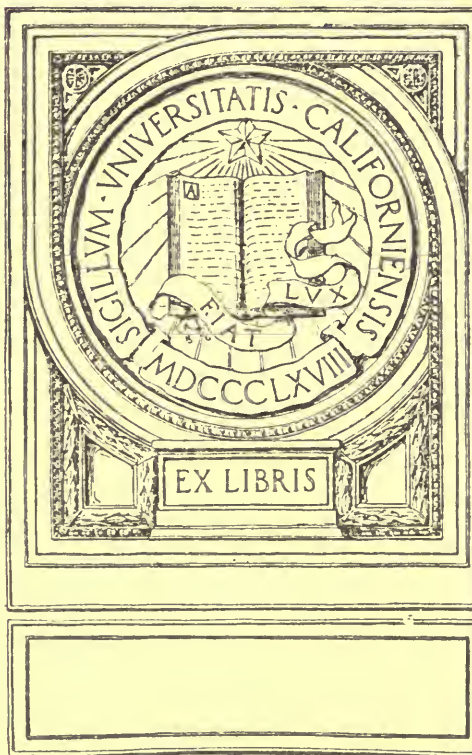




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COURT OF QUEEN'S BENCH, IRELAND.

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**A REPORT**

OF

**THE PROCEEDINGS**

ON AN

**INDICTMENT FOR A CONSPIRACY,**

IN THE CASE OF

**THE QUEEN**

*v.*

DANIEL O'CONNELL,  
JOHN O'CONNELL,  
THOMAS STEELE,  
CHARLES GAVAN DUFFY,  
REV. THOMAS TIERNEY,

REV. PETER JAMES TYRRELL,  
RICHARD BARRETT,  
JOHN GRAY, AND  
THOMAS MATTHEW RAY,

IN

MICHAELMAS TERM, 1843, AND HILARY TERM, 1844.

BY

JOHN SIMPSON ARMSTRONG,

AND

EDWARD SHIRLEY TREVOR, Esqrs.,

BARRISTERS AT LAW.

DUBLIN :

HODGES AND SMITH, 21, COLLEGE-GREEN.

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DUBLIN: PRINTED BY M. H. GILL.

ANNALS OF THE  
YEAR 1888.

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*Judges of the Court.*

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

Lib

*Counsel for the Crown.*

The Right Hon. THOMAS BERRY CUSACK SMITH, *Attorney-General.*  
RICHARD WILSON GREENE, Esq., *Solicitor-General.*  
RICHARD BENSON WARREN, Esq., *Second Sergeant.*

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2/18/81

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2-00

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Messrs. MAHONY, FORDE, CANTWELL, GARTLAN, and REILLY, *Attorneys for the Traversers.*

WALTER BOURNE, Esq., *Clerk of the Crown.*

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## P R E F A C E .

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THE original intention of the Reporters was to have published a full Report of the Trial, with only short notes of the decisions of the Court on the several motions made in the course of Michaelmas Term, 1843. After a considerable part of the work had been printed, at the suggestion of several gentlemen of the Bar, they resolved on publishing a report of the arguments and judgments on the preliminary motions. In consequence of this alteration in the original plan of the Report, the pages from 25 to 120, are duplicates. In order to prevent confusion, and to afford a facility of reference, the duplicate numbers have been printed with an asterisk. The Reporters avail themselves of this opportunity of acknowledging the urbanity and kindness of the Lord Chief Justice, and the other Judges of the Court; and to the Counsel employed, they have also to express their obligations for the assistance afforded them.

*April 13, 1844.*



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QUEEN'S BENCH.

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REPORT

OF

THE PROCEEDINGS

IN THE CASE OF

THE QUEEN *v.* O'CONNELL AND OTHERS,

&c. &c.

---

IN the month of October, 1843, warrants having been issued against several gentlemen, charging them with a misdemeanor in exciting discontent and disaffection among Her Majesty's subjects, &c.; they attended before Mr. Justice Burton at his residence, and gave bail to appear in the Queen's Bench, on the first day of the ensuing Michaelmas Term.

---

THURSDAY, NOVEMBER 2ND.

This being the first day of Michaelmas Term, the following proceedings took place:—

MR. JUSTICE BURTON entered the court at one o'clock. The Clerk of the Crown then proceeded to call over the grand jury panel.

George Frederick Brooke, Esq., who was the first who answered to his name, objected to being the Foreman, on the ground that it would interfere with his duties as one of the Directors of the Bank of Ireland.

The *Attorney General*.—The usual course is, that the first grand juror who answers to his name is the Foreman. It is irregular to select a Foreman from the Grand Jury panel. In Mr. Brooke's case there is no legal objection whatever, neither privilege nor disability. I wish that the regular course should be adopted in this case.

The following Grand Jury were sworn :

GEORGE FREDERICK BROOKE, Foreman.

|                                |                               |
|--------------------------------|-------------------------------|
| Robert Latouche, Jun.          | Patrick Waldron.              |
| Benjamin Lee Guinness.         | Thomas Hutton.                |
| Philip Doyne.                  | Richard O'Gorman.             |
| Henry Roe.                     | Simon Foot.                   |
| Sir Beresford Mac Mahon, Bart. | Henry Courtney.               |
| Sir Robert Harty, Bart.        | John Wisdom.                  |
| Richard Armit.                 | Bartholomew Moliere Tabuteau. |
| Andrew Vance.                  | Robert Callwell.              |
| George Pim.                    | William Henry.                |
| Francis Augustus Codd.         | William Newcombe.             |
| Robert William Law.            | William Sherrard.             |

His Lordship then delivered the following Charge :

Gentlemen of the Grand Jury of the county of the city of Dublin,—I not aware of any ordinary business of the county of the city of Dublin on which it is necessary for me to make any particular observations. If any difficulty in discharge of any particular duty should occur to you, the Court will be ready to give you, at any time, 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 very great anxiety, and of very great public importance, and upon that I think it my duty, as summarily as the circumstances of such a subject will admit of, to lay such observations before you as, I hope, may somewhat facilitate the discharge of that very important—but, perhaps, you may find it not very difficult—duty which you have to discharge. Gentlemen, the case to which I allude is the subject of an indictment which is likely to be referred to you; and I have to state to you, what perhaps you are perfectly well acquainted with without any information from me, that such an indictment, even when found, is only an accusation against which the party accused is then, that is, after the bill has been found by the Grand Jury, called on 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 brought before them, and they are not only to hear the evidence so given, but also so far as they find it necessary, to cross-examine the witnesses who may be produced to them, so as to enable them to form a satisfactory judgment upon their credit. If, on a careful examination of such evidence, they, the Grand Jury, or a majority of them, amounting at least to twelve, are satisfied that a sufficient case has been made before them, to justify their putting the party on his trial, they must find the bill 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 the charge, they must then reject it, and thereupon the party is discharged from that bill for that time; but in that case he is not acquitted of the charge contained in it. The

sufficiency of the evidence depends upon this consideration, whether if the party was actually on his trial on a plea of not guilty, and no evidence was given for the defence, 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 you may find the bill a true bill as to some one of the counts contained in it, and may reject it as to some one or other of those counts. If you find a true bill as to any of the counts, in that case the party accused is put on his trial on those counts only so found to be true; but a Grand Jury cannot properly find a bill a true bill as to part of any particular count, and not a true bill as to the other part of the same count; and further, that where a bill is preferred against several persons, 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 only with conspiracy, the bill cannot be found against one of them. Gentlemen, I have now to tell you that, as I understand, the bill likely and intended to be submitted to you is a bill against a certain number of persons specified in it, the whole being a charge of conspiracy, the sense of which is, agreeing among themselves only, or together with others, and concurring with each other in a design to effect certain unlawful purposes, or at least to effect certain purposes, whether in themselves unlawful or not, by unlawful means. Gentlemen, I believe I may state that the great, ostensible, and, as I should collect from the statement in the informations sworn before me, the avowed object of the persons charged by the bill is the abolition of the Legislative Union between 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 by 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 is or will be preferred, and which it is material to state. It appears, then, that some or one of the persons charged has or have asserted, at some or one of the public meetings referred to in the informations, that the Legislative Union is in itself unlawful; that it is absolutely void: the consequence of which must be, that every Statute made since the Union, and purporting to bind Ireland, will, in that instance, be void, and have no legal effect. Gentlemen, whether this language be correctly stated, or whether any language to that effect was actually used, or if used, was used in that sense, you are to judge, and to satisfy yourselves, by the examination of witnesses on oath; but I think the statement in the sworn informations, as I have collected it, authorizes and indeed makes it incumbent on me to say, 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 the exercise of your judgment on this indictment which will be preferred 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 part of it, at any time to contest the policy or expediency of continuing this 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—have the persons charged unlawfully and seditiously conspired to excite disaffection and discontent among 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 in your consideration of the indictment, you will direct your attention to this, not only with reference to this particular count, but also as it may throw light on your examination of all or any of the counts in the indictment. Gentlemen, I will now proceed, in connexion with, and with reference to the observations which I have just made, to call your attention to one of the charges in the indictment; it appears to me to be of paramount importance; that is, the one which charges, as part of the alleged conspiracy, the inducing and procuring large numbers of persons to 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 information before me, that the intimidation spoken of does not, or, at least, does not necessarily impute to the persons calling together these multitudes, who appear to have been assembled at different times, and to have occasionally been addressed, as appears by the informations, by the appellation of fighting men, it does not, I mean to say, express any design or intention of permitting or encouraging any infraction of the public peace on those occasions. On the contrary, it would appear to me, that the principal object, and one earnestly impressed on these multitudes, was a strict abstaining from any attempt, at that time, to commit 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 the country, and also, and especially, to affect, or endeavour to affect, the proceedings of the legislature on the subject, and, at the same time, on pretence of petitioning for a repeal of the Union, asserting, in the presence of these assembled multitudes, that by their intervention it might and should take place. This seems to me to afford ground for charging in the indictment a purpose of intimidating. Gentlemen, whether the parties charged really had that purpose or intention it is for you to judge; that is, you will judge whether there is or is not matter of charge fit and proper to be tried by a jury, on a plea of not guilty. I have further to tell you, that the charge in the indictment on this ground is, if true, a misdemeanor; and further, that there appears evidence of the truth of that charge, but of the truth of that evidence, and the inference 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 of the jury, I have already intimated to you that the evidence in support of this charge is of a circumstantial or inferential character, and must therefore be taken into consideration in connexion with the other charges in the indictment which may be found to



have a relation to it. Gentlemen, I have alluded to one which charges, as part or a circumstance of the object of conspiring, that they have excited discontent and disaffection among the Queen's subjects, and have endeavoured to seduce from their allegiance divers of the Queen's subjects, and among others her subjects serving in the army and navy. If the evidence to this effect appears to you to have any weight, it not only tends to establish what is in itself at least a high misdemeanor, but also to corroborate the evidence on the charges which I have before noticed, and therefore in both these views it craves 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 purports to be a letter or letters published in a newspaper, or perhaps in several newspapers, of which some or 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 by you with care, with a view first to elicit the true meaning and intention of the composition itself. You are aware that it is to be supposed that a design of such a description would be conveyed in ambiguous and very careful and studied language. Secondly, you will have to consider with attention, the fact of its being published with or without the knowledge of the parties charged, and whether its so appearing in public was or was not in accordance with the intention of the parties concerned, or any of them. Gentlemen, this is a charge which I do consider of a very important nature indeed, and to which, therefore, I call your particular attention, for the purpose of judging whether any design of the kind was really entertained. If there be sufficient evidence to induce you to believe that it is as it at present appears—that there was a design of this description, you will have to consider whether it ought or ought not to be submitted to a jury empanelled between the Crown and the subject, in order to arrive at the truth of the charge. Gentlemen, there is another charge, which, with the same view, that is, its relation to the charge of designed intimidation by the demonstration of physical force, deserves, as it appears to me, your particular attention. That is the charge of soliciting and obtaining, as well from different parts of the United Kingdom, as from foreign countries, large sums of money, in order to promote and effect the objects charged by the indictment. 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 also of terms of acknowledgment of such receipt, and of encouraging, if not directly soliciting, the continuance of them. The question upon this part of the case will, I apprehend, be whether these contributions were received for the purpose charged by the indictment, or at least whether they do not so raise this question or presumption upon such evidence, either direct or inferential, as to make out 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 may, according to my view of the subject, add this, that the offence, as it appears to be charged,



(I allude here to the motive and purpose ascribed to the collection of these contributions) is a misdemeanor, and I cannot but feel that I am bound to say that in my own present view of this part of the case, the fact itself opens consideration of very great importance, and such as will, in my judgment, on the admitted or hitherto uncontroverted circumstances, disclose a case very fit for, and which possibly could only be satisfactorily adjudicated on by a trial on a plea of not guilty to the indictment. Gentlemen, there is another charge of a specific offence which I think it right to call to your notice. It is in itself a charge which craves your attention and consideration, and it is not without application to the other charges in the indictment, so far at least as respects the remote and possible consequences of these proceedings, which are the immediate subject of the indictment. 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 prerogative of the Crown in the establishment of Courts for the administration of the law. Upon this, Gentlemen, I will only say that the offence, as here charged, is a misdemeanor, and that there is evidence partly, but not altogether, of an inferential character in support of this charge, inasmuch as the evidence in some particulars goes to the actual appointment of persons to fill the office of administering justice in public Courts designed for that purpose, and accompanied by declarations, if the evidence be true, that the Judges should for the future be appointed by the people. Gentlemen, such a measure,—I mean the appointment of public arbitrators to decide upon matters in litigation and dispute between the Queen's subjects,—if it should be considered beneficial to the public, ought properly to have been effected by an Act of Parliament. This measure may seem to have been adopted in this particular case, on the assumption that the Parliament of the United Kingdom is not a lawful Parliament, and therefore, that the Queen's subjects in 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. I cannot however but observe, 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, an inference of law applicable to an hypothetical case, it must be a matter of much difficulty for a Grand Jury, in the exercise of their functions, to come to a determination upon it; and therefore, if the facts upon which the offence is charged, and upon which the inference is to be deduced, be clearly proved, it may be the better course to find the bill, leaving the evidence and the legal consequence of it to be determined at the trial, on an issue joined on the plea of not guilty. Gentlemen, I hope I have so far made myself intelligible to you, as to the course of your duty, and as to the consequences of the exercise of that duty. If in the exercise of that you find the bill a true bill, you will send the case to be tried by a jury empannelled between the Crown and the subject. There is a circumstance which I feel

some little difficulty in speaking to you of; at the same time that I think it not improper to make some observation upon it. I am not sure that it will be necessary for you to take it into consideration. Gentlemen, it is, I believe, well known, that one of the witnesses from whom the informations were taken, and upon whose testimony the indictment may, at least in part, be grounded, has himself been publicly charged with misrepresentation on a matter of identification, that is, in identifying a particular person. You will probably, if he should be produced to you, cross-examine him on this subject; and I have only to tell you, that if a misrepresentation appears to have been made by him, on his oath, and to have been so made wilfully, and with a consciousness of the falsehood of the matters sworn to by him, it follows, that such a misrepresentation will justly disentitle him to any credit from you; and further, if it should appear to have been a misrepresentation arising from negligence, that is, from want of proper care and attention to the important duty he had to discharge, it may, under all the circumstances, be sufficient materially to affect his credit, though not sufficient to disentitle him to all credit as to the truth of other parts of his testimony. Gentlemen, the case, at least so far as it is in my power to bring it under your consideration, with a view to the effectual discharge of your duty, is now substantially before you, and so far as the informations sworn before me go. It is right to observe, that upon notification to the parties charged by the intended prosecution, they immediately and voluntarily, and very creditably to themselves, entered into recognizances to appear and abide the prosecution. You will now proceed to the examination of the evidence, and you will allow me very respectfully to request you to bring to it minds free from preoccupation, préjudice, or prepossession, so far as concerns the alleged guilt of the parties brought before you. The subject you have to consider is very important. That is indeed a very feeble epithet to apply to it. From the motives that have led to the movement, from the means used in conducting it, and from its possible results, it is, in my judgment, of a most awful nature. But that does not authorize us to consider the question otherwise than as leading to a strictly impartial judgment upon its legal character. You will remember what I have all along intimated to you, that to this moment the parties are not, legally speaking, accused of any offence. You are to judge not whether they are guilty, but whether they shall be accused; that is, whether they shall be called upon to admit or confess or disclaim the imputation; and upon their disclaimer, that is, on their plea of not guilty, they will have to meet the legal accusation by evidence, either denying the charge or explaining it away. Upon these topics the jury will have to decide. Gentlemen, I am aware that I have made but an imperfect statement to you. I have only to add, that if any other question should arise, or any further exposition of the law should become necessary on this indictment, the Court will be ready to afford you every assistance in its power.

The *Attorney General*.—The indictment which your Lordship has adverted to is ready to be laid before the Grand Jury, and will be

sent up to them at half-past ten to-morrow, or at any hour that may be convenient to them, and the witnesses will then be in attendance.

Mr. *Hatchell*, Q. C.—The parties, who are bound by their recognizances to attend, are present, in case any order should be made by the Court.

The *Attorney General*.—They are bound to attend not only to-day, but from day to day, until called on.

---

SATURDAY, NOVEMBER 4TH.

The Foreman of the Grand Jury stated to the Court, that a clerical error had been made in the fourth count of the indictment, the name of the Rev. Peter James Tyrrel being substituted throughout that count for that of the Rev. Thomas Tierney.

The CHIEF JUSTICE having inquired whether any of the counsel for the traversers were present.

Mr. *Macdonagh*, Q. C., appeared as counsel for the Rev. Thomas Tierney, when

The *Attorney General* objected to his addressing the Court on the ground that he had not obtained a license from the Crown to defend the traverser.

Mr. *Cantwell*, the agent for the Rev. Thomas Tierney, stated, that he had obtained the license, and called on Mr. Macdonagh to proceed.

Mr. *Macdonagh* then objected to the bill being amended, there being nothing to amend by.

The *Attorney General*.—The counsel for a party has no right to address the Court before the indictment is found. Until then, all the proceedings are *ex parte*. I therefore object to counsel addressing the Court at the present stage of the proceedings. With respect to the amendment, the error is merely a clerical one; the substitution of one name for the other; and I apprehend the Court has power to have the bill amended. This is not an application to amend the indictment after it has been found.

Mr. *Macdonagh*.—The Attorney General will remember that I did not address the Court until I was called on to do so.

The LORD CHIEF JUSTICE.—The irregularity is attributable to me in calling on Mr. Macdonagh. The Court is of opinion that this is not to be considered as an indictment. It is merely a bill 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, and therefore that no person ought at present to be heard. If the Attorney General is desirous of having a clerical mistake amended, the Court will permit him to do so. Indeed, I say he may do so without applying to the Court at all. For the present, the bill is to be handed back to the Grand Jury.





" tice ; and further unlawfully, maliciously, and seditiously contriving,  
 " intending, and devising by means of intimidation, and the demon-  
 " stration 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, 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 disaf-  
 " fection amongst the liege subjects of our said Lady the Queen,  
 " and to excite such subjects to hatred and contempt of the Govern-  
 " ment and Constitution of this realm as by law established, and to  
 " unlawful and seditious opposition to the said Government and Con-  
 " stitution, and also to stir up jealousies, hatred, and ill-will between  
 " different classes of her Majesty's subjects, and especially to pro-  
 " mote amongst her Majesty's subjects in Ireland feelings of ill-will  
 " and hostility towards and against her Majesty's subjects in the  
 " other parts of the United Kingdom of Great Britain and Ireland,  
 " and especially in that part of the said United Kingdom called Eng-  
 " land ; and further to excite discontent and disaffection amongst divers  
 " of Her Majesty's subjects serving in her said Majesty's army ; and fur-  
 " ther 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 unlaw-  
 " ful and seditious purpose of obtaining by means of the intimidation  
 " to be thereby caused, and by means of the exhibition and demon-  
 " stration 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 ad-  
 " ministration 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 with-  
 " draw the adjudication of their differences with, and claims upon  
 " each other, from the cognizance of the said Courts by law estab-  
 " lished, and to submit the same to the judgment and determination  
 " of other tribunals to be constituted and contrived for that purpose.

" AND THAT the said Daniel O'Connell, Thomas Steele, and  
 " Richard Barrett, respectively, in pursuance of the said unlaw-  
 " ful combination, conspiracy, and confederacy, heretofore, to wit,  
 " on the 19th of March, 1843, at Trim, to wit, at the parish of St.  
 " Mark, in the county of the city of Dublin aforesaid, did meet and  
 " assemble themselves with divers others of the said conspirators un-  
 " known, and did then and there cause and procure, and aid and  
 " assist in causing and procuring, divers subjects of our said Lady  
 " the Queen, to a large number, to wit, to the amount of 30,000,  
 " then and there to meet and assemble themselves together, at Trim



“ aforesaid, to wit, at the parish aforesaid, in the county of the city  
“ of Dublin aforesaid.

“ AND THAT the said Daniel O’Connell, Thomas Steele, and  
“ Richard Barrett respectively, in pursuance of the said unlaw-  
“ ful combination, conspiracy, and confederacy, heretofore, to wit,  
“ on the 19th of March, 1843, at Trim, to wit, at the parish of St.  
“ Mark, in the county of the city of Dublin aforesaid, unlawfully,  
“ maliciously, and seditiously, did again meet and assemble with  
“ divers others of the said conspirators unknown, and did then and  
“ there cause and procure, and aid and assist in causing and procur-  
“ ing divers subjects of our said Lady the Queen, to a large number,  
“ to wit, to the number of 200, then and there to meet and assemble  
“ themselves together, at Trim aforesaid, to wit, at the parish of St.  
“ Mark, in the county of the city of Dublin aforesaid; and that at  
“ such meeting the said Daniel O’Connell, in further pursuance of  
“ the said unlawful combination, conspiracy, and confederacy, in the  
“ presence and hearing of the said subjects, did then and there make  
“ and speak, with a loud voice, divers malicious and seditious words  
“ and speeches, and particularly the said Daniel O’Connell did so  
“ speak in substance and to the effect following, that is to say.” The  
speech is then set out. “ And that the said Richard Barrett, in fur-  
“ ther pursuance of, &c., afterwards, to wit, on the 22nd of March,  
“ in the year last aforesaid, to wit, at Marlborough-street, in, &c.,  
“ unlawfully, maliciously, and seditiously, did in a certain news-  
“ paper called the *Pilot*, publish, and cause and procure to be pub-  
“ lished, in the form of, and purporting to be a report of a speech  
“ of the said Daniel O’Connell, amongst other things, as well the sub-  
“ stance and effect of the said several malicious and seditious matters,  
“ herein-before mentioned to have been spoken and uttered by the  
“ said Daniel O’Connell, to the said subjects, so assembled at Trim  
“ aforesaid, as also divers other malicious and seditious matters and  
“ things tending to bring into hatred and contempt the said Govern-  
“ ment and Constitution of this realm. And that the said John Gray,  
“ in further pursuance of, &c., afterwards, to wit, on the 21st of  
“ March, in the year last aforesaid, to wit, at Prince’s-street, in, &c.,  
“ unlawfully, maliciously, and seditiously, did in a certain news-  
“ paper called the *Freeman’s Journal and Daily Commercial Ad-*  
“ *vertiser*, publish, and cause and procure to be published, in the  
“ form of, and purporting to be a report of a speech of the said Da-  
“ niel O’Connell, amongst other things, as well the substance and ef-  
“ fect of the said several malicious and seditious matters herein-be-  
“ fore mentioned to have been spoken and uttered by the said Daniel  
“ O’Connell to the said subjects, so assembled at Trim aforesaid, as  
“ also divers other malicious and seditious matters and things tending  
“ to bring into hatred and contempt, the said Government and Con-  
“ stitution of this realm. And that the said Charles Gavan Duffy,  
“ in further pursuance of, &c., afterwards, to wit, on the 25th of  
“ March, in the year last aforesaid, to wit, at Trinity-street, in, &c.,  
“ unlawfully, maliciously, and seditiously, did in a certain news-  
“ paper called the *Nation*, publish, and cause and procure to be

“ published, in the form of, and purporting to be a report of a speech  
 “ of the said Daniel O’Connell, amongst other things, as well the sub-  
 “ stance and effect of the said several malicious and seditious matters  
 “ herein-before mentioned to have been spoken and uttered by the  
 “ said Daniel O’Connell to the said subjects so assembled, at Trim  
 “ aforesaid, as also, divers other malicious and seditious matters and  
 “ things, tending to bring into hatred and contempt the said Govern-  
 “ ment and Constitution of this realm.

“ AND THAT the said Daniel O’Connell, Thomas Steele, and  
 “ John Gray, respectively, in further pursuance of, &c., heretofore,  
 “ to wit on the 14th of May, in the year last aforesaid, at Mullingar,  
 “ to wit at, &c., did meet and assemble themselves with divers others  
 “ of the said conspirators unknown, and did then and there cause and  
 “ procure, and aid and assist in causing and procuring divers subjects  
 “ of, &c., to a large number, to wit, 100,000, then and there to meet  
 “ and assemble themselves together at Mullingar aforesaid, to wit  
 “ at, &c.

“ AND THAT the said Richard Barrett, Daniel O’Connell, Thomas  
 “ Steele, and John Gray, respectively, in further pursuance of, &c., here-  
 “ tofore, to wit, on the 14th of May, in the year last aforesaid, at Mullin-  
 “ gar, to wit, at, &c., did again meet and assemble with divers others of  
 “ the said conspirators unknown, and did then and there cause and pro-  
 “ cure, and aid and assist in causing and procuring divers subjects  
 “ of, &c., to a large number, to wit, 300, then and there to meet  
 “ and assemble together at Mullingar aforesaid, to wit, at, &c., and  
 “ that at such meeting the said Richard Barrett, in further pursu-  
 “ ance of, &c., in the presence and hearing of the said subjects,  
 “ did then and there make and speak with a loud voice divers ma-  
 “ licious and seditious words and speeches, and particularly the said  
 “ Richard Barrett, did then and there so speak in substance, and to the  
 “ effect following, that is to say”—Barrett’s speech is then set out;  
 and he is further charged with having published the same in the *Pilot*  
 newspaper of the 15th of May.

“ AND THAT the said Daniel O’Connell and Thomas Steele re-  
 “ spectively, in pursuance of, &c., heretofore, to wit on the 21st of  
 “ May, in the year last aforesaid, at Cork, to wit, at, &c., did meet and  
 “ assemble themselves with divers others of the said conspirators un-  
 “ known, and did then and there cause and procure, and aid and assist  
 “ in causing and procuring divers subjects of, &c., to a large number, to  
 “ wit, 500,000, then and there to meet and assemble themselves to-  
 “ gether at Cork aforesaid, to wit, at, &c.

“ AND THAT the said Daniel O’Connell and Thomas Steele re-  
 “ spectively, in further pursuance of, &c., heretofore, to wit on the  
 “ 21st of May, in the year last aforesaid, at Cork, to wit at, &c., did again  
 “ meet and assemble themselves, with divers others of the said con-  
 “ spirators unknown, and did then and there cause and procure, and  
 “ aid and assist in causing and procuring divers subjects of, &c.,  
 “ to a large number, to wit, 500, then and there unlawfully, ma-  
 “ liciously, and seditiously to meet and assemble themselves to-  
 “ gether at Cork aforesaid, to wit at, &c., and that at the said meet-

ing the said Daniel O'Connell, in further pursuance of, &c., in the presence and hearing of the said subjects, did then and there make and speak with a loud voice divers malicious and seditious words and speeches, and particularly the said Daniel O'Connell, did then and there so speak in substance, and to the effect following, that is to say, &c."—Speech of Daniel O'Connell is then set out, and Barrett, Gray, and Duffy are charged with having published the same.

"AND THAT the said Daniel O'Connell, John O'Connell, and Thomas Steele respectively, in pursuance of, &c., heretofore, to wit on the 28th of May, in the year last aforesaid, at Longford, to wit at &c., did meet and assemble themselves with divers others of the said conspirators unknown, and did then and there cause and procure, and aid and assist in causing and procuring divers subjects of, &c., to a large number, to wit 200,000, then and there to meet and assemble themselves together at Longford aforesaid, to wit at, &c.

"AND THAT the said Daniel O'Connell, John Gray, and Thomas Steele, respectively, in further pursuance of, &c., heretofore, to wit on the 28th May, in the year last aforesaid, at Longford, to wit at, &c., did again meet and assemble with divers others of the said conspirators unknown, and did then and there cause and procure, and aid and assist in causing and procuring divers subjects of, &c., to a large number, to wit 200, then and there to meet and assemble themselves together at Longford aforesaid, to wit at, &c., and that at the said meeting the said Daniel O'Connell, in further pursuance of, &c., in the presence and hearing of the said subjects, did then there make, and speak with a loud voice, divers malicious and seditious words and speeches, and particularly the said Daniel O'Connell did then and there so speak in substance and to the effect following, that is to say."—Speech of Daniel O'Connell is then set out, and Barrett, Gray, and Duffy are charged with publishing it.

"AND THAT the said Daniel O'Connell, Thomas Steele, Richard Barrett, and Peter James Tyrrell, respectively, in further pursuance of, &c., heretofore, to wit, on the 5th of June, in the year last aforesaid, to wit, at, &c., did meet and assemble, with divers others of the said conspirators unknown, and did then and there cause and procure, and aid and assist in causing and procuring divers subjects of, &c., to a large number, to wit 200,000 persons, then and there to meet and assemble together, at Drogheda, to wit at, &c., and that at the said meeting, the said Daniel O'Connell, in further pursuance of, &c. in the presence and hearing of the said persons, did then and there make and speak with a loud voice, divers malicious and seditious words and speeches; and particularly the said Daniel O'Connell did then and there so speak in substance, and to the effect following, that is to say." His speech is then stated, and Barrett, Duffy, and Gray are charged with publishing it.

"AND THAT the said Daniel O'Connell, Thomas Steele, and John O'Connell, respectively, in further pursuance of, &c., heretofore, to wit, on the 8th of June, in the year last aforesaid, at Kilkenny, to wit at, &c., did meet and assemble themselves, with divers others of the said conspirators unknown, and did then and

“ there cause and procure, and aid and assist in causing and procuring divers subjects of, &c., to a large number, to wit 300,000, then and there to meet and assemble themselves together, at Kilkenny aforesaid, to wit at, &c.”

“ AND THAT the said Daniel O’Connell, John O’Connell, and Thomas Steele respectively, in further pursuance of, &c., afterwards, to wit on the 8th of June, in the year last aforesaid, at Kilkenny, to wit at, &c., did again meet and assemble, with divers others of the said conspirators unknown, and did then and there cause and procure, and aid and assist in causing and procuring divers subjects of, &c., to a large number, to wit 500, then and there to meet and assemble themselves together, at Kilkenny aforesaid, to wit at, &c., and that at the said meeting the said Daniel O’Connell, in further pursuance of, &c., in the presence and hearing of the said subjects, did then and there make and speak with a loud voice, divers malicious and seditious words and speeches; and particularly the said Daniel O’Connell did then and there so speak in substance, and to the effect following, that is to say.”—The speech is then set out, and Barrett, Gray, and Duffy are charged with publishing it.

“ AND THAT the said Daniel O’Connell and Thomas Steele respectively, in further pursuance of, &c., heretofore, to wit on the 11th of June, in the year last aforesaid, at Mallow, to wit at, &c., did meet and assemble, with divers others of the said conspirators, unknown, and did then and there cause and procure, and aid and assist in causing and procuring divers subjects of, &c., to a large number, to wit 400,000 persons, then and there to meet and assemble together, at Mallow aforesaid, to wit, at, &c.”

“ AND THAT the said Daniel O’Connell and Thomas Steele respectively, in further pursuance of, &c., heretofore, to wit on the 11th of June, in the year last aforesaid, at Mallow, to wit, at, &c., did again meet and assemble themselves, with divers others of the said conspirators unknown, and did then and there cause and procure, and aid and assist in causing and procuring divers subjects of, &c., to a large number, to wit 200, then and there to meet and assemble themselves together, at Mallow aforesaid, to wit at, &c., and that at the said meeting, the said Daniel O’Connell, in further pursuance of, &c., in the presence and hearing of the said subjects, did then and there make and speak with a loud voice, divers malicious and seditious words and speeches; and particularly the said Daniel O’Connell did so then and there speak in substance and to the effect following, that is to say.”—The speech is then set out, and Barrett, Gray, and Duffy are charged with publishing it.

“ AND THAT the said Daniel O’Connell, and Thomas Steele, respectively in further pursuance of, &c., heretofore, to wit on the 29th of June, in the year last aforesaid at Dundalk, to wit at, &c., did meet and assemble themselves with divers others of the said conspirators unknown, and did then and there cause and procure, and aid and assist in causing and procuring divers subjects of, &c. to a large number, to wit 300,000, then and there to meet and assemble themselves together at Dundalk aforesaid, to wit at, &c.”



“AND THAT the said Daniel O’Connell, and Thomas Steele, respectively, in further pursuance of, &c., heretofore, to wit on the 29th June, in the year last aforesaid, at Dundalk, to wit at, &c., did again meet and assemble themselves with divers others of the said conspirators unknown, and did then and there cause and procure and aid and assist in causing and procuring divers subjects of, &c., to a large number, to wit 500, then and there to meet and assemble themselves together at Dundalk aforesaid, to wit at, &c., and that at the said meeting the said Daniel O’Connell, in further pursuance of, &c., in the presence and hearing of the said subjects, did then and there make and speak with a loud voice divers malicious and seditious words and speeches, and particularly the said Daniel O’Connell then and there did so speak in substance and to the effect following, that is to say.”—His speech is then stated, and Barrett, Gray, and Duffy are charged with publishing it.

“AND THAT the said Daniel O’Connell, John O’Connell, Thomas Steele, and John Gray, respectively, in further pursuance of &c., heretofore, to wit on 3rd of July, in the year last aforesaid, at *Donnybrook*, to wit at, &c. did meet and assemble themselves with divers others of the said conspirators unknown, and did then and there cause and procure, and aid and assist in causing and procuring divers subjects of, &c., to a large number, to wit 200,000, then and there to meet and assemble themselves together at Donnybrook aforesaid, to wit at, &c. and that at the said meeting, the said Daniel O’Connell in further pursuance of, &c. in the presence and hearing of the said subjects, did then and there make and speak with a loud voice divers malicious and seditious words and speeches, and particularly the said Daniel O’Connell, did then and there so speak in substance, and to the effect following, that is to say.”—His speech is then set forth, and Barrett, Gray, and Duffy are charged with publishing it.

“AND THAT the said Daniel O’Connell, John Gray, and Thomas Steele respectively, in further pursuance of, &c. heretofore, to wit on the 6th of August, in the year last aforesaid at *Baltinglass*, to wit at, &c. did meet and assemble themselves with divers others of the said conspirators unknown, and did then and there cause and procure and aid and assist in causing and procuring divers subjects of, &c. to a large number, to wit 300,000, then and there to meet and assemble themselves together at Baltinglass aforesaid, to wit at, &c.

“AND THAT the said Daniel O’Connell, John Gray, and Thomas Steele respectively, in further pursuance of, &c., heretofore, to wit on 6th of August, in the year last aforesaid, at Baltinglass, to wit at, &c., did again meet and assemble themselves, with divers others of the said conspirators unknown, and did then and there cause and procure, and aid and assist in causing and procuring divers subjects of, &c., to a large number, to wit 400, then and there to meet and assemble themselves together at Baltinglass aforesaid, to wit at, &c., and that at the said meeting the said Daniel O’Connell in

“ further pursuance of, &c., in the presence and hearing of the said subjects, did then and there make and speak with a loud voice divers malicious and seditious words and speeches; and particularly the said Daniel O’Connell did then and there so speak in substance, and to the effect following, that is to say, &c.”—His speech is then set forth, and Barrett, Gray, and Duffy are charged with publishing it.

“ AND THAT the said Thomas Tierney, in further pursuance of, &c., heretofore, to wit on 15th of August, in the year last aforesaid, at Clontibret, to wit, &c., did meet and assemble together with divers others of the said conspirators unknown, and did then and there cause and procure, and aid and assist in causing and procuring divers subjects of, &c., to a large number, to wit 30,000, then and there to meet and assemble themselves together at Clontibret aforesaid, to wit at, &c.

“ AND THAT the said Daniel O’Connell, John O’Connell, Richard Barrett, John Gray, Thomas Mathew Ray, Peter James Tyrrell, and Thomas Steele respectively, in further pursuance of, &c., heretofore, to wit on the 15th of August, in the year last aforesaid, at Tara, to wit at, &c., did meet and assemble themselves, with divers of the said conspirators unknown, and did then and there cause and procure, and aid and assist in causing and procuring divers subjects of, &c., to a large number, to wit, 800,000, then and there to meet and assemble themselves together at Tara aforesaid, to wit at, &c., and that at such meeting the said Daniel O’Connell, in further pursuance of, &c., in the presence and hearing of the said subjects, did then and there make and speak with a loud voice divers malicious and seditious words and speeches; and particularly the said Daniel O’Connell did then and there so speak in substance and to the effect following, that is to say, &c.”—His speech is then set out, and Barrett, Gray, and Duffy are charged with publishing it.

“ AND THAT the said Daniel O’Connell, John O’Connell, John Gray, Richard Barrett, Thomas Steele, Peter James Tyrrell, and Thomas Mathew Ray respectively, in further pursuance of, &c., heretofore, to wit on the said 15th of August, in the year last aforesaid, at Tara, to wit at, &c., unlawfully, maliciously, and seditiously, did again meet and assemble themselves, with divers others of the said conspirators unknown, and did then and there cause and procure, and aid and assist in causing and procuring divers subjects of, &c., to a large number, to wit 500, then and there to meet and assemble themselves at Tara aforesaid, to wit, at, &c.; and that at the said meeting the said Daniel O’Connell, in further pursuance of, &c., in the presence and hearing of the said subjects, did then and there make and speak in a loud voice divers malicious and seditious words and speeches; and particularly the said Daniel O’Connell did then and there so speak in substance, and to the effect following, that is to say, &c.” Speeches of Daniel O’Connell and John Gray are then set forth, and Barrett, Gray, and Duffy are charged with publishing them.

“ AND THAT the said Daniel O’Connell, John Gray, Thomas

“ Steele, and Richard Barrett, respectively, in further pursuance of, &c., heretofore, to wit, on the 10th of September, in the year last aforesaid, at Loughrea, to wit at, &c., did meet and assemble with divers others of the said conspirators unknown, and did then and there cause and procure, and aid and assist in causing and procuring divers subjects of, &c., to a large number, to wit 100,000, then and there to meet and assemble themselves together at Loughrea aforesaid, to wit at, &c.

“ AND THAT the said Daniel O’Connell, John Gray, Thomas Steele, and Richard Barrett, respectively, in further pursuance of, &c., heretofore, to wit on the 10th of September in the year last aforesaid, at Loughrea aforesaid, to wit at, &c., did again meet and assemble with divers others of the said conspirators unknown, and did then and there cause and procure, and aid and assist in causing and procuring, divers subjects of, &c., to a large number, to wit 500, then and there to meet and assemble themselves together at Loughrea aforesaid, to wit at, &c., and that at the said meeting the said Richard Barrett, in further pursuance of, &c., in the presence and hearing of the said subjects, did then and there make and speak with a loud voice, divers malicious and seditious words and speeches, and particularly the said Richard Barrett did then and there so speak in substance, and to the effect following, that is to say, &c.—The speeches of Barrett and Gray are then set out, and Barrett, Gray, and Duffy are charged with publishing them.

“ AND THAT the said Daniel O’Connell, Thomas Steele, and John Gray, respectively, in further pursuance of, &c., heretofore, to wit, on the 17th of September in the year last aforesaid, at Clifden, to wit at, &c., did meet and assemble with divers others of the said conspirators unknown, and did then and there cause and procure, and aid and assist in causing and procuring, divers subjects of, &c., to a large number, to wit 50,000, then and there to meet and assemble themselves together at Clifden aforesaid, to wit at, &c., and that at the said meeting, the said Daniel O’Connell, in further pursuance of, &c., in the presence and hearing of the said subjects, did then and there make and speak with a loud voice, divers malicious and seditious words and speeches, and particularly the said Daniel O’Connell did then and there so speak in substance, and to the effect following, that is to say.”—It then sets out his speech, and charges Barrett, Gray, and Duffy with publishing it.

“ AND THAT the said Daniel O’Connell, Thomas Steele, and John Gray respectively, in further pursuance of, &c., heretofore, to wit on the 17th of September in the year last aforesaid, at Clifden, to wit at, &c., did again meet and assemble with divers others of the said conspirators unknown, and did then and there cause and procure, and aid and assist in causing and procuring, divers subjects of, &c., to a large number, to wit 400, then and there to meet and assemble themselves together at Clifden aforesaid, to wit at, &c., and that at the said meeting, the said Daniel

“O’Connell, in further pursuance of, &c., in the presence and hearing of the said subjects, did then and there make and speak with a loud voice, divers malicious and seditious words and speeches, and particularly the said Daniel O’Connell did then and there so speak in substance and to the effect following, that is to say, &c.”—The speech of Daniel O’Connell is then stated, and Barrett, Gray, and Duffy are charged with publishing it.

“AND THAT the said Daniel O’Connell, Richard Barrett, and Thomas Steele respectively, in further pursuance of, &c., heretofore, to wit on the 24th of September, in the year last aforesaid, at Lismore, to wit &c., did meet and assemble with divers others of the said conspirators unknown, did then and there cause and procure, and aid and assist in causing and procuring divers subjects, &c., to a large number, to wit 100,000, then and there to meet and assemble themselves together at Lismore aforesaid, to wit at, &c. And that at the said meeting, the said Daniel O’Connell in further pursuance of, &c., in the presence and hearing of the said subjects, did then and there make and speak, with a loud voice, divers malicious and seditious words and speeches; and particularly the said Daniel O’Connell did then and there so speak in substance and to the effect following, that is to say :”—The speech is then stated, and Barrett, Gray, and Duffy are charged with publishing it.

“AND THAT the said Daniel O’Connell, Richard Barrett, and Thomas Steele respectively, in further pursuance of, &c., heretofore, to wit on the 24th of September, in the year last aforesaid, at Lismore aforesaid, to wit in, &c., did again meet and assemble, with divers others of the said conspirators unknown, and did then and there cause and procure, and aid and assist in causing and procuring, divers subjects of, &c., to a large number, to wit 200, then and there to meet and assemble themselves together at Lismore aforesaid, to wit at, &c., and that at the said meeting, the said Daniel O’Connell in further pursuance of, &c., in the presence and hearing of the said persons, did then and there make and speak, with a loud voice, divers malicious and seditious words and speeches, and particularly the said Daniel O’Connell did then and there so speak, in substance and to the effect following, that is to say :”—The speech is then set out, and Barrett, Gray, and Duffy are charged with publishing it.

“AND THAT the said Daniel O’Connell, Thomas Mathew Ray, John Gray, Thomas Steele, and Richard Barrett, respectively, in further pursuance of, &c., heretofore, to wit on the 1st of October, in the year last aforesaid, at Mullaghmast, to wit in, &c., did meet and assemble themselves together, and, with divers others of the said conspirators unknown, and did then and there cause and procure, and aid and assist in causing and procuring, divers subjects of, &c., to a large number, to wit 100,000, then and there to meet and assemble themselves together at Mullaghmast aforesaid, to wit at, &c.; and that the said Daniel O’Connell, in further pursuance of, &c., did then and there act as the Chairman of the said meeting;



“ and did then and there, in further pursuance of the said unlawful combination, conspiracy, and confederacy, in the presence and hearing of the said subjects, make and speak with a loud voice, divers malicious and seditious words and speeches, and particularly the said Daniel O’Connell did then and there speak in substance and to the effect following, that is to say.”—The speech of Daniel O’Connell is then set forth, and the Resolutions passed at the meeting; and Barrett, Gray, and Duffy are charged with publishing them.

“ AND THAT the said Daniel O’Connell, John O’Connell, Thomas Steele, Richard Barrett, and John Gray, respectively, in further pursuance of, &c., heretofore, to wit on the 1st of October, in the year last aforesaid, at Mullaghmast, to wit in, &c., did again meet and assemble themselves together, and with divers others of the said conspirators unknown, and did then and there cause and procure, and aid and assist in causing and procuring divers subjects of, &c., to a large number, to wit 200, then and there to meet and assemble themselves together, at Mullaghmast aforesaid, to wit at, &c.; and that at the said meeting the said John O’Connell, in further pursuance of, &c., in the presence and hearing of the said persons, did then and there make and speak, with a loud voice, divers malicious and seditious words and speeches, and particularly the said John O’Connell did then and there so speak in substance and to the effect following, that is to say.”—The speeches of Daniel O’Connell and John O’Connell are then set out; and Barrett, Gray, and Duffy are charged with publishing them.

“ AND THAT the said Daniel O’Connell, John O’Connell, Thomas Mathew Ray, Thomas Steele, John Gray, Charles Gavan Duffy, Thomas Tierney, Peter James Tyrrell, and Richard Barrett, respectively, in further pursuance of, &c., heretofore, to wit on the 29th of September, in the year last aforesaid, to wit at, &c., unlawfully and seditiously did, with divers others of the said conspirators unknown, endeavour to cause and procure, and aid and assist in endeavouring to cause and procure large multitudes of persons unlawfully and seditiously to collect, meet, and assemble together at a certain place, to wit at Clontarf, to wit at, &c., and that for that purpose, and in pursuance and furtherance of the said last-mentioned unlawful object and design, the said Charles Gavan Duffy, on the 30th of September, in the year last aforesaid, to wit at Trinity-street, in, &c., did print and publish, and cause and procure to be printed and published in a certain newspaper called the *Nation*, certain matter to the substance and effect following, that is to say.”—The advertisement headed “Repeal Cavalry” is then set forth, and John Gray is charged with publishing resolutions to the same effect.

“ AND THAT the said Daniel O’Connell, Thomas Mathew Ray, and Charles Gavan Duffy, respectively, in further pursuance of, &c., heretofore, to wit on the 13th of February in the year last aforesaid, to wit at, &c., did meet and assemble with divers of the said conspirators unknown, and did then and there cause and

“procure, and aid and assist in causing and procuring, divers subjects of, &c., to a large number, to wit 300, then and there to meet and assemble themselves together at, &c.; and that at such meeting the said Daniel O’Connell, in further pursuance of, &c., in the presence and hearing of the said subjects did then and there make and speak with a loud voice divers malicious and seditious words and speeches, and particularly the said Daniel O’Connell did then and there so speak in substance and to the effect following, that is to say.”—The speech of Daniel O’Connell is then set out, and Barrett, Gray, and Duffy are charged with publishing it.

“AND THAT the said Daniel O’Connell, Thomas Matthew Ray, Peter James Tyrell, Charles Gavan Duffy, John Gray, Richard Barrett, and Thomas Steele, respectively, in further pursuance of, &c., heretofore, to wit on the 6th of March in the year last aforesaid, to wit at, &c., did meet and assemble themselves together with divers others of the said conspirators unknown, and did then and there cause and procure, and aid and assist in causing and procuring, divers subjects of, &c., to a large number, to wit 500, then and there to meet and assemble together, to wit at, &c., and that at the said meeting the said Daniel O’Connell, in the presence and hearing of the said subjects, did, in further pursuance of, &c., then and there make and speak with a loud voice divers malicious and seditious words and speeches.”

“AND THAT the said Daniel O’Connell, John O’Connell, Thomas Matthew Ray, John Gray, and Thomas Steele, respectively, in further pursuance of, &c., heretofore, to wit on the 30th of May, in the year last aforesaid, at, &c., did meet and assemble themselves together, with others of the said conspirators unknown, and did then and there cause and procure, and aid and assist in causing and procuring, divers subjects of, &c., to a large number, to wit 500, then and there to meet and assemble themselves together, to wit at, &c., and that at the said meeting, the said Daniel O’Connell, in the presence and hearing of the said subjects, did, in further pursuance of, &c., make and speak with a loud voice divers malicious and seditious words and speeches; and particularly the said Daniel O’Connell did so speak in substance, and to the effect following, that is to say.”—His speech is then set out; and Barrett, Gray, and Duffy are charged with publishing it.

“AND THAT the said Daniel O’Connell, John O’Connell, Charles Gavan Duffy, and Thomas Steele, respectively, in further pursuance of the said unlawful combination, &c., heretofore, to wit on the 25th of July, in the year last aforesaid, to wit at, &c., did, in further pursuance of, &c., meet and assemble themselves together, with divers others of the said conspirators unknown, and did then and there cause and procure, and aid and assist in causing and procuring, divers subjects of, &c., to a large number, to wit to the number of 300, then and there to meet and assemble themselves together to wit at, &c., and that at said meeting a certain letter

“ was then and there read aloud, in the presence and hearing of the said Daniel O’Connell, and of the said other persons so then and there assembled, stating, among other things, to the purport that the writer of the said letter requested that the said newspaper called the *Nation*, should be sent to him by the said persons so designated as the Loyal National Repeal Association, and that the said Daniel O’Connell, in further pursuance of, &c., in the presence and hearing of the said subjects, did then and there make and speak with a loud voice, divers malicious and seditious words and speeches, and particularly that the said Daniel O’Connell did then and there so speak in substance and to the effect following, that is to say.”—The speech made by Daniel O’Connell is then set out, and Barrett and Gray charged with publishing it.

“ AND THAT the said Daniel O’Connell, John Gray, Thomas Matthew Ray, John O’Connell, Thomas Steele, and Charles Gavan Duffy, respectively, in further pursuance of, &c., heretofore, to wit on the 22nd of August, in the year last aforesaid, at, &c., did meet and assemble themselves together, with divers others of the said conspirators unknown, and did cause and procure, and aid and assist in causing and procuring, divers subjects of, &c., to a large number, to wit 300, then and there to meet and assemble themselves together at, &c. And that, at the said meeting, the said Daniel O’Connell, in further pursuance of, &c., in the presence and hearing of the said subjects, did then and there make and speak with a loud voice divers malicious and seditious words and speeches; and particularly the said Daniel O’Connell did then and there so speak in substance and to the effect following, that is to say.”—His speech is then set out; and the plan for renewed action of the Irish Parliament; and Barrett, Gray, and Duffy are charged with publishing them.

“ AND THAT the said Daniel O’Connell, John O’Connell, John Gray, Richard Barrett, and Thomas Matthew Ray, respectively, in further pursuance of, &c., heretofore, to wit on the 23rd of August, in the year last aforesaid, to wit at, &c., did meet and assemble, with divers others of the said conspirators unknown, and did then and there cause and procure, and aid and assist in causing and procuring, divers subjects of, &c., to a large number, to wit 300, then and there to meet and assemble themselves together, to wit at, &c. And that at the said meeting the said John Gray, in the presence and hearing of the said persons, did in further pursuance of, &c., then and there make and speak with a loud voice divers malicious and seditious words and speeches; and particularly the said John Gray did then and there so speak in substance and to the effect following, that is to say.”—The speech of John Gray, and the Report of the Arbitration Committee, are then stated; and Barrett, Gray, and Duffy are charged with publishing them.

“ AND THAT the said Daniel O’Connell, John O’Connell, Thomas Matthew Ray, Thomas Steele, and John Gray respectively, in further pursuance of, &c., heretofore, to wit on the 4th of September, in the year last aforesaid, to wit at, &c., did meet and as-

“semble with divers others of the said conspirators unknown, and did then and there cause and procure, and aid and assist in causing and procuring, divers subjects of, &c., to a large number, to wit to 200, then and there to meet and assemble themselves together at, &c.; and that at the said meeting the said Daniel O’Connell, in the presence and hearing of the said subjects, did then and there make and speak with a loud voice divers malicious and seditious words and speeches; and particularly the said Daniel O’Connell did, in further pursuance of, &c., then and there so speak, amongst other things, in substance and to the effect following, that is to say.”—His speech is then set out and Barrett, Gray, and Duffy are charged with publishing it.

“AND THAT the said Daniel O’Connell, John O’Connell, Thomas Matthew Ray, Richard Barrett, John Gray, Thomas Tierney, Peter James Tyrrell, and Thomas Steele, respectively, in further pursuance of, &c. heretofore, to wit on the 12th September, in the year of our Lord last aforesaid, at, &c. unlawfully, maliciously, and seditiously did meet and assemble, with divers others of the said conspirators unknown, and did then and there cause and procure, and aid and assist in causing and procuring, divers subjects of, &c. to a large number, to wit 400, then and there unlawfully, maliciously, and seditiously to meet and assemble themselves together, to wit at, &c. and that at the said meeting the said Daniel O’Connell, in further pursuance of, &c., in the presence and hearing of the said subjects, did then and there read aloud and publish a certain unlawful, malicious, and seditious writing, purporting to be an Address to the inhabitants of the countries subject to the British Crown.”—The address is then set out, and all the traversers are charged with circulating it. And Barrett, Gray, and Duffy are charged with publishing it.

“AND THAT the said Daniel O’Connell, Thomas Matthew Ray, John O’Connell, and John Gray, respectively, in further pursuance of, &c. heretofore, to wit on the 26th day of September, in the year last aforesaid, to wit at, &c., did meet and assemble themselves, together with divers others of the said conspirators unknown, and did then and there cause and procure, and aid and assist in causing and procuring, divers subjects of, &c., to a large number, to wit 300, then and there to meet and assemble themselves together, to wit at, &c., and that at the said meeting the said Daniel O’Connell, in further pursuance of, &c. in the presence and hearing of the said subjects, did then and there make and speak with a loud voice divers malicious and seditious words and speeches.

“AND THAT the said Daniel O’Connell, Thomas Matthew Ray, Thomas Steele, and John Gray, respectively, in further pursuance of, &c., heretofore, to wit on the 27th of September, in the year last aforesaid, to wit at, &c. did meet and assemble, with divers of the said conspirators unknown, and did then and there cause and procure, and aid and assist in causing and procuring, divers subjects of, &c. to a large number, to wit 300, then and there to meet and



“ assemble themselves together, to wit at, &c. and that at the said meeting the said Daniel O’Connell, in further pursuance of, &c., unlawful combination &c., in the presence and hearing of the said subjects, did then and there make and speak with a loud voice divers malicious and seditious words and speeches.

“ AND THAT the said Daniel O’Connell, John O’Connell, Thomas Mathew Ray, and Thomas Steele, respectively, in further pursuance of, &c., heretofore, to wit on the 2nd October, in the year last aforesaid, to wit at, &c., did meet and assemble themselves with divers of the said conspirators unknown, and did then and there cause and procure, and aid and assist in causing and procuring, divers subjects of, &c., to a large number, to wit 300, then and there to meet and assemble themselves together, to wit at, &c., and that at the said meeting the said Daniel O’Connell, in further pursuance of, &c. in the presence and hearing of the said subjects, did then and there make and speak with a loud voice, divers malicious and seditious words and speeches.”

“ AND THAT the said Daniel O’Connell, John O’Connell, Thomas Matthew Ray, Thomas Steele, Charles Gavan Duffy, Thomas Tierney, and John Gray, respectively, in further pursuance of, &c. heretofore, to wit on the 3rd October, in the year last aforesaid, to wit at, &c., did meet and assemble themselves together, with divers of the said conspirators unknown, and did then and there cause and procure, and aid and assist in causing and procuring divers subjects of, &c., to a large number, to wit 300, then and there to meet and assemble themselves together, to wit at, &c., and that at the said meeting, the said Thomas Steele, in further pursuance of, &c. in the presence and hearing of the said subjects, did then and there make and speak with a loud voice, divers malicious and seditious words and speeches, and particularly the said Thomas Steele, did then and there so speak in substance and to the effect following, that is to say.”—The speeches of Thomas Steele, John Gray, and Thomas Tierney, are then set out, and Duffy is charged with publishing the speech of Tierney.

“ AND THAT the said Daniel O’Connell, John O’Connell, Thomas Steele, Thomas Mathew Ray, John Gray, and Peter James Tyrrell respectively, in further pursuance of, &c., heretofore, to wit on the 9th of October, in the year last aforesaid, to wit at Abbey-street in, &c., did meet and assemble themselves, with divers others of the said conspirators unknown, and did then and there cause and procure, and aid and assist in causing and procuring divers subjects of, &c., to a large number, to wit 1000, then and there to meet and assemble themselves together, to wit at, &c., and that at such meeting divers sums of money were then and there, in further pursuance of, &c., paid by sundry persons to the said Thomas Matthew Ray, for the purpose of being by him (the said Thomas Matthew Ray) applied in and towards the prosecution of the objects of, &c., and that at the said last mentioned meeting, the said Peter James Tyrrell, in further pursuance of, &c., did then and there, in the presence and hearing of the said subjects,

“unlawfully, maliciously, and seditiously make and speak with a loud voice, divers malicious and seditious words and speeches, and particularly the said Peter James Tyrrell did then and there so speak, in substance and to the effect following, that is to say.”—The speech of Peter James Tyrrell is then set out, and Barrett, Gray, and Duffy are charged with publishing it.

“AND THAT the said Richard Barrett, in further pursuance of, &c., heretofore, to wit on the 10th of March, in the year 1843, to wit at Marlborough-street, in, &c., unlawfully, maliciously, and seditiously did publish, and cause and procure to be published, in a certain newspaper called the *Pilot*, certain unlawful, malicious, and seditious matter, to the substance and effect following, that is to say: *Repeal—America.*”—The article is then set forth.

“AND THAT the said Richard Barrett, in further pursuance of the said unlawful combination, &c., did also then and there, in the said newspaper called the *Pilot*, publish, and cause and procure to be published, in the form of, and purporting to be a report of a speech of one Robert Tyler, certain other unlawful, malicious, and seditious matter, to the substance and effect following, that is to say.”—The article is then set out.

“AND THAT the said Charles Gavan Duffy, in further pursuance of, &c., heretofore to wit on the 1st of April, in the year 1843, to wit at Trinity-street, to wit at, &c., unlawfully, maliciously, and seditiously did publish, and cause and procure to be published in a certain newspaper called the *Nation*, certain unlawful, malicious, and seditious matter, to the substance and effect following, that is to say: *The Memory of the Dead.*”—Which is then set out.

“AND THAT the said Charles Gavan Duffy, in further pursuance of, &c., heretofore, to wit on the 29th of April, in the year 1843, to wit at Trinity-street, in, &c., unlawfully, maliciously, and seditiously did publish, and cause and procure to be published in a certain newspaper called the *Nation*, certain unlawful, malicious, and seditious matter, to the substance and effect following, that is to say: *Something is Coming.*”—The article is then set out.

“AND THAT the said Charles Gavan Duffy, in further pursuance of, &c., heretofore, to wit on the 29th of April, in the year 1843, to wit at Trinity-street, in, &c., unlawfully, maliciously, and seditiously did publish, and cause and procure to be published, in a certain newspaper called the *Nation*, certain unlawful, malicious, and seditious matter, to the substance and effect following, that is to say: *Our Nationality.*”—The article is then set out.

“AND THAT the said Charles Gavan Duffy, in further pursuance of, &c., heretofore, to wit, on the 10th of June, in the year 1843, to wit at Trinity-street, in, &c., unlawfully, maliciously, and seditiously did publish, and cause and procure to be published, in a certain newspaper called the *Nation*, certain unlawful, malicious, and seditious matter, to the substance and effect following, that is to say: *The Morality of War.*”—This article is then set out.

“AND THAT the said Richard Barrett, in further pursuance of, &c., heretofore, to wit on the 28th of August, in the year 1843, to

“ wit at Marlborough-street, in, &c., unlawfully, maliciously, and seditiously did publish, and cause and procure to be published, in a certain newspaper called the *Pilot*, certain other unlawful, malicious, and seditious matter, to the substance and effect following, that is to say : *The Duty of a Soldier.*”—Then follows the article.

“ AND THAT the said Richard Barrett, in further pursuance of, &c., heretofore, to wit on the 6th of September, in the year 1843, to wit at Marlborough-street, in, &c., unlawfully, maliciously, and seditiously did publish, and cause and procure to be published, in a certain newspaper called the *Pilot*, certain other unlawful, malicious, and seditious matter, to the substance and effect following, that is to say : *The Irish in the English Army.*—*Mr. O’Callaghan’s Letters.*”—The article is then set out.

“ AND THAT the said Richard Barrett, in further pursuance of, &c., heretofore, to wit on the 25th of September, in the year 1843, to wit at Marlborough street, in, &c., unlawfully, maliciously, and seditiously did publish, and cause and procure to be published, in a certain newspaper called the *Pilot*, certain other unlawful, malicious, and seditious matter, to the substance and effect following, that is to say : *The Army, the People, and the Government.*”—Then follows the article.

“ AND THAT that the said Richard Barrett, in further pursuance of, &c., heretofore, to wit on the said 25th of September, 1843, to wit at Marlborough-street, in, &c., unlawfully, maliciously, and seditiously did publish, and cause and procure to be published in the said newspaper called the *Pilot*, certain other unlawful, malicious, and seditious matter to the substance and effect following, that is to say : *Runoured Death of General Jackson.—The Battle of New Orleans.*”—The article is then set out.

“ AND THAT the said Richard Barrett, in further pursuance of, &c., heretofore, to wit on the 6th of October, in the year 1843, to wit at Marlborough-street, in, &c., unlawfully, maliciously, and seditiously did publish, and cause and procure to be published, in a certain newspaper called the *Pilot*, certain other unlawful, malicious, and seditious matter, to the substance and effect following, that is to say, *The Battle of Clontarf.—This is the REPEAL YEAR.*”—Then follows the article.

“ AND THAT in another part of the said newspaper called the *Pilot*, the said Richard Barrett did, in further pursuance of, &c., on the day and year last aforesaid, at, &c., unlawfully, maliciously, and seditiously publish, and cause and procure to be published, certain other unlawful, malicious, and seditious matter, to the substance and effect following, that is to say : *Thus terminated the Battle of Clontarf.*”—The article is then set out.

“ AND THAT the said Charles Gavan Duffy, in further pursuance of, &c., heretofore, to wit, &c., on the 26th of August, in the year 1843, to wit at Trinity-street, in, &c., unlawfully, maliciously, and seditiously did publish, and cause and procure to be published, in a certain newspaper called the *Nation*, certain other unlawful, malicious, and seditious matter, to the substance and

“ effect following, that is to say : *The Crisis is upon us.*”—The article is then stated.

“AND THAT the said Charles Gavan Duffy, in further pursuance of, &c., heretofore, to wit on the 7th of October, in the year 1843, to wit at Trinity-street, in, &c., unlawfully, maliciously, and seditiously, did publish, and cause and procure to be published, in a certain newspaper called the *Nation*, certain other unlawful, malicious, and seditious matter, to the substance and effect following, that is to say : *To the Editor of the Nation.*”—A letter is then set out.

“AND THAT the said Daniel O’Connell, John O’Connell, Thomas Steele, Thomas Matthew Ray, Charles Gavan Duffy, Thomas Tierney, Peter James Tyrrell, John Gray, and Richard Barrett, respectively, and the said other conspirators, in further pursuance of, &c., heretofore, to wit on the 1st of March, in the year aforesaid, to wit at the parish of, &c., and on divers other days and times before and after that day, and at divers places in divers parts of Ireland, unlawfully, maliciously, and seditiously did meet and assemble themselves, with divers other persons, to the Jurors aforesaid unknown, and on said several days and times, and at said several places, in further pursuance of, &c., did respectively receive, obtain, and collect divers large sums of money, as well from divers of the subjects of our said Lady the Queen, as from others the inhabitants of foreign countries, and the subjects of foreign states ; and did also, at said several times and places, in further pursuance of, &c., respectively address and speak to, and in the hearing of divers of the subjects, &c., at the several times and places in manner aforesaid, assembled and met together, divers malicious, seditious, and inflammatory speeches, discourses, and harangues ; and did also respectively propose and submit to said persons so assembled, at said several times and places respectively, divers motions and resolutions, with the intent thereby, at said respective times and places, to excite and persuade, and endeavour to excite and persuade, each other, and the said persons, whose names are to the Jurors aforesaid unknown, and also the said liege subjects of, &c., at said times and places respectively present and being, as aforesaid, to discontent with, and hatred of, and disaffection to the Government, Laws and Constitution of this realm, as by law established, 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.

“*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 Steele, 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 dis-  
 “ content 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 tri-  
 “ bunals duly and lawfully constituted for the administration of justice ;  
 “ and further unlawfully, maliciously, and seditiously contriving, in-  
 “ tending, and devising, by means of intimidation and the demonstra-  
 “ tion 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 13th of Febru-  
 “ ary, in the year 1843, with force and arms, to wit at the parish  
 “ of St. Mark aforesaid, in the county of the city of Dublin afore-  
 “ said, unlawfully, maliciously, and seditiously did combine, con-  
 “ spire, 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 op-  
 “ position 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 Ma-  
 “ jesty’s subjects in Ireland feelings of ill-will and hostility towards  
 “ and against Her 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  
 “ 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 as-  
 “ semble together in large numbers, at various times and at different  
 “ places within Ireland, for the unlawful and seditious purpose of ob-  
 “ taining, 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 Go-  
 “ vernment, 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.

“ *Third 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 Steele, Thomas  
 “ Matthew Ray, Charles Gavan Duffy, Thomas Tierney, Peter  
 “ James Tyrrell, John Gray, and Richard Barrett, unlawfully, mali-  
 “ ciously, 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 sub-  
 “ jects in the tribunals duly and lawfully constituted for the admi-  
 “ nistration of justice; and further, unlawfully, maliciously, and sedi-  
 “ tiously contriving, intending, and devising, by means of intima-  
 “ tion and the demonstration of great physical force, to procure and  
 “ effect changes to be made in the Government, Laws, and Consti-  
 “ tution of this realm, as by law established, heretofore, to wit on  
 “ the 13th of February, in the year 1843, with force and arms,  
 “ to wit at the parish of St. Mark, in the county of the city of  
 “ Dublin aforesaid, unlawfully, maliciously, and seditiously did com-  
 “ bine, 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 Constitu-  
 “ tion of this realm as by law established, and to unlawful and sedi-  
 “ tious opposition to the said Government and Constitution, and  
 “ also to stir up hatred, jealousies, 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 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 sub-  
 “ jects 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 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 as-  
 “ semblies and meetings, changes and alterations in the Government,  
 “ Laws, and Constitution of this realm, as by law established; and fur-  
 “ ther, to bring into hatred and disrepute, the Courts by law estab-  
 “ lished 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.

“ *Fourth 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 Steele, 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 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 13th day of February, in the year of our Lord 1843, and on divers other days and times, as well before as after, with force and arms, to wit at the parish of St. Mark, in the county of the city of Dublin, as aforesaid, 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 the other parts of the United Kingdom, and especially in that part of the said United Kingdom called England; and further, to cause and procure, and aid and assist in causing and procuring, divers subjects of our said Lady the Queen, 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, 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.

“ *Fifth 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 Steele, 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 cause and create discontent and disaffection amongst the liege subjects of our said Lady the Queen, and to excite the said subjects to hatred and contempt of the Government and Constitution of this realm as by law established, heretofore, to wit on the 13th of February, 1843, with force and arms, to wit at the parish of Saint Mark, in the county of the city of Dublin aforesaid, 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 the said 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 the other parts of the said United Kingdom, and especially in that part of the said United Kingdom called England, 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.

“ *Sixth 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 Steele, Thomas Mathew Ray, Charles Gavan Duffy, Thomas Tierney, Peter James Tyrrell, John Gray, and Richard Barrett, 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 13th of February, 1843, with force and arms, to wit at the parish of Saint Mark, in the county of the city of Dublin aforesaid, 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 cause and procure, and aid and assist in causing and procuring, divers subjects of our said Lady the Queen, 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 intimi-



“ dation 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, 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.

“ *Seventh 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 Steele,  
 “ Thomas Matthew Ray, Charles Gavan Duffy, Thomas Tierney,  
 “ Peter James Tyrrell, John Gray, and Richard Barrett, unlaw-  
 “ fully, maliciously, and seditiously contriving, intending, and devis-  
 “ ing, 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 es-  
 “ tablished, heretofore, to wit on the 13th of February, 1843,  
 “ with force and arms, to wit at the parish of saint Mark, in the  
 “ county of the city of Dublin aforesaid, unlawfully, maliciously, and  
 “ seditiously did combine, conspire, confederate, and agree with each  
 “ other, and with divers other persons whose names are to the Ju-  
 “ rors aforesaid unknown, to cause and procure, and aid and assist in  
 “ causing and procuring, divers subjects of our said Lady the Queen,  
 “ 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 the  
 “ 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 especially, by the means aforesaid, to  
 “ bring about and accomplish a dissolution of the Legislative Union  
 “ now subsisting between Great Britain and Ireland, in contempt of  
 “ our said Lady the Queen and the laws of this realm, to the evil ex-  
 “ ample of all others in the like case offending, and against the peace  
 “ of our said Lady the Queen, her crown and dignity.

“ *Eighth 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 Steele, Tho-  
 “ mas Matthew Ray, Charles Gavan Duffy, Thomas Tierney, Peter  
 “ James Tyrrell, John Gray, and Richard Barrett, unlawfully, ma-  
 “ liciously, and seditiously contriving, intending, and devising to  
 “ bring into disrepute, and to diminish the confidence of Her Ma-  
 “ jesty’s subjects in the tribunals duly and lawfully constituted  
 “ in Ireland for the administration of justice, heretofore, to wit  
 “ on the 13th of February, 1843, with force and arms, to wit at  
 “ the parish of Saint Mark, in the county of the city of Dublin  
 “ aforesaid, unlawfully, maliciously, and seditiously did combine,  
 “ conspire, confederate, and agree with each other, and with di-  
 “ vers other persons, whose names are to the Jurors aforesaid  
 “ unknown, 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 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 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, 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.”

“ *Ninth 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 Steele, 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 bring into disrepute and diminish the confidence of Her Majesty’s subjects in the tribunals duly and lawfully constituted for the administration of justice, heretofore, to wit on the 13th of February, 1843, and on divers other days and times, as well before as after, with force and arms, to wit at the parish of Saint Mark, in the county of the city of Dublin aforesaid, 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 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 liege 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 law, 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.”

“ *Tenth 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 Steele, Thomas Mathew Ray, Charles Gavan Duffy, Thomas Tierney, Peter James Tyrrell, John Gray, and Richard Barrett, unlawfully, maliciously, and seditiously contriving, intending, and devising to bring into disrepute, and diminish the confidence of Her Majesty’s subjects in the tribunals duly and lawfully constituted for the administration of justice heretofore, to wit on the 13th of February, 1843, and on divers other days and times, as well before as after, with force and arms, to wit at the parish of Saint Mark, in the county of the city of Dublin aforesaid, 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 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 liege subjects in Ireland  
 “ in the administration of the laws therein, 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.

“ *Eleventh 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 Steele, Tho-  
 “ mas Matthew Ray, Charles Gavan Duffy, Thomas Tierney, Peter  
 “ James Tyrrell, John Gray, and Richard Barrett, unlawfully, ma-  
 “ liciously, and seditiously contriving, intending and devising, by  
 “ means of intimidation and the demonstration of physical force,  
 “ and by causing and procuring large numbers of persons to meet and as-  
 “ semble together, in divers places and at divers times within Ireland,  
 “ and by means of seditious and inflammatory speeches and addresses  
 “ to be made and delivered to the said persons so to be assembled as  
 “ last aforesaid, and also by means of the publishing and causing and  
 “ procuring to be published to and amongst the subjects of her said  
 “ Majesty, divers unlawful, malicious, and seditious writings and com-  
 “ positions, and further contriving and intending by the several means  
 “ aforesaid to intimidate the Lords Spiritual and Temporal, and the  
 “ Commons of the Parliament of the United Kingdom of Great  
 “ Britain and Ireland, and thereby to effect and bring about changes  
 “ in the laws and Constitution of this realm as by law established, here-  
 “ tofore, to wit on the 13th of February, 1843, to wit at the parish of St.  
 “ Mark, in the county of the city of Dublin aforesaid, unlawfully,  
 “ maliciously, and seditiously did combine, conspire, confederate, and  
 “ agree with each other, and with other persons whose names aer  
 “ to the Jurors aforesaid unknown, to cause and procure large num-  
 “ bers of persons to meet and assemble together in divers places and  
 “ at divers times within 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 respectively,  
 “ and also by means of the publishing, and causing and procuring to  
 “ be published, to and amongst the subjects of Her said Majesty, divers  
 “ unlawful, malicious, and seditious writings and compositions to in-  
 “ timidate the Lords Spiritual and Temporal, and the Commons of  
 “ the Parliament of the United Kingdom of Great Britain and Ire-  
 “ land, and thereby to effect and bring about changes and alterations  
 “ in the laws and Constitution of this realm as now by law established,  
 “ in contempt of our said Lady the Queen, and of 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.”

#### BILL OF PARTICULARS.

“ 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 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 other 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 on ——.” It then sets out the dates of several meetings which were held in the months of March, April, July, August, September, October, and November, 1843, and of the several meetings at Limerick, Sligo, Charleville, Cashel, Ennis, Athlone, Skibbereen, Galway, Tullamore, Tuam, Maryborough, Roscommon, and the dinners which took place at those places. “ And any entries of the said several proceedings made by the defendants, or any of them, or by the direction of them or any of them, and the manner and order in which the persons composing the said several meetings respectively went thereto; and also it is further intended to give in evidence, in support of the said prosecution, the holding of, and all proceedings and acts of, certain assemblies styled Courts of Arbitration, held at Blackrock and Rathmines, in the vicinity of Dublin, and also at Limerick, in the months of August, September, and October, 1843, and of the persons professing to act as Arbitrators in the said Courts; and it is further intended to give in evidence, in support of the said prosecution, the fact of the printing and publishing, and also the contents, of the several newspapers following.”—It then enumerates the dates of several of the *Pilot*, *Freeman's Journal*, and *Nation* newspapers, published during the months of March, April, May, June, July, August, September, October, and November, 1843. “ And you are to take notice, that each and every of the said several matters hereinbefore mentioned or referred to, will be offered in evidence at the trial of this case, in support of each and every of the counts in the indictment. Dated “ 13th of November, 1843.”

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WEDNESDAY, NOVEMBER 8TH.

At three o'clock on this day, the Foreman of the Grand Jury addressed the Court, and handed down the indictment to the Clerk of the Crown, who read the finding of the Grand Jury, which was in the following words—“ A true bill for self and fellows,—George Frederick Brooke.”

Mr. Richard O'Gorman (one of the Grand Jurors), I beg to express my dissent from that bill.

The *Attorney-General*.—I move that the traversers be now called on their recognizances.

The Clerk of the Crown then called over the following names:—Daniel O'Connell, Esq., John O'Connell, Esq., John Gray, Esq., Thomas Steele, Esq., Richard Barrett, Esq., the Rev. Thomas Tierney, the Rev. Peter James Tyrrell, Charles Gavan Duffy, Esq., Thomas Matthew Ray, Esq.

Mr. Thomas Steele.—I take this opportunity of stating, that I intend to defend myself without the aid of counsel, as I did successfully on a former occasion; but I strongly object to be prosecuted by the *Attorney-General*, who has publicly manifested a prejudice in the case. I do not speak of the other traversers—they will take their own course; but I hope that a sense of propriety, or I should rather say, common decency, will induce him to retire, and leave the trial to be prosecuted by his highly gifted, patient, and temperate colleague, the *Solicitor-General*.

The *Attorney-General*.—I now move for an order from your Lordships, that the traversers do plead four days from the present time, pursuant to the Statute 60 Geo. III. cap. 4, sec. 1, which enacts, that the person, prosecuted by indictment or information, for a misdemeanor in this Court, and who shall appear in term time, in person, to answer such indictment or information, shall, upon being charged therewith, not be permitted to imparl to a following term, but shall be required to plead or demur thereto within four days from the time of the appearance. I seek a similar order to that made in the case of *The King v. O'Connell*, on the 26th of January, 1831. In that case the rule was special, in consequence of the defendant having been called, and not being in attendance, and undertaking by his attorney to appear in person on the following day, the rule was entered so as to run from the preceding day. I apprehend, that it is the duty of the officer to charge the traversers, who are now present, with the indictment.

Mr. *Hatchell*.—I am not aware this course should be adopted, but, on the part of Daniel O'Connell, I move, my Lords, that he should be forthwith furnished with a copy of the indictment.

The several counsel for the other traversers, and Mr. Steele on his own behalf, made similar applications.

The *Attorney-General*.—The copies of the indictment shall be furnished as soon as possible. The section of the Act is precise, that the defendant, when charged with the indictment, must plead thereto within four days from the time of his appearance.

Mr. *Moore*, Q. C.—The words of the 8th section, by which the traverser is entitled to a copy of the indictment, are equally precise. The two sections must be read together in order to give the party accused the advantage he is entitled to. If the construction put upon the Statute by the *Attorney-General* be right, the party would be called on to plead to an indictment which he had not seen.

The LORD CHIEF JUSTICE.—The Act is peremptory, the Court

has no discretion. The Act requires that the party should plead or demur within four days. I do not say that, if a satisfactory case were made, and an application made to the Court to extend the time for pleading, that the Court would not grant it. But we are not to assume that there will be any necessity to ask for further time than that specified by the Act.

Mr. JUSTICE PERRIN.—The only question is, whether the party is charged with the indictment, before he receives a copy, or hears it read.

Mr. *Fitzgibbon*, Q. C.—It is not necessary that the indictment should be read. At common law, a party was entitled to have the indictment read to him, and until then he was not bound to plead to it. The Statute merely did away with imparlances, but it did not deprive the party of his right to have the indictment read, but substituted instead of that, that he should be furnished with a copy, if he chose to apply for it. I submit, until he has been furnished with this copy, or until it has been read to him, the rule to plead cannot be entered.

Mr. *Macdonagh*.—There are two questions here :—first, what is the meaning of the words “being charged,” and secondly, what is the true construction of the Statute, reading the 1st and 8th sections together? First, he is not charged with the indictment until called on to hear it read, in order to make his defence—that is the true construction and plain meaning of the first section. The Act was passed to prevent imparlances, but does not deprive the party of his common law right to have the indictment read to him. By the 8th section, he is entitled to a copy to enable him to prepare his defence; and if he be furnished with a copy, that is tantamount to the reading of it, but he cannot stand charged, until either it has been read to him or he has been furnished with a copy.

The *Attorney-General*.—If the parties insist on it, I do not oppose the reading of it, but as a matter of convenience, copies will be furnished within an hour. The 1st and 8th sections of the Statute are not to be read together. A party is not entitled to a copy of the indictment until the bill has been found; there is no provision that he should be furnished with a copy of the bill, we could not provide copies until the bill has been found; but it is clear that he stands charged with the indictment the moment it has been found; and we are entitled to have the rule to plead entered, before copies have been furnished. All I require is, that the parties should stand charged with the indictment.

The LORD CHIEF JUSTICE.—I would ask Mr. Moore if he is satisfied to have the substance of the indictment read.

Mr. *Moore*.—My Lord, in a criminal case I would not feel myself warranted in giving any consent.

Mr. JUSTICE CRAMPTON.—I apprehend, that under the Statute, they cannot be called upon to plead until charged with the indictment. If the traversers are satisfied with a short statement of it by the Clerk of the Crown, they then will stand charged, if not, it must be read. The eighth section has no connexion with the first.



The party has two rights, one to have the indictment read, and to be charged with it, and the other to have a copy furnished without expense. I would suggest that the rule to plead be entered now, and the time to run from to-morrow. This order the Court can make without the consent of the parties.

The Clerk of the Crown then commenced to read the first count of the indictment; when having read a few lines, he was stopped by Mr. O'Connell. The rule to plead was then entered, the four days to run from the following day.

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THURSDAY, NOVEMBER 9TH.

Mr. *Henn*, Q. C.—My Lords, on the part of Mr. John O'Connell, I have to apply for liberty to compare the copy of the indictment which has been furnished with the original. It is essential, before we are called on to plead, that we should be certain the copies furnished to us are correct copies. Suppose that in this indictment there was a material variance, and that we demurred for that; and if it were found, upon comparing the copy with the original, that this variance did not exist, the demurrer would be overruled.

The *Attorney-General*.—I apprehend that the copies have been certified by the Crown Solicitor; if so, they are not entitled to have them compared.

The LORD CHIEF JUSTICE.—I apprehend that the common course is, to give not only certified, but attested copies. I think, therefore, that this application ought to be granted.

Mr. *Henn*.—I now apply to your Lordships for further time to plead.

The LORD CHIEF JUSTICE.—I think this is the subject matter of a distinct motion, and notice must be given to the Attorney General.

Mr. *Macdonagh*.—My Lords, on behalf of Mr. Barrett, I move that he be furnished with a copy of the caption of the indictment.

The *Attorney-General*.—This is a motion without notice.

Mr. *Macdonagh*.—I submit a motion is not necessary. An order was made by the Court that we should be furnished with the copy of the indictment, and the Crown have not complied with that order, as they have not furnished us with a perfect copy. They have omitted the caption, which is part of the indictment.

The LORD CHIEF JUSTICE.—We have nothing before us to shew that the order has not been complied with.

Mr. *Macdonagh*.—My Lord, you have the copy of the indictment which shows that. We cannot now serve a notice, as we will require this before we are called on to plead; and if we are called on to serve a notice we would be bound to plead before the motion be moveable.

Mr. *Henn*.—In this case we are not bound to give any notice. Under the terms of the Act we were entitled to this order; and we

say that the officer has not complied with the order of the Court, as he has furnished an imperfect copy, and no notice is therefore necessary.

The LORD CHIEF JUSTICE.—According to the common rule of the Court, where a party has a motion to make he must give notice of it, more especially when counsel on the other side says he will oppose that motion. I see no reason why the Court should go out of its ordinary course in this case; notice of this application must therefore be given.

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SATURDAY, NOVEMBER 11TH.

Mr. *Whiteside*, Q. C., on the part of Charles Gavan Duffy, moved that the Clerk of the Crown be directed to amend the copy of the indictment already furnished, by adding the entries and endorsement on the indictment, including the names of the witnesses, and relied on the following authorities in support of his application: 1 Deacon, Cr. Law, 667; Foster's Cr. Law, 228; *Cooke's Case*, 13 State Trials, 330; the 60 Geo. III. c. 4; *Rex v. Simmons*, 1 Carr. & Payne, 84; *Rex v. Beazley*, 4 Carr. & Payne, 220; *Regina v. Bull*, 9 Carr. & Payne, 22; 6 & 7 Will. IV. c. 114.

The *Attorney-General*, for the Crown, opposed the motion, and relied on *Regina v. Gordon*, 6 Jurist, 996; and contended that the witnesses' names were not part of the indictment, inasmuch as they never appeared on the record when it was made up, and that the traverser was therefore not entitled to a copy of the witnesses' names, under the Statute 60 Geo. III. c. 4.

Mr. *O'Hagan* followed for the traverser, and contended that the only case cited by the *Attorney-General* was an authority against him. He also cited the following authorities: Coke's preface to 3 Reports; Dickenson's Quarter Sessions, 204; 2 Gabbett's Cr. Law, 196; *Rex v. Brown*, 1 Salk. 376; *Roy v. Ford*, Yelverton, 99; *Delap v. Leonard*, 5 Ir. Law Rep. 108; 6 & 7 Will. IV. c. 114; 1 & 2 Vic. c. 37; *Anonymous*, 1 Lewin's C. C. 322; *Rex v. Dickenson*, Russ. & Ryan, 401; 2 Hale's P. C.; *Deacon v. Duke*, Forster's Cr. Law, 229, 230; East's Pleas of the Crown, 113.

The *Solicitor-General* replied, citing *Rex v. Sheridan*, 31 State Trials, 574; *Lady Fulwood's case*, Cro. Car. 483.

The LORD CHIEF JUSTICE.—The Court are of opinion that the application in this case cannot be granted. It is not grounded on any particular state of facts, making a special case, which might induce the Court to believe that what the traverser asks for, is necessary to enable him to defend himself against the present charge. He makes no particular case; he states no particular facts, but he demands, as a matter of right, that the names of the witnesses that are endorsed on the indictment which has been found against him, and returned as a true bill by the Grand Jury, shall be furnished to him. It is an extraordinary thing, if this be an application of right *ex de-*



*bito justitiæ*, that his able and learned counsel have not been able to refer, not only to a decision, but a single instance in which such a practice has been adopted or pressed. Nay, more, they have not been able to shew to the Court a single instance of such an application having been made. It is altogether, and in all its parts, a motion without precedent; and being a motion without precedent, and the practice being reported by the officer of the Court to be the other way, without going further into the question, the Court is of opinion that that is a sufficient ground to refuse the motion, unless the party applying can demonstrate that he is entitled as a matter of right, contrary to all practice, to demand that which he now comes forward to demand. On what ground is he entitled to this, as a matter of right? Before the Act in question, the 60 Geo. III. c. 4, what was that right founded on? The case of *Rex v. Sheridan* proves, that as a matter of right the Crown is not bound to furnish the accused with the evidence against him, nor with a list of the witnesses; and that authority and decision of the Court of King's Bench, delivered by Lord Chief Justice Downes, which was cited for the accused, is a direct authority against him, on the matter of right. Well, then, is there any thing in the Act of Parliament which has changed the law on the subject. I do not find that there is any language in the Act of Parliament which has changed the law, and I would observe, that the law does not depend merely on what was the practice in Ireland in Crown proceedings, but the same has at all times been the law in England, and there is no instance of an application to an English Court where the Act of 60 Geo. III. does apply. There is no instance at common law of such an application having been made *ex debito justitiæ* to a Court in England, so that we have the established practice of both countries to show that the present application is as unfounded in point of fact as it is unauthorized by any decision or authority. Then the case is to be considered whether the Act of 60 Geo. III. has so changed the law as to entitle a party now to demand that *ex debito justitiæ* which before the passing of the Act it appears he had no right to; what is then the import of this Act of Parliament, by which a traverser is privileged or warranted to demand by his counsel the names of the witnesses? I have already observed that the case of *Rex v. Sheridan*, produced and cited by the traverser's counsel, furnishes a strong reason why such an application should not be granted, as being dangerous to the administration of justice, and as preventing in the end a fair trial. A party having got into possession of the names of the witnesses may keep the witnesses back. There is not in the part of the Act which is directory, any mention made of the names of the witnesses at all; the Act directs that parties standing in the situation of those who are now making this application should have copies of the indictment free of expense. It had been the custom in this country, that parties charged with misdemeanors should be furnished with copies of the indictment from the office of the Clerk of the Crown, paying a fair and reasonable amount for them. The present Act gives them copies as a matter of right free of expense, but what is there in it gives them a

right to a copy of the names of the witnesses. The Act gives them a copy of the indictment with which they are to be put in charge, for the purpose of enabling them to take measures and proceedings to defend themselves against the charge. To enable them to plead to the charge which appears on the face of the indictment, that which does not appear need not be furnished. Why are they to be furnished with the names of the witnesses? Their defence, if any they have, does not depend on the names of the witnesses, but on the nature of the charge. Whether the names of the witnesses be A and B or C and D, they are not a whit benefited by knowing them, either with reference to the nature of their defence, or the mode of conducting it. The charge is one and the same, and the defence remains one and the same. The Act of Parliament did not contemplate that this would be for the relief of the traversers, and therefore no notice whatever is taken of the names of the persons endorsed on the indictment. Then it is said that the names must be taken to be, and are in contemplation of law, a part of the indictment. The Act of Parliament, by directing that the parties accused should have a copy of the indictment, did not intend to include in that a copy of the names of the witnesses, who preferred the charge against him. Those are two very different things, and the case of *Rex v. Sheridan*, shews how eminently different they are. It is very right that the party accused should be acquainted with the charge against him, but it may not be at all right that the particular evidence by which that charge is to be supported, should be handed over and given to the party accused. The contemplation of the law has been altogether otherwise. The decisions have been altogether otherwise; and if I am to be told, if the Court is to be told, that there is an alteration in the law, by reason of the late Act of Parliament, directing a copy of the indictment, some express provision of the Statute should have been pointed out to that effect. There is nothing of the kind. The Statute did not intend any alteration to be made in this respect, and therefore it is quite silent with regard to the witnesses. The Court would expect, and every reasonable man would expect, that if such an alteration of the law had been intended, it would have appeared on the face of the Statute itself, so that there would have been no possibility of doubt or mistake. There are no express words in the Act, and there is no reason to infer that such was the intention of the legislature; and it is capable of being demonstrated, that the names endorsed on the back of the indictment do not form a part of it, from the fact, which is not controverted, that they are never introduced on the record. If they were a part of the indictment, they must be included in the record. They never are, and therefore there is no reason whatever for the Court to infer that the operation and meaning of the Act in question was, that the names of the witnesses should be given, though the Act itself takes no express notice of them. That being the fair view of the case, and it being a conceded fact, that no precedent can be brought before the Court upon which to ground this application, we must assume that it is unprecedented, contrary to the

practice at all times in this country, and therefore in the absence of all authority, in the absence of all decisions of the Court, we are bound by the practice which the officer informs us has always subsisted without any deviation. The judgment of the Court is therefore, that the application cannot be granted.

Mr. JUSTICE BURTON, and Mr. JUSTICE CRAMPTON concurred.

Mr. JUSTICE PERRIN.—I concur in the judgment of the Court that the application should be refused. It is in effect an application to amend or complete the copy of the indictment furnished, by inserting in it the names of the witnesses endorsed on the back of the indictment. I do not consider that the names are any part of the indictment. The authorities which have been referred to, among others, Foster's Crown Law, unequivocally say: "That the party accused is entitled to a copy of the whole indictment, but is not entitled to a list of the witnesses." It never was contended in any case that I ever heard of, or that was cited at the bar, that the witnesses' names are any part of the indictment. As my Lord Chief Justice has observed, there are no particular grounds laid in this case for the application. It was not made on the ground that in this particular case the names of the witnesses were necessary, or would be conducive to the defence of the parties. The application is simply this, that the officer shall be directed to amend the copy furnished already, as if the names of the witnesses were part of the indictment. In my opinion they are not, and a motion made on that ground must therefore fail. I cannot think it necessary to make any observations on the cases which have been cited. With regard to the case of *Rex v. Sheridan*, I should hesitate before I gave my opinion, that the principle laid down there should govern the Court now, because the law has since been altered by the Legislature. I therefore express no opinion on it, nor do I say whether a case might be made for an application similar to the present one. My opinion is formed on the application now before the Court, and on the grounds on which it has been rested.

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#### SAME DAY.

Mr. *Macdonagh*.—My Lords, on the part of the Rev. Peter James Tyrrell, I apply that a copy of the caption of the indictment be furnished to him or his attorney; or that the copy already furnished be amended by adding the caption thereto. I move on the affidavit of the attorney for the traverser, which states that the application is not made for delay. At common law in cases of treason and felony the accused party was not entitled to a copy of the indictment, *Sir Henry Vane's case*, 1 Lev. 68; *Rex v. Holland*, 4 T. R. 692. In cases of misdemeanor he was entitled to it as a matter of right, 1 Chitty, Cr. Law, 403. In order to entitle the parties accused of treason to a copy of the indictment, the 7 Will. III. c. 3, after reciting "that nothing is more just and reasonable than that persons

"prosecuted for high treason, and misprision of treason, whereby the  
 "liberties, lives, honours, estates, blood and posterity of the subject  
 "may be lost and destroyed, should be justly and equally tried, and  
 "that persons accused as offenders therein should not be debarred  
 "of all just and equal means for defence of their innocencies in such  
 "cases," enacts, "that all and every person and persons whatsoever  
 "that shall be accused and indicted for high treason, whereby any  
 "corruption of blood may or shall be made to any such offender or  
 "offenders, or to any of the heir or heirs of any such offender or  
 "offenders, or for misprision of such treason, shall have a true copy  
 "of the whole indictment, but not the names of the witnesses, deliv-  
 "ered unto them, or any of them, five days at least before he or they  
 "shall be tried for the same, whereby to enable them, or any of them  
 "respectively to advise with counsel thereupon, to plead and make  
 "their defence." My Lords, the construction put upon that Act was,  
 that in order to carry its intention into effect, a copy of the caption  
 of the indictment should be furnished. And accordingly it is laid  
 down by Sir W. Blackstone, 4 Bl. Com. 351, that "the prisoner shall  
 "have a copy of the indictment (which includes the caption), but  
 "not the names of the witnesses, five days at least before the trial;  
 "that is, upon the true construction of the Act, before his arraign-  
 "ment; for then is his time to take exceptions thereto by way of  
 "plea or demurrer." That practice was followed in 1746, in *David  
 Morgan's case*, Foster, 1, and is adopted by Sir Michael Foster, 227-  
 229. The first edition of Sir Michael Foster's work was published  
 in 1762, nearly a century after the Act of Will. III. was passed, and  
 the practice of giving a copy of the caption had been followed during  
 the whole of that period. The same rule is laid down in modern  
 works upon criminal law: in 1 East, P. C. 113, and 1 Chitty Cr. L.  
 404. In *Rex v. Jackson*, 25 Howell's St. Tr. 886, the prisoner  
 pleaded without a copy of the indictment, but the Attorney-General  
 conceded his right to have the caption read. The Act defines the  
 purpose for which the copy of the indictment was to be furnished,  
 viz., to enable the party accused to defend himself. And Sir Michael  
 Foster, in page 229, particularly refers to this object of the Statute,  
 and states that a copy of the caption is necessary to enable him to  
 defend himself. The object of the 60 Geo. III. c. 4, under which we  
 apply, was substantially the same as that of the Statute of Will.  
 III. Sec. 8 enacts: "That in all cases of prosecution for mis-  
 "demeanors, the Court shall, if required, make order that a  
 "copy of the information or indictment shall be delivered, after  
 "appearance, to the party prosecuted, upon application made for  
 "the same, free from all expense to the party so applying." the  
 privilege given by this Statute is somewhat larger than that given  
 by the Statute of Treasons, for it gives the copy without expense.  
 The words, though not exactly, are substantially the same in both Sta-  
 tutes. The words of the Statute of Treasons are, "a true copy of the  
 whole indictment." Those in the 60 Geo. III., are "a copy of the  
 indictment." The word "true" cannot make any difference, because  
 it is not a copy, unless it is a true one; and the word "whole" can-  
 not make the slightest difference, as is apparent, when you consider



the antecedent practice, and the context of the Act itself. In 1 Chitty, Crim. Law, 405, it is said: "Although these Acts mention only 'the whole indictment,' the prisoner ought to have a copy of the 'caption also delivered to him, for this is necessary to enable him to conduct himself in pleading as the other, and such is now the constant practice.'" The Legislature did not intend that the person indicted should have a copy of the names of the witnesses, and we may thus account for the omission of the word "whole" in the latter Statute. But the omission of it cannot affect the present case. It is therefore plain, that the same thing was intended to be given by the Statute of 7 Will. III. c. 4, and the Statute. 60 Geo. III. c. 4. At common law, the traversers in misdemeanor cases had a right to imparl. This right of general imparlance was abolished by the 60 Geo. III. c. 4, and instead of that, it directed that the traversers should have a copy of the indictment free of expense. That valuable privilege of imparlance having been taken away from the traversers, the Court should take care that they should have the full benefit of that privilege which was substituted for it. Previous to the Statute, the party indicted was entitled to have the indictment read slowly, once or twice, in order that he might take a note of it. Hawk. P. C., b. 2, c. 4. 1 Chitty C. L., 403. Bacon's Abridg., Indictment G., and instead of that, the Statute gave a copy of the indictment in order that he might plead or demur. How can he plead or demur to the caption, if he is not furnished with a copy of it? I need not enter into the wide field of objection which may be taken to the caption of an indictment. It is sufficient to say, that objections may be taken to it, and that the Court may, if it think those objections good, quash the indictment. This was one reason why the Judges, in *Greg's* case, decided that a copy of the caption should be furnished. From the earliest period, it has been the practice to give a copy of the indictment in cases of misdemeanor, and the caption was included in it, because it was essential in order to enable the party to plead or demur, that he should be furnished with a copy of the caption. For these reasons, and upon these authorities, I submit that my client is entitled to a copy of the caption of this indictment.

The *Attorney-General*.—Before I advert to the analogy which it has been attempted to draw between the Statute of Treason and the 60 Geo. III., and to the determination of the Judges in *Greg's* case, I wish to call your Lordships' attention to the circumstance that it has never been the practice in misdemeanors to give a copy of the caption of the indictment. In point of fact there is at present no caption in existence. In 2 Hale P. C. 165, it is distinctly stated that the caption is no part of the indictment. This is further established by the fact that the caption is not made up until the end of the term. In the case of *Rex v. Faulkner*, 1 Saund. 250, d., it was decided by Lord Mansfield that the caption is no part of the indictment, in conformity with the authority of Lord Hale. In that case Lord Mansfield, in delivering judgment, says: "The 'caption is no part of the indictment; it is only a copy of the style 'of the Court at which the indictment is found.'" The same propo-



sition is laid down in 2 Gabbett's Cr. L., 278. In 1 Saunders, 308, note 2, is said: "When an inferior court, in obedience to a writ of "*certiorari*, returns an indictment to the K. B., it is annexed to the "caption, then called a schedule." The schedule not being a part of the indictment, but *annexed* to the indictment. The same proposition is adopted in Archbold's Cr. L., 26, which is the most recent treatise on criminal pleading. I therefore submit, on these authorities, that the caption is no part of the indictment. If that be so the traversers are not entitled to a copy of it under the 60 Geo. III., on which this application is founded. With respect to *Greg's* case, which has been relied on on the other side, your Lordships will find in Bacon's Abridgement, Treason, C. c., the resolution adopted by the judges, and their reasons for adopting it. It is thus stated: "That it is the safer way to deliver a copy of the caption, as well as of the body of an indictment, for high treason." That resolution was not adopted by the judges on the construction of the Statute of Treason, but it was conceded that *for safety* and *in favorem vitæ*, by reason of the severe penalties attached to the crime of treason. It is quite clear that the same reason does not apply to a case of misdemeanor. I have already said that the uniform practice has been not to grant a copy of the caption in misdemeanor cases. On these grounds I submit that this application should be refused.

Sir *Colman O'Loghlen*.—My Lords, we conceive that the traversers have the right of reply, and that the Solicitor-General should now proceed. It was so decided in this Court, in the case of *Regina v. Gregg*, which is not reported.

The *Attorney-General* and Mr. *Napier*.—The right of the Crown to reply has been decided, and cannot be now controverted. *Regina v. Jones*, *Jebb & Bourke*, 144; *Rex v. Kirwan*, 31 St. Tr. 543; *Regina v. Frost*, *Gurney's Report*, 544; *Rex v. Marsden*, 1 *Mood & Malk.*, 439.

The LORD CHIEF JUSTICE.—The practice in Ireland has always been that the Crown is entitled to the reply.

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MONDAY, NOVEMBER 13TH.

Sir *Colman O'Loghlen*.—My Lords, I am counsel for the Rev. P. J. Tyrrell, and I trust I shall show your Lordships that we are entitled to carry our motion, notwithstanding the argument of the Attorney General. I beg at the commencement to remind your Lordships of two facts; first, this is not an application to enlarge the time to plead, or to alter the rules of pleading; secondly, it is not grounded on the right of the traverser alone, but also on an affidavit that it was made not for delay. Regularly the caption should be affixed to every indictment. The Attorney General has stated that the caption is never made up until the record is made up, or a *certiorari* is granted. He has cited no authority for that assertion. In point of law, the caption ought to be made up as soon as the indictment is found. In

cases of treason, it is the practice to give a copy of the caption as well as of the indictment. In that case the caption is made up with the indictment; *Rex v. Johnson*, 6 East, 586. In order to obtain a copy of the caption, the party must apply before plea pleaded. In Foster, 230, it is said: "But if the prisoner pleadeth without a copy of the caption, as some of the assassins did, he is too late to make that objection, or indeed any other objection that turneth upon a defect in the copy." The same principle is laid down by the Chief Justice, in *Rex v. Cooke*, 13 How. St. Tr. 330; *Rex v. Rookwood*, 13 Ibid. 161, 1 Leach, Cr. L. 11. From these authorities it is clear that the time for making the application for a copy of the caption is before plea pleaded, in cases of treason; and therefore the caption should be prefixed to the indictment. It is a principle of the common law, that an indictment may be quashed for a defect in the caption, not only in treason but in felonies and misdemeanors, *Rex v. Brown*, 1 Lord Raym. 592; 1 Salk. 376; Hawk. P. C., B. 2, c. 25, s. 146. For instance, if it appears that more than twenty-three jurors are sworn, or the indictment is found by less than twelve jurors, all the authorities agree that the indictment must be quashed. My Lords, we are entitled to a copy of the caption on principle, upon the construction of the 60 Geo. III, and at common law. On principle we are entitled to have the means furnished to make every defence which the law allows us. We cannot tell where, when, or before whom this indictment is found, without the caption. If the indictment is improperly found, or the Court has no jurisdiction, we may plead in abatement, or we may move to quash it, or we may demur; 1 Leach, C. L. 425; *Rex v. Feamley*, 1 T. R. 316; *Rex v. Warren*, Strange, 698. Is it not monstrous to say that we may plead or demur to the caption, and yet that we are not entitled to a copy of it? How do we know how to frame our plea or demurrer without it? In the second place, we are entitled to a copy of the caption on the construction of the Statute. The 60 Geo. III. c. 4, gives us a right to a copy of the indictment. The word indictment has two meanings, a limited original meaning, and a more extended and enlarged meaning. In its original meaning, it is not a record, and is defined, "a written accusation of one or more persons of a crime or misdemeanor preferred to or presented on oath by a Grand Jury," 4 Bl. Com. 301, "an accusation found by an inquest of twelve or more, upon their oath," Co. Lit. 126, b. In this sense, I admit that the caption forms no part of it. But there is besides, a larger and more extended meaning, viz.: a written accusation of record, and in that sense the caption is a part of the indictment. It is considered in that sense by Sergeant Hawkins, in Book 2, c. 25, sec. 46. He considers what ought to be the form of the body of the indictment, and what ought to be the form of the caption of the indictment, thereby showing clearly, that in his opinion an indictment of record consists of two independent, distinct parts, the body and the caption. This meaning is adopted in *Rex v. Smith*, 8 B. & Cr. 341. There is express authority to shew that where a Statute gives a copy of an indictment, the word is to be taken in that sense, and the caption is

included. That was the construction given to the Statute of Treasons already alluded to; 1 East, P. C. 113, Foster, High Treason, 229. In *Frost's* case, a copy of the caption was delivered with the indictment. The words of the 60 Geo. III. c. 4, are not exactly the same as those of the Statute of Treasons, but there is no substantial difference between them. Then, why should a different construction be put on them? They both refer to state prosecutions. The Attorney-General said, that the construction on the Statute of Treasons was adopted *in favorem vitæ*. That is contradicted by all the authorities on the subject. Both East and Sir Michael Foster state that it was adopted for the purpose of enabling the party to plead or demur to the caption. In cases of misdemeanor the party always gets a copy of the caption when it is made up. He is entitled to it as a matter of right; Deacon, Indictment; *Rex v. Marsh*, 6 Ad. & El. 244. It is the duty of the officer to make up the caption, and if he has not done so, the traverser should not be prejudiced by the default of the officer, and the Crown should order him to make it up. What we seek is a matter of right, *ex debito justitiæ*; and I respectfully submit, that even if your Lordships should feel any doubt on the point, you should give the traversers the benefit of that doubt, and of an extended construction of the Statute.

The *Solicitor-General*.—My Lords, on the part of the Crown, it is my duty to resist this innovation, wholly unsupported by principle or authority, and which appears to us to be of a dangerous character. I was surprised to hear Sir Colman O'Loghlen assert that this is a privilege to which the traverser was entitled at common law. There is no authority for that position. The reason why the caption is returned with the indictment on a *certiorari* to an inferior Court is to enable the question of jurisdiction to be raised. In the case of *Rex v. Johnson* there was a plea to the jurisdiction, but there is nothing in it to show that the caption was given as part of the indictment. If the Statute 60 Geo. III. c. 4, is taken up *per se*, without reference to the preceding practice, or to any other Act of Parliament, and that the Court had simply to decide on the meaning of the word "indictment," not a moment's doubt could be entertained on the question. If the Statute had used the words "the record of the indictment," according to the distinction taken on the other side, it might then have been contended that they included the caption. But the word "indictment," of itself does not include the caption. Bac. Abridg. Indictment, T.; *Rex v. Atkinson*, 1 Saund. 250, *b.* note 2; *Rex v. Goff*, Russ. & Ry. 179. There is another proof that the indictment and the caption are different things: they are the acts of different persons. The indictment is found by the Grand Jury; the caption is the ministerial act of the officer of the Court. The only authority which has been relied on for the construction of the Statute contended for by the other side is the resolution in *Greg's* case. That practice in High Treason was adopted, as it is expressed, *for safety*; but it was never extended to any other case. Another reason why the practice should have been adopted was that, by the 7 Will. III. c. 3, sec. 5, a limitation to charges of treason is enacted. The in-

dictment must be found within three years after the offence committed, and the caption might be necessary to ascertain whether the bill was found within that period. The uniform practice and usage in this country have been not to grant a copy of the caption, and it has always been held to be evidence of the law. The consequences of an alteration of the practice would be very dangerous. It would become the duty of the officer in all cases to make up the record. At the Assizes, where the time is limited, that practice would be productive of great inconvenience. I submit, therefore, that this application is not sustained by reason or by authority, that it is contrary to the established practice, and should therefore be refused.

The LORD CHIEF JUSTICE.—In this case, an application has been made on behalf of one of the traversers, the Rev. Peter James Tyrrell, for an order, that the caption of the indictment against the said Peter James Tyrrell, and the several other traversers, should be delivered to the said Peter James Tyrrell, or to Mr. Cantwell, his attorney, or that the paper writing purporting to be a copy of the indictment, delivered to the said traversers should be amended by adding thereto a copy of the said caption. It is to be observed, that although this motion purports to be grounded on affidavit, and although an affidavit was made which was read by counsel on Saturday, and which went to this, that the parties making the application did not mean thereby to cause any unnecessary delay, yet it makes no peculiar case as a ground of the application. I can conceive that certain circumstances might possibly exist, which if properly laid before, and duly stated to the Court on affidavit, might forcibly and strongly be made use of in order to sustain an application such as the present one. For instance, if there was an allegation that the indictment was not in point of fact found by a majority of the Grand Jury, or that the names of the Grand Jury did not appear in the indictment as it stood, so that the party was unable to make his defence. Such subject matter as I have alluded to might make a case to be pressed before the Court, to show that it might be necessary for his or her defence, that the names of all the jurors who found the bill should appear and be set forth, and that for that purpose the production of the caption was necessary. Such a statement as that would probably induce the Court to comply with the application. I do not think that such a state of facts exists in this case, I merely put it in order to exemplify the proposition, that a party might perhaps have made an application of this kind with success. But I must take this application, notwithstanding the affidavit which has been made, as not being grounded on any peculiar circumstances, but as being insisted on, as I understood Sir Colman O'Loughlen, as a matter of right, *ex debito justitiæ*. The majority of the Court are of opinion that it cannot be complied with. The case has been argued very much on the analogy of the Statute of Treasons, and it is insisted on by reason of the similarity of the wording in the clause of the Statute of Treasons, and the Statute of the 60 Geo. III. on which the present proceedings are founded, and the Statute of Treasons having received a judicial construction which has been acted on by a practice of more than 100 years, that the



same construction ought to be given to the Statute now in question, the language of the two Statutes not being substantially or materially different. I confess that I go very much with the argument that there is no substantial distinction in the words made use of in the Statute of Treasons, and the words made use of in the present Statute. The Statute of Treasons enacted, that the party accused should be furnished within a certain time with a true copy of the whole of the indictment. The words of the present Statute are, that he shall be furnished with the copy of the indictment. I believe the Statute of Treasons contains the word "true"—"a true copy of the whole of the indictment." The words of the present Statute are, "a copy of the indictment." As I said before, I do not see any very material or substantial difference between these two enactments. But I will observe, that the language of the Statute of Treasons has been extended by interpretation beyond their original meaning, and it is to be observed also, that though they did receive that construction at a meeting of the Judges, yet that in point of fact there never was a judicial interpretation to that effect, or to that extent, and the language used by the Judges at their meeting was, that *for safety*, it would be better that the accused should have a copy of the caption as well as a copy of the indictment. These words were used by the Judges in giving a construction to one of the most penal Acts of Parliament that was ever passed—an Act of Parliament which gave a definition of the crime of high treason, and affixes pains and penalties on such an offence. And the Legislature, in tender consideration of the dreadful nature of those pains and penalties, and punishment inflicted on any person who should come within the meaning of that Act, whose life and property would be implicated and jeopardized by a conviction under it, gave them a copy of the indictment. There is therefore no foundation for the assertion of counsel, that the construction put on this Act was not *in favorem vitæ*. I must say, that when we take into consideration that these facts are all recited in the preamble of the Act of Parliament, it is idle to say that the doctrine *in favorem vitæ* was not taken into consideration in the construction and interpretation of the penal language of this Act. The decision, or the construction which has been adopted with regard to it, the way in which it has been looked upon by the Judges, are all very properly brought together and commented on by that able lawyer and humane Judge, Sir Michael Foster. Having enumerated the cases by which it is now beyond a doubt established, that in cases of treason, under this Act of Parliament, the party accused is entitled not only to a copy of the indictment, properly so called, but also to a copy of the caption; and after considering the topics connected with them, he concludes in these words: "It will not be thought superfluous to have shortly stated how these matters stood at common law, since all high treasons not within the Act, and all felonies, in which I include petit treason, stand in these respects upon the footing of common law." I apprehend, therefore, that it would be a very unsafe rule indeed, to apply the language of that most highly penal Act, the Statute of Treasons, to



other cases, and other crimes, which the law has not placed in a similar degree of condemnation. The Courts and the Judges have been actuated in their construction of the Statute of Treasons, more by the extraordinary nature of the pains and penalties enacted by it, than by any general rule applicable to all cases of felony or treason not within that Act, or that there ought to be a general leaning to give the party accused a benefit which that Act of Parliament has not provided for. It was never the intention of the law or of the Legislature to give in all instances to the accused party, however inconvenient or humane it may be considered, the privilege which is demanded here as a matter of right, a copy of the caption of the indictment. At common law, the parties accused were not entitled to a copy of the indictment at all. In treasons, not enumerated in the Statute of Treasons, and in felonies at common law, they were not only not entitled to a copy of the caption, but they were not entitled to a copy of the indictment at all; and so the common law stood from the earliest times up to the time when Sir Michael Foster wrote the passage which I have read, and so the common law stands at this day, except in particular cases like those which fall within the range of the present Act of Parliament, particular species of misdemeanors prosecuted by the Attorney General, where a particular provision is made which has some analogy to the Statute of Treasons, but in my opinion is not governed by it. At common law, a party accused was entitled to, at least there is no instance of his having been refused, a copy of the indictment against him, upon paying for it at the office of the Clerk of the Crown. I mean in cases of misdemeanor. I have the authority of the officer for saying, that a party accused of misdemeanor applying for and obtaining, on payment, a copy of the indictment against him, has never been furnished with a copy of the caption; and I believe also the same appears to have been the universal practice in the administration of the law in England, up to this day. I take it for granted, that if it was otherwise, some one or more of the able, acute, and intelligent gentlemen, who appear here for the traversers, would on this the second day of the argument, have produced a solitary instance to the Court. The very fact of the absence of practice in favour of this application, is in my mind a demonstration that the construction imposed on the Statute of Treason, has never been thought applicable to criminal cases in general. There is no intrinsic moral rule which would entitle the party accused to call for an alteration in this practice which has existed, and has never been overturned from the earliest times. I am afraid to make a precedent on such a subject. I cannot see the danger or inconvenience which may not follow from this novel introduction now for the first time asked for; but it is not difficult to suggest some to show the difficulties which would be introduced into the administration of criminal justice in this country, if such an application as this is to be necessarily acceded to as a matter of right. This application is grounded on the 60 Geo. III. and that Statute is not confined to the Court of Queen's Bench, but it is equally applicale to criminal proceedings at the Commission of *Oyer*

and *Terminer*, and to inferior Courts. Section 8 enacts: "that in all cases of prosecutions for misdemeanors, instituted by His Majesty's Attorney or Solicitor-General, in any of the Courts aforesaid, the Court shall, if required, make order that a copy of the information or indictment shall be delivered after appearance to the party prosecuted free of expense." The Courts there referred to are those mentioned in section 7, and they are Sessions of the Peace, Session of Oyer and Terminer, Great Session, or Session of Gaol Delivery. Thus it is open for any person prosecuted for misdemeanor by the Attorney or Solicitor-General, not only in this Court but in any of those Courts, to apply to be furnished, free of expense, with a copy of the indictment? Now if that includes the caption, and this new practice is to be introduced against all precedent, what inconveniences will not result from it, and how may it not embarrass the criminal proceedings at the assizes. There the time is limited; and if the application was to be made at the termination of the Commission of Oyer and Terminer, or at the assizes, when there is no time by possibility to make up the record, there is no end to the inconvenience and danger which might be attendant on the introduction of this new precedent without authority, which is now for the first time demanded from the Court as a matter of right. In point of fact the indictment, properly so called, is quite different, perhaps I should not say quite different, but it is essentially different from the caption. The indictment is the act of the Grand Jury; the caption is not made up at the same time, nor have the Grand Jury anything to do with it: it never goes before them at all; it is the ministerial act of the officer of the Court who completes the record by the introduction of certain forms which, in point of fact, make no part of the charge, but which are only introduced on the record when it comes to be made up. At the present time this indictment is not in a state to furnish the party applying with a copy of the caption. It remains *in fieri* during the whole time, or until the record comes to be finally made up, and until that time there is, 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 cause the record to be made up, because there being no caption at present he cannot furnish it. It might be a very different thing if a particular reason existed to stay the proceedings in order to have a special caption made out. Such an application might be made if it was founded on justice; for instance, if the bill had only been found by eleven jurors, and a caption was required to be made up in order to enable the party to take advantage of that. But this application is made as a matter of right, without stating the object of it; and because a certain construction has been put on the Statute of Treasons *in favorem vitæ*, it is insisted that the same construction ought to be put, although that reason does not apply and could not apply to the construction of this Act. I say that, in its ordinary sense, the word "indictment" does not include the caption. In ordinary language it means something less and different. In common parlance it is taken for the body of the indictment; and it

rests on the traversers to show that, in the construction of the 60 Geo. III. c. 4, the ordinary language must be laid aside and the meaning, which they contend for, applied. That meaning is different from the fact; both fact and law are *primâ facie* against it, and in opposition to it. The caption is not in existence. The caption therefore cannot be part of the indictment which is in existence, and therefore unless they can show that they are entitled to have the same construction which was applied to the Statute of Treasons, in its very peculiar circumstances, applied to this Statute also, I do not see what right they have to say: we will take this word "indictment," and we will use it with a meaning quite different from the common meaning, and we will insist that our meaning shall be adopted by the Court. It is enough to say, that the universal practice is against it. The Act of 60 Geo. III. has been in force now upwards of twenty-four years. It has been frequently acted on, cases have been brought to trial under it in this court, and this is the first time that the construction now contended for was ever thought of. Universal habit and usage are against it, because we find that such a demand was never made. Copies of indictments have been furnished, either under the old rule of paying for them to the Clerk of the Crown, or under the provisions of this Statute without paying for them; and up to this hour the universal habit and usage have been, not to furnish a copy of the caption. There is no rule better settled than that the practice of the Court is the law of the Court. The law of the Court is therefore against this application, and the law of the Court is the law of the land, not being contrary to it. The law therefore is against the application. The established practice of both countries is against the application. It must therefore be refused.

Mr. JUSTICE BURTON.—The Lord Chief Justice has stated the grounds of his judgment, in which I concur so fully, that it is, perhaps, quite unnecessary to add anything to what he has stated. I will only shortly advert to those grounds, and the rather, because I am bound to admit that for some time during the present discussion I was disposed to entertain a different opinion. It is to be recollected, that this is not an application addressed to the discretion of the Court, in a particular case, and under particular circumstances, to make an order on the Clerk of the Crown to add a caption to the indictment, but an application on an alleged right to see the caption, and to have that caption made up expressly for the purpose of being furnished with a copy of it; and this, as it is insisted, under the specific provisions of the Statute Law. That is the ground of the application, and on that ground it is to be met. It is, I apprehend, clear, that in cases of misdemeanor, the party accused has been considered as having a right, at common law, to a copy of the indictment (when I say at common law, I mean that a practice had prevailed for so great a length of time, that the origin of it cannot be known). This right (if right it be) has been always exercised in cases of misdemeanor. The accused, if he chose, might have a copy of the indictment in all such cases, after the indictment was found, and at any time before plea pleaded. This might probably in the beginning have taken place *ex gratia*. It has, however,

in the progress of time, been so acted upon, as to have obtained the character of a right; but yet, no instance is found of parties, when claiming a copy of the indictment, claiming also a copy of the caption. At least, there is no instance of an application of this kind having been granted as of right. I may observe that there is no doubt as to the true meaning of the word caption; and there is abundant authority to show that it is not a part of the indictment—that the indictment is a document by itself, and that the caption is a document by itself; and where this has been so frequently asserted without contradiction, we may well assume that the caption is in truth an addition to the indictment, and not a part of it. Unquestionably, the party accused has a right to the copy of the indictment under the Statute, under which the application is made, but the caption cannot be taken as part of the indictment. I apprehend, therefore, that so far as the practice goes on the subject, the accused party is only entitled to a copy of the body of the indictment, not to the caption, which is afterwards added to it; but yet, if a copy of the caption were also required upon the ground of its being in the particular instance necessary for his defence, the Court would perhaps, under particular circumstances, direct the caption to be added to the indictment, and give him a copy of it. This may be stated independently of the Statute Law. But let it now be supposed that the Statute of Treasons had not been passed, but only the Statute of 60 Geo. III., I apprehend that the course of the Court being not to annex the caption to the indictment as soon as it is found, the party accused could be entitled to the copy of the indictment alone, as a matter of right. I say as a matter of right, for I do not deny that a case might occur of special circumstances, under which the Court, in the exercise of its discretion for the benefit of the party accused, might give him a copy of the caption. The case then is brought to the interpretation of the Statute of Treasons, and to the consideration of the exposition that has been put on that Statute. That is, whether it has gone the length of making the law different in this respect from what it was, independently of that Statute; in other words, has it given the subject in all cases in which he is entitled to a copy of the indictment, a copy of the caption, and a right to have the caption put upon the record, in order that he may have the privilege of a copy of it; and I own this construction pressed on my mind for some time, and in this manner. The Statute extended only to offences of treason, and gave the party accused a right to a copy of the indictment in express terms. Those express terms not including a copy of the caption; but when the Statute came to be considered in a particular case, the Court reasoned on it, in this way, namely, that the case in question was a case of high treason, in which the severest punishment is inflicted on the party convicted, namely, the punishment of death, together with the further consequences of attainder and corruption of blood; and that being so, it was reasonable that the party should have every just means of defending himself against it, and thus a copy of the indictment was granted. Then came the question, whether he ought to have a copy of the caption also. That was made the subject of deliberation and consideration by the Judges; and they came to this re-



solution, that under the terms of the Statute, considering it in all its operations, it was safe and reasonable that its provisions should be extended in point of interpretation to a copy of the caption as well as of the indictment. That was the ground upon which the law was established in cases of treason, and it pressed itself strongly on my mind that it might not unreasonably be applied to all cases under other Statutes. But on further consideration I am satisfied that this inference has not a sufficient foundation. After full consideration therefore, and with the advantage of a deliberation with my Lord Chief Justice, and the other members of the court upon the subject, I have brought my mind to think that I was mistaken in entertaining my first opinion. Let us consider the grounds on which this application is put and what it may lead to. In this particular Statute, which does not apply to all cases of treason, but only to particular treasons there are a number of special provisions. The judges having determined that the terms of it did not comprise the caption of the indictment, concluded that it would be the safer course to extend the operation of these words beyond their original signification, and to allow a copy of the caption, but it would be too much to say, that therefore it was in truth the meaning, and that a meaning amounting to a declaration of the Legislature, that in all cases then subsisting, or which thereafter might occur, in which the party is entitled to a copy of the indictment, he should likewise have a copy of the caption, and yet that must be the construction and effect of that resolution of the Judges, if we apply it to this case. Consider then the words of the 60 Geo. III. c. 4. It has been said and argued very strongly, that the Legislature must be supposed, when it made provisions of this kind, to have known what the Statute of Treasons was, and inasmuch as the Statute of Treasons gave a copy of the indictment, and the caption, so as to make it a part of the indictment, that that is to be the construction to be given to this Statute which is in the same terms. But I am satisfied, after consultation with my brethren, that this is not a true or just way of construing such a Statute as this. There can be no question, I think, that if the Legislature intended that the party, by the Statute of 60 Geo. III. c. 4, should get a copy of the indictment with the caption added to it, considering the doubts which had been entertained as to the Statute of Treasons, it would have inserted words in this subsequent Statute to this effect, that the party should have a copy of the caption as well as a copy of the indictment. I cannot think myself entitled to add to the clear words of the Statute, to put this forced construction on them, justly and properly forced in the construction of the Statute of Treasons; but not just and proper in the construction of a subsequent Statute. I think it would be a new mode of construing a Statute to do so, therefore I concur in the opinion of the rest of the Court, that the party is not entitled in this case, under all its circumstances, to have the application complied with.

Mr. JUSTICE CRAMPTON.—I am very unwilling to occupy any portion of the public time, which is now so valuable in this Court, by



attempting to do any thing more than express my concurrence in what has fallen from my Lord Chief Justice and my brother Burton in delivering their opinions, especially as the sentiments which I entertain on the subject have been thrown out by me in the course of the argument: but as my brother Perrin differs from the rest of the Court, I think it right to state shortly the grounds on which my opinion is founded. I agree with my Lord Chief Justice in the conclusion at which he has arrived. I think this motion is one without precedent in a matter very likely to have furnished many precedents, if the right which has been so strongly contended for on the part of the traversers had existed. I think the application has been properly termed an innovation. It is not only without precedent but against all practice. I except, of course, the case of treason, which stands upon its own peculiar grounds. The Statute on which the motion is founded has been law in Ireland for twenty-four years. There have not been, it is true, a great many state prosecutions during that period, but there have been several in which very able counsel have been concerned, and which were much contested, and such an application as this was never thought of. But the actual practice extends much beyond that time. It has been stated by the traversers' counsel that the course was at all times, in cases of misdemeanors, both in England and Ireland, for the Clerk of the Crown, or the officer, to furnish the traversers with a copy of the indictment, and that such copy included the caption. There is no reason to arrive at that conclusion. On the contrary, the early practice in England, as well as the uniform practice in Ireland, seems to be the other way. I have now before me an old precedent, *Cavendish's case*, Anderson, 156, in which a copy of an indictment is set out, and that copy does not include the caption. And no authority or precedent has been shown to support the position. Again, it is urged that, under the Statute of the 60 Geo. III. c. 4, the traversers are entitled to this motion. But it appears to me that neither as a matter of right, nor of discretion, are the traversers entitled to this motion. As to any exercise of discretion on the subject, unless it be for the purpose of delay, the traversers can suggest no benefit from their carrying this motion. Indeed, if we have a discretion to exercise, we have no documents before us showing any special ground why this motion should be granted. If there be no such ground, why should we make this innovation—this precedent, which may be attended, in cases at the Assizes, with very injurious consequences? But, let us see what it is that the parties complain of, and what they want? They complain that they have not been furnished, according to the order of the Court, with a full copy of the indictment, but they say that the copy furnished to them is imperfect, and defective in a material part, which ought to have been supplied—namely, the caption. The application is at first brought forward as a complaint against the officer, charging him with not having complied with the order of the Court. But in point of fact, the officer is in no default—there was not, and there is not now any caption in existence. The officer has furnished the traversers with a copy of all that he had. The traversers knew this. They were

charged with the indictment in open Court. It was read to them, not at length certainly, but the clerk of the Crown commenced at the beginning, and read on until one of the traversers stopped him. The indictment had then no caption; and these parties who heard the indictment so read, without a caption, now complain that the officer has furnished them with an imperfect copy of that which they so heard read. Is it possible, under these circumstances, that the traversers did not know that the document with which they were furnished was a perfect copy, at the time they served this notice and made this application? And if so, can this application be sustained upon this notice? Is it a motion for a full copy of the indictment, as is argued, or is it really, though not avowedly, a motion for further time to plead. But secondly, it is said, the notice may be informal, but substantially what the parties meant to move for was, that the officer should be ordered by the Court, to add to the top of the indictment, a formal caption, and that he should make out a copy of the indictment, with this formal caption, and furnish them with that copy. But this view of the motion admits that the officer is not in default; the order has been complied with, and the traversers have had a perfect copy of the indictment. Then, supposing they had moved for a copy of the caption, are they entitled to it? Not certainly under the order to furnish a copy of the indictment, unless the caption be a part of the indictment. Now, the uniform practice in all our criminal Courts (except in cases of treason) is not to affix any caption to a single indictment, but to make up a general caption applicable to every presentment. That is the course of the Court, and yet the application is made, as at first moved, against the officer, under the circumstances which I have stated—as if the order of the Court had not been complied with, as if the officer had given an imperfect copy when the Court had ordered a perfect one. In point of fact, the copy is as full as the original. This application, in this view of it, is founded on the assumption which was strongly put forward by one of the counsel who argued the case for the traversers, Mr. Macdonagh, that the caption is part of the indictment. Now, if there be one thing established in law better than another, it is, that the caption is no part of the indictment; See Hale, 2 P. C. 165.

Mr. *Macdonagh*.—Your Lordship misunderstood me; I did not mean to argue that the caption is a part of the indictment.

Mr. JUSTICE CRAMPTON.—Whatever the argument may have been, its foundation upon this notice is, that the caption is part of the indictment. If it is not, what right has the party to say that he has been furnished with a part of the indictment only, and not with the whole of it? According to the authorities, the caption is no part of the indictment. In the contemplation of the law, it never was held to be so. In some elementary works, it may have been called a part of the indictment, but legally it is not so. What is an indictment? It is a bill found by the Grand Jury, and by them handed down, in the view of the Court, with the attestation of the foreman, for himself and fellows. The caption may be made up in any part of the term. The caption, therefore, is not found by the Grand Jury, and is no

part of the indictment. It is only evidence that the indictment has been found by the Grand Jury; and when the record is made up, and a copy of the record so made up is furnished, the caption will appear, and may perhaps then be called part of the indictment. The learned counsel who so ingeniously argued this case, have read the preamble of the Statute of Treasons, as if it was incorporated with the Statute 60 Geo. III. c. 4. That is the gist of the argument on the preamble in this Statute. The preamble recites the delays occasioned by the existing practice in relation to the administration of justice in cases of misdemeanor, and the necessity of the interference of the Legislature, to obviate those delays. That is a question we have nothing to do with. Then what says the Statute? "That in all such cases," that is, in all cases of prosecution for misdemeanor, by his Majesty's Attorney or Solicitor General, "the Court shall, if required, make an order that a copy of the information or indictment shall be delivered, after appearance, to the party prosecuted, or his clerk in court, or attorney, upon application made for the same, free of all expense to the party so applying; provided that such party, or his clerk in court, or attorney, shall not have previously received a copy thereof." Now, how are we to understand this? Where I find the word "indictment" used in the Statute, does it mean an indictment as the law interprets the word, or does it mean the indictment and caption? It is perfectly clear, if the word "copy" stood alone, no human being could possibly draw the inference that it was intended that the caption should be furnished; the caption being no part of the indictment at all, any more than the witnesses names on the back of the indictment are part of it; but the caption being the act of the officer, giving the evidence that the bill has been turned into an indictment by the Grand Jury, it is impossible to draw any other than this conclusion from it. Then it is to be observed that this Act of Parliament was passed with reference to misdemeanors only, and the Legislature must have known that the practice at the time was to furnish a copy of the indictment, strictly and properly so called, and not of the caption, and accordingly the Act of Parliament was so framed. Then it is said that a copy of the caption is supplied in cases of treason, and that a like interpretation should be applied to this Act of Parliament. The Act of Treason stands alone. It is an excepted case. It is applicable to some treasons only, but never to felonies or misdemeanors. The practice in felonies was to give no copy at all; in misdemeanors, to give a copy of the indictment, but not of the caption. The practice since the Statute of Treasons has been to give both in particular cases, where the emergency of the case and reason required it. The Judges, in *Greg's* case, did not, as my Lord Chief Justice has observed, put a construction on the Statute. Their resolution was not intended as a construction on the Statute of Treason, although the practice which was adopted by that resolution has been followed ever since *Greg's* case. The Judges had met for the purpose of considering what was to be done in the first case which had arisen under the Statute. There is something special in the

words of that Statute, and I quite agree with the counsel for the traversers that the words "whole indictment" in the one Statute, and "indictment" in the other, may mean the same thing, and that both expressions should be equally turned to the prisoner's advantage, in the case of an offence the most serious for which he could be tried. The Judges then considered whether a copy of the caption should be furnished, and it was held to be safer to deliver a copy of the caption with the indictment, but not as part of the indictment. The reason suggested by the Solicitor-General seems entitled to some consideration. I shall not dwell upon this; but there is a manifest distinction between the two Acts of Parliament, which ought never to be lost sight of in arriving at a conclusion on this subject. The Statute of Treasons requires that the prisoner shall be put in possession of the indictment for the purpose of enabling him to plead, and before he is put to plead. The Judges in England argued thus: "Here is a case of life and death, and it is safer that the prisoner should have a copy of the caption as well as of the indictment;" not thereby interpreting the word "indictment" in the Statute as including the caption, but that, as a rule of practice, it was safer that the prisoner should have a copy of the caption, and accordingly in cases of treason, it has become a rule of practice which has been uniformly adopted from that period to the present. But it is merely a rule of practice, and is not a construction of the Statute. It was a humane rule, adopted for the benefit of the prisoner, where his life was in jeopardy; that it was safer that he should have a copy of the caption with the indictment, to enable him to plead and prepare his defence. That was the state of the law with respect to treason, and the Legislature did not intend that any new construction should be put on the word "indictment" in the Statute now in question. It is not enacted, that the caption shall be a part of the indictment, or that the prisoner shall have a copy of the caption to enable him to plead. The Legislature, in enacting this Statute, seems to have had two different, and, as it were, contrary intentions to carry into effect. The one was in a spirit of humanity to make a prosecution, especially in a case of a highly penal nature, as little oppressive to, and as protective of the prisoner as possible, and the other was an intention or disposition on the part of the Legislature, to prevent all unnecessary and technical objections which were intended to evade, to frustrate or delay the administration of justice. It was difficult to find language adapted to both these intentions, but both seem to have been equally in the contemplation of the Legislature. The Statute of Treasons is one which should receive as large a construction as its provision will admit of in favour of a prisoner. On the other hand many of the later Statutes were framed with the view of taking away all captious objections and all pleas of such a nature as lead, not to justice, but to a delay or frustration of it. This Act of Parliament belongs rather to the latter than to the former class. It might have followed the Statute of Treasons, and said that the party should plead in four days after he was furnished with a copy of the indictment, but the Legislature appears to have avoided that course,



and said that the party should have four days to plead from the time when he shall have heard the indictment read in open Court, and shall have been charged with it. He has an option to call for a copy of the indictment if he pleases. A party indicted for treason must have a copy of the indictment, but here an option is given to the party whether he will have a copy of the indictment; but whether he has or not, he must plead within four days from the time when he has appeared in Court. It is manifest, when we consider the objects of the Statute, that the Legislature considered that a party indicted for treason should have a copy of the indictment before him to enable him to plead, and it is manifest also that the Legislature considered that in misdemeanors it was sufficient for a party to hear the indictment read to enable him to plead, and besides, he was to have a copy of the indictment free of expense, at any time he thought fit to call for it, not in four days, or before plea pleaded, but at any time. These are material distinctions between the two Statutes. They are not *in pari materia*. Their language is not the same, their preambles are not the same; they are different in every point of view. An interpretation has been put on one of them, growing out of a continued practice, which is not applicable to the other. My opinion, therefore, is that this is an application clearly deserving the name of an innovation; that it is one against the practice, and therefore against the law of the court; an application against principle, and likely to be attended with inconvenience to the due administration of justice; an application, as my Lord Chief Justice has truly said, unnecessary, according to the affidavits which have been made on the present occasion, for the traversers have stated no ground whatever why it should be granted, save one which is not a true one, namely, that the officer has given an imperfect copy of the indictment. For those reasons my opinion is, that the application should be refused.

Mr. JUSTICE PERRIN.—I am of opinion that this application ought to be complied with, and that the accused ought to have a copy of the caption of the indictment, in order that he may advise with his counsel to plead and make his defence. The Statute which has been referred to, the 60 Geo. III. c. 4, which abridges the existing rights of persons prosecuted for misdemeanor, deprives them of imparlance to the following term, and obliges them to plead or demur within four days from the time of appearance, after they shall be charged with the indictment, provides that, in all cases of prosecution for misdemeanor, instituted by his Majesty's Attorney or Solicitor-General, in order to enable the party prosecuted to meet this new state of things, and condition in which he is placed, that the Court shall, if required, order a copy of the indictment or information to be delivered free of expense to him or his attorney, on demand. For what purpose was it to be furnished? For his defence. And for that purpose he is entitled to it, in order to enable him, in the words of Lord Holt, applied to the Statute of Treasons, to advise with his counsel on the plea which should be pleaded. "Though this mentioneth only  
"the copy of the indictment, yet he ought to have a copy of the cap-



tion delivered to him with the indictment, for this, in many cases, is "as necessary to enable him to conduct himself in pleading as the other."—*Foster*, 229. Accordingly this application has been mainly supported on analogy of the enactments of this Statute to those of the Statute 5 Geo. III. c. 21, Irish, and the Statute 7 Will. III. c. 31, and 7 Anne, c. 21, English, upon which Statutes it has been held uniformly by the Judges ever since the passing of them, that the party accused was entitled not only to the body of the indictment, but also to a copy of the caption of the indictment. They were not, as this is, enacted to abridge the rights of the accused. It is a mistake to say that they required to be liberally construed, because they inflicted deprivation and disadvantage. On the contrary, they enlarged the rights of the party accused, and conferred upon him distinct and new advantages, to such a degree that, in the opinion of Bishop Burnet, as quoted by Sir Michael Foster, "the design of it (7 Will. III. c. 3) seemeth to be to make men as safe in all treasonable practices as possible;" and yet the Judges, in putting a construction thereon, held the accused had a right to a copy of the caption as well as the body of the indictment. A good deal of argument has been advanced on one side and on the other, as to whether the caption is part of the indictment or not. Though the learned counsel who opened the case for the traversers has latterly expressly disclaimed the intention to argue that it was a part of the indictment—on what ground he has not informed the Court—but on looking into the authorities to which we have been referred, and the view taken by learned Judges and able writers who are considered as authorities, I doubt very much the soundness of that disclaimer. I find in 2 Hawkins' Pleas of the Crown, in chapter 25, on indictments (it is a work of high authority, and the writer has never been supposed to have taken a view too favourable to the rights of the accused), in the commencement of the chapter, this definition of an indictment: "An indictment is an accusation at the suit of the King, by the oaths of twelve men of the same county wherein the offence was committed, returned to inquire of all offences in general, in the county, determinable by the court into which they are returned, and finding a bill brought before them to be true." The indictment is not merely a record, or instrument in writing, containing the facts constituting the charge, but it is a finding by twelve men. In his analysis of the particulars to be considered, in this chapter on indictment, he enumerates amongst them: "6. Who may and ought to be indictors; 8. Of the form of the body of the indictment; 9. Of the form of the caption of the indictment." It is not only an accusation, but it is and becomes so as a finding by twelve competent qualified men; and accordingly, we find that when the party is called upon to plead to the indictment, if the caption shows that it is not a finding by twelve such men, or leaves it uncertain whether it is a finding by twelve men, he may demur to it. It is not then an indictment, and he is not called on to answer it. Why? Because it is not a finding by twelve men. If it appear that the Grand Jurors are not men belonging to the county, he may also demur. Their incompetency or dis-

qualification, on various grounds, may be the subject of a plea in abatement: and unless he know when, where, and by whom the bill is found, he has not the means of pleading such special matter with advantage. It therefore appears to me that, as I have been in the habit of thinking, the indictment consists of two parts, the body and the caption. It so appears throughout that chapter in Hawkins, and I refer particularly to pages 287, 309, 346, and 349, and he is not contradicted by any authority that I have been able to find. With respect to that passage cited from the case of *The King v. Atkinson*, in the note to Saunders' Reports, 250 (*d*), it can hardly be held that Lord Mansfield meant to go the length of holding that the caption is no part of the indictment. The question in that case was, whether an incorrect copy of the caption returned might be amended, according to the truth and conformably to the original caption; a copy which was incorrect by the mere blunder of the officer, who was only ministerial in making the act, as Lord Mansfield says; he does add, that "the caption is no part of the indictment; it is only a copy of the style of the court at which the indictment is found." So far he is correct, that it is no part of the finding or act of the jury. I cannot consider this dictum an authority to that extent, in express opposition to Hawkins, for in that very case, the question, whether there were a sufficient indictment, depended on the contents of the caption. Suppose it does go that length, it is, after all, but the *dictum* of Lord Mansfield, and I should say, against the reason of the thing as well as the authorities. The ancient course was for the jury to find the bare facts, and for the officer to put them into form. It is unjust to say, that Lord Mansfield was laying it down as an absolute proposition, that the caption is in no point of view, part of the indictment, for that was not the decision in the case. It is said, as I have before observed, that the copy of the indictment is furnished, in order that the accused may advise with his counsel how he may be enabled to plead. Unless he knows what the matter of fact is, how can he plead? How can he have the advantage of pleading the special matter to the caption, if he is ignorant of its contents? It has been suggested as an objection to this application, that the party is calling on the Court, in this early part of the Term, to give that which is only completed at the end of the Term. That if an answer in this case would be an answer in high treason as well as in misdemeanor. The same difficulty would occur in both cases. But in my mind he is only calling on the Court to have that done which ought to have been done, and which from mere neglect has grown into disuse. I do not mean to attach blame to the officer of the Court in this particular instance, but in strictness it is his duty to enter the proceedings of the Court *de die in diem*, and so it would appear from the record when it is made up. For the caption is entered as of the first day of the term. There is no inconvenience in this course. There may be, it is true, several indictments found on several days in the term, but if any thing special occurs, the caption may and ought to be framed accordingly. Another objection has been urged, namely, that this application is contrary to the prac-

tice of the Court; that the copy of the caption is not given in practice by the officer of the Court, and that the practice of the Court is the law of the Court. No doubt that it is the law, but I have not heard of any instance of a rule, or even of a *dictum* of a Judge before to day, in favour of the position that the party is not entitled, under this Statute, to what has been demanded at the bar. I have not heard of one instance in which an application such as the present one has been refused. I cannot consider that because the objection has not been made, for the case has not arisen during the twenty-four years which have elapsed since the passing of the Statute, that any practice of the court against the application has been shown or established to exist. The course of proceeding of the parties in the instances, and they are not many, in which crown prosecutions have occurred, many have been for the party to make an application to the officer of the Court, who may have refused to give a copy of the caption of the indictment, and the parties may have submitted without remonstrance. But I cannot imagine that because the question never was raised before, even if an occasion for raising it had occurred, that, therefore, this is to be considered as the practice of the Court, binding the Court as law. But then there is another practice adverted to, and that is the practice at the Assizes, where it is said to have been established that, although the party accused is entitled (on paying the usual fees) to a copy of the indictment, he is not entitled to a copy of the caption. I never knew an instance in which this was discussed, or in which it was even mentioned. But it is not in common practice asked for or given. Why? Because the parties apply, at their own expense, for that which is in ordinary cases only material, viz., the body of the indictment. They pay for what they get, and they do not ask for more than they want. No cases are produced in which the caption has been refused where material. I do not think that such negative evidence is sufficient to establish a practice. These are the grounds on which it appears to me that the construction of this Statute ought to be governed by the practice under the Statute of 7 William III. c. 3, and 7 Anne, c. 21, in England, and 5 Geo. III. c. 21, in Ireland. Of course when I am under the disadvantage of differing from the rest of the Court, I must feel that there is every probability that I am wrong. But no other disadvantage will ensue, because the rule of the Court will not be according to my opinion.

[After some discussion on another topic introduced—]

MR. JUSTICE PERRIN.—My attention has been drawn by my brother Crampton to a passage in 2 Hale, Pl. Cr. which had escaped me, and to which I have not adverted, it is this: “The caption of the indictment is no part of the indictment, but it is the stile or preamble, or return that is made from an inferior Court to a superior, from whom a certiorari issues to remove; or when the whole record is made up in form, for whereas the record of the indictment as it stands upon the file of the Court wherein it is taken is only thus: *juratores pro domino Rege super juramentum suorum presentent*, when this comes to be returned upon a certiorari is

“ more full and explicit in this form,” &c. Lord Hale does here certainly say the caption is no part of the indictment, but not in the sense contended for, nor to the extent, nor that it is not essential to the indictment, as appears in the subsequent pages, when he treats of the caption and of the body of the indictment ; so that without observing as fully upon this passage as I should had it been brought to my attention when delivering my opinion, it appears to me subject to the same view as Lord Mansfield’s position, and so not to apply exactly to the matter in argument.

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TUESDAY, NOVEMBER 14TH.

This being the last day for pleading, according to the rules of the Court, the following plea was handed in in person by Daniel O’Connell, Esq. :

“ And the said Daniel O’Connell, in his own proper person, comes into the Court here of our 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, 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, and that the said witnesses so then and there produced before, and examined by the jurors aforesaid, 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 said Lady the Queen, before the Queen herself, 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 the Third, intituled ‘ An Act to regulate the proceedings of Grand Juries in Ireland upon bills of indictment,’ to wit in the parish of St. 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.”

Similar pleas were handed in by the several other traversers in person.

The *Attorney-General* objected to those pleas being received, as at that stage of the proceedings the traversers were not entitled to plead in abatement ; he, at all events, applied as a matter to the discretion of the Court, that those pleas should not be received, until he had an opportunity of considering the question.



Mr. *Hatchell*, on the part of the traversers, contended that the pleas should be then received, and that if the Attorney-General objected to them, he could afterwards move to have them set aside.

The Court postponed hearing the matter discussed until the following day, it then being a late hour, without prejudice, however to the traversers, if the Court should be of opinion that the pleas should have been then received.

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WEDNESDAY, NOVEMBER 15TH.

The *Attorney-General*.—My Lords, the question before the Court now is, whether those pleas in abatement which have been pleaded by the several traversers, ought to be received, and that will be found to depend on the construction of the 60 Geo. III. c. 4, and I contend that under that Statute they were bound to plead in abatement, when charged with the indictment; that has been the practice both in felonies and misdemeanors, 1 Chitty, C. L. 447; 4 *id.* 520, note; 2 Gabbett's Cr. L. 328; 1 Burns' Justice, Abatement, 2; *Rex v. Kirwan*, 31 State Trials, 578. These cases show what the practice has been, and the form of the plea is the same in *Rex v. Kirwan* as in this case. But I submit, upon the true construction of the Act, it does not apply to pleas in abatement. Looking to the preamble of the Act, so far from giving facility to dilatory pleas, it shows that such a construction would not be in accordance with its intention, for it expressly recites that delays had occurred, and that it is for remedy of those delays the Act was passed; and looking to the latter branch of the section, it is clear we are entitled to compel a party to plead in that term, in the same manner as he might have done prior to the Act, on an imparlance to another term. Now, before the passing of the Act, if there had been an imparlance, the party would not have been entitled to plead in abatement. Bacon's Abr. Plea, c. 3. Under this section, when giving the party four days to plead or demur, it was never in contemplation that he was to put in a dilatory plea. In the ordinary rule of this Court, the eight day rule to plead does not permit the party to plead in abatement, or to the jurisdiction; that should be pleaded in four days.

Mr. JUSTICE PERRIN.—It was only in cases of treason or felony, that the party was bound to plead on his arraignment.

The *Attorney-General*.—If that be so, then this plea is late under any circumstances. In civil cases and in misdemeanors, the rule is the same, and a dilatory plea should be filed within four running days. The rule in this case commenced to run on Friday, and should have been filed on Monday, as Sunday counts as one of the four days. It is clear then that prior to the passing of the Act, those pleas could not have been received. Now what is the construction they seek to put on the Act? They call on you, notwithstanding the preamble of that Act, to extend the time for receiving those dilatory pleas, which clearly would have been irregular before the passing of the

Act. Further, supposing those pleas were received, and I take a demurrer to them, if I succeed on that demurrer, I could only get a judgment of *respondeat ouster*, 1 Chitty's Cr. Law, 451, and according to the construction put upon the Act, by the other side, the effect would be, that an Act passed for the purpose of preventing delay, would create delay. This is a strong reason to show that the pleas thereby meant should be pleas which would lead to a final judgment, and not pleas which would lead to a judgment of *respondeat ouster*, and thereby give the parties new time for pleading. Further, if a party appears by attorney, there can be no imparlance, but the party shall be compelled to plead, and if I be right, that there cannot be a plea in abatement, or to the jurisdiction after imparlance, this plea does not meet this second branch.

Mr. JUSTICE PERRIN.—Do you infer from this that a plea in abatement is taken away?

The *Attorney-General*.—No. Either they are to plead on arraignment, or to plead in four running days. If they are to plead in four running days, the Statute has no reference to pleas in abatement, it has only reference to pleading in bar or demurring, and has not the effect of extending the time for pleading.

Mr. *Moore*.—My Lords, if I understand the *Attorney-General*, he is applying for an order that the officer should not receive those pleas, and in strictness he is bound not to make that application without notice; but I do not seek to turn him round on this point, I submit on principle and on the true construction of this Act, that those pleas are regular. There is no controversy, but that we had the whole of yesterday to put in pleas of some kind or other. The first ground of his argument was, that if the Statute had not passed, we are not at liberty to plead in abatement, unless at the time of arraignment. It becomes therefore necessary to consider at what period a party is said to be arraigned. In 2 Hale, P. C. 219, arraignment is the time given to the party as to the period he is called on to answer and to say whether he is guilty or not, and that time, according to the rules of the Court, did not arrive until yesterday, and we were not bound to say whether we would plead in bar or in abatement. The second question for the consideration of the Court is the construction of the Statute, and whatever doubt may have existed antecedent to the Statute, there is not a particle of doubt with respect to the right to plead in abatement under the Statute. It is clear that at common law in misdemeanor cases, the party had a right to imparl to the ensuing term. *The Queen v. Rawlins*, 3 Salk, 185. But then it is said, if we had entered an imparlance we should have been bound not to have pleaded in abatement. Whatever be the rule in civil cases I know of no authority to show that after an imparlance in a criminal case, the party is deprived of his right to plead in abatement. Whatever may be the principle applicable to civil cases, the Court would be slow to extend the rule to Crown cases, which would have the effect of depriving a party of a benefit he would otherwise be entitled to, for a plea in abatement may be a plea to the merits: there is no doubt but the parties had a great privilege in being allowed to imparl, that right

was given to him to afford him every opportunity in point of time, of making himself acquainted with the charge against him. A great advantage is thus taken away by the operation of this Act, and it is to be considered as a penal Act, because it goes to abridge the common law right; it therefore should receive the fullest interpretation in favour of the party. It is said, that it appears by the preamble, that the Statute was intended to prevent delay; now the object of it was, to do away with the right of imparling, and to substitute in its place, that the party be required to plead or demur in four days, and you are called on to construe it as if it said, a plea in bar in four days. A plea in abatement is as valid as a plea in bar, and may go equally to the merits; and when a common law right is taken away, why should a party be deprived of a privilege the Act gives him? Upon no principle can the Court give the Act this narrow construction, if the Legislature intended to confine it to pleas in bar, they would have inserted those words, but the Court would not be warranted in introducing them.

Mr. *Hatchell*.—My Lords, on the part of Mr. Ray, I submit, that those pleas ought to be received. When on Friday the rule to plead was entered, we applied to the Clerk of the Crown to be informed at what time it was necessary to put in a plea, and we got a certificate from him stating, that we had the whole of Tuesday, so that if we relied on this certificate alone, this plea ought to be received. There is no doubt that at common law, if a party appeared in person, he had a right to imparl to the next term, but if he neglected to appear in proper time, he was deprived of that right, 1 Gude, Cr. Law, 90; *Rex v. Cox*, 1 Show. 56. This plea is said to be a dilatory plea, but it raises a very important question. There has been no practice to regulate the construction of this Act, and the Court will not, therefore, give it such a construction as will exclude this plea.

Mr. *Brewster*.—My Lords, in reference to the certificate, the officer was misled; he was asked to inform the traversers when the rule to plead would run out, but that rule had nothing to say to pleas in abatement, and the party when they made this application, should have stated whether they intended to plead in abatement or in bar. As to the nature of the plea, it is purely a dilatory plea, and does not go to the merits of the case. The authorities are clear, that upon the civil side of the Court, he has but two days to plead in abatement, *Jennings v. Webb*, 1 T. R. 277. Another rule is, that there can be no plea in abatement after a general imparlance, *Duncombe v. Church*, 1 Salk. 1; *Evans v. Stevens*, 4 T. R. 227. Pleas in abatement in criminal cases, are looked on as in civil cases. Under the Statute of Anne, they must be verified by affidavit, *Rex v. Grainger*, 3 Bur. 1617, and in that Statute, pleas in abatement are called dilatory pleas. In misdemeanor, there are two courses not accurately distinguished, traversing and imparling. The party desiring to traverse, when called on to appear, must appear and plead.

Mr. JUSTICE PERRIN.—My impression is, that when a party applies to traverse in *prova*, he is not called on to plead until the next

Term. It has been doubted whether, after a party had pleaded, he could traverse *in prox.* *Rea v. Claxton*, 1 C. & Dix, C. C. 183.

Mr. *Brewster*.—In Dickinson, Quarter Sessions, 451, it is stated that he is to plead to the indictment before he is entitled to traverse, 2 Gabbett, 317, however, it is clear that after imparlance he could not plead in abatement. But it is said that the Statute has altered the law in this respect. The Statute was intended to prevent the postponement of a trial, and it has taken away the right to imparl. After an imparlance there could be no plea in abatement, it was, therefore, outside the mischief which the Legislature intended to remedy. This is not a penal Statute, it is a remedial Statute, and if the Court has a discretion, it is bound to carry out the intentions of it. It speaks of pleas and demurrers; they are both pleas in bar; there is no special demurrer in criminal cases.

The LORD CHIEF JUSTICE.—In this case, the question before the Court has been treated and argued, and in point of fact, I conceive it to be, an application made by the Attorney-General, that the respective pleas in abatement which were tendered yesterday should not be received. The Attorney-General contends that these several pleas, which are all one and the same, are not pleas in bar, but pleas in abatement—merely dilatory pleas; and he insists, first, that those being dilatory pleas, the parties were bound to have filed or tendered them, if at all, within four running days, and he has argued, that because they were not tendered until the fifth day, they are too late by the rule of the Court, and ought not to be received. In general terms, if that were so, I should say that the present is a case in which this rule ought not to be applied. There has been a great deal of dispute and controversy with regard to what passed at the office of the Clerk of the Crown, on the application made to him on the part of the traversers, as to the time they were bound to plead, but whatever was the object, whatever was the intention of the parties, it is perfectly certain, that on Saturday a formal application was made as to what length of time the parties had to plead, and it is also certain that the Clerk of the Crown, being thus seriously applied to, did give an answer in writing, that the parties who made the application had all Tuesday to put in their plea. I do not see how the Court can now give attention to the Attorney-General insisting that Monday was the last day, when the officer has given in, under his hand, that the parties had all Tuesday to plead. Now if this was a case, which generally speaking would be brought under the operation of the four-day rule, as being a dilatory plea, in my opinion, after the communication made by the officer of the Court, the Attorney-General could not insist on that rule in this particular instance.

However, it is necessary to consider the case otherwise and further. This Court is called on to give an opinion, whether, according to the ordinary practice under the Statute 60 Geo. III. c. 4, defendants are precluded from putting in a plea in abatement, which has not been filed before the regular day for so pleading. Tuesday was the regular day for pleading under that Statute, but the Attorney-General says it must be taken to be for pleading in bar and not in abatement. If



a distinction was intended to be drawn or relied on, when the officer was applied to, he should have apprised the parties that that distinction existed; on the contrary, he makes no distinction whatever, but he says, that the time for pleading, making no distinction between pleading in bar or in abatement, would be out on Tuesday, and that the party would have the whole of Tuesday to file his plea. That is another reason why this distinction is hardly open to the officer of the Crown. The officer of the Court is the person to be applied to, and he gives an answer, equivocal, if it is intended to be relied that there is a distinction, but perfectly intelligible if there be no distinction. But let us see whether under the Statute they ought to be permitted to file the plea in question on Tuesday, putting out of view the consideration of that general answer given by the Clerk of the Crown, which would have a strong tendency to mislead the parties, if they were not at liberty to plead one or other of those pleas. Whatever be the rule of the Court in civil cases, I apprehend it has nothing to say to this case. Further, with regard to the rule of the Court as applicable to its criminal jurisdiction, there appears little or no room for any practice to be resorted to under the Statute in question; I have not heard stated a single authority in reference to the point upon which the Court are called upon to make a decision; therefore, the practice with regard to any particular case, is not applicable as a rule of construction. I have already said, I do not see any analogy between civil and criminal cases. We are therefore called on to see what is the interpretation to be put on this Statute independently either of authority or of practice, and we are obliged to resort for that construction, to the internal consideration of the thing effected by the Act, the privileges of which the traversers are deprived, or the benefits conferred by it. It has been truly stated, that the right to traverse *in pro.x.* was a most valuable privilege, which every person under the circumstances stated was entitled to before the Statute had passed; the effect of it was, that a person accused of a misdemeanor before the passing of this Statute, without preparing his defence, without taking any trouble, was entitled, if he did not choose to go to trial, to defer it to the following term. That was a most valuable privilege; and we are called upon to give a construction to an Act which took away that privilege; and we are asked upon what terms, upon a fair interpretation of the Statute, he was deprived of that privilege which he before undoubtedly possessed. What has been given to him in lieu of it? What does the Act, which was passed with a view to amend the law, but in amending the law, is said to have operated as a penal Act, depriving him of those rights? The law said there is no sufficient reason for the continuance of the right to traverse *in pro.x.*, which is rather to be looked upon as an indulgence than as the exercise of a wholesome right; the indulgence is taken away, but a new right is reserved. He is furnished by the Act with all necessary and useful means proper for his defence; it therefore says: "in case such defendant shall appear to such indictment, or information, by his clerk or attorney in Court, it shall not be lawful for such defendant

“to imparl to a following term; but a rule requiring such defendant to plead may forthwith be given, and a plea or demurrer to such indictment enforced, or judgment by default entered thereon, in the same manner as might have been done before the passing of this Act.” He is deprived of the right to traverse *in prox.*, but it was never intended to deprive him of making what defence he pleased. There is a certain time within which, whatever that defence may be, he is obliged to bring it. There are four days in which he is obliged to plead in, and it is insisted that we are to assume, that not only the time should be impaired and contracted, but that the Statute must mean four days to plead to the merits. The Statute has said no such thing; if the Statute, in depriving a party of a benefit, intended further to curtail him, by compelling him to plead in bar, would it not so express it? If the words “in bar” had been used there would have been no question, but they have not used those words, and this being a forfeiture, and therefore it is said in the nature of a penal Statute, the Court is called upon to construe it so as to compel a party to plead in abatement in two days if he thought fit to do so. That construction would cut off two running days, and but two days would be left, whereas the Statute has given four days. Without going further, I think I have sufficiently explained my view. We are bound not to give the Statute a narrow construction, moreover as the officer made no restriction as to the nature of the plea. If the case turned on that alone, I would not permit a party to be misled by the act of the officer of the Court; and assuming that there has been a mistake, I would hold the party accused entitled to the benefit of it. These are my views upon it, and I believe I have the concurrence of the Court.

MR. JUSTICE BURTON.—I concur in the judgment pronounced by my Lord Chief Justice, and in the grounds upon which that judgment was founded. I conceive that this is a mere question of time upon the distinction between a plea in abatement and a plea in bar. That question is whether the traversers may now put in a plea in abatement, or whether they have lost that right by lapse of a day. Now, supposing I had more doubt than I have on the construction of the Statute, yet I should think a case of this kind open for the examination of the question whether any unfair delay was intended, whether what was done was with a view to gain time, or whether it was done fairly for the purpose of a defence, which the traversers considered they had a right to make, and if the lapse of time appeared to be in consequence of an inadvertence, I should be disposed to let the party make his defence by a plea in abatement, notwithstanding that inadvertence. However, it would not be right, after the judgment given by my Lord Chief Justice to abstain from stating my opinion as to the construction of the Statute. I rely entirely on the words of the Statute itself. That has been my view from the time the discussion commenced, and I still think it the safest course to see what the words of the Statute are, and to follow the general rule in the construction of all Statutes,

that when plain words are used, they should be construed according to their actual import. That is the course to be adopted in the first instance. There may be cases in which a question may arise, and in which the observations so strongly made at the bar may apply, as to what may have been the intention of the Legislature, but the Court must be sure, and very clear indeed, as to that intention, before it is at liberty to strain the words, or to carry the provisions of a Statute to a length to which the words of it do not extend. Antecedent to this Statute, the traversers in cases of misdemeanor had an advantage, of which they had availed themselves for a length of time, that of traversing *in prox.* The Statute was passed to deprive the traversers of that advantage. It was right and just and reasonable that it should be put an end to. But then the question arises, how far the Statute has restrained the liberty of the subject in this respect, and we must see what the plain words of the Statute are. Now, the words of the Statute taken by themselves are quite clear; instead of having a right to imparl, it fixes a precise time within which the party accused is to defend himself, that is four days. That is certainly a short time, but it cannot be suggested, and it has not been suggested, that the Legislature intended to make an explicit difference between a defence in chief, and a plea in abatement. I have observed that in a criminal prosecution, a defence by way of abatement is often not merely dilatory, and, therefore, though the right of imparling to a certain time was taken away, it is likely the Legislature meant to give the party four days from the time mentioned in the Statute to plead and make his defence in whatever way he might choose. I do not think that the Legislature meant to make the distinction which has been contended for. I therefore conceive that this is the rational construction of the Statute, and that I am bound to concur in opinion with my Lord Chief Justice. There is one circumstance upon which great stress has been laid, that is the notification to the Clerk of the Crown, and his answer to it. With respect to it, I think it was a general application as to what time the party had to plead, without any communication as to the nature of the plea. That might have been owing to the difference not having occurred to the minds of the persons who made the application. The Clerk of the Crown seems to have been of the same opinion himself, that no distinction was to be made between pleas in bar and pleas in abatement. There seems to have been a misconception on both sides. On the construction of the Statute I am strongly of opinion that we ought not to deprive the parties of the right to pleas in abatement.

Mr. JUSTICE CRAMPTON.—I concur in the judgment of the Court, and feel it is unnecessary for me to state my reasons at length. But I wish to be clearly understood, as founding my judgment exclusively upon the construction of the Statute, and for this reason, that if a party be led into a mistake by misinformation from an officer of the Court, the Attorney-General not being a party to such misinformation, I am by no means satisfied (and indeed the tendency of my mind is the other way), that the right of the Crown can be thereby affected. If

a party has been misled, and takes a step which he otherwise would not have taken, it may be in the discretion of the Court, upon a proper application, and an affidavit stating the grounds to let that party in to plead, whose time has lapsed; but this is not an application to the discretion of the Court at all; the learned counsel for the traversers have put it as a matter of right, and, I have heard nothing in answer to Mr. Moore's argument. With regard to the construction of the Statute, there appears a fixed time within which the traverser is to plead or demur, without distinction as to pleas in abatement, or pleas in chief. Into the merits of this plea I do not enter, but the party has a right to put in a dilatory plea, and provided he does so according to the rules of the Court, we have no power to take away that right from him; for the period is fixed, within which he has to plead or demur. The Statute has taken away a solid privilege from the traverser, and has given him a privilege in return. The true construction is that adopted by my brother Burton, to construe the Act of Parliament according to the common and ordinary meaning of its language. When, therefore, the Legislature has said, that the party shall plead within four days, we must understand it to have meant to include every species of plea, which the law enables the party to put in. These pleas have been put in within four days, I therefore think they should be received.

Mr. JUSTICE PERRIN.—I concur in the judgment of the Court, and in the reasons so fully given by my Lord Chief Justice.

The *Attorney-General*.—I understand the several pleas to be now received. I now hand in a demurrer to each of them; and I submit that I am entitled to call on the traversers to join in demurrer *instanter*; *Rex v. Loyer*, 16 State Trials, 122.

Mr. Moore and Mr. Pigot, Q. C. contended that the traversers were entitled, according to the practice of the Crown side of the Court, to a four day rule to join in demurrer; *Rex v. Johnson*, 6 East, 583; 1 Chit. Cr. Law, 432.

The *Attorney-General*.—The ordinary practice may be so. But the recognizances are to appear from day to day, and I apprehend I have a right to call the traversers on their recognizances, and to call on them to join in demurrer. I represent the Crown, and whatever may be the rules and practice of the Court, as has been well observed by Lord Plunket, they are the servants of the Court, and under its control, and I trust your Lordships, in the case of a plea in abatement, put in merely for delay, will call upon them to join in demurrer now.

Mr. Moore.—That is the most extraordinary proposition which I have ever heard from counsel in any case. There is a settled practice by which the party is entitled to a certain privilege in order that he may consider whether he will join in demurrer or not; yet the Attorney-General gravely asks your Lordships, to disregard that practice, and because he thinks fit to inform the Court that he has made up his mind as to the object of the plea, and that he has made up his mind to argue the demurrer, therefore all rules established for the benefit of the accused in the administration of justice are to be set at nought. There may be an authority for it,



but I confess I never heard such a proposition before, and I trust I may never hear it again.

The *Attorney-General* in reply still relied on the case of *Rex v. Kirwan*.

The LORD CHIEF JUSTICE.—There was no objection made on the part of the traversers in that case. I have inquired the practice from the officers of the Court, and I find that it is the practice to give the four day rule.

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MONDAY, NOVEMBER 20TH.

The Clerk of the Crown having stated that joinders in demurrer had been handed in by the agent for the several traversers,

Mr. *Ford*, attorney for the traversers, submitted that he was entitled to a further rule for time to prepare the paper books.

The Clerk of the Crown stated that the traversers had a right to call on the Crown to join in the expense of paper books.

The *Attorney-General* contended that there was no rule for joining in the expense of paper books, as they were ready to be delivered to the Judges free of expense.

Mr. *Moore* was heard in reply.

The Court held that as the paper books had been furnished to them free of expense, the traversers were bound to argue the demurrer immediately, and the following day was fixed for the argument.

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TUESDAY, NOVEMBER 21ST.

The *Attorney-General*.—My Lords, the plea in this case is a plea in abatement, and the general nature of it is, that it states that the indictment was found a true bill on the evidence of four witnesses produced before and examined by the Grand Jury, and that those witnesses were not, nor was any one of them, previous to being examined, sworn in open Court, according to the provisions of the Statute 56 Geo. III. c. 87, and the point intended to be raised by this plea is, that the Statute 1 & 2 Vict. cap. 37, an Act to empower the foreman of Grand Juries to administer oaths to witnesses on bills of indictment, does not extend to the Court of Queen's Bench, and that the witnesses to support this indictment should have been sworn in open Court according to the provisions of the 56 Geo. III. c. 87. The earliest occasion on which a construction was given to this Statute of 1 & 2 Vic. was in the year 1838, immediately after the passing of this Act, by the Judges (Woulfe, C. B., and Moore, J.) who then presided at the Commission Court for the county, and county of the city of Dublin; on that occasion the Chief Baron charged the Jury with respect to this Act, and directed them to act according to its provisions, and at the following commission in 1839, when Doherty, C. J., and Johnson, J., presided, a similar charge was given, and from that time to the present the same construction

has been given to this Statute by the several Judges who successively presided at the Commission Court. The principle governing the Commission Court would equally apply to this Court; and if the Court of Queen's Bench is to be excluded, the Commission Court is also to be excluded. The Court is therefore called on to disregard the declared opinion of the twelve Judges, and to cast an imputation upon the convictions which have been found since the passing of this Act, and to admit that the sentences which have been pronounced were illegal, which would be the result of the proposition contended for on the other side.

But I do not mean to rest my argument upon the opinion of the twelve Judges, although it has been uniformly acted on up to the present time; for I think I shall be able to show, that the Judges have come to a true construction of the Statute, and that any other construction would be contrary to its intention and its object. Before I advert particularly to the Acts in question, I shall call the attention of the Court to the law as it stands in England, which may be considered the common law, upon the subject. At the Durham Assizes of 1834, the practice appears to have been for the Grand Jury to swear the witnesses, *Teazedale's Case*, 2 Lew. C. C. 294, and in a late case, *Regina v. Russell*, Carr. & Marsh, 247, the Court held that when the Grand Jury had found a bill, the Judges before whom the case came to be tried ought not to inquire whether the witnesses were properly sworn previously to their going before the Grand Jury, and that an improper mode of swearing them would not vitiate the indictment, as the Grand Jury were at liberty to find a bill on their own knowledge merely. In that case Wightman, J., referred to a case which had been tried before Lord Denman and himself (a report of which case I have obtained from Sir Gregory Lewin); on that occasion Sir Gregory Lewin contended, that the Grand Jury had no power to administer the oath to the witnesses, but Lord Denman and Mr. Justice Wightman held, that it was not competent for them to inquire into the information upon which the Grand Jury had found the bill. Such has been the practice in England, and I shall now show how the law stands in this country. Prior to the passing of 56 Geo. III. c. 87, it had been the custom for Grand Juries to find bills of indictment, not upon their own knowledge, but in a manner which the law did not recognize, namely upon sworn informations, without having examined the witnesses at all; and the object of the 56 Geo. III. was to alter that practice. It recites that this practice existed and should be discontinued, and then declares and enacts, that 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. That is a declaratory Act; but I shall not now contend how far being a declaratory Act, it affects the cases to which I have referred, as showing what the common law was. because it is not material to go into that question; and I am willing for the purposes of this argument to admit, that under the 56 Geo. III., one or more of the witnesses should be

sworn in open Court. The object of that Act was, not with respect to the place of swearing the witnesses, but to do away with the practice of finding bills upon sworn informations, without a *viva voce* examination of the witnesses. Under this Statute the practice arose of swearing the witnesses in open Court, and it is not questioned, but on the contrary it is admitted by the plea, that this was a general provision of the Statute extending to every Grand Jury in Ireland, inclusive of the Queen's Bench. This Statute then, which extended to every part of Ireland, which was general in its terms, not excluding any Court, led to this inconvenience—that the proceedings of the Court were interrupted, and that there was an irreverent administration of the oath, in the confusion and noise of the Court. That was a mischief which was felt to exist in every Court of Oyer and Terminer, and in none more so, perhaps, than in the Queen's Bench, and the object of the 1 & 2 Viet. was to meet that mischief; but still carrying out the principles of the 56 Geo. III., namely, to have a *viva voce* examination of witnesses. The 1 & 2 Vic. 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.” Although no great stress is to be laid on the title of an Act, yet it has not been thrown out of consideration in all cases. The title of this Act is in conformity with its provisions, and shows that it did not seek to confine it to any particular class of Courts. The preamble recites the 56 Geo. III., and that the provision therein contained for the *viva voce* examination of witnesses had been found most salutary, but that the administration of the oath in Court had been productive of delay, and other inconvenienc. Now there is nothing in that recital to confine it to any particular Court, it recites a general mischief applicable to all Grand Juries in every Court, that was the swearing the witnesses in open Court, therefore we have on the face of the preamble of the Act, that portion to which I am entitled to look, the clear intention of the Legislature to provide a remedy for an existing mischief applicable to every Grand Jury. The Act then says, “for remedy whereof,” that is, for remedy of the mischief arising from the swearing of witnesses in open Court, “be it enacted, that in all cases where bills of indictment are to be laid before Grand Juries in Ireland for their consideration;” that provision cannot be said to exclude the Court of Queen's Bench; “the Clerk of the Crown at the 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 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 shall, previous to the examination of any witness whose name shall appear endorsed, &c., administer the oath, &c.” And it then contains the following provisoes: “that the said oath is not to be in addition to, but in lieu of that heretofore administered by the 56 Geo. III., and that no foreman of any Grand Jury shall have

“ power to administer such oath to any witness 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.” Now looking to the provisions and preamble of this Act, and looking to the fact, that the 56 Geo. III. applies to all Grand Juries in Ireland, is it not the plain object of the Legislature to leave that which was beneficial, namely, the *viva voce* examination of witnesses, untouched, and to apply a remedy to that which did not work well, namely, the administration of an oath in open Court, and because the Act has named the Clerk of the Crown at Assizes, and the Clerk of the Peace at Sessions, as the ministerial officers to perform this duty, you are called on to give this narrow construction to the Act, and to control the intention of the Legislature, and to decide contrary to what has been received by all the Judges in Ireland, as the true construction of the Act. There are abundant authorities to show that where a ministerial duty is imposed on a ministerial officer, by an Act of Parliament, that duty may in similar cases be performed by another officer similarly situated, in Courts to which the Act is intended to extend.

As to the general rules of construction of Acts of Parliament, there is no doubt that a remedial Statute should receive a liberal construction, so as to extend the remedy and to suppress the mischief, *Murphy v. Leader*, Jebb & B. 75; *Watt v. Mann*, 4 Scott, N. R. 362; *Rex v. Inhab. of Everdon*, 9 East, 105; in the matter of *Bryant*, 5 T. R. 509; *New River Company v. Graves*, 2 Vern. 431. The general principle is clear, that even if necessary, the Court will put a liberal construction upon a remedial Act, contrary to the literal words, to carry out the intention of the Legislature; but it is not necessary for me to contend so in the present case, 2 Inst. 395; in that case, although an *elegit* was directed to one particular officer, and the words of the Statute named another, yet the Court held, that this being a beneficial law, by equity it was extended to every other immediate officer, to every other Court of Record, and in p. 393, in commenting on the Statute of Westminster 2, Lord Coke says, that although justices in eyre are there mentioned, yet that Act being a beneficial law, it is to be taken by equity to extend to the Court of Common Pleas; and in p. 431, the same doctrine is laid down, and in commenting on the Statute of Westminster 1, he states, “ that Statute being made in affirmation of common right, doth extend to the Court of Chancery, Court of Exchequer, and to all other Courts of Justice, for that all are within the same mischief, and, therefore, ought to be within the same remedy.” If then this case is to be governed by those rules of construction, if the intention of the Legislature is beyond doubt, and the 56 Geo. III. and the general nature of the enactment, and both provisions, and the general provisions applicable to all Grand Juries, be kept in mind, is the Court prepared to say, that this is inapplicable to Grand Juries in this Court, and also to the Court of Commission at Green-street, and also to special Commission? Those Courts are as much excluded from the operation of this Act, according to the argument on the other side, as the Court of Queen’s



Bench would be, yet it has been the practice since the passing of this Act, at Special Commissions, to have the witnesses sworn before the Grand Jury, and, therefore, if the Court will follow this technical construction, they will thereby be deciding, that all the convictions at those Assizes have been illegal. If it be held, that the Act only applies to Quarter Sessions and Assizes, the proceedings by the Recorder of Cork must also be held to be illegal, as he holds his Sessions every six weeks, and also those of the Recorder of Dublin who does not hold Quarter Sessions. [Mr. Justice *Perrin*.—He holds Quarter Sessions, but adjourns them from time to time.] If so, he comes within the terms of the Act, and yet is it to be said, that when he adjourns in order that the Judges may preside at the Commission of Oyer and Terminer, the proceedings in the same Court, within a day of each other, and for the same purpose, are to be different?

Even if the Court was called on to give the strictest construction to this Act, it is a mistake to say those Courts are not Courts of Assize. Before adverting to this part of the case, I would remark, that if an indictment was found in any part of Ireland, under the provisions of the 1 & 2 Vict. it might be returned by *certiorari* into this Court, and then the accused might be tried at the bar of this Court, and are the proceedings to be different in such a case as this? With regard to the jurisdiction of the Court of Queen's Bench as a Court of Assize, it is laid down in *Dagge's Crim. Law*, 175: "that the jurisdiction of this Court is very extensive. The Justices of the King's Bench are sovereign Justices of Oyer and Terminer, gaol delivery, and of eyre, and their jurisdiction is general all over England;" and in 1 *Bac. Abr. Assize*, A. p. 332, it is laid down that assizes are to be taken in the King's Bench, or Common Pleas, for the county in which they sit, and for all others, are to be arraigned in their proper counties. In *Comyn. Dig. Assize*, B. 21, it is said, that these Courts have an original jurisdiction for taking assizes without any patent or commission, that is, they had that inherent jurisdiction at the common law. If then those words are to be considered in their literal sense, this Court is a Court of Assize, and in that view of the Act, the Clerk of the Crown has jurisdiction to act as a ministerial officer, as a Clerk of the Crown at assizes. Formerly this Court followed the King's person; and instances have occurred, in which this Court has removed its sittings to a distance from where it was usually held, the effect of which was, that the proceedings of other Courts, both civil and criminal, in the county into which it was removed, were thereby suspended. Before the year 1729, treasons and felonies committed in the county, and the county of the city of Dublin, could only be tried at the bar of the Court of King's Bench during term; and it became necessary, in consequence, to pass an Act to allow the commission to continue its sittings after term, 2 *Gabb. Crim. Law*, 13. Upon these grounds there is no pretence for saying, that the Judges have come to a wrong construction of this Statute.

With respect to the form of the pleas, they have been most

inartificially drawn. The plea states, that four witnesses were examined before the Grand Jury, without stating the names of those witnesses, or that the names were unknown. The rule is this, that if the parties did not know the names, their course was to aver, that those persons were unknown, but they were not at liberty to put in a more general statement; that divers persons did a certain act, without setting forth their names, or stating that they were unknown, which statement they should have verified on their oaths. Steph. Pl. 353; 2 Gabb. Crim. Law, 221. Another principle is, that in a plea in abatement, certainty in every particular is requisite; now this bill of indictment might have been found on the testimony of witnesses who had been affirmed, not sworn, and in this respect their plea is not sufficiently certain.

Sir Colman O'Loghlen.—My Lords, with regard to the practice which has been relied on as governing this case, namely, the practice of considering this Act as applicable to all Courts, it ought not to have any weight. The question now to be decided is matter of strict law, and practice ought not to be a guide in such a case. *Rex v. Inhabitants of Eriswell*, 3 T. R. 725. In that case Lord Kenyon said: that he hoped he should never have the rule *communis error facit jus* insisted upon in a question of law, as to act upon such a rule in such a question, was to set up “a misconception of the law in destruction of the law,” and that for his part, “he was clear it would be most dangerous to adopt it, as according to that doctrine, the mistakes of Judges, provided they became universal, would become the rules of law.” Cases had been cited from Lew. C. C., in order to shew, that by the common law in England, witnesses were sworn before the Grand Jury; but even supposing such to be the case in England, no such law could prevail in this country, there being a specific Statute upon the subject. It was also said, that when the Grand Jury had found the bill, the Court ought not to inquire whether the witnesses were properly sworn, *Rex v. Russell*, 1 C. & March, 247; but there are several cases in which the contrary has been decided. In an *Anonymous Case*, 2 Lew. 322, it was found, after the Grand Jury had been discharged, that the witnesses on one of the bills, which had been delivered into Court as found, had not been sworn, and Alderson, B., sent for the Grand Jury, and desired them to take back the bill and examine the witnesses afresh; and in *Rex v. Dickenson*, Russ. & Ry. 401, it is laid down, 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. But the witnesses should not only be sworn, but properly sworn, and in a case in 6 C. & P. 90, it is said, that a party cannot be legally convicted upon an indictment found by the Grand Jury, upon the testimony of witnesses who were sworn by an officer of the Court after the session had elapsed, and so much importance was attached to that case, that a special commission had to issue to try the prisoner again, who had been convicted. It must be admitted then, from those cases, that every bill of indictment should be found upon the evidence of witnesses properly sworn;

and the question now is, have the witnesses been properly sworn in the present instance? From the Statute 56 Geo. III. (which is declaratory of the common law), it is clear, that in order to be properly sworn, they should have been sworn in open Court, unless that Statute has been repealed by a subsequent Statute. It is admitted here, that they were not sworn in open Court, but it is said that the Statute 56 Geo. III. has been repealed by 1, 2 Vic. That Act, however, upon its proper construction, only applies to Assizes and Quarter Sessions.

The first question which arises upon the Act is, can the word "Assize" include the Court of Queen's Bench? The word "Assize" cannot include the Court of Queen's Bench, 3 Blac. Com. 185; 2 Gab. Crim. Law, 8; 1 Reeve's Hist. pp. 178, 245. At common law Assizes were taken in the Common Pleas and Queen's Bench, but Magna Charta has altered this, and the Justices were directed to take the Assize in each county, and a further alteration was made by the 3 Edw. IV. c. 5, Ir. Whatever, may have been the original meaning of the word "Assize," it has now acquired a peculiar meaning by practice, and it is to this specific meaning it is to be applied. In *Smith v. Harrison*, 6 Mod, 143, it is said, "when an Act of Parliament makes use of a term generally, it shall receive the same sense that the common law takes it in, and no other;" and the same is laid down in 2 Inst. 736; and in Dwar. on Stat. 702, it is said words are to be taken in their ordinary signification. See then what has been the ordinary sense in which this word has been used? The Queen's Bench is not at common law (meaning by common law the signification put upon the word "Assizes" of text writers), a Court of Assizes, nor is it one in statute language. A series of statutable enactments shows that the word "Assizes" in a Statute does not extend to the Court of Queen's Bench. The Acts allowing presentments to be made for malicious burnings; 7 Will. III. c. 21, 9 Will. III. c. 9; in consequence of the use of the word "Assizes," were held not to extend to the Queen's Bench, and it was found necessary to pass the 29 Geo. II. c. 14, to extend them to that Court; *In re Millar*, 2 Jebb & Sy. 273. There are other Acts also, in which this distinction has been taken; the 60 Geo. III. c. 4, takes a clear distinction between the Queen's Bench and the Court of Assize, and a similar distinction is taken by the Grand Jury Act, 6, 7 Will. IV. c. 116; there the Legislature thought it necessary (s. 3) to enact, that for the purposes of that Act, the word "Assizes" should include and import "a presenting term," and the words "Judge of Assize" should include Judges of the Queen's Bench. The same distinction is taken by the 5, 6 Will. IV. c. 26, and several other Acts; and there is a distinction drawn between Clerks of the Crown in the Queen's Bench, and Clerks of the Crown at Assizes, 2 Will. IV. c. 48. It is clear from these authorities, that neither at common law, nor by Statute, could the word "Assizes" be taken to mean the Queen's Bench; and the last Statute referred to shows that the Clerk of the Crown at the Assizes did not include the Clerk of the Crown in the Queen's Bench.

The next question then is, whether the 1 & 2 Vict. applies to Grand Juries in this Court. It is said that it does apply to this Court, first, because the words are general, and secondly, because such is the policy of the Act. In the first place, however, it must be remarked, this is a penal Act, and should receive a strict construction, for not only does it deprive the accused of the means of knowing the names of his accusers, but it also takes away from him that right which he was entitled to at common law, and creates a new jurisdiction; *Pierce v. Hopper*, 1 Strange, 249; *Pool v. Neil*, 2 Sid. 63. There was another reason why it should not be held to apply to the Queen's Bench, it was a mere enacting Statute, and the Queen's Bench is not to be included in it unless expressly named, 2 Hawk. 426; *Rex v. Richards*, 8 B. & C. 420; *Rex v. Kelsey*, 1 D. P. C. 481. It is true, the 56 Geo. III. includes the Queen's Bench, but that is a declaratory as well as an enacting Statute, and, therefore, the Queen's Bench was included in it, because it is included in all declaratory, though not in enacting Statutes. There is nothing in the Statute of Vict. to take it out of this general rule. It is said that the title of the Act is general, but it is well settled that the title is no part of the Act, *Rex v. Williams*, 1 Wm. Bl. 95; *Mills v. Wilkins*, 6 Mod. 62; Dwar. on Stat. 653; but even admitting the title to be part of the Statute, there is nothing in the title to contradict the construction we seek to put upon it, namely, that it does not extend to presenting terms. The title to other Grand Jury Acts was equally general as this. Thus, the 3 & 4 Will. IV. c. 78, is entitled, "An Act to amend the laws relating to *Grand Juries in Ireland*," yet that Statute had only relation to Grand Juries at Assizes and Quarter Sessions, and the 6 & 7 Will. IV. c. 116, is equally general in its title, yet it was necessary to pass a subsequent Act, 7 Will. IV. c. 2, to extend its provisions to the Queen's Bench. When Acts are *in pari materia*, if the same words are used in both Statutes, a distinction made in the one is a legislative exposition of the sense in which it should be taken in the other; *Gale v. Laurie*, 5 B. & C. 163; *Rex v. Smith*, 4 T. R. 419. But it is said the words in the enacting part are general; they are controlled by the subsequent words; *Petty v. Goddard*, O. Bridg. 40; Dwar. Stat. 688. It is true, the Statute uses those general words, but it afterwards specifies expressly the *modus operandi* at the Assizes and at Sessions, but it says nothing as to the *modus operandi* in the Queen's Bench, and this amounts to a clear declaration by the Legislature, that they never intended it should extend to the Queen's Bench. The words of the Statute it is true, are "in all cases when bills of indictment, &c.," but those words, "in all cases," must mean "in all cases of crimes committed, *i. e.* treasons, felonies, and misdemeanors," not as contended for on the other side, in all cases before all Grand Juries; and the Statute should be read as if it included negative words, confining the *modus operandi* to the Clerks of the Crown and Clerks of the Peace. But it is said that the Statute is only directory; it is, however, settled that if an affirmative Statute, which is introductory of a new law, directs a thing



to be done in a certain manner, so that even in the absence from the Statute of any negative words, it shall not, and cannot be done in any other manner; *Wethin v. Baldwin*, 1 Sid. 55; Plowd. Com. 206: Affirmative words, if absolute and preemptory, will make the Statute as imperative as if the case were put in the negative. Suppose an indictment for perjury against one of the witnesses, who had been examined before the Grand Jury. This indictment should contain the averment that the names were endorsed by the Clerk of the Crown, and that fact must also be proved, otherwise a conviction could not be had, *Rex v. Higgins*, 2 East, 21. It must further appear and be alleged in the indictment, that the person by whom the oath was administered had competent power to administer it, now the foreman had only power to administer an oath to a witness, whose name was endorsed, and that endorsement should be made by the proper officer in pursuance of the Act. *Rex v. Wood*, 2 Rus. on Crimes, 632; *Regina v. Rawlins*, 8 C. & P. 439, these cases show that the reference in the Act to the Clerk of the Crown at the Assizes, is imperative and not merely directory, and if imperative they must control the former words of the Act. But it is said, that the Statute is to be construed by the preamble, it is, however, settled that the preamble is no part of the Statute, *Mills v. Wilkins*, 6 Mod. 62, and it often happens that the preambles of Statutes, where they recited the mischief for which a remedy was intended, were more extensive than the enacting part of the Statute, *Rex v. Powell*, 4 T. R. 576. But even supposing the question to be, whether this particular case was within the mischief which it was the object of the Statute to remedy, yet it could not have been intended to refer to the term Grand Jury. In this Court prosecutions seldom occur, and therefore the mischief is small, but at Assizes and Quarter Sessions it is a matter of every day occurrence, and that was what the Legislature had in contemplation to remedy. It is a maxim of law, which it is not possible to controvert, that if the words of a Statute do not reach to an inconvenience rarely happening, they ought not to be extended to it by an equitable construction, for the objects of a remedial Statute are mischiefs *quæ frequenter accidunt*. But no matter what might be the mischief contemplated by this Act, the Court are bound to inquire what was the remedy provided, and that is to be collected from the Act itself, the meaning of which is to be sought not from the title, nor from the preamble, but from the purview and body of the Act; for however general the preamble may be, yet if the words of the Act are not equally general, the Court is bound to give effect to the latter and not to the former, for it is in the latter that the intention of the Legislature is most clearly stated and most unequivocally defined. Now the words of the Statute are: "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 the Assizes, and the Clerk of the Peace at Quarter Sessions shall endorse, &c., and the foreman of the Grand Jury so empanelled," &c.; now the words "foreman of the Grand Jury" can only mean the foreman of the Grand

Jury at Assizes or Quarter Sessions; the words "so empannelled" strengthen that conclusion, so does the concluding proviso, "that no foreman of any Grand Jury shall have power, &c., unless the name shall have been previously endorsed by the Clerk of the Crown or Clerk of the Peace respectively." Now the word "respectively" must have been used with a view to restrict the application of the Act to the two Courts previously alluded to. A Statute ought to be construed, so that no clause or sentence should appear superfluous, and the latest intention of the Legislature should be followed by qualifying the prior general words by the subsequent particular ones, and if you exclude these words as surplusage, you will exclude sensible and operative words. But it is said that if this case is not within the literal words it is clearly within the equity of the Statute; it is, however, a dangerous course to strain an Act of Parliament in order to give it an equitable construction. In *Bradling v. Barrington*, 6 B. & C. 475, Lord Tenterden says: "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 on and abide by the plain words, although the Legislature might possibly have provided for other cases had their attention been directed to them;" and in *Rex v. Inhabitants of Beatty*, 10 B. & C. 526, the same Judge thus expresses himself: "We think it much the safer course to adhere to the words of the Statute construed in their ordinary import, than to enter into any inquiry as to the supposed intention of the persons who framed it." In *Notley v. Bush*, 3 B. & C. 164, he expresses himself to the same effect. If there has been a *casus omissus* in the Act, it is the duty of the Legislature not of the Court to supply it, *Jones v. Smart*, 1 T. R. 52. As to the consequences that would arise from thus considering that Statute, the Court are not to take this into their consideration; they should construe the law as they find it. As to the objections to the form of the plea, it is said we should have set forth the names of the witnesses, or state that they were unknown, and Steph. Pl. 302-3, has been referred to, but the cases referred to do not support that position, and when facts are in the knowledge of the opposite party less particularity is required in pleading, Steph. Pl. 370. As to the omission of the word "affirmed" it is included in the word "sworn."

Mr. Moore.—My Lords, whatever was the law of England upon this subject, it is plain, that after the passing of the 56 Geo. III. no bill of indictment could be found unless the witnesses were previously sworn in open Court. The language of that Act is express and peremptory, and it is impossible to contend, that if the 1 & 2 Vict. had not passed, such an indictment as the present could be sustained. The first question, then is, whether 56 Geo. III. has been repealed in all or any portion of it by the subsequent enactments. It has not been repealed, and according to the law as it stands, there is no legal objection to the swearing of witnesses in open court before the bill has been sent to the Grand Jury. The Act of Vict. has only substituted another mode of swearing wit-

nesses, but it has not repealed, nor does it profess to repeal the 56 Geo. III. That Act is recited in the Act of Vict., and if it was the intention of the Legislature to repeal any portion of it, it was easy to have said so, but there is no word in the Statute of Vict., which expresses such an intention, and one of the provisoes demonstrates this, namely: "that said oath is not to be in addition to, but in lieu of, that heretofore administered." If the Legislature intended to repeal the former Statute why use those words? They say, we do not repeal the former Act, we merely substitute another mode of proceeding, and provide that the oath to be administered by this Act is to be in lieu of that which was formerly administered, therefore, if this Act does not apply there can be no difficulty as to the course the Crown should adopt, because the 56 Geo. III. is still in force, and although, in certain cases, the witnesses may be sworn before the Grand Jury, yet it is still open to adopt the ancient course.

The main question then is upon the construction of the 1 & 2 Vict. It is said that it extends to all cases where bills of indictment are sent before a Grand Jury, and consequently that it extends to this Court; we say, on the contrary, that it does not extend to this Court, and whether the Court of Queen's Bench has been omitted through design or by accident, in neither case can the Court insert a provision which is not to be found in the Act. The title of the Act, which has been adverted to, does not carry with it the weight sought to be attached to it. The language of it is satisfied by there being Grand Juries to which it would apply; it omits the word "all;" it merely says, "the Foreman of Grand Juries," and this furnishes an argument that it was not the intention of the Legislature to extend it to every case. But it is said that the preamble being general, will afford a clue to the construction of the entire Act. Now what was the mischief to be remedied by this Act? it was the delay which occurred by the administration of oaths in open Court. The question then is, where did that delay occur which produced such an inconvenience as to call for the interposition of the Legislature? A great delay and inconvenience had occurred at the Assizes and Quarter Sessions, but not in the Queen's Bench, where in the interval between the passing of both Acts, few bills had been sent before the Grand Jury, and consequently but little inconvenience could be felt. It is plain, therefore, that the Legislature had not the Queen's Bench in view when passing the Act, and, therefore, it only can apply to those Courts where the mischief was felt, and required a remedy, and the Court will not extend the Statute beyond the mischief to be remedied, more particularly where there are no words to warrant such a construction. So far then as the preamble goes, there is no weight in the argument. Let us then look to the enacting part of the Statute; it says: "that in all cases where bills of indictment are to be laid before Grand Juries in Ireland." Now these words are certainly very general; Grand Juries are empannelled as well in the Queen's Bench as at the Assizes or Sessions;

they therefore might be extended to the Queen's Bench, were it not for the following portion of the sentence, "the Clerk of the Crown at the Assizes, and Clerk of the Peace at Sessions, &c." When you consider the mischief to be remedied, which was the delay that existed at the time, it is plain that this sentence should be read thus: "that all Grand Juries at Assizes in Ireland," &c. The Act provides by negative words, that no Foreman shall have power to administer the oath unless the names are endorsed; now the plain meaning of this is, that the Foreman has no original jurisdiction. Suppose the names were endorsed on the bill and sent to the Grand Jury, and suppose that they were not satisfied with the testimony of those witnesses, and that it was disclosed to them that there was another witness whose name had not been endorsed, would it be competent for them to examine this witness? How would you give effect in such case to the negative words of the Act? It follows, therefore, that the authority given to the Foreman was not an original authority, but consequent upon the act done by the officer provided by the Act. Now who is the officer provided to give this authority to the Foreman to administer the oath? You cannot assume that the Legislature intended to delegate the jurisdiction to the Clerk of the Crown of the Queen's Bench without naming him. Suppose the words, "Clerk of the Crown at the Assizes," had been omitted, and the sentence were to run thus: that the Clerk of the Peace was to endorse the names; would it not be going far to say, that it extended to every possible tribunal, that it extended to tribunals which had not been mentioned? This is in some degree a penal enactment; every Act abridging the rights or privileges of the accused well deserves to be called a penal enactment. We did consider it of importance to have got the names of those witnesses, and if the Act had not passed, we would have been entitled to that benefit, and when construing the Act which deprives us of this benefit, you should not go further than the words of the Act will warrant. Look to the peculiar phraseology of the Act. It does not say the Clerk of the Crown generally, but the Clerk of the Crown at Assizes, and when you find the Legislature using those words, it affords a clue to what they intended, that is, that where they used the general words, "in all cases," they intended, "in all cases at Assizes or Quarter Sessions." If it was the intention of the Legislature to go beyond those tribunals, why not say so? But they have not said so; on the contrary, in pointing out the machinery to carry the object of the Act into execution, they have enumerated two tribunals, and there is nothing in the Act to enable the Court to extend it to the Queen's Bench; there is no mention made of an officer of the Queen's Bench. As to the Commission Courts, it is not necessary for me to consider whether it includes those Courts.

MR. JUSTICE PERRIN.—I think it is essential to your argument to show that it is confined to the Assizes and Quarter Sessions.

MR. MOORE.—I can only say that I am not apprised of the nature of that Court, but unless the Commission Court is to be consi-



dered a Court of Assize, it is as much out of the operation of this Act as the Court of Queen's Bench.

Mr. JUSTICE CRAMPTON.—What construction would you put on the words “so empannelled?”

Mr. *Moore*.—That must mean that the Clerk of the Crown is to send the bill to the Grand Jury so empannelled at Assizes, the tribunal to which he so belonged.

Mr. JUSTICE CRAMPTON.—I should think “so empannelled” referred to the antecedent words “all Grand Juries in Ireland.”

Mr. *Moore*.—As to the word “Assizes,” it cannot be considered to apply to the Queen's Bench, at least in the common understanding. The Court, when the words are plain and distinct, and have a recognized meaning, are not to see, whether at any former period they had a different meaning, and whether this Court had ever been designated a Court of Assize; at least it is not the natural signification of the term intended by the Act, and the Court should not go out of the Act to deprive the accused party of a privilege.

Sir *Colman O'Loughlen* referred to the 36 Geo. III. c. 20, s. 14, in which a clear distinction is taken between the Assizes and the Queen's Bench.

The *Solicitor-General*, in reply.—My Lords, with regard to the Statute 29 Geo. II. c. 14, which was referred to on the other side, for the purpose of shewing that the Legislature was conscious, by using the word “Assizes” in two preceding Acts, they had not included the Queen's Bench, and that they, therefore, thought it necessary to pass that Act, for the purpose of extending the provisions of those Acts to the Queen's Bench; that Act is a declaratory Act, and so far from being an authority in their favour is a declaration by the Legislature that those Acts did include, and were intended to include, the Queen's Bench.

But the substantial question in this case is the construction of the 1 & 2 Vict. The construction sought to be put on this Statute is this, that at the Assizes, popularly speaking, and the Quarter Sessions, the old mode of administering the oath to witnesses is to be done away with, but that in all other cases the law should continue as it was under the 56 Geo. III. Before the Court will adopt such a construction, attended with those consequences which have been already alluded to, they would be bound, if necessary, to strain the language of the Act in order to avoid giving it such an interpretation. It is the duty of the Court to further the intention of the Legislature, when it is discernible by the Act, though words may not have been adopted sufficient, if technically and narrowly construed, to explain that intention. The rules of construction of Acts of Parliament are very clearly laid down in 1 Plow. Com. 36; 2 Id. 467; *Doe d. Bywater v. Brandling*, 7 B. & C. 660, where Lord Tenterden says: “In construing Acts of Parliament, the Court are to look “not only at the language of the preamble, or of any particular clause, “but at the language of the whole Act, and if they find in the preamble, or in any particular clause, an 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, they can collect, from the “more large and extensive expressions used in other parts, the real “intention of the Legislature, it is their duty to give effect to the “larger expressions, notwithstanding the phrases of less extensive “import in the preamble, or any particular clause.” *Bryant’s Case*, 5 T. R. 509; 2 Inst. 156, 256; *Saunders v. Plummer*, O. Bridg. 226; 1 Saund. 217; *Johnes v. Johnes*, 3 D. P. C. 15. Upon those authorities, it is plain the Court are bound to give effect to what upon the whole Act they find the intention of the Legislature, notwithstanding it has been inaccurately expressed. Now, with regard to the Statute itself, I think I shall be able to show that it is general in its operation. The Statute of 56 Geo. III. is now conceded to be universal in its application, although that Act mentions no Court, but is a general enactment to correct a vicious practice of sending informations before a Grand Jury, and the Grand Jury finding bills upon those informations, without any witnesses being examined in support of them. It is said that this Act has not been repealed. I admit the Statute of Vict. does not use the word “repeal,” but it contains enactments inconsistent with the enactments of 56 Geo. III., and substitutes others for them, and so far as it substitutes enactments for the 56 Geo. III., the Court is bound to follow the Statute of Vict. The 56 Geo. III. being then confessedly universal, and the Legislature having found that certain provisions in it were salutary, and should be continued, but that other regulations in that Act were inconvenient and ought to be discontinued, they accordingly stated in the Statute of Vict. that was the state of things which required a remedy. The title of the Act is not cited with a view to control the Court, but to show the intention of the Legislature. They say we are calling on the Court to alter the Act of Parliament; on the contrary, they are calling on the Court to make an alteration, by introducing words into the Act. The 1 & 2 Vict. recites, “that the “provision for the *vivá voce* examination of witnesses was most “salutary,” that is, that it was most salutary in every case, and as universal as the 56 Geo. III., yet the Legislature using this universal language, it is contended they only extended those salutary provisions to one or two classes of cases. It then says: “but the administration of the oath had been productive of delay and other “inconveniences, for remedy whereof,” that is of this universal inconvenience, “for remedy whereof be it enacted, that in all cases.” Now according to the argument on the other side, for those words “all cases,” you should insert “*certain cases*.” “Where bills of indictment are laid before Grand Juries in Ireland;” here again, to sustain their argument, they are obliged to take the word “Assizes,” and interpolate it after “Grand Jury,” and they say it should be read thus: “In *certain cases* where bills of indictment are laid before Grand Juries *at Assizes* in Ireland.” But it is said, that this has been a *casus omissus* in the Act; if there has been a *casus omissus* it is not in the body of the Act, but in the machinery to carry the Act into execution. Now without introducing any new

words into the Statute, if, after the word "consideration," you read the following words, "the Clerk of the Crown at the Assizes, and Clerk of the Peace at the Quarter Sessions, or his or their deputy, shall endorse upon the back of each 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," in a parenthesis, this will remove any difficulty. With regard to the words "so empannelled," the word "so" must be construed as synonymous with "there," that is, whenever Grand Juries are empannelled they are to find the bills of indictment upon the testimony of witnesses sworn in a certain manner; and that if this be at Assizes, the Clerk of the Crown, and if at Quarter Sessions, the Clerk of the Peace, shall endorse the names. But it is said, the Clerk of the Crown in the Queen's Bench has no jurisdiction to endorse the names, not being mentioned in the Act; however, when a duty is directed to be done by an Act of Parliament, and the person to do that is not named, it is to be done by the party to whom that duty usually belongs. It is said that the practice in this case should not be relied on, and that *communis error non facit jus*; but even if there was any doubt as to the correctness of this practice, which there is not, yet the Court, in order to prevent a public mischief, and to prevent injustice being done, should adopt that practice. But there is nothing doubtful in the words, we do not seek to alter them, but they seek to curtail their effect by this supposed inconsistency. They say the Clerk of the Crown at the Assizes, or the Clerk of the Peace at the Sessions, shall send the bills to *all* Grand Juries. Now that could not be done, for they are not the persons to do so in every case; yet they say, that the words "Clerk of the Crown and Clerk of the Peace" are to be the leading words of the Act; they admit the prior words are large enough to include every Court, but they say they are to be controlled by the subsequent words, and that these latter words are to define the extent of the Act, and that they are entitled to select particular words of the Statute, not for the purpose of explaining, but for the purpose of altering it.

With regard to the form of the plea, the Solicitor-General cited 2 Saund. 209 *a*; *Rex v. Cooke*, 2 B. & C. 618; *Dockary v. Lawrence*, Prac. Cas. C. P. 29.

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WEDNESDAY, NOVEMBER 22.

THE LORD CHIEF JUSTICE.—In this case of the *Queen v. Daniel O'Connell and others*, it becomes my duty to deliver my opinion and judgment, in which, I am happy to say, I have the concurrence of my brethren on the Bench. The case has been argued with great anxiety, I may say, and with great ability on both sides. No doubt it is a case of peculiar importance as affecting the criminal administration of justice in this country, not only as regards the present parties before the Court, but also as relates to all the criminal con-

victions which have taken place in the city of Dublin, at the commissions of Oyer and Terminer there, and in the county of Dublin, and at the Special Commissions in the country.

The principal question turns upon the true construction of the Statute 1 & 2 Vict. c. 37. It is contended on the part of the traversers, who have put in the present plea, that the operation of that Act is to extend only to cases where the officers employed to carry the Act into execution were the Clerks of the Crown on Circuit, or the Clerks of the Peace at Quarter Sessions; on the other hand, it is contended on behalf of the Crown, that that is a narrow construction of the Act, not according to the purport and intention of it, and that it ought to be held to extend to cases going before Grand Juries of the county and the county of the city of Dublin, either in the Court of Queen's Bench, or before the Commissions of Oyer and Terminer, or at the Special Commissions in the country. I feel bound to say, after a great deal of anxious deliberation given to this case, and taking advantage of the able arguments of counsel, that the decision of my mind, and that without much doubt, is, that the construction given to the Act by the counsel for the Crown is the right and the true one. Certainly it would be an opening to a very strange and much to be lamented conclusion, if the Court should be of opinion, that all which has been done in the way of passing bills before Grand Juries at Special Commissions, or in the Court of Queen's Bench, has been erroneous, and that would be the necessary result, if the construction put upon this Act by the traversers' counsel should be held to be the true and just one; however, if, notwithstanding this unfortunate conclusion, the Court should see, that upon elaborate argument it has been demonstrated, that it is acting in error, whatever the consequence be, the law must be put in its proper bearing and position, and must take its course. I cannot but feel satisfaction, that this general inconvenience, and most disastrous consequence, will not take place by reason of the view the Court have come to upon the construction of this Act.

The Attorney-General began his argument by a statement of two certain charges made shortly after the passing of this Act, by the two Judges who respectively presided at the Commission of Oyer and Terminer in the city of Dublin; I mean the late Chief Baron Woulfe, and Mr. Justice Moore, on one occasion, and on another occasion by Chief Justice Doherty, and Mr. Justice Johnson; upon each of which occasions, the leading Judge, on behalf of himself and his brother Judge, directed the attention of the Commission Grand Jury to the subject matter of this Act. They did then respectively and most deliberately give their opinion, that they were within the operation of the Act in question, and charged the Jury accordingly. This same practice has been continued to the present time. Upon those two occasions no doubt the construction of this Act was deliberately thought upon and discussed by the Judges in whose names these two charges were delivered, and it is to be inferred that the other Judges, who have since presided at those Commissions, and at the Special Commissions in the country con-



curred in the view so taken by those respective Judges, and must have been of opinion that they were not sitting *coram non judice*, but within the operation and meaning of the Act of Parliament. It has been asserted, first, that this practice has been of too short continuance to be looked upon as law upon the subject; I do not understand the Crown to put the question upon such an assumption. They have only to put it forward as showing the concurrence of the Judges upon the law so pronounced upon, and I will say that the argument of the traversers' counsel assumed a very extraordinary sort of shape, when, having first made the objection, that in point of time the practice and usage were not sufficient, they then unreservedly announced the fact, that all the Judges had been acting erroneously, and argued that inasmuch as all were wrong and in error, their common error could not establish the law upon the subject. It is not because Judges have done so and so, but because, in the deliberate execution of their judicial discretion, they felt themselves called upon to give an interpretation to the Act; that the opinion of the Judges so expressed has been brought forward as an authoritative direction to the present Judges when they are called upon in a like way to give their interpretation to the Act in question. The concurrence in opinion of those Judges is the highest authority that could be produced before us for directing our judgment upon the present occasion. But we are called upon to give our interpretation to this Act, and though I do not say we are to be governed altogether by the views of preceding Judges, yet I must say for myself, I would be much influenced by their authority, when called upon to give a judgment upon a point that has passed under their consideration on a previous occasion.

I will go now to consider what the Act in question is. I have already stated generally the different views of the construction of the Act, by the traversers and the Crown. Before I come to the consideration and detail of the substance of the Act, in order to arrive at its construction, 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 have 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 whatsoever. The first rule I would mention is laid down by one of the most eminent Judges who ever graced the English Bench, and whose authority has been mainly relied on by the counsel for the traversers in their argument of this case, I mean Lord Tenterden, and I am willing to bring his opinion to bear upon the question, as to what is to be taken into consideration upon the construction of Acts of Parliament. In *Doe d. Bywater v. Bradling*, 7 B. & C. 660, he says: "The question in this case depends entirely on the construction of a particular Act of Parliament. In construing Acts of Parliament the Court are to look not only at the language of the preamble,

“ or of any particular clause, but at the language of the whole Act,  
 “ and if they find in the preamble, or in any particular clause, an  
 “ 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 they  
 “ can collect from the more large and extensive expressions used  
 “ in other parts, the real intention of the Legislature, it is their  
 “ duty to give effect to the larger expressions, notwithstanding the  
 “ phrases of less extensive import in the preamble or any particular  
 “ clause.” In the progress of the argument it was insisted, first,  
 that the title was no part of the Act, secondly, that the preamble  
 was no part of the Act. I do not know how this argument could  
 be maintained by reference to the authority of Lord Tenterden,  
 whose authority they do not dispute. This is not merely the  
 authority of Lord Tenterden, but of common sense, that when  
 called upon to put a meaning on a given instrument, you must  
 take it all together and not by parts. When the expression is  
 used that the preamble is no part of the Act, it can only mean  
 no part of the enactment, nevertheless it is part of the Act, and  
 you cannot take the Act without it, and you must take it into  
 consideration when you come to give an interpretation of the  
 Act. These are not the only rules of construction laid down by  
 unquestionable authority in the various books that have been re-  
 ferred to, many of which I shall pass by, because the subject matter  
 is fully set out in the other authorities which I am now about to  
 state. I look upon this as an additional rule of construction, that  
 where an Act is passed for the public benefit, the Court are bound  
 to give it such a construction as will advance the remedy intended  
 to be provided for and repress the mischief, and I will say also,  
 that this rule is to be carried into effect, not merely in the con-  
 struction of ordinary Acts of Parliament, but that there is no differ-  
 ence if the Act in question happens to be penal. The first passage I  
 shall refer to is in *Plow. Com.* 36. There is given an instance of the  
 way in which the Court has absolutely strained the words of an Act  
 of Parliament for the purpose of giving it a construction that would  
 promote the remedy and repress the mischief. The author there says :  
 “ Therefore the Statute *de circumspecte agatis*, which says, use  
 “ yourself circumspectly in all matters concerning the Bishop of  
 “ Norwich and his clergy, is nevertheless extended to all other  
 “ Bishops ;” that is, not being by the words of the Act, but the  
 manifest and apparent intention concerning which no doubt can be  
 entertained, that it was consistent with the public welfare to extend  
 the Act beyond the language of it, if such appears to be the plain  
 intention of the Legislature. So in that case there was no reason  
 to confine it to the Bishop of Norwich, and it was held to apply, not  
 merely to the Bishop of Norwich, but to every other Bishop  
 similarly circumstanced, therefore to every Bishop in England. In the  
 case of *Stradling v. Morgan*, *Plow. Com.* 205, the rules are further  
 extended with regard to the interpretation of Acts of Parliament  
 and the exposition that they are to receive. Again, in the same

book the same subject is considered; he speaks of two kinds of equity to be taken into consideration in the construction of a Statute, which has been already adverted to in the passage I have read, and is more fully given and observed on in p. 467. Several other instances of a similar nature are put; one of them is essential, it is an application of the same rule to a capital case. By the words of an Act of Parliament it was made a capital felony to steal horses, and that was applied by the equity of the Act of Parliament to stealing a horse; that was a stronger case than the present; it was not only a penal Statute, but a Statute inflicting punishment of a capital nature, and if it be said that the law is penal in this case, it may be answered, so it was in the other case; equity knows no difference. A great many similar cases have been cited and referred to, particularly in 2 Inst. pp. 256, 393, 431; these are not merely antiquated law, and, as intimated by the counsel for the traversers, no longer law, but in confirmation of those is the high authority of Lord Ellenborough in *Rex v. Inhabitants of Everdon*, 9 East, 105, where, in speaking of an Act, he says: "this is the plain sense and spirit of the Act, though somewhat straining upon the words of it; but no other construction can be put upon them, consistently with the general object of the Act. And in doing this, we do not go further against the letter of the Act, than was done in the case referred to, where the description of a person not having any child, was construed to mean not having any child which could be a burthen to the parish;" this latter being narrow and inconsistent, they adopted a construction more consistent with the Act.

Having premised these general rules of construction, I now come to the consideration of the Act itself. I come to this consideration, having referred to the practice of all the Judges since the passing of the Act of Parliament, from which time only there could be any decisions. The Act is the 1, 2 Vic. c. 37. It contains a history of all that has passed in this country for a period of years, upon the subject matter and mode of swearing witnesses before Grand Juries up to the time of the passing of the Act. 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." I agree with the counsel for the traversers in saying that the title of an Act of Parliament is not, strictly speaking, a part of it, and that you cannot reform the enacting part of the Act by an inconsistent passage in the title; but when we come to construe an Act of Parliament, and to make out the meaning of the Legislature, it is perfectly allowable and competent for the Court to take into their consideration, what the Legislature had in view when they passed this Act—what was the mischief—and what was the remedy provided for that mischief; and in common sense I will say, in order to assist me in coming to an interpretation, I will look to every part of the Act calculated to throw light upon that subject. Now the title of this Act is not the title of an Act about to be passed for any particular part of Ireland, it is for all parts of Ireland, one part as much as another, and there is no reason to control the general applica-

tion of the general words contained in the title, inasmuch as the mischief to be provided against was equally extensive throughout. It recites: "Whereas by an Act passed in the 56 Geo. III., 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 recites that to be a prevalent evil in various parts of Ireland. No man reading this Act, can question but that evil recited in the 56 Geo. III., was one which prevailed as well in the city of Dublin, and in the Court of Queen's Bench, as in other parts of the country, and required the general application of the Act of Parliament to correct this abuse, as much in one part of Ireland, Dublin included, as another. It then, having recited the enactments of the 56 Geo. III., goes on to say what happened since the passing of that Act: "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 found productive of delay and other inconveniences." Now, I should observe, that I cannot adopt the argument brought forward, however ingenious; for I will not take the *ipse dixit* of any counsel against an express recital in an Act of Parliament, which recites that delay and inconvenience does result from the practice of swearing witnesses in open Court, and I will not go beyond that, nor will I listen to the assertion that there was no delay or inconvenience, when the Act tells me in express terms that there was, and that it was in order to meet and remedy that evil it was passed. It is demonstrated by the Act that an evil did exist, of a character so serious as to call for the interposition of the Legislature. What was that evil? The delay and inconvenience arising from the practice of witnesses being sworn in open Court. I should wish to know was that a mischief which prevailed in the country parts of Ireland, but not in Dublin. Certainly that was not what the Legislature contemplated. They contemplated an evil which existed as much in Dublin before the Commission Courts of Oyer and Terminer, as it did before any Assize town or Court in the country. Then we have an existing evil, general and universal through the country, and we have the Legislature reforming that evil which they recited to exist. Now *ab ante* one would say, if the Legislature were about to reform a general evil, their intention would be to pass an Act as general as the evil. If that be so, and I really think no body can deny it without exercising ingenuity, and looking to it in plain common sense, the obvious meaning and intention a man is to expect from the Legislature reciting such an evil, is, that it would be found that the remedy is as extensive as the evil they complained of. If so what could be expected but that the enactment, in consonance with the plain intention of the Legislature, should be an Act so general as to repress the evil wherever found. What reason can be suggested for giving the Act a contrary construction, or what sort of fatuity was it supposed could influence a Legislature to act in such a way as to frustrate their object and intention, for that would be their ob-



ject according to the argument of the traversers' counsel. "For remedy whereof be it enacted, that in all case where bills of indictment are laid before Grand Juries in Ireland for their consideration." There the Legislature contemplated, as might be expected from the insertion of the recital, that this remedial Statute they were about to pass, was to be as extensive in its operation as the mischief they complained of, and that no case was to be excepted from the operation of it, no reason being assigned why it should be excepted. "In all cases," it says, "where bills of indictment are to be laid before Grand Juries in Ireland for their consideration, the Clerk of the Crown at the Assizes, and Clerk of the Peace at Quarter Sessions, or his or their deputy," that is, when such officer shall exist. They are instances that such officer should act in pursuance of the operation of the Act, which is as general as language can make it, and is to operate in all cases. Now the Clerk of the Crown at Assizes, and the Clerk of the Peace at Quarter Sessions would be incompetent and unable to act in all cases; they can only act in their respective counties. Wherever they exist, they are the proper officers called on to put this Act into execution, that is, not in exclusion of other cases where similar and proper officers exist, though not distinctly enumerated in the Act. Those that are particularised are *instar omnium*, and put by way of example, that is, when those officers do exist they shall be the persons to carry the Act into execution; but they do not exclude the duty from being performed by other officers similarly situated, who in a case within the same mischief are called on to carry the Act into execution; and in cases where there was no Clerk of the Crown at the Assizes, or Clerk of the Peace at the Sessions, as at the Commission Court in Dublin, whenever the services of a similar officer are required, as, for instance, the Clerk of the Crown in this Court, or the Clerk of the Crown of the Commission Court, they are to be the persons to carry the Act into operation. Give it that meaning, then the words "in all cases" will be explained, whereas give it a contrary meaning, then those words will apply to cases where such officers have not a power of acting. This case therefore is unlike several of the cases that have been cited. It is not a case where by adhering to the literal construction we can carry out the intention of the Act, because the Clerk of the Crown at the Assizes, or the Clerk of the Peace at Quarter Sessions would have no jurisdiction to interfere in the Court of Queen's Bench, or the Commission Court in Dublin, and to give it such a construction would be to frustrate the intention of the Act. I find in this way of construing the Act of Parliament, that no part of it is in opposition to another, but each part bears on the other, and all cooperate to the same end. Then comes the proviso: "provided always, that the said oath or affirmation is not to be in addition to, but in lieu of that heretofore administered under the provisions of the 56 Geo. III.," that appears to furnish a further argument on the same view of the subject; there is an express proviso, that the oath to be administered by the Grand Juries is not to be in addition to, but in lieu of the

oath to be administered by the 56 Geo. III. ; it is to be a substitution for that ; it therefore necessarily follows, it is to be as extensive as the oath in lieu of which it is substituted—it is to be a complete substitution, not an addition. Then comes the further proviso: “ That no Foreman of any Grand Jury, nor any other 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 ;” not saying such Clerk of the Crown, or such Clerk of the Peace, nor making any distinct reference to the Clerk of the Crown, or Clerk of the Peace, but wherever there is to be an oath administered, the witnesses’ names must be endorsed on the bill by the Clerk of the Crown, or Clerk of the Peace generally ; the meaning was, that they were the officers to put the machinery in motion, as an example only, but they do not exclude the application of the Act to all similar instances, and according to various cases, that which falls within the same rule falls within the same remedy. That is the view I have taken upon the subject, and I do not find that the ingenuity of the traversers’ counsel has had the effect of raising a doubt upon my mind upon the construction of the Act.

Another question has been raised, which has not been overlooked by the counsel for the Crown, though not pressed by them ; and in the view I have taken of the case, it is unnecessary I should give any opinion with regard to this point of form ; but if called upon to make a decision as to it, I should be of opinion that the plea was ill. It is a dilatory plea in contemplation of law ; a kind of pleading to which no favour is held out by the law, because it tends rather to defeat than promote justice, and no strictness can be regarded as too great with regard to such pleading. I need not go through the cases upon the subject ; they are found collected in 2 Sand. 203, *a.* ; Cro. Jac. 82 ; 3 T. R. 185. There appears an insufficiency in the form of this plea. It is a plea to a bill of indictment, that one or two of the witnesses were not sworn in open court—that is, that it must be bad, not being found upon the testimony of witnesses sworn in open Court ; but the Act provides that the affirmation of witnesses shall be sufficient. Now, suppose this bill had been found upon the affirmation of Quakers, would that be a bad bill because it was not on sworn testimony ? I think not. Therefore, upon that ground, as well as upon the true construction of the Act of Parliament, I am of opinion that the plea is bad, and that the demurrer which has been put in, on behalf of the Crown, must be allowed.

Mr. JUSTICE BURTON concurred.

Mr. JUSTICE CRAMPTON.—I shall best promote the administration of justice by being silent on the subject, which has been so elaborately and learnedly discussed by my Lord Chief Justice. I do not enter into the discussion of the formal defect in the pleas at all ; I found my judgment on the Statute itself. I adopt the extended construction given to it by the Attorney-General, and which was the construction

put on it in the first judicial consideration given to it, and which has been continued to the present time. I think that is the only one consistent with the context, and the only one which can effectuate the manifest intention of the Legislature appearing on the face of the Statute itself. It appears to me that the argument of the counsel for the traversers results entirely from considering what is a mere misdescription or imperfect expression of the character of the officer by whom the bill is to be sent to the Grand Jury, as an essential part of the enactment. I, therefore, concur in the judgment of my Lord Chief Justice.

MR. JUSTICE PERRIN.—I think it right in this case, even at the expense of a further consumption of the public time, to state the grounds on which I concur with the judgment of the Court. The question in this case is, whether, by the law of Ireland, a bill of indictment can be lawfully found on the testimony of witnesses not sworn in open court, but sworn in the Grand Jury room by the foreman, or some other member of the Grand Jury. This question depends on two Statutes; the one is the 56 Geo. III. c. 87, the other the 1 & 2 Vic. c. 37, and upon their just construction. Many authorities have been cited not bearing upon the question that really arises, of which authorities, therefore, I shall take no notice; and several positions have been contended for on the one side and on the other, which, in the view of the case which I deem it right to take, I do not consider it necessary to discuss, no question as to their applicability appearing to me to arise or to exist in this case. For instance, on the one side it has been argued that, though a case is not within the letter, it may be within the equity of the Statute, and may be extended to the mischief, though not provided for in terms. On the other side it was contended, that the Court should be bound strictly by the letter of the Statute, and that if any case, not within the letter of the Statute, requires a remedy, it must be left as a matter to be remedied by the Legislature. It does not appear to me necessary to make any observation on that position. But one has been put forward, however, namely, that the Grand Jury may find a bill without evidence, and that the matter is not to be inquired into by the Court; and against that position I beg leave decidedly to protest. I hold, that an indictment cannot lawfully be found in Ireland but upon the testimony of sworn witnesses, whose names are endorsed on the indictment. When I use the word "sworn," I mean persons to whom an oath has lawfully been administered, except in cases provided for by particular Statutes under particular circumstances, as in the case of Quakers, Moravians, and Separatists, who may give their testimony on affirmation. Then the only question here is, whether the witnesses must be sworn in Court, or before the Grand Jury. Now the 56 Geo. III. c. 87, most distinctly and explicitly provides, that no bill of indictment can be returned a true bill, unless the same has been found by the Grand Jurors on the evidence of one or more witnesses for the Crown, sworn in Court, and produced before them. This Statute is declaratory of what the law was, as well as an enacting Statute. Under its provisions the witnesses

were produced in open Court, and they were sworn in Court, and their names were endorsed by the Clerk of the Crown or the Clerk of the Peace, or by the proper officer of the Court for preparing and sending up the bill to the Grand Jury, no matter where that Grand Jury was empannelled. That was the duty either of the Clerk of the Crown or the Clerk of the Peace, and an imperative duty under this Statute to put the names of the witnesses on the bill; and, accordingly, that has been the practice ever since. When he had administered the oath to the several witnesses, they were afterwards to be examined before the Grand Jury; but this practice of administering the oath in open Court, was found to be productive of some mischief and inconvenience. It was found to produce a great deal of delay, accompanied by want of decorum, and was found, in fact, very injurious to the administration of justice. A number of the witnesses were sworn together, in a hurried manner, they were then sent off to the Grand Jury, and were examined by the Grand Jury, either immediately, or, perhaps, after a considerable interval, and it was felt not only to be indecorous in practice, but objectionable as separating the witness from the impression that he was giving his testimony under the sanction of an oath. That was one of the inconveniences to be provided for, for which the Statute 1 & 2 Vic. c. 37, was enacted. Wherever the Statute of 56 Geo. III. c. 87, was in operation this inconvenience was found to prevail. It prevailed as well at the Commission Court in Dublin as at the Assizes in the country; and accordingly the Statute 1 & 2 Vic. recites the former Act in these words: "Whereas by an Act passed in the 56 Geo. III. entitled, "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, &c., and whereas the provision for the *vivâ voce* examination has been found most salutary; but the administration of the oath in Court has been productive of delay and other inconveniences." It then proceeds to provide for and remedy this inconvenience, which was not confined to any particular place or any particular Court, but was just as general as the provisions of the Statute under which it was enacted, and accordingly it proceeds thus: "For remedy whereof, that is, for the remedy of the inconvenience which prevailed as generally and extensively as the Act itself, "be it therefore enacted, &c., that in all cases where bills of indictment are to be laid before Grand Juries in Ireland for their consideration," that is, in all cases where the inconvenience prevailed, "the Clerk of the Crown at the Assizes and the Clerk of the Peace at Quarter Sessions, or his or their deputy, shall endorse upon the back of such bill of indictment the name or names of the witness or witnesses for the Crown in support of such bill, and shall send the same so endorsed to the Grand Jury." The Statute is in my mind defective, in not going further and mentioning other Clerks of the Peace and Clerks of the Crown, or in not using general terms to embrace them all. It then goes on and says: "And the Foreman or



“ other member of the Grand Jury *so empannelled*, twelve members  
 “ of the said Grand Jury (at the least) being then present, shall, and he  
 “ is hereby authorized and required so to do, previous to the exami-  
 “ nation of the witnesses whose names shall appear indorsed on the  
 “ back of the bill of indictment, administer to such witness the oath.”  
 This provision is universal ; it is general and not confined to any particular Grand Jury. It says, “ the Clerk of the Crown at the Assizes, and the Clerk of the Peace at the Sessions ;” that is, at the Assizes or Sessions at which the bills which they shall respectively prepare, shall be sent up according to their duty and the practice of indorsing the names of the witnesses to be examined ; and he shall, according to this provision, send them up to the Grand Jury. The omission to which I before adverted exists here ; but the Statute enacts, “ that the Foreman of the Jury *so empannelled*,” not having alluded to any empannelling previously, but meaning that when the Grand Jury is empannelled the Foreman shall administer the oath to the witnesses whose names are endorsed on the bill ; which oath shall be in lieu of that formerly administered under the 56 Geo. III., to every witness ; and upon every bill in every Court where the bill is prepared by the Clerk of the Crown or Clerk of the Peace ;” and the Foreman and other member of the Grand Jury “ who shall have administered such oath or affirmation shall, on the back of such bill of indictment, &c. Provided always, that the said oath or information shall not be in addition to, but in lieu of, that heretofore administered in Court, &c. ; and provided also, that the Foreman of the Grand Jury, or any other member thereof, shall have power to administer such oath, &c., and to examine any witness, &c., 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.” That is, by the Clerk of the Crown or Clerk of the Peace whose duty it was ; and whose duty it was equally in the Queen’s Bench or Commission Court, as at the Assizes or Quarter Sessions. He was to prepare the bill, whose duty it was to do so, and the Foreman of the Grand Jury is not to administer the oath to any person but those whose names are sent up. That appears to me to be distinct and explicit. Under the 56 Geo. III. every Clerk of the Crown and Clerk of the Peace endorsed the names of the witnesses on the indictment.

A difficulty has rather been suggested than argued, that no authority was given to the Clerk of the Crown in the Queen’s Bench to do this act. It was unnecessary that any authority should be given to him to do this by Act of Parliament. It is certain that no authority is given to the Clerk of the Crown in the Queen’s Bench to do so ; but surely an Act of Parliament is not necessary to authorize the Clerk of the Crown to do his duty, which it is necessary that he should do in order to carry out the provisions of the Act of Parliament. It is not his endorsement, but the Act of Parliament, which gives authority to the Foreman of the Grand Jury to administer the oath, instead of that

which was formerly administered in Court; and if there was a foundation for the argument that this authority should be given, it would seem to be impliedly given by the Act of Parliament. But what I rely on is, that it was his duty to do so, and no Act of Parliament was necessary to authorize him to do it. It is said that Grand Juries in the Queen's Bench, and at the Commission Court, are not to be included within the general terms, "no Grand Jury in Ireland," and that an amendment of this Act of Parliament is necessary. I do not consider at all that this is a penal Act of Parliament. I am not resorting to any technical rule of construction. I am relying on the plain words of the Act of Parliament, which needs no forced assistance. Therefore, it does appear to me that this Statute does necessarily apply to every case of every bill sent up to a Grand Jury in Ireland. I do not at all concur in this objection any more than I do in the argument on the other side, that the Queen's Bench is to be included in the meaning of the word "Assizes." I have no intention, in the construction of an Act of Parliament, to resort to such subtleties as that. Assizes means properly when the Judge goes on circuit, and it is meant so to be distinguished in many cases. Acts of Parliament were referred to by counsel for the traversers, bearing out, and establishing this distinction; and I recollect another case in which it was so ruled. In that case, the question arose as to whether there ought to be a ballot for a jury at *Nisi Prius* at the sittings of this Court after Term, before the passing of the 3 & 4 Will. IV.; and I recollect, on the argument, a Statute of Geo. II. being produced, which directed that jurors should be balloted for, elected, and sworn; and I recollect there was a difficulty felt for some time, until the Clerk of the Crown suggested and pointed to the Court the word "Assizes," and the Court held that the Statute did not apply to the sittings at *Nisi Prius* in Dublin. That was the case of *Rex v. Cox*.

Then it is said, that the words "so empannelled" confine the enactment to jurors empannelled at the Assizes and Quarter Sessions. It is observable that the term "so empannelled" has no exact reference to any thing that goes before, the word "empannelled" not being mentioned. But I think it may fairly and justly embrace and refer to the Grand Jurors previously mentioned, who are the Grand Jurors in Ireland "before whom bills of indictment may be laid, for their consideration," or, possibly, it might, as was argued so ably and ingeniously by the counsel for the traversers, refer to Grand Jurors at the Assizes and Quarter Sessions merely. But supposing a question to arise on this, and that we are to ascertain what it does refer to, whether we are to apply the confined meaning which the one side give the words, or the enlarged meaning which the other side have contended for, how are we to be guided in arriving at the truth in this respect? The purpose of the Act points to all Grand Jurors which shall be empannelled, and that purpose will be defeated in a great number of instances, if the latter and confined

reference should be adopted. Further, the express words of the Act—the express words of the very section—the express words of the very sentence on which the question arises, are: “in all cases “where bills of indictment are to be laid before the Grand Jury for “their consideration.” If it was uncertain, when you referred to the commencement of the section, to what the words “so empannelled” referred, might not these words be held sufficiently to declare the intention to apply the remedy needed to all cases where the inconvenience existed, that is, to all cases where bills are laid before a Grand Jury in Ireland. I therefore think, that it would be a narrow and unwarrantable construction, to confine these words to a part only, instead of all the cases included and provided, or intended to be provided for by the Statute, in order to defeat a principle of great importance. Therefore, though I think the clause respecting and introducing the terms “Clerk of the Crown at the Assizes,” and “Clerk of the Peace at the Quarter Sessions,” is inaccurate, and though it may be argued that the person who framed this Act did not advert to, or know whether there was any other tribunal than the Assizes and Quarter Sessions, still there are words in the Act of Parliament sufficiently large and distinct, to remove the difficulty and doubt which may arise. I think the enacting words do substantially and sufficiently provide, that in all cases where bills are to be laid before Grand Juries for their consideration, the Foreman or other member of the Grand Jury shall administer the oath, which oath it substitutes for that before administered under the 56 Geo. III. c. 87, which was universal, but provided that no witness should be examined, whose name was not endorsed by the Clerk of the Crown and the Clerk of the Peace, and this enactment appears to me to meet the mischief, and does not go beyond it, and remedies it. I therefore think there is no *casus omissus*, and I merely construe the Acts which are before me. I apply their express meaning to the ease at bar. I do not control that meaning, I do not extend it. I do not mean to legislate. I mean to give my opinion as to the meaning of these two Acts of Parliament. I do not think, therefore, that I am contravening any authority which has been cited, when I hold that since the 1 & 2 Viet. c. 39, in every case where bills are laid before Grand Juries in Ireland, the witnesses ought to be sworn by the Grand Jury, and not in open Court as before. I find that this construction of the Statute at which I have arrived, after a careful and diligent and anxious consideration, in order to arrive at a just conclusion, has been, after judicial consideration, adopted by all the Judges: in the first instance, by that able and enlightened Judge, the late Chief Baron Wolfe, assisted by Mr. Justice Moore, at the next Commission after the passing of the Act; by Chief Justice Doherty and Mr. Justice Johnson, when their attention was expressly pointed to it afterwards. I find that it was adopted not only by them, but continued by every other Judge at the different Commissions that have since been held, and it is material also to observe, that it was not merely the opinion of the Judges, but also of

the existing law officers of the Crown at the time, whose attention was distinctly drawn to it, and if there had been any doubt entertained by the Judges on the subject, the matter would certainly have been remedied by an Act of Parliament framed to meet those doubts, I therefore feel myself strongly fortified by these judicial declarations.

On these grounds, therefore, I am of opinion that the demurrers ought to be allowed, and that these pleas are insufficient.

With reference to the ground of special demurrer, it is not necessary that I should, and I do not express any opinion upon it. But I cannot but observe, that if I was satisfied that the special demurrer was well founded, it would go far to convince me that the rule which the Court made on a former day, refusing the names of the witnesses, was erroneous, and the argument on which it was founded unsafe. If I came to the conclusion that this plea is bad in point of form, it would certainly considerably shake my confidence in that decision.

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The *Attorney-General*.—My Lords, I now apply that a judgment of *respondeat ouster* be entered against each of the traversers, and that they be called on to plead *instanter*. A similar order was made in the case of *Rex v. Johnson*, 6 East, 601. If parties decline to plead *instanter*, the Court should enter the plea for them according to the provisions of the 9 Geo. IV. c. 54, s. 8, whereby it is enacted, “that if any person arraigned upon, or charged with any indictment for treason, felony, piracy, or misdemeanor, shall stand mute of malice, or will not answer directly to the indictment or information, in every such case it shall be lawful for the Court, if it shall so think fit, to order the proper officer to enter a plea of not guilty on behalf of such person.”

Mr. *Hatchell*.—My Lords, I submit we are entitled to a rule to plead over in chief after a judgment of *respondeat ouster*. In the case of *Rex v. Sheridan*, 31 State Trials, 575, there was a consent entered into by the parties. In 1 Tidd, Pr. 641, it is said, the defendant, after judgment of *respondeat ouster*, has in general four days' time to plead; but this is a matter in the discretion of the Court, and in criminal cases the Court has always felt bound to give the accused party the benefit of this four-day rule; *Rex v. Williams*, Comber. 19; Tremain. P. C. 48; *Rex v. Elliott*, Cro. Car. 182; in that case a plea in abatement to the jurisdiction of the Court was put in, which was overruled, and afterwards divers rules were given them to plead.

Mr. *Whiteside*.—My Lords, I submit that the Statute 9 Geo. IV. c. 54, does not apply to this, as the provisions of it were complied with by our first plea. The case of *Rex v. Elliott*, Cro. Car., and *Rex v. Williams*, Skinner, 217, show that a party charged with a misdemeanor had one rule to join in demurrer, and after judgment of *respondeat ouster* four days to answer. In the case in 6 East, there was no argument. In misdemeanor cases the rule is



analogous to that in civil cases, and then the party is always entitled to a four-day rule; *Rex v. Taylor*, 3 B. & C. 512; *Cantwell v. Stirling*, 1 M. & Scott, 365; 2 Arch. Pr. 671; *Duncan v. Carlton*, 2 B. & C. 799; 1 Sel. Pr. 275.

Mr. *Brewster* replied.

The LORD CHIEF JUSTICE.—This appears to be an application to the discretion of the Court, and so it has been stated. Now what have we to influence that discretion. It was competent for the party to make a statement, that from particular circumstances, which lay upon him to bring forward, he was not able, and would not be prepared to put in a plea to the merits *instantly*. I do not blame the parties for putting in this plea in abatement. Again, he has been furnished with a copy of the indictment for fourteen days, and there is no statement that he is not aware of the subject matter of it. He has the power of pleading not guilty, or putting in a general demurrer, and he has not stated what course he will take. But, admitting this application is to the discretion of the Court, and that the party has no right to insist on it, he does not make any case from which we must assume that he can make none that [could be addressed to the discretion of the Court; it, therefore, appears in the nature of an application for the purpose of delay, and the Court cannot comply with it. And as he has made no case, there is no reason why justice should be delayed, and why the Attorney-General should not have, as a matter of right, an answer to the indictment which has been preferred against the traversers, we are, therefore, of opinion that the traversers must answer *instantly*.

A plea of not guilty was then handed in on the part of Daniel O'Connell, and the several other traversers.

The *Attorney-General*.—The *similiter* to those pleas will be added in the office. He stated that notice would be served this day on each of the traversers, of his intention to apply for a trial at bar.

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FRIDAY, NOVEMBER 24TH.

The *Attorney-General* moved that the trial of this cause should be a trial at bar, and that Monday, the 11th December, should be appointed for it to take place.

Mr. *Henn*, contra, applied that as the then jury list was improperly constituted, and not according to the terms of 3 & 4 Will. IV. c. 91, the trial should be postponed until the new jury panel should come into operation, as no fair trial could be had by the panel as at present constituted.

The *Attorney-General* having assented to the proposition, Monday, January 15th, was appointed for the trial to take place.

SATURDAY, NOVEMBER 25TH.

Mr. *O'Hagan* (with whom was Mr. *Whiteside*), on the part of Charles Gavan Duffy, applied that he be furnished with a list of the witnesses' names endorsed on the back of the indictment. This is a motion to the discretion of the Court upon special grounds. I move upon the affidavit of the attorney for the traversers, who states that he considers the names of those witnesses essential for the defence of his client; he also denies that this motion is brought forward for delay. A motion in some respects similar to this has been previously made, but that was an application that the copy of the indictment already furnished should be completed, by the addition of the witnesses' names, and on that motion it was contended that those names constituted part of the indictment, but the present is an application to the discretion of the Court on special grounds. The indictment, in this case, charges the traverser with a conspiracy, which involves in it a great number of overt acts, and extends over a long space of time, a period of nine months, and it is but reasonable that he should be afforded every means of defending himself. One of the great means in a case like the present, is that the accused should know who the witnesses are who will be produced against him, to enable him to judge of their character, and the source from which their information may have been obtained. Ninety-two meetings are alleged as overt acts of this conspiracy, and the counsel for the Crown may rely on any one overt act, and the traverser will be obliged to be prepared with evidence to meet the charge. Under these circumstances, and looking to the legislative enactment upon the subject, I submit that this is an application which the Court in its discretion ought to grant. Under 56 Geo. III. c. 87, the witnesses against the party were sworn in open Court, so the party had an opportunity then of knowing who would be produced against him as witnesses, but by 1 & 2 Vict. c. 37, that practice has been altered, and the witnesses are, by that Statute, directed to be sworn before the Grand Jury, so that the party has no means of knowing who the witnesses are, and it therefore has rendered the present application to the Court necessary. But it was never intended thereby to deprive the traverser of the advantage he had under 56 Geo. III., of knowing the witnesses against him. The 1 & 2 Vict. recites that inconvenience had occurred, in consequence of witnesses being sworn in open Court, but no inconvenience could occur from the accused party seeing who the witnesses were, and this being a remedial Statute, ought not to be construed so strictly as a penal Statute, and the party should not be thereby deprived of the benefit he before enjoyed. The principle of modern legislation is to afford the accused every just means of making his defence. By 6 & 7 Will. IV. c. 114, after a recital to that effect, it is enacted that he is to be furnished with the copy of the informations sworn against him, and he thereby has a full knowledge of the charge, and of the witnesses who will be produced against him. It is said that the practice in this country is against

granting the names of the witnesses, but no practice can have any weight, as the Statute of Vict. has not existed for a length of time sufficient to establish any practice on the subject. There cannot be said to be any practice on the subject, for there is no trace of an application having ever been made. In England the practice has been uniformly to give the names. In *Rex v. Gordon*, 6 Jur. 996, which will be relied on by the Crown, from the affidavit to ground that application, it is clear, that the defendant knew who the witnesses were, and unless the practice were to grant those names the application would never have been made. We would not be able to call on the Crown to produce the witness whose name is endorsed on the indictment for the purpose of cross-examination, and this is a right which would be allowed the traverser in most cases, *Regina v. Vincent*, 9 Car. & P. 91; *Regina v. Bull*, ib. 22; *Regina v. Holden*, 8 Car. & P. 606; *Regina v. Thursfield*, id. 169. These cases also show that such is the practice in England, for unless the names had been furnished to the accused he could not have asked for their production. *The King v. Parnell*, 1 Wm. Blac. 36.

MR. JUSTICE PERRIN.—I think the practice in England is to have the witnesses sworn in open Court, because the 56 Geo. III. is a declaratory act, and was for the purpose of making the practice the same in both countries.

MR. O'HAGAN.—We have an affidavit by an eminent solicitor in England, stating that such has been the practice. Upon these grounds I submit that my client ought to be furnished with those names.

The *Attorney-General* (with whom was the *Solicitor-General*).—The present application, which in substance is merely a rehearing of one which has been refused, is put upon two grounds; first, that the traverser is entitled to it is a matter of right, and secondly, that it is an application which the Court in its discretion ought to grant. As to the first point, this is an application of the first impression, and never before in this country has such an application been made. It is an application for a privilege which is not granted in high treason, the highest crime known to the law, Bac. Abr. Treason, C. C. It is said, that the advantage was had prior to the passing of the Stat. 1 & 2 Vict., that although no practice had existed in Ireland, yet it was unnecessary to make the application, because the witnesses were perfectly well known, being sworn in open Court. But it is well known to every person it would be impossible thereby to know who the witnesses were, as several hundred perhaps were sworn in a corner of the Court, in different cases, and it would be impossible to know in what particular case each of those were to be examined. There is no ground for the argument that they are deprived of a privilege, for this is a privilege which never existed. The case referred to in 2 Wm. Blac. only decides this, that copies of indictment are not public records, and that it is only under the 60 Geo. III. the party is entitled to them, and in *The King v. Holland*, 4 T. R. 694. Buller, J. says, that it is only in civil cases the party is entitled to inspect the evidence. But it is said they cannot have the privilege of calling for

the production of witnesses ; when the proper time arrives they may call for the production of them, but because the party at the time of the trial may be entitled to that privilege, that is no authority to show his right to make the application at the present time. The affidavit of the English solicitor is no authority to guide the Court, as he is not an officer of the Court ; but the case in 6 Jur. clearly shews that such has never been the practice in England. In that case Justice Patterson says, " I never heard of such an application " as this before, and yet circumstances of this nature must have " occurred before, and I do not find that any precedent has been " made or used to sustain the application."

The LORD CHIEF JUSTICE.—In this case the majority of the Court are of opinion that the present application ought not to be granted. The application is, that the Clerk of the Crown should furnish to the traversers a list of the names of the witnesses, appearing on the record of the indictment which had been found against him. The present motion is properly distinguishable from the application, which, though similar in its nature, yet was in itself materially different, upon which the Court gave judgment some days since. I need hardly say that if there was not an essential difference, the discussion of the self-same subject would not be permitted by the Court a second time. It was brought forward on a former occasion on an application that the Clerk of the Crown should amend the copy of the indictment by inserting in it a list of the witnesses' names, that application was made as a matter of right, the parties having insisted that they had a right under the Statute to what they sought by their application. The Court decided that they were under a mistake, and that they had given a misconstruction to the Act of Parliament, when they considered that as a part of the indictment, which in fact was no part of it, and that, therefore, they were not entitled to it under the Statute on which they relied, and the Court saw no reason to entertain a doubt upon the propriety of the adjudication which was then made ; I shall, therefore, pass it by, and come to consider the present question on its own grounds.

I do not understand the present application as an assertion of a right which a party is entitled to demand, it has been argued on another ground, that although the party had not a right, yet he ought to be heard with success in an application to the discretion of the Court in order to enable him to prepare himself fully for his defence. Considering this then as an application to the discretion of the Court, I do not think that the party who makes this application has sustained his case so as to call into action the order of the Court regulated by its discretion. In the first place to call the Court into action, the traverser should make out a case to its satisfaction, that, without obtaining that which he applies for, he cannot effectually prepare his defence. I should observe in the first place that the traverser, on whose behalf the application is made, has made no affidavit, but his attorney has made an affidavit, in which, if I have not misunderstood it, he states in general terms that the obtaining the names of the witnesses was material for the prepara-



tion of his defence. Now it is an odd thing, when we consider how often and how fully this question has been in substance discussed, that to this hour there was no affidavit from the party or his attorney that they did not know the names of the witnesses. He might have a perfect knowledge of those persons, yet the affidavit might be supposed to be substantially true, and this was a reason to be taken into consideration in influencing the discretion of the Court. Another consideration for the Court was, that though it stated generally that the names of the witnesses would be necessary, he does not attempt to show, that the furnishing of those names would be of any use whatever to the defence.

The case has been argued, and properly argued, as addressed to the discretion of the Court, stating that according to the known rules and practice of the Court, the custom was to grant, in cases of misdemeanor, a copy of the names of the witnesses against the traversers; but as far as my experience goes, or as far as I have heard, I have not heard stated a decision upon which the allegation could be founded, namely, that from the earliest times it has been the practice in misdemeanor cases to supply those names. So far as I know the law, or have heard the case argued, it has not been sustained by any Judge, or by the *dictum* of any text writer upon the subject; and in advancing this proposition, a mistake does exist on the part of the traversers' counsel. It was advanced as generally applicable to all cases. Now, though the principle, that it was desirable that parties should have every fair means afforded them for preparing their defence against the charge for which they were arraigned, was applicable to all cases, though this principle applies in all its length and extent to cases of felonies as well as misdemeanors, yet it was not attempted to be argued, that the rule applied to cases of felonies; and I should say, considering the rule itself, that if there was a distinction to be taken, it should be applied more favourably to those persons accused of the greater, than those accused of the lighter crimes; but it is, and must be conceded, that no instance was ever known in the history of the law, of this being applicable to cases of felony; but it is said it was applicable to the case of treason, and that in analogy to cases of treason, the rule ought to be extended to misdemeanors. I take that also not to be the law. If there was an analogy to be applied from treasons to misdemeanors, I should like to know on what principle it is, that it also could not be applied from treason to felony, and I repeat again, that it never was applied to felony, nor could it be argued that by law it ought to be so. But then, what is the law applicable to cases of treasons? They were cases *sui generis*, and they should not be brought under the consideration of the Court, as governing cases of misdemeanors; and though the law in its mercy has extended this privilege in cases of treason, in consideration of the penalty attached to this crime, it did not do so in the case of misdemeanors. But there is not the same principle referrible to felonies as to treason. As the law originally stood in cases of treason, the parties accused had no right to a copy of the

witnesses' names, nor had they a right originally to a copy of the indictment; but by the Statute of Treasons, it was enacted, that from thenceforward, the party indicted for treasons of a certain nature, involving the dignity of the Crown, should, in consideration of the dreadful penalty attached to the crime, be furnished with a copy of the indictment, but making a reservation at the same time, that he should not have a copy of the names of the witnesses; and in no case up to that time, was the party accused, whether of treason, felony, or misdemeanor, entitled at common law to be furnished with a list of the names of the witnesses. There is in the Statute of Treasons, that which has been brought forward as showing an analogy which ought to govern the present case; but there is also in that Statute, that which appears to me to afford a strong argument the other way, for it is not merely silent with regard to furnishing a list of the witnesses, but it is expressly excluded from its operation. There are counteracting principles with regard to those which governed the common law, and those enacting an improvement on the common law. There were very cogent reasons stated, why the copy of the list of the witnesses' names should not be furnished to the accused, although he was entitled to get the indictment containing the charge and the informations upon which it was founded. Witnesses had been murdered, 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 furnishing the witnesses' names. Now that being the case, we are called on, without a reason which appears to us satisfactory, without an affidavit from the party (to which I have before referred as being to be looked for, and expected in applications of this kind) to make, for the first time in this country, a new rule which would be applicable, not only to the present, but every other case of misdemeanor, that in every case without exception, the party accused should be furnished with a copy of the names of the witnesses. The Legislature has from time to time made enactments in addition to the common law in cases of misdemeanors, which the parties will be entitled to the benefit of as a matter of right. They were entitled to a copy of the indictment, to a copy of the original informations sworn against them, on which they were held to bail; and one might suppose that the Legislature conceived, that having got these privileges, which by the common law they were not entitled to, no reasonable ground was afforded why all persons accused of misdemeanors should be furnished in addition with the names of the witnesses who had sworn against them, whereby the safety and security of those witnesses might be compromised, and thereby the attainment of justice defeated. Now it appears to me, when a party comes *ex gratia* before the Court, they should make out a satisfactory case, that it was absolutely necessary for them to have the names of the witnesses, for the non-furnishing of which I can suppose a very fair and good reason might be afforded, and they should confine themselves to the analogy of existing cases, where the law has made a provision that

the names should be furnished. Now I go back to cases of high treason. By the Statute of Anne, 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 within ten days before the trial. Is that a precedent to induce us, without a sufficient reason assigned, to make an order to furnish the names of the witnesses in a misdemeanor case, at a period of fifty or sixty days before the trial? There is no corresponding precedent with regard to felony up to the present day, and although the party accused of felony might require to be furnished with the names of the witnesses against him, as much as a party accused of misdemeanor, yet the law affords him no such means of information. The officer of this Court upon a former occasion reported to us, that as to the practice of furnishing the names in cases of misdemeanor, it was never done in this country. But it may be said, that in this country there is no practice existing, and it was argued, that there could not exist a practice as to whether it was so or not, for these reasons, because the practice could not have sprung up from the 56 Geo. III. (1816), and only and for the first time the law had made a clear declaration, that witnesses who were to be examined before the Grand Jury were to be sworn in open Court; and that inasmuch as the party accused had an opportunity of knowing who those persons were, he therefore did not require from that time to the passing of the 1 & 2 Vict. to be furnished with the names of the witnesses. It was said, that the accused had thereby gained a privilege they did not before possess, and that they were deprived of that privilege by the operation of the Statute 1 & 2 Vict., whereby it was enacted, that the swearing of witnesses in open Court should be discontinued, but that they should be sworn before the Grand Jury; therefore they argued, that between those periods, the 56 Geo. III. and the 1 & 2 Vict., the accused did not want to be informed of the names of the witnesses against him, and that consequently it was not necessary to apply for that information. But supposing that privilege to be such as has been contended for, does it necessarily follow, that there was no room for the existence of such a practice before 1816? Up to that time the parties certainly had not the means of being informed of the names of the witnesses, by seeing them sworn before them, because it is recited in the Act, that the bills used to be found without witnesses being examined in Court, and that therefore up to that time they had no means of being informed of the names, except by application at the Crown Office. Now if that be so, how does it happen, that up to 1816, no person accused of misdemeanor ever made an application to be informed of the witnesses' names? For this reason, because the law did not allow him to do so, and that was the foundation on which the officer was enabled to report, that no such practice existed in this country. At all events, if such a practice did exist, it did not lay any foundation, or show any reason why the present should be pushed beyond the case of high treason, where the names were only to be furnished ten clear days before the trial. That

was also the foundation of the cases in 9 C. & P. and in 8 C. & P.; they do not show the existence of such a rule as has been insisted on, but they amount to this, that when the trial comes on, when there is no danger of intimidation or otherwise; if a case was made to the satisfaction of a Judge, not as an imperative rule of the Court, or of law, but that the attainment of justice required the presence of all the witnesses whose names were endorsed on the indictment; and the Judge being called on, and having the power to have the indictment laid before him, he would make the order as he did in those instances, that the absent witnesses should be called, in order to give the accused the power to cross-examine them; but that is no precedent for the present application. If this were the day of trial, and that it was stated that witnesses' names who appeared on the bill, were not called for examination, it would be a matter within the power of the Court, and consistent with justice, to make the order, that those witnesses who were not brought forward should be produced, and no doubt such an order would be obtained. But that is not the present case, it is widely distinguishable from it. Then as to the practice as alleged to be proved in England. I at once say, that nothing is more undesirable, than that a different practice should exist in this country and in England; but in support of what has been said of English practice, no case has been produced to show what that practice is, or upon what it is founded, not even the authority of text writers; but a statement of the existence of such a practice was made, founded on a statement made by an English solicitor, not being an officer of the Court in England, who could certify such to be the practice. How could we know the extent of his experience, or how far he is to be relied on? Why were not documents authenticated by the proper officer produced? But in any event, the practice in England does not appear to have been brought under discussion in the Court in England; and if driven to the necessity of deciding which practice I should abide by, regretting as I should do, the existence of a practice in this country different from that in England, I should abide by it.

Mr. JUSTICE BURTON.—I concur fully in the judgment which has been given by my Lord Chief Justice, and in the reasons given by him. It is not necessary for me to go at length into the subject; but I concur in opinion that in this particular case, the rule applied for ought not at this time to be complied with. When the application was made which has been adverted to, and which was made in a different form, and in a different manner, and when I concurred in refusing it, I did not conclude myself from entertaining an application which was not precisely of the same description, but for the same purpose, that of obtaining a list of the witnesses examined by the Grand Jury. I did not then conclude myself from entertaining this application, when it should be made, without being governed or affected at all by the refusal to grant the former one. I am not sure that I expressed myself to that effect during the discussion of that application, but certainly I did feel strongly that I



did not intend to exclude myself from entering into the consideration of the question, whether the traversers had a right to the production of the names of the witnesses examined before the Grand Jury, either as a matter of right, or as a matter within the discretion of the Court to grant or refuse. When the particular time should arrive for such an application, I considered myself entirely open to the discussion of the question. I confess when the application was first opened by the counsel for the traversers, and when it was supported by the arguments which were used in the first instance for its being complied with, I certainly did feel a wish, that the application might be one which upon the part of the Crown there might be sufficient reason for conceding, or at least, which there might be no reason for not conceding, because it is impossible not to feel, that on an application made for the benefit of a person accused of any particular crime, whether of a private or of a public description, that he should have all reasonable means of defending himself, and I therefore did entertain a hope, that the application might be complied with on the part of the Crown, either exactly as it was made or subject to any terms which might be thought necessary to affix to it. However we are not now to consider the case in that light, we are to consider first, had the traverser a right in this instance *de jure* to be furnished with a list of the witnesses examined before the Grand Jury; secondly, if he had not, was the request so reasonable a one that it ought to be complied with, and at this time. Now it strikes me that the application ought not to be granted as of right, for the reasons given by my Lord Chief Justice so fully and distinctly, and I will not take up the public time by adding any thing to what he has said, or even expressing the grounds on which I concur with him. They are grounds entirely in conformity with the reasons which he has given; and I ought not perhaps to say more upon the subject. However there is one circumstance or ground of argument, that, if not directly asserted, and I do not mean to say that it has been, has been at least argued on, as if a principle of a particular kind which would not guide them, or at least ought not to govern the Court, yet should have a considerable effect on the Court in coming to a decision on the subject. I apprehend that it is no principle of the law of Ireland or of England, that a person accused has a right previous to the trial, to any indication, statement, or exposition, from the prosecutor or the Crown, whether in a case of private or of a public prosecution, of the evidence against him. I apprehend there is no ground or suggestion for a principle of that kind, or that such a proposition, if made previous to the Act, was ever conceded. There is one instance of a case in which the prosecutor furnished a list of the witnesses, but I apprehend that case depended on a particular Statute, the Statute of Treasons, and that it never existed under the 56 Geo. III. or 1 & 2 Vict., therefore it is not to be made the foundation in this case, that on the ground of public principle and justice, a man accused of any crime or misdemeanor is entitled from the Crown or the prosecutor to a list of the wit-

nesses. That has not been asserted, but the case been argued as if something of this kind ought to be conceded. But if this is not so, then the question must come entirely to be discussed upon the effect of the Statute which has been referred to, and certainly there is no provision in it that would warrant an application of this kind, at all events under these particular circumstances. The Statute in question has given a certain benefit to the party accused, that when a bill of indictment is sent to the Grand Jury, they should have the jurisdiction to examine the witnesses, and to see, before they find the bill, not only that the witnesses examined before them are deserving of credit on other grounds, but also on this ground, that they are duly sworn, and have taken a solemn oath, and have put themselves under the sanction of a religious obligation to tell the truth. That has been done, and accordingly it is made essential, that the Grand Jury should have endorsed on the bill the names of the witnesses examined on oath before them. Jurisdiction is given them to do this, and it is only for that purpose that the Act was passed, for the purpose of giving the accused the advantage of having the bill of indictment endorsed with the names of the witnesses. If there were no other reason than this, it is very well worth consideration, that when witnesses are examined before the Grand Jury it is very reasonable, that first the Court should know, and very reasonable also that the party accused should know, particularly when he is furnished with a copy of the indictment, what witnesses have already been examined against him. The statement of those witnesses' names may have this effect, it may induce the prisoner not to call any witnesses as to a particular part of his defence, if certain witnesses are called for the prosecution, because the witnesses for the prosecution may be the persons to whom he himself would appeal for the truth of the facts material for him to prove, it is reasonable, therefore, that he should have the advantage of seeing what witnesses are to be examined on the part of the prosecution. It is on this ground, I think, that the decisions have been founded, that when the trial comes on, the party accused, if he desires it, can have all the witnesses produced, who were examined before the Grand Jury, and should not be put to the expense or inconvenience of summoning them or other witnesses, who may have an opportunity of proving the facts necessary for his defence, and therefore I certainly think it very reasonable, generally speaking, and on general grounds, and for such a purpose as that, unless some special reasons interfere, that the Judge should grant this application a reasonable time before the trial. So much I think is to be collected from the authorities referred to already on the subject, but I do not think that it has ever been, or now is a principle of the Crown law upon the subject in question, that the party is at any time to be acquainted with the particular evidence as given before the Grand Jury, and therefore, it is only for the purpose mentioned, or some similar or analogous purpose to it, that it is conceded as a reasonable thing. So far we may safely go; but the proposition contended for is this, that at any time after bills have

been found, the parties accused are entitled to the list. Now upon that I perfectly concur in the reasons that my Lord Chief Justice has laid before the Court, and although, as I collect, he admits it to be very reasonable, that for a reasonable purpose, the Judge should grant a list to the traversers, yet it is not the necessary consequence that on the indictment being found and on the endorsement of the witnesses' names being made on the bill, the party accused should be entitled to a list of those names at the same moment that he is entitled to a copy of the indictment. I do not think that any such proposition has been established, and I think that the reasons suggested by my Lord on the subject, at all events, are sufficient to induce one to see, that there may be great inconveniences, and not only inconveniences, but impediments to the administration of justice, if the proposition was carried to this extent. Such a proposition never came under the consideration of a Court of Justice, and I do not think was ever established. If any practice existed, I take it to have been founded on general grounds, and, generally speaking, perhaps there may be no reason for not furnishing a list of the witnesses at the time the indictment was found, but there are particular reasons, or may be particular reasons or inconveniences affecting the administration of justice, to restrain that practice within certain limits, and admitting such a list ought to be furnished before the trial, under proper and sufficient circumstances, does it therefore become a right of the subject to have it at all times and in all cases. I do not think that has been established. The first impression on my mind was certainly, that there could be no reasonable objection to this application, however, from the nature of the crime itself, from the peculiar circumstances attending it in many points of view, it may be attended with consequences dangerous and detrimental to the administration of justice, to grant the application which has been made at this moment. I think, therefore, the Court ought not to comply with the application at this time, whatever may be done on a future occasion.

MR. JUSTICE CRAMPTON.—At this late hour I should not feel myself warranted in doing more than express my concurrence in the opinion of my Lord Chief Justice, were it not that one of my learned brothers differs from the rest of the Court. This is an application which is certainly of very considerable importance. It is an application by the traversers to an indictment for a misdemeanor, for an order upon the prosecutor, to furnish them with a list of the names of the witnesses endorsed on the back of the bill sent up to the Grand Jury, and it is made at a period of seven weeks before the day fixed for the trial. This application must be founded either on the right of traversers, and it has not been so urged by their counsel, or it must be founded on grounds upon which the discretion of the Court should be called into exercise to grant this privilege to the traversers. I say nothing with regard to the former motion having been substantially the same as this, because if I found that, in point of right, the traversers were entitled to such an order, or that they had such a case as called for the exercise of the discretion of the

Court, I should not certainly, in a case of such importance, on the last day of term, wish that they should be deprived of their right on a mere matter of form. But this application must be founded either on a right, or on some ground calling for the exercise of the Court's discretion. Now what is the right on which the traversers are entitled to this list? It cannot be because it is part of the indictment. That was the motion which was refused, and I think was correctly refused on a former occasion. Though in a popular sense, sometimes, the names of the witnesses may be said to form part of the indictment, in point of law they are no part of it. It cannot, therefore, be under the Statute that the application is made. But it is said, or rather suggested, that the traversers have a right to the witnesses' names at common law. They have been unable to find any authority for that position, neither principle nor adjudged case. I find nothing applicable to this case in the case of treasons. The parties accused of treason are entitled to a list of the witnesses' names by the Statute. In cases of felonies to this day, the party accused is not entitled to a copy of the indictment. In misdemeanors it is said he is. He was not so by the common law, I know that he is now considered as entitled to it, and has been in cases of misdemeanor so considered to be entitled for a considerable time. It has been said, that this right grew out of the favour of the Court. That position perhaps might be made out; but, however it may be, the traverser has a right to a copy of the indictment. But having that right, he has no right either by statute law or by common law, to a copy of the names of the witnesses endorsed on the indictment, unless it is as part of it, and that view has been rejected by the Court. The case has been put on another ground, namely, that it was the practice at common law to give the names of the witnesses. Where is that practice? The traversers now call on the Court to make an order of this kind for the first time. In this country such an order was never made. To be sure it was never applied for, but we are now called on to change the order and practice of proceedings in this country, on what is termed the English practice. I do not admit that such has been the established practice in England; I pay no attention, either to the certificate, or affidavit, which have been produced. The testimony of no gentleman, either in England or Ireland, however respectable or eminent he may be in his profession, ought to be a voucher for the practice of a Court of common law. The practice is to be collected from some higher authority, otherwise we can pay no attention to it. However, if I was satisfied that the practice was so in England, it would make no change in my opinion in this particular case, sitting as I do here in the Court of Queen's Bench of Ireland. If I was satisfied that it was the practice in England to give a list of the witnesses' names to traversers in cases of misdemeanor, should I think that the traversers in this case ought therefore to get a list of the witnesses? No. It may be the practice to give a list of the names of the witnesses along with the indictment. It is otherwise here. If any such practice there be in England, it may be a practice merely official,



which has never been brought before the attention of the Courts in England, with regard to which no adjudged case can be found. But although it be conceded, for the purposes of this discussion, to be English practice, is it therefore to govern the practice here? If there be such a practice, it is probable that it grew out of the habit of the Clerk of the Crown giving the names with a copy of the indictment. The case seems to have been that. But what is the practice in Ireland? The experience of the officer, and our own experience, is, that such a practice never existed in Ireland. But then it is said, there is no practice at all in Ireland, and therefore we ought to be governed by the practice in England. The practice of the Court is the law of the Court, and of the country. But the practice of the Courts of law in England and here, do not always conform. In some instances their practice is better, in other instances our's is better; and I concur in the desire, that the practice of both countries should be assimilated as far as possible. However we must act on the practice as we find it. It is said, that there is no practice here, and therefore that we should take up the English practice. That seems to me to be a misstatement. It has been the practice at the Assizes here, to grant copies of indictments in misdemeanor cases, since the passing of the 56 Geo. III. c. 87, and the 1 & 2 Vict. c. 37; but never since the introduction of the wholesome practice of examining the witnesses before the Grand Jury, has a copy of their names been given, either with or without the indictment. Before the 56 Geo. III., there were no witnesses examined before the Grand Jury, and therefore no names were endorsed. After the 56 Geo. III., we can conceive a new practice to have arisen, to find no bill of indictment without the examination of witnesses. Twenty-five years have since elapsed, and no application has been made to have the names of the witnesses examined; I do not know whether it was the practice to endorse the names on the bill after the passing of the 56 Geo. III. or not; if it was, it furnished the party with an opportunity to make the application. The 1 & 2 Vict., which has at all events established that practice, is a Statute of a late date, but since it passed, it never occurred to any body, in a case before the Court, at the Assizes, to call for a list of the witnesses; no traverser, therefore, before the passing of the 56 Geo. III. or under that Statute, or since the passing of the 1 & 2 Vict., has ever made this application as a matter of right. I, therefore, think, as a matter of right, it is impossible to entertain this application. But another ground has been put, that it is an application to the discretion of the Court. I certainly think, in common with my Lord Chief Justice, that if a sufficient ground was stated by affidavit, calling on the Court at a proper time, for a list of the witnesses, I should be disposed to grant such an order. But what are the grounds of the present application? First, that the party is ignorant of the names of the witnesses, and, therefore, he is prejudiced thereby. Am I at liberty to assume here, that the traverser did not know those names, when I find that on a former occasion an application was made to the Court to have the names furnished

on a different ground from the present one; and that neither any of the traversers, nor any of the respectable gentlemen concerned for them, have stated on oath, that they did not know the names of the witnesses; they may not have been known to them in a legal way; but every person must be aware, that in practice, the names do transpire. If the party was ignorant of the names, and thought that he would be prejudiced by not having a list of the witnesses, why did he not disclose the fact of his ignorance by the affidavit of himself or his agent, and show why he wanted the names of the witnesses, and the application would then have been made to the discretion of the Court. Is this a *bonâ fide* application to enable the party to make his defence at this important time? That is the question. If it is so, it ought to have been stated. It may be so, but that is not disclosed by the affidavit. What use is to be made of this list? Can we be satisfied that some use may not be made of it, which is not *bonâ fide* beneficial to the defence of the traversers, but on the contrary, prejudicial to a fair trial? I am making no imputations on the traversers. I am speaking merely of the affidavits, which are in this respect quite defective and insufficient to support the application. Another matter has been observed on by the Chief Justice, which is not without weight, I mean the time at which the application is made. Seven weeks before the trial. According to the English practice, it is at the trial or shortly before it, that the prosecutor or the Clerk of the Crown is called on to give this information to the party. But according to the principle contended for here, the moment the indictment is found, that instant the party is entitled to the names of the witnesses. If the names of the witnesses be part of the indictment he is, but if not, he is not. If they be not part of the indictment, as the decision of this Court has asserted, on legal principles he must make the application to the discretion of the Court. Has he a right to have that discretion exercised seven weeks before the trial? The trial has been postponed by consent, and that long period has been given to enable the parties to prepare for their defence. There is abundant time for defence and inquiry of every description. But possibly the parties may want the names not for that purpose, which I think is the only purpose for which they ought to be furnished with them. Therefore I say, it is a motion without precedent in this country, without a single adjudged case to warrant it. Such a motion, if granted in this particular case, on the grounds before the Court, might form a dangerous precedent. If granted on this occasion, it could not be refused at a Special Commission, or at the Assizes. It is impossible to foresee the dangers and inconveniences which might not arise from the introduction of such a rule before those Courts. I think it safer, especially in criminal cases, to stand by the established practice, than to introduce, in a case like the present, where there are no special grounds for the exercise of the discretion of the Court, at such a period of time, contrary to the usual course of proceedings, a rule which might involve consequences of such danger to the administration of justice. My opinion, therefore, is clear, that on the

present grounds, and at the present time, the application ought to be refused.

Mr. JUSTICE PERRIN.—Notwithstanding all that I have heard at the Bar and from my Lord Chief Justice and my learned brethren of the Bench, I am still under the disadvantage of differing from the rest of the Court. I cannot see any good reason to refuse this application, and not to give the names of the witnesses endorsed on the indictment as they are now sought for. This application is perfectly distinct from that on which the former order of the Court was made. The motion on that occasion was to amend the copy of the indictment which had been furnished to the traversers, and it was, in my judgment, properly refused, on the ground that the names endorsed on the indictment form no part of it. This is an application made on the affidavit of the attorney, the gentleman who is employed to arrange and prepare the defence, of one of the traversers, and he swears that he requires a list of the witnesses' names as essential to, and for the purpose of enabling the traverser to defend himself effectually. I think there can 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 is, and the Statute which has been referred to, the 6 & 7 Will. IV. c. 114, altering the state of the law in an essential particular, proves this to be a sound principle, and also, in my mind, furnishes a complete answer to a good many of the arguments which have been urged against this application. The defence may depend much on the veracity and character of the witnesses who are to be produced on the part of the Crown. That may furnish an important ground of defence for the consideration of the traversers and those engaged for them, and as my brother Burton has observed, it may be very material for the traverser, or the prisoner, to know, that certain witnesses will be produced on whose testimony he may be enabled to rest part of his case. There is another distinct reason for giving him the names of the witnesses, It may be important for him to know this, with a view to avoid the necessity of looking for other witnesses to support his case in that respect. It is not necessary for me to go through the cases or instances in which it may be, or in which it may not be, essential to the traverser to know the names of the witnesses to be produced against him, because the person who makes the affidavit in this case is, above all other persons, qualified to form an opinion, and he has distinctly sworn that it is, according to his belief, essential to the defence of the traverser that he should be apprised of the names of the witnesses. I was surprized to hear it asserted that he did not swear that the names were not known. I cannot conceive how any gentleman of respectability or veracity could swear that it is essential to his client to be furnished with the names of the witnesses, if he was conscious at the time that his client knew them. I think this affidavit necessarily involves, in every well-constituted mind, a distinct denial that he does not know the names. Because, if he does, it is in my mind not only an evasion, but direct false swearing. I perceive no sound objection to this disclosure; nor have I heard any

argument which has satisfied me that it is desirable that the witnesses' names should in general be suppressed. No special objection has been suggested at the bar in this particular case. I wish to be as brief as possible at this late hour on the last day of term. I before adverted to the 6 & 7 Will. IV. c. 114; it does not show to me any objection nor any inconvenience that would arise from furnishing the names of the witnesses sought. By that Statute the party accused is entitled to the names and depositions of all the witnesses sworn before he was held to bail or committed. I can see no inconvenience, but a distinct reason for giving him the names of the witnesses upon the indictment, for the purpose of informing him whether he is to make his defence against the depositions alone, or whether any additional proof has been given before the Grand Jury. It appears to me, therefore, that there is no sound objection in general to such a course of proceeding. It has been stated that the first Monday in next term having been fixed for the trial yesterday, the traversers have abundant time to prepare for their defence, and that this application comes too soon. It appears to me that this is the exact time when the application should be made, if the parties believe it essential to their defence. It could not be made between this and next term. It is not a motion which could be made in Chamber, unless some particular circumstances arising after term were relied on.

It is said there is no practice in this country to give a list of the witnesses; or that the practice is the other way. I cannot find any instance in which the names of the witnesses were ever refused; and, if they were never refused, it follows that there was no necessity for making the application. So that, with respect to that observation, it may be taken that there is in this country no fixed or settled practice on the subject. But it does appear to me, on the best consideration that I can give to the documents which have been laid before us, supported, as I think they are, by the case to which the Attorney-General referred, *Rex v. Gordon*, that the practice in England is to give the names of the witnesses endorsed on the indictment in cases of misdemeanor. I think it is impossible to doubt that such is the practice there, especially as it is not suggested on the other side that the practice is otherwise. We have been furnished, in the course of the argument, with a variety of information on the subject which is not to be found in books; and, therefore, I must take it that, if this application was made at Westminster Hall, it would be granted. I consider then, without saying that the practice of a Court in England is to govern the practice of this Court, that in a case of this description, where there is no settled practice, it would be convenient to adopt that which prevails in England. I think it has been very fairly insisted, that nothing inconsistent with or obstructive to the administration of justice would ensue from complying with that practice. The common law of England is the common law of Ireland, where the latter is not altered by Statute; and I think that should be relied on rather than any unascertained and unpublished practice here. Before the 56 Geo. III. the practice in Ireland was to have bills found without examining witnesses—on the informations alone. That was



contrary to the practice in England, as well as to the common law of both countries. This practice it was endeavoured to sustain by suggesting difficulties which were likely to follow an alteration of it. It was suggested that such an alteration would be fraught with dangers and difficulties to the witnesses, some of which were specified, and some were not. But after great deliberation, the Legislature persevered in passing the 56 Geo. III. ; and the practice was altered, and the common law was declared ; and it was also enacted, that the names of the witnesses should be endorsed on the bill.

I have adverted to the principal grounds on which I have come to this conclusion. There are other observations which I should have wished to make, and which, but for the lateness of the hour, on this the last day of term, I should feel myself bound to make in a case where I am under the disadvantage of differing from the rest of the Court. My opinion is, that this application ought to be granted.

Mr. *Smyly*.—My Lords, in this case I have to apply for a Special Jury.

The LORD CHIEF JUSTICE.—You may take the order.

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## HILARY TERM.

FRIDAY, JANUARY 12TH, 1844.

Mr. *Moore*, with whom was Mr. *Whiteside*, applied on the part of the traversers, that the panel of special jurors, for the year 1844, should be quashed and set aside, or that a *mandamus*, or an order in the nature of a *mandamus*, should be issued, directed to the Recorder, commanding him to place on the list of jurors, for the year 1844, the names of twenty-seven persons whose qualifications had been proved before, and allowed by the Recorder to be special jurors of the city of Dublin ; and that upon the said Jury List being rectified according to the truth and fact, and the adjudication of the Recorder, it be delivered to the Clerk of the Peace for the county of the city of Dublin, and that he be ordered to strike a special jury to try the case, pursuant to the order of the 25th of November, 1843 ; and that in the mean time the trial should be postponed or specially fixed for the 1st of February. They moved, on the affidavit of the attorney for the traversers, which stated that the names of several persons whose qualifications had been allowed by the Recorder, had, by fraud or mistake, been omitted from the Jurors' List from which the jury had been struck. They contended that the Court had jurisdiction under the 3 & 4 Will. IV. c. 91, to allow the motion, and that it was a proper case for the exercise of that jurisdiction, and relied on *Regina v. Mayor of Eye*, 9 Ad. & El. 670 ; *Rex v. Severn Railway Company*, 2 Barn. & Al. 746.

The *Attorney-General* (with whom was the *Solicitor-General*).—The Crown is ignorant of the cause of this mistake. If any has taken place, it is the fault of the Clerk of the Peace or his deputy, and there is a special provision in the 36th section of the Act, by

which he may be punished. Unless the traversers can impute corruption to the Crown, or some persons employed by them, the Court should not permit the trial to be postponed. There is no appeal from the decision of the Recorder, and therefore the Court has no jurisdiction; *Regina v. Conrahy*, 2 Cr. & Dix, C. C. 56.

The LORD CHIEF JUSTICE.—The Court is of opinion that this application cannot be granted. We all concur in that view of the subject. The disclaimer that has been introduced against imputing any act of criminality to any person whatsoever, is somewhat remarkable. A great deal has been said as to the impropriety which has been committed; a great deal has been said to show that the persons to whom that impropriety may by possibility be imputed, are within the jurisdiction of the Court. I could very well understand, if the facts at all warranted it, that an application might have been brought forward which would have called for the attention, and investigation, and interposition of the Court; but this very grave charge is made against no individual. That the charge is not made, does not proceed from want of consideration nor from ignorance of the subject. The parties have not brought forward the case we might have expected them to do. This has been the subject matter of investigation, both public and private, for a great length of time. An affidavit has now been made by the attorneys for the traversers. They have tried the assistance of counsel, but they have made no tangible charge against any person whatsoever. Mr. Mahony goes the length of stating, that corruption had taken place somewhere. What is the Court to do with an affidavit of this kind? What is the order the Court is now called on to pronounce? An order for a *mandamus* to quash the general Jury Panel of the county of the city of Dublin, after all these proceedings have been taken. Every person who may be a suitor during the present year is perfectly satisfied that his rights are secure in the persons who have been selected, and is interested in upholding it as it at present stands. There must be a strong, convincing, and peculiar case to induce the court to make this alteration which is sought for, and to set aside that which the public are now interested in. Then with regard to the *mandamus* No regular notice has been served upon the Recorder, of this application against him, or on the Clerk of the Peace, nor is the present application grounded upon any tangible charge. I do not say that a case of corruption might not be made out, which would give the Court jurisdiction, authority, and right to interfere, but here no specific case has been made, on the contrary it has been disclaimed. The only case made is, that Mr. Mahony took upon himself to say that he believed corruption existed somewhere. Though the Act is very long, and a great deal of pains appear to have been taken in settling the proceedings, it seems to have been studiously the intention of it, that unless corruption was proved, the proceedings before the Recorder were to be conclusive. The Recorder is intrusted with the revision of the lists, originating with the parish officers in the first instance, and to be investigated by him, and he is to pronounce his judgment, and to make out a list, which, when transmitted to the Clerk of the Peace, is to be handed to the Sheriff as the Jurors'

Book out of which the Sheriff is to form his special jury list. But when once the document has left the Recorder's office, he has no further power over it. Therefore, there would be another objection to this application, because it proceeds upon the ground that he would have power of correcting the lists. He has no such power. That Act of Parliament has not provided for that case. The Recorder has no power to recall the list for the purpose of re-investigation. On these grounds, I think, the application is against reason and against principle, and ought to be refused.

Mr. JUSTICE PERRIN.—I concur in the rule which has been pronounced; but I cannot help saying that it is a matter of great suspicion and of great negligence. It is going far to assume that it was a mere accident; however, it is clear that this Court has no power to reform the Jury List, especially without notice to the parties concerned. The proper course of proceeding is by a prosecution against the party for his misconduct; but there is no ground for the interference of the Court summarily, as there is no misconduct charged against any specified person. On these grounds I concur with the judgment of the Court.

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SATURDAY, JANUARY 13TH.

The *Attorney-General* moved, that in the event of the trial not terminating before the 31st of January, the 1st of February, and every succeeding day, until the 15th of April, or so many as might be fixed for the trial of the case, should be deemed and taken for the purpose of the said trial, as part of the Hilary Term, 1844, by virtue of the Statute 1 & 2 Will. IV. c. 31, s. 3.

The LORD CHIEF JUSTICE.—The Court has directed a trial at bar and has fixed the day. Will those days not then of course be part of the term without any order of the Court for that purpose. However, there being no opposition, the Court, though they may think it unnecessary, will grant your motion.

Mr. JUSTICE PERRIN.—I think it would be a dangerous precedent to make an order in contemplation that a trial by jury will last more than sixteen days. I do not think that the Act of Parliament meant to go to the extent to which the order you seek for goes.

The motion was granted.

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MONDAY, JANUARY 15TH, 1844.

The Clerk of the Crown having called over the traversers' names, they all appeared at the bar, with the exception of the Rev. Peter James Tyrrell, who had died in the interval since the last Term. He then called over the jury panel, several of whom were excused from attendance, in consequence of ill-health. A sufficient number having however appeared, Sir *Colman O'Loughlen*, on behalf of Daniel O'Connell, handed in a challenge to the array, which was as follows :

“ And now on this day, to wit, on the 15th day of January,  
 “ comes the said Daniel O’Connel, in his proper person, and the  
 “ jurors empannelled, and so forth, also come, and thereupon the said  
 “ Daniel O’Connell challenges the array of the said panel, 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 of November  
 “ last past, to wit at Dublin, in the county of the city aforesaid, be-  
 “ fore the Right Hon. Frederick Shaw, Recorder of the said city  
 “ of Dublin, for the purpose of examining a list of jurors of the said  
 “ county of the city of Dublin, for the now current year, to wit the  
 “ year 1844, pursuant to the statutable enactments in such case made  
 “ and provided, the Clerk of the Peace in and for the said county  
 “ of the 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, 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 Re-  
 “ corder 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 Re-  
 “ corder did not, as by said 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 deliver such general lists con-  
 “ taining such names to the Clerk of the Peace, to be fairly copied  
 “ by the said Clerk of the Peace in the same order as by said sta-  
 “ tutable enactments is directed, but on the contrary thereof ne-  
 “ glected 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 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 qualifications have been allowed  
 “ upon the correcting, allowing, and signing of said lists as afore-  
 “ said by the Recorder, but omitted the names of divers, to wit sixty



“ persons whose qualifications respectively to be on said list had been  
 “ so allowed as aforesaid by the said Recorder, which said several  
 “ persons whose names have been omitted are as follow [here fol-  
 “ low 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  
 “ 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 the 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 gene-  
 “ ral 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 calen-  
 “ dar 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 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 omit-  
 “ ted from said book, purporting to be the said Jurors’ Book, and  
 “ from said list, purporting to be said Special Jurors’ List; and the  
 “ said Daniel O’Connell further saith, that said several persons so  
 “ omitted as aforesaid, had been 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 panel 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 said list, purporting to be the said Special Jurors’ List for the  
 “ year 1844, so made out as aforesaid, to the danger 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 per-  
 “ sons named in the said paper writing, purporting to be such gene-  
 “ ral list as aforesaid, was without the knowledge, consent, privity,  
 “ contrivance, suggestion, or sanction of the said Daniel O’Connell,  
 “ or of any person for him, or with him, or with his privity, or in any  
 “ way whatsoever by his authority, or on his behalf, or with his pri-  
 “ vity, and that the said panel was so arranged as aforesaid from the  
 “ said paper writing, purporting to be the said 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 be-  
 “ fore the said panel was so arranged; and this the said Daniel  
 “ O’Connell is ready to verify; wherefore he prays judgment, and  
 “ that the said panel may be set aside, and quashed, and so forth.”

The *Attorney-General*.—My Lords, as the indictment is joint, I think the proper course will be to enter a suggestion on the record of the death of the Rev. Peter James Tyrrell. The officer should take it down now, and he can afterwards enter it formally on the record.

The several challenges were then handed in on the part of the traversers.

Sir *Colman O'Loghlen* stated that there was some difference between the challenges just handed in, and that of Mr. O'Connell; in one averment, in stating, in addition to the allegation, that the paper writing, purporting to be a general list, was illegally and fraudulently made out, they added, that it was so made out for the purpose and with the intent to prejudice the said traversers in the cause.

A demurrer was then handed in by the Crown, and the traversers joined in demurrer.

The *Attorney-General*.—My Lords, on the part of the Crown, I demur to this challenge. The 3 & 4 Will. IV. c. 91, sec. 4, provides, that “for the assistance of the Sheriff in framing the Jurors' Book, “the Clerk of the Peace in every county, &c. shall, within one week “after the commencement in every year of the Midsummer Sessions, “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, or other district of collection, and to the collectors of other cess or assessment “wherein 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 the Act as aforesaid, and also to perform and comply “with all other the requisitions in the said precept contained.” The 25th section provides for the mode in which the officer is to strike a special jury, when an order for it has been obtained. The contrary not being averred in the challenge, it must be taken for granted that the special jury was properly made out by the Sheriff, from the document purporting to be the Jurors' Book for 1844; and there is nothing on the face of the challenge to show that the High Sheriff has not done his duty, therefore he must be assumed to have complied with the section of the Statute in every particular. We must then go back to the 9th section, to ascertain the manner in which the Jurors' Book, from which the Sheriff is to take the special jury, is made out. By the challenge, it is endeavoured to be established, by facts appearing on the face of it, that the Jurors' Book for 1844 is null and void. The early part of the 9th section provides for the return of the list by the High Constable to the Recorder, and for the mode in which the collectors' lists are to be corrected by the Justices at the sessions, or by the Recorder; and then enacts: “and when every such list shall be duly corrected by the Justices “present at such special sessions, or adjournment thereof, and allowed “and signed by them, or three of them, they the said Justices shall cause “one general list to be made out therefrom, arranged according to “rank and property; and the presiding Justices at such sessions shall

“ deliver the same to the Clerk of the Peace, who shall thereupon  
 “ cause the same to be truly and fairly copied in the same order, in a  
 “ book to be by him provided for that purpose, and which book shall  
 “ be called the Jurors’ Book for the year.” Under this section, there-  
 fore, the Recorder in Dublin having corrected and allowed the col-  
 lectors’ or parish list, is to cause a general list to be made out there-  
 from, containing the names of all persons whose qualifications have  
 been allowed, arranged according to rank and property, and to deliver  
 it to the Clerk of the Peace, on whom the duty is imposed by the  
 statute to make out the Jurors’ Book from the general list, and to  
 deliver it to the High Sheriff. It is a settled principle of law, that  
 public officers are presumed *prima facie* to do their duty ; and there-  
 fore, in the absence of a distinct averment in the challenge of non-  
 performance of these specific duties, the inference of law is, that  
 they were performed ; *Williams v. East India Co.*, 3 East, 192 ;  
 The performance of their duty by the respective officers is not nega-  
 tived by the challenge, and must therefore be presumed to have  
 taken place. There is no averment that the Recorder did not  
 deliver the general list to the Clerk of the Peace. The averment  
 in the challenge is a negative pregnant, which establishes this affir-  
 mative, that a general list had been delivered to the Clerk of the  
 Peace. It is not negatived that a general list of some description  
 was delivered to the Clerk of the Peace, and therefore I am entitled  
 to assume that there was ; nor that the Jurors’ Book was made out  
 from that list ; nor that the Clerk of the Peace did not hand over  
 the Jurors’ Book to the High Sheriff. It is not controverted in the  
 challenge, that the High Sheriff made up the list of jurors regularly  
 from the Jurors’ Book of 1844. All this not being controverted by  
 the challenge, is in point of law admitted. The challenge runs thus :  
 “ 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 the said several last-mentioned lists, one general list, containing  
 “ the names of all the persons whose qualifications had been so allowed,  
 “ arranged, &c. ; nor did the said Recorder thereupon, or at all,  
 “ deliver such names to the Clerk of the Peace, to be fairly copied by  
 “ said Clerk of the Peace, in the same order as by said statutable en-  
 “ actments is directed.” This averment is nothing more than this,  
 that the Recorder did not deliver to the Clerk of the Peace, a  
 general list, containing the names of *all* persons, arranged according  
 to rank and property, on the parish list, and that would be proved  
 not only by the omission of a single name, but by the transposition  
 of a peer’s son for a baronet. By that kind of ingenious special  
 pleading, the Court is to infer, that no general list was made out,  
 contrary to its own judicial knowledge. It is not even negatived  
 that a list, purporting to be a general list, was delivered to the Clerk  
 of the Peace. Thus, if a person in the employment of the Recorder  
 was to omit or transpose a single name, the whole of the Jurors’ Book  
 for the county would be nullified. The challenge then states : “ and  
 “ the said Daniel O’Connell further says, that a certain paper wri-  
 “ ting, purporting to be a general list 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 the general list, does not contain the names of all the persons whose qualifications have been allowed, &c., by the said Recorder, but omitted the names of divers, to wit, sixty persons, &c." It then goes on to state the names of those persons : "and the said Daniel O'Connell further says, that from the said fraudulent paper writing, purporting to be such general list as aforesaid, 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." By this pretence the Jurors' Book (which purports to be among the records of the Court, not simply in the case of the *Queen v. O'Connell*, but in every other case) handed to the High Sheriff by the officer properly authorized, is to be nullified, because some unknown person, whom nobody can suggest the name of, might have or did, for a fraudulent purpose, erase or omit certain names, in doing the duty imposed on him by the Recorder. Under these circumstances, it must be contended on the other side, that every jury for the year 1844 in Dublin, is to be struck from the Jurors' Book of 1843; for, by the provisions of the Act, if there is no book for 1844, the Sheriff must go back to the book for the former year. The alteration, whether intended so or not, has the effect of prejudicing the Crown, by delaying the trial. What I submit to your Lordships is this : there is no averment at all stating that the Recorder did not hand a general list to the Clerk of the Peace, the law therefore presumes that he did. There is no averment that the Clerk of the Peace did not make out the Jurors' Book from a general list. There is no averment that a Jurors' Book for 1844 was not made out by the Clerk of the Peace; no averment that the Sheriff did not make out a special jury list, containing 717 names; no averment that the jury was not properly struck. It is therefore to be presumed that these things were done. There is no averment of fraud or contrivance on the part of the Crown, the High Sheriff, the Recorder, or the Clerk of the Peace. The Jurors' Book is a final record, that on which the Sheriff is to act. That is clearly decided by the case of *Regina v. Conrahy*, 1 Cr. & Dix, C. C. 56, and *Regina v. Fitzpatrick*, 1 Cr. & Dix, 522; and that an irregularity in the book did not justify a challenge to the array. The enactment has been decided by Chief Justice *Doherty* and Judge *Torrens* to be merely directory. My Lords, it is not stated in the challenge, that the act done by some person unknown, was to the prejudice of Mr. O'Connell, although it is so stated in the other challenges. It would be endangering the proceedings in every court of justice, if your Lordships were to put it in the power of any individual, by an alteration in the general list of jurors, to nullify the proceedings of the Court. If this unknown person, whoever he may be, can be discovered, I shall be happy to take any proceedings against him. It would be very desirable that justice should be brought home to him, whoever he may be; and I am sure



that the Crown is as strongly interested as those engaged on the part of the prosecution; but I cannot consent to or allow a challenge of this kind, without taking the distinct opinion and decision of the Court upon it. It would be productive of the greatest mischief to nullify the Jurors' Book for 1844; in point of law there is no ground for treating it as null and void. I may observe, that in England, according to the case of *the King v. Edmonds and others*, 4 B. & Ald. 471, there can be no challenge to the array in a special jury case. For these reasons I trust the Court will be of opinion that the demurrer to the several challenges should be allowed, and the trial permitted to proceed.

*Sir Colman O'Loghlen.*—My Lords, I am counsel for the traverser, Daniel O'Connell. I do not understand the learned Attorney General to rely on his last observation as to the right to challenge to the array to a special jury.

*The Attorney General.*—I certainly do, and I cited *Rex v. Edmonds* with that view.

*Sir C. O'Loghlen.*—It is laid down in *Dickenson's Quarter Sessions*, by Sergeant *Talfourd*, p. 501, note, that a challenge to the array of a special jury does lie. The same position is laid down in *Hayes' Crim. Law*, 443, and in *Bacon's Abridg. Jury. D. Rex v. Brumage*, 3 Wils. 439; *Rex v. Johnson*, 2 Str. 1000; and in *Andrews*, 85, 104; *Rex v. Nolan*, 1 Huds. & Br. 164. With regard to the effect of this challenge the Attorney General has stated, first, that there is no averment that the Recorder did not make up the general list; and secondly, that there is no averment that he did not hand over to the Clerk of the Peace the general list, and that the Clerk of the Peace did not make out the Jurors' Book for 1844. Now, these facts are averred as distinctly as they possibly could be. The challenge, after referring to the correction of the list before the Recorder, goes on to state: "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 statute, &c.; that the several persons whose names are hereinafter mentioned, were then and there adjudged by the 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 said 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 qualifications had been so allowed, arranged according to rank and property; nor did the said Recorder thereupon at all deliver such general list containing such names to the Clerk of the Peace to be fairly copied by the said Clerk of the Peace in the same order as by said statutable enactments is directed, but on the contrary neglected so to do." With regard to the word "all," if issue was joined on the fact, and if it was shown that one name was omitted, it would be sufficient. The words of the Statute, sec. 9, are: "They the said Justices shall cause one ge-

“neral list to be made out therefrom, containing the names of *all* persons “whose qualification shall have been so allowed.” It is specifically averred in the challenge that the Recorder did not cause the list to be made out, and that he did not deliver it to the Clerk of the Peace. We then go on: “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 made out.” The Attorney General did not dare to join issue on that point. By demurring to the challenge he has admitted the truth of the averment that the general list was illegally and fraudulently made out. I will now show you that the Jurors’ Book, from which the special jury in this case was struck, was made out from this list, so illegally and fraudulently concocted. My Lords, the next averment is this: [*counsel here read the remainder of the challenge*]. Thus we have taken all the facts step by step. We have averred in precise language that no general list was caused to be made out by the Recorder; secondly, that no such list was delivered to the Clerk of the Peace by the Recorder; thirdly, that a fraudulent book was concocted, from which this special jury was taken. The present panel is therefore fraudulently taken from a list concocted by some person whom we do not know. The Crown might have joined issue on these facts. The Attorney General said there was no averment that this was to the prejudice of Daniel O’Connell. The word “fraudulently” would include that, but besides, the challenge concludes “to the wrong and injury of the said Daniel O’Connell.” The fact being admitted upon this demurrer that there was a fraudulent list concocted, that the Jury Book was made up from a fraudulent list, and the special jury was taken from the Jurors’ Book, the next question is, what is the effect of that, and is it a ground for challenging the array?

The LORD CHIEF JUSTICE.—I do not know whether you are not putting the matter further than the pleading warrants, in using the word “concocted.”

Sir *Colman O’Loghlen*.—I mean “made out.” The principle contended for by us is, that the general list was fraudulently made out. There can be no doubt that if the Sheriff acted fraudulently, and if he was to omit the names, it would be a ground of challenge. At the Maryborough Special Commission, page 259, in Munday’s Report, Chief Justice Bushe says: “Your duty is to try, whether this is an “impartial panel, or has it been so constructed as to deprive the prisoners of a fair trial. If persons have been left off that panel, or “corruptly placed, or postponed in such a manner and to such an extent, as would deprive the prisoners of impartial jurors, or throw “them into the power of jurors prejudiced against them, then this is “not an impartial panel, and you will find accordingly; but if otherwise, “there is no pretence for this challenge.” That case establishes that fraud in the Sheriff is good ground for a challenge to the array. No fraud is now imputed to the Sheriff, our allegation is, that fraud was committed before it came to the Sheriff’s hands; and I ask, is there a substantial distinction between the cases where fraud has been com-

mitted by the Sheriff, and where it has been committed before it came to his hands. The Attorney General stated that the Statute points out a remedy by imposing a penalty on the person who acts corruptly. What remedy would that be in a case of life and death? The 36th section gives the same remedy against the Clerk of the Peace, and all subordinate officers, and against the Sheriff; yet fraud in the Sheriff is a good cause for a challenge to the array. Therefore, if a subordinate officer acts fraudulently, it is a good cause of challenge. The Attorney General referred to one or two cases, *Regina v. Conrahy*, and *Regina v. Fitzpatrick*. In the first case Judge Torrens decided that the Statute was merely directory. There is no analogy between that and the present case. There it was merely alleged that the form had not been complied with, but no fraud was alleged of any kind. In the other case, Chief Justice Doherty overruled the challenge *pro forma*, and reserved the point for the twelve Judges. It did not become necessary to decide the question, for the prisoner was acquitted. Those cases, therefore, are merely blind cases, and have nothing to do with the present case. The Attorney General stated that a formidable principle would be decided if the challenge was allowed; the formidable principle is the other way. It would lead to this, that provided the Sheriff does not act corruptly, if every other officer acts corruptly, the party has no remedy whatever. If there is no precedent, it is because the question never has arisen before. [Mr. Justice BURTON.—How is the fraud alleged in this case?] The allegation is, that the list was illegally and fraudulently made out, by some person or persons unknown, and that fact is admitted by the demurrer. So the case stands thus; no general list was made out by the Recorder, as directed by the Statute; no such list was delivered by the Clerk of the Peace; but a fraudulent list was made out by a person unknown, and from that the Jurors' Book and the special jury panel were taken. Notice was given of this to the Crown Solicitor, and the question is now, whether that is sufficient to set aside the whole panel. In point of law it is. The only substantial objection on the part of the Crown is, that allowing the challenge would lead to delay. I answer, that it would only postpone the trial for a short time. Delay is necessary when a packed jury list is made out for the purpose of injuring us. But even if your Lordships do not consider that you have jurisdiction to act in this case, I would apply to the Attorney General himself, and ask him, even at the eleventh hour, to reconsider the decision he has come to, because I ask him how can he expect that this trial will be satisfactory to the country, if there is a conviction, *per fas aut nefas*, when the fact of the fraud is admitted?

The Attorney General.—I made no such allegation, or no such admission, and no counsel is justified in stating that I did.

Sir Colman O'Loghlen.—I merely stated that the Attorney General admits the fact by the demurrer which he has taken to the challenge.

Mr. Fitzgibbon.—My Lords, I am, with my friend Sir Colman O'Loghlen, to sustain the challenge, not only on the part of my

respected friend, Mr. O'Connell, but also of the other traversers, as it was not thought right that the time of the Court should be taken up by arguments offered by as many counsel as there are traversers. My Lords, an anxiety is plainly expressed in the Jury Act that the Jurors' Book should be framed according to the provisions of it, that it may be fairly constituted. The legislature directs that a list should be made out by each collector, of every man residing within their respective districts, without wilfully omitting the name of any one individual. The legislature uses the comprehensive words, "all the names," in every instance. That being so, the question is, whether a special jury panel, from which a substantial number of names is omitted, is properly constituted. Every person is interested in the list having all properly qualified persons included in it, and, therefore, it is directed that the list shall be open for the inspection of every person, for the purpose of suggesting or expunging names, and for the purpose of preventing the fatality which has occurred at the present trial, two of the parties on the list being erroneously described. The Attorney General stated that this Jurors' Book was made up from the list revised by the Recorder. Why was that not pleaded? It was alleged on the motion that there was some collusion between the unknown person, who made this omission, and the traversers. But the traversers have plainly averred that they were not in collusion, or in communication with him. If the Attorney General had taken issue on that averment, it would have been decided whether it was true or false. It is common reason and common sense that a man accused of a heinous crime, is entitled to be tried by a jury legally constituted; and it is no answer to tell him that it has not been legally constructed, but the prosecutor is no party to the fraud, which has been committed by a person unknown to you and to them. The law says, that the Recorder shall cause to be made out a list, comprehending the names of all those persons adjudged to be properly qualified. The Recorder did not do so. Those acting for the Crown had distinct and express notice that the list was fraudulently and illegally constructed. If there is any remedy at all for the traversers, it is the present one. Suppose the case of a jury list so cut up as to consist only of outrageous partisans, and a jury struck by the Sheriff from such a list; is the party to be first tried, then punished, and then to have his remedy against the sheriff? Yet that is the proposition which the Court is called on to entertain. I admit that it is always presumed that a public officer does his duty until the contrary appears; and the contrary appears here. The Recorder's own handwriting is to the parish list. He had a simple and easy duty to perform, to see that the general list was made out correctly from it, and to rectify the omissions. Those are the provisions of the Act of Parliament. They have not been complied with, and gross neglect has taken place. Is the Recorder to be presumed to have done his duty after this proof that he has not done it? Fraud will vitiate everything. It will vitiate a judgment of your Lordships' court, or of the House of Lords. Fraud committed, even without the intent of the parties, will vitiate the most solemn deed. If it is al-



tered by a third party it is no longer valid. There is no proceeding in law which fraud will not invalidate; and will it not vitiate the construction of a tribunal which is to pronounce the guilt or innocence of the person accused, who, in the oldest language of the law, is always to be presumed to be innocent, until he is proved to be guilty. In such a case the Court should try to get rid of technicalities, in order to arrive at a just conclusion. We have heard much of the delay of justice. For the purpose of rectifying this fraud, it is a desirable thing to delay justice. But the delay necessary for rectifying the omission will be short. It is the right of the subject and the duty of the Crown to delay this trial. The Attorney General has objected to this pleading for want of technicality. He says that there is no averment; that the Recorder handed over a list to the Clerk of the Peace. There is an averment that he handed him over an illegal list. The argument of the Attorney General is this: that because the 35th section gives a remedy in a certain case, it was not intended that there should be one in other cases. That is a complete *non sequitur*. No provision was made for a case like this, because the Legislature did not presume that such an occurrence could take place. Let me not be understood that I object to any gentleman on the panel of twenty-four, who have been called over. Let no man imagine that I intend to allege or insinuate that any one of them is not a fair and upright and impartial juror. I think it necessary to guard myself against that supposition. That is not the question at all. I know not who the gentlemen are who have been selected. I am arguing against the legality of the panel. I am not suggesting that we cannot receive a fair trial from the jurors who have been called. I know them not, and I am therefore entitled to presume that they are upright and honourable men.

The *Solicitor General*:—My Lords, before I reply to the several objections which have been relied on, I must advert to an expression which was made use of by Sir *Colman O'Loughlen*. I certainly did regret to hear him make use of such an expression, which I would willingly attribute to inadvertence—I mean the expression “a packed jury.” I must give him the benefit of that supposition, because I am unwilling to suppose he used the expression wilfully, as it was totally unjustified by the case put on his own showing. I would not advert to this, but that I felt that an erroneous impression might go before the public, from the words which were so thrown out, which were wholly unjustifiable and untenable. Am I not authorized in saying, that such were unjustifiable, when Mr. Fitzgibbon was obliged to admit that he had no grounds for saying that any of the gentlemen who had been summoned would not fairly decide the issue, and therefore I hope the expression was not deliberately used.

My Lords, I shall now apply myself to the legal grounds upon which it is contended that this challenge ought to be allowed. The Attorney General insisted, as I do now, that in point of law this challenge is not maintainable. I think that it is different altogether

from the case of a challenge on the ground of unindifference in the Sheriff. I am not prepared to argue, that if a challenge were put upon the ground that the Sheriff had arranged the panel partially, that such would have been a bad challenge, because no such special objection has been relied on.

It is said that the word "all" is a material word in the Act of Parliament, and in the challenge. Your Lordships will recollect, that the foundation of the argument of the Attorney General is, that certain averments were omitted, which were necessary to be made, in order to repel the legal presumption, that certain officers had done their duty. He said, they have not negatived the fact, that the Recorder did make a list; but it is said that they did do so, because the word "all" is material, and that if an issue had been taken, it would be incumbent on us to shew that every name had been introduced, and that if there was a single omission, or a single misarrangement, the Recorder would not have put in all the names, and consequently that amounts to a denial that he made a list; but even supposing that a name had been omitted, it is idle to say that they have put upon that record any thing like the allegation, that no lists had been made out. They have alleged that no list containing all the names was made out; but it is plain, he did make out a list, arranged in some form. It is then said, the Recorder was bound to deliver a list of all the names he had adjudicated upon. The question here is, whether the book when handed to the Sheriff, is or is not a book which is to furnish the juries for the ensuing year? We are taunted with this, that certain persons did something with a list. That may be consistent with the allegation that it was done before the Recorder had made the list. Suppose a list had been fraudulently furnished to the Recorder; it would be monstrous to say that was a fraudulent list, not because the Recorder was guilty of the fraud, but because some person had practised a fraud upon him. They do not say by whom the illegal list was made up; but there is a general assertion that the list was made up fraudulently.

It is said that we have admitted by our demurrer this to be to the manifest prejudice of the traversers. We do not admit any such thing, for that could only arise upon facts which do not appear upon the record. I refer to this, as it is important to disabuse the public, from the assertions of counsel that such admissions had been made. It is said, then, we should have joined issue upon the fraud. What fact could we join issue upon? I have always considered if fraud is meant to be imputed, it should be specified—it should be fastened upon some person in some manner. What issue could be taken upon an allegation, to which no defence could be applied? What is to go to the jury? There is no single fact averred, there is no single person charged with fraud, and am I then to be told we admit fraud, because we do not take issue upon what is not alleged; it is therefore impossible we could take issue, and because that is so, we are forced to demur. How can I admit fraud by a person unknown? Suppose a fraud did exist, why did they not put it upon the challenge that the fraud occurred through the default of the Recorder, or

some person employed by him? then we might be called upon to go before a jury, and to risk that upon an issue. Then it is said, that if the Sheriff had acted fraudulently, that would be a good ground of challenge. I do not dispute that; I do not go the length of saying that if the Sheriff was guilty of improper conduct, that would not be a good ground of challenge. But it is said, that there is no difference between fraud by the Sheriff, and those who had acted before the lists came to his hands. That does not follow. When the book once comes into the Sheriff's hands it cannot be altered, but is to remain the book for that year, therefore it is idle to say that there is an analogy between the facts, before it comes to the Sheriff's hands, and afterwards.

**Mr. JUSTICE CRAMPTON.**—Does not the allegation in the challenge amount to this, that the list was fraudulently made out, and that fraud was committed in omitting the names of sixty persons, whose names had been adjudicated upon?

**The Solicitor General.**—I admit that there is a general allegation of fraud, but in the legal sense that is not a sufficient allegation. It is further alleged, that it was to the prejudice of the traversers, and it is said that should be replied to. That should not be replied to, because it is a mere inference that it is to the prejudice of the traversers, without stating any facts. If they had stated that persons unfriendly to them were put on the list, that would be an allegation of a fact, from which an inference could be drawn; but in the absence of any fact, there is a general objection, that a fraud was committed by some person unknown, to the prejudice of the traversers. Suppose it was done by a person who did not mean to injure the traversers, but to serve them. It may have been done by such person unknown to them—but whether they were known or not, yet, when it takes place without default of any person over whom the Court has control, it would be monstrous to say that therefore the Jury Book should be thrown aside. An appeal has been made to the Attorney General, that he ought to yield to this challenge, as otherwise there could not be a trial, which would be satisfactory to the country. I could understand this, if the objection were to the special jury panel returned by the Sheriff: but we are told that the Jury Book for 1844, handed by the Sheriff to the Clerk of the Peace, omitted fifty-nine names, and that the book could not be used for the year 1844. If then, we yield to that, the result would be, that either the trial must stand over until January, or, if they were to be tried, they should be tried by the condemned jury panel of 1843, for the revision of which the trial stood over to the present time. It is said, that we admit the Jurors' Book was illegal; we do not admit any such thing. When I take the demurrer to this challenge, I admit the facts pleaded, but I do not admit the legality, because that is a question of law, and not fact, and it is for that purpose we have taken the demurrer. We are called on to consent to have this book amended: we could not consent; it would be illegal; because, by the provisions of the Act, after the book once gets into the Sheriff's hands, it cannot be amended, it is not competent to make the alteration. If we had

consented, we would have consented to what we had no right to do, nay, more, this Court could not order it to be done; but, if we did consent, the consequence it would lead to would be this, that every trial by this panel would be open to the same objection. This case has been argued, as if there was no case to be tried by this jury panel but the case of *the Queen v. Daniel O'Connell*, and it seems to be expected that the case should be different from any other case. The charge is, that fifty or sixty names have been omitted, if those names were introduced, there would be a ground of challenge for so introducing them.

Mr. JUSTICE PERRIN.—If the Recorder had found that in copying the general list, the clerk had made some mistake, if he had discovered that before they were given to the Sheriff, had he not power to correct it?

The *Solicitor General*.—I think not. The object of the Act was, that there should be a book, which, when made up, should be unalterable. The 35th section provides, that if any person offends against the Act by altering the jury list, and it is proved to the satisfaction of the justices, he shall be liable to a penalty. If, therefore, the Sheriff had taken upon him to put in or omit names of persons unqualified, he would have done what must have subjected him to a penalty, and which would be good ground of challenge. Further, suppose a trial at an Assizes occurring after the delivery of the jurors' book to the Sheriff, and, after a verdict, a conviction occurred under the Act for a fraudulent error in the book, and then, pursuant to the Act, the book was amended, it could not, in such case, be contended, that the verdict could be set aside, and if so, it follows that a finding by a jury, selected from the present list, must be a correct one.

Mr. *Moore*.—I am instructed, on the part of the traversers, to consent that the list should be sent back to the Recorder, for the purpose of being amended, and that then a new special jury should be struck, and the trial proceeded with.

The *Attorney General*.—I object altogether to the proposal. It is a proposal which cannot be complied with: there is no power in the Act by which it could be done. The alteration would affect every proceeding taken during the whole year, and if any person was tried under the new list it would be erroneous, and a party not bound by the consent could object to the proceedings.

The LORD CHIEF JUSTICE.—The majority of the Court are of opinion that this demurrer must be allowed, and consequently, that the challenge must be overruled. The subject matter is not new to the consideration of the Court, inasmuch as the argument has embraced in substance what the Court were occupied with on Friday last, and the Court then gave judgment: and upon every consideration I have been able to give the subject since, I have found no reason to find fault with the judgment then pronounced; on the contrary, all the consideration I have been able to give the case since, and in the progress of the argument to-day, has tended to confirm the opinion I then entertained. The application then under the consideration of the Court



was, that for certain reasons then brought forward, the panel should be quashed. By the present proceeding, the same question precisely is not the question upon which we are called on to give judgment, but I confess I cannot see the principle which would lead me, on the present occasion, to entertain a different judgment from what I then formed, and in which I had the concurrence of my brethren on the bench. At present, the case comes before the Court in the shape of a challenge to the array. There are several challenges, but in delivering the judgment of the Court, I shall consider the case as if there was only one, as the cases do not contain any ground of distinction between them. Whatever rule is right in one case is right in the others. Now the objection, as spread upon the face of the challenge, is this: that the Recorder of Dublin having, in the revision of names presented to him for his judgment and consideration, upon the question of their allowance to be admitted upon the jury list or not, did not, as he was bound to do by the law, make from that list so presented to him, a return 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 persons presented to him for revision, as coming from the officer in the first instance, but, on the contrary, he omitted so to do. It then goes on to state, that the said lists did not contain the names of all persons whose qualifications had been allowed upon the correcting, allowing, and signing said lists by the Recorder, but that he omitted the names of fifty-nine persons. It then avers that the said persons are resident within the district to which they belong, and that they are qualified to serve. Now, the question is, that statement having been demurred to by the Attorney General, and therefore the facts being admitted so far as they were properly pleaded, is that a ground for the allowance of this challenge to the array of the jury panel? It is necessary to consider what the law is under which those proceedings have taken place. It is a code of law incorporated into one Act, the previously existing law being thereby essentially modified and altered. Just to give an outline of what that system of laws is, as so introduced, I shall take the liberty of stating my general views upon this Act. It was made for the entire kingdom. It is not restricted to the case of the *Queen v. O'Connell*. It is not an act restricted to one county, but is applicable to and intended to be a statutable provision for the appointment of juries throughout Ireland during the ensuing year. Now what were the steps to be taken under it? The Act finds a list of officers provided, some of high rank and distinction, others in subordinate stations; some, like the Recorder and the magistrates in other Courts, invested with high judicial powers; others again merely ministerial officers, entrusted in different degrees and at different stages with the administration of the law connected with the preparing of the lists from which the jury were afterwards to be selected. There is a great distinction throughout the Act between judicial and ministerial officers. The Recorder is judicial; the magistrates at sessions are judicial; the Sheriff is ministerial; the collectors are all ministe-

rial. Now, according as the officers so called into operation are of a judicial or of a ministerial character, in different degrees is entrusted to them the carrying the Act into operation. I must observe, that although the Act contains a great many provisions, though it appears a well-considered Act, intending to provide a general system connected with the administration of justice, and of the highest importance to all suitors and all persons, whose life, property, and character are at stake, and though intended to repeal all former Acts, and to make a general provision under the system detailed in this Act, no further proceeding appears in any part of the Statute, to limit or control the powers therein mentioned to have been provided, except as specified in the Act. The proceedings under the Act begin with the ministerial officers. The Clerk of the Peace, at a certain time of the year, in the month of July, with a view to prepare the jury list for the ensuing year, is to issue his precept to the High Constable and the several cess collectors, to make out and prepare a list of all who are to be called on to serve on the jury list. The Act defines who are to be admitted upon the jury list, and takes the precaution that none are to be admitted but those who are qualified to discharge the duty of such officer; and on the other hand, it equally desires that no person should be rejected who is duly qualified. In the city of Dublin, the parish collectors are the officers corresponding to the barony collectors in the counties in Ireland; and as the challenge has reference to the city of Dublin alone, I shall, in my observations on the Act, consider it as if it was an Act severally and solely for the city of Dublin.

The Clerk of the Peace issues his precept to the parish collectors, and they are enjoined by the language of the Act, to make full and accurate lists, omitting none, and rejecting none that are qualified; and they are to make a return of those lists to the Clerk of the Peace, and after a certain time those lists are to be laid before the Recorder, for his revision and adjudication upon the subject. What is he to revise and adjudicate upon? The right of every person within the several parishes, who claims a right to be admitted upon the list; and on the other hand, objections to the admission of any improper person who should fail to establish his right. Now, in order that those matters may be fairly investigated, the lists so returned are to remain open, in the office of the Clerk of the Peace, for a period of three weeks, and every person who may have a desire to look at the lists, is entitled by law to make himself master of them, according as they are returned. A party may oppose the claim of a person desiring to be admitted as a juror, and it is for the Recorder exclusively and finally to make an adjudication whether he is to be admitted or rejected. He is armed with full power to enable him to conduct the investigation to a satisfactory conclusion, but he is not to do so without giving the parties interested notice whether their claims are disputed. After that public investigation, the Recorder comes to a judicial decision, which, so far as I am aware of, is not controllable by any power in the community, if it be not done corruptly. The Court of Queen's Bench has a super-

intending power over all magistrates and officers, if an attempt is made to evade the law, or to violate it by fraud or corruption; but if no such charge is made out, their conduct is not subject to investigation or control. The Recorder has been selected by the Legislature as the judicial determiner of cases of this description. It is a high and important privilege with which he is so invested, and with it, is in a great measure connected the flow and fountain of justice, and the purity of the administration of the law. But he was left without control; and there may be very good reason why he was so, as we may presume there was for making his decision final and beyond appeal. In this case the precepts were issued and returned by the parish officers; the time was appointed for the investigation; it took place, and the Recorder made his revision, and having pronounced his decision, it was irrevocable, and could not be reversed by any one. After that was done, another duty is imposed on him, that is, that he shall make, or cause to be made, a new list, arranging the persons according to rank and property; and the Act directs, that in the newly arranged lists, he shall include all persons who, on a previous revision, have substantiated their claims before him. But it is to be observed, that no penalty is imposed on the Recorder for omitting to do this, or any other duty which the Act imposed on him. There is no imputation in this challenge, that the omission which is said to have taken place on the part of the Recorder, was the consequence of improper conduct, malversation, or corruption—none was imputed to him. But it was said the Act required he should make out the new lists according to rank and property, classing the persons according to such order required by the Act, and that he should do so with respect to all whose claims should be allowed. I do not know how far this is to be carried, but if I understand the argument right, they push it to that extent. Here were two duties imposed on the Recorder. First, he is to revise the lists delivered to him by the collector, and he then is to make a new list according to rank and property; and he was equally bound to have made no omission, but to have included in the classification of rank and property, every individual, just as much as he was bound by the Act to have allowed or disallowed his claim generally to be received as a juror. Now how far is that to be carried? Suppose the Recorder had included every person whose claim had been allowed, but suppose he had omitted to class them according to rank and property, are all subsequent proceedings to be avoided, and to be the subject of a challenge to the array, because he has omitted to follow the directions of the Statute in this one instance. Suppose he did make a classification according to rank and property, and suppose he admitted all those persons entitled, will it be contended that he has made a wrong classification, because, by the judgment he has come to, he has put men worth £2000 at the bottom of the list, and put at the top men not worth so many hundreds. Unquestionably he would have deviated from the directions of the Statute, but is that a reason why all those proceedings should be null and void, and why, if a trial took place, it should be in the

power of either of the parties to show that part of the Act had been deviated from, and that, therefore, the jury panel in that particular case was good for nothing. If the argument be correct, the consequences must go that length, and I cannot help thinking that such a decision would be most injurious and dangerous to the community. This is a judicial act in the Recorder, as much in one case as the other. The Act is directory in pointing out to what his attention is to be directed, but it leaves and intrusts to his discretion the manner in which he should act. Now, if that be so, and that is the position in which the Recorder stood, then his act is not to be the subject matter of a challenge to the array. I do not mean to question whether the special jury panel may not be challenged: several cases were cited, in which it was so decided: I do not mean to controvert that, the more so as it seems not to have been pressed on the other side. But I observe that in those cases a protest was made upholding their right, and nothing was done to remove it. It is not because the challenge was to the array of the special jury, but because the Recorder has not followed out the directions of the Act of Parliament, and that some person unknown has had the opportunity of making an alteration in the lists so returned, the sixty persons whose names had been allowed by the Recorder do not now stand upon the list. The Recorder was not answerable for that; no blame was imputed to him in the way of any thing corrupt or fraudulent. If he had made a mistake, no person would contend that was to be the subject matter of investigation. Moreover, no person in the community has a revising or controlling power vested in him, and if he had come to a wrong conclusion, the Court of Queen's Bench has no power of investigating whether he was right or not. There is no averment in the challenge he did not make out the lists according to the Act; the averment is that he did not make out such a list without excluding any. The list, so made out according to rank and property, is handed by him to the Clerk of the Peace, the officer selected by the Statute, with whom such lists should be deposited; then the Recorder's duty and jurisdiction are at an end. The list then goes into the hands of a subordinate officer, whose duty is chalked out by the Act of Parliament, which he was bound to follow, and to transmit this list to the hands of the Sheriff; the duty of the Clerk of the Peace is to have the list made out, called the Jury List, and when it is so made out it is his business to hand it to the Sheriff. The Sheriff receives it, and if there had been corruption on the part of the Sheriff, who is the officer of this Court, not like the Recorder who is not, whose duties are intimately connected with preparing the jury list, he would be liable to be called on to account, and moreover that would be properly the subject matter of challenge to the array growing out of the unindifferency of the Sheriff. But this is not the case with the Recorder. Who is to try his unindifferency? He is not here, or represented by counsel. Being a judicial officer, he stands besides in the same situation as the Master of the Crown Office, in the case cited from Barn. & Ald. In that case the Court, on public grounds, would not allow his conduct to be in-



investigated. If the conduct of the Master of the Crown Office would not be entered into, *a fortiori* the Recorder's cannot. This matter, unless there is some fraud on the part of the Recorder, cannot be entered into upon a challenge taken to the array by a person who comes for trial upon the issue joined by the parties, with which the Recorder has nothing to do. The Recorder has decided the matter, and his decision is final. It would be a great inconvenience that a delay should arise in this case, because the formation of the jury panel 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 should have accepted that offer; I am not called on to give judgment on that; but I say, every person who may be a suitor during the year 1844, has a direct interest in supporting and sustaining those proceedings. What would be the consequence if those proceedings are to be set aside? The necessary consequence would be, that it would be open to every person to take such an objection, and that his adversary would not have the power or the means of resisting the objection and upholding the list. This is a general list, and the parties concerned in supporting it are all the persons who may be suitors for the year 1844. They would have no means of explaining the facts alleged against the panel, because they were no parties to the making up of the general list, and knew nothing of it. This Act was introduced for the general purposes of the country, and whether wisely or not, the law has provided that the proceedings of the Recorder should be considered as judicial, and not capable of being appealed from, or revised by any other tribunal. The result is, that the jury list being prepared, the Sheriff is obliged by the law to take the materials as he finds them returned to him by the Clerk of the Peace, from which return he is to form his special jury. He has no power of altering it. He could not add to it any of the names which have been omitted; therefore, there being a general beneficial object to be attended to, there being, as far as I can see, no intention on the part of the Legislature to give any power of investigating or appealing from the proceedings before the Recorder, inasmuch as they are of a judicial and not a ministerial kind; my opinion is, that the demurrer must be allowed. I do not mean to throw out any opinion as to what has taken place. It may be explained, or may remain in obscurity. That is not the question. We have no power of investigating it. I therefore think, in conformity with the judgment of the Court on Friday, that this challenge is not maintainable.

Mr. JUSTICE BURTON.—This case has been the subject of so learned and deliberate a judgment by my Lord Chief Justice, and I so fully concur in all that has been said by him, that I do not think it necessary to occupy the public time further at this hour. I do not entertain any reasonable doubt on the subject; and I can only say that I have felt a great deal of anxiety in the course of the discussion, that every thing which concerns the administration of justice in the superior courts should be free from every possible imputation, and that there should be no interruption to the course of strict and

impartial justice. I certainly feel every inclination that all persons fit to be on the jury, and who are in such a rank as to qualify them to it, should be on the Jurors' Book, so that the great end of public justice should be effected, not only between the parties immediately before the Court, but other parties who may become suitors in the present year. I was for a moment struck with the proposition made by Mr. Moore, which I understood exactly as he explained it,—that, without investigating the strict law of the case, the parties should consent that the persons omitted should be in the present case considered as if they were on the Jurors' Book, and a new special jury should be struck. I was, I own, caught for a moment by the good sense of this proposition, and I am sure it was meant in perfect good faith; but I cannot but say, on consideration, that I think the most prudent course to be adopted on the part of the Crown was, not to accede to the proposition, not for the purpose of taking advantage of the mistake which has been made, or for embarrassing the traversers, but because it might lead to objections of a similar nature hereafter, which might be made use of for sinister purposes, and cause a great deal of embarrassment in courts of justice. We must consider this case with reference only to the challenge and the demurrer; and the first proposition which we have to determine is, whether the Jurors' Book, which has been made upon the revision, is a nullity? We must see what jurisdiction there is to declare it a nullity. The principal directions given by the Statute have all been complied with. The Parish List, the General List, and the Jurors' Book were all made up. All this was done by the properly constituted authorities. The jury, therefore, are *prima facie* selected from the proper Jurors' Book. Then we have to consider, whether the omission which the challenge to the arrayers has taken place, renders the Jurors' Book null and void. I should say, that upon this challenge the Court have little to do. I will not say that a case might not arise in which, circumstanced as this array is, the Court would be called on to consider whether it is null and void. But in my judgment, the terms of this challenge do not warrant the Court in holding that the jury list is an actual nullity. I cannot say that it is perfect, that a better list might not have been made out; but that is not the question. The question is, whether it is null and void? I will not say that proceedings of this kind may not be of so fraudulent a nature as to call for the interference of the Court. I should be sorry to lay down a proposition such as that, and I will not venture to do so. Perhaps it may be of little value to test a proposition of this kind by extreme cases; but perhaps they should not be entirely left out of consideration. Here are 717 persons admitted as persons fit and proper to serve on juries. Suppose a case where there really were 700 or 800 persons fit to serve as jurors, and that twenty or thirty only are returned. It would startle the mind to say the Court was bound by what was done there. But on the other hand, would it not be absurd to say this, that because a certain number of persons are omitted, suppose only one or two, that on that account all the proceedings are to be void? That would make the statute which was passed for the purpose of

securing a good jury, nothing but a subject of litigation, and in that way it would be more injurious than beneficial. I do not think, therefore, that the simple circumstance of the omission of a certain number of qualified persons, either through blunder or mistake, or improper conduct, is sufficient to render all the proceedings a nullity; and for my part, I think that in this case the challenge is not supported by the allegation of such matter as would authorize the Court to hold the proceedings a nullity. The traversers have not asserted but deprecated the presumption, or the supposition that the Recorder acted with any fraudulent intent in what he has done. It has been put as an inference from the facts, that he may have been grossly negligent. If that be so, why not state that as a ground of challenge? If it was intended to be relied on, it should have been stated. It is said that a certain number of names has been omitted; on the other hand, it is not denied that 717 persons are returned, and they furnish a sufficient number of persons to select a fair and impartial jury from. In order to authorize us to interfere, something more should be shown. The nature of such misconduct should be alleged and stated, and specifically stated, so as to enable the Court to judge upon it. This is not stated, and we are called upon to decide upon a supposition of this kind, not that the Jurors' Book is of no effect as to the parties in this particular case, but that it is null and void altogether, and no person bound by it; and although it is much to be regretted, that such a number of qualified persons should have been left out of the list, I have satisfied myself that we should not be acting on sound legal principles, were we to declare the whole proceedings void on this occasion.

Mr. JUSTICE CRAMPTON.—After the elaborate judgments which have been delivered by my Lord Chief Justice and my brother Burton, I would not, at this late hour, occupy the time of the Court further than by saying that I concur in that judgment, were it not that as one of the Court is of a different opinion, I feel bound to state my reasons for that judgment in this important case. The traversers complain of a particular injury to themselves, and, also of an injury of a serious and monstrous character, which they say is likely to result if this challenge be not allowed; on the other hand, it is said on the part of the prosecution, that a very serious injury is likely to result to the public, if this challenge should be held good. Now I quite agree with the proposition, that it is the bounden duty of the Court to keep the fountains of justice clear; but I, for one, know no mode by which that can be better attained, than by the Court fairly administering the law between the parties. Let us see what the law is on this subject. This is a challenge of great novelty, at all events it is quite unprecedented in point of form and substance; I do not mean to say that an established principle may not be applied to it, and that parties might not avail themselves of that principle, but I own I feel very little difficulty in forming an opinion on this challenge—I think it bad, both in point of form and substance; I go farther than that, I should feel very great difficulty in allowing the doctrine, that a challenge exists to the array of a

special jury, and undoubtedly the case of the *King v. Edmonds* is subject to a great deal of observation; but I do not rest my judgment upon that, I only state it lest I should be understood as affirming the doctrine that a challenge would apply to a special jury. But, suppose the challenge does apply, let us see whether it can be supported in the present case. There is no imputation against the Sheriff, none against the Clerk of the Crown—they have discharged their duty regularly and properly; the Sheriff's duty was merely formal, to attend there by himself and his agent, and to produce the books. This is all he has to do, the rest is performed for both parties by the Clerk of the Crown, on the part of both parties. His duty is merely ministerial. As to entering into a discussion, or making an adjudication with regard to the array of the panel he has no jurisdiction—his duty is merely to strike the special jury; what then is the ground of the challenge? not unindifference in the public officer, no such thing. This case seems to me to be similar to the case of *elisors*, and it is clear there could be no challenge where *elisors* had made their return, or against the return of the Master of the Crown Office. The ground of challenge here is not unindifference in the Sheriff. What is the doctrine of challenge to the array founded on? Take it on the highest authority, from the words of Lord Coke; he says, “that the challenge to the array is “in respect of the cause of unindifference, or default of the Sheriff, or other officers that made the return, and not in respect “of the persons returned, where there is no unindifference or default in the Sheriff.” That is the language of Lord Coke. But here the ground of challenge is not for unindifference in the Sheriff, or other officer making the return, but for partiality in an unknown person, who is supposed to have had access to the lists during the period they were under consideration, and before the Jurors' Book was formed. A fraud is alleged to have been committed, what is that fraud? The name of the person who committed it is not stated, nor is the fraud itself distinctly set out, unless it be by the statement of the omission of the names, which statement is studiously separate from the allegation of fraud, which makes the challenge extremely informal, though, no doubt, it was framed as accurately as it could be under the circumstances. The groundwork of the complaint, which is separated studiously from the charge of fraud, is this, namely, that the names of fifty or sixty persons, upon whom the Recorder had adjudicated as persons proper to be on the Jurors' Book, were not to be found upon that book, or rather upon the general list. What is ground of challenge to the array, according to law? A challenge founded upon partiality in the officers. You may challenge the return for fraud or mistake in the officer, but fraud in a stranger will not give the Court jurisdiction. It is said that this challenge should be allowed, because the fraud, if any, was committed in the process, during the revision of the list. The Recorder is not charged with fraud, all that is imputed to him is negligence, not fraud. On the contrary, it is alleged on the face of the challenge, that the Recorder had examined, and revised, and signed the alphabetical list, and had



discharged his duty so far with perfect propriety, and that the sixty persons were adjudged as fit to be put on the general list, and therefore on the Jurors' Book. The words "adjudged," in the Act of Parliament, is not unimportant, because it shows, as my Lord Chief Justice has observed, that the Recorder is the final judge, as to the duties which he has to perform under the Act; that his duties are strictly judicial duties, in the performance of which, there is no appeal to this Court, or to any body in the community. His acts are final, not subject to review or revision. He is responsible for the performance of those duties which the legislature has devolved on him, so far as a judge is responsible, not to any tribunal, but on higher grounds, and in another manner. The Recorder is first to pronounce an adjudication upon each name in the alphabetical list, and he is to sign that list; that is his first duty. He has to perform another duty, not less important—he is to cause one general list to be made from the list which he has revised and signed, and he is to make this change, and this change only, that he is to arrange that list, not alphabetically, but according to rank and property. This duty he is not to do with his own hands. That list is a statutable copy of his adjudication, an exemplification, so to call it, of his adjudication. The Recorder is to cause the revised list to be truly and fairly copied, and he is to deliver it to the Clerk of the Peace; the Clerk of the Peace copies everything, which, in contemplation of law, is the act of the Recorder, who is the judge; his duty is to see that it is fairly and truly copied, and when that is done, he is to deliver it to the next officer in succession, on whom the duty of framing the Jurors' Book devolves. There is no allegation in this case, that the omission is the act of the Clerk of the Peace; it is alleged to be the act of some person unknown. I say this exemplification is the testimonial of the judicial act of the Recorder. It is final, and no Court, no human being, has a right to examine it; neither this, nor any other Court can go beyond it; the returning officers are unconnected with it, whether Sheriff or Elisors—they have nothing to do but the plain duty devolved on them by this Act of Parliament. This challenge rests upon this ground, that no Jury Book was in existence, that is, there can be no special jury for 1844, unless it be formed from the Jury Book of a former year, or by consent. The question is not, is there any defective Jury Book, or is there a Jury Book at all; but is this Jury Book defective in not having sixty names on it? We must take it for granted, that these names were omitted, as was observed by the Solicitor General; the fact is not sworn to, but we must take it to be true. How far true? For the purpose of this argument, but not further, or one moment longer. I pass by the fraud, that is too loose and too blind an allegation to make the ground of a challenge; it is not said what it is, but they charge that there is an omission of sixty names from the Jurors' Book. There may be an injury to the individuals here, but we are not to consider this case as between the Crown and these parties; but we are to consider it as a case involving the legality of all the special juries, and common juries, during the course of the year; and whether the whole course

of the administration of the law is to be suspended. Is it right that it should be so? I say most clearly it is not. What is the jurisdiction of the Court with regard to special juries? It is empowered to order a special jury, but it must be struck as required by the Act. What is the manner required by the Act? I need not go through the Statute, but it must be struck from the Jurors' Book, emphatically; not a man can be taken from any other source. The Sheriff has no right to look to anything else. The names must be taken from the Jurors' Book, and can be taken from no other document or paper whatsoever. If the special jury is not to be taken from the Jurors' Book, where is it to be taken from? It is evident, that if a special jury cannot be struck in this case, it cannot be struck in any other case. To enable the Court to get juries, it must have recourse to the Jurors' Book for 1844. If that be a nullity, there can be no Jurors' Book at all. Every single regulation of the Act of Parliament has been complied with here, with one exception. The statement of facts in the challenge is extremely loose. Every thing is stated in the nature of a negative pregnant. It is not alleged that the Recorder did not make out a juror's list, but the allegation is, he did not make a list containing the names of all the persons found on the revised list, thereby stating that he did not make a list, but that the list was defective. It goes on to allege that he did not deliver a list containing such names. This statement appears to be correct enough. The statement is, that for some cause or other, the list returned by the Recorder is not void or a nullity, but that it is defective. In order to make this a good ground of challenge, it must be put on the ground of fraud. I do not profess to be bound by extreme cases. We may suppose all the names in the revised list to have been omitted: on the other hand, we may suppose one or two names only to have been omitted. The great difficulty of allowing this is, because, before the book was formed, a mistake was made, and certain names were omitted from the jury list, all parties are to be deprived of a special jury from this Jury Book. Suppose, as has been stated in one of the books, a rat had eaten up one of these leaves, why, if the traversers' argument is true, the jurors' list would then be a nullity, and the Jurors' Book, framed from it, would be a nullity. These are monstrous propositions, and I do not understand how we can place reliance in the argument from which they flow. This Jurors' Book was made out according to the Statute, save this fraud of some person, or this omission; and I cannot help stating, from all that I have heard, that it was an omission rather than a fraud. But, at all events, the Statute is precise, that the Jurors' Book is the instrument by which the High Sheriff is to go, and by it alone. I am, therefore, of opinion with my Lord Chief Justice and my brother Burton, that we cannot go beyond the Jurors' Book. There is no imputation on the Jurors' Book itself; it is admitted to be, and so I should collect from the words of the challenge, a fair and true copy of the general list. The imputation is only on the general list. I take the jurors' list to be the record. The High Sheriff is not to take into consideration the man-

ner in which it was made up. I by no means say that the party is without remedy if he proceeds; but this I will say, that if we were right in refusing the motion, we are, *a multo fortiori*, right in refusing the challenge. I can conceive the motion might be successful, in consequence of the misconduct of some specified person; but when the Jurors' Book is brought before us, and we are told that this panel has been struck in such a manner that a trial cannot be had, the assertion is without foundation. There is an abundant number of names on the panel to form a jury, from which a fair trial may be obtained. It may be a hardship on the traversers, or it may be a hardship on the Crown, but the principle of law is of universal application, that a particular injury must give way to the general inconvenience. No particular injury is pointed out; general inconvenience is pointed out, because, by pronouncing a judgment in favour of this challenge, we pronounce that there can be no valid trial, either by a special or a common jury, during the year 1844.

Mr. JUSTICE PERRIN.—I have carefully considered this Act of Parliament and its provisions since this motion has been before the Court, and in applying its provisions to the matter which appears on the challenge, I am under the disadvantage of coming to a different conclusion from my Lord Chief Justice and my brethren on the bench. I think, but not without considerable doubt, that this challenge ought to be allowed. By the Act, the collectors are to make out, in alphabetical order, true lists of all qualified persons within their districts, and to deliver them to the Clerk of the Peace, who shall keep them for public inspection for a certain time; special sessions are to be fixed for the purpose of revision and correction of the lists, by the insertion of proper persons, or the omission of improper persons, when every such list shall be fully corrected, by the Justices in the different counties in Ireland, and the Recorder in the city of Dublin, and shall be allowed and signed by him or them; and they, or one of them, shall cause a general list to be made out. I concur entirely in the distinction taken by my Lord Chief Justice between the judicial and ministerial duties of the Recorder, and I will say with him, that the judicial duties of the Recorder here end; and I think that it so appears by reference to the case of the counties, for after the revision of the list by the Justices, the general list is not to be prepared by them. I should say that, so far, the proceedings of the Recorder are strictly judicial, and so much so, that after he has, as judge, closed and allowed and signed the lists, he could himself make no alteration in it; and therefore, I take it, his judicial duty then closes, and what remains for him to do is not to write with his own hand a general list, but to cause a general list to be made, containing the names of all those whose qualifications have been allowed, which is to be framed from the several lists sent by the collectors, upon which several adjudications, revisions, and corrections have been made. It is the duty of the Justices and of the Recorder to cause a general list to be made of all qualified persons, arranged according to rank and property, and I should say, that if a mistake were made in that arrangement, that would be a matter upon which the Jurors' Book should not be im-

peached—a matter from which no appeal could be made. I will go further, and say that a casual mistake would not vitiate the list, and would not be incurable. The Act then directs that the Recorder shall deliver the same, that is the general list of all whose qualifications have been allowed, and the Clerk of the Peace shall thereupon cause the same to be truly and fairly copied, in the same order, in a book to be by him provided for that purpose, at the expense of the county, city, and town respectively, &c. which book shall be called the Jurors' Book. Then the Statute provides, that every Jurors' Book so prepared shall be brought into use on the first of January after it is so delivered, and shall be used for a year. What does the challenge say? The challenge says, that after the Recorder had duly revised, examined, and corrected the parochial list, after he had signed it, he did not deliver a general list of all the names, arranged according to rank and property, but omitted to do so; on the contrary, that some person unknown, fraudulently, and, as alleged in some of the challenges, "to the prejudice of the traversers," made a list, omitting sixty names, purporting to be a general list, from which list the Jurors' Book was made out. Now, this is not an allegation that, by error or mistake in making out the list, some names were omitted accidentally. This is not a charge of an unintentional error, but it is a charge of intentional error, that some person did make a false list, omitting sixty names. The Attorney General very properly insisted that matters not contravened or met in the challenge, must be taken to be admitted; and he insisted, I think, justly, that he was at liberty to take them as admitted. But it must be considered, that there is a sufficient allegation that the Recorder handed in a list which was a defective list. The Recorder knew no more of it than I do; and I think it would be monstrous to hold that a shadow of suspicion should alight upon him. There is nothing to warrant—nothing to suggest that he knew it; therefore, it must be taken that he was imposed on. Then what is the result of that? Is that the general list authenticated by the Recorder? Is it to be taken to be the act of the Recorder, and that he is giving it as a voucher of the correctness of what he hands in? He is merely a ministerial officer in that case, no more answerable for it than the person by whom he sends it; and, in my mind, it is indifferent whether he hands it in himself, or whether he was ignorant of the omission. But how does that affect the materiality of the question? The evil to the parties who want a full jury list is as great as if the Recorder or the Justices were conusant of it. It appears to me that this challenge amounts to an allegation, that this was not, in truth, a general list, made from the other lists, which it ought to be, in order to constitute a foundation for a Jurors' Book. It has been observed, that the Act of Parliament was framed with great accuracy—that the important object was to secure unbiassed jurors, and to leave as little as possible in the power of any particular officer. If we hold, then, that an alteration of this kind, made by a person who must be doing his duty in the employment of the public—if a contrivance of this sort is to be incurable, and is not to vitiate the act, which purports



to be the act of the Judge or superior officer, I cannot understand what security there is for the purity of the Jurors' Book. If the correct one may be mutilated, another one may be substituted. I cannot imagine that the mere fact of being received from the hands of the officer, from the Justices, or the Recorder, should constitute the real foundation of the list from which the Jurors' Book is to be made. It seems to me, and perhaps this is as good a place to mention it as any other, that if such a thing were practised, and came to the ear of the Recorder, he would have a right to go with the real list, and call on the Sheriff to repudiate the fabricated list, and to correct the Jurors' Book according to the truth. It strikes me, that not only he would have that power, but that it would be his duty to do so. Suppose the Sheriff, in framing his special jury list, had marked off the names for his clerk to write, and that some of those names had been omitted by the clerk, and that the special jury list was framed, with the omission of those names, and that that was not discovered until the forty-eight names were about to be drawn, it strikes me that that would be a good cause for challenge. On the same principle, suppose a *nisi prius* trial, for which the Sheriff returns a *distringas* to this Court, and that it was afterwards altered by a subordinate officer of the Court some weeks before the trial, and afterwards, when it went down to the country it was discovered, surely that would be a ground of challenge, although not for misconduct in the Sheriff. It is said, that this challenge is a novel one, but its novelty arose from this, that the Act was of recent date. Before it, the Sheriff was uncontrolled in his selection. He was called on to return a jury from the body of the county, or from the different districts, but he might return whom he pleased. Here is a provision, confining his selection to a particular list; if that is vitiated, although the Sheriff is not a party to that, yet it appears to me to come within the principle on which challenge to the array rests, and upon which it was originally founded. Much has been said about the inconvenience that would arise from admitting the present challenge, although no case can be found in the books on the subject. It has been objected that great inconvenience would arise, if this challenge was held to be good. The Court is not to regard the consequences of its decision, except so far, that it should be cautious that those decisions are well founded, and act upon sound principles of law. We are to decide the law according to the best of our abilities, and if any public inconvenience should follow, that should be remedied by those who had power to make laws. But it strikes me, that the inconvenience apprehended has been described as more extensive than it really is, and that there is a power to correct the error, which was admitted to exist in this particular case. I cannot see any objection to amend the book according to the true and real general list. These are the grounds on which I felt myself compelled to act, though not without considerable doubt, in coming to a different conclusion from my brethren.

The demurrer was allowed.

TUESDAY, JANUARY 16TH.

The Clerk of the Crown then called on the traversers to appear; two of whom, Messrs. Barrett and Duffy, not answering to their names, Messrs. Cantwell and Gartlan, the attorneys concerned for them, stated they would be in court in a very short time, and that they, as acting on their behalf, assented to whatever should be done in their absence.

The *Attorney General*.—My Lords, I am quite satisfied of the accuracy of what has been stated; but I think in a case of this kind, every thing should be regular.

Mr. JUSTICE CRAMPTON.—In misdemeanor cases, is it not usual for traversers to appear by attorney?

The *Attorney General*.—That is only conceded *ex gratia*. But where the traversers enter into recognizance, they cannot appear by attorney, without the consent of the Crown, and it has been expressly so decided in England. There would be an obvious objection, if, for instance, any difficulty should arise as to the identity of any of the traversers in the progress of the trial.

Mr. Henn.—There should be a separate appearance entered for each of the traversers, by attorney. There is no objection in point of law to their appearing by attorney, and we shall undertake that they shall appear, if required.

The *Attorney General*.—If that application had been originally made, I was prepared to show by authority, that they could not appear by attorney. I shall certainly require their attendance during the trial.

Messrs. Barrett and Duffy having come into Court,

The following gentlemen were called, and answered to their names:

James Hamilton.

Edward Roper.

Mr. Roper objected to serve, as his health was bad; and also that he was not liable to serve as a juror, being seventy-two years of age. He handed in a document, certifying his inability to serve.

Mr. Henn.—As Mr. Roper has been returned on the jury list, and made no objection to his being put on the list when the revision was going on, he cannot now object to serve.

Mr. O'Connell.—The document handed in by Mr. Roper is a declaration, and cannot be received by the Court.

Mr. Macdonagh.—The Court decided yesterday, that the decision of the Recorder was final; the party not having objected at the time when it was competent for him to object, cannot now be excused.

Mr. JUSTICE CRAMPTON.—Your argument is not *ad idem* to the present case. The observations were then made with respect to the array, not to the qualification of any particular juror.

The CHIEF JUSTICE.—This gentleman is returned on the jury list, and I have heard nothing that would induce me to say that he

has established an excuse ; and I further think, unless some sufficient reason be shewn, the traversers have a right to insist that he should be sworn, and in my opinion he ought to be sworn.

The following Jury were then sworn :

|                  |                    |
|------------------|--------------------|
| James Hamilton.  | Henry Thompson.    |
| Edward Roper.    | Anson Floyd.       |
| Edward Clarke.   | John Rigby.        |
| Francis Falkner. | Robert Hanna.      |
| John Croker.     | William Longfield. |
| Henry Flinn.     | William Ord.       |

The Clerk of the Crown then gave the traversers in charge.

Mr. *Napier*.—My Lords, and Gentlemen of the Jury. This is an indictment, charging the traversers with an unlawful conspiracy and confederacy, and contains eleven counts. The first count charges the traversers, first, with unlawfully intending and devising to raise and create discontent and disaffection amongst Her Majesty's subjects ; and secondly, to excite them to hatred and contempt of the government and constitution of this realm, as by law established ; thirdly, to excite hatred, jealousies, and ill-will amongst different classes, especially hostility and ill-will between Her Majesty's subjects in Ireland and in England ; fourthly, to create discontent and disaffection in the army ; fifthly, to cause and procure, and aid and assist in causing and procuring divers subjects of Her Majesty, unlawfully and seditiously to meet and assemble at various times and places within Ireland, in order, by means of the intimidation to be thereby caused, and the exhibition and demonstration of great physical force, to obtain changes and alterations in the government and constitution, as by law established ; and sixthly, to bring into disrepute the courts by law established for the administration of justice, and to diminish the confidence of her Majesty's subjects therein, with intent to withdraw the adjudication of their differences therefrom, and to submit them to the adjudication of other tribunals, to be contrived and constituted for the purposes. It then sets out, as overt acts, in furtherance of these designs, meetings, speeches, and publications.

The second count is the same as the first, omitting the overt acts.

The third count is the same as the second, except in the charge as to the procuring the meetings, the words "unlawfully and seditiously" are omitted.

The fourth count omits the charge as to the army, and the overt acts.

The fifth count is for a conspiracy, with intent to create disaffection, and to excite to hatred and contempt of the government and constitution, omitting the overt acts.

The sixth count charges the intent to be by means of intimidation, and the demonstration of physical force to procure and effect changes in the government, omitting the overt acts.

The seventh count is the same as the sixth, with this addition, that the changes to be effected were especially the dissolution of the legislative Union.

The eighth count charges a conspiracy, to bring into hatred and disrepute, the courts for the administration of justice, with the intent to induce her Majesty's subjects to withdraw the adjudication of their differences therefrom; omitting the overt acts.

The ninth count is the same as the eighth, with the addition of a charge to usurp the prerogative of the Crown in the establishment of those courts.

The tenth count is the same as the eighth, omitting the intent.

The eleventh count charges the causing and procuring large numbers to assemble, and by means of unlawful, seditious, and inflammatory speeches and addresses, and by means of publishing, and procuring to be published, seditious writings, to intimidate the united Parliament, and thereby to effect changes in the laws and constitution of the realm.

The traversers have pleaded not guilty.

The *Attorney General*.—My Lords and Gentlemen of the Jury. Gentlemen, you have been empanelled in the present case, in order to perform the important duty of deciding upon the innocence or guilt of the several traversers, and I am sure it is not necessary to impress upon your minds the necessity of giving your anxious and undivided attention to this momentous case during its progress to its conclusion. My learned friend Mr. Napier has already stated to you the nature of the charge which has been brought forward by the officers of the Crown, against the several traversers; but the better to impress it on your minds, in order 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 charges against the traversers. 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 the realm as by law established, and to unlawful and seditious opposition to the said government—to create jealousy and ill-will among various classes of Her Majesty's subjects, especially to promote a feeling of ill-will and hostility towards Her Majesty's subjects in England—to excite discontent and disaffection in the army—to cause large numbers of persons to meet together at different times, and in different places, for the unlawful purpose of obtaining, by means of intimidation, and the demonstration of great physical force, changes to be made in the government of the country, as by law established, and, in particular, by these means to bring about a dissolution of the legislative Union between Great Britain and Ireland—by means of inflammatory speeches, addresses, and seditious publications to intimidate the Imperial Parliament, and thereby bring about certain changes and alterations in this realm, as by law established—to excite hatred and distrust of the tribunals of the country, as by law established—to diminish the confidence of Her Majesty's subjects in the administration of the law therein, and to usurp the prerogative of the Crown, in the establishment of courts for the administration of the law.

Having thus brought under your notice the charges for which the



traversers stand indicted, I think it will be convenient, before I open the facts of the case, to make some observations relative to the law of conspiracy, to enable you to apply those observations as I proceed with my statement of the case. But, Gentlemen of the Jury, you must be aware of this, that I do so under the correction of the Court; you are not to take the statement of the law from me, or from the traversers' counsel conclusively, but so far only as it meets with the approbation of the Court. With respect then to the law of conspiracy, I have to state to you that it is a crime which consists in the combination or agreement of more than one person, either to do an illegal act, or to effect a legal purpose by illegal means; and a confederacy to effect an illegal object, or even a perfectly legal object by illegal means, is, in the contemplation of the law, criminal, and amounts to the offence of conspiracy. My Lords, you will find it so laid down in the case of *The King v. Jones*, 4 B. & Ad. 349; and the same rule of law was also laid down in this Court in *The King v. Forbes and others*, Green's report, page 347, where it is said by Chief Justice Bushe, in giving the judgment of the Court. "The nature of a conspiracy is now to be described. It is defined "to be when 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 should never "be effected. The merely confederating constitutes the crime, "though the object be not effected." And in a more recent case of *The Queen v. Murphy*, 8 Car. & Payne, 310, Mr. Justice Coleridge, in summing up to the jury, says: "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 consent "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?" He further says: "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; neither is it unlawful to refuse payment

“ of the church rate in money, and to leave the collector to obtain  
 “ payment, by taking the goods of the party, as is constantly done in  
 “ the case of the Quakers ; but it is unlawful, by means like those  
 “ charged in this indictment, to prevent these rates being levied on  
 “ the goods of the party. It is not necessary that it should be proved  
 “ that these defendants met to concoct this scheme, nor is it neces-  
 “ sary 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 were 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 ne-  
 “ cessary that you should find both Mr. Murphy and Mr. Douglas do-  
 “ ing each particular act, as after the fact of a conspiracy is once estab-  
 “ lished 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.” Gen-  
 tlemen of the Jury, I tell you confidently that such is the law, and such  
 always has been the law. If then, upon hearing the facts of the  
 case, you believe that the several traversers have been engaged in  
 the common design to obtain their object by the means alleged in  
 the indictment, the moment you are of that opinion, the acts of  
 one, or what was said or written by one, for *scribere est agere*, be-  
 comes evidence against the other, as much as if he had written or done  
 that particular thing. I have already stated in the opening of this  
 case, if their design was, by confederating, to effectuate an illegal ob-  
 ject, or a legal object by illegal means, they would be guilty of con-  
 spiracy. With reference to this last proposition, my Lord, I would  
 wish to call your attention to the case of the *King v. Stone*, 6 T. R.  
 528. In *Watson's* case, reported in the 32nd vol. of the State Trials,  
 page 7, Mr. Justice Bayley, in his charge to the Grand Jury, states  
 the law in a case of high treason ; in that case a conspiracy to levy war  
 was also included. That doctrine, as laid down by Mr. Justice Bayley,  
 is applicable to the present case. He says : “ 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 com-  
 “ mon 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. If, therefore, you are satisfied that  
 “ any of those persons concurred in planning the thing, or concurred  
 “ in inciting others to engage in it, or engaged in it at a subsequent  
 “ period after it had been planned and devised by others, but came  
 “ into it for the purpose of carrying it into effect ; provided you shall  
 “ find that they all had the same common purpose and design, no  
 “ matter when any one person entered into that 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; whether he were present at the  
 “time when the rising took place or not; if he were 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  
 “which will be brought under your consideration.” He further says,  
 “I omitted to state to you, that amongst the overt acts you will pro-  
 “bably find *conspiring* will be one of the subjects charged, and *con-*  
 “*sulting* 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 ob-  
 “jects of the charge, or by persons engaged with them in the same  
 “common purpose and design, that will justify your finding the con-  
 “spiracy and consultation.” That being the general law relating to  
 conspiracy, so far as it is necessary to advert to it, I now come to  
 the case of *The Queen v. Vincent*, 9 C. & P. 275. I may observe, that  
 the indictment in that case was much the same as the present; it  
 charged that the defendants did conspire to excite discontent and  
 disaffection in the minds of the liege subjects of Her Majesty, and to  
 excite them to hatred and contempt of the government and consti-  
 tution of the realm, and to unlawful and seditious opposition  
 to such government; and it was proved that persons complained  
 of having been alarmed by those meetings. Upon this indictment  
 the defendants were found guilty, and that was an indictment  
 to excite discontent and disaffection in the minds of Her  
 Majesty’s subjects, and to create contempt for the government,  
 and unlawful opposition to it, which is a portion of the charge in  
 the present case. There is another case reported in the 25th vol. of  
 the State Trials, 1004, *The King v. Redhead*, otherwise *Yorke*, to which  
 I shall call the attention of the Court. That was an indictment, “that  
 “the defendant did, with other persons, unlawfully, maliciously, and  
 “seditiously combine, conspire, and confederate with each other, to  
 “traduce, vilify, and defame the Commons House of Parliament,  
 “and the government of this realm, and to excite a spirit of discon-  
 “tent and disaffection in the subjects of the King, towards the King  
 “and the government of the realm; and that he and the other conspira-  
 “tors, in pursuance of the said unlawful combination and conspiracy,  
 “did cause and procure divers subjects of the King, to the number  
 “of 4000 and more, to meet and assemble themselves together, for  
 “the purpose of hearing divers scandalous, seditious, and inflam-  
 “matory speeches, resolutions, and writings, of and concerning the  
 “Commons House of Parliament, and that they did propose, pub-  
 “lish, and read to the said subjects, the said scandalous, seditious,  
 “and inflammatory speeches, for the purpose of traducing and vilify-

“ing the said Commons House of Parliament.” In that case, the defendant was convicted, and Mr. Justice Rooke in pages 1151–1153, in charging the jury, said: “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 excite a spirit of discontent, disaffection, and sedition in their minds. If you should be of opinion, that the defendant uttered these speeches with that view, or that they had that tendency, even though he might not have 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, in my opinion, no more justify himself for what he has done, by saying he did not think it would have that consequence, than a man who should fire 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 should be allowed to say, ‘I did not think it would have killed the man.’” And he further observes: “He supported his speculative principles of annual parliaments and universal suffrage, and says he has uttered no more than what may be found in the speeches of such men as the late Lord Chatham, Lord Camden, Sir George Saville, Archdeacon Paley, and others; and it is very true they have done so; and 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; whether he did not address them with a view to inflame their minds and their passions.” I think it advisable to call your Lordships’ attention to a very important case. I shall beg leave to call the attention both of your Lordships and the jury to it, as bearing upon the subject of unlawful assemblies, because, as the law is there laid down, I think it will be found to displace a portion of what I anticipate will be the defence in the present case. It is the case of *Redford v. Birley* and others, reported in the third volume of Starkie’s *Nisi Prius Cases*, page 76. That, my Lords, was an action of trespass, brought against certain persons engaged in dispersing the Manchester meeting. Pleas of justification were put in by the defendants, which your Lordships will find in a note to the case, but it is not necessary now to allude to them, as you will find them referred to by the Judges in giving judgment. The case having come on for trial before Mr. Justice Holroyd, and a verdict having been found for the defendants, establishing those pleas of justification and the illegality of the meeting, at the ensuing term a motion was made for a new trial, and the case came on for argument before Lord Tenterden, then Chief Justice Abbott, Justices Bayley, Holroyd, and the present Lord Wynford, and the Court unanimously refused to set aside the verdict, thereby establishing the law as laid down by Mr. Justice Holroyd at the trial; and each of the Judges, in delivering judgment on the motion for a new trial, gave their opinion with regard to the unlawfulness of assemblies of this multitudinous character. The judgments are given in a note to the case, and I will read for your



Lordships some passages from these judgments, which refer to the present matter. In page 99, Mr. Justice Holroyd at the trial stated:—"There is likewise another plea, which has let in a great deal of evidence, viz., that there was a previous seditious conspiracy, to excite discontent amongst the King's subjects, entered into by divers seditious persons, for the purpose of exciting disaffection and hatred, and contempt of the government and constitution, as by law established, and by unlawful means and combinations to alter the government and constitution of the realm. And then in one of the pleas, the drillings are alleged, which are stated to be clandestine. 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." And in page 103, the same judge, citing the opinion of Mr. Justice Bayley, who had tried the case of *Rex v. Hunt*, a case arising out of the same meeting, in giving judgment in that case, said: "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 too;" and in the next page he says, also quoting the language of Mr. Justice Bayley: "what are the objects of the leader, the person who means to occupy the chair,—the persons intending to take distinguished parts in it? what are the objects of those who bear the flags or banners?—those are to be considered with reference to the inscriptions; what are the objects of those who have been drilled? 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, would be illegal." I should have stated to your Lordship, that the motion for a new trial was on several grounds, independently of the objection in point of law; among others, that the verdict was against evidence. In page 112, Lord Tenterden, in giving judgment, stated: "If all that was legitimate evidence, *a fortiori*, the conduct of persons probably and apparently going towards the meeting, would most 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. 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 that there were public grievances, which a meeting of this description might prevent; others might go, meditating mischief immediately;" and I now pray your Lordships' attention to what follows: "others," observed the learned Judge, "might go there, who meditated mischief at some future time, when those drilled, who, up to this period had been without arms, might have arrived at a further stage in military discipline." You will be told that, forsooth, these

meetings dispersed peaceably. The peaceable separation of those meetings—the intention that they should disperse peaceably, is one of the most formidable parts of this conspiracy. The meeting was to disperse peaceably, because the time had not arrived. In the language of one of the traversers: “England’s infirmity was to be Ireland’s opportunity;” and the same traverser asked the assembly: “Will you be ready to come again when I call you; I know you will: but you must wait till the time arrives.” If that course had not been adopted, the conspiracy would have broken up at an earlier period; but part of the system was to have the organization complete, from east to west, from north to south, before the signal should be given; therefore, those meetings peaceably dispersed. Thus, as Lord Tenterden said, persons might go to those meetings who meditated mischief at some future time, when those drilled might have arrived at a further stage in military discipline. In page 113, the noble Lord said: “When we consider that these country people came marching in this way, through the town of Manchester, bearing flags and banners inscribed with mottoes, not merely containing high-sounding words, but inscriptions of *No corn laws! Better die like freemen than be sold like slaves!* and various other expressions of defiance; it is manifest that there was an avowed intention to insult those who were intrusted 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 judgment, was followed by Judge Bayley, who, in page 116, says: “It appears by the evidence in the case, that the meeting was composed of an immense number of persons; a very large portion therefore of physical strength. It appears on the evidence in the case that there was an elevation, from which elevation persons would have the opportunity of making speeches; and it appeared also, that amongst other persons, there was one who had no particular connexion with the place, and who had come from a considerable distance, for the purpose of speaking, and for the purpose of communicating his sentiments to that large body of people, which was assembled at that place; and he might, by the intimations which he there made, give to the physical force so assembled, a direction which might operate in perfect innocence, or with a degree of danger to the public peace. It appeared, that before that period, it was notorious that he had been at another public meeting, at which public meeting there had been certain resolutions passed. 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.” And are we to be told, or is it consistent with the law, as these learned judges have laid it down, that hundreds of thousands of people may assemble, whose course of proceeding is to be regulated by the directions of one individual, who may tell them to separate peaceably, who might do so to further

the design of the conspiracy, and because the organization was not yet complete, to enable him to withdraw the mask which concealed his design. They separated peaceably, but they were controlled by one man, and that man might have given them either one direction or the other. I say, therefore, that these meetings were inconsistent with the law of the land, and I shall ever hold that opinion, until I hear the contrary laid down positively from the Bench. In page 125 of the same Report, Lord Wynford, in delivering judgment, said, "It appears to me impossible to say this drilling was innocent. If it was not innocent, what was 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 should be then enabled to overturn the government." And you will hear it laid down, that these meetings and that this confederacy, which I trace to the Association in Dublin, for the purpose of organizing the population against the law, because they were peaceable, and peaceable only according to the determination of one man, were consistent with the law and constitution. In page 126, the same learned judge continues: "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 so much experience in matters 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, it is most probable that that which I have stated is correct, at least as far as regards the intention 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, as was said by one of my learned brothers, they should have a trifling addition made to their discipline, by having arms put into their hands, then the mischief was finally to be entered upon." Such, then, was the law laid down by Lord Tenterden, Mr. Justice Bayley, Mr. Justice Holroyd, and Lord Wynford. I shall only advert to one more authority on this subject, before I proceed to state the facts of this case. The case I allude to is reported in 9 Car. & Payne, 460, *The Queen v. Collins*; in that case, Mr. Justice Littledale says: "With respect to the second resolution, it is no sedition to say, that the people of Birmingham had a right to meet in the Bull-ring, or any where else; but you are to consider whether the words, that they *are best judges of their own power and resources to obtain justice*, 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." That, my Lords, was a case of

far less enormity than the present, although the defendants were there found guilty, and will make the authority of it more strikingly applicable to the present case. I shall trouble your Lordship with but one more case, that is the case of *The King v. Burdett*, 4 B. & Ald. 178, where Lord Tenterden, in giving judgment, says, “In the *King v. Bowes* and others, the trial proceeded on 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 com- “munity of criminal purpose, and by their joint co-operation in for- “warding the objects of it in different places and counties; the locality “required for the purpose of trial was holden to be 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 the principle I took the liberty of adverting to, in the last part of my statement, that the act of one conspirator engaged with others in one common design, is in point of law the act of all, because, for the purpose of venue, an overt act done by one in the county in which the indictment was laid, is, in contemplation of law, the act of all. You may rely on it as evidence of a conspiracy by all, at the place where the venue is laid.

Having now called the attention of your Lordships shortly to the law applicable to a great portion of this case, except one branch of it, which I shall allude to hereafter, I shall now proceed, gentlemen of the jury, to open to you the facts of this momentous case. Gentlemen, I think it convenient, however, before I do so, to advert very shortly to the position in which the question of the repeal of the Union stood at the time of the constitution of the Repeal Association in Dublin. Shortly after the passing of the Roman Catholic Relief Bill, which, as your Lordships know, received the royal assent in 1829, an association was formed in this city, which changed its name on various occasions with a view of evading the law, having in contemplation a repeal of the legislative Union. Having that for its object, and there being a Statute then in force, which has since expired, the then Government, at the head of which was Lord Grey, issued a proclamation in January, 1831, suppressing this Association, stating, that the Association was an assembly assuming various denominations, and that they had assembled and held meetings from time to time, for the purpose of promulgating seditious doctrines, and by means of inflammatory language to excite and keep alive a spirit of disaffection and hostility to the existing law; and further stating, that those meetings were dangerous to the public peace, and inconsistent with the due administration of the law. Gentlemen, as I have already said, at this time a Statute was in force, giving a stronger power to the Government than they now possess, and that was passed by the Government of which Lord Grey was the head. In the course of the same year, a question was put in the House of Commons, to Lord Althorp, then a minister of the



Crown, relating to the repeal of the Union; he then stated the views of the Government with respect to it, thus: "The Hon. member for Waterford has, as it is well known, been exciting so much discontent and disaffection in Ireland, and was keeping up so much agitation in that country, by speeches, which, though concluding with an advice to be obedient to the laws, it was evident to any unprejudiced man who read them, or marked the course which the honourable gentleman was pursuing, that his language and conduct were evidently intended, and must have the effect of exciting an insurrection throughout the country. His avowed object was, to obtain a repeal of the legislative Union; but he would ask any man who considered what such a repeal must produce; whether it did not become the duty of the government to use every means in their power for the suppression of such conduct, and the punishment of the man who pursued it? Is it not evident that the repeal of the legislative Union must produce a separation of the two countries? I trust that those engaged in so dangerous a course to the peace and prosperity of the country will not succeed, and if they do, it must be by a successful war, and I know too much of my countrymen to believe such an event to be possible. I have a horror of all description of war, but particularly a civil war, which is most to be dreaded and abhorred; but I think a civil war is preferable to the dismemberment of the empire." That was the position in which the repeal question stood in 1831; that was the opinion entertained by the then English government, and by Lord Althorp, who was then a leading member of it; and this is of importance in considering the course they have adopted to carry out their object, which I shall show is not consistent with the law and the constitution; and before I close this case, I will prove out of the mouths of some of the traversers, that their object was to obtain a repeal of the Union, otherwise than by legal and constitutional means. This is not the first time that persons have been found to preach peace when they intend the contrary; for, as we find in the 31 State Trials, page 98, it has been well observed by Mr. Justice Grose, in passing sentence, "that men, with rebellion in their hearts, occasionally use words like you, recommending peace, order, tranquillity, and obedience to the law;" and they do so with an obvious purpose, because, if they did not continue to do so up to that point where they may venture to throw off the mask, it would defeat their own designs; they must therefore preach peace and tranquillity, until they have wound up the public mind, until they can tell the people now "is the time, the period has arrived in which you may carry out your object." The effect of this proclamation, and the strong opinion expressed by the government, was to give a temporary check to repeal agitation; but the moment the Act had expired, the agitation was recommenced, the repeal of the Union was again brought forward, and in the commencement of the session of 1833, His late Majesty, in his speech on the opening of Parliament, desired to be furnished with additional powers for controlling the disturbers of the public peace in Ireland, and strength-

ening the legislative Union between the two countries. That was addressed to the Parliament in the commencement of the session of 1833, and in moving the address, Lord John Russell, then a minister of the Crown, stated: "can you say that the object is not a separation between the two countries, when all that has lately passed in Ireland shows, that the object is nothing more or less than an attempt, under the name of a repeal of the Union, to disunite the two countries—to confiscate the property of Englishmen, who have property there—to overturn at once the united Parliament, and to establish instead of the King, Lords and Commons of the united kingdom, some parliament of which Mr. O'Connell was to be the leader and chief;" and on the same night, another minister of the Crown said: "I told the honourable gentleman that which I now emphatically repeat, namely, that the question of the repeal of the Union is the question of separation between England and Ireland, and that the question of separation involves the question of the destruction of the British Monarchy, and the establishment in Ireland of a ferocious republic of the worst kind;" and the late Lord Lieutenant of Ireland said: "that although he had the greatest horror of a civil war, yet he would prefer it to a repeal of the Union." The result of that debate was the introduction of what is commonly called the Coercion Act, an Act renewing and giving more power to the executive than they possessed under the Statute 10 Geo. IV., under which the proclamation of 1833 was issued; the effect of that Act was to suspend the agitation of repeal in this country.

One of the traversers, Mr. Daniel O'Connell, brought forward a motion in the House of Commons, in 1834, in favour of a repeal of the Union, upon which occasion one of the then ministers of the Crown moved an amendment to the address to the throne, to declare the fixed determination of the Parliament to maintain, unimpaired and undisturbed, the legislative Union. On the occasion of that address, Lord Monteagle made a celebrated and powerful speech, and the amendment was carried by a majority of 523 to 38. The result of the debate was, that it, in conjunction with the Coercion Act, did suspend the agitation of the repeal of the Union for a short time. The next step to keep this unhappy country in a state of agitation was, to establish another of those associations, which, whatever name they have had, still had the same object in view. It was formed in the year 1836, the Coercion Act having expired, and it was called the "General Association," having, as part of its constitution, that which has always been found to be a part of the system, the collection of what was called justice-rent, a portion of the money of which the poor inhabitants of this country have been, from time to time, defrauded, and which has been spent in a way that nobody knows, or has ever heard; and it is only astonishing how the inhabitants of this country could have been deluded into having money extorted from them, and never being informed how it was spent. This society continued up to 1838; then was formed the Precursor Association. It continued to collect and spend money, in carrying on the same system of agitation which has been the curse of this country. You might as

well expect the natural body to be in a state of health, when operated on by excessive stimulants, as to expect this country to be in a state of tranquillity and happiness, with this constant agitation carried on from year to year. I have now brought the facts of this case down to the period of the institution of the present association. This association was formed in the month of February, 1840, it changed its name twice, and assumed its present name "The Loyal National Repeal Association," in July, 1840.

Gentlemen of the jury, it becomes necessary for me now to bring before you the general nature and 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 it liable to pay a small subscription only, in order to extend the organization throughout the country, and to organize as far as might be the poorer classes of the country. Accordingly the associate pays only one shilling, and a card is given him, which answers all the purposes, without coming within the express language of the act against pass-words and signs. It enables him to show that he was connected with the Association, and thus the people have the means of knowing who are connected with this Association. This card which I hold in my hand has a shamrock at the top, with the words "*Protestant,*" "*Catholic,*" and "*Dissenter*"—"quis separabilis"—and at the bottom a view of the Bank of Ireland, formerly the Parliament house, and the words "*It was and shall be.*" The next class in that association are those called Members,—the lower class, the Associates, pay one shilling, the members are to pay twenty shillings each, or if an associate take the trouble to collect twenty shillings that entitles him to be a member, as well as if he had paid the money himself. To each of those members a card is issued, to which I shall call your attention. On one corner of this card is printed "*Clontarf, 23 April, 1014*"—on another "*Benburb, 16 June, 1645*"—at the bottom are Irish words, which being translated mean "*The mouth of the Yellow Ford, 10 August, 1598*"—and opposite to that is "*Limerick, 31 August, 1692.*" Now, as some of the members to whom this card was issued might not be perfectly aware of the object for which it was contrived, or understand the meaning of those names, a printed explanation was issued which had been adopted by the Association to point out why these four names were selected. They are the scites of battles fought in which the Irish had been successful, and either the Danes, or the English, or as the defendants call them, the Saxon foreigners, were defeated by the Irish. This is the association preaching peace and tranquillity; this is the association which never thought of exciting discontent or disaffection between different classes of her Majesty's subjects; that card being composed with a view to rake up the transactions of centuries past in the history of Ireland, and to excite discontent among the Irish and hatred to the Saxon foreigners. I may state here for your information, that the account of each of those battles given by this paper, was adopted by this Association. The battle of Clontarf, which is first adverted to, was that in which Brian Boroihme with an Irish

army inferior in numbers, defeated the Danes; the second battle is that at the mouth of the Yellow Ford, where Hugh O'Neill appears to have commanded the Irish; the next is the battle of Benburb, in which the Irish were commanded by Owen Roe O'Neill; then Limerick where general Sarsfield commanded. The card then upon a pillar upon one side states the comparative extent and population of Ireland compared with Portugal, Spain, Holland, Belgium, Naples, Bavaria, and other countries, and says: "*Ireland has not a Parliament.*" It states the yearly revenue of this country, its exports, that two-thirds of the men and officers of the English army are Irishmen, and again states that "*Ireland has not a Parliament.*" There are two flags on the card, one containing the same motto as appears on the associates' card, the other is described to be the sun bursting from under a cloud, which I believe was the ancient banner of Ireland—there is then a small map of Ireland, and also a scroll at the top of the card and another at the bottom. On the scroll at the top there are these words: "*Resolved unanimously, that the 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, 15 February, 1782.*" There is a distinct statement on the face of this bond of union between the members of this society, that the 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; and I suppose it will be contended on the other side, that is what they can rightfully and legally make a portion of the contract by which they are to be united. You will be told that this resolution was adopted by the delegates from the Irish Volunteers on the 15th of February, 1782. Gentlemen, I shall beg leave by way of anticipation to recall your recollection to what was the question in the year 1782 as contrasted with the present question. By the Statute of the 26th Geo. I., a Statute made by the English Parliament, having then no Irish representatives, but this country having then its own domestic legislature, a claim was made to bind Ireland by the force of the English Statute, and it was that which led to the resolution in 1782 made by the Irish Volunteers. At the time of this resolution of the Volunteers, keep in your recollection the state in which the constitution of both countries stood; Ireland had a separate Parliament, the Parliament of Great Britain had no Irish representatives, and the Volunteers then denied the power of the English Parliament to bind Ireland by its laws. Subsequently, the Act of Union passed by the consent of the legislatures of both countries, and with the assent of the Crown, articles were drawn up and agreed to, which I shall hereafter advert to more particularly, and by those articles which were adopted, it was provided, that both countries should be represented for ever by one united Parliament; and will it now be said, that because in 1782 the Irish Volunteers denied the right of the English Parliament, this country being then unrepresented in England, to make laws binding Ireland,



when it had a legislature of its own, that that is to justify that bond of union which has been engraved on this card, declaring that the legislature of the United Kingdom has no authority to make laws to bind this country? A more illegal proposition, I will venture to say, never emanated from any persons the deepest in sedition. Gentlemen, at the bottom of this card is written: "*You may make the Union a law, but you cannot make it binding upon conscience.—Saurin's Speech.*" I dare say, in the course of this case you will have not only that speech of Mr. Saurin's adverted to, but also the speeches of Lord Plunket and the late Lord Chief Justice of this Court; but the persons who are constantly bringing those speeches before their deluded followers, always omit to state that these opinions were delivered in the Irish House of Commons before the passing of the Act of Union, and that they never fell from the lips of these eminent men, after the Union had become the law of the land. Gentlemen, there is another class of persons in this Association, a higher class than members, these are persons who have subscribed or collected a sum of ten pounds, and they thereby become Volunteers. I hold in my hand one of the cards of the Volunteers: it is headed, "*The Volunteers of 1782 revived,*" and is signed "*T. M. Ray, Secretary,*" in the handwriting of one of the traversers. There is at the head of the card a likeness of Mr. O'Connell, and also of Grattan, Flood, Owen Roe O'Neill, and Brien Boroihme engraved upon it.

These being the persons connected with the Association, it was found necessary that there should be officers for the purpose of organizing the people, and accordingly we find that there were Inspectors, Baronial Inspectors, Repeal Wardens, and Collectors. The repeal wardens were, by the rules of the Association, to be appointed at the recommendation of the clergyman of the parish. They were only to be appointed, however they might be recommended, by the Association itself, and there was issued to each of them instructions as to their duties. This book is indorsed: "Instructions for the appointment of repeal wardens, and collectors of the repeal fund, and their duties." The ninth duty of the repeal wardens is here stated to be, to take care that there is a repeal newspaper transmitted to their locality; a three-day paper to such as had collected twenty pounds repeal rent, and a weekly paper to such as had collected ten pounds. The tenth duty of the repeal wardens was to see that those newspapers were put into the hands of such persons as would give them the greatest circulation, and to see that each paper was read, and its contents communicated to as many persons as possible; to circulate all news respecting the Repeal Association, and the transactions of such of the general business as appertained to the question; and that, when such a number of repealers as were then pointed out should be embodied, a room was to be hired for their general organization, and that the wardens, in such a case, were to consult the Association at all times respecting their movements. You will thus observe, Gentlemen, that in every district, according to the course of

instruction which the repeal wardens received, their duty was, that if the sum of ten pounds came from the district, they should be supplied with a weekly paper, and if twenty pounds, with a three-day paper, with a view, that the sedition which the repeal press traded in should be circulated among as many persons as possible. Such was part of the duty of the officers of the Association, to endeavour, by the publication of seditious articles and harangues, to have the country organized, and to excite hatred and discontent among various classes, and opposition to the law; and part of the system was to take care that the repeal press should be instrumental in carrying out this design. I may observe, that there was nothing new in making the press an object for attaining a revolution in a country. It was by means of the French press, and particularly that celebrated organ, "*L'Ami du Peuple*," that the minds of the people in France were poisoned. The same course was adopted in the year 1798, by the newspaper of the day, known by the name of "*The Press*," but I trust that this conspiracy has been checked in sufficient time to prevent now the consequences which followed on a former occasion, from the licentiousness of the press. I shall now explain, not in my own language, but in the language of one of the traversers, the manner in which this organization was carried out through the country. I shall have occasion in the course of my statement to call the attention of the jury in a more particular manner to this important publication, but I shall now only read a short extract from it, showing the objects of the Association in organizing the country, by means of the appointment of repeal wardens. One of the defendants, Mr. Charles Gavan Duffy, in the Nation newspaper of the 12th of August last says: "if  
 "the organization by general, provincial, and baronial inspectors, by  
 "wardens and collectors, by volunteers, members and associates, has  
 "any efficiency, and it now has a fair trial, a far different machinery,  
 "though checked and hampered, carried Catholic Emancipation;  
 "the present organization will be extended to every parish in  
 "Ireland, and will be perfect in every parish. The whole nation  
 "will be arranged under that system. There is a full purpose on the  
 "minds of the repeal leaders not to rest until it is carried out. By  
 "its means the people will be gradually arrayed, classed, organized,  
 "and bound together. Subordination of ranks, community of thought,  
 "obedience to orders, firm trust in those who command them, constant activity in teaching and learning the means of liberation, are rapidly becoming general. In a subsequent part of the same publication he says, "the organization should not only be carried on every where, but should be revised every where. If the repeal wardens of any district do not see the organization, revision, and training of all repealers in their district; if the people do not evince organization by obedience, a sense of their duty, courage, and habitual order which take place in a free nation, those wardens have not done their duty, that district is not ready for liberty." Gentlemen, you have heard of the Jacobin club in France. No

person contemplated the consequences which would succeed the formation of that club, but it at length succeeded in overthrowing one government, and that which succeeded it could not be found to exist on the principles which gave it birth, but was followed by a despotism which continued, as you know, for a series of years. Gentlemen, you will recollect the instructions that were given by Mr. Duffy, to the repeal wardens, that if they had not adopted the course which had been suggested, they had not done their duty, and that district was not ready for liberty. I cannot abstain in this place from describing the mischief arising from an organization and a conspiracy of this description, by reading the language of the late Chief Justice of this court, when presiding as judge at the Maryborough Special Commission. He says, page 8 of Mr. Mongan's report of the Special Commission held there, "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 inflame the passions of one man by the passions of another, and to bring into general action the collected views 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." That was the description of conspiracies and of the result of societies of this kind, by that eminent and gifted individual.

Gentlemen, I shall now call your attention to the earliest meeting of the Repeal Association, to which I think it necessary to advert. Though from the great weight and magnitude of this case, it will be impossible to call your attention to every meeting, I shall however direct it to every important meeting, and although I shall necessarily occupy a large portion of your time, I shall select only those which I consider important. Gentlemen, of that Association each of the traversers is a member. I shall show that they were in the habit of attending its meetings, although I have not access to the books. It is immaterial whether they paid the subscription or not, if they took part in the proceedings. The first meeting to which I shall call your attention was held on the 13th February, 1843; there were present upon that occasion, Mr. O'Connell (I mean Mr. Daniel O'Connell, whenever I speak of the other Mr. O'Connell, I shall call him Mr. John O'Connell), Mr. Duffy, and Mr. Ray. At that meeting Mr. Ray read an abstract of the accounts for the last year, among which was the cost of newspapers, amounting to £365 15s. 11d., that being part of the expenditure of the Association, for the purpose of circulating those papers through the country, which were calculated to excite feelings of hostility against the government and constitution of the country. At that meeting it was that a diploma was produced, which I should have remarked on when speaking of the repeal wardens. It is a handsome engraved document, and although I call it a diploma at present, you will find that possibly it had re-

ference to other duties, besides those which I have mentioned, of the repeal wardens. You will find that one of the traversers on one occasion asked whether the people would not follow the repeal wardens, as well as if they were called sergeants. That was the diploma, or I should say, the commission, which was issued on that occasion. At that meeting Mr. O'Connell made these observations. "It must be clear to those powers, that all the power of England "is more imaginary than real, is not this then the time for Ireland ? "The great mistake of Napoleon was that he undervalued Ireland. "If, instead of taking an army to Egypt or to Russia, he had sent "40,000 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 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 connexion in less time than he had been addressing "them. France knew of the discontent of the people, she knew "that by the educated classes she would be opposed, but she also "knew, now that Christianity again blessed her altars, that the "anointed priests of God were heard as formerly from her pulpits, "and that the spirit of religion had taken the place of the spirit of "atheism and infidelity, which made the Irish abhor them, and when "the soldier would go to mass side by side with the peasant, that "the statesman was mad who would leave Ireland in her present "position, except he resolved not to go to war with France or any "other country. But let them rally with him and get repeal from "England, she might defy all the countries upon the face of the "earth. 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 make every field a redoubt, where cavalry could "never bear down upon her infantry. The light and hardy soldier "would find a protection in every field in the country. The roads "were a kind of defiles, and if the congregated powers of Russia en- "deavoured 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 op- "pressors." Now, gentlemen of the jury, I would ask, is Russia the oppressor of Ireland ? Is it not clear that he spoke of the congregated force of England ; and that if Ireland was led by her own leaders, it was the forces of the latter she would drive out ; for you will find it occurring elsewhere in his speech, that England is designated as the oppressor of Ireland ? Is not this intended to be conveyed and circulated amongst the people by the newspapers (the repeal wardens taking care that they shall be read), to excite the misguided population of this country against the people of England ? You have Ireland as a military position pointed out ; every field a redoubt, every road a defile, a place where cavalry could not act



against the infantry, and as the card has pointed out, they were defeated in four actions, and why should not the Irish, being led by their own people in the next action, defeat the oppressors of their country?

I will now refer to a publication of Mr. Barrett, the editor of the Pilot newspaper, one of the traversers who has been taking a prominent part in this conspiracy, and endeavouring, as far as he could, to excite discontent and disaffection among the people. This was one of the papers which was to be circulated through the country by the repeal wardens, they taking care, according to their instructions, that it should be read by as many of the deluded populace as possible. The paper I refer to bears date the 10th March, 1843. It gives an account of a repeal meeting held in Washington, in America. I shall not trouble the Court with all that occurred at that meeting, but I shall merely refer to a speech delivered by Mr. Tyler, son of the American President, in which he says, speaking of the Irish people: "when we see that 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 im- " possible, or even difficult. *The libation to freedom must some- " times be quaffed in blood.* The Irish heart he looked upon as " true as freedom's pole, true as is the magnet to the north, and their " lives are given cheaply in the purchase of liberty." I shall now call your attention to the leading article in that paper, where that speech and the sentiments expressed in it are adverted to. It is there spoken of, as " a bold, statesmanlike speech," so that the libation to freedom must be sometimes quaffed in blood, and the lives of the Irish are given cheaply in the purchase of liberty; that is what Mr. Barrett calls a bold, statesmanlike speech. Mr. Barrett then goes on further to state: " 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? " The interests concerned are immense; America has an interest " in this question. The rapacity and grasping movements of England " have awakened her to the necessity of checking that rapacity. She " is bound to this course by self-interest; England aspires to univer- " sal sway. This is incompatible with the safety and liberty of the " United States. The efforts of England to take possession of far " more than her share, of the Oregon territory on the south Pa- " cific shore of America, has already called forth the anxieties of " American statesmen. 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—a curious coincidence.” This is the publication the members of the Repeal Association consider themselves justified in circulating through the entire of this country. This is the poison infused into the minds of the Irish people, who would be obedient to the laws if left alone, were it not for those mischievous agitators leading them on for their own ends. These were the means, to use the language of a late minister of the Crown, by which a revolution is sought to be effected; a republic is sought to be established; a republic of which Mr. O’Connell is to be the leader and chief. This is the purpose, this is the curious coincidence, to which Mr. Barrett alludes.

Gentlemen, the next step taken in this conspiracy was to accustom large bodies of men to assemble together from great distances, who were to march great distances pursuant to orders issued to them, thus to accustom them to meet and come from those distant places, to assemble together, not with arms in their hands, because they were first to be drilled and to assemble without arms, until the proper period had arrived for putting arms into their hands. They were to go to these meetings in military organization, not to act, but, as Lord Tenterden and Lord Wynford pointed out, in *Redford v. Birly*, when the time had arrived, when the drilling was complete, when the time of England’s infirmity which was Ireland’s opportunity had arrived, then the order for taking up arms was to be given. There was nothing new in this. Every step of this conspiracy has its precedent. The same course was adopted in 1797, previous to the rebellion. It is a matter of history. By the report of a committee of secrecy appointed by the House of Commons, for the purpose of inquiring into matters connected with the breaking out of the rebellion of 1798, it is said in page 6 of the report: “ We your committee beg leave to call the attention of the House to the proclamation of the Lord Lieutenant and Council, bearing date the 6th day 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 number 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 association.” Such was the plan of organization prior to the rebellion of 1798—and that is the precedent from which these monster meetings were taken. The first meetings in 1843 are of little importance—they became more so as the conspiracy increased in strength and daring. A meeting took place in the county of Meath, it was the first of the monster meetings, and was held at Trim on the 19th of March, 1843, and three of the traversers were present at it, Mr. O’Connell, Mr. Steele, and Mr. Barrett. There were about thirty thousand persons assem-

bled there, and a dinner was given the same day at which the leaders of this assembled multitude were present. At this dinner the toast of the people having been given, Mr. Barrett returned thanks. "He adverted to the progress of repeal, said that they were certain to succeed, situated as England was abroad and at home, and he called on them to be united, tranquil, and generally organized, and when the time was come, Ireland had but to stamp her foot and she would be free." This is the legal, constitutional, and peaceable mode by which this great alteration in the constitution of the realm is to be obtained, and it is quite consistent with what Mr. Duffy stated. "If the repeal wardens have not done their duty, that parish is not ready for liberty." But when every parish is ready for liberty, when it is ready for rebellion, then Ireland had but to stamp her foot and she would gain repeal. At that same dinner Mr. O'Connell said, "When I think of the multitudes by which I have been surrounded to day, and the bright eyes that looked on me, the elasticity of spirit that was there; when I beheld on one side those smiles and female loveliness, and on the other those reverend clergymen bringing benedictions, I will ask the men of Meath will you be slaves? I would rather be in my grave or a freeman!" Do you recollect the observations of Lord Tenterden in reference to the inscriptions on banners as affecting the illegality of the assembly. "Better die like freemen than be sold as slaves." He further says: "When I ask are you slaves, I would rather be in my grave or a freeman. 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 occurred in which the Irish were on the point of victory when they abandoned the field. In the most disastrous battles that they fought, victory was their's if they persevered; even at Aughrim they had a triumph if they only had perseverance to insure it, and even at the blood-stained Boyne they would have gained the victory if they had fought 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. There is not a human being so stultified as to think that the English parliament will do anything for Ireland; 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." Thus upon that occasion Mr. O'Connell adverted to the physical force which surrounded him; he recalled to their recollection the battles of the Boyne and of Aughrim; he called on them to say, whether they would be slaves; that they had nothing to hope from an English parliament, and if they would follow his example they should either go to their graves or be free men. It may not be improper to state here a matter by no means unimportant, that during the whole of the last session of parliament no petition was presented from one of those multitudinous meetings. It is not surprising

that there was not, it would be rather singular if a petition was presented, the leaders at those meetings having stated they had nothing to hope from that parliament, which alone by legal means could assent to the carrying of the object they profess. I know you will be told that shortly before this prosecution was instituted, there had been considerable activity in purchasing parchment, to prevent the consequence arising from the possibility of its being truly alleged that no petition had been presented; but even if they had presented a petition, what passed would have shown merely that it was a colourable proceeding, that their object was not to be carried by constitutional means, or through the instrumentality of the legislature.

Gentlemen, something more than a year ago a newspaper called the *Nation*, was established in Dublin, of which one of the traversers, Mr. Duffy, is the proprietor. You will recollect what I have already adverted to, that it was a principle of the Repeal Association, to circulate these papers as much as possible amongst the people. Now I believe it is a saying which has been so frequently repeated as to become a proverb: "I shall leave to you the making of the laws, if you give to me the writing of the ballads." It is a singular circumstance that the writing of seditious poetry had been resorted to previous to the late Irish Rebellion. In the report of the Secret Committee you will find extracts from newspapers of the same class of seditious poetry which was circulated to poison the minds of the people of this country. The "*Nation*" has become the means of sending abroad pieces of seditious poetry, which have become so numerous, that I find they have published them in a volume called "*The Spirit of the Nation.*" I shall not trouble you with reading it, but one specimen will give you to understand the extent to which it has been made use of. This poem appeared in the *Nation* of the first of April last, it is entitled: "*The memory of the Dead.*" It is as follows:

#### 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 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.”

That is the publication by which it was intended to poison the minds of the people of this country. What I have read to you is but a single specimen of an entire volume, which is full of exciting, inflammatory, and seditious publications, for the purpose of creating discontent and disaffection among the people of this country. I have looked through a volume of a newspaper, which was published in the year 1797, called the *Press*, and which was established with the object of advocating the rebellion, and I find nothing in it like the poem which I have read. Gentlemen, I shall now read to you an article from the same paper, the *Nation*, of the 29th of April, 1843, It commences thus: “Something is coming; aye, let it be for good  
 “ or evil, something is coming. Some crisis, some decided swell or  
 “ ebb of Ireland’s fortune is not far off. The country at length is  
 “ roused, gathering and darkening, and accumulating, have its forces  
 “ been for long, and men said, ‘It will be a shower,’ and ‘twill pass  
 “ away;’ but now the masses are suddenly rolling together and crowd-

“ing the firmament. The heart of Ireland begins to beat strongly.  
 “ This is a solemn time for all men who can influence the people.  
 “ Excitement fully as great existed here before, and existed vainly, or  
 “ worse. 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 wel-  
 “ comed on the coasts, and a half campaign would have seen an inde-  
 “ pendent 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. Let no man mistake  
 “ us. We do not wish to discourage the people, but to put them in  
 “ a state of mind as remote from depression as from frivolous confi-  
 “ dence—confidence has no safe basis except in thorough knowledge.  
 “ 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. We re-  
 “ peat, then, that there are signs of storm abroad, and we wish the  
 “ people to look into the tempest, and measure its strength, and pre-  
 “ pare to conquer it. Ireland has the means of a present and par-  
 “ tial, and of an ultimate and complete success in her own hands, if  
 “ she go wisely, and therefore sternly, coolly, and vigorously to work.  
 “ Let no man believe that they have undertaken a holiday mumming  
 “ in meeting England’s remorseless and subtle despotism. Let us  
 “ have no bragging or fool-hardiness. There has been too much of  
 “ this at all times in Ireland. If we are 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 cam-  
 “ paigns as well as battles, in politics or war. Let us look about us  
 “ for the elements of success—let us throw away no resources, offend  
 “ no ally, arouse no neutral, and abandon no strong position. We  
 “ have the opportunity and the means themselves to our hands.  
 “ America is more unanimous in its friendship, and more power-  
 “ ful in its means, than in 1829. Let America be told the whole

"truth of our position, and she will do her best. We can promise for some of the ablest and greatest in France. The French people long to serve us. England is in distress. Her finances are in difficulty. Her colonial empire—India, the Cape, China, Canada, &c., make such a demand on her, that out of one hundred and three battalions, which constitute her infantry of the line, eighty are abroad, and only twenty-three in the three kingdoms. And unless the late blows received from Portugal and Brazil tend to keep her up against the staggering shocks from without, and the huge cancer of aristocracy within, her pecuniary resources will diminish as the demand for them increases. What then is wanting? Exertion, coolness, patience, and courage. 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?"

Now I pray your attention to what follows: "premature insurrections, and needless provocation of party, and military hostility have before ruined as good hopes as ours. Rapid, uniform, and careful organization for the repeal agitation, charity and conciliation, and a strict observance of the laws, are the pressing and present duties of every Irishman." They wished the people to wait until the organization was complete—until every parish in Ireland was ready; but they wanted them to wait in peace, for one of the mottoes of the Association was: "the man who commits a crime, gives strength to the enemy," meaning the Saxon foreigner, the person from whose relentless grasp, when the time arrives, you are to extricate yourselves, but your present duty is a strict observance of the law. The article then goes on to say: "Thus shall we battle 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. We did not hesitate to differ from that illustrious man upon smaller questions. 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. We speak, then, not as flatterers, nor thoughtless assentors, when we call this project the wisest, the boldest, and the most pregnant with great results of any measure he ever proposed in Ireland; if the people do their duty, this machinery must triumph. But upon the composition of that body, on the just and judicious zeal with which it is matured, and on the firm courage with which it is backed by the people, every thing depends. If the people, flattered at the thought of a new plan, grow negligent in their organization, and remiss in their agitation, or if they hastily promise, and blindly

“ appoint as the trustees of their subscriptions, cowards, blockheads,  
 “ knaves, or bigots, men of doubtful courage, vain or clumsy intel-  
 “ lects, or uncertain devotion to Ireland—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 tole-  
 “ rant men, and if they stand by those they trust, without cavil or  
 “ flinching, Ireland will soon be a nation.” One would suppose that  
 such an article as this might have been conceived sufficient for one  
 publication; but such is not the case, for in the same number of  
 the paper there is another article to which I was most desirous of  
 drawing your attention. It is entitled “ Our Nationality,” and is  
 to the following effect: “ The olive growth of nationality is over-  
 “ spreading 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 who sees its  
 “ beauty unmoved, whose heart yearneth not for its saving shade. If  
 “ such there were, they are fast disappearing; those who were with-  
 “ out hope are now firmest in national belief, and the shrinking and  
 “ timid are become the forward and most bold. Many, too, who  
 “ only a year ago, regarded it as a fair, unreal vision, now cling to it, as  
 “ a palpable, intelligible, and immeasurable blessing already clutched  
 “ in their hearts’ grasp, and only to escape thence when those hearts  
 “ are cold and pulseless. Men meet in the highways, between whom  
 “ there had been long and frantic estrangement, and while they shake  
 “ hands in common hope, they stare around them for that mutual  
 “ juggle, by whose dexterous application was shuffled out of view the  
 “ lasting glory, which each could share with each, and all enjoy abun-  
 “ dantly. 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; the lesson of sanguine  
 “ men, among whom we have had an humble place; the teaching of  
 “ truth confirmed and matured by wrong. Men’s thoughts were  
 “ probed; they were told to garner their individual sufferings, to  
 “ forget them in their country’s dependence; history was opened to  
 “ them, and it showed them those on whose fiat their hopes were  
 “ based, remorseless, truthless, cold, selfish, and bloody, in every age  
 “ and every clime; it showed them that to lean there, was to lean  
 “ on death, and their own sense and courage did the rest. They  
 “ have resolved to trust no more to 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 de-  
 " crepid thing that calls itself our master. With so little to deter  
 " us ; with heaven above us and the earth below us, where our  
 " martyred fathers lie ; with our conscience as our guide, and the  
 " world to cheer us, is it not marvellous that we could have so long  
 " stooped to a beggarly servility ? But this is unavailing. Let us  
 " look back only to be assured. If the past supply no higher im-  
 " pulses than the present, let it be forgotten. It has lessons which,  
 " when we are called on to forgive, will afford ample scope for the  
 " exercise of the most difficult of the Christian virtues, and till  
 " then it shall rest with those unavenged heroes who have become a  
 " portion of itself. At present other thoughts must animate, other  
 " impulses must be obeyed. 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 re-  
 " quires corresponding caution, courage, and virtue. Our enemy  
 " may be aroused, and so must Ireland. 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 to-  
 " gether, 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. 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 re-  
 " demption at whatever cost. The demonstration will be one of  
 " works. Each parish will be prepared to show, not what it thinks,  
 " but what it has done. They will appoint representative delegates  
 " from every locality, who will tender to the Liberator the allegiance  
 " of those who are willing to pay for the honour of serving their  
 " country. The two meetings will come off on the 23rd 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."

Gentlemen, at this stage of the proceedings it may be right,  
 having already stated the opinions of the late government with respect  
 to the question of a repeal of the Union, to recall to your  
 recollection what took place between the former and the next multi-  
 tudinous meeting to which I shall have to call your attention. On  
 the 9th of May, 1843, in the House of Commons, the excitement  
 which prevailed in Ireland in consequence of those multitudinous  
 meetings, gave rise to a question, which was put to the first minister  
 of the Crown, and upon that occasion he made the following observa-

tions: "I can state, that her Majesty's government are alive to the evils which arise from the existing agitation in Ireland, with respect to the repeal of the Union. And I further state, that there is no power, no authority which the prerogative of the Crown and the existing laws give to the government, which shall not be exercised for the purpose of maintaining the Union, the dissolution of which involves not merely the repealing of an Act of Parliament, but the dismemberment of the empire." A statement of the same nature was made on the same evening in the House of Lords, by the Duke of Wellington. So far then, as the opinion of the government is concerned it was pronounced unequivocally on that occasion, and it cannot be said that the proceedings subsequent to that were carried on in ignorance of the determination of the government. If the proceedings continued, they would be left to be determined by the tribunals of the country. About five days after that declaration in Parliament, on the 9th of May, the meeting at Mullingar took place. There were present on that occasion, Mr. O'Connell, Mr. Steele, Dr. Gray, and Mr. Barrett. There was an immense assemblage at that meeting. It was said by some of the defendants that it amounted to 100,000. I believe that the number was exaggerated, however it was a meeting of many thousands. They came to that meeting preceded by temperance bands, dressed in uniform; and gentlemen, you will find in the course of the observations which I have to make that this was not considered by the defendants themselves an unimportant circumstance. It is part of the system of military array; and I regret much, that these temperance societies have been involved in this political question with which the country has now for so many months been vexed. I cannot help saying, as I have adverted to this circumstance, that with respect to the Rev. Gentleman who first carried out that object, my strong belief is, that he was influenced by none but the purest and best motives. But though I believe that to be the case, others have taken advantage of that which was intended for no political object, and have turned it to political purposes. It is singular, that in this respect also, they had in their recollection the advice given by the leaders of the United Irishmen, as to the importance in carrying out their object, that sobriety should be part of their system; these societies were organized throughout the country; of this, advantage has been taken, and these bands have formed part of these processions. At that meeting, there were banners floating from the windows and the house tops; triumphal arches were erected, bearing inscriptions, among 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 now to allude to. On the same day, a repeal dinner was given after the meeting, at which Mr. Barrett spoke as follows: "Can they unrepeal us by silencing us? We know, England now knows, the world knows that Ireland is united. 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, yet silent as gunpowder—smooth on the surface, only in-  
 “ dicating the depth of the waters. We will crouch, but it will be  
 “ the crouch of the tiger, ready to take the sure but terrible spring,  
 “ and clutch our independence. Come what may, the die is cast,  
 “ repeal must be successful. We have the cause, the leader, and the  
 “ country. A leader worthy of the people, and a people worthy of  
 “ the leader, sober, forbearing, resolved, and possessing all the vir-  
 “ tues which must enable them to attain, while rendering them worthy  
 “ of national independence! With such a cause, such a leader, peo-  
 “ ple, and clergy, who will despair ? ” Again, in another part of his  
 speech, he says: “ There are moments in the life-time of nations  
 “ as individuals, which lead on to prosperous fortunes. If Ire-  
 “ land has missed former opportunities of regeneration, that is only  
 “ a warning not to miss another. The moment has arrived ; in-  
 “ stead of vain regrets over the past, let us seize on the present,  
 “ and take care that this neglected moment may not become the re-  
 “ gretted past of a future day. Irishmen, proceed in the mighty  
 “ work before you. To recede were ruin. Be firm, and you tri-  
 “ umph ; hesitate, and you fall. To suppose you would neglect your  
 “ present opportunities, would be to suppose you would ungratefully  
 “ neglect that refreshing cup of national independence and prosperity,  
 “ which Providence in its mercy seems at last to have presented to  
 “ your parched and feverish lips.” These were the observations of Mr.  
 Barrett. At the same meeting, Doctor Cantwell, a Roman Catholic  
 Bishop, spoke as follows : “ We have long enough, in vain, tried to  
 “ obtain justice from England, and it is time that we should endeavour  
 “ to right ourselves.” 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, and I say all are repealers. Let  
 “ the foolish minister threaten ; I dare, I defy him to crush the re-  
 “ peal 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 strange language to fall from two ministers of a Christian  
 Church.

Gentlemen, the next meeting I shall call your attention to, is  
 that which was held at Cork, on the 21st of May, at which Mr.  
 O’Connell and Mr. Steele were present. It was said, that on that  
 occasion, 500,000 persons were assembled. They met in the same  
 manner as they had done at former multitudinous meetings, for the  
 same object and the same design, to accustom those thousands to  
 come from remote distances, to accustom them to obey commands,  
 and to get them into a state of organization, by bringing them  
 headed by bands, and in military array, in order that when the time of  
 action should arrive, which I have before adverted to, they might be  
 ready to come again and receive their orders. At the dinner, which

took place after the 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 £56 to £694 per week; and I hope, that on Monday next, or some succeeding day, it will be close on a thousand, and perhaps more. [A voice—More power to you.] Mr. O'Connell —More power to old Ireland; that is power indeed. Some wisecrackers went to the Stock Exchange, which was going up until repeal was whispered, and then they fell one and a half; and yet they tell me that troops will be sent amongst the people." Mr. O'Connell in continuation said, "Let them attack us; and if they do, what will be the consequence? What will be the state of the three-and-a-half per cents? If they will attack us, 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 would 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 will not say what has happened to her; she is now a wandering maniac, warning her sex against the ruffian soldiery of Britain.' Let him say but that, and I will ask Peel how many fires would blaze out in the manufactories of England? No; they must discuss the question with us. They must listen to us. They will not attempt to bully us, for it is not to be done. They shall not attempt to massacre us. No! the hangman will be disappointed. We are safe, for Ireland reposes in peace. Her thousands are aroused; and the peaceable arms are extended to heaven, incapable of being intimidated from joining in the offer I make you; and the time is come when I am enabled to make you that offer. I offer you the repeal of the Union." This was the language used at the dinner, on the day, when it was said, half a million of the Irish people had arranged themselves in order and in military array, in the second city in the kingdom.

Gentlemen, the next meeting I shall call your attention to is that which was held at Longford, on the 28th of May. I abstain from adverting to the object of those meetings, and the consequences arising from them, for this reason, as I shall not state my own views of their object, but I shall call your attention to the view which was taken and stated by one of the traversers. On that occasion, Mr. O'Connell and Mr. Steele were present. That meeting has been variously estimated in point of numbers, the lowest calculation being 60,000, and the highest 200,000. It is immaterial to my purpose, whether the meeting was one or the other. It was a meeting collected from seven counties, which embraced the diocese of Dr. Higgins, Longford, Leitrim, Sligo, Roscommon, King's County, Meath, and Cavan. You have heard from the speech which I have already read, what were the sentiments of Dr. Higgins, with respect to the opinion about repeal of the Union, in his own diocese. At this meeting, the multitudes were collected from no less than



seven counties, and the different parties came headed by bands, dressed in uniform, of which there were no less than eight, some of whom had travelled from twenty to thirty miles. The platform on that occasion was surmounted by a device which required no explanation, and was sufficiently intelligible to the people: "*Ireland for the Irish, and the Irish for Ireland.*" I believe that is a statement which it is perfectly unnecessary to explain, it explains itself. There were banners also appearing in the town bearing mottoes, among which was this: "*A population of nine millions is too great to be dragged at the tail of another nation.*" The Rev. Mr. Dawson proposed a resolution at that meeting; he said: "Why should Ireland be treated worse than Australia? that colony has had her representations attended to—she is treated so because she is capable of being the successful rival of England. Are not the feelings of Irishmen to be attended to and respected? Would France, America, and other foreign powers sit quietly by and see the rights of Irishmen trampled under foot?" What was meant by this inquiry? This is part of the attempt to create disaffection amongst Her Majesty's subjects, by representing them as trampled on, and that they never would be righted by the Parliament but by the interference of foreign nations—France and America. At that meeting Mr. O'Connell said: "We shall not be in the slightest degree in fault, for we will not violate any law whatever; but I will tell you what, if they attack us, then who will be the cowards? We will put them in the wrong, and if they attack, then in your name I set them at defiance." That was to say in other words, if they do permit us to organize the country from north to south and from east to west; to hold those multitudinous meetings in all parts of the country, because I call them legal, I will take care there shall be nothing done at present until we have the organization complete, but if they attack us I will put them in the wrong, and set them at defiance. A dinner took place on the same day, at which Mr. O'Connell, Mr. Steele and Mr. Barrett were present. Mr. O'Connell at that dinner made some observations which I shall now read to you, although they are a repetition of the observations made at Cork. He commences by an allusion to Lord Beaumont: "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 should say to one, 'Jemmy, your father has been killed;' 'Tom, your brother has been shot.' A third would ask him, 'but my sister Eleanor' does she live?' he would say, 'your sister is not dead.' 'But is my father alive?' 'No, your sister watches 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.' Yes, my Lord Beaumont, the brother of El-

"len O'Moore would be near your castle; he would hear that you  
 "were one of the men who hallooed on the destroyer 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  
 "the destruction of England would vindicate the country of the  
 "maddened and persecuted Irishman who would have reached her  
 "shores." Now, Gentlemen of the Jury, I would ask you did  
 you ever in the course of your life, on any occasion, or at any  
 time, or in any country in the world, hear so inflammatory a speech,  
 and one so calculated to excite the strongest feelings of the excitable  
 population of this country? You will observe that in that speech he  
 calls the Queen's troops the ruffian soldiery of Great Britain, you will  
 find him presently endeavouring to correct that statement, and represent-  
 ing that he did not use those words; but why he did so, you will  
 perfectly understand before I close. On the 30th of May a meeting  
 of the Association took place, at which five of the traversers attended,  
 Mr. O'Connell, Mr. Steele, Dr. Gray, Mr. John O'Connell and Mr.  
 Ray. Upon that occasion Mr. O'Connell said: "A typographical  
 "error has occurred in the report in the *Freeman's Journal* of the  
 "proceedings at Longford. I did not call the soldiery of Britain a  
 "ruffian soldiery; I would not do so, because it would be false, they  
 "are, on the contrary, an extremely civilized class of men. I never now  
 "see a soldier in the dock charged with any crime. When I was  
 "called to the bar that was not the case; there used to be then  
 "three, five, and sometimes seven soldiers charged with breaches of  
 "the law, but for a number of years it is not so; we never now see a  
 "soldier in the dock, and I would be wronging my judgment if I called  
 "them a ruffian soldiery. The sergeants are a most deserving body  
 "of men, they are the men to whom the present discipline of the  
 "army is owing. If justice were done them, there is not a company  
 "in which one of them ought not to be raised to the rank of an offi-  
 "cer." As I proceed, gentlemen, you will understand this correction.  
 In the *Pilot* newspaper of the 31st of May, Mr. Barrett, one of the  
 traversers, takes the opportunity of reminding the repeal public, that  
 this journal would be sent to each locality where £20 was subscribed.  
 I advert to this to shew that Mr. Barrett, Mr. Duffy, and Dr. Gray,  
 used those newspapers not merely for the purpose of circulating the  
 news but that they were instrumental in forwarding this conspiracy.

The next meeting which I shall refer to, took place at Drogheda,  
 on the 3rd of June. There were present on that occasion, Mr.  
 O'Connell, Mr. Steele, Mr. Barrett, and the Rev. Mr. Tyrrell (who  
 is now dead). There was a procession through the streets;  
 bands, dressed as usual in uniforms, accompanied the procession.  
 The streets were decorated with green boughs, and several thousands  
 of persons were present. There were flags and banners bearing

mottoes—among them, *A nation resolved to be free has only to will it. The wild shout of Ireland calls for repeal. We are Irishmen determined to be free—We are nine millions—A population of nine millions is too great to be dragged at the tail of any nation.* A clear demonstration of the objects of those assembled thousands, to carry out these principles by the exhibition of physical force, and by an organization which must ultimately be arrived at. Mr. O'Connell in his address to the people said, "I want Ireland for the Irish, I am sick of seeing this lovely land misgoverned by Saxon foreigners. I want to see Irishmen, men born and reared in Ireland, and who have the true Irish stuff in them, making laws for the Irish people. I have addressed my countrymen by thousands, in Sligo, Longford, Cork and other places. I am going to Tipperary, Kilkenny, Mallow, Ennis, Skibbereen, and Galway. Wherever I go, but one cry is reverberated, a thrilling shout for "repeal." In another part of his speech he called on them to give three cheers for the army, and they would in return get nothing but civility from them. On the same day a dinner was given at which Mr. O'Connell, Mr. Steele, and Mr. Barrett were present. Mr. Barrett at that dinner, in reply to a toast said: "But let him beware how he (speaking of the Duke of Wellington) by aggression puts the people in the right, and causes a simultaneous outbreak. Mere men of office cannot comprehend the power of a 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 Bastille: even in that execrable French Revolution there was one redeeming trait; that enthusiasm set at naught all the old military calculations, and surmounted what were deemed obstacles physically incompatible with success. When the despot of the continent leagued against republican France, and England cut off her communications by sea, she was deficient in saltpetre, a needful ingredient for gunpowder. They thought she was helpless. Enthusiasm gave the motive—science came to the aid of patriotism—the chemists of France set their wits to work—saltpetre was extracted from old walls, and many other unexplored materials, and France worsted the allies at the Battle of Jemappe. 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 breastwork, every valley a ravine—a country in which cannon or cavalry could not act, and where all warfare must be inevitably irregular." At the same dinner Mr. Steele said, "that if Ireland and Ireland's leader were compelled to resistance, as he 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 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.” There is not much difficulty in understanding Mr. Barrett and Mr. Steele on that occasion. They distinctly meant to excite the people to look to themselves for law, not to the Parliament; so that when the period had arrived, they might be ready to take advantage of the difficulties England might be engaged in, if they thought fit. The concluding toast at the Drogheda dinner was: “ The repeal press of Ireland, the most powerful auxiliary which Mr. O’Connell had in his undertaking,” to which toast Mr. Barrett returned thanks.

Gentlemen, the next meeting I shall call your attention to, was held at Kilkenny, on the 8th of June, at which Mr. O’Connell, Mr. Steele, and Mr. John O’Connell attended. There was represented to be present on that occasion, upwards of 300,000 persons; the same bands, the same array, and the same display of physical force. Mr. O’Connell, on that occasion, gave three cheers for the Queen’s army, the bravest army in the world, and stated, that the sergeants were the most intelligent of their class, and he hoped they would soon become officers. At a dinner given on the same day, at which Mr. O’Connell, Mr. Steele, and Mr. John O’Connell were present, Mr. O’Connell said: “ What a waste of physical force have we not witnessed to day? We stand at the head of a body of men, that, “ if organized by military discipline, would be quite abundant for the conquest of Europe. Wellington had never such an army as we saw to-day. There were not at Waterloo, on both sides, so many “ stout, active, energetic men as we saw here to-day. Oh! but it “ will be said they are not disciplined; if you tell them what to do, “ you will have them all disciplined in an hour. Don’t you think that “ they are 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 the repeal wardens as if they were called sergeants and captains?” This is in substance the language I adverted to in a former part of my statement; “ you are to organize the men, you are to be called repeal wardens, and your commission a diploma;” and they are to be ready to march after those repeal wardens, as if they were captains or sergeants.

Gentlemen, I shall next call your attention to an article published by Mr. Duffy, in the Nation, of the 10th of June, by which you will see the community of purpose and design among those parties. The article I allude to, is headed “ The Morality of War,” or it should more properly be called “ the morality of rebellion.” It commences thus: “ 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-Athla,



" Buidh, and Clontarf, on the repeal 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. We think them unfounded and mischievous, though  
 " most benevolently meant by him. 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 ; for there is more of self-restraint, more  
 " contempt of bodily suffering, more of high impulse, more of great-  
 " ness achieved for its own great sake ; more, in short, of heroism  
 " in war than in almost any other human occupation. This is the  
 " case to some extent in all wars, but increases as the justice of  
 " the cause, and the efforts of the just combatant increase. 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 broken in a disastrous battle, and may his name rot in eter-  
 " nal 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 ! War,  
 " the exposure of ourselves to wounds, toil, and death, is as much  
 " our duty in a just cause, as any other mode of sustaining justice.  
 " 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. War may be very often unnecessarily employed ;  
 " and so may love, anger, law, teaching, or any other human act of  
 " feeling. Moral agitation has its woes as well as war. Ruined for-  
 " tunes, broken friendships, the wreck of hopes, and the tearing of  
 " ties dearer than life, have followed some of those religious and  
 " social changes effected by moral means, and which, notwithstanding,  
 " all men wisely and justly unite to honour. We have now done  
 " with the subject ; we shall not return to it. We feel no wish to  
 " encourage the occasion of war ; but whenever the occasion comes,  
 " here or elsewhere, may sagacious and informed souls, bold hearts  
 " and strong arms, be found to plan, lead, and fight ! May the ex-  
 " amples of Miltiades and Washington never want imitators where  
 " there are tyrants to invade, freemen to defend, or slaves to struggle  
 " for liberty ! We recommend the following passage, from a grave  
 " and able, and one of the latest English historians, to our readers :  
 " Besides, economy and the military virtues are the great supports  
 " of national existence, as food and exercise support our individual  
 " bodies. I grant that the existence so supported may be worthless,  
 " may be sinful ; yet self-preservation is an essential condition of all  
 " virtue. In order to do their duty, both states and individuals  
 " must first live and be kept alive. But, more than all this, econo-

“ ‘ mical and military questions are not purely external ; they are  
 “ ‘ connected closely with moral good and evil. A faulty, political  
 “ ‘ economy is the fruitful parent of crime ; a sound military  
 “ ‘ system is no mean school of virtue ; and war, as I have said  
 “ ‘ before, has in its vicissitudes, and much more in the moral  
 “ ‘ qualities which it calls into action, a deep and abiding interest for  
 “ ‘ every one worthy of the name of man.” Gentlemen, I ask you,  
 having read that article, was I not justified in calling it the morality  
 of rebellion ?

The next meeting to which I shall advert, is the one which took place at Mallow. I merely allude to several of those meetings, not wishing to occupy more of the public time than necessary. At that meeting, Mr. O’Connell and Mr. Steele were present. It took place on the 11th of June, 1843. There were present on that occasion about 300,000 persons. Several temperance bands attended at that meeting, and the same organization was observed by those masses of persons which had been at other meetings. Mr. O’Connell addressed the meeting, and amongst other observations, he spoke as follows : “ I love and honour the  
 “ Queen’s army ; they are the bravest in the world. They are  
 “ welcome wherever they go. The officers are gay and gallant  
 “ young gentlemen. The sergeants are the first in the world ; and  
 “ I regret that the custom does not prevail in the British army which  
 “ prevails in the French, of giving commissions to sergeants. In  
 “ France, no man is an officer who has not first served as a sergeant,  
 “ and who has not been recommended for his good conduct ; and,  
 “ with respect to the private soldiers, I will say, that when called to  
 “ the bar, I remember many of them tried for offences ; for the last  
 “ twenty years, however, crime has considerably diminished among  
 “ them ; and for the last ten years, I have scarcely heard of one of  
 “ them being in the dock, or tried for any offence.” At the dinner,  
 on that occasion, he spoke as follows : “ 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. You may soon learn  
 “ the alternative to live as slaves or to die as freemen. No,  
 “ you will not be freemen, if you be not perfectly in the right and  
 “ your enemies in the wrong. I think I perceive a fixed disposi-  
 “ tion on the part of some of our Saxon traducers to put us to the  
 “ test. The efforts already made by them have been most abortive  
 “ and ridiculous. In the midst of peace and tranquillity they are  
 “ covering over our land with troops. Yes, I speak with the awful  
 “ determination with which I commenced my address, in conse-  
 “ quence of the news received this day. There was no House of  
 “ Commons on Thursday, for the cabinet was considering what they  
 “ should do, not for Ireland but against her. 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 by those connected with this conspiracy. You must recollect that her Majesty is a branch of the legislature of the Kings, Lords and Commons established by the articles and terms of the Act of Union, and yet they are to wrest from her her power and authority, and of their own free will to place the sceptre in her hands upon such terms as they may choose, and these are the proceedings of "The *Loyal National Repeal Association*." In another part of his speech he says: "Have we not the ordinary courage of Englishmen? 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 shall be my dead body they will trample on, not the living man. They have taken one step of coercion, and may I ask them what is to prevent them from taking another? May not they send us to the West Indies, as they have lately emancipated the negroes, to fill up their places. Oh! it is not an imaginary case at all, for the only Englishman that ever possessed Ireland sent eighty thousand Irishmen to work as slaves, every one of whom perished in the short space of twelve years beneath the ungenial sun of the Indies. 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." Gracious God! was ever heard such an attempt to create between fellow-subjects of the same Queen, feelings of hatred to be excited against those whom they were taught to consider their Saxon oppressors. Is it to be tolerated in a country where the law is in force, that proceedings such as this should be carried on? I ask you, gentlemen of the Jury, who have a solemn duty to discharge, is the country to be handed over to those who would turn the government into a ferocious republic (to use the language of one of the ministers of the Crown), of which one of the traversers is to be the head? Again in another part of that speech he says, "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. 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 have got, their country will be free and will be their own. I feel it now my duty to warn you against these Saxons; perhaps a few days will tell us what they mean to do. 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 passion, or the treachery  
“ of her children.”

I now bring you, gentlemen, to a most important meeting, important, because I believe it was the first meeting at which an assertion was made by Mr. O’Connell, of the power of having the Union repealed without the aid of the United Legislature. He has stated this to be law, and I ask if among the numerous counsel for the traversers, there will be found a single man who will affirm that proposition ; yet the deluded people of this country are to be told that they are not to look to the Parliament to carry the object they have in view, and that it can be legally obtained without doing so. I ask you now to remember this, a proposition which I denounce in the face of the country, of this high court, and of the legal profession, to be illegal, unconstitutional, and unprofessional. This meeting was held on the 29th of June, at Dundalk. There was the usual number of temperance bands, all in uniform, the same organization as at other meetings. Several thousands of people were collected. At that meeting a tricoloured flag was displayed with the inscription, “ *Ireland in mass resists her foes.*” On the same day on which this meeting took place Mr. O’Connell said: “ 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. No ! on next “ Sunday week I attend a meeting, as multitudinous at least as we “ had to-day, in Waterford, on that day week I will attend a “ meeting in Tullamore, nearly in the centre of Ireland ; on that “ day week again I shall attend another in Tuam, under the auspices “ of one John Tuam ; and in a few days afterwards I shall attend “ another meeting in Castlebar. I have not fixed the time for any “ others yet, but I have been called upon to fix it, and in every one “ of them there will be exhibited the same tranquil determination, “ the same resolution that Ireland shall be a nation, the same deter- “ mination never to abandon the pursuit of this sacred cause until it “ ends in success. And I want to know what power under heaven, “ and adding to it the fiends of hell, can prevent us from obtaining “ our nationality when all Ireland wishes for it ? It may be asked “ why I should take the superfluous trouble of attending those 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 refuse to give us the justice we require, the restoration of our “ domestic parliament.” But do they imagine that I intend to stop “ at calling those meetings ? If those meetings do not procure some- “ thing, I am bound to do something substantial, and the basis of the “ movement to effect that object is to be found in those meetings. They “ are satisfying both friends and foes that the nation is with me, man “ for man with me, ay, 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 on us,  
 “ and I have the pleasure to tell you that we are too strong to be at-  
 “ tacked. Sometimes there comes over me a temptation, and I almost  
 “ am induced to wish they would attack us; but I promise you a per-  
 “ fect certainty that they will not venture to do it, and there is no  
 “ concealing the certainty that if they did attack us, the result would  
 “ not be doubtful. I am not afraid of not getting a substantial por-  
 “ tion of the North, and then the national movement will be com-  
 “ plete, and the next step is to be taken. I shall tell you what I mean  
 “ to do; we have already published the plan for the new Irish parlia-  
 “ ment, and selected the places that ought to return members, taking  
 “ up the population in 1831, so there will be no favour to any per-  
 “ son. Every town with nine thousand inhabitants will have a mem-  
 “ ber, and that, with the county members of parliament, would make  
 “ three hundred. I will request that every one of those places will  
 “ collect the sum of one hundred pounds, and send an individual with  
 “ that sum to Dublin. If there be any of those towns that will not  
 “ make that sacrifice, they would not deserve to have members in the  
 “ Irish parliament. If the individuals that would be selected are not  
 “ ready to make that sacrifice themselves for the town, they will not  
 “ deserve to be returned for the town hereafter. I will have my three  
 “ hundred gentlemen assembled in Dublin; their occupation will be  
 “ to bring the money, and thus make a treasury, and then as the law  
 “ requires it, they can dissolve themselves, and there is nothing to pre-  
 “ vent me from inviting my two hundred and ninety nine companions  
 “ next day to a public banquet, at which no persons will attend but  
 “ them and me. And I do not see why we should not form a cham-  
 “ ber of consultation—not of deputies, to arrange the terms of the  
 “ repeal of the Union. I have formed this plan with the Convention  
 “ Act before me, riding the three hundred members through every  
 “ clause of it. There remains then only the assent of the Sovereign  
 “ to be procured; and I tell you the Irish parliament can be revived  
 “ legally and constitutionally, by the mere exercise of the preroga-  
 “ tive of the Crown in issuing the writs, and without going to the  
 “ British Parliament at all. It is only necessary to have them sealed  
 “ by the Lord Chancellor as keeper of the great seal. Sugden would  
 “ do it at once if he were paid for it. When the Chancellor is di-  
 “ rected he will seal the writs for the return of the Irish parliament,  
 “ and by the return to those writs the parliament will be again estab-  
 “ lished in College-green. The plan is quite simple, but it requires  
 “ the nation to back me to enable me to carry it out, and I will have  
 “ the nation to aid me. Let no person dispute that right of the  
 “ Queen who is not prepared to dispute her right to the throne.”  
 That assertion was made to delude the people, who had been told  
 from time to time by the late ministry, and by the present, who had  
 been told by an overwhelming majority in Parliament, that they  
 would not listen to a step which would lead to a dismemberment of  
 the empire. They are told that the moment their organization is  
 complete, the Queen may issue writs for summoning an Irish Parlia-  
 ment. They are told this by a gentleman of standing and eminence

in his profession at the bar, and Mr. O'Connell is in this singular position, either he did not believe what he then stated to those assembled thousands, or if he did, will any of his counsel assert it now? I will 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 was provided that the said United Kingdom be represented in one Parliament, to be styled, "The Parliament of the United Kingdom of Great Britain and Ireland," and in a portion of the fourth article in the same Act it was provided, "that when his Majesty, his heirs, or successors, shall declare his, her, or their pleasure for holding the first, or any subsequent Parliament of the United Kingdom, a proclamation shall issue under the great seal of the United Kingdom, to cause the Lords spiritual and temporal, and Commons, who are to serve in the Parliament thereof on the part of Ireland, to be returned in such manner as by Act of this present session of the Parliament of Ireland shall be provided; and that the Lords spiritual and temporal and Commons of Great Britain shall, together with the Lords spiritual and temporal, and Commons so returned as aforesaid on the part of Ireland, constitute the two houses of the Parliament of the United Kingdom." Thus we have these articles ratified, approved of, and confirmed by the parliament of Ireland, one of those being that the Irish nation being represented in the Parliament of England, it should be the sole Parliament of the United Kingdom; and yet in direct opposition to this legal enactment of the King, Lords, and Commons of this country, confirmed by an Act of the English legislature, having this distinct provision uniting the Parliament of both countries for ever, you are told that it is a part of the prerogative of the Crown, without the assent of Parliament, to summon an Irish Parliament—an *Irish* Parliament—in Ireland, and you are told that any person that denies that, denies the title to the throne. Now, I ask again, if there is one counsel among the numerous bar at the other side who will state that the Act of Union is void? I am aware that it has been stated on many occasions by the same authority that the Union is void; but I reiterate that no lawyer can say that the prerogative can extend to what has been held in that language to be within it. It is a delusion, practised on the people of this country, to assert that the prerogative of the Crown could be so exercised, and yet that language was held by the parties who said they might crouch, but that it would be the crouch of the tiger, ready to spring on what came within his grasp.

The next meeting to which I shall call your attention was held at Donnybrook, on the 3rd of July. There were several thousands of persons present, and there was the same arrangement there—the same organization, the same display of physical force. At that meeting Mr. O'Connell, Mr. John O'Connell, Mr. Steele, and Dr. Gray, attended. On that occasion, Mr. O'Connell said, "What a glorious sight is here! What an awful assemblage! I have seen many mighty and majestic assemblies, but it has never happened to me

" to behold such an assemblage, as is congregated here to-day. It  
 " is impossible for me to have more power—I have power enough—  
 " the only question is, how to wield it; I have more strength, more phy-  
 " sical force than ever monarch commanded or general led. I have abun-  
 " dance of physical force. All Ireland is rising as one mass. The mighty  
 " movement has commenced from Cape Clear, and is extending itself  
 " to the Giant's Causeway. The shout is re-echoed from Howth to  
 " Connemara; a voice is abroad on the wild winds of heaven, which  
 " cries aloud: *Repeal of the Union and liberty for Ireland. Old*  
 " *Ireland and liberty.* Yes, there is such a national uprising,  
 " such a simultaneous declaration of opinion—such a manifestation  
 " of popular determination—such a national resolve recorded in the  
 " presence of high heaven, announcing to the nations of the earth  
 " that Ireland shall be free, and the Union repealed. All that is  
 " requisite is to manage our strength. Let there be no riot, no  
 " violence, no tumult, no breach of the peace. Let us exhibit  
 " sobriety, order, tranquillity, all crowned by immortal, imperish-  
 " able determination. We will have the country for ourselves."

Gentlemen, upon that occasion, as upon many others, you have it  
 impressed upon the minds of the assembled multitudes, that there  
 should be no riot, no turbulence, no violence, but peace was en-  
 joined; and it was for this reason which I shall state to you, that the  
 conspiracy could not be carried on, if there was any riot, or violence,  
 until the period had arrived when the signal was to be given. At  
 present and up to that period, the meetings were only to be used for  
 the purpose of organization, and for the purpose of carrying their  
 object, if possible, by the demonstration of physical force. He  
 further stated: " You know as well as I do, there is one only way to  
 " mortify the enemies of Ireland, and that is to continue peaceable,  
 " and remain determined. Now I delight in the species of au-  
 " thority I possess; I know not how acquired. How pleased I  
 " am with the readiness with which I am obeyed. I account for it  
 " from the identity of all the people with me in the majestic strug-  
 " gle to make Ireland a nation again, and to strike off the domi-  
 " nion of the foe and foreigner." Strike off the dominion of Eng-  
 land, repeal the Union between Great Britain and Ireland, Great  
 Britain being the foe and foreigner. Again, he says: " Yes, we  
 " will not submit to be legislated for by such a country—the  
 " struggle in which we are engaged is one which will transmit our  
 " glory to all ages, and render us illustrious among nations for having  
 " achieved the liberty and independence of our native land; Europe  
 " is contemplating our struggle; Africa on her sable shores hears the  
 " name of the Irish leader, and sighs for a man of the same energy  
 " to lead them from slavery to happiness and true enjoyment; Ame-  
 " rica has heard us. The Association meets to-morrow, and to-mor-  
 " row I will hand in from America £1125 sterling. I think Welling-  
 " ton will hear that with surprise, and I am sure Peel will with terror.  
 " We will give the Americans an entire day, Monday, for their cor-  
 " respondence and nothing else. We will show them how deep and  
 " sincere is Irish gratitude. The voice of thankfulness will re-echo

“ from the shores of Ireland across the waves of the Atlantic, and  
 “ reverberate in the woods and on the lofty mountains of America,  
 “ testifying the delight with which the Irish receive this sympathy of  
 “ the Americans.” Sympathy of a nation who stated through the  
 son of its President, that the libation of a country’s freedom must  
 sometimes be quaffed in blood. “ But (he continued) the assertion  
 “ to which I have alluded relative to the introduction of a bill into  
 “ Parliament for carrying repeal, is all a fallacy, for I have the satis-  
 “ faction to tell you, that it is not necessary that any such bill should  
 “ pass the Saxon senate. The Queen has it in her own power, at  
 “ any moment, to summon the Irish Parliament again into existence.  
 “ The first lawyers in the land, the lawyers most deeply versed in  
 “ matters relating to the spirit of the English Constitution, have given  
 “ their opinion to that effect. Saurin, Bushe, and Plunket have all  
 “ of them concurred in declaring the Irish Parliament had no legal  
 “ right to pass the act of Union. Such a proceeding on their part,  
 “ was at direct variance with the spirit of the Constitution, for men  
 “ who had the audacious presumption to barter a nation’s birthright  
 “ had been sent into Parliament to make laws not to abolish legisla-  
 “ tures. Those great authorities denounced, in language of the most  
 “ fiery eloquence, the nefarious proceeding which was then in con-  
 “ templation, and pronounced the Union to be void in point of law  
 “ and principle, inasmuch as it was an act which they who connived  
 “ at had no power or authority whatsoever to perform. Plunket,  
 “ with a force of imagery and a sublimity of language which it is im-  
 “ possible to commend too highly, declared that as well might the  
 “ frantic suicide imagine that the act whereby he destroyed his ini-  
 “ serable body could annihilate his immortal soul, as the Irish repre-  
 “ sentatives imagine that they had any power to spoliolate Ireland of  
 “ her constitutional, inalienable right to have a Parliament of her  
 “ own. What is the consequence? The consequence is, that the  
 “ fatal Act of 1800 was founded on no fundamental principle of the  
 “ Constitution, and that the Irish Parliament is not dead but only  
 “ sleepeth. The Queen, whom may God preserve and defend, could  
 “ give directions to her authorities in Ireland to-morrow to cause  
 “ the issue from Chancery, of writs for holding an Irish Parliament.”  
 Now what is the statement thereby conveyed to the congrega-  
 ted and assembled thousands; it is this—that Saurin, Bushe, and  
 Plunket have declared the Act of Union void. I tell you, gen-  
 tlemen, they never said so; they made these strong observations in  
 their places in Parliament, before the Act had passed. They op-  
 posed the passing of the Act, as they had a right to do, entertaining  
 the views which they then did. Observations were made, during  
 the debate, and among others, those eloquent words of Lord Plunket,  
 and they are now cited, for the purpose of instilling into the minds  
 of these misguided people, that those eminent persons had, after the  
 Act of Union had passed, declared its invalidity, and thereby pro-  
 nounced that the Crown had authority to call an Irish Parliament.  
 I deny that the Crown has a right to issue writs to summon an Irish  
 Parliament. You will observe that this prerogative is asserted and  
 supported by the allegation that such was the opinion of those great



and eminent men, not one of whom ever suggested such a notion. Those observations referred to were made by them for the purpose of inducing the legislature not to pass the Act, and they are now made use of for the purpose of conveying to the minds of those assembled thousands, that they had declared the invalidity of the Union, and the existence of a prerogative to summon an Irish parliament. Again, I reiterate my denial of that right; the Crown has no such prerogative, and I say that the Act of Union is valid; and it is somewhat singular, that the invalidity of this Act should be asserted by Irish Roman Catholics, when we consider, that if this Act be void, every subsequent Act of the Imperial Parliament is also void, among which, is the Roman Catholic Relief Bill. It is totally impossible to contend that the Act of Union is a nullity, without asserting, for the purpose of supporting that proposition, that every subsequent Act which has been passed for the purpose of binding or affecting this country, is also a nullity; and I ask, whether I am not justified in complaining, that an attempt should be made to delude the Irish people by the authority of those great names into the supposition that this was entertained as an opinion by them, when they never expressed any such opinion; and are they to be told, that although they can have no hope from the legislature, yet they can have it from the prerogative of the Crown. At that meeting, which took place at Donnybrook, Mr. O'Connell alluded to a remittance which he had received from America; and at a meeting of the Association, which was held on the 4th of July, on which occasion Mr. O'Connell, Mr. John O'Connell, Mr. Steele, and Dr. Gray were present, a day selected obviously, because it was the anniversary of the American independence, Mr. O'Connell said: "I shall next proceed to hand in the sums of money I have received from America, and this is an auspicious day to talk of the Americans. This is the 4th of July, the anniversary of their independence. I believe that cheer will go on the western winds with the rapidity of the lightning flash, and the force of the thunderbolt, and crossing the thousands of miles of the broad Atlantic, be heard amongst the towns, and along the rivers, and amidst the lofty mountains of America. Oh! how I pity the man that is not delighted at the feeling that the Americans obtained their independence. They did not turn out in wanton and violent rebellion, or commit any aggression against the English power. No: on the contrary, they were submissive to the English power as long as they were permitted to submit, until a tyrant monarch (and a greater tyrant never filled the throne, both in intention and disposition, than George the Third) compelled them to resist. The Americans suffered every species of injury; they were robbed of their rights; they were refused the privilege of self-legislation; they endured every thing until England passed an act annihilating their domestic legislature. They bore all until England attacked them with open arms; they then (and may God bless their posterity for it) resisted; they fought the good fight, and they conquered gloriously in the cause of liberty and independence. I am sure that England has since

“grown wiser; I know that she is weaker than she was then. I beg to hand in the following sums:” he then handed £1125, the sum which had been received.

The next meeting to which I shall allude, was held at Tullamore, on the 16th of July; Mr. O’Connell, Mr. Steele, Mr. Barrett, and Dr. Gray were present. Twelve bands attended in uniform, from the King’s County, the Queen’s County, the County of Westmeath, and the County of Tipperary. 150,000 persons were present at the meeting. On an arch was this inscription: *Ireland, her parliament, or the world in a blaze.* On a flag: *Ireland must no longer be a serf nation.* The Rev. Mr. Kearney addressed that meeting in those words: “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, by enlarging 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 fair promises in addition to some good acts; but he is too wise for them. He was never yet overreached 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. Allow me then, not to take up your time any longer than to read the resolution.” [shouts of ‘Repeal, Repeal, Repeal’] Mr. O’Connell.—“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. When I addressed former multitudinous assemblages of the people, I endeavoured to show them the advantages that would result from a repeal of the Union, that nothing would do good for Ireland but the restoration of her own Parliament. Upon that topic I dilated often, and was able to demonstrate that Ireland must continue in misery unless she had her own parliament. My object was to excite them to exertion, and I threw in the ingredient of hope, because a struggle without hope is a vain and tedious operation; but now I need not talk of hopes, for I come here to announce the certainty of repeal. In my former addresses I called upon the people to aid me in the struggle I was making; I continue that call still, but I have to add to it, that success is placed beyond all possibility of doubt. You have only to persevere and redouble your former exertions, if possible, and the battle will be won. We have got upon vantage ground, and must not only endeavour to keep it, but we must advance still further on the road to victory, and it is as certain that we shall carry repeal as that the sun is now shining upon you. To be sure that certainty is to be attributed chiefly to our own simultaneous and multitudinous exertions, from which success, so far, has entirely resulted. 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’].” Gentlemen, that will convey to your minds the feelings of this multitude; “if you want us we will be ready to come.” That is not the only meeting at which this question was put. That meeting separated peaceably, I admit, but it was because the time had not yet come, and to commit crime would give strength to the Saxon enemy, but “will you be ready to come when I want you again?” At the close of this address, he says: “Oh, little the Saxon knows that gentleness of manner 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 should flow, general never stood by such soldiers. I have the bravest and the most moral people to deal with; but you must combine; there must be no treachery among you; and it is a 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. 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 to work in a part by himself, solitary and alone, and refused to hold any intercourse with him. My friend was afraid that they belonged to some secret society, and addressing them said, that he hoped that they were not Ribbonmen, that they refused to let that poor fellow into their company; but what was their answer? ‘Oh! that fellow refused to become a repealer.’ These good men were combined for the cause of repeal; and it is absolutely necessary that you should be doubly active now. I cannot afford to leave out man, woman, or child without becoming repealers. Let every one join with me in the call for repeal, and the shout will reverberate to England—the Saxon will be aroused from his slumbers—the echo will be borne on the wild waves, and the Union shall be, must be repealed.” This is the system by which many men are compelled to join in the conspiracy, by treatment such as this. Workmen not associating with a fellow-labourer because he committed the crime of refusing to become a repealer, because he exercised his judgment upon the point—a system under which neither liberty nor independence can exist, like every revolution which always ends in establishing a tyranny of the worst description.

The next meeting to which I shall advert, took place at the Association on the 18th of July, Mr. O’Connell, Mr. John O’Connell, Mr. Steele, Mr. Barrett, and Dr. Gray were present at it. I believe this was one of the earliest periods at which an important branch of this conspiracy was brought forward, I mean the establishing of the arbitration courts, to which the people were recommended to

resort in preference to the petty sessions court. At that meeting Mr. O'Connell moved the adoption of certain resolutions for the appointment of arbitrators. This is a subject which I shall presently advert to, and I will merely say now, that this is the first occasion of the assumption of one of the prerogatives of the Crown in endeavouring to establish courts throughout the country, and to take away the administration of justice from the tribunals established by law.

The next meeting was held at Tuam, on the 24th of July, at which Mr. O'Connell, Mr. Steele, and Mr. Barrett were present; there were the usual temperance bands, I believe twenty in number, present; and I believe there were some hundreds of thousands of people collected on the occasion. A dinner took place in the evening of the same day, at which the same traversers attended; Mr. O'Connell spoke at the dinner as follows: "The strength of our enemies is shattered, they are distracted and divided in their weakness; and if the people have the grace and the skill to make their adversaries' infirmity the opportunity of their own liberty, the good fight is fought, the goal of freedom is won, and Ireland is again a nation. That Ireland is in the right—that her population is justified in the gigantic efforts which they have latterly been making for the attainment of their legislative independence—that they have experienced such treatment for a long series of years at the hands of England, as has fully warranted them in the protection of a native senate, are facts which admit of no dispute on the part of rational, dispassionate men, and which are acknowledged without qualification by all the nations of the universe. America sent her voice of thunder careering over the illimitable waters of the great Atlantic, to tell you you are justified in all your proceedings. Admiring France looks on with breathless interest, and all Europe has her eye fixed with an intensity of vision on the magnificent demonstration in favour of liberty whereof Ireland is now the theatre. I will be happy if I see my country free. Oh! let us resolve as one man to achieve her freedom, and the day of her glory is 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—

" O Ireland! shall it e'er be mine  
To wreak thy wrongs in battle line?  
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."

On the 26th of July, a meeting of the Association was held, at which Mr. O'Connell, Mr. John O'Connell, Mr. Ray, Dr. Gray, and Mr. Steele attended, and at which Mr. O'Connell alluded to a plan by which the estates of the Irish Society, situated in Ulster, were to be confiscated.

I have next, to call the attention of the Court and the jury to an



important meeting that took place at Baltinglass; but as I cannot possibly conclude my statement to night, I wish to suggest to the Court whether this may not be a proper time to adjourn, as I do not wish to fatigue the jury.

The LORD CHIEF JUSTICE.—We do not wish, Mr. Attorney General, to limit you in time; and if it suits the general convenience, we do not object to an adjournment.

The jury were then about to leave the box, when

The LORD CHIEF JUSTICE said—Gentlemen, do not leave the box at present.

After a consultation of a few moments,

The LORD CHIEF JUSTICE.—Mr. Attorney General have you thought of what is to be done with the jury between this and to-morrow?

The *Attorney General*.—With respect to that, the matter rests entirely with the Court; I beg to hand up to your Lordships the case of *The King v. Kirwan* and others. Of course, if the Court should come to the conclusion that the gentlemen should stay together, it will be necessary, as it has occurred in some of the state trials, that the Sheriff should have provided a comfortable hotel and accommodation suitable to the circumstances. As you have called upon me to express my opinion, my Lord, I must, in the discharge of my duty say, that I consider nothing can be more desirable in this case than to prevent all communication or interference with the jurors; and to act up to the spirit of the Act, my opinion is that they should not be allowed to separate, as it is no ordinary case, but the very serious charge of conspiracy. In a case of high treason, it is stated, upon authority, that the Sheriff was directed by the Court to procure suitable accommodation for the jury; and in a hotel adjoining the court apartments were procured, where the jury retired from day to day, and received every accommodation and comfort that could be procured for them; but they were not allowed to separate until the trial was finished. I state this, my Lord, in the discharge of my public duty, and regret the necessity of inconveniencing the jury, but, my Lords, if you should consider it advisable to allow the jury to go to their respective homes, I am sure it will be altogether unnecessary to caution gentlemen of their respectability against holding any communication with any person whatsoever on the subject of this trial; I do not mean with the friends of the traversers alone, but with every person.

Mr. *Moore*.—My Lord, now that the Attorney General has in part assented to the jurors having liberty to go to their respective homes, I beg leave, on the part of the traversers, to say, that they are most desirous that the jury should have every convenience and accommodation, and fully consent to their going home.

The LORD CHIEF JUSTICE.—Gentlemen, you may retire to your homes, and I trust you will bear in mind, that you are to abstain from all communication with any person upon the subject of the present trial.

WEDNESDAY, JANUARY 17TH.

The *Attorney General*.—My Lords, and Gentlemen of the Jury, on the 6th of August, there was a meeting at Baltinglass, in the county of Wicklow. At that meeting, three of the traversers were present, Mr. O'Connell, Mr. Steele, and Dr. Gray. Many thousand persons were present; some of the papers calculated the numbers at 150,000. Mr. O'Connell addressed that meeting, and among other matters, he said: "and shall they tell me that the parliament, which by force and fraud was extorted from us, is never to be revived again—I deny it. I call on you all to deny it with me, and to give me your universal promise that Ireland shall be a nation. Yes, I call on you to give your universal promise, that Ireland shall be a nation." This was addressed to a multitude of 150,000. He afterwards said: "If I want you again, will you not be ready at my word; let any man who is determined to meet me again on a future occasion, when I shall require your presence for a peaceable purpose, hold up his hands." Here the report states, thousands of hands were upraised, with loud demonstrations of applause. Mr. O'Connell then said: "Let bog-trotter Fenton take a note of that cheer to his master in London, the Earl of Wicklow, that he may be brought to understand what is the true state of popular feeling in Ireland." Now, again I say it is by no means unimportant, at meetings of this kind, to inquire what was the effect produced upon those who heard those inflammatory addresses; and I am in a position to prove to you, the observations of some of those assembled thousands; I should say, tens of thousands. One man was heard to declare, "We are determined to get repeal, for we are sober now, and shall not be put down as we were in '98." Another observed: "Let us wait with patience for a few months; the time is nearer than you think; Ireland was trampled on, but shall be so no longer." Others exclaimed: "that they would turn out to a man and fight for repeal." Others: "that they would die, or have repeal, and that other parts of the country would die to a man, but that they were afraid of the sea-side fellows." Another said: "that Father Lawler told them in the chapel, it was too far gone now, and that they would get it, but not without blood being shed." Some were heard to say: "that if they were not sure of getting repeal, there would not be a blow of work done in all Ireland, and that the people would rise to a man." Others contradicted that, saying, "that the people did not intend to rise; that the only way they wanted to get their right, was by peace; that if they were refused, foreign powers would strike the blow." That is the way the people of this country have been deluded by these agitators; that is what they understood by their exhortations to peace. "The time is nearer than you think."—That accounts for the manner in which Mr. O'Connell addressed a former meeting: "if I want you again, will you not be ready at my word." That is the meaning of "the time is nearer than you think." The expectation was, that they

would be required at some future day, of which they should receive notice ; when the organization was complete, when the repeal wardens had done their duty, and every parish in Ireland, in the language of Mr. Duffy, was ready for liberty. A dinner took place on the same day, in Baltinglass, at which Mr. O'Connell, Mr. Steele, and Dr. Gray were present. Mr. O'Connell, on that occasion said : " 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 not have 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 re- " volution ; but in the British service, they are the finest, the most " intelligent, and the most trust-worthy 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 should pronounce ; " and I give them advice to do so from this spot." Now, you understand the meaning of the passage " the revolution in Spain was brought about by the military." He makes use of that language, calculated to inflame the non-commissioned officers in this country against the government, to represent to them that they were treated with injustice, and to persuade them, that the injustice would be remedied as the cause of repeal advances ; and you will find, when I refer to some publications of the traversers connected with the army, that the common design of all persons engaged in this conspiracy, when they had organized the people of the country, was to endeavour to excite discontent in the army, so as to render the government powerless against that organization. He further stated : " I have " thrown out more than once, and I repeat the outline of it now, " with the remark, that it is yet far from being complete. What I " mean to propose is, that a preservative association shall be formed, " which will be preservative of every thing worth preserving, and ob- " literative of every thing which ought to be obliterated. That every " member of it should find out or produce £100, as a proof of the " trust that is reposed in them, in their own neighbourhood, or of " their own generosity towards their country. I will take care of " the law, and that there shall exist no power of prosecuting or in- " dicting any of its members. I trust, that before Christmas comes, " we will have that Preservative Society sitting in Dublin, and draw- " ing up bills which they will call on the British Parliament to pass, " and if they refuse to do so, then they will call respectfully on Her

“ Majesty the Queen, to call her Parliament together in Ireland “ again.” This was the dictation to the hundreds of thousands who were assembled at this meeting; first to call on the British Parliament to pass bills approved of by the Preservative Society, and if the British Parliament did not do so at the dictation of the Preservative Society, to call on Her Majesty to summon a Parliament in this country, and then, as I said yesterday, to hand over to her the sceptre of this country on terms dictated by those engaged in the conspiracy. Mr. O’Connell then proceeds: “ I repeat, the practical details “ of my plan are not yet worked out, but I wish to announce the “ general outline of it, that it may be fomenting in the Irish mind, “ and may be digested by others as well as by myself; and I trust, “ that before I see another birth-day I shall see Ireland righted, and “ her Parliament in College-green again.” Gentlemen, I think it will not be necessary for me now to advert to any thing that intervened between the 6th and the 12th of August; and as I stated yesterday, I have abstained from commenting much on the general state of organization throughout the country, and the object of these multitudinous meetings, because their purpose will be more clearly pointed out by the language of one of the traversers.

I shall now beg to call your attention to an important publication in the *Nation* of the 12th of August, six days after the meeting at Baltinaglass; and I think you will find that publication of importance as throwing light on the object of those concerned and engaged in the conspiracy with which they are charged—It is entitled “ The March of Nationality,” and is as follows: “ How beautiful our country is! How full “ of cautious energy. How sure a hope lies under her anxiety. How “ fiercely she springs upon what ’tis 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 “ bruised children, while she prepares for them retribution and relief. Her brow is pale—most pale, and well that peaceful 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. It becomes a memory laden with a thousand transient glories and baffled hopes. It were unseemly in her for whom “ an army of unrevenged martyrs garrison her soil; it were unseemly in her whose children feel such pangs and woes; and most unwise and unbecoming would it be for her, with so trying and so “ vast a contest before her, to wear one rude or reckless look.”

“ Let us see what has been done, and what remains.—What were “ we a year ago? The squabbling and impotent serfs of England; here “ a master mind, and there a heart prophetic with enthusiasm, foresaw the time when a people, owning all that gives the power to be “ a nation, would scorn to serve. They foretold that eight millions, “ with all that enforces independence upon man, with the oldest and “ most varied history in Europe, with the deepest wrongs, and having “ their old wronger for their present tyrant—with a home marked “ apart by the ocean, with limitless misery and limitless resources—



“ were destined to be admirable and strong among the nations of the earth. But now; oh joy and praise!—apathy and distrust have fled. The storm of nationality has rent the cloudy pall which closed around us: even now it scatters the dark masses, and lends us glimpses of serene liberty.

“ 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 thousand—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. Most of the counties of Leinster and Munster, and some in Ulster and Connaught, have come in masses together to declare that they are ready to make any sacrifice—money, repose, or life—to achieve their independence.

“ 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 those meetings a strange and formidable event.” Gentlemen, that is not my language, it is the language of one of the accused parties, that the absence of riot made each of those meetings strange and formidable. It is true that at those meetings Mr. O’Connell preached peace; it is true he wished them to disperse peaceably; every person must rejoice that his injunctions were obeyed—that we have up to this time been saved the misery of an attempt by those multitudes, by an outbreak, to carry out their designs. But the absence of riot, and of the commission of actual violence, however we may rejoice at it, does not take away from the illegality of those meetings, because the intention was to organize the country throughout, that they should be peaceable until the organization was complete; the very absence of riot made each of those meetings, in the language of Mr. Duffy, a strange and formidable event. It then goes on: “ There was a time when such meetings might have been plausibly resisted by our despots, and the country forced into a premature contest.” They all look to an ultimate contest. “ Now there is no such danger. 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 knew 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 organization, by general, provincial, and baronial inspectors, by wardens and collectors, by volunteers, members, and associates, have any efficiency 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 mind of the repeal leaders not to rest until it is carried out. The people will gradually, but surely, be arranged, classed, organized, and bound together. Subordination of ranks, community of thought, obedience to orders from trust to those who command, constant activity in teaching and learning the means of liberation, are rapidly becoming general.

“ Nor will the organization stop at arraying the people in their parishes, and massing them all under one will; it will every day extend its operations. It has resources in it to advance as well as to maintain itself. 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. Patriotism will make their jurisdiction universal, and public opinion will so sanction their decrees that no man will disobey them. But woe to him who disabuses his office by negligence or partiality—woe to him who sullies this popular ermine by partiality—and curses upon the man who, from bigotry, friendship, or vanity, helps to place such a power, for good or ill, in the hands of an uneducated, weak, or vicious man!

“ 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.

“ Ireland is changing into a nation.” This Preservative Society was to assume the functions of the legislature. They were to send bills to the United Parliament, with directions that they should receive its sanction, and in the mean time they were to pass as laws for the Irish people. Men are not to be returned if they do not do their business in such a manner as shall be satisfactory to the Association. The article then goes on to say: “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. 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 organization well understood by the people, and applicable to any national exigency: we have an indestructible tie binding the highest and the 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?

“ 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. The declaration of disciplined masses in America, that if lawless force were to come upon Ireland their swords would mix in the fray, and the well-understood will of the finest spirits and most potent citizens of France not to let us contend alone, are full of warning to England.

“ But their first service is to diminish the likelihood of a contest.

“ He will be a bold minister who believes that the professions of France and America are not an idle boast, and yet draws his sword against Ireland. We have some chance now, notwithstanding the hot words of the fallen Henry Brougham, that we will be allowed to work out our liberties unrestricted. This chance is in part owing to our foreign relations.

“ Nor is England combined against us. Her people groan under the sway that ruins us. The successors of the Norman aristocracy still monopolise their land and harass their industry; and they begin to murmur that they will not legislate nor fight against us.

“ But, again we tell Ireland she must free herself by her own might. We have much to do. After all that has been done, we are only at the gate of the temple. Ere we reach the altar we must overcome many a foe and correct many a vice, and we must bear, and battle, and be steadfast.

“ 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—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.

“ 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 of one of the defendants as to the state of the country at the time, of the effect of the organization, and of the object of the parties engaged in planning it and carrying it out.

Gentlemen, I shall now call your attention to the two meetings, which were held a few days after the 15th of August, one at Clontibret, in the County of Monaghan, at which the Rev. Mr. Tierney was present; the other at Tara, the most remarkable of all these monster meetings. There were present at that meeting, Mr. O’Connell, Mr. J. O’Connell, Rev. Mr. Tyrrell, Mr. Barrett, Mr. Steele, and Dr. Gray. The locality of Tara was well known, and was selected as the place of meeting for two purposes. First, because it was the place where the ancient monarchs of Ireland were elected, and secondly, because it was the scene of a battle which took place in 1798, in which those engaged in the rebellion were defeated. Vast numbers of people assembled there; at the highest calculation there were one million of persons, at the lowest 100,000 present; however, whatever the number was, it was a formidable meeting. This spot of ground was selected for the reasons I have mentioned, in order to exasperate the people with the recollection of its having been the scene of the defeat of those engaged in the rebellion of 1798. Hundreds of persons were actually seen on their knees plucking the wild plants growing on the ground, where the remains of the persons who fell there were buried, and pulling a red plant which grows there, under the impression that the colour of the leaf arose in consequence of the slaughter which had taken place. This particular scene was selected to exasperate the people, by endeavouring to recall events that had taken place years before. At that meeting, Mr. O’Connell addressed the people in these terms: “ 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 of 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. I am glad to find that a great quantity of brandy and biscuit has been lately imported, and I hope the poor soldiers got some of them. 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 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. At the last fight for Ireland, when she was  
 " betrayed by having confided in England's honour ; but, oh ! Eng-  
 " lish honour will never again betray our land, for the man would  
 " deserve to be betrayed who would again confide in England. I  
 " would as soon think of confiding 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 them-  
 " selves between the contending forces, and actually stayed the pro-  
 " gress of the advancing enemy. See how we have accumulated the  
 " people of Ireland for this Repeal year. When on the 2nd 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 their legal rights. I told you that the Union did not de-  
 " prive 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 whenever the people 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. The towns which sold  
 " their birthrights have no right to be reckoned amongst the towns  
 " sending members to parliament. King James the First in one  
 " day created forty boroughs in Ireland, and the Queen has the  
 " same right as her predecessor to do so. We have a list of the  
 " towns to return members ; the counties, as a matter of course, will  
 " return them according to their population ; and the Queen has  
 " only to order writs to issue and to have honest members to advise  
 " her to issue those writs, and the Irish parliament is revived by  
 " its own energy and the force of the Sovereign's prerogative.  
 " I want only the Queen to exercise her prerogative, and the Irish  
 " people will obtain their nationality again. If, at the present mo-  
 " ment the Irish parliament was in existence, even as it was 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 ? 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. You may say, it is the  
 " act of her ministry, if you please. To be sure it would be the act  
 " of her ministry, and the people of Ireland are entitled to have

“ their friends appointed to the ministry. The Irish parliament will  
 “ then assemble, and I defy all the generals, old and young, and all  
 “ the old women in pantaloons—nay, I defy all the cavalry of the  
 “ earth to take away the parliament from Ireland again.” Give me  
 “ three millions of Repealers, and I will soon have them; the first  
 “ 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’ Court, and go to them. On Monday next we will  
 “ submit a plan to choose persons to be arbitrators to settle the  
 “ differences of the people without expense; and I call upon every  
 “ man who wishes to be thought the friend of Ireland to have his  
 “ disputes settled by the arbitrators, and not again to go to the  
 “ Petty Sessions. 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, when it is supported by law, until we have the royal  
 “ authority to set the matter right and substitute our own parliament.”  
 Gentlemen, you will observe the statement made by Mr. O’Connell that  
 the magistrates who had been deprived of the commission of the peace  
 were to be appointed by the Repeal Association, as judges of the Arbitration  
 courts. But I tell you this, and I say it with confidence, for I  
 heard one of the learned Judges on the bench, who charged the Grand  
 Jury say it, that if such courts were beneficial for the public, they  
 should be appointed by Act of Parliament, and that these courts are  
 illegal and an attempt to exercise the prerogative of the Crown.  
 They issued summonses calling on them to appear and to consent  
 to submit their disputes to the arbitration of the persons so ap-  
 pointed, but that device and contrivance will not prevent their  
 appointment of these arbitrators from being an usurpation of the  
 prerogative of the Crown. It is remarkable, that this measure was  
 adopted in consequence of the exercise of the right of the Crown,  
 to dismiss the magistrates, who thought fit to attend those multi-  
 tudinous meetings, which I have described to you, not in my own  
 language, but in that of one of the traversers as formidable events.

Gentlemen, there was a dinner at Tara on the same day. At  
 that dinner, Dr. Gray addressed the assembly, and said: “ In one  
 “ thing only was he compelled to differ from the observations that  
 “ had fallen from their respected chairman. In giving the toast, he  
 “ stated that the press was of no politics, and he wished 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. He had himself the honour of being among them that  
 “ evening as a guest; but he felt that wherever he was, he was an  
 “ Irishman, and as an Irishman he was ready to strike out boldly for  
 “ the political liberty of his country. The repeal press was a politi-

cal 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, until the people of that country were relieved from Saxon tyranny and oligarchic domination. I believe I 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 only of this land, but to the alien isle hard by that so jealously watches the proceedings of this day. Every eye is fixed upon the council assembled this day at Tara, and eagerly looks to its resolves. Is it not a national council in the most extended meaning of the phrase? Have not we at our head the monarch of the Irish heart; have we not the spiritual peers of the realm; do not the lay peers aid by their counsel? We have here, too, the clergy of the land, and the constitutional representatives of the people; aye, and the people themselves in their multitudinous thousands have this day assembled within the precincts of the ancient council-hall of Tara, taken counsel together and issued their proclamation, and that proclamation *is no compromise*. As I this day strayed over the ruins of past glory, I chanced to walk over the graves of the patriots of what I may call our own day. I cannot find words to give expression to the emotions I felt as I contemplated their sad fate. A mournful 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 has that mysterious relic lain prostrate as the land whose destiny its fall symbolized; but now I saw it erect again, and on Tara's lill, and over the patriots' grave. I felt 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." On that occasion, Mr. O'Connell said: "But he is no statesman that 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 six hundred or seven hundred thousand, is the man a statesman or driveller who expects that might will always slumber amidst grievances, continued oppression endured too long, and the determination to allow them to cure themselves, and 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. But sooner or later, if they do not correct the evil, and restore to Ireland her power of self-government, the day will come when they will rue their present want of policy, and will weep, perhaps in tears of blood, for their want of consideration and unkindness to a country, whose people could reward them amply by the devotion of those hearts and the vigour of those arms. I now turn to the gentry of Ireland; let them first answer the question that I have already put to them. Is

“ it possible things can remain as they are ? I defy them to produce from the congregated millions of Irishmen, a single man who will answer that question in the affirmative. It is impossible they should remain as they are. 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 command than the people of Ireland are to the wishes of a single individual.” I think, that very submission to a single individual, a very formidable circumstance, because, if he is able to direct those congregated thousands not to engage in riot or disturbance, the same person will have power, when the time has arrived, to give directions of a different nature, which will be equally obeyed. This is evident from the question put by Mr. O’Connell, when he said : “ when I want you again will you come,” and the answer was, “ Yes, the sooner the better.” We know the meaning of that : “ we may keep the peace at present, because it is not safe to do otherwise.” Gentlemen, although we must all rejoice at Mr. O’Connell’s anxiety that there should be no riot, and no disturbance, still, in the language of Mr. Duffy, those meetings were strange and formidable events.

On the 20th of August, a meeting was held at Roscommon, and Mr. O’Connell, Mr. Steele, and Mr. Barrett were there. Mr. O’Connell, in addressing the meeting, said amongst other things : “ The people of Ireland are too great to submit ! Drink may elevate the courage of men going into battle, but they go at last to the battle with a heavy heart. If I had to go to the battle, I would have men who would not spend their fire or strength, but who would stand or move in a slow step. Give me the band of teetotallers, with their wives and daughters, in the run, and no army in the world would molest them. The people are more sober ; they are not now what they were in 1798, and on that account I look forward to the success of the struggle now going on.” You will recollect, the statement of some one in the crowd at Baltinglass, that they were sober then, not as in 1798, and on that account they looked forward to success in the struggle which was now going on. At the dinner given on that occasion, Mr. O’Connell said : “ I am really inclined to think, that of all the demonstrations which have been made, the meeting of this day ought to strike our enemies with the greatest terror, and give our friends the greatest confidence.” That was the opinion of Mr. O’Connell himself, that those meetings were calculated to strike terror into the minds of those who were favourable to the British constitution, not perhaps from an apprehension that they would end in an immediate outbreak, but from the consequences which would result from these demonstrations of physical force.

Gentlemen, there was a meeting of the Association on the 22nd of August, at which Mr. O’Connell, Mr. John O’Connell, Mr. Ray, Mr. Steele, and Dr. Gray, were present. I am not sure whether any of the other traversers were present. On that occasion, Mr. O’Connell submitted to their consideration a plan for the renewed



action of the Irish Parliament. I shall not trouble you with reading the entire account, I shall merely refer you to the third resolution, which is in these words: "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." If binding in law, I do not understand the consistency of saying that the Crown had a prerogative to issue writs for summoning an Irish Parliament. You are in possession of what this committee mean by legal and constitutional means. The plan then proceeds to declare the number of representatives to be returned, and a schedule was annexed showing the number and the population of the different counties and towns. It then provides that the right of voting should be household suffrage, and vote by ballot, and declared that the monarch *de facto* of England, should at all times be monarch *de jure* of Ireland. Then, after providing that the connexion between Great Britain and Ireland should be perpetuated by the Crown, it concludes by stating this was to be carried into effect, according to recognised constitutional principles; that is, by the Crown dispensing with the provisions of an Act of Parliament, and directing the issuing of writs, under the great seal, for the assembling of an Irish Parliament, a prerogative which has not been claimed for a long period of our history. Gentlemen, it is not because it was stated by the parties, that all this could be done by constitutional means, that we are to assume that it is so. I tell you, subject to the correction of the Court, that the Crown does not possess the power of dispensing with the Act of Union, and issuing writs to summon an Irish Parliament.

Gentlemen, on the 23rd of August, a meeting took place at the Association, at which Mr. O'Connell, Mr. Barrett, Mr. Ray, Mr. Steele, Mr. John O'Connell, and Dr. Gray were present. You will recollect the language I read from the Nation of the 12th of August, that Ireland was changing into a nation, that she had obtained all the machinery, public opinion, order, taxation, justice, and legislation: justice and legislation referring to the arbitration courts. I shall now call your attention to an address made by Dr. Gray to the Association on that occasion, submitting a plan for the institution of those courts throughout the country, because the Crown, in exercise of its prerogative, had thought fit to deprive the magistrates, who had attended those multitudinous meetings, of the commission of the peace. In that address,

Dr. Gray, after stating the manner in which the committee proposed the arbitrators should be elected, said, that after the election, and before the arbitrators acted in their new capacity, they were to receive the sanction of the Association. I shall not trouble you, Gentlemen, by reading the report at this stage of the proceedings. It will be offered in evidence to you, but it is perfectly clear that the course adopted was this, that the Association was to sanction the appointment of these persons who were to be elected by the people as judges, at the arbitration court, thereby assuming the prerogative of the Crown, which alone had the right of appointing judges in Courts of Justice, and of regulating the administration of justice throughout the country. I state confidently to you that it is an offence against the law for any person or any number of persons to assume the administration of justice, in the manner in which it has been assumed by this Association.

Gentlemen, I shall now call your attention to a publication in the "Nation," of the 26th of August. This paper is a portion of the Repeal press, which I have already stated was a most powerful organ in the hands of Mr. O'Connell, in carrying out his object. The article I allude to is headed: "The crisis is upon us," and goes on to say: "Our Union with England was not merely an unjust and iniquitous, but an illegal and invalid Act. The natural rights of the people were trampled down in utter disregard of the forms and spirit of the constitution. The statesman's wisdom, and the lawyer's learning, lent authority to the instinctive repudiation of the patriot. 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 observations made by Mr. Saurin, before the Act of Union had passed, in his place, in the Irish House of Commons. There is no parallel between statements made when opposing a measure before becoming a law, and observations made when it had become the law of the land. If a man believes that a particular measure in contemplation of the legislature, would be injurious to the best interests of this country, he is justified in stating his objections to such a measure. Scarcely an Act has passed on which many observations have not been made, which, if critically examined, would be found to go farther than the speaker in his cooler moments would have gone; but that does not justify the adoption of such language after the measure has become the law of the land. Mr. Saurin was the last man alive, who, when a measure had become the law of the land, would have said, that resistance to the law was a duty. Yet the authority of that eminent man is made use of in this article, for the purpose of conveying to the misguided people that such was his opinion; he never declared any such opinion, because, after it became the law of the land, he never made use of an expression which would recommend such a

course. Yet Mr. Duffy thinks fit to circulate through the length and breadth of the land, that a greater than Saurin has said that resistance to the Act of Union has become a duty. He then goes on to say: "This, the forty-third year of provincial degradation, may, if the people have worth and energy, become the first of restored independence. The knot, which had baffled every attempt to unravel its complications, has been severed with one final decisive blow, struck with the sword of peace consecrated on the height of Tara. There is a way, if there exists a will, for the liberation of Ireland—for the reconstruction of her legislature. The case between the people and her leaders stand 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 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. It seemed as if the time had come to evoke the slumbering might of that Irish army which the legend tells us was doomed to sleep entranced in panoplied array until aroused by some potent spell for the expulsion of foreign tyrants. So sudden, so enthusiastic, so resistless was the response of the Irish mind to the call of the Irish leader! Meeting was held after meeting, each exceeding its predecessor in numbers, and all without exception challenging respect for the demeanour of the masses who attended. Evidence was piled on evidence of a national will, combined with a national morality and intelligence, universal throughout every county in Ireland. The million shout of Tara completed the proof, and flung back the responsibility again upon the leaders! 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. In the making or marring of our own for-

“tunes, we involve to an incalculable extent the hopes of the whole human family. We have gloried in the irresistible efficacy of a new element in political warfare which we boast to have invented, and by whose employment we have already won many outposts. Will the principle or the men fail now in this last decisive struggle? Shall the nations who have given us their admiration, and sympathy, 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 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 exigence of the hour is to secure the possession, and appropriate the structure to the sacred uses of self-legislation. The number of representatives who will occupy seats in the future Irish House of Commons happens to coincide with that determined upon as the most eligible limit for the intended Preservative Society. It is desirable for many reasons that the distribution of representation should be the same, so that the transition may be easy and natural to the recognized and technically legal condition of a Parliament. 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.”

On the 4th of September, a meeting was held at the Association, at which were present Mr. O’Connell, Mr. Steele, Mr. John O’Connell, and Dr. Gray. At that meeting, subscriptions were handed in from various parts of America. Mr. O’Connell read a letter from the parties who sent them, and then proceeded to state, that a meeting would take place at Clontarf, on the 8th of October, and that the chair would be taken on the mound that covers the bodies of the Danes. He then alluded to the prospect of the success of the repeal question, and that the speech from the Throne, instead of throwing a damper on the ardour of the Irish people, as it was intended to do, was calculated to produce a contrary effect. Prior to that meeting of the 4th of September, there was a meeting which I intend to call your attention to, that was a meeting held on the 28th of August; But before I do so, I would wish to recall to your recollection, that on the prorogation of Parliament, Her Majesty made a speech from the throne, which had reference, among other matters, to the existing



state of Ireland, and it was in reference to that speech that the observations were made by Mr. O'Connell. Her Majesty said: "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 in the existing laws, as may tend to improve the social condition, and to develop the natural resources of Ireland. From a deep 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 connexion between the two countries. I have forborne 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 declaration 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. On the 26th of August, that speech was delivered from the throne. A meeting was held at the Association on the 28th. Her Majesty's speech had then arrived in Dublin. At that meeting there were present, Mr. O'Connell, Mr. Steele, Mr. John O'Connell, Mr. Ray, Mr. Barrett. It was stated that the arbitration forms were ready, and the meeting was then adjourned to the following day, the 29th of August. On that day, the same parties who had attended on the former day were present, except Mr. Barrett. Mr. O'Connell gave notice of that, which I shall call your particular attention to just now. It was a counter manifesto which was to be addressed to the subjects of the Crown throughout Ireland. At that meeting Mr. O'Connell addressed the meeting as follows: "My next topic, I mean to move that it be referred to a 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. The committee will enter into the details of all those matters, which, in my judgment, justify, and not only justify, but demand the continuance of the present agitation. We have been accused of being discontented, and we plead guilty to the charge, if guilty it can be called. Yes, Ireland is deeply discontented, and it would be an accusation of great weight, and a crime of considerable turpitude, if Ireland was discontented with-

“ out an adequate reason. It is my business to show it to the public and to the universe, for foreign nations have their eyes upon us, as well as the inhabitants of these realms. 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. We are not disaffected, we make the constitutional distinction between the Sovereign on the throne, and the minister whose act it is—the Sovereign whose name is used, the minister whose responsibility is constitutionally offered, though hitherto practically very useless. But it has its merits. It separates from the throne any ebullition of that anger and just indignation which false charges always produce; and it has the effect of visiting that anger and indignation on the heads of the base ministry, who would dare to traduce us. In order to vindicate the people of Ireland—in order to enable them to decide what course they shall hereafter take, I will bring before the Association those matters of importance with which the present crisis is pregnant. I will endeavour to shew them in detail, and with as much distinctness as I possibly can, the state of the Irish people at the commencement of the late Session of Parliament, and the Acts of that Session, and I will then direct your attention to our future prospects and our future conduct.”

Gentlemen, I shall now call your attention to a publication in the Pilot newspaper, of the 28th of August. The progress of the conspiracy had been carried on to this extent. Every means that could suggest themselves to the minds of those engaged in the conspiracy, had been used to excite discontent and disaffection in the minds of the people of this country. They had been roused to a feeling of anger against those who were called their “Saxon oppressors.” They had been taught their own strength. They had been brought together in thousands, from distant parts of the country; they had been taught to know the reliance they might place on themselves; discipline had been carried on to a certain extent. But still there was a difficulty in their way, for if the army could be depended on, they could not carry out the designs. You have already heard several extracts from speeches of Mr. O’Connell, in which he endeavoured to excite disaffection amongst the non-commissioned officers of the army, by drawing a parallel between the course adopted towards them in the English army, and that pursued towards the non-commissioned officers in the French army. There was nothing new in this. This attempt was taken from the proceedings previous to the rebellion of 1798. It was part of the system in 1797, and with precisely the same view and object the same attempts were made upon the army of that day. In the report of the secret committee of the House of Commons, you will find it stated, that while the united Irishmen “were maturing their designs, and secretly acquiring the strength and consistency of a revolutionary army, they omitted no artifice by which they could hope either to

“weaken or embarrass the government of the country. So early as the  
 “year 1792, the seduction of the soldiery made a part of their sys-  
 “tem. They were assured that the season was now arrived for its ac-  
 “complishment, and no means which wicked subtlety could suggest  
 “were left unemployed; printed papers were industriously circulated  
 “among the privates and non-commissioned officers, urging them to  
 “insubordination and revolt; holding out the most tempting offers of  
 “preferment to such as should desert their colours.” In the same way  
 were causes of grievances suggested to the non-commissioned officers  
 in the present instance; and the object of such suggestion was ex-  
 plained in the language of Mr. O’Connell, that “when our cause  
 “progresses, those grounds of discontent and dissatisfaction will be re-  
 “moved.” Keeping that in view, I now will call your attention to a  
 publication in the Pilot newspaper of the 28th of August; it is in the  
 form of a letter signed, “Richard Power, P.P.” and is entitled “The  
 “duty of a soldier:” “There are at this instant more men in Ireland  
 “who understand their just rights, and who are conscious of their  
 “power of asserting them, than ever existed in any nation even of  
 “five times its population. “There are 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, or who intends to do the slightest personal  
 “injury to any human being, by joining in the great national revo-  
 “lution upon which they are now unalterably determined. This is  
 “the highest degree of political training to which a nation ever yet  
 “was brought. It is a condition of society which no one ever  
 “imagined until the great apostle of peaceful agitation has exhibited  
 “it to the astonishment of the world. This, after all, is not de-  
 “priving the thief of his physical force, but creating an overwhelming  
 “force which he dare not encounter, constructed, however, upon such  
 “a principle that no other thief can use it, its animating principle  
 “being 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 by his  
 “peaceful doctrines—I mean the military. Mr. O’Connell is the  
 “best abused man in the world; his motives are misconstrued, his  
 “objects misrepresented, his character maligned, his person in-  
 “sulted, and his character held up to scorn; his course must be  
 “cautious. 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, con-  
 “summate wisdom on his part never even to have alluded to it.  
 “His system cannot be perfect, however, it will not embrace every  
 “class, through whose agency an oppressed and plundered people  
 “can create for themselves a wise, just, and impartial government,  
 “without bloodshed, rapine, or any species of crime, unless the

“ soldiery are instructed in their conscientious duties. The very  
 “ life and soul of a soldier’s profession is to die for his duty ; let the  
 “ brave soldier therefore know his duty and he will die to perform it ;  
 “ but as he every day of his life dares death he will die before he  
 “ would exceed it. My present purpose is to explain as clearly  
 “ as I can what that duty is. I cannot be suspected of corrupting  
 “ the soldiery or bringing them over to second any views of my own.  
 “ I can have no political object, no ambitious projects. I took the  
 “ oath of allegiance, and I shall adhere to it to my death, and my posi-  
 “ tion in society is immoveably fixed. I can, therefore, have no other  
 “ object but to state the truth, and as truth and justice must ever go  
 “ hand in hand, to make the statement of the true doctrine on this  
 “ point subservient to universal justice as far as it may. I do not  
 “ presume to be an authority on this most grave and important sub-  
 “ ject, but stating this publicly what I conceive to be the true doc-  
 “ trine regarding it I am open to correction. 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 the  
 “ purpose of 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. He would sooner be the victim of either than stain his  
 “ high character with the crime of the one or the infamy of the  
 “ other. He is not the ready tool of a bloody-minded tyrant, who  
 “ would employ him to cut down the unarmed and defenceless.  
 “ He would sooner stand to be shot at than be converted into a  
 “ murdering man-butcher by any such horrible miscreant. It has  
 “ been reported of a certain officer now stationed in Ireland, that he  
 “ attended an assemblage of magistrates held on the eve of one of  
 “ Mr. O’Connell’s great monster meetings, as they are called, and  
 “ that he offered on just getting a hint to drive a troop of dragoons  
 “ into the body of the meeting, and trample and cut down like weeds  
 “ men, women, and children ! If it be a fact that this red-coated  
 “ fiend made such an offer, and that it is known to his fellow-officers  
 “ in the service, and that they now associate with him, I call them  
 “ to their teeth a pack of cowardly, infamous, unmanly scoundrels.  
 “ He is no soldier. He is not only a disgrace to the character of  
 “ an officer, but he would be a disgrace to a gang of pirates. No  
 “ brave man ever made such an offer. A brave man would let  
 “ himself be blown from a cannon before he would even contem-  
 “ plate it, and the officers who tolerate such a filthy cannibal amongst  
 “ them deserve to be sent out to gloat themselves upon human flesh  
 “ in the congenial companionship of their fellow-savages in the



“ South Sea Islands. Having said thus 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 ; but to this duty he is bound to devote every  
 “ energy of his mind and body in life and death. In action  
 “ the soldier is to have no will of his own. It is the right and  
 “ duty of his commanding officer to point out what he is to  
 “ do. 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 un-  
 “ necessary cruelty, to weaken and destroy the adversary in every  
 “ way in his power, and even when he sees that his own death is in-  
 “ evitable, to sell his life as dear as he can. War being once legiti-  
 “ mately proclaimed, the soldier is a mere instrument in the hands  
 “ of the government of his country, to be employed by the general  
 “ placed over him for the destruction of the enemy ; and whatever  
 “ intellect he possesses he is only to use to carry into effect the com-  
 “ mands of those in authority over him. It will be said that this is a  
 “ degrading and debasing condition to place rational beings in who  
 “ are all-accountable for their actions, and many of whom may be as  
 “ intelligent and enlightened as the very general whom they are thus  
 “ blindly required to obey ; but the strength and effectiveness of an  
 “ army is ever in proportion to the extent to which this spirit pervades  
 “ the whole mass, men and officers. Prompt, cheerful, and determined  
 “ resolution to carry the commanding officer’s orders into effect, is  
 “ the whole secret of military discipline. On it alone depends vic-  
 “ tory : it will tell almost against any odds, and it is therefore that it  
 “ is a moral duty in a just cause. This is the full extent to which  
 “ the unreflecting, mechanical obedience required from the soldiery  
 “ can be carried. It is absolutely impossible that any human autho-  
 “ rity could exist on earth which could absolve any man in any con-  
 “ dition or profession from the moral responsibility which attaches to  
 “ every rational being. 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 a just war. This is his sole duty—this is his only obliga-  
 “ tion ; if commanded to do anything 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. No supposed obligation, no imaginary duty would justify  
 “ or excuse him before God and the world ; he would be a robber  
 “ and a murderer if he advanced one step in obedience to any human

“ being for such a wicked purpose. But here arises the embarrassing  
 “ difficulty to the brave and honest soldier. If, believing the go-  
 “ vernment that would be so depraved as to engage in such a war, would  
 “ be sure to treat its own soldiery with as great barbarity as it would the  
 “ unoffending people, and believing the service to be iniquitous ; he  
 “ disobeys, he is put down as a coward. If he fights he is a mur-  
 “ derer, and this to be sure is a hard case, but why should a soldier  
 “ talk of a hard case? If he be that of a milk-and-water kind of  
 “ thing that would sit down to bemoan his unhappy fate, what busi-  
 “ ness had he with the profession of a soldier? Will not rob?  
 “ Will not the brave and honest fellow who would disobey such pirates  
 “ be tried by court martial and shot at the drum head? Who  
 “ will dare then call him a coward? Why nothing but the fear  
 “ of this world ever makes him take chances of escaping amongst  
 “ the gang of robbers who would obey, and then who is the real  
 “ coward? Clearly the man who would take the chance to escape as  
 “ the murdering thief, not he who would die sooner than be a villain.  
 “ 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 shud-  
 “ der 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. I do not, of course, mean to make any practical  
 “ application of this doctrine to the actual state of this or any other  
 “ country at the present moment ; 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 in the community in the moral duties they  
 “ owe to each other. The military have been in all ages the most  
 “ powerful class—when ignorant, depraved, and blood-thirsty they  
 “ have been invariably employed for the plunder and oppression of  
 “ their fellow-men ; when intelligent, moral, and generous, they have  
 “ ever been the protectors of the people, the defenders of their li-  
 “ berties, and the scourges of their tyrants. It is therefore essential  
 “ that they should be included in the grand scheme for the universal  
 “ regeneration of mankind by intellectual instruction alone. If this  
 “ short notice of this extremely important subject should contribute  
 “ to bring it under general discussion, it will be doing good service.  
 “ If any one differs from my views regarding it I shall be glad to have  
 “ his reasons. I undertake to go fully with him into it, and to define  
 “ and demonstrate the moral duty of the soldier under all possible  
 “ circumstances—in peace and war, at home and abroad. As a be-  
 “ ginning, to mark out these two or three prominent points, about  
 “ which there can be but little rational controversy, is perhaps quite  
 “ enough.” There can be no misunderstanding this publication. In the  
 early part it alluded to the effect created by the vast number of persons

which the system of organization had brought together, and then spoke of the necessity of obtaining what is called justice, by peace if possible, but peace or war, justice, meaning thereby a Repeal of the Union. That was to be obtained by peaceable means, by the demonstration of physical force, if possible, but if that did not succeed, "peace or war, justice." It is thought right to impress this on the minds of the soldiers, that if the government acting on the principle of their predecessors, declared by a minister of the Crown, that a civil war was preferable to the dismemberment of the empire, was driven to the necessity of protecting the loyal subjects of the Crown, by the aid of the military, they, the military, were not bound to obey. That is the mode by which they are to have what they called a bloodless revolution. The sergeants of the army are to pronounce as they did in Spain, the military are to coalesce with them; and by that means they are to effect a dismemberment of the empire.

I now come to another meeting of the Association, which was held on the 4th of September. On that occasion, Mr. O'Connell made a speech, in which he said: "I want no revolution, or, if any, only a return to former times; such a revolution as that of 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 could 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, the people would not be deprived of their resources, and the means of vindicating their cause." To leave the harvest to rot on the ground; to give up the use of exciseable articles.—these were the legal, the constitutional modes by which Mr. O'Connell tells the Association that they are to obtain the repeal of the Union. I find, that in the report of the Secret Committee of the House of Commons in 1798, to which I have before referred, an allusion to a similar plan which was adopted by the united Irishmen, to give up the use of exciseable articles. One would suppose that the leaders of the repeal movement had been studying the history of the rebellion of 1798, and endeavouring, as far as they could, to model their conduct according to that standard, and to adopt and imitate, with as much safety as possible, the principles and acts of that day, as they were pompously called. Mr. O'Connell proceeds: "but of course I do not suggest them. The harvest is now cut. I speak the day after the fair, and therefore with particular safety. A resolution for the non-consumption of exciseable and customable articles is not proposed at present. It is reserved for a greater exigency; but I am far from saying that it may not be proposed. I will shrink from nothing, I will state candidly every thing; and I come now to the actual state in which we are placed. The repeal wardens will be in the nature of returning officers; and the Queen may even direct writs to them by that de-

“ signation ; that is what I want. I do not want representation, or  
 “ any thing like it. The repeal wardens will have no representative  
 “ or delegated authority ; they are appointed for the ascertainment  
 “ of a particular fact. I wish that to be understood, not only here,  
 “ but in the Attorney General’s office. I repeat, that the appoint-  
 “ ment of repeal wardens is distinct from the Preservative Society.  
 “ Many gentlemen of high station are willing to become members of  
 “ the society. They are ready to make any sacrifice ; they are  
 “ ready to receive any penalty, even death ; but I will take care to  
 “ keep them safe, that is my duty, that is my professional business.”  
 In another part of his address he said : “ I shall be at a meeting in  
 “ Connemara on the Sunday after next, when I shall certainly have  
 “ 150,000 men to meet me ; but my object is to bring your attention  
 “ more immediately to my plan, for a Preservative Association. We  
 “ must first arrange, that when the event arrives, when the Queen  
 “ shall issue, by virtue of her prerogative, her summons to the Irish  
 “ Parliament, she may be able to direct her summonses to the different  
 “ constituencies. Our plan on that subject will soon be ready for  
 “ circulation among the Irish people ; and taking the Reform Bill as  
 “ our basis, we will soon have every thing arranged.” Alluding to  
 the council of three hundred, he says : “ As I am counsel for Ireland,  
 “ I promise you faithfully that the Preservative Association shall  
 “ not come within the Convention Act, or any other Act of a penal  
 “ nature. I promise you to have the arrangement so complete, that  
 “ it will be as safe to sit in the presence of the Attorney General as  
 “ in that of the present meeting, if it had the power of deciding  
 “ upon fact and law on the subject. Looking before and around  
 “ me, I see no prospect of any thing being done for Ireland,  
 “ except through the medium of the Association. The landlords  
 “ stand aloof, and will not join us ; I tell them they are mad. They do  
 “ not understand the signs of the times. I hold out to them the  
 “ hand of friendship and assistance. I am ready to make arrange-  
 “ ments that will consult even their feelings as well as their real in-  
 “ terests ; but if they leave me alone, and more animated persons  
 “ about me press me, while they will not give me succour or assist-  
 “ ance, let the evil fall on them. It is their folly not to join their  
 “ country, and it will be their punishment hereafter not to have  
 “ joined in proper time. Who will tell me the Queen’s speech is to  
 “ satisfy us for these things ? It expresses deep concern for the agi-  
 “ tation in Ireland. There will be agitation in Ireland, and there  
 “ shall be agitation in Ireland, and there must be agitation in Ire-  
 “ land. Yes, until the moment when our grievances are redressed,  
 “ and we have a parliament in College-green.” There happens,  
 gentlemen of the jury, to be such a Statute as the Convention Act ;  
 but in order to evade its provisions, these three hundred gentlemen  
 were to meet, as it were by accident, in Dublin ; the people were to  
 subscribe £100, which was to be given to each of these three hun-  
 dred persons, with a view of their being looked on as delegates.  
 They were to separate and meet again, and to dine together. That  
 was to be purely an accidental circumstance. That was one of the



plans by which the objects of the conspiracy were to be carried into effect. If it had not been checked, it is impossible to say to what lengths it would ultimately have proceeded.

I will now call your attention to another publication in the *Pilot* newspaper, of the 6th of September, on the subject of the army. This is not simply a letter, but it has been published as one of the articles of the newspaper. It is headed "The Irish in the English army; it is as follows: "Mr. O'Callaghan's letters. No subject in "the present state of the 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. And for what, we ask, has "he been visited with this annoyance? Is not the soldier an improving member of society? So much is this the case, that during the "late government, libraries were ordered to be established for every "regiment in the service. And yet we published no later than last "Monday, a letter, forbidding the soldiers of the 43rd light infantry, "stationed at Montreal, from reading the *Weekly Register*, "although the poor fellows had subscribed in advance for that paper. "But if the soldier can read, he can easily find something to read, "and we have heard that the men when they go out to refresh themselves, always call for the prohibited papers. 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*. That paper, forsooth, would threaten the "Irish nation with the *army*, if they merely discussed the subject of "the repeal of the Union? However, we soon found a champion "in the person of Mr. O'Callaghan. He silenced the *Standard* by "analysing the army, and showing that above forty-one thousand "Paddies served in that force! Those facts appeared in the shape "of letters, directed to Mr. Staunton, of the *Register*, and Mr. "Ray. They were also printed in the *Pilot*, whose columns are "always open to the complaints of the poor soldier. Nothing at the "time, as far as we recollect, created so much excitement and interest as those letters. They are now much augmented and improved, and published under the characteristic title of 'The Irish "in the English army and navy.' In the annals of cheap publication, "we have never seen any thing to equal them—twenty-four pages of "close letter-press for one penny! As for what they contain, "we need only say, that they are one mass of authorities and quotations. Those letters put the question in a nutshell. They are "alike suited for the pocket of the citizen and the knapsack of the "soldier. The author may well observe in his preface, indeed, since "the Spanish army have ventured to pronounce that orders to fire "upon one's fellow-subjects are not in every case to be obeyed, inasmuch as those orders may not always be founded on justice; and "when not so founded, can, if obeyed, be only complied with in vio-

" lation of the solemn commandment, 'Thou shalt do no murder.'  
 " Since the patriotic Spanish army, like that of France at the revo-  
 " lution, have so presumed to think, and to prove they think, that  
 " soldiers are not always to be counted upon as mere unreasoning or  
 " conscienceless herds of wholesale and unconditional man-butchers,  
 " whenever the aristocrat oppressors of the community, under the  
 " designation of government, may command the people to be massa-  
 " cred for not submitting to injustice; since the 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 mang-  
 " ling lash to the bleeding back, and such merciless drillings as have  
 " caused poor private M<sup>c</sup>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; and his  
 " able and universally-accessible publication, from which the above  
 " extract is taken, is one of the best hand-grenades that could be di-  
 " rected against the abuses of such a system. It should be circu-  
 " lated in every direction." I could read some publications in 1797,  
 from the *Press* newspaper of that day, of exactly the same tendency.  
 Mr. Barrett has taken care, to the best of his abilities, that these  
 publications should be brought under the notice of the army, and  
 that they might always be found in the soldier's knapsack.

The view taken by the Government, of this agitation, appeared  
 clearly from Her Majesty's speech on the 26th of August, but this  
 had no effect whatever among the members of this Association, for  
 on the 10th of September, another multitudinous meeting took place  
 at Loughrea, at which Mr. O'Connell, Mr. Barrett, Mr. Steele, and  
 Dr. Gray were present. The rain however happened to set in in the  
 morning, when Mr. O'Connell addressed the assembled multitude,  
 and said: "That he regretted the weather prevented him from  
 " giving full expression to his gratitude; but they had high authority  
 " for saying, that the rain fell upon the just as well as upon the un-  
 " just. He could not avoid saying that Connaught had done its du-  
 " ty—Connaught was determined that Ireland should be free. He  
 " was delighted to see such a body of people coming together and  
 " conducting themselves like the higher orders—the *higher orders*,  
 " bah! He had physical power enough at his command to produce  
 " the greatest revolution that ever was effected, and yet that meet-  
 " ing was as tranquil, as orderly, as submissive as if the youngest per-  
 " sons in the community had assembled together for their recreation  
 " or amusement. The Saxon stranger shall not rule over Ireland—  
 " it shall belong to the Irish, and the Irish shall have Ireland. You  
 " shall have the Repeal." At the dinner on the same day, in res-  
 ponding to the toast of "the people," Mr. Barrett made use of the

following among other observations: "I am from long, close, and attentive observation of the Irish people convinced that were their virtuous tranquillity set at nought; were they by aggression involved in a conflict which conscience would approve and necessity justify; there is in the organization, the numbers, the nature of the country, and the spirit of the people at this moment, in their sense of wrong and love of right; in their deep conviction of all that would be lost by defeat and won by victory—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." At the same dinner Mr. O'Connell stated: "That the Ministry had but one arrow in their quiver, and out they came with it in the Queen's speech. Oh! what a trick it was—it was worse than even a scolding match between two fishwomen, for the fishwoman would give her antagonist a power of replying to her, but they kept all the scolding on one side. 'Twas an unfair advantage Judy you took of us." There's the way the Queen's speech was spoken of by the members of the National Repeal Association. "You took an unfair advantage of us Judy." In another part of his address at that dinner, he says: "My maxim is, he who commits a crime gives strength to the enemy." I think the jury perfectly well understand now what that term means. He then added: "It has been my political maxim through life, always to keep a look out for the breakers ahead, and to keep clear of shoal water, and I will undertake to guide the bark of Irish liberty into the harbour of safety." Dr. Gray spoke at the same dinner, to the toast of "the Repeal Press." He said: "I cannot but congratulate the men of Loughrea on the glorious demonstration I have this day witnessed. As a Connaughtman I feel proud of the bold attitude assumed by my countrymen, and having had many opportunities, during the present struggle, of seeing Repeal demonstrations, I am bound in justice to the men of Loughrea and its vicinity to tell them my opinion of the meeting of that day. I have been present at demonstrations in the east, in the west, in the south, and in the north; but never did I behold a scene that inspired me with more of hope in the ultimate destiny of my country, and that gave me more of confidence in the power and vitality of the mighty spirit of nationality that was now vivifying the land than that which we have just beheld. If, however, I feel pride in witnessing such a scene, how much greater should be the gratification I would experience at being enabled to do my 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 are numbers—there is order—there is precision—but above all, determination was stamped on every brow, and was uttered by every voice; and am I to be told that such a people are 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 their frown. 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 do the men of  
 “ Ireland care for the ministerial manifesto? What do the bold  
 “ peasantry of Connaught care for it? It will be by them treated  
 “ with utter disregard. It was not the speech of the Sovereign. Is  
 “ it not the speech of a minister, who, fearing again to insult the Irish  
 “ nation, has the cowardice to do it through a woman? But even  
 “ were that speech in unison with the sentiments of the Queen,  
 “ would the nation fear because of the opposition she might be ad-  
 “ vised to give to their just demand? No, we will not halt or hesi-  
 “ tate 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? His hostility was evinced in accordance with  
 “ the wish of the minister, as well as against the ministerial advice.  
 “ He opposed the Catholic emancipation, because he hated the Irish  
 “ and their religion with a bigoted hatred, yet the people, nothing  
 “ daunted by his impotent opposition, pursued their course regard-  
 “ less of his whims, and forced even from him large concessions.  
 “ The movement has now assumed a form that bids defiance to any  
 “ and every opposition; and though those who know not the hearts  
 “ of the people may hope to damp their ardour by such silly courses,  
 “ there is this day given to the minister a substantial proof that the  
 “ men of Connaught, at least, will never lower the standard of Re-  
 “ peal, but that they will continue to rally round the Liberator till  
 “ he has consummated the legislative independence of the country.”

On the 10th of September, a meeting was held of the Association, at which Mr. O’Connell, Mr. John O’Connell, Mr. Steele, Mr. Barrett, and Dr. Gray were present. Dr. Gray said: “ I have been  
 “ commissioned by the committee of arbitration, to report progress.  
 “ Circulars have been forwarded to the repeal wardens and clergy, in  
 “ pursuance of the report previously adopted by the Association.  
 “ Deeds of submission, and all the necessary documents have been  
 “ procured, and are ready to be sent down to the country, so that  
 “ the plan is now fit to be carried into operation. The committee  
 “ have received many letters from ex-justices of the peace and other  
 “ persons, with reference to the appointment of arbitrators.” Mr.  
 O’Connell on that occasion said: “ I am delighted the time has  
 “ arrived in which it will be no longer necessary for the people to re-  
 “ fer their differences for settlement to the magisterial authorities  
 “ constituted by law; they will have their own arbitrators, as my  
 “ great object is to supersede all necessity for the people applying to  
 “ the magistrates appointed by law.” That declaration, so made by  
 Mr. O’Connell, shows that his object, and that of the Association,  
 was to usurp the prerogative of the Crown, and to endeavour to es-



establish throughout the country, courts for the administration of the law, which should supersede the tribunals legally constituted by the authority of the Crown.

On the 13th of September, a meeting was held at the Association, at which Mr. O'Connell, Mr. John O'Connell, Mr. Ray, and Mr. Steele attended. I have already stated, that on the 29th of August, the Queen's speech having arrived in Dublin, 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 called the grievances of the people, and stating the mode by which those grievances were to be remedied. This is not the place for entering into a discussion of what are to be called grievances; nor are you, gentlemen, or the Court, to decide, whether grievances do exist, or not; you are only to consider whether the course pursued by the traversers in this combination and conspiracy, is a legal course for the purpose of carrying out their object. This manifesto then goes on to state, that there is no hope of obtaining redress for what were called grievances, by legal or constitutional means, and the mode by which they are to be remedied is pointed out by language which is not equivocal. I shall read the concluding passages of it: “ 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-whipped 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 over- “ powered 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, “ chairman of the Committee.” Mr. O'Connell moved that this address should be printed on a broad sheet, and circulated throughout England, Ireland, and the Colonies. The motion was carried unanimously, by acclamation. In it he distinctly pronounces, and the Association adopt the statement, that there was no hope of redress from Parliament, and that they sufficed for themselves; that the Irish

people must look to themselves alone for redress ; and that unless they redress themselves, they should not get it from any other quarter. He then speaks of a constitutional mode of redress, but he omits to say what it is. It might be, that the Association considered that a demonstration of physical force was a constitutional mode. It is for you to say, when you consider the organization that exists throughout the country, whether you are of opinion that those grievances were to be redressed by Parliament or by the Irish themselves. This address was to be circulated through the country by means of the repeal press ; but being apprehensive that they would not give it sufficient circulation, it was to be printed on a broad sheet, and to be circulated in every part of the United Kingdom.

Gentlemen, I think the mode by which the Irish were to right themselves, is more unequivocally pointed out at the next monster meeting, because, as the conspiracy was progressing, the mask was removed by degrees ; and matters, which at the early part of the conspiracy might have been made the subject of doubt or of argument, were adopted when this conspiracy advanced in its proceedings ; day by day the pretexts with which the meetings were convened were discarded, and the real objects ceased to be concealed. The meeting to which I would call your attention, was held at Clifden, on the 17th of September, four days after the Association had pronounced the opinion, that redress for them was not to be obtained from the Parliament of the United Kingdom. Dr. Gray, who was present at that meeting, gives an account of it in his paper, and in his description of that meeting, of which he was an eye-witness, he said the horsemen came to the meeting in troops of peasant cavalry, that they had repeal cards in their hats, tied on with green ribbons, and that this cavalry was headed by farmers with cards also tied on with green ribbons. These corps of cavalry were preceded by bands, and it was not unimportant to remark that those bands were in every instance dressed in uniform. Hundreds of thousands came to that meeting marching in the order described, and preceded by the bands in uniform, and wearing green scarfs and ribbons. They also carried banners, on which were inscribed mottoes recording the victories achieved in the olden time by the Irish people. Were not such things calculated to excite and irritate the feelings of the people ? At that meeting Mr. O'Connell was present, and made a speech to the people. Gentlemen, you will again recollect that this was the next monster meeting that took place subsequent to the meeting of the Association at which the address had been adopted, and at which it was recommended by Mr. O'Connell that the Irish people should redress themselves. Mr. O'Connell spoke at Clifden as follows : " 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 " to-day. But I came here to make an experiment on the men. I " have them, and now I will make my experiment on them. 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 whe-  
 “ ther you do not 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? You have no commerce. And where are your manu-  
 “ factures? Oh! you have no manufactures. Why? Because Ire-  
 “ land is governed by Saxons, and not by Irishmen. Will you join  
 “ me to give Ireland to the Irish?” This was the address of the  
 chairman of the committee, who passed the address at the Asso-  
 ciation a few days previous, telling them that they had no hope from  
 Parliament, that they should redress themselves. He told those  
 misguided people they had no commerce or manufactures, but he  
 did not tell them that the cause of it was the pernicious system of  
 agitation which has been the curse of this country. He did not tell  
 them that the agitation kept the English capitalists out of the country,  
 that it is the insecurity to property which prevents the English capital,  
 the Saxon capital, from flowing into this country. He did not tell them  
 that if they had no commerce or manufactures, they had no person to  
 thank but those who were the leaders of this conspiracy, and this As-  
 sociation. In another part of his speech he says: “ My experiment is  
 “ satisfied. I can now tell the rest of the three provinces that Con-  
 “ naught is as determined as they are—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 hos-  
 “ tility. I will keep you out of danger and conduct you in the con-  
 “ stitutional ways of the law and national exertion. 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 know it, and I will tell you why it is unnecessary, because  
 “ your enemies know it as well as I do.” At the same meeting Mr.  
 O’Connell further said: “ I have demonstrated that I have more  
 “ men of a fighting age (why should I not use that word?) ready to  
 “ stand by their country, than ever evinced that determination be-  
 “ fore. 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 pro-  
 “ verb says you cannot 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. We are ap-  
 “ pointing men to act as arbitrators in the room of the magistrates  
 “ who were struck off, and those who are left in the commission, who  
 “ are infinitely worse. Last year Goulburn took off the duty on ar-  
 “ bitration, as if he actually had seen what was coming.” In a subse-

quent part of his speech he added: "Do they think they will catch an old bird with chaff? You will see in the newspapers a report of the first Court of Arbitration, which will sit on Friday next, Doctor Gray in the chair. It will sit every Friday; afterwards they will spread through the country. We have had a number of applications for the establishment of Courts in various parts of Ireland, and 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. This is laying the basis of a judicial system, and above all it is safe—I defy all the Crown lawyers to find a flaw in the plan." Well might Mr. Duffy say they had all the incidents of a nation,—taxation, justice, almost legislation, and I may add organization. He further 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 subordination will be complete. Their discipline will be complete. Why you saw how the cavalry fell in and took their station, four by four, at the word of command of Tom Steele. No aide-de-camp of the Lord Lieutenant was ever obeyed so cheerfully as he was."

The next meeting took place at Lismore, on the 24th of September, Mr. O'Connell, Mr. Steele, and Mr. Barrett were present. Flags and banners were conspicuous there. Mr. O'Connell addressed the assembled multitude, and asked them "if you are wanted by me again will you not come?" When such observations as these were made, it was not wonderful that at Baltinglass the people should have said, "the time is nigher than you think." He farther said: "some of my friends spoke of the impression we have made on France, on America, and on Europe, doubtless we have made such impressions on these places; but I can also tell you, that we have made a deep impression on the English, and they are beginning to see and understand the Irish, and by and by they might attempt to bribe them. They may talk of compromise. Compromise to the winds! I will have no compromise. I have planted my standard, and I will stand to it through weal or woe, for on that standard is engraven repeal. I have enjoyed much of the confidence of the people, perhaps no man undignified by the title of king or monarch, ever enjoyed so much popularity, and I may add, that it has happened once or twice that I have been abused by some kings, but I never returned the compliment. I believe it never happened, that a man like me possessed so much power; my wishes are obeyed as law; and I am persuaded I have no other way of working out my salvation, than by working out good for my fellow-man—it is my vocation under heaven." At the dinner he said: "Look at the state of Ireland; the entire nation has pronounced that they have ceased to be slaves, because the light of freedom has beamed upon them."



" They have pronounced their determination not to remain longer  
 " the victims of an alien Parliament ; and let them wait for a while ;  
 " I am one of the wait-a-whiles ; allow the progress to be kept a se-  
 " cret, not from ourselves, for we have nothing to fear. 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 they neither attempted to conquer nor 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. My first anxiety  
 " is to wrest from the present judicial administration its unholy au-  
 " thority, to do away with the wrangling of the petty-sessions courts,  
 " where the magistrates preside. I want to have tribunals of recon-  
 " ciliation, 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 the tribu-  
 " nals not existing by patent from the Crown. He then proceeds thus :  
 " I implore you to continue your confidence in me. Let it not be by  
 " the shout that you will support me. Wait for a moment, and  
 " allow me to tell you when the time comes to exert yourselves."

This was on the 24th of September. On the following day, the 25th,  
 an article appeared in the *Pilot* newspaper, headed "*The Army, the  
 People, and the Government.*" A subject which was very important  
 for the consideration of those who had determined to redress them-  
 selves without the aid or concurrence of the Parliament. It was as  
 follows : " 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 would 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 ; though now,  
 " alas, but too many of them have little or no property ? Then again,  
 " the army ; by this we mean that respectable body of men the ser-  
 " geants and privates, are all from the people. They intermarry with  
 " the people ; and if they survive the service, where there is plenty  
 " of fighting, hardships, and flogging, but very little promotion, in fact  
 " more kicks than halfpence, where we ask must they return once  
 " more but to the ranks of the people ? We therefore think that  
 " we are amply justified in calling the army the people's army. But  
 " in this we have not alluded to those persons who were born to  
 " command the sergeants and privates. Our readers are aware, that  
 " in what is called the English army, there is a custom, established  
 " not certainly by the soldiers, by which 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 mo-  
 “ ther’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 do not stop  
 “ here. The aforesaid boy, brave fellow, can make another bounce  
 “ over the heads of those veterans, who have grown grey in the ser-  
 “ vice 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, 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. 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 drowsy and unproductive classes calling themselves  
 “ nobles, but of which we can convey a better idea by the word idlers.  
 “ How long this state of things is likely to continue in these coun-  
 “ tries we do not know, but we think we see what Talleyrand called  
 “ a beginning of the end. 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, do not recommend the system of  
 “ rising up and knocking on the head which the French were com-  
 “ pelled to adopt. Far from it. We are the old friends of peace-  
 “ able 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. But to come to the point, the  
 “ state of the army, what the devil are those persons in command  
 “ about? Are they blind? Are they mad? Will they be warned  
 “ by us, whom they know well to be their friend; for if our columns  
 “ were not open to the poor soldiers, and if our pen was not used  
 “ as a peace preserver, we really believe there would have been a  
 “ mutiny long since. 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 accoutred as if for battle, but leave  
 “ him the Press open, and 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 look to the

“ state of the 5th 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. Thus was the *driller drilled*.  
 “ But this was not all. When an inquest was held on the carcass, 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 Robert-  
 “ son Mackay.” This is the “ moral instructor,” stating that a young  
 man of unimpeachable character stepped out of the ranks, and com-  
 mitted a murder by shooting his officer. Thus were the people to effect  
 a Revolution, which was to lead, as the moral instructor said, to all  
 the people of Ireland dividing the land among themselves like  
 brothers. He then goes on : “ The soldiers of the 5th *appear to be*,  
 “ in their political principles, *decided repealers*. Not physical force  
 “ repealers, for if they were so, having plenty of arms and ammunition,  
 “ they could easily appeal to that open violence. This physical force,  
 “ or armed violence, was what the government had the silliness to  
 “ threaten the Liberator and his millions with ! But for some cause  
 “ best known to themselves they *forgot* to execute their threat. When  
 “ a detachment of the 5th left Loughrea, some weeks ago, the repeal-  
 “ ers with their Temperance bands, accompanied that detachment for  
 “ above two miles out of town, and on taking their last sorrowful fare-  
 “ well, the soldiers are stated to have taken off their caps, and given  
 “ *three cheers for Repeal*. Thus the country appears never to have  
 “ been so safe, *as the people and the army are on the best terms*. 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. But those untried and unimpeached villains would  
 “ do well to first consider the feelings of the army. An army  
 “ has often proved a two-edged weapon, which is liable to wound  
 “ the hand that wields it. Thank God, we have however lived  
 “ to see the army morally reformed, so far as *soldiers* are con-  
 “ cerned. 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. The soldiers are now as  
 “ decent, sober, orderly a body of men as any in society. They are  
 “ patient too, and heaven knows they require to be so. Many of  
 “ them are teetotalers. They mind their religion, and if not pre-  
 “ vented by their money-promoted commanders, would improve  
 “ their minds by reading the newspapers, which, we think, after ful-  
 “ filling their duties, including over-drilling, that 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 UNPRO-

" **MOTED OFFICER.** While we are on this important subject, 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. These letters first  
 " let the cat out of the bag. They teach the soldier his importance,  
 " showing him that he is an accountable being, not, what certain  
 " traitors would make him, an unconditional murderer. They teach  
 " Ireland her strength, and also teach England her's, which the  
 " whole world now admits to consist of Irish soldiers and sailors.  
 " Ireland is England's right arm, so say the English themselves, and  
 " so say we all of us. Take away the right arm, and what a way  
 " she'd be in, and what a figure she'd cut. With O'Callaghan's  
 " letters in one hand, and his Green Book in the other, we set at  
 " defiance the conspirators who would DARE talk of warring against  
 " the Irish nation; the best, the most loyal subjects the Queen has.  
 " To the patriotic author an eternal debt of gratitude is due by his  
 " countrymen. He first directed the public attention to the army,  
 " showing up its component parts, and revealing the astounding fact  
 " of *forty-two thousand Paddies*, serving in the pay of England.  
 " We do not wonder that he has been called the soldier's friend.  
 " 'Tis a proud title, and we know no man now living, better de-  
 " serving of that name. To conclude, for our parts, we agree with  
 " O'Callaghan's golden maxim, to never cease advocating the cause  
 " of the poor, whether they be *peasants* in the field, or *sol-*  
 " *diers* in the ranks, whether they be tyrannised over by the exter-  
 " minating agent, or the over-drilling martinet." These publications  
 were to be circulated among the army, and I ask you the object  
 Mr. Barrett had in view, when he wished to have them so circulated.  
 There is another publication in the same paper, of such a char-  
 acter, that I think it necessary to refer to it. It is an article  
 headed: "*Rumoured death of General Jackson. The battle of*  
*New Orleans.*" After some observations with respect to him,  
 and his exploits during the American war, we find the following  
 commentary by Mr. Barrett: "Why do we recall these things  
 " now? We will confess that we have more reasons than one for  
 " doing so. The first is, that the deeds of our illustrious country-  
 " man, 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, he was only a  
 " lawyer, not having served his apprenticeship as a hireling to the  
 " committing of murder, 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 Presi-  
 " dent Tyler, in consequence of the part taken on behalf of Ireland,  
 " by his brilliant son," (that is the man, who, I have already stated,  
 said, "the libation to Ireland's freedom must be quaffed in blood"),  
 " eulogises, in his last publication, General Jackson." 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 at- " tacking them twice in the night; so might the latter, were he " driven to it, especially as darkness equalises undisciplined with dis- " ciplined men, throwing the advantage, if any, in favour of the for- " mer; the pike being, from the distinctive peculiarity of its shape, " the weapon best adapted for night. We do not mention these things " because we are anxious for an outbreak, but because we wish to " prevent it. The best way to preserve peace is to show that we " are prepared for war; for even bulls, when they find that they are " equally matched, have the sagacity to be civil to, and shy of each " other." This article contains many other observations, but what I have read will be sufficient justification for my observations, as to this moral instructor of the people; but I will not endeavour to take from the force of the language of this moral instructor, by commenting any further upon it.

On the 27th and 28th of September, meetings were held at the Association, at which Mr. O'Connell, Mr. John O'Connell, Mr. Ray, Mr. Steele, and Dr. Gray were present. On the 27th, the form of the arbitration deed and the proclamation were submitted to the Association. The proclamation was headed by a harp and crown, and from its form you will not be surprised that Mr. Duffy said, they had assumed all the forms of government; it runs thus:—" 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 neces- " sary for the legal commencement of arbitration suits:—signed by " order, T. M. Ray, Secretary." That was the system sought to be established, which was to supersede, not only the petty sessions courts, but the proceedings of every court in Ireland, exercising a jurisdiction under a patent from the Crown.

Gentlemen, I have now arrived at an important date in those transactions, the 1st of October. It was on that day that the meeting was held at the Rath of Mullaghmast. Mr. O'Connell stated at the dinner that succeeded that meeting, that there was one million of persons present; the lowest calculation was, I believe, 250,000. At that meeting there were present, Mr. O'Connell, Mr. Steele, Mr. Barrett, Mr. Ray, and Dr. Gray. The Rath of Mullaghmast was selected for this multitudinous meeting, for this reason, as stated by Mr. O'Connell: " I choose this place for the meeting, because it was " the precise spot on which English treachery and false Irish trea- " chery consummated a massacre unequalled in the history of the " world, until the massacre of the Mamelukes by Mehemet Ali." Such was the reason assigned by Mr. O'Connell himself, for select- ing that place. I suppose it will be said, that those who selected this spot for assemblage, had not combined to excite hostility be- tween different classes of her Majesty's subjects; who was the Saxon foe, and the Saxon foreigner who were engaged in this mas-

sacre? This spot was selected with a view of influencing the people, who if left alone and not misguided, misled, and misinformed, would be obedient to the laws. Thus by selecting this spot the provocations of centuries past were raked up, the sufferings of our ancestors were brought into view for the purpose of exciting hostility between fellow-subjects of the British empire. At that meeting a document was handed about by a person who said it had been printed expressly for all the well wishers of their country, by the desire of Mr. O'Connell, and groups of the country people were observed in different parts of the field listening to the persons who were reading that paper to them. Under the apprehension that the language used on the platform would not reach all the parties, the course was adopted of printing and circulating a document of this inflammatory nature. It was headed, "A full and true account of the dreadful slaughter and murder at Mullaghmast, of a body of 400 Roman Catholics." I will not trouble you by reading this document at full length, but I shall quote a few passages from it, in order that you may understand its nature; it said: "The chief men of the sept of O'More and Offally were invited by the Earl of Sussex to a friendly conference at the Rath of Mullaghmast. All the leading men of talent and courage of the tribe, to the amount of 400, rode into the fatal Rath. They perceived too late how perfidiously they had been dealt with; they found themselves surrounded by a triple line of horse and foot, and at a given signal these fell upon the un-armed and defenceless gentlemen, and murdered them all on the spot." The paragraph concluded with attributing such treachery as a common feature in the policy of England. "Did she not always act thus? Has she not ever thus used those who sued to her for mercy—has she not always betrayed those who confided in her honour? Is she changed?—No! Consistent in villany, she is doing now in India what she formerly perpetrated in this country, and so she might do again if Irishmen were cowardly and foolish enough to give her the opportunity! To be warned against her treachery let a picture of the massacre of Mullaghmast be placed in every house in the country, that we may be guarded against such murder and atrocity, by which, much more than by her valour, England had always obtained dominion." I shall not trouble you with a statement of the various ballads and placards of a seditious character that were circulated among the people, for the purpose of exciting them, in consequence of the impossibility of such an immense multitude hearing every thing that passed on the platform. Those ballads and placards were printed by a man of the name of Hanly, residing Fishamble-street, which was the general printing office for all seditious publications throughout Ireland. Amongst the flags at that meeting, there were several upon which were inscriptions, *Remember Mullaghmast*; that meant, remember the place where, according to the statement of Mr. O'Connell, a massacre was perpetrated by the Saxons worse than that by Mehemet Ali. On others were, *Ireland for the Irish and the Irish for Ireland*. On another, *A population of nine millions is too great to be dragged at the tail of another Na-*

tion. On another, *Ireland must be a Nation*. On another, *Repeal*. On another, *No Saxon threats, no Irish slaves*. *No compromise but Repeal*. At this meeting there were men with labels of *O'Connell's police* round their hats, who did duty by the platform, and Mr. O'Connell said he was glad to see them do their duty so well, hoping at the same time, that he will soon have no other police in Ireland. Mr. O'Connell arrived at the platform at Mullaghmast about two o'clock. It may seem an unimportant circumstance perhaps, but you may not hereafter have reason to think it so, that he came arrayed in his scarlet robes. Many matters may seem trifling when merely stated, which were intended to have, and had an important effect; however little they might have on the higher order of society, yet this is not the case with such masses as those which composed this meeting. Mr. O'Connell went to that meeting arrayed in his scarlet robes, and an incident occurred on the platform which may also strike you as trifling, but which might also have a powerful effect on such a multitude. A cap was presented to Mr. O'Connell on the platform, which, according to the statement of one of the defendants, was embroidered, and ornamented with gold, and corresponding in form with the ancient Irish crown preserved in the Irish Museum. Such was the description of it given by Mr. Barrett. To this too, some ridicule might be attached, but it was not thought ridiculous by the people met there that day. Whatever colour of ridicule might be given to it now, it did produce a great effect on the hundreds of thousands then assembled. It was placed on the head of Mr. O'Connell amid great cheering from the people. On them the effect was not intended to be ridiculous: on educated persons it might have no effect, but not so on those who surrounded the platform. Though all that was spoken could not be heard from the platform, yet all that was done there could be seen by every human being in the meeting. Mr. O'Connell having arrived at the platform, addressed the meeting; he was in the chair, and having thanked them for the honour done him, said: "I feel more honoured than ever I did in my life, with the single exception of the day I attended a meeting, if possible more majestic, at Tara. But if a comparison were instituted, it would take a more discriminating eye than mine to perceive any difference between them. They exhibited the same determination, the same firmness, the same resolution not to violate the peace. They were not guilty of the slightest outrage; they would not give the enemy any power by committing a crime. But they peacefully and manfully stood together in the open day to protest before man, and in the presence of God, against the iniquity of the Union. 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 dele-

"gation from the people was confined within the limits of the con-  
 "stitution, and the moment Parliament went beyond and destroyed  
 "the constitution, that instant it annihilated its own powers, but it  
 "could not annihilate the immortal spirit of liberty which belonged  
 "as a rightful inheritance to the people of Ireland, and take it then  
 "from me that the Union is void." This was addressed to a multi-  
 "tude consisting of from 250,000 to 1,000,000 of persons, and is in  
 accordance with the statement made, that the Crown had the right  
 of summoning an Irish Parliament, and was consistent with the opi-  
 nion that the Act of Union was void. He further stated: "I admit  
 "that the Union has the force of law, because it is supported by the  
 "policeman's truncheon, the soldier's bayonet and sword, and the  
 "courts of law; but I solemnly declare, that it is not in the spirit of  
 "the constitution and is therefore void. I have physical force  
 "enough about me to-day to achieve any thing, but you know full  
 "well it is not my plan. I will not risk one of you—I could not af-  
 "ford to lose any of you. I will protect you all—I will obtain for you  
 "all the repeal of the Union. 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  
 "were displayed.] The assertion of that sentiment is our safe pro-  
 "tection, for nobody will attack us, and we will attack nobody. In-  
 "deed it would be the height of absurdity in us to think of making  
 "an attack when we can play the game peaceably and quietly. There  
 "is not a man in his senses in Europe or America, that does not ad-  
 "mit the repeal of the Union is now inevitable. The English news-  
 "papers taunted us, and their writers, who first laughed us to scorn,  
 "now admit that it is impossible to resist the application for Repeal.  
 "I thought the monster meetings had demonstrated the opinion of Ire-  
 "land. 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. I choose 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  
 "crimes of the world, until the massacre of the Mamelukes by Me-  
 "hemet 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." Thus tracing back  
 transactions which occurred centuries before,—grievances which may  
 have existed then, with a view to excite them to hostility to England.  
 In another part of the same speech he says: "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 bargains, 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 ne-  
 “ cessary; but we came to take 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. I have led you thus far  
 “ in safety; I have stilled 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 them-  
 “ selves 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 realized 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, hold a petty sessions  
 “ of their own, in the room of the magistrates who have been un-  
 “ justly deprived. We will submit all our differences to them, and  
 “ will endeavour to do justice to all parties, and it will not cost you  
 “ a single farthing. I shall go on with that plan until I have all dis-  
 “ putes decided by judges appointed by the people themselves. I  
 “ wish to live long enough to see justice realised to Ireland, and li-  
 “ berty proclaimed throughout the land. It will 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, when she has  
 “ got rid of the present miserable and paltry administration, and has  
 “ an administration that I can support, constituted of friends of Ire-  
 “ land; we will then have a Parliament; but I must finish that part  
 “ of the job before I go further; and one of the reasons for calling  
 “ you together was, to proclaim throughout Ireland, that I want to  
 “ arrange that before I go a step further. The Conciliation Hall  
 “ will soon be finished in Dublin, and it will be worth any man’s  
 “ while to go from Mullaghmast to Dublin, to see what a beautiful  
 “ hall it will be. When I have that arranged, I will call together  
 “ 300, as the *Times* newspaper calls them, bog-trotters, but better men  
 “ never stepped upon pavement. I will have 300, and no thanks to  
 “ them. 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 will not  
 “ be content until I see not a single man in any office, from the low-  
 “ est 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. If  
 " there be any man in favour of the Union let him say so [cries of  
 " 'not one']. I never mistook you. Yes, my friends, the Union was  
 " begot in iniquity, it was perpetrated in fraud and cruelty, it was no  
 " compact, no bargain; it was an act of the most decided tyranny  
 " and corruption that ever was perpetrated. The trial by jury was  
 " suspended; the right of personal protection was at an end; courts  
 " martial sat; and the county of Kildare, amongst other counties,  
 " was filled with blood. 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 ex-  
 " posed 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, an absurd insurrection; but you have a  
 " leader now who will never allow you to be led astray. Even your  
 " enemies admit, that the world has not produced any man that can  
 " exceed the Irishman in activity and in strength. The Scotch  
 " philosopher and the French philosopher have 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 I any teetotalers here? [cries of 'yes']. Yes, it is teetotalism  
 " that is repealing the Union. I could not afford to bring you to-  
 " gether, I would not dare to do it, if I had not teetotalers 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. 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, dis-  
 " ciplined as you are in obedience to those who are breaking the  
 " way, and trampling down the barriers between you and your con-  
 " stitutional liberty." Gentlemen, at this meeting was proposed  
 " and carried, what has been called the Leinster declaration. This  
 " meeting was in fact a provincial meeting for Leinster, and conse-  
 " quently, these resolutions raised the name of the Leinster declaration  
 " for repeal. The first of these resolutions was as follows: " Resolved,  
 " That this meeting hereby declare its devoted loyalty to the per-  
 " son 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, stand-  
 " ing on the graves of the martyred dead, we solemnly pledge our-  
 " selves to use every constitutional exertion to free this our native

“land from the tyranny of being legislated for by others than her own inhabitants.” The martyred dead there meant the 400 Roman Catholics who were massacred by what were termed the Saxon foreigners, whose acts could not be exceeded in brutality by any people in the world, except the Turks. The next resolution was as follows: “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 also a concluding resolution for a petition to parliament for a repeal of the Union, to be intrusted for presentation to a Repeal member. This meeting having been held after the prorogation of parliament, I am not at liberty to apply to it what I applied to the others, namely, the fact of no petition having been presented to the House of Commons from it, but when you are considering under what pretext those meetings assembled, and that at none of them was any petition prepared, you will judge whether the resolution passed at this meeting, was not to give a colour of legality to it, when by the address on the 13th of September, it had been resolved unanimously, that there was no hope from Parliament. In *The King v. Redhead*, to which I have already referred, a verdict was had against the traversers, although at the meeting which was arraigned, a resolution was adopted to present a petition to Parliament; that therefore does not test the legality of the meeting, and you are to judge whether this meeting of half a million of persons, at which the resolutions which I have read were passed, was held for the purpose of overawing the legislature, by the demonstration of physical force, and the apprehension of ulterior consequences, or for the purpose of petitioning Parliament.

On the same day a dinner took place, in a pavilion erected on the Rath of Mullaghmast. Always bear in mind the statement in the document which I read to you, that it was on that Rath that the Irish Catholics had been massacred, you will thus be better able to understand why one of the banners or emblems used on the occasion, contained an Irish harp, without a crown, and the Irish wolf-dog, with the inscription—*No more shall Saxon butchery give blood-gouts for our repast. The dog is watching, he is roused, and treachery expelled from Mullaghmast.* On another banner was the motto, *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 traversers. Mr. John O’Connell was in the chair at that dinner, and in proposing the first toast, he said: “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 bab-  
 “ bling 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. What-  
 “ ever 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.” At the dinner, Dr. Gray read a letter, dated  
 26th September, 1843, and signed Thomas Ffrench, in which the  
 following appeared: “ This mighty movement, unprecedented in  
 “ the history of nations, has now assumed a magnitude much too  
 “ immense to admit of retrograde or compromise. It has, in fact,  
 “ terrified the foes, as much as it has delighted the friends of Ire-  
 “ land. 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 an-  
 “ swer, 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 Saxon cowardice and treachery, will not, I am sure, be  
 “ ineffectual in imparting to the vast assembly, an instructive lesson,  
 “ as to the paramount necessity of cautious counsel in future. Why  
 “ should *Punica fides* so long usurp the dignity of the adage in clas-  
 “ sic pages? 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 connexion  
 “ with this county furnishes instances of Saxon perfidy, exceeding  
 “ in numbers and magnitude, any in the history of Carthage, or  
 “ even in the universal history of the world.” Mr. Barrett made a  
 speech at that dinner, in which, among other observations, were the  
 following: “ It has been said, that as we visited the Hill of Tara, to  
 “ recall the virtuous and glorious days of Irishmen, in order to  
 “ awaken the sentiments by which we may be restored to independ-  
 “ ence; 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.” In the course of the  
 dinner, Mr. O’Connell, in speaking to the toast of the “ Repeal  
 of the Union,” said amongst other remarks, “ Peel was valiant for  
 “ the hour, and Wellington said there was nothing for it but war;  
 “ but they saw we do not want to go to war with them. 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 have made these demon-  
 “strations before hundreds of thousands of fighting men; one would  
 “think you had a taste for fighting. We have met, and we have  
 “proclaimed by our meeting the national determination for the  
 “regeneration of the country. 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 one  
 “hundred speeches, the effect would have been precisely the same.”  
 Again he says: “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. A few more we shall now have by way of tilly. I  
 “have five or six or seven yet unarranged, these at least we shall  
 “have, and I think by that time, the ministry will be tolerably con-  
 “vinced, that the do-nothing policy will not heal the sores of  
 “of Ireland.” Again he says: “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 these steps are not difficult.  
 “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 yourselves. Oh! there is not a rock  
 “of any colour, but that where we will have them. 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  
 “to do our business.” He then speaks of the difficulty of restraining  
 the people at the stage at which they were now arrived; and I may  
 here remind you of this, that Lord Tenterden stated, that persons  
 who listened to those speeches evinced more anxiety to proceed  
 rapidly, than those who delivered them. Such was the apprehension  
 of Mr. O’Connell, as to the result of this organization, which  
 you will be told had not been brought about for the purpose  
 of any contemplated breach of the law. Again, he says: “I  
 “wish that every man should bide his time, and be guided by the  
 “counsel of wise men, and the anointed priests of God. I know  
 “that you will do so. 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. I anticipated it, and  
 “I now rejoice in it, where my voice is sounding, and you are quiet  
 “hearers, attentively listening; there was once raised the yell of des-  
 “pair, the groans of approaching death, the agony of inflicted  
 “wounds on the perishing and the unarmed. On this very spot they  
 “fell beneath the swords of the Saxon who used them securely, and  
 “delightfully grinding their victims to death; here the Saxon tri-  
 “umphed; here he raised the shout of victory over his unarmed  
 “prey. Upon this very spot, 300 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, and 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.” This was a transaction which took place, or which was alleged to have taken place in the reign of Queen Mary, and it was referred to for the purpose of exciting hostility in different parts of the empire, between the people and the Government ; after an interval of some hundred years, he sought to excite the people, by ransacking the history of his country for centuries past ; and yet, gentlemen, you will be told by the counsel on behalf of the traversers, that they are innocent of the charge in the indictment, of combination and conspiracy to excite hostility between the people and the throne. Dr. Gray spoke at that dinner, and amongst other observations he said : “ I stand up to return thanks, not on behalf of this or that class, but on behalf of the judges appointed by the people. For the first time the people have judges, for a long time past they have been ruled, and governed, and trampled upon by aliens and enemies ; by enemies, who, although living amongst us, were not our friends but our foes who lived among us till they found 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, deriving their authority, not from any patent appointments, not from any constituted assembly, but deriving it directly and solely from ourselves.” I am not aware that any thing further happened at that dinner, to which it is necessary for me to refer.

Gentlemen, on the 2nd of October, a meeting of the Association took place, at which Mr. O’Connell, Mr. John O’Connell, Mr. Ray, and Mr. Steele were present. Mr. O’Connell referred to the plan of the Queen’s issuing writs for an Irish Parliament, to which he had frequently referred at prior meetings ; and he made some observations at that meeting, with respect to an advertisement, to which I shall have to refer.

On the 3rd of October, another meeting of the Association took place ; the persons present were Mr. O’Connell, Mr. John O’Connell, Mr. Ray, Mr. Steele, Mr. Duffy, Rev. Mr. Tierney, and Dr. Gray. That meeting included all the traversers, except Mr. Barrett. A letter was read at that meeting, which shows the kind of tyranny which they practised, to force persons to join the repeal movement ; it is a letter signed by Patrick Skerrett, the Chairman of the Town Commissioners of Loughrea, inclosing £14 to the friends of the Association, and in that letter were stated the names of the subscribers. Amongst others were three : one who would send his subscription in a few days, and two who were recusants (that is, they exercised a fair and unbiassed judgment), whom they (the Board of Commissioners) were determined to expel from their body, when a proper opportu-

nity arrived. Upon this passage in the letter being read, Mr. O'Connell rose up and said: "They are quite right to turn out those who are not repealers." This is the freedom of this system. It resembles exactly the circumstance which occurred at Tullamore, which had been spoken of with such approbation, where a labourer was seen in a field, working by himself, his fellow-labourers refusing to speak to him, because he had exercised the right of private judgment. You now have the same system extending to the higher classes; you have the Commissioners, in whom the corporate property is vested by the Corporation Act, sending their subscriptions to this Association, and stating that they would expel three recusants from their board, and Mr. O'Connell expressing his approbation of this tyranny over the free exercise of private judgment in a matter of this description. I am sorry to say that many persons have been driven to join the repeal movement, by this system of oppression and tyranny. At that meeting, Mr. Steele made a speech which will be in substance detailed to you by one of the witnesses, who will be produced to prove this case. I cannot avoid making some observations here with respect to this. A statement has been made that this speech never was made, yet it is somewhat singular, if it was not made, it should appear in three newspapers belonging to three of the defendants, and they will have an opportunity of examining the reporters of these three newspapers, who reported that speech. I ask you now to test this and make this inquiry from yourselves, when you will find that, which I venture to anticipate, they will not examine the reporters who reported that speech, the persons over whom they have control. I should observe with respect to the witness, whom we shall produce on behalf of the Crown, and who reported this speech at Mullaghmast, if they question the accuracy of his report of what took place, they can examine their own reporters who published an account of it, and although there may be some trifling variation, which will necessarily arise when there are two reports of the same proceeding, yet it will be found substantially correct. Their case will be to throw discredit upon this witness, as may be seen by the placards which have been most discreditably circulated. If he is not stating the fact, three of the defendants having reported those proceedings in the several newspapers, will have an opportunity of producing their reporters, and getting them to state what will be their defence, that every word of his speech was pure imagination, although they have published them. But if he be in error in the report, I would as soon take their own report, for the purpose of proving the criminality of those proceedings, as they will be found just as criminal in their own report of the proceedings. I ask you, gentlemen, to put this question to them, when they go into their case, and I prophesy they will not produce one of those reporters. There was another speech made at this meeting, to which, gentlemen, I wish to call your attention. It is a speech made by the Rev. Mr. Tierney; it is as follows: "It is an old story, but 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 congre-  
 “ gate 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 Provi-  
 “ dence as the saviour of his country? No; though that would be  
 “ justifiable in you, still you come here for a better and for a holier  
 “ purpose; you come here to help him, to assist him in rescu-  
 “ ing 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? 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 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 is 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 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. 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.” That is one of the battles  
 “ mentioned on the Repeal card, in which the Saxons were defeated,  
 “ and the Irish victorious. “ These are bright spots in the history of  
 “ my locality, and, as I am talking of bygone 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 50th year of his age; he  
 “ was one of the bravest generals that ever commanded an Irish  
 “ army. In 1588, Sir William Fitzwilliam was Lord Deputy of  
 “ Ireland; he was a bloody and inhuman monster; he was a foul  
 “ murderer and a robber. I shall mention to you a robbery and a  
 “ murder he committed in my county. He had Red Hugh Macmahon,  
 “ chieftain of Monaghan, arrested on 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 H. 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 H. Bagnall, a Cap-  
 “ tain Ansly, and others of his English murderers.” This is a trans-  
 “ action which Mr. Tierney brings forward to excite hostility against  
 “ his fellow-subjects in England. “ On account of this frightful and



“ inhuman murder, and 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 forces 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 surround-  
 “ ing bogs of certain townlands. The English being repeatedly beaten  
 “ and repulsed by the bravery of the Irish and the vigilance of their  
 “ general made a desperate attack on the Irish lines, led on in per-  
 “ son by their general, Sir John Norris; but the general’s horse was  
 “ shot under him, and the general himself, 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 on the Irish, and succeeded in gaining  
 “ the pass; when he crossed the river, he was met in person 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 upon  
 “ the earth. The English fled; the Irish gave an hurrah of tri-  
 “ umph, and dreadful slaughtering ensued upon the spot. In that  
 “ battle, O’Neill captured all the military stores, arms, and ammuni-  
 “ tion 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 55 years afterwards, in making a ditch,  
 “ found about £2000, which they left behind. This battle was  
 “ fought in Clontibret; he was then in the 58th year of his age,  
 “ and he was able, in single combat, to beat the stoutest man  
 “ in all England; three years afterwards he fought the great battle  
 “ of the Yellow Ford. In the same locality, in that battle, the Irish  
 “ and the English lost their general; the same Sir Henry Bagnall,  
 “ the murderer of M’Mahon, was shot dead; all the principal officers  
 “ of the army, and 2,500 soldiers were slain on the field of battle,  
 “ while the Irish had but 200 men killed, and 600 wounded. Why,  
 “ it may be asked, when the Irish were so successful, and fought  
 “ such noble battles, were they some time after so unfortunate? I  
 “ answer, English gold or 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 herds of place-hunters that you have every day about the  
 “ Castle? Where are the would-be aristocracy that every man will oc-  
 “ casionally meet in his own little isolated locality?—the hiring rep-  
 “ tiles but we 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, 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 country ; he sunk into a grave, his ashes are at  
 “ Rome, they are now in a foreign clime, almost unknown and for-  
 “ gotten ; oh ! if they are not unknown and forgotten, I hope that  
 “ due honour will yet be paid to his name and 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 ? 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 years more :

“ Like the lamb that’s doomed to bleed to-day ;  
 Had he thy reason would he 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 chil-  
 “ dren, and generations unborn will bless you. Mr. Chairman, in  
 “ the name of the county I am from, and particularly of my own pa-  
 “ rish, Clontibret, where a hundred fights were fought, permit me  
 “ to hand you, in the name of that parish, in the name of that peo-  
 “ ple, the children of the men that fought the battle of victory, un-  
 “ assisted from any other locality, but being of the north, and of that  
 “ county alone, £92.” Now, I ask you, do you understand what Mr.  
 Tierney meant in the commencement of his speech, by inquiring if  
 they came there to enable him (Mr. O’Connell) to make Ireland the  
 land of the happy and free, and if they were prepared to do so ? I ask  
 you to construe the meaning of Mr. Tierney, when he said, that  
 deeds as well as words were required, by what subsequently fell  
 from him in relating the battle ; and what he had in view when  
 he says, that they are ready to give their hands as well as their  
 hearts ? It is impossible to mistake it ; it did not suggest peace.

I shall now go back a few days, to bring before you some matters  
 connected with the preliminaries for the Clontarf meeting. On the  
 30th of September, there appeared in the *Nation* newspaper, an ad-  
 vertisement, headed “ Repeal cavalry — Clontarf meeting. The  
 “ committee for this great national demonstration being apprised of  
 “ the intention of many repealers to appear mounted on Conquer  
 “ Hill, Clontarf, recommend the following rules to be observed, for  
 “ the regulation of the cavalcade, at this first muster and march of  
 “ the mounted repeal volunteers. 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 Oc-  
 “ tober, 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 a-breast, half distance, each bear-  
 “ ing a wand and cockade, distinguishing the number of his respec-  
 “ tive 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 turn-  
 “ pike gates. Fourth, each horseman to take and keep the place  
 “ assigned to him on joining his troop, and remain in rank until dis-  
 “ missal 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, &c. 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. Seventh, that the Chairman and members of  
 “ the Committee bearing wands and cockades, do form the mount-  
 “ ed staff in advance, and that the muster, march, and parade at the  
 “ meeting field, shall be under their sole order and direction, until dis-  
 “ missed, after the proceedings 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.” That appeared on the 30th of September. On the  
 2nd of October, at the Association, Mr. O’Connell observed: “ I  
 “ saw with surprise, a paragraph in the *Nation* newspaper, which  
 “ ought not to have been printed, although it appeared a very good  
 “ quiz, and I beg you will not pay any attention to it.” This ad-  
 vertisement was suppressed, and another was substituted in its  
 place, apparently as if a pen were taken, and the military words struck  
 out, by turning the word *troop* into *group*, and omitting the words  
*muster*, *officer*, *march*, but leaving it in all other respects the same.  
 This document, this quiz, every person understood. It was more  
 convenient to call *troop*, *group*. Then, after considering that they  
 had struck out all the objectionable parts, the advertisement stands  
 in the same form, leaving the substance and the sense, with all its  
 illegality on the face of it, as it was published, and I tell you that this  
 advertisement was illegal. In the case of *Redford v. Birley*, which I  
 have already referred to, Lord Tenterden says, in page 128: “ It is by  
 “ no means to be taken for granted that it is lawful for the subjects  
 “ of this country to practise military manœuvres and exercises 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.”

On the 6th of October an article appeared in the *Pilot* newspaper 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. It is, as it were, treading over the days that are passed, or reading the history of Ireland anew. It is recalling to our minds, as in a picture, the calamities that our fathers experienced, or the feats they achieved. For this reason it was wise that meetings should be held at Tara and Mullaghmast, and for this reason it is particularly wise that another should be held at Clontarf. In the whole range of Irish topography no spot is more celebrated than this. It was here that Irishmen, under a commander as prudent as brave, taught a lesson to their Danish invaders that has never been forgotten. Would to God that there had been soldiers of equal spirit, and commanders of equal prudence and bravery to meet the plundering and bloodthirsty Saxons in subsequent years, when they first set their feet upon our soil! Oh! if there had what a world of misery Ireland had been spared! Should the game of subduing us be attempted now, however, such a people exists—such a commander could be found. 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 conquered 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.” The article then gives a description of that battle, and continues: “Thus terminated the battle of Clontarf. What strikes a person most on reading the account of it is, the bravery that the Dalcassians, 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. 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 the Second, 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 amongst themselves, and through that means they became a prey to the tyrants and plunderers by whom they were attacked. A new spirit has however arisen in our days. Ireland is becoming united; for we make little count of the few paltry bigots that are keeping aloof. Education is doing its work—prejudices are melting before it. It is an indisputable fact that



" the people of this country were never so much under the com-  
 " mand of any one man, or so manageable, as they are at pre-  
 " sent. Neither were they ever so sober, so intelligent, or more  
 " brave. From this it follows that they never were so formida-  
 " ble, if want only attacked; and the physical, the moral, the intel-  
 " lectual position of them, together with the coolness, the courage, and  
 " the great capacity of their leader, should, as it will, protect them  
 " from aggression. All that could be required of them if they were  
 " attacked would be to imitate the conduct of their ancestors, the  
 " Dalcassians, who never entered a field without being resolved to  
 " *conquer or die.*" A detail is then given of the hardships experi-  
 " enced by those Dalcassians on their return to their own country,  
 " and the article concludes: " May the Irish people of the present  
 " day, should they be driven to it, imitate the conduct of the brave  
 " Tipperary men, or former Dalcassians." That publication appeared  
 " on the Friday previous to the day appointed for the meeting, which  
 " promised to be of a most formidable character, keeping in view that  
 " the parties were to form under the direction of the Association, and  
 " to assemble for the purpose of proceeding to that meeting. On the 7th  
 " of October, a letter appeared in the *Nation* newspaper, signed *A Dal-*  
 " *cassian.* It was as follows: " There is not amongst the millions who  
 " are banded to obtain a repeal of the pretended Union, one man  
 " who more fervently desires to see Ireland for the Irish than I do,  
 " nor one who would more gladly seek to efface the very footsteps  
 " of the foreign spoliator from our soil. I beg to offer a suggestion  
 " to my countrymen—to the old people of the Scots, whereby that  
 " effect would certainly be produced to a certain extent, and ano-  
 " ther significant indication given of our unchangeable determination  
 " that Ireland shall not be for the Saxon or the Norman, but for  
 " the Gael, from henceforth to the end of time." The writer then  
 " proposes, that after the meeting at Clontarf, the Irish shall discon-  
 " tinue to adopt the Saxon names for places, and that the original  
 " Irish names shall be resumed. Gentlemen, you are aware, and it is  
 " not necessary that I should do more than advert to it, that the  
 " meeting to be held at Clontarf was prevented by a proclamation.  
 " It was to have been the first of those five, six, or seven meetings  
 " which Mr. O'Connell stated would be held before the closing of the  
 " year; that meeting did not take place, and, I believe, it did not take  
 " place from a conviction which existed of its illegality.

On the following day, the 9th of October, a meeting was held at  
 Calvert's theatre; it was a meeting of the Repeal Association, and  
 there were present at it Mr. O'Connell, Mr. John O'Connell, Mr. Ray,  
 Mr. Steele, Dr. Gray, and the Rev. Mr. Tyrrell, who has since died.  
 I should not have thought it necessary to state any thing that fell from  
 Mr. Tyrrell, but that he proposed an important resolution which was  
 to have been proposed by him at Clontarf, in case the meeting had ta-  
 ken place. He said: " We are come here for the purpose of proposing  
 " resolutions at this meeting, which would have been proposed for  
 " your adoption at the meeting yesterday, if it had taken place. I will  
 " read them first, and then place them in the hands of our respected  
 " chairman." And accordingly they were read by Mr. John O'Con-

nell, who acted in the capacity of chairman: "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.—That we, the clergy, gentry, freeholders, burgesses, 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 its own inhabitants.—That forty-five 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.—That petitions to the houses of Lords and Commons would be adopted, praying for the recognition of the inalienable rights of the Irish nation to a domestic legislature; and in order thereto, for a repeal of the legislative Union." I have already in an earlier part of the case adverted to those resolutions; they are not exactly, but very nearly, the same in terms as those on the repeal card, and I merely beg to remind you, that as there is an attempt to draw an analogy between these resolutions and those of the Irish volunteers, that there is a great distinction between them. Ireland was then represented by her own Parliament. The Union did not exist, but it is now law by the adoption of the articles of Union. If at the time those resolutions were passed, claims were made by the English Parliament to govern Ireland, by laws passed by that Parliament where she was not represented, that would be sufficient to justify those resolutions which are sought to be established by the precedent of the Irish Volunteers; but I impeach the legality of any resolutions which assert that no power except the Queen, Lords, and Commons of Ireland, ought to legislate for Ireland, and they ought not to have been adopted.

I have gone through a statement of the several meetings, which I thought it might be important to direct the attention of the Court and Jury to. I shall now recall to your recollection the charge for which the traversers have been indicted. They stand indicted, for combining and confederating together, to raise discontent and disaffection amongst her Majesty's subjects, and to excite them to hatred and contempt of the Government and Constitution of the realm, as by law established. Now I would ask you, gentlemen of the Jury, whether, after all the details which I have laid before you, if they be proved, you can entertain any doubt of the guilt of the traversers of

a conspiracy to excite discontent and disaffection among her Majesty's subjects, and to excite hostility against the Government, and also, which is another branch of the indictment, to excite disaffection amongst her Majesty's subjects serving in the army. It is impossible to carry on the government of a country, if in a united kingdom, the inhabitants of different parts of the empire are to be excited to hostility towards each other. I am satisfied that they would not be excited to hostility, were it not for the mischievous agitation which is kept up in this country; and that when the evidence on this portion of the indictment is detailed before you in proof, you will concur with me, if I have established the case which I have stated, that it is your bounden duty not to hesitate to find the traversers guilty of this portion of the charge. Another portion of this serious conspiracy, was to excite disaffection in the army. The progress of the conspiracy may be well understood; first, it was necessary to excite discontent among the people, and then it was necessary to excite hostility against that portion of the empire with which Ireland is united, and most active measures were taken to excite that hostility. It became important with this view that the people should be shown their strength, in the first instance. In order to organize them, they accustomed them to come from remote distances, and having taught them their own strength, they sought by means of this demonstration of physical force to awe the Government into granting the object of this confederacy—the Repeal of the Union. But so long as the army remained faithful, there was little hope of success from this organization and assembling of those thousands in different parts of the country. They seem to have been following up, step by step, what was considered in 1797, the year before the rebellion, most important, namely, to endeavour to alienate the minds of the army, and create among them a spirit of discount and disaffection, and more especially among the non-commissioned officers, for the purpose of obtaining their assistance in carrying out this revolution, which you are told by one of the traversers, is to end in a division of property in the country. A portion of the charge also, gentlemen, as you are aware, was that the traversers conspired to cause large numbers of persons to assemble together, for the unlawful purpose, by means of the intimidation to be thereby created, and the demonstration of physical force, to procure and effect changes to be made in the government and constitution of the country, and particularly by these means to accomplish a dissolution of the legislative Union. Gentlemen, I think at the opening of this case, I sufficiently pointed out, and in this I think I shall have the concurrence of the Court, that in order to render meetings of this description illegal, it was not necessary that any immediate apprehension of a breach of the peace should be entertained. I believe it was the object and wish of Mr. O'Connell, that the parties at those meetings should separate peaceably, and it appears that in his addresses and speeches, at most of the meetings, he expressed that wish; but I am also satisfied that there was an ultimate object, that when the organization was complete, when every Repeal Warden in Ireland had brought each parish to that state of

discipline, that, as Mr. Duffy said, they would be ready for liberty, then it was intended, to use the language of Mr. Barrett, that Ireland should stamp her foot, and the Repeal should be granted. Whether it was the intention of the traversers, by these inflammatory speeches and publications, to lead to an actual outbreak hereafter or not, is not material to the purpose of the present charge against them. If they had it in contemplation to the full extent, if they intended that at some future period there should be an outbreak, headed by one of the traversers, in point of law that would be a higher offence than that for which they are now indicted. It is sufficient, for the purpose of the present indictment, it being for a misdemeanor subjecting them to fine and imprisonment, that you should believe that these meetings were held for the purpose of overawing the legislature, and by the demonstration of physical force and organization throughout the country, in the end to get a Repeal of the Union, otherwise than by the constituted tribunals of the country, the United Parliament. If their intention was to overawe the legislature, and to obtain a Repeal by the organization effected, and the intimidation practised, I need scarcely inform you that was illegal, for then it would be utterly impossible to carry on the government of the country, if such important alterations were not to be made by the representatives of the people, but by the people themselves, by means of the physical force which they have displayed. One mischief arising from these assembled multitudes is that which Mr. O'Connell adverted to at Mullaghmast, that when the people were organized to the extent to which they are, even though he were anxious that there should be no outrage, that all should be peaceable, he might not be able to control them under his command, after having excited them to this extent. At Mullaghmast he adverted to this apprehension which he felt, and said it came across him like a sickly dream, and he appealed to them whether they would continue to obey him. I certainly will admit that it was not intended that there should be an outbreak; that was part of the system adopted in this conspiracy, and of course we have reason to rejoice that such a course was adopted; but that does not take away from the illegality of those proceedings. If the intention was to organize the people to that extent that the Government of the country could not be carried on independently, but by force of the control of those assembled multitudes, who were to dictate to the legislature the course they were to adopt, that was illegal. Although throughout these speeches and publications no ultimate outbreak was adverted and looked to, yet I believe they intended to carry on the intimidation by those meetings, and by the assembly of so many thousand persons, rather than to create any present disturbance. It is sufficient for my purpose, if you should believe that these multitudes were assembled together for the purpose of intimidation by the demonstration of physical force, although there might be no actual intention of using it, except for intimidation. If that be the case, they are guilty under this indictment. It is not necessary for the purposes of this prosecution, that you should believe that an



ultimate outbreak was intended. As I have already said, and as was said by Mr. Justice Rooke, though one of the traversers might not have intended the consequences that might result from their acts, it might as well be said, by a person who fired a pistol among a crowd, that he did not intend to kill any person. When Mr. O'Connell said, that he had a sickly dream come over him, he was afraid that the people's feelings had been wound up to so great an extent, that an outbreak might take place ; but whether he intended or not, that there should be no future outbreak, no physical force, yet I tell you, that these meetings, and that combination, were illegal under the charges in the present indictment. There is another branch of this indictment, relating to the establishing of the Arbitration Courts, which you have already heard. I may now tell you, gentlemen, that in a conspiracy of this kind, although I have stated to you the entire of it, and each part of it is intimately connected with the other, it is not necessary that you should come to the conclusion that the traversers are guilty of every portion of it ; it is not necessary for the Crown to establish every portion of the conspiracy ; it is sufficient if you are of opinion that they are guilty of any one part. Although I believe I shall be able to establish every portion of the charge, yet I think it necessary to state this.

Gentlemen, I have now detained you for a great length of time, and I will conclude by using the language used by a most eminent Judge, Chief Justice Bushe, at the Maryborough Special Commission : " I will conclude 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 the 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 more abject motive of earning an ignominious popularity ; on the other hand, panic is often the source of a blind, rash, indiscriminating zeal, or exasperating energy, more resembling the temper of war, than the stayed 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 and personal interest in putting down the existing mischief ; an interest which we are bound to neutralize by the coolest impartiality." He then concludes : " Let us therefore cooperate 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.”

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THURSDAY, JANUARY 18TH.

FREDERICK BOND HUGHES *sworn, and examined by the SOLICITOR-GENERAL.*

I am a short-hand writer. I have been in the habit of reporting for 17 or 18 years. I recollect coming to this country in September last. I arrived on Saturday the 30th of September. I never had been in Ireland before. I recollect the following day the 1st of October. I went on that day to a place called Mullaghmast, in the county of Kildare. I arrived there about half-past 12 o'clock. There were many persons present when I arrived, and they gradually began to increase to a large number. As near as I could guess, 30,000 or 40,000 persons were present; I could not see over the whole extent of the ground. I saw no particular exhibitions, except persons coming from different parts with banners. I took on that occasion a memorandum of what passed, that is, of the speeches. I have it here.

The *Solicitor General*.—Before you refer to your notes, can you mention some of the inscriptions on the banners?

“Hurrah for Repeal,” I think was the inscription on one of the banners. “The Men of the Border County” was another; those were in front of the platform. “The man who commits a crime is an Enemy to his Country,” was another. “A Country of Nine Millions is too great to be dragged at the tail of any Nation.” The musicians connected with the various parties had on a sort of fancy dress. I did not observe how many bands there were. There were several persons about the platform with papers on their hats and staves in their hands, and on the paper was inscribed “O’Connell’s Police.” I know the traverser, Mr. Daniel O’Connell. I see him in Court. It was on a Sunday that the meeting took place. Mr. O’Connell arrived at about two o’clock. I am not aware that I saw Mr. John O’Connell on that occasion. Mr. Ray and Dr. Gray were present. I think I should recollect Mr. Ray. Dr. Gray is sitting behind me. So is Mr. Ray. I know Mr. Steele. I saw him there. I see him in Court. Mr. O’Connell had a sort of velvet robe on. It was scarlet or claret colour. After the arrival of Mr. O’Connell some gentleman proposed that he should take the chair. That motion was put and carried. Mr. Caulfield, I think, proposed it. Mr. O’Connell addressed the meeting. I took a note of what Mr. O’Connell said on that occasion. I took it in short-hand, to the best of my ability. I have both the original notes, and the transcript here.

The *Solicitor General*.—I do not want to take you through the

whole of what was said. Begin at the first page, and read to their Lordships and the jury, what Mr. O'Connell said [see *ante*, p. 133].

Mr. *Monahan*.—Read the whole of the speech from beginning to end.

Mr. *Hatchell*.—There are passages which we consider most material to the traversers. [The Witness then read the speech of Mr. O'Connell at Mullaghmast.]

*Examination resumed*.—I heard resolutions proposed at that meeting. Mr. Aylmer proposed the first resolution. The first resolution was in the following words: "Resolved, that this meeting hereby declares its devoted loyalty to the person and throne of Her Gracious Majesty Victoria, Queen of Ireland, and its determination to uphold and maintain inviolate all the prerogatives of the Crown as guaranteed by the Constitution." That resolution was carried. The second resolution was proposed by Mr. Joseph Hacket of Kilkenny, and seconded by Alderman Keshau. It was: "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 resolution was put by the chairman, Mr. O'Connell, and carried. Some gentleman then came forward with a velvet cap. It was a round velvet cap. It was Mr. O'Callaghan who presented it. He said: "I am deputed by the committee, who send me to present you with the National Cap." He then read an address. The cap was then placed on the head of Mr. O'Connell. [The Witness then read the observations made by Mr. O'Connell]. A resolution was then proposed for the adoption of a petition to Parliament, for a repeal of the Union, which was to be presented by a repeal member. After that, the following resolution was proposed:—"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 superior wisdom, discretion, patriotism and undaunted firmness, hereby pledge ourselves individually and collectively to follow his guidance, under any and every circumstance that may arise, come weal or come woe, never to desert the constitutional standard of repeal, which he has raised." That resolution was put from the chair, and carried. It was not put by Mr. O'Connell. A gentleman was called to the chair to pass the resolution. The meeting was held in the open air, at a place called the Rath of Mullaghmast. There was a dinner on the same day, at Mullaghmast. Mr. O'Connell, Mr. John O'Connell, Mr. Steele, Mr. Barrett, Dr. Gray, and Mr. Ray were present. I never had seen any of them, except Mr. John O'Connell and Mr. Daniel O'Connell,

before that day. I saw them in Parliament. I never was in Ireland before. Mr. John O'Connell presided at that dinner. After dinner Mr. John O'Connell made a speech. Several letters were read. A letter was read from Mr. Thomas Ffrench. [The Witness read the letter]. There was a gentleman, who I was told was Mr. Barrett, there. He made a speech during that evening. [The witness read the speech, see *ante*, p. 138.] Mr. O'Connell's health was proposed; in returning thanks, he spoke. Mr. Ray spoke at that meeting. The toast of the "Repeal Association" was given. Mr. Ray was called on to respond to it. Dr. Gray was at that meeting. He spoke to the toast of the "dismissed magistrates, and Repeal Arbitrators." I recollect Monday, the 2nd of October. There was a meeting of the Association on that day. I got admittance by stating that I attended to report. I obtained a ticket on the following day. I got it from Mr. Ray. It was in the following words:—"Admit the bearer, Mr. Hughes, of the Press, at all times, to our meeting, T. M. Ray." On the back: "Loyal National Repeal Association." At the time Mr. Ray wrote this, I said to him, "you had better state that I am Reporter for the Government. He said, "that will do for the present; the Conciliation Hall will soon be open, and you will have a place to yourself." I mentioned at Mullaghmast, that I came to report for the Government. Mr. O'Connell stated, that he understood there was a gentleman there on the part of the Government. I immediately stood up and said, that I attended on the part of the Government, to report the proceedings. Mr. O'Connell then said, that on former occasions gentlemen had attended to report at the Catholic Association; that he had afforded them every facility, and had given them access to documents; and that any accommodation he had afforded those gentlemen, he would be happy to afford to me. I believe it was also through Mr. O'Connell that I received a ticket to attend the banquet.

The *Solicitor General*.—Do you see Mr. Barrett in Court?

The *Witness*. [Looking at Mr. Barrett]—That is the gentleman, to the best of my belief, whom I saw at Mullaghmast, and who made the speech which I have read as Mr. Barrett's. On the 2nd of October I took a note of what took place at the Association. I find in it a report of a speech made by Mr. O'Connell upon a letter from Limerick being read by Mr. Ray, the Secretary. [The witness read the speech, in which Mr. O'Connell referred to an advertisement which appeared in the papers, headed "Repeal Cavalry," in relation to the Clontarf meeting, and in which he stated, that though a good quiz, it ought never to have been printed]. On the 3rd of October, 1843, I was at the Corn Exchange. At the meeting of the 2nd of October, 1843, there were present, Mr. O'Connell, Mr. Ray, Mr. Steele. On the 3rd of October, 1843, Mr. O'Connell, Mr. John O'Connell, Mr. Ray, Mr. Steele, Mr. Duffy, Rev. Mr. Tierney, Dr. Gray, Dr. Murphy, and several others were present. Mr. Duffy is in court, sitting next to Mr. Tierney. A letter from Loughrea was read at that meeting. I must state that all the letters and papers in my notes are not copies of the originals. I was told that those which



appeared in the papers were authentic. I applied to Dr. Gray for the resolutions at Mullaghmast. I first applied to Mr. Ray; I was told I should apply to Dr. Gray. When I saw Dr. Gray, I told him I was referred to him by Mr. Ray, for copies of the resolutions. He appeared to have some reluctance to give them to me.

Mr. *Fitzgibbon*.—I beg your pardon, Sir; state what he said, and do not give any inference of your own.

*Witness*.—This was several days after the meeting at Mullaghmast. Dr. Gray said he could not find the resolutions. I did not get them afterwards. When he stated he could not find them, I said I applied to him in consequence of Mr. O'Connell having promised me a copy of the resolutions at Mullaghmast; and that I wished him to communicate with Mr. O'Connell on the subject. He said he would take an hour to consider; and then he would write to me a note to say what his determination was. I said, "Oh! do not write to me; you had better see Mr. O'Connell on the matter." I was then about leaving. When we were at the staircase Mr. O'Connell was coming up. I said, "Here is Mr. O'Connell now, Dr. Gray; will you speak to him?" Mr. O'Connell said, "Well, Mr. Hughes, are you here for documents?" or some such words. I said I had applied to Dr. Gray for the resolutions at Mullaghmast, and that he had said he could not find them. Dr. Gray then took Mr. O'Connell into a private room. Shortly after Dr. Gray came out. I asked him again, "Am I to have the documents, or do you refuse them?" He said, "Oh, no; I do not refuse them. I do not mean any disrespect to you; but I cannot lay my hands on them."

Mr. *Rigby*, (one of the Jurors). Who said that?

*Witness*.—Dr. Gray. He then said: "If I could find the original document I don't think I should waste my time in writing them out for Sir Robert Peel." I said: "I have nothing to do with Sir Robert Peel, I apply to you in my character as short-hand writer." Dr. Gray then said: "You can take them from the newspapers—they are authentic." I was at the Corn Exchange on the following day; I told Mr. O'Connell I had applied to Dr. Gray, and that he had declined to give me the copies, and that he had told me I should get them in the newspapers, and that they were authentic. Mr. O'Connell said: "Yes, they are authentic." A letter from Loughrea was read at the meeting.

Mr. *Hatchell* objected to reading the letter from the newspapers.

*Witness*.—I think I have got the original. The copy of the letter is dated Loughrea, October 2, 1843, and signed by Patrick Skerrett, Chairman of the Town Commissioners of Loughrea, was handed to me by Mr. Ray. It states that the writer forwarded £14, as the subscription of fourteen of the Town Commissioners of Loughrea. He stated the names of the subscribers, and said: "They have remitted these subscriptions through the Rev. J. Macklin. One will pay in few days, and two or three, who are recusants, it is determined to expel from our body with all convenient despatch, when the proper opportunity occurs." Mr. O'Connell read the

letter at the meeting; after reading it he moved that the letter should be inserted on the minutes, and said: "They are quite right to turn out those who would not become repealers."

Mr. JUSTICE PERRIN.—To whom was the letter addressed?

Witness.—This is a copy; there is no address on it. After reading the letter Mr. O'Connell moved that it should be inserted on the minutes, and that the thanks of the Association should be conveyed to the writer, and the other gentlemen mentioned therein. Mr. Steele was present at that meeting. He addressed the meeting. Dr. Gray then proceeded to read the names of certain persons whom he moved should be appointed Arbitrators, and 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 Mr. O'Connell. Mr. O'Connell said: "I accept the office with great pleasure." Dr. Gray then read from a paper a list of the Arbitrators who had been appointed; many of whom were gentlemen who had been dismissed from the commission of the peace. Mr. O'Connell, on the reading of the paper, said: "I hope I shall live to see the day when the hall of the Four Courts shall be very empty." After the admission of Mr. Balfe, as an Arbitrator, was moved, Dr. Gray said, immediately before the motion was carried: "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 are forwarded." Rev. Mr. Tierney was present at this meeting. He made a speech. [Witness read the speech, see *ante*, page 141.] Mr. O'Connell then said: "I think this highly respectable clergyman deserves the thanks of the Association, I heard his speech with pride and pleasure." That motion was carried by acclamation. Mr. O'Connell made some further observations, which the Witness read. I attended a meeting of the Association on Monday the 9th of October, at Calvert's Theatre, in Lower Abbey-street. Mr. John O'Connell was in the chair.

*Cross-examined by MR. HATCHELL.*

The meeting at Mullaghmast was the first occasion of my coming to Ireland. I came over for the purpose of attending that meeting.

Mr. Hatchell.—Perhaps I should apprise the Court for whom I appear. I am counsel for Mr. Ray, but I shall ask the Witness some general questions. With regard to the other traversers, my learned friends will ask whatever questions they may consider necessary. I mention this, lest it should be supposed that I am cross-examining the witness on behalf of all the traversers.

Mr. Fitzgibbon.—It may be right to mention, that although each of the traversers have a right to cross-examine the Witness, that right will not be exercised, except with regard to matters relating to some of the traversers individually.

*Cross-examination resumed.*—I have been professionally a Reporter, but not for the public Press. My business is that of a short-hand

writer. I never was a reporter for a public journal. I have attended public meetings in England to report the proceedings at them. From an early period of my life I pursued that profession. I was particularly employed in England to come here as a Government Reporter. I was not apprised of any meeting, but received general orders to come over. My orders were to come over here for the purpose of reporting, subject to such directions as I might receive. On my arrival I had a letter given to me, addressed to the Attorney General. On applying at the Attorney General's house, I was told that he was not at home, and I was directed to go to Mr. Brewster. This was late on Saturday, the 30th of September. We had a very long passage, and did not arrive in Dublin until ten o'clock at night. The meeting at Mullaghmast was the next day. It was eleven o'clock before I went to Merrion-square. I stopped at Gresham's Hotel that night. I told the waiter to order a car, or a fly, to go to Mullaghmast early the next day. An assistant came over with me, and accompanied me to Mullaghmast. I did not see the Crown Solicitor before I went. I got to Mullaghmast about twelve o'clock. I had no person with me but the assistant whom I brought over. He was to assist me in transcribing my notes. He attended the meeting. He is a very good Reporter himself; I brought him to transcribe my notes. I have no doubt he took a note; I believe he took a note of it. His name is Leatham. I cannot say if he is to be a witness. He came over and returned with me on my first visit to Ireland; he also came over with me at the time I was examined before the Grand Jury. I have no doubt he will be examined, but I do not know it for certain. He took a note. I believe he has transcribed some portions of it. No other person came over with me but Leatham. He lives in London. Neither he nor I are in Mr. Gurney's Office. On our way to Mullaghmast, we stopped at Naas. When we arrived at Mullaghmast, there were a few persons on the ground, scattered here and there. I was there about an hour and three quarters before Mr. O'Connell arrived. There was a platform on the ground. I got on it. I had a good view of the people assembled. The different parties came to the ground from distant parts, with their bands playing. I heard nothing about their being temperance bands. I think there might be two or three bands. I cannot say that they were temperance bands; I did not ask nor care. I formed no opinion as to their being temperance bands; all I can say is, that there were bands there. I think one or two of the flags had inscriptions of "temperance." I saw other banners with mottoes. I have attended meetings in England, but never saw any banners or mottoes except in the time of Queen Caroline. I never attended any county meetings in England; I have attended Chartist meetings at Manchester, in the Carpenters' Hall. I never attended a meeting in the open air. I never attended meetings of reformers in 1831 and 1832. I was then commencing reporting. I was then practising for myself as a Reporter. The meetings at the Carpenters' Hall, at Manchester, were the only public meetings that I ever attended. There was a number of women and children in the crowd at

Mullaghmast. The assembly was of a perfectly peaceable character throughout. I saw no tendency to riot, disturbance, or disagreement among the people themselves. When the Queen's name was mentioned it was always received with the loudest applause and demonstrations of loyalty. I recollect, after Mr. O'Connell's arrival, it being mentioned that I was on the platform as Government Reporter. I was not introduced to Mr. O'Connell, but he mentioned that he understood that there was a Government Reporter present. I said I attended there on the part of the Government. He then directed that every facility and accommodation should be afforded me for the purpose of reporting. He did not shake hands with me on that occasion. Subsequently I had that honour. Afterwards I got a ticket for the banquet. Mr. Leatham was there too. There was no secret about the matter at all. A great number of persons, respectable in appearance, were at the banquet. The banquet commenced at five o'clock, and was over at nine. I went away a few minutes before it broke up. The same order, regularity, and good conduct were observed by the persons there as at the meeting. I saw persons called the O'Connell police about the platform at the meeting. It appeared to me that they prevented persons from getting on the platform, and kept the passage to it clear. I think persons would have been much incommoded unless there had been some such persons to prevent the crowd from getting on the platform. I think it very proper there should be such persons, and they appeared to me to have the effect of keeping order. I did not return to Dublin that night. I returned to Naas. I did not transcribe my notes that night. I transcribed but a small portion of my report in Ireland. The Queen's health was given at the dinner. It was received with very great applause, and is marked as such in my report. The health of Prince Albert was given after the Queen's. That was given by the Chairman, Mr. John O'Connell. I have a note of the manner in which it was received. It was received with great applause. It was before that, the letters of excuse for non-attendance were read by Dr. Gray. I have a note of different persons from whom they were received. I have a note of a letter from Dr. Mac Hale, signed John Archbishop of Tuam. I believe that letter was read. A copy of it was handed to me. I took no short-hand note of it. I have no doubt I got copies of several of those letters. Several of them I got from the newspapers. Mr. Ray threw the copies on the table. There were several of them. [Read a letter from Dr. Mac Hale.] I have not a letter from Mr. Talbot. I have a letter from the Right Rev. John Cantwell (dated September 28th, 1843). I have a note of a letter from the Right Rev. James Keating having been read. I have only one other letter read at the Mullaghmast meeting. I should say that when I applied for copies of these letters, and the resolutions passed, I was referred by the parties to published letters in the newspapers.

Mr. *Hatchell*.—Look at that paper and say, whether Dr. Keating's letter was read.

The LORD CHIEF JUSTICE.—What paper is that ?



Mr. Hatchell.—The *Freeman's Journal* of the 2nd of October.

*Cross-examination resumed.*—I cannot from notes or memory give the substance of Dr. Keating's letter, but to the best of my opinion it was read. I have not Lord Ffrench's letter. I have one signed Thomas Ffrench. I have a note of a letter having been read from Lord Ffrench.

Mr. Hatchell.—State the number of letters read, and the names of the persons from whom they were received.

*Witness.*—There was one signed Michael Boylan, dated Hill-town House, 27th September, 1843, and another dated Liverpool, 28th September, 1843, and signed Patrick Farrell. I will not undertake to say that all these letters were read. When copies were refused to me, I took them in their order from the newspapers several days, in the course of the week, after the meeting. To the best of my belief they were read. I have a note of a letter from Sir Colman O'Loughlen having been read; another from Thomas Ffrench; another dated from Castle Ffrench; one from Mr. Keating, a Town Commissioner of Longford; one from Dr. Cantwell, and one from Dr. Mac Hale. I have not a note of a letter from Colonel Baker. Many letters were read, I have no doubt, which I did not take down; having been promised copies, I did not pay much attention to them. I considered that all the letters read would be handed to me. There was a motto hanging up in the Pavilion, "*A nation of nine millions is too great to be dragged at the tail of any nation.*" I do not recollect having read that motto in the *Morning Chronicle*. In consequence of the situation I hold in reporting at committees of the House of Commons, I do not read papers of either side. I never attended trades meetings. I never was a member of an institution for the encouragement of native manufacture. I did not go to White's in Thomas-street to fit myself with a cap. I do not understand anything about puffing, direct or indirect. I have no doubt it is a very good way of advertising. I would have no objection to encourage native manufacture. If I got a cap to fit me I would wear it. I did not get a cap like Mr. O'Connell, although I admired it. I am not aware that gentlemen coming from Paris return with tri-coloured caps, as comfortable to sleep in. I have seen various caps. I did not form any opinion whether there was high treason in that cap of Mr. O'Connell's. I was Irish enough to buy something in Ireland, and of Irish manufacture. I bought a tabinet for the lady. I do not know but I would have taken a lady for the tabinet if I had been disengaged. I left Ireland on the 17th or 18th of October. I attended on the 2nd of October at the Association. I was accommodated there; and received every courtesy, kindness and attention from all present. There were some speeches made there which I have not read. I have an observation of a person of the name of Lanktree, before a letter from Tullow, signed Denis Jackson, was read. I have the passage about the Donegal meeting. I have the passage referring to West Canada. Mr. O'Connell at Mullaghmast had on a robe; I understood it was as Lord Mayor of Dublin. [The witness read Mr. O'Connell's speech on 9th of October, at Abbey-street Theatre]. I was in Dublin five or six days after the Clontarf meeting. I was

aware of the Clontarf meeting. I went there by general directions ; I was to attend all the meetings at the Exchange, and all the monster meetings. I was aware of the proclamation. I received no directions to go to Clontarf. I went from curiosity. I did not report anything which took place there. There was no meeting. I saw nothing there but troops, and a few persons who were there from curiosity as I was myself. I was not at the Corporation at all. I do not think I heard any thing said at the Corn Exchange of the procession having been altered so as not to interfere with divine service. I first applied to Mr. Ray for documents, he answered that he was not Secretary of the meeting at Mullaghmast, otherwise he would have given them ; and then I made the application to Dr. Gray.

*Cross-examined by MR. MOORE, as Counsel for the REV. MR. TIERNEY.*

On the 3rd of October, I saw Mr. Tierney at the Association. I did not know him before. I never saw him before. I went about twelve o'clock, and remained to the conclusion of the meeting, at about four or half-past four. I have no doubt two or three hundred persons were there. There were not many speeches. Speeches were made by several who are not now on their trial.

*Cross-examined by MR. MAC DONAGH, as Counsel for MR. BARRETT.*

Mr. Barrett, at the Mullaghmast dinner, spoke to the toast of "The People." On the 3rd of October, there were present Mr. John O'Connell, Mr. O'Connell, Mr. Steele, The Rev. Mr. Tierney, Dr. Gray, Mr. Duffy, Mr. Ray. Mr. Barrett was not there. I made a mistake with regard to Mr. Barrett.

The fact is, that Mr. Barrett was not at all at that meeting? He was not.

And, of course, did not deliver a speech? He did not.

You were at a dinner at the Rotunda? I was.

Am I to assume that Mr. Barrett was not there? He was not.

And that he, therefore, made no speech there? He did not—I mistook somebody else for him on those occasions.

You stated, I think, that at the earliest opportunity you corrected the mistake? I did.

Were you at Judge Burton's house when the informations were about to be sworn? I was.

Did you see Mr. Barrett there? I did.

Did you, on that occasion, depose to the informations? No, it was on a prior occasion ; I swore an affidavit on one day, and swore an amended one on a subsequent day.

Do I understand you to say, that you corrected this mistake about Mr. Barrett, by an affidavit subsequently sworn? I did not.

Did you see Mr. Barrett in the act of being held to bail on the informations which you had previously sworn? I was present on that occasion.

Did you see him subscribe the recognizance? I did.

Did you then correct the mistake? I did so as soon as I had an opportunity. I mentioned it to Mr. Rae and to Mr. Kemmis. Mr.

Rae was in the room, and Mr. Kemmis was reading the recognizances. Immediately on their leaving the room, I said that I had made a mistake as to Mr. Barrett being at the Rotunda or at Abbey-street Theatre. I spoke to Mr. Rae, Mr. Kemmis's managing clerk.

Did you then apprise those persons of the mistake? I said that I had a doubt about Mr. Barrett.

When? On that occasion.

Where? I believe when we were leaving Judge Burton's house.

Did you and Mr. Kemmis go back and correct the affidavit? No.

What did Mr. Kemmis say? I cannot remember.

How far was this from the Judge's door? We were coming from it over to Kildare-street.

It was before you reached Mr. Kemmis's house, I presume?

Yes. We were on our way there.

Can you not recollect what Mr. Kemmis said on that occasion? I cannot.

Did he say it was too late to correct the mistake? No.

He did not make any observation? I do not remember that he did.

And the matter was left there? Yes.

You mentioned it to Mr. Rae? I did.

Was that at the Judge's house? In the passage, as we were leaving the room.

Mr. Barrett was then leaving the house? He was.

What did you say to Mr. Rae? That I had been mistaken with regard to Mr. Barrett, and that I doubted whether he was at the Rotunda or at Abbey-street Theatre; that I heard his name, and had mistaken the person.

What did Mr. Rae say? I do not remember.

You did not return to correct the error? I put him in possession of the error; I was not aware that the identity of Mr. Barrett would be left to me; I was satisfied that although he was not at Abbey-street Theatre, that he was at Mullaghmast. I believe I corrected the mistake as to Mr. Tierney's Christian name, three days after. The other mistake remained altogether uncorrected.

You did not apprise Mr. Barrett of it? I did not know where to find Mr. Barrett.

Was it not three days after that, you corrected the affidavit as to Mr. Tierney? It was on that occasion.

The affidavit had been sworn two or three days before? Yes.

When you returned from the Judge's house you corrected the mistake as to the Christian name of Mr. Tierney? It was.

And you then spoke to the Crown Solicitor of the mistake as to Mr. Barrett? Yes.

*Cross-examined by MR. WHITESIDE on behalf of MR. DUFFY.*

I saw Mr. Duffy hand in money at Calvert's Theatre, on the 9th of October. I cannot say whether he went away immediately after or not. It was a dark stage, with candle and daylight mixed

together, which made it very hard to see. I was on the platform at Mullaghmast. I reported all that occurred there to the best of my skill and ability. I was in London at the time of the great meeting about the Dorchester labourers, when Dr. Wade paid a visit to Lord Melbourne, accompanied by about 200,000 men. I was in Parliament-street. I saw Dr. Wade in his robes. The people marched in procession over Westminster-bridge. I never saw so many people together in my life. There were more than 100,000, I should rather say 200,000. I attend Committees of the House of Commons. I do not attend debates; I only attend Committees.

I was going to ask you whether the Irish peasantry, or the English gentry in Parliament are the best behaved? The people at Mullaghmast were very quiet and well-conducted.

There was no coughing or shuffling of feet? No.

Now are not the House of Commons very noisy and ill-mannered, and do not they keep bad hours? I cannot say that. I never heard Oastler speaking. I received the letter of introduction to the Attorney General from Mr. Gurney. It was on the 9th of October that I saw Mr. Duffy hand in the money.

*Re-examined by the SOLICITOR-GENERAL.*

Mr. Ray said he was not Secretary of the meeting at Mullaghmast. I applied to him in his character of Secretary of the Repeal Association. He told me he was not Secretary of the Mullaghmast meeting. I saw Mr. Barrett at Mullaghmast. I had reason to doubt the correctness of my statement when I saw Mr. Barrett at Judge Burton's house, on the occasion of the recognizances being taken. I was there to amend an affidavit as to the Christian name of Mr. Tierney. The affidavit for that purpose had been prepared before I discovered the mistake as to Mr. Barrett. When I saw Mr. Barrett I knew him to be the gentleman I saw at Mullaghmast. I have the address which was presented to Mr. O'Connell, on the 9th of October, at Calvert's Theatre.

Mr. *Hatchell*.—I submit to your Lordship that no part of the debate, statement, or transaction can be read now. The Crown were bound to bring it out on the direct examination; and have no right now to read other speeches. They knew their own mind, and selected such parts as they thought right.

The LORD CHIEF JUSTICE.—There can be no objection to reading the address to which that speech was an answer.

[The Witness read the address.]

FLEMING MATHIAS LEATHAM *sworn, and examined by MR. BENNETT, Q. C.*

I know Mr. Hughes. I follow the same business as he does. I came to Ireland with him. I came as his assistant. I was at the Mullaghmast meeting with him. I have been ten years engaged in reporting. I went to assist Mr. Hughes to transcribe his notes. I transcribed the report from his short-hand note-book. He took the notes in short-hand and I transcribed them at his dictation, as he stated them. I have seen Mr. Hughes in London. I took notes my-



self for my own amusement at Mullaghmast. I did not take full notes. My sole object was to assist Mr. Hughes. He is a particular friend of mine, and I wished to come over and see the country. I copied some resolutions in short-hand which were thrown on the table by Mr. Ray at the banquet. I attended on Monday, the 2nd of October, at the Association. Mr. Hughes got two cards from Mr. Ray, and by that means we got admission. I got one of these from Mr. Hughes, and he got it from Mr. Ray. [The card was produced, and was similar to that produced by Mr. Hughes, the former witness].

*Cross-examined by MR. FITZGIBBON.*

Those were the resolutions in substance which were read at Mullaghmast. The papers afterwards went round the reporters, from one table to another, and I saw no more of them. I read newspapers after the meeting.

Did they contain the resolutions?

The *Attorney-General* objected to the question.

Mr. *Fitzgibbon* then withdrew the question.

*Cross-examined by MR. MOORE.*

I got a card from Mr. Hughes. I understood Mr. Ray to have given the cards. He was informed, to the best of my belief, that I was with Mr. Hughes, and he must have known him to be a Government Reporter, for he saw him at Mullaghmast. He gave directions to admit me and Mr. Hughes.

*CHARLES ROSS sworn, and examined by MR. SERGEANT WARREN.*

I am a native of England. I reside in Loudon. I am a newspaper Reporter. I am a short-hand writer. I have been a newspaper Reporter I think upwards of twenty years. I came to this country in August last. I first came here in July. I think it was July, but I am not certain. I think it was June. It was the day before the Donnybrook meeting. It was suggested to me to come over on the part of Government, to take notes of Mr. O'Connell's speech at the Donnybrook meeting. I attended that meeting, and took a note of Mr. O'Connell's speech. I have not got the note I took of that speech. I cannot say what became of it. I took a transcript of it. I carried the original to Loudon, and kept it in a drawer for a fortnight after I took it. I then put it into a cupboard, with other papers, and it was lost. I searched for it where I originally placed it. I have a transcript of this note. It is very correct. I took it the next day. I attended the meeting also for a newspaper. I was connected with a newspaper. I should wish to explain, if I am permitted, for I have been misrepresented, and I reserved what I had to say on the subject to this occasion.

Mr. *Henn* objected to any explanation being given by the Witness.

*Examination resumed.*—When here I took reports for a newspaper. I have a copy of my notes of Mr. O'Connell's speech at Donnybrook. He spoke of the physical force of the parties who surrounded him, at the commencement of the speech. [The Witness

read the speech. See *ante*, p. 89.] I formed an opinion of the numbers who were present. I thought about 40,000. I was on the scaffold or the hustings. I mean the same place as Mr. O'Connell was. I saw bands at the meeting. The people came with the bands in procession. There were also a great number of flags. I do not recollect the mottoes on them. I saw Mr. O'Connell come on the ground. He arrived about 2 o'clock. I saw nothing particular carried before him. There was much confusion. The meeting did not last more than two hours. I wrote this note the next day, and went the day after to England. I returned in August. I saw Mr. John O'Connell at the meeting, but I do not recollect that I saw any other of the traversers. I did not attend any meeting of the Association in July. I attended one in August shortly after my return, on the 28th of August. I have not on my notes who was in the chair on that occasion. I did not get in until after the chairman had been appointed. Mr. John O'Connell is the first name I have on my note on that occasion. I attended several other meetings, and I usually saw at them Mr. O'Connell, Mr. John O'Connell, Mr. Steele, and Dr. Gray. I have seen Mr. Duffy there, but not more than twice. I am sure I saw him twice. Mr. Ray acted as Secretary. I have a note of Mr. O'Connell's speech on the 28th of August. I got some papers from Mr. Ray. I got this printed paper from Mr. Ray, as Secretary, on the 27th of September. He always distributed those papers at the table. I got the other paper the same day. [Other papers handed up]. I got this from Mr. Ray. The printed one was given by Dr. Gray, on the 16th of October.

Sergeant *Warren*.—My Lords, these are all papers relating to the Arbitration Courts.

*Examination resumed*.—I got other papers on the 3rd of October, a letter of the 2nd of October, signed Patrick Skerrett. There is no address on it. I received that from Mr. Ray, on the same day. I was at a meeting of the Association at the Corn Exchange, on the 4th of September. I did receive a document on 13th September, not from Mr. Ray, but in the copying-room from one of the clerks. I had received papers there before. It was the Address to the people of the British empire.

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FRIDAY, JANUARY 19TH.

*Examination of CHARLES ROSS continued by SERGEANT WARREN.*

I was present at a meeting of the Repeal Association on the 28th of August. I saw there Mr. O'Connell, Mr. John O'Connell, and Mr. Ray. I have a note of Mr. O'Connell's speech, in which he adverted to a plan for the restoration of the Irish Parliament. [The Witness read the speech, See *ante*, p. 111]. Mr. O'Connell referred to a letter which had been received from Mallow. I have no copy of this letter. Mr. O'Connell 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. I was at the Association on the 29th of August,

Mr. O'Connell was there, and made some observations on the Queen's speech, in reference to the maintenance of the Union.

To Mr. *Henn*. I did not take full notes of all that occurred, I only took notes of what I considered material. They are short-hand notes.

Mr. *Henn*.—I submit, my lords, he is not entitled to read those notes. He says he did not take a full note of all that passed, he only took notes of those parts which to him appeared material. He is not to be the judge of the materiality.

The LORD CHIEF JUSTICE.—If the witness undertakes to give the substance of what was spoken, according to his judgment, that surely would be sufficient. If every note was to be taken *verbatim et literatim*, no note would be admissible.

Mr. *Henn*.—My Lords, I require the substance of all that passed; and the Reporter has no right to exercise his judgment as to what is material and what is not. I do not want a *verbatim* note, but a substantial note.

Mr. JUSTICE BURTON.—Suppose no notes had been taken at all, but that the witness came to give evidence as to what he heard stated by certain persons, would not that be admissible, although he might not remember every word that had passed? If he had them in his memory, surely that would still be evidence.

Mr. *Henn*.—My Lord, that would be a different case. But if a person goes there deputed by the Government to take a note of the entire proceedings, and only produces garbled extracts, I submit that would not be evidence; we are entitled to the whole of what passed there.

Sergeant *Warren*.—[To the Witness.]—Have you taken a note, to the best of your skill and judgment, of the entire of Mr. O'Connell's speech on that occasion?

*Witness*.—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.

Mr. *Henn*.—I object, my Lord, to this witness going on. He swears he did not take all the speech.

Sergeant *Warren*.—If I do not mistake, he swore he had taken a full note. [To the Witness.]—Have you taken the entire of that speech? I know I have, because it is all consecutive. I can always tell when I have taken only a branch of a speech.

Mr. *Henn*.—Now tell me, are those full notes, or loose abstracts of them? I cannot depose to a fact of which I know nothing.

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? I do not 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.

Mr. JUSTICE 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 correctly, and see what it is. What is your answer?

*Witness*.—I find I have not taken a full note. I have taken a full short-hand note of all matters which I considered important in the speech ; and then when I come to a passage, as for instance, a description of the evils the country had suffered from the Union, such as the falling off of trade, &c., of this I took a note, but not so full a note as of the other parts.

Mr. JUSTICE CRAMPTON.—As I understand you, you take a *verbatim* note of some parts of a speech, and of others you give merely a summary ? Yes.

Mr. JUSTICE CRAMPTON.—Then you cannot give the words of those parts of the speech which you took what you call a summary of ? I would not pretend to do so. I will give you an example, my Lord. [The Witness read an extract from his notes : “ ‘ There is another bill of indictment against the English Government.’ Read the address of the Irish members. That was the address of Mr. Smith O’Brien and other Irish members. Commented on it :—‘ Such was the state of Ireland at the commencement of the last session. What was done ? An inquiry was refused. The Welsh committed crimes ; they are rewarded by an inquiry. The Irish committed no crimes ; an inquiry was denied to them ; and the Arms Bill is inflicted on them.’ ”] Now these are what I call heads of two or three sentences ; but they are pretty full ones.

THE LORD CHIEF JUSTICE.—Do you take upon you to swear, to the best of your skill and judgment, that notes, such as you have read, contain the substance of what was said, though they are not the words used ? Certainly.

Mr. *Henn*.—If I understand you right, you say you took a *verbatim* note of what you considered material ? Yes.

But of those matters which you did not consider material you took a summary ? Yes.

Now do you venture to swear, that of those parts which you did not consider material, you have taken fully the substance ? Yes, the topics.

I do not mean by substance, merely taking a note of the topic, I ask you whether you have taken the substance of what Mr. O’Connell said in the discussion of the topics ? I have not taken a full note of the substance ; I could supply the substance of the comment from memory.

Did you not, within the last five minutes, swear that you could not ? Particular words, certainly, I did, but not the substance.

Are you able to swear positively that you can depose to the substance of the comments ? To the general substance, certainly. I cannot pretend with regard to the passages, to give anything like the precise language used by Mr. O’Connell.

Mr. *Henn*.—Will you take upon yourself to swear to the substantial meaning of the comments ? Yes, of the topics.



Mr. *Henn.*—That will not do.

The *Solicitor General.*—There is a preliminary question to be settled before the discussion goes further. Suppose the witness admitted most unequivocally, that he could not give either the substance or the language of the several parts of a speech, yet I would have a right to get from him what the speaker did say. I never heard it contended that it is not competent to prove that certain language was used by a person on a particular occasion, because the witness is not able to depose to all that was said by that person from the beginning to the end of his speech. I will venture to say no such proposition is to be found in any law book. The evidence may be subject to observation to the jury, or if they can impeach it by a reporter, let them do so, but let them not exclude what we can give, because we cannot give the whole of the speech.

Mr. *Henn.*—I do not controvert what the *Solicitor General* has laid down. The witness only produced the notes to refresh his memory, the notes themselves are not evidence. If a written publication were given in evidence, they might read a part of it, but what I submit is, that when a witness takes a partial note only of the proceedings, he is not entitled to use that note, but must depend on his memory.

MR. JUSTICE CRAMPTON.—Do you confine your objection to the parts of the speech to which the witness only took a topical note, or do you extend it to the parts of which he has a full note?

Mr. *Henn.*—I object to his reading the note at all, unless it is a full note.

THE LORD CHIEF JUSTICE.—Unless some authority can be shown for it, the Court will admit the evidence, it being in correspondence with all known law which can be found upon the subject.

MR. JUSTICE CRAMPTON.—We admit so much of the evidence as the witness has a full note of, or to the substance of which he is able to swear.

[The Witness read the speech]. This speech concluded with a motion that an address should be presented to Her Majesty. This motion was agreed to. I took no memorandum whether there was approbation or disapprobation of that speech. I was present at 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 of the intended meeting at Clontarf. [The Witness read Mr. O'Connell's speech, see *ante*, p. 117.] I attended the meeting alluded to in Mr. O'Connell's speech. It took place at Loughrea, on the 10th of September, Mr. O'Connell, Mr. Steele, Dr. Gray, and Mr. Barrett were present. I took a note of what Mr. O'Connell said. [The Witness read the speech. See *ante*, p. 120]. I formed an estimate that there were about 12,000 persons present. I have made a mistake; I saw no person but Mr. O'Connell at that meeting. I was present at the dinner; Mr. O'Connell, Mr. Steele, Mr. Barrett, and Dr. Gray were there. [He was here called on to identify those parties].

Mr. *Fitzgibbon.*—When any of the traversers are stated to have been present on any occasion, I will mention it if we mean to dispute their identity; on this occasion we do not dispute the identity.

[The Witness here read Mr. O'Connell's speech at the dinner. See *ante*, p. 121.]. I was at a meeting of the Association at the Corn Exchange on the 15th of September.

*Witness.*—Am I to speak from my notes or from my own recollection?

Serjeant *Warren.*—Speak from your own knowledge, if you can speak positively.

I have only Mr. O'Connell in my notes; but Mr. Ray, and Mr. John O'Connell were there. I have a note of Mr. O'Connell's speech on that occasion. [The Witness read the speech, and a copy of the "Address to the people of the British Empire," which was passed on that occasion].

"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. 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*.

"The hypocritical pretext under which that Union was offered to the Irish was—that the people of both countries should be identified into one—that the two countries should be amalgamated into one nation—that there should be no longer any difference of rights or privileges between the English and Irish; but, on the contrary, that the people of both countries should be placed upon a footing of perfect equality in law and in fact, without any unfavourable distinction towards the one, or undue preference towards the other. Such was proclaimed by the British Government to be the intent and meaning of the Act of Union, and such, in point of common sense and of honesty, the Union, if fairly worked out, ought to be.

"But the exact reverse is the case. The promises held out by the English Government were shamelessly and totally violated. Every pre-existing evil was, by means of the Union, continued and aggravated, and no opportunity has been omitted to inflict new and severer grievances upon this unhappy country.

“ The manufactures, which before the Union flourished in very many of our cities and towns, have been annihilated in most, and continued only in a few, and with diminished productiveness. The productive commerce of Ireland has been put down, and in its room there has been substituted the export of the prime necessities of life, the produce of our fertile soil; exported, however, not to bring any return to Ireland, but to be disposed of for the payment of the rents of absentee landlords—rents to be expended in foreign lands, and for the exclusive benefit of strangers.

“ Another destructive branch of our remaining foreign commerce, consists in the conveyance from our shores of our hardy population, who, having no employment at home in their own naturally fertile and teeming fruitful soil, are compelled to seek a livelihood in foreign countries, and to enrich by their productive labour any country but their own.

“ The consequences are obvious; widely spread pauperism has covered the land, and the Commissioners of Poor Law Inquiry have authenticated the awful fact, *that more than 2,385,000 of the people are, some for the entire, and others for at least a portion of the year in a state of absolute destitution.*

“ Under the protection of the Irish parliament Ireland was the least taxed country in Europe; whilst, under the iron rule of the British legislature, it is a universally admitted fact, that Ireland is, in proportion to her means, the most heavily taxed country on the face of the globe.

“ The agricultural interests of Ireland also bear comparatively greater burthens than the agriculture of any other nation—burthens exclusively confined to the land; they are these:—the tithe rent-charge exceeds half a million of pounds sterling per annum, the Grand Jury assessments, in a great part compulsory, amount to near 1,500,000 of pounds sterling per annum, and the poor rates on lands will very soon amount to more than another million sterling per annum—all, all payable out of the land alone.

“ The enumeration of the Irish people lately published by Government, affords facts that show the most fearful destitution of the people of Ireland. It is shown that more than one-half of the rural population, and one-third of the town population, are living in the lowest state, namely, in a cabin or single room. It is also shown that there is a second class, very nearly in the same proportions, and but little removed in comfort from the first or most destitute, leaving for a class that may be said to enjoy anything like comfortable circumstances, only 16 per cent. in the rural, and 30 per cent. in the town districts. Thus there are 84 per cent. of the rural population in woful want, and 70 per cent. of the civic population in equal distress. Attend to those facts, fellow-subjects; weigh them well, and see whether there be, on the face of the earth, woe equal to ours.

“ These terrific truths, indicative of great suffering, are authenticated by the Government Commissioners, upon whose unquestionable authority we state them.

“ Another fact, of a still more awful nature, is derived from the

“ same authority—it is, that the population of Ireland has for the  
 “ last ten years, diminished by more than 700,000 souls. The hi-  
 “ deous importance of this statement will be felt, when it is recollected  
 “ that one great proof of increasing prosperity is found in the due  
 “ augmentation of the people, whilst the most decisive evidence of  
 “ human misery is found in the fact of a retrograding population. In  
 “ Ireland that misery is evinced to the extent of an annual retroces-  
 “ sion of the population of more than 70,000 souls.

“ Such, fellow-subjects, is the general outline of the impoverish-  
 “ ment of the Irish people, and their sufferings, originating in and  
 “ continued by the fatal measure of the Legislative Union. Such is  
 “ the condition of the people of Ireland more than forty years after  
 “ the Union—such is the authentic picture of the wretchedness of the  
 “ Irish, after the Union has subsisted near half a century ; the facts  
 “ derived from the highest and the most reluctant authority, that of  
 “ Government itself ; a reluctance naturally arising from the obvious  
 “ truth, that the Government thus doth confess its own crimes—for  
 “ the misery of the people in a fruitful land must be the crime of the  
 “ Government.

“ In addition to the physical evils produced by the Union, the  
 “ misery of Ireland is aggravated by political injury and religious in-  
 “ sult.

“ These are the aggravations of the wretchedness arising from  
 “ our physical destitution :

“ Firstly—The great bulk of the Irish people being Catholics, do,  
 “ even in their impoverished state, cheerfully support a complete  
 “ hierarchy of their own clergy ; they are impelled by religious mo-  
 “ tives to support that clergy, and they do support that clergy out of  
 “ means that are little better than actual destitution. In the mean  
 “ time the ecclesiastical temporalities of Ireland, emanating from the  
 “ bounty of our Catholic ancestors, are dedicated to the *sustentation*  
 “ of the clergy of a comparatively small minority. This grievance  
 “ would not be endured in England—this grievance would not be  
 “ borne in Scotland. *It is borne in Ireland* ; but it is not thereby  
 “ the less keenly felt by the sensitive and religious Irish people.

“ Secondly—the Representation of Ireland is most unjustly and  
 “ unfairly disproportioned to the population and resources of Ire-  
 “ land. *At the Union Ireland was compelled to give up two-thirds*  
 “ *of her Representatives*—Great Britain did not give up a single  
 “ one. It was an iniquity, without a single ingredient of reciprocity.  
 “ *Ireland gave up 200 members*—England not one. If the Union  
 “ were a bargain, it would be in the nature of a partnership. The  
 “ man would be only fit for Bedlam, who should become a partner  
 “ on the terms of annihilating two-thirds of his capital, and receiving  
 “ nothing in return from his partners. Two-thirds of Irish repre-  
 “ sentation was confiscated for the profit of England—that is, to  
 “ enable England to have Ireland at her feet, without adequate  
 “ power for any protection. The Reform Bill afforded an oppor-  
 “ tunity to remedy this grievance. There were 220 members which  
 “ had belonged to the extinguished boroughs, to be distributed



“ between these three countries. Scotland, with a population of  
 “ little more than two and a half millions, got eight in addition to her  
 “ forty-five. England (then with a population of thirteen millions)  
 “ took to her own share 207 out of 220 members, and distributed  
 “ some amongst her great towns, and the far greater part amongst  
 “ her counties, according to the ratio of their respective population.  
 “ *Ireland, at that time containing more than seven millions of in-*  
 “ *habitants, got an increase of only five members.*

“ Let us dwell a little upon the complicated enormity of this  
 “ injustice. *Ireland lost by the Union* two-thirds of her represen-  
 “ tation. She *ought* to have got by the Reform Bill at least from  
 “ seventy to one hundred additional members, *Ireland did get—*  
 “ *fully five !! Aye, fully five !!!*

“ And there are people absurd enough to complain, that the  
 “ Irish are discontented—aye, *that they are !!!*

“ Let us recapitulate :

“ England, on thirteen millions, got 207 members.

“ Scotland, on two and a half millions, got eight members.

“ *Ireland, on seven millions, got five members.*

“ We leave these facts to fester as they are.

“ Thirdly—Our Parliamentary Franchises are wholly inadequate  
 “ to secure anything like a true reflection of the opinions of the  
 “ mass of the nation. Two facts will establish this grievance.

“ One of these facts is, that one Riding of Yorkshire has more  
 “ votes than all the agricultural counties put together of Ireland.

“ The other fact is, that Wales, with a population of 800,000,  
 “ has more than 36,600 voters, while the *county of Cork, with an*  
 “ *agricultural population of 720,000, has only 2,000 voters.*

“ Add to these, that Ireland, from the legal nature of the fran-  
 “ chise, and the technicalities with which it is surrounded, and the  
 “ power that it gives to the aristocracy to prevent the right to re-  
 “ gister, the consequences are, that restricted as is the franchise at  
 “ present, it must day by day become more limited, until it is totally  
 “ useless for all popular purposes. It is actually in the rapid progress  
 “ of extinction. If the present system is to prevail, there will shortly  
 “ be in Ireland no popular franchise at all.

“ Fourthly—The Municipal Reform Bill for Ireland is almost an  
 “ entire mockery ; and even the few rights that have been left to the  
 “ reformed Corporations, are confined to the wealthier classes. The  
 “ pecuniary value of the franchise is so high, as to exclude the great  
 “ bulk of the population of our towns and cities.

“ In England, the richer country, in the corporate towns and  
 “ cities, every man rated to the poor rate and borough rate, no  
 “ matter at how low a sum, is a burgess, and entitled to enjoy corpo-  
 “ rate franchises.

“ *In Ireland, the poorer country, no person can be a burgess, or*  
 “ *enjoy the corporate franchise, who is not rated to the poor at £10*  
 “ *per annum, or upwards.*

“ In England, the richer country, the corporate franchise is  
 “ enjoyed subject to the payment of two taxes, the poor rate and the  
 “ borough rate.

“ *In Ireland—for example, in Dublin—the corporate franchise cannot be enjoyed without the payment of nine or ten different taxes or rates.*

“ Is there any human being so absurd as to suppose, that there is any thing which ought to be called an Union between countries thus circumstanced?

“ Fifthly—The pecuniary exhaustion occasioned by Absenteeism is one of the mainsprings of all the evils which Ireland suffers. There is no country on the globe in which anything like one-third of the comparative absenteeism existing in Ireland can be found. It would be as well for Ireland, that nine-tenths of the provisions that she exports to England were sunk in the sea, as that they should arrive in safety at the British markets; when sold, no return is made to Ireland, either in money or in goods. The price goes into the pockets of absentees, who spend every shilling of it out of Ireland. No country in the world pays such a tribute to another, as Ireland thus pays to England—a tribute creating exhaustion, poverty, misery, and destitution in all their frightful forms.

“ Sixthly—The connexion between landlord and tenant in Ireland, arranged as it has been by a long course of vicious legislation, wants that mutual confidence which is essential to the benefit of productive industry. The labouring population, unable to obtain employment, live habitually on the verge of extreme destitution. They must obtain land, or they die. The issues of life and death are in the hands of the landlords. The massacres of the clearance system consign to a premature and most miserable grave, hundreds of thousands of victims. They are wholesale murders, followed by the assassination in detail of the instruments of landlord rapacity. These crimes, on both sides, cry to heaven for vengeance and redress; for a redress, capable of giving to the landlord his just right to adequate rent, and to the tenant just protection for the produce of his labour and capital.

“ Another species of tyranny, the basest and most atrocious of all, has been recently put in practice by some of the most cruel and bigoted of our landlords; not content with the dominion of the landlord over the tenure and the rent, they insist upon and exercise a diabolical despotism over the religion and the conscience of their tenants, and require of them to send their children to schools from which the Catholic clergy are excluded, and in which no religion is taught but that which the parents believe to be false. Thus these landlords usurp a bigoted power over the souls, as well as the bodies, of their wretched serfs. It is only an Irish landlord who could be guilty of this climax of cruelty.

“ The relation between landlord and tenant cannot subsist as it is in Ireland. It is a subject replete with the utmost difficulty. Its solution is filled with dangers. It would require the aid of the honest and feeling portion of Irish landlords, to enable the honest and conscientious friends of Ireland to place the relations between landlord and tenant on a satisfactory footing to both. But,

“ alas! these landlords will not join in our struggle until it is too late, and then they will become the principal sufferers.

“ Notwithstanding our connexion with a nation which boasts to be the wealthiest, the most enlightened, and most powerful in the world, our commerce, our fisheries, our mines, our agriculture, attest by their languishing and neglected condition, the baneful effects of English misgovernment.

“ 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.

“ This grievance becomes fearful, when it is recollected that it involves the administration of justice. Men who have spent their lives in virulent vituperation, and in public hostility to the Catholics of Ireland, can never give the Irish people any confidence in the judicial bench; and certainly there cannot be any infliction greater than to suffer a constant dread of judicial partiality.

“ The magistracy—purged as they are of the friends of Ireland, the repealers, are generally of the party hostile to the people. In the magisterial bench but little confidence can be placed.

“ Eighthly—The financial robbery of the Irish people by the Union, is the most plain and palpable crime ever committed by one nation upon another. The Irish owed a debt of twenty millions sterling at the Union. Britain owed four hundred and forty-six millions sterling. These debts have been amalgamated—a fraud, as against Ireland, to the extent of four hundred and twenty-six millions of pounds sterling—a gigantic fraud!!!

“ Ninthly—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.

“ Tenthly—The voice of the civilized world lays to the charge of the English Government the guilt of having produced this exasperation of national feeling—this misery, this wretchedness, this exhaustion, this destitution. Upon that Government lies the responsibility of having failed to secure the welfare and the content of the Irish people, and of having, on the contrary, diffused throughout the nation, want, and woe, and bitter discontent, and heart-rending sorrow.

“ 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.

“ 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 valuers, 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-whipped 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 noonday 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 bigotry, 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,**  
“ *Chairman of the Committee.*

“ *Corn Exchange Rooms,*  
“ *Dublin, 13th September, 1843.*”

I was at the meeting at Clifden, on the 17th September. I saw there Mr. O’Connell and Mr. Steele. I remember no others at the meeting. I recollect seeing Mr. Dillon Browne. I heard him make a speech there. I have a note of it. [The Witness read the speech]. I heard Mr. O’Connell make a speech there. I have



a note of it. [The Witness read Mr. O'Connell's speech, see *ante*, p. 124]. Mr. O'Connell was at the dinner that day. I saw Mr. O'Connell, Mr. John O'Connell, Mr. Steele, Dr. Gray, and Mr. Barrett, at the dinner. Mr. John O'Connell was not at the dinner at Clifden. I was thinking of the Mullaghmast dinner where Mr. John O'Connell presided. The only traversers who were at this dinner were Mr. O'Connell, Mr. Steele, and Dr. Gray. Dr. Gray spoke at the dinner. The Queen's health was first given; then "the People." Dr. Gray spoke to this toast. [The Witness read Dr. Gray's speech, and the speech of Mr. O'Connell.] I thought there were about 5000 or 6000 present there. I was present at the meeting of the Association, on the 27th of September. Mr. O'Connell, Mr. Ray, and Dr. Gray were present. Dr. Gray made a report at the meeting, respecting the Arbitration Courts. I have not a copy of that. I was furnished with some documents. I got a *Form of Proclamation*.—"Whereas " there has been formed for the district of —, a Court of Arbitration. Notice is hereby given that Mr. —, the Secretary thereto, " will furnish, free of expense, all the necessary and such information " as may be requisite for the legal commencement of arbitration suits. " Signed by order—T. M. Ray, Secretary to the Loyal National Repeal Association. God save the Queen."

Serjeant *Warren*.—Who is the printer signed to that notice?  
Mr. *Bourne*.—Browne, printer, 36, Nassau-street.

The officer next read a second document, to the following effect:

" *Form of Testimonial*.—These presents are to certify that the  
" Loyal National Repeal Association of Ireland having perfect confidence in, and firm reliance upon, the integrity, ability, and sound  
" discretion of —, at a meeting, holden —, at the Great Rooms,  
" Corn Exchange, did, by public vote, and now by these presents,  
" doth sanction, approve of, and recommend him, the said —, to  
" aid for the district of —, as an Arbitrator, to dispose of and decide,  
" and adjudicate upon all such differences and disputes as may  
" arise within the said district of —, and which may be duly submitted to him by the parties litigant. In witness whereof we here-  
" with subscribe our names,

" —, *Chairman*,  
" —, *Secretary*."

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.

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. First*—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 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. *Second*—It is *illegal* and an indictable offence for arbitrators to administer an oath. In hearing cases, they will therefore not only not administer an 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. *Third*—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. *Fourth*—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 a £20 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, 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.*—*Fifth*—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. *Sixth*—After the parties have come to the place of holding the Arbitration, and before the plain-

"tiff 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 farther with the case. *Seventh*—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. *Eighth*—The disputing parties, or either of them, should be allowed to have the aid of professional men, if they choose. 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 *seven*. *Ninth*—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 advisable that, in all cases where it is practicable, the award be made immediately after the hearing.

*General Rules*.—*Tenth*—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. *Eleventh*—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. *Twelfth*—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





“on account of its importance to the public for the detection of crimes, that those persons who are the channels by means of which that detection is made, should not be unnecessarily disclosed.”

Mr. *Henn*.—There is a distinction between the cases. If it had not arisen on the other side on the direct examination, I should not be at liberty to go into the inquiry as to the name of the person. In the case referred to, the question arose on the cross-examination. This is a question arising on the direct examination; and how can I test the accuracy of his answer, unless I am allowed to ask the question?

The LORD CHIEF JUSTICE.—The Court are all of opinion, that the distinction taken by 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 connexion with any newspaper? Yes, the *Morning Chronicle*.

How long in connexion with that paper? About three years.

Does it support the present Government? No.

Were you in connexion with any other paper? Not at that time.

Were you at any other time? Yes; the *Times*.

When did your connexion 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.

Witness.—If I had not come as a newspaper reporter I would not come for anything.

Would you not come for £100,000? Oh! I might; or £75,000.

Why, would it be so hard to tempt you? I was led to apprehend some danger.

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 at 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. I did

not interfere at all. I got a place on the platform. That, gentleman, is the correspondent of the *Morning Chronicle*. He is not connected with the Government. I did not communicate to him that I was deputed to come over by the Government.

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.

You would not give £50,000 to get away from it; 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, I assisted in preparing a report for the *Morning Chronicle*.

Was that on the same day? Yes, it was on Monday, 3rd July.

Did you on that day copy the short-hand notes you took, to furnish your report to the *Chronicle*? Oh no, I sent it 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 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.

But you do not pretend to say that you even gave the substance of what was said in those topical notes? I do not understand the latter portion of your question. I took notes in such a way as not to misrepresent the sense of the speaker upon those points on 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 how far the expression "substance" extends.

Mr. Henn.—Why, substance is substance, and it is so plain a word that it could not be made plainer. 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 express but one idea, and I only put down the idea.

What are topical notes? The substance of the observations made on the various topics alluded to.

Now, Mr. Ross, having escaped from the savages, and got back to London, you got courage to come back again? 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 in the neighbourhood of Dublin that I was afraid; I entertained apprehensions at first.

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 knows me in London.

You know 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 attended three monster meetings, and several at the Association.

Now, will you 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 at Mullaghmast; 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 the 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? 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.

Did you tell the truth when you stated you would not take

£50,000 to come here? I say so. I did not state at all that I came here on the part of the Government; there is one with whom I am connected, I mean my wife, whose wishes and feelings I always consult, 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, refused to do so; and when a gentleman of education 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? You did not communicate that you came here on the part of the Government to the *Morning Chronicle*? No.

Now, Mr. Ross, you attended the Loughrea, Clifden, and Mullaghmast meetings, did you send reports of the proceedings at each to the *Chronicle*? I did not send the report of the Mullaghmast meeting to the *Chronicle*.

You took notes? Yes.

Who supplied the *Chronicle*? Mr. Geary.

Are you acquainted with him? Well.

Did you compare notes? No.

You did not transmit the report to the *Chronicle*? No.

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.

Do not 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 the country, and I never heard that questioned until I heard it by some gentlemen here. It is preposterous.

You were not always merely a Reporter? No.

You were, I believe, an Editor? I was.

I was the Editor of the *Carlisle Patriot* from 1837 to 1839. It is of Conservative politics. I have not always been a Conservative, for the term has only existed about ten years.

Mr. Henn.—Of what politics are you?

*Witness*.—

“In moderation placing all my glory,  
Some call me Whig, and others call me Tory.”

I have been denounced by some members of my family, who are Liberal, for being Tory, and I have been blamed by my Tory friends for being too Liberal.

Mr. Henn.—Perhaps both were right?

*Witness*.—Perhaps they were; you can only arrive at a mean by the assertion of two opposites.

Mr. Henn.—You tell us more than we poor Irish knew before.

*Witness*.—When I was Editor of the *Carlisle Patriot* I had no hesitation in professing Conservative politics; because they were professed by persons with whom I generally agreed. If you asked me



what I was before the Reform Act I should say I was a moderate Whig. I never had a touch of a Radical about me. I have had a leaning to Liberal principles, which all young men have, and which is the inevitable result of reading.

Mr. *Henn*.—I hope you will inspire the Government with similar views? I do not think it necessary. None of the present Government were connected with the *Carlisle Patriot*. I did not know any of the proprietors of it except from their own statement. I remember the trial of a person of the name of Taylor at Carlisle. I do not remember giving evidence at that trial. If I did it must have been about some unimportant matter, as I do not recollect it.

Mr. *Henn*.—I suppose it was a topical note which you did not consider material? I took no notes of it. It was an examination before the magistrates.

Were you examined before the magistrates? No.

Did you not protest, on the high privilege of a Reporter, that you should not be examined? Certainly not. I did not take an active part in the elections in England. I did not always confine myself to the drudgery of reporting during my connexion with the Press. I have occasionally written articles. I am not aware of ever having written an election squib; but if any one is shown to me I will say immediately whether I wrote it or not. I do not remember Mr. Wentworth standing for Carlisle. I do not remember the placard which has been handed up to me. Nor the name of the candidate which is on it. I never saw or heard of him before. I was not in Carlisle in 1841. I left it in January, 1840. I was connected with the London papers in 1841. If there was a contested election at Carlisle in 1841 I must have heard of it; but I never heard who the candidates were. There was an election at Carlisle, for the county, in 1839 or 1840. I never saw the placard that has been handed to me before. I was Editor of the *Carlisle Patriot* in 1838. I have not the slightest recollection of this placard, but it might have appeared in my own paper. I cannot say whether it did or did not. I was there three years then.

Mr. *Henn*.—The author of the paper which I allude to says: “protest, in the strongest manner, against the conduct of the magistrates, in compelling us to give evidence against the prisoners.” Do you remember those words? No.

Mr. Sergeant *Warren*.—The witness has already stated that he has no recollection of having seen that document before, and therefore you have no right to read a word of it.

Mr. *Henn*.—I am entitled to ask whether this was inserted in the paper with his sanction.

The COURT ruled against the question.

Mr. *Henn*.—Will you swear you did not, when Editor of the *Carlisle Patriot*, protest against Reporters being examined? No; not even in the sentence which you have read.

Which you have written? Which you have read.

What is your opinion now? I never heard the question discussed until this trial. I have been in the habit of reporting in the House

of Commons. I have often reported Mr. O'Connell's speeches. I found difficulty in following him. Almost all Reporters find difficulty in following Mr. O'Connell. I do not think it would be easier to report a passage in the House of Commons than at a public meeting, and for this reason, that at a public meeting you are much nearer to the speaker. At Donnybrook all was quiet and peaceable. So at Clifden, Loughrea, and Mullaghmast. I saw numbers of men coming with their wives, and numbers of the cavalry without saddles or bridles. I was not frightened, because my character was not known. I was sure that I was quite safe near the traversers on the scaffold, so I always kept there. All the speakers spoke from the scaffolding. I think scaffolding is the proper word. It is hustings at an election. It was wet at the Clifden Meeting, but not so wet as to interfere with reporting. We had an umbrella over us. I was able to take notes pretty fully. I attended the Association on the 4th of September. There were a great many persons there besides the traversers. The room would hardly hold as many as this Court. The dinners were well attended.

Did you see, at any of those meetings, any of the traversers do any thing inconsistent with the duty of a peaceable citizen? No.

Was there a tendency to a breach of the peace? No.

I took a note of a speech of Mr. O'Connell's on the 4th of September, before the one I read. I have not got the note of what he said after reading a letter from Dundalk, with regard to a man of the name of Callan. I have a report of some observations of Mr. O'Connell, about Ribbonism, just after Dr. Gray's speech. He said that efforts were making to extend the Ribbon system among the people—that it was the duty of the Repeal Wardens to watch all proceedings of that nature, and give information respecting them to the magistrates. That was all I considered material. From my recollection I think he read a list of names. I have a faithful transcript of what Mr. O'Connell said. Mr. Ray read a letter from a Mr. Napper, in reply to a vote of the Association. This was at the meeting of the 27th of September; Mr. O'Connell said: "He is a most respectable gentleman, and we cannot hesitate for a moment to place his letter in the minutes. Mr. Napper 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. 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 was honest he would wait until I was present to make such a proposition." Mr. Connor had proposed that the Association should agree to a resolution, declaring that rent should not be paid. Mr. O'Connell continued: "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 expropriating 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. O'Connell then moved that the letter of Mr. Napper, and an extract from the speech of Lord Londonderry should be inserted on the minutes, and that the name of Mr. Connor should be expunged. This motion was carried. Mr. Steele suggested that Mr. Connor's money should be returned. I have no report of Mr. Steele's speech, nor of Mr. John O'Connell's speech on that occasion.

MR. JUSTICE PERRIN.—Did you send a report of the Donnybrook meeting to the newspapers?

*Witness.*—No, my Lord, with the exception of a few sentences of Mr. O'Connell's speech, which I wrote from memory.

*Cross-examined by MR. HATCHELL.*

I think I saw Mr. Ray on the scaffold at Mullaghmast—perhaps I should say platform—it is a better word. I also saw him at the banquet. I left London first to come to Ireland the day before the Donnybrook meeting. I came direct by railway from London. I took a warm interest in the Cumberland elections, in 1837, 1838, and 1840. I supported the Conservative candidates. There was no opposition on that occasion, a brother of Lord Morpeth's was returned. I never took part in any election in which Sir James Graham was a candidate.

SATURDAY, JANUARY 20TH.

JOHN JACKSON *sworn, and examined by MR. BREWSTER.*

I am connected with the *London Morning Herald*. I was its Irish Correspondent in the course of the last summer and autumn. I attended the Association meetings in Dublin, and transmitted to London regularly, reports of what passed there.

Mr. *Brewster*.—My Lords, I do not mean to make the Witness go through all the speeches that have been already read. I will merely ask him who took part in the meetings at which those speeches were made. [He handed him a manuscript].

*Witness*.—Those are my original notes, which I sent to London. I find there a speech made by Mr. O'Connell, on the 30th of May, at the Association. [The Witness read part of the speech]. I have a note of a meeting at the Association on the 6th of June. Mr. O'Connell, Mr. John O'Connell, Mr. Barrett, and Mr. Steele were present on that occasion. [The Witness read Mr. Steele's speech and Mr. O'Connell's speech].

[This meeting not being stated in the bill of particulars, the examination of the Witness on that subject was discontinued].

I attended a meeting of the Association on the 4th of July. Mr. O'Connell, Mr. John O'Connell, Mr. Ray and Mr. Steele were present; on that occasion, sums of money were handed in from America.

At a meeting of the 5th July, Mr. O'Connell, Mr. Duffy, Mr. John O'Connell. [The Witness read what Mr. O'Connell said, and the proceedings of the meeting on that occasion].

On the 18th of July, I was present at the Association. I saw there Mr. O'Connell, Mr. John O'Connell, Mr. Barrett, Mr. Ray and Dr. Gray. [The Witness read the proceedings of the meeting on that occasion, and what Mr. O'Connell stated].

On the 25th of July I was present at the Association. Messrs. Ray, O'Connell, Duffy, Steele, and John O'Connell were then present. [The Witness read what Mr. O'Connell said]. On the 22nd of August I was at the Association, and saw there Mr. Duffy, Mr. O'Connell, Mr. John O'Connell, and Mr. Steele. [The Witness read the proceedings of the meeting.] On that day I got a document. It is a plan for the renewed action of the Irish Parliament. I was at the adjourned meeting of the 23rd of August. Mr. O'Connell, Mr. John O'Connell, Mr. Barrett, and Dr. Gray were present. I have a note of Mr. O'Connell's speech. [The Witness read the speech.] I have also a note of Dr. Gray's speech, in bringing forward the report of the Arbitration Committee. [The Deputy Clerk of the Crown read the report of the Arbitration Committee.] Mr. Steele, Mr. John O'Connell, Mr. Ray, Mr. O'Connell, and Dr. Gray were at the meeting of the Association of the 28th. I have a note of Mr. O'Connell's speech on that occasion. [The Witness read the speech.] I have a note of the meeting of the 29th of August. Mr. O'Connell, Mr. Ray, and Mr. John O'Connell were present at it.



In different parts of Mr. O'Connell's speech on that day, I have marked, "hear, hear, and cheering." I was present at a meeting of the Association on the 4th of September; Mr. Ray, Mr. O'Connell, Mr. Steele, and Mr. John O'Connell were present. Mr. O'Connell handed in different sums from different parts of Ireland—from Liverpool and America. I have a note of a speech of Mr. Ray, referring to the ballads in the *Nation*, and saying, that the vendors of ballads should get such ballads as were published in the Spirit of the Nation, and give up the dissemination of the trash which they usually sold. Mr. O'Connell spoke of the intended meeting at Loughrea. I was at a meeting of the Association on the 12th of September. Mr. O'Connell, Mr. Barrett, Mr. Steele, and Dr. Gray were present at the meeting on the 12th of September. Mr. Barrett handed in £21 from a place in Fermanagh. Mr. O'Connell introduced Mr. ——— to the meeting, as having brought the last contribution from America. Dr. Gray spoke of the arbitration arrangements. [The Witness read the speech]. I was at the meeting of the 13th September. Mr. O'Connell, Mr. Steele, and Mr. Ray were present. Mr. O'Connell read a letter from Washington in America, signed by W. Tyler. Mr. Ray spoke. [The Witness read his speech]. I got a copy of the address to the British subjects. [Handed in]. I was at a meeting of the Association on the 21st of September. Mr. Ray, Mr. J. O'Connell, and Mr. Duffy were there. Mr. Duffy handed in subscriptions from several places in the north. I was present at a meeting of the Association on the 27th of September. Mr. O'Connell, Mr. J. O'Connell, Mr. Steele, Mr. Ray, and Dr. Gray were there.

Mr. *Brewster*.—Mr. Ross has given evidence of those meetings yesterday. I therefore merely wish the Witness to state who were present.

*Examination continued*.—On the 28th September I attended a meeting of the Association. Mr. O'Connell, Mr. John O'Connell, and Mr. Ray were there. Mr. O'Connell spoke of the coming meeting at Mullaghmast.

Mr. *Moore*.—If the only object be to prove the persons who were at the meetings, Mr. Brewster's course is proper. But he cannot state what Mr. O'Connell said.

Mr. *Brewster*.—Mr. Ross gave no account of the meeting.

Mr. *Moore*.—We wish to take the opinion of the Court as to this. It is admitted by this Witness that he has not a full note of the speeches. The Crown have no right to read an extract from the speech. I do not go the length of saying that the Witness should give evidence of all that passed, but the whole speech should be read.

The LORD CHIEF JUSTICE.—All I want is, that they should read every thing which Mr. O'Connell said.

Mr. *Moore*.—That is not the course which has been adopted.

Mr. *Brewster*.—Mr. O'Connell appears to have made at each meeting several speeches. When we called on the Witness to read any portion of a speech, we asked him to read the whole of it. But in this instance we do not wish to hear the speech.

The LORD CHIEF JUSTICE.—It would be quite unfair for the Crown to give a garbled extract ; but I think Mr. Moore has misunderstood Mr. Brewster.

*Examination continued.*—Mr. Steele was at that meeting. I was present at a meeting on the 3rd of October. Mr. O'Connell, Mr. Steele, Mr. Duffy, Mr. Ray, Mr. John O'Connell, Dr. Gray, and the Rev. Mr. Tierney, of Clontibret, were there. Many persons attended at these several meetings. Sometimes more and sometimes less. They were generally well attended.

Mr. *Brewster*.—Have you heard any of the traversers, at any of these meetings, say anything of newspapers.

Mr. *Fitzgibbon* objected on account of the generality of the question.

The objection was overruled.

*Witness.*—I did not.

*Cross-examined by MR. FITZGIBBON.*

I am a Clare man. I have been acting in the capacity of Correspondent for the *Morning Chronicle* for two years. I am not a short-hand writer. I am not a Reporter, as the term is generally applied. I mean by a Reporter a short-hand writer. I was in the capacity of a person reporting public proceedings after a manner. I began that occupation three or four years ago. I contributed to provincial newspapers. I sent reports to the *Limerick Star* and *Limerick Chronicle*. The *Limerick Star* is a Liberal, the *Limerick Chronicle* a Conservative paper. I was first employed for the *Star*, and then for the *Chronicle*.

What is your native place ? Kilrush.

What were the reports which you sent to the Limerick papers ? They had no reference to politics ; they were sketches of the Petty Sessions.

Were they illustrated sketches ? A little embellished occasionally.

By being a little embellished do you mean that they had pictures ? They were pen and ink sketches.

The embellishments, then, were done with pen and ink ? Yes.

By embellishments you mean something put into the report that had not taken place ? Certainly.

Something not true ? The half of them were fictions.

That is what you call reporting after a manner. Then you practise as a Reporter by vending falsehoods ? No ; I report on the same principles as I would contribute to works of imagination.

Then you have contributed to works of imagination ? I have done so, a little.

Embellished a little ? Tales of imagination.

You are a little bit of a poet ? I am.

You are what is called in Clare, a poetaster ? Yes, if you choose to apply the term.

Then, you have contributed to publications ; did you ever send any to the *Nation* ? Never.

To what papers did you send them? To the papers I mentioned before, the *Limerick Star* and *Limerick Chronicle*.

In conformity with the principles of the papers? In nine cases out of ten, they had no reference whatever to them.

To what had the tenth case reference? To the subjects of the day, occasionally.

Have you contributed to magazines? I contributed a short tale to the University Magazine.

A false one? Yes.

But you intended that it should be believed to be a true one? To the man who would be fool enough to believe it I did.

Then you intended that it should be believed, if people were fools enough to do so? Yes.

Now, those illustrated sketches which you sent, as the reports of the proceedings at the petty sessions at Kilrush, was it not intended that they should appear to be true? Oh! yes.

You intended that they should appear in the public papers as true reports? I did.

And they were not true? Some were, and some were not.

When did you cease reporting at Kilrush? This month two years I came up to Dublin.

How did you prefer to live in Dublin? I became the Correspondent of the *Morning Herald*.

But you know Dublin is a place where a man must have a little income to live.—How do you support yourself? I receive 150 guineas a year from the *Morning Herald*, as their Correspondent.

As a fixed salary? Yes.

What have you to do for that? I send a letter every day having reference to the topics of public interest of the day.—I give a summary of the news of the day.

You read the local papers published in Dublin, and you make a summary of what is going on, and send it to the *Morning Herald*? Certainly, topics of newspaper interest generally.

Had you the privilege of embellishing those? I had.

And you exercised that privilege? No, not in matters of truth.

Is there any truth in what you send to the *Morning Herald*? Yes there is; I send any thing in the shape of news.

And you first come to the knowledge of it from the newspapers? Yes.

Then you endeavour, on the best authority you can, to discover whether what you find in the newspapers is true? I take a great deal of it for granted.

Do you take opinions? What I think not improbable I do.

Do you go to inquire about the truth of them? Certainly; and if I saw any absurd or high-flying opinion I should be slow in adopting it.

What mode do you take of ascertaining the truth? General inquiry. From whom? Any person I happen to meet, where the matter is one of conversation; I try to ascertain whether it is true or false.

Can you tell me any one occasion on which you endeavoured to ascertain the truth or falsehood of any statement? I cannot charge my recollection with any particular instance.

Yet you persevere in swearing that you used to do so? Yes; I cannot call to mind any individual case, but I have done it. I make inquiry from some person whom I believe to be a person of truth.

Are those the notes you took for the *Morning Herald*? Yes, this is one of my daily letters to the *Morning Herald*.

Did you send that identical piece of paper to the *Morning Herald*? I did.

I do not mean the substance of the contents of the paper; I mean the identical papers themselves? The very identical paper I have in my hand, I sent to the *Morning Herald*.

For the purpose of being printed in the *Morning Herald*? Yes.

I suppose you know enough of reporting to know that it is necessary, in sending manuscript to a newspaper, to write only on one side of the paper? Yes.

That is part of the instructions to every Reporter? Yes.

In order that without being copied they may immediately be sent into the printing office to be set up? Yes.

Were those papers when you sent them to the *Morning Herald* in the same state that they are now? No; they were in full length scraps, not divided as they are now. When I was short of paper I might have tacked a small part to another; but I never divided them in the centre.

Then they were not divided in that way? No.

You received them back from the *Morning Herald*? I did not receive them.

After you sent them to the *Morning Herald* when did you see them again? I received a letter from the proprietor of the *Morning Herald* about two months ago.

I did not ask you what you heard from the proprietor of the *Morning Herald*. I asked you when you saw those papers again, after sending them to the *Morning Herald*? About two months ago; scarcely two months since.

In whose hands did you see them? In Mr. Kemmis's, who handed me a letter from the Editor of the *Morning Herald*.

You saw them in Mr. Kemmis's hand? Yes.

Where was he when you saw them? He sent for me and I went to him.

Was that the first time you saw them? It was.

Whose initials are those? Mine.

When did you write them? In Mr. Kemmis's office a few days after that.

For the purpose of identification? Yes.

Had you any communication with Mr. Kemmis before that? None whatever.

Did you expect that communication from Mr. Kemmis? On my oath I did not.



When did you begin to attend the meetings of the Association? I suppose about eight or nine months ago.

Was that the first time you were there? No, I was often there before.

May I ask you are you a Repealer? No.

And you paid a shilling on going in? The first time I went I did.

Afterwards you went in free? Afterwards I went in with a young man connected with the Press, as a Reporter.

You tell me these pieces of paper were sent to the *Morning Herald*; were they your own notes? Sometimes they were.

Were they ever taken from the notes of the man near you? Very frequently.

You were not able to take the notes yourself? I am not a short-hand writer. Sometimes I was, and sometimes I was not. I might have come in late. Twenty things might have detained me.

Then you sometimes copied from the slips of the short-hand writer near you? I copied them to this extent, that I gave the substance of what he had written out.

This was done while the proceedings were going on? Yes.

You copied his long-hand transcript from his short-hand notes? Sometimes.

Did you endeavour to vary it? Yes.

That is to vary it so that it should not appear to be a copy of what he had transcribed? Precisely.

That was for the purpose of making the persons to whom you transmitted these papers, believe that you took them down yourself? It is a very general custom.

I am not asking you the general custom, but your particular custom? I have done so often.

And those are the notes you have been reading here to-day? Yes.

Now, will you be good enough to take up the notes that you have read here to-day, and take any piece of paper that you will particularly swear was taken down from the lips of the man who is reported in it to have spoken? On my oath Mr. O'Connell made those observations.

Mind, Sir, that was not my question. To the best of your belief, did Mr. O'Connell make the observations which are written on that paper? In substance he did.

On your oath did you write what is in each of those papers while Mr. O'Connell was speaking? Yes.

On your oath is that written down on that piece of paper as it fell from the lips of Mr. O'Connell? Yes, to the best of my belief and recollection, it is.

I ask you to fix on any one scrap of paper that you can positively swear to? I swear, to the best of my belief and recollection, but I am not positive?

Then you are not positive as to that piece of paper? No.

What is the date of that? The 30th of May.

Are you positive at all that that piece of paper was written as the words fell from the lips of Mr. O'Connell? No.

On your oath was it written while he was speaking, and from his lips? It was spoken when I wrote it out.

Will you swear it was not taken from another paper? I will not swear to that.

Then it may have been taken from another paper? This portion may or may not.

Might not any man in court have safely answered that it might or might not? I cannot recollect any particular case.

Then you do not recollect whether it was taken from another paper, or from the lips of the man whom you have represented to have spoken it? I cannot.

Can you fix on any one of those which you will positively swear was taken from the lips of the speaker? I cannot fix on any particular one.

Now, will you take up that paper of the 5th of July. Was that made up in the same way as the others? Yes.

Was it written while the people who were at the meeting spoke? Yes.

You swear that? Yes.

The whole of that bundle? Yes.

Take up one of these slips of paper, and say, on your oath, whether that was written while the meeting was going on on that day in the Association Rooms? Every one of these papers was written on that day in the room.

While each particular speaker was speaking? Yes.

Do you swear that positively? I must explain.

No; give me an answer first. On your oath, do you swear positively that every word on every one of these slips was written in the Association Room on that day, and while each particular speaker was speaking? Certainly not.

You told me a while ago, that they were. Turn to Mr. O'Connell's speech on the 5th of July, and read a sentence of it. Do you swear that sentence was written down while the speaker was speaking it? I cannot be certain whether it or was or was not.

Mr. *Brewster*.—I object to Mr. Fitzgibbon taking a part of a speech and reading it in this way.

Mr. *Fitzgibbon*.—I am taking the only legal course, and if I adopted any other course, I should be legally and properly stopped by the Crown. How does the matter stand? Here is a man informing the jury of what took place from memory. He comes here to tell the jury that he is a Reporter for a newspaper, and that he attended these meetings; that he heard what Mr. O'Connell said, and took it down in writing. The question is, is the Witness to be believed? Is his statement true or false? I want to show that it is absolutely false; a fabrication from beginning to end. I want to show that he is not relying on any paper which he wrote himself, nor on memory. I want to show that he comes here falsely representing himself to be a Reporter. That he was not able to take notes, and

that he did not take notes of what passed, that he is giving in evidence what he copied the next day *verbatim et literatim* from newspapers.

*Cross-Examination resumed.*—Will you swear that you did not take those notes from a newspaper ?

To the best of my recollection I did not, but I may have copied them from the notes of a newspaper.

Did you copy that sentence while Mr. O'Connell was speaking ? I cannot swear positively, whether I did or did not.

One way or the other you cannot tell me ?

I cannot tell you at this distance of time.

Nor whether you wrote it out on the same day ?

I cannot say.

May it have been the next day ?

I cannot be certain.

Then you may have copied some of those slips from the morning papers ?

I may have copied some of them.

Is it possible that you did ? It may be so.

Did you ever copy them from the papers ? I did not copy them ; I cut them out of the papers.

Then did you send over the pieces of the newspapers that you cut out ? When I adopted them, I did.

Did you send the paper you hold, to London ? I did.

Will you swear it was not copied from the newspaper ? It is very probable it may have been taken from a newspaper, or from the notes of a newspaper ; I cannot undertake to swear positively that it was not.

Then those papers may have been copies taken from printed newspapers, the day after the meeting ? Or from the notes I took on that day ; it may be the one, or it may be the other.

*A Juror.*—Did you not swear that all that was written during the time of the meeting at the Corn Exchange ?

*Witness.*—The majority of them were written during the meetings at the Corn Exchange.

*Mr. Fitzgibbon.*—I put the question which the Juror asked you, again ; did you not swear that all those papers were written during the meetings ? The majority of them were.

Will you swear that they were all ? Some of them were written after the meetings broke up.

Were any of them written the next day ? I cannot tell whether they were or were not, some of them were occasionally.

Did you not take some of them from the morning papers ? I did.

Did you not say all of them were written during the meeting ? I said, generally speaking, all of them were.

Do you persevere in saying that ? That is what I meant to convey.

You cannot now remember what you said five minutes ago ; I did not ask you what you meant to convey ; did you not say that they were all taken while the proceedings were going on ? I did not say so ; I said generally.

Sometimes you were merely listening? Sometimes.

And not taking any note at all? Sometimes.

Do you recollect Mr. O'Connell making a long speech about Negro slavery? I do.

Were you present? To the best of my recollection he spoke several times of it.

Were you present when he spoke of it on the 5th of July? To the best of my recollection I was.

Were you present at the whole of the meeting? I rather think I was.

Will you swear positively that you were? I will not.

Will you swear you were there for an hour? I will.

For two hours? To the best of my recollection I was.

Is that the only answer you will give me? Yes.

Will you positively swear that you were there for an hour? To the best of my recollection I was.

Perhaps in making up that hour, you include several attendances? When I went there I stayed altogether.

On that day? Yes.

You will not swear that you were there for an hour certainly? To the best of my recollection I was.

Then you will not swear positively you were there for an hour? I think I was, I did not time myself.

Then you cannot positively swear you were there for an hour? No.

Can you positively swear you were there for half an hour? I cannot.

Can you positively swear you were there for a quarter of an hour? Oh I can; I remained there for some time.

Can you swear that some time amounted to a quarter of an hour? I can, and more.

How much more? I cannot remember; it might have been one hour, it might have been three. I cannot remember.

Who was on his legs when you went into the room on any one occasion? If you will allow me, I will read it.

No. Did you not say that your note might have been taken from the morning papers the next day? I did not commit it to memory.

What were they doing when you went into the room? I cannot remember.

Was any body there on the 5th of July? I cannot particularly remember on any specific day who was there.

Did you find any body in the room? There was always somebody in the room when I went there.

Was it in the morning, at noon, or at night? It was at mid-day. What o'clock? About twelve or one o'clock.

Did you hear the whole of Mr. O'Connell's speech that day? Yes.

The whole of it? Not the whole of it.

Do you positively swear that you went to the Association at twelve or one o'clock that day, and that you heard Mr. O'Connell speak? Yes.



Will you swear that you were there till after two? I cannot say when I came in unless I refer to my notes.

That is, the notes you took from the newspaper. Will you swear that you saw Mr. O'Connell coming into the room that day? I either saw him coming in or I was there before him.

Is that your answer? I am not ashamed of it.

The Atlantic breezes in the county of Clare harden the face? They have not hardened mine.

Do you swear that neither the Atlantic breezes nor any thing else has hardened your face? I do not understand the question.

Did you not tell me before it had not? Not exactly.

What do you answer? I do not know that they have hardened me in any way.

Then you are not hardened? No.

Do you think to prove by your testimony that you are not a hardened man? Most decidedly.

Were you at the Association on the 4th of September? I was.

Were you present when Mr. O'Connell said, that no tumult should take place in his day? I was. [The witness read the speech]. I was there when Mr. O'Connell spoke that speech. I wrote this identical paper that day as the words fell from Mr. O'Connell's lips. I did not take that note from any Reporter's slips or from a newspaper. Mr. O'Connell said "that would not be an unnatural or unadvisable result." I swear it to the best of my belief. That is my own report.

Was any one sitting near you at the time? I cannot remember. To the best of my recollection Mr. Edwards was there, but I am not certain of it.

Can you mention any single Reporter who was there that day? There was a host of them there.

Do you swear on your oath he was there that day? I do not.

Then you cannot remember any Reporter who was there that day? The usual corps was there.

Can you name any single man who saw you that day in the Association's rooms? Any one that was there might have seen me. I suppose Mr. O'Connell saw me. Mr. Ray must have seen me there.

Did Mr. O'Connell speak to you? I am not on speaking terms with him.

Did you speak to Mr. Ray? I cannot remember that I did.

You know Mr. O'Connell and Mr. Ray are both on their trial and cannot be examined? Yes.

You were among the Reporters taking notes? Yes.

Can you recollect a single man that you saw there that day? I cannot remember at this distance of time.

You cannot remember—in Italian—*Non mi recordor*. Who was in the chair that day? I do not remember.

Was Mr. John O'Connell there that day? Will you allow me to refer to my notes.

Can you say whether he was or was not without referring to your notes? I cannot.

Now you may refer to your notes. Was he there? He was. I took notes only of what these three gentlemen said, because they were the leading men. One cannot, you know, play Hamlet with the part of Hamlet left out. Mr. John O'Connell made some observations. I cannot remember how long he was speaking. About an hour. It was a long speech. I do not know who spoke before him. I do not know that any one spoke but Mr. John O'Connell, that day. He made a long speech. I did not give a *verbatim* note of it.

"This is not an unnatural result." Were those Mr. O'Connell's words? To the best of my belief they were.

How did you get in? The porter recognized me as belonging to the Press.

I cannot remember whether I looked at any slips of other Reporters, on that occasion. I saw Reporters writing short-hand that day. I will not swear that Mr. Edwards, the Reporter for the *Freeman's Journal*, was there. I think a short-hand Reporter could take a more accurate report than I could.

*Cross-examined by MR. WHITESIDE.*

I cannot swear I saw Mr. Duffy on the 6th of July, without referring to my note; nor on the 25th of July. The room was generally full. I cannot remember what Mr. Duffy said, without referring to my note. I did not take down every thing he said. There was nothing remarkable about what Mr. Duffy said. I did not give an account to Government or to Mr. Kemmis of it. I did not tell them how I took my notes. All I sent to the *Morning Herald* is not here. I said Mr. Ray made an observation, not a speech. It was a casual observation, and occupied four lines in my notes. As well as I remember, I swear I was present, but I will not swear that my report was not copied from another paper?

Will you swear that he did not say that he got a letter stating that some ballad singers had been taken up for singing seditious songs, and that Mr. O'Connell approved of the conduct of the persons who took them up? I will not swear that did not occur. These reports were to serve the purpose of letters; I do not undertake for their accuracy. I will not swear that Mr. O'Connell did not move a vote of thanks to the persons who arrested the ballad singers. An address of the Irish representatives was read, Mr. O'Connell commented on that address. It was a statement of the grievances under which the Irish people laboured, and that they were loyal to the Queen's person.

You stated that Mr. O'Connell said that the Irish were not disaffected? Yes.

That they were loyal to the Queen's person? Yes. I heard him speak of the French Constitution and Louis Phillippe, rather severely. He found fault with that Constitution, that it was a

mockery, because there was not a House of Lords in France. He said also they taught infidelity. I heard Mr. O'Connell say, he wished to correct the error that the *Nation*, or any other newspaper was the organ of the Association. I remember the day he proposed the plan of the Irish Parliament. I always endeavoured to tell the truth in my letters, although I made them a little flowery. The *Morning Herald* has changed hands lately. I heard Mr. O'Connell say that he would not, or the Association would not hold itself responsible for any thing that appeared in newspapers.

*Witness.*—My Lord, I wish to explain.

Mr. *Fitzgibbon.*—Sir, you have explained. I object to your making a speech.

*Witness.*—I merely wish to state, before the world, that these documents and letters were put into the Crown Solicitor's hands without my knowledge. I never knew it until I saw them in the hands of the Crown Solicitor.

*Cross-examined by MR. MOORE.*

I took the notes of the 3rd of October, on that day at the meeting. I do not know the Rev. Mr. Tierney's person. I mentioned him as one of the persons who were there that day. I put his name down having asked casually what his name was. It is from hearsay I derived my knowledge of him. I mentioned, according to my notes, that he was there. To the best of my belief he was there. I never saw him before nor since. I would not take upon me to swear positively he was there. Somebody, who I was told was Mr. Tierney, made a long speech.

Mr. *Moore.*—My Lords, I have been making an application to the Counsel for the Crown which they do not think they ought to comply with. Your Lordships will recollect that the witnesses have read long extracts from speeches, which it was impossible that we could have taken down correctly. My application is, that we should be furnished with copies of those extracts as read by the witnesses.

The LORD CHIEF JUSTICE.—I do not know that the Court has power to make such an order.

Mr. *Moore.*—I am sure that even if the Court has not the power of making the order, any difficulty felt on the part of the Crown, in complying with the application without the sanction of the Court, would be removed if your Lordships were to intimate that the copies ought to be furnished.

Mr. *Fitzgibbon.*—These papers are here as documents put in on the part of the Crown; we are, therefore, entitled to them.

The *Attorney General.*—Such a course has never been adopted to the present time; and I object the more to it when I recollect the course adopted as to one of those witnesses. The traversers are placed in no difficulty; they have every meeting reported by the short-hand writers for their own newspapers. Under all the circumstances I certainly will not depart from the usual course by furnishing copies of these documents.

Mr. *Moore*.—I do not consider after what has been stated by the Attorney General, that I can call on the Court to make any order.

Mr. *Fitzgibbon*.—I now submit that the whole evidence of the last witness Jackson should be struck out. He was brought here as a witness of what had been said and done at those meetings. From the Witness's own showing he had no means of giving evidence on the subject. This is the proper time to make the objection.

THE LORD CHIEF JUSTICE.—I do not think this is the occasion to make the objection. The Witness has been cross-examined by three of the counsel for the traversers. The objection may be well worthy of consideration, but not at this time.

Mr. JUSTICE PERRIN.—I do not think that the traversers have a right to strike out the evidence of any witness.

JOHN BROWN, *examined by Mr. HOLMES.*

I reside in Nassau-street, and carry on the printing and stationery business. I have been long carrying on the business. It is at No. 36. I know Mr. Ray. I have known him for several years. I have heard of an association in the city of Dublin, called the Loyal National Repeal Association of Ireland. Mr. Ray holds the situation of Secretary to that society. I was employed to do some printing work for that society. The association generally, through Mr. Ray, employed me. I have been four or five years doing work for the society. I have been paid for the work I have done, except a running account now. I was paid by Mr. Ray, and sometimes by a clerk in his office.

Have you received much money from time to time for the business you did?

I have.

Could you mention how much; be under the sum?

Mr. *Fitzgibbon*.—That is not evidence against the traversers.

THE LORD CHIEF JUSTICE.—It is evidence against Mr. Ray.

Mr. *Holmes*.—What amount have you received from him from time to time? I cannot say.

Have you kept any account book? I have; the account was sometimes about £20.

Mr. *Whiteside*.—I object to evidence of the contents of this gentleman's books being given; they should be produced.

Mr. *Holmes*.—Have you been served with a *subpœna duces tecum*? I was, and I have brought the books with me.

What amount have you received from Mr. Ray from time to time within the last two years?

Mr. *Whiteside*.—I submit this is not evidence. The first act in the indictment is on the 1st of March, 1843.

Mr. JUSTICE CRAMPTON.—I do not see the relevancy of the inquiry.

*Examination resumed.*—I printed this document for the Association. ["Report of the Committee of the National Repeal Association of Ireland."] I printed this document also for the same Association.



["Instructions to Repeal Wardens."] I printed these documents also. ["Description of the New Card for Members." "Proclamation relating to the Arbitration Courts." "Address to the Inhabitants of the Countries subject to the British Crown." "Rules to be observed by the Arbitrators." "Arbitration Notice." "Plan for the renewed action of the Irish Parliament."] I cannot say exactly the number of copies of the Report of the Committee that I printed, perhaps two thousand. They were sent to the Association, and I was paid for them. I printed four or five thousand copies of the "Instructions to Repeal Wardens." I was paid for them. I was paid for "Mr. O'Callaghan's Letter." I printed two hundred of the "Proclamation," two thousand of the "Arbitration Rules." I was paid for them. I printed two or three thousand of the "Address to the Inhabitants of the Countries subject to the British Crown." and was paid for them. I printed some of those documents from manuscript, and some of them from extracts from the Newspapers. I have none of those manuscripts. I was served with a *subpœna* to produce them, and I searched for them. I took this document I produce, of "Leinster for Repeal," from the printing office file. I cannot say whether any thing was printed from it.

*Examination resumed.*—I have a book in which payments are entered.

Mr. *Holmes.*—Look in the book whether there is any entry made of payment for that document?

Mr. *Whiteside.*—The entries in that book cannot be evidence.

Mr. JUSTICE PERRIN.—Have you any entry relating to that document?

*Examination continued.*—There are two entries relating to a document for the Mullaghmast meeting. I printed 2000 of that document, which is entered; it is headed "Leinster for Repeal." I printed it for this Association, and was paid for it. The newspaper called Mullaghmast a monster meeting. I have no documents which I printed for the intended meeting at Clontarf. I think I printed some for the Donnybrook meeting. I did not bring all the documents, for it would take a cart to bring them. I brought these in compliance with the subpœna. All that are here were printed for the Association, and I was paid for them. I printed this document for Mr. Mahony. ["An Address as to the Revision of the Jury List, to the People of Ireland."]

Mr. *Whiteside.*—There is no proof that any of these documents have been used by the traversers. They are no evidence against Mr. Duffy. The only evidence of his being a member of the Association is, that he was seen once handing in money at Calvert's Theatre.

Mr. *Holmes.*—Every one of the traversers is a member of the Association, and these were printed for the Association, and paid for by the Association.

Mr. *Fitzgibbon.*—The only evidence before the Court is that Browne printed these documents for the Association; but, with one

exception, it does not appear when. It does not follow, from the date of the document of the 3rd of October, that it was printed then. All the overt acts charged in the indictment arose since March, 1843. Acts done by the Association four years ago, ought not to be now read in evidence of a conspiracy sought to be proved by acts done since March, 1843.

The LORD CHIEF JUSTICE.—The Court is of opinion that the documents may be read against all the traversers.

The Deputy Clerk of the Crown then proceeded to read the “Instructions to Repeal Wardens.”

Mr. *Macdonagh*.—My Lords, I object to these documents being read in evidence against my client. There is no evidence of their having been adopted or introduced at any of the meetings of the Association, and they are offered in evidence on this principle, that they were ordered to be printed by the Secretary of the Association at some time or other. I now beg leave to call your Lordships’ attention to the bill of particulars furnished by the Crown, and then to my present objection, and then to some authorities in support of it. The indictment after the general language used in cases of conspiracy, particularizes the overt acts. The bill of particulars furnished by the Crown, is as follows: “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 each and every of the several meetings in the said first count specified or referred to; and also the speeches made, the resolution, proposed or adopted, the acts done, the letters and other 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, &c.” The bill of particulars then specifies the several meetings of the Repeal Association, and the several monster meetings in the country: “And it is further intended to give in evidence in support of the said prosecution, the holding of and all proceedings and acts of certain assemblies, styled Courts of Arbitration, held at Blackrock and Rathmines, &c. And it is further intended to give in evidence in support of said prosecution, the fact of meeting and publishing, and also the contents of the several newspapers following.” A number of newspapers are then set out by name and date. The overt acts in the indictment are the various meetings held either in the open air, or at the Association, and the insertion in several newspapers of various publications. It is perfectly plain that these documents do not fall within any of these overt acts. They were not proposed or adopted at any of these meetings, nor were they published in any of these newspapers, nor do they fall within the comprehensive and extensive words of the bill of particulars. The Crown have taken a wide range, they apprised us by the bill of particulars, that every act done or speech made,

or resolution and letters or other documents proposed at any one of these meetings of the Loyal National Repeal Association shall be given in evidence. When they have taken so large and comprehensive a range, it is plain that in common justice they should be confined within it. They have also stated, that they would give in evidence, the speeches and resolutions passed at Limerick, Sligo, Ennis, Athlone, and other meetings. I contend that the documents here, fall within the range of neither of these two distinct classes of evidence. Ample latitude has been allowed to the Crown on this occasion; and I submit, that in a case of conspiracy like this, the Crown are not at liberty to wander out of the bill of particulars which they have furnished, and the overt acts, specified in the indictment. It would be manifestly unjust that they should. In *Rex v. Hamilton*, 7 Car. & P. 454, an application was made for a bill of particulars. It was the case of a conspiracy to obtain goods under false pretences; a bill of particulars was furnished, which was not sufficiently full, and an application was made for a further bill of particulars, which was granted. That case proves that the Crown are strictly confined to the evidence which is stated in the bill of particulars. This case should be decided on the general principle of law, and not in reference to the magnitude or character of this case. The bill of particulars was furnished on the 13th of November, 1843, when the Crown were fully apprised of their case. On these grounds, my Lords, I submit, on the part of Mr. Barrett, that these documents are not admissible against him.

The *Attorney-General*.—My Lords, there is one observation of Mr. *Macdonagh's*, in which I concur; that is, that no distinction is to be made between this and any other case which may be tried in this Court. I shall show that these documents are, on clearly legal principles, admissible. I entirely deny Mr. *Macdonagh's* legal proposition, that a party is bound to furnish, in his bill of particulars, the evidence on which he intends to rely. There is no such rule of law. The rule of law is, that you are, in a case of conspiracy in which overt acts are not stated, to furnish the parties accused with the particulars of the charges against them. But it is neither law, reason, nor common sense, that you are to furnish them with the evidence in support of those charges. That has been decided in cases of treason, where more particularity is required than in cases of conspiracy. In Phillips on Evidence, 492, the rule is thus laid down: "the meaning of the rule is, not that the whole detail of facts should be set forth, but that no overt act, amounting to a distinct, independent charge, though falling under the same head of treason, shall be given in evidence, unless it be expressly laid in the indictment; but still, if it conduce to the proof of any of the overt acts which are laid, it may be admitted as evidence of such overt acts. With this view, the declarations of the prisoner, and seditious language used by him, are clearly admissible in evidence, as explaining his conduct, and showing the nature and object of the conspiracy." It is unnecessary to insert overt acts in the indictment for conspiracy. In consequence of the difficulty which the traversers might be put to, arising from the adoption of this course, it has become the cus-

tom to furnish a bill of particulars of the charges; and there is a rule in the Queen's Bench in England to that effect. But it is never necessary to furnish particulars of the evidence which is to be adduced in support of those charges. It was so decided in *Rex v. Watson*, 32 St. Tr., which was a case of high treason, and therefore, *a fortiori* to the present case. The nature of the present indictment and bill of particulars shows that these documents are admissible. The overt acts in the indictment are, the monster meetings, the meetings at the Association, the speeches and other matters at the Association, and also publications in the newspapers. These documents are evidence in support of those overt acts. The principle of all the cases I submit to your Lordships is, that the bill of particulars is to put the parties in possession of the general nature of the charges. All the matters stated in the bill of particulars are with that view, and are stated as overt acts, and not as evidence. That is the principle of the case in *Roper's case*, 6 St. Tr., 687, which establishes that would be most inconvenient to set out the nature of the evidence. We have put them in possession of what we should have done, and are not bound to do more. The publications stated in the indictment are not evidence but overt acts in themselves. We have given them general information to prevent surprise. This evidence showing the nature and constitution of the Association not an overt act I submit is receivable.

Mr. Moore.—I am, my Lords, on the same side with Mr. Macdonagh to support the objection to the reception of these documents in evidence. It is material, in the first instance, to ascertain the nature of the evidence offered. The only evidence, with respect to these documents, is, that they were printed by order of, and paid for by, the Secretary of the Repeal Association. There is no evidence of the time when, or of the circumstances under which they were printed. It is most material to ascertain the time when these documents were printed, because any of the traversers might unfairly be visited with acts for which they were not responsible. I acknowledge that the question for the Court now to decide is, whether these documents are admissible, not being contained in the indictment and the bill of particulars. The bill of particulars purports, in addition to several matters which are set out in the first count of the indictment, to give in evidence several other matters which are specified. In the first count of the indictment there is a great variety of overt acts, consisting of meetings, speeches, and publications, set out in detail, specifically as overt acts. Accordingly, the bill of particulars states that it is intended to give all these matters in evidence which are there set out. It is not pretended, nor can it be pretended, that any mention is made, in any of the overt acts, of these publications and documents. Then comes the question, are they included in the matter specified? I submit they are not. There are three classes of things set out in the bill of particulars, in support of which it is proposed to give evidence. First, the several meetings there specified. There is no evidence to connect these documents with them. The next general head is, the several meetings at the Association, which



are specified in the bill of particulars by date. Have your Lordships any evidence that any one of these documents were ever read, or considered, or known, at any one of these several meetings? If there is any use in a bill of particulars it is to apprise the parties accused of the evidence which is to be adduced against them. I apprehend that these documents do not come within either of the general heads which I have referred to. Well, my Lords, what is the third head specified in the indictment? It is the several newspapers. All those are set out in detail in the bill of particulars, and there is nothing to connect these documents with them. I therefore submit, my Lords, that the Crown are not entitled to give in evidence these documents, as not coming either within the indictment or the bill of particulars.

*The Solicitor-General.*—My Lords, the objection now taken to these documents is, that they are not specified in the indictment or the bill of particulars as overt acts, or as pieces of evidence. It is contended by the counsel for the traversers, that it is the duty of the Crown to apprise the traversers by the bill of particulars of the line of evidence which it is intended to adopt. That is a misconception of the rule of law. The rule of law is not that you are to set out the evidence, but to apprise the party of the nature of the charge against him, and the Crown are not to bring forward evidence in support of any particular charge without apprising the party of that charge. Accordingly the objection in the case in 7 Car. & P. was this: there was no overt act put forward in the indictment, and it was objected that the particulars delivered were too general, and did not limit the charge in any way either to place, persons, or facts, nor did it state what specific acts the party was charged with. But these documents are not overt acts, nor are they charges in themselves, but they are pieces of evidence. That is the first answer to the argument on the other side. The second answer is this, your Lordships have it in evidence that at one of the meetings specified in the bill of particulars, the appointment of Repeal Wardens took place; that was one of the proceedings at the meeting. This document is the instructions as to the duty of the Repeal Wardens. There is also a third answer. One of the charges in the indictment is the collection of divers sums of money in various parts of Ireland, and the document in question shews that the collection of money is one of the duties of the Repeal Wardens.

*The LORD CHIEF JUSTICE.*—For a time I was somewhat taken by the arguments in support of this objection; but I did not at first understand the nature of the indictment. I see that a particular overt act of conspiracy specified in it is the levying and collecting sums of money throughout the country, for the purposes of this Association. Now, surely, no specification that the parties who collected the money were Repeal Wardens is required in the bill of particulars. There is no surprise in this. The traversers have had abundant notice of the charge against them.

*Mr. JUSTICE BURTON.*—I certainly was under a misapprehension as to the nature of the objection. A party is entitled to a notification; and if that notification is made in a manner calculated to cloak

the real matters intended to be relied on from the knowledge of the parties, it is certainly the duty of the Court to see that the parties are not taken by surprise; but I do not conceive that to be the objection in this case. There has been a great deal of documentary evidence; and it more than once struck me that it would be a matter of reasonable accommodation if the Crown should furnish to the traversers' counsel copies of that documentary evidence, in order that they might be better prepared to meet that by other evidence in answer to it, or, at all events, that they might not be taken by surprise. But, in truth, there is no ground for saying that the traversers have been taken by surprise. A full bill of particulars has been furnished to the traversers, and this evidence comes within that bill of particulars. There can have been, therefore, no misapprehension on the part of the traversers; they have had full notice. I therefore think the evidence is admissible.

MR. JUSTICE CRAMPTON.—I entirely concur with my Lord Chief Justice. I think this evidence is clearly admissible, and admissible on the distinction taken in the first instance by the Attorney General. The fallacy on the part of the traversers' counsel arises altogether from confounding the charge, or overt act in the indictment, with the evidence to be given in support of it. I do not think the Crown is called upon to show that every specific matter which is offered in evidence is to be found in the bill of particulars. According to my notion, the bill of particulars is to inform the party charged with the nature of the particulars of the charge, but not of any portion of the evidence. That I take to be the principle. Mr. Macdonagh cited an important case, which no doubt in some degree bears on his argument. But I have looked to the case, or rather the order made in that case, and it is not at all applicable to such a case as this. The order was: "that the prosecutor deliver to the defendant, Mr. Woolf, or his attorney, a particular statement and specific charge, in writing, to be made against the said Mr. Woolf under this indictment, in order that he may be enabled fairly to defend himself against such charge." Thus it did not refer to a particle of the evidence, but merely the particulars of the charge. That was the case of an indictment for a conspiracy to obtain goods under false pretences, and the prosecutor would have been at liberty to give in evidence, false pretences different from those set out in the indictment, if a bill of particulars had not been delivered. If the counts in the indictment had been specific, if they had stated all the charges which were to be brought against the defendant, the prosecutor would not have been obliged to give a bill of particulars. Mr. Justice Littledale says: "The effect of a bill of particulars is, where a count is framed in a general form to give the opposite party the same information that he would give if there was a special count." Well, the present indictment contains counts specifically setting out the particulars of this charge and the overt acts. Other counts are general, and do not set them out. If the general counts had been omitted, the party would have been entitled to no bill of particulars. He has got a bill of particulars to meet the case of the open count. The order

in this case is, that the charge and not the evidence of the charge, is to be set out in the bill of particulars. It is a general count, and suppose a particular document intended to be brought forward in support of it, for instance, this document, as evidence that the Repeal Wardens had been appointed on a particular day at the Association, and of instruction having being given to them. The question is, are the documents emanating from the Association, evidences under the general count against this Association, namely, the appointment of Repeal Wardens. These documents do not support my new charge against the traversers, which is not stated in the indictment, or in the bill of particulars. If they were brought forward in support of a charge different from those in the indictment, then I think the objection ought to prevail; but the question is, whether they make a new charge, or whether they are not evidence in support of the charges in the indictment. It appears to me that they are quite germane to the charges. It is quite important and material to know the nature and the constitution of this body, which the traversers are charged by the indictment with forming. It is quite material to know the duties of these Repeal Wardens. This evidence is not brought forward in order to make a distinct charge against the traversers, but to sustain a charge on the face of the indictment. This document is signed by Daniel O'Connell, one of the traversers, as Chairman of a Committee, appointed by the Association. Suppose there had been no printed instructions at all, but that this gentleman had given parol instructions to a certain number of those Repeal Wardens, as to the duties they were to perform. Can any person say that these instructions are not evidence against the person who gave them? I say manifestly and clearly, they are, under every count of the indictment. Then if those instructions, if given by parol, would have been evidence, would they not be evidence when in print? would they not be evidence if they were in Mr. O'Connell's hand-writing? Clearly they would. Then what is the effect of their being printed? Are they not as much his act as if they were in his hand-writing? Then if they are admissible against one, they are admissible against all, because they are the act of the whole body. The bill of particulars may limit the party who serves it, to the charges in it, but it does not limit him to the documents stated in it. I do not see how it is possible to say that it does. In my opinion, therefore, this evidence is admissible.

Mr. JUSTICE PERRIN.—The difficulty in this case appears to have arisen from the manner in which the bill of particulars is framed. There can be no question that if there had been no bill of particulars this would clearly have been evidence in support of the general count in the indictment. The authority cited by the Attorney-General appears to me to be so far applicable. The object of a bill of particulars is to narrow the field of evidence, and to confine the parties to the evidence there stated. This bill of particulars is not in the ordinary form. We are under the disadvantage of having no rule in this Court to ascertain what the party is to be confined to, nor have we, on the other hand, any notice calling for this bill of particulars

before. But the Crown appears to confine not only the charge but the evidence, because the bill of particulars is in this form: "that in addition to the overt acts in the first count the Crown will give in evidence the several matters, &c. which took place at each of the several occasions, that is, at meetings," &c. I should certainly understand that to mean that the evidence was to be confined to acts done at those meetings. It is a new mode of framing a bill of particulars, because it is not confined to charges or to the evidence growing out of the charges at one single meeting. But then it is said that there is an overt act relating to the first count, under which this evidence is admissible, that therefore it is admissible generally. This seems to be the opinion of the Court. It is to be observed that this is 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 the printing of it out of the funds of the Association. It is also the act of the Committee, and therefore applying it to the overt act to which I have referred, as the rest of the Court are of opinion that it is evidence, the document ought to be received.

Mr. *Macdonagh*.—My Lords, I am not about to re-discuss the question that has just been decided, but I merely wish to say, that it is doubtful whether a bill of exceptions will lie in a case of misdemeanor. I believe there are authorities to show that it does. It is the intention of the traversers to take a bill of exceptions.

Mr. JUSTICE CRAMPTON.—It would require a strong argument to convince me that a bill of exceptions may be taken in a trial at bar, for a misdemeanor.

The Deputy Clerk of the Crown then read the following documents:

*Instructions for the Appointment of Repeal Wardens and Collectors of the Repeal Fund, their Duties, &c.*

" N. B.—Each person having paid one shilling is entitled to be enrolled as an Associate Repealer.

" Each person having paid one pound is entitled to be admitted a Member.

" Each person having collected twenty shillings is entitled to be admitted a Member, provided he is himself a contributor of one shilling or more to the Repeal Fund.

" Each person subscribing ten pounds is entitled to be enrolled a Volunteer.

" Each person collecting ten pounds is entitled to be enrolled as a Volunteer, provided he be himself a subscriber of one shilling or more to the Repeal Fund.

" In each and all of the above cases, the individual must be moved and seconded at a public meeting of the Association.

" Repeal Wardens and Collectors of Ireland!—upon you depends the success of the great constitutional struggle in progress for the restoration of our country's legislative independence. In your hands are placed the future destinies of Ireland. If you



“ neglect your duties, Ireland must continue in the capacity of a wretched and ill-treated province. But if you discharge those duties with zeal and active patriotism, Ireland shall again be a nation.

“ It is for you, then, Repeal Wardens and Collectors, to answer this plain but all-important question,—Shall Ireland continue to be an ill-used province? or shall Ireland be again a nation; possessing a Parliament, freely chosen by her own people, and making laws for the protection and benefit of the eight millions of her brave, moral, and industrious inhabitants?

“ Speak, then, Repeal Wardens and Collectors! Will you, through apathy, suffer your country to continue what she is—a neglected and pauperised province? when it is in your power, by constitutional exertion alone, to elevate her to the position and dignity of a happy, contented, and prosperous nation! !

“ In order effectually to repeal the baneful Act of Union, there is only one thing necessary to be done, and that one thing is—to perfect the legal and peaceable organization of the great majority of the Irish people, and to have their names enrolled in the books of the Loyal National Repeal Association. Such was the simple but successful plan whereby Catholic Emancipation was extorted from the grasp of a reluctant British ministry.

“ We have told you, that there is only one thing necessary to be done, in order to enable Irishmen to regain their legislative independence; and that one simple thing is, to have Ireland legally and peaceably organized!

“ We shall now proceed to point out the mode by which this constitutional organization is to be completed; and for that purpose we shall consider, in the first place, what are the necessary qualifications of Repeal Wardens and Collectors.

“ First—and above all things.—The Repeal Wardens and Collectors should be men of good moral character.

“ Secondly.—They should enjoy the respect of their clergy, let them belong to what religious denomination they may.

“ Thirdly.—They should possess an intimate knowledge of the district to be collected by them.

“ Fourthly.—They should be men determined to exert themselves strenuously in enrolling Members and Associates.

“ Fifthly.—They should be persons disposed to reason calmly with such as refuse their co-operation in the Repeal cause at present; but to avoid all strife, and never to reproach those who differ from them in opinion.

“ Sixthly.—They should be persons who understand the principal arguments in favour of Repeal; who are able to explain to those who may want information on the subject, the strict legal means by which Repeal is to be gained; the advantages that should result to Ireland from the re-establishment of her native Parliament; what has been the rapid decline of Irish trade and manufacture, and what the increase of Irish poverty and destitution, since the baneful Act of Union was forced upon the country against the ex-

“pressed will, and in opposition to the decided interests of its inhabitants.

“We shall next describe the mode in which Wardens and Collectors are to be appointed.

“The first mode we recommend, and indeed the wisest and best, is to have proper and efficient persons recommended to the association by the parochial clergy, for the various streets, townlands, or other districts, into which their parishes are to be divided.

“Secondly.—Should the clergy not interfere, the persons to act as Wardens should then be recommended at a public meeting; but in either case, their names must be transmitted to the Repeal Association in Dublin, and their appointment regularly moved; for the National Repeal Association alone is competent legally to appoint the Wardens. Other persons, bodies, or meetings may recommend, but they cannot appoint; the power of appointment to these offices rests with the Association alone legally; but every reliance may be had that, unless for some very strong reasons, the recommendation of the persons named will be confirmed by the Association. When each Repeal Warden is thus duly appointed, he will receive a written notification from the Association, and when he shall have completed remittances to the amount of £5, he will be presented with the handsome diploma recently designed.

“*Duties of the Repeal Wardens.*—The first duty of the Repeal Wardens is to divide the parish or place into districts of convenient size, and each to take upon himself the care of one district.

“The second duty of each Repeal Warden 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!

“The third duty of each active Repeal Warden is to supply the place, so far as he possibly can, of any Repeal Warden who shall, through illness or other cause, neglect having his district collected, and to complete the collection in such neglected district, as though it were his own, reporting such neglect to the Association.

“The fourth duty of the Repeal Wardens of each parish or district, will be, to select the most efficient amongst them as an Inspector. In every case where one or all of the parochial clergy can be prevailed on to act in that capacity, they should be selected without hesitation. But should the parochial clergy be disinclined to act, the Wardens ought then name some zealous and intelligent person of their own body to act as such Inspector; always taking care to transmit the names of such individuals, in the first instance, to the Association for appointment.

“The fifth duty of the Repeal Wardens is to transmit to the Secretary of the Repeal Association in Dublin, if possible weekly,

“ and if not weekly, at as short periods as possible, the amount collected, and the names and residences of the contributors, that they may be enrolled as Associates, or admitted Members, as the case may be, and the cards duly forwarded accordingly. The Wardens are to be careful in keeping copies of these lists, to facilitate the collections.

“ The sixth duty of the Repeal Wardens is to procure signatures to the various petitions agreed to by the Association, or by any Repeal Meeting, and to take special care that none but genuine signatures are affixed thereto; or when persons cannot write, to obtain their authority for affixing their names; and also to transmit such petitions, either to the Secretary of the Repeal Association in Dublin, or to the Member of Parliament fixed upon to present them.

“ The seventh duty of the Repeal Wardens is, to promote the Registry of Parliamentary, Municipal, and Poor Law Electors, on the liberal interest, by ascertaining the names and qualifications of all such persons, not registered, who are qualified, and inducing them to take the necessary steps to have their franchise established.

“ The eighth duty of the Repeal Wardens is, to promote the encouragement of Irish Manufactures in their several districts, to the exclusion of all foreign-made articles.

“ 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 the weekly paper.

“ The tenth duty of the Repeal Wardens 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 also for the purpose of transacting general business, such as arranging accounts, paying in subscriptions, transmitting the receipts to Dublin, &c., we would recommend that wherever there is a sufficient number of Repealers enrolled the Wardens and Collectors should provide a convenient room to meet in. Such a room can be hired for a mere trifle weekly in any town or village; but the Wardens are in every such case to consult the Association in Dublin previously.

“ The office of Repeal Warden, though highly honourable and eminently useful, must be purely ministerial. They must not be, or be considered as representatives or delegates. It is plain that,

“ in point of fact, they are not so. But they must not assume or pretend to be so, nor must any of them violate the law in any respect. We are quite satisfied that nobody will be recommended for the appointment but one who is thoroughly convinced that whoever violates the law strengthens the enemies of Ireland ; this is an axiom of the most undoubted truth. It ought, we repeat it, to be engraved on the mind of every Repealer, that ‘ whoever violates the law strengthens the enemies of Ireland.’ ”

“ The Repeal Wardens are not to be, nor to consider themselves to be, nor to act as, a separate and distinct body from the Repeal Association, but are, in fact, local committees of that body, and subject to its control. Neither are there to be established separate associations or branches, distinct from the Association in Dublin ; but all are to belong to, and form part of the one Association in Dublin. The Loyal National Repeal Association could not act in connexion with such separate bodies, which thus, instead of being an assistance to the cause of Repeal, would become a source of weakness by division.

“ The eleventh and last duty we shall point out to the Repeal Wardens, 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. He who would administer a secret oath would likewise sell his unfortunate victim the moment after he succeeded in duping him to take it. The Repeal Wardens must also prevent the formation or continuance of any secret society whatsoever.

“ Remember that ‘ he who commits a crime gives strength to the enemy.’ ”

“ In conclusion, we call firmly upon the Repeal Wardens to do their duty—to perform the glorious task allotted to them. The success of the Repeal agitation depends principally, if not entirely, upon their exertions. If we can get Repeal Wardens in every parish to act energetically, and, above all, perseveringly, the Repeal of the Union is certain.

“ Let every Repeal Warden recollect that upon his own individual exertion may depend the greatest possible quantity of good to his native country.

“ The office of Repeal Warden is one of the highest utility, and of the most honourable importance, but of course gratuitous.

“ Repeal Wardens DO YOUR DUTY, AND IRELAND IS FREE ! ”

“ DANIEL O’CONNELL,  
“ *Chairman of the Committee.*

“ *Corn-Exchange Rooms, May, 1843.* ”

[The *Deputy Clerk of the Crown* then proceeded to read Mr. O’Callaghan’s letter, concerning the description of the Repeal card.]



Mr. *Macdonagh*.—I object to this being received in evidence against Mr. Barrett. This is solely the act of Mr. Ray. There is no overt act in the indictment to which it can be referred. The general ground on which the Court decided in favour of the reception of the former document was, that there is an overt act in the indictment to which it was referrible. That does not apply to the present objection. A learned Judge has said: “that the doctrine of “making all persons charged with conspiracy, liable for the acts of “one had gone far enough, and should be carried no farther.” In order to let in such evidence, it must be clear and demonstrated to the mind of the Judge who has to decide on the admissibility of the evidence, that the act was done in furtherance of the common object and intent of the conspiracy. Every statement or every act cannot be admitted. It must be said or done in furtherance of the common purpose, otherwise the act or statement of the one is not the act or statement of the other. It has been decided, that a letter written by one, unless it is for the purpose of forwarding the common object, is not evidence against the other. I have a further objection to this document. It purports to be a letter explaining some document which is not yet in evidence. It was referred to in the Attorney General’s statement, but it is not yet in evidence. Because it is printed by Mr. Browne, and paid for by Mr. Ray, it is contended that it is evidence against my client. The document was ordered to be printed by Mr. O’Callaghan, and paid for by Mr. Ray. If it had been ordered by the Association, through Mr. Ray, it might have been evidence. But under these circumstances, and on both these grounds, I submit, my Lords, that this document ought not to be received.

The *Attorney General*.—I submit, my Lords, that this is evidence. It is quite unnecessary for me to repeat the argument which I urged against the former objection, because the Court was of opinion that it was well founded. That, I apprehend, puts an end to this question.

Mr. JUSTICE CRAMPTON.—Is there, in evidence, any speech, or resolution, at the Association, which has reference to this document?

The *Attorney General*.—There is, my Lord. Besides, there is, in the bill of particulars, a reference to a newspaper which contains this document. It is copied, *verbatim*, in the *Nation* of a particular date, which is mentioned. I am not bound to produce that paper now. But I rely on the former decision, and on the principle on which the former evidence was admitted. I entirely deny that it was ever heard of, that in a case of conspiracy, a list of documents should be furnished. When there are general counts in the indictment the prosecutor may be called on to furnish a bill of particulars, but I never before heard of a list of documents being furnished. In *Watson’s* case, papers which were found in the house of a co-conspirator, and which had reference to the design of the conspiracy, were allowed to be given in evidence. Even an overt act is not to be excluded if it be in support of an overt act stated in the indictment. The bill of particulars is not that we intend to give in evidence acts. The rule

of law is stated, and the authorities are collected, in Phillips on Evidence. The principle is decided in *Watson's* case, that any act done by one of the parties, in pursuance of the original concerted plan, and with reference to the common object, is, in contemplation of the law, the act of the whole party. This document, which is explanatory of the Members' cards, appears to have been printed under the direction of the Association, through Mr. Ray, its Secretary. It is, therefore, admissible against every member of it. By what has been already read it appears that this card is in the nature of a receipt for the subscription.

Mr. Henn.—I shall trouble your Lordships but with few observations in support of this objection. I quite agree with the Attorney General that if it be admissible against one, it is admissible against all the traversers, but I submit that it is not admissible against any of them. The Attorney General has alleged that this document comes within the bill of particulars, because it is contained in one of the newspapers which have been referred to in the bill of particulars. For aught that appears, this document may not be the same as that which is copied in the newspaper. We do not admit that it is. Then it is said, and it has been repeated, that if one overt act be specified in the indictment, you may give in evidence another overt act not specified. That may be so, but I say, that when a bill of particulars is furnished, the party is bound by it. When he says, he will rely on certain acts, that amounts to an averment that he will rely on them alone, and on none other. What is the overt act specified in the bill of particulars, of which this is evidence? That has not been stated, and I am entitled to call on the other side to point it out. If they have not done so, I am entitled to assume that there is no such overt act. I admit that if there had been no bill of particulars, this evidence would have been admissible. I admit, also, that there might have been no obligation on the Crown, to furnish a bill of particulars; but they have done so, and that is tantamount to a compliance with an order of the Court. I know not where they found the precedent for this bill of particulars, but here it is; your Lordships will observe the form of this indictment; it states the different meetings and the dates of them, and the acts done and the letters and other documents read at them. They now seek to read certain documents which were not read or referred to at any of those meetings. The bill of particulars refers to certain newspapers, and states that the Crown will rely on the fact of the printing, publishing, and contents of those newspapers, and yet I am told it contains nothing but the charges. Now, my Lords, the Attorney-General has endeavoured to bring the case within the charge for the collection of money. Let me call your Lordships' attention to the mode in which that overt act is stated in the indictment, it is, that the traversers "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, did seek to carry on the alleged conspiracy by meeting, collecting money, making seditious speeches, "and adopting resolutions." Is it possible to say that this mode of

stating the overt act lets in such evidence as this? Is it evidence of money being received at divers other places and times?

The *Solicitor General*.—My Lords, this is the same objection as that which the Court has just overruled in a different and rather more ingenious shape. It is confounding what is matter of charge with what is matter of evidence. The test of the admissibility of the evidence is this, is it applicable to any part of the charges in the indictment? The gist and substance of the objection is, that the traversers have been taken by surprise. There is a count charging those persons, members of this confederacy, with carrying on the alleged conspiracy by collecting money. We offer, on the part of the Crown, a written or printed document, having proved it to have been printed by order of one of the traversers and one of the persons engaged in this confederacy; and therefore it is an act done by one of the alleged conspirators in furtherance of the common design attributed to them: and I pledge myself that it contains evidence of the object which these parties had in view. In 1 Phillips on Evidence, 492, the rule is laid down, referring to Hardy's Case; in the same case, evidence was admitted to prove that Thelwall, who was a member of the corresponding society with the prisoner, had brought a paper with him to a printer, and desired him to print it. The paper being considered as evidence to prove a circumstance, in the conspiracy. So, in the same manner, the fact of Mr. Ray taking this paper to the printer, is admissible in evidence—It is precisely this case:—

“Mutato nomine, de te  
Fabula narratur.”

The LORD CHIEF JUSTICE.—I think when you come to analyse the present question, it comes to precisely the same principle as that on which we have just made our decision. I really do not see, when one comes to understand the matter, that there is any difference between the two cases. How does the case stand? Suppose the former decision had not been made. The eight gentlemen in question are indicted for a conspiracy to do a great variety of unlawful acts, which are specified. The indictment contains a great number of counts. Many of these counts contain specific acts said to have been done by the traversers in furtherance and support of the common object of the conspiracy. Other counts are in general terms only, alleging a general conspiracy with a particular end, but not setting forth the overt acts. Now if the indictment rested solely on the first branch of counts which I have specified, which state the common object, and the acts done in furtherance of it, the traversers would not have been entitled to call on the Attorney General for a bill of particulars at all; but in regard that overt acts are not laid in other counts, the traversers call on the Crown to furnish a bill of particulars, which they would restrict, not only to the subject matter of the charge, but also to the evidence therein stated. That appears to me to be a great mistake, and not the meaning of the bill of particulars in question. I have already said, that if there was nothing in the indictment but the special counts, or those which contained specific overt acts, the traversers would not be entitled to

a bill of particulars at all. The bill of particulars furnished in this case states, that "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 and took place at 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 other documents read, and the several proceedings which occurred or took place at each of the several occasions following, that is to say," &c. It then details the different meetings; but this notice, given by the bill of particulars, does not at all alter the position in which the Crown stood, independently of the bill of particulars, with regard to those counts which contain, each of them, an overt act, giving a specification, a particular statement of a particular state of facts, in accordance with the general charge made in the indictment. Supposing there were none but those special counts, how would the matter have stood, if this evidence had been then offered? It would have been relevant evidence, going strongly, if believed, in support of the charge under the special counts, that these parties, with one general intent, entered into a conspiracy with the view of doing so and so, specifying the particular thing. Supposing there was no bill of particulars, would it be argued or alleged that this evidence was not sustainable in support of those counts of the indictment which are called special counts. Nobody could doubt for a moment that this would have been admissible evidence. I am not speaking of the effect of the evidence one way or the other; as I read the bill of particulars, what has been given by it appears on the face of it to have been intended by the parties as an addition. Clearly there has been no surprise on any of the traversers if you take the case as standing on the special counts, if this paper had been offered in evidence against them, because it is clearly admissible on the special counts. The bill of particulars is not in respect of the special counts at all. It is in relation to something else, and it is not necessary for us to consider the general counts at all; all we have to consider is whether this is admissible against the traversers under the special counts. In this there is no surprise. The question, whether it is evidence in support of the indictment, was not gone into by the traversers' counsel, the ground that was taken by them was, that there is a bill of particulars, and that this evidence does not come within it.

Mr. JUSTICE BURTON and Mr. JUSTICE CRAMPTON concurred with the Lord Chief Justice.

Mr. JUSTICE PERRIN.—I am clearly of opinion, as I before stated, that upon the indictment as originally framed, this evidence is admissible; but I have as strong an opinion that it does not come



within that specified in the bill of particulars. However, it being understood that the bill of particulars relates merely to the other counts in the indictment, it cannot effect the rule with regard to the first count; certainly, on reading the bill of particulars, I cannot say that it is confined to the latter count, for it refers to several matters and things contained in the first count. But I do not think that material to the view which I have taken. It is on the general ground that the bill of particulars does not affect this question, that I concur in the ruling of the Court, that the evidence ought to be admitted under the first count. That is the only count that has overt acts specified in it.

The *Deputy Clerk of the Crown* read the following :

“ *Letter to the Secretary of Loyal National Repeal Association, explanatory of the new Card for Members, by the Author of the “ Green Book. Printed for Circulation by Order of the Committee of the Association; April 11th, 1843.*

“ *Nation Office, March 13, 1843.*

“ MY DEAR SIR,

“ I beg leave to submit, along with the Members’ new card, to be laid before the Association to-day, the following description of the design on that document, and to accompany it with such explanatory remarks as may tend to obviate any misconception or misrepresentation that might otherwise be indulged in on the subject. The object of the design for that card, has been the concentration of such national emblems, with statistical and historical circumstances, as to render it, as far as possible, a manual of our reasons for demanding legislative independence; that until confuted—and it cannot be so, MUST make every *Irishman* who reads it, unless he be a corruptionist, a fool, or a coward, an advocate for the claim of Ireland to be ruled by Irish laws, and Irish laws alone.

“ The border or frame work of the card is composed of two pillars, connected at the top and bottom by the representation of slabs, suited for inscriptions.

“ On the top slab is contained this inscription: ‘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. The united elements of the old regal, aristocratic, and democratic constitution of Ireland, as acknowledged and confirmed in the time of our fathers, to the exclusion of any thing like separation, are here set forth as those for whose restoration, accompanied by such changes as the present times may render necessary, the Irish people are now seeking. On the bottom of the slab is engraved: ‘You may make the UNION a law, but you cannot make it binding on CONSCIENCE.’

“ —*Saurin’s Speech.*

“ The force of such an opinion against the validity of the Union,

“ as that of the Tory or Orange Attorney General of Ireland for so many years, needs no comment.

“ The interior part of the card, or that within the pillars to the right and left, as well as the slabs at the top and bottom, contains the words, *LOYAL NATIONAL REPEAL ASSOCIATION OF IRELAND*; the word ‘Ireland,’ being placed over a small geographical representation or map of ‘our own little island,’ and beneath this, at a due distance, are the words constituting the usual form of admission for Members to the Association, when the necessary blanks shall have been filled up. Then from the pediment of each pillar, slanting upwards towards the engraved map of Ireland, two flag-staffs issue. The flag on the right bears the figure of a Shamrock, on one leaf of which is the word ‘CATHOLIC,’ on the next, ‘DIS-SENTER,’ and on the third, ‘PROTESTANT,’ and then running up through the centre, the motto, ‘*QUIS SEPARABIT?*’ or, ‘*Who shall disunite us?*’ These, I need scarcely observe, are the words which the advocates of Irish provincial debasement, as embodied in the so-called Act of Union, place about its knavish and unnatural type, a combination of the Shamrock with the Rose and Thistle,—three things that would never have been joined, had Irishmen endeavoured to act on the principle of ‘*QUIS SEPARABIT?*’ in the sense attached to it in the shamrock. The other flag, or that issuing from the pediment of the left column, displays a representation of the ‘*SUN-BURST,*’ or the ancient royal banner of Ireland, on which the sun was seen partly issuing, and his rays streaming on every side, through the clouds surrounding him,—no bad figure, by the way, of the present bright hopes and prospects of our noble country, notwithstanding the darkness of domestic disunion, and foreign oppression, which too long dimmed the brilliant light of national prosperity, that, under other circumstances, would have vivified and adorned her.

“ On the shaft of the left column is this inscription: ‘*Ireland contains 32,201 geographical square miles; is 4,649 miles larger than PORTUGAL; 4,473 larger than Bavaria and Saxony united; 409 larger than NAPLES and SICILY; 233 larger than Bavaria, Wurtemburgh, and Baden; 1285 larger than HANOVER, THE PAPAL STATES, and TUSCANY; 9,609 larger than DENMARK, HESSE DARMSTADT, and the Electorate of Hesse; 5,565 larger than GREECE and SWITZERLAND; 13,065 larger than HOLLAND and BELGIUM; is in population superior to 18, and in extent of territory, superior to 15 European States, AND HAS NOT A PARLIAMENT.*’

“ On the shaft of the right column is this inscription: ‘*IRELAND has 8,750,000 inhabitants; has a yearly revenue of £5,000,000; exports yearly £18,000,000 worth of produce; sends yearly (after paying her Government expenses) to ENGLAND, £2,500,000; remits yearly to absentees, £5,000,000; supplied during the last GREAT WAR against FRANCE, the GENERAL, and two-thirds of the men and officers of the ENGLISH army and navy; has a military population of 2,000,000, and HAS NOT A PARLIAMENT.*’

“ Upon the capitals and pediments of the two pillars, on the shafts  
 “ of which are the above inscriptions, the names and dates are given  
 “ of four of the most remarkable victories gained by the Irish ‘at  
 “ home,’ when their calumniating English and Anglo-Irish oppres-  
 “ sors, in their collections of disgusting lies, miscalled histories,  
 “ so long thought proper, for sufficiently intelligible motives, to  
 “ scribble that Irishmen *always* fought badly.

“ The victories on the left hand column are thus set forth :  
 “ CLONTARF, 23rd April, 1014; ‘ BEAL-AN-ATHA BUIDHE, 10th  
 “ August, 1598.’

“ The victories upon the right hand column are : ‘ BENBURB, 5th  
 “ June, 1645.’—‘ LIMERICK, 9th to 31st August, 1690.’

“ The first of those victories, CLONTARF, was fought between a  
 “ confederate force of 24,000 Danes and Lagenians, under Maol-  
 “ morde, the traitorous King of Leinster, the celebrated Brod Er,  
 “ commander of the Danish fleet, and several other Danish princes  
 “ and leaders of eminence, on one side ; and an Irish army, inferior  
 “ in number, composed of the forces of Munster, Connaught, and  
 “ some Ulster chieftains, under the illustrious Brian Boru, monarch  
 “ of Ireland, and his heroic son Murrough O’Brien, on the other.  
 “ The object of the Heathen Danes, who at this period determined  
 “ to make up for the failure of their constant attempts during above  
 “ 200 years, to conquer Ireland, bears too strong a resemblance to  
 “ the subsequent conduct of *another* country towards us, not to be  
 “ mentioned : ‘ They invaded’ says a cotemporary French Chroni-  
 “ cles, ‘ with an innumerable fleet, and accompanied by their wives,  
 “ ‘ their children, and their Christian captives, whom they reduced to  
 “ ‘ their slaves, the island *Hibernia*, likewise called *Irlanda*, in order  
 “ ‘ that the IRISH BEING EXTERMINATED, THEY MIGHT COLONIZE  
 “ ‘ THAT MOST OPULENT COUNTRY FOR THEMSELVES !’ And the in-  
 “ vaders *did* ‘colonize’ or get lands for themselves in Ireland, though  
 “ in a very different sense from what they wished. For on their  
 “ ‘ meeting’ with the Irish at Clontarf, which lasted from sunrise  
 “ until late in the evening, and in which Paddy, it will be recollected,  
 “ had to fight *fasting*, as it was a good Friday ; the Danes and their  
 “ anti-national confederates (for *then*, as *now*, renegade Irishmen  
 “ were found on the foreigner’s side) lost, in killed, and drowned,  
 “ 13,800 out of their 24,500 men ! The Irish, though their loss in  
 “ leaders, including their venerable monarch, was heavy, had no more  
 “ than about 4000 of their private men slain. And this signal  
 “ triumph, over the enemies of their country and religion, was gained  
 “ by Irishmen, at a time when the English were reduced to the  
 “ basest slavery by the Danes, who imposed four successive Danish  
 “ kings upon the English throne. The honest Tipperary moun-  
 “ taineer in last week’s NATION, might *well* write :

“ Oh ! these heartless oppressors of Saxon extraction—  
 How at all do they keep us to languish in chains ?  
 When we conquer’d their betters, by far, in an action  
 That smash’d into powder the plundering Danes !”

“ The second victory, that of BEAL-AN-ATHA-BUIDHE, or *The*

“ *Mouth of the yellow Ford*, was gained over the English in their infa-  
 “ mous attempt during Elizabeth’s reign, to put down the religion  
 “ of the Irish people, as well as to take their land from them, after  
 “ the manner of the Heathen Danes above mentioned. The Eng-  
 “ lish army, commanded by Field Marshal Sir Henry Bagnal, was  
 “ composed of veterans who had served with honour in the French  
 “ and Belgian wars. It consisted of 4,500 foot, and from 500 to  
 “ 600 horse. These troops were all in the finest condition, glittering  
 “ in steel, brass, or gold; furnished with the best fire-arms and artil-  
 “ lery; their cavalry consisting of cuirassiers; and they had with  
 “ them a long train of baggage-animals carrying, besides money, an  
 “ ample stock of bread, biscuit, meat, and every other necessary for  
 “ the relief of their garrison of 300 men in the fort of Portmore, near  
 “ Armagh, which the gallant Hugh Ferdinand O’Neill (called in  
 “ English, Earl of Tyrone), was besieging. The Irish troops also  
 “ amounted to 4,500 foot, and about 600 horse; but they consisted  
 “ merely of the followers of their chieftains, summoned from their  
 “ homes. They had very few guns, no artillery, and, with the ex-  
 “ ception of their chiefs, had no armour amongst them; their wea-  
 “ pons being bows and arrows, darts, swords, axes, and pikes. They  
 “ conquered, however. The English general, Bagnal, with twenty-  
 “ three superior officers, a number of lieutenants, ensigns, &c., and  
 “ 2,500 men, were found dead upon the field; thirty-four standards,  
 “ 12,000 pieces of gold, all the artillery, provisions, the musical in-  
 “ struments of the enemy, and other trophies, were captured on that  
 “ glorious day; and in fine, such of the English as remained toge-  
 “ ther, consisting of but 1,500 men, took refuge in Armagh, and were  
 “ only permitted to evacuate Ulster, on the condition of surrender-  
 “ ing both Armagh and Portmore, and of going away with nothing  
 “ but the clothes on their backs; their commander alone being per-  
 “ mitted to carry off his armour and trunk. The Irish, on this memo-  
 “ rable occasion, had but 200 men killed, and 600 wounded. The  
 “ third victory, or that of Benburb, was gained by the Irish, in the  
 “ reign of Charles the First, against the Parliamentary or Crom-  
 “ wellian ‘rebels’ of England and Scotland. The Irish forces under  
 “ the illustrious Major-General Owen Roe O’Neill, were but 5000  
 “ men in number, of whom 4,500 were foot, and 500 horse, the lat-  
 “ ter very badly equipped. The English and Scotch, under Gene-  
 “ ral Munro (who was so sure of carrying all before him, that he had  
 “ decided on being in twelve days in Kilkenny, and on driving the  
 “ SUPREME COUNCIL, or the NATIONAL ASSEMBLY of Ireland from  
 “ it), amounted to 8000 foot, and 800 well accoutred cavalry. They  
 “ had likewise a train of artillery, variously stated at from four to seven  
 “ pieces, while we are not informed that the Irish had any. The  
 “ Irish, nevertheless, on coming ‘to push a pike’ against the ‘rebels,’  
 “ left 3,245 of the enemy slain upon the spot, besides as many more  
 “ as made 4000 in the course of the pursuit. In addition to the  
 “ parliamentary or ‘rebel’ officers killed, the Irish captured Lord  
 “ Montgomery, twenty-one other officers, 150 privates, with all the hos-  
 “ tile artillery, arms, tents, baggage, eighty-two stand of colours, 1500



“ draught horses, and provisions for two months. The Parliament-ary General Munro was obliged to save himself by such a precipitate flight, that his coat, hat, and wig were left behind him! Of the Irish officers, but two were killed and three wounded, and of the Irish soldiers, no more than thirty-five were slain, and 245 hurt! Considering that we have English and Anglo-Orange authority for the statement, ‘ that the Irish *always* fight badly at home, this was doing pretty well.

“ The circumstances of the last triumph of Ireland, noted in the Members’ new card, or that over the Prince of Orange (*afterwards* William III.), and from 30 to 35,000 veterans, at Limerick, a town so badly provided with the usual requisites for military defence, that the French general, Lausun, on abandoning it to the Irish in despair, swore *it would be taken by pelting it with roasted apples!* The circumstances of that memorable achievement of Irish heroism, both on the part of Irish MEN and Irish WOMEN, are too well known to be dwelt upon. I need only observe, that after remaining before the place from the 9th to the 31st of August, 1690, the besiegers retreated in the night, having lost, in addition to officers, above 5,000 in killed alone; their wounded and sick not being specified, but unquestionably three times as many. The Irish had 1,062 soldiers, and 97 officers killed or wounded.

“ Such were the noble achievements of Irish prowess on Irish ground, when *physical*, and not MORAL force alone, as at present, constituted the medium of defending Irish liberty. To the latter peaceful, legal, and constitutional means for regaining their lost legislative rights, under the bloodless, yet irresistible guidance of their great leader, O’Connell, Irishmen now look forward; though, in the above instances of martial devotion to the cause of Ireland, they have no less reason to honour the memory of those gallant men, who acted upon the sacred principle of Roman patriotism—*‘ Dulce et decorum est pro patriâ mori!’*

“ I remain, my dear Sir,

“ Your’s very sincerely,

“ JOHN CORNELIUS O’CALLAGHAN.

“ T. M. Ray, Esq.”

“ 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.”

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MONDAY, JANUARY 2ND.

The LORD CHIEF JUSTICE.—I am sorry to say that Mr. Justice Burton is prevented by a severe cold from coming down to Court and taking his seat on the Bench.

Mr. Hatchell.—In consequence of what has fallen from your Lordship, namely, that Judge Burton is unable to attend court, ow-

ing to indisposition, I, upon behalf of the traversers, in connexion with the other counsel engaged for them, object to the trial being proceeded with but before a full Court.

The LORD CHIEF JUSTICE.—We will take a note of your objection.

The *Attorney General*.—No difficulty whatever can arise from the absence of his Lordship, as it was expressly decided in the Bristol riot case, *The King v. Finney*, that where one of the Judges took ill, the trial could be proceeded with in his absence. There was a document proved by Mr. Browne the printer, on Saturday, the entire of which I will not require to have read, as it has been proved and read by one of the witnesses already examined, from the manifold copies—I allude to the plan for the renewed action of the Irish Parliament; however, if there is any wish expressed I will not object to its being read again.

Mr. *O'Connell*.—Read the whole of it.

Mr. JUSTICE CRAMPTON.—What can be the use of reading a document which we have on our notes already?

Mr. *O'Connell*.—Only part of it, my Lord, has been read already, and it is a very important document.

The *Attorney General*.—Then read it fully.

[The Clerk of the Crown then read the Report of a Committee of the Repeal Association, signed “Daniel O'Connell, Chairman,” for the renewed action of the Irish Parliament, which was as follows:]

“*Plan for the renewed Action of the Irish Parliament.*”

“Firstly.—The Irish people recognize, acknowledge, maintain, and will continually preserve and uphold 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 recognize, acknowledge, maintain, and will continually preserve and uphold all the prerogatives of Her Majesty and of her heirs and successors, belonging to, and inhering 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 exist 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 principle, 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 the county members should be increased to 173, in the manner hereinafter specified. Secondly, That there should be 127 members returned from cities and towns, in manner hereinafter 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 than 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.

“ 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 ratio of population, should send one member each.

“ The following schedule of the different places to return members to the Irish Parliament, will show their relative population, and the number of members to be assigned to each :

“ COUNTIES.—Antrim, population, 316,909, members, 6; Armagh, 220,134, 5; Carlow, 81,688, 3; Cavan, 224,933, 5; Clare, 258,322, 6; Cork, 713,716, 12; Donegal, 289,148, 6; Down, 352,912, 8; Dublin, 176,012, 5; Fermanagh, 148,763, 5; Galway, 381,564, 7; Kerry, 236,136, 6; Kildare, 108,421, 4; Kilkenny, 169,945, 5; King’s County, 144,225, 4; Leitrim, 141,524, 4; Li-

“ merick, 248,801, 6; Londonderry, 222,012, 5; Longford, 112,558, 4; Louth, 107,481, 4; Mayo, 366,328, 7; Meath, 176,826, 5; Monaghan, 195,533, 5; Queen’s County, 145,851, 4; Roscommon, 240,613, 6; Sligo, 171,765, 5; Tipperary, 402,563, 8; Tyrone, 304,468, 6; Waterford, 148,233, 5; Westmeath, 135,872, 4; Wexford, 182,713, 5; Wicklow, 121,557, 4.

“ Towns.—Ardee, population 3,675, members 1; Arklow, 4,383, 1; Armagh, 9,470, 2; Athlone, 11,406, 2; Athy, 4,494, 1; Ballina, 5,510, 1; Ballinasloe, 4,615, 1; Ballymena, 4,067, 1; Ballyshannon, 3,775, 1; Bandon-bridge, 9,917, 2; Bantry, 4,274, 1; Belfast, 53,287, 4; Boyle, 3,433, 1; Bray, 3,758, 1; Carlow, 9,114, 2; Caher, 3,408, 1; Callan, 6,111, 1; Carrickfergus, 8,706, 2; Carrick-on-Suir, 9,626, 2; Cashel, 6,971, 2; Castlebar, 6,373, 1; Charleville, 4,766, 1; Clonmel, 15,134, 2; Clonakilty, 3,807, 1; Coleraine, 5,752, 1; Cork, 107,016, 5; Cove, 6,966, 1; Dingle, 4,327, 1; Downpatrick, 4784, 1; Dungarvan, 6,527, 1; Dublin City, 204,155, 8; Dublin University, 2; Dundalk, 10,078, 2; Dungaunon, 3,515, 1; Drogheda, 17,365, 2; Ennis, 7,711, 2; Enniscorthy, 5,955, 1; Enniskillen, 6,116, 1; Fermoy, 6,176, 2; Fethard, County Tipperary, 3,405, 1; Galway Town, 33,120, 3; Gort, 3,627, 1; Kells, 4,326, 1; Kilrush, 3,996, 1; Kinsale, 7,812, 2; Kilkenny City, 23,741, 3; Killarney, 7,910, 2; Limerick City, 66,554, 4; Lisburn, 3,218, 1; Londonderry, 10,130, 2; Longford, 4,516, 1; Loughrea, 6,268, 1; Mallow, 5,229, 1; Mountmellick, 4,577, 1; Mitchelstown, 3,545, 1; Monaghan, 3,848, 1; Mullingar, 4,295, 1; Navan, 4,416, 1; Naas, 3,808, 1; Nenagh, 8,466, 2; New Ross, 5,011, 1; Newtownards, 4,442, 1; Newry, 13,064, 2; Parsonstown, 6,595, 1; Rathkeale, 4,972, 1; Roscommon, 3,306, 1; Roscrea, 5,512, 1; Sligo, 15,152, 2; Skibbereen, 4,429, 1; Strabane, 4,700, 1; Tipperary, 6,972, 2; Thurles, 7,084, 2; Tralee, 9,568, 2; Trim, 3,282, 1; Tuam, 6,883, 1; Tullamore, 6,342, 1; Waterford City, 28,821, 3; Westport, 4,448, 1; Wexford, 10,673, 3; Youghal, 9,608, 2.

“ 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 addition 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 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 connexion 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 recognized law, and strict constitutional principle.

“ Signed by order,

“ DANIEL O’CONNELL,  
“ *Chairman of the Committee.*”

He subsequently read the rules to be observed by Arbitrators appointed by the Repeal Association, to whom the people were to submit their disputes, also published by Mr. Browne, and proved on Saturday.

The Deputy Clerk of the Crown then read the

“ *Report of Sub-Committee appointed on the 17th Day of August, 1843, to consider and report on the Adoption of a general System of Arbitration throughout the Country.*

“ Your Committee having carefully considered the several questions referred to them with respect to the introduction of a system of arbitration throughout Ireland, with a view to the better adjustment of all disputes that may from time to time arise among such of the inhabitants thereof as may be disposed to submit same to Arbitrators, beg leave to offer the following Report thereon, for the adoption of your Association :

“ Your Committee are strongly 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 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, prepare the requisite 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 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. In defining those districts, your Committee would suggest that advantage be taken of the divisions at present established for the purpose of petty sessions Courts, and recommend that those districts be adopted, inasmuch as the peasantry are in general familiarised thereto. 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 at present, be in all cases chosen as the Chairman of  
 “ the Court of Arbitration. Your Committee are strongly impressed  
 “ with the conviction that in selecting persons to be intrusted with  
 “ such high and important functions 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. For this pur-  
 “ pose they would suggest that the Repeal Wardens resident in the  
 “ several districts be called upon to recommend to the Association  
 “ such persons as may seem to them the best qualified to act as Ar-  
 “ bitrators, and that they be directed, in making their selection, to re-  
 “ quest the aid of the Repeal clergy and gentry in their several dis-  
 “ tricts. That the names of the persons so selected and approved of  
 “ be transmitted to the Association through the provincial Inspector  
 “ of Wardens, and be accompanied by a report from him on the qua-  
 “ lifications of the persons so recommended, and that such recom-  
 “ mendations and reports be referred for consideration to the Stand-  
 “ ing Committee.

“ In giving the sanction of your Association to the recommen-  
 “ dation of any Arbitrator, your Committee suggests that it be  
 “ given by vote of the Association, at one of the ordinary or  
 “ adjourned public meetings, on special motion made, and that of  
 “ such motion it is necessary that at least one week’s public notice  
 “ be given. They further recommend that each Arbitrator, on the  
 “ vote of the Association being formally notified to him, shall  
 “ promise, as a Repealer, that he will arbitrate impartially on all cases  
 “ that may be referred to his decision. Your Committee would also  
 “ suggest that the Repeal Wardens of the district be requested to  
 “ recommend a person qualified and willing gratuitously to act as  
 “ Secretary to the district Arbitrators, and that it be the duty of such  
 “ Secretary as may be approved of by the Association, to keep,  
 “ under the direction and superintendence of the Arbitrators, a  
 “ book, in which proper minutes be kept of all proceedings had be-  
 “ fore the Court of Arbitration. Your Committee are also of opinion  
 “ that due publicity should be given in each district to the names of  
 “ the Arbitrators and the place of arbitration. With respect to the  
 “ mode of conducting the proceedings of the Courts of Arbitration,  
 “ your Committee recommend that the Arbitrators sit publicly in a  
 “ place or places to be named in their respective districts, on a cer-  
 “ tain fixed day, each week or fortnight, according to the peculiar  
 “ circumstances of the localities; and that any person having any  
 “ difference with, or claim upon, another, shall serve notice upon  
 “ that other, calling upon him to come before the Arbitrators upon  
 “ the next day of sitting, and submit to have the matter in dispute  
 “ arbitrated upon; and that there shall be appended to said notice a  
 “ further notification signed by one of the district Arbitrators, noti-  
 “ fying that the Arbitrators would sit for the adjustment of diffe-  
 “ rences on the day specified. It is the opinion of your Committee  
 “ that the presence of three Arbitrators should be declared necessary

“ to arbitrate upon each case, and that all questions be decided by  
 “ vote, the majority determining the decision, and that should a  
 “ greater number than three sit to arbitrate in any one case, and  
 “ that said number be an even number, that then the Chairman  
 “ should have two votes, and that in all other cases a majority of  
 “ the votes of the Arbitrators shall determine. Your committee  
 “ recommend that the parties be permitted to avail themselves of  
 “ professional aid whenever they consider it advisable. Your com-  
 “ mittee recommend that after the parties shall have appeared be-  
 “ fore the Arbitrators, a deed of submission be respectively signed  
 “ by them and duly witnessed, consenting to leave the matter in  
 “ dispute to the decision of the Arbitrators, and to abide by such  
 “ award as they may make. That the Arbitrators, having heard the  
 “ case and evidence adduced on both sides, make their award, which  
 “ award shall be final and conclusive, and that they endorse same upon  
 “ the deed of submission, and see that the proper entry of the proceed-  
 “ ings be made in the minute-book by the secretary, and that a copy  
 “ of the award be given to each party, and that the original deed of  
 “ submission and award be preserved. Your committee also recom-  
 “ mend that after the publication of the award, should either party  
 “ refuse to comply therewith, the party so refusing shall be reported  
 “ by the Arbitrators to the Association, and that the standing com-  
 “ mittee do then proceed to inquire into the cause of said refusal;  
 “ and that should the parties so refusing, fail to give satisfactory rea-  
 “ sons to the committee for such his refusal, the committee do re-  
 “ commend that the party so refusing, be expelled from the Associa-  
 “ tion by a public vote. Your committee would suggest that for the  
 “ better working of the system, the secretaries be required quarterly  
 “ to forward to the Association for inspection, the minute books;  
 “ and further recommend that blank forms of notices, deeds of sub-  
 “ mission, minute books, and other such books and forms, be for-  
 “ warded, in the requisite quantities, to the several districts, free of  
 “ expense; and that there be no charge made or fee received by the  
 “ Arbitrators, or any of them, or by their secretary, for any notice,  
 “ deed of submission, or copy of award, but that all forms be supplied,  
 “ cases heard and arbitrated on, awards made, and copies thereof  
 “ given to the parties free of all costs and charges whatsoever. Your  
 “ committee cannot conclude without urging upon your Association  
 “ the necessity of calling upon all Repealers throughout the King-  
 “ dom, to avail themselves of this mode of obtaining a fair and im-  
 “ partial adjustment of their disputes and differences.

“ Signed by order,

“ JOHN GRAY, *Chairman.*

*August 21st, 1843.*”

[The following documents were also read:—A Draft of the Ap-  
 pointment of Repeal Wardens; the form of Summons before the Ar-  
 bitrators; and the placard headed “Leinster for Repeal,” and giving  
 notice of a Meeting to be held at Mullaghmast on Sunday, the 1st of  
 October, 1843.]

THOMAS THACKER sworn, and examined by MR. FREEMAN, Q. C.

I am a lithographic artist. I came to this country last March two years. I resided before in London. I know a person of the name of Holbrooke. Immediately on my coming to this country I was employed by him in taking sketches from scenery, and lithographing them. I was often employed in other work. The cards handed up are printed from stone. They were originally engraved on copper, partly by Mr. Gardner and partly by Mr. James. I could not say who struck off these particular cards. I have seen similar cards in great numbers, printed in Mr. Holbrooke's place, 4 Crowstreet. Some thousands were printed. This card is similar to those printed in Mr. Holbrooke's place.

Mr. *Freeman*.—The two cards handed up are those already proved, the Associates' card. I produce another card.

*Examination resumed*.—I saw a similar card to that before. This is the Members' card. It is printed in the same manner; originally engraved on copper, and impressions taken from the copperplate and transferred to the stone. This is a second printing. I put the colour on the stone, to enable the printer to print from it. It was done at Mr. Holbrooke's. A great number of this description were struck off. I put black on the stone; the printer put on the green. I believe by Mr. Holbrooke's directions. The design is owing partly to myself. I designed the decorations and the flags, a Shamrock and a Sun-burst. Mr. Holbrooke brought me a rough sketch of the design. No person was with him when the sketch was presented to me. Mr. O'Callaghan used to come up when Mr. Holbrooke was giving instructions. I believe his Christian name is John Cornelius. Mr. Holbrooke told me so. I know Mr. Ray. I have seen him at Mr. Holbrooke's. I have no recollection of his being then with Mr. O'Callaghan. He has come and inspected them, and suggested improvements, which were made. One alteration was as to the form of the harp on the Volunteers' card. No alteration was made at his suggestion in the Members' card. A suggestion was made by Mr. Ray as to improvement of the likeness of Mr. O'Connell. The lithograph Thomas M. Ray at the foot of that card is a *fac simile* of the handwriting of Mr. Ray. I have seen Mr. Ray write a few words. I cannot from what I have seen him write form an opinion of his handwriting. I sketched the likeness of Mr. O'Connell, Mr. Grattan, and Mr. Flood. I copied the likeness of Mr. Flood from a picture in the Dining Hall of the College. Mr. Davis accompanied me there. I copied the likeness of Owen Roe O'Neill from a print which Mr. O'Callaghan's brother brought to Mr. Holbrooke's. I have seen Mr. Davis several times at Mr. Holbrooke's. The likeness of Brian Boroimhe I copied from the frontispiece in "Keating's History of Ireland." The likeness of Ollum Fodla I got from my imagination. Mr. Holbrooke suggested the name; it was frequently discussed by Mr. Davis, Mr. Holbrooke, and Mr. O'Callaghan. I cannot say whether Mr. Ray was present at the



time. I took the likeness of Sarsfield from an old French engraving in the possession of Mr. Geraghty, a bookseller. Mr. Holbrooke brought me to see it. It was Mr. Holbrooke's wish to have it put on the card. I cannot say Mr. Ray was present at the time. I think I composed the likeness of Hugh O'Neill, and that of Dathi. I have been at the Association, and have seen Mr. Ray there. This is the Repeal Wardens' diploma. I designed it from materials furnished by Mr. Holbrooke. It was completed before the Volunteers' card. While this was designing, I saw Mr. Ray. I won't undertake to say that I heard a communication with regard to this diploma. While it was in progress, Mr. Holbrooke used to bring these several gentlemen to see it; Mr. O'Callaghan, Mr. Davis, Mr. Ray. I think it was the other card Mr. Steele came to see. I cannot say which. No one was with him; he came but once. He directed his conversation with regard to the cards to Mr. Holbrooke. It was quite irrelevant to these diplomas. I knew Mr. Duffy. I have seen him at Holbrooke's. I have seen him come with Mr. Davis. I am not aware that he came with any person else. He came to a place appropriated for drawings, a kind of studio. He looked at the works. I do not remember his making any observation on them, but he looked at them. This was about the middle of last year. Mr. Duffy was up several times, but I cannot say how often. It was at the Repeal Association I took Mr. O'Connell's head. It was about the time the Volunteers' card was in progress. I saw Mr. John O'Connell at the Association. I first saw him at the Repeal Association, near the table under the chair. I do not know whether I saw Mr. Ray on that occasion, but I have seen him there with Mr. O'Connell. I do not know whether Mr. O'Connell, Mr. John O'Connell, and Mr. Ray, were all present at the same time. I was there rarely except for sketching, six or seven times. I do not remember seeing Mr. Duffy then, or Dr. Gray. I should know Dr. Gray if I saw him. I saw him at Mr. Holbrooke's, I believe he came up merely to inspect the work. I do not know Mr. Barrett. I recollect an alteration respecting the harp, and also in the cap of the chief, by Mr. Ray. This was in the diploma. When I went to the Association, Mr. Holbrooke accosted me. There was a mistake in the formation of the harp, as to the place where the strings were placed. The objection was that the harp was like an English and not an Irish harp. I had put a spike on the top of the cap. It was not a coronet. Mr. Ray suggested both these alterations. I had nothing to do with the striking off the diplomas. I cannot say how many were struck off. Many Associates' cards were struck off. They were sent to the Association after they were printed. John and Joseph Annesley printed the cards. I once saw a large quantity of the cards taken out by some boys who were employed at Mr. Holbrooke's. I was an enrolled Member of the Repeal Association, not by my own consent.

*Mr. Fitzgibbon.*—How do you know? I had a card put into my hand by Mr. Holbrooke. I sketched Mr. John O'Connell at the Repeal Association Room. It was according to appointment I met

him there. I was in the Committee room of the Repeal Association. I was there once, for the purpose of sketching a bust of Mr. O'Connell. I was paid for my services. I was paid by Mr. Holbrooke.

*Cross-examined by MR. MACDONAGH.*

I have been five years practising as an artist. I have frequently seen gentlemen at my study. A great many gentlemen have called there. I do not know Dathi. I believe he is only known to the Irish people. I think it is merely in their imagination. I have seen other persons than those I have named in my study. I have been in the service of Mr. Holbrooke since I came to Ireland. I knew he was engaged for Government business, in the Board of Works. He advertised it on his glass windows. It was the first thing that struck me. It was visible to every body that went into the passage. I did not know him to be employed by the Government before he was employed by the Repeal Association. He was employed by the Repeal Association and the Government at the same time. He used to do printing business for the Government. I saw the presses moving while I was employed about these cards. The Associates' card was designed by me and by Mr. Holbrooke. I would not knowingly design any thing injurious to my loyalty. I was in the Dining Hall of the College to take Mr. Flood's likeness, and I did not think I was doing any thing disloyal. Mr. Flood was a contemporary of Mr. Grattan. I saw Mr. Steele at Mr. Holbrooke's. I do not know whether he was there about the title page of a book. I remember seeing Dr. Gray. He was inspecting the premises. He was looking at the presses. I do not know Mr. Barrett at all. My interview with Mr. John O'Connell was by private appointment, to take his likeness at Mr. Holbrooke's desire. I have not seen Mr. Holbrooke since I have been here. I came on Wednesday evening. I was in London since last August. I believe Mr. Holbrooke to be in Dublin now. I do not know where the Messrs. O'Callaghans are. I parted with Mr. Holbrooke voluntarily. I went to London to carry on my profession there.

*ISAAC GARDINER, examined by MR. MARTLEY, Q. C.*

I am a writing engraver. I am an Englishman. I first came to Ireland last February. I was in Mr. Holbrooke's employment from the middle of February to the latter end of June, 1843. It is my business to draw letters on stone. I engraved the lettering on these cards at Mr. Holbrooke's, somewhere about March last. I executed the whole of the writing on the Associates' card for Mr. Holbrooke. I engraved the whole of it. I did it before the Members' card. The columns and the banners were on the plate when I got it. Mr. Holbrooke gave me the work. I do not know Mr. Ray, or Mr. Duffy, or Mr. Steele. I cannot identify any of them. I put the name of Thomas M. Ray, from a supposed autograph of Mr. Ray. I had nothing more to do with the Volunteers' card than designing the writing. I cannot say who engraved it. I have the impressions with me. The Members' card was the first; then the small card. The

Diploma was the next. I executed the writing on it. I saw several of the Diplomas printed. There is a stamp on the Members' card which was not there when it was printed. There is no stamp on the Diploma. I cannot say how many were printed. I had no share whatever in arranging the process for printing the colour. This is a copy from the copper-plate which I produce.

*Cross-examined by MR. MOORE.*

I was in Mr. Holbrooke's employment from February to June. I came to Ireland in the middle of February, and entered immediately into Mr. Holbrooke's employment.

To Mr. *Martley*—There was a person of the name of Annesley in Mr. Holbrooke's employment. I never saw him take any of the cards away after they were printed.

To Mr. *Moore*.—Mr. Holbrooke did much business. He worked for the Government. I knew it. He had four persons connected with the printing and engraving in his employment. I received directions from Mr. Holbrooke in the ordinary course of business, and I so executed them. There was no concealment or mystery about it.

*JOHN ANNESLEY, examined by MR. SMYLEY.*

I am a lithographic printer. I was in the employment of Mr. Holbrooke. I will not swear that I printed any of these (the Members' and Associates' cards), but I have printed similar ones. I put on the colour. I once took some of the small cards to the Corn Exchange. I cannot say to whom I delivered them. I had a pass book. When the cards were delivered initials were entered in the books by the person who received them in Mr. Ray's office. I cannot say how many of the cards I have printed. I have printed thousands of such. I printed the Arbitration Award. There was no stamp on it when I printed it. I do not know where the paper came from. I have printed such papers as the Deed of Submission to the Arbitrators. There were a good number done, the same as these. I never carried any of them to the Association.

*Cross-examined by MR. CLOSE.*

I have been four years in Mr. Holbrooke's employment. I do not know where the original die of the stamp on the award is. I have printed matters for Mr. Holbrooke for the Government. I never saw that stamp on papers printed for the Government. I saw the die of one of those stamps at Mr. Holbrooke's. I did not see it five, four, or three, or two years. I cannot fix the time when I saw it first. I will not venture to say I did not see it before 1843. Those papers were printed within the last four months. I do not recollect ever seeing the die. I saw the stamp. I never saw the stamp on any other paper. I have delivered other work, but very seldom, for the Board of Works. There is no check on the delivery of the goods there.

JOSEPH ANNESLEY *sworn, and examined by MR. BAKER.*

I know Mr. Holbrooke, and have been in his employment a year and six months. I have printed cards of the description of the Associates' cards, at Mr. Holbrooke's, not long ago. I brought parcels of these cards to the Corn Exchange. I left them at the top of the house, with two of the clerks. I do not know those of the office. I know a person of the name of Quigley. I have given cards to Quigley in the office. I do not know Mr. Ray. I do not know his appearance. I saw the Volunteers' cards brought to the Corn-Exchange. I have seen documents such as the diploma brought to the Corn-Exchange, and delivered there.

*Cross-examined by MR. M'CARTHY.*

It was not my duty to make up parcels. I made up some of the small cards. I printed the Repeal Cards. Mr. Holbrooke is in town now. I am still in his employment.

The *Clerk of the Crown* then read :

“ The Associates' Card.”

“ The Members' Card.”

“ The Volunteers' Card.”

“ The Diploma of the Repeal Wardens.”

Mr. *Fitzgibbon*.—It was not proved that any paper having a stamp was ever delivered by a member of the Association. This has a stamp on it. This document, with a stamp on it, was never delivered to any member of the Association, nor was it recognised by them.

Mr. JUSTICE PERRIN.—The stamp will not be read ; it does not characterise the instrument. It will not affect the meaning and import of the instrument.

The *Deputy Clerk of the Crown* then read :

“ The Arbitration Award.”

JOHN ULICK M'NAMARA, *examined by MR. TOMB, Q. C.*

I am a short-hand writer. I was present at a meeting at Tullamore, on the 16th of July. I arrived there between three and four o'clock. The proceedings commenced about two o'clock. I saw many people coming into Tullamore. As far as I saw they came in in the same way they would come in on any other occasion. There was a great crowd there. I took a short-hand note of what passed. I transcribed the note, with the exception of some few sentences. My short-hand note is destroyed. I know two of the traversers, Mr. O'Connell and Mr. Steele. They attended that meeting. The Rev. Mr. O'Rafferty was Chairman.

Mr. *Tomb*.—State what the Chairman said.

Mr. *Hatchell*.—Do you mean to state that the transcript is an accurate verbatim translation of your short-hand notes ? It is, with the exception I have mentioned. I took notes of some few sentences, which, in transcribing, I omitted.



Then your short-hand notes would shew some sentence taken down, and not transcribed? Certainly.

Is there any portion of that transcribed, supplied from your own memory? No words are left out except connecting words which are generally left out by reporters. There is no substantial word in the sentences which I did not take down in short-hand; and those sentences are complete with the exception of connecting particles. Mr. O'Rafferty said: "Fellow-countrymen and brother Repealers, the regenerator and liberator of our country has come to pay you a visit. Allow me to tell you that the mighty leader of the Irish people has come to address you; this is the first time we had the honour to see him at a public meeting in the town of Tullamore. I do not say too much for the people of this locality when I assert that they were at all times the ardent and sincere supporters of every measure introduced by that great man for the benefit of his country. He has come to talk to you about repeal. I believe you all know what that means; he has come to bring our native parliament, to establish a legislature in this country, that will make the laws for the benefit of the people; that will respect the rights of the people, and that will give them good government. They have been too long trampled on by the representatives of Saxon authority; too long have they been trodden down and treated worse than slaves. That great and illustrious man will address you; he will tell you, as he has told others, the great and lasting blessings that a domestic legislature will bring to this country. I return you thanks for the honour you have done me; for thirty years I have laboured sincerely for the public cause. I have been a supporter according to my humble means of every measure introduced for the good of the country, and my exertions shall not be wanting to forward the great cause of repeal."

*Examination continued.*—Did a Mr. Flanagan address the meeting? He did, very shortly.

Did the Rev. Gentleman make a speech, and if he did, read it? The Witness said Mr. Flanagan addressed the meeting, so did the Rev. Mr. Spain and the Rev. Mr. Nolan. Mr. Flanagan made a short speech at that meeting. The Rev. Mr. Spain said: "On occasions of a nature similar to the present, it has lately been often said, this is a 'great day for Ireland,' but I may be permitted to say, that this is a glorious day for the King's County. This day the King's County has nobly done its duty, and the truth of this assertion is fully borne out by the display which I now witness. But a few short days ago we had a meeting at another end of this county, at Birr, at which the Liberator did us the honour to attend; it was one of those meetings in which Ireland put forth her strength. The people assembled in hundreds of thousands, determined that she should be a nation. As I then had an opportunity of expressing my sentiments on the subject of Repeal, I shall now take leave to read the resolution that had been put into my hands. [The Rev. Gentleman then read the first resolution]. Whatever be the view of public men with regard to maintaining or repealing the Act of

“ Union, no man of common sense or common honesty can deny the truth of that resolution; no man can deny the reckless character of the men by whom the Union was proposed, or the infamous means which were adopted to carry it; and if it be equally true that the distressful consequences too truly predicted have been literally fulfilled, on what ground can any Irishman wish to see it maintained? That Englishmen should be for the Union, and even Englishmen of liberal principles should be for it, is not surprising, but no Irishman ought to hesitate a moment in demanding its immediate repeal.” The Rev. Mr. Kearney addressed the meeting. [The Witness read the speech, see *ante*, p. 92]. The people, during those speeches shouted “ Repeal, Repeal, Repeal.” Mr. S. Robinson spoke on that occasion. Mr. O’Connell spoke.

The *Attorney-General*.—I have no wish to inconvenience the traversers provided they are within the precincts of the Court; but I have just heard that two of the traversers left the Court for the purpose of attending a meeting. That is a thing that I cannot acquiesce in; and, if it be the case, I require that they shall be sent for immediately.

Mr. *Moore*.—They shall be sent for.

[The Witness then resumed the reading of Mr. O’Connell’s speech at Tullamore, see *ante*, p. 92].

*Examination resumed*.—This meeting was held on a Sunday. I could not form an estimate of the numbers assembled. It was held in the Market Square. I saw many banners. There were inscriptions on some. Of those that were carried about I have no recollection; but of those in the various parts of the town I have. One was: *See the Conquering Hero comes*. Another:

“ Breathes there a man with soul so dead,  
Who never to himself has said,  
This is my own—my native land.”

*Ireland, her Parliament, or the World in a Blaze. Cead Mille Failtha.*

Mr. *Rigby* (one of the Jurors).—Was the banner *Ireland, her Parliament, or the World in a Blaze*, displayed in the town, or at the meeting? It was in one of the streets; but not at the meeting. There were a great many bands of music there. The meeting was over, I think, before five; but I am not quite certain. It lasted about two hours.

*Cross-examined by MR. HATCHELL.*

I was at Tullamore the evening before. I went before there was any crowd there. There was a platform erected for the speakers. I was on it. I saw one reporter there, and I understood there were others. There was no obstruction to my taking notes. The people assembled as if they were coming to a market or fair. There were females mixed through the men. I have no doubt there were children there. Every thing was peaceable, so far as the conduct of the

persons there was convened. I do not belong to that part of the country. I was employed to go there by Captain Despard, the resident magistrate for Meath. I was not there on the part of any newspaper at all.

Mr. *Hatchell*.—Were you there on the part of the Government ?

The LORD CHIEF JUSTICE.—You cannot answer that question.

I was not paid for my reporting, and I am very much afraid I shall not be paid. I transcribed my notes, but not for several days after the meeting. That was the reason I was not paid, because I did not make them out in time. I did not transcribe them until about six days after the meeting. I made my report out at home, at Trim. I knew that an application was made while I was from home. I went home after the meeting on Monday, and remained until Wednesday. My notes were on slips of paper not connected together. I understood that I was to be paid, but no price was fixed on. I had been in the habit of reporting for Drogheda papers for something more than a year, but I was not connected with any newspaper in the mean time. I was not very much out of practice, for I often took notes at the Assizes, though not employed. I did not transcribe them. I was absent from Trim for two days after the meeting. I was not written to for my report. I made it out because I knew I should be asked for it. The meeting was on the 16th of July. I think I had it transcribed in six days. Of course I was to be paid by the job. I never was paid by the line. I was paid by the year for newspaper work. I cannot say how long it took me to transcribe these notes. I did not transmit them when they were ready, and I did not intend to transmit them unless they were applied for. They were applied for during my absence from home. I was told, the day after I came home, that if the report was not sent that evening by post it would be too late. I had not got them ready, and I conceived then that it was too late. I thought it might possibly not be too late. I thought that the message might have been for the purpose of hurrying me, and therefore I transcribed them. I did not know, when I was going to take the notes, that they would be used. I had no idea I was to be examined as a witness. I did not think it probable that I should. But I thought that it was possible. I did not send them at all. I gave them to my brother-in-law to read, and he gave them to a person; I know not whether I am at liberty to mention his name.

Mr. *Tomb*.—Certainly not.

*Cross-examination resumed*.—Upon my oath I expected him to return them to me. He did return them. He called a second time for the same person to show to another person. I cannot say how long a time intervened between the meeting and my finally parting with the notes. They were returned to me by him after I gave them the first time. I gave them a second time to my brother-in-law. They were not returned, and I never saw them till I saw them here in Dublin. I do not know how long intervened between the meeting and the time when I parted with them first. I am sure it was more than a week. I first made a draft from my short-hand notes, and this was a fair copy of the draft. The draft was destroyed. The draft and

the notes were destroyed on the second day. The short-hand notes were also destroyed about two months after the meeting. I cannot fix particularly, but I should say it was not three months. I had them for a considerable time after the report had finally left my possession. I did not take down every sentence that was uttered. I often had to finish sentences where parts were wanting in my notes. Whole sentences may have been omitted in the report. I do not write Mr. Taylor's system of short-hand. I have this passage in my report: "that professors in Spain and France have proved that there is not such a people on the face of the earth." I swear that I took it down, in my notes. I am sure it was not a Scotch professor. I do not mean to say I am infallible; I am sure that the words professor and philosopher are not alike in short-hand. [The Witness here wrote down the two words in short-hand]. I did not see the placard *Ireland, her Parliament, or the World in a Blaze*, carried to the market place. I saw it in the streets hours before the meeting. I did not walk in the streets after the meeting. I did not hear Mr. Steele desiring the banner to be taken down, nor did I hear of it. Mr. Robinson is a Quaker. He spoke as follows: "Gentlemen, when Ireland asked bread, what did you get but a stone, and when you asked for the amelioration of your sad condition you got an Arms' Bill, a proof of their total ignorance of your wants and condition. But, if the provisions of that bill were not of the most insulting and unconstitutional nature, and if it did not give the petty tyrant an opportunity of trampling still further upon the liberties of the people, I should care nothing about it, for we want no arms but our own two arms, and our head to guide them, and whilst we move under the counsel of the Liberator we shall be sure never to make a bad use of them. We shall have recourse only to that moral warfare which tyrants never understood before; a new species of warfare, a warfare more likely to restore the liberties of Ireland than all the armies in Europe. We want amelioration, and are anxious to do harm to no one, but to do good for ourselves. Instead of an Arms' Bill they ought to give us another bill; they ought to give us fixity of tenure to better the condition of the poor landholders. Our tenants ought to be paid for their improvements, and the landlords ought not to be allowed to drive or distress their tenants unless they gave leases for three lives or thirty-one years. I think you like that; that would be a good Arms' Bill; that is the Arms' Bill we want."

Mr. *Hatchell*.—My Lords, we wish to have a copy of this report, or that it may be read so slowly, that our reporter may take it down.

Mr. *Tomb*.—You are not entitled to any thing of the kind.

Mr. *Hatchell*.—No use could be made of it, except that the counsel may observe on different passages of it.

The LORD CHIEF JUSTICE.—The Court cannot make any order on the subject.

*Cross-examination resumed*.—A resolution was adopted, that a petition to Parliament should be presented. I have no objection to my notes being read or made public. I do not know whose property



they are. The resolution for a petition was moved in the following words: "Gentlemen, I beg leave to move for the adoption of a petition to Parliament, for a repeal of that fatal measure, the "Union." That was seconded by Dr. Walsh. I should observe in explanation, that the names of few of the parties who spoke, were announced; and it was only from making inquiries as to the names of the speakers, that I could get their names. The petition was read, but I did not take a note of it, because I thought the newspapers would give it. I did not apply for it. I read a copy of it in the newspaper. I saw it in more than one newspaper. I also examined the report of the proceedings in two newspapers. I have no copy of the petition. The next note of a transaction in my notes is of a resolution. I do not know any thing of it. The Rev. Mr. Kearney moved it; Mr. Clarke seconded it. There was another resolution moved by Mr. O'Loughlin, and seconded by Mr. Ryan, which I have not. The next is Mr. Robinson's speech. The next was the reading of the petition to Parliament. Mr. O'Connell's speech followed. I was taking notes at the table. I threw some of them into the fire, and my child cut some of them up. I threw the draft into the fire.

*Re-examined by MR. TOMB.*

I saw but one Reporter there. It was said he was for a newspaper. I understood there were more.

JOHN SIMPSON STEWART *sworn, and examined by the ATTORNEY-GENERAL.*

I am a Sub-inspector of the Constabulary. I was stationed at Tullamore in July last. I was there on the day of the meeting on the 16th July. I went round the town the morning of the meeting. I saw banners and mottoes. There were a large number of persons besides the inhabitants of the town in the streets. The people came in thousands to attend the meeting. This was between nine and ten. I know High-street, Tullamore.

*The Attorney General.*—What were the mottoes you saw in High-street on that morning?

*Mr. Henn.*—I object to that question. I submit that placards seen in the streets of Tullamore cannot be evidence.

*The LORD CHIEF JUSTICE.*—Why not?

*Mr. Henn.*—Because it does not appear when, or by whom they were put up. They were seen before the meeting took place. They may have been put up in the night, when scarcely any one was in the town. The numbers who came in could not make it evidence.

*The LORD CHIEF JUSTICE.*—I do not think that it is necessary to show by whom it was done, as the evidence now stands. Observe, that all the parts and particulars of what took place that day, cannot be given in evidence at the same time. What the Witness has sworn to, amounts to this;—he was in the town of Tullamore on the day of the meeting, attending to his duty as an officer of police. In the morning vast numbers of people came into the town, and he, in the

exercise of his duty, went round the town to make his observations. He saw that the multitude did not belong to the town. He walked about to see what was taking place, and he observed sundry banners and mottoes. He states this as a matter of fact, which he saw in the course of the morning, while preparations for the meeting were going on.

Mr. *Henn*.—He has not said where he saw those banners. I objected to his stating the inscriptions before laying foundation, by proving where the banners or placard were placed. A banner or a placard posted in High-street is not evidence.

The LORD CHIEF JUSTICE.—It would not be evidence if it had not been proved that there was an assemblage of people.

The *Attorney General* cited *Redford v. Birley*, and *Rex v. Hunt*.

The Court overruled the objection.

*Examination resumed*.—There were large numbers of persons in the town. They went through High-street. Large numbers came from Birr. There was an arch in High-street, stretching across the whole street.

The *Attorney General*.—Was there a motto on it?

Mr. *Henn*.—It does not appear when or by whom it was erected.

The *Attorney General*.—The case of *Rex v. Hunt*, 3 Barn. & Ald. 578, proves that this is evidence.

Mr. *Fitzgibbon*.—There was only a verdict on the fourth count in that case. That was for attending an unlawful assembly. No one knows who erected this arch, what evidence is it that Daniel O'Connell is guilty of conspiracy? In *Rex v. Hunt*, there was only a verdict on the count for attending an unlawful assembly, and it was given in support of that count. There is no such count in this indictment.

The *Attorney General*.—In *Rex v. Hunt*, there was a conviction on the fourth count. Chief Justice Abbott in his judgment in that case says: "Inscriptions used on such occasions are the public expression of 'the sentiments of those who bear and adopt them, and have rather 'the character of speeches than of writings.'" Accordingly the evidence of inscriptions on those banners was admitted. The present case varies in no respect from that, except that this is an indictment for a conspiracy for doing that which was done in *Rex v. Hunt*. The character of an assembly must be shown by the banners. That is what I am proceeding to show. The special pleas in *Redford v. Birley*, exactly apply to this case. On these authorities I am entitled to show the preparations for this meeting, and every thing that took place at it.

Mr. *Whiteside*.—There is a manifest distinction between this case and that of *Rex v. Hunt*. It does not appear that this arch was erected or these banners carried by any persons connected with the meeting. The Chief Justice, in that case, says, that the inscriptions are a public expression of those who bear and adopt them. This inscription was never adopted by any of the traversers. It might as well be said, that, if arches were erected at Clontarf and

the meeting was at Donnybrook, the inscriptions could be given in evidence to show the intention of the persons assembled.

The CHIEF JUSTICE.—I think these flags, mottoes, and banners are admissible in evidence, for the purpose of showing the real character of the meeting. Suppose the parties chose to call their meeting a peaceable meeting, but that, in point of fact, it was of a hostile character, which would be evidenced by the banners, could it be contended that they were inadmissible to show the real character of the meeting? I am of opinion that the objection should be overruled.

Mr. JUSTICE PERRIN.—Evidence of acts and declarations is admissible to show the object of an assembly. Here is an arch erected in a public street, leading to the place of meeting, in the same town, not so remote as Clontarf is from Donnybrook; and if it was permitted to continue there during the holding of the assembly, it would be admissible to show the intention of those holding that assembly, and must be considered as an expression of opinion. This case is not exactly the same as those cited, but the principle exactly applies.

*Examination resumed.*—On one side of the arch was written: *The Slave-master may brandish his Whip, but we are determined to be free.* On the other: *Beware of physical Force. Beware! Physical Force is a dangerous Experiment to try on Irishmen. Repeal shall not be put down by the Bayonet.* The Roman Catholic chapel at Tullamore is opposite the Corn Market. The platform could be seen from the chapel gate. There was an arch opposite the chapel gate, with the inscription, *Ireland, her Parliament; or the World in a Blaze.* The meeting was held on Sunday. The greater number of the persons entered under that arch. The platform was exactly opposite to it. There was a banner opposite the platform, with the inscription: *Ireland must not be, ought not to be, shall not be, a Serf Nation.* There was a motto on the platform: *Nine Millions of People are too great to be dragged at the Tail of any Nation.* There were other inscriptions, *He who commits a Crime gives Strength to the Enemy. God save the Queen.* There were others: *See the Conquering Hero comes. Cead mille failtha. Peace and Perseverance. Repeal. Justice and Prosperity to all Classes and Creeds. Breathes there a Man, &c. Ireland welcomes her Liberator.* The crowds began to come in early, but the greater number from half-past nine to one o'clock. The greater number came by the Birr road. A great number of bands came into the town. About nine or ten bands. I suppose they were temperance bands. They came in at different times, with large numbers of people. They came in in sections of four.

To Mr. JUSTICE PERRIN.—I mean four abreast.

One of them got out of his place to stop at a particular house, and a horseman said to him, “d—— you, Sir, keep your ranks;” he obeyed and returned to his proper place. I counted between seventy and eighty sections of four. I could not be particular to the number, but I think there were about three hundred. The footmen did not come in with the same regularity. I observed persons giving directions to the

crowd generally, halting them and getting them into order. Mr. O'Connell arrived the night before the meeting. I think the arch in High-street was erected the night before. I saw the one opposite the chapel. It was erected in the morning after ten o'clock. I saw the mottoes over the arches between half-past nine and ten o'clock. Mr. O'Connell came to the platform about two o'clock. I saw Mr. Steele also at the meeting. I have no doubt Mr. O'Connell was there. I heard some parts of Mr. O'Connell's speech. I was in a store overlooking the platform, ten or twelve yards from it. I heard him say "that he came there from the centre of Ireland to announce to them the certainty of Repeal. He would prove from Peel and Wellington that Repeal was certain," or words to that effect. He likened Peel to a fool who came to a river and stood there to let the waters flow past. He made some allusions to Lord Beaumont, and called him "despicable Beaumont." As far as I heard it, he alluded to a speech of Peel's, who said he would prefer a civil war before he would grant Repeal, and he then said, "the better day the better deed; let him make war on Ireland, for he stood there to hurl his high and haughty defiance at him." I am not giving his exact words, but I took this down, as nearly and accurately as I could. He said, the people of Ireland should not be compelled to pay for the Church to which they do not belong. He alluded to the Government or somebody giving him the ecclesiastical establishment, and he said he would take it as an instalment. He did not say how much he would take, but he said: "I will take what I get, and I will make them then give me the remainder." He then asked whether there were any teetotallers there, and a great number of people put up their hands. He then said, "If I want you, can't I get you any day in the week; but I will take care I will never want you." He then told them not to vote for a Tory or anti-Repealer. I calculated there were from sixty to seventy thousand men, women, and children there. I do not include the residents of Tullamore; all the persons left Tullamore that night. The meeting dispersed at about five o'clock. Some of the bands were in white, some in green and white.

*Cross-examined by MR. HENN.*

I am not a short-hand writer. I was quartered at Tullamore two years before this. I was apprised of the meeting. It was my duty to attend and report what occurred, and I did so. I heard Mr. O'Connell say something about Ribbonism, but at that particular time I lost the whole thread of his discourse. There were a great number of men, women, and children in the town. All went off as peaceably as it was possible. There was not the slightest occasion for the interference of the police, nor slightest tendency to riot or disturbance.

Mr. Henn.—Do you not think there was less probability of accidents from the crowd observing such order in coming in? I do not think the order was observed to prevent accidents.

Have you attended other meetings? I have been at some meetings at fairs and markets.



Have you seen persons going in this order at funerals? I never have. I went about the town the night before the meeting. I am almost positive I saw the arch in High-street the night before, but I am not quite positive I did. I am quite positive I saw the motto, *Ireland, her Parliament, or the World in a Blaze*. I saw it on the Sunday morning, the 17th of July, at about ten o'clock.

You did not interfere to take it down? No.

Will you swear it was not taken down that day? No.

Will you swear it was not taken down before the meeting? I will not.

Was it close to the platform? I was at an angle so that I could not see it.

Was it there when you went home? I went home a different way.

Did you see any one putting it up? I did.

Where were you when Mr. O'Connell went on the platform? In the store overlooking it; the arch was not opposite to that.

Will you say it was there at twelve o'clock? I cannot say.

Will you swear it was there at the commencement of the meeting? I did not see it.

When did you see it last? When I went to take a note of the different mottoes.

Can you swear you saw that motto at twelve o'clock? I think I saw it about eleven o'clock.

The meeting was at two? Yes.

You took down one motto, *Patience and Perseverance*? I did.

Did you observe these words, *and Obedience to the Laws*, on the same banner? No.

Did you see *Repeal, but no Separation*? I did not; it is not on my notes, and I would have taken it down if it had been there.

Were there not a number of ladies and gentlemen there? I saw a number of women and children, but very few ladies.

Did you see the people coming from church? I did not.

Did you see on a placard, *The Queen, God bless her*? I saw *God save the Queen*. I do not recollect seeing *The Queen, God bless her*. There were several minor mottoes and inscriptions in windows which I did not take down. I took down every one that was across the street and on the platform. I took down all the principal ones. I did not take down all those which were publicly exposed. I think I may swear I took down all those on the platform; but I am not positive. I have no recollection of seeing on a placard, *The Rose, Shamrock, and Thistle*. I took down my notes at the meeting. I wrote my report on the next day at three o'clock. I received my directions on Saturday and Sunday. I sent it the next day.

NEALE BROWNE sworn, and examined by MR. NAPIER.

I am a resident magistrate at Tullamore. I was there on the 16th of July. I know where the church is. My house is on the High-street. I saw the people coming into town from the western side, from Frankford, at about one. Persons had come into the town

before that. I saw several bands of music in the town. That was at the time of divine service in the church. I remained from church to be ready, if called upon as a magistrate. When the procession was formed, it passed near the church. This was at half-past two, or nearly so. I saw Mr. O'Connell. I think Mr. Steele was sitting in the carriage, but I am not positive. I was in a field in the rear of my house when I heard the music, and I then went into the house ; and when I got near the window the procession had passed by. I followed it into the street, I do not recollect whether there were any horsemen. The people were walking about fifteen a-breast, with regularity and order. After taking different turns through the streets, the procession went to the Market square, and passed within about one hundred and fifty or two hundred yards from the base of the mound where the church is built. I did not know the tunes. I met several people coming from church through my own fields. That is not the usual way for them to return. The greatest number of persons who lived at the top of the town, about thirty-five, went through my fields. The road they usually went, was that down which the procession passed. Three bands had military uniform, with the exception that they had no belts. The Roscrea band wore scarlet hats, as are worn by the cavalry. Another band had military caps. When the people came from the western side about two o'clock, about 240 horsemen came with them in a column, of about five a-breast. The general appearance was, that they kept order. In some instance they mixed with the crowd.

*Cross-examined by MR. MOORE.*

I have been at Tullamore since the 26th or 27th of September, 1835. The bands were all temperance bands. I have heard of temperance bands having uniforms within the last two years, long antecedent to the 16th of July. I did not know what tunes they played. I know the last witness, Mr. Stuart. I sent directions to him and to the County Inspector, directing that they should attend the meeting. That was on the 15th of July. I had received directions on the subject, on my report that—

From whom did you receive them? [The question was objected to, and overruled.]

*Examination resumed.*—It was on my suggestion that the directions were given. I did not go down to the place of meeting. There was no riot or disturbance at the meeting. No report was made to me of any. There can be no doubt there was none.

*Re-examined by MR. NAPIER.*

Roscommon is thirty Irish miles from Tullamore.

JAMES JOHNSTON sworn, and examined by SERGEANT WARREN.

I am Head Constable of the Sligo Constabulary. I was at Longford on the 2nd of May, last. There was a large Repeal meeting there on that day. It would be impossible to form an accurate estimate of the numbers, but I should say there were 40,000 or 50,000 persons there.

There was an array of horsemen opposite the platform. They were about 100 in number. The people were in many instances accompanied by bands. I observed two bands in semi-uniform. I observed mottoes on banners. I saw *Cead mille failtha*, on a large piece of calico. *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, &c. 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 Nation.* I was fifteen yards at the rear of the platform. I heard almost all the speakers with distinctness; at times I saw them. Mr. O'Connell, Mr. Steele, and several persons whom I did not know. The Chairman, a gentleman called Count Nugent, said: "The Irish will get all they want if they attend to their friends. Ireland will be able to right herself. It is the duty of every Irishman to rally round the standard of Repeal." Priest O'Beirne spoke next, he said: "This is not a time to give a silent vote. Every Irishman should rally round the standard of Repeal. The loyalty of Ireland is not the loyalty of expediency. Ireland will again be raised to the dignity of a nation, and will cease to be legislated for by those who are ignorant of her condition, and hostile to her prosperity." He then inquired: "Have you a voice in the Legislature?" There were several cries of "No, no." At the termination of his speech, he called for three cheers for the Queen, and three hearty cheers for the Repeal of the Union. Mr. Carberry said: "They ought to join to crush England, and the year will close with a Parliament in College-green. The Liberator's promise will be faithfully fulfilled—we will have a Legislature for ourselves, which will make the people happy and contented." I do not know the name of the next speaker, but he said: "O'Connell might be offered the highest office in the Government, but he does not deserve your esteem if he deserts the cause of Repeal." The Rev. Mr. Gavin spoke next. Dr. Higgins spoke next; but I have no note of his speech. Mr. O'Connell said: "I can tell you our's is no vain cause. Let there be no Ribbon society in the county. Take no illegal oath. We are peaceable. Let them but attack us, and then ——" He made a pause, and continued: "We will stand to our defence. Let Peel and Wellington give us an Act of Parliament; we will find a way to drive a coach and six through it."

Sergeant *Warren*.—Was the speech spoken throughout with the same tone of voice? Yes, except the pause. It was made in a way that I cannot describe, but the people seemed to understand it. Mr. O'Connell continued: "I will tell you what they will do. They will take the commission of the peace from your supporters. But an Irish parliament will some of these days enable me to punish them in an exemplary manner." He said that the temporalities of the Church ought not to be allocated to the Church of the minority. "It is preposterous for one man to ask another to pay for his education. I will tell you what Repeal will do for you; you will get

“fixity of tenure. I will explain to you what that is. It will prevent you from having a landlord, who will not give you a twenty-one years’ lease; [a voice from the crowd, ‘hurrah!’] I would give the landlord his right, but I would make him perform his duty. I will tell you what the Union has done for us. It has carried away nine millions from the country, which might otherwise have been spent in it. We will not continue under the domination of the Saxons and oppressors who have ground us to dust, but ——” He made a pause, and continued: “We were never conquered. Ireland must be for the Irish. You are too good not to have the majesty of a nation. Go home now quietly and tell your friends of this day’s news, and when I want you again, I will let you know the day.” Mr. Steele announced to the multitude, that he had several hundred of copies of an address by the Liberator to the people, in relation to some measure of Sir Robert Peel’s, for distribution. I did not see him distribute any.

*Cross-examined by Mr. FITZGIBBON.*

I never saw Priest O’Beirne before that day. I do not know him. I was standing about fifteen yards in the rear of the platform. I had a difficulty in taking down what was said, for the backs of the speakers were turned towards me. I wrote these papers the same day. I had a window-stool in a house to write on. I was sent to Longford on duty; another head-constable, Maguire, was with me. We were to observe the meeting, and to take notes of what we considered material. Mr. O’Connell made a significant pause, intended to convey something not expressed. I was behind him when he made the pause.

Will you turn your back to the jury, and show what sort of a pause Mr. O’Connell made? I do not think I could give it the same expression that Mr. O’Connell did. I cannot recollect whether I saw his face when he was making the pause. The pause may have been three, or four, or five seconds, it was not a minute. He made another pause of that kind.

What was Mr. O’Connell saying when he made the pause? He said, “will you submit to be ground to the dust, but ——” and he made the pause. “We were never conquered.” That is the best imitation I can give of the pause.

Mr. *Fitzgibbon*.—I fear we are putting you in a false position in asking you to imitate Mr. O’Connell.

I arrived in Longford on the night of the 27th. There were no riots there. I saw no breach of the peace, nor a tendency to it, but the people came in in a most disorderly manner, leaping, and shouting, and brandishing their sticks. As they were coming in the people were in a sweating rage of excitement. Mr. O’Connell had not addressed them. They were led in in that state by persons whom I believe to be priests.

Did you see any of the priests with sticks? They may have had them; my recollection does not enable me to state that they had.

Are you able to swear whether they had or not? I saw several



men on horseback who were dressed as priests, but I cannot say whether they had sticks; they may have had them.

Did you know them to be priests? Except from the style of their dress, I did not know them to be priests.

Did you see any man give offence to another that day? I believe I did not. I saw persons pulling others down from the platform. A momentary anger may have arisen.

Did you see it? I will not swear that I did.

Did you not tell me a moment ago that you did? I might have seen it, but I will not swear that I did.

Was there even momentary anger? There might have been without my noticing it.

Did you see any? I will not swear that I did. I saw no breach of the peace. The people appeared of one temper, with regard to the advice of Mr. O'Connell, and obedient to him.

At what hour did you see the leaping and brandishing of sticks? The people came in from ten o'clock until two.

Did all the bodies shout and brandish their sticks? They did not.

Where were the police? I should say they dare not show their faces. I was in plain clothes. Two of us came from Sligo. There may have been shouting at several parts of the town, about the centre of the street. I was in Needham's house. He is a person in business. I believe he is a chandler. I cannot say in what street he lives. I observed the shouting and whirling of sticks several times. From ten until two, occasionally, there was such a display of the mob as they entered. Those displays took place often. There were no policemen in the street of Longford from about eight till ten. I may have seen policemen in the evening. It was loud shouting. Every person there should have heard it, if he had the use of his ears.

*Re-examined by* SERGEANT WARREN.

I do not know whether the police were in their barracks or about the town.

You have been asked about Mr. O'Connell's pause; did you ever hear of cats' paws? Yes, I have heard of people being made cats' paws of.

Mr. Fitzgibbon.—It was observed the other day by the *Solicitor General*, that a certain observation had been made by one of Her Majesty's Counsel; now, that is an observation made by one of Her Majesty's Sergeants, arising out of my cross-examination.

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TUESDAY, JANUARY 23RD.

Mr. JUSTICE BURTON was still absent from indisposition.

JOHN MAGUIRE *sworn, and examined by* MR. BENNETT.

I am Head Constable of Police. I was stationed in Sligo in May last. I was at Longford on the 2nd of May. It was on Monday. I

saw the people coming in between nine and ten o'clock. There were bands of music parading the streets. They had military caps with red tassels and gold bands. Another band was preceded by a drum-major with a large stick. The people followed the bands. I calculated there were between forty and fifty thousand assembled. Different parties came in in military order, led on by a person whom I believe to be a Roman Catholic priest. They came in a kind of rank and file. There were several on horseback. They came in with Mr. O'Connell. He was accompanied by about one hundred horsemen. Mr. O'Connell came in on the front box of a carriage. It was a close carriage. There was another gentleman sitting with him on the box, who I understood to be Bishop Higgins. Mr. Steele was in the carriage. Another person was in the carriage, who appeared to be a clerical gentleman. Mr. O'Connell arrived about two o'clock, preceded by three or four bands. The houses in the town were decorated with green boughs, and some of the parties had boughs. Some of them had sticks, and brandished them when they came near the platform. The meeting terminated between three and four o'clock. I was near the platform, it was very large, and there were numbers of people on it. I saw none of the traversers except Mr. O'Connell and Mr. Steele. I took notes of the mottoes and banners. I allowed the other constable, Johnson, to take notes of the proceedings. 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: *A Population of Nine Millions is too great to be dragged at the Tail of any Nation*. This was fastened to the wall on white calico on the Dublin road. I saw it there after Mr. O'Connell passed. "*He that commits a Crime gives Strength to the Enemy*," was another motto. I am sure the word "enemy" was there. *Repeal and no Separation*, was another. *Cead mille failtha* was another. I heard Mr. O'Connell speak. He said, "Their's was no vain cause." I do not recollect having heard any allusion made by him to trials by jury, or the administration of justice in the country. He said, "They will take the commission of the peace from your respected supporters." I recollect the last sentence in the speech perfectly—to go home quietly, to tell their friends what they saw there, and that when he wanted them again they would come. Mr. Steele then came forward. I saw people brandishing sticks as they came in. After Mr. O'Connell made his speech I saw the brandishing of sticks. After the meeting was over they all dispersed. I do not know where the bands came from.

To the LORD CHIEF JUSTICE.—I suppose there were 40,000 or 50,000. but it is impossible to form an accurate estimate.

*Cross-examined by MR. HATCHELL.*

I am in the constabulary, and a first 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.

I am a first Head Constable, and the next step is Sub-Inspector. 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? No, nor do I belong to any other party.

Do you not belong to a *party* of police? Yes.

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,

“Othello's occupation 's gone.”

And Mr. Head Constable Maguire had nothing at all to do; is not that so? I did not go there to preserve the peace at all.

Did you not, 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. 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? Yes, something after that fashion.

You said the people were brandishing their sticks? Yes, they were.

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 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? No.

Did they come to the post? No.

Did they present arms when the general came up? No.

Did they charge? No.

They did not? No.

And yet they came in military array. Wonderful Captain Maguire. 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, 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? There might be some of them lame, and in that sense they might halt.

Where did they halt? Near the platform.

That was when they could go no further? Yes.

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.

Oh! they wanted rest, and then they stood at ease. Just so.

They marched and halted, and stood at ease, because they were tired? Yes.

Do you know any thing 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.

And let your right leg follow it? Yes, that is it.

Well, now, were the people coming in military array, with their left legs foremost? I do not know which of their legs were foremost.

Did you see them all march? I do not know.

Did you ever hear "Come, brave boys, we're on for marching?" Can you explain the difference between the right and left legs? Not exactly.

Which of your legs is foremost now? I cannot say.

Mr. *Hatchell*.—Come, Captain Maguire—General, I think, I ought to call you, did you ever read Dundas on Manœuvring? Yes, a little.

What part of it? I cannot say.

Then, you have forgotten your lesson? So it appears.

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 Dundas tactics. 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 all march two deep, but some of them did.

How many of them did so? Some more and some less?

Were they short or long? I do not know.

Well, take the largest party and say how many came two deep?

Mr. Hatchell.—Well?

Witness.—Well, Sir.

Mr. Hatchell.—I say ill, Sir; go on.

Well, go on? The largest number of a party might exceed one hundred.

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 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. I mean after he came into town.

Did they 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.

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.

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.

JOHN JOLLY *examined by* MR. BREWSTER.

I am Head Constable of Constabulary. I am stationed in the East Riding of Cork. I remember a meeting at Mallow, on the 11th of June, 1843. It was on Sunday. I was there. I went to Mallow in uniform, but changed to plain clothes before the meeting took place. It commenced about three o'clock. Before it commenced I saw a procession pass through Mallow in the direction in which I was told Mr. O'Connell would come. I cannot tell what road it was, for I was a stranger there. The procession was very numerous. There were several bands, and persons on horseback. They marched in regular order, with bands and banners; the bands playing and banners flying. Some had cards in their button-holes, more had papers on their hats with "O'Connell's Police" printed on them. They marched four or six abreast, in column. The horsemen went much in the same way, apparently in regular order. I saw persons taking more particular command than others. Those men were outside the ranks, and gave directions to the column. Some of the men on horseback, who took commands, had wands with ribbons on the ends. It was late in the evening when the procession returned. I saw Mr. O'Connell and Mr. Steele with them. I do not remember ever seeing such a crowd before. I think there were hundreds of thousands of persons there. I saw Mr. O'Connell and Mr. Steele on the platform. It was near the shambles in Mallow. There was a large open space. It was nearly full. I was about ten yards from the platform. I took no notes. I heard part of Mr. O'Connell's speech. I can state the substance of part of it. When I got to the platform I was told they were occupied in reading an Address. I heard him say, he had come there to tell them a secret, and he thought there was enough of them there to keep it. That the Union should be repealed in some time, which I do not recollect. He mentioned the time, but I did not hear it. 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, 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. He said a friend of his in Kilkenny told him he would not call his

pig "Sugden;" and as for the Lord Lieutenant, he was so ignorant that he heard he sent a commissioner to see was Kilkenny a seaport. 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." He said, "If we are attacked we will defend ourselves." 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, no, not members of parliament, but lords. 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. At the word "armed" he made a pause. The meeting lasted two hours. Before Mr. O'Connell arrived there was a person on the platform who pointed to a person in the crowd to leave that; he addressed the people about him to cut the reins and drive him away, for he was an enemy. I cannot say whether the person referred to was on horseback, from the position I occupied.

*Cross-examined by Mr. WHITESIDE.*

Are you acquainted with Mr. Johnston? I have seen 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 he not 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 cannot say exactly. The procession was going through the town at the time.

Do you swear the full procession was going through? I saw 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 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 do not 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? 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 *timperance*? 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 I prefer the former.

Why, you know in either case they are prosecuted, *quacunque via*, as we lawyers say. 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 you not 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? That is for the Inspector-General.

Well, the Inspector-General is a reasonable man, and do not you think it reasonable that a useful active man like you should be promoted? It is reasonable.

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? You will be a lord yourself, Lord Ballincollig? He said so.

Tell me now which is all this, treason, conspiracy, sedition, or flat burglary? 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 create 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.

Now did you not say you never joked when on your oath? That is really no joke, Sir.

You were not much pressed on that day? Indeed I was by the crowd.

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 amongst them? Neither.

Did you dine comfortably that day, and had you a good bed? It was pretty hard.

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? I was sent here.

*Re-examined by MR. BREWSTER.*

Mr. Anderson, during the day, was for a while in Barrack-square. He was not in the crowd. He was in the Court-house. I do not think he could conveniently hear what was going on.

*HENRY GODFREY sworn, and examined by MR. FREEMAN.*

I am in the Constabulary. I am a Constable. I was stationed at Donard, six miles from Baltinglass. On the 6th of August, I was ordered into Baltinglass. I came there the evening before. I saw great numbers in the town between twelve and one o'clock. I saw them coming in waggons from Rathvilly. At that time I saw one band. I knew the Rev. Mr. Nolan at that time. The band was in a waggon. There were great numbers. I saw several banners, but I do not recollect the inscriptions on them. I took no note of them. This was in the town of Baltinglass. The meeting was held near the town. I heard Mr. Nolan desire numbers of people to go to meet Mr. O'Connell. I heard a man saying, that "the shouts were frightening the pigeons." "Yes, and the Protestants too," said another. This was before Mr. Nolan. The waggon had gone over the bridge in the direction to meet Mr. O'Connell. I heard no other persons say it in the crowd. I cannot say when the band went to meet Mr. O'Connell. I was dressed much as I am dressed now, in

plain clothes. I cannot say what time I heard the expression, but I think it was between twelve and one. I met Mr. O'Connell on the road coming in, nearly about one o'clock. I heard a man say that this was the day that would frighten Saunders. I know Mr. Robert Saunders, he lives at Saunders-Grove, a little more than two English miles from Baltinglass. This was just before Mr. O'Connell came up. I made a memorandum the very day, just after the meeting. I do not recollect any other expression. I attended the place of meeting. I saw Mr. O'Connell, Mr. Lawlor, the Rev. Mr. Nolan, Mr. O'Farrell, the Roman Catholic Curate from Dunlavin, about eight miles off. I saw Mr. Copeland. He was Chairman. He lives at Dunlavin. That is about seven Irish miles from Baltinglass. I saw the two young Metcalfes, from the Park. I saw a man who was named to me as Mr. Steele. He is here. I saw young Mr. O'Connell there. Mr. O'Connell spoke; he said: "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; I heard him say something about Lord Wicklow; I heard him call Mr. Fenton a "bog-trotting agent;" I do not recollect that I heard him say any thing more. I heard Mr. O'Connell say that they would get the Repeal; that they would not be refused, as they were all sober and determined men. I saw the Rev. Mr. Lawless there. He said he should have Repeal. He talked of having met some clergymen in travelling to Dublin, and that he would leave them the tithes during their natural lives. I cannot say how many were at the meeting. I was not alone. There was another man with me. The pressure was very great.

*Cross-examined by MR. FITZGIBBON.*

I have been back and forward to Baltinglass ten or eleven years. I am known there. I have been a policeman twelve years. I was always at Baltinglass in my uniform. I saw many that I knew in the crowd that day. Some near me, and some not. I was not insulted nor molested, nor even any expression used hurtful to my feelings. There was no attempt to remove me from the crowd. I might have got up to the platform. Mr. Nolan was near me. The person who made the reply that the meeting would frighten the Protestants, was near me. I saw him. I was within a yard of him. I did nothing. I looked at him. I would not know him. He appeared to be a countryman. He was in a frieze coat. I did not know the man who spoke about frightening the pigeons. I cannot name any man who heard that expression. I endeavoured to avoid the notice and the eyes of those that knew me. Any place that I saw them, I would slip off to some other part of the crowd. I had no trouble to do that. I found a place where none knew me, in front of the platform, sometimes twenty, and sometimes ten yards from it, in different parts of the crowd. When I heard the expression, "This is the day that will frighten Saunders," I was beyond

Hughes' hotel on the Dublin road. There was nobody I knew near me then. I cannot say whether any other person heard the expression. I was near the man that said it. I do not know him. I did not ask him his name. I did not think it was my duty. I took a note of the expression between the time I heard it, and the termination of the meeting. I did it on the side of the road.

Show me your note? I have not it here.

Did you not, awhile ago, look at your note, and pretend to read it from your book? I did, and I have it here [handing a paper to counsel].

Mr. *Fitzgibbon*.—Did you not awhile 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 any thing 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 burned.

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.

Repeat the expression again respecting Saunders. I will: it was, "This is the day that will frighten Saunders."

That 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 burned. I took notes that I did not mention in my report.

Does the book in your hand correspond with the report which you furnished? It is nearly the same as my report, but I cannot say it is exactly the same.

Mr. *Freeman*.—If Mr. *Fitzgibbon* intends to cross-examine the Witness, with respect to the document, it should first be placed in his hands. That is the fixed rule of law.

Mr. *Fitzgibbon*.—Mr. *Freeman* has misunderstood my question. I merely asked if the report which he delivered is the same as that which he had in his book. I did not ask him anything about the contents of the report.

The *Attorney General*.—There is no misunderstanding of Mr. *Fitzgibbon's* question; and I submit that question is illegal. The point was decided in the Queen's case, that a witness could not be examined as to the contents of a paper, without having it put into his hands. The question put by Mr. *Fitzgibbon* was: "does the book in



your hand correspond with the report which you furnished?" surely that is tantamount to an inquiry as to the contents of the paper.

MR. JUSTICE CRAMPTON.—You had better put the question again, Mr. Fitzgibbon.

Mr. *Fitzgibbon*.—Did you copy your report from the book in your hand? In the first instance I made out my report from the notes which I took on the day of the 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 do not know what has become of it. I dare say it is at home. I am sure I do not 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? No, there is nothing about it here.

Mr. *Fitzgibbon*.—Why, Sir, you do not think it worth your while to look through your notes for it? 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! Passin gstrange 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 do not know.

HENRY TWISS *sworn, and examined by* MR. MARTLEY.

I am a Sub-Constable, and was so in the month of August last; I was stationed at that time at Redcross in the county of 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 estimat-

ing 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 do not 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 shewn 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. MACDONAGH.*

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 cannot 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 peaceably? It did.

*PATRICK LENEHAN sworn, and 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 Lawlor 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; 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*.—I submit that the effect produced by the meeting is evidence.

The LORD 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*.—Do your Lordships consider the traversers ought to be affected by expressions that any individuals think fit to use after the meeting has separated. See how dangerous the effect of such a line of examination might be. Your Lordships have lately ruled, that if persons in coming to a meeting conduct themselves in a particular way, and thereby give a character to the meeting, that would be admissible; but it would be going a very dangerous length to allow the traversers to be 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*.—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 giving by his presence his sanction to the proceedings. But suppose everything to have been fair, legal, and tranquil at a meeting, and when it separates, his connexion with it ceases, when it is 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 character, property, liberty, or perhaps in 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.

Mr. *Tomb*.—I respectfully submit that this is a proper question to be asked, and that the evidence as to what the Witness heard the people say on the bridge is admissible, on the grounds that it tends to shew what the nature of the meeting was, and the effect likely to be produced by the language used. The people who used the ex-

pressions sworn to by the witness, appear to have been part of the crowd that met at that meeting and listened to what was said.

Mr. JUSTICE CRAMPTON.—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 evidence of the witness is admissible, inasmuch as it characterizes that meeting. I am not aware that there is 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. *Moore.*—In the absence of authority, the Court must look to the principles of common sense and common justice. Is every individual who has attended a meeting to be made responsible for every thing which may be said, an hour after the meeting, by persons who may act illegally or make use of illegal expressions? That is inconsistent alike with common sense and with common justice.

The *Attorney-General.*—My Lords, I conceive that it is inconsistent neither with common sense nor with common justice to receive this evidence. On the contrary, it would be inconsistent with common sense and common justice not to make the parties accountable for what was said and done after the meeting. In the case of *Redford v. Birly* the expressions used by persons going to the meeting were admitted by Mr. Justice Holroyd, and his decision was affirmed by the Court of King's Bench, on a motion for a new trial, as showing the character of the meeting. In that case, on the part of the defendant, it was proposed to examine a Mr. Andrews, who stated that he resided within two miles of Manchester, on the road from Manchester to Whitecross. The counsel for the defendant were proceeding to examine him as to the fact of his having seen bodies of men in the night of the 14th of August marching along the road near his house, and as to expressions used by them. It was objected that those facts were not admissible in evidence, unless it was shown that the plaintiff was one of the party. Mr. Justice Holroyd said that he was clearly of opinion that the evidence proposed was admissible as to part of the facts in issue. One of the issues was, whether a certain unlawful, wicked, and seditious conspiracy had not been entered into, to excite discontent and disaffection in the minds of the people, and hatred and contempt of the Government and constitution, &c., therefore the transactions which occurred in Manchester and the neighbourhood were clearly admissible evidence, which he was bound to hear when adduced for the purpose of proving that such a conspiracy did exist. What was said by a person leaving a meeting shows the character of it, just as much as what was said going to a meeting. We have in evidence the remarkable expression of Mr. O'Connell, "If I want you won't you come again?" We have also in evidence the language used by persons who attended the meeting, that they were ready to turn out to a man and fight for Repeal if neces-



sary. The question for the jury is, how was that language understood? Common sense shows that the best way of proving that, is by the expressions of parties leaving the meeting, rather than by the expressions which were used before the meeting. At the time this conversation took place the meeting was not over: the people were dispersing. It is, therefore, part of the *res gestæ* at the meeting. In *Regina v. Dammanie*, 15 Howell's St. Tr., 553, evidence of the expressions used by the mob who accompanied Dr. Sacheverell to the Temple was admitted. Nothing can be more important to show how the people understood the language of the speakers than the conversation of persons leaving the meeting. Suppose some of the parties had pulled down Mr. Saunders's house as they were returning from the meeting, that might be given in evidence against every one who took part in the meeting, and they would be responsible for it.

Mr. *Whiteside*.—The case cited by the Attorney General makes for us. In that case, expressions of the mob who accompanied Dr. Sacheverell to the Temple were admitted; but it is not stated that those expressions were used after the meeting. Here are two men who are nearly half a mile from the place, after the meeting took place. If that can be given in evidence, the acts of the parties the next day may be admitted. In Lord *George Gordon's case*, the expressions were used by the mob, when they were pulling down a house.

The *Attorney General*.—In page 553, you will find that it was the mob who accompanied Dr. Sacheverell home to the Temple, who used the expressions; that must have been after the meeting. We rely on this evidence as part of the *res gestæ*.

Mr. JUSTICE CRAMPTON.—The evidence in *Daniel Dammanie's case* was, that the mob accompanied Dr. Sacheverell to the Temple, but it does not say that they did so after the meeting. That is a very important fact.

Mr. JUSTICE PERRIN.—It would be a very different thing if the shouts were made by the whole body, but this is a conversation between two men who were apparently connected with the meeting.

The LORD CHIEF JUSTICE.—Let it be ascertained whether these persons were at the meeting.

Mr. *Tomb*.—Where were the men? On the bridge when I came up. I cannot swear that they formed a portion of the people who were at the meeting.

The LORD CHIEF JUSTICE.—The Crown must withdraw the evidence; and if the Jury have taken a note of it, they must strike it out.

*Cross-examined by Mr. MOORE.*

I came from Holywood, 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. I 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.

*Re-examined by Mr. TOMB.*

Captain Drought was very unwell that day, and could not attend the meeting.

*MANUS HUGHES sworn, and examined by Mr. HOLMES.*

I am in the Police, acting as Constable. I was stationed in August within twenty-one miles of Baltinglass; I was at Baltinglass on the 6th August last; there was a great assemblage of people there on that day. I think I know Mr. O'Connell. He was pointed out to me at the meeting. I never saw him before. I went to Baltinglass the day before the meeting. I went to the meeting in plain clothes; people were coming into the town all the morning. I saw Mr. O'Connell about two o'clock; he came in by the turnpike-road, the Dublin one; there were a great many people with him; when I saw him it was when he was coming near the platform. I did not see him until he was near the platform. I heard people speak of Mr. Saunders, before Mr. O'Connell came in. I took notes of what passed that day. I wrote them out next morning. I will swear to their correctness. I 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. I heard them say nothing more, except that Mr. O'Connell ordered 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.*

I came from Tara the night before. I cannot tell the time that the people began to come in. I had no work to do in my capacity of a policeman. There was no breach of the peace that I saw, or even the appearance of it. I heard one person say, when Mr. O'Connell called to have three cheers for Mr. Saunders, that he ought to be attacked. I was then upon the platform. The crowd was very thick. There was not any other policeman there with me. I had an Inspector there that day, but he was not at the meeting. There was a superior in rank to me there, Constable Godfrey, and one other constable. I am not certain whether Mr. Hawkshaw was there that day. I was speaking to him one part of it. When Mr. O'Connell said there should be a cheer for Mr. Saunders, the people

said he should be attacked. After the meeting was over, the people went away peaceable.

*Re-examined by MR. HOLMES.*

I saw Mr. Hawkshaw in the town but not at the meeting.

JOHN TAYLOR *sworn, and 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, about a couple of thousand; I was sometimes within about nine or ten yards of the platform; I saw a gentleman who was called Mr. O'Connell there; 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 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. I heard nothing else from any of the crowd assembled there. I heard another gentleman speak, whom I heard the people call Mr. O'Reilly; he spoke of the villanous 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 memory 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.

*A Juror.*—Repeat what Mr. O'Reilly said in his speech respecting the emigration of the people by the villanous Government. 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, and was stationed in August last in Drummartin station, in the county of Monaghan. I know a place called Clontibret, and was there on the 15th of August last. There was a meeting held there on that day. It was a large meeting. I did not

see the entire of the persons present, as I made it a point to attend to the speakers. I can tell some parts of a few of the speeches. I took a few notes. I took them on that day [day of meeting]. I can speak from memory of the Rev. Mr. Tierney's speech. He spoke very briefly. A gentleman followed him who was called Counsellor M'Mahon. Next Mr. O'Neill Daunt. I forgot to mention that the Chairman was speaking when I went on the platform. Captain Seaver was the Chairman. A Mr. Jackson spoke also at the meeting, and a Mr. Conway, the Editor of the *Newry Examiner*. I took short notes of what the Rev. Mr. Tierney said. He said the Union was carried by every species of fraud and corruption. In consequence of the crushing I got, I could not write any more of what he said. I recollect seeing the Rev. Mr. Tierney some time before the meeting took place. I saw him convenient to his own house. He lives in the townlands of Slisnaganchin. I had a conversation with him about the meeting. I was instructed to inquire of Mr. Tierney, in consequence of the many reports, when the meeting would take place. I went to ask him if he would have the kindness to let me know when the meeting would take place. As nearly as I can recollect, when I went to him, the conversation was this. He said, the day was not yet fixed; that it depended upon the convenience of some barristers, to whom he had written, to attend. He adverted to the Union; and he repeated that it had been fraudulently carried. He said it was not binding; he represented it to be a nullity and a concoction; that it was not binding upon conscience. He said that the feeling towards Repeal was becoming general; that it had extended itself to the army; that the army were favourable to repeal, and partook of the enthusiasm of the people; and that they could not be so easily led to spill the blood of their fellow-men by the bayonet, for seeking redress of their grievances peaceably. I remember him speaking as to what the army had done in Spain. That was on the 16th of June.

Mr. *Moore*.—I object to the Witness being examined as to a private conversation occurring so long before the meeting. We came here prepared to meet certain overt acts stated in the indictment. One of those overt acts is the meeting of the 15th of August, but we are 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 is at liberty to give evidence of a conversation occurring two months before the meeting, it might go back ten years before it; I do not know anything that would make any difference with regard to time. It is hard to be prepared to repel anything this witness said, not being apprised that such evidence was to be given.

The LORD CHIEF JUSTICE.—The conversation is 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 has some reference to the part Mr. Tierney took at Clontibret, which is 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 attaining 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.*

I am stationed in the parish of Clontibret. I have been quartered there since 1841. Mr. Tierney is the Roman Catholic clergyman of the parish. I cannot say how long he has been so. There was not any person with me when I had the conversation with Mr. Tierney on the 16th of June. When I first went up to Mr. Tierney he was in conversation with another man, who went 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. They were more than ten yards off. I can write. I was at the meeting in question, and I was dressed in my policeman's clothes. I was on the platform, and I took some notes of what was said. I have them with me. I made a short note in my diary of my conversation with Mr. Tierney, on the 16th of June. I have a copy of it with me. The diary is at the station, in the care of the senior constable. The note is to this effect: "Friday, 16th of June, saw " Priest Tierney on the subject of the Clontibret Repeal meeting, who " said that the period was not fixed as yet, and that it depended on " the convenience of barristers who were to attend, and who would " give the authorities sufficient notice, &c., &c., &c." That is the

whole of what I took down on the subject of the meeting. There is not a word of Mr. Tierney's having spoken about Repeal and Spain in my diary. I have no note of the conversation with regard to Spain and the army. When I understood I was to be examined from Captain Johnston, I took a sort of note of it. That was some time in October. I am not a Roman Catholic. I knew Mr. Tierney before the 16th of June. He knew me to be a policeman. I had on my uniform on the 16th.

Mr. *Moore*.—Has Mr. Tierney ever assisted you in keeping the peace in the parish? If Mr. Tierney wishes me to speak of any assistance he has given me, or if the Court should deem it expedient that I should do so, I will tell you; otherwise I would not wish to reveal what I consider to be a secret.

The CHIEF JUSTICE.—The Court has no objection to your making any statement you please, in reference to what you have been asked.

*Witness*.—He has assisted me, inasmuch as he has sent for me, and given me information in reference to the concealing of a birth, and—

Mr. *Moore*.—We do not want to hear anything about that. Go on, and say in what other way he has assisted you? He also gave me information about another girl deserting her child. There were magistrates at the meeting at Clontibret. I saw Mr. Plunket and Mr. Golden there, but they were not on the platform. There were military and police there, but I do not know who sent them. I do not recollect having heard that they were sent to the meeting at the request or suggestion of Mr. Tierney, but I will not swear that I did not hear it. The meeting was a peaceable one. I saw no violence of any sort at the meeting, but I could not say how long it lasted. I took the note now produced while the meeting was held. It has nothing in it with reference to the resolutions moved, or to any petition read. Captain Seaver was in the chair. Captain Wilcocks, Mr. Plunkett, Mr. Goold, and Mr. Hamilton, the magistrates, were there also.

WILLIAM THOMPSON sworn, and examined by MR. BAKER.

I am a Head Constable of Police. I was stationed at Clontibret last August, and was present at the Repeal meeting. I was on duty, and on the platform. I heard the several speakers distinctly. I was on the platform when Captain Seaver, the Chairman, spoke, and I heard him. I took a note of what he said, but I could not undertake to say what the precise words were. I heard him ask: "Whether they had all got Repeal cards, and if not, they should lose no time in getting them, for he had reason to know that other associations had signs and passwords by which they might know each other, and why should not they?" The Chairman also said, "I know no other better way of your knowing each other, than your getting Repeal cards." The Chairman afterwards desired the meeting to go home quietly, and insult no person. I also heard Mr. O'Neil Daunt speak, and took a note of what he said. He commenced by

saying "I bless God I belong to this land, and to this people. You, the people, should have this land if you are worthy, and who dare say that you are not?" I heard Mr. Daunt also say, "the Repeal 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 tell them we would not—never." I also heard him say in another part of his speech, "Before God we swear they shall not bully us longer. If we had an Irish Parliament once we would have the power to keep it; but we must now stand to our colours, and persevere in the course O'Connell pointed out to us; then in place of six struggles or battles for Repeal, one will do for all."

Did he say anything more? Yes, he said: "Are we not as good as the English?" A voice said, "better." "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 Mr. M'Mahon; he was introduced as 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.*

Were you on the platform? I was when I took part of the notes, but not when I took the whole. I was on the ground when I took the part relating to Mr. O'Neill Daunt. I took Captain Seaver's on the platform. He spoke loud. So did Mr. Daunt. I was in uniform when I was taking the notes. There were but three police there in uniform. There were others at a distance from the platform. I saw no magistrates immediately at the platform; they were at some distance. I was at the end of the platform; it might have been two or three yards from it when I heard Mr. Daunt speak. Struggles, not battles, was the word he used. The meeting was perfectly quiet. It was most peaceable. I was on the platform in uniform. There was no objection to my taking notes there. I spoke to a person who was pushing up, and said: "You will see the account in the newspapers in a day or two," and he replied: "No doubt; but we do not want to see the notes you take of it." All was perfectly quiet and tranquil.

*JAMES WALKER sworn, and examined by MR. NAPIER.*

I am a Sub-Inspector of Constabulary. I am stationed in the neighbourhood of Tara, 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. Captain 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 I did not hear it played. I knew Mr. O'Connell before. I saw Mr. O'Connell there. I did not see any of the other traversers there. I was there nearly an hour before he arrived, and the people were coming to the meeting from various directions. There was a platform erected before Mr. O'Connell arrived. It was down from the church fifty or sixty perches or more. Mr. Despard was there at the time.

*Cross-examined by MR. CLOSE.*

I was for some hours through the crowd that day. Their demeanour was perfectly peaceable. I observed females there. There were many carriages, and a good number of ladies. The bands were temperance bands. For a considerable time before that meeting they dressed in fancy dresses.

*GEORGE DESPARD sworn, and examined by SERGEANT WARREN.*

I was in the constabulary. I am now resident Magistrate in the county of Meath. I recollect the 15th of August; I was in the town of Trim; that morning there was an assemblage of people, who formed in Trim, and marched through the town, in ranks four deep towards Tara, which is about six Irish miles from Trim. There were bands in carriages preceding them. There were persons who had wands who assumed command. I heard some of them say, "keep your ranks"—"keep your step." I went to Tara by a different road. Not the twentieth part of the persons assembled passed through Trim. I knew a man there from Kildare. There were men from Tipperary, Wexford, Dublin, and Westmeath there. One man told me he came from Nenagh, another from Wexford—I knew this only because they told me so. I was at Tara some time before Mr. O'Connell came there. Various parties marched up in procession with bands playing and banners flying, but not perhaps as regularly as they passed through Trim. It would be impossible to form an accurate estimate of the numbers. My own opinion is, that there were 100,000 persons present, at least. Perhaps in saying so, I am under the mark. I calculated there were about 7,000 horsemen. I counted nineteen bands. I did not see any persons on the Hill of Tara assuming the command. Mr. O'Connell's procession came up at two o'clock. When he got on the platform a great many people crowded on it, and I think within an hour and a half, a sudden movement took place, and they all went away in bodies of 20,000, as if there was a pre-concerted plan. They separated about four o'clock, in the ordinary way a crowd would separate. I heard some observations. I was standing on a ditch as Mr. O'Connell came by, when a respectable, well-dressed man turned to me and said: "It is not gen-



lemen O'Connell wants here to-day." I turned and looked at him, and asked what he wanted? he said, "he wants men with bone and sinew, that will be able to do the work when it comes." Mr. Walker, the Sub-Inspector, and Major Westenra, were standing near me. I said: "I suppose men like those frieze-coated fellows there." Just so, said he. May I ask you, said I, where you came from? I came from the barony of Shilmalier, in the county of Wexford. I said, "pray, did many come with you?" "Yes," said he, "two thousand came from Wexford, and three thousand joined us in Kildare." When Mr. O'Connell's procession had passed by, he said: "you did not take off your hat to Mr. O'Connell; you do not belong to our party." "Certainly not," said I. He said, "I knew by the curl of your lip you did not." I said; "I am very glad to hear that your eyes told you so much truth, I am only amusing myself; I do not belong to any party." He said: "Oh! no matter, we will let you come on the field, for all that." A countryman then came up, and said to him: "you do not know that gentleman; you had better leave him alone." They said, when they saw Major Westenra, "Long life to the *furriner*." I think they mistook Major Westenra for a foreigner, on account of his moustache. "We can't get Repeal without them; long life to Leather Roland." I afterwards found out, it was Mr. Ledru Rollin they meant.

*Cross-examined by Mr. HATCHELL.*

I do not reside in Trim, I slept there the night before; I was desired to attend there; it is my duty to attend all public meetings of the kind; I saw the people move from Trim; I went to the head of the town to make a calculation; I have been twenty years stationed in that district; I generally attend fairs, petty sessions, quarter sessions; I am well known both by men, women, and children; I am sure they all know me except those who came from Westmeath; I went to the end of the town, and I jumped on a wall and stood there; they did not give me a cheer; I am afraid they did not think me their general; they saw me perfectly well; the band preceded them; I reside in the county; Rathline is the nearest village to me; the Trim band is the nearest band; it was dressed in a new uniform before that; I saw them on the Patrick's day before; I saw the uniform made up in the tailor's shop where I happened to go on some business; I never saw them in that uniform before; I heard a man say, "keep the step," and another, "keep the ranks;" they did not keep the step, and I do not think they knew how to do it; I went from that to Dunsany and from that to Tara; I walked over to the hill; I heard there were twenty-one bands there; Mr. Walker was there in coloured clothes; He came up with me from Trim; there was no policeman in uniform there; Major Westenra was with me the whole time; he came from Trim for curiosity; I have seen the Hon. and Rev. Mr. Taylor; I did not see him there; there were many respectable looking carriages; there were several ladies; Major Westenra is not here, that I know of; he left the meeting

with me ; I never saw him since ; I never heard he was dead, and I therefore suppose he is alive.

Mr. *Hatchell*.—Was not the Shilmalier man humbugging you when he asked you if you would not take off your hat for Mr. O'Connell? I do not know, I told him I would not take off my hat.

Then you are not particularly fond of Mr. O'Connell? I have nothing to do with Mr. O'Connell.

Now I will ask you a serious question, and I do not care how you answer it, are you a Repealer? I will answer you as seriously, I am not.

I never heard the name of the Wexford man. I do not know whether he was humbugging me or not, but if he was he met with the wrong man to humbug. I was surprised when he told me about the 2000 men coming from Shilmalier. I did not ask his name. I never was in Shilmalier. I do not know the population of it, nor did I look for the population of it. I suppose it is forty miles from Tara. I did not know it was upwards of thirty miles. I cannot tell the distance. He did not say he came through Dublin, but he said he came through Kildare. He did not tell where the 2000 men slept. I do not know whether he spoke the truth. Very likely he did not. I have only his word for it. I believed it at the time, and I have no doubt that he brought a large body with him. Mr. Walker was close to me. Neither I nor Major Westenra grew pale when we heard it. The man spoke loud. He was near me on the ditch, and he did not make a secret of it. Mr. O'Connell was still speaking when the crowd began to go. There were two platforms. I do not know whether one of them was appropriated to the ladies. My attention was not particularly drawn to that. There was no appearance of any disturbance, nor tendency to it. The people were walking and talking, and amusing themselves. I got on the ditch to see Mr. O'Connell. I did not look out for the Shilmalier boys. This interview took place as Mr. O'Connell's procession was coming up. It was nearly one o'clock. I made a report of these proceedings. Mr. Walker was near me, and must have heard what took place. I did not understand that any Chartists were present. I saw in a paper that Chartists had been sent there to create disturbance. I did not hear Mr. O'Connell or his friends denounce Chartists at the meeting. I heard I was denounced myself, and I saw it in a paper. I was very glad to get rid of the man, and I did not get him watched. The ditch where I stood was very far from the platform; several hundred yards from it. It might have been a quarter of an English mile. I know that the men in different counties wear different friezes. I saw Meath, Westmeath, Kildare, and Cavan frieze there. The county Meath people know me very well. A number of people were there who knew me. Mr. Walker was on my right, and the man was on my left hand. There were no persons whom I knew there.

JOHN ROBINSON, *sworn, and examined by* MR. BENNETT.

I am a Coustable. I was at a meeting at Clifden. On Sunday, the 15th of September; it is in Connemara. I think at least between 4,000 and 5,000 were there. I saw persons passing the barrack going

to the meeting. The barrack was a hundred yards from the place of meeting, which was on a flat field. There was elevated land near it. I first saw the Rev. Mr. M'Namara, Roman Catholic curate, mounted on horseback, and a hundred persons behind him. They moved about four or five abreast. To the best of my recollection, I saw Repeal cards in their hats; I saw them quite convenient to me. I heard people telling they were the Ballinakill Repeal cavalry. At the lowest calculation there were a hundred horsemen. There were a good many on foot. I saw Mr. Murray, a pawnbroker from Galway, there. He was in a gig, dressed in a green frock, made of calico or silk, and a large scarf of the same colour embroidered with gold. He wore a very large Repeal card. He had a green ribbon round his hat, which was a straw hat. About a hundred or more mounted, and three hundred or four hundred on foot, were following him. The footmen did not walk in order at this time. When the procession was going to the platform, they were walking in better order. They walked abreast, and more regularly. Those following Mr. Murray had Repeal cards in their hats. Murray's card was three times as large as the others. To the best of my recollection, there was a shamrock on it. It was green. I saw several parties of horsemen besides those, but I cannot tell who they were headed by. They groaned, and shouted for Repeal as they passed the barrack. I think there were 1000 mounted men there. Mr. M'Namara belongs to Ballinakill parish. I did not hear Mr. O'Connell speak that day. I saw him in a carriage, Mr. Steele at the back of the carriage, and as the people shouted, Mr. O'Connell waved his cap. He was in front of the carriage, and Mr. Steele was in it.

*Cross-examined by MR. FITZGIBBON.*

I spoke of Thomas Murray, I know him well. He is a respectable man, and is considered wealthy. They were all Connemara horses the people rode, who followed Murray. Some of them carried double. Two men, and sometime a man and woman on others. Some of them had saddles or pillions. They were all Connemara people. They were all very quiet. I did not leave the door of the barracks. It was open. The police were walking in and out. Captain Ireland was in barrack, but did not keep to the barrack. His own house was between the place of meeting and the barrack. There were a great many women, children, and *gorsoons*, and a vast number of bare-footed people there. It was a countryman who told about the Ballinakill cavalry. I did not know him. He was in a kind of a trot. They had no carbines nor weapons. He was walking. They had bridles. They had no bits. They had no carbines nor weapons of any description. I did not remark that any of them had *suggawns* I saw saddles made of sedge. Those that were after those with Mr. M'Namara had all leather saddles.

*Re-examined by MR. BENNETT.*

All those who were with Mr. M'Namara had saddles. There were some with Mr. Murray who had saddles.

WEDNESDAY, JANUARY 24TH.

Mr. Justice Burton was absent from indisposition.

JAMES HEALY examined by the ATTORNEY-GENERAL.

I am a Sub-Constable in the Constabulary. I was at the meeting at Mullaghmast, which took place on the 1st of October. I went to the meeting early that day. I remained there during the day and part of the night. I am stationed at Cork, and I went from Cork there. I think there were about 250,000 at that meeting. I was on the central part of the field, and I was along the road when the procession was coming up. The crowd which came before Mr. O'Connell came up in a very boisterous manner; shouting, screeching, and driving all before them. Those that came with him were very regular. Those that were hurraing and screeching arrived, I think, from Carlow and Kilkenny at an earlier hour than Mr. O'Connell. The people came from all directions. The principal part came through "the long avenue." I saw a number of bands; I think about thirty. Some were dressed in uniform resembling the hussars and lancers. I saw several documents circulated amongst the people. I saw the document now handed to me. This document was purchased by another person. I bought a similar one myself. The price, I believe, is only a halfpenny, but I paid a penny for it. I should think several thousands of these were purchased by the crowd. I heard nothing said when they were purchased. I tore up the one I bought myself. A Sub-Inspector of Police purchased the other. His name is John Donovan. I think the several thousand documents, of which I spoke, were the same as that which I bought. There were persons disposing of the documents from an early hour in the morning till nightfall. I saw Mr. O'Connell and Mr. Steele at the meeting. They arrived, I think, between two and three o'clock. I saw a great many persons with labels upon their hats, bearing the inscription "O'Connell's police." They had pieces of timber in their hands, five or six feet long. They were quite small, like wands. I saw flags and banners at the meeting. There was one with the words *No Saxon Threats, No Irish Slaves, No Compromise but Repeal*. These inscriptions were upon a flag belonging, I believe, to the Castlecomer colliers. I do not know whether they were the Castlecomer colliers, but I heard persons say they were. Upon another flag were the words, *Border Men, greet O'Connell, Cead mille failtha*. Upon several others were the words, *Repeal*, and *We tread the Land that bore us*. Near the platform was a banner with the words, *The Queen, O'Connell, and Repeal*. On another was the inscription, *Ireland dragged at the Tail of another Nation*. I observed one attached to a private carriage with the words, *Repeal and no Separation*. On another, near the pavilion, were the words, *Fixity of Tenure, the Farmer's Right*. On another, *Mullaghmast and its Martyrs—a Voice from the Grave*. On another was a dog, with a harp and something which I cannot describe before it. I saw the words, *No Saxon Butchery shall give*



*Blood-gouts for a Repast ; the Dog is roused, and Treachery expelled from Mullaghmast.* I think the words *God save the Queen, or The Queen, God bless her*, were underneath. The platform was occupied about two hours, but the meeting did not then separate. Some remained until morning. I heard no observations amongst the people, except shouting for Repeal and old Ireland, and words to that effect.

*Cross-examined by MR. MACDONAGH.*

I heard no expressions amongst the crowd except those which I have mentioned. I went amongst the crowd very much that day in the discharge of my duty, and minutely examined what was going on. I listened attentively to every thing.

You mingled with the groups of people? Yes.

And listened to what they were saying? Yes, to anything I could catch.

And all you did catch was "Repeal and old Ireland," although you were there during the meeting, and from eight o'clock until the next morning? I was there from the evening before the meeting to eleven o'clock at night, after the meeting.

I presume you were sent from Cork to the meeting because you were a stranger? I do not know; it may have been the reason.

Was it not a very peaceable assemblage? Yes, so far as I have seen there was no riot or breach of the peace from morning until night; all was very quiet in that respect.

And you answer me in the affirmative that there was no riot throughout the day? There was nothing except shouting for Repeal.

When you told the Attorney-General that parties remained there that night, you meant, I presume, at the banquet; they were enjoying themselves in the tents, I presume? Yes.

In peace and quiet? As far as I saw.

Were not the bands which arrived from Carlow and Kilkenny, temperance bands? I think they were.

You have come from the south of Ireland; now have you seen any of the processions of Father Matthew? Yes, a great many of them. And temperance bands were at those processions? Yes.

How many bands have you seen at a time in his processions? I have seen more bands than I saw at Mullaghmast.

How many have you seen at a time? I have seen forty-five at a time.

When did you see them? On the day of the Cork temperance procession.

How many thousand people were in that procession? I cannot exactly say; I should think about 300,000.

Did the temperance bands wear uniform? Some did.

Had they flags and banners? Some had; very small ones; I cannot call them flags.

I presume there were inscriptions upon them? Oh! yes, all connected with the temperance movement, as I believe.

I presume those processions are common in the south of Ireland? Very common.

How long have you been in the constabulary? Twelve years.

Have the people improved in their habits in consequence of the temperance movement? Very much so; I think there is a great improvement in point of drunkenness.

Describe how the bands came from Carlow and Kilkenny; I suppose they were in great joy? They appeared to be very wild. They drove all before them. They were led by persons who appeared to station them in different parts of the field.

Were you one of the persons who were driven before the people? I got a little crushing.

There was nothing bad in it though? No.

Did they injure anybody? Not that I could learn, except knocking down a gingerbread stand. They were selling them for profit. They were not giving them for nothing amongst the people. There were many persons selling gingerbread, grog, coffee, and things of that description. I do not know any of the persons who were selling those things. I did not observe a single one of the ballads given for nothing. In large assemblages I have frequently seen persons hawking about and selling ballads, and I suppose they took advantage of this large assemblage to do so. I saw the persons at the meeting every place where they could make sale of these ballads.

Have you not even seen persons selling such ballads at the Assizes, when the Judges were sitting in the Crown Court and in the Civil Court? I have seen persons going about at the Assizes singing ballads.

Now, with respect to those men who had papers in their hats with "O'Connell's Police" on them, did not you see them preserving peace and good order at the meeting? I saw them exerting themselves, but not in the way police would.

Did not you see them keep the platform clear and preserve order? I believe that was their intention. Heard instructions given to them by a person named Walsh, to keep order and quietness about the platform and pavilion. Some of them did not comply with that order. The wands I saw were peeled, smoothed, and slight. I will say that they were pieces of timber.

Mr. *Moore*.—My Lords, I submit that the evidence of the last Witness, as regards the ballads, ought not to be received. His evidence, as I understand it, is this: "That there were persons selling, and distributing ballads in the course of the meeting, that he himself purchased one, which he lost, but that he got the document he produced from another policeman, who put a mark upon it." I do not know whether the Witness went the length of saying he saw the other policeman buy that document. It would be evidence I acknowledge, if he saw the other policeman buy it from the person who was selling it; but seeing him mark a document which he did not see him buy at the meeting from the person selling it, that I apprehend is not admissible in evidence.

The LORD CHIEF JUSTICE.—That is not the entire of his evidence.

Mr. *Macdonagh*.—My Lords, I submit that upon the evidence given, this document is not receivable in evidence. A very great

latitude is to be allowed in cases of conspiracy, when it is clearly to be inferred that an act was to be done in furtherance of the common object of the conspirators ; but where it has been proved, that in this vast assemblage, persons hovered about, or mingled amongst groups of persons for the purpose of selling ballads, as was the habitual custom in the country to take advantage of large assemblies for the purpose of selling those ballads, and that those ballads were not distributed gratuitously, but sold for profit, just as any other thing at the meeting, it would be unjust in the highest degree to permit that species of evidence to be received against the traversers. Besides there was not the remotest proof given of any connexion between those persons speaking on the platform, the traversers, the Association, or any member of that body, and the persons distributing those ballads. Mr. Brown, the authorized printer of the Association, had been examined, and this document is not shown to have been printed by him. I admit Mr. O'Connell, or any other of the traversers, would be responsible for any thing done at the meeting in furtherance of their common purpose, with their knowledge ; but it is not every collateral declaration, even of conspirators, that can be made evidence. This is no part of the *res gestæ*. Would it not be monstrous to hold, that if at one of Father Mathew's Temperance meetings, a ballad of this description was sold, that he should be held responsible for it ? If this were allowed, it would be in the power of any ill-designing person to convert a perfectly legal assembly into an illegal one.

The *Attorney General*.—In the case of *The King v. Hardy*, 24 State Trials, it was decided that the Court has a right to look into a document offered in evidence, with a view to its admissibility or not. Now how does the evidence stand before the Court ? You have it proved that Mr. O'Connell said he chose that place (the Rath of Mullaghmast) for an obvious reason, that they were on the precise spot in which English treachery, and false Irish treachery too, consummated a massacre unequalled in crime in the history of the world, until the massacre of the Mamelukes by Mehemet Ali. It was necessary to have Turks to commit crime in order to be equal to the crime of the English ; no other people but the Turks were wicked enough, except the English. 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 is what was stated by Mr. O'Connell at that very meeting where he could not be heard by the 250,000 persons present. At that meeting there was the motto : *No more shall Saxon Butchery give Blood-gout to the Repast, the Dog is roused, and Treachery expelled from Mullaghmast*. You may understand from this the purpose I have in having this document read in evidence. It was

impossible that this language could be heard by so large a multitude ; and this document was circulated among those who could not hear what had been said. It is said it is not admissible because it was sold ; but that is no reason that it should not be admitted as evidence to show the character of the meeting, and to show the concurrence of the parties in the object they had in view. Nothing could be more important than this, to show the view with which those persons were assembled together—to excite discontent and disaffection among them to the English. It will be for the jury to say how far the traversers were privy to, or connected with this document ; but I submit that the Court are entitled to look into it, for the purpose of seeing the object that the parties had in view.

Mr. *Monahan*.—My Lords, on the part of Mr. John O'Connell, I submit that this document ought not be received in evidence. The Attorney-General has stated that he knows who the printer of that document was ; but he has not produced him to show for what purpose, or for what object it was offered for sale. There is no evidence that it was exhibited in the presence of the traversers, or that they had any knowledge that it ever existed ; and it is clear, to make it evidence, it should be brought home to have been the act of the parties taking part in the proceedings of that meeting, or that it was done with their sanction or knowledge, or that they recognized or adopted it. I did not object to the placards being given in evidence, because they were openly and publicly exhibited at the meeting.

The *Solicitor-General*.—My Lords, I submit that this should be received in evidence, leaving it open to the traversers to give an explanation of it if they can. It is admissible, as showing the character of the meeting, the transactions that took place, and, among others, the circulation of this paper, which bears upon the charge contained in the indictment ; that is, that the traversers entered into a conspiracy for the purpose of exciting animosity and ill-will amongst different classes of her Majesty's subjects. We have shown that this meeting was convened by the direction of some of the traversers, and this document is evidence to show the intention of that meeting. It is immaterial whether it was sold or not, it is part and parcel of the *res gestæ* at that meeting, and shows its character. It is not necessary to show any authority emanating from the Association for the printing or publishing of the document ; if they call a meeting they are responsible for what takes place at that meeting ; but if necessary to prove an authority for its circulation, is there not *primâ facie* evidence from the document, which is uncontradicted, for it bears upon it the professed object for which the meeting was convened. Here is a document circulated through a multitude of persons, consisting some of " O'Connell's Police," and a large number of them connected with the conspiracy, and is it to be believed that it did not come to the knowledge of the traversers, and that there is not *primâ facie* evidence of that ? But it is said we should have proved that this was printed by the authority of the Association ; that was not necessary to prove, as this was given in evidence as part of the *res gestæ*. If they had circulated



the Repeal cards, and the other document, which we were under the necessity of proving, then there would have been no necessity for that proof. If they can produce evidence capable of contradicting this they may do so. They are at liberty to give an account of where they came from, they can produce the printer who printed them; but I submit that they are evidence, as part of the *res gestæ*, and it is for them to show that they were not authorized by the Association.

The LORD CHIEF JUSTICE.—The Court are of opinion that this document ought to be admitted in evidence; we do not say what the effect it may have as evidence, but we say it ought to be laid before the Jury, in order that it may form part of the consideration of that upon which they may have to give judgment. I think, without controverting what was said by Mr. Moore, that it is admissible. He does not adopt the same ground as Mr. Monahan did; but it is only Mr. Monahan's argument that I have to take into consideration. He says, if it could be proved that this document was circulated with the consent, or as forming part of the object of those who called this meeting; he could not deny but that it was admissible as evidence against them. Now, let us see how the case stands upon the evidence already before the Court, and then compare it with the principle, the existence of which he admits. No person will deny but that there is evidence at present before the Court and the Jury, of the existence of the Repeal Association, consisting of a body of persons, who assembled at different places, in very large numbers, causing publications to be printed for different purposes, consistent with their objects. It cannot be denied that they have been in the habit of calling those meetings in different places, and that those meetings were called upon the authority of the Association, of which the several traversers are members. Now, in furtherance of this common practice, some time before the meeting of Mullaghmast, it was deemed advisable by the Members of the Association, that a great provincial meeting for Leinster should be called on to assemble at Mullaghmast. That place was appointed as the scene of the meeting a considerable time before the day appointed for the meeting. For the purpose of having the place of meeting made public, instructions were given to the printer of the Association to print a number of advertisements. A great number were printed and circulated, that placard printed on yellow paper being one of those, calling a meeting of the province of Leinster to assemble at Mullaghmast; that was therefore the place intended by the Association at which the meeting should assemble, and the persons who were called on to assemble had this significant hint given them, by a memorandum at the bottom of this publication—"Remember Mullaghmast." Now, why was Mullaghmast brought to their remembrance? Mr. O'Connell had stated why he, acting on behalf of the Association, chose that to be the place for assembling on this occasion. Upon the evidence it appears Mr. O'Connell attended the meeting, and explained fully why Mullaghmast had been chosen. He made two speeches, one in the morning, another in the evening at the banquet, and Mr. Barrett, who is also a member of this Asso-

ciation, was there and made a speech ; those two persons on three several occasions stated distinctly why Mullaghmast was chosen as the place of meeting. It was chosen deliberately, and a summons was issued beforehand, and they were called on to assemble. Now, what object had Mr. O'Connell in choosing Mullaghmast as the place of meeting but to bring to the remembrance, and perhaps to the feelings of the parties assembled, the scenes that had taken place there in former times. Whether that was likely to produce excitement he did not say, but one of the reasons given by Mr. O'Connell himself was, to bring to the recollection of the meeting the treachery and cruelty of the Saxon race, and the impossibility of dealing with them. The people, then, were invited to come to Mullaghmast, as to a provincial meeting, and consequently a very great one, and that invitation was given to them expressly by the Association through Mr. Ray, their Secretary. And the placards were printed by Browne their printer, and circulated. Now, when Mr. O'Connell or the Association took upon themselves to collect together, by public advertisement, a number of persons, to the amount of 250,000, it requires some consideration to say whether that is not an illegal act ; but I will say this, whether it was so or not, that those who ventured to call together that meeting, must abide the consequences of their own act as to what was done, connected with that meeting. 250,000 persons obeyed that summons to "remember Mullaghmast," and the first thing that was done was, to hand about a paper purporting to be "A full and true account of the dreadful slaughter at Mullaghmast, on the bodies of 400 Roman Catholics," and this was presented by a number of persons in all parts of the field, and whether they were given there gratuitously, or they were called on to buy them, is not of much consequence. These being circulated through the field, it was almost a necessary consequence, that those who were assembled there would hear what had been done at Mullaghmast. Now, I cannot pass by the fact, that Mr. O'Connell and Mr. Barrett drew similar pictures in the several speeches made by them, to what is referred to in this document. They all concurred in saying that cruelty and treachery not to be endured had been inflicted, and expressed their determination never to trust British cruelty again. Now, that was the professed object of the meeting, and it was intimately connected with it, and it is impossible to call the attention of the Jury from the fact of those persons being called together ; and it is for them to say, whether this is unconnected with the matter. I have therefore not the slightest reason for thinking that this document is not admissible in evidence.

MR. JUSTICE CRAMPTON.—In my opinion this document is clearly admissible in evidence. I shall assign my reasons for arriving at that opinion :—This paper is admitted to be one of importance ; but without going into the nature or character of it, it appears to me that it cannot be rejected. With regard to the first objection, we must recollect that one of the overt acts set forth in the indictment is the meeting at Mullaghmast ; the character therefore of that meeting, and the nature of it, the object, and the acts of the parties

become very material, with a view to the charge in the indictment, which I shall not enter into. The acts of the parties forming those assemblies become of importance, because *primâ facie* the acts and declarations of every one who attends a meeting, and who takes an ostensible part in it, and forms part of the assembly, become the acts and declarations of all the others, though they may disconnect themselves from them by evidence. Thus, the act of any one, though in a different part of the field, though it might be a quarter of a mile off, may be given in evidence against persons on the platform. Now what are the facts? Here is a meeting assembled for the purpose of a discussion of a particular kind; here is a paper distributed by thousands, which upon the face of it has reference to this particular place of meeting. Now, suppose it appeared that some person, even in a different part of the field, at a considerable distance from the platform, read this paper aloud to the people, would any person say then that it should not be read in evidence? certainly it would be read in evidence. Suppose further, that it was circulated generally through the meeting, no person will contend that it should not be received in evidence against those speaking at the meeting. Then what is the difference? This is not an isolated fact, for it was circulated by many persons. If circulated without being sold, no lawyer could contend that it was not evidence, for those persons attending there were all *primâ facie* members of the meeting. Well, but is said, there was a sale. I think it would be rather a dangerous doctrine to hold, that seditious papers should be separated from the meeting, merely because it was not circulated gratis. The fact of sale cannot make a difference in this respect. Reasoning on general principles, that can make no difference. If from the evidence I could draw the conclusion that the vendor was unconnected with the meeting, and on his own account took advantage of this large assemblage, for a purpose of a different kind, I will not say then that it should be admitted as evidence; but the persons who sold them were *primâ facie* members of the meeting, and *primâ facie* the others were bound by their acts. I think it of importance that this paper should be laid before the Court, with a view of ascertaining the intention of the purchasers, who were a portion of the assembly, and whose acts, therefore, were the acts of the whole assembly; and therefore, I am of opinion that this should be received in evidence, and that the objection is untenable. There is another objection made by the counsel for the traversers, that if only two or three of these papers had been sold, this could not be admitted in evidence. The evidence is a sufficient answer to that objection, for it appears that these papers were sold in thousands.

MR. JUSTICE PERRIN.—I am of opinion that this document is clearly evidence to show the character of the meeting. Evidence has been given with respect to several meetings, to show what the conduct and character of those meetings were, and the declarations of the persons assembled. Here we have it in evidence, that from morning to night several persons were engaged in circulating and crying those documents, in different parts of the field; that is publicly circulating them, and no person interfered to prevent them. I

do not say what the effect of this evidence may be. I do not say that it is connected with the Association; that is for the Jury to decide upon.

The *Deputy Clerk of the Crown* then read the following document :

“ *The full and true Account of the dreadful Slaughter and Murder.*

“ The fate of those murdered martyrs is calculated to brace  
 “ the sinews, and rouse in the mind of every Irishman a spirit of  
 “ desperation; their blood cries yet to Heaven for vengeance. The  
 “ day may not—we trust will not come, brought about, as it must  
 “ be, by British aggression, when that cry will be heard; but if it  
 “ should, we be to the conquered. That our readers may know be-  
 “ forehand the circumstances under which that black deed in the  
 “ annals of British crime, the slaughter at Mullaghmast, was perpe-  
 “ trated, we publish the following account of it, extracted from  
 “ Taaffe’s History of Ireland. His account may give some perhaps  
 “ a higher gusto for attending the meeting. After alluding to the acts  
 “ of grace with which the reign of Philip and Mary commenced, such  
 “ as the restoration of the house of Kildare, the creating of Charles  
 “ Kavanagh a Baron, and the liberation from prison, where he had long  
 “ time been, of O’Connor of O’Faly, Taaffe, who, as well as Leland,  
 “ attributes these acts to a desire on the part of Philip and Mary to  
 “ re-establish the ancient religion, not to any love they entertained  
 “ for Ireland, goes on to say: ‘ However, a crime horrible to relate,  
 “ which makes humanity shudder, effaces all the merits of this reign,  
 “ and is not exceeded by the foulest acts in the records of human  
 “ depravity. The ancient inhabitants of Leix and O’Faly, ever  
 “ since the English settlement here, had to guard against the  
 “ English encroachments. Their wars with the English in de-  
 “ fence of their patrimony were frequent, only suspended occa-  
 “ sionally by a peace in name, but a truce in fact. Sometimes  
 “ ejected, they often retook possession at the point of the sword.  
 “ The English, who beheld with their greedy eyes these fair,  
 “ well-cultivated plains (Morrison) wearied with the invincible  
 “ courage and perseverance with which they defended their inhe-  
 “ ritance, had recourse to the vilest treason against the law of  
 “ nature and nations, and against God appealed to as a guarantee of  
 “ treaties against man, whose welfare is interested in fidelity to en-  
 “ gagements. The chief men of the two septs (O’Moore and O’Con-  
 “ ner) 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 times, 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, 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, de-



“ fenceless gentlemen, and murdered them all on the spot. Ah!  
 “ bloody Queen Mary, yes, blood-thirsty Philip and his blood-thirsty  
 “ spouse, in one day butchered 300 Irish Catholics; all cavaliers and  
 “ men of chivalrous honour, the heroic descendants of one of the  
 “ greatest heroes in the western world, Conal Kearnach, chief of the  
 “ knights of Ulster. And the sequel, full of horrid deeds; the army  
 “ thus glutted with the noble blood of the magnanimous, the pious,  
 “ the hospitable, the brave, were let loose like blood-hounds on the  
 “ multitude, dispersed in their villages, now without counsel, union,  
 “ or leader; a miserable massacre was made of those unhappy peo-  
 “ ple over the whole extent of what is now called the King and  
 “ Queen’s Counties, without regarding either age or sex.’

“ The details of the diabolical outrages committed in those large  
 “ and populous districts would make hell blush to be outdone by  
 “ devils in human shape. I leave the reader to surmise the scenes of  
 “ horror that ensued when the whole population of an extensive ter-  
 “ ritory was consigned to military execution. A few brave men here  
 “ and there sold their lives as dearly as they could. What conflagration  
 “ of villages and unfortunate victims rushing from the flames on the  
 “ spears of their murderers! What shrieks and lamentations of  
 “ women and children! A brutal soldiery, drunk with blood and  
 “ the contents of the cellar, raging with fire and sword through the  
 “ country, cutting down men, women and children with indiscrimi-  
 “ nate slaughter—children massacred before their affrighted parents,  
 “ reserved for their greater torture to die a double death; the first in  
 “ witnessing the massacre of their innocents, and then being cut down  
 “ themselves. The contemplation is horrible.

“ Leland passes over most of these infernal deeds. Plowden  
 “ omits them altogether; but though the former, the historian of the  
 “ Pale, speaks not of the enormous perfidy by which these gallant  
 “ clans, the O’Moorees and the O’Connors, were circumvented, he  
 “ does not entirely conceal the inhuman barbarity with which their  
 “ utter extirpation was pursued.

“ ‘Numbers of them (he says) were cut off in the field, or exe-  
 “ cuted by martial law, and the whole race would have been utterly  
 “ extirpated had not the Earls of Kildare and Ormond interceded  
 “ with the Queen, and become sureties for the peaceable behaviour  
 “ of some survivors.’ Taaffe, in speaking of this catastrophe, says  
 “ that the annals of Donegal, from which Leland copied, misdate it,  
 “ confounding it with a similar perfidy practised towards the Butlers,  
 “ near Kilkenny, in the reign of Elizabeth. ‘Had not,’ he says,  
 “ ‘the warlike tribes of the O’Moorees and O’Connors been circum-  
 “ vented by treachery, their lands could not have been seized upon  
 “ without a sanguinary war, nor have been bestowed on adven-  
 “ turers, and converted into shire ground—the King and the Queen’s  
 “ County, which he proves they were—in the reign of Queen Mary.’  
 “ The Act of Parliament by which this robbery was perpetrated, bears  
 “ date 1556, not three hundred years ago; and as this barbarous mas-  
 “ sacre must have taken place before the passing of that Act, no doubt  
 “ is left about the reign in which it occurred. The preamble of the

“ Act itself is quoted by Taaffe at length, and the names of the  
 “ counties and county towns substituted for the ancient names of  
 “ Leix and O’Faly, viz., King’s County, Queen’s County, Philips-  
 “ town, and Maryborough, mentioned by him as collateral proofs that  
 “ the massacre at Mullaghmast, and the converting of the territories  
 “ of the O’Moore and O’Connors into shires or counties must have  
 “ taken place in the reign of Philip and Mary.

“ We allude to these particulars about the dates, because Curry  
 “ 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 Ca-  
 “ tholic England; in proportion to her ability, towards Catholic Ire-  
 “ land, as there has in subsequent years been perpetrated by Pro-  
 “ testant England; Teutonics and Celts, the races of the two countries,  
 “ are different, like acids they will not amalgamate, nor cannot meet  
 “ without one neutralizing 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 others as possible. From first to  
 “ last the Caucasian lords, from whom the Saxons are descended,  
 “ that rushed on Europe, and, as if hell had broken loose, for years  
 “ barbarously desolated it, were a predatory race, bloody of mind,  
 “ treacherous of disposition, and savage in their propensities—pos-  
 “ sessed little of the refinement, and scarcely any taste for arts that  
 “ distinguished people of eastern origin—a taste that spreads such a  
 “ halo over fallen Greece, and which once characterized and will  
 “ again illuminate Ireland.

“ The descendants of this race, like animals of the different species,  
 “ inherit the different passions of their parents; and as nations, as  
 “ well as animals, have each peculiar propensities, England may be  
 “ called the tiger of all—possessing the insatiable thirst for human  
 “ blood; the stealthy pace and piercing talons of the brute, which is  
 “ tameable alone through fear. On this account those who knew  
 “ either the one or the other—either England, or the tiger—will not,  
 “ like the unfortunate people of Mullaghmast, trust to their cle-  
 “ mency or mercy; but be prepared with the hard hand and iron  
 “ heel to meet, strike down, tread upon, and subdue their butchering  
 “ appetite. To drop the simile, however, and come to England  
 “ herself: What disposition has she 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 honor? Is her nature changed?  
 “ No: consistent in villany, she is doing now in India what she for-  
 “ merly 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? Warned, at all events, they should be against  
 “ her treachery. A picture of the slaughter at Mullaghmast should  
 “ be hung up in every Irishman’s room, to remind him of the bru-

“tality and perfidy of England, by the latter of which, much more than by valour, she obtained dominion in this country.

“Dublin : Printed by John Hanvey, 2 Fleece-alley, Fishamble-street.”

The *Attorney General*.—I propose to read that part of her Majesty’s speech, delivered on the close of the last session of Parliament, which relates to Ireland.

Mr. *Moore*.—I object to this being given in evidence; I do not know upon what ground it can be offered.

The *Attorney General*.—There have been several speeches proved, which were made by Mr. O’Connell, commenting on this speech; and I apprehend a document so commented on, must be received in evidence.

The LORD CHIEF JUSTICE.—It must be received.

The Officer then read that portion of the speech which referred to the agitation of the Repeal of the Union.

JAMES IRVINE *examined by* SERGEANT WARREN.

I reside in Liverpool, and am connected with the Constabulary there. I was there on the 13th of October last, and saw placards relating to Repeal posted on the walls there. I took one down, and now produce it. I saw several others of a similar nature also posted through Liverpool.

The Witness was not cross-examined.

Sergeant *Warren* said, this was a *verbatim* copy of the address to the British subjects, which was already read. It had Mr. Browne’s name to it, as printer, and would be read again, if necessary.

The Court thought it unnecessary.

CHARLES VERNON *sworn, and examined by* MR. SMYLY.

I hold the office of Registrar of Newspapers in the Stamp Department. The declarations made by the publishers and proprietors of newspapers are made in my office, and the newspapers are also lodged there as they are published. I have here the declarations lodged by Mr. Barrett, proprietor, printer, and publisher of the *Pilot*. I have seen him subscribe that document. This declaration was lodged in my office. It is that of the proprietor of the *Nation*, by Mr. Charles Gavan Duffy. I am not acquainted with Mr. Duffy’s handwriting. The proprietors of the *Freeman’s Journal* are George Atkinson and John Gray, M.D., and Edward Duffy is printer. I do not know the handwriting of Dr. Gray, but I do know Edward Duffy’s, and saw him write that name. These are copies of the original declarations; they are certified by Mr. Cooper, who is the proper officer for that purpose. The declarations of Messrs. Barrett, Gray, E. Duffy, Atkinson, and Charles Gavan Duffy, are all certified by Mr. Cooper. I have with me copies lodged of the *Pilot*, *Freeman’s Journal* and *Nation*. I took them from the Stamp Office. I have the *Nation* of the 10th of June; it purports to be signed by Charles Gavan Duffy. I assessed the duty upon it, and it has been paid.

Mr. *Smyly* asked the Witness to read the leading article in the *Nation* of the 10th of June.

Mr. *Whiteside*.—I object to this paper being read until Mr. Duffy's handwriting has been proved. It should also appear on the face of the declaration, or be proved *aliunde*, that the person before whom it purports to be made had authority to take it, 2 Hayes' Cr. Law, 565, *Rex v. White*, 3 Camp. 98. This is signed by Mr. Cooper, but it does not state who Mr. Cooper is.

The *Attorney General*.—Mr. Cooper is here, and we will examine him.

JONATHAN S. COOPER sworn, and examined by MR. SMYLY.

I am Comptroller and Accountant-General in the Stamp Department for nearly twenty years; one of my duties is to take and subscribe the declarations of proprietors, printers, and publishers of newspapers; the declaration in my hand was made before me on the 18th of November, 1842, by Mr. Charles Gavan Duffy, as proprietor of the *Nation*; I saw him sign it, as also the declarations made and subscribed by George Atkinson and John Gray (as proprietors), and Edward Duffy (printer) of the *Freeman's Journal*, on the 18th of February, 1841; as also the declaration of Mr. Barrett (proprietor of the *Pilot*), on the 8th of December, 1837.

Cross-examined by MR. WHITESIDE on Behalf of Mr. DUFFY.

I am authorized by commission to act as Comptroller; I have not my commission here, it is at home: the date (18th November, 1842) in Mr. Duffy's declaration is correct.

Mr. *Whiteside*.—Pray do you know Mr. Duffy?

Witness.—I cannot say I do.

Mr. *Whiteside*.—This is not sufficient, they must go farther. There is no proof identifying Mr. Duffy, the traverser, as the proprietor of this newspaper; they must produce some person who knows him. In criminal cases the evidence should be very distinct.

The *Attorney General*.—The 6 & 7 Will. IV. c. 76, s. 6, provides that no newspaper shall be printed until this declaration has been made, and there is a heavy penalty on any person publishing a newspaper knowingly making a false declaration at the Stamp Office, and the 8th section provides that a certified copy of this declaration shall be conclusive evidence of the facts therein. The question then for the consideration of the Court is, whether this declaration so signed by the party as the publisher and proprietor of this paper, and produced by the proper officer, is not sufficient *prima facie* evidence that it has been published by Mr. Duffy.

Mr. *Brewster*.—In the case of *Morgan v. Fletcher*, 9 B. & C. 382, the production of the certificate lodged at the Stamp Office, and an attested copy of the paper were held sufficient evidence of proprietorship, and the same was decided in *The King v. Hunt*, 31 State Trials, 375.

Mr. JUSTICE CRAMPTON.—I have it upon my notes that the traverser, Mr. Duffy, is the proprietor of the *Nation*.

Mr. *Whiteside*.—There is no legal evidence of it.



Mr. JUSTICE CRAMPTON.—Suppose there were two traversers of the same name on trial for the same offence, and evidence like the present was brought forward, which of the two is the person conclusively bound by the Act of Parliament?

The *Solicitor-General*.—*Primâ facie*, it is evidence against either of them.

Mr. JUSTICE CRAMPTON.—If it be evidence against either, you might have two men convicted on two indictments upon the same paper, on which it was alleged only one was the proprietor. In my opinion, something in addition to the statutable evidence is required, but very slight evidence is sufficient. For my own part, I feel no difficulty, in point of fact, for I find Mr. Duffy described by a witness who was very closely cross-examined, as the Editor of the *Nation*.

The *Attorney-General*.—I think it would be a bad precedent, where a Statute makes a certain thing evidence, that the Court should go beyond the Act. The words of the Statute are: "that this shall be as good evidence as if the handwriting had been proved."

The LORD CHIEF JUSTICE.—I am not satisfied that the Crown has shown sufficient evidence of identity. I think that the proof at present is imperfect. The Act requires that Mr. Duffy should sign a declaration. The original declaration would certainly be evidence against the person who had signed the declaration as proprietor, and who had made a declaration at the Stamp Office. But in order to prevent any difficulty arising at the Stamp Office, the eighth section contains a further provision, furnishing a different species of evidence to be given against the party; a species of secondary evidence is this certificate, signed by the authorized officer, and if that officer had given evidence that he knew the person who signed, all would have been right.

The *Attorney-General*.—I do not feel bound to give further evidence, unless the Court shall so direct.

Mr. JUSTICE PERRIN.—That is rather inconsistent with the course you have taken. You proved Mr. Barrett's handwriting by the first witness, and have produced Mr. Cooper to prove Mr. Duffy's handwriting, and having failed, you have had recourse to this certificate.

The *Solicitor General*.—Requiring such evidence would render the Act nugatory, because if it is necessary to prove the handwriting to the original declaration, why direct that an attested copy of that declaration should be evidence? What the Act intended was to do away with, and guard against the difficulty of proof arising from the circumstance that the person going before the public officer might be unknown to him. It therefore makes this certificate evidence, and it would be contrary to the policy and intention of the Act to require such proof.

Mr. JUSTICE PERRIN.—In my opinion the case cited does not go to the point. The objection in that case was, that it was necessary to prove the actual publication of the libel by the defendant. Formerly you should prove the fact, as in that case; and the Statute referred to did away with the necessity for such proof. Mr. Justice

Bayley says: "If a paper corresponding with the paper described in the affidavit is produced, the party producing it is to be in the same situation as if he had proved that the paper had been bought at the house, shop, or place of business of the defendant."

The *Attorney General*.—I think the concluding portion of the section leaves the matter beyond doubt, for it provides: "In all proceedings, and upon all occasions whatsoever, a copy of any such declaration certified to be a true copy under the hand of one of the Commissioners, or of any officer in whose possession the same shall be, upon proof made that such certificate hath been signed with the handwriting of a person described in or by such certificate as such Commissioner or officer, and whom it shall not be necessary to prove to be a Commissioner or officer, shall be received in evidence against any and every person named in such declaration as a person making or signing the same as sufficient proof of such declaration, and that the same was duly signed and made according to this Act, and of the contents thereof; and every such copy so produced and certified shall have the same effect, for the purposes of evidence against any and every such person named therein as aforesaid, to all intents whatsoever, as if the original declaration, of which the copy so produced and certified shall purport to be a copy, had been produced in evidence, and been proved to have been duly signed and made by the person appearing by such copy to have signed and made the same as aforesaid."

The LORD CHIEF JUSTICE.—The Court is of opinion, that the evidence should be admitted.

[The Witness here read an article in the *Nation* of the 10th of June [*ante*, p. 82].

Mr. *Whiteside*, for Mr. Duffy, called on the Witness to read other portions of the paper, which were read accordingly.

Mr. *Henn*.—My Lords, I submit if the Crown produce and give a document in evidence, and read any part of it, we are entitled to have all read as evidence on the part of the Crown, 1 Phil. Evid, 340, *Dagleish v. Dodd*, 5 C. & P. 238; *Wilson v. Bowie*, 1 C. & P. 10, and note; *Calvert v. Flower*, 7 C. & P. 386. These authorities establish clearly that it is not made evidence for the party who calls for it, but for the party by whom it is produced.

Mr. JUSTICE PERRIN.—I know in *Rex v. Perry*, 2 Camp. 398, it was decided that a party might use an advertisement in a different part of a paper, but I do not know whether he was entitled to use it as the evidence of the prosecutor.

The *Attorney-General*.—In 1 Phil. Evid. 340, cited by Mr. Henn, there is nothing to show that it was proposed to be read by the defendant, as part of the plaintiff's evidence, and in the next page the contrary is laid down. But even if a doubt did arise, it is only applicable where the plaintiff reads a document, which is qualified or referred to by some other document which may be calculated to give it a meaning. In that case it may perhaps be read, but what the traversers contend for is, that where there is a distinct paragraph totally disconnected from the other part, they are entitled to read it. There is no authority showing that, and in page 342 of the same book

this principle is laid down, that if a document contains matter connected, and other matter entirely disconnected with the subject, and a portion of it is read, that does not make every portion of it evidence; here there is no connexion between the two articles. In *Sturge v. Buchanan*, 10 A. & E. 159, it was held that, where a letter book which was produced by the defendant, on notice given him for that purpose by the plaintiff, and the plaintiff read certain letters in that book as evidence, the defendant had no right to read in his own behalf, other letters on the same subject, copied in the same book, but not referred to in those read by the plaintiff.

Mr. *Fitzgibbon*.—The question here is, whether having given notice in their bill of particulars, that they will use certain newspapers, and that they will make use of the contents, which must mean all the contents, as evidence, they are to be allowed to stop short and use only certain portions of them? These papers are produced in order to prove overt acts against the traversers as members of the Association, because Mr. Duffy, the proprietor, was a member of the Association. It is sought by these to show the objects of the Association, and for that purpose they give certain portions in evidence, and yet seek to withhold from the Jury what would clearly and more plainly explain those objects. We are entitled to call upon them to read every thing that bears upon the subject matter in issue. It is like stopping a witness who has given only part of an answer and preventing him from giving the remainder. Here it is sought to give in evidence part of these documents, in order to make an impression on the Jury which we may find it difficult to obliterate. What I get from a witness on cross-examination is evidence for the party producing him; here the articles which we wish to read should be made part of their evidence. They should read the whole of the document and should not stop when they have read only what they think favourable to themselves; for the question is, what is the purport of the whole of this document?

Mr. *Monahan*.—The case cited by the Attorney General from 10 Ad. & El., does not apply to the present case; in that case a book was produced containing a series of letters, and one of the parties wished to give evidence of a letter written on a particular day, and the other party was not allowed to read letters written on a different day. Suppose Mr. Vernon brought a volume of newspapers, we should not be entitled to call on him to read them all, but we are entitled to have the whole of a particular newspaper read.

MR. JUSTICE CRAMPTON.—Where do you draw the limit? Is every thing in a newspaper to be evidence?

Mr. *Monahan*.—I say, that every thing regarding the subject-matter of the charge, every thing showing the object of the parties, is evidence. *King v. Lambert and Perry*, 2 Camp. 398.

The *Solicitor General*.—The question here is, whether the Crown having read from a newspaper the whole of an article, the traversers have a right to insist upon reading another part of that newspaper, upon a different subject-matter, namely, a publication of a speech appearing to have been made some days before the publica-

tion in question, and the argument is, that by the word "contents," in our bill of particulars, we are bound to read the entire newspaper. The word "contents" means what is pertinent, and relevant to the issue. If we read the entire of the article, that is sufficient, and cannot be called a garbled extract. The document is the article, and we have read the whole of it. In the case in 2 Camp. an advertisement was allowed to be read, because it was part of the same publication which bore upon, and qualified the sense and meaning of what had been read; but it did not qualify the charge. If this article qualified the meaning of the article which we read, justice would require that it should be read too, but not so, if it merely qualifies the charge.

MR. JUSTICE CRAMPTON.—The question does not seem to be, whether it is to be read or not, but whether it is to be read as evidence for the Crown or for the traversers.

The *Solicitor General*.—The reason why such evidence was admitted in *Rex v. Perry* was, that it affected the character of the article which had been read. But the proposition here, is widely different. It is sought to read an article, which, though relevant to the issue, is not explanatory of the article which we have read. In *Batt v. Howard*, 3 Stark. 6, the entry was referrible to the charge, but it was refused, because it was not referrible to the former entry. *Adey v. Bridges*, 2 Stark. 189, was to the same effect. So was the case in 10 Ad. & Ellis, cited by the Attorney General.

THE LORD CHIEF JUSTICE.—This case has been so much discussed that I shall be brief in giving my reasons for the decision I have come to. A newspaper was given in evidence for the purpose of having an article which was printed in that paper, entitled "The Morality of War," read. This article in itself is perfect and distinct, and the whole has been read by the Crown. On another occasion, after an interval of several days, and having no connexion with that article, a speech was made by one of the traversers, which happens to have been reported in another part of the same paper, apparently having no connexion and giving no qualification of the opinions published in the same newspaper upon the subject of "The Morality of War." Now, suppose the speech, instead of having been spoken by Mr. O'Connell, was spoken by Mr. Duffy on an isolated occasion, having no reference to the article; could it be said that Mr. Duffy, having made that speech, would be entitled to have it read, if he were unable to show its connexion with the article on "The Morality of War." No case has been cited which would lead to that conclusion (so far as I can see). or to support the proposition now advanced on the part of the traversers; and if called upon to decide, I should have great doubts whether the traversers, without the consent of the Crown, would have had a right to have had that distinct and independent publication read at all. It is quite a different publication, as different as if the speech had been made one day and the publication had taken place six days afterwards. Though both in the same newspaper, one is not an explanation or a qualification of the other; however, the Crown have made no objection to the speech being read, therefore it is not necessary to decide whether, if an objection had been made, the Court would or



would not yield to it. It has been read, and the question now is by whom. We are of opinion, it must be considered as read by the traversers. I am not saying against the traversers, but whatever they read again during the trial, is their evidence.

Mr. JUSTICE CRAMPTON.—I concur in the opinion which has been delivered by my Lord Chief Justice. There are two questions; first, whether Mr. Duffy has a right to have a second article, containing a report of a speech, read on his part; secondly, whether, it having been read without objection, it is now to be considered as evidence on the part of the traversers or of the Crown. Now I do not think the cases cited bear exactly upon the matter before the Court. No doubt it is true where a conversation is deposed to by way of an admission on the part of a defendant or a traverser, he has a right to have the whole of the conversation given in evidence, that is, subject to this restriction, that it is relevant to the issue. An answer in Chancery may be considered as falling within the same rule. Where an answer is produced against a party as an admission, he is entitled to have the whole of it read, if it be relevant to the issue, and where an affidavit is read at *Nisi Prius*, the defendant is entitled to have the whole of it read, under the same restriction. Another principle is applicable to this case, and it is this, that nothing is to be received that is not relevant to the subject matter of inquiry. But there is a third principle bearing on this question, in which I own there is some difficulty; but, as my Lord Chief Justice has properly observed, the Court are not called upon to decide on it, that is, whether, in a case like the present, if one paragraph in a paper be read as being seditious, or tending to sedition, another paragraph in the same paper entirely detached from it, and not explanatory of it, or modifying it, can be read. The general rule I always understood to be this; if a piece of evidence complete in itself is put before the jury by one party, it cannot be affected by another piece of evidence of the same description, unless that other piece of evidence intends to explain and modify or qualify that which has been offered on the other side. In the *King v. Lambert and Perry*, Lord Ellenborough has laid it down, that, although in a newspaper, which is the subject of a prosecution for libel, there be one article, and in the same paper there be a second article, which has no reference to, and is unconnected with, the former, yet there are cases in which the second article may be read. That decision, I suppose, is well-founded; but that was a case in which a question arose as to the intention of the writer, to be deduced from the article, the subject matter of the prosecution. The second article might then be introduced for the purpose of aiding the jury in coming to a conclusion as to what were the intentions and motives of the writer, in writing the article the subject of the prosecution. Supposing that doctrine to be well-founded, then arises the important question, and the only question upon which I mean to give an opinion—whose evidence is this? The Crown say that it is not part of their evidence: my opinion is, that the traverser who has called for the reading of it, has thereby made it his own evidence. I will not say that if the article had been also an editorial article

bearing upon the same subject, or if, without being an editorial article, or without being written by the same party, it had been one from which there could be deduced anything like a test of the intention of the party in writing the former article, that it might not be admissible in evidence. But the question is, if it is admitted in evidence, whose evidence is it? In the *King v. Perry*, Lord Ellenborough says: "If there be any parts of the same paper upon the same topic with the libel, or fairly connected with it, the defendants have a right to their being read, although locally disjoined from it. But," he says, "the Courts have gone further, for they have allowed the defendant to give in evidence various extracts from works which he had published at a former period of his life." One would certainly infer that it was read as the defendant's evidence, for Lord Ellenborough puts it on the same ground as if it was a paragraph in another paper, and it cannot be contended that a paragraph taken from another paper could be read in cross-examination by the defendant as part of the plaintiff's evidence. I therefore take it, that in that case the article, though in the same newspaper, was read as part of the defendant's evidence. But another test has been suggested; is this paragraph to be considered as part of the cross-examination? if so, then undoubtedly it comes within the rule that no part of the cross-examination is evidence of the party who cross-examines. The witness was called to prove only certain matters relating to this paper, the officer was the person who should have read, and the fact of the paper having been read by the witness does not give it the character of a cross-examination. The defendant proves a new document in the course of his cross-examination of the witness; he chooses to have it read, and therefore it becomes part of his evidence, unless it refers to, or explains, or modifies, or qualifies that which has been read by the opposite party. It appears to me, that supposing this article to be admissible, which it is not necessary to decide, as the Crown have consented to its being read, that it is no part of the cross-examination, but part of the defendant's evidence; he is entitled to the benefit of it, but he must take it as his own evidence.

Mr. JUSTICE PERRIN.—The question appears to me simply this: A newspaper is given in evidence on the part of the prosecution, from which an article is 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. It was offered as evidence of such intention having been entertained by him. In no other point of view can that be looked on as evidence. That having been read by the Crown, the traverser's counsel calls upon the witness or the officer to read another part of the same publication, an article distinct from, and not referring to the former article, but which, he says, being published at the same time, and *uno flatu*, and being indicative of a directly different intention, ought to be read to show he had not the same intention as that which had been inferred from the first article. It is offered as explanatory of and qualifying the article read by the Crown, and as part of the same publication, under the

authority of the *King v. Perry*. In the language of Lord Ellenborough: "the passage alluded to will deserve more or less attention according to its connexion with the subject matter of the libel." The whole question is for the jury whether the person who published these two articles in one paper entertained the intention charged. I do not think it necessary for the jury to consider whose evidence it is. It is given at the instance and desire of the traversers, for the purpose of protecting them from the inference which might be drawn from the article read by the Crown. The prosecutor reads what, as he conceives, sustains his case. He is not bound to read the whole of the paper. The traverser then calls for another part of the same paper, which he conceives to be favourable to him, but it does not belong to anybody.

According to the case of *The King v. Perry*, the article was very properly admitted in evidence. If the second article related to different subjects from the first, and had no possible reference to it, it would not be received, but it is not necessary that it should relate to the same particular matter as the first article, if it relates to the object with which that article was given in evidence. In the case of *The King v. Perry*, the first article was used to shew that Lambert and Perry, the defendants, had published a seditious libel with the intention of defaming King George the Third, and the second article was referred to, to show that they were not persons who could entertain those disloyal feelings, that being an article praising the king, and mentioning several circumstances highly creditable to him. It did not relate to the particular matter in the former article, but as the two articles were parts of the same publication, both were the subject matter for the consideration of a jury. In *Horne Tooke's* case, and *The King v. Stockdale*, the same doctrine was established; but in that latter case there was this distinction, that all the passages were contained in the publication and part of the same book. I therefore think that this evidence is admissible, but I concur with the other members of the Court in thinking that it should form part of the evidence given for the traverser.

The Officer then read for the Crown an article, entitled "The March of Nationality."

Mr. *Whiteside* required that Mr. Sharman Crawford's letter in the same paper should be read.

At the suggestion of the Court it was agreed, that for convenience each paper should be disposed of by both parties before another was produced.

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THURSDAY, JANUARY 25TH.

Mr. JUSTICE BURTON was still absent.

Mr. *Vernon* produced the *Nation* of the 12th of August.

Mr. *O'Hagan*, on the part of Mr. Duffy, required that the address to the people of Great Britain, signed by Mr. Smith O'Brien, and several other Irish Members should be read, and it was read by the Clerk of the Crown.

The *Nation* of the 26th of August was produced, and the articles "The Crisis is upon us," and "The Irish Congress," were read on behalf of the Crown.

Mr. *O'Hagan* required that the article headed "Superseding Magistrates," and containing a correspondence between Mr. Henry Sugden, and Mr. Valentine Blake, should be read.

The *Attorney-General*.—I do not think this document bears upon the article which we have read. I would not object, but that articles and letters have been read which have no reference to the documents which have been read by the Crown. I wish, therefore, the ordinary course to be pursued. We wish to close the case for the Crown as soon as possible, by merely reading portions important for the prosecution, and when the Crown close their case, the traversers can offer such evidence as they consider bears on the issue.

Mr. *Hatchell*.—We thought we had the full acquiescence of the counsel for the Crown to read those documents, and it is now too late to take the objection. We understood that this course was to be adopted as a matter of convenience, and we have made our arrangements accordingly, and it would now embarrass us in the course we have adopted, if that arrangement is to be deviated from.

The LORD CHIEF JUSTICE.—We conceived that the arrangement which had been entered into at the time was, that it would be the most convenient way to get rid of one paper before another was produced. At the time that arrangement was made, it was not probably anticipated that the reading of documents unconnected in their nature with the evidence which had been produced by the Crown would have been called for. I do not see there can be any embarrassment by pursuing that arrangement, but it is to be hoped that counsel for the traversers will not take any unnecessary advantage of that arrangement.

Mr. JUSTICE CRAMPTON.—No doubt the strict rule is with the Crown, at the same time it was suggested by the Court, and it was thought the most convenient course would be, to dispose of each paper in its order. I do not, nor will I anticipate that that suggestion will be abused by reading matters not relevant to the issue between the parties.

The article was then read.

The *Pilot* of the 7th of June, was then produced, and an article containing a description of the great Repeal demonstration at Drogheda, Mr. O'Connell's, Mr. Barrett's and Mr. Steele's speeches on that occasion were read on the part of the Crown.

Mr. *Macdonagh*, on the part of Dr. Gray, required that the article headed, *We are not Slaves*, and a petition praying for a Repeal of the Union, which was adopted at that meeting, should be read. The article was read.

The *Pilot* of the 12th June was produced, and proved. The report of the Kilkenny dinner, and Mr. O'Connell's speech at that dinner, were then read on the part of the Crown.

Mr. *Macdonagh* read the account of that dinner in that paper, as taken from the *Kilkenny Journal*, and the *Morning Freeman*.

The *Deputy Clerk of the Crown* read the article required.



The *Pilot* of the 14th of June, was then produced, and proved, and the proceedings at the Mallow meeting read, and Mr. O'Connell's speech on that occasion was also read for the Crown [see *ante*, page 84].

At the request of Mr. Macdonagh, the speech of Edmund B. Roche, M.P., and that of Dr. Gray were read.

The *Freeman's Journal* of 7th August was produced, and proved, and the proceedings of the Baltinglass meeting read on the part of the Crown.

The *Pilot* of the 16th August was then produced, and proved, and the proceedings at the Tara meeting, and the speeches of Mr. O'Connell and Dr. Gray read, on the part of the Crown.

Mr. *Macdonagh* required that the names of several persons who attended that meeting should be read, which was accordingly done.

The *Nation* of the 19th August was produced, and proved. The article relating to the Tara meeting was read for the Crown.

The *Pilot*, 15th May, was produced, and proved, and the proceedings at the Mullingar meeting, read for the Crown.

The *Freeman's Journal* of the 30th of May was then produced, and proved, and the speech of Mr. O'Connell, at Longford, read for the Crown.

At the instance of Mr. Fitzgibbon, the speech made by Count Nugent, the Chairman of that meeting, was read.

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#### FRIDAY, JANUARY 26TH.

Mr. JUSTICE BURTON took his seat on the Bench, with the other Judges.

Mr. VERNON'S *Examination continued.*

He produced the *Freeman's Journal* of the 4th of April. The proceedings of the Repeal Association, on the 3rd of April, were read for the Crown.

The *Freeman's Journal* of the 31st May was then produced, and the proceedings of the Association on the 30th of May read.

The *Pilot* of the 5th July was produced. The article headed "Repeal is coming—the Affairs of Spain," and the proceedings at the Association, were read.

The *Freeman's Journal* of the 23rd August was produced, and proved. The speech of Mr. O'Connell at the Association, and an article entitled "The National Manifesto," were read for the Crown.

Mr. *Close* read the observations of Mr. O'Connell on Mr. McKennie's letter.

The *Freeman's Journal* of the 24th August was then produced, and proved. The proceedings of the Association, and the Report of the Sub-Committee in reference to the Arbitration Courts, were read.

The *Pilot* of the 10th of March was produced, and proved. The leading articles headed "Repeal—America," were read.

At the request of Mr. *Macdonagh*, the account of proceedings of the house painters, headed "Repeal Board of Trade," was read.

The *Nation* of 1st April was produced, and proved.—Articles, "The Memory of the Dead," "Something is coming," read.

Mr. *Whiteside*.—Turn to page 5, folio 456, and read the song that you will find there.

Mr. Vernon then read as follows :

" MY BEAUTIFUL, MY OWN.

" I have watched in delight the fire that flies  
In the lightning flash of thy dark blue eyes,  
As they sparkled in joyous merriment, caught  
From the passing jest to the brilliant thought—  
My beautiful, my own.

" But I have seen a light in them dearer still,  
A softer, diviner radiance, fill  
Their sparkling orbs, was bliss to see :  
'Twas affection's light, and 'twas turned on me—  
My beautiful, my own.

" In dread of thy frown, I vainly strove  
In silence to hide my heart's deep love :  
But my soul's felt passion thou didst not spurn,  
And at last even whispered of love's return—  
My beautiful, my own.

" Oh, that moment's happiness was worth  
All other things on this broad earth :  
And I felt that thenceforward unto me  
My only heaven could be with thee—  
My beautiful, my own.

" I've played with the curl of thy raven hair,  
And wish'd to be one of the tresses there :  
To touch for ever that rosy cheek,  
And catch each accent thy lips should speak—  
My beautiful, my own.

" For in rapture almost too great I've hung  
On the low, sweet tones of thy gentle tongue,  
As they told of thy choice, which could not range,  
And thy love, which time could never change—  
My beautiful, my own.

" Did the poet's mantle to me belong,  
I would hallow thy beauty in deathless song :  
In the minstrel's lay should thy name resound,  
And a halo of glory circle thee round—  
My beautiful, my own."

The *Pilot* of the 28th August was produced, and proved, and the letter signed "Richard Power, P. P.," read.

The *Pilot* of the 6th September was produced, and proved ; an article, headed "The Irish in the English Army ;" "O'Callaghan's Letters ;" and another, "The Army, the People, and the

Government;" and also another, "The rumoured Death of General Jackson."

The *Pilot* of the 6th October was produced, and proved. An title, "The Battle of Clontarf," read.

The *Nation* of the 30th September was produced, and proved. Advertisement headed "Repeal Cavalry," read.

The *Freeman's Journal* of the 3rd October was produced, and proved. An advertisement headed "Repealers on Horseback," "Clontarf Meeting," was read.

The *Freeman's Journal* of the 29th September, was produced, and proved; an account of remittances to the Association was read.

The *Pilot* of the 29th September, an account of remittances, was read.

Mr. *Macdonagh*.—Read Mr. O'Connell's speech on Ribbonism. [The speech was read.]

The following documents were then handed in, and entered as read:

Letter of the 29th September, 1843, signed, John, Archbishop of Tuam.

A letter, 2nd October, 1843, signed, Patrick Skerrett.

An address to the Inhabitants of the British Empire, signed D. O'Connell.

Appointment of Arbitrators.

Letter from Edward Carey to T. M. Ray, 2nd October, 1843.

Certificate of Arbitrators.

Rules to be observed by Arbitrators.

Instructions for Repeal Wardens.

Award and Deed of Submission to Arbitration.

Notice of the formation of the Court of Arbitration.

O'Callaghan's Letter.

Association Cards.

Account of the dreadful slaughter at Mullaghmast.

CHARLES HOVENDEN *sworn, and examined by* MR. BREWSTER.

I am an Inspector of Police. I know Dr. Gray and Mr. John O'Connell. I saw them both acting as Arbitrators. I saw Dr. Gray act but once as Arbitrator. I have seen Mr. John O'Connell several times. I first saw him on the 17th of October. I saw him several days subsequently acting as Arbitrator. There was one case the first day I attended the court, and there was no case on the subsequent days.

*Cross-examined by* MR. HATCHELL.

I was not there on the commencement of the proceedings of the first day. I went there about a quarter past eleven. I went in and out once or twice, no obstruction was given to me, quite the reverse. There was the greatest kindness shown me. They stated they had no power to do anything except by consent of the parties. I saw no fees paid, no persons pleading. The parties wishing to have their differences settled did consent. There was nothing done in the case that was brought on, it was adjourned to Kingstown. I was

not present when it was finally decided. I did not see any case decided. I went there in uniform. I did not go there by the direction of the Arbitrators. I went there in performance of my duty as Inspector of Police. I did not go there as officer of the court. I gave no previous intimation that I would go there. I saw no oaths administered

The *Attorney General*.—My Lords, we close on the part of the Crown.

Mr. *Moore*.—My Lords, Mr. Sheil, who is to open the case for the traversers, is unwell. We have sent to him, and he says that he is at present confined to bed by a slight attack, but that he will be able to attend tomorrow. The other counsel would be put to great difficulty if required to address the Court to-day. Perhaps your lordships will not think I am trespassing too much on the indulgence of the Court by requesting an adjournment until to-morrow.

The LORD CHIEF JUSTICE.—It is a very reasonable application.

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SATURDAY, JANUARY 27.

MR. RICHARD LALOR SHEIL, Q. C.

*My Lords, and Gentlemen of the Jury,*

I am counsel in this case for Mr. John O'Connell. It is so important a case that I am sure you will agree with me in thinking, that I do not resort to exaggeration, and that I do not speak in the language of hyperbole, when I say that the attention of the empire is directed to the spot on which we are assembled. How sacred is the trust reposed by the laws of your country on you! How great is the task which I have undertaken! Conscience of its magnitude I rise to address you—not unmoved, but undismayed; not unmoved, for at this moment how many of the incidents of my own political life inevitably recur to my recollection, when I look up to my great political leader, my deliverer, and my friend. But of the emotion by which I acknowledge myself to be profoundly stirred, solicitude forms no part. I have great reliance on you—in the ascendancy of principle over prejudice—the predominance of true religion over sectarian error—and, above all, in your regard for your oaths: but, while I have that reliance on you, I am not quite destitute of confidence in myself. You will do me the justice, I am sure, to believe that I do not speak in the language of a vain-glorious self-confidence, when I say that I am well aware that I am encompassed by gentlemen infinitely my superiors in every forensic and every intellectual qualification. My confidence is grounded not on an overweening esteem of my own humble talents, but from a thorough conviction of the innocence of my client. I know that he is innocent; and how do I know that he is innocent? I appear before you not only as the advocate of the son, but in some sort as a witness. The father and the son are identical; their principles are the same; the same blood flows in their veins;



the same feelings animate their hearts. I toiled with the father in companionship—humble, indeed, but not dishonourable—for upwards of twenty years of my life, in that great work which it is his chief boast, that in the spirit of peace it was conceived; in the spirit of peace it was carried out; and in the spirit of peace it was brought to its glorious consummation. I am acquainted with his character, the temper of his mind, his habits, his feelings, his hopes, his fears, and his aspirations; I have, if I may venture to say so, a sort of cognizance of every pulsation of his heart. Gentlemen, it is from this source that my confidence is derived; I know that of the motives attributed to him by the Attorney-General he is incapable. It is this impression, thorough and impassioned, and I trust that it will prove contagious, which will sustain me in the execution of the arduous duties, physical and intellectual, incident on this great trial; and will not only bear me up against the illness under which I am at this moment labouring, but will, I trust, raise me to the height of this great argument, lift me to a level with the lofty topics of which I have to treat, in resisting a prosecution, to which no parallel in the annals of criminal jurisprudence can be found. Gentlemen of the Jury, the Attorney-General, in his speech of very considerable duration, but the length of which was by no means disproportioned to the magnitude of the subject, read to you a long series of diligently collected extracts from publications and speeches, spreading over a period of upwards of nine months. At the close of all these extracts, he expressed his astonishment that such language could be used in a country where social order is maintained. Gentlemen of the Jury, if the indignation of the Attorney-General was not artificial, if it was not an *ex-officio* indignation which he gave vent to, if he spoke to you with sincerity, how did it come to pass, and I am sure there is not one of you who did not put to himself this question—how did it come to pass that for a period of nine months not a single step was taken by him, or by the Government, for the purpose of arresting what was represented by him as a sore calamity? The country, he said, was traversed by incendiaries, who set fire to the passions of the people. The whole fabric of the state was in a blaze. If so, how does it come to pass that the Attorney-General gazed, with folded arms, at the conflagration? Why was it that the Castle fire-engine, why was it that an indictment, that an *ex-officio* information, was not resorted to? He has given no explanation. He has hinted at no explanation on this head. Is there not too much reason to conjecture that this expedient was resorted to by the Right Honourable Gentleman for the purpose of decoying and ensnaring the traversers into some indiscretion which might afterwards, and in due time, be turned to account. I heard the Attorney-General allude several times to the expression which occurred in some of the speeches which he read to you: “*Bide your time.*” Is it befitting that the Government should bide their time, in order to turn the popular excitement to a useful official account? The public prosecutor, who gives a connivance almost equivalent to a sanction, and who incites to an indiscretion of which he may afterwards

take advantage, appears to bear some sort of moral affinity to the delator, who provokes to the commission of the crime, from the denunciation of which, his ignominious sustainment is derived. Is it befitting the head of his Profession, the representative of its intellect in the House of Commons ; is it befitting the man who holds the office that was held by Saurin and by Plunket, who should keep watch and ward from his high station for the public safety ; is it befitting that he should descend to the performance of functions worthy only of a commissary of the French police ; that, instead of being the sentinel, he should stoop to be the "artful dodger" of the State ? What can be the motive ? for what purpose ? The Solicitor-General will tell you it was forbearance on the part of the Government. I tell you the motive was twofold. If, when a seditious publication, or a publication alleged to be seditious, appeared, a prosecution had been immediately instituted against Mr. Duffy, he might have been caught. If, when another publication appeared in the *Pilot*, a prosecution had been instituted against Mr. Barrett, he might have been caught. And then Dr. Gray might have been caught. And, perhaps, Mr. Steele might have been indicted for some speech. But what great party purpose would then have been obtained ? None. If I may venture to draw an illustration from the habits of my constituents at Dungarvan, the Attorney-General did not fish with a line, but he cast into deep water a nicely constructed trammelling net, in order that he might draw in the great Agitator, the leviathan himself, the member for Kilkenny, three editors of newspapers, and a pair of priests, at one single stupendous haul. There was another motive. If he had indicted Barrett, for what Barrett wrote, that would have been no charge against Mr. O'Connell. If he had indicted Duffy, for what Duffy wrote, that would have been no charge against Mr. O'Connell. If he had instituted a prosecution for libel or for seditious speeches, the party who wrote the libel, or who spoke the speeches, would have been alone responsible. But by proceeding for a conspiracy, which has all the advantages of the old doctrine of constructive treason, they could use the acts of one against another. It is a maxim of our law, a general maxim of our law, that what is said by one man, or what is done by one man, shall, in ordinary cases, not be brought in evidence against another ; the exception is in cases of conspiracy. In cases of conspiracy, what is done by A. at a distance of a hundred miles, may be given in evidence against B., although he never heard it. That, I may be permitted to say, Gentlemen of the Jury, is the law ; and now we find the motive for not prosecuting the editors of the newspapers. They were joined in the indictment for conspiracy, in order that their publications might be given in evidence against Mr. O'Connell. Now, gentlemen, you can account for some of the strange circumstances connected with Mr. Bond Hughes. He arrives in Dublin with a letter to the Attorney-General. The Attorney-General not being at home, he goes to a man who is at least equivalent to the Attorney-General. We find Bond Hughes and Mr. Brewster together. No one ventures to ask Bond Hughes what happened between him and Brews-

ter, and I leave it so. As Mr. O'Connell might have said, at one of those meetings to which the Attorney-General has referred, in speaking of the "dark-eyed" girls of Kildare, "something must be left for the imagination." I will not break the gauze under which Brewster and Bond Hughes must be left together. Bond Hughes goes to Mullaghmast. He comes from it, and he makes an affidavit. What does he state? He states he saw Barrett at two meetings in Dublin; he swears he saw him only three times, once at Mullaghmast, and twice in Dublin—I think on the 9th of October. Bond Hughes swears to the meeting; Bond Hughes swears to the speeches; Bond Hughes swears to the fact of the presence of Barrett at the meeting. Bond Hughes afterwards sees Barrett at Judge Burton's house; he says, "Oh! I was mistaken; this is not the gentleman I took for Barrett." He goes to Mr. Rae, Mr. Kemmis's clerk, and says, "I am afraid I have made a great mistake; I have made an affidavit which was the ground of a warrant from a judge of the Queen's Bench against Mr. Barrett; I have stated what is not the fact, and I wish to correct my statement." "Oh, it is done now," said Rae. Hughes said nothing, but went to look for Mr. Kemmis. He met Mr. Kemmis in Kildare-street, near his own house, and told him that he had made a mistake, that he had introduced Barrett improperly into the affidavit. What does Mr. Kemmis say? Nothing. Gentlemen, the alteration in the affidavit would have been an awkward circumstance. It is not my province to comment on the conduct of the Crown Solicitor in the transaction; the facts are before you. But I think, when you consider the great importance attached to the use of everything that was said by Mr. Barrett against Mr. O'Connell, you cannot but regret that the Crown Solicitor took that very peculiar view of his official duty which he seems to have adopted. I cannot see why other editors were not indicted. Three editors of three newspapers are combined in this indictment; but the editors of all the repeal papers in Ireland might have been joined. The editors of the *Limerick Star*, the *Waterford Chronicle*, and other newspapers in the south of Ireland, might have been joined; they are all members of the Repeal Association; all conspirators, according to the Attorney-General. Every article of theirs might have been given in evidence. Gentlemen, I believe that no persons are less disposed to combine together; and the gentlemen of the Press will forgive me if I venture to say so, no persons are less prone to act in a spirit of concord than the editors of newspapers. The most trifling circumstance is a source of alienation. The Public is their mistress, and they detest each other with a cordiality proportioned to their devotedness to the object of their affections. Only imagine Mr. Murray Mansfield, the Editor of the *Evening Packet*, and Mr. Remmy Sheehan, of the *Evening Mail*, indicted for a conspiracy! I remember once hearing Mr. Barnes, the celebrated editor of the *Times*, when asked by Mr. Rogers what sort of a man a Mr. Tomkins was, replied "Tomkins? Dull dog, he reads the *Herald*." But see, Gentlemen,

of the Jury, see the effect of this conspiracy, into which three editors of newspapers are brought. I believe there is an English gentleman on that jury. Will he be prepared to give his sanction to a prosecution against the Corn-Law League, against Mr. Bright and Mr. Cobden, founded on articles in the London newspapers? Will he think it right that the *Morning Chronicle*, the *Globe*, and the *Sun*, should all be joined in the same indictment: that every syllable which appeared in the *Globe*, the *Sun*, and the *Chronicle*, should be given in evidence against Mr. Cobden and Mr. Bright? Would not the common sense, the plain justice of Englishmen, revolt against such a proceeding? Gentlemen, there have been often in England trials for conspiracy like the present one, and English juries have been asked before now to find verdicts for conspiracy, but an English Attorney-General never fails to join to the counts for conspiracy, counts for attending unlawful assemblies, and counts for seditious language. In this case, I know not why, there is not a single count introduced except for conspiracy—conspiracy or nothing. It is not so in England. I take as a remarkable illustration of this the trial of Henry Hunt, to which reference has been made once or twice in the course of this trial. You know, Gentlemen, that when Henry Hunt was indicted, England was in a very perilous condition; you know that in the north of England there was a great confederacy among the lower orders. It was proved before a Secret Committee of the House of Commons, of which the present Lord Derby, then Lord Stanley, was Chairman, that large bodies of men were drilled at night in sequestered places, and were made familiar with the use of arms. It was proved in that very case that meetings were held, the result of previous concert; that men attended these meetings armed. All this was accompanied by circumstances infinitely more alarming than any suggested in this case. Henry Hunt was indicted for conspiracy; he was also indicted for attending unlawful assemblies; but an English jury refused to find him guilty of conspiracy, but found him guilty of attending unlawful assemblies, on the fourth count of the indictment. Gentlemen, the promises made at the time of the Union have not been fulfilled. English capital has not been adventured; Englishmen have preferred sinking their capital in the rocks of Mexico rather than embark it in this fine but unfortunate country. The magnificent predictions held out to us in the eloquent declamations of Mr. Pitt have not been realized, but let us, at all events, derive one advantage from it. Let English fair play, let English principles, let the spirit of English justice, the abhorrence which prevails in England of every unworthy expedient, let English loathing of constructive crime, find its way to Ireland. But it is not to England alone, thank God! that I am enabled to refer for a salutary example of the aversion of twelve honest men to prosecutions for conspiracy. There have been in this country trials for conspiracy. You all remember the case of *Rex v. Forbes* and *Hanbidge*, referred to in the course of this trial, in support of a legal proposition. I avail



myself of it now for another use. In that case a riot took place at the Theatre. Lord Wellesley imagined that there was a conspiracy to drive him out of the country. A prosecution for conspiracy was accordingly instituted. The Protestant feeling in Ireland took fire; addresses poured in from all parts of the country remonstrating against this stretch of prerogative. A Protestant jury did their duty, and refused to convict their compatriots and co-religionists. I remember well the Catholic party were rash enough at that time to wish for a conviction. They were under the influence of a fanatic partizanship; they were not swayed by a true regard for their own interests. If there had been a conviction, it would have formed a precedent in this very case. Gentlemen, we live in times of strange political vicissitude. We have witnessed strange things within the last ten or twelve years, and strange things we may yet behold; but God forbid—and I say it in the sincerity of my heart, for I hate ascendancy in every form—God forbid that we or our children should live to see the time when four Catholic Judges shall be sitting on that Bench, when an array of Catholic counsel shall be engaged in the prosecution, when eleven Protestants shall be struck off the Jury by a Catholic Crown Solicitor, and when the counsel for the traversers shall have to address twelve Catholic Jurors at the trial of a Protestant. I know full well the impressible tendency of power to abuse. It is therefore 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 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 turn the Court of Queen's Bench into a Star Chamber, and to commit further inroads on the great principles of the Constitution. Gentlemen of the Jury, it is my intention to show to you that my client is not guilty of having combined with anybody for any one of the purposes mentioned in the indictment. In treating the several topics to which I shall apply myself, I shall have occasion to advert to the evidence laid before you, and to the proceedings adopted by the Government in the various stages of this prosecution; but before I go to that part of the case, I shall show you what the object of my client was; I shall show you that his object was a legal one, and that he endeavoured to obtain it by legal means. The Attorney-General, in his speech, entered into a wide field. He was exceedingly, but not illegitimately, discursive. He introduced a great variety of topics. He referred to speeches of Sir Robert Peel and Lord John Russell; to a Report of the Committee of the House of Lords in 1797: to the great transactions of 1782. I do not at all complain of this in a case of such importance; it is right to endeavour to obtain light wherever it can be found. Gentlemen, I shall go back a little beyond the year 1782; but do not be alarmed, for you will find that I can traverse with rapidity a long tract of time. I know no author who has given a more accurate account of the state

of Ireland, and of the first struggle for the assertion of her rights, than the great Sir Walter Scott. He was bred and born a Tory. He, perhaps, was not entirely free from some disrelish towards Ireland: but when he came among us his opinions underwent considerable alteration. The man who for Scotland felt that attachment which he has so beautifully expressed in those lines which you heard quoted in the course of this trial, could make allowance for those who felt the same love for the land of their birth. Sir Walter Scott wrote the *Life of Swift*, and in page 248 of that work, which I hold in my hand, 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.'" Swift came to Ireland in 1714. At first he dedicated himself exclusively to literary pursuits, but when he had seen the oppressions under which the people of Ireland laboured, his spirit caught fire, and he exclaimed to his friend Delany, "Do not the villanies of men eat into your flesh?" In 1710, he published a proposal for the use of Irish manufactures. The Attorney-General of the day represented this tract as calculated to excite hostility between the different classes of his Majesty's people, one of the charges preferred in this indictment. A prosecution was determined on. At that time the Judges of this country did not enjoy what they now possess, "fixity of tenure." They are now, thank God, no longer tenants at will; and I speak with unaffected sincerity—and let that be understood by all those that hear me, when I read the passage that follows—such scenes as occurred at that period cannot possibly recur. The Judges

may for a moment be under the influence of mistaken feelings—they may be blinded by strong emotions; but corrupt they cannot be. “The storm which Swift had raised 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.” Swift was not dismayed by that prosecution from exhorting his countrymen to resort to the only means by which a redress of their grievances could be obtained, and accordingly he published the celebrated Draper’s Letters; and in his fourth letter he has the audacity to complain—of what, do you think?—of the exclusive employment of natives of England in places of trust and emolument in Ireland, of the dependence of that kingdom on 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 Cartaret, who was just landed, and accordingly a proclamation was issued, offering £300 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 shepherd 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 this 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 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 turned with one consent upon the man by whose unbending fortitude and preeminent 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 by the 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 conception so fine. And well might our own immortal Grattan, so great and so good, in speaking of his own great achievement in 1782, address to the spirit of Swift and to the spirit of Molyneux his enthusiastic invocation; and may not I, in the circumstances in which I am placed, offer up, without irreverence, the prayer, that of the spirit by which the soul of Henry Grattan was animated, every remnant may not be extinguished in the breasts of his countrymen. But let me not permit myself, Gentlemen, to be carried away by enthusiasm from that more sober cast of thought, with which the topics connected with the great incident to which I have adverted ought to be considered. How was it that the independence of Ireland was achieved in 1782? Was it by adopting the language of calm discussion? Was it by humbly expostulating with the British Parliament, and submitting to them a meek statement of the grievances of the country? I am well aware that we shall be told that a Government, so beneficent as the present is, anxious to govern the country with impartiality; anxious to avoid all party distinctions, will never turn an unheeding ear to the calm statement of the grievances under which the people of Ireland may conceive themselves to be labouring. But, Gentlemen, I do not find, in reading the history of any country, that, by such means, the redress of any one grievance was ever yet obtained. It was not, at all events, by following such suggestions that the liberty of Ireland was accomplished by the great conspirators of 1782. England would have coerced them if she could have ventured to do so. But English statesmen, in their struggles with America, had been taught a salutary lesson from adversity, the only schoolmistress, from whom statesmen seem capable of learning anything, but who charges so much blood, so much gold, and such torrents of tears for her instructions. In reading the history of that fatal struggle, in tracing the gradual descent of England from the tone of haughty dictation to that of disaster and of despair, it is impossible not to be struck with many painful analogies. If in time—if the English minister had listened in time to the eloquent warning of Chatham, and to the still more oracular admonitions of Burke, what a world of woe would have been saved! He repented when it was too late; the colonies were lost; but Ireland was saved, by the recognition of a great and just principle. I told you that the Attorney-General of the day did not indict Charlemont, and Grattan, and Flood, for a conspiracy. The people of Ireland were then influenced by a sentiment of nationality too exalted, and by that love of country, which God, for his wise purposes, has implanted in our nature. We were a

nation then ; we were not divided by those miserable religious distinctions by which we are now distracted and degraded. If we were eight millions of Protestants,—and sometimes I have been for a moment betrayed into the guilty desire that we were—do you think that England would use us as she does ? Do you think we should submit to the system under which every place of dignity and emolument should be awarded to natives of the sister country ? Do you think that we should not insist that a large portion of the revenue should be expended in works of public improvement here ? Do you not think that we should insist that the quit-rents and crown-rents should be expended in our own country, instead of being applied to enlarge Charing-cross, or embellish Windsor Palace ? 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 the slightest equivalent for the manifest loss we have sustained ? And should we not peremptorily require that the Imperial Parliament should hold a periodical session, for the transaction of Irish business, in the metropolis of a powerful and, as it would then be, an undivided country ? But we are prevented by our wretched religious distinctions from cooperating for a single object by which the honour and substantial interests of our country can be promoted. Fatal, disastrous, detestable distinctions ! Detestable, not only because they are revolting to the true principles of Christianity, and because they substitute for true religion the rancorous antipathies of sect, but because they make the Union a mere name, substitute for a real Union a mere parchment ligament, which may be snapped by an event, convert a nation into an appurtenance, make a great country the footstool of the British minister, and render us the scorn of England and the commiseration of the world. There is not a country in Europe where the abominable distinctions between Catholic and Protestant are permitted to continue. Is it not extraordinary that in Germany, where Luther translated the Scriptures ; in France, where Calvin wrote the Institutes ; in the country of the Dragonades and St. Bartholomews ; in the country from whence the forefathers of a Judge on that bench, and of the first ministerial officer of the Court, were inhumanly and barbarously driven, the mutual wrongs of Protestant and Catholic are not only forgotten, but forgiven ; while we, madmen that we are, arrayed against each other by that fell fanaticism, which, driven from every other country, has found refuge here, precipitate ourselves on each other in that fierce encounter, in which our country, bleeding and lacerated, is trodden under foot ; convert an island, which ought to be the most fortunate in the sea,

to a receptacle of misery and of degradation ; counteract the designs of Providence, and become conspirators against the beneficent intents of God. Gentlemen, it is admitted on all hands, it was admitted by Mr. Dundas and by Mr. Pitt, that the progress of improvement made by Ireland after the accession of her liberty, was marvellously rapid. Once having entered the career of improvement, she ran so fast, that England was afraid of being overtaken. Her commerce and her manufactures doubled ; the plough climbed to the top of the mountain, and found its way to the centre of the morass. The moral and physical aspect of the country was at once transformed. This city became one of the noblest capitals of the world ; wealth, and rank, and genius, and eloquence, and every intellectual accomplishment, all the attributes by which men's minds are exalted, refined, and embellished, were gathered here. Of that prosperity the memorials remain ; of that prosperity architecture has left us its magnificent attestation ; this temple, dedicated to justice, is one of the witnesses, silent and solemn, of that glorious time to which I may appeal. It is seen afar off ; it rises high above the din and smoke of this populous city :— Be it the type of that moral elevation over any contaminating influence above which every man, engaged in the administration of justice, ought to ascend. The penal laws were enacted by slaves ; they were relaxed by freemen. In 1782, the Protestants of Ireland acquired political liberty, and they gave us civil privileges. They had been contented to kneel to England on the Catholic neck. They assumed a nobler attitude, and they permitted us to get up. In 1782, they acquired political rights ; in 1793 they gave us the elective franchise, a word of noble etymology ; and I have no doubt that a satisfactory adjustment of the Catholic question might have been made by the Irish Parliament. The prosperity of the country was blasted by that miserable rebellion which you have heard repudiated in the speeches of my learned friend. Though “ The Memory of the Dead,” a poem, published in the *Nation*, had been read to you in evidence, Mr. O'Connell's detestation of the Irish rebellion has been proved to you beyond doubt. The rebellion led to the Union. The plan of the Union, you will find, was borrowed by Mr. Pitt from that great captain and statesman, Oliver Cromwell, to whom the gentry of this country are under such essential obligations. It must be admitted on all hands, that by their loyalty they make ample compensation for the republican origin of their estates. Oliver Cromwell returned four hundred members for England, thirty for Scotland, and thirty for Ireland. The thirty returned for Ireland were Englishmen, gallant soldiers, men who had conferred great services on England ; one would have imagined, that, when they were returned to the English Parliament, they would have met with a cordial welcome from their English brethren. Gentlemen, in reading matter connected with this case, I had the curiosity to look into a report of the debates in Cromwell's Parliament, taken by Thomas Burton, who was a member of the Parlia-

ments of Oliver and Richard Cromwell from 1656 to 1659. He took a diary of the debates of the United Parliament of England and Ireland. A few years ago the manuscript was found in the British Museum. It was published, and contains some curious matter. You will be surprised to hear that the reception given to the deputies from Ireland was very different from that which I have anticipated. They were considered as in some sort contaminated by the air which they had breathed in this country, and 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. Annesley 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.'"

Gentlemen, you may ask me, why I have read to you these singular passages? I will tell you why. The form of government may change—institutions may change—but the national character of a country, like its language, is not susceptible of alteration. The instinct of domination will prevail for centuries. Towards the Protestants of Ireland, when the Papists were ground to powder, the very same feeling prevailed, of which we see manifestations



to this very hour. The question is not between Catholic and Protestant, but between the greater country and the smaller, which the greater country endeavours to keep under an ignominious control. Many of the men who voted for the Union lived to repent it; and Lord Clare himself, when designated as a plebeian peer by a great Whig patrician, lamented the mistake which he had committed. The Union was carried by corruption and by fear. The shriek of the rebellion still echoed in the nation's ear. The *Habeas Corpus* Act had been suspended, and martial law had been proclaimed. The country was in a state of siege. The minister was supplied with a purse of gold for the senator, and a rod of iron for the people; yet that corruption, at which even Sir Robert Walpole would have been astonished, was resisted by the genius and patriotism of some of the most eminent men that this country ever produced. There was arrayed against the minister, Grattan, Curran, Ponsonby, Foster, and almost all the distinguished men of that time, the brightest in our history. Goold, whose admirable speech is given by Sir Jonah Barrington, in his "Rise and Fall of the Irish Nation," Saurin, Bushe, Joy, and Plunket, to whom I shall presently call your attention. Gentlemen, the Attorney-General in his speech said, that it was not legitimate to refer to the opinions expressed by Saurin and other eminent men of the time, as if what is said in debate is not to be regarded as the language of sincerity; as if what is said in Parliamentary debate is suggested merely by party considerations. The Attorney-General for Ireland appeared to me to take a singular view when he pressed this subject on you. He has been but a short time in Parliament, I have heard something from him of the morality of war, and something, I believe, of the morality of rebellion, but I must say, the light thrown by him on the morality of Parliament is curious indeed. I will only say, that when he made his observations on Mr. Saurin's speech, it brought to my mind a debate which I heard in the House of Commons on the subject of the education question. Mr. Saurin founded his opinion on the authority of Locke. Mr. Plunket, whose speech produced an impression never surpassed in the House of Commons, denied the right of Parliament to destroy itself. Bushe took a similar course—Bushe, whom we have lost so lately, whom it was impossible for those by whom the highest genius and the noblest eloquence were prized not to admire—whom it was impossible for those, by whom the highest worth is justly estimated, not to respect and reverence, and whom it was impossible for those not to love who could appreciate as generous a heart as ever beat in a human breast. Such were the sentiments of many illustrious men, expressed in debate, I admit, but great principles are not of an age; they are of all time; they are imperishable and everlasting; they are as immortal as the mind of man, incapable of decomposition or decay. The question before you, however, is not whether these principles are well or ill founded. That is not the point upon which your decision is to turn; but you are to take into consideration that the men who are arraigned before you were

made familiar with those principles by men whose eloquence still echoes in the nation's mind, and if they have been led astray, they have been led astray by the authority of men with whom it is surely not criminal to coincide. If the traversers at the bar, if my client, made familiar with this doctrine, expressed in language so glowing and so attractive, have come to the conclusion, that the Union was not only an injurious measure, but was a measure at variance with all constitutional principles, and was carried by what amounted to an infringement of a great nation's rights, you must make allowance for any vehemence of feeling, you must excuse any violence of expression, into which they may have been betrayed. The Union, Gentlemen of the Jury, was a bargain and sale; the sale was profligate, and the bargain was bad. Bad terms were made for the country; better terms ought to have been obtained. As was observed by Mr. O'Connell, in one of the speeches read to you, two-thirds of the representation of Ireland were suppressed, and not a single English member was abstracted. What was the consequence? A consequence as injurious to Ireland as if the dependence of its Parliament had been restored. The hundred members allowed to Ireland were lost and merged in the English majority, and on an Irish question, on a question in which the interests of Ireland only are involved, she has practically no voice in the legislature. I do not mean to say that this evil might not be cured by a wise and bold minister; such a man might trace, with the sanction of the majority of the Irish members, a policy which would remedy the evil. But it is not the wish of the British ministry to govern Ireland according to the opinion of the majority of the Irish representatives. If they did entertain such a wish, they would be opposed by the prejudice of English members. But whether that position arises from prejudice or conviction, the result is exactly the same as if the old system of a dependent Parliament was restored; but supposing the principle on which the Union was carried to have been unconstitutional, supposing it to have been a nullity, and on that subject I am not called on to give any sort of opinion; supposing it to have been injurious at the time, yet if the results of the Union have been beneficial to the country, the Union should be maintained, the cry of Repeal should not be listened to, and should never have arisen. Gentlemen, we hear that the manufactures of this country have augmented, that its commerce has increased, but if there is one fact beyond doubt, it is this, that the great majority, the great bulk of the people are in a condition more miserable than that of any other country. The greater happiness of the greater number may be a Benthamite antithesis, but in that phrase a great deal of Christianity is condensed. If you find in any country that the inhabitants of it, the great bulk of the people, are in a state of degradation and destitution, must you not come to the conclusion that the government of the country is carried on on imperfect or mistaken principles. What is the cause of the people of this country being in the condition that they are? Why is it, that when travellers land amongst us from the United

States, from Germany, or from France, although prepared, by previous description, for the exhibition of the misery which is disclosed to them, yet, at the spectacle which presents itself, they stand appalled and aghast? Is the cause in the air, or the soil, or is it the *genius loci* that produces it? Or is the fault in the Government? Let us see, Gentlemen, whether I can make out my case by taking a retrospect of the leading facts connected with the subject. I shall go through them with great celerity; but in a case of this kind, you will not consider me wantonly prolix, even if I should trespass at more than ordinary length upon your attention. I shall make you no excuse: your time is valuable, but the interests at stake are of inestimable price, and you will take no account of time when you bear in mind the effects of your verdict. They will be felt when generations shall have passed away, when every heart that throbs in this great assembly shall have ceased to palpitate, when the contentions by which we are agitated shall no further touch us, and all of us, Protestant, Catholic, Radical, Repealer, Tory, Conservative, shall have been gathered where all at last lie down in peace together.

Gentlemen, what was the first measure adopted in the Imperial Parliament with respect to Ireland? The very first measure which was introduced after the Union into the Imperial Parliament, was the enactment of martial law, and the suspension of the *Habeas Corpus*. Mr. Pitt intended to carry Catholic Emancipation immediately after the Union, and he intended at the same time to connect the Catholic Church with the State. You may think that Catholic Emancipation ought not to have been granted; many in this Court may entertain that conscientious conviction, but you must admit, that if carried at all, it ought to have been carried sooner. If carried at all, it should not have been carried after the twenty-nine years of the political laceration which this country has endured; and the fact, the striking fact, that Mr. Pitt was unable to carry the question which he regarded to be the immediate corollary of the Union, is a proof to you that the policy could not be adopted by him, which he considered necessary to the benefit of this country. 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 influence of the English people. He went out, and Mr. Addington came into office. Mr. Pitt returned to office without stipulating for Catholic Emancipation. The question was again brought forward in 1805, and lost by an English majority in the Imperial House of Commons. Mr. Pitt died of the battle of Austerlitz, and the Whigs came in in 1806. The Whigs attempted to introduce a measure of partial relief to the Roman Catholics, but the Tories raised the No-Popery cry, and drove them out, and introduced the new doctrine that the usefulness of public measures is to be tried, far less by the principles on which they are founded, than by the parties by whom they are accomplished. When the change of Government was effected by the "No-Popery" cry, a proof was given that the government of

Ireland was transferred, not merely to the Imperial Parliament, but to the opposition and prejudices of the English people. The religious prejudices, perhaps the conscientious feelings, which existed at that period among the great mass of the English people, caused the change of government, and the procrastination of the measure, which has been fraught with such fearful consequences. The Tories came into office in 1807. They found two measures in the portfolio of the Whigs; 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. Do not imagine that I am going into a description of the Arms' Bill, but this I will observe, it was either necessary or unnecessary. If unnecessary, how monstrous a violation was it of the Bill of Rights! If necessary, what a reflection is that necessity on the system of government carried on in this country! It is beyond question that in this year 1819, when England was on the verge of a rebellion, no such bill was ever propounded by the British ministry. The Tories, having carried the Arms' Bill, and the Insurrection Act, its appropriate adjunct, proceeded to reduce the provision allowed to the College of Maynooth. One word only on that subject. Either the College of Maynooth ought to be abolished, or it ought to be largely endowed, in order that an education should be given to the Roman Catholic clergy such as a body exercising such vast influence ought to receive. Some suggest that it would be better that the Roman Catholic clergy should be educated in France. But I hope never to see such a conductor established between the Tuilleries and this country. I hope never to see a Gallo-Hibernian Church established here. I hope never to see Parisian manners acquired at the expense of the morality of the Irish priesthood. I am too much attached to my Sovereign, and to the connexion between the two countries, to wish to see the instruments of French enterprise, the agents of French intrigue, located in every parochial sub-division of the country. To this day, Gentlemen, the Government do not dare to propose an increase of the grant to the College of Maynooth; they do not dare to enlarge the system of enlightened education which has been established in this country, and has produced such moral and salutary effects. No statesman has courage enough to make this proposal; and that fact is an illustration of the policy by which this country is governed under the auspices of the Imperial Parliament. I pass from the year 1808 to 1810, and I beg your particular attention to what took place in 1810. A decade had then elapsed since the Union. It had been put to the test of a searching experiment; it was known by its fruits. What was the result? The Union was the subject of universal complaint among all classes of the people of this country. Its degradation was felt, and by none more than by the Protestants of Dublin. A requisition was signed, not by Catholic agitators, but by twelve of the Grand Jury of the City of Dublin, and by one hundred and forty of the freemen and freeholders, addressed to the High Sheriff of this city, calling on



him to summon an aggregate meeting, for the purpose of drawing up a petition to Parliament for the Repeal of the Union. Here is the requisition: "We, the undersigned, late Quarter Sessions Grand Jurors of the City of Dublin, knowing the distressed and deplorable state of the manufactures of every branch, and the city and nation in general, do feel ourselves called upon to point out what we conceive the only measure of remedial relief from the general gloom and misery that pervades this unfortunate land, which is to request, and we do hereby request the Sheriff to call a meeting as soon as possible of the freemen and freeholders of this city, to prepare an humble petition to His Majesty, and the Parliament, praying for a Repeal of the Act of Union, as we, in common with all our unbiassed countrymen, look upon that Act as the root and origin of all our misfortunes." That meeting was attended by Daniel O'Connell. Gentlemen, it is not my intention, in the course of the observations which I mean to make, to direct your attention to the speeches of Mr. O'Connell, which have been alluded to on the part of the Crown. On the part of the defence, I do not mean to go through those voluminous speeches. I should not have strength to do so; and I believe it unnecessary, because the whole of those speeches will be before you, and you will have to judge of their effects by the whole of their context; to compare their different parts; to consider what is favourable and what is adverse, and to endeavour to collect from them whether the intent of the traversers, as laid in the indictment, is true. But, Gentlemen, having told you that it is not my intention to go into a detail of those speeches, you will, I hope, excuse me if I should, in drawing your attention to the speech made by Mr. O'Connell in 1810, be particular in my reference to every passage in that speech. I will tell you why:—because when that speech was made, no man could by possibility have attributed to him the motives which are now laid to his charge. No man could say that he entered into a conspiracy with the twelve grand jurors, and the hundred and forty freeholders, who signed the requisition. That is out of the question. Will it not then be an important fact to show you that in 1810, the very same language was used, the very same sentiments were expressed by Daniel O'Connell, and that the enormous quantity of newspapers laid on that table, are nothing else than an expansion of the sentiments and opinions contained in the speech delivered by him in 1810. If the sentiments of 1810 are the sentiments of 1844, the intent of 1844 must be identified with the intent of 1810. The following is the 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 mer-  
 “ chants become bankrupts ; her gentry banished ; her nobility de-  
 “ graded. 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 this 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 situa-  
 “ tion 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 re-  
 “ moved 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 respect-  
 “ ing 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 in-

“justice. The representatives whom 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 trea-  
 “son. The reasonings upon which those opinions are founded are suf-  
 “ficiently obvious. They require no sanction from the authority of  
 “any name; neither do I pretend to give them any weight by de-  
 “claring them to be conscientiously my own; but if you want autho-  
 “rity 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 said, that crime, like wine,  
 “improves by old age, and that time mollifies injustice into inno-  
 “cence. 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 birthright, of our inde-  
 “pendence; may it not be permitted us mournfully to ask how this  
 “consummation of evil was perfected? for it was not in any dis-  
 “astrous battle that our liberties were struck down; no foreign in-  
 “vader had despoiled the land; we have not forfeited our country  
 “by any crimes; neither did we lose it by any domestic insurrec-  
 “tion; 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! Eng-  
 “land, 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 pe-  
 “riod when, out of 100,000 of the seamen in her service, 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 naught 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 his-  
 “ tory, that the rebellion itself was fomented and encouraged in  
 “ order to facilitate the Union. Even the rebellion was an acci-  
 “ dental 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 reli-  
 “ gious 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 sub-  
 “ divisions; they separated the Protestant from the Catholic, and  
 “ the Presbyterians from both; they revived every antiquated cause  
 “ of domestic animosity, and invented new pretenses 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 re-  
 “ ligious 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 any thing  
 “ 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 un-  
 “ wieldy 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  
 “ Imperial 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 pro-  
 “ fligate ; I cannot be suspected of flattering them ; yet, vile as they  
 “ are, I do not believe that they could have had the audacity to in-  
 “ sert in the speech, supposed to be spoken by His Majesty, that ex-  
 “ pression, had they known that, in fact, Ireland was in abject and in-  
 “ creasing poverty. Sir, they were content to take their information  
 “ from a pensioned Frenchman, a being styled Sir Francis D’Iver-  
 “ nois, who, in one of the pamphlets which it is his trade to write,  
 “ has proved by excellent samples of vulgar arithmetic, that our manu-  
 “ factures are flourishing, our commerce extending, and our felicity  
 “ consummate. When you detect the ministers themselves in such  
 “ gross ignorance as, upon such authority, to place an insulting false-  
 “ hood 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 le-  
 “ gislate 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 ne-  
 “ cessary 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 re-  
 “ lates 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 dis-  
 “ turbances, 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 his 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  
 “ domestic complaints and calamities. The great enemy of the li-  
 “ berty of the world extends his influence and his power from the  
 “ Frozen Ocean to the Straits of Gibraltar. He threatens us with inva-  
 “ sion 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 en-  
 “ deavouring 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 po-  
 “ pulation, 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 has 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 would 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 mil-  
 “ lions be raised from Cape Clear to the Giant’s Causeway, if the  
 “ men most remarkable for their loyalty to their King and attach-  
 “ ment 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 with-  
 “ out commotion and without difficulty. Let the most timid amongst us  
 “ compare the present probability of repealing the Union with the pros-  
 “ pect that in the year 1795 existed of that measure being ever brought  
 “ about. Who, in 1795 thought an Union possible ? Pitt dared to at-  
 “ tempt 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 discre-  
 “ tion from your enemies ; they have crushed your country by fo-  
 “ menting 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.”

Gentlemen, I think you have found that my statement was not incorrect when I stated to you that in 1844 Mr. O’Connell expressed precisely the same opinion as in 1810, and suggested that the Repeal of the Union was to be accomplished by the same instrumentality. Mr. Riddle, the High Sheriff, was in the chair; but who do you suppose was called to the chair when the High Sheriff left it, *magnum et venerabile nomen!* Sir Robert Shaw having taken the chair, an Address was presented to him as the representative of the city of Dublin, to support the prayer of the petition, and here is the answer of this conspirator for the dismemberment of the empire. He appears to have been embued with all the fell and ferocious intents attributed to my client, and to have been connected with the alleged conspirators before you in almost every sentiment.

“ GENTLEMEN,—I feel much obliged for your kind and flattering Address; it is the greatest possible gratification to me that my public conduct should have met the wishes of so large and so respectable a body of my fellow-citizens, as the freemen and freeholders in aggregate meeting duly assembled. Since I have had the honour of being one of your representatives, I have always considered it my duty to attend any meeting of my constituents, legally convened, for the purpose of hearing their sentiments; and I thought myself particularly called on to do so on the late occasion, when a question of so much importance to the welfare of the nation was to be agitated. Upon the subject of the Union my sentiments have already been unequivocally avowed; those sentiments remain unchanged. It is with much satisfaction I contemplate the part I took when the measure was discussed in the Irish parliament, and it cannot but afford me additional pleasure to find that my conduct on that occasion is to this day recollected by you with approbation. With these impressions on my mind, you will, I trust, readily believe me when I assure you that I shall feel sincerely happy in co-operating in all such measures as may be best calculated to forward the object of your petition, consistently with what the interests of

“Dublin, the general prosperity of Ireland, and the power and stability of the empire may demand.

“I have the honour to be, Gentlemen,

“Your most obedient and humble Servant,

“ROBERT SHAW.”

The next letter bears the name of one of the greatest and best men this country ever produced; it is signed “Henry Grattan.” I have heard it suggested, that after the Union he changed his opinion as to the measure. That suggestion is repelled by evidence which has assumed the rank and dignity of history.

“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 and much-respected constituents, 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 connexion with Great Britain, and to that harmony between the two countries, without which the connexion cannot last. I do not impair either, as I apprehend, when I assure you that 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. He declares again and again that unless backed by the nation, nothing can be accomplished by him. And what is the nation? Ask the Catholic, what is the nation? He will probably tell you the seven millions,—the people,—because they are the depository of all political power. He is wrong. Ask the Protestant, what is the nation? He will tell you the million and a half who have all the property, who enjoy the advantages of education, and the results of education—high intelligence and high public spirit, who are united, organized, and determined. He is wrong. The nation are neither the Catholics nor the Protestants, but both. It was the sustainment of both that Mr. Grattan considered indispensable to make the proposition either prudent or possible. It was the sustainment of both that Mr. O’Connell demanded at Tara, at Mullaghmast, and at the forty-one meetings, the details of which you have had before you. Backed by the nation! Those words express a sentiment which no man in this Court should blush to avow. If you believe that Mr. O’Connell entertained it you cannot find him guilty. If you believe that he meant to carry the Repeal of the Union by physical force and by rebellion, you must



find him guilty ; but if he meant to carry the Repeal of the Union by the means which Grattan proposed, you cannot find him guilty. In 1812, Mr. Percival lost his life, and efforts were made to construct a cabinet favourable to emancipation. The project failed. The Catholic question at that time occupied the public mind. The Catholic Board had commenced its sittings in 1812, and it was determined to put it down by a state prosecution. You all remember the trial of Sheridan and Kirwan. 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 on the jury. He spoke in the way in which the cause of freedom should ever be advocated. 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 Roman Catholic 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 Orange-  
 “ man, 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 pro-  
 “ cess, but I will say that they ought to have interfered in counter-  
 “ acting a selection which has insulted some of the most loyal men of  
 “ this city, and must disparage any verdict which may be thus pro-  
 “ cured. But, Gentlemen, upon a nearer view of the subject, I relin-  
 “ quish 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 per-  
 “ suade 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 deci-  
 “ sion, 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 pro-  
 “duces conviction.” It might, at first, be supposed that a Protestant  
 jury would take this language in bad part; but they gave Mr. Bur-  
 rows credit for his manly frankness, and they acquitted the traver-  
 sers. Mr. Saurin was then Attorney-General. Whatever may have  
 been his faults, hypocrisy was not among them. He was of opinion  
 that Protestant ascendancy, in every department of the State, was  
 necessary for its salvation. He thought that it should predominate  
 not only at the Castle, but in those public tribunals which are armed  
 with so much authority, and exercise so much influence over the for-  
 tunes of the state. He did not deny, he scorned to deny the impu-  
 tation. He had his faults, but he had also many virtues. I remember  
 him well, he was meek in prosperity, and in adverse fortune he was  
 serene. To the last the lustre of adversity shone in his smile; for his  
 faults, such as they were, his name, in an almost inevitable inheri-  
 tance of antipathy, furnishes an excuse. How much more noble was his con-  
 duct, and the conduct of the Government of the day, than if they had  
 been profuse of professions which they never meant to realise, and  
 had offered an insult to the understanding, as well as a gross wrong  
 to the rights of Irish people, by telling them that no difference was  
 to be made between Catholic and Protestant! and yet I shall not  
 be surprised if, notwithstanding all that has happened, the same cant  
 of impartiality shall be persevered in, and if we shall hear the same  
 protestations of solicitude to make no distinction between Protes-  
 tant and Catholic, especially in the administration of the law. The  
 screen falls, the “little French milliner” is disclosed, “by all that’s  
 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, the ex-  
 clamation of the unfortunate Sir Peter Teazle, “oh! damn your sen-  
 timent,” will break in upon him on every side. Notwithstanding the  
 acquittal of Sheridan and Kirwan on the first trial, a second prosecu-  
 tion was instituted, and a conviction was obtained. What good to the  
 country was effected by it? Was it sanctioned by the public? Was it  
 ratified in the tribunal of public opinion, to which, after all, an appeal  
 must ever be made? Was the Catholic spirit, was the spirit of the  
 public subdued? Was the agitation put an end to? No. Sir Ro-  
 bert Peel came to this country in 1813. He was an Irish Member,  
 and had been returned for Cashel, where a small but discriminating  
 constituency, could appreciate the merits of the future Minister  
 of England. It has been said, that statesmen who are destined  
 to operate in England, are sent to dissect in Ireland. Mr. Peel  
 had the finest instruments, a nice and dexterous hand, and gave  
 proof that he would give the least possible pain in any amputa-  
 tions which he might afterwards have to perform. He was de-  
 corous; he avoided the language of wanton insult; he endeavoured  
 to establish a mild despotism here, and to unite moderation  
 with absolute power. He gave us no offence; he dealt in “de-  
 cencies for ever.” But still the agitation continued. He must

have seen the irresistible argument in favour of Emancipation, but he had not the moral courage, the quality in which he is mainly deficient, to break from his party and concede at once that which he was at last compelled to concede. A new policy was adopted after Mr. Peel had returned to England, and the notable expedient was adopted of counteracting the Secretary by the Lord Lieutenant, and the Lord Lieutenant by the Secretary. We had Grant against Talbot, and Wellesley against Goulburn, and it was expected that from this complication of policy good results would flow. The Roman Catholics of Ireland had been led to entertain the hope that something would be done for their relief. But their eyes were opened, and they at length discovered that they could rely on themselves alone for the accomplishment of Emancipation. Daniel O'Connell, in the year 1821, founded the Catholic Association. He constructed a vast engine by which public opinion was to be worked; he formed with singular skill the smallest wheels of the complicated machinery, and he put the whole in motion by the current of eloquence which flowed, as if from a hot-well, from his soul. The people were organized—the middle classes, the Catholic clergy, the Catholic aristocracy, were combined. The Minister determined to put down the Catholic Association, and in 1825, a bill was brought in for the suppression of it. Mr. O'Connell proceeded to London in the hope that by making a tender of just concession, he might be able to avert the measure by which such an infraction of liberty was threatened. He offered to connect the State with the Catholic Church,—he was dismissed with scorn and contumely. The bill was passed for the suppression of the Catholic Association; the bill was laughed to scorn, and proved utterly inoperative. Mr. O'Connell was not dismayed, his energy redoubled; the peasantry were taught that the elective franchise was not a trust vested in the tenant for the benefit of the landlord. A severance took place between landlord and tenant, which I regret, and shall always regret, but for which those who delayed justice so long are alone responsible. A great agrarian revolt took place. The Beresfords were beaten in Waterford, the Fosters in Louth, and at length the Clare election gave demonstration of a moral power whose existence had scarcely been conjectured. I remember standing near the late Lord Fitzgerald, an accomplished and enlightened man, when he looked down from the hustings on a mass of sixty thousand sober men—I remember to have heard him say, that he wished that Wellington and Peel could look on the spectacle which he then beheld. He saw that something far more important than his return to Parliament was at stake. Catholic Emancipation was carried, and here let me put two questions to you. The first is, whether in the twenty-nine years which I have traversed as rapidly as I could, you have had abundant proof of the beneficial results of the Union. Do you think 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 the Imperial Parliament, was so wise, so just, so salutary, so fraught with advantage to the

country, so conducive to its tranquillization, and to the development of its resources, that for twenty nine-years the Union ought to have been regarded as a great legislative blessing to this country. The next question is more important. Take up this indictment, substitute "Catholic Emancipation" for Repeal, and you will find that in 1829, if the Attorney-General had been directed to prosecute for a conspiracy those who carried Catholic Emancipation, every count in the indictment would have been applicable, and evidence of, exactly the same description might have been brought forward for the purpose of sustaining it. Editors of newspapers were members of the Catholic Association, Mr. Staunton, the respectable proprietor of the *Weekly Register*, was a member of it. His newspaper was sent through the country. He stood exactly in the same relation with regard to the Catholic Association as Dr. Gray and Mr. Barrett stand to the Repeal Association. He will be produced to you on that table, and he will prove that he never got one farthing from the Catholic Association, except for advertisements, and for the space occupied in his columns, and nothing else. Mr. Conway and Mr. Barrett were members of the Catholic Association. The regulations of the Catholic Association were much the same as those of the Repeal Association. Monster meetings were held as they are now. You all remember the provincial meetings which were attended by fifty, sixty, and a hundred thousand men. They collected money as they do now; money came from America and Canada, and strong sympathy for Catholic Ireland was expressed. In 1828 and 1829 England was threatened with a war. Russia had passed the Balkan. M. de Chateaubriand in the French House of Deputies, adverted to the speeches in the Catholic Association, and used language of minacious intimation towards England. 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? Seditious speeches were not passed over at that time. The humble individual who addresses you was prosecuted for having made a speech on the expedition of Wolfe Tone. But it was not an indictment for conspiracy. The Crown sought to make me responsible for what I said myself, not for what was said and done by others. The bills were found. But Mr. Canning was then in office, and he said openly in the Cabinet: "I have read the speech which is the subject of the prosecution. There is not a sentence in it which would justify a call to order in the House of Commons. The prosecution is unjust, and must be abandoned"—and the prosecution was abandoned. Why do I refer to this? For two reasons: First, because I am, thanks be to God, as innocent as you, or any living man of the monstrous charge then preferred against me,—and in the next place, to show you the manly mode of dealing of the Government of that day. There was no attempt to involve me with others; if there had been such an attempt, I know not what would have been my fate. 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 spoken, written, and done. In this proceeding, whose tardiness indicates its intent, you will not, I feel confident, become his auxiliaries. A Coercion Bill, if the agitation for a Repeal of the Union is to be put down, would be preferable, for it operates only 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 to-day: it may be levelled against the Anti-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.

Pass to the events which followed Emancipation. The Emancipation Bill is carried. The Tories are put out by their former Irish auxiliaries. The Whigs came in, and the Reform Bill is proposed. How was it carried? You heard the Attorney-General read a speech of Lord John Russell's respecting the Repeal of the Union. You have heard him refer to the authority of Lord Grey. Let us see how the Reform Bill was carried. One hundred and fifty thousand men assembled at Birmingham. They threatened to advance on London. Lord Althorpe and Lord John Russell entered into a correspondence with them. A resolution not to pay taxes is entered into, and applauded by Lord Fitzwilliam; Cumber is reduced to ashes; Bristol is on fire. The Lords hesitate. With one blow of the prerogative the Whig Premier strikes them down. And who were the men—the bold and audacious men—conspirators indeed! who embarked in an enterprize so fearful, and which could only be accomplished by such fearful means—Lord Grey? Yes. Lord John Russell? Yes. Lord Althorpe? Yes. You remember the question put by Mr. Hatchell to one of the witnesses, Mr. Ross, whether he knew Sir James Graham? I do not wonder that the Attorney-General started up and threw his buckler over the Secretary for the Home Department. Gentlemen of the Jury, this prosecution came from the Home Office. This country is under the direction of the Home Office. It was stated by Sir Robert Peel, in Parliament, that for every proceeding in this country the Home Office is responsible. Gamblers denounce dice! drunkards denounce debauch! against immorality let wenchers rail, when Graham denounces agitation! I do not speak in a spirit of partizanship when I say this. I do not say that Sir James Graham, when he changed his party, did not do so from disinterested motives. I am willing to admit that his sentiments were conscientious. I will not attack behind his back the man whom I have so often attacked to his face, but this I will say: the Attorney General, when he bore in mind the political part taken by his master in passing the Reform Bill, should have been more forbearing in his observations on the acts of Daniel O'Connell. The Reform Bill is passed. The Reformed Parliament is summoned. What is the first measure adopted by the Imperial Reformed Parliament? The very first measure adopted is

the suspension of the *Habeas Corpus* Act, the Coercion Bill, by which a jury, composed of twelve soldiers, are sent with a sort of military roving commission to try the offences committed in the disturbed districts in Ireland. But a Coercion Bill was better than a State Prosecution. It is only a temporary suspension of liberty, with its operation limited to a particular period, and when that period is elapsed there is an end to the Act of Parliament, and liberty revives. But a verdict, a verdict founded on the perversion of law, on the subtilization of law, a verdict not consistent with the high principles of the constitution stands as a precedent. The Act of Parliament inflicts a gash, the verdict inflicts a mortal wound. Gentlemen of the Jury, I will not go into a detail of the rest of that series of calamitous measures which have kept this country in a state of destitution and misery to the present hour. The Church Temporalities Bill, the Tithe Bill, the Municipal Bill, the Registration Bill. These questions, with their diversified ramifications, have left us not a moment's rest; cabinets have been destroyed by them; the great parties in the state have fought for them, and Ireland has supplied the fatal field for the encounter of contending factions. 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, an English tariff in our markets, and a state prosecution in Her Majesty's Court of Queen's Bench. Do you not think, Gentlemen of the Jury, that I have made out my case to a certain extent, and established that the policy pursued by the Imperial Parliament, in regard to this country, whether by Whigs or Tories, I make no distinction, has been productive of consequences seriously injurious to the country. I do not know of what politics you may be. I do not know whether any one of you are advocates for the Repeal of the Union. You may be of opinion that a Repeal of the Union would lead to a rupture between the Parliaments of the two countries, and to a consequent dismemberment of the empire. It might not be attended with all the beneficial results which its advocates anticipate from it, but still the discussion of it may not be useless. Gentlemen of the Jury, if the councils of the State were governed by no other motive or consideration than those of justice; if measures were founded upon syllogisms; if government was a matter of pure dialectics, then all assemblages of the people should, of course, be deprecated, and every exciting adjuration addressed to the passions of the people should be strenuously reprov'd. But you may carry on a ratiocination with a Minister for one hundred years, and not advance a single step. The agitator must sometimes follow the example of the diplomatist, who asks for every thing, in order that something may be obtained; and you may rely on it, that when Ministers are most loud in their complaints against agitation, they generally have in contemplation some measure of conciliation. For example, we are indebted to agitation for the Landlord and Tenant Commission, which Conservatives think will disturb the foundation 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 towards Ireland. The Union was never carried into effect. If it had, Ireland would not be a miserable dependant in the great imperial family. One of the charges brought forward by the Attorney General against the traversers was, that at Mullaghmast they used a motto taken from the *Morning Chronicle*: "Nine millions of people cannot be dragged at the tail of any nation on earth." If this sentiment be seditious, I am sorry for it, it is one in which I concur, and I do not hesitate to express my concurrence in it in the Court of Queen's Bench. I do not attach any great value to mere numbers. To vast multitudes apart from moral weight, I attach no value; but the moral aspect of the people of this country has, within the last hundred years, undergone extraordinary changes. Education, that great circulator of political sentiment, has been extensively diffused among us. Ireland, if I may so speak, has undergone a species of transformation. By one who had seen her half a century ago, she would scarcely be recognized. The simultaneous, miraculous abandonment of that pernicious habit to which the nation was addicted, effected by one man, I do not go so far as to say, is to be regarded as evidence of the great and powerful political organization of the people of this country, but it is a strong indication of what might be done by a good Government with so fine a people; and it is a change of which a great statesman might avail himself for the advantage of the country. The great literary organ of the Whig party has recently suggested many bold measures, which it represents as necessary to Ireland. There are numerous difficulties connected with some of the propositions to which I refer, but there is one which I think deserves serious attention, and which I consider rational and feasible; nothing is rational which is not feasible. It is suggested that the Imperial Parliament should sit here for two months before the month of February, every year, for the discharge of Irish business alone; and that the Imperial business should be afterwards transacted in the great metropolis of the British Empire. I see no difficulty in this. No objection could then arise from the great departments of the State, and all their machinery, being located in London, for during the Irish Session, a reference to them would not be required. It might be inconvenient for English members to come here, but, believe me, the state of things going on in this country the agitation and distraction which exist in it, and the consequences of this State prosecution—whatever may be its result, conviction or no conviction—are attended with inconveniences far greater than any which English members, in crossing the Irish channel, would encounter. The benefits to Ireland, which would be derived from such a plan, no body can doubt. It would have the advantages without the dangers of a Repeal of the Union. There would be

no dismemberment of the Empire ; no Catholic ascendancy to be dreaded ; no predominance of one party over the other. The intercourse of the two countries would be augmented to such an extent, that their feelings would be identified ; national prejudices would be reciprocally laid aside ; English capital would be diffused through Ireland ; an English domestication would take place. Instead of lending money on Irish mortgages, Englishmen would buy lands in Ireland, and live on them. The absentee drain would be diminished. The value of property would be nearly doubled : public works would be undertaken ; and the natural endowments of the country would be turned to account. You would see the country again inhabited by its ancient nobility. What a magnificent spectacle this city would then present ! Its ancient splendour would be renovated ; your streets would again 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 would be driven. The mansions of your aristocracy would blaze again with that useful luxury which contributes, by the affluence of the rich, to the employment and the comfort of the poor ; and this metropolis, the seat of a nation's legislature, would not be deemed unworthy to be the abode of Majesty itself. You would behold your Queen among you proceeding to the Parliament, with the diadem, the brightest in the world, glittering on her brow, while her countenance beamed with that expression which becomes her better than the Crown itself. 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 which 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 can be placed, presenting to her subjects the model of every conjugal and maternal virtue. I do not speak in the language of enthusiasm when I say that this anticipation might be realized ; but if, instead of co-operating for such a purpose as this, we continue our fierce dissensions, what hope will be left for the country ? If you, Gentlemen, instead of assisting in an undertaking so reasonable and so safe, shall conspire with her Majesty's Attorney-General in crushing the men who have had the boldness to complain of the grievances of their country, you will lay Ireland prostrate. You may strike agitation dumb ; you may make millions of mutes ; I admit it ; but beware of that dreary silence, which is darkly significant of the fearful purpose which it awaits its opportunity to accomplish. Beware of contributing to those incidents of horror which every good man will pray may be averted, and which will be lamented when repentance shall be, like that of those who are for ever doomed, whose sorrow is unavailing, and whose contrition is vain.

Gentlemen of the Jury, I am far from meaning to say that strong language is not reprehensible, and has not been used ; but I deny that those speeches bear, when taken together, the interpretation put upon



them. Gentlemen, I do not recollect, and I am sorry to say I have had some experience in that way, an instance of any popular movement in which such language has not been used. If any of you have taken the trouble of reading the speeches at the Anti-Corn-Law League, you have read language of a character more exciting and inflammatory than any which has been proved before you. I grieved to hear the Attorney-General say that Her Majesty was spoken of in terms of personal disrespect at one of these meetings. I heard him say that the Queen was spoken of as one would speak of a fishwoman. I will not attribute misrepresentation to any man, but this I must say, that it was one of the most infelicitous expressions which a public officer could be guilty of. Mr. John O'Connell proposed the health of the Queen at Mullaghmast, and added that the speech delivered by the Queen was the speech of her Ministers, and could not be considered as the emanation of her own unbiassed mind. On every occasion on which the the speech of Her Majesty was alluded to the distinction was taken between the Queen and her Ministers. My client's speech at Mullaghmast was given in evidence. It is strong in expressions of enthusiasm and affection to Her Majesty. Will the Attorney-General deny—is it not notorious to every body that the speech from the throne is regarded as the speech from the minister?—that the minister alone is responsible for it? I say it is unfair, it is illegitimate to impute to the traversers, in open Court, an offence so monstrous without giving better proof of it than this. Gentlemen, how is it that the Tories speak of Her Majesty? You cannot have forgotten the contumelies heaped upon the head of the Queen, on the resignation, in 1839, of Sir Robert Peel. I will not, Gentlemen, disgust you by a more distinct reference to those traitorous orgies in which even clergymen took part. It is better to inquire how it is that gentlemen connected with these very prosecutions have thought it decorous to comport themselves when their own passions were excited. I shall not weary you with numerous extracts, but such as I shall give you I think you will admit are of a peculiar kind, and not destitute of interest. The first speech I shall give you is extracted from the *Evening Mail* of the 9th of March, 1835. I believe it is taken from a report of the proceedings at a meeting at Exeter Hall, on an exceedingly interesting subject, the National Education Board, of which the Solicitor-General, I believe, is one of the Commissioners. I will not ask the Attorney-General what he thinks of this speech, because it refers to a subject somewhat embarrassing to him: what his opinions are on the Education question it is not easy to conjecture, and it is not for me to scrutinize. The following extract is one of no ordinary interest, and I defy the Crown to produce any thing like it in the speeches of the Repealers: “The Government might make what regulation it pleased; but he trusted the people knew their duty too well to submit to its enactments. It 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 valley would resound the rallying cry of ‘ To your tents, oh Israel.’ ” That speech was delivered by the Right Hon. Frederick Shaw, who still lends his efficient support to Her Majesty’s Government, the mutilators of the Word of God. But the next incident is still more interesting, a still greater person is to be introduced on the scene. In the year 1837 a great Protestant meeting was held by gentlemen who had a right to hold that meeting, but who have no right to complain of others following their example. The meeting was held in the Mansion House, in the city of Dublin. It was attended by almost all the representatives of the Conservative interest in the country. On the motion of Sir Robert Shaw, who was in the chair at the meeting in 1810, to which I have just now adverted, Lord Downshire was called to the chair. I shall advert to one or two of the speeches, as reported in the *Evening Packet* of the 14th of January, 1837. The Earl of Charleville said, “ Well, Gentlemen, you have a rebellious Parliament, you have a Lord Lieutenant the slave and minion of the rebellious Parliament.” The Attorney-General was present when these words were used—did he remonstrate? Did he expostulate? Could not Lord Charleville, The Right Honourable Thomas Berry Cusack Smith, and the Editor of the *Packet* have been indicted for a conspiracy? Not only he did not remonstrate, but he made a speech, in which he stated, that “ he was sorry “ to find that the Roman Catholic members of Parliament paid so little “ regard to their oaths.” When the Right Hon. gentleman used those expressions, I am not surprised that Roman Catholics were struck off the jury. Let him not misapprehend me, I do not refer to his language in the spirit of resentment. Resentment is the last sentiment which such expressions are calculated to produce. I refer to these expressions solely for the purpose of showing how men who have their prepossessions and feelings most under restraint, may be betrayed into indiscreet expressions, but they should be the least disposed to find fault with those, who, feeling a deep interest in the welfare of their country, may be betrayed into a violation of discretion, The Attorney-General has expressed great indignation at the references made at Mullaghmast, to transactions over which the veil of oblivion ought to be drawn. He said, and justly said, 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. How does he 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 was as alarming as it was in the year 1641, when events took place from whose recollection the imagination turns with horror and dismay. Gentlemen, monster meetings are not exclusively Catholic.

A meeting was held in Cavan. In the Appendix to the Report of the Committee on Orange Lodges, of the 12th of November, 1834, I find this passage : " And, lastly, we would beg to call the attention of the " Lodge, and through them return our heartfelt thanks and congratu-  
 " tulations to our brethren through the various parts of Ireland, who,  
 " in the meetings of three thousand in Dublin, four thousand at Ban-  
 " don, thirty thousand at Cavan, and seventy-five thousand at Hills-  
 " borough, 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, Gentle-  
 men, is one which Lord Stanley, in one of his wayward moods, was  
 pleased to apply to the Orangemen of Ireland. At Cavan there were  
 30,000 people assembled, and I hope you will excuse me when I  
 venture to state to you and read out what took place at the meeting.  
 The Rev. Marcus Beresford came forward and said, " I beg leave  
 " to introduce to you the Champion of the Protestants of Ireland, a  
 " good and honest man :

" Here is Mr. Samuel Gray,  
 The Protestant hero of Ballibay."

Mr. Gray appears to have been *transported* with the reception which he met with. Mr. Samuel Gray then came forward and said : " he was an honest and straightforward Protestant, and that was his only merit." So much for that monster meeting. I now come to the next, which consisted of 75,000 persons, not men, women, and children, no, Gentlemen, a different class of men, deserving of unaffected respect ; a class of men who may be misdirected by feelings of partizanship, but whom I for one will never concur in putting down. I quoted to you before from the *Evening Packet*. It is only right, lest I should excite a dangerous jealousy, to quote now from the *Evening Mail*. Here is a description of the battalions : " At an early hour in 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 at their head to the general place of assemblage, so that the  
 " area in front of the hustings did not present a very crowded appear-  
 " ance until the arrival of the men in large masses, each having a  
 " pride of marching, Border fashion, shoulder to shoulder, beside his  
 " neighbour and brother, with whom he was ready to sacrifice his  
 " 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 Rev. H. Waring, who was drawn by the people. A flag, the  
 " Union-Jack, was hoisted at Mr. Reilly's as the signal of their arrival.  
 " In a few moments they were seen descending from a steep hill to  
 " the town, and approaching the place of meeting in a close, dark,  
 " and dense mass, comprising certainly not less than 20,000 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 Marquesses of Londonderry and Downshire, Lord Clanwilliam, Sir Robert Bateson, Colonel Forde, Colonel Blacker, Lord Castle-reagh, and Lord Roden. The latter had 15,000 men, his own 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 75,000 persons present, exclusive of the thousands who filled the town, or thronged to absolute impediment all the adjacent roads and avenues.” I make no comment on those meetings. I think they were perfectly legal and constitutional, and I hope no precedent may now be established which may hereafter be applied in putting such meetings down. But if assemblies so vast are legitimately held by Northern Protestants, to the Catholics of the South of Ireland, is not the same privilege to be awarded ?

Gentlemen, permit me to advert to some remarkable matter contained in the Report of the Committee on Orange Lodges, to which I have just referred, relating to a subject on which you have heard a good deal from the Attorney-General. They are resolutions passed by the Orange Lodges ; and though I deviate in some sort from the order which I had prescribed to myself, I do so because I find there some matter of peculiar interest : “ 15th February, 1833, William Scott, sixteenth company, Royal Sappers and Miners. That the Committee would most willingly forward all documents connected with the Orange System to any confidential person 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 Mius 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.” I have read these resolutions in order to show you after what fashion men proceed who are anxious to obtain influence over the army. One of the charges against the traversers is, that they conspired for the purpose of seducing Her Majesty's troops from their allegiance. How is it that men proceed who have such an enterprize in view ? They pass resolutions to forward documents to confidential persons in Ballymona, as prudence will not permit that printed documents should be forwarded direct to our military brethren.” They issue warrants for the purpose of establishing Orange Lodges in the regiments. Gentlemen of the Jury, what is the evidence in this case against my client, with respect to the army ? Has any proceeding of an analogous kind been



adopted? Has any document of a clandestine character been transmitted to the army? Has money been distributed amongst the army? Have emissaries been employed in the circulation of seditious papers? Have the Catholic Priests who attend the military hospitals, been found tampering with the soldiery—and pouring “a leprous distilment” into their ears? Do you find any one expedient adopted, to which men, anxious to seduce soldiers from their allegiance would, beyond a doubt, resort? All you find in this case is, a speech or two of Mr. O’Connell’s with regard to the promotion of the sergeants, and there the matter ends. There is a distinct resolution passed, that no sort of communication shall be held with the army. In fact, the only material document on the subject is the letter of a Mr. Power, a Roman Catholic priest, residing in the county of Waterford, who is not a member of the Repeal Association, and who is not indicted as a conspirator at all. That letter, which is represented as seditious and incendiary, is not prosecuted—Why not? The name of Mr. Power is known, his residence is known, the letter he is here to explain to you. Is it fair to let that letter pass, to keep it in reserve, and to produce it now?—not against Mr. Power, mind you, he is not indicted at all, he is to escape with impunity, but against Daniel O’Connell and his son, who had no cognizance of it, who had no communication with the author of it—and use it as evidence, on the legal subtlety that Mr. Power’s letter appeared in Mr. Barrett’s newspaper, that Mr. Barrett is a member of the Repeal Association, and therefore, that Daniel O’Connell is engaged in a conspiracy to seduce the army from their allegiance? Gentlemen, I state to you these facts, not from my own imagination, but as they appear to you in evidence. Let us see what course has been adopted by the Government in this prosecution? The first step taken was the dismissal of the Magistrates. Sir Edward Sugden dismissed them on a ground which incurred almost universal condemnation from all parties. They were dismissed on account of something that was said in the House of Commons, and on account of the “inevitable tendency of the meetings to outrage.” Why, Gentlemen, there has been unequivocal proof given to you that the meetings had no tendency to outrage. I use the words “tendency to outrage,” because Mr. Hatchell asked Mr. Ross, the clandestine Sub-Inspector of the Home Office, whether he observed any tendency to outrage, and he said that he did not observe the least. Gentlemen, the question for your consideration is not, after all, whether the Government acted right or wrong in the dismissal of these Magistrates, but what was the real character of the meetings, and whether they deserve the reprobation which has been heaped on them? Let me contrast the proceeding of the Lord Chancellor of Ireland with the doctrine laid down by Baron Alderson in his charge to the Grand Jury at the Monmouth Summer Assizes, 1839. It is reported in 9 Car. & P. : “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 might 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 consti-  
 “ tution of this country did not, God be thanked, punish persons  
 “ who meant 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.” What has been the  
 evidence given here? Has a single respectable gentleman—a single  
 man of station and rank, living in the place where the meetings  
 were held, been produced to prove to you that they were a source  
 of apprehension in the neighbourhood? Has any man been pro-  
 duced to prove that they had even a tendency to outrage? It is al-  
 most unnecessary for me to direct your attention to this, because it  
 must have struck yourselves that no gentleman of property or station  
 in the neighbourhood where these great meetings were held, was  
 brought on the table to state that any apprehension was produced by  
 them. The officers of the constabulary, and the persons connected  
 with the police establishment who have been examined, all concur in  
 stating that there was no violation of the peace. Indeed, the Attor-  
 ney-General has stated as much. He charges the traversers, not  
 with breaking the peace, but with keeping it, with the malevolent in-  
 tention of enabling the whole population to rise at a given time, and  
 to establish a sanguinary republic, of which Mr. O’Connell is to be  
 the head. Forty-one of those meetings were held, all of the same  
 character; and at last a proclamation is determined on, for the pur-  
 pose of stopping the Clontarf meeting. You have heard the re-  
 marks of Mr. O’Connell with reference to the course adopted to-  
 wards that meeting, and to me they appear extremely reasonable.  
 Notice had been given three weeks before of the intention to hold the  
 meeting, and yet the proclamation was not published until late in  
 the evening of Saturday, the 7th of October, the day before that  
 on which the meeting was to have taken place. Mr. O’Connell  
 said, that he believed the authorities did not intend, by giving  
 this late notice, to induce the people to meet. He did not  
 impute to them such an atrocious attempt on the lives of the peo-  
 ple as might have been perpetrated by sending the army amongst  
 an unarmed populace, if the meeting had taken place. But such an  
 event might have occurred, and the Government are at all events  
 open to the charge, that they did not use due diligence in giving a  
 more timely warning, one which would have removed all doubt and  
 uncertainty. But there are some other circumstances connected  
 with this proclamation, to which I will call your attention. It has  
 always been the usage when a Privy Council is about to assemble, to  
 direct summonses to every Privy Councillor residing in Dublin. On

this occasion those summonses were not issued. I am given to understand that Chief Baron Brady was not summoned; The Right Honourable Anthony Richard Blake, a Roman Catholic, who was appointed Chief Remembrancer of the Court of Exchequer, by a Tory administration, an intimate friend of that illustrious statesman, the Marquis of Wellesley, a man who had never appeared in public assemblies, a man who had never made an inflammatory harangue in his life, that gentleman did not receive a summons. I have told you who did not receive summonses, I will now tell you who did. The Recorder of the city of Dublin, by whom the Jury List was to be revised, in whose department that most untoward event, the mutilation of the jury panel, occurred, received a summons. It was suggested in this Court that the Jurors' List might have been mutilated by accident, perhaps by a rat, strange hypothesis! I am far from meaning to suggest that there was any infamous decimation of the Jurors' List. But the fact is incontrovertible, that a large portion of the list was omitted. I state the fact; I make no comment on it. The bill is sent up and found, and an application is made for the names of the witnesses, on the back of the indictment. One of the Judges who preside at this trial, gives his opinion that the names of the witnesses ought to be granted as a matter of right. Another of the Judges says, that he does not consider it a matter of right, but that he is surprised that the Crown did not give the names of the witnesses. But from that day to this, notwithstanding the opinion of one Judge, that it was a matter of right; and the opinion of another Judge, that it was most advisable to do so; notwithstanding that, up to the hour of the trial, the name of a single witness was not furnished by the Crown. Then comes the challenge to the array. The ground of the challenge was, that a large portion of the Jury List was omitted. The Jurors' Act may be a preposterous one, because, in truth, fortune is the arbiter. You might almost as well take the dice and throw for a Jury; but, the dice are not to be loaded. The traverser is not to be deprived of his fair chance, or, if I may use the expression, of his fair number of tickets in the lottery on which his fate depends. But I am told you have 717 Jurors on the list, and that is a sufficient number to take a perfectly fair Jury from. Possibly so; but that is not what the law gives me. The law gives me a certain number, and the Jury are taken by lot; it is all matter of accident, and in this game of chance, for it is nothing else, it is only right that I should be awarded the number of contingencies, to which, by law, I am entitled. Gentlemen, one of the Judges was of opinion that the challenge to the array—to the constitution of the Jury, in the first instance, was well-founded. The rest of the Court were not of that opinion, but the very fact of there being a difference of opinion should have induced the Crown to discharge the order for a Special Jury, and to direct the Sheriffs to return a new panel. I do not mean to say that the Jury is not fairly constructed; I mention those incidents, Gentlemen, in order that, feeling that the traversers have been deprived of some of those contingent benefits given them by the law, you

may give them an equivalent for any loss which they have sustained in your anxious performance of your sacred duty, and protect the rights and interests of your fellow-subjects, whose liberty is at stake. At length the trial comes on. The Attorney-General takes eleven hours to state the case. I was surprised at his brevity, when you compare it with this Behemoth of indictments which upheaves its vastness on that table. In *Hardy's* case, which lasted ten or eleven days, the indictment does not exceed three or four pages, but it requires a demonstration of physical force to lift this indictment up. Not only, however, this indictment, but a bill of particulars, a phenomenon in its way, was furnished by the Crown.

The Attorney-General called on the traversers to answer for ninety meetings, and for an infinite variety of publications. The Attorney-General in his statement, expressed resentment at the violence of language used at some of these meetings, but he put some restraint on his indignation, until he came to that part of the charge which alleged that Daniel O'Connell, John O'Connell, and the other traversers had been guilty of the monstrous crime of taking away the business from the Courts. Then he assumed a lofty tone, his moral stature rose. How well the great Lord Chatham (I remember to have read it somewhere) said: "shake the whole constitution to its centre, the lawyer will sit tranquil in his cabinet; but touch a single thread in the cobwebs of Westminster Hall, and the exasperated spider rushes out to its defence;" and accordingly a great sensation was produced by the learned Attorney-General's statement, a great movement took place in the Court, it communicated itself to the Hall, and reached even to the Common Pleas! With regard to that charge I can only express my astonishment that the learned Attorney-General did not institute a prosecution against the Society of Friends for conspiring to take away the business from the Courts by the establishment of Arbitration Courts; and you will have read to you, in evidence, resolutions passed by the Society of Friends, that the arbitration system has been productive of peace and good-will among men. Lord Brougham, whose authority will not be disputed, has given his high and indisputable authority in favour of the arbitration system. The next charge which the Attorney-General alluded to in chronological order was, that Daniel O'Connell had been guilty of a gross breach of law by showing a gross ignorance of law in stating that her Majesty might call a Parliament in Ireland, and create additional Irish boroughs. Why, Gentlemen of the Jury, that is, after all, but a proposal to swamp the House of Commons; Sir James Graham once proposed to swamp the House of Lords. The present Lord Denman, stated an analogous doctrine in the House of Commons, which every body knew to be law. But, notwithstanding that doctrine, I own that it would be a strong, and not a very constitutional exercise of the Prerogative of the Crown, to issue writs for the creation of new boroughs. Mr. O'Connell only stated, that the right existed; and surely a man is not to be charged with conspiracy, merely because he makes a statement founded on abstract law, but at variance with the principles of our



modern Constitution. After all, the main charge is this : that a conspiracy was formed, for the purpose of creating a sanguinary revolution in this country, and if you believe my client guilty of that crime, you will find him guilty, but if not, you are bound to acquit him. How is it that men engage in an undertaking of this kind ? Do they not bind themselves by oath ? Do they not swear to silence, to deeds, to death ? Do they not associate superstition with atrocity, and invoke Heaven to ratify the covenant of Hell ? Do they not assemble in dark and solitary places, and verify the exclamation put by the great observer of nature, into the mouth of a conspirator : " Oh Conspiracy, where wilt thou find a cavern dark enough to hide thy monstrous visage ! " Such is the conduct of men who confederate for a criminal purpose. What has been the conduct of these men ? All has been open as day. It is a conspiracy in the street. Every thing has been laid bare. They have, I may say, stripped their minds before the Public. For one shilling the representatives of the Home Office could learn at the Conciliation Hall all that was said, all that was done, and all that was thought. Conspirators are inseparable. How do these men act ? Mr. Duffy, of the *Nation*, the publisher of the " Memory of the Dead," the great delinquent, did not attend a single meeting in the country—he did not even attend the meeting at Mullaghmast, where you are told the cap in the shape of the Irish Crown was presented to Mr. O'Connell. Why did not the Attorney-General produce a fac simile of it from the College Museum ? He quoted Moore :

" Let Erin remember the days of old,  
Ere her faithless sons betrayed her ;  
When Malachi wore the collar of gold,  
Which he won from her proud invader."

It is by such mummery as this that this State prosecution is supported. But Mr. Duffy did not go to Mullaghmast ; he did not go to the Coronation. Will John O'Connell, the Prince Royal, ever forgive him ? Mr. Tierney, was not at Mullaghmast. He was guilty only of one speech, and should be made Professor of Rhetoric in Maynooth,—the only punishment I would inflict upon him. Father Tyrrell too was only at one meeting ; but they were determined to catch a priest. They caught two. One poor fellow is in Malahide church-yard. But when they were beating for this sort of game, why did they not catch a Bishop ? The Attorney-General mentioned that Bishops Higgins and Cantwell, and M'Hale, so he called them, were at these meetings ; and why not join them in the indictment ? Were there not episcopal speeches—were there not pastoral letters published in the newspapers ? Did we not hear Higgins ! Higgins !! Higgins !!! nothing but Higgins for three months ; were not the leading articles in the *Times*, replete with " Higgins ? " was he not sometimes " Lord Higgins," then " Bishop Higgins," then plain " Higgins," and yet Higgins is not indicted. Nor is John Tuam ! The Attorney-General thought it prudent not to intermeddle with

the redoubted "John of Tuam," who would have marched to gaol with a mitre on his head, and a crosier in his hand, and robed in pontifical attire, but deemed it more politic to assail a poor priest from Monaghan, who attended but one meeting. Gentlemen, look at the great mass of political matter which issued from the mind of Mr. O'Connell within the last nine months. See whether one great sentiment does not prevail throughout the entire—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. You find him uttering the same sentiments in 1810 as he did in 1844. You find him declaring that he would not purchase the Repeal of the Union at the expense of one drop of blood. He announces that the moment the Government send a single magistrate to disperse his meetings, they shall be dispersed. A man cannot wear the mask of loyalty for forty-four years: however skilfully constructed, the vizard will drop off, and the genuine features of the truculent conspirator must be disclosed. Daniel O'Connell was called to the bar in 1798; he was then in the flush of life. His young blood bounded in his veins, and his vigorous body was but the type of his athletic and elastic mind. He had come from a land of mountains, where he had listened to the roar of the wild Atlantic, whose surge rolls unbroken from the coast of Labrador. You recollect the striking description which was read to you of the spot of his birth, from one of his own speeches. He carried enthusiasm to romance; and of the impressions which great events are calculated to make on minds like his, he was peculiarly susceptible. He was unwedded; he had, to use Lord Bacon's expression, given no hostages to the state. The conservative affections had not yet fastened their ligaments, tender but indissoluble, to his heart. There was an enterprize on foot calculated to attract the adventurous and the daring. It was guilty; but not wholly hopeless. The peaks which overhang the bay of Bantry are indistinctly seen from the hills of Iveragh. At a time so trying what was the part performed by this conspirator of sixty-nine? Did he play Piere at twenty-two who is ready to play Renault at sixty-nine? Not only did he take no part in that guilty transaction, but conjecture never lighted on his name. Curran was suspected; Grattan was suspected: both were designated as unimpeached traitors; but on the name of Daniel O'Connell conjecture never lighted. And are you to believe that the man who turned with abhorrence from the conspiracy of 1798, now, in an old age, which is not premature, would engage in an undertaking by which not only his own life, but the lives of those far dearer to him than his own—the lives of thousands of his countrymen, would inevitably be sacrificed? Can you believe that he would stain the laurels which it is his noblest boast are unspotted by blood; that he would drench with gore the land of his birth, of his affections, and of his redemption, and for a project as guilty as it would be absurd, lay prostrate that great moral monument which he has raised so high that it is visible to the remotest

regions of the world? In the life of Daniel O'Connell I find a refutation of the charges preferred against him. Do you think that the man who aimed at a revolution would repudiate the assistance of France? Do you think that the man who was anxious for a revolution would denounce the infamous system of slavery by which the great transatlantic Republic, to her everlasting shame, permits herself to be degraded? But, to come nearer home, do you think that a man with such purposes as have been attributed to him by the Attorney General, would spurn at all connexion with the Chartists in England? A confederation between the English Chartists and the Irish Repealers would have been formidable. Chartism uses its utmost and most clandestine efforts to find its way into Ireland; O'Connell detects and denounces it. Of the charges that are made against him, does not then his whole life contain the refutation? To the accusation that Mr. O'Connell and his son conspired to excite animosity amongst Her Majesty's subjects, my last observation is more peculiarly applicable. The only remaining topic to which I shall advert is, the charge to create hostility amongst Her Majesty's subjects. In all the speeches and publications with which Mr. O'Connell is alleged to be connected, can you show me a single phrase which contains the slightest reflection on the Protestant religion? God knows we and our creed are too often made the subject of vituperation. Men speak of our religion as idolatrous, and of our clergy as surpliced ruffians—we feel no resentment. Mr. O'Connell believes firmly in his religion, and does his best to practise it. That religion teaches him two things: one to entertain feelings of charity towards those who dissent from him—the other to forgive those who do him wrong. It is from incidents which seem comparatively of small importance, that a man's character may be often estimated. You recollect a reference having been made two or three times in the course of the evidence, to Sir Abraham Bradley King. He was Mr. O'Connell's political, almost his personal enemy. Poor man! he was deprived of his office, and the Whig Government had determined to deprive him of all compensation. I often saw him standing in the lobby of the House of Commons, a most forlorn and wretched man. The only one of his old friends who stuck to him was Baron Lefroy. But Baron Lefroy had no interest with the Government. Mr. O'Connell, struck with pity for his misfortunes, went to Lord Althorp, pleaded his cause, and obtained the compensation which had been refused him. I remembered a letter written by him to Mr. O'Connell. I went to him and asked 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 Sir Abraham Bradley King, an officer entered his study, and told him he was the Alderman's son-in-law. He said: "a short time before his death, Sir Abraham called me to his bed-side, and gave me this injunction, 'when I am buried go to Dublin, wait on Mr. O'Connell, and tell him, that in the last moments of my life I recollected his kindness; and that I prayed in my last prayer that all good fortune should attend him, and that every peril should be averted

“ ‘from his head.’ ” This is the letter. . It is short, let me be permitted to read it to you :

“ *Barrett’s Hotel, Spring Gardens,*  
“ *4th August, 1834.*

“ VERY 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 to yourself am I indebted, for putting the case in the right light; to my Lord Althorp—for his Lordship’s considerate, 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 of 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 your’s 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.”

You may deprive of his liberty the man to whom that letter was addressed—you may deprive him of the sight of nature—you may bury him in a dungeon to which a ray of the sun has never yet descended, but you cannot take away from him the consciousness of having done a noble action—you cannot take away from him the right of kneeling down every night before he sleeps, and asking for forgiveness in the divinest part of his Redeemer’s prayer. The man to whom that letter was addressed is not guilty—the son of that man is not guilty of the intent ascribed to him, and of this he puts himself upon his country. Let that phrase be rescued from its technicality; let it be no longer a fictitious one. We have lost the representation of our country in the Parliament, let us find it in the jury box:—Let your verdict prove that in the feelings of millions of your countrymen, you participate. But it is not to Ireland that theaching 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 Irishmen 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 befall 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 vicissitudes 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 has 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 best and "best-beloved child." No! you will not consign my client, and the father of my client, to the spot to which the Attorney-General invokes you to deliver him. When the winter shall have passed, and the spring shall come again, it is not from the window of a prison-house that the father of such a son, and the son of such a father, shall look out on the green hills on which the eyes of so many a captive have gazed so wistfully in vain; but in their own mountain home, they shall listen again to the murmurs of the great Atlantic; on the hills where they were born they shall go forth together to inhale the freshness of the morning air; "they shall be free of mountain solitudes;" they shall be encompassed with images of liberty on every side; and if time shall have taken its suppleness from the father's knee, or shall have impaired the firmness of his tread, he shall, resting on the summit of some high place, lean upon his child—the child of one who looks down on him from heaven—and shall look far and wide into the land 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 of fair play, I place my confidence. I ask 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 pleasurable 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.

Mr. *Moore*.—My Lords, I certainly feel great difficulty in rising to address the Jury, after the speech which has just been made by

my learned friend ; and I should be grateful to your Lordships not to call on me to address the Jury until Monday morning.

The LORD CHIEF JUSTICE.—It is the desire of the Court to give you every indulgence ; and unless the Attorney-General requires you to go on to-day, we shall adjourn until Monday.

The *Attorney General*.—I should certainly think it very improper to interfere in any way with Mr. Moore.

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MONDAY, JANUARY 29TH.

MR. MOORE then addressed the Court.

*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 favour of my client. 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 possess not the power of addressing to you any of those affecting appeals which he made, yet I confidently hope 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 bestow upon every branch and upon 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 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 has been excited through every part of Ireland, from one end to the other ; when we consider the hundreds of thousands—I may say millions, of our countrymen that have unequivocally, 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 ; when we consider that in every part of this country there is the most feverish and restless anxiety with regard to the result of your verdict, 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 a person 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 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 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 this 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. If it be so destitute of merits as he would represent it to you, 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 the 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 this I will say, let the 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 of the Jury, 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 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 recol-

lection that there is no indictment against 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 than for him 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 thus 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, artless, unencumbered 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 connexion with any of the traversers until the 3rd of October, after all the monster meetings had



ceased, he endeavours, notwithstanding, to make him responsible for all the antecedent acts of others ; and my client 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 the 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 characterizing 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 characterized 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 Philippic upon himself and the Government which he served. Am I not entitled to ask a question, which presses itself irresistibly 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 lie designedly 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 common weal are yet more inseparably identified, and that duty consists in preventing the commission of crime ; and if it were the deliberate opinion of the Attorney-General, and 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 rushing 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 these 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 that 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 stations 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 any Court or jury. Let the result of the present prosecution 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 is 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 he 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 prose-

cution 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 that they ought to be put down. 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 assemblage of the people, no jury should aid or assist him to bring to punishment those who 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 and sword, 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 most 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 battalions of Britain, armed with every implement of war, guided by the most experienced leaders, ready to do what those leaders might think right;

on the other hand, you had an unarmed and defenceless multitude. The occurrence of the slightest accident, of the slightest approach to violence, of even an angry expression, and a collision between the army and the people might have ensued. The armed soldiery of this 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 plains of Clontarf might have been a second time saturated with the blood of its countrymen. That such a danger was averted 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 averted 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, which appears to me untruly and unjustly attributed to them. Gentlemen, if you separate from the charge of conspiracy the high-sounding phrases given by this indictment, you will find that it is nothing more or less in point of law 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 a 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 that 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 out without direct positive testimony, but what testimony of any kind have you to enable you to say that this agreement did take place? When 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 arrive at the date from which you can infer the existence of this alleged agreement. He has not told you when 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 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 to 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 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, as a monster indictment, words which are peculiarly 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 Frankenstein 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 was notorious, as one of them stated it 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 the indictment was, upon their oaths, a fit case to be submitted to the consideration of a jury. When, Gentle-

men, he 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 this 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 heretofore been attempted, and this is an effort made to introduce constructive conspiracy; and you are called upon to construct a crime out of the mass of documents and evidence laid before you. 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 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 a precedent for this proceeding. He founded this case on it, and carried out the details in the same manner as they had been carried out in that case. The then Attorney-General 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, and giving it as their verdict, that they could not construct a conspiracy. The same took place in Horne Tooke's case also, which was referred to by Mr. Sheil; and in Hunt's case. In every case, 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 these 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, 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 of the other traversers until the 3rd 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 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 or week 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 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 or 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 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 select 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. Tierney 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 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 of Monaghan. He is a gentleman, as I am instructed, of most exemplary private 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 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? Are there any particular privileges 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, and Mr. Tierney had a perfect legal and constitutional right to entertain the opinion, that that measure was injurious, and 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, 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, who ought not, if he brought his mind to the conscientious conviction that the Union was injurious, to use every le-



gitimate 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 legitimate 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 or your's to do that, 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 and 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 then used with the language used by 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 Chief Justice Bushe, who, I regret to say, is no longer amongst us, but I may say, that his memory will ever remain enshrined in the hearts of his countrymen? Do 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, passed 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 were 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 mil-

lions 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 advocated 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 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 hereby 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 opinions 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 of 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 about twelve months afterwards, 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 he deserves the greatest credit for it. That man would be a sorry and wretched statesman who said, 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 principles were to oppose the emancipation of the 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. Bushe, "that he was putting to the hazard his ease, his power, his darling popularity;" but like an honest man, and an honest Minister, he had the magnanimity to risk, and even to 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 any man then tell you that you should doubt the sincerity of the traversers, because eminent statesmen have expressed an opinion adverse to the measure. Gentlemen, if then you believe, that my client entertained a conscientious opinion of the injury and injustice of the Union, I think, giving him credit for the sincerity of it, 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 acts to which I have referred.

Gentlemen, I will take both of them in 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. Now, 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 of, 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, and 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 apparently eloquent language in which it was carried on. Have we not this further strong improbability? He was a policeman, not even one of the flock of Mr. Tierney, and he came dressed in uniform; is it likely 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 conversations alleged to have taken place months since? M'Cann told you he kept a diary; that he put in that diary an account of the meeting, but he did not take any note of the conversation, and that he never mentioned it until he heard he was to be examined. Why did he make an entry of part of what had 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 omitting to do so strong evidence, either that it never occurred, or that he thought it unimportant, and if he thought it unimportant is it credible that he would have 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 later 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 friends who had 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 those 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. He thought it might be useful to the charge of tampering with, and endeavouring 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 of 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 produced 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 policemen are produced, and the magistrates 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 that 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 the Rev. Mr. Tierney. Not an iota or particle of connexion 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 any act of violence committed? No. Was there anything done to show that the meeting was an illegal assembly? Not one. There was not one single particle of riot or disturbance, it was characterized by that which characterized all the other meetings; it 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 by those fair persons whom even erminent judges found it impossible to resist. The Attorney-General calls upon you to pronounce this meeting illegal, in order to connect my client with the 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 to much the same effect, a petition was drawn up to this effect: "that the Legislative Union having operated to our injury, we request your honourable house to repeal said Union." So that this meeting, this perfectly tranquil, this perfectly peaceable meeting, having adopted resolutions, and expressed their opinion that the 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.

The meeting to which I shall next refer you, is a meeting of the Association which was held on the 3rd 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 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 any of those speeches or publications which have been noticed, and for the first time he is brought into connexion with two of the traversers at the Repeal Association on the 3rd 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. 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 3rd of October, 1843, the Association consisted of at least 1,000,000 of members; and are you prepared to pronounce them 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 to do so. It may be easy to sneer at it, but it is very different 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 legally 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 subscriptions 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 for such an act. 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 legal functionary a deep debt of gratitude for the important assistance rendered him 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; he may instruct him in the power of sneering away the loyalty of the Anti-Corn-Law League; and when he has done so, you may perhaps see the Marquis of Westminster brought into a court of justice as a conspirator. I confess that my client attended the meeting of the 3rd 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 no doubt but the parish of Clontibret stands as high in his estimation as the field 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 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 any thing in his words to warrant such a construction. It is not for you or me to pronounce with authority 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 thwart and strain the meaning of words, in order to fasten a bad motive on our fellow-being. Gentlemen, I lay these matters before you most unhesitatingly; 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 in favour of my client; 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.

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MR. HATCHELL, Q. C.

*My Lords, and Gentlemen of the Jury,*

I am counsel 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 this 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 preoccupied; that there can be

very little indeed left for me to add to the eloquent observations of my friend Mr. Sheil on the facts and law of the case, and the powerful and able observations of my friend Mr. Moore, on the general charge and 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 to see if you can bring your minds, as fair, honest, and impartial jurors, to come to the conclusion from the criminal intent charged by the indictment, that those traversers, and each of them, had 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 call your attention (although I believe it has been already closely drawn to the question by the counsel that preceded me) to the real, substantial question which you have to try. Permit me, before I do this, 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 justify him. 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 it. He never published a libel in his life. He never uttered charge or accusation against any 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 as to what intent Mr. Ray was a member of the Association, as to 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 implore you not to permit your minds to be diverted, or your attention distracted from the consideration of the real question you have to try. 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

laid 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, that 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 intention. The Court, the Judges who preside here, it is for them to say whether the facts given in evidence are facts that ought to go before you for your consideration; they are the judges of their admissibility, or whether they should go before you as tending to sustain the charge; 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? With what intention those acts were done? 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? 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's trial. 24 St. Trials, 205. Lord Chief Justice Eyre, in calling the attention of the Jury to the question they had to try, 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 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 examination, and the most attentive consideration, and that the result should be perfectly clear and satisfactory. In the affairs of common life no man is justified in imputing to another person a meaning contrary to what he himself expresses, but upon the fullest evidence." You have it here laid down, on the highest authority, that no man has a right to impute to another motives contrary to what he professes; 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. 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 referred to the legal and innocent motive, and not strained to a criminal intent." 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 as to the intent of the accused, he is

entitled to the benefit of such doubt, and you are bound to acquit and not to convict him of the illegal and 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 characterized 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 conduct of them all, and combining those charges in a volume of overt acts—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 intent of assailing the Government and the 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. 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—I mean the impeachment of Warren Hastings. When, on occasion of Hardy's trial, Mr. Erskine, the eloquent advocate of the accused, came to speak of the impeachment in that case (which falls far short of the complexity 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 892 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 the persons accused will carry men." Surely," continued Lord Erskine, "the admonition of this supereminent lawyer ought to sink deep into the heart of every judge and every jurymen 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, from that very cause, to proceed with more abundant caution; lest they should 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 to fall back



“ and look to every thing again, lest a false light should deceive them,  
 “ admitting no fact but upon the foundation of clear and precise evi-  
 “ dence, and deciding upon no intention that does not result with equal  
 “ clearness from the fact. This is the universal demand of justice in  
 “ every case, criminal or civil—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 anchor-  
 “ age for the understanding; where no reach of thought can look  
 “ round in order to compare their points; nor any memory be ca-  
 “ pacious enough to retain even the imperfect relation that can be  
 “ collected from them. Gentlemen, my mind is the more deeply affect-  
 “ ed 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 lightly of great state prose-  
 “ cutions, 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 in the nation. I know them indeed so well as  
 “ to be persuaded that could they have foreseen the vast field it 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?—Ma-  
 “ ny 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 as a dishonour to the constitution; and that it brings, by its example,  
 “ insecurity into the administration of justice. Every man in civilized  
 “ society has a right to hold his life, liberty, property, and reputation  
 “ under plain laws, that can be well understood, and is entitled to have  
 “ some *limited, specific* part of his conduct compared and examined  
 “ by their standard, 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 with fatigue, and dispirited with anx-  
 “ iety.” Such was the language of Lord Erskine on that occasion,  
 and yet in that case Mr. Hastings alone stood charged, and the ac-  
 cusations were few compared with the accusations brought against  
 my client. 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, and in which he is sought to be implicated by sug-  
 gestion and surmise, and you are called upon to come to the con-  
 clusion, that every thing that my client did, for which I admit him  
 responsible, he did not, with the innocent intent which he was bound  
 to do, and in his capacity of paid officer to the society, in the consci-  
 entious discharge of his duties as a paid servant, but with a criminal  
 intent to pull down the laws and 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 averse 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 characterized. Mr. Ray is an humble man, with a large family, who look to him alone for support, a support derived wholly from his situation as Secretary to the Association. 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 does not, to the fullest extent, sympathise with the objects of that Association; 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 as in duty bound—and yet, 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 characterized 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, and prize the independence of the mind—I ask you, can you come to that conclusion ? I think you will concur with me in thinking that Mr. Ray ought not to have been included in this indictment. He ought never to have been made a party 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 the charge contains proceedings of the Repeal Association as overt acts, and they have included in the indictment Mr. Ray, the salaried servant of the Association, the person who registered the acts of that Society. 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, paltry, pettifogging 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 merely advert to it for the purpose of showing the consequences which result to the rest of the traversers from the circumstance 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 manœuvre 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 services. 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 handwriting; he knew the working and machinery, so to speak, of the Society, and was, of all others, the best qualified to prove the honest and perfectly legal intentions of its members. He could have proved their objects; and yet the evidence of this man, who could alone sustain the case of the traversers—who would be able to give the best evidence of these transactions, that man has been included in the indictment. See the manner the charge is brought forward. They 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 the were accordingly obliged to avail themselves of the ordinary newspaper reports, which did not publish all the transactions of the meeting, 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 this evidence against all the traversers, 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 Hardy, and 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 and the other members of those associations which it was the object of those prosecutions to put down? 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 that 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, a high, a noble, and 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, if benefit is fairly to be derived from it. Now the best evidence which could be produced in this case, as to the acts and objects of the members of the Association, is Mr. Ray; 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; they examined him to show what was alleged to be an overt act of treason. Horne Tooke was entitled to the cross-examination of the witnesses 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 and 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 every thing conducted openly and publicly? Yes. Was there any thing 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 Royal 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. 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. It bears exactly on the com-



plaint I make, that the Crown should not have included my client in the indictment—the Secretary of the Repeal Association, who discharged his 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 Ray, the official of a legal, a recognized 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 that he did not do these things with the intention of discharging his duty, consistently with his principles; but that he was engaged in a preconcerted plot—in a settled conspiracy—to carry out the intents charged in the indictment. You are to swear upon your oath that you 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. 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. I am ready to admit, on the part of Mr. Ray, that whenever there was a meeting of the Association, *qua* Association itself—he attended and officiated as Secretary, and that gets rid of all questions in respect to the meetings in Dublin. 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 county 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 very many of them were from the county and city of Dublin, many attracted there from curiosity as to what was to take place, 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. I do not 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, to see this great sight. He did nothing there; he made no speech there; he did not act as Secretary, and taking that fact alone of his attendance there, the Crown might as well have included in the indictment 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 that is no legal ground for attaching to him the character of a conspirator to seduce the army and overturn the Government. 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 for that purpose; but what was his evidence? Why was it given? I will tell you: it was an attempt to give a certain colouring to this case; a colour of illegality to that great meeting, and that you might draw inferences from that evidence after obtaining a colouring for it. Well, then, Walker was examined, and what did he prove? That he saw persons assembled, 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 to everything he could depose. Then comes that smart gentleman, Captain Despard; he said that he was no Repealer, that he had no great regard or esteem for Mr. O'Connell; for what reason, I suppose he best knows 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, either by design or accident, endeavoured in the strongest manner to give a colour, which they were not warranted in giving, to the movements of the persons assembled. Captain Despard said, that the bands were dressed like the 54th band, and that the people came in marching order to the meeting, and by that word he wanted to give to the meeting something of a military character. 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 was utterly inapplicable to the state of 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 nature 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? The gallant Captain Despard and Major Westenra were taken for foreigners, "because," says the Captain, "Major Westenra had a moustache, and I had a curl in my lip." Well, he gets into a conversation with a country fellow who thought he might indulge in a little pleasant conversation with the foreigner while 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. I think the Attorney General knew nothing at all about this alleged conversation when he opened the case, or if he did, I think he did well to leave it out, and not contaminate his case, bad as it was, with such trash as I allude to. The Attorney

General did not allude to 2000 Shilmalier men who marched to Tara for the purpose of creating a rebellion. Oh, no, the good sense of the Attorney General repudiated it, he knew it would be really too farcical to adopt it. The conversation to which he referred, if ever such took place at all, must have been treated as a mere joke, or a humbug, by every person but Captain Despard, whose zeal outran his discretion. Walker, who gave his evidence fairly and quietly, and who was next Captain Despard when the conversation took place, is not asked a word about it. If they did not consider it a mere bagatelle bantering of Captain Despard by the countryman, would it not have been stated by the Attorney General, would it not have been disclosed by the evidence of Walker, and then corroborated by Captain Despard? Why is not Major Westenra produced, who might also have corroborated him as to the character and object of this conversation? It is plain the Attorney-General never thought of introducing this episode about the 2000 Wexford men. I have merely adverted to this transaction, because Mr. Ray was present at this meeting, as it is not my intention to make any remarks relative to the other meetings, because Mr. Ray only attended those at Tara and Mullaghmast, and I will leave them to other hands. I shall only add this further observation as to that piece of evidence of Major Despard, that the traversers' counsel thought that we might have objected to the reception of this evidence, but we apprehended that an objection to its admissibility would give it a weight and importance it did not deserve. 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. Everything done at the dinner was given in evidence except that speech of Mr. Ray. 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 that occasion, but of so little importance were those observations that they were not even reported. The speech was not reported, nor was it given in evidence on the part of the Crown—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. What was the first resolution passed at that meeting? The first resolution declares loyalty to the Throne, and a determination to uphold the prerogative of the Crown, as guaranteed by the constitution. That 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. 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. I call attention to this fact, because it is one which, I regret to say, discloses a management and distortion which ought to be absent from a trial of this description, where everything should be above board, and straightforward. What do I allude to? I allude to the catch-penny ballad or placard, published and printed by a person named Hauvey, 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 state prosecution, and particularly in a state Crown prosecution, I deny that he ought to be kept back. When the Attorney-General opened this case, he said that these seditious, infamous, and disgraceful publications were circulated by thousands and tens of thousands for the purpose of exciting one nation against the other, and that my client and the other traversers fabricated the document, and had it circulated. Why should not the Attorney-General produce the person who circulated them, that we might ascertain where he got them, and who paid for them. We objected to the document, we thought it unjust to be produced in evidence on a conspiracy, where it was sought to make each conspirator responsible for the acts of his co-conspirators. Was it to be endured, that such a document, circulated by this person, whose character was blackened as a vender of seditious publications in the outskirts of the meeting, for profit and hire, should be received in evidence, and the person himself not produced. Mr. Brown, who was the regular and recognized printer of the Association, who printed the Repeal Wardens' Instructions, and a variety of documents for which he was paid, was produced. 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 this printer 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 and more respectably, 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 old history he drew his account. But my learned, acute, clever friends,



perfectly understood their business. Every one knows, that even at the assizes, such songs and publications were sold by wretched paupers, at the corners of the streets. I could not suppose that the Attorney General would 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, and I shall only be brought to think so, if I shall hear the Solicitor General say, in his reply, that the traversers ought to call, as their witness, this vender of sedition.

Gentlemen, Mr. Moore has observed to you on the principles on which a British jury should decide. I can well understand that an indictment for a conspiracy might be justifiable, or the only proceeding by which individuals could be punished in certain cases, as 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 and the Constitution will look with jealousy on the doctrine of conspiracy when they see it 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 accusations, each one of which might have been in itself made the groundwork of a prosecution, if the Crown had thought fit to select that mode of proceeding. In the case of Henry Hunt, 3 B. & Ald. 566, before referred to, it was an indictment against Hunt and nine others, on three 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 fourth count of the indictment was for their attending an unlawful assembly. Among other facts which were proved, it appeared 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 that 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 atten-

ding an illegal meeting? Gentlemen, the Crown want a conviction for a conspiracy, and therefore they would not insert a count for attending an unlawful assembly; they 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, to administer the laws upon sound, safe, rational, and intelligent principles. It was that of *The Queen v. Vincent and others*, reported in 9 Carrington & Payne. This, too, was a conspiracy to disturb the peace, and create discontent and disaffection; the jury rejected the counts for 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? At that meeting, Mr. Vincent made use of the following words: "To your tents, O Israel." It is not for me 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; perish the privileged orders, and up with the Government which the people have established." This was the language used at that meeting, and yet the jury 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 call on you to go with me in saying, that there is no act of conspiracy to be attributed to him in any part of this charge. These meetings were not illegal: and, independently of that, Mr. Ray attended them only 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, or 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.



TUESDAY, JANUARY 30TH.

MR. FITZGIBBON, Q. C.

*If it please your Lordships,*

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 plainly impossible to separate the cases of these 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 of a joint offence, it is a charge of an offence that cannot be committed by a single person, it is a charge of an offence in its very nature involving the necessity of more than one criminal, if any crime was committed at all. I, therefore, Gentlemen, do not intend, nor is it the instructions 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 these 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 in examining witnesses, but eight days of solid reading of documents—to make out the guilt. 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 thus involved, 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 the innocence of a fellow-subject to depend upon the chance of your being able, through this mass of 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 is told the charge against him is contained in that heap, almost without any explanation of it? This pile has been read to you in the speech of the Attorney-General, but not a word of it has been explained to you, and to this hour, now at the commencement of the fourteenth day of the trial, I venture to say not one gentleman whom I have the honour to address, knows the precise nature of the duty he has to discharge in coming to a conclusion on this evidence, or has the most remote apprehension of how he is to deal with this mass of evidence, in order out of it to draw any conclusion as to the guilt or innocence of the parties accused. 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 that you shall bear them in your memory? What are you to do with them? Let me ask you how you are to arrive at any conclusion from such a mass of premises? 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 who have preceded me—if my friend, Mr. Sheil, in rising to address you so ably as he did in this case, to perform a duty 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 to leave that altogether 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 in every state of human society the most detestable. To be a conspirator is to be the worst of human beings—to be a conspirator is to be every thing that can be suggested of vice, of treachery, and of villany. Gentlemen, when I am here to defend these 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 in my own Profession—pre-eminent to a degree that perhaps no other man ever was 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; 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 in that Profession, now only entering upon it, but a candidate for honours in it—when I have him charged here—when I stand here, Gentlemen, for my own client, a young man not more than twenty-eight years of age, a member too of another as learned and honourable and useful a profession as my own—when I consider all these 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—that I cannot approach that without an anxiety that almost disables me from the performance of it, mine, Gentlemen, when you take into account these considerations, mine is no enviable position at the present moment. But there is a little more to render my place an uncomfortable one. 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 into silence—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, these are the persons who are employed in pursuing this object. Gentlemen, of all these members of my Profession, as individuals in it, so far as I have any personal knowledge of them, I will speak of them 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 also say of them that they are worthy of the very highest eulogy. 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 ordinary matters and ordinary 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 the reports of many such cases, and from the perusal of them I have gathered this, 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 have ever 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," incurred in 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 so fallen. 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; indeed, of their assistants, by-the-by, I shall not have much to say. Yes, Gentlemen, carried on unfairly; 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. It is essentially necessary, and nothing more than mere justice to me, that you should bear in mind the exact position which I occupy upon the present occasion. 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 every thing 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 every thing that I would say for myself, were I 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 guilt, when he is himself conscious of innocence. Gentlemen, the present prosecution is a contest, and a contest of a very interesting character, to the result of which the country looks with eager expectation. It is a contest in the very temple of Justice—it is a contest, in the result of which are involved the characters and liberties of your fellow-subjects—and it is a contest, therefore, that ought to be carried on fairly on both sides, but, above all, fairly on the part of the prosecutors. Gentlemen, I will freely concede to the gentlemen who conduct this prosecution the power and privilege of exercising upon it their ability 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; strike fairly, and if you knock me down, and 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 fair antagonist who deserves any respect or quarter at my hands.

Gentlemen, 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 matter of law which it is fair, and legal, and proper for the Court to direct them upon. 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 the 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 the 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 judge had authority to declare that he was guilty without the intervention of twelve men to decide it. They alone had the jurisdiction and right to look into the mind, and to declare the intent with which the act was done. The intent is that which constitutes guilt, and no act constitutes an offence abstracted from the intent with which it is committed. That is a maxim as old as common sense—as old as common justice. If the mind is not guilty, the man is not guilty. It is

you, and you alone, who have authority to look into the mind, and to ascertain and declare the motive; and it is therefore you, and you alone, who are to determine the guilt or innocence of the accused; and it is impossible legally 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 expressed, though it is rarely, and, in my opinion, *never* ought to be expressed to the jury, on the point of guilt or innocence in criminal cases; but in respect to the guilt of an accused party it never, never ought to be given. Why does the law take from the Court the decision of the guilt or innocence, and why does the law place this jurisdiction in twelve men selected from common 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 medium through which, and the proper tribunal by which that question is to be decided; they are ordinary men, familiar with common motives; and therefore it is that they 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 whatever to do; no jurisdiction or right to meddle at all, or even to express an opinion, if it be unfavourable to the accused; and I deny the propriety in a criminal case of its doing so at all, because when you are discharging the high duties imposed on men in your position, you are to look into the minds and hearts of your fellow-subjects, and you are called upon to do so under the solemn obligation of an oath, and upon the evidence only, and not upon the opinion of any man, or set of men, no matter what their station may be. When you are required to pronounce upon the guilt or innocence of an accused party, the opinion of the Judge goes into your box with more weight than that of any individual, liable to be wrong, ought to 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 mind and motive, than any Judge in the land. Therefore, Gentlemen, the law placing that in your hands, and calling on you to give your verdict, upon your responsibility to your own consciences, it is for you carefully and jealously to examine the opinion of any man who expresses that opinion to you, and to be cautious that you don't entertain it for more than its intrinsic worth. This, Gentlemen, I submit to you, subject to the correction 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, and that you are not subject to any sort of direction or authority of the Court on that point. Gentlemen, having told you that you should take the law from the Court, the Attorney-General then proceeded, as he admitted, to the correction

of the Court, and he stated to you what he said 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. He never attended more than one of those meetings. Against him, therefore, there is scarcely a shadow of evidence in the case that he conspired with any party. It was, therefore, not necessary for Mr. Moore to apply his able mind to the investigation of the law of conspiracy, as laid down for you by the Attorney-General. Gentlemen, I cannot, on the part of Dr. Gray, make that peculiar case; and I have, therefore, first to deal with this great question—is there a conspiracy at all in this case? It, therefore, 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 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; and 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 in his mind of what is the meaning of an overt act? Gentlemen, the words “overt act” occur in only two offences, according to the law of England. I do not think that any one of you ever heard of an overt act of murder, an overt act of perjury, an overt act of larceny or thieving. What, therefore, is the meaning of an overt act? 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 has not been explained before, and it is essentially necessary that it should be explained. Treason is a crime distinguished from all others in this; that you may be guilty of it without doing any one corporal 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 Sovereign, whether male or female—that is, if you form in your own mind a determination to kill the Sovereign, the moment you form that determination, you are guilty of high treason, though you should never after do any act in pursuance of that determination. What is the meaning of an overt act in treason? It is an act which evidences the intention formed in the mind of killing the Sovereign. It is not properly an overt act of treason, unless it cannot be otherwise accounted for, than by the supposition that the party who did it must have predetermined in his mind to kill the Sovereign, or to do the other act constituting the treason. Treason, therefore, is a secret crime which a man may commit, without disclosing the fact, or doing anything in pursuance of the intention. The crime being an act of the mind only, some visible act from which the



commission of the crime can be inferred, must be done before the crime can be proved. It is a crime that one man may commit without telling any one else of the fact, because it is the crime of the person's own mind. An overt act may therefore be defined to be an open, visible, palpable act; an act that can be seen, or a speech that can be heard; something palpable done that can be made the object of the senses, and from which the commission of the secret crime can be inferred. The crime of conspiracy is also a secret crime, committed by more than one person forming a guilty purpose; but it is not merely a determination in a man's own mind, the mere forming of which, on account of the enormity of the crime, is made to constitute the guilt of treason. Conspiracy is unlike treason in this particular, that the latter is an exception to the passage, where Milton says, that an evil thought might pass through the mind of the purest angel, and without guilt. It does not become a crime until carried into action, and if not carried into action, it does not become a crime at all. Conspiracy is the secret commission of a crime by more than one. If two or more persons agree together, and conspire by villanous means to commit some crime against their neighbour, then the law says they are guilty of conspiracy, although they should not accomplish, or even attempt to accomplish, the guilty purpose. If they lie in wait for their victim, while he is unconscious of the danger, then the law says they are guilty, although he should escape, and that is common sense and common justice. The parties may consult secretly, and then you have only to look to some open and visible act done in pursuance of that consultation, and from that act infer that they are guilty of a conspiracy. This visible act should be such as cannot be otherwise accounted for, than by supposing a guilty combination to do it, else it is not properly called an overt act of conspiracy—that is, an act proving that a conspiracy must have been formed, or such an act could not have been done. That is what is properly called an overt act. When you are called on to draw a conclusion, and a conclusion of the highest guilt, from certain acts, and you can account for them in any other manner than by supposing a case of guilt, I ask in such a case is it unnatural or unfair to ask you to refer the actions to the innocent motive? An overt act affords an argument of guilt, and must be an act which a reasonable man can account for on no other supposition than that of guilt. Now let us apply this to the present case. The Attorney-General has told you there must have been a conspiracy between the eight defendants, because they did certain acts that have been given in evidence. When the Attorney-General proceeded to state the case, and mentioned the overt acts to you, I most anxiously followed him all through that statement, and I expected he would, in some place or other, have called your attention to some speech or other act which could not have been spoken or done if it had not been previously concocted or concerted between the parties. Did the Attorney-General do such a thing? He did not. He did not produce a single speech in evidence, that must have been from its intrinsic matter concocted previously by the defendants, if they had not been engaged in a

criminal conspiracy, which could not possibly have been the emanation of a single mind—which must have been concocted and contrived elaborately and criminally by more than one. He could not point out such a speech, although he made a statement of eleven hours' duration, during which time he read a great variety of speeches from newspapers; he could not refer you to any passage to prove that one sentence of those speeches was previously concocted; he could not produce a single speech or sentence, in its own nature showing that it had been previously arranged by the defendants. Did the Attorney-General attempt to tell you that any of the speeches, judging from the nature of them, must have been previously concocted by the conspirators? If not, then these speeches afforded no proof of a conspiracy at all. Did the Attorney-General, in detailing the case to you, show you any one act that could not be done by one individual, unless he had been previously engaged in a criminal conspiracy with some other individual? Did the evidence produced show the parties were engaged in a conspiracy? No such thing. The evidence afforded no such inference. How did the Attorney-General attempt to argue the case before you, that there was a conspiracy? I will tell you the plan by which he endeavoured to do so. He said that there were many meetings held, that they were illegal meetings, and that those meetings were called by the defendants, and that the defendants all *concurred* in calling those meetings, and that therefore they were guilty of a conspiracy. Those eight traversers did agree, for instance, to call a meeting at the Hill of Tara, and the Attorney-General says that was an illegal meeting, and because they all had agreed to call that meeting, therefore they are guilty of a conspiracy, because they *concurred* in doing that illegal act. If the meeting was illegal, and the parties agreed in calling that illegal meeting, then they were guilty of concurring in that illegal object, and the law calls that a conspiracy. Another portion of the Attorney-General's argument was this; if two or more of the parties concurred in doing 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 to the fullest extent that to be legal. It would be, he admitted, 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 and in a state prosecution, it startled me a good deal. However, the Attorney-General did not come here without some authorities, which no doubt he read from books that had been printed; and he came backed by them, I am ready to admit. Gentlemen, Mr. O'Connell, whose countenance I am so desirous to have, and whose assistance to suggest to me or correct 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 I must endeavour to do my

duty without it. Gentlemen, the Attorney-General has 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. You are told that this 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 have been sustained in the reign of Edward the Confessor—could have been sustained before the Conquest, in the time of Edward, a good old King, whose laws the people have been anxious to preserve from that period to the present. I tell you, Gentlemen of the Jury, that is the meaning of the statement that this is an indictment at common law; and when you approach the consideration of the question of “guilty or not guilty,” you ought to consider the circumstances and the time in which this alleged crime has been committed. This is an indictment framed against eight members of a political association formed to redress an alleged grievance, established to obtain a Repeal of the Union. Gentlemen, will you not be surprised to hear, that, from the time of Edward the Confessor up to the year 1794, there never was in England an instance of the members of a political association—aye, from the association headed by Wat Tyler down to the year 1794, there was not an instance of an indictment for conspiracy against the members of an association of this kind. Is not that an astounding fact? Was conspiracy a crime unknown to the law in those days? Gentlemen, the law of conspiracy, at an early period, became an object of great solicitude, and was even the subject of legislation. It was a crime too dangerous to the liberty of the subject to be left undefined, and one so calculated to be taken hold of as a ministerial scourge, that at a very early period it became the subject of a statutable legislation. By an Act passed in the 21st Edward the First, the crime was carefully defined; and the definition is stated from the Act in the 1st vol. of Hawkins’ Pleas of the Crown, 444, which is considered good authority, with prefatory statements of the object of the Act, which I will read for you: “For the better understanding of the nature of a conspiracy, I shall consider, first, who may be said to be guilty of conspiracy; second, in what manner such offenders are to be punished. As the first point—who may be said to be guilty of conspiracy—there can be no better rule than the Statute, the 33rd, or rather the 21st of Edward the First, the intent of which was to make a final definition of conspirators, to which purpose it declareth: ‘Conspirators be they that do confeder 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 appeal 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 their malicious enterprizes, and this extendeth 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 quar-  
 “ ‘ rels, pleas, or debates that concern other parties than such as  
 “ ‘ touch the estates of their lords or themselves.’ ” Thus you see  
 that Hawkins states the intention of that Act of Parliament to have  
 been to make a final definition of the crime of conspiracy. I won’t  
 do as the highest law officer of the Crown has done—I won’t keep  
 from your view one part of a page, which is calculated to explain the  
 part I read. I will not say whether this was right or wrong; but  
 I will show you by-and-by that it has been done. I admit that  
 in the same book, page 446, it is 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 confedera-  
 “ tions 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.” The instances here given by  
 Hawkins of the crime of conspiracy at common law, arose from  
 cases in which it would have been unreasonable to allow the criminal  
 conduct involved in them to go unpunished, and not being within the  
 terms of the Statute of Edward I. it was concluded that they must  
 be punishable at common law. One of the earliest of these 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 per-  
 sons in power sometimes assume the character of an individual, and  
 commit frauds similar to those committed by individuals, the parish  
 officers in England used by fraud to transfer the paupers from their  
 own to an adjoining parish. In *The King* against *Edwards*, the  
 officers of one parish had 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 the burthen from their own  
 parish to the adjoining one; they conspired to bribe him, and were  
 very properly indicted for the conspiracy. That was one of the first  
 instances reported of a prosecution for a conspiracy at common law.  
 Another occurred also at an early period. A cardmaker had become  
 famous for his manufacture, and another cardmaker, with his wife  
 and servants, conspired together to bribe the apprentice of his rival  
 to put grease into the glue used in making the cards, whereby the  
 cards might be spoiled, and 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 by direct evidence that they had conspired. 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 that the servant gave it, and each  
 gave the money for the same purpose of inducing him to mix grease  
 with the paste; and the Court allowed their several and respective acts



to go to the jury, as evidence of the conspiracy, on the ground that being members of the same family, living in the same house, and all adopting the same scheme to accomplish one and the same criminal object of ruining the man by the same abominable means. The coincidence of their acts was considered as evidence of concerted co-operation, and what was done by each in the absence of the others was therefore allowed to go to the jury as evidence of the conspiracy. That case is reported in *Strange*, and is a plain illustration of the doctrine of conspiracy, and is at once sanctioned by law and by common sense.

Let me now give you the history of the Attorney-General's definition of conspiracy. First let me give you the definition itself; I have it in his own words, I took them from his own lips, and I think I will be borne out by every one who took down his words as well as I did myself. 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*, 4 Barn. & Ad. 349, 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, 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 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." This is the authority cited. No doubt Lord Denman is a very able and a very constitutional judge, and perhaps those were the words he used on that occasion. But *saying* that the indictment on which he was giving judgment was bad, because it did not charge the doing of an illegal act, or of a legal act by illegal means, was not *deciding* that an indictment would be good which charged this and nothing more. His so *saying* was not at all necessary in order to decide on the indictment before him; and now let me tell you the value that is to be attached to the *saying* of a judge under such circumstances. Mind, that such a *saying* is not a decision of the judge who says it, nor is it the decision of the Court of which he is a member—it is what we call technically, a *dictum*—to use a common expression, an *ipse dixit*. No constitutional judge will ever pay much attention to one of these *dicta*: and I believe the true value of them was never more truly described than by Sir Anthony Hart, who, when somebody was pressing him with the dictum of a judge, said "he always thought that the quotation of a dictum was an attempt 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, repress the habit of citing in one case what a judge has said, in the way of observation, on another, and for this reason, this plain reason, that what is said by a judge in a particular case, is said in reference exclusively 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 cited by the Attorney General, and which I have already repeated to you; and in 1834 the same judge (and I wonder the Attorney General did not make use of the fact) in the case of *Rex v. Seymour*, 1 Ad. & Ell., 713, which was an indictment for conspiracy by criminal means to exonerate one parish from a pauper, and to throw him upon another, again spoke the same dictum, and, as in the case of *Rex v. Jones*, he used it 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 had been indicted for opening a shop, and practising concerted schemes to defraud people of their goods. The jury convicted them, and there was a motion to arrest judgment, because the charge made in the indictment was not properly within the law of conspiracy. Lord Denman's dictum was cited to him by counsel to uphold that indictment, and his Lordship's observation upon it was this: "I do not think the antithesis is very correct." This was his commentary on his own dictum; and he disregarded his own dictum, and the judgment was arrested; and however great his authority in other respects, there is not much of its weight embodied in that dictum. That is the case of *The King v. —*, 9 Ad. & El. 690. Oh! but the Attorney-General does not rest upon the authority of Lord Denman's dictum alone, 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 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 "or to effect a legal purpose by the use of unlawful means, even although such purpose should never have been effected." That is his description, or if you like to call it so, his definition of the crime of conspiracy. I was 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 analogous to that which map-makers pursue in copying from those who went before. The definition of Chief Justice Bushe was taken from East's Pleas of the Crown, 462, almost verbatim; and now let me tell you from whence East got it. East gives it in commenting on the case of *The King v. Edwards*. In that case, reported in 8 Mod. a motion was made to quash the indictment because it did not show, on the face of it, any offence. The Court answered by saying, that quashing an indictment was a matter of discretion, and that they would not do it in that case; and it is reported that the Court *said* on that occasion, when it was not necessary to *decide* any such thing, that conspiring to do an unlawful act, or a lawful act by unlawful means, is a crime; and you may now see where Lord Denman got his antithesis. That is reported in 8 Mod. 320, a book, too, of rather questionable authority. But it is no matter whether the

report is correct or not, it is nothing but a mere *dictum* of the Court, describing the common law offence. Such a definition is not to be found in Coke, or in any of the old authorities, who were better acquainted with the common law than we are. No doubt it is to be found in East's book; he is a man of the present day, I may say, a writer of no coercive 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 binding authority. Besides, his definition is merely a repetition of the dictum in the case of *The King v. Edwards*. Such is the Attorney-General's first proposition on this law of conspiracy. Now let us come to his second proposition, which is this: he says: "If you believe that the several traversers have been engaged in the common design of obtaining the object in view; that moment, if they have the common design, the moment that they *have* the common design, that moment they are guilty of the crime of conspiracy, and the act of one is evidence against the others." Let us deal with this 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 our countrymen have been engaged in that? It cannot. This million, therefore, are conspirators; that is, the worst and the most criminal of the human race; and the act of every one is to be evidence against all, and against every one of them. Gentlemen, give your attention for a moment to the monstrous consequences 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 the Repeal of the Union, is guilty of being a conspirator; and the act of every man of these is evidence against every other of them. You can, if you believe that to be the law, account for the admission in evidence of the conversation between Captain Despard and a man that he says he met on the back of a ditch, in the outskirts of the meeting, where there was not one of the defendants to hear what passed between them—a conversation with a man, whose name, place of abode, whose very description is unknown. That conversation was carried on between Captain Despard and him—that conversation has been given in evidence against those eight defendants, and on what principle? Upon the principle, that those eight defendants had constituted that man, whom they had never seen, no matter who he was, to be the agent of each and every of them, and had given him authority to speak for them, and bound themselves to stand or fall 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, and the liberty and safety of your fellow-subjects are in your hands, when you, twelve men of common sense—twelve honest men are called upon to give the sanction of your verdict to a doctrine so absurd. The speech of this man, whoever he was, from the back of the ditch, is here put in evidence as an overt act of conspiracy in the defendants, that is to say, an act which affords convincing proof to the mind that that act could not have been done by that man un-

less there had been a previous criminal concert and agreement between him and the eight defendants. The only ground on which the act of that man, whoever he was, can, with any colour of justice, be admitted as evidence against the traversers, is the assumption that they had made him their agent, and the only way in which this evidence, when admitted, can advance the prosecution, is by considering it as a proof that the meeting was seditious, because this man's words were seditious; that is the only way it can be entertained by you in this case as evidence in any degree whatever to affect your verdict. Gentlemen, you are not here trying whether any of those meetings were illegal or not; you are not here trying whether any opinion expressed at them was legally or morally wrong or not; you are not trying whether any speech made at them was seditious or not. Those meetings are admissible in evidence for one or other of these purposes, and for one of these 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 that the Repeal of the Union was pursued by the defendants by illegal means, and therefore, and therefore only, does the question of the legality or illegality of any of those meetings arise in this case. Secondly, whether they were legal or not, the meetings may be evidence in this case as overt acts, that is, they may be evidence showing that they could not have taken place unless there had been a previous conspiracy, and a previous conspiracy of these defendants; this 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 fact, 2000 men, 2000 able bodied men, bone-and-sinew men, as that fellow expressed it, had marched from the county of Wexford to the county of Meath, to aid at the exhibition of physical force intended to be made at that meeting—if such were the intent, if such a conversation could, I say, be taken as evidence of that, and if you from that conversation believe that that was the fact, then, Gentlemen, that conversation may be worthy of your attention. But do you believe, first, that 2000 able bodied men did march from the county of Wexford from the barony of Shilmalier? Do you believe that? Gentlemen, is that a fact which, if it happened, is susceptible of any proof? Are you, in the absence of that proof, to presume the fact, which, if it were a fact, could so easily be proved? Did these men go in a balloon, and if they did, did they soar to such a height that they could not be seen from the earth? Did they pass under ground? What road did they go—what roads did they go? Where is the human being that saw any of them in their transit? Where are the witnesses to prove that any of the peasant dresses of the county of Wexford, as peculiar as any in Ireland, were to be seen at Tara meeting? I take it for granted, Gentlemen, that some of you have been in the county of 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 who attended at Tara, to tell you he saw one Wexford man at it? Captain Despard did not; who did? Gentlemen, persons in my Profession perhaps, witnessing as they do, a little more frequently than the most experienced juror can do, the frailties of human nature so often exhibited by witnesses on the table, especially in cases where they are deeply interested, 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. Suppose for a moment, that there were 2000 men there from Wexford, and that this person who spoke to him on the ditch was one of them (I think that is insinuated), mind all the coats about him were those of Meath and Kildare; the conversation was not in a whisper, it was loud, every person round him must have heard it. 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 appear 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, that I should not desire to sustain the whole burthen of proving it if I could divide it with another. This Wexford man, I am sure, knew Captain Despard—nay, he made himself known to him. He must indeed be ripe for rebellion, when he was thus ready publicly to avow his sentiments. And he must have been singularly destitute of common caution, when he could thus voluntarily 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 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; this is the very acme of improbability. Do you think that to prepare for battle was the real object of those meetings? 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 transparent, 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 this story so very probable, as that Captain Despard, with all his flippancy of tone and manner, should expect a Jury on their oaths, to swallow it without corroboration, when it might have been so easily corroborated? He told you that this man stood upon his left hand, and that immediately upon his right was his own policeman, Walker, who heard what had passed. This Walker was examined, and he was allowed to go from the table without being asked a single question as to whether he had heard this extraordinary conversation. The Superintendent of Police, Major Westeura, 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 and ready to obey those acting for the Crown—this gentleman, who must have overheard such a conversation, if it took place, is not produced. But it would perhaps be going too far to ask you

to believe that Captain Despard was an 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 sort of "fix." Let us see how you can be got out of it. 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 previously made by 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 should come up, that this man, planted there for the purpose, should address him in that extraordinary way, I can then understand why Captain Despard comes alone to prove the conversation, and why Walker was not questioned, and Major Westenra not produced.

Gentlemen, I will show you in this case, a little management in another matter, 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 bring home to the traversers the devising the heads and ornaments for some of the cards. In the year 1844, the days of Paddy M'Kews are, to a certain extent, gone by, and we shall see matters of this kind in our days conducted in a more civilized way. It will not 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 supposed to bear most hardly against the members of the society—it will not 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 as a witness, and if it should appear that he had been a leading, conspicuous, noisy, and clamorous member of the Association, it could hardly be expected, if he should come here as a crown witness, 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 engraving of the card ; and you remember the difficulty there was in establishing, by the testimony of these men, the connexion of those cards with the Association. What could have been easier than to prove that connexion in the way it had been done in the case of the placards, to prove which, Mr. Browne, who was employed to print them, and paid by the Secretary, was produced. I am sure I am addressing rational men—that I am addressing honest men—men of the world and of experience—who will 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 the Association, and also, at the same time, the workman of the Government, was not produced to prove the connexion between his work and the Association, who had employed him to do it. But if Holbrooke was convicted on this table of having been the instrument of the Government—if it

should appear that he had himself suggested those emblems of sedition which he executed—that he had put them upon the cards of this Association,—such a disclosure would bring odium upon this whole proceeding, and 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 the fact that Holbrooke is kept back, and that his journeymen, who could scarcely prove anything, are produced, of itself strong evidence of crafty and subtle contrivance in the management of the case in one particular; and is it too much for me to ask you to believe that there may be some contrivance and management also in another particular, whether or not I have exactly conjectured the details of that arrangement by which this Wexford man, so called, was brought into communication with Captain Despard, it is not important to determine. This transition naturally arises out of my observations on the Attorney-General's second proposition of law. I was calling your attention to the monstrous injustice which follows from this alleged proposition of law, that of admitting as evidence of criminality against my client this conversation held at the back of a ditch between total strangers to the parties on trial, and no part of which was ever heard by any of them. The Attorney-General, however, stated this proposition not merely as his own, but he came with authority to support it. Indeed it required some authority to sustain it, for its application in this case exhibits a novel degree of injustice, if not of absurdity; and accordingly Mr. Attorney does not take the responsibility of asserting this law upon himself, but he turns 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 into my statement, to form part of the patchwork on which I mean to rest this case. In citing Mr. Justice Coleridge, the Attorney-General followed the course which Sir Anthony Hart said is generally followed in the quotation of dictums; for I think the Attorney-General somewhat misrepresents, or perhaps he misunderstood the learned judge on whose authority he relies. The Attorney-General cited from the case of *The King v. Murphy*, 8 Carr. & Payne, 310, where Mr. Justice Coleridge told the jury: “If you are of opinion that the acts of those two persons were done without a common concert or design between them, the present charge cannot be supported. 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 nor common sense requires it should be proved. If you believe the 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, 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 pro-

pounded by the Attorney-General in any other light than as an illegal and monstrous absurdity, I entirely concur in the language of Justice Coleridge that I have read to you, taking it, of course, in conjunction with the facts to which it was applied, and having regard to the case in which it was spoken, and to the evidence which was offered in that case. His words, when the whole are taken together, appear perfectly consistent with good law and common sense, and all they amount to is this, that men who have conspired (and I now use the word in its criminal sense, for I will bring you by-and-by to the difference between conspiracy and concert) however they may conceal the fact itself of conspiring, may, in pursuing the object of their conspiracy, act so as to give sufficient and satisfactory proof that they must have conspired. That men who have agreed to do criminal acts, may so execute these acts as to demonstrate that the conspiracy existed between them previous to the doing of these criminal acts. For instance, not only pursuing the same object by the same means, but doing so in such a way as to demonstrate previous concert as "one doing one part of an act, and the other doing another part of the same act"—i. e., one beginning and the other finishing the same act, in such a way that you cannot account for the identity of their actions in any other way than by assuming a preconcerted arrangement between them. This is the substance of the passage from the charge of Justice Coleridge. And it is as plain as day that Mr. Justice Coleridge, when he used the language referred to, spoke it, in reference to the case and the facts then before the jury, and to the proofs given in that particular case. He was speaking of two individuals who were connected, and whose acts were connected by a variety of circumstances, all tending to show that they were acting by a previous concert and conspiracy. And are we to have the language applied to that case, as it were thrown into a crucible, and refined so as to make it applicable to this State prosecution? Because Mr. Justice Coleridge told a jury that they might infer a conspiracy between two men, from the fact, that these two men were pursuing the particular object in that particular case often by the same means, and from the fact that in so doing, one sometimes began and the other finished one and the same act, and from other similar facts (for he mentioned these but as instances), therefore, one sweeping general proposition is to be concocted, and the authority of Mr. Justice Coleridge is to be quoted for it: "that wherever one common object is in fact pursued," there you are at liberty to infer that a conspiracy exists amongst those who are in pursuit of that object—that because a million of people or three millions of people are associated together for a political object—the repeal of an Act which they consider to be an injurious law—that because they happen to entertain one political sentiment, and concur in one common political intent—the acts of every one of that million, no matter where their acts are done, how they are done, when done, or almost whether done at all or not, yet these acts are all to be given in evidence against any one man, or any number of men selected from these millions, and because of the concurrence of their political sentiments, and the consequent unity of their political object, they are to be at once



pronounced to be criminal conspirators. And this is the proposition which you, twelve men of common sense, are called upon on your oaths to take as the law of the land. But the Attorney-General is wonderfully expert at citing cases, indeed I will do him the justice to say, that in this respect, he has scarcely a rival in the Hall. There is no case in the books he will not make 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 admit, was also in favour of his general proposition, and he referred you triumphantly to some words attributed to that learned judge, in the case of *The King v. Watson*, 32 St. Tr. 7. But first, let me tell you that *The King v. Watson* was a prosecution for high treason, and, therefore, not by any means strictly analogous to the present prosecution. The Attorney-General read you a very brief extract from the language of Judge Bailey upon that occasion; but he omitted much of what that learned judge said, that qualified and explained the part cited by the Attorney-General. I ask you to hear now the language 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 accidental agreement and concurrence of opinion amongst a large section of the subjects of the Crown, which they individually believed they had a perfect right to entertain and to express? Is the existence of such an accidental coincidence, as very possibly may exist upon the subject of Repeal of the Union, whether for or against it, between me and any gentlemen in that box, the least evidence of conspiracy between us? No, Gentlemen, Mr. Justice Bailey was not speaking of any such coincidence of opinion; he was speaking of the criminal conspiracy which exists in treason. His remarks had special reference to a case of treason, and not to a case of political co-operation. 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, it is 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 consult*; and furthermore, that they consulted with a *criminal intent as criminal conspirators*, and that they were conscious of being such when they so consulted. All this you must believe before you can find a verdict against the party or parties who are put on their trial for conspiracy. Gentlemen, Mr. Justice Bailey was there also speaking of the crime of treason, and expressly distinguishing between that crime and felonies, he says: "Treason differs from felony in this, that in felony "there are accessaries, in treason there are none. And therefore, "those who at any period, either before or after the formation of "the treasonable conspiracy, concur in the treasonable purpose, are "equally guilty with those who are in it from the beginning to the "end."

And now, having called your attention to the only two authorities that have been cited by the Attorney-General, this last observation brings me to consider the third position laid down by the Attorney-General in his speech. And I beg your attention, Gentlemen, as British subjects, as men who desire to spend the rest of your 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 and honour, as men of 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 the Repeal Association is a "criminal conspiracy—that every man who belongs to it is a criminal conspirator," and he told you that "whoever comes into the common purpose or design, 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 and approval—such the proposition which *you* are called upon to ratify and adopt; and he supports this doctrine by the language, which Mr. Justice Bailey used in distinguishing between treason, in which there are no accessaries, and felony in which there are accessaries. 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 and answerable for all the seditious practices of all who concur with him in his political object, and who may be co-operating with him, no matter how injudiciously, in the attainment of that object. And because of the general concurrence of sentiment as to one object, every person who joins the Association, must be branded as a member of a wicked and illegal conspiracy. I dare say the Solicitor-General, who will have the right to 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 very commencement. 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, when assembled, legally and decorously, and then delivering such speeches as have been read in Court, involves the whole proceeding, and every one engaged in it, in illegal practices, and affects all who are engaged in the proceedings with the guilt of seeking the repeal of the Statute by illegal means. They argue that those who call the meetings, and deliver illegal speeches at them, are pursuing the common object by illegal means, and are, therefore, guilty of conspiracy; and that those who attend the meetings, and listen to and approve of the speeches, are also acting in furtherance of the common object, and by coming into the common design, and assenting to the illegal speeches, they become equally guilty with those who are in from the beginning; and in support of this argument, the Attorney-General has cited to you the words of Mr. Justice Bailey, in that 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. Mr. Justice Bailey says, in page 7: "Treason differs from felony " in this, in felony there are accessaries; in treason there are " none; what would make an accessory in felony would be a prin- " cipal in treason. He who plans the thing." Now, I ask, what thing? Is it the thing of meeting to petition Parliament for a Repeal of the Union? No such thing; was it the thing of meeting in public and making speeches? No—the thing Mr. Justice Bailey was speaking of was high treason. Justice Bailey continues, and says: "He who plans the thing, or 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 preparatory to the execution of the thing proposed, is as much a principal " as he who executes that thing." What matter? High treason. As he who executes what? As he who executes high treason. The language of Judge Bailey was applied to high treason and to nothing else. "And provided a man comes once into the common purpose and design." What design and what purpose? not the design or purpose of calling or attending a meeting for some avowed political object, or the delivery of political speeches there; no such thing.

“ 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.” In a case of high treason ; that is the case Justice Bailey is speaking of. This is the language, spoken by an English judge to a grand jury, in his charge to them in a case of treason, not spoken of, nor applicable to the case of men politically associated together for openly avowed political purposes. Yet this is the language brought forward to support the monstrous proposition, that any man of the traversers, and any other person who joined the Association, whose rules and regulations were published and circulated to the entire world, from the moment that he so joined it he became a conspirator, and criminally reponsible for all the acts of all the members of this Association, in furtherance of its objects from the beginning. This is the language, I say, brought forward by the Attorney-General to support the monstrous proposition that all the members of this Association are to be branded as foul conspirators. Such are the three propositions of law laid down by her Majesty’s Attorney-General, touching cases of conspiracy.

Now let me deal with another proposition of law laid down by the Attorney-General, concerning illegal meetings. The law on the subject of illegal meetings, and of conspiring to call and to attend illegal meetings. His view of the law on this subject the Attorney-General supports by referring you to the case of *Redford v. Birley*, reported in 3 Starkie’s *Nisi Prius* Cases ; and here I beg leave to give you a short history of that case. It is remarkable that the Attorney-General did not think it right or prudent to give you any account of it at all. The case of *Redford v. Birley* arose out of a very remarkable and far-famed transaction which occurred in Manchester in 1819. You have all heard of the celebrated meeting which took place on the 16th of August, 1819, at a place called Peterloo, at Mauchester. 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, and the indictment charged him, as in the present case, with a conspiracy. The first three counts were the principal counts, and charged him with conspiracy. There were also other counts, charging him with attending an illegal meeting. The charge of conspiracy was pretty much the same as in the present indictment. 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 for conspiracy in the indictment, he knew very well that the crime of conspiracy savoured of novelty, and would not be favoured by an English jury, and he therefore added a count for attending an illegal assembly. On this 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 hear on the case. The question then was whether a conspiracy had existed before the meeting was called, and this question was then brought before the competent tribunal, namely, a jury of the country. I say before a jury, for



I say it is not, by the laws of this realm, competent for any judge or any number of judges, to pronounce any man guilty until twelve of his fellow-men pronounce him guilty. It was and it is a jury, and a jury alone, who were and who are capable of coming to the conclusion of what was, and what is, 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 of their impartiality 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. Yet Hunt and his associates were proved beyond all doubt to have concurred and co-operated with each other, and with divers other persons unknown in calling and in attending that meeting. That being the result of the prosecution of Hunt for a conspiracy, 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 wounded 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 every thing ; but as it was not safe to defend the case on that plea, and because there were certain matters to justify the act, if it should be proved against the defendant, several pleas of justification were put in, and in them it was alleged that the meeting at which the plaintiff had suffered the injury was illegal, and some of the pleas stated that the meeting had been 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, had driven him away from the meeting, and in so doing had done him as little injury as possible. In this plea, you see that a conspiracy was alleged, and of course it then became necessary to prove it, or at least it was competent for the defendant to give evidence of the existence of such conspiracy under this plea. In consequence of this, amongst other evidence produced on the trial, was a witness 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. This evidence was tendered, and it was received, and this witness swore that he was ill used and abused by the parties who were so assembled, but that they let him go with his life, and that on the next day, when passing his house, on their way to the meeting, some persons hissed him. Now, recollect, that this very 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 nightly meeting where this man was abused, and where the men were drilled ; and yet the jury acquitted him and his co-defendants of the conspiracy. On the trial of the civil action this evidence

was objected to, but it was admitted by the judge, and the jury having nothing to do with any question except whether the plaintiff, by reason of the injury which he had sustained, was entitled to damages, found a general verdict for the defendant, but on which of the pleas it did not appear. A motion was afterwards made to set aside that verdict, on the ground that illegal evidence was allowed to go to the jury, but it was refused. And now, Gentlemen, we come to the authority which the Attorney-General says this case affords on the question, whether or not a conspiracy exists in the case now before you. This authority exists in the dicta of the judges in refusing to set aside the verdict. But 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 was admissible, to show the jury that there was an illegal conspiracy, such conspiracy being directly averred in one of the pleas in that case. Now, mind, the jury had 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 believing that there had been any conspiracy. The question before the court on the new trial, motion, and the only question, was, were these drillings *evidence* to go to the jury, of a conspiracy, not whether they proved a conspiracy, but whether there was such evidence of a conspiracy, afforded by the nightly meetings, as ought to have been submitted to the jury, that they might exercise their judgment upon it in coming to the conclusion whether there was a conspiracy or not. And it is from the dicta of judges in pronouncing judgment upon the question of the admissibility of this evidence, that is, upon a mere question of law, and that question brought in that way by motion before the Court, that the Attorney-General has endeavoured to prove as a matter of fact that there is a conspiracy in the present case, and that the meetings in the present case were illegal meetings. Gentlemen, from that case he cited for you a part of the judgment of a very learned judge, Mr. Justice Best, now Lord Wynford. He cited these words for you, and these only, viz.: "It appears to me impossible to say that this drilling was innocent. If it is not innocent, what is it?" He stated this sentence from page 125 of the Report. Gentlemen, in estimating the value of the dicta of judges, when cited by lawyers 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 which were alleged to have taken place amongst the Repealers, but which were not proved to have taken place, were criminal and illegal drillings; and Mr. Attorney-General read for you an isolated sentence, at the conclusion of the first column of page 125, and there he stopped. Don't you think, Gentlemen, that in common fairness he ought to have read for you the charge respecting the drillings of which Justice Best was speaking, to which the word "this" refers? Now, if there was an explanation of that pronoun in the judge's own language, and in the very same page from which he was cit-

ing, in fairness to him, don't you think he ought to have read it? If he wished to influence you by the opinion of that learned Judge, expressed in the sentence he read, do not you think common fair dealing towards you should have made him read what that word "this" referred to? But he did not explain it; he left that for 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, in reference to which Mr. Justice Best was speaking—mind that he was speaking of the drilling which was proved in that case to have taken place), "It is said," he observed, "that this drilling was for the purpose of enabling a large concourse of people to be at the same spot of ground." That was the excuse given for the drilling of which he was speaking. "This is truly ridiculous," he says. 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 that;" that is, 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." It is worthy of your attention, that here Mr. Justice Best plainly expresses the opinion that if drilling was necessary for the mere 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 that purpose, provided it did not go further, would be justifiable and legal; that is plainly to be collected from his language. "They need not go to the extent of not merely putting themselves in close order, but up to the full extent, short of having arms in their hands, namely, the act of firing. For several of the witnesses speak of their not only forming in ranks, but of the words of command being given, such as 'make ready,' 'present,' 'fire.'" Here is the drilling Lord Wynford was speaking of. This is the species of drilling which he referred to by the pronoun "this," in the short sentence read by the Attorney-General, and Mr. Justice Best goes on and says: "This is a species of drilling which I state again, as it appears to me, never could have been had recourse to for any innocent purpose." Here, Gentlemen, is the drilling which Mr. Justice Best was speaking of. That learned judge goes on: "There is also most material evidence on that part of the case, from one of the witnesses who says they were ordered to advance in front—and on the sound of the trumpet, fall on their faces, as in the drillings of light infantry." These are the drillings of which Justice Best said: "It appeared to him impossible to say that they were innocent." Is it fair—is it fair, let me ask, to read the sentence the Attorney-General read, which speaks of this drilling of which I have now read for you the description, 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, or the opinion of a judge, for the purpose of coercing a jury, is bound to cite it candidly, fully, 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, when cited against the party accused by the public prosecutor, it is a case where a man of his own rank, of his 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 the Attorney-General, his 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 not lenity and forbearance. 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, in which, conscious of innocence, I 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 I may succeed in parrying your blow, you are no longer the antagonist 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 it for myself? Gentlemen, it may be productive of bad consequences to me in my career to do so; but I cannot regard that; I shall never eat the guilty bread which is earned by professional subserviency. I shall not retire to my pillow borne down with the remorseful feeling that I was an example of dereliction of duty, as I should be if I should not say for this young man everything which he would be justified in saying for himself; if I should not say for him every word which I would say for myself, were I here the party accused.

Such, Gentlemen, has been the statement of the Attorney-General in this prosecution as to the law; and after so stating the law, he then came to the facts of what he termed this momentous case. I agree with him; it is a momentous case; but I doubt that we shall agree in the reasons for calling it a momentous case. That he thinks it a momentous case I have no doubt, in reference to the effect it must have upon his position with his own party. He feels it to be a momentous case, and it is because he feels it to be a momentous case in reference to himself, that this want of candour has stolen upon him, as it ever does, and ever has done, and ever will do, when the party is himself conducting his own case as the litigant. The prosecutor here is not acting merely on the motives of counsel, but in a sense also for himself, in support of his credit with his party. He would have you to consider this a momentous case; because your verdict of “guilty” or “not guilty,” may affect the peace and quietness of the country? But whatever may be its effect on the



community at large, I deny the right of any community, because it may be useful to themselves, to take one farthing of the property, or to touch one hair of the head of any man, or to deprive any man of one moment's liberty, because it may be useful to them or to the state to do so—common justice revolts at the notion of inflicting punishment on one man to serve the purposes of others, however numerous. Your verdict of guilty or not guilty may or may not be serviceable to the community. But I deny your right, when considering the question of guilt or innocence, to entertain one thought of the effect of your verdict upon the people at large, or even on the whole human race. 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 on trial, and until I am found guilty, I am presumed by the law to be innocent, and it is then a fair ingredient in the consideration of the weight of punishment; the public good may then be considered in measuring the punishment. I deny the right of any human being to plead his own good as a reason for my conviction. Yet this is the reason involved in the suggestion made to you, that this is a momentous case. Let me now give you my reason for thinking this a momentous case. Gentlemen, you cannot be ignorant of the history of your own country, and of England, and it may also be said, 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 its distant dominions, and when the northern hordes poured down upon the Roman provinces in 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 bond-slaves and serfs, over whom the power of life and death was exercised by the remaining one-third. They were brought and sold in the market like cattle; and the first act towards the rescuing of those wretched people from that most degraded 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 those whose fealty was so accepted; and while the conqueror imagined that he was securing the submission of these serfs, he was in effect releasing them from former bondage and conferring rights where none had previously existed. 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, writhing under, and struggling out of, the bondage which was thus partially relaxed, and to which, by the Saxon conquest, the people of Britain had been subjected in the early part of our history. From the moment when any civil right was conferred, as it was by accepting fealty, the people have been struggling by periodical exhibitions of their strength, to extend their rights to procure redress of the wrongs

they were suffering. Now, give me your attention for a moment, and you will see what a monstrous case this is, and wherein its great importance consists. This indictment 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 is the only charge made, or rather a conspiracy to exhibit it; for although the actual exhibition of physical force is acknowledged, and was openly made, no charge is made that a crime was committed by such actual exhibition, but the whole charge consists in an alleged conspiracy to make such exhibition of it. Now, let us for a moment consider what is meant by this exhibition of physical force. A great mass of the community is dissatisfied with the present law, and those who are dissatisfied 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 altered, until it shall be repealed; and they, in the strongest language, declare their determination never to cease using every effort which the law and the constitution will sanction, to have that law repealed. In the course of this pressing struggle of the people for a repeal of that law, they come forward in great numbers for the avowed and loudly proclaimed purpose of showing, by a public demonstration of their numbers, what an immense mass of the community, and what an immense proportion of the physical and the moral strength of the community is 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 would ask, does the Attorney-General think that Magna Charta was procured by crime? I would ask was there any exhibition of physical force at Runymede, although it is certain there was no use made of it? I ask was there not a demonstration of physical force upon the plain of Runymede, when the iron barons of England, not unarmed like those at Tara and Mullaghmast, but fully armed, presented themselves as persuasive suitors before their sovereign, to ask him, by way of favour, to sign the Charter they had brought in their hands ready for him? Was there no exhibition of physical force there? Yet that is the Charter which no Attorney-General—no! no judge! nor no king of England, dare to say was illegally procured or void because of its having been procured by demonstration of physical force? Is that the only instance in English history of great reformation being accomplished by the exhibition of the mighty proportion in their favour of the physical and moral force of the country? No, there are other instances. Let me ask you has any great measure been ever attained except by the means imputed to the defendants? Look to the Clare election; what was that? Was not that an exhibition of great physical force? Why were not the people who assembled there prosecuted? Why was that demonstration of physical force allowed to be successful? If the people there acted illegally, why were they rewarded by

emancipation. If the people be now acting only as they acted then, why should they be then rewarded—why should they be now 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, the result of that suffering? Why then is this a momentous case? Because it is a case by means of which, and by means of your verdict in it, the present ministry are seeking to get into their hands a scourge by which they may in future be able to repress the public expression, the multitudinous expression of the feelings of all men in the country who may not be of the ruling party. That is a thing for which every ministry in every period of English history has been anxiously striving, yet not one of them to the present hour has succeeded. Why have they not succeeded? Gentlemen, it was not the judges of the land that stood between them and the attainment of their object—never. I do not despair that this case will furnish an instance in which the Judges of the land will stand between the minister and the accomplishment of his criminal purpose. But to the honour of England and of English juries, no minister has been able to attain that object there. At an early period, and in the worst period of our history, the state lawyers devised what is called constructive treason. The Statute of Edward III. for the protection of the subject, gave a narrow and precise definition of that offence, but state lawyers and state Judges, in order to repress popular outcry and complaint by ingenious constructions of this clear and simple Act of Parliament, extended it to cases plainly not within either its letter or its spirit. But the Legislature from time to time yielding to the force of public opinion, swept away all these constructions, and on the return of reason restored the British law again. The last attempt to revive constructive treason—a foul attempt—was made in the prosecution of Hardy and Tooke, in 1794; that was a period of great political 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, felt alarm for the safety of our institutions, and it was supposed would join in support of the minister with all possible alacrity in averting the evil from his own country. That was a time at which one of the ablest, one of the most learned, one of the most artful men that ever was at the bar in England was Attorney-General. They framed upon that occasion an indictment for high treason against a great man—a very popular man—a very learned man, I mean 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 of political writings and speeches on the table, they threw down piles of papers, and desired the jury, and ingeniously sought to induce them to spell out treason from the mass. That prosecution was countenanced by the greatest authority then on the Bench, it was carried on, it was pressed on with the ability that both the Attorney-General and Solicitor-General of that day possessed, and they were both great men. That prosecution, however, failed; the common sense of the jury,

who were Englishmen, found a verdict against the Crown and defeated the prosecution. But it was not given up after one defeat ; they first proceeded against Hardy, the poor shoemaker, and he was acquitted. That did not satisfy the assailants of British liberty ; they brought it before another jury ; they drained the cup to the dregs, and put all the accused parties successively on trial one by one ; they were not satisfied with one or two or three trials and acquittals ; but in the end a number of successive juries, composed of sensible Englishmen, defeated their attempt. That was the last attempt made in England to establish constructive treason. I trust it will be the last. 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 language you are listening to, but the language of accused men in their defence. It is not my intention to attribute impure motives in any quarter, for I have nothing to do with the motives of any man in this case. It is my duty 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 deceived, or improperly influenced in your verdict by any any professional impropriety they may have been guilty of. There are certain rules which ought to be observed in the conducting of all legal investigations, and more particularly in 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 against the man that my remarks shall be directed.

Let me now call your attention to the statement of the facts of this case, as he called them, made by the Attorney-General ; but first permit me to put you in possession of what I understand to be the rule of the law, and of the Profession in relation to the statement of counsel. When a counsel rises to state the facts of a case, he expects not to be interrupted ; and the rule is that he shall not 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 party, and especially against an accused party, anything that he himself as a lawyer does not feel persuaded that he will be able subsequently to substantiate and give in evidence against the person charged. Now mind that is the rule, and there is always an understanding that, while enjoying the benefit of the rule he will by no means transgress that rule by stating what he knows he cannot prove, or by reading documents which he knows cannot be made admissible in evidence against the party. With this understanding the counsel goes on and states his case, consisting of the matter against the party accused, and then he is to bring evidence in support of the statement. Now let us



see the course which was pursued by the Attorney-General. He commenced by stating to you that shortly after the Emancipation Act passed, that is, in the year 1831, the then Lord Lieutenant of Ireland issued a proclamation; and he not only told you that as a fact which he did not afterwards attempt to prove, but he read every word of that alleged proclamation for you. Yes, he read it every word, for what purpose? Why, to prove a case of conspiracy against men now on their trial, who were then boys at school, and were not, nor could not, then be engaged in the association against which that proclamation was issued, or in any association whatever. The Attorney-General read that document to you which had been issued in the year 1831, 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 alleged to have been committed by them thirteen years after that proclamation issued. They are now accused of conspiracy, because they agitate the question of the Repeal of the Union, and the question is whether they have criminally conspired to agitate that question. 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 published to the world? He read the document, and closed the case for the Crown without attempting to make that document evidence against the traversers. He contented himself with the reading of it. He did not attempt to make evidence of that paper, and he calls on you to attend to a document which he must have known was inadmissible as evidence. Upon what principle of law—upon what principle of justice—upon what principle of fair play, did he seek to influence your verdict by the reading of that 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, suppose in the year 1844, that a man was prosecuted for murder, and that the prosecuting counsel read a document in which a man of great authority and note had some thirteen years before published a statement to the world, asserting that murders of a similar nature and similar in facts, were very rife in his neighbourhood, and that such murders were of a shocking character, and that certain persons, being 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, and with which it is confessed he had nothing to do? Would such a course be just, or would it not be an unfair contrivance for the purpose of affecting the minds of the Jury with prejudice against the man then before them, not by anything the man himself had done, but by an *ex-parte* statement which 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? Was it not plainly for the purpose of inducing you to believe that the Repeal agitation was

thirteen years ago branded as sedition by the then Lord Lieutenant? Why should the opinion of the then Lord Lieutenant, expressed on the then agitation, be read in evidence against Dr. Gray, who was then at school, and had nothing to do with that agitation? But he did not stop at the reading of that paper. He told you that Lord Althorp, in his place in the House of Commons, in 1831, had designated Mr. O'Connell's agitation for a 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 read this alleged speech to you at all? He also told you that in the year 1834, 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 destructive of monarchy, and would be the means of establishing a ferocious republic. I ask you is that the way to deal justly with a man on his trial? Upon what principle of law or of justice is the abuse of a political opponent, uttered in a privileged place, behind the back of the party abused, to be given in evidence and read, not only against the party abused, but against other parties not at all connected with him at the time of the abuse, nor for many years after. The question being, whether this agitation be criminal or not, is it the way to deal with a man on trial for taking part in it, to read against him the abuse of his political opponent? 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 affect your minds by this abuse, in his opening statement, and sit down without offering you one single particle of evidence on the subject? Not only without attempting to argue that these speeches of Lord Althorp and Lord John Russell are evidence against the traversers, but without attempting to prove that any such speeches were even in fact spoken. Is it legal to tell you the object of the defendants was branded by Lord John Russell in 1834, as tending towards anarchy and a dismemberment of the empire, and the establishing of a ferocious republic? He told you also that Lord Ebrington, when Lord Lieutenant of Ireland, had said that he had a great horror of civil war, but that he would prefer a civil war to a Repeal of the Union. I ask was this fair, legal, or just in the Attorney General? Was it a fair act on his part, as a prosecutor, to read for you the statements of Lord Ebrington, of Lord Althorp, and Lord John Russell, the bitter opponents, on this question, of Mr. O'Connell, and to do so without giving any evidence, not only to render these speeches admissible in evidence against the traversers, but without one shred of evidence that any such speeches were ever delivered at all. What legal right had he to do so? None whatever.

Now, let me bring back your attention to the definition given by the Attorney General of conspiracy; he stated that it was a conspiracy to combine to effect a lawful object by unlawful means. I ask you here, and I ask you confidently, was it legal for the Attorney-General to read those alleged proclamations and speeches

against the traversers? I presume he did so on consultation with his colleagues. Assuming that the object which they are pursuing, that is a conviction, to be a legal object—in thus illegally reading this alleged proclamation, and these speeches, are they not pursuing that object by illegal means; and are they not, therefore, conspirators within the very terms of their own definition? Will any one of his colleagues tell you he was entitled to state to you the speeches of Spring Rice, and the other persons alluded to, knowing, as he must have known, that he could not make evidence of one sentence of them against the traversers? Were those not illegal means of attaining the object which he had in view—the conviction of these traversers? I say his official conduct in that particular was most illegal. If ever there was a case in which the statement ought to be confined within the strict limit of the law, and solely to the proofs, it is the case where the highest law officer of the Crown is prosecuting a fellow-subject no matter how humble, no matter for what alleged crime; the Attorney-General, with the influence of Government at his back, is bound by every tie to confine himself to strict legal rules; but the instances I have given you are not the only instances I have to give you of a departure from legal rules by the Attorney-General, in the present case. Gentlemen, I spoke to you of the proneness of state lawyers to indulge in this departure from legal rules, in their anxiety to procure convictions; even my amiable friend, Sergeant Warren, could not resist the temptation of being irregular, in this state prosecution. You all remember the witness Johnston, who was examined relative to the meeting at Longford. Do you remember Sergeant Warren standing up to re-examine him? Gentlemen, counsel has a right, after a cross-examination is over, to re-examine a witness—to ask him for an explanation of anything arising on the cross-examination. You may remember a passage in that man's evidence in which he spoke of a significant pause made by Mr. O'Connell, which he would have you to understand had something seditious in it. My friend, Sergeant Warren—do not 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 in every good and moral qualification, nor breathes there a human being that with greater pleasure bears testimony to it than I do. But I am here using the language of an accused man, I am here in defence of a client, 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; without regard to the respect which his conduct on all other occasions deserves. I had cross-examined the witness as to the *pause*. What was Sergeant Warren's question on re-examination?—"Did you ever hear of cat's *paws*?" "Yes," said the flippant witness, "I have heard of people making cats' paws of others," *se servir de la patte du chat pour tirer les marrons du feu*—that is, use the cat's paws to pull the roasted chestnuts out of the fire. Now, as a pun, this does no credit to the learned Sergeant; as a joke, it is unseemly and unseasonable; as an 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. As an insinuation, this pun certainly deserves my notice, and it is my duty to observe on it. It insinuated that the traversers, or some of them, made cats' paws of the people—that they, under colour of patriotic views, were using the people as dupes 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, and an exemption from the imputation of motives, while they impute, thus irregularly and improperly, motives to the traversers who are now upon their trial, and the issue being, whether they shall leave this court stamped as foul conspirators, or as gentlemen of station in society? Have I dealt unjustly with this joke? Could any man say I did my duty, if I did not observe upon it? I do not know whether it ever entered into the head of a state prosecutor to make a "cat's paw" of a Jury to draw nuts out of the fire for himself: but I know that when people make imputations of this kind, they ought to bear in mind the position in which they stand. However, Gentlemen, whatever nuts may be drawn out of the fire by means of your verdict in the present case, neither you nor I may expect to get any of them. And I do not know why my client, who is beside me, should not point over there, and express his hope that the learned Sergeant may get a large nut out of the fire, as a consequence of your verdict. 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, 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 corrected, my friend, the Solicitor-General proceeded to show that it would not be legal to correct it, and he concluded by this observation, "and this is the argument of one of her Majesty's counsel," alluding to what I had 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. But to return to the statement.

After having read from those speeches, and those placards, the Attorney-General then told you he had come to the facts of the case. He came 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 hours; he read for you amongst the rest, a scrap of poetry, very treasonable poetry, as he would suggest, "The Memory of the Dead," reminding people of the year '98. I wonder, Gentlemen, when he was commenting on 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 kindred with those unhappy, misguided men, no doubt concluding with the chorus:

“ You, men, will be true men, and remember '98.”

I do not 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 even since '98, and that you men should be true men and remember '98 against those that were not born in '98. I own, to my imagination, that *morceau*, 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 exciting your prejudices and inflaming your passions with a recollection of that unfortunate period.

But now, Gentlemen, how am I to deal with the numerous and prolix speeches and publications which have been read to you both in statement and in evidence? Am I to take them up one by one and read them over again, and add my commentary on each as I read it? This would plainly be an endless task, and if I can avoid a course so calculated to weary you I am bound to do so. You are not here trying the legality or illegality of any one, nor of all these speeches and publications. The traversers are not indicted for sedition, and the criminality of any speech or publication comes only incidentally into question. If to speak any particular speech was the commission of crime, then you have to inquire whether the defendants, or any two or more of them, conspired to concoct and deliver that speech. These are the two questions and the only questions which you have to ask in relation to each and every of the speeches and publications which have been read to you. and therefore I shall endeavour to deal with the case, by making general observations on all the publications read against the traversers. The past has been referred to in many of their speeches and publications, and referred to in terms which the Attorney-General would have you to suppose were intended to excite a spirit and feeling of revenge in the living towards the living, on account of the supposed wrongs inflicted by the past generations on those who are long since dead. This is the construction which the Attorney-General puts on the language used by the traversers. That the past has been referred to in terms not very cautious, is not to be denied, but still in terms not very likely to be adopted by men who had crime in their hearts, or by men seeking to excite civil wars, and pursuing their object as conspirators, by men engaged in an atrocious attempt to stimulate the inhabitants of this country at the present day to civil war—a design which they dare not openly avow. That they did use this language, plainly condemning, and holding up to execration as they did, the cruelties of by-gone times, to my mind carries much conviction that,

in so doing, they had no criminal intent whatever. That they acted openly, and plainly, and unreservedly, is to me proof that they were not conscious of any criminal intent. Now, let us for a minute contemplate the means by which this Repeal of the Union was to be carried; and if I mistake not, we shall be able to account for the many references made to the past cruelties of the reigning party without ascribing them to the desire of stimulating the present generation to outrage. 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. We should remark, that in modern days, public opinion has attained a strength wholly unknown to it in ancient times. Why? what is the cause of this new force of public opinion? The cause of it is this: the rapid communication between the several countries on the face of the earth, the rapid communication of thought by which the whole human race has been, as it were, converted into a single country, nay, into a single family, in which no individual can stir in any public matter without being under the view and subject to the opinion of all. He must be but a poor observer of human events who does not perceive how irresistible is the power, even upon whole nations, of public opinion in the present day, when this rapid communication and this power of the Press bring the attention of the whole human race, almost in a moment of time, on the actions of men and of nations; the Press and rapid communications are two modern engines, and 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 like the conduct of an individual, subject to the control of public opinion, and it is brought under view for the reprehension or the praise of all other nations. It is brought under that principle adverted to by Locke, when he asserts that men who disregard both Divine law and civil law are yet coerced to obey the law of opinion. 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 that rapid communication of thought existed—before the power of the press existed—nations were hardly amenable at all to the force of opinion; for other nations could know nothing of their acts until they were stale and half forgotten. In fact nations could not be considered at all before the Forum of opinion; that is not the case now; and if you will only carry in your minds this suggestion of mine, I think it will explain much of the matter that has been read to you, without leading you to the conclusion of guilt against the traversers. Do you recollect the sentiment so often repeated in all the speeches of Mr. O'Connell? Do you remember the words, "We want your sympathy—we do not want your physical force." "Ours shall be a revolution not accomplished by blood." "Ours is to be a revolution to be accomplished by peaceful means; Repeal is to be procured by legal, peaceful, and constitutional means; ours shall be a bloodless revolution." 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. A population able to work and willing to work, yet starving for want of employment. Is Ireland in a state it ought to continue in? Whether the Repeal of the Union would cure the woes of Ireland, I do not 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 a state of things should not be suffered to continue, in which we see an active and an able-bodied population, desirous of employment, and willing to work for the smallest amount of wages that can be measured, inhabiting a territory waste and wild, and yet susceptible of the highest cultivation, and capable of making a return of tenfold for every day’s labour bestowed upon it, yet that territory is allowed to lie a squalid and dreary waste, but still less squalid, still less hideous than the human habitations and the human beings by which it is deformed, not cheered. Travel through the South and West of Ireland, and in all parts you will see wastes of many miles, further than the eye can reach, of improveable land that has been there sleeping, perfectly inert and useless to the human race for centuries; you will see that waste, 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 in other lands; when I see this population starving and miserable, but yet strong and intelligent; when I see human beings squalid and degraded, obliged to subsist on the most wretched food, having neither shelter, nor clothing, nor comfort of any kind; when I see a population such as that, and in that condition, I ask myself, is this a state of things that ought to be? When I see thousands, nay millions of men starving, yet willing to give their labour for the paltry sum of sixpence a day, and living upon land that would yield a return of five shillings for the sixpence, I ask myself, is that a state of things which ought to exist, or, if it exists, which ought to continue? 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, for thinking, no matter how erroneously, 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 of this law would put an end to this crying wretchedness? Are men who advocate the repeal of that Statute, and seek to make proselytes to their opinions to be branded by the foul name of conspirators? All the gentlemen who represent this country in Parliament reside permanently in London; they draw after them all in their own rank who may have some interest to prosecute at Court. And it is plain that all this, at least, is occasioned by the Union. To say, therefore, that men who believe this law to be the cause of the evil, are not to express an opinion against that law—are not to unite against that law —

without being branded as conspirators, seems to me monstrous and absurd. Yet this is the conclusion which you are called on to come to by this prosecution! 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, for this plain reason, that I thought it useless to do so; but let any man convince me to-morrow that the repeal of that Statute would raise this unfortunate country from this most deplorable condition, and I would be a Repealer. I will not shrink from saying that if once I am convinced that this Statute is the cause of that misery, I would henceforth 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 there are many, many thousands, and 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 committing the crime of conspiracy. See what you are called upon to do. Because men have considered that the Repeal of the Union would be the regeneration of Ireland from that state of wretchedness, in which it confessedly exists—because they endeavour to persuade others by warm language to be of their 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, that it means agreement or coincidence of opinion? It means no such thing. The essence of the crime is treachery. It is in its treachery the danger and the importance of the crime consists. When men put their heads and wits together intending to commit crime against their neighbours who are ignorant of this combination, and therefore who are not on their guard; who may, therefore, be taken by surprise, such combination to commit crime is properly called conspiracy. Treachery thus, necessarily *ex vi termini*, and secrecy also, are included in the word conspiracy. There never was such an abuse of language as that which asserts that conspiracy means concert or agreement, or combination to do an illegal act, or, in their alternative, to do a legal act by illegal means. In the complicated state of the laws of this country, is it to be said that a man who has an object in view is a conspirator, if it should eventually turn out that this object was illegal? Suppose a man claims the estate that is in your possession, thinking he is legally entitled to it, though he is not, and confers with his friends how to recover it, is he, therefore, a conspirator? Conspiracy imports crime, crime of the deepest die. It means that persons have a criminal object in view, knowing it to be criminal; or, if they are pursuing a legal object, knowing that the means which they intend to employ are criminal. See how that is illustrated by the cases that are decided. Those who bribed the assistant of the cardmaker were guilty of this crime. Is that like the case now brought before you? Certainly not. It is utterly impossible to say so. Gentlemen, the law of this country never sanctioned the application of the law of conspiracy to such a case as this. In the case



of *Rex v. Bird*, reported in 25 St. Tr. 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 misdemeanor. In that case witnesses were produced, who alleged that they themselves aided the three men who were on trial; the case broke down on the credibility of the witnesses, who swore to a clear case of treason, but who were disbelieved, and there was an acquittal. Having failed, in that prosecution, to turn a charge of treason into a misdemeanor, of which a jury might be found more easily to convict, and having failed in the case of Hardy and Tooke, 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 misdemeanor, a conspiracy for being a member of the societies, a connexion with which they had sought to establish, as treason, against Hardy and Tooke. Yorke was convicted, having been badly defended by himself, and being prosecuted by all the weight and influence of the Government, by which he was borne down, and borne down unjustly, and against law. That was in the year 1795, the year after the prosecution for treason, in the case of Hardy and Tooke, had wholly failed and broken down. Yorke was tried for the same facts which had been proved against Hardy, Tooke, and others. That case of York, so far as I can learn, never has been brought into precedent, and I do not think any lawyer reading the report can say it was a constitutional or proper conviction. Yorke, however, 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 not only failed in their attempt to establish a case of constructive treason, upon the same facts, against men who were ably defended, but they also failed in the attempt, the persevering attempt, to establish a precedent for turning a case of treason into the less revolting offence of misdemeanor, which would have answered their purpose as well in point of punishment and would have made it easier to get conviction. 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. Persevering efforts were made to establish a ministerial scourge in this crime of libel. The doctrine propounded by the State lawyers, and finally adopted by the Bench, was that the mere fact of publication constituted the only question for the jury, and that the jury had nothing to do with anything else except the bare fact of publication, and when called on to find a verdict where a person was accused of having published a libel on the Government, the jury were not to consider the matter of that libel at all, but merely the fact of publication, and Lord Mansfield decided that as the law in the case of *Rex v. —*, noticed afterwards by himself 3 Term R. 430; but it came more directly before him in the case of *Woodfall*, who was prosecuted for publishing Junius's

Letters. These letters contained remarkable and pointed allusions to the physical force of the people, and in plain terms, 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, but a verdict which frustrated the intentions of the Chief Justice. They found that Woodfall was "guilty of the printing and publishing *only*." The case came before the full Court, and the Court ordered a new trial, holding that the insertion 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 at the former trial had 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 of freedom which he enjoyed himself, and which he hoped to see transmitted to 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, the case by 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 *Rex v. Withers*, and Lord Kenyon 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 in the case of libel was taken entirely out of the hands of the jury, and the determination of that question was assumed by the Judges, contrary to every principle of British law. The minister had then in his hands that scourge which he had been so long looking for. But against this usurpation at length common sense prevailed, and the community asserted its privileges in Parliament, through its representatives: and the Parliament, not consisting of lawyers or judges, passed an Act in 1792, declaring that what the Judges had established was not the law, and again restoring to the jury the privilege of deciding on the guilt or innocence of the defendant in cases of libel as in all other cases, and thus restored to the jury the jurisdiction to try the mind and the motive of the party accused, as a right peculiarly belonging to them, and refusing to the Judges 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, for the crime of libel, the last State prosecution for libel after that law was passed, was the case of *Rex v. Hone*, in 1817. Hone had published parodies on the Lord's Prayer, the Creed, and the Litany. He was prosecuted by the Attorney-General of that day, on three distinct and several indictments, and he was tried and acquitted on three several days, by three seve-

ral juries, against the opinions of Lord Ellenborough and Justice Abbott. 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 which they hoped to transmit to those who should come after them.

Gentlemen of the Jury, there never was in England nor in Ireland any 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 discussions upon all political topics. Mark the course of the proceedings in the present case. There is no count in the indictment for attending illegal meetings or any other crime, but that of conspiracy; a conspiracy to hold meetings for the purpose of petitioning the Legislature for the repeal of an Act of Parliament, and by the exhibition of physical force at these meetings to overawe the Legislature. If the meetings were illegal, why was there not a count in the indictment for attending those 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 it be a crime to conspire for the purpose of calling a meeting, and of extorting from Parliament alterations in the law by the exhibition of physical force, why not have a count in the indictment for making such exhibition of physical force? Why omit all these 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 perilled on the single charge of conspiracy, because they hoped that by management, or by some accident, it might so happen that twelve anti-Repealers, twelve men of their own party, 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, their political adversaries, or else find a verdict of guilty on the charge of conspiracy, there being no other charge 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 the 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 charge of, and defending the very citadel of liberty; do not suffer yourselves to be deluded into the supposition

that it is the traversers alone who are to suffer by, and 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. I do not think it was fair to press that passage into this case. That language of the late Chief Justice was used on a very different occasion, and applied to a wholly different class of persons from those to which the Attorney-General would now apply it. That address was delivered at a special commission appointed for the trial of nightly incendiaries and murderers; that was a strong exhortation to the Grand Jury under very peculiar circumstances, when there was reason to apprehend that the terrors held out by the assassin and the incendiary, might scare them from the performance of their duty. In the commencement of his charge, the late Lord Chief Justice drew the attention of the Grand Jury to the vast numbers 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 impress upon the jurors 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 had created the necessity for the special commission. Under these circumstances it was proper and just in that able and constitutional judge to tell the Grand Jury, in emphatic language, that those associated crimes (the crimes of which he was speaking—the crimes of nightly burnings and nightly murders) must be met vigorously by the strong arm of the law; but, Gentlemen, you must not lose sight of that fact, this the language quoted by the Attorney-General was not spoken of any individual on his trial—was not addressed to a jury sworn to try whether any accused parties were or were not guilty of the crime imputed to them. That language was used before any man was indicted as a criminal—before any man was placed upon his trial, and when the only duty of a jury was to decide, not whether A. B. was or was not guilty, but whether the persons then in gaol should be placed on trial—whether the bills of indictment which should be preferred against them ought to be received as true bills 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, and in reference to that prisoner's case, it would have been an eternal blot on his memory as a Judge. It would be a blot on his memory as a Judge and as a man, if he had done so. Is it justifiable in the Attorney General to borrow the language of that distinguished Judge, thus addressed to a Grand Jury concerning incendiaries and murderers, and to apply it to this case, where these gentlemen are on their trial for the state offence of conspiracy?



What, may I ask, would be the feelings of that Chief Justice, if he were here at this moment, to witness the application of the language which he used in the case of assassins and murderers, to his brother-barrister of forty years' standing? Oh, that he were here to witness! How would that Lord Chief Justice express his indignation at this foul misapplication of his language to his friend and to his eulogist, in the case where they were most violently opposed to each other? Oh, but he would not recognize Mr. O'Connell as his friend, in his present position. They belie his memory who think so. He would, although he stands at that bar, call him his friend, and would protect him from such injustice as is done him by this misapplication of what was never intended for such a man. Why did the Attorney General not address you in his own language? Why did he adopt the language of a great man, and seek to affect the defendants by the authority of the late Chief Justice, as well as by his eloquence? Had the Attorney-General addressed you in language of his own invention, the style would suit both the occasion and the speaker, and we should have a proof that he who could, on such an occasion, misapply such eloquent language, could not invent it. No, Gentlemen, he addressed you in the language of Lord Chief Justice Bushe, in order to prejudice the case of the traversers, and to impress your minds with the notion that these were associated criminals like those to whom the late Chief Justice alluded. The Attorney-General had open to him the plain and simple course of stating and commenting on the facts of the case before you. Why not follow that course, and why warp and misapply to this case the eloquent commentary which was made upon a totally different description of crime, and on a totally different class of men? The charge here is simply this, that the defendants conspired together. If any conspiracy existed, the proof of its existence must be simple, and why not simply state the proofs and afterwards simply prove the facts demonstrating the existence of the alleged conspiracy. If the guilt existed the proof of it could not require a statement of eleven hours, and evidence occupying seven or eight days. A case of clear guilt never could be so bewildered and involved in chaos and confusion as this case now stands before you. How, I again ask, am I to deal with the numberless speeches, publications, and documents which have been already partially read to you? Am I to begin them and read them, and comment on them one by one? Were I to do this, when would the case terminate? Were I to take up, for instance, the speech of Dr. Gray, my client, delivered at Mullaghmast, and comment upon it, and, as I read it, point out to you that although a warm speech it was yet not a treasonable or a seditious speech, although I should succeed in convincing you that there was nothing criminal in that speech, I should yet not have advanced one step in the defence. I should be told that Dr. Gray was not charged either with treason or sedition, and that his speech was read against him only as evidence of his concurrence with the other conspirators in advancing their common object. After reading, analyzing, and defending that speech, and proving it innocent from beginning to end, I should at the

conclusion have but cut off one head of the Hydra. Every other speech of every other of the traversers, nay, of every member of the Association, and every word either written or spoken by any one of them, is equally evidence against Dr. Gray, as what he published or spoke himself. Such is this doctrine of conspiracy. I should therefore read, analyze, and justify every other speech and publication, as well as his own, a task to be performed scarcely by Hercules himself. To attempt this would be useless, and worse than useless. The course pursued in reading the publications to you by the Crown, is in other respects also calculated to prejudice the defendants. They selected from each, the passages best calculated to prejudice the traversers, and to support the charge of sedition, and those passages were read in rapid and unbroken succession, so as to make a deep impression upon you, which nothing could afterwards efface. Thus, by extracting the poison from a great number of documents, an effect is produced which would not follow from reading the whole of each speech or publication. Thus from the very bread of life deadly poison may be extracted, destructive if taken by itself, but not only innocent, but salutary, if taken in combination with that from which it was extracted. When they thus read for you in succession those many passages containing strong, warm, and passionate declamation of Mr. O'Connell, they omitted to read what the same gentleman had many times, and over and over again spoken of a completely opposite tendency. I shall shew that if you are to judge of Mr. O'Connell's motives from his public speeches, and to decide whether he was a conspirator against the peace and happiness of his country, you must come to such a conclusion in the total disregard of the sentiments one thousand times expressed and warmly inculcated by him. I will venture to say that I shall read for you such passages, as that every man of you will feel himself by them warmly prompted to the fulfilment and discharge of every moral, religious, and political duty. Is it then fair that he should be tried and condemned, not by the fair tenor of all his public language, but by passages selected from that immense mass of thought, as Mr. Sheil has called it, which he has poured forth during the last three or four years—and that he should be judged by those selected passages, spoken in warmth, with the incaution of conscious rectitude of purpose,—and that those chosen passages should now be brought in review before you, to excite your passions, and rouse your prejudices?

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WEDNESDAY, JANUARY 31st.

Mr. *Fitzgibbon*.—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 upon this the morning of the second day to address you. I hope no man will ascribe the fault 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 this

mass of matter which has been confusedly thrown down before you without explanation—that I should not have the faculty, in a short speech, to make that mass intelligible to you, and bring before you other matter calculated to explain, and neutralize, and render innocent much of what you have heard in the shape of crimination 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 in detail. I hope I don't stand in a wrong position with the Court in not concluding yesterday, and not doing so to have broken any implied promise to the Court.

The LORD CHIEF JUSTICE.—Don't imagine any such thing: the Court has no thought of the kind.

Mr. *Fitzgibbon*.—I have a duty to perform, and in reference to my own peace of mind, I must perform it, no matter what time I may take to do it. I stand here for only one of the traversers, technically speaking, for Dr. Gray, but in effect I speak for all. 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 a young man in the beginning of life; he is part proprietor of a newspaper of, perhaps, the oldest standing of any in your city—a newspaper that has preserved an unimpeached character for moral and political integrity, and a high character for ability, for half a century in your city. I, Gentlemen, have to defend him from a charge of conspiracy, 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 have 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 this crime—of having been led or misled, if you will, 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, and 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 that 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 reading them in rapid succession to you, to induce you to believe that Mr. O'Connell's agitation had for its object a final termination in an 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 call your attention to what, in my judgment, appears to be the very strongest passage they have read to you from the speeches of Mr. O'Connell as leading to such a conclusion. I take up the speech of the 11th of June last, at Mallow. Give me again your attention to this portion of his speech. I will read to you the worst parts of it, and

leaving out the intermediate passages, as the Crown have done, and shall read those passages in the very order in which 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? That he was about to take arms and rise in insurrection. That is their interpretation of these words. Let them disguise it as they please, that is what they mean to impute. 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? Why did he not indict for high treason? 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 expressive of that intent, the crime of high treason was perpetrated; and why did he not indict for high treason? He goes on: "They may take the alternative, to live as slaves or die as freemen." Again they would have you believe that by that Mr. O'Connell intended to suggest to his hearers, that if they did not choose to live as slaves, they should take up 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 the meaning they want to insinuate to you. Is that the meaning of Mr. O'Connell? Again I ask them if they believed that to be the meaning themselves, and had the most remote expectation of inducing others to believe it?—If they did believe it to be his meaning, 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, you are bound to acquit every one of the traversers in this indictment, because, if you believe that to be his meaning, I tell you, subject to be corrected by the Court, that Mr. O'Connell was guilty of high treason, and that the misdemeanor is merged in that higher offence, and you cannot convict him legally of the misdemeanor. 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, meant 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 had just arrived, 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 a moral movement of the people, without the slightest possible anticipation of any sort of violence or force, was to be, by the Government, made the ground for commencing hostilities, by way of physical war; that was 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 beloved



“ 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 that he is first by force, and war, and rebellion, and insurrection, to take that sceptre out of the hands of 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 a capacity and understanding, that belong 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 national 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 battle? But, Gentlemen, is no courage necessary to keep your peaceful and moral position, and to persevere against every threat of violence, and 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 would call the attention of mankind to their suffering, is no moral courage necessary to enable them to assemble in peaceable but in multitudinous bodies, and there to expose the sufferings they are enduring, and the patience with which they endured them? Is no moral courage necessary in the pursuit of that honest and fair exposure, that legal and constitutional exposure of their sufferings? Is no 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 army that was to be sent into Ireland to trample under foot those that would meet 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 given you a single particle of evidence that 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, having the whole body of that police open to their scrutiny, that one single man ever made one single movement in any part of Ireland towards a preparation of any description with a view to a physical contest? How, then, are you to be called upon to believe that Mr. O'Connell could have alluded to himself falling in battle? What he alluded to is plain. He was well aware that there was a vast amount of military force in the country, and that it was very possible that that force might be called into action for the purpose of scattering and dispersing one of the peaceable meetings convened for a purpose he considered legal—the constitutional purpose of petitioning Parliament. And what he 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 expanded 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. “The high and haughty defiance” which he hurled at the Government had this signification, and nothing more: Send your armed troops against me if you please, with swords, bayonets, and artillery; march your police against us if you please, cut me down if it so pleases you, but while you so threaten me I will still hold my ground, I will still occupy the post which I now hold; I will still, despite of every threat, continue to address my fellow-subjects; you may trample me under foot if you choose, but I will persevere unto the end in the constitutional course which I have proposed to myself; I will draw no sword, but as long as life is left to me I will continue to fight against you with the only weapons I ever employed—my tongue and my mind. These weapons I will use to the end, and till the last hour of my life I will continue to expose you and your contemplated atrocity to the odium and execration of the whole human race. Such is the course that I will unswervingly pursue, and now attack me if you dare. Set at nought, if you dare, the opinions of the good and the wise all over the world; dare to meet their indignation if you have the front to do it; 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: "They have taken one step of coercion, and may I ask what is to prevent them taking another? May not they send us to the West Indies, as they have lately emancipated the Negroes, to fill up their places; oh! it is not an imaginary case at all, for the only Englishman that ever possessed Ireland sent eighty thousand Irishmen to work as slaves, every one of whom perished in the short space of twelve years, beneath the ungenial sun of the Indies. Yes, Peel and Wellington may be second Cromwells, and might be guilty of such acts of atrocity as the massacre of the ladies in the Bull-ring of Wexford. But no; I am 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 the ladies, while unarmed and 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 sectarian differences, would unite together as one man, and adopt his peaceable doctrine, no matter what their creed, if they united in a peaceable complaint of their grievances, their moral combination would become irresistible, and they would necessarily become free. He felt that it was he who had led them into this movement, and, finding that the Government were threatening severe measures of force 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 finally be too strong for physical force. He next proceeds to say: "All that is delightful—all that the enthusiasm of romance can fling round the human heart—is centered 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 Saxon 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 this prosecution wipe facts from the page 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 liberty and peace and happiness from their shores? What nonsense it is to talk to twelve men upon their oaths, calling on them to subvert the evidence of historical record! what monstrous drivelling and folly 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, in order to warn the living not to follow the bad example of their dissensions. And that this was his meaning 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." Is not that true, literally and strictly true? Has not Ireland been divided and split into poor miserable factions, by wretches pretending patriotism, but each one seeking only his own profit, advantage and gain, with a total disregard for his country? These facts ought to be wiped from the page of history if it be treason to refer to them. Again, he says: "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 "Saxons"? Surely he must have meant to refer to men who, like the Saxons, 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 physical contest, 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 would 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. But could he possibly have been the dolt to expect any man to believe that he had other intentions? They could not walk together, as Captain Despard told you, 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 any thing in the world calculated to make them any thing except victims to be slaughtered.



Are you, twelve Gentlemen of sense, to be called on to believe that Mr. O'Connell, in his mind, ever contemplated any one of those atrocious acts of rebellion imputed to him; or that he ever so expressed himself with the view that any body should so understand him? Will it be for a moment argued that he at any time contemplated a physical-force contest between the Repealers and the army? Do you suppose that he would ever have let them know that he entertained those ideas if he really did entertain them, or that his hearers could so understand him? Gentlemen, they did not so understand him; but the Crown want you, hoping that, perhaps, you may be politically opposed to him, to fasten upon this construction as a pretext, because you have him in your power, and avail yourselves of this 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 will do the greater credit to you and to your country. Your verdict will be then a verdict to which it will be impossible to say yea or nay. If he be guilty as a conspirator, convict him, uncaring consequences; but if he be not that foul conspirator, I entertain no apprehension from any of those twelve Gentlemen I see in the box, although they may not be personally known to me, or I to them, with two or three exceptions, their faces are familiar to me, their names are familiar to me, and their character is known to me. Do not imagine I want to persuade you to find a verdict against the evidence; far, far be it from me: my humble efforts shall be directed to this single object, to opening your eyes thoroughly to the whole case, and doing so honestly and fairly, and without the smallest exaggeration. You have those passages in Mr. O'Connell's speech that I read to you, and let me now call your attention to some other passages from his speeches throughout the agitation, to which your attention has not yet been directed. I shall now proceed to read to you a few passages from his speeches, which I think you ought to be made 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 passages against him. From a speech of his delivered at the Association, on the 13th 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 would not ob- " ject—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 any- " thing of the kind, there is little doubt that it would soon be put down " by that pious and exemplary prelate, the Right Reverend Doctor

“Cohen, the Catholic bishop. He would give his valuable assistance  
 “in hunting the Feargusites out of Loughrea. We do not repudiate  
 “Chartists because they bear that name, but we cannot associate with  
 “men who have been stained with crimes of the most dangerous and  
 “evil tendency. . . . And see now how the case is at the moment  
 “that the Chartists wish that we should join them. Instead of re-  
 “gretting the acts of insurrection and sedition in which they have  
 “been engaged, we find them cheering those who were convicted on  
 “the merits of being guilty of such crimes. Frost, Williams, and  
 “Jones, although a point of law was raised in their favour afterwards,  
 “which had the effect of saving their lives, were convicted on the  
 “clearest testimony, of being engaged in open insurrection; and yet  
 “we find the Chartists cheering them and looking upon them as mar-  
 “tyrs. The Irish Repealers cannot have anything to do with such  
 “men. We cannot allow our cause to be stained 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 frater-  
 “‘nizes with the torch-and-dagger men of England—he is a part and  
 “‘parcel of that confederation, many of whose members have been al-  
 “‘ready tried and convicted, upon the clearest testimony of high  
 “‘treason and sedition.’” He is here speaking of the Chartists.  
 Now do not 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 calls the Chartists the Feargusites; he abso-  
 lutely nicknamed them; he 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? See, Gentlemen, what unequalled abuse he  
 heaps upon them—what scorn, and contumely, and contempt he pours  
 out on the physical-force men, the torch-and-dagger men. Does he  
 utter one word of approbation of their proceedings, or show any pity  
 or countenance for them? Here again, in another speech of his, at  
 the meeting of the Association on the 16th 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 any thing done by them, they shall not  
 “hold out the slightest idea of violating or infringing the law or con-  
 “stitution, or any contingency.” They would not violate the law and  
 constitution, on any contingency. . . . “They [the Catholics of

“ Maryland] introduced in the body of their charter entitling them  
 “ to their laud, 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 com-  
 “ pact, 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 after-  
 “ wards, 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. . . . But rejoicing that that spirit is gone  
 “ by, and that in that happy country, man meets man on the same  
 “ footing, without any distinction of creed or religion, and each  
 “ stands before the other in the dignity and integrity of conscientious  
 “ feeling, free from the taint of party politics, or religious ascen-  
 “ dancy, or the gift of undue power to any.” Is that the statement of  
 a man seeking party power and sectarian ascendancy? I ask is there any  
 good man in society who should not feel grateful to him for the dissemina-  
 tion of such sentiments? “ The Irish Catholics were three times in  
 “ power since the Reformation, and they never persecuted a single Pro-  
 “ testant. . . . Let them [the statesmen] reflect on passing events,  
 “ and let them know that we desire only to consolidate the strength of  
 “ the British empire, by making every portion of that empire prosperous  
 “ and happy. I wish to observe, that our resolutions respecting the  
 “ Chartists, which were passed at the last meeting, have not, as yet,  
 “ appeared in the *Register*, and it is most important that they should  
 “ appear in that paper; for it is of consequence that they should be  
 “ read through every part of England. I hope, therefore, they will  
 “ appear in the *Register* to-morrow. . . . All we wanted was justice  
 “ and equity. We wanted to put no person down. We wanted only  
 “ to be on equal footing with them. 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, 500,000 Irishmen would be found ready to lay down their  
 “ lives to defend it. . . .” Such is the language of the man who is  
 branded to you as a foul conspirator, who it is said has treason in his heart  
 when he has peace on his tongue. “ As to the Rechabite Society, or  
 “ any other society, the members of which are known to each other  
 “ by secret signs or passwords, it is illegal, and subjects those be-  
 “ longing to it to transportation. . . .”

Well, you have heard what he said about the physical-force men in England and Ireland. You remember, Gentlemen, that

it was said, on the part of the prosecution, that the Repeal Association was an illegal society, and that the cards were their passwords. You recollect it was insinuated that the cards of the Repeal Association were the signs by which the members were known to each other. Now, let me ask you what is a password? Is it not a secret sign by which the members of a secret, and therefore criminal association, are known to each other, without being known to other persons who are not members of that society? Does that definition of password agree with common sense, and is not that the received meaning of the term? Did you ever hear of the members of any illegal and secret society, going out in multitudinous assemblages, and telling the whole world their passwords? Did not the members of the Association go to the multitudinous meetings with their cards in their hats? They went to the meetings with their cards in their hats, i. e., with their passwords, as you were told these cards are thus exhibited—and you are called on to believe that these cards were as passwords, and yet that these men went out in this open manner, and told this their secret password to the whole world. Will you believe that; can you credit it? Can you forget that the cards were carried out in the open day; and yet you are called on to believe they were secret signs and passwords. Such monstrous contradiction I have never heard, between men's acts and the motives imputed to them, and yet you are to be blinded by mere statement, and called on to give a verdict contrary to common reason, and rebutted by evidence of the plainest and most conclusive nature. Really, Gentlemen, this assertion that the cards were a password is so absurd that I will not dwell on it longer. Mr. O'Connell then goes on: "Now, I tell Mr. Dawes, who, I believe means well, that I did say, and I now repeat it, that any man belonging to that society is guilty of a transportable offence, and liable to be prosecuted at any moment. . . . It is, however, enough to say, that the society is illegal, and that any of its members are liable to be prosecuted for a transportable offence. So much for this society in England. I recollect the Ribbon system here, when I put it down in four counties; it was revived again, and no oath was necessary in becoming a member; like the Rechabites, they had quarterly passwords, which were paid for by the members, and in which some of the officers, as they were called, carried on a profitable traffic. . . . Teetotalism should never be mixed up with any secret society. Father Matthew says that teetotalers have no politics—quite true; as a body, they are no politicians, but at the same time each individual should hold his own politics, so that they were not mingled with sectarian feelings, or ill-will towards those whom he thought differed from him. Teetotalism has been magnificently glorious to the people of Ireland, and it may yet be so to the great body of the people of England; and as I feel deep anxiety for those Rechabites who seemed to be, partly, at least, composed of teetotalers, I beg to tell them that their society, and every secret society, is illegal. . . . It will be said, I suppose, that I want to separate the two countries; that I want only to injure England; and that the first thought in my mind is the injury of England, and not the advantage of Ireland; but those are calumnies I am prepared to meet." Again, hear Mr.



O'Connell at the Association, 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 arguments, they would not listen to  
 " reason, but they quarrelled with every man who did not go so far  
 " as they went themselves, and it was creditable to the operatives of  
 " Ireland, upon whom the Chartists were forcing themselves, to keep  
 " aloof from them. . . . Under the sanction of the highest morality  
 " and purest sense of religion, they would proceed, unstained by crime  
 " and unallied to those who sanctioned and approved of a violation of  
 " the laws. . . . The good sense of the coal-porters, and of the peo-  
 " ple 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 were unwill-  
 " ing to separate from England. The Irish did not want separation,  
 " they wanted nothing but legislative independence. . . . I am here  
 " counsel for the Tories as well as the Liberals, for they are Irishmen,  
 " and are entitled to the rights of Irishmen, and I care not for their  
 " politics, remember the motto : *Ireland for the Irish and the Irish*  
 " *for Ireland.*" The Attorney-General would have you believe what  
 Mr. O'Connell meant by that was, to have Ireland for one particular  
 party, and to establish what the Attorney-General called a ferocious  
 republic. Does he not here explain himself—Does he not mean  
 Irishmen of every grade and of every political opinion ? " They are, as  
 " Irishmen, entitled to my advocacy as well as any other portion of  
 " the community, and they will have it. . . . We declare no war with  
 " the Protestant community, we bear them no ill will. . . . There  
 " is not a man of them whom we 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 possess-  
 " ing the franchise who would not vote against me. Never, through-  
 " out 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 vio-  
 " lence to their prejudices or predilections." Gentlemen, can any of  
 you regret that the man who could preach such truly liberal sentiments  
 with so eloquent a tongue, in such persuasive language, of which he  
 is *so perfect a master*, was listened to—can you regret that these  
 sentiments should have been heard and assented to by millions of  
 your fellow-countrymen ? Can the mind of man conceive that the  
 man who could conceive these lofty and moral sentiments, which  
 do credit and honour to human nature, could be in the very act of  
 expressing them, a deliberate and foul conspirator, who was planning

a cruel war and the destruction of his fellow-subjects. Can you believe that the man who could use language such as I have read to you, could be at the same moment and in the very act of expressing these sentiments, guilty of treason. Again, at the Board of Trade, on the 23rd September. "The fact is, we have heretofore had all parties in Ireland except an Irish party." Is not that true, literally true, Gentlemen—is it not an historical fact—have you not had all parties in Ireland except an Irish party—have you not seen the public of all parties led on by selfish leaders, who had nothing in view but their own selfish ends? Is it not a melancholly fact, that the great body of society have at all times looked on in silent abhorrence, and beheld with contempt, and execration the leaders of every party in Ireland, pursuing their selfish ends; pretending public good, but pursuing individual ambition, to be gratified at the expense of the respectable and honest portion of the community? Is it not the fact, that there never was an honest party seeking only the public good, in Ireland? I ask you to tell me when there was, if it ever existed? He further says: "Orangemen and Rockites, Blackfeet and Whitefeet, Hearts of Oak and Hearts of Steel, Whigs, Tories, Radicals—I am sick of them all; what honest man, Gentlemen, is not sick of them. I must have a party of Irishmen, bound together in the love of our common country, and whose happiness will be their dearest object. I am glad to see that even in this room I will not stand alone in this determination. It is full time that we merge all party and sectarian distinctions in the one universal desire to benefit our native land. 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 mine 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. Let no Irishman so far forget himself, as to quarrel with his brother for his doctrinal belief; as well might he fall out with him for the quality of his skin." Gentlemen, that is a liberal and an expressive illustration. A man may as justly be condemned for the skin which nature gave him, as for the religion which the chance of birth and education equally forced upon him. Where is the honest man who can dissent from that sentiment who must not respect it? where is the Christian man who will not close with that sentiment and say that the man inculcating it has acted the part of a Christian. Mr. O'Connell tells them they had no right to quarrel about religion, because whatever religion a man was educated in he *must* follow, and it was not his voluntary act to do so, for he could no more help entertaining it, than he could the quality of his skin. The man who inculcates such a sentiment is a friend to the human race, and yet you are to brand him as a foul conspirator. "In this world, at least, let every Irishman be bound in affection to his fellow, and let him leave the question of religion with his God in the next. . . . We look with no feelings of ill-will, or of aversion upon England; we wish not to weaken the British connexion; we are attached in kindly feelings to the English throne,

"as it is at present occupied; we regard the Queen with affection-  
 "ate gratitude for the kindness of disposition she has manifested  
 "towards us; nor have we any desire to transgress our allegiance  
 "to her as loyal subjects. It is calculated to do us benefit; it can-  
 "not injure, nay, it would be a great and positive advantage to Ire-  
 "land, if we had a Parliament of our own. Then, indeed, the con-  
 "nexion would be eminently calculated to advance our prosperity  
 "and promote our happiness. . . . We must keep compactly within  
 "the confines of the law. In a political society the administering of  
 "a pledge were illegal; not so, however, in a Board of Trade."

Gentlemen, is it possible, let me ask you, to imagine that a man  
 who could entertain 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? Again, at the Association, on the 28th 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, my object is to advance his happiness equally with that  
 "of all others of my fellow-countrymen. My wish is to create a  
 "feeling of Irishism in the country among my fellow-countrymen of  
 "every religious denomination. 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 man dis-  
 sent from that sentiment? Will any of you tell the distracted,  
 divided, worn-down people of this country, that the man who preaches  
 such principles is nothing but a conspirator? What will you tell  
 by that but that they must lie down under their miseries, or  
 else that they must unite together in parties of real conspirators.  
 Moral instruction they cannot hope for, if the man who preaches  
 loyalty and love of country, peace and good-will amongst all, must  
 be regarded by them as a conspirator. Is that what you are pre-  
 pared to tell them by your verdict? Was he a statesman who  
 directed these prosecutions? Was he an honest man or a fool,  
 and what did he hope to effect by them? Am I addressing men  
 who are interested in the good of their country? If I am, you  
 will give by your verdict a lesson which the Minister will not  
 soon forget. Again he says: "I wish to state, before the meet-  
 "ing separates, that I have received several communications re-  
 "specting the Rechabite Societies in England and Scotland, and  
 "in reply to them I have to observe that my conviction is,  
 "these societies are illegal, and any man that belongs to them,  
 "either in England or in Scotland, is liable to prosecution for a mis-  
 "demeanor, and is punishable with transportation." Again at the  
 Association, on the 5th of October, he says: "I am for obtaining  
 "the highest political advantages by means of the law and the Con-  
 "stitution, 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 one particle of human property." . . .  
 Is it criminal to obtain political advantages by those means? to  
 obtain them by legal means, without spilling one drop of blood,  
 or injury to a particle of human property. Is he a criminal who

sought to effect his purpose by those means? Is he a conspirator? If that be law and sanctioned by your opinion, then, indeed, we live under strange laws. "The people of Ireland mean to obtain the restoration of their native Parliament by those means which all wise and good men could sanction, and on which, I trust, Providence will smile—by means of the law and the constitution. The law is good enough, and the constitution abundantly sufficient for that purpose, and we can, without any difficulty, work out our political salvation in the channels which that law and constitution give us. . . . I move that that letter be inserted on our minutes, and 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. They have already signalized their principles by an attack on the Queen's troops, in which they were defeated. . . . It is our most sincere wish that turbulence and outrage should be suppressed; but I thank my God that although such a state of things had at one time prevailed to a certain extent, it has so diminished, that at present it may be said to have scarcely existence at all in this country. . . . I respect the rights of the landlords; I do not want, far be the thought from me, to plunder them of their properties. . . . We will not violate any law. . . . We seek but for equality with England—we seek no more. . . . I move, Sir, a form of address to our revered and beloved Sovereign, who is not the Queen of a faction or a party, but of her entire people. She is not the Queen whose health has been received with nine times nine, and rounds of the Kentish fire, by the Orange Association. No; but a Queen who the first of her race who has shown a disposition to do perfect justice and fairness to Ireland; the Queen who has evinced, in a peculiar degree, some of those qualities which distinguished 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 portraying this beautiful picture, from the beautiful, the good, and the benignant original, in language calculated to enlarge the noblest ideas which the most loyal subject could have formed of our Sovereign—calculated to increase loyalty, and endear the Queen to every heart? Must not every British subject that loves the benignant, the singularly benignant Sovereign, the truly innocent and amiable Sovereign who rules us; must not every man who would wish to see such a Sovereign truly beloved, truly esteemed, and truly revered, have a feeling of gratitude to the orator who has used his eloquence for so useful and so good an object? Are 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 towards the Sovereign, is yet a traitor to that Sovereign, is a conspirator against the peace of the country and the safety of the throne of that Sovereign. Gentlemen, I do not apprehend you will do anything so absurd. Again on the 11th of October—hear how he speaks of the Chartists, and the course of agi-



tation pursued by them ; what just execration he heaps upon the proceedings of this body : “ He had every reason to hope that a higher feeling of conciliation and Christian charity would supply their place. . . . This, however, he well knew, that there ever would be an impediment to national glory and prosperity until the small stream of peaceful reconciliation became, like the Shannon, the beauty of living waters, when the ark of Repeal would float proudly and triumphantly on its surface. . . . As Chartism had been mentioned, he should take that opportunity of reading to the meeting a passage from Feargus O’Connor’s own Journal, which some person happened to send him. The passage was in a letter of Feargus’s to the Chartists of the United Kingdom of Great Britain and Ireland. How much Feargus loved the Union. The passage was as follows : ‘ All Ireland is coming round to Chartism. We shall soon have them all with us to a man.’ All Ireland coming round to them, indeed. Why, he might as well attempt to put Ireland upon wheels, and wheel it to him. He would just succeed in bringing Irishmen round to Chartism by such a project as by any other attempt. Hearing the mention of Chartism, at the moment he could not resist the opportunity of letting them see the notion entertained by Feargus as to Chartism in Ireland. . . . The fact of these Reverend Gentlemen, with such numbers of others of their order, coming forward to join with them for Repeal, proved clearly and beyond all doubt, if other proof were wanted, that they (the Repealers) were acting rightly and legally. It showed that there was no immorality, turbulence, or any thing criminal whatever in the proceedings or the objects of the Association ; because, if there were any such in the remotest degree to be found amongst them, these truly good and pious men would never for a moment think of having anything to do with them. It showed two things. First, the legality and perfectly peaceable character of their proceedings and their object, and that neither the law of God or man was violated. . . . Some of themselves might go to these meetings as a part of their own body ; in fact, as individuals, but not as delegates. In truth, he was pushing the law to the utmost extremity ; but having guided the Catholic Association perfectly free from every legal danger, he was most anxious that a word should not escape in the Repeal Association, which could be laid hold of.” If he had in view the possibility of a physical struggle, do you think he would have spoken thus of those who were ready to co-operate in such a struggle. Again on the 18th of October, at the Association, he says : “ Any man, who has one particle of the statesman about him, will recollect that the great evil of the country is agrarian disturbances, and those 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 of that, and Lord Eliot must know, for he must have read the evidence given before the Committee of the House of Commons, and the Committee of the House of Lords, showing

“ that there was no instance yet of agrarian disturbances that 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 persua-  
 “ sion have lifted up their hands in supplication to God, and in en-  
 “ treaty to man. It is a crime that has frightened the land, and dis-  
 “ graced 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 ven-  
 “ geance was always extended over the murderer ; that, sooner or  
 “ later, he would meet with condign punishment in this world ; and  
 “ that, if he were so fortunate as 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 states-  
 “ man that can think that he will heal that crime without removing  
 “ the cause.” Is not that an eloquent, able, and rational appeal to  
 the two parties involved in that unfortunate struggle, to the mis-  
 guided landlords—if any such there be—who may have provoked  
 threats of vengeance from the miserable peasantry, and to the delu-  
 ded peasantry, to abstain from their criminal revenge ? Again, on the  
 26th of October, he said at the Association : “ Now what I am look-  
 “ ing for ; the object of this Association—is to prevent separation. We  
 “ are looking for Repeal to prevent the possibility of separation. . . .  
 “ We will offer no violence to the prejudices or predilections of  
 “ any man. . . . Ireland shall achieve all that is gay in vitality, re-  
 “ strained within the bounds of the Constitution, avowing a heart-  
 “ binding allegiance to the throne, to free institutions, and deter-  
 “ mined alone upon achieving the protection of an independent  
 “ Irish Legislature. . . . Our movement, however, for the redress of  
 “ grievances will be tranquil, legal, constitutional ; we will not have  
 “ recourse to violence, force, or crime of any kind ; but labour zea-  
 “ lously and faithfully for the liberation of our native country from  
 “ the stain of crime, and the unjust domination of one sect or per-  
 “ suasion over the rest. . . . An era has arisen when by the virtues  
 “ of the people we have achieved a mighty triumph, free from excess  
 “ or violence of any kind ; free from the stain of bigotry or intoler-  
 “ ance, and unharmed by the ebullition of any of the bad passions.  
 “ Actuated by the most generous feelings, we shall now only show  
 “ our determination to prove ourselves superior to those whom we  
 “ succeed.” 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 senti-  
 ments 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 shall 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, con-

“ scientifically 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. As a man I hold  
 “ this—as a man I speak thus. But my conduct as Lord Mayor, shall  
 “ not be such as to give the slightest indication of my political bias;  
 “ but it shall, in every instance, I trust, be characterized by tolerance  
 “ and liberality, and evidence—the strict impartiality and unswerving  
 “ integrity of an honest man. . . . No man ever assumed the lofty  
 “ office to which I have now been promoted, with a higher sense of  
 “ its important duties, of its momentous charge, and of its practical  
 “ utility, even in the details of its working out, than I do; and most  
 “ ardently do I hope that my own conduct, and that of the gentle-  
 “ men 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 prin-  
 “ ciples, and the higher points of religious belief, may yet unite toge-  
 “ ther 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 are to promote the welfare of all without distinction. 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  
 “ motives, and that there is no notion on the subject of the strictest  
 “ impartiality, no conception with regard to the most unswerving inte-  
 “ grity of purpose and of action, which they may have imagined to  
 “ themselves, that they will not find realized, 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. It is a question which shall be as foreign from the prac-  
 “ tice of my life, as it is foreign to, and abhorrent from, the charac-  
 “ ter and principles of justice. . . . I promise my fellow-citizens,  
 “ that, in anything which comes before me, they will not discover  
 “ the slightest symptom of partiality in my conduct, whether they be  
 “ Repealers or non-Repealers. . . . I am proud of the honour you  
 “ have done me, and will evince my gratitude by doing justice to all,  
 “ without regard being had to predilections in politics or religion.  
 “ . . . Be it, then, our high ambition so to demean ourselves, that  
 “ we may set an example to the world, and prove that Irishmen,  
 “ discrepant though they may be, each from the other, in the quality  
 “ of their political belief, can sink these differences in a happy obli-  
 “ vion, and leaving the impulses of religion to the scrutinizing eye  
 “ of Him whose prerogative it is to judge us all, can unite together in  
 “ perfect cordiality of spirit and the completest unanimity of pur-  
 “ pose, while they have one great object in view, the welfare and  
 “ happiness of their country. . . .” Is there any gentleman who  
 hears me who will dissent from this proposition. Is it right to follow

the Jewish example—is it right to commit to prison the man who has thus preached to his fellow-countrymen? Is that just? Is it like Christians? Will you crucify the man for those sentiments? Ask yourselves the question fairly as Christians; I ask the question, and I have no doubt of the answer I will get from every gentleman who hears me.

Again, at the Association, on the 9th of March he says: “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. . . . During the entire struggle for Catholic Emancipation, no man was even charged with riot, or with the slightest offence respecting property. . . . Not a drop of human blood was ever mingled with our contest, nor is the weight of it on our souls, or the guilt of it on our minds; but we obtained that mighty political revolution without crime and without bloodshed, by the incessant exertion of our constitutional faculties, and by the gigantic, aye, the electric force of public opinion, in favour of right and justice.” There is that great principle, put forth in language that I am not master of; 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; public opinion, that now means, not the opinion of any sect or party, or any county, or any province, or any kingdom, or any empire, or of any quarter of the globe—public opinion, that now means the opinion of all mankind that can think justly. 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. That has been propounded by him eloquently, philosophically, and ably. 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 one 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 the conduct of nations; opinion was no sanction for the conduct of 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. That, Gentlemen, is the present moral force of human opinion. Where is the Ministry, where is the Sovereign, where the body of men, aye, the nation that dare to act so as to



deserve the condemnation of public opinion? "The *Globe* talked of "the absurdity of Repeal, but he would say that anything else was "absurd in comparison to it; nothing else was safe, or calculated to "bind the two nations together in reality. A better spirit was springing up amongst them, and the Catholic who would not join in a "kindly spirit to bury past offences in oblivion, was an enemy of his "country."

In March, 1843, the "*Memory of the Dead*" was published, and in January, 1844, it has been read for you again, with well practised emphasis; and, by-and-by, you will be told again that those who are under the guidance of Mr. O'Connell were reminded of those past atrocities, in order to stimulate them to avenge those atrocities. That is a most unfair and mistaken construction put upon this *morceau* of '98. See for a moment what the object he had in view was: it was to make the Irish peaceable and quiet, in the place of being a distracted, miserable, criminal, bloody-minded population, with one large section watching when they might burn the houses of their sleeping fellow-countrymen, and another section prosecuting their miserable, selfish, personal advantages, at the expense of all good feeling. 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 upon 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 from 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 of '98? 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 from a barbarous faction, 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 in battle? When they were to refrain from physical force and moral power 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.

Gentlemen, some allusions have been made to the communications from America, as if that country were looked to for aid in a physical contest ; but I will read for you what was said by Mr. O'Connell at a meeting of the Association on the 15th of November, 1841. " 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—we invite them to sympathise with us in a struggle for our rights, by means consistent with, and under the sanction of that Constitution . . . . It was right that he should first observe, that the enrolment of the gentlemen as volunteers, mentioned in that letter, was a circumstance which took place in America, and was not of course connected with the proceedings of that Association, which was not at liberty to enrol any members unless they were British subjects." [See how Mr. O'Connell guards with the anxiety of a parent that Association from the possibility of being considered an illegal association]. " 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 . . . . Some men there were who held that the differences of various religions could not be discussed without producing animosity and ill-will in society—but this he denied. A man might converse on the differences between his own tenets and those of his neighbour, as he might converse on the colour of a horse ; but that man was of no religion who would bear ill-will to his neighbour, or persecute and oppress him, because of that difference. Such a man might call himself a Catholic, a Protestant, or a Presbyterian, but this, at least, was certain, that he was no Christian. He was rather a blasphemer, who set all religion at defiance, and broke through the primary obligation of Christianity, which enjoins that we should do unto others as we would desire to be done by." Again, on the 14th Nov. 1841, he says : " If, in these communications, there was to be found any incitement towards sedition, or any remonstrances that they should look for the attainment of their national rights by means turbulent or unconstitutional, then, indeed, they would be compelled, however unwillingly, to repudiate any support or countenance from men who could hold such language. 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 the accumulation of public opinion—by the combination of the good and true-hearted of every denomination—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. . . . They had not challenged the kind feelings of the Americans, nor invited

“ their sympathy ; they had sent no missionary amongst them, nor  
 “ had any stimulant been had recourse to to excite their enthusiasm.  
 “ . . . Let it not be said by any that their object was to excite a spi-  
 “ rit of hostility to England. Far from it ; the Americans were fully  
 “ sensible of this fact, that nothing could be better calculated to con-  
 “ solidate 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 strong-stays of England in all her quarrels and  
 “ distresses, and that by no measure could such defences be more  
 “ readily assured 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 had 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 fre-  
 “ quently, 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 treason, 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 would  
 “ not be entertained or discussed ; 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 : “ That should not,  
 “ however, lessen his allegiance, or diminish his respect and attach-  
 “ ment to the admirable young Queen that holds the throne of these  
 “ realms. He thought she possessed a superiority of judgment and  
 “ intellect to any person of her own sex that he ever knew. She had  
 “ evinced a more honest-hearted and friendly disposition towards  
 “ this country than any British monarch that had preceded her ; and  
 “ therefore, he was anxious to secure the stability of the Throne on  
 “ the basis of the prosperity of all her people. . . . He wished to give  
 “ to England the most powerful ally that she had ever had—the gene-  
 “ rous hearts and ready arms of Ireland ; and he was struggling for the  
 “ Repeal of the Union, that she might command both the one and  
 “ the other. . . . The frightful and appalling crimes in this country  
 “ were the assassinations that took place in revenge for those clear-  
 “ ances. That fearful crime, at which every feeling man shudders, at  
 “ which every good man weeps, against which every religious man ex-  
 “ claims—that crime which was visited with the deserved punishment  
 “ of death, and over the perpetrators of which the red arm of God’s  
 “ vengeance was suspended—resulted from that system. But they  
 “ were not to be palliated or mitigated on that account. They were  
 “ murders foul and horrible, and they brought disgrace and calamity  
 “ on the country.” 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 connexion with the dagger-men and the torch-

men? No; surely there is no man who will say that any sympathy could have existed between them, 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?

Gentlemen, 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 objects in view which would render it necessary for them to have a delegate in any foreign or independent country. Their American friends did not assume that they had any desire or intention of breaking their allegiance to the Crown, or disconnecting themselves with the Government of Great Britain. . . . The Americans advised them to continue in the peaceable course of agitation in which they had commenced, but at the same time to persevere to the end. They pressed on them the propriety of avoiding all approach to violent revolution, and they did not require of them to lessen their allegiance to the Throne; that allegiance which is as pure and unimpeachable now as it had been always. If they gave any other advice, the Irish nation would spurn their 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 a 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; but it was on that account not the less sacred with them, for 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 obviously contrary to the well-being of your country, so obviously at variance with common sense and common justice, that the question is never to be discussed? Is it so clear, so plain, that the man is nothing but a conspirator who disputes that 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, was such that he would not take £50,000 to come over here avowedly in the character of a Government Reporter. Mr. Ross was connected with the public Press, and 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 Le-



gislature ; and yet are they properly qualified to legislate for Ireland ? For my part, seeing the state of ignorance that exists in the English mind towards the people of this country, I ceased to be 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. 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 White-boy, and upon a shattered rusty brass blunderbuss, which performed a similar exploit some twenty-five 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. 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 spy. Mr. Hughes being, as you have all witnessed, a man of sense, a man of fortitude, a man of firmness, a man of intelligence, he came here without any difficulty. 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 required. 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 his notes, to take down fully and perfectly everything he shall observe, everything he sees and hears. He is not unknown, and yet does his presence express or mitigate the strength of the language, or the strength of the 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 course a little. Well, Mr. Hughes is not interrupted in any shape, nor is there any obstruction offered to his taking ample notes of what he sees and hears. 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? Is he allowed to go through the jostling, and, perhaps, the hostility he might fear to be exposed to? No such thing. He gets an invitation there; 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. When the cloth was removed, he is supplied with pen, ink, and paper, to take down what might be said by those present, after their hearts were warmed by the enjoyments of the table. He does take it down, and 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 without it. He took his notes in a book, and no one attempted to take it from him; he is allowed to cross the Channel just as he came over. This is the way in which Mr. Bond Hughes was treated by the people, while he was acting in the capacity of a Government informer. He crosses the Channel again, and comes over here to be a witness in these State prosecutions against the idol of this people. He swears his informations, and he makes a great mistake in them; and there are circumstances which attach to this mistake 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 accused, 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? Was there a question asked him which could throw odium upon him? He read from his notes his admirable report, his accurate report; he deported himself like a man of truth and honesty, and in the course of his examination there was not a question put to him which could hurt his feelings, or which could be otherwise than grateful to him. Is not that a great moral

demonstration in Ireland ? 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.

Gentlemen, at a Repeal meeting at Kells, on the 27th Dec., 1841, Mr. O'Connell again says : “The Queen, long life to her, who was the sincere friend of Ireland, was at least free, but she was then a prisoner in her own palace. From his heart he hoped she might be delivered from the hands of her enemies, and allowed to act as the impulse of her own generous heart should dictate. . . . They wanted not to separate from England ; they wished not that the golden link of the Crown should be broken, or their true and undivided allegiance disturbed, which they owed to one of the best Monarchs that ever governed the British empire. . . . It had been said that Repeal would sever the connexion between the countries ; he denied it ; there lived not a man who felt a purer or a more devoted allegiance to his Sovereign than he did, and the more particularly because the possessor of that Crown was a lovely and an amiable woman, and the first of her family desirous of doing good to Ireland. She was a Sovereign who, with manly intrepidity, kept the advocates of bigotry and intolerance from power for twelve months, and may God in heaven bless her for doing so. Nay, so far from Repeal producing separation, he was firmly convinced the calamity so much dreaded would take place unless the Repeal of the Union were granted.” Here is the sentence Jackson has misrepresented, but whether from design or not it is not necessary for me to say. He underwent a very searching cross-examination because he did represent himself as a Reporter, which he was not ; he was not qualified to take notes. I only assailed his accuracy. I know nothing of a witness except on the table. Here is what Jackson says was spoken by Mr. O'Connell : “ I know such a struggle will not take place while I live, but after my death it is not an improbable nor an undesirable result.” It will be proved Mr. O'Connell did not use these words : the words he used were : “ 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 dis sever the connexion. 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. . . . He would have them to recollect that he who com-

"mitted a crime strengthened the enemy.' He warned them against  
 "secret societies, and the more so because there was no necessity in  
 "taking an oath, inasmuch as if the act were good there was no ne-  
 "cessity for concealing it. Where was the man who, when he per-  
 "formed an act of charity or benevolence, wished that it should be  
 "concealed? and thus the nature of these secret societies proved  
 "that the intentions for which they were established were bad in  
 "themselves." 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 are flat, stale, clumsy. It was not like the manly and  
 lofty style of Mr. O'Connell; it was not what he would speak, nor was he  
 guilty of speaking it. Mr. O'Connell never faltered, he never stopped; when  
 at the top of the ladder his eloquence never flagged; 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 for you 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; and yet this was the language which  
 he used to the people of Ireland the next day at the Association: "What  
 he then said would pass through the papers, and the people would be assured through-  
 out the land that the Association condemned nothing, and that he  
 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. They were in every respect  
 and in every instance illegal. They were even worse than illegal, for they  
 were highly criminal; besides which, they were not binding. An illegal  
 oath did not bind the villain who took it. It might bind the man of  
 mistaken conscientiousness, but it would not bind the villain. The man  
 of conscientious feeling should not take such oaths, and it was infinitely  
 better for him to show his honesty by making a stand against it in the first  
 place than by adhering to it afterwards. He would call on the Irish  
 people from that spot to make a stand against taking any illegal oaths.  
 . . . . They should recollect the motto of the Association, that 'the  
 man who commits a crime gives strength to the enemy.' There was, in fact,  
 but one magic for always succeeding in politics, and that was, being  
 always perfectly right, and thus compelling your opponents to be in the  
 wrong. . . . I wish my recommendation to be perfectly understood.  
 I announced it yesterday, and I repeat it to-day—let the people bring  
 any wretch who attempts to cajole them into taking illegal oaths before  
 the magistrates. . . . The Repealers could have no connexion with any  
 illegal societies. They only wanted the Repeal of an Act of Parliament,  
 and they could never obtain that object by violent means, and he  
 was glad they could not. They could only effect their object by  
 constitutional means, and by not putting themselves in the power of  
 their enemies by doing an illegal act. . . . 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 connexion. . . . He sympathized for his Sovereign. He trusted that no danger would befall her from any quarter; but, if the day should come when the Queen might stand in need of the assistance of her Irish subjects, he pledged himself in the name of that city, of which he was the chief magistrate, that there would be strength enough in that city alone to put down the outbreaks of active treason.” Such is the language made use of, and yet you are called on to believe and infer certain matters from passages selected from speeches made at multitudinous meetings, and delivered on the spur of the moment. 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 Mr. 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, at the Repeal meeting at Dundalk, on the 6th Jan., 1842, he says: “ If there came any one among you to entrap or decoy you by any oath, give him up to the authorities. They only want your blood. I put a stop to their progress in Tipperary. I heard they were making their way into Meath, but there they were routed. Have nothing, then, to do with Chartists or Ribbonmen. If you bring any of these Paddy M’Kews among you, they will traffick in your blood-money, and therefore avoid them. . . . The Queen, the loveliest as well as the first and foremost of her sex, wept when the enemies of all social order and harmony were to take possession of the places of honest politicians. She is the most accomplished woman of her sex, God bless her; and she is determined to have justice done to Ireland, if she only had the power. Let the people preserve their loyalty to the Throne unbroken; let them maintain an unspotted allegiance to the Crown; let there be no violence of any kind, but let peace and good will be your watchword. . . . I need not tell you to separate quietly, for you will do so yourselves; and let not the words I have addressed to you be lost. I intended that they should sink deeply into your minds, and that you should profit by them. 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.” Here he is propounding to the whole world their system of action. Theirs was not, he said, a contest to be achieved by the sword or the battle-axe. Speaking of a contest, mind you, he says it was not a contest to be achieved by the sword or the battle-axe. 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 befall both countries. . . .

“ They would do no violence, nor offer any outrage to human property or to human life ; but, encouraging the arts of agriculture, commerce, literature, everything which could improve or ennoble the country, they would pursue undeviatingly their onward path to freedom, but would scorn to desecrate the sanctity of their cause by the effusion of a single drop of human blood.” . . . 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 in anything that ever was uttered by this first of his Profession, ay, I will also call him the first of Irishmen, for having preached these doctrines to the people ; is there any thing in this that could link him with the wretch I have described ? “ Let it not be said that he looked for separation. No man breathed who was more anxious than he that these two countries should be united by the golden link of the Crown, the maintenance of which junction he looked upon as being useful for the tranquillity and liberty of Ireland. 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 connexion between the countries. . . . Entertaining as he did a feeling of affectionate respect and allegiance towards his Sovereign, which made him wish to preserve to her executive that connexion, he was induced to look for a Domestic Parliament to prevent that separation. He wished to see Ireland leagued with England, rather than that a separate dominion should be established ; but he wished to see her under the fostering care of her own Legislature. While he lived there would be no separation.” Again, at the Association, January 22nd, he says : “ Loyal to the Queen, attached to the connexion with England. . . . They can easily vindicate their rights to the restoration of their native Parliament. . . . They were looking for that Repeal, not for the purpose of giving the Catholics any ascendancy, but to put all classes of people, as they had a right to be, on an equality of rights and privileges. . . . Whenever England was in distress she cried to us for succour, and the Irish gave their assistance. . . . 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. . . . These would he give unto her ; and, in return, he asked nothing more than equal justice and equal liberty. . . . If justice were done the

“ Irish people England might set the universe at defiance, if com-  
 “ bined against her. . . . No hope but a peaceful combination for  
 “ the Repeal of the Union ; that combination to be based upon a  
 “ general obedience of the law, joined with the most perfect submis-  
 “ sion to legal authority ; keeping within the bounds of peace and  
 “ order ; infringing no ordinance of man ; committing no sin against  
 “ God : to be peaceable and just to all. . . . Horrible crimes had  
 “ been committed, at the recital of which human nature shuddered,  
 “ and into the provocation given to commit which he would not then  
 “ enter, because they were incapable of palliation. . . . The only  
 “ consolation which the members of that Association had was their  
 “ determination to denounce them in every possible way ; to advise  
 “ against them, and to address to the perpetrators, whoever they may  
 “ be, every sentiment of Christian feeling, which could have the  
 “ effect of deterring them from the commission of such awful crimes.  
 “ . . . He was an apostle of that sect in politics, which held that  
 “ the dearest and highest of earthly privileges were dearly bought  
 “ at the expense of a single drop of human blood. All political ad-  
 “ vantages might, he held, be acquired by the combination of good  
 “ men ; and it was by this agency alone that they sought to succeed.”  
 Let all good men but come to one common resolution, that something  
 is to be done for the prime grievance of the country. Let them leave  
 it to discussion as to what that something may be ; but let all good  
 men unite in one cry that something must be done. Let reason  
 investigate and determine what that something is to be ; but let  
 all good men cry out that the evil exists—that some remedy  
 must be had to cure it. Let all thus cry aloud ; and where is  
 the power that suppresses public opinion thus expressed ?

Again, at the Association, on the 4th of April, 1842, he 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 as-  
 “ sistance of the Repealers of Manchester, valuable as it was, than  
 “ be in connexion with any party who would join in tumult or out-  
 “ rage of any kind. . . . He hoped that they would never more  
 “ hear of anything like what occurred at Manchester. . . . Here  
 “ was the resource for Her Majesty, and Her Majesty had it in her  
 “ power to serve the Irish people ; it was in the power of the Queen  
 “ to revive the Irish Parliament ;—and that Parliament was not dead  
 “ —it only slumbered. . . . The Queen (and he asserted it as a  
 “ constitutional principle) had it in her power to revive the Irish Par-  
 “ liament whenever she pleased. . . . All he wanted was the sanc-  
 “ tion 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 sectarian or selfish character ; they wished  
 “ to do good to every man who was a sojourner in their land, no mat-  
 “ ter 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 connexion 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 traversers 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, do not 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. What was the “constitutional principle” propounded by those great men? It was that a union—an Act professing to effect a union, obtained from the Irish Parliament by bribery, by corruption, or any other unconstitutional or 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. Fraud will vitiate anything. 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. These 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,” but it could 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 brick-bats 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 monstrous 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.

Gentlemen, perhaps I have fatigued you—indeed I have fatigued myself; but I think it necessary to read for you these extracts from Mr. O'Connell's speeches, 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 Chartists, he did it for the purpose of drawing around him men who were inclined for peaceful efforts; 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 in '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 connexion with the Chartists in this country and in England. As to the Chartists in England, they could have no communication with them without violating the law, for such communications would come within the rules of corresponding societies, and amount to a violation of the law; and 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. 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 connexion with them. . . . He could not think of anything more awful than those agrarian disturbances; he was there to condemn them; he was there to proclaim them to be crimes incapable of mitigation, and deserving of the severest punishment; he was there to repeat, with his humble and profane lips, that doom which God, who would judge them all, would pronounce against the slaughterer of his fellow-creature. He was there to alarm the conscience, if he could, of Ireland. He was there to arouse all that was good and virtuous in the land, to the suppression, by any means—he meant by honest, and fair, and legal means—of this dreadful crime. . . . Their rulers ought in time to conciliate the true-hearted and loyal people of Ireland. 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.

“. . . . They would set the example of a peaceful, but still loyal and  
 “ firm organization of the people ; and, whilst they revered liberty, and  
 “ were attached to religion, still they would respect the opinions of every  
 “ human being in existence. . . . He would pursue that moral and  
 “ legal course, which, while effecting great radical changes, would give  
 “ no man cause to tremble, with regard to any interference with life,  
 “ liberty, or property. The social circle, and the bonds that tied society  
 “ together, would be undisturbed—no violence would be committed, or  
 “ injury done to any human being ; on the contrary, every man’s con-  
 “ dition in the country would be benefited, and prosperity and happiness  
 “ would be universal. . . . Great revolutions would 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. . . . It would be Her  
 “ Majesty’s prerogative to order the writs to be issued to call again to-  
 “ gether in College-green that Parliament which had no power to annihi-  
 “ late itself. 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. . . . Whilst  
 “ they sought the inalienable right to legislate for themselves, they  
 “ would maintain with fidelity the British connexion.” British con-  
 “ nexion ! 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 here. Again, on the 16th of May, at a  
 “ Repeal meeting : “ 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. . . .  
 “ She [England] has got one friend—one, too, who will be loyal and  
 “ brave in her defence, and that is Ireland. . . . His struggle was  
 “ not for any religious ascendancy in the land, it was no struggle for  
 “ any religious sect or persuasion ; but, with the blessing of heaven,  
 “ for the entire people of Ireland—for the Catholic, Protestant, and  
 “ Presbyterian—all of whom were equally interested, and would de-  
 “ rive the same benefits, could they be but induced to give up their  
 “ dissensions, and become true Irishmen. . . . Never until he ap-  
 “ peared 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.” Whether in the open air, or under a roof, you always  
 “ find him consistent, throwing contempt on physical force, and eulo-  
 “ gising and panegyricizing a peaceful and moral course.

Gentlemen, Mr. O’Connell has been abused for raising prejudices

against men of property ; has anything been read to you which could tend to such a conclusion. I will now read to you an extract of his speech, made at a meeting of St. Paul's Ward, on the 18th May, 1842.

“ He need hardly tell them that he would not advise any man to pursue a line of conduct that could, by possibility, do him the slightest injury. He would not allow property to be interfered with, violence committed, or the social circle disturbed. He would cause the people to proceed morally, peaceably, and constitutionally. He was not seeking to obtain any selfish or sectarian purpose. The object he had in view would be equally beneficial to all ; and, if Irishmen of every class and creed studied their own interests, they would unite with him to make their common country prosperous and happy. . . . He would take care that the Irish people should, in all their movements, keep within the bounds of the law, and the spirit of the Constitution.” And at the Association, May 21st, 1842, he says: “ 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 would 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. . . . But in this, as the former document, there were some expressions which he would prefer to have left out. They [the Americans] were mistaken in the allusions which they made as 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. Certainly, if the time should come when those who now possessed an influence over the Irish mind would have passed away and gone to their reckoning, and younger and more ardent and anxious persons appear on the public stage, in this case 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 connexion, as it stood at present, could continue. . . . The Americans were wrong in thinking the present Repeal agitation would end in any violent struggle. The Repealers would violate no law ; they were proceeding constitutionally, as well as legally, taking care to keep within the bounds of law and morality, and do no act but that of which every good and virtuous man could approve, and which God would be pleased to sanction. . . . The Irish did not mean to obtain Repeal by the commission of a single crime, and, of course, they would not sanction a different course by others. . . . There was no danger of civil war ; there would never be a civil war in Ireland again. . . . The Irish people did not look for aid from any mortal power, or to an outbreak at home, that would destroy all the elements of society, carry devastation in its ruin, and mark the downfall of the state where it occurred.” It is not treason he wants, not the men of Wexford, as insinuated—but the strength of public opinion. “ I can tell them [the impracticables] we will not go to war with

“ England ; we would not take the greatest benefit that could be  
 “ conferred upon us at the expense of one drop of human blood.  
 “ There shall be no crime, no outrage, no injury of person or pro-  
 “ perty ; our agitation must be peaceable, legal, and constitutional.  
 “ . . . . We will petition the Queen to come to her loyal, faithful,  
 “ and devoted Irish subjects ; and once the Queen sets her foot in  
 “ Ireland, she can call the Irish Parliament together, she has the  
 “ power vested in her of issuing writs for the purpose. . . . So when  
 “ the Queen comes to Ireland the Irish Parliament will be revived.”  
 Again, at the Association, on the 15th August, 1842 : “ Ireland  
 “ continued tranquil, firm, and determined in seeking for an ame-  
 “ lioration of her wretched condition, determined to have recourse to  
 “ none but peaceable means, which would be justifiable in the eyes  
 “ of Providence, and calculated to honour themselves in the opinion  
 “ of all human beings. . . . Their duty to the Queen, their alle-  
 “ giance to the Sovereign, as well as their wish to have prosperity  
 “ extended to her subjects, demanded that they should proclaim their  
 “ determination to agitate peaceably for a reform in the Commons  
 “ House of Parliament. . . . The people of Ireland would engage  
 “ in no rebellion, in no violence, anarchy, and strife ; but they would  
 “ join in every peaceable effort that may be made to procure for the  
 “ people their just rights . . . . With the blessing of God, and the  
 “ aid of good men, they would achieve the Repeal—without a crime,  
 “ for they would never be a party to any crime. They would achieve  
 “ it without rousing a single particle of bad feeling or party ani-  
 “ mosity. They would be no parties to religious persecutions or  
 “ religious distinctions between Irishman and Irishman. They would  
 “ leave conscience free within the bounds of the land, and permit every  
 “ man to worship God in the sincerity of his belief, whatever that be-  
 “ lief might be. Yes, it was a cause on which he did not think he was  
 “ profane in saying it, Providence well might smile. It was a cause which  
 “ could be sanctified by Heaven, for its object was to make every Irish-  
 “ man better, and no man worse than he was before. . . . Let men re-  
 “ proach him as they pleased with his exclusiveness, as they called  
 “ it, and of speaking too harshly of those that will not become Re-  
 “ pealers, but he would ask them would they do anything else for  
 “ Ireland, and if they did he would be ready to join them.”

The most legitimate ground upon which a rational man might  
 blame Mr. O'Connell and the Repealers would be this—that they, as-  
 suming 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 will not defend that course ; on  
 the contrary, I blame them for it. I do not 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 for the evils of Ireland, but many who think  
 it would be no remedy at all. I do not think they were right in that,  
 but because I do not think they were right in that, does it follow



that I think they were criminal? 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 these 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. Do not 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—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 their's 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 must be a conspiring to commit crime, or 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. Do not 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 any thing 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 the 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 do not think so, show me any other, and I am ready to join you.” None other, Gentlemen, was offered. Again, at Drogheda, on the 28th August, 1842: “He wished to preserve the connexion with England by the golden links of the Crown, but to do away with the degrading, debasing, and impoverishing measure of the Union. . . . He was rejoiced to say, that in that country (Meath) there were no Whiteboy disturbances. . . . He would never seek to effect a Repeal as the Belgians had done; no, he was the apostle of a different sect—he was an apostle of that political sect that said and proved that the greatest political advantages could be obtained by peaceful means. . . . . 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 agi-

tation. 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 an octavo volume, which he said, but did not 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, which 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 that he felt that he had no right to put that book in evidence. I think he must have reflected very little on what he was doing if he thought he could contribute to the ends of justice by referring you to that book. If he had read it in evidence I would have had it now in my hands, instead of never having seen it in my life except when I saw it with him. I would have had an opportunity of reading it from beginning to end, and of exercising my judgment and my imagination upon what I found in it, and showing you how totally distinct was the organization of '97 and '98 from that of '43 and '44. The book then would be in evidence for all purposes, and would be open to observations from both sides, and it would prove whether the Attorney-General's inferences were correct or not. 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-General 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 twenty-nine 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, came to the conclusion that there was no power 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 then vacant in 1829, 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 will 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 reported 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. Mr. O'Connell 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 that he wanted a council of three hundred 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 manifestly 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 proceedings by the Attorney-General; but if Mr. O'Connell had it in contemplation to appeal to measures of physical force, and to organize the masses for that purpose, is it likely that he would have repudiated



and denounced the Chartists and Whiteboys. The cooperation 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 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. . . . Wherever the Repealers were strong, they put down Chartism and Socialism. . . . It was not in Dublin he was afraid of them, for there they could take measures to counteract their machinations; but they were going through the country and calling the people together, and using his name to induce them to join them. They said to the people O'Connell wanted them to be ready, and they came down from him amongst them; but they lied, the villains, and from that spot he denounced them. . . . 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 was convinced that those miscreants would practise upon the ignorance of the people, and lead them into secret societies for the purpose of betraying them. . . . 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 organizing 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 soldier—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 it?

Gentlemen, the definition given you by the Attorney-General of the crime of conspiracy, describes no crime at all; for you must recollect, that a combination or agreement does not imply guilt; to do some illegal act implies no guilt; or to effect an illegal purpose by illegal means implies no guilt. I will prove this to you on undoubted authority. I am not going to misrepresent one Judge or mislead another, but I am going to cite what no Judge can deny is a binding legal authority, a long established and plainly decided case. It is the case of *Rex v. Turner*, 13 East, 228. That was an indictment for a conspiracy, which stated that the defendants unlawfully and wickedly devising to imagine, &c., did conspire, confederate, and agree together to go into a certain preserve for hares belonging to T. G., and against the will of the said T. G., to snare and kill said hares, and to procure divers bludgeons, and other offensive weapons, and to go to the said preserve armed therewith, for the purpose of opposing any person who should endeavour to apprehend, or obstruct, or prevent them from carrying into execution their unlawful purpose, and that they did, in pursuance of such conspiracy, go into the grounds and set snares to catch hares. After a verdict of guilty, a motion was made in arrest of judgment for the insufficiency of the charge, on the ground that it was only that of an agreement to commit a mere trespass upon the property and to set snares for hares, and was not an indictable offence, but at most only an injury of a private nature. The judgment was arrested by Lord Ellenborough, who was as good a Judge on all legal subjects as ever sat on the English Bench, and as high a Prerogative Judge as ever adorned it from the days of the Conquest down to the present hour. Those parties agreed to commit that offence, not to rob a man of his property, in a certain peculiar sense, because that would be a felony, and to snare hares is not a felony. But I ask you—was the project of those eight persons honest? was it innocent? As to the enjoyment of property, with regard to the spilling of human blood which might have taken place in consequence of the bludgeons the parties were armed with, was it innocent? Every man would say, that in all those particulars the project was not innocent, and the jury found the defendants guilty of a conspiracy. In that case, on the motion in arrest of judgment, Lord Ellenborough, in giving the unanimous decision of the Court, 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 *Rex v. Eccles and others* was considered as a conspiracy to do an unlawful act affecting the public. But I should be sorry that the cases of conspiracy against individuals, which had gone far enough, should be pushed still further. I should be sorry to have it doubted whether persons agreeing to go and spoil 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.” It may be said that the present case is analogous to the case referred to by Lord Ellenborough—

that is, the case of *Rex v. Eccles*—as affecting the public, that like as in that case the parties had combined to restrict trade, and as they did so, they were guilty of conspiracy. But I say, to be guilty of a conspiracy, the parties must be proved to have acted together with a criminal mind. The true distinction is, that to be a conspiracy there must be a criminal act performed; because if the means be criminal, to put the means in execution is a crime, and therefore knowing and believing it to be a crime is essential to constitute a conspiracy. Although I deprecate the notion of defining crime, so as to bind a jury by the definition and to take from them the decision on the question of guilt or innocence, and to conclude them, as it were, by the definition, so as to make it matter of law; yet crime may be defined and ought to be defined for technical and legal purposes, in order to know how to frame the indictment; and also for the purpose of knowing what judgment to give when a party is found guilty by the jury. For these purposes a definition is proper and necessary; but for the purpose of binding or concluding a jury, the law recognizes no such definition, because the guilty purpose and the intention of the party accused is a question in all cases exclusively for the jury, and forms a necessary ingredient, and that is never to be inferred by the Court as a matter of law, as a necessary consequence of any acts; is never to be established as a matter of law, nor to be assumed until found by a jury. But if I were to form a definition which could, in point of law, be upheld as an adequate definition of conspiracy, I would call it a wicked confederacy of two or more persons knowingly and wilfully to aid and abet each other in the commission of a crime. I would call persons so combining conspirators. This appears to me consistent with reason, law, and common sense; but to substitute mere concurrence and coincidence of purpose for concerted and wilful combination; to substitute the word illegal for the word criminal, and to say that men have criminally conspired if they have agreed to do some act which turns out to be an unlawful act, if this be a criminal conspiracy, what man would be safe? If the question of guilt or innocence is to be concluded by the mere legality of the purpose in the complicated state of the law, who can be sure that he will not fall into the condition of a criminal conspirator, even when acting with the purest and best motives, if the object in view should turn out not to be legal? If so monstrous a proposition is to be adopted as that every member of an association is to affect every other by his acts, in every case where the objects of the association shall turn out to be merely illegal, and if crime is to be spelled out in every case where legality cannot be shown, no member of any association, at least of any political association, can be safe.

There are, Gentlemen, one or two other topics upon which I have to address you. 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 commands they are, and whom they are unthinkingly bound to obey—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. But whether it is so or not, if we had the author here to answer before this high Court for writing what would be a triable case, one not requiring three or four weeks' debating, for the jury could have come to a conclusion with a reasonable certainty upon which they might find a conviction or an acquittal. If, therefore, the Attorney-General thought that this letter was written for a criminal purpose—for it must be a criminal purpose—he should have prosecuted the writer, and I am sorry he did not prosecute him; again, if he did not think so, I am equally sorry it should have been brought forward here for the purpose of damaging those who had nothing to do with it. But Mr. O'Connell is proved to have praised the sergeants of the army—to have said they were the finest body of men in the world—and 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. Now, Gentlemen, where 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, I think rational men 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 could 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 suppose, 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. At the Repeal Association on the 14th September, 1843, when his plot was ripe,



when everything he had said in praise of the sergeants was long since published, when everything had been done that could possibly be supposed as intending to seduce them, at that meeting he forbids any person connected with that body, to interfere in any manner with the soldiery. Now, I pray your attention to the period at which Mr. O'Connell thus plainly and publicly repudiates, disavows, and prohibits any intercourse of any kind with any member of the army. That was in September, 1843; and we now, in January, 1844, are trying this case. Out of the whole British army which has been in Ireland, openly in the pay of the Government, who have instituted this prosecution, have you had produced to you a single sergeant, corporal, or private soldier, or any single individual, to whom he has opened his lips upon this particular subject? Was it, therefore, to be pretended, that this prohibition was not a genuine one—that he meant “don't nail his ears to the pump;” or was it delivered in the true spirit of truth, intending that he should be obeyed? And was he not obeyed? Am I not entitled to assume that he was obeyed? Can the counsel for the Crown produce any one single soldier or sergeant to show he had been tampered with? Was it to be expected that the traversers should prove it? That would be impossible. We could not prove a negative! Why did not the Crown prove any single act done by any single being connected with the Association, for the purpose of seducing the soldiery? It was open to them to do so. Every act of every member of the Association would be evidence against the traversers. Why did they not produce and prove a tampering of any kind with them? Why will you not attribute to Mr. O'Connell a wish of begetting in the minds of the people a feeling of love and respect for soldiers? The people were protected by the soldiers, and that they should love them is a thing I think is to be desired and wished for by the community. He wished to remove from their minds any feelings of hostility to them, and to convince them that they were men deserving of respect. Why should he not be so interpreted? The whole course of his life—the whole torrent of his eloquence—everything he has ever said or done, has had for its object the establishment of love, order, and good will amongst his fellow-men. He has, no doubt, often expressed a strong political bias, and a strong dislike of political sentiments disagreeing with his own. I am not here to defend him for what he has done wrong in that respect. I do not want you to attend to my argument if I am so uncauid—so unprincipled as to support that which I do not believe to be right. At the same time, full allowance should be made for his feelings on the occasion, when he did so forget himself; when he so forgot that benignant nature which, beyond doubt, belongs to him.

Gentlemen, another imputation in this case, is the collection of money; and I hope before I sit down, I shall convince my friend, Sergeant Warren, that that money has been collected, not as chesnuts are drawn from the fire, but fairly and legitimately collected. In the present very peculiar state of society, although justice should be common to all, free as air, and fresh as the water we drink, yet it is impossible to get it if you have not money. Every Court of Justice is open, as

Horne Tooke said, and so was the London Tavern; but one should have money to pay their way, because to ascertain whether a man had justice on his side or not, requires the aid and assistance of scientific minds, and the aid and assistance of those cannot be procured without paying for them. So that it is perfectly impossible for any one individual to bring his case within the proper jurisdiction to repress his grievances, without having a golden key; it would be impossible to collect signatures to the petitions of millions, without considerable expense. It took £100,000 to canvass the county of York, and yet it does not contain a tithe of the inhabitants of this country. Now, there is just one other subject that has not been touched upon yet, and that is, the Arbitration Courts.

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 thrive; 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 of the country? At some of those meetings some one or other, I really forget who, spoke about not wanting the Saxon ermine, and so on. Gentlemen, that was improper language. Why? Because it was open to be misinterpreted. I do not think the man who uttered it, whoever he was, meant to say that the Judges of this country were Saxons in ermine, that 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, none of them approved of it. They did not express the wicked purpose of bringing the Courts of the country into disrepute. 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—withdrew the commission from every one that attended those meetings. Others of them took umbrage at this, and they resigned. That 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—entitled to by reason of the place he holds—entitled to from the manner in which he fills it—and entitled to by the power which he wields in a way in which it was scarcely ever wielded before, by legal acquirements which perhaps never belonged to a lawyer in this country but himself. Do not imagine that I stand here to palliate or justify in any way the language of any newspaper, of any man, or any party, or any association, upon any act, judicial or ministerial, performed by such a functionary. But the act was calculated to beget anger, and it did beget anger; but it produced no other effect except to beget anger. That, however, did not establish a conspiracy, nor did it exhibit a fixed and 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; if he dismissed the magistrates in whom the people had confidence, why they would make Arbitrators for themselves, 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. I tell you, Gentlemen, that is a legal purpose. Mind, 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 closed their case, satisfied with the production of 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—that he saw one case decided by the Arbitrators, and that he supposed it was decided well. Now, if that was illegal, the *Ousel 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 this ; God forbid there should !

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THURSDAY, FEBRUARY 1ST.

Mr. *Henn*.—I am instructed, my Lords, to submit, on the part of the traversers, that the Court should adjourn until the 15th of April. We conceive that the Court has no power, under the Act of Parliament, to proceed with the trial after the term is ended. If your Lordships should be of a different opinion, we request that you will take a note of the objection.

The LORD CHIEF JUSTICE.—Certainly.

MR. WHITESIDE.

*May it please your Lordships.*

GENTLEMEN of the Jury, in this case I appear before you as counsel for Charles Gavan Duffy, the proprietor of the newspaper called the *Nation*. I could have wished my client had selected his advocate from among my brethren at the bar, of whom so many may be found my superiors in every talent and in every acquirement. The 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 the part of the accused, from whatever quarter it may come, I gain resolution from confidence in you. The solemnity of this state prosecution would be enough to bespeak your considerate attention. The principles 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 merits of my client's case, that justice may prevail and the cause of public freedom may triumph. I shall not at the outset disguise from you that the result of this case is regarded by me with trembling apprehension, not from the vulgar fear of lawless outbreak or of popular fury ; the arm of power is strong enough to repress and punish such excesses ; my apprehension arises from another and a better motive. I feel the importance of your decision, I am anxious for the character of our common country, for the purity of 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 this day's proceedings will be scanned by the opinion of enlightened England, and of whatever other country possesses freedom. As far as you can, as far as human infirmity will permit, discharge your duty unflinchingly between the Crown and your fellow-subject. Be tender of that subject's freedom, and your decision will be applauded by your own



consciences and by all just men throughout the world. Gentlemen, you are not impannelled to try the traversers for their political opinions. The soundness or unsoundness, the policy or impolicy of their proceedings, the wisdom or the folly of their actions, 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 on the style exhibited by political writers, or on the taste shown by a popular speaker; your's is a severer duty than that of the moralist or critic. Although you should be satisfied that some of the speeches made were intemperate or rash; although you may condemn the character or style of many of the written productions which were given in evidence before you; although you may disapprove of the general objects in view by the parties accused this day, still there would not be the least conceivable approach made thereby to the decision of the question of their guilt or innocence of the particular subject matter charged by the present indictment. Crime is what is alleged against the traversers, crime of a peculiar and a defined character. If that peculiar crime, as it is described and explained on the face of the indictment, be not clearly and distinctly proved, no matter of what other supposed offence the traversers by possibility may be suggested to be guilty, still you would be bound to acquit them on the present indictment. To find a man guilty of one charge because there may be a surmise that he might be accused of another, would be to violate the law and trample on justice. From the strict line of your duty you will not swerve. Gentlemen, you are not—I say it 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. Community of sentiment on political subjects is not criminal. Associations exist for all purposes. There are literary, scientific, religious, and political societies. Their object is to accomplish a given end; to concentrate opinion, and to strengthen that opinion; to bring it to bear on particular subjects to which they are devotedly attached; and by means of that concentration to obtain benefits and blessings which otherwise might not be accomplished. Governments are naturally quiescent. They are repugnant to change, and adverse to popular movements; and, therefore, it requires the greatest efforts—and perhaps it is wise it should—and the greatest concentration of opinion, to obtain from the Government that which, when it is obtained, all parties agree is a benefit and an improvement. It is by such means that the wisest reforms have been effected. The greatest triumphs of humanity have been so accomplished; the noblest projects that ever entered into the human head have so been gained. In ordinary cases, when men are charged with a particular crime, it is to be proved whether they are guilty or innocent by what they themselves have done or written; and the evidence to convict them must be given

under the strict and rigid rules prescribed and fixed by law. But, as you have seen, in this crime of conspiracy, a latitude of proof is permitted, which your own experience, as jurors, tells you would be suffered in no other form of proceeding. One man is sought to be affected, not with what he himself has done, or spoken, or committed, but with what other men have done, spoken, or committed. That he should suffer for the consequence of his own acts or his own speeches is natural and right, because he can control the one and regulate the other; but it seems, at first sight, difficult to understand the justice of the rule, that guilt shall be fixed on a man, not for what he himself has done against the law, but for what has been done by other persons at a distance, over whose movements he has no control, whose tongue he does not license, and cannot check, and over whose actions he has no authority or power. If, Gentlemen, in an ordinary case, that observation is founded on good sense, it has infinitely more weight when you come to apply it to a charge of political conspiracy. There it is necessary for a jury to be much more on their guard; for the incautious language, the improper actions of one man, may be sought by a good administration, or by a bad one, to be visited on another man, who may be obnoxious to either. It is our blessing that we are supposed to live under defined laws, pointing out exactly what we are to do and what we are to avoid, showing us our responsibilities, and how we may escape them, and how we may comply with the requirements of the law.

Gentlemen, each verdict of a jury that tends to make our duties or our rights more complicated, involved, obscure, or perplexed tends to endanger the liberties we possess. The indictment here is solely for a conspiracy; and I cannot praise it as a work of legal ingenuity or of art. You may imagine the legal artist possessed of much bodily strength, and armed with a huge scissers, files of the *Nation*, the *Pilot*, the *Post*, or the *Mail*, are placed before him. He applies himself to his task with no charitable spirit, but with considerable zeal. Speeches are stripped by him of all inoffensive matter; biting passages are cut out from leading articles; reports of public meetings, given more severely than the speakers of the several speeches intended; letters of angry correspondents, written at long intervals of time, are carefully selected and given in full. The prose of the indictment is embellished by a Transatlantic speech by the son of President Tyler; and the whole is wound up by a song. First come the proceedings at a great public meeting; then the speeches at a dinner, which is charged as an overt act; then comes the editor of the *Freeman*, then the editor of the *Pilot*, who are charged with publishing them in pursuance of the conspiracy; then comes my client, the editor of the *Nation*, who is charged with having transcribed or copied them into his weekly paper. That disposes of one meeting; then another meeting and another dinner are brought forward; the three editors are again paraded in succession, and so on from March until October last year, the indictment giving and purporting to give what, by the way, may be very useful to the future historian, a narrative of all the public meetings and of all the good

dinners which took place in Ireland during a period of ten months. The indictment may be divided into two parts, the first consisting of the reports and copious details of speeches sufficient to fill several octavo volumes; the second part may be regarded as a formidable abridgment of the proceedings of the Association, the plan for the renewed action of the Irish Parliament, the leading articles in the Repeal newspapers, the angry letters of Priest Power, and other matters of a general and miscellaneous character, all forming this precious olio of an indictment. Gentlemen of the Jury, the guilt of any man must be difficult to be made out, if it requires a document of such extraordinary prolixity to explain it; and the innocence of that man would be clear indeed which such a mass of parchment is not calculated to endanger and obscure. Gentlemen, you are to understand that the overt acts specified are not in themselves the spirit of the accusation; each of these acts is not singly brought forward as the subject matter of a distinct charge or crime against the accused; they are all used and brought forward as the proofs wherewith to sustain the general crime in the indictment, which I have before stated, and which is the only question which you have to try. Now that crime I shall take the liberty to state to you. The traversers are accused of having conspired to excite "discontent and "disaffection amongst the liege subjects of our Lady the Queen, and "to excite such subjects to hatred and contempt of the Government "and Constitution of these realms 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 said United Kingdom of Great Britain and Ireland, and "especially in that part of the United Kingdom called England, &c., "and 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 with having conspired to bring into disrepute the Courts of Justice, by the establishment of Arbitration Courts, and by inducing suitors to withdraw their cases from the lawful tribunals, and to have their differences adjusted by private individuals. That is the conspiracy charged, and that is the single crime which you have to try. You have to ascertain whether the accused are guilty of a conspiracy to do the precise acts, the very things, the specified things, the described things, set forth in this extraordinary, unprecedented, and unheard-of indictment.

Gentlemen, the Attorney-General, who, I think, stated this case with great moderation and temper, and conducted it with fairness and candour, began his statement by a reference to the principles and authorities which, he said, were necessary to explain the subject matter under consideration. There is not much dispute about the general principles of the law of conspiracy. It is

in the application of those principles that the difficulty lies ; and I do not see by what process of reasoning he has connected those principles with the evidence in this case, so as clearly to demonstrate their applicability to this particular charge of conspiracy. As to the definition of conspiracy there can be no doubt ; it is a conspiracy to combine in order to accomplish an illegal object, or a legal object by illegal means.

The first case cited by the Attorney-General was *Rex v. Jones*, 4 Barn. & Ald. 345. That case has not the least analogy to the present case. It was an indictment against a man against whom a commission of bankruptcy had issued, for concealing part of his effects. The indictment did not show that the party had actually become a bankrupt, and it was held to be defective, on the ground that it did not disclose anything to constitute an offence. The second case quoted by the Attorney-General was *Rex v. Forbes*. I have only to say a word to the jury as to the subject matter of that case, to show, in passing, what may be treated as a conspiracy. Several persons combined for the common object of dining together at Daly's Club-house, and I believe they carried their object into execution ; they found it so merry a one that they further agreed to sup together, and I believe they pursued that object with the like perseverance and industry ; finally, they combined, confederated, conspired, and agreed to go to the play, and having done so, one had a rattle, and he rattled—another had a whistle, and he whistled—a third suffered his ultra-Protestant feelings to get so much the better of him, that he threw a bottle on the stage. An indictment for a conspiracy was sent up to the Grand Jury, but they ignored the bill. The Attorney-General then filed an *ex officio* information, the case was tried and there was no verdict, except in one case, that of Brownlow ; he was acquitted, and that conspiracy was never heard of from that hour to the present.

The next case cited by the Attorney-General, was *The Queen v. Murphy*, 8 Carr. & Payne, 310, in which Mr. Justice Coleridge said : “ 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 consent and design between those 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 so 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 conspiracy, 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.” Now, my Lords, I have to observe that the object



pursued there was illegal. The traversers had agreed together to prevent the collection of a certain rate, and to deter a person from raising it—the object therefore was illegal, and the good sense of the charge is this, that if the Jury were satisfied that the persons charged with this illegal object did part of an act at one time, and part of an act at another time, that amounted to a conspiracy. Clear evidence was given in the case, and on that evidence there was a verdict.

The next case cited was that of *The Queen v. Vincent*, 9 Carr. & Payne, 275. There are two cases of that name in the same volume, one very long and good, the other very short and bad. The Attorney-General cited the bad one. In that case the first count charged that the defendants conspired “to excite discontent and disaffection in the minds of 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.” 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 in the minds of the Queen’s subjects, and by force of such terror and alarm, to procure great changes to be made in the Constitution of the realm, as by law established, and to annoy, alarm, disturb, and prejudice divers subjects of the Queen, in the peaceable enjoyment of their property.” In this count no overt act was charged. That is the accusation in this case. Evidence was given on the part of the prosecution, of violent speeches delivered by those who attended the Chartist meetings, to the multitudes assembled; and I will call the attention of the Court to a particular part of the report of the case: “On the part of the prosecution, it was proposed to ask Mr. Roberts, the Superintendent of Police at Pontypool, who attended several of the meetings, whether persons complained to him of being alarmed at those meetings. *Carrington*, for the defendant Edwards.—I submit that persons who were alarmed, should be called to prove that fact, and that what they said to Mr. Roberts is not receivable. *Gurney*, B.—“The fact that persons made complaint to the Superintendent of Police, of alarm occasioned by these meetings, is receivable. The evidence was received.” That is, they asked the policeman whether any body in the kingdom complained of having felt alarm or apprehension from the meetings. On this authority, it was competent for the Crown to ask the policemen who were produced before you, whether any person in the community felt any alarm or apprehension from these meetings.

The next case cited was, *Rex v. Stone*, 6 T. R. 528. In that case, evidence having been given to connect the prisoner with John Hinford Stone, who was, during the transaction, resident in France, and domiciled there with Jackson, and to shew they were engaged in a conspiracy to collect intelligence for the French Government, Lord Grenville, the Secretary of State for the Foreign Department, was called to prove that a letter of Jackson’s, containing treasonable information, had been transmitted to him from abroad, but in a confidential way, which made it impossible for

him to divulge by whom it was communicated. Adair and Erskine objected on behalf of the prisoner, to the reading of the letter, as it had not been proved to have come to the hands or knowledge of the prisoner, and that nothing could be received to affect the prisoner, but his own acts. At first Lord Kenyon concurred on general principles, that the act done by one person could not be given in evidence against another; but the next day he said, he had thought of the point, and that he was satisfied that the evidence was admissible; but even when the act and letter of Jackson were given in evidence, the jury perceived the danger of finding one man guilty for the act of another, and they acquitted the prisoner.

The next case referred to by the Attorney General was *Rex v. Red-head*, 25 St. Tr. 1004. I wish to call your attention to the indictment to that case. It contained matter similar to that contained in this indictment, namely, inflammatory speeches, which were relied on in support of the charge of conspiracy, but all these speeches are explained by proper averments and inuendoes, containing the direct point and meaning which was proved at the trial. Certainly, they were scandalous productions; but I wish to call the attention of the Court to the fact, that in that case not only was it averred and proved that the act was done, but also that it had the effect which it was asserted it had. In page 1020, the counsel for the Crown stated the fact which was afterwards proved, that pikes were prepared, as suggested in the libel, under the pretence, that it was perfectly right for men to prepare a pike for the innocent and justifiable purpose of self-defence. Mr. Law says: "The pikes will be produced to you, they are formed "in a way that might administer very effectual annoyance either to "the civil magistrate or troops, or anything else in case of resistance, "when they should break out into a public opposition to the coun- "try." My Lords, I have also to mention, that in page 1043 evidence was given of the tendency of the speeches, as pointed out in the *inuendo*, and in page 1010, evidence was also given of the making of pikes, and the furnishing a sufficient quantity of heads for them, to be made of steel. The Attorney-General more than once relied on a passage in the charge, to which I will call your attention. In page 1148 Mr. Law says: "Let it not be said that the words slipped casually "from him, he must contemplate arming who approves of arms when "they are made. It is not on the loose words of a letter that I lay "a stress, he has one put in his hand, sent by an associate, upon "this record." Now, my Lords, the passage to which the Attorney-General referred is in page 1152, Mr. Justice Rooke says: "He "supported his speculative principles of Annual Parliaments and Uni- "versal Suffrage, and says, he has uttered no more than what may be "found in the speeches of such men as the late Lord Chatham, Lord "Camden, Sir George Saville, Archdeacon Paley and others, and it "is very true they have done so." My learned friend the Attorney-General did not read to you this: "*and we believe in charity that they have done so.*" That is not a very temperate observation for a Judge to make on the Bench, it is not such an observation as one would expect to find in a charge; he then makes use of the other part of the sentence which the Attorney-General quoted,

“ and 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, whether he did not address them with a view to inflame their minds and their passions.” I admit in that case there was a verdict of guilty. I do not precisely see the value of the distinction taken by the learned Judge, and adopted by the learned counsel in this case, that a man may broach opinions in Parliament which another man cannot express out of it. I do not think there is any law to support such a proposition. If Lord Chatham was at liberty to express his opinion in Parliament, and if Archdeacon Paley was at liberty to write his—and they have done so, I do not know why a Judge should say to an unfortunate person in the dock, “ I may believe that what Lord Chatham spoke and Paley wrote, they honestly believed, but it is impossible to believe that such a vulgar person as you could be actuated by the same motives.”

My learned friend, the Attorney-General, next cited the case of *Rex v. Watson*, 32 St. Tr. 1, and called the attention of the Court to the statement of the law by Mr. Justice Bailey in his charge. “ 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 should 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 this charge or by persons engaged with them in the same common purpose and design that will justify your finding the conspiracy and consultation.” In that case Sir Charles Weatherell defended Watson; and the jury, acting on that charge, thought fit to acquit the prisoner.

The next case referred to was that of *Redford v. Birley*, 3 Stark. N. P. C. 76, and that case from beginning to end is in our favour. That was an action brought against the military who acted at Manchester, under the direction of the civil authorities. On the part of the defendants, Mr. Andrews was called as a witness, who stated that he lived within two miles of the town of Manchester, on the road between Manchester and Whitemoss. The counsel for the defendant were proceeding to examine him as to the fact of his having seen bodies of men on the night of the 14th or early on the morning of the 15th of August, marching along the road near his house, and as to expressions used by them, tending to show that they were proceeding to Whitemoss for the purpose of being drilled. That evidence was objected to and admitted by Mr. Justice Holroyd. In page 87 evidence is referred to as having been admitted of parties feeling terror and alarm at the meeting. In page 80 a witness states that he was asked whether he would go to get a big loaf for a little one? and that he afterwards went to the Tandle Hill, where he found a number of people assembled; that they said they would have a reform in Parliament; that they would make the best of their way

to London ; and make use of the property of any one who had property as they went on the road ; and that afterwards about seven hundred of them proceeded to drill. Then a paper was produced, signed by a number of gentlemen from Manchester, expressing their apprehensions for the safety of the town. That paper was objected to and admitted in evidence. Mr. Justice Holroyd says : “ It is to be recollected that this is not an action against the magistrates, but “ it is an action against four of the military who were called in by the “ magistrates to assist the civil power.” In a note to page 96 it is stated, that impressions of terror and alarm were made on the inhabitants of the town of Manchester. In page 99, Mr. Justice Holroyd says : “ In one of the pleas the drillings are alleged, which are “ stated to be clandestine. But whether they were clandestine or “ not, if they were done for the purpose of overawing the Govern- “ ment, or for the purpose of exciting tumult or resistance to the “ civil power, they would be unlawful. It is also alleged that divers “ of these conspirators, of whom part were the persons drilled, in pur- “ suance of the conspiracy, unlawfully, and armed with stones, blud- “ geons and other offensive weapons, met with intent to carry into “ effect the conspiracy.” As to the unlawful assembly, he says : “ If they come armed, or meet in such a way as to overawe and ter- “ rify other persons, that of itself may perhaps, under such circum- “ stances, be an unlawful assembly.” Again, in page 106 : “ If, from “ the general appearance, and all its accompanying circumstances, it “ is calculated to excite alarm and consternation, it is generally cri- “ minal and unlawful, that is in all those persons who go for purposes “ of that kind, disregarding the probable effect, and the probable “ alarm and consternation ; and whoever gives countenance thereto is “ amenable as a criminal party. With a view to that, the evidence “ of actual alarm, and absence or want of alarm, is material ; and that “ has been the occasion of a great deal of evidence being admitted “ regarding other persons’ fears and apprehensions, and what “ information was given to the magistrates, under which they, “ whose duty it is to protect the King’s subjects from all mis- “ chief, in such a way and manner as is lawful, were to act.” Then his Lordship makes these observations on Lord George Gordon’s case : “ They were called for an ostensibly lawful purpose, and “ there was of itself nothing further meant or intended, than to pe- “ tition the House of Parliament to repeal Acts which were passed in “ favour of the Roman Catholics. They met on that occasion in im- “ mense numbers, but not so many as on the occasion on which we “ are now unfortunately sitting. Lord George Gordon went up with “ their petition to the House of Commons, and they accompanied “ him there ; so far there was nothing amiss ;”—that is, 70,000 or 80,000 persons meeting together and going with Lord George Gordon to the House of Commons ;—“ 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. On that occasion, they were not “ satisfied with what was done in the House of Commons, and the re-



“ sult was, that they went into different parts of London, and set fire  
 “ to Newgate, to some of the religious houses, to some of the Roman  
 “ Catholic houses, and among others, they opened the prison of the  
 “ King’s Bench, I think, as well as Newgate. The consequence was,  
 “ the town was in riot and confusion three days; till, at the expira-  
 “ tion of that time, the military were called in, and were obliged to do  
 “ military execution; and I believe that some persons were engaged  
 “ in the work of conflagration at the time they arrived. Now, that  
 “ is a circumstance which some amongst us are old enough to remem-  
 “ ber, among others myself. Then the case of the meeting in Spa-  
 “ Fields affords another instance; there the meeting was ostensibly  
 “ proper, but the consequences were mischievous; persons broke  
 “ into houses, and much damage was done. I do not mention this  
 “ for any other purpose than to show that those things having hap-  
 “ pened within the memory of persons now living, it naturally makes  
 “ magistrates more alert and on their guard when an immense number  
 “ of persons come together for the purpose of petitioning the Crown,  
 “ which they have a right to do, supposing they do not come under  
 “ circumstances which tend to inspire terror and alarm in the neigh-  
 “ bourhood, and are naturally calculated for the purpose.” Much stress  
 has been laid on the observations on the drilling, but I beg to state that  
 Lord Wynford did not state that drilling is illegal, but he very cautiously  
 guards against it; he expressly says that drilling may be legal. That is  
 what is called the positive opinion that drilling is an illegal act.

My Lords, the case of *Rex v. Hunt*, 3 Barn. & Ald. was a charge of  
 conspiracy. The fourth count in the indictment was, that the traversers  
 did, on the 16th day of August, unlawfully, maliciously, and sediti-  
 ously assemble together, and cause others to assemble to the number of  
 60,000, in a formidable and menacing manner, with sticks, clubs, and  
 other offensive weapons, with banners, flags, colours, and placards, having  
 divers seditious and inflammatory inscriptions, and in martial array.  
 The evidence, your Lordships will observe, is not given in Barnewall  
 & Alderson; but the result was, that Mr. Hunt was acquitted of the  
 conspiracy, and found guilty of attending an unlawful assemblage. I  
 will refer to the evidence, with the view of showing upon what evi-  
 dence they acquitted him. In the biography of Mr. Hunt, the evi-  
 dence at the trial is given at full length. The evidence against Mr  
 Hunt referred to the Manchester meeting, and to a resolution which  
 had been passed at it, and which had been previously passed at the  
 Spafelds meeting. That resolution was rather of a startling descrip-  
 tion. It was, that if the grievances of the people were not redressed  
 by a given day, they were to consider themselves as released from  
 their allegiance. That was rather a bold step; but the next project  
 which they had in contemplation was more daring still, for they pro-  
 posed to meet together on a given day, and to elect a member for  
 Manchester without any writ being issued for that purpose. That  
 meeting, however, was proclaimed to be illegal; but they resolved to  
 meet on the 16th of the month, after spending the whole of the night  
 of the 15th in drilling. One of the witnesses examined on the part  
 of the prosecution was a person of the name of Murray. His evi-

dence is given in page 295 of the second volume of Mr. Hunt's life. His evidence is as follows: "I live at Manchester; I know Mr. Shawcross. I went with him on the night of the 14th of August. Mr. Rymer and his son were with us. We went to Whitemoss. We left Manchester on purpose to go there, and reached it by daylight. Hearing some persons near us shouting and hallooing, we lay down to prevent our being seen. We then got to the house where the men were drilling. There might be 600 or 800 of them. The plot of ground was square. They were in squads, and there was a drill sergeant at the head or end of every squad. They were marching when I went up. I heard the words, 'march,' 'wheel,' 'halt.' It appeared like a camp; the men obeyed the orders given to them. I remember the words 'eyes right,' 'dress,' and 'forward.' I was close amongst them on the left hand. The first words said to me were by a drill sergeant, who bade me fall in. I knew the man; his name was Caterall. I said I thought I would fall in soon. The different sergeants began to shift their squads, and look steadfastly. I did not like their looks, and thought of shifting my ground, when I heard a cry of 'spy;' it ran along the lines, and I heard the words 'mill them, d—n them, mill them.' I then heard a cry of 'they are constables;' and the answer was, 'd—n them, murder them.' I moved off, and so did Shawcross, but we were followed by eighty or ninety men. They overtook Shawcross, beat him, and knocked him in the ditch. From twenty to thirty men followed and overtook me. They began to beat me with sticks, and kick me most violently with their clogs. I desired them to give over; that that did not look like a reform in Parliament; it was, I said, very different treatment from that received by prisoners of war." The man was an old soldier. "They asked me how we would treat them if we took them prisoners at Manchester? I said we would treat them as prisoners, and not murder them. They continued beating me, and one said, 'shall we kill him out and out, and put him in the pit, or let him go?' A man said, 'he has had enough;' another, 'if he has any more he'll die.' They then desisted and held a consultation, after which one of them asked me if I would consent to go down on my knees, and never be a King's man again, and never name the name of the King any more? I said 'yes,' as I considered my life was in danger. I fell on my knees; the words I now mentioned were proposed to me, and I repeated them. They then let me get up. One man struck me twice after I got up, and that was all. I went to Middleton, as I was unable to go to Manchester. I was unable to stir after I got to bed. I was the next day removed to Manchester, where I was confined to my bed. On the next day, the 16th, I heard the sound of bugles, and on being removed to the window I heard the cry of 'halt!' The crowd then halted near my door. I looked out, and saw the streets filled with people. Those in the centre were in ranks, six abreast. The bugle was again sounded, and I heard the word 'march,' and the party moved on, and began to hiss very loud." In page 307, the evidence of John Ashworth is given; he says: "I saw two divisions come to

“ Oldham on the 16th of August, and join another division, which came up before them. They formed together, and went on ten or twelve abreast to Manchester by the new road. They might be from 3,000 to 5,000 strong, exclusive of stragglers. Many called out to me by name to go with them; but I said they were a week too soon for me; that I could not go till Saturday. Some of them also said they would make a ‘Moscow’ of it before they came back. This occurred at eight o’clock in the morning of the 16th.”

Mr. Justice BURTON.—What is the authority of that book?

Mr. Whiteside.—It is the Life and Memoirs of Henry Hunt. Evidence of apprehension and alarm was there given by several professional persons from Manchester. In page 349 the flags are described. On some of the flags were these inscriptions: *The Rights of Man—Let us die like Men, and not be sold like Slaves—Liberty is the Birthright of Man.* A witness of the name of Ellis says: “I think the meeting was calculated to produce a most appalling effect on the minds of the inhabitants. Mr. Hulton says, page 352: “Undoubtedly there were several gentlemen who were strongly impressed with fear and alarm. My own opinion was, that the town was in the greatest danger.” Mr. Justice Bayley, in his charge, says: “With respect to the banners, I again observe, that those only who show that they were favourable to any motto inscribed on them, by carrying or immediately marching under them, can be considered as liable to any penalty which the illegal nature of any of the inscriptions may warrant.” I call your Lordships’ particular attention to that observation, because it was proved in this case that an arch was erected with a motto, which was relied on as proof of the criminal and illegal motives at that meeting. The learned Judge then “commented with severity upon the resolution that the people were absolved from any obedience to the laws, except on such conditions as was therein expressed, from and after the first of January, 1820.” On that charge and on those facts, Mr. Henry Hunt was acquitted of a criminal conspiracy, and found guilty only of attending an unlawful assembly on the fourth count.

The Attorney-General, I believe, did not quote the case of *Regina v. Vincent*, 9 Carr. & Payne, 91. I shall call your attention to the facts and to the law of it. The first count charges that the prisoners conspired, together with divers other persons unknown, “unlawfully, maliciously, and seditiously to meet and assemble themselves, together with the said, &c., and the other conspirators, at, &c., for the purpose of exciting discontent and disaffection in the minds of the liege subjects of our said Lady the Queen, and for the purpose of moving and exciting the liege subjects of our said Lady the Queen to hatred and contempt of the Government and Constitution of this realm as by law established.” The second count was similar, but stated, as an overt act of the conspiracy, that the conspirators assembled at Newport, on the 19th of April, 1839, to the number of 2000 and more, in a menacing manner with offensive weapons, and did cause great terror and alarm to the peaceable and well-

disposed subjects of Her Majesty. The twelfth count was for a tumultuous assembly. The thirteenth count stated that the defendants, "together with divers other evil-disposed persons to the jurors aforesaid unknown, to a great number, to wit to the number of 2000, heretofore, to wit on, &c., with force and arms, at, &c., unlawfully and in a tumultuous manner did meet and assemble themselves together, and being so met and assembled together, did then and there unlawfully and tumultuously continue together for a long space of time, to wit, for the space of four hours, near the dwelling-houses of divers liege subjects of our Lady the Queen, inhabiting within the said town, and also in divers streets and common highways, there making loud exclamations, cries, and noises, to the great terror, annoyance, and disturbance of many of the liege, peaceable, and quiet subjects of oursaid Lady the Queen, to the great damage, &c., and against the peace, &c." The thirteenth count was for a riot. What was the evidence in support of this indictment? Mr. Thomas Phillips, the Mayor of Newport, says: "In consequence of information I received on the 19th of March last, I directed the Superintendent of Police to go to Pentonville to protect persons and property." Evidence of alarm and danger to the public peace was also given by Mr. Webber and by Mr. Fraser. Then comes an important piece of evidence, which I think is well worth your attention. It is the evidence of Mr. Johnson. "I am a commercial traveller. On the 27th of April I called on Mr. Townsend. After business, he asked me what I thought of the Chartists in Lancashire. I said I pitied them, as they were the deluded victims of designing knaves, who had no character or property to lose, but who sought to excite the people to rebellion, in the hope that in a general scramble they should get something. I asked if they had many Chartists about Newport. He said they had a great many, and that at a meeting just held they had beaten or frightened the magistrates, and he said he was the treasurer of the body. I said in a careless way, that if we had been in our former trade we might have turned it to a pecuniary profit. He inquired what it was, and I said we had been in the trade of supplying the African chiefs with muskets, cutlasses, and pistols. He asked me the prices, and said he would give me an order, and pay cash for them, as he was treasurer of the body. I asked to what extent his order would go, and he replied, 200 to 300 muskets, 500 to 600 cutlasses, and pistols in proportion, and he added: 'You must undertake the delivery at Newport.' I said seriously, for I spoke jocularly before, that we would not supply arms for such an abominable purpose." Baron Alderson, in summing up, said: "I take it to be the law of the land, that any meeting assembled under such circumstances as, according to the opinion of rational and firm men, are likely to produce danger to the tranquillity and peace of the neighbourhood, is an unlawful assembly. You will have to say, whether, looking to all the circumstances, these defendants attended an unlawful assembly, and for this purpose you will take into your consideration the way in which the meetings were held, the hour of the day at which



“ the parties met, and the language used by the persons assembled,  
 “ and by those who addressed them. Every one has a right to act in  
 “ such cases as he may judge right, provided it be not injurious to  
 “ another ; but no man, or number of men, has a right to cause alarm  
 “ to the body of persons who are called the public. You will consi-  
 “ der how far these meetings partook of that character, and whether  
 “ firm and rational men, having their families and properties there,  
 “ would have reasonable ground to fear a breach of the peace ; for I  
 “ quite agree with the learned counsel, that the alarm must not be  
 “ merely such as would frighten any foolish or timid person, but must  
 “ be such as would alarm persons of reasonable firmness and courage.  
 “ The indictment also contains charges of conspiracy, which is a crime  
 “ which consists either in a combination and agreement by persons to  
 “ do some illegal act, or a combination and agreement to effect a legal  
 “ purpose by illegal means. The purposes which the defendants had  
 “ in view, as stated by the prosecutor, was to excite disaffection and  
 “ discontent ; but the defendants say that their purpose was, by reason-  
 “ able argument and proper petitions, to obtain the five points men-  
 “ tioned by their learned counsel. If that was so, I think it by no  
 “ means illegal to petition on these points. The duration of Parlia-  
 “ ments, and the extent of the elective franchise, have undergone more  
 “ than one change by the authority of Parliament itself ; and with regard  
 “ to voting by ballot, persons whose opinions are entitled to the highest  
 “ respect are in favour of it. There can also 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 now required to have it in order to repre-  
 “ sent any part of Scotland or the English Universities. If, however,  
 “ the defendants say that they will effect those changes by physical  
 “ force, that is an offence against the law of the country. No civil-  
 “ ized state can exist if changes are to be effected in the law by phy-  
 “ sical force. And yet eminent persons have done so, as the learned  
 “ counsel has stated, and their conduct was 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 against the present defendants. With regard to the  
 “ speeches of the defendants at these meetings, I entirely agree with  
 “ the observations of the learned counsel, that nothing is more unfair  
 “ than taking a part of a speech without the fair context ; and you  
 “ will, therefore, take the whole that is proved, and consider whether  
 “ anything else that was said altered the effect of the passages relied  
 “ on by the prosecution. You will say whether you are satisfied that  
 “ the defendants conspired to excite disaffection. If you are so,  
 “ you will find the defendants guilty of the conspiracy.” The re-  
 “ sult was, that on this evidence the jury found a verdict of not  
 “ guilty of a conspiracy, and guilty of attending an unlawful assem-  
 “ bly. I will draw your attention to the last passage in Baron

Alderson's charge to the Grand Jury: "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; 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 those who are 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. The Constitution of this country does not, thank God, punish persons who, meaning to do what is right in a peaceable, orderly manner, are only in error in the views which they have taken on some subject of political interest."

My Lords, the last case I shall trouble you with is the report of the trials of the Chartists. It was also a charge of conspiracy, and it is remarkable for the clear, distinct, and accurate statement of the law by Baron Rolfe. The Chartists were accused of a conspiracy. The people went about destroying mills, injuring property, and forcing men not to attend to their work. Feargus O'Connor was one of the persons indicted. He was at the time the proprietor of the *Northern Star*, and he was indicted in a separate count for writing an article in his paper, in which he seemed to advise the people to stay out. A separate count to meet his case was put into the indictment; that is to say, he was not made responsible for what resulted before he had written this article; he was only to suffer for what he had done himself. I have heard the doctrine stated here, that a person who joins an association is responsible for an act which may have been done by it two years before. I will not trouble the Court by reading this evidence; I will merely send it up to the Bench. However, at Preston the military fired on the people. I will now call your attention to the admirable summary of the facts and law, as laid down by the learned Judge; in page 358 the charge is reported. The learned Judge says: "Gentlemen, you have been told over and over again, what no doubt is the fact, that what these defendants stand charged with is the crime of conspiracy, and with that only. There were originally other charges in the indictment, which it is not necessary to discuss, as they have been withdrawn. What I would now call your attention to is the charge of conspiracy, and that alone. What then is that act or those acts which in the eye of the law constitute conspiracy? It has been said that there is great difficulty in this subject, and great confusion in explaining what constitutes conspiracy. I do not see those difficulties to the same extent as they have been

“ suggested by others. Doubtless cases may arise in which it might be difficult to say, if certain acts constituted conspiracy, why they do ; but in the present case, there can be no difficulty at all ; because, for the purpose of this investigation, it is quite sufficient for us to define conspiracy as being a combination of two or more persons, either to do or to cause others to do an illegal act, or to bring about a legal act by illegal means.” The learned Judge then proceeded to state the charges in the indictment, the first count of which was, that Feargus O’Connor conspired, &c., by causing to be brought together divers unlawful, tumultuous, and riotous assemblies, of seditious and evil disposed persons, and by forcing and compelling divers of Her Majesty’s peaceable subjects, then employed in their respective trades, to desist and to depart from their work, and by divers seditious and inflammatory speeches, &c., to create alarm, discontent, and confusion, with intent thereby unlawfully to effect and bring about a change in the laws and Constitution of this realm. The second count charged a conspiracy by force and violence, creating alarm, to cause changes in the laws and Constitution of the country. The fifth count stated, “ That Feargus O’Connor, with divers persons unknown, conspired to excite the Queen’s subjects to disaffection and hatred of her laws.” The learned Judge, with regard to this charge, says : “ Standing alone, that is nothing ; these are mere idle words. You cannot charge persons with exciting hatred to the laws—for how is that done ? You must have it explained. By what means is that done ? You must put that out of the question. By endeavouring to persuade the Queen’s subjects to unite, confederate, and agree to leave their employments, and produce a cessation of labour through a large portion of the realm, with intent thereby to bring about a change in the laws and Constitution.” He then says : “ You have heard it stated by one of the learned counsel at the bar, that a difference of opinion exists among very high legal authorities, as to whether, under the comparatively recent Acts of Parliament passed on the subject of combinations among workmen, the merely *persuading* people not to work till the Charter became the law of the land, is or is not criminal ; for the purpose of this inquiry, I should distinctly tell you to consider it criminal—for this reason, that one of the counts in the indictment charges no other criminality but that. And if you should be of opinion, in reference to all or any of the defendants, that that is all of which they have been guilty, then you will find them guilty on that count only ; and it will be then for the Court of Queen’s Bench to say, whether that count does or does not bring them within any thing criminal according to the true construction of the law.” In page 362 : “ The charge, be it always present to your minds, is not that of having attended illegal meetings, of having uttered seditious speeches, or of having turned workmen from their employment, or of having caused tumult, violence, or outrage ; and if the defendants, or any of them, have been guilty of any of those, they are still liable to be indicted for such offence, and their conviction or acquittal on this indictment will neither protect nor hurt them, but the sole charge here is, that they combined and conspired together to

“ effectuate certain objects ; if they did so, from that moment  
 “ the crime here charged is complete, even though not a single man  
 “ has turned out, or a single outrage been committed. On the other  
 “ hand, if there was a conspiracy, and that some who took part in the  
 “ proceedings resulting from it were ignorant of the conspiracy and  
 “ the object of it, they are no more guilty of the charge contained  
 “ in this indictment than those who took no part in it, not having en-  
 “ tered into a combination or agreement. That being so, I say the  
 “ difficulty at the very outset likely to present itself to the minds of  
 “ those considering subjects of this sort for the first time is, that if the  
 “ crime consists in the agreement to do certain unlawful acts, how are  
 “ we to find that any such agreement has been entered into? In the  
 “ ordinary transactions of life, when parties enter into an agreement,  
 “ they manifest it by reducing it to writing, or by making it verbally  
 “ amongst themselves, and the evidence of the writing or the person  
 “ who heard the agreement made will be sufficient to substantiate it.  
 “ But in order to convict persons of a conspiracy must we have the  
 “ same sort of evidence? must we find the parties reducing to writing  
 “ what they conspired to do? or must we have the evidence of some-  
 “ body who was present and heard them when they were entering into  
 “ the compact? Certainly not. Perhaps the most satisfactory evi-  
 “ dence would be that of persons who were present when the in-  
 “ dividuals charged with the crime had entered into the agree-  
 “ ment, or when they did that which clearly amounted to such  
 “ an agreement; but this is by no means necessary. You may con-  
 “ vict parties of conspiring together to effect a certain purpose,  
 “ although you may have no writing to show such combination or  
 “ agreement, or although you may not have the evidence of any  
 “ who was present and heard such agreement when it was entered into.  
 “ You may infer that there was such an agreement, from the acts which  
 “ the parties committed. In the reply of the Attorney General yes-  
 “ terday, he was alluding in some degree to this view of the case. I  
 “ think his language went beyond what I have stated to you the law  
 “ would warrant. Probably he meant the same thing that I did, but I  
 “ think the expression made use of was calculated to mislead. He  
 “ stated in substance—these are not his exact words—that if these  
 “ parties were going about lecturing and exciting parties to all those  
 “ acts referred to in the charge, and if they were all recommending the  
 “ same line of conduct, that that would amount to a conspiracy. The  
 “ only qualification I put on that, in laying down the law, is this, that  
 “ that would not amount to conspiracy at all. It might be evidence  
 “ from which you might infer a previous combination; it might be  
 “ evidence leading more or less forcibly to that conclusion, according  
 “ to all the surrounding circumstances.” Then, my Lords, he says:  
 “ As to a great many of these defendants, there will be no other evi-  
 “ dence whatever, at least that I have been able to discover, of pre-  
 “ vious combination or agreement to carry out any of these illegal  
 “ purposes, except so far as it is to be inferred from their acts in en-  
 “ deavouring to carry the strike out. With regard to others of  
 “ the defendants, so far from that being the case, it is quite clear



“ they took no part at all in the actual carrying out of the strike, and the only evidence against them would be (I allude particularly to what were called the delegates in Scholefield chapel), their meeting together, and entering into resolutions and transactions of that meeting. So that as to a portion of the defendants, you will have to convict them (if you do convict them), on one sort of evidence, the inference from their acts.” In page 375: “ In order to convict parties of such a charge, you must show such acts perpetrated by them, as indicate such a complete union of design as makes it impossible not to see there must have been some combination beforehand; not, perhaps, all meeting together, but one saying to another: ‘ Well, we will go to such and such a place, and we will get John Smith to go to such and such a place, and do so and so.’ It might be proved either that such was the case, or by distinct testimony of meeting, combining, and arranging to carry such things into effect.” His Lordship made some observations on the devices on banners and flags, to which I will call attention; he says: “ If a placard has no serious mischief in it, and merely some expression which I dare say the writer thought very sublime; it would be a great deal too much to dwell with too much minuteness on an expression of that sort, in reference to a crime of that magnitude, which you have now to consider. . . . I can quite pardon the expression: ‘ Leave the decision to the God of justice and of battle.’ But what is the meaning of this, which I marked, when the placard was sent up to me, as being, I must say, the worst part of the address? ‘ Englishmen, the blood of your brothers reddens the streets of Preston and Blackburn, and the murderers thirst for more.’ That is only vulgar and inflammatory; but now what do you make of this? ‘ Peace, law, and order have prevailed on our side.’ That struck me as one of the most important statements in the placard, because it led me to the conclusion that the persons who prepared and issued it, did not think it any breach of the peace, law, and order, to commit the outrages of which they must have been cognizant, of which charity itself would hardly suppose that those who drew up the address were aware.”

Now, Gentlemen of the Jury, having stated the principles to the Court, I come to the facts of this case, which from the singular attention you have paid to this trial, cannot have escaped your notice. Let us see what is found in this indictment before we proceed further. According to the principles which I have stated to the Court, your duty is to find what the parties have done. What is it? that they agreed on a political question?—No. Is it, that they combined to carry out their views on that subject?—No: but that they confederated and conspired, by a complete union of purpose—by unity of design—by a prearranged and preconcerted plan, to do all the acts set out in the indictment. If you find them guilty on one count of the indictment; if you find them all guilty, you must find them guilty of having done the things specified in that count, with the intent laid in that count, for the illegal object specified in that count, and none other.

Mr. JUSTICE PERRIN.—You do not mean that the jury are to find that the traversers committed every overt act?

Mr. *Whiteside*.—No, my Lord, but they must find them all guilty on one count, of one and the same conspiracy. The conspiracy is distinct from the overt acts.

Mr. JUSTICE BURTON.—In what way is the trial of Mr. Feargus O'Connor authenticated?

Mr. *Whiteside*.—It is published by Mr. Feargus O'Connor himself. It was taken in shorthand by himself, and published. He states that he was quite satisfied that he had been convicted according to law.

Gentlemen of the Jury, the overt acts are perfectly distinct from the conspiracy. They are the matters put forward to establish the conspiracy. You must be satisfied, in order to find a verdict of guilty, that it is impossible that the traversers could have done those acts except for the purpose of carrying out that complete, fixed, and settled combination, confederation, and agreement, specified in the indictment. The Attorney-General may make out this conspiracy in one of two ways,—by positive proof that the eight traversers entered into a conspiracy to do those acts, or by inference, from the several matters which have been given in evidence before you. There is no evidence to show an express agreement to do those things. I therefore come at once to the consideration of the second part of the case, that is to say, can you infer from the evidence that there was a previously arranged plan to do these things? The object of my client is to accomplish the repeal of a certain Act of Parliament, called the Act of Union. That object is perfectly legal. No Parliament can make a law that another Parliament cannot unmake. The Legislature of one period cannot bind and fetter the Legislature of another period. If it was so, absurd and cruel laws would become perpetual, and oppress posterity. It was not even asserted in this case that an agreement to procure a Repeal of the Union was not a legal object; therefore, if you, Gentlemen, agreed for that purpose, and one of you did an unjustifiable, illegal, and unwarrantable act, even in pursuance of the common and legal object for which you are combined together, that does not make your previous agreement illegal; nor are those amongst you who agreed to a legal object to be visited with that illegal act. A great body of evidence has been tendered and received in this case. 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 for the same reason, and the speeches of Mr. Steele; but if my client agreed with them for a legal and constitutional purpose he cannot be made accountable for the intemperate effusions which he never combined or agreed should be spoken. Those acts cannot fix guilt on my client, unless it be clearly proved that they were done in pursuance of the common object—that common object being to effect a Repeal of the Union not by lawful means, but by unlawful violence, and by some of the absurd means stated in the indictment, and none other. Gentlemen, I freely admit that while an object may appear to be lawful, the means resorted to in order to effect it may be unlawful, and

therefore I at once come to the consideration of what those illegal and criminal means are, by which it is alleged the traversers sought to carry out this originally legal object. And I will first draw your attention to the vast meetings which were held in different parts of the country, and will consider the general character of those meetings in mass. They began on the 19th of March, 1843, and ended in October of the same year. I exclude from this general consideration all the meetings of the Association; and I will just observe in passing that there is no complaint of these meetings as unlawful assemblies in themselves—there is no charge of riot, or of a breach of the peace, or tendency to it—no injury to property, no assault on any person—and therefore, strange enough, you are required to believe that attending at those meetings, or causing those meetings to be held, not for an unlawful purpose, because the purpose was to obtain a Repeal of the Union, are overt acts proving a general conspiracy. These meetings were quite consistent with the previous agreement of opinion on the subject of the Repeal of the Union, they were the necessary result of that agreement; and because the object was to carry the Repeal of the Union by the only means by which it could be carried, by a concentration of moral opinion. I care not for those preposterous words in the indictment, “demonstration of physical force,” they are not explained—there is nothing to lead the understanding to what they mean. Because these large numbers of people assembled together, you are called on to come to the conclusion that these very meetings are overt acts to prove a conspiracy. A few words as to the numbers at those meetings. I have already read to you the language of one learned Judge: “God be thanked, it has never been questioned that the right of the “people of England to petition is their ancient, undoubted, and unquestionable privilege.” Well, the people may meet to petition, let me ask you in what numbers may they meet? Where is the line to be drawn between the number which makes a meeting lawful and the number which turns the same into an unlawful meeting. Is it to depend upon the weather whether a meeting is lawful or unlawful? Is a meeting of 20,000 men unlawful? Is a meeting of 10,000 men unlawful? Was the meeting at Hillsborough, some years ago, unlawful? Is it unlawful for 75,000 men to meet for the purpose of petitioning for a Repeal of the Union, and lawful for the same number to meet, in order to petition for the maintenance of the Union? If that be stated and asserted to be law, I can only repeat that the law of England has ceased to be the rule of reason. The circumstance of the number of persons, I admit, may be an important element for your consideration, if there be reason to entertain alarm and terror from the meeting. But if persons meet together in peace, sobriety, and order, and conduct themselves at the meeting with propriety and decorum, and separate peaceably, and return to their homes with tranquillity, I require the Solicitor-General, since questions have been put to us in the progress of this trial, to state to you whether he requires twelve men, administering the law of England, to adopt the monstrous doctrine laid down by the Attorney-

General, that the more profound the tranquillity, the greater the peace, the more perfect the order, the greater the illegality—the more complete the determination not to violate the law, the more incontestible the proof of crime and of conspiracy. If men resolve not to break the law, but to assert their rights by legal means—not to assail personal liberty, or personal property, I want to know how these several circumstances can make out by just, sensible, or intelligible argument, that the particular conspiracy laid in the indictment is proved?

Gentlemen of the Jury, I think I can say with truth, that these meetings are disliked by kings and ministers. Men born to command dislike to hear the language of the people expressing in tones of indignation their grievances or their wrong? Such sounds startle their ears and disturb the serenity of a court. Ministers dislike public meetings at which the people may express their grievances or their wrongs, and state that they are not well governed, because they thereby pronounce a censure more or less upon those to whom the government of the country is intrusted; for ministers are more or less affected by the opinions of the mass of the people for whom all Governments are instituted. Declarations of the people that they are not satisfied, that their grievances ought to be redressed, involve more or less censure, and therefore ministers dislike such meetings. A meeting trifling and contemptible in numbers will pass unobjected to and will produce no effect. Try it by this test: suppose the twelve gentlemen whom I have the honour to address agree in opinion on some question—a fiscal question, or any other in which they may be interested—and hold a meeting; let your arguments be the most convincing, your facts incontrovertible, your reasons overwhelming, still your meeting would be treated with contempt by the Press, and your observations would produce no effect. Suppose 1200 men meet to express their opinions, the Reporters will flock to hear them, the speeches will be reported, and the arguments will reach the public; their resolutions will find their way to the minister of the day; he begins to see what is the bearing of the public mind on the particular question, his slow and immoveable nature is stirred up. Suppose instead of 1200, that 12000 persons meet, what is the result? Suppose they do not prevail by their first meeting, and they meet a second, a third, and a fourth time, and say, in plain and unmistakeable words that their grievances must be redressed; that the minister must consider the cause of complaint; that it must be discussed; that he must not treat their arguments with contempt but listen to reason, and that if those arguments are well founded they must prevail—what would be the result of such a meeting? Would it not produce important results? Would it not, at all events, draw the attention of the Government and the Parliament to their grievances and their wants? They would not be conspirators because they agreed in their common object of endeavouring to get their grievances redressed—they would not be conspirators although one of the 12,000 made use of intemperate or violent language, and although some wicked incendiary disseminated through the meeting some scandalous or seditious production, which was never known or adopted by



the meeting. Gentlemen, the humbler classes of the community have the same right to meet as you have. No difference between you and them is known to or recognized by the law or Constitution of this country. Their opinion is not equivalent to the opinion of men who are in the same rank as your's—they must therefore compensate for the loss of moral weight by the addition of greater numbers. If they meet and express their opinions peaceably, and if the Reporters who were sent here from England were astonished at the peace, order, and good conduct observed by the savages who inhabit this part of the empire, then those meetings are as legal as your's would be.

Gentlemen, I will now call your attention to a few of the great public meetings which have taken place in England, and which were not illegal because they took place under the eyes of the Attorney General and Solicitor General of England. The first of these meetings to which I shall call your attention, is that which Mr. Ross, one of the Crown witnesses, proved that he was present at; that was the meeting of 200,000 persons which was held in London. They met together to discuss the grievance of the sentence passed on the Dorchester labourers. 200,000 men marched to Downing-street to visit Lord Melbourne, who was then Prime Minister, with a petition which it took twenty men to lift, containing their opinions on the sentence inflicted by one of the Judges of England. They were headed by a Clergyman of the Established Church of England, Dr. Wade, in his robes. Remember, one of Mr. O'Connell's wicked actions was, that he went to one of these meetings in his robes of office. It is not very likely that a man who was going to encourage a riot or a breach of the peace, would go to a meeting in his robes. Dr. Wade headed the meeting in his full robes, the Attorney General of England looking out at them as they marched through the street. Gentlemen, I will read to you a short account of that meeting, that you may see how quietly and in what capital style they do these things in England. It is taken from a newspaper of the 27th of April, 1834: "The meeting assembled at six o'clock, in Copen-  
 " hagen Fields. At eight o'clock the principal lodges, headed by  
 " their respective officers, with crimson collars, marched five or six  
 " abreast, in regular, almost military order. The view of such large  
 " columns was most imposing. The numbers could not be less than  
 " 200,000. The different lodges were distinguished by appropriate  
 " banners; and at their head marched Mr. Owen, in a blue cloak  
 " and crimson collar, and Dr. Wade in his clerical robes." Now, Gentlemen, what is the result of these 200,000 marching through the streets of London, with flags and banners, uninterrupted by any body?—what is stated by the Prime Minister of the day?—that 200,000 men coming to present a petition, is a thing which cannot be sanctioned by the Government. "Your meeting is justifiable; it is for a justifiable object; your petition is justifiable, your conduct is justifiable; but I cannot receive a deputation consisting of 200,000 men. Send me your petition to-morrow, and I will receive it and lay it before the King." Was it suggested that they were guilty of a 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, and not to interfere, unless they observed a tendency to riot or confusion. There was no riot or confusion at the meeting. It was a lawful meeting, but I admit it was objectionable, because so large a body of men marching to the King or the Houses of Parliament with a petition, is a proceeding which ought not to be sanctioned. The account of the meeting is given in the *Morning Post* of the day. That paper commends the conduct of the Government for not interfering; and speaking with regard to the *Times*, who had censured the meeting, observed that they thought such censure came strangely from that journal, who, previously to the passing of the Reform Bill, had sanctioned and encouraged the use of the brickbat and the bludgeon.

I shall now call your attention to the meetings which were held at Birmingham, previous to the passing of the Reform Bill. A meeting of the Birmingham Political Union took place on the 8th of October, 1831. The following is the description of that meeting, given by one of the newspapers of the day: "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. There never was, we may safely assert, any previous occasion upon which such deep and universal excitement pervaded the mind of Birmingham and its neighbourhood. Notwithstanding the numerous and highly respectable meeting which took place for a similar purpose, under the auspices of the High Bailiff, so late as Friday last, the inhabitants looked up to the meeting of Monday, as the one which would most effectively develope the state of public feeling: and in this they were not mistaken. The day was ushered in like a day of triumph, by the ringing of the church bells, and by ten o'clock the inhabitants were upon a general move to the place of meeting. 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, and peculiarly well formed for such a purpose. It consists of 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, Scholesfield, Muntz, Jones, &c., and preceded by the band, began to arrive on the ground, 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 various 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. Taxa-*  
 " *tion, without Representation, is Tyranny. Lawler 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 regenera-*  
 " *ted, Scotland renovated, and Ireland redressed. The best Security*  
 " *for the Throne of Kings is the People's Love.* It is utterly impos-  
 " sible adequately to describe the appearance of this most magnificent  
 " assembly. When the Council had taken their stations on the plat-  
 " form, 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. In our  
 " opinion, moderately speaking, the numbers could not possibly fall  
 " much short of that number. The spectacle was the most splendid  
 " of the kind we ever remember to have witnessed. On the ridge of  
 " the hill which crowned the amphitheatre, the banners, in numbers  
 " about twenty, were placed at equal distances, and gave a beautiful  
 " finish to the perspective. Among other distinguished persons present  
 " on the occasion, drawn to the spot by motives of curiosity, but  
 " who took no part in the proceeding, were Prince Hohenlohe (the  
 " brother of the celebrated prophet of that name), and the Chamber-  
 " lain 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 manufac-  
 " ture ; they had likewise had the good fortune of witnessing an un-  
 " paralleled exhibition of Birmingham public spirit." It is not ne-  
 " cessary for me to read the speeches, but the speakers used very warm  
 " language. They plainly said they will have their rights ; that the  
 " Reform Bill shall be passed ; that the then representation in Parlia-  
 " ment was a mockery, a libel on the Constitution, an insult to them ;  
 " that the wealthy inhabitants of Manchester should not be represented,  
 " though a miserable town close by had two representatives. They say  
 " that might be law, but that it was not constitutional—that it was against  
 " the spirit of the Constitution, and all law must be redressed. They  
 " went further ; they intimated their intention to pass a resolution not  
 " to pay taxes, and to send up a small party of 100,000 men to London  
 " to quicken the deliberations of the House of Lords. Did the Minis-  
 " ters of the day presume to say that the meeting was illegal ? No  
 " Attorney-General, who ever stood on English ground, would have  
 " dared to say so. I do not say this insolently or presumptuously.  
 " Those men knew their rights, whether their opinions were right or  
 " wrong, it is not for me to say, but they expressed those opinions,  
 " and combined to carry them into execution ; they became powerful,  
 " and plainly stated that since Reform was resisted by the oligarchy for

unjust purposes, they would compel them to grant by the display of a great moral confederation, or by what the Solicitor-General will call a demonstration of physical force, which is, after all, but a decisive expression of opinion. They had many of the rich merchants and wealthy traders with them, and a great portion of the physical force of the country at their back; they said that the law ought to pass, that the resistance to it was corrupt, that it was resisted only because men wished for their own profit to prevent it from becoming the law of the land—that they should not prevent it. That it is now the law of the land is perhaps as much owing to that meeting as to any other cause. I remember to have read that Lord John Russell said, that he saw no reason why the people should not speak out, that the whisper of a faction would never put down the voice of the nation. There was no prosecution resorted to on that occasion, none of that mawkish sentimental twaddle about men coming together to express their honest, firm, and deliberate conviction that such a law should be the law of England. They sought to redress their wrongs, and to secure their freedom, and therefore it was that they met and passed this resolution. There were other resolutions which I shall not read to you, but which were of a very strong character.

Gentlemen, I shall now bring the Attorney-General to the county with which he is connected, his own happy Yorkshire. In that county he represents a borough, and I am sure a better, or more honourable representative cannot be found. I will bring him back to Yorkshire, and tell him when next he goes there, to inquire about King Richard, that is, Mr. Oastler, and to see his placards. I need not tell you that there was very great discontent in the north of England on two subjects, the Poor-Law Bill, and the Factory Bill. The mass of the people considered that those employed in the factories, both young and old, were in fact nothing better than slaves—slaves under the beneficent rule of England, more wretched, as they describe it, than the black slaves; that their children were forced to work before they were able to do so. Speeches and songs were made against what was called this grinding and remorseless despotism. I quote from the *York Herald and General Advertiser*, of the 28th of April, 1832: “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.  
“ Though much of the interest of its appearance was certainly taken  
“ away by the very unfavourable state of the weather, yet we are  
“ happy to say that this untoward event in no wise damped the spirit  
“ of the proceedings. Early on Monday morning the bustle began  
“ in Leeds; the streets were crowded with people, waiting to witness the arrival of the different divisions; the bells of the parish  
“ churches rung merry peals, and, as the weather was then favourable, the scene was altogether lively and cheering. According to  
“ the programme the various divisions of operatives entered Leeds  
“ from Halifax, Huddersfield, Bradford, Dewsbury, Heckmondwicke,  
“ Holmfirth, Keighley, &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; but it is needless for us to dwell upon the minutiae of a dark and dreary march through rain and mire, and it is sufficient to observe that a strong sense of duty, and the consciousness of being engaged in a righteous cause, kept up the spirit, and gave nerve to the exertions of those thousands of pedestrians.” Mr. Oastler made a speech; anything more distinct and emphatic was never heard. He described the infantine slavery which existed as worse than that of the blacks. They resolved on petitioning Parliament, and Lord Ashley was instrumental in gaining the Ten Hours Bill, which was not then, but is now the law of the land. They met in thousands and tens of thousands; they remonstrated, they combined to carry their object, they assembled with banners and music, and some of their language was more violent by a thousand degrees than any which has been used in the course of this Agitation. They reviled the aristocracy, and declared that the wealth which they possessed was procured by the sweat and labour of the poor. Did the Attorney-General ever say that this combination for a common object, or the means which they took to carry that object were illegal? They had processions, they marched with lighted flambeaux, they came in thousands, fifty, sixty, seventy, eighty and a hundred miles; for what purpose? to compel the Legislature to do what? to listen to their grievances, to discuss their grievances, to hear their complaints and to redress them, to listen to the call of humanity on their behalf, and to do the unfortunate artisans in England that justice which I hope will yet be done to the unfortunate labourer in Ireland. Gentlemen, there is an account given, I think it is in the history of the Factory Regulation Bill in 1832, of the means which were employed to carry that Act. They call these gatherings by the name of the Pilgrimage of Mercy. There could be nothing more exciting than the language of these publications, they held out the manufacturers to be worse than the slave owners, they insisted that the law should be altered, and it was altered.

Gentlemen of the Jury, I will now call your attention to the Hillsborough meeting which was mentioned by Mr. Sheil; it is described in the *Evening Mail* of the 31st of October, 1834. The men of the north are there described as having done their duty well, and I am happy to hear it, I admire and like them for it. They marched by Hillsborough “in border fashion,” to do what? to meet, and by a demonstration of physical force to express, what? that the Union should be maintained, and that they would support it and resist its repeal at the sacrifice of their lives and fortunes. They had a right to come there with 75,000, marching “in border fashion,” to hear bold speeches and strong arguments in support of the Union, and do you think that if they met to-morrow again to express their determination to maintain the Union, and to declare their confidence in the Attorney-General and the Solicitor-General, that they would not be greatly obliged to them for doing so? Do you think that if they passed a vote of thanks for the spirit, zeal, and ability, and, I will add,

moderation, with which this prosecution has been conducted, that the Attorney-General would not return them thanks in his most flowing and graceful style. Would he not say, "Gentlemen, I am deeply grateful, and believe me, to the last moment of my life I shall be sensible of this expression of confidence and approbation of my conduct and of that of the Government, of which I am an unworthy member, and of your determination by a great demonstration of physical force, to sustain the Law, the Church, the State, and all the Established Institutions of the country." Yes, Gentlemen of the Jury, 75,000 men met at Hillsborough for a common object and a common purpose. There were no women or children amongst them, and I will venture to say that there was hardly a man there who could not handle a gun, or polish a musket; and I believe the Attorney-General in his heart rejoices that they could. Suppose that these 75,000 men had come to a resolution, such as the following: "Resolved—We are of opinion, that the Union is unconstitutional, illegal, and a grievance, and should be repealed." I want to know whether they had not a right to meet and express that opinion—whether they had not a right to bring banners and flags, and bands of music, and to play those tunes with which my friend, Mr. Napier, is so familiar, for full many a time and oft he has defended most respectable clients, charged with slight excesses which they may have committed on their return from those pleasant parties where they commemorated him, who, as Lord Plunkett expressed it, "came to conquer Ireland to happiness and freedom?" Suppose that they met, "in border fashion," and declared in bold language that they would give their confidence to the Minister of the Crown—that they would back him with their lives and fortunes if he upheld the agitation; and, Gentlemen, I certainly think they were formidable. But what would be said, instead of five, ten, or fifteen thousand men, women and children, 75,000 Protestant Yeomen, with arms in their possession, met to support the Government with their lives and fortunes? Have they a right to support the Constitution? Have they a right to resist the Repeal of the Union? The Solicitor-General, by this prosecution, says, that they have not. I say they had. I say there is no law for one class of men more than for another. There is no law to enable 75,000 men to meet and petition, in support of an Act of Parliament at Hillsborough, and at the same time, to prohibit 75,000 to meet, in order to petition the repeal of the same Act at Tara Hill? But when twelve gentlemen are considering the true character of this prosecution, I have no more doubt than that as I am a living man, that no consideration of a paltry political nature will draw their minds to the conclusion that meetings are illegal, which are held in the exercise of petitioning the Sovereign or the Legislature, a right as undoubted as that of our gracious Sovereign to the throne of these realms. I know that you will never act on a partial, intolerant principle. You will never say that the men of the North have a right to meet and discuss, in order to petition Parliament; but that the men of the South have no such right. You will say that the law of England is an impartial law, and knows no distinction between one man and another, which does not dis-

criminate between different religious or political creeds, but extends its protecting shield alike over all. You are too sensible of the benefits of the constitution of which you are this day the guardians, to say that men have not a right to meet to petition, provided that they meet *bonâ fide* for that purpose, and provided it is not a mask to conceal a plot, or a combination to destroy the institutions of the country, to spread ruin and devastation through the land, and provided that meeting does not violate the letter of the law or the spirit of the Constitution.

And now, Gentlemen, I will consider the general character of the meetings, as collected from the evidence which has been brought forward in the case. I will consider the evidence *en masse*, and will not go through the different meetings *seriatim*. Analyse with accuracy that evidence, and compare it with the testimony which might have been given. Rank and file, we had the whole police establishment in Ireland produced on the table; I mean to say, that there is no rank, office, or degree in the constabulary department, a representative of which has not been brought before you in the character of a witness. We have had Police Sergeants and Police Constables, Chief Constables and Inspectors of Police, Stipendiary Magistrates and aspirant Inspectors. We, on the part of the traversers, have adopted every expedient which human ingenuity could suggest in order to obtain undeniable and authentic evidence of the true character of these meetings. During the few weeks' respite which your Lordships were kind enough to allow us, we have had agents in every part of Ireland to discover whether any act of violence had been done, to make inquiry whether the meetings occasioned alarm or terror, whether any person was assaulted or any property was injured, whether the resident gentry, or men of business, or men of political opinions different from those of the traversers, felt alarm or terror at these assemblages of the people, and what is the result of all the mass of evidence given before you even by the Crown? That there was no infraction of the law, no violation of the peace, not even a tendency to a breach of the peace, no infraction of good order or decorum, no exhibition of arms. The police officers might have been asked not only whether they felt alarm themselves, but whether any person in the community had complained to any one of them that he felt alarm; no such question was put on behalf of the Crown. The result, therefore, of the whole evidence is, that perfect peace and unbroken tranquillity prevailed at these meetings. If the meetings were held, as the Attorney-General declares, for the purpose of instilling awe into the public mind, why did not the Attorney-General bring witnesses from Mallow, from Baltinglass, or from any other of the districts where they were held, to prove that they were alarmed at them. Not a living being was produced to prove that fact. The police were at every meeting, sometimes in their uniforms, but more frequently disguised in plain clothes. They were dispersed through every meeting—they were in the nature of spies for the Crown. I do not mean to use the word in an offensive sense, but their duty was, to watch and make inquiries, and report all they heard and saw. What

was the result of their evidence? What was the sum and substance of their testimony, combining and concentrating their evidence from first to last? 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 on them; that the people conducted themselves invariably with peacefulness, good order, and tranquillity; although when large multitudes are assembled together, if one man commits a violent act all present may be involved in the consequence of that, yet on no occasion was there an instance of impropriety even on the part of a single individual. If the contrary was susceptible of proof, why was it not proved? No witness proved that there was any display of weapons of any description. The people went empty handed to the meetings, or else they were armed with nothing more than a white wand, somewhat similar in length and thickness to the switch wherewith my learned friend and myself, in former years, were corrected for our boyish misdeeds; and even they were used only for the purpose of preserving order, and preventing confusion and obstruction on the roads—such is the evidence of our crime, such is “The head and front of our offending.” The monstrous proposition for which the Attorney-General is contending is, that the more peaceable, the more orderly, the more decorous the meetings were, the more deserving they are of reprehension. How am I to defend those men, if that doctrine be admitted, that the more peaceable their demeanour the greater is the proof that a conspiracy existed; and if that peaceable demeanour is only evidence of the atrocity of our fell intent? According to this doctrine, it naturally follows, that if you, Gentlemen, had been put into the jury box for the purpose of deciding on the sanity or insanity of a man, every proof that his words and actions have been in the strictest conformity with the dictates of unclouded reason, must be regarded as damning and conclusive evidence of his insanity. In conformity with that doctrine, the Attorney-General calls upon you to say, that the legality of our proceedings is to be regarded as proof of our intention to carry a legal object by illegal means. If the persons assembled at these meetings had demeaned themselves like violent, besotted men, beating and knocking down all they met, that, according to the Attorney-General, would have been quite natural and consistent with the true Irish character; the law would have been broken in the manner in which it ought to be broken, and as it has been broken in Ireland from time immemorial. But if men lay aside the national vice which has gained them a reputation throughout Europe—if they meet silently and peacefully—if they demean themselves with courtesy towards every person, and with the strictest order, the Attorney-General calls for Hawkins and Hale to prove that they have been guilty of treason, conspiracy, and everything that is horrible. But the Attorney-General says that the resolution to petition Parliament was only a pretext to give a legal complexion to these meetings, and, indeed, I understood him to say that he would adduce evidence to prove that no petitions were presented to the House of Commons. He has brought forward no evidence to prove this statement, nor was it material that he should do so. That question arose in Hardy’s case, and it was clearly shown by Mr. Ers-



kine, that a meeting was not to be deemed criminal or illegal because a petition was not presented with panting expedition. The true object was to have a great number of petitions prepared, in order that they might have more weight and influence when Mr. O'Connell came to present them in mass—that was the plan adopted by the Chartists in England. They did not present a petition until they had obtained three millions of signatures. Was it said that this was illegal? What does Baron Rolfe say with regard to the Chartist meetings? “What numbers can make a meeting illegal; what quantum of organization and arrangement; what deputations from one to another; what quantum of all or any of these makes a meeting illegal, is a question which must depend wholly on degree. It is very difficult to lay down any rule *a priori*, and, therefore, I will not encumber the present sufficiently encumbered case, by stating what my view of the law is on that point.” This case, therefore, so far as the numbers are concerned, ends in nothing. They had a right to petition. They came in numbers, but there is no law to say that it is illegal for a number of persons to seek, by petitioning, a legal object—the repeal of that Statute, called the Act of Union. It would have been absurd to have presented a single petition, when, as the Attorney-General admits, no more than thirty members of the House of Commons were favourable to the Repeal of the Union; it was, therefore, necessary and proper to wait until a sufficient number had been procured, so as to present them in mass, and to make the desired impression on the Parliament.

I shall now call your attention to two or three circumstances, in relation to these meetings. The first peculiarity connected with them is the attendance of the Temperance bands. The Attorney-General must have a very inharmonious turn of mind if he objects to the Irish people seeking so innocent an amusement, instead of the poison by which they formerly inflamed their minds, and perverted their understandings. I say that it is commendable in them to do so, although I cannot say that those Temperance bands are very harmonious. But did these bands play party tunes? not like the bands in the North of Ireland. The good and loyal music which they play is: “The Protestant boys will carry the day;” “The Boyne Water;” “Down, down, Croppies lie down.” These are the only loyal tunes in the North; they despise all other music; and many a broken head and black eye was the result of not joining with the loyal bands who play these loyal tunes. They never play “God save the Queen” there at all, and because the Temperance bands play it, the Attorney-General says it is rank treason. One of the witnesses stated that these bands had colours, and wore fancy uniforms, and played “God save the Queen.” How excessively annoying to loyal ears! Why, Gentlemen, I never heard such music as the Temperance bands play. But because men dress themselves in fancy dresses, and amuse themselves with music instead of going to a public house, depriving themselves of reason, and unfitting themselves for the discharge of their duties, the Attorney-General says they are guilty of a conspiracy. Well, I think the charge was not far wide of the mark, for I never heard of a fouler or a darker con-

spiracy to murder harmony. O yes! these Temperance bands did conspire, confederate, combine, and agree to murder harmony. Well, but they had flags and mottoes, not perhaps such as the Attorney-General would have selected; these would have been *Church and State*; *The Constitution, as settled in 1688*, and others, to which, no doubt, my learned friend is sincerely and devotedly attached. Those are the only loyal mottoes in the mind of the learned Attorney-General. But these banners did not bear the motto of *Church and State*, for the first of them was *Liberty, and Old Ireland for ever*; another was *Repeal of the Union*; and another, *We will not be Slaves*. There is treason for you! The people say, "we will trust in O'Connell, who tells us to come quietly to a meeting, and to go home peaceably." That is conspiracy! They take his advice. Worse and worse!! Oh, say the Crown prosecutors, these fellows will not get drunk and break each others' heads; they will not go to jail; they will persevere in dogged peace and tranquillity. Wicked obstinate fellows! We shall all be ruined; Sir Thomas Staples will not have a single case in the North, next circuit. From North to South, from East to West, not a man will go to jail. It must be treason; rank and foul conspiracy. No wonder the Crown prosecutors became alarmed when they saw matters going on so quietly, and so unfavourably to them, so they resolved that Temperance must be put down, and then the Irish will drink, and fight, and recover their senses in jail; and so the Crown lawyers combined, conspired, confederated, and agreed to make it out conspiracy. Talking about mottoes, reminds me of a speech of the Duke of Sussex, which I met with by accident; I will go up to royalty itself. The Duke of Sussex made a speech at the Fox Club dinner, at Norwich, sometime after the Manchester massacre, in 1820. The King's health was given, and 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 is not the way we do in Ireland. When we hear the Queen or Prince Albert's name given, we give three cheers, and fling our hats up into the air, and shout with joy; that is the way we do things here. Those who say that the Irish do not love the aristocracy and the Constitution are much mistaken. I think they are less disposed to republicanism than any other nation. In speaking to a toast at the dinner to which I have alluded, the Duke of Sussex used these words: "I would rather suffer death than lose my liberty." That was the language of one who might have sat on the Throne of England, but the moment a poor Irishman puts—not the words, *Down with the Monarchy*, or *Down with the Bench*, or *Down with the Peerage*, or *Down with the Attorney-General*, or *Down with the Oligarchy*, or *Down with the Privileged Orders*, or *Down with the Borough System*, but *Liberty*, on a banner, the law officers of the Crown start up and say it is conspiracy. There was also this motto, *Liberty or Death*, at that dinner. That motto was questioned by some. The matter was laid before the Attorney-General of England, and he declared that the object of the dinner being a legal one, the proceedings at it

were perfectly constitutional. Let us now turn to some of the banners and mottoes at one of these meetings. It was proved that there was an arch erected at Tullamore with the inscription, *Ireland, her Parliament, or the World in a Blaze*, but that was not put up by Mr. O'Connell, or Mr. Steele, or any of the traversers, or with their knowledge. M'Namara told you distinctly, that persons came to that meeting precisely as they would have gone to a fair or to a market. Afterwards, one of the policemen endeavoured to pervert the facts, and to make out that there was a procession, but he was obliged to admit that the people were quiet. The motto inscribed on the arch was undoubtedly improper and unjustifiable, but, as I have already said it was placed there without the knowledge or consent of Mr. O'Connell, and the moment he saw it he sent Mr. Steele, who, being one of the traversers, cannot be examined, to pull it down, and it will be proved to you that it was taken down before the meeting. Gentlemen, make the case your own; suppose you were going to a public meeting, and suppose that without your knowledge or approbation some rash and misguided person erected an arch over the road through which you were to pass, are you to be made accountable for it, merely because it was erected there, although you did not desire it to be put up. It will be proved to you distinctly, that the moment Mr. O'Connell's eye caught the inscription, he said that he would not go to the meeting until it was removed; that he sent Mr. Steele who had it removed, before the meeting was held. I rely strongly on that fact, as proving that the intention of the traversers was not criminal or illegal, that they meant to confine themselves within the boundaries of the constitution, and not to outstep the limits of the law. The policeman stated that when he passed, an hour or two afterwards, the banner had been removed. I therefore rely on this fact as evidence in favour of the accused, and not against them.

I shall now draw your attention to another circumstance which occurred at Mullaghmast. The counsel for the Crown stated, that they intended to rely on the acts done, and the speeches made, at the several meetings. Now, persons of ordinary understanding would suppose, that it was meant to give evidence of speeches and acts which would lead to a clear conclusion that the persons who spoke and acted were guilty of a conspiracy to carry an illegal object. But I can conceive nothing more absurd than to give the acts of one man in evidence, in order to prove that another man is guilty of a conspiracy, and to convert a lawful meeting, for a lawful object, into an unlawful meeting, and for an unlawful object. We do not object to the inscriptions and banners which appeared there being given in evidence against those who attended that meeting; but we do object, in accordance with Mr. Justice Bayley's opinion, that they should be given in evidence unless they were within the view of the speaker; and if inscriptions which the parties never saw, and acts which they never knew or approved of, are allowed to be given in evidence, I say, there is an end to the possibility of any body of men meeting for the purpose of discussing any subject, however legal it may be. Try this meeting by the test of the meeting at Hillsborough. That

meeting was held for the purpose of supporting and not of repealing the Union. There were 75,000 people present. They made speeches, and they carried banners and flags. Did a question arise as to the legality of that meeting? What is to be the test of the legality of a meeting? I should say, and you would say, that its legality is to be determined by the acts done, by the speakers, by the speeches made, by the inscriptions on the banners and the flags used at the meeting, by the general conduct of the persons assembled, whether they met quietly and returned home peaceably; all these circumstances are to be looked at with the eye of a Christian. They are to be considered as men would consider them, who respect the privileges of the Constitution. They are not to be scanned with the captious eyes of a lawyer. You are not to find men guilty of motives which they never entertained. The traversers met for the ostensible purpose of petitioning for a Repeal of the Union. It lies on the Crown to prove, by indisputable evidence, that this motive was but a mask for treason and sedition. But you are not to find men guilty of the acts of others, over whom they had no control. Lord Downshire and Lord Roden attended the Hillsborough meeting, with their tenantry at their backs. Suppose some ballad-singer from Belfast had sold at the meeting some scandalous, wicked, disgusting production, are Lord Roden and Lord Downshire to be tried, although they went there for a legal purpose, and did no illegal act, because they spoke from the hustings? Are they to be prosecuted, because some bad-minded, illiterate fellow—a spy perhaps—sells that production at the meeting? No. And is Mr. O'Connell to be prosecuted because some obscure individual, for his own private gain, rakes up some forgotten fact of history, and displays it to the eager eyes of the curious people? Where is the evidence that Mr. O'Connell ever sanctioned the vending of that placard at Mullaghmast? Where is the evidence that he ever saw it? They produced Browne, the printer of the Association; and he brought all the documents which he ever printed for them, or which were ever ordered by them. Is that document among them? And are these men to be tried, condemned, and sentenced, because a ballad was sold at Mullaghmast containing the history of an event which occurred nobody knows when? Is that evidence of the plot charged in the indictment? Is that a proof of the unity of purpose, of a preconcerted plan for the illegal object with which the traversers are charged? The printer of the Association is produced; other documents are proved as having been ordered and paid for by the Association; and not a particle of evidence is given as to this document, though the Attorney-General calls on you to fasten on these unfortunate gentlemen—for unfortunate they are, if they are to be convicted on such evidence as this—the guilt of some anonymous miscreant. Every principle of law, justice, and reason, makes it imperative on the Attorney-General, in a prosecution for a political crime, to keep back nothing. I complain that he has produced no witness as to the printing of this ballad. It was not our duty or our business to do so. They have ascribed guilt to us, and



they are bound to prove it. They have not proved it, and, Gentlemen of the Jury, although that ballad has been admitted by the Court, I submit, that it cannot be evidence against us, unless it is proved to have been printed in pursuance of the common plan, union, and combination, for the unlawful object with which the traversers are charged.

Gentlemen, I shall now draw your attention to what was said at some of these 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. First, I will observe that many of the speeches which were given in evidence were not proved to have been actually spoken by Mr. O'Connell. The nature of the accusation enables the Crown to give a number of newspapers in evidence, containing reports of speeches alleged, but not proved to have been made by Mr. O'Connell. You will recollect, that it is impossible to discriminate between the speeches as they were actually spoken, and the speeches as they were afterwards embellished. Some of the most eloquent passages, particularly in the way of political extracts, have been attributed to men, although they never spoke them. It is said, that a great portion of Cicero's speech, in defence of Milo, was never spoken by that eloquent advocate. I will draw your attention to one or two of the speeches attributed to Mr. O'Connell, in which he alluded to the Battle of the Boyne, and the defeat of the Irish there. Now, Gentlemen, it is singular, that Sir Walter Scott, in alluding to the Battle of Floddenfield, admonishes his countrymen not to fall into the mistake committed by their ancestors, but to be steady, and firm, in their moral agitation, and not divided and wavering, as their ancestors were in their physical conflicts. That was precisely the meaning of Mr. O'Connell, in alluding to the Battle of the Boyne. He encouraged the people to persevere in the moral and constitutional struggle in which they were engaged, by a reference to his moral facts. His language means no more than this: "By their want of union, and "perseverance, your ancestors lost the Battle of the Boyne, do you "persevere in the moral and constitutional struggle in which you are "engaged, and you must succeed." But, Gentlemen, is it right that my client should be responsible for the speeches of Mr. O'Connell? Mr. Duffy was not at any of the monster meetings. Mr. Duffy was in Dublin whilst those meetings were held. Mr. O'Connell spoke at Clifden, at Mullaghmast, at Cork, in remote parts of Ireland; he used certain illustrations. Could Mr. Duffy control him? Mr. O'Connell alluded to certain historical events—to the battle of the Boyne, battle of Aughrim; he quoted poetry and prose, everything which his excited fancy could suggest. Did Mr. Duffy combine, confederate, conspire, and agree, that he should do so? Mr. Moore has written some verses, in which he alludes to the battle of Aughrim in terms of sorrow and regret. Yet that did not disentitle him from receiving a pension from the Government of which the Solicitor-General is a member. Mr. Duffy, in common with other journalists, merely printed the reports of the speeches in which Mr. O'Connell referred

to these historical facts; and ten months after he is selected and brought to trial by the Attorney-General, who prefers to strike a blow at him rather than at his professional rivals of the *Mail* and *Packet*. The expression, "better die like freemen than live like slaves," is a mere boastful expression, showing independence of thought and boldness of speech, but proving nothing as to the charge. Another expression of Mr. O'Connell was much dwelt on by the Attorney-General: "the people would be stultifying themselves to expect redress from an English Parliament." In his observations on that expression, the Attorney-General followed the example of Mr. Mitford, afterwards Lord Redesdale, in Horne Tooke's case. That eminent lawyer endeavoured, from a similar expression, to lead the jury to infer that it was the intention of Horne Tooke to accomplish his purpose by physical force; but the jury declined on that occasion to adopt the view of the learned law officer. Mr. O'Connell, in discussing the subject of the Repeal of the Union, frequently made use of the expression, "that justice was not to be obtained from the Imperial Parliament." It was because he believed that to be the fact that he was of opinion that the Union should be repealed. If he had said that the Union should be repealed, and yet admitted that justice could be obtained from the Imperial Parliament, you must at once see the inconsistency which he would have been guilty of. He wished to contrast the ready and efficient justice which would be dispensed by a domestic Legislature, with the cold neglect which the applications and complaints of the Irish people met with from the Imperial Parliament. He did not speak against the power of the House of Commons, nor that it should be lopped off as a useless branch of the Legislature. He merely said that it was not as pure as it ought to be; that the system of representation was imperfect; and that an Irish Parliament would give a more perfect representation, and would restore the country to the condition in which it once was.

I will now call your attention to one meeting, at which, I will admit, that a very reprehensible speech was delivered by Mr. O'Connell—I mean the meeting at Longford on the 28th of May. Mr. O'Connell, on that occasion, spoke freely of Lord Beaumont; but does that prove that the traversers combined, conspired, confederated, and agreed for the objects specified in the indictment? They agreed together, in order to carry the Repeal of the Union. But did they agree that Mr. O'Connell should abuse Lord Beaumont, or that Lord Beaumont should abuse Mr. O'Connell? I read Lord Beaumont's speech against Mr. O'Connell, in which the noble Lord stated, that he despised him and his vituperation—that he despised him as the reptile which crawls in the dust. That is the language, and whatever Mr. O'Connell's faults may be, it was he who placed Lord Beaumont in the House of Lords, and gave him the opportunity of using this gross and insulting language. Mr. O'Connell, insulted and incensed—being himself a master of invective—poured forth a torrent of abuse in reply, and said many things which he had better have left unspoken; but did Mr. Duffy combine and confederate that Lord Beaumont was to abuse Mr. O'Connell in

the House of Lords, and that Mr. O'Connell should retort against Lord Beaumont at Longford? Mr. O'Connell was incensed and insulted at the contumelious language applied to him. Whatever are his faults, that remarkable man has gained a place in the history of his country, and a name which resounds throughout Europe. And Lord Beaumont certainly showed bad taste, weak judgment, and bad manners in applying such language to him. He only proved that an Irish peasant may be more polite than an English peer. There was another expression of Mr. O'Connell's, which the Attorney-General dwelt on much. Mr. O'Connell said, "I will take care that you do no wrong, but if they attack us, we will do so and so." Gentlemen, these are undoubtedly strong expressions, but there is nothing illegal or unconstitutional in them, explained as they are by other observations such as, "they must discuss the question with us," "they must listen to us," "they shall not bully us." I therefore submit to your better judgment, that remarks such as these, isolated observations of a speaker, the most of them made in reference to public matters, news which had lately arrived from the capital, are not a proof of a criminal conspiracy. The style of a speech depends much on the physical condition of the speaker at the moment. Many of those speeches were made after dinner, and I will venture to say, that if the Attorney-General himself stood up after dinner to speak in defence of "Church and State" he would be astonished at the speech he would make. No doubt it would be a very able, animated and exciting speech; it might contain a great deal of what he calls inflammatory matter, and it would not be a bit the worse speech for that. Much has been said about the use of the word "foreigner" by Mr. O'Connell. As to that he took it from an English law book. Your Lordships will find that in the case of *Mahony v. Ashlin*, 2 Barn. & Ad. 478, that a bill drawn in Ireland on a person in England, is a foreign bill in England. Ireland was solemnly ruled to be a foreign country, and the Judges determined that they would not take judicial notice of Dublin. I really do not know why Mr. O'Connell should be indicted for a conspiracy for speaking the legal truth. Then, with regard to the manner in which Mr. O'Connell spoke of Sir Robert Peel and the Duke of Wellington. The language applied to those distinguished individuals is merely a personal matter, and does not prove the intention imputed to the traversers by the Attorney-General. When Mr. O'Connell spoke of having more physical force at his disposal than there was at Waterloo, he meant nothing more than that the question supported by such a mass of people, and by such a combination and concentration of moral power, must be discussed and considered. It was a mere boastful expression, that such a number of persons were formidable, just as the 75,000 men came to Hillsborough, shoulder to shoulder, and must be listened to, and their demands considered and discussed. The Attorney-General, immediately before he alluded to the meeting at Mullaghmast, introduced a singular topic into his speech. He said that a question was put in Parliament, and an answer given, which was decisive on the subject of the Repeal of the Union, and that nevertheless, the meeting at Mullaghmast was held five days af-

terwards. Why did he introduce this subject? Clearly for this reason; to impress your minds with the belief and conviction that, as the parties endeavouring to procure a Repeal of the Union knew that little was to be expected from Parliament, their object must have been unlawful. Now, Gentlemen, I shall take the liberty of saying, that that was an unconstitutional argument for the Attorney-General to make use of. Neither you nor I are bound to notice nor bound to read the speeches which are made in Parliament. To force us to read all the speeches which are made there, would be an intolerable act of despotism, against which the spirit of the country would revolt. It is only by a breach of privilege that the proceedings in Parliament are ever published at all. Lord Mansfield declared that he never felt himself bound by the resolutions of either House, and that if such resolutions were passed the Court was bound not to listen to them. They are not law, nor can they affect us in any respect, and therefore my learned friend's observation was not supported by law, and was at variance with constitutional rights; but, since he did introduce them, I shall not hesitate to call your attention to what passed at the same debate, on the 9th of May. Viscount Jocelyn said: "I rise for the purpose of asking my Right Honourable friend at the head of the Government, whether the Government is aware of the fearful excitement which has prevailed for some weeks past on the subject of the Repeal of the Union; and if so, whether the Government is determined to take any steps for its repression? I likewise wish to know whether my Right Honourable friend has any objection to state, for the satisfaction of the loyal people of Ireland, whether or not the Government is determined to maintain, at all risks and hazards, the inviolability of the Legislative Union between Great Britain and Ireland." Sir Robert Peel said: "I rejoice that my noble friend has given me an opportunity of making, on the part of the Government, a public declaration on the important subject to which he has called the attention of the House; and I think it necessary on this occasion to remind the House of what has been, within no very distant period, the publicly recorded opinion and engagements of the Crown and both Houses of Parliament with respect to the Legislative Union of Great Britain and Ireland." Sir Robert Peel referred to the King's speech, and the Addresses of both Houses in 1834, and continued: "On the part of Her Majesty, I am authorized to repeat the declaration made by King William; and I have no doubt that the present Houses of Parliament would, if necessary, be prepared to fulfil the engagements into which their predecessors entered. I can state to my noble friend 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 to 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 involve, not merely the Repeal of an Act of Parliament, but the dis-



" memberment of this great Empire. Of this I am confident,  
 " that an executive Government can lose nothing of moral or  
 " real strength by confiding as long as possible in the ordinary  
 " powers which the law and Constitution give them, and in being un-  
 " willing, without urgent necessity, to disparage those ordinary powers  
 " by asking for increased authority; but I do not hesitate one moment  
 " to say, that if such necessity should arise, Her Majesty's Government  
 " will, without an instant's hesitation, appeal to Parliament for additional  
 " and effectual powers, which will enable them to avert the mighty evil  
 " that would arise, not only to the country, but more especially to Ire-  
 " land, from a successful attempt to sever the connexion between the  
 " two countries." Sir Robert Peel then referred to the declaration of  
 Lord Althorp, which the Attorney-General has quoted. Parliament  
 sat until the 20th of August; the most of the meetings took place  
 before that period, without any further step being taken by the Minister  
 in the way of legislation. Did he not, thereby, leave an impression  
 on the minds of the people, that, however he disliked the agitation,  
 it was not illegal; not unconstitutional. He does not answer the  
 question which was put to him; on the contrary, he carefully avoids  
 it. Since, therefore, that debate has been referred to, am I not  
 entitled to rely on the answer of Sir Robert Peel, to show, that in the  
 opinion of the Ministry, the meetings were perfectly legal and perfectly  
 constitutional? That answer has been severely criticised by  
 Lord Cottenham, the late Chancellor of England, in the House of  
 Lords. His Lordship said it was unconstitutional for any Minister of  
 the Crown to declare that he had communication with the Sovereign,  
 on any subject. He said that the only constitutional mode of communi-  
 cation with the Sovereign was through the Parliament by an address,  
 and the answer to it; and he distinctly states, and gives powerful rea-  
 sons for his opinion, that the observations made by Sir Robert Peel  
 were unfortunate, and unconstitutional. I therefore do not see how a  
 reference to this debate can serve the purposes of this prosecution. It  
 is admitted that the head of the Government did not, up to May,  
 think that the meetings were illegal; his eyes were open to all that  
 was passing in the country; he was called on to suppress the meet-  
 ings; if he thought they were illegal and improper. Parliament sat  
 until August; he took no measures; he asked for no further powers;  
 and he now directs the Attorney-General to come into Court, and  
 asks you, a jury of Irishmen, for a verdict condemnatory of the meet-  
 ings which took place before May, condemnatory of the meetings  
 which took place up to the month of August, although he did  
 not think it right to ask for any power to repress them. Gen-  
 tlemen, looking to what took place at the meetings at Mullaghmast,  
 it might have been said that the speech made by Mr. O'Connell might  
 be considered violent and improper. Part of it may be so; but  
 you will observe, that in the correct report of his speech, so far from  
 encouraging or exciting religious distinctions, he asserts, that the  
 massacre which took place there was not perpetrated by Protestants  
 on Catholics, but by Catholics on each other. That proves that his  
 distinct object was not to excite religious distinctions, but the reverse:

and you will again observe, that these are his own observations, and not the act of Mr. Duffy, or of any of the other parties combined in this prosecution.

I shall now call your attention to another subject, which was much relied on by the Attorney General, that is, the form, character, and nature of the processions, as he called them, by which these meetings were got together. The Attorney General endeavoured to fix on them the character of a military array, no matter how discordant the music, or how irregular the march. It was proved in the case of *Redford v. Birley*, to which I have already alluded, that there were processions, that a number of men were regularly drilled, that they marched by torch-light to attend the meetings; and I now ask you to apply the reasoning used in that case to the circumstances in evidence before you, which are as distinct and as different as one state of facts can be from another. But first, Gentlemen of the Jury, where is the law which prevents men from marching in procession? The Attorney General has stated to you that the meetings and processions were all of a similar character. Let us take the Donnybrook procession as a specimen. You all saw the procession which preceded that meeting. You all saw a number of decently dressed respectable artizans, marching through the the city to Donnybrook. They passed the Castle gates, under the eyes of the Government and of the Attorney General. That was a type of all the meetings. Would you believe any man who would venture to say, that he felt tarror or alarm, either for his person or his property, from that meeting? *Ex uno disce omnes*. This meeting was peaceable, tolerant, constitutional, legal; and you must infer that all the others were similar. But where is the law which says, that processions such as you witnessed on that occasion, and such as took place at Tullamore, and at all the other monster meetings, are illegal? You remember the cross-examination of Mr. Jolly, who describes them as marching in regular columns, infantry and cavalry, the women behind the men on pillions. You remember one of the Policemen giving evidence of a speech of Mr. O'Connell's, in which he said that all the farmers would be gentlemen, and the gentlemen lords; he was to be Lord Ballincollig himself. You may judge whether a man of Mr. O'Connell's good sense ever made such an observation, and you are now called on to take this as proof of a conspiracy on the part of Mr. Duffy. The witness said that the people marched in order, came in order, and returned in order. I will draw your attention to a few processions in England, but before I do so I will ask the Solicitor-General whether it is illegal at common law for men to meet and walk in procession with colours, flags, and music. Will he say that these circumstances make an assemblage an illegal one. He was not a law officer of the Crown at the time the bill for the suppression of the Orange processions was passed. Why, Gentlemen, for 150 years the Orangemen of the North met in thousands on particular anniversaries; they marched with flags, banners, and music, and very often they had firearms, and sometimes, if they were interfered with, they used them, and then they were tried for a riot. But will my learned friend tell me that they were guilty of an illegal act by meet-

ing and marching to commemorate the advent of William the Third to this country, and that because they so marched in procession they were acting illegally, and were to be dealt with by the common law? Gentlemen, he cannot do so; it is proved that they were not illegal by the fact that it was necessary to pass an Act of Parliament to put them down. Processions with flags and music, and with arms, if nothing more occurred, were considered perfectly legal in the good old days of Protestant ascendancy. The difficulty was, to know how to deal with them, and Lord Stanley, then, as now, one of the Ministers of the Crown, thought fit, by an Act of Parliament, to put down the Orange processions in the North, leaving it open for all other persons to meet together and to walk in procession with music and banners, or with anything else they pleased. It was a mock liberality indeed which put down one class of men, and not all alike. 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 the act, to ask them to declare that processions are illegal at common law. On the occasion of the introduction of that bill by Lord Stanley, one of the Judges on that bench took part in the debate. Mr. Crampton said: "There seems to be this complaint against the present measure—that it does not go far enough, and put down associations of a very different nature from those it intended to touch. The object of my right honourable friend is not to prevent anything like an exhibition of general feeling, but is simply to put down those party processions which have been productive of so much mischief in Ireland, and have caused so much bloodshed, and to the suppression of which the common law has not been found adequate. There is no wish on the part of the Government to prevent constitutional meetings; but it is absolutely necessary, for the tranquillity of the country, that those processions, which have been such a frightful source of crime and bloodshed in Ireland, should cease to be held. My honourable friend, the member for Downpatrick, says that the present law is amply sufficient for putting down those processions; but, after mature consideration on the subject, I entertain an entirely different opinion." Mr. Lefroy, who now administers justice in another Court with great ability, resisted the bill: he said, "I admit that there is a portion of the bill which may not be considered objectionable in itself—I mean that clause which makes it an offence to assemble at those meetings with arms; but I contend that that clause is wholly unnecessary, because to meet with arms would be an offence at common law, and, therefore, there is no occasion to legislate upon it; but for all the rest of the bill, going as it does to make it a misdemeanor to meet unarmed, and merely wearing those badges, which surely are not more offensive to his Majesty's Government than tri-coloured flags, is a measure of the most partial, unprecedented, and unjust legislation." And Mr. Stanley answered: "Why, then, says the honourable gentleman the member for the University of Dublin, there are religious festivals set apart, which are directed by the liturgy of the Church to be celebrated; and he asks, Do you intend to prevent

“ us from going to church, and celebrating a festival, the celebration  
 “ of which is prescribed by our own liturgy? My answer to that  
 “ is: Do your religion and your liturgy prescribe that you should at-  
 “ tend at church with party banners and ensigns, and with loaded  
 “ muskets, with the avowed intention, or, if not with the intention,  
 “ having the effect, of exciting against you the angry feelings of that  
 “ portion of the community who differ from you in the views they  
 “ take of the events which you are assembled together to celebrate?”  
 That is to say, that it was lawful to march in procession with loaded  
 muskets. He refused to extend that law so as to affect meetings like  
 those; and you are now called upon, at the beck of the Attorney-  
 General of the same Ministry who refused to extend the law so as to  
 put down all processions, to put down processions like the pre-  
 sent, which might have been effected by that Act. Two persons  
 in the House of Commons opposed that Act. One of those men  
 was the traverser, Daniel O’Connell. He had to consider the case  
 of his old enemies, the Orangemen of Ireland; and what course did  
 he take? He might have then spoken of them as he pleased.  
 He might then have forgotten their virtues, and remembered only  
 their vices and their faults. He might have given his vote to extin-  
 guish their rights. He did not do so. He distinctly said that “ no  
 “ case had been made out for the measure, and that, therefore,  
 “ though a Catholic, he should oppose it.” There was one other  
 gentleman amongst the few Irish representatives who opposed it;  
 him you are also called upon to convict. The son of Mr. O’Connell  
 declared on the same manly, sensible, and constitutional grounds, he  
 said, that “ if men were wrong in their opinions the power of the law  
 “ was sufficiently stringent to put them down; but that they should  
 “ be allowed to state their opinions freely. For his part, he thought  
 “ they had a right to speak their sentiments. He spoke the opinions  
 “ of a large and respectable portion of the population of Ireland, and  
 “ resisted the measure.” Will the law officers of the Crown now tell  
 you that marching—I put it that they marched regularly in procession,  
 with music, flags, and banners—will it be asserted that such marching,  
 if nothing else occurs, is illegal? Will it be said that it required the  
 interposition of an Act of Parliament to put down the Orange pro-  
 ceSSIONS, and yet that you, a jury, are to declare that processions, by  
 another portion of her Majesty’s subjects, are illegal and unconsti-  
 tutional. I will now read to you the recital of the Act of Parliament;  
 it is 2, 3 Will. IV. c. 118: “ Whereas great numbers of persons  
 “ belonging to different religious denominations, and distinguished  
 “ respectively by various emblems, expressive of party feelings and  
 “ differences, are in the habit of meeting and marching in procession in  
 “ Ireland, upon certain festivals and anniversaries, and other occasions,  
 “ and such processions are calculated to create and perpetuate ani-  
 “ mosities, and have been found to occasion frequent and sanguinary  
 “ conflicts between different classes of her Majesty’s subjects, for pre-  
 “ vention whereof, and in order to guard against the recurrence of  
 “ the tumults, riots, and disorders arising out of such processions, be  
 “ it enacted, &c.” I submit, therefore, Gentlemen, to your better



judgment, that these processions were perfectly legal. They existed for 150 years, they are part of the history of your country, they were a hundred times more formidable than any which have been proved before you on this occasion, they passed without objection, it required an Act of the Legislature to put them down, and you will say to the Government, "as you did not think proper to put down all party processions, but choose to legislate exclusively against the Protestants of the North, we will leave you to deal with these processions as you can, you require an Act of Parliament to make these processions unlawful." Gentlemen, you ought to dismiss from your minds these angry speeches; if a man is to be judged by extracts from his speeches, no man can be safe. Mr. O'Connell's real object was, to discuss the subject of the Repeal of the Union. It was not a mask to conceal a different design, and other parties are not to be affected by any rash, intemperate, or heated language into which he may have been betrayed in discussing that question.

Gentlemen, it is insisted on, that these vast meetings were collected for the purpose of exciting discontent; it is not stated what kind of discontent. A man may be discontented without being a conspirator. A hungry man is discontented, and Cicero, with all his eloquence, would not make him a contented man; but he is not a conspirator. The advocates for the abolition of slavery were discontented. They said that slavery was abhorrent to the law of England, that it was against the law of God. They combined and they confederated, and they compelled the Legislature to concede that act of justice and humanity, and but for that union and that discussion slavery might still remain a blot and a disgrace to English humanity, braving the vengeance of Heaven itself. To say therefore, that to excite discontent is criminal, is to say just nothing at all. The Legislature itself has felt the wisdom of discontent, and has made laws which would never have been made but for that discontent. In the same way, the people of England became discontented before the passing of the Reform Bill; and that measure, which was before resisted, became the law of the land. It is not therefore a crime to be discontented with any law, and that does not make my client a conspirator, unless he has done something dangerous, illegal, or subversive of the Constitution. The word discontent may be better understood by coupling it with disaffection. The charge in this indictment is curious. It is not a charge of discontent or disaffection towards or against Her Majesty, nor against the form of the Constitution. I cannot clearly understand what it means; the conspiracy is not to excite discontent against the Constitution. I admit that would be criminal. Nor does it relate to the Sovereign or her authority. I admit, that to excite discontent against the form of the Constitution would be illegal. Therefore the question is, what is the form of the Constitution? It consists of the Sovereign, the House of Lords, and the House of Commons. To excite discontent and disaffection against the existence of the House of Commons would be seditious, and if parties combined to do so, it would be a conspiracy. To excite discontent and disaffection to the privileges of the Peers or the prerogatives of the Crown would be criminal, and to combine to

do so would be a conspiracy. To excite discontent against Royalty, to curtail the prerogatives of the Crown, to say the Crown was an unnecessary part of the Constitution, would be illegal—a combination to do so would be a conspiracy. Thus, Gentlemen, to combine to subvert the House of Commons, to limit the privileges of the Peers, and to curtail the prerogatives of the Crown would, I admit, be an illegal combination; but to admit that the Constitution, consisting of Queen, Lords, and Commons, is the best, the safest, and the most beneficial form of government which the wit and wisdom of man ever contrived for the protection and the prosperity of the people, and to wish to extend the beneficent principles of that Constitution to every part of the empire, never can be held to be discontent or disaffection to that Constitution which you praise and applaud, and which you desire to have extended to the land of your birth. Therefore, Gentlemen of the Jury, all that is said in the indictment about disaffection and discontent, applies to an effort, not to put down the House of Commons, but to restore it; not to abolish the House of Peers, but to bring it back where its presence is so desirable; not to limit the prerogatives of the Crown, but, perhaps improperly, to extend them. How can these acts be treated as overt acts of an illegal combination to carry the Repeal of the Union by unjust and unlawful means, as if conspirators were seeking in darkness and in subtlety to subvert the throne? The object of the traversers was to reform the constitution, and if you were to hear it announced that a new and a beneficial Constitution was obtained by every country in Europe, would you not rejoice, and if you would, how can it be disaffection or disloyalty to express so much for the Sovereign as an attachment for the great and glorious principles on which the Constitution is based, and which every freeman should sustain and consolidate. If these persons' desire was to restore the Constitution which they conceived they had lost, that is not disloyalty; there is nothing criminal in that, in any point of view; and therefore it is not an overt act of the conspiracy alleged in the indictment. Consider yourselves, for a moment, the zeal of my client and the other traversers for a Repeal of the Union; place yourselves in their position—adopt their intention—is not that the way in which you would discuss the matter? What, suppose you were of opinion that the Union had been carried by unfair and dishonest means, that you conscientiously believed it to be an evil to your country, what mode would you resort to to gain your object, and to repeal that fatal measure? Reflect on the past history of Ireland; what course would suggest itself to get from the Imperial Parliament the measure which you sought? An unreflecting man might say, why not ask it from the Crown? Why not rely on the justice of the cause, and on the force of truth? Why, Gentlemen of the Jury, some Irishman might say, we did apply to the Crown, we did rely on the justice of our cause, and we found it a broken reed. We did so, and we gained nothing. We found that popular strength and popular organization were the only means which we could resort to with success; we found that claims which were denied to justice, were granted to the moral, the peaceable, the formidable organiza-

tion of popular opinion. What is the history of Ireland for the last eighty years—what but an account of a series of Societies, of Associations, and of Clubs for the attainment of one thing or another? Almost all the measures which they sought, they have gained. They are now the law of the land, proving either that they ought to have been granted at once, or to have been denied for ever. It is a very questionable doctrine indeed, that political privileges and rights should be withheld until a great and formidable organization arises, when they are granted only because it is necessary to concede them in order to check discontent, and to teach the people that great and painful secret, to rely on popular organization, for to it every thing will be granted, and without it every thing will be denied. See what has been the state of the country since the year 1760. In that year the first Catholic Association was formed. They obtained a relaxation of the penal code in 1770. They struggled, and by popular organization they obtained what ought to have been granted fifty years before. While they were seeking to redress their grievances by obtaining their civil rights, another body of men conspired, combined, confederated, and agreed to rescue Ireland from contempt and ruin. That body was the Volunteers of Ireland. At that moment what was the condition of Ireland? All commerce with her was interdicted, her trade was prostrated, her manufactures were destroyed, she was a country without commerce, her Parliament did not represent the larger portion of her inhabitants. The Volunteers were discontented at this, and well it is for you to-day that they were so. They were not then called disloyal or disaffected, and yet they conspired, combined, confederated, and agreed to obtain justice for their native land. All that the genius of Swift, the learning of Molyneux, and the patriotism of Lucas had failed to obtain, was yielded to men with arms in their hands. They combined, and but for that combination we should yet be the serfs of England. They were discontented with a law, they remonstrated and they failed, and then they struggled for its repeal: The Catholic Association having learned how concessions were to be obtained, formed themselves into a new body or general committee of delegates, which held its meetings until 1792. In 1806 a new association was formed, and was renewed in 1810 under the auspices of Mr. Scully. In 1823 the last Association was formed, it 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 Repeal Association are almost *fac similes* of them. They met, they debated, they published, they subscribed their money in pursuance of their common object, which was the repeal of an Act of Parliament, with a zeal unequalled in the history of the country. They had their rent collectors, and they collected rent, but they broke no law. That Association ceased in 1825, but it was not in consequence of a prosecution for conspiracy. Meetings were held in every part of the country. A simultaneous meeting was held on the 21st of January, 1830, at which no less than a million and a half of persons were present. They had a common object; they assembled under the sanction of

a law. The great Crown lawyer of the day, Mr. Plunket, was then Attorney-General. He was desirous to put them down, but there was no prosecution. Under the very eyes of the Executive this combination was formed, and yet they did not interfere with it. Simultaneous meetings were held, and so extensively were their proceedings promulgated through the country, that 8,000 copies of the *Weekly Register* were circulated every week. The Brunswick clubs sprang up. Their object was to resist Emancipation, and at length the confederation, which had existed since the year 1760 was put down in 1829. But what was the lesson taught to the people of this country? that by popular and peaceful organization, and peaceful agitation, they would become victorious over the interest of the aristocracy, the conscience of the Sovereign, the wish of the English people, and the inclination of almost the entire of the British Parliament. That was the system and the policy observed by England towards this country, like an angry and capricious parent, who one moment chides his child without cause, and the next rewards her with a sugar plum. This agitation continued for a long period; what were the Government about all that time? Why did they not proceed to suppress, according to the spirit of the Constitution, by legislation? The first Catholic Association was suppressed by the 33 Geo. III. c. 29. That Act was passed because they had appointed delegates, and it was intended by it to put down that delegation. It proves that an Act of Parliament was necessary to put down such a combination, which was legal at common law. The strongest argument is deducible from that fact in support of the legality of this Association. The Catholic Association debated and agitated; they passed resolutions, they collected rent, yet they were admitted to be a legal society by the first lawyers in the House of Commons. What then was the obvious duty of the Government? It was the course pointed out by Lord Jocelyn in May last! When all the associations of a similar nature had been admitted to be legal, the only course was to put this Association down by an Act of Parliament. I have therefore the clearest authority for saying that such an Association is not illegal; cannot be dealt with by the common law; and can only be put down by an Act of Parliament. Common law and common sense were alike on the side of 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 a common law proceeding, 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 preeminent; he said: "The most extraordinary charge is that which has been advanced by some Honourable Gentlemen, who say that they would not care for the bluster, impetuosity, and violence of faction; but what they most dread is, the dense, quiet, and uninterrupted stillness prevailing in Ireland. This they consider more fatal than the period of 1782, when the Volunteers assembled; that of 1793, when the Jacobins assembled;



“ or that of 1798, when the standard of rebellion was hoisted in the  
 “ country. The more quiet, it seems, the more danger. Every one  
 “ remembers the line,—

“ ‘ My wound is great, because it is so small,’

“ as well as the addition which a wit made to it,

“ ‘ Then ’twould be greater were it none at all.’

“ Of a similar character is the apprehension that some persons enter-  
 “ tain, founded on the existing tranquillity of Ireland.” Upon the  
 same principle, it is contended that the danger of the present move-  
 ment bears an exact proportion to the tranquillity and good conduct  
 of the people. Gentlemen of the Jury, two Acts of Parliament were  
 passed on this subject. The first was the 6 Geo. IV. c. 4. It enacts, that  
 “ every society or other body of persons assuming, or in any manner  
 “ exercising the power of acting for the purpose or under the pretence  
 “ of procuring the redress of grievances in Church and State, or for car-  
 “ rying on or defending actions civil or criminal, which, or the mem-  
 “ bers thereof, shall for the purposes thereof continue or renew their  
 “ meetings, whether under the same or under any different name or  
 “ names, by adjournment for more than fourteen days, or collecting  
 “ or receiving money, shall be deemed an unlawful combination and  
 “ confederacy.” Next came an Act which I think the Attorney-  
 General might as well have refrained from alluding to. It was called  
 the Coercion Act, and expired in two years. A more severe or  
 tyrannical Act is not to be found on the Statute Book, and it is to be  
 regretted that such an Act was introduced, and carried by a Ministry  
 from whom one would rather have expected measures favourable to  
 the liberties of the people. But the inference to be drawn from the  
 passing of that Act is, that it was necessary, in order to suppress  
 associations, that an Act of Parliament should be passed, because  
 all associations and societies of this description were not at vari-  
 ance with the common law. And if by-gone Associations were not  
 contrary to the principles of the common law, how can you be called  
 upon to declare that the Repeal Association, which differs from them  
 in no way except in being more mild and less comprehensive in its  
 constitution than any other, is, unlike them, at variance with the  
 common law? In all the other cases, the Government were most  
 anxious to have put down those associations by the ordinary inter-  
 vention of the common law, if they could have done so. But they  
 found it impossible to do so, and therefore it was that they had to  
 apply to Parliament for further powers. If those associations were  
 legal, surely an association formed for the lawful purpose of repealing  
 a law is not in itself proof of a conspiracy.

I shall now draw your attention to another branch of the case, to  
 which you are naturally led—the constitution of the Repeal Associa-  
 tion. The Attorney-General described it to you as an Association  
 in which a number of persons were combined, who by means of  
 secret symbols endeavoured to carry out their wicked projects, and  
 he compared it to the societies referred to in the Report of the  
 Secret Committee of the House of Commons in 1797. The first

thing which the Attorney-General relied on as showing the nature and constitution of the Repeal Association, and the fell intent of the conspiracy, was the Associates' card. I cannot, for the life of me, discover what evidence of conspiracy there is on the face of this document, unless a sketch of the Bank of Ireland, and a very bad one by the way, can be viewed in that light. Perhaps, the conspiracy is evidenced by these words, *it was and shall be*. The next document is the Members' card, and my learned friend grew serious when he described it to you. He would find nothing in it, but I find something to which I think it important to draw your attention. The first words that I find on it are *God save the Queen*. The next document is the card, for which the parties pay £1. It first begins with a statement of certain statistical facts; it states the population of Ireland, its revenue, its size, as compared with other countries in Europe, the number of men which it supplied to the English army and navy, during the last war; and it concludes with the fact that Ireland has not a Parliament. At the four corners are written the names of four battles, *Clontarf*, *Benburb*, *Beal-an-Atha Buidhe*, and *Limerick*, and from that the Attorney-General infers that the object of the Association is not the Repeal of the Union, but a wicked and unlawful one. He says, it is highly criminal to advert to these historical facts. If so, the Scotch nation should be put on their trial for conspiracy, and Burns was a conspirator, must be handed down to posterity as a conspirator, because he wrote some beautiful lines on the battle of Banockburn. In the centre of the card is a flag, with the representation of a shamrock, and on one leaf is the word Protestant, on another Presbyterian, on the third, Dissenter, and on the fourth, Catholic. In the centre, is the motto *Quis separabit*. That does not look like a conspiracy. It is rather like a charitable and generous attempt to unite all classes of religionists in the same bond of union, and to bury in oblivion all sectarian differences. My learned friend, the Attorney-General, did not allude to this motto; and yet, I think, it is of no small importance, for it proves that the Association was not instituted for the purpose of spreading dissension among different classes of Her Majesty's subjects, but expressly for the purpose of promoting good will and good fellowship among all classes of the community. That is the nature of this wicked document. I do not see how it can lead you to the conclusion that the traversers have entered into the wicked conspiracy which has been attributed to them. I next come to the Volunteers' Card; and were it not for the valuable assistance, which I am sure I shall receive from your Lordships in the interpretation of it, I should approach the task with fear and trembling. My Lords, I find a likeness, faithful, I am to presume, of a celebrated Irish legislator, who rejoiced in the appellation of Ollam Fodhla. I confess, with shame, my 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 state to you, Gentlemen, the laws which were propounded by this illustrious Solon. He will explain to you the principles which were inculcated by this wise legislator, and

the nature of the wicked, abominable, and seditious crime of putting the somewhat formidable name of Ollam Fodhla, and his exceedingly handsome face drawn by Mr. Thacker on this card. But, Gentlemen of the Jury, I am sorry to inform the Attorney-General, that the Judges of the Queen's Bench are parties to this conspiracy. For if you take the trouble of looking up, as you pass through the Hall, you may see the bust of Ollam Fodhla gazing on the angry litigants below, pointing and directing those who look for justice to the Queen's Bench. You may give credit for purity of intention to those who thought that Ollam Fodhla ought to be a model of uprightness and purity, but I do not see why the members of the Repeal Association are to be held to be conspirators, because they have placed his likeness on their card. Here is a name which I confess puzzles me a little; and I must certainly apply this time to Mr. Justice Burton for assistance. It is the next name on the card, Dathi! Did you ever hear of such a name as Dathi? Why, there is conspiracy in the very sound of it. But who he was, what were his thoughts and opinions, and how he conducted himself, whether conformably to law or against the law, I am not competent to say; and I feel, therefore, that my only course is to apply to some person acquainted with the antiquities of Ireland to throw some light on the matter; and if there was any thing particularly wicked in his conduct, I leave it for the learned Judge to explain to you how the people who put his name on this card are conspirators. All I have been able to discover about the gentleman is, that he was a Pagan, and Mr. Moore says he was killed at the foot of the Alps by a flash of lightning! But why his name was put on this card along with that of Ollam Fodhla, I cannot discover. The learned Attorney-General forgot to prove to you that such persons as Dathi or Ollam Fodhla ever lived. But I leave it to you, Gentlemen, to judge what the names of these old gentlemen had to do with the conspiracy charged against the traversers here, and to determine whether they are guilty of a foul conspiracy, because their names appear on the card. The learned Judge who is so well versed in the antiquities of Ireland, will enlighten you very much on this subject. But the traversers went further, and they placed two other names on the cards, and what do you imagine they are? The names of Grattan and Flood. They had the hardihood to place those names on the card; names which will live and be handed down to posterity as long as Ireland lasts. But why will their memory be handed down from generation to generation? Is it because by secret treason they struck down the Monarchy and abolished the Constitution? No. But as men, to one of whom even the Irish Protestant Parliament voted no less than £100,000 for his exertion in the cause of his country; men who, by their persuasive and eloquent tongues, accomplished more than ever was accomplished by man; men to whom the world looks back with admiration, and respect, and esteem. And is it come to this, that a jury of Irish gentlemen are called on to say that men are guilty of a wicked and foul conspiracy, because they put on their cards the names—the immortal names—of Grattan and Flood, the greatest men their country ever produced, whose lives and principles

they should endeavour, if not to emulate, at least to follow at an immeasurable distance; I say that if that be the charge, and I say it emphatically, the answer to it will be found enshrined in the hearts of the Irish people. The next document relied on in the statement of the Attorney General, was the Rules to be observed in the Appointment of Repeal Wardens; and even if treason existed in the names of Ollam Fodhla and of Grattan and Flood, I defy the ingenuity of man to discover any thing criminal or bordering on conspiracy in this document. Holbrooke, who was employed by the Board of Works, was the man who was employed in open day to print it. There was nothing dark, secret, or hidden about it. All was done openly, and in the face of day, and by a man employed by the Government. The first thing to be observed on it is the likeness of the Queen sitting on her throne, with the sceptre in her hand and the crown on her head, and underneath it the words, *God save the Queen*. Gentlemen, if you see any thing wicked, dangerous, or disloyal in that, you will find the traversers guilty. I shall hand up the card to you, and you will then be able to judge for yourself whether there is conspiracy in it or not. On the top of the card is an Irish crown and an Irish harp. Immediately below the crown, on the left hand side, is a picture of the Giant's Causeway. If you have never been at the Giant's Causeway, I would recommend you to go there, and you will be able by inspection to judge of the analogy which it bears to the conspiracy with which the traversers are charged. But lest you should be considered partial, having visited the North, I should recommend you also to visit Glendalough. Here it is, on the right hand side of the card, with its church and round tower. What a serious matter this is! The Giant's Causeway on the one hand, and Glendalough on the other. Who can deny that it is rank conspiracy? It was not with the Jacobins in France that they were dealing, but with the pictures of Glendalough and the Giant's Causeway. Now we come to Achill, in the West, and on the other side, by way of showing that they do not forget Mr. O'Connell, is a nice picture of "Derrynane Abbey;" there is a quiet little party on the lawn, of which Mr. O'Connell appears to be one, then there are the words "*Evin go Bragh*," a little dog, and an old Irish harper, and all appear to be very peaceful! Gentlemen, I hope the day will never come when these allusions to the ancient glory and to the national music—the most touching and pathetic in Europe—will be considered by a jury a proof of conspiracy. There was an explanation of the Members' card, written, it is said, by a Mr. O'Callaghan. He comments on the resolution adopted by the Irish Volunteers in 1782, on certain words used by Mr. Saurin in his speech against the Act of Union, and it appears that opinion has been justified by what has since taken place, on the words "Catholic, Protestant, and Dissenter," placed on the three leaves of the shamrock, with the motto *Who shall disunite us?* and then, Gentlemen, he comes to what the Attorney-General calls the most questionable part of the document. Mr. O'Callaghan says that it is not true that the Irish always fought badly in their own country, that at Benburb they gained the victory, where the unfortunate Charles I. was backed by the Irish against his rebellious English subjects, who after-



wards dragged their Sovereign to the block. He then alludes to the siege of Limerick. Is it treason or conspiracy to speak of the gallant defence made there by the Irish? The treaty still exists which proves that gallant defence. They were suffered to march out with their arms, the colours, and with all the honours of war. That is an historical fact, and it is no crime to allude to it. I therefore submit, Gentlemen, to your better judgment, that this card affords no proof of the conspiracy with which the traversers are charged by the Attorney-General.

Gentlemen, I now come to the duties of the Repeal Wardens. They are almost a fac-simile, a transcript of the rules of the old Catholic Association. The first duty of the Repeal Wardens is to divide the parish or place into districts of convenient size, and each to take upon himself the care of one district. The second duty 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 Repeal. The fifth duty of the Repeal Wardens is to transmit to the Secretary of the Repeal Association in Dublin, if possible, weekly, and if not weekly, at as short periods as possible, the amounts collected, and the names and residences of the contributors, that they may be enrolled as Associates, as the case may be, &c. These rules are taken from the rules of the Catholic Association, and contain instructions to the Repeal Wardens to guard against secret societies, and combinations against the law. I will particularly call your attention to the eleventh and last duty. “The eleventh and last duty we shall point out to the Repeal Wardens, 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. He who would administer a secret oath, would likewise sell his unfortunate victim, the moment after he succeeded in duping him to take it. The Repeal Wardens must also prevent the formation of any secret society whatever.” I shall now, Gentlemen, call your attention to the resolutions which were passed at a meeting, in July, 1843, and to the Address to the Subjects of the British Empire, which has been proved in evidence before you.

Mr. *Henn* read the documents.

Mr. *Whiteside*.—Gentlemen, I shall next call your attention to two documents. The first is a letter which has been already proved in the case which is headed “Repeal and Federalism.” It was written by Mr. Sharman Crawford; and I contend, that the fact that a gentleman of Mr. Sharman Crawford’s distinction, fortune, and position in the country should agree in the opinion of Mr.

O'Connell, that something like local legislation should be obtained, is an important fact for my client. In that letter he sets forth the grievances under which he says Ireland labours, which are in fact the same as those which Mr. O'Connell has spoken of, and therefore the substantial disagreement between them is only as to the form of the measure, the one advocating federalism, the other an independent Parliament. The other document is the Protest of the Irish members. It was signed by 132 members of Parliament, and was addressed to the English people. It sets forth the grievances on account of which Mr. O'Connell says he is justified in seeking for a repeal of the Union. The representative of Belfast, a wealthy, influential, and important constituency signed it, and his opinions have not been disavowed, or disclaimed by his constituency. It was also signed by Mr. William Smith O'Brien, a distinguished member of Parliament for thirteen years, the son of a baronet, a Protestant, who addressed another letter to the Repeal Association, in which he stated that he had been forced to come to the conclusion, that a separate legislature only would ameliorate the condition of Ireland. It is, therefore, impossible to say that it was sedition in Mr. O'Connell to hold the same opinion with the wisest, the most just, and the most respectable individuals in the country. In *Hardy's* case, 24 St. Tr. 211, Mr. Erskine says: "The first observation I shall make to you is, that every act done by the prisoners, every sentence written by them, in the remotest degree connected with the charge, or offered in evidence to support it, were done and written in the public face of the world; the transactions which constitute the whole body of proof, were not those of a day, but in regular series for two years together; they are not the peculiar transactions of the prisoners, but of immense bodies of the King's subjects, in various parts of the kingdom assembled without the smallest reserve, and giving to the public through the channel of the daily newspapers a minute and regular journal of their whole proceedings." So it was with Mr. O'Connell, even at the commencement of his public life. In January, 1800, he made a speech at the Royal Exchange, he made that speech publicly, under the surveillance of Major Sirr, a gentleman of considerable police talents. He who is now charged with conspiracy, then made his first speech against the Union. Forty-four years ago, at a public meeting, he broached sentiments for which he is indicted for a conspiracy to-day. In 1810 he broached the same opinions, in the speeches read to you by Mr. Sheil.

Gentlemen of the Jury, the Attorney-General referred you to the report of the Secret Committee of the House of Commons in 1797, and he endeavoured to draw an analogy between the proceedings of this Association, and the proceedings of the United Irishmen at that time. But he kept back from you the fact that the United Irishmen first sprang up in Belfast, among men who hold different opinions on every political subject from the men who are charged with this conspiracy—among the Protestants and Presbyterians of the North of Ireland. I will read to you some passages which will

prove how different the constitution of that society was from that of the Repeal Association. How different were their rules and their principles of action. In page 67 of the Report, you will find a paper containing the original design of the Society of the United Irishmen, and I will call your attention to some passages in it: "Is there any middle state between the extremes of union with Britain, and total separation in which the rights of the people can be fully established and rest in security." "Let the Society at large meet four times in the year, and an acting committee once a month, to which all members shall be invited." "Let these meetings be *convivial*, but not the transitory patriotism of deep *potations, confidential*, the heart open and the door locked;" that is very like the Repeal Association; "*conversational*, not a debating society." In page 67: "Secrecy is expedient and necessary; it will make the bond of union more cohesive, and the spirit of this union more ardent and more condensed. . . . It will throw a veil over those individuals whose professional prudence might make them wish to be concealed until a manifestation of themselves becomes actually necessary." In page 54: "It appears from a variety of evidence that no means are neglected for establishing their constitution, and enforcing an obedience to their laws; that contributions are levied to defray the expenses of the Society, that threats and intimidation are employed as a means to prevent their associates from being brought to justice, and that a committee is appointed to defray the expenses of defending such as are brought to trial, or are in prison; that the assistance of the French is expected and held forth as negotiated for." In page 41 of the Appendix, No. 2, is this: "Over the seat of the president of each meeting of this society, shall be suspended, a label, with these words: BEWARE OF ORATORS." A very unsuitable motto, certainly for the Repeal Association. I venture to say, that no man will accuse Mr. O'Connell of fixing up that motto in the Repeal Association Rooms. I am surprised the Attorney-General should have referred to this book, proving, as it does, that the United Irishmen looked to French sympathy for assistance. What is the evidence on that subject in this case? Mr. Jackson, that respectable gentleman who dealt in thunderbolts, who wrote the embellished reports of the Kilrush petty sessions, who sent off to the *Morning Herald*, slips of paper, which he had procured from any person who was charitable enough to give them to him, who wrote stories which any person might believe, who was foolish enough to do so. That respectable gentleman told you that he heard Mr. O'Connell abuse Louis Philippe, and scoff at the French Constitution; ridicule the Government, and warn the people against every thing French. If he had been engaged in a secret, dark, deep conspiracy, such as that in which Wolfe Tone and the United Irishmen were engaged, would he not, like them, have sought to conciliate the French nation? Mr. O'Connell's observations tend to produce a contrary effect, for he abused the House of Peers, called the King an usurper, and went so far as to say that the Irish people would assist the lawful monarch in re-

covering the throne. That was the worst way in the world of gaining the good feeling of the French people, for they are fond of revolutions, and they get up one every ten years, just for diversion. Gentlemen, I submit therefore on the whole of this part of the case, that it is impossible—looking at the publicity of these proceedings, the time these opinions were first adopted, the motives which led the people to adopt them, the consistency with which they adhered to them—it is impossible, from any one thing which has been adopted, and, as Lord Erskine said, printed and given to the world for the last twelve months, to come to the conclusion that these people were banded together in a wicked and abominable conspiracy, to accomplish universal desolation—it is impossible to come to the conclusion that there was a common preconceived plan to carry their object into effect by the wicked means specified in the indictment.

Gentlemen of the Jury, the Attorney-General deprecated this agitation on the question of the Repeal of the Union. He told you that at the time of the Union there was a fixed settlement of the constitutional relations of the two countries. Gentlemen of the Jury, the Irish people, or a large mass of them, are of opinion that they labour under grievances; that there are reasons why they should seek for a Repeal of the Union, and that you are not to condemn them on that ground. The universal people of Ireland look to the composition of the Government. They see it composed, as I shall say, of honourable, and enlightened, and excellent men; but they see amongst that Government no one man connected with Ireland, to represent their wants, their wishes, and their grievances. Of self-legislation they are deprived; of self-government it would seem they are incompetent. It is a matter no less of surprise than of concern, that the country which produced a Burke, the teacher of statesmen, the saviour of states, cannot now furnish a single individual qualified to share in the administration of the affairs of his native country. You may say, Gentlemen, and say with truth, that it is a matter of small moment who the individuals may be who compose the Ministry of the day, provided the people are prosperous, contented, and happy. But are the people of Ireland contented, prosperous, and happy? Alas! a large portion of our countrymen are unhappy, discontented, destitute. They look around for the cause of their misfortunes; they behold a country blessed by Providence with the means of wealth. The strong man pines for the daily wages of a sixpence; he strives with gaunt famine in the midst of fields teeming with fertility and plenty. Is he seditious, if he exclaims in the language of indignant remonstrance, that he thinks a native Parliament would give him the means of subsistence? Is it criminal for him to wish for the means of life? Is he seditious if, knowing that his single voice would be unheeded as the idle wind, he joins with other men in a declaration of their common wants, their common grievances, and their common sufferings? Is he, or are they, conspirators, if they think a local Parliament might, perhaps, give them those blessings for which they sigh? They think, perhaps erroneously, that a resident aristocracy, and a resident



gentry would prove the source of industry, and the means of wealth. They see their aristocracy absentees—the mischief daily and hourly increasing. They think, perchance, a native Parliament might induce them to return. Are they conspirators because they say so? They know, and true it is, that the beauties of Ireland, if now she has any, are not sufficient to induce her nobility or her gentry to return. What are her rare beauties compared with the fascinations of the Imperial Senate, or the glittering splendour of a Court? They see and they believe that wealth is hourly diminishing in the country. Before them they think there is a gloomy prospect and little hope. They look to this metropolis; they see what a quick and sensitive people cannot shut their eyes to—the houses of their nobility converted into boarding-houses or barracks; their Stamp Office abolished; their Linen Hall waste; their Exchange silent; their University deserted; their Custom House almost a Poor House; and, not long since, they read 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 grief of the poor old Irish soldiers, who had bravely served their country. That cruelty was prevented by an exhibition of national spirit and national indignation. They see daily the expenditure of every shilling is withdrawn from the poorer to the richer country, on the ground of the application of the hard rules of political economy, or the unbending principles of Imperial centralization. They behold their Parliament House—the Union has *improved* it into a Bank. That magnificent structure, within whose walls the voice of eloquence was heard, stands a monument of past glory and present degradation. The glorious labours of our gifted countrymen within those walls are not forgotten. The works of the understanding do not quickly perish. The verses of Homer have lived for twenty-five hundred years, without the loss of a syllable or a letter, while cities, and temples, and palaces have fallen. The eloquence of Greece tells us of the genius of her sons and of the freedom which produced it. 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 forth 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. We, too, in brighter times have had amongst us men 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 Burrowes, the Demosthenic fire of Plunket, the eloquence of Curran rushing from the heart, which will sound in the ears of his countrymen for ever. They failed to save the ancient Constitution of Ireland; wit, learning, eloquence, genius, lost their

power over the souls of men. With one great exception these, our distinguished countrymen, have passed away; but their memories cannot perish with them; while the language lasts their eloquence lives, and their names will be remembered by a grateful posterity while genius is honoured and patriotism revered. Lastly, on the subject of the Union. The Irish people say the Imperial Parliament has not attended to their peculiar wants, nor redressed their peculiar grievances. "Our character," say they, "has been misunderstood, and some times slandered; our faults have been magnified into vices; and the crimes of a few have been visited on the nation." The Irish—the mere Irish—have been derided as creatures of impulse without settled understandings, or reasoning powers, or moral sense. They have their faults, I grieve to say it; but their faults are redeemed by splendid virtues—their sympathies are warm, their affections are generous, their hearts are brave. They have rushed into this agitation with ardour, because it is their nature when they feel strongly to act boldly, and to speak passionately. Ascribe their excesses to their enthusiasm, and forgive. Recollect that the same enthusiasm has borne them triumphant over 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. Nor is their high spirit useful only in the storm of battle; it cheers their almost broken hearts—lightens their load of misery, well nigh unsupportable—sweetens that bitter cup of poverty which thousands of your countrymen are doomed to drink. What is there truly great which enthusiasm has not won for man? The glorious works of art, the immortal productions of the understanding, the incredible labours of heroes and patriots for 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, and tyranny; the securing and spreading of 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 heart. Directed to the wise purposes for which Heaven designed them, they will yet redeem, regenerate, and exalt this country.

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FRIDAY, FEBRUARY 2.

MR. WHITESIDE.

*My Lords, and Gentlemen of the Jury,*

I shall now draw your attention to the charge in the indictment, on the subject of the Arbitration Courts. That charge is, that the traversers conspired 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 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. This single accusation is spread over a great portion of the indictment, and was much dwelt upon by the Attorney-General in his address to you. I apprehend, it would astonish you much if a prosecution was instituted against one of you on the ground that you recommended one of your brother jurors not to go to law. With a view to ascertain whether the act done is legal, you must consider what was done, or advised to be done, and whether the means resorted to for carrying the object into effect were legal. I submit to you that it is both a religious and a moral duty, if possible, to compromise litigation. "Now, therefore, there is utterly a fault among you, because ye go to law one with another. Why do you not rather take wrong? Why do you not rather suffer yourselves to be defrauded?" 1 Cor. cap. 6, v. 7. Therefore, it is plain, that to compromise the subject matter of difference between neighbours, if you can, is a religious duty. Next, I submit it is a moral duty. Paley, in his Moral Philosophy, p. 141, says on this subject of litigation: "But since it is supposed to be undertaken simply with a view to the ends of justice and safety, the prosecutor of the action is bound to confine himself to the cheapest process that 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 is often very difficult to adjust separately." Therefore, Gentlemen, the thing done is both a religious and a 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 had been brought at great expense before a Judge and Jury, it has been suggested by counsel or by the Court that a submission to arbitration should be adopted, and that it should be referred by consent to one or two discreet and sensible men to adjudicate on the matter in dispute. The Statute law of the land recognizes arbitration. By the 10 Will. III. c. 14, it is provided, "that merchants, traders, and others may agree that their submission of a controversy (for which no remedy exists but by personal action or suit in equity) to award or umpirage, be made a rule of Court of record, and insert the agreement in their submission." There are two later Statutes also on the same subject. The 3 & 4 Vic. c. 105, s. 63, recites, that "whereas it is expedient to render references to arbitration more effectual, enacts, &c." There are also other provisions to facilitate submission to arbitration, and to compel the atten-

dance of witnesses. By the 5 & 6 Will. IV. c. 64, and the 5 & 6 Vic. c. 82, arbitration is also recognized; and by the latter Statute, where the matter in dispute is under £20, the arbitration awards are made free from stamp duty. Gentlemen, the Statute law, where it does not make any positive enactment on the subject, recommends arbitration. There are Statutes relating to Friendly Societies. The 10 Geo. IV. c. 56, s. 27, makes provision for referring their disputes to arbitration. My Lords, the case of *Waters v. Taylor*, 15 Vesey, 17, shows that Courts of Equity give encouragement to arbitration. Lord Eldon says: "The argument with reference to these provisions [provisions in reference to arbitration] is, that the Court can no more renounce the jurisdiction on account of the ridiculous or frivolous nature of the dispute, than upon the most important point; but my argument is, that the Forum they have provided for themselves, and the guard, introduced by them against the Forum of the country, shows their intention against the interference of any other jurisdiction until they have tried the effect of the special means provided by themselves." In *O'Keeffe v. O'Connell*, 1 Fox & Sm. 69, the late Chief Justice Bushe says: "And the reform all that remains to be considered is, whether the construction of the Statute is such that no award can be executed without previously making the submission a rule of Court. The preamble of the Statute goes far to show that such is not the true construction of the Act, for it recites the object of it to be, to give to the party getting the award the power of enforcing it by the summary order of that Court, of which the submission is made a rule. It does not affect to give a jurisdiction to the arbitrator through the authority of the Court. His authority and jurisdiction flow not from the Court, but from the deed of submission executed by the parties, and the Court is merely resorted to by means of the Statute, as affording a summary sanction by treating as a contempt the disobedience of the award when made." Now, Gentlemen, apply this to the evidence which the policeman Hovenden gave before you. Therefore, Gentlemen of the Jury, applying the doctrine to which I have taken the liberty of referring the Court, it is quite plain that the Arbitrators did not act until they had obtained the consent of the parties. To advise men not to go to law is not a crime; it is a moral duty; and if several agree in the recommendation to perform a moral duty, it cannot be a conspiracy. The thing to be done, therefore, is not illegal; and then the question is, whether the means by which it was sought to be done were illegal. Four or five documents were read by the Attorney-General, but they proved nothing. One of them was a summons served by one party on another. Gentlemen, I tell you that if a matter was referred to two jurors in that box, you must give, and it is usual to give and sign some form of notice, apprising the parties to come before you on a particular day, in order to enter on the particular subject of reference. As to the other document, the Form of Award, it proves nothing but how a proper award may be made. If the subject matter of



arbitration be £20 or upwards, the award must be stamped, to guard the parties against committing an illegal act. The Form of Award only shows that where the parties chose to consent to refer the subject matter of dispute, here is the form by which that consent may be carried into execution; and the directions which have been read declare positively that the Arbitrators are to take notice that they have no power, authority, or jurisdiction, except by the consent of such parties as may come before them. That was the last rule adopted by the Association, and the proposition made by Dr. Gray, that any person who would not abide the award of the Arbitrators should be expelled the Repeal Association, was rejected, and never acted on and never adopted, and the only rules resolved on were those which have been read in evidence, and in which no such penalty is contained. There is, therefore, nothing more in this part of the case than a recommendation to the parties to submit to arbitration. That consent is the root of all the references to arbitration, and the thing to be done being moral and proper, and the means being legal, I submit that this novel, unheard-of, unprecedented, extraordinary, extravagant ground of accusation cannot be relied on 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 own magistrates. It arose from matters 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 was suggested by the act of the Government. They saw that a number of gentlemen of high respectability, attended those Repeal meetings, and it is quite plain, from reading the first letter 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 discussion in the House of the Lords, and the declaration 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 those meetings, and if so to dismiss them." That letter plainly showed that the Lord Chancellor thought that attending those meetings originally was not an illegal act, and was then merely a warning. Gentlemen, it is not my duty, if I thought it consistent with the high respect I entertain for

that distinguished person, to enter on a discussion of the grounds on which he proceeded; but there were men of high authority expressed their opinions on 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 those 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—and it is not for me to say who was right, or who was wrong—seeing that these gentlemen possessed the confidence of the people, that the people were piqued at their dismissal, they did recommend their appointment as arbitrators, and in the words of Mr. O'Connell, "recommended that all miserable petty sessions 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 the 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 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 the peace, or magistrate, was, "conservator of the peace." In the 2 Inst., 558, Lord Coke says: "These conservators, by the ancient common law, were, by force of the King's writ, chosen in full and open county, *de probioribus et potentioribus comitatus*, by the freeholders of the county, 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 learning in the able and learned argument of one of the learned Judges now upon the Bench, Mr. Justice Perrin, in the case of *Taaffe v. Downes*, which shows the origin of the appointment of those justices to which I adverted. The sheriffs were originally appointed by the people, and for this reason, that they had the appointment of the juries. The law did not give the appointment of the sheriffs to the Crown, because if a cause arose between the Crown and the subject, he might return an unfair jury. The sheriffs were elected by the people for the same reason, as Lord Coke says: "because their

“ office concerned the administration of justice, in which all were concerned.” The coroner, for the same reason, was appointed by the people, and he alone, as in ancient times, is now elected by the people, as were the sheriffs and justices of the peace. The appointment of sheriffs is now vested in the worthiest hands in which it could be placed. The Judges select three gentlemen of the county whom they think most fit, and the Crown is bound to select a sheriff from the persons returned by the Judges. I, therefore, say it is no crime to wish the justices of the peace to be appointed by the people. If you wish to know how the people lost their right of appointing those officers you shall hear, in the language of one of the most eminent legal authorities that you can be referred to. I quote from 1 Blackstone’s *Comm.*, 347. “ But when Queen Isabel, wife of Edward II., had contrived to depose her husband, by a forced resignation of the crown, and had set up her son, Edward III., 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 through 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, the arbitration rested on the consent of the parties. 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 counsel 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 observations made by Mr. O’Connell on 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 by Mr. O’Connell, that it was not the act of Her Majesty, but that of her Ministers. He had a right to comment on it. Our gracious Sovereign is not responsible for any word in that speech. The Whig Ministry prepare a Whig speech, and the Tory Ministry a Tory speech. The Whig Ministry censure the Tory speech, and the Tory Ministry censure 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 papers 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 any thing that has proceeded from the Throne since the expulsion of the Stuarts, is thus, by the vile 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 interest 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 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 interest of the Church, almost in the words of the Popish tyrant, James II.? 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, let me call your attention to the mild and gentle strictures which appeared in another journal of similar politics, the *Morning Post*, with respect to that speech. I confine myself to a reference to those newspapers, for I am well aware that they are likely to find favour from the counsel for the Crown, and I think it utterly impossible that journals whose opinions are so sound and orthodox, should commit any error on the subject of the right of the public to express their opinion of the speech of the Sovereign, which is put into her mouth by the Minister. Hear, now, 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 the unhappy period, 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 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 infect high places. We know what the present administration has given us, it has given us a frivolous, scandalous, and futile 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, means, when the Whigs go out and the Tories come in. Now, Gentlemen, I implore you to keep that passage in mind when the Solicitor-General comes to speak of this part of the case. Remember how the Tories speak of the Whig speech, and how the Whigs speak of the Tory speech, and then consider whether you can deny to Mr. O’Connell, who does not care a bean-blossom for Whig or Tory, the right of abusing the speech of any Ministry who may be in power. I call on the Solicitor-General to read from beginning to end all the speeches of Mr. O’Connell which have been given in evidence, and I defy him to find a single sentence reflecting on the person of Her Majesty. I defy him to quote from any one of Mr. O’Connell’s speeches, anything in reference to the Queen’s speech which comes within a thousand degrees of the severity of these comments; and I say it with pleasure, for I cannot but deprecate such observations as indicating something on the part of him who uses them which does not partake of that high feeling of loyalty which ought to characterize all well-disposed subjects, and which ought surely to characterize such constitutional productions as the *Standard* and the *Post*.

The next charge is, that the traversers conspired to excite disaffection and discontent among her Majesty’s subjects serving in the army and navy. It is a singular charge; it does not allege that the traversers entertained any project to encourage mutiny, or desertion, or insubordination. It merely charges the traversers with exciting disaffection and discontent, without saying against whom. Mr. O’Connell’s observations with regard to the army arose out of a tragical transaction which took place in the course of last summer; a soldier dropped down dead while on drill, a jury was empannelled by the Crown, and found the circumstances under which he died, and added to their verdict something condemnatory of the discipline to which he had been subjected, as they thought that he had died of over fatigue, occasioned by severe drilling. This verdict was publicly discussed, and occasioned many comments in the newspapers, some of which contended that the jury were wrong in appending that statement, as it was subversive of discipline, while others as stoutly maintained that the jurors were quite right in doing so, for it was full time that the grievances of the soldiers should be inquired into. That occurrence was yet fresh in the public mind when another tragical event occurred; a private of the 5th Fusileers, a Protestant and an Englishman, stepped out of the ranks while on parade, and shot the Adjutant, a Scotch officer, dead upon the spot. This dreadful occurrence also gave rise to comments and observations; it was said, and truly said, that there must be something wrong in the discipline of the army, something oppressive to the soldiery, when a man of good character, and remarkable up to that time for his good conduct, could be guilty of an act so horrible and so atrocious. It was the topic of general conversation. There were many publications on the subject. Mr. O’Connell, incidentally, made some remarks on the subject, in one of his speeches. A letter was written by Priest

Power, to the editor of the *Pilot*. On that letter I will say nothing. Mr. Barrett is defended by his own counsel. But I merely wish to ask you, how a letter addressed to Mr. Barrett by a clergyman in the country can be given in evidence against Mr. Duffy. I complain that the gentleman with the scissors should have cut out this letter, and brought it forward against Mr. Duffy, as a proof of conspiracy. There is no evidence of a common plan to corrupt or tamper with the soldiery. It is not alleged that there was any common plan to wean their allegiance, and the only evidence in support of the charge is, that he expressed his opinion that the sergeants ought to be more frequently promoted to commissions. Gentlemen, I could refer you to military works, written by officers in the army, in which the same doctrine is propounded, that if there was promotion from the ranks, our army might be much improved by it. For my part, I give no opinion on the subject; but it seems to me at least to be a fair topic for discussion, and therefore I do not see why an expression of opinion on it should be dragged forward as a proof of conspiracy, when no precise positive act can be brought forward against my client, or the other traversers, in support of the charge.

Gentlemen, the Attorney-General dwelt much, as you may remember, on the fact of the resolution of the Volunteers at Dungannon, in 1782, having been printed on the Member's Card. I will dispose of that topic as shortly as possible. I ask you, as plain sensible men, when you have heard the opinions of eminent men, to the effect that the Union in constitutional principles is void; do you think that those observations of the Attorney-General are just? The Attorney-General said, that such opinions being expressed by those eminent men in Parliament, before the act had passed, was no justification for the assertion of them, after the Union had passed into a law. To a certain extent the observation is true, but the Attorney-General has pushed it too far. If that distinguished man expressed his fixed deliberate opinion that the Union was void in point of principle, what difference can it make whether that opinion was expressed before or after the measure had passed into a law? We must suppose that his expressions faithfully represented his thoughts on the subject; 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 the passing of a law, which is not founded on truth. Is it not monstrous to charge Mr. O'Connell with a conspiracy for having quoted Mr. Saurin's words? Why was he not indicted before? He has been quoting those words for thirty-four years. Gentlemen, I hold in my hand a report of the trial of Mr. Magee of the *Evening Post*. It was a remarkable trial, and took place in the year 1813. I find in the report of Mr. O'Connell's speech, on that occasion, in page 109 of the Report, this passage: "Now, Gentlemen, of this Mr. Saurin, then an Agitator, I beg leave to read the opinion on this Union—the author of which we have only called artful and treacherous. From his speech of the 13th March, 1800, I select those passages: 'Mr. Saurin said, ' he felt it his duty to the Crown, to the country, and to his family,

“to warn the Minister of the dreadful consequences of persevering in  
 “a measure which the people of Ireland almost unanimously disliked.”  
 And again, “he, for one, would assert the principles of the glorious  
 “revolution, and boldly assert in the face of the nation, that when  
 “the sovereign power dissolved the compact that existed between  
 “the Government and the people, that moment the right of resistance  
 “accrues; whether it would be prudent in the people to avail them-  
 “selves of that right, would be another question; but if a Legisla-  
 “tive Union were forced on the country, against the will of its in-  
 “habitants, it would be a NULLITY, and resistance to it would be a  
 “STRUGGLE against USURPATION, and not a RESISTANCE against  
 “LAW.” Mr. Saurin was counsel on the other side; he was present  
 when these words were used, and he made no observation withdrawing  
 or qualifying the opinion which he had expressed in the Irish House  
 of Commons, thirteen years before. Let me now refer to the debates  
 in the Irish Parliament, on the question of the Union. I will not  
 occupy your time with reading more than a few sentences, but you  
 will observe that there was scarcely a speaker of eminence who did  
 not prophesy that in a few years the question of the Union would be  
 re-argued, re-discussed, and re-investigated. You have already heard  
 what Mr. Saurin said. Mr. Bushe, addressing Lord Castlereagh,  
 said: “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 politi-  
 “cal 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 was 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 ex-  
 “erted 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 with-  
 “out; that the rabble were appealed to from 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, and stained the treasury bench—that the disgust of the measure broke asunder and dissociated laws of the tenderest and most delicate connexions 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 these 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. 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, where a transaction, though fortified by seven-fold form, is radically fraudulent, that all the forms and solemnities of law are but so many badges of the fraud; and that 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, not of compact and volition—a conquest, not a union. Union upon such principles, and accomplished by such means, policy never can require, justice can never 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 tomb of Charlemont and the Volunteers, and erase his epitaph, or whether your children go to your graves saying, ‘A venal, a military court attacked the liberties of the Irish, and here lie the bones of the honourable dead men 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, governed and directed by conscience and wise discretion; he did not contend certainly that the Parliament might not be so constituted as not to 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. I tell you, 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 well not only the nature of the measure itself, but the effect which it may have on the country, before it accedes to the present resolution. Under the Constitution of Ireland we have lived happy, we have all bettered our condition, our country has advanced to greatness with uncommon rapidity, our commerce has increased, our agriculture improved, our laws have assumed a sublime and impartial character, it has furnished every thing for hope and nothing for despondency. It is that Constitution which has given 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 a good one, and you think it deserving of being considered by the country, *dissolve* the Parliament, and 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 lately 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 hours 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 Crown, and to British connexion.*" Gentlemen, I will trouble you but with one word more—it is the opinion of the Hon. J. Fitzgerald. He sat in Parliament at that time. He held the important and lucrative office of Prime Sergeant. He was called on to support the measure. Rather than do so, he resigned his place, because he said his conscience would not permit him to hold it. "The genius, the ambition, and

“ the aspiring thoughts of man are not to be controlled ; and little reason  
 “ have we, dressed in a little brief and questionable authority, to expect  
 “ that the increasing population of four millions of people will respect this  
 “ compact, if entered into, as sacred. It will be handed down to them  
 “ with the history of the present day, and the means taken to effect  
 “ this mighty change. There will be a look back. They will be told  
 “ that the country was called upon to this compact, when martial law  
 “ was in full force. They will hear of the years 1779 and 1782.  
 “ They will inquire how they lost the great acquisition of those days :  
 “ a free, residing, superintending legislature. They will inquire by  
 “ what means they lost the power of granting supplies, the true source  
 “ of national independence, and the great constitutional control of the  
 “ executive power, whether resident or non-resident ; and much I fear,  
 “ that, dazzled by the splendour, without the loyalty and moderation of  
 “ 1782, similar claims may be made, and Great Britain may not be  
 “ found in a similar disposition to concede. *My soul aches, to think*  
 “ *with what ease confusion in that gap may enter, and by the one*  
 “ *country take the other.* Under those impressions I differ from  
 “ those with whom I had so long acted. I still differ from them with  
 “ respect, and without resentment ; and shall vote with the Hon.  
 “ Baronet.”

Gentlemen, you see what that great man foresaw. Yes, he foresaw that posterity would inquire into the means by which they lost that greatest of blessings, a free, superintending, resident Parliament. The Attorney-General observed that these were passing speeches made in the heat of debate. The same eminent men were not satisfied with passing speeches. They left on record their opinions on the subject of the Union. They drew up a solemn and elaborate document in the nature of a protest, in order to perpetuate on the records of Parliament, and to hand down to posterity their sentiments on the subject of the Union. Lord Corry, the son of Lord Belvidere, moved the Protest and Address to his Majesty. It is given in the 4th Vol. of Grattan's speeches, and is as follows :  
 “ 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 delu-  
 “ sive, and whenever it is to have effect, that effect will be to our  
 “ injury. Most of the duties on imports 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 manufac-  
 “ turers 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 in-  
 “ terest 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  
 “ in 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, scan-  
 “ dalous signatures against the Constitution ; that notwithstanding  
 “ these attempts to procure a fallacious appearance of strength and  
 “ muster against Parliament, the people have expressed their senti-  
 “ ments 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 peo-  
 “ ple, as well as the Parliament, to be against it, your Majesty’s Mi-  
 “ nisters 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  
 “ procuring 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 Par-  
 “ liament 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, par-  
 “ ticularly the Chancellor of the Exchequer, the Prime Sergeant,  
 “ three Commissioners of Revenue, a Commissioner of Accounts,  
 “ a Commissioner of Barracks, and the Cursitor of the Court of Chan-  
 “ cery, 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 pro-  
 “ cured 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 carry-  
 “ ing 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 disin-  
 “ herited 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 ex-  
 “ penses, that is, two-seventeenths by Ireland, and fifteen-seven-  
 “ tenths by Britain; that under these unconstitutional circum-  
 “ stances, your Majesty’s Ministers have endeavoured, against the  
 “ declared sense of the people, to impose upon them a new Constitu-  
 “ tion, subverting the old.” 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 feel 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 Union is an unnecessary innova-  
 “ tion, and innovations, at all times hazardous, are rendered pecu-  
 “ liarily so 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 re-  
 “ venues. Inasmuch, also, as it destroys our Constitution which was  
 “ worked well, and substitutes a new one, the benefits of 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 Bri-  
 “ tain 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, with-  
 “ out giving wealth or strength to Britain.

“ Inasmuch as it tends to raise and perpetuate discontent and  
 “ jealousies, to create new and strengthen old distinctions of interests  
 “ in our concerns of trade, manufactures, revenue, and Constitution,  
 “ and instead of increasing the connexion between the two king-  
 “ doms, 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 charac-  
 “ ter, debases its rank from a kingdom to that of a dependent pro-  
 “ vince, yet leaves us every expense and mark of a kingdom but the  
 “ essential one of a Parliament; 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. In-  
 “ asmuch 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 intrust  
 “ 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 senses of the Commons and the peo-  
 “ ple, during the existence of martial law through 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 pro-  
 “ tection 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 irre-  
 “ sistible 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 connexion  
 “ between the two kingdoms, on which the happiness, the power,  
 “ and the strength of each irrevocably and unalterably depend.”

Now, I observe that Mr. Saurin was one of the tellers upon that division ; the numbers were 77 to 135 ; he was therefore a party to that deliberate, formal, document now on record, which contains his sentiments upon that occasion. Mr. Toler, who was so peculiarly distinguished for his legal acquirements, voted for the Union, and obtained a peerage, while Mr. Saurin died a Commoner ; and this was one of the advantages gained to the country by the Union. Gentlemen, it has been observed by the Attorney-General, that the state and condition of Ireland, at the time the Volunteers were established, warranted them in the resolutions which they adopted, but that the present state of the law does not justify a similar line of conduct. The argument fails him. His argument was, that at that time Ireland had a Parliament perfectly independent and separate from England, but that England had usurped the right, by 6 Geo. I. to pass laws to bind this country, although the Irish then had a Parliament of their own, and that therefore the Volunteers were justified in combining in the way they did, because the Act of 6 Geo. I. was an insult and an affront to the country, and gave a right to England to treat Ireland as a dependent country. Ireland had then a Parliament, and therefore the Volunteers had a right to pass the resolutions which they did pass. That argument fails him ; for Lord Coke says, in 4 Inst., that the Parliament of England had the power to bind Ireland by expressly naming it. Therefore that Statute of 6 Geo. I. was law when the Volunteers came into existence, and consequently those resolutions were against the letter, though not against the spirit, of the law. Thus the Attorney-General’s argument may be turned against himself, for if it was justifiable to pass resolutions condemnatory of the English Act and against the letter of the law, when we had a Parliament here, which has been deprived of its authority, how much more justifiable is it to adopt resolutions in the spirit of those of the Volunteers, when we have lost that Parliament, with the benefits of a resident legislature. I find in looking again at the resolutions that an ancestor of my friend Mr. Tomb attested, by his own signature, that it was illegal, unconstitutional, and a grievance to at-

tempt to bind the people of Ireland by an English Act of Parliament, although it might be according to the letter of the law, it was contrary to the spirit.

The Attorney-General has said that the Act of Union was a great and a final settlement ; I shall show you that that argument destroys the very principle upon which the foundation of the Union rests. If he means to contend that an Act of Parliament contains a provision for its finality, that destroys that foundation of the Act of Union, for a previous Act had provided the reverse. The Volunteers, therefore, made no mistake. Why? They found that by the 6 Geo. I. the Parliament of England had presumed to bind the people of Ireland, and they called on the people of England to abandon and to repeal that Act, and they succeeded. The Parliaments of both countries passed that solemn Declaration of Rights to which Mr. O'Connell has referred, and from which he has drawn an argument, which was signed and ratified by the Lord Lieutenant as a final settlement between the two countries. That was the Statute 23 Geo. III. c. 28 (England), by which it was enacted, "That the right claimed by the people of Ireland to be bound only by laws enacted by His Majesty, and the Parliament of that kingdom, in all cases whatever, and to have all actions and suits at law or in equity, which may be instituted in that kingdom, decided by His Majesty's Court, therein finally, and without appeal from thence, shall be, and it is hereby declared to be established and ascertained for ever, and shall at no time hereafter be questioned or questionable." Lord Mountnorris, in the "Transactions of the Irish Parliament," page 399, speaking of that Statute, says: "The assertion and declaration of the Irish powers, and the final renunciation of the English Parliament in 1781, have established upon an eternal, irrevocable foundation the sole right of their own Parliament to legislate for Ireland." That Act in the course of eighteen years was repealed, although it contained stronger language, indicating the intention of the Legislature, that it was to be a final and irrevocable settlement between the two countries. And yet we are told that the traversers are not at liberty to discuss the expediency or the justice of repealing the Act of Union. I therefore submit to your better judgment, that the argument of the Attorney-General on that ground is of no value, and that the traversers have just as much a right to insist that the Act of Union should be repealed, as they who passed the Act of Union had to insist that the Statute 23 Geo. III. c. 28, should be repealed. Molyneux in his "State of Ireland," page 105, says: "Shall we of this kingdom be denied the birth-right of every free born English subject by having laws imposed on us, when we are neither personally nor representatively present." That celebrated book met with a fate which it did not deserve. The English Parliament ordered that it should be burned, and thereby much increased the estimation in which it was held in this country.

Gentlemen, I shall next call your attention to the consideration of another subject, the mode by which Mr. O'Connell asserted that the Irish Parliament should be revived. Mr. O'Connell in that ex-

traordinary 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 £10, possesses a vote, and there are very few houses in Dublin not worth £10. 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, Universal Suffrage, and Vote by Ballot. This was expressed in language much more violent than that used by the traversers, and yet the jury decided that he had a right to hold that opinion, all which was very well for a Duke. In his letter, addressed to Colonel Sharman, he states, that "it might be a better arrangement to have only 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 sincerely she may. It is a positive insult to the understanding of any man to say that such would not be a blessing to this country, improve her trade, her manufactures, and her resources. Even our Profession would be benefited by it, for the residence of Her Most Gracious Majesty in this country would not prevent her loyal subjects from going to law. The Attorney-General adopted the Socratic method in his argument with us; he put questions to us, which he required us to answer. Now, I am not bound to maintain the doctrines propounded by others who spoke before me, but I shall show that there is reason in what they said. Can it be 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. If that be a conspiracy, it is a conspiracy in favour of matrimony, and I think I may make my learned friend a present of it. If the question is to be tried by a *fair* jury, I think they would decree in our favour. The Attorney-General has endeavoured to persuade you that Mr. O'Connell's intention was, that Her Majesty was to be pulled from her throne—the House of Peers to be abolished—and the House of Commons extinguished! Gentlemen, if he has been guilty of any crime in this respect, it is of the monstrous crime of extending the prerogative of the Crown. 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. Suppose he did say so, where is the authority in which it is laid down, that the man who propounded such a proposition—that the man who says that the Sovereign has greater authority than she really has, is guilty of conspiracy? If you say that the Sovereign has greater prerogative power than she has, are you therefore to be charged with a conspiracy? 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, as we lawyers do, prove what you assert by some authority, cite a case to show that Her Majesty has the power to dispense with the Act of Union, and to summon an Irish Parliament. Suppose that Mr. O'Connell, instead of saying that Parliament should be reformed—that the Parliament should be extended to Ireland—that everything had gone wrong, and that the Irish Parliament should be revived—that no power on earth had a right to make laws for Ireland, but the King, Lords, and Commons of Ireland, in accordance with the resolutions of the Volunteers in 1782—that the Act of Union was a nullity in accordance with the opinion of Mr. Saurin; suppose he said, I am of opinion that the Parliament is a humbug—a nuisance, that Her Majesty has a perfect right to rule by her own word, without a Parliament, when she likes, and where she likes, for the Queen is an unalterable part of the Constitution, and may dispense with Lords and Commons.—What would be the consequence? I will cite to you a case in point. A celebrated writer in England published a book, in which he said the House of Commons was unnecessary. The House of Commons took huff at that, and said that that doctrine was unconstitutional, and voted the book to be a scandalous and seditious libel, and presented an address to the Sovereign, praying him to direct the Attorney General to prosecute the publisher of such a monstrous opinion, and a prosecution was accordingly instituted. That is the case of *Rex v. Reeves*, 2 Peake, N.P. Cases; and Lord Kenyon then laid it down, “that the right 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 that we possess, for the Reformation, the Revolution, and our emancipation from the tyranny of the Stuarts; and that in a free country like this, the productions of a political writer should not be harshly 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 I need not say to you that the people of England are justly attached to the judicial system under which they live, when you hear it laid down by the Lord Chief Justice of England, a doctrine so favourable to freedom. The jury in that case retired; they had the book before them; and though they had the address of the Parliament, declaring that the book was improper, yet nevertheless they gave a verdict of acquittal. The language there was extravagant, the doctrine unsound, but the jury looked upon it with the eyes of men of sense, and they qualified their verdict by saying, they disapproved of what was said, and the mode the argument was conducted; they found a verdict of not guilty, and the Chief Justice approved of that verdict. Therefore, if Mr. O'Connell had said that Her Majesty might 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 ought to be restored to the position in which it stood before the Union; that the House

of Lords and the House of Commons ought to be restored. In England, the right of free discussion is the right of every Englishman; 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. The Attorney-General called on the traversers' counsel to assert, if they could, that Her Majesty had power to summon an Irish Parliament, notwithstanding the Act of Union. Gentlemen, the power and prerogative of the Crown to issue writs to summon a Parliament, seem to have been very extensive under the old law. There is no authority for asserting that that prerogative does not yet exist; but, no Minister, in modern times, would advise Her Majesty to exercise that prerogative. Queen Elizabeth omitted sending writs to ten boroughs, in order to have a majority. Hallam, in his "History of the Constitution," mentions many instances of the Crown withholding writs from places accustomed to send members to Parliament. If you look to the Parliamentary History you will find the most learned and elaborate discourse which perhaps was ever written, by Sir John Davies, the Attorney-General, to King James I., and is to be found in the Appendix to Leland's History of Ireland. In that discourse you will find the right of the Sovereign, namely to create forty boroughs in one day, vindicated. It was questioned in 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 a writ for the borough of Newark; that was disputed, and it was decided by the House of Commons that the Sovereign had a right to create the borough, and that by a very large majority. Mr. O'Connell's argument is that the Sovereign has still this right. Chitty, in his work on the Prerogative of the Crown, enters into that question. He says, in p. 67: "It is in the power of the Crown to add any number of members to the House of Peers by raising individuals to the English peerage; but it may, perhaps, be doubtful whether the King has it in his power to increase the number of members in the Lower House of Parliament, by empowering an unrepresented town to elect and send members to Parliament. It seems clear that, from the time of Edward IV., until the reign of Charles II., both inclusive, our kings used frequently to assume this right. The last time it is known to have been exercised was in the 29 Car. II., who gave this privilege to Newark; and on the legality of the grant being then questioned, for the first time, in the House of Commons, it was acknowledged by a majority of 125 to 73." If that prerogative does exist, it is in the power of the Crown to dispense with the Act of Union; for the Sovereign may create boroughs now, as before that Act. That book was published in the year 1820. Whether that opinion be right or wrong, is Mr. Duffy to be punished as a conspirator because he adopted a certain opinion of Mr. O'Connell's, not having read sufficiently on the subject to know whether that opinion was right or wrong. Suppose Mr.

Duffy had adopted the opinion of the Attorney or Solicitor-General on the subject, instead of that of Mr. O'Connell, would he, therefore, be a conspirator? 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, which was 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.

The LORD CHIEF JUSTICE.—I do not think you can cite that book.

Mr. *Whiteside*.—In Horne Tooke's case, publications of the prisoner, twelve years before, were allowed to be read in evidence. However, I can state the substance of it. Mr. O'Connell said, that to rely on 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 to 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 its members believed the traversers 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 are spoken of openly, and in daylight—those dark projects, those treasonable designs, these hidden contrivances. The rules of the Association are given to the public; they employed the printer of the Crown to print them; and they declared their purpose to be the peaceable organization of the people, to concentrate popular opinion, and carry out the objects they had in view, and that was legitimate and proper. What was the conduct of the Government? Did that Government show that they believed that there existed in this country a conspiracy beginning in March and ending in 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 terms the Court sat in which the Attorney-General had the right, by reason of his high station, to take any proceedings he thought proper in the defence of

the law and Constitution, on any of those publications that are now asserted to be seditious—why have they not been prosecuted by him? And I retort on him the argument he used, that if it was mischievous in those defendants, or any of them, to spread poison through the land, it was 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 called on to act against the meetings in this country, and they declined. 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, give us now only a short Act of Parliament to put down those who disturb the public peace. They were called upon to do that, and they did not do it. They remain quiet until Parliament breaks up; his Excellency, of whom I speak with profound respect, retires from Ireland for recreation, or for the cultivation of those elegant tastes for which he is so distinguished; the Lord Chancellor betakes himself to the banks of the Thames, to the charms of Boyle Farm, to muse on law or read of Pope; the noble Secretary for Ireland 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; the Solicitor-General, calm as ever, is indulging in the most agreeable anticipations of the future; the Prime Minister is gone to Drayton; Her Majesty to sea. Ireland is left, in the most comfortable manner possible, to go head foremost to destruction. A happier arrangement of things could not be made; life and property were consigned to the mercy of the conspirators, and the progress of the conspiracy advanced unheeded and unchecked. The meeting at Clontarf is announced: how shall I describe it? A black cloud hung on the declivities of the mountains; the political horizon is overcast; a dangerous activity on the part of the Government succeeds a dangerous silence; couriers fly to the Irish officials. The Crown lawyers prick up their ears and say, here is sedition—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 our English functionaries to return to the seat of their Irish happiness! Meanwhile time pressed; Mr. Attorney grew ardent, Mr. Solicitor apprehensive; 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 Gibbon of future times may tell. I'll tell you what they do—they do nothing. The do-nothing policy prevailed, and on Friday they separated, having done nothing—with the happy consciousness that they had discharged their duty. Refreshed by sleep, they reassembled on Saturday. They consider—they compose—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. The Commander-in-Chief receives his order, and prepares for battle—the cannon are loaded—the bayonets are fixed—the cavalry mount, and forth marches our victorious army in all “the pride, pomp, and circumstance of glorious war.” It was a glorious sight to see. The advanced guard, by a brisk movement, pushed on and seized Aldborough House. The light infantry, protected by cavalry, rush forward—the guns are placed in position—the Pigeon-house, bristling with cannon, looked awful, the police skirmished, and the Commander-in-Chief—what did he do?—all that Julius Cæsar, under similar circumstances, could have done. 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. Such a triumph was never achieved since the renowned days of Irish history, when Brian Boroihme girded on his mighty sword on his giant thigh and smote the Danes. To be more 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 peculiar a people as the Irish? The meeting at Donnybrook was not forbidden—the Clontarf meeting was to be put down by the bayonet. Will the intellects of the people be much edified by that most interesting document—that learned performance, the proclamation, which was 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? Does Irish law vary with the seasons? Is that law in June which is not law in October? 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 reason, if it was—if the Government saw the men that went to that meeting passing by the Castle gate, and knew it was held, and they read the speeches, if they had their Reporters there, and were aware of everything that passed, why not then put down that and similar 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,

yet allowed the mischief to prevail and spread over the country, until it was ready to burst forth, volcano-like, in a fiery torrent. If you convict my client, you convict the Government. If you desire to acquit the Government, you must acquit my client. These Ministers are chosen by Her Majesty to govern this great empire; the peace of the country is intrusted to them; your lives and property, it is asserted, are in jeopardy; they say a black conspiracy has existed in this country since the month of March, that they knew it, and were aware of every act done in pursuance of that conspiracy; yet they did nothing to put it down; they allowed the seditious speeches to be made and published; they read them; they noted them; they let them pass; they took no proceedings; they asked no aid from Parliament; and now they want to disengage themselves clear, by commencing this unprecedented prosecution, by charging these men with an illegal act. In the ordinary course of human affairs, the most powerful and conclusive admissions will be drawn from the conduct of parties, but in cases of political conspiracy between the Crown and the subject, it is for you to take care, and great care, that it should not be in the power of the Government to-day to say, by their conduct, as significant as their acts and declarations, a certain thing is lawful, and not to be censured—and then to draw together all the incautious language, all the violence of public men, for a period of ten months, in one indictment, to overload the memory, and confuse the understanding, by the mass of paper upon the table; and to tell twelve honest men, who are governed by no other desire than to do justice, to spell out of the whole a black conspiracy to subvert the monarchy and uproot the Constitution that you have sworn to protect. I take the liberty to say this, that it is impossible for you to believe, nor do I believe that the learned gentlemen I see before me ever thought there was a conspiracy. I do not believe they thought the conduct complained of amounted to a conspiracy. They did not, during all that time, prosecute for a conspiracy. Was the understanding of the Attorney-General less acute—was the Solicitor-General less anxious—were they reluctant to tell the Government to discharge their duty? No; they are honourable gentlemen both; they do credit to the Government that selected them for their important functions, and there are not two men in the Hall that would more honestly and frankly express any opinion they were called upon to give. They did not advise the Government to act. The Government did not act, because they did not believe a conspiracy to exist. It now remains for me to say but a few words in reference to the particular acts charged against my client, Mr. Duffy. He 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 advocated a great public question. 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, vehe-

mently. Reflect on the position in which such a writer stands. 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 on what is passing, promptly, and without reserve. If he is deficient in spirit, the public will not read his paper; if extravagant, the Attorney-General threatens, and sometimes the doors of the Queen's Bench open for his admission, whence he cannot retire as comfortably and as quietly 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 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 the indictment; nay, more, the proprietor is liable, though absent, for the sins of others, although 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 you are to collect, by an inference of reason, that he has made himself, by the acts he has done, a conspirator, guilty of the precise conspiracy charged in the indictment. I deny there is any general conspiracy, and I have endeavoured to prove that there was none. If there was, secondly, I deny Mr. Duffy to have been a party to any such conspiracy. His acts establish nothing criminal against him. He is a Repealer, but that does not entitle this Court to deprive him of his liberty or his 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 has Mr. Duffy done? The charge against him is divided into two heads, the reports of proceedings published by him, and the original articles and observations upon them. With respect to the reports, I apprehend that you cannot find him guilty of any charge of conspiracy. He reprinted in his weekly paper, though not at such a length, the reports of proceedings for the previous week, compiled from perhaps ten or a dozen other journals in which they originally appeared. These were matters which it was desirable the public should know, which it was desirable the Government of England should know, and what was he to do? If he did not publish them in his paper, no one would buy it. Is he more guilty of reporting such meetings than the *Evening Mail*, or the *Evening Packet*, or *Saunders*, or the *Warder*? Therefore, Gentlemen, so far as the reports go, I do not think you can find him guilty as a conspirator. The Attorney-General himself admitted this, for he said that my client used his newspaper, not to circulate news, but as an engine of the Association to forward the conspiracy. He therefore admitted, that merely narrating or publishing the news of the day would not

make him a conspirator. Why the business of a newspaper must be stopped altogether if such a proposition could be for a moment listened to.

The remaining question, then, is as to the original publications, which, I admit, suggest other considerations, which I shall take the liberty of bringing under your notice. 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 ferreted 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. 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. The indictment 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. I want to know by what right you are called upon to presume, in a criminal case, that it refers to 1798, any more than to 1698, or 1598, or 1498. The expression 1798 does not occur in the song from the beginning to the end. 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 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, by reason of a common plan, and an union of purpose, that some young man, perhaps within the walls of Trinity College, animated with that poetic fire which illuminated 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 Eng-



land is not safe—that the Constitution of England is in danger, because some young man, 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 found a verdict on such grounds? Gentlemen, it is not fair, 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, 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 systems 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 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 number 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 these 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 for 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 ever more as a conspirator, because he commiserated the unhappy end of any ardent and misguided men who loved their country, "not wisely, but too well?" No, Gentlemen, such a proceeding would be scandalous and disgraceful; and equally unworthy is it of the great and distinguished 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 less indicative of conspiracy (if conspiracy indeed there be) than the stanzas which have been read to you. Let him tell you how Moore was punished for writing such lines as these in his "Lamentation of Aughrim:"

" Could the chain for an instant be riven  
Which Tyranny flung round us then,  
Oh! 'tis not in man nor 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."

Let him tell you how the bard was punished for penning the song of "Ruark, 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; 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 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

to the Sovereign. Are not the 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 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 affected by it—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 Malagrowther,” 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 will be forced to fly with his monster indictment. Did any one presume to prosecute Sir Walter Scott for that? No. What then was the result? The Scotch succeeded, and the English Minister was obliged to give them their rights. But was that done in a cold, servile manner? Do you think that they would have succeeded if they had merely remonstrated with the Minister? if they had said to him: “Sir Robert, do listen to us, we respectfully submit,” as we lawyers say in addressing the Bench. Not he; he went boldly about the task, and he succeeded in making his country, which contained about one quarter of the number of inhabitants that Ireland did—he succeeded in making his country happy, respectable, and great, while we are degraded to a poor, pitiful, paltry province. I am not ashamed or afraid to say this. I trust the time will come, when the Irish people will combine to have their common grievances redressed, and, for the common good of their country—the good of this ancient kingdom, that she may once again flourish.

Gentlemen, I now come to the evidence, to prove a serious charge of the indictment; and what do you think the Attorney-General relied on part of it for? Why a letter in the *Nation* newspaper, signed “A Delcassian.” Delcassian, treason of course. 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 loughs, 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. 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 upon the table, and asked, “Do you remember the letter of ‘The Delcassian,’” he would say, “On my oath I do not remember a word about it.” 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 gentleman who lived

in his days. That is one part of the charge; and now come to that which they rely on for a conviction. The subject is from the same paper, the *Nation*, of the 27th of April. It is headed, "Something is coming, aye, for good or ill, something is coming." [Mr. Whiteside read the article, see *ante*, page 71.] It says, "Coolness is 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 that there is. "The people are sober now." I submit there is nothing of conspiracy in that. "Let them be kind and conciliating to the Protestants."—Neither can I see anything in that; but every person don't view things in the same light as the Attorney-General does. I do not think it is wrong in a writer to endeavour to conciliate Protestants, because he well knew that there were 800,000 good Presbyterians in the North of Ireland, who were strong-minded, 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. I don't see anything wrong in that; and 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 the traversers are to be convicted of a conspiracy, because the writer in the *Nation* endeavoured to conciliate his Protestant brethren. The *Nation* says they differ from Mr. O'Connell; and is that a sign of conspiracy? I say the newspapers do not speak the sentiments of the Association, and therefore there is no conspiracy between its members and the editor. The next article he relied on, is the article headed "Our Nationality;" a thing which will always be objected to by our brethren on the other side of the water, or at least by the Government. [Mr. Whiteside read the article, see *ante*, p. 74.] Mr. Barrett has also used the word "clutched" in a speech made by him. "Oh," says Mr. Barrett, we shall be the devil for thinking, like the old woman's cow." And then, forthwith, the Attorney-General put the "old woman's cow" into the indictment. "Until we clutch"—What? The Queen? No. The Chief Justice? No. The Attorney-General? No; but our "independence." I ask you, is this to be brought up in judgment against the defendant? I will ask any one man of you, if he were on his oath, 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 forgotten. The advertisement about the Clontarf meeting was not what it should be—it was most objectionable; but it was immediately repudiated and 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 was 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 intended ; but as they had proceeded in a procession to Donnybrook, they considered that they might do so to Clontarf.

There is but one article more I shall trouble you with ; but I must remark that I cannot approve of the unjust and intemperate observations which were sometimes made upon the English nation ; for they, a great, free, virtuous, and magnanimous people—they have gained freedom for themselves, and have given to the world proofs of their enterprize and spirit. It is, however, to be regretted that the practical good sense, which pre-eminently mark 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 Government 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, I must say, 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 or 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 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, 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 Governments 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 be avoided for the time to come, and remedies, if possible, discovered for the miserable consequences of misgovernment and neglect. Gentlemen of the Jury, I have no more to say upon that part of the case. 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 Mr. Moore. Moore was wrong to have used it. Yet, probably, when the trials are over, if I called upon the learned Solicitor-General, I would find “ Moore’s Melodies,” and “ The Irish Gentleman in Search of a Religion,” upon his table ; yet, perhaps, if he knew who knocked at the door, he would, like the

lady in the play, thrust one into a drawer, and put the other under the table, and put "The whole Duty of Man" in its place.

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 Shackelton, expostulating for having the words Benburb, Clontarf, &c., upon the Repeal card. Now, Gentlemen, do you think the traversers combined together, that Mr. Ebenezer Shackelton 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, friend, thou hast no business here," and he peaceably dropped him overboard. Gentlemen, in my young days 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 Shackelton, through Mr. Haughton, writes this letter to the *Nation*, that Mr. O'Connell and Mr. Steele should suffer for it? I call your attention to this passage: "We feel no wish to encourage the vocations of war; but whenever the occasion comes here or elsewhere, many sagacious and informed souls, bold and strong arms, will be found to plan, lead, and fight; may the examples of Miltiades and Washington never want imitators where there are tyrants to invade, freemen to defend, or slaves to struggle for liberty." This is the article, Gentlemen, which the Attorney-General has brought you to pronounce a verdict upon. I defend that sentiment—it is noble—worthy of 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 of the greater hero of modern times whose illustrious life is an example useful for liberty and civilization for ever. I will 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 transcendent 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. Considering what America is and what she was, I exclaim with the Roman historian, "*Civitas incredibile memoratu est, adepta libertate, quantum brevi crenerit.*" 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 and 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.

Gentlemen, the whole case is now before you, and is 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 refused to concur. 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 your 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 dare 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—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." Gentlemen, the true object of this prosecution is to put down the freedom of 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 can 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, science, civilization, 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 make 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 to enslave; resist-



ance 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 he hates. State prosecutors, 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 are 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 with discussion and by discussion tyranny must perish? Compare the stillness of despotism with the healthful animation, the natural warmth, the bold language, the proud bearing, which spring 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 under 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 'complaints 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 rea-

son. Emulate this day the great virtues of Englishmen, their love of fairness, their immovable 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 there, not to persecute, but to save. Believe 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 Ministry, and dragged their Sovereign to the block. We shall not be ready to imitate the English precedent; 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 ours for 600 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 terrors of the land, but in the hearts of her people. Your patience is exhausted. If I have spoken suitably to the subject, 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 well 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.

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MR. MACDONOGH.

*May it please your Lordships, Gentlemen of the Jury,*

In this case I am counsel for Mr. Richard Barrett, the proprietor of the *Pilot* newspaper. He stands indicted for an unlawful, malicious, and seditious conspiracy against the laws and Constitution of the realm. Associated with him in that indictment are two Members of Parliament, one of them a gentleman of high rank in the Profession of the law, holding a patent of precedence under the Crown, and entitled to precedence next after Her Majesty's Sergeants. But this prosecution takes a wider range, and aspires to a loftier flight, for it involves in its moral condemnation millions of the Irish people. The counsel for the prosecution admit they have no direct or express evidence to establish this conspiracy, but they represent their case as one of presumptive proof—of circumstantial evidence; it becomes, therefore, of importance, that you should reflect upon the true principles of judgment in such a case, for to you is confided the duty of hearing and determining (guided by the wisdom of the Court) upon facts and probabilities, and those presumptions which the law entitles you to make.

Gentlemen, I presume that you are familiar with the principle, that every man enters a court of justice with the presumption of innocence in his favour. It requires in the prisoner no station or place in society to raise such a presumption. The law of England is a law of justice, and it does not narrow or restrict its presumptions of innocence to any particular class of the Queen's subjects. I have the assurance and authority of the law for telling you, that the law of the land presumes every man to be innocent till the contrary is proved. It is so laid down in Roscoe, Crim. Law, 16. And how is this proof to be made? not by exciting suspicion, not by creating doubts or difficulties, or placing the prisoner in an equivocal position; no, to justify a verdict of guilty, it is not enough to collect from the evidence, that the defendant, in any particular case, *may be guilty*, or *probably* is guilty, but his innocence must be quite incompatible with the fair result of the whole proof. It was the emphatic declaration of Lord Kenyon, that "no man ought, or can be convicted in England, unless the Judge and the jury have a *firm assurance* that "innocence cannot, by any possibility, be the victim of conviction and "*sentence.*" You may have heard it said, that circumstantial evidence is, sometimes, safer than direct testimony. *That* is so in one case only, namely, where the circumstances are utterly incompatible with the innocence of the party. But, Gentlemen, the utmost caution is necessary in giving weight and effect to evidence of a circumstantial character; Roscoe, Crim. Law, 17-20. Now, if the most guarded

caution be necessary, even in cases where the *evidence* of circumstances is *all one way*, with how much greater force does this observation apply when you are considering a case in which the circumstances are conflicting, where many of them have great strength in favour of the defendants, and lead to the conclusion of innocence? It is my duty to endeavour to convince you of that innocence, and to submit, for your better consideration, such arguments as may tend to show that the evidence does not satisfy the allegations upon this record. The indictment charges the traversers with conspiring to raise and create discontent and disaffection among the liege subjects of the Queen, and to excite them to hatred and contempt of the Government and the Constitution of the realm, and to excite hatred and jealousies and ill-will amongst different classes of said subjects, and to create discontent and disaffection among divers of the said subjects, and amongst others Her Majesty's subjects serving in the army, and to bring into disrepute and diminish the confidence of Her Majesty's subjects in the tribunals duly constituted for the administration of justice, and by means of intimidation and the demonstration of great physical force, to procure changes to be made in the Constitution of the realm. In these terms, the intent and the conspiracy to carry it out are stated, and the indictment then proceeds to enumerate several overt acts, such as that the parties assembled in a variety of places, with thousands of other persons, that they made certain seditious speeches; and the first count of the indictment concludes with charging three newspapers, the *Pilot*, the *Nation*, and the *Freeman*, with publishing the speeches so delivered. Now, Gentlemen, divest that indictment of its jargon. Ponder the weight and scrutinize the severity of its charges. Reflect upon the number of persons it shadows, if it does not include, and I think you will concur with me, that so awful an accusation ought not to be lightly hazarded, and that the clearness, the simplicity, and the cogency of the evidence ought to be proportioned to the magnitude of the cause. Is the evidence clear, simple, or cogent? Is it not obscure, involved, and inconclusive? What masses of documents—what a multitude of speeches—what a vast variety of petty and isolated things have been heaped, not even grouped, together to make out this charge—"this baseless fabric of a vision!" As if to render confusion worse confounded, the Crown inverted all order, and began at the last monster meeting at Mullaghmast. This was, I suppose, to throw light on the case; but, Gentlemen, I shall attempt to throw light upon the case, by *commencing* at the *commencement*, and by presenting to your minds the *proofs* applicable to each meeting, without regard to the stage of the proceedings at which the Crown thought fit to introduce the evidence. It is the more imperatively necessary to take this course, and to *read*, and to *insist upon* those portions of the speeches which are favourable to the traversers, inasmuch as those which were calculated to prove injurious, were read and most elaborately collated, and commented upon in the opening speech for the Crown; and allow me to express my persuasion, that you will take notes of the context of those speeches, with the same honest perse-



verance which you have exhibited during the whole progress of this investigation.

Gentlemen, the first meeting—in order of time, though not in order of proof—of which evidence has been given by the Crown, was that which took place at Mullingar. I pray of you to refer to your notes, and find there, if you can, anything deserving the name of *evidence* upon this branch of the case? Has any sworn witness told you that there was a meeting at Mullingar? Have its numbers been *stated* with certainty, *lessened* by design, or *exaggerated* by fancy? No, Gentlemen, there is *no* witness. No human being who was at that meeting is produced. To no one can the test of cross-examination be applied. The meeting took place in a county not very remote from this metropolis, a county studded with police stations, abounding in magistrates, and its beautiful vales and hills inhabited by a peaceful, and, I hope, a loyal population. Yet such was the character of this meeting, so mild, so peaceful, so unexceptionable, that the gentlemen who conduct this case on the part of the prosecution, who must have received the most ample information on the subject, have made their election to turn aside from the inquiry and to call no witness, either policeman, inhabitant, or magistrate. Oh! but they have one of the public newspapers of the day, and they have resorted for evidence to the *Pilot* of the 15th of May, 1843. 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 was the registered proprietor and printer of that paper. He was responsible for what appeared in it. No other person, none of the other traversers, had control over this publication. If the report of the speeches said to have been made at that meeting were a libel upon the Government, or contained in it aught that could be considered seditious, the Crown had the utmost facility for prosecuting Mr. Barrett. They might have indicted him for that publication, they might have indicted him in May, 1843, and your attention would have been confined to a single act, and not distracted, as it has been, by a variety of topics. The construction of that alleged libel, and the ascertaining the motives with which it was published, would have been a compound question of law and fact, *exclusively* within the province of a jury. However, *that* course was not pursued by the Crown. That report was not arraigned as, *per se*, a seditious libel; neither was any *merely personal* or *individual* guilt ever attributed to Mr. Barrett, upon the ground that his newspaper was made the medium of communicating to the world the speeches delivered at that meeting. The plain and palpable allegation of crime was avoided, and in its stead you are trying a charge of that species of crime which Sir William Russell, and other respectable writers on criminal law have thus characterized. In 2 Russ., 675, it is thus laid down: “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 be- “comes illegal.” Instead of trying a plain offence in 1843, they chose to follow this doubtful and uncertain course. The incertitude of this offence was not its only charm. It affords a

species of constructive machinery, whereby individuals may be linked together, and the acts of one man may be tortured into the guilt of another. Accordingly, the old newspaper of May, 1843, which was just hastening to oblivion, is reproduced in January, 1844. It is offered in evidence, not only as against Mr. Barrett, but against each and every one of these traversers, not only as showing that he published it, but as showing a criminality of mind and a guilty combination amongst them, to carry out their object as conspirators. As to Mr. Barrett himself, if this were an indictment for libel, there would be abundant evidence of publication. In Roscoe's Law of Evidence, pp. 603-4, it is said: "That it is now well established, that in order to render a party guilty of publishing a libel, it is not necessary that he should be the actual publisher of it, or that he should even have a knowledge of the publication; not only is a person who procures another to publish a libel, himself guilty of the offence (Hawk. P. C., B. 1, c. 73, s. 10), but a bookseller or publisher whose servant publishes a libel, is criminally answerable for that act, though it was done without his knowledge. This rule, which is an exception to those which govern the other branches of criminal law, appears to be founded upon a principle of policy, and to have been arbitrarily adopted, with a view of rendering publishers cautious with regard to the matters to which they give general circulation." For, although the printer and publisher of this paper, he may not have actually known the contents of it, yet by an arbitrary rule of law, he is supposed to have adopted it, thus violating that principle of the common law, that to constitute crime, the mind and act of the party must concur. This arbitrary rule could be readily applied to Mr. Barrett. Even to that rule there are exceptions, in page 605, where it is said: "So it is said by Mr. Starkie, that the defendant may rebut the presumption by evidence that the libel was sold contrary to his orders, or clandestinely, or that some deceit or surprise was practised on him, or that he was absent under circumstances which entirely negative any presumption of privity or connivance." 2 Starkie on Slander, 34, 2nd Ed. However this may be in libel, I assert that on this indictment he cannot be rendered liable by reason of any constructive publication. A conspiracy is the charge. To convict him you must be satisfied that he was a personal conspirator. But with what show of justice, can this report in a public newspaper be pressed as being entitled to any the least importance as against the other traversers? What is this report? A mere narrative of past facts—a recital of antecedent things. My Lords, in 1 Phillips on Evidence, page 202, you will find this passage: "In Hardy's case a question arose, as to the admissibility of a letter written by Thelwal, and sent to a third person not connected with the conspiracy, containing seditious songs, which the letter stated to have been composed and sung at the anniversary meeting of the Corresponding Society, of which Society the prisoner and the writer of the letter were proved to be members. The argument in favour of the evidence was, that the letter was an act done in furtherance of the conspiracy; that the

“ letter contained language of incitement, not merely a narrative or confession by a stranger, and that in such case, *scribere est agere*. “ The objection was, that the letter contained merely a relation by the writer that certain songs had been sung, which could not be evidence against the prisoner. The majority of the Court decided against the admssibility of the letter.” It may be said, this was circulated amongst the public, and therefore that it differs from a letter written by a conspirator, giving an account of the transactions of the conspiracy. There is a difference, but it is in my favour, and against the effect of this evidence as proof of a conspiracy. In 2 Starkie on Evidence, p. 324, it is said : “ Such evidence is more or less strong, according to the danger or *publicity* of the object of concurrence. . . . “ The more secret the one and the greater the coincidence in the other, the stronger is the evidence of the conspiracy.”

Gentlemen, it may excite some surprise, and it is not for me to foresee whether posterity will condemn a prosecution, in which, when it is proposed to strike down a political adversary, the first piece of evidence against him was one of the public newspapers of the party that he espoused, published ten months before the charge was preferred. These meetings are alleged as overt acts to convince you that there was a concert and previous conspiracy between those parties. These overt acts do not constitute a crime, but they are offered in evidence to induce you to come to the conclusion that these parties have met, combined, and consulted for the wicked purpose charged in the indictment. Now, Gentlemen, I will call your attention to this piece of evidence, if it deserves to be called so. If you or I subscribe to a particular society, is it fair that we should be liable for a publication in a newspaper, stating the views of that society? The newspaper which was given in evidence of the overt acts at that meeting was the *Pilot* of the 15th of May. On that occasion, the chairman 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.” That was the speech of the chairman, indicating the objects of the meeting, and now you will observe the only speech referred to as an overt act at that meeting was the speech of Mr. Barrett. The Attorney-General read a passage of that speech, which he said was seditious ; but it will be my duty to read to you, not only the entire of that speech, as one portion of it explains the other portion, but also the speech of Mr. O’Connell on that occasion. The Crown have proved, if the newspaper be of any value, and they have no other evidence, that this was a meeting for lawful purposes, and that it was not in its inception, nor in its progress did it become an unlawful assembly. The object of the meeting was to petition Parliament, for the Repeal of an Act of Parliament, and that is a right which every British subject may freely and fully exercise. The Bill of Rights, independent of former Statutes, had asserted and defined the subject’s right to petition Parliament. Power had, indeed, sanctioned certain glosses and restrictions upon this right ; and the exercise of this *common right* was, at certain periods of our history, attempted to be curtailed ; but the free spirit of Englishmen cannot be extinguished ; once more was this privilege asserted ; once again was its exercise enlarged, and by the 1 W. & M. St. 2, c. 2, the Legislature of England again declared, “ that the subject hath a right “ to petition, and that all commitments and prosecutions for such “ petitioning are illegal.” I will prove that from a book which has frequently been adverted to in the progress of this trial. In the case of *Regina v. Vincent*, 9 Car. & P. 109, Baron Alderson says, in giving judgment : “ The purpose which 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 “ argument and proper petitions to obtain the five points mentioned “ by their counsel.” If that were so, I think it is by no means “ illegal to petition on those points.” And in *Kemp v. Gee*, 2 Starkie, Evid. 638 : “ There was a resolution of the House of Commons, 9th February, 8 Will. III., in which it was declared that “ all petitions to the House of Commons were lawful or at least “ punishable by themselves only.” Now, Gentlemen, it was lawful for the people to meet to petition Parliament, and it was proved that they did meet for that purpose, and as soon as the universal feeling was demonstrated, then was the time to present their petitions to the House of Commons. It is equally clear, and indeed it is a corollary to and from that right, 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. Such is the language of Baron Alderson in a carefully prepared charge delivered to the Grand Jury of Monmouth, in 1839, and to be found in the note to the *Queen v. Vincent*, 9 C. & P., 95. In *De Lolme*, Com. B. 2, c. 12, pp. 438-9 : “ Nor has the “ great freedom of canvassing political subjects we have described, “ been limited or confined to the walls of Westminster, that is to the “ exclusive spot on which the two Houses meet : the like privilege



“ is allowed to the other orders of the people ; and a full scope is given to that spirit of party, and a complete security extended to those numerous and irregular meetings, which, especially when directed to matters of government, create so much uneasiness in the sovereigns of other countries. Individuals even may, in such meetings, take an active part for procuring the success of those public steps which they wish to see pursued ; they may frame petitions to be delivered to the Crown, or to both Houses, either to procure the repeal of measures already entered upon by Government, or to prevent the passing of such as are under consideration, or to obtain the enacting of new regulations of any kind : they may severally subscribe their names to such petition. . . . Such meetings may be repeated, and every individual may deliver what opinion he pleases on the proposed subjects, though ever so directly opposite to the views and avowed designs of the Government.” I said, Gentlemen, that the Crown have proved that this meeting never became an illegal assembly. They have attempted to show nothing to the contrary, and it is a rule of law, as well as of good sense, that of things not appearing upon a criminal trial, and not existing, the same estimation is to be held. But affirmatively it is in proof, that this assemblage having unanimously passed a resolution declaratory of loyalty and devotion to the Queen, gave three cheers for Her Majesty, and quietly dispersed. Have I not therefore, established, that the Crown have not only not proved, but they have not attempted to prove that this was an illegal assembly. No speech at that meeting is charged as an act of conspiracy, but a passage in an after-dinner speech of Mr. Barrett is selected as an overt act of conspiracy. Let us assume that this sentence of the speech, if spoken before dinner, might have been open to the charge of indiscretion, as being liable to misconstruction. Spoken, as it was, after dinner, it betrays a very great confusion of metaphorical language. The old woman and the cow I confess I do not understand. But to argue gravely, that this was an overt act of conspiracy, surpasses anything which I have ever seen resorted to, in the desperation of a falling cause. He did not say, “ we will stand up and fight,” but he said, “ they may silence us if they please, but we will clutch our independence ; not a separation of the two countries, but a Repeal of the Union.”

The next meeting in order of time, is the Longford meeting, which took place on the 29th of May. Although these meetings were not presented to you in their order, I shall take them as they in fact occurred. In reference to this meeting, two policemen were examined as witnesses, James Johnston and John Maguire. I regret the manner in which Johnston gave his evidence. I was sorry to hear him speak, almost contemptuously, of persons whom he called priests ; and I am sure I shall have your approbation, when I express a wish that temperate and chastened language should become the standard style when we speak of the ministers of any creed. One of those gentlemen of whom he spoke in so depreciating a style, Mr. O'Brien, stated, “ that the loyalty of Ireland was not the loyalty of expediency,” and added, “ that

“ Ireland should cease to be legislated for by persons ignorant of her condition.” This man gives a miserable outline of some few sentences spoken by those on the platform, and I very much apprehend that Mr. Johnston was labouring under some excitement himself, when he told Mr. Fitzgibbon, on his cross-examination, that “ the people came in in a sweating rage of excitement.” Yet there was no anger or breach of the peace; and his comrade, Maguire, adds to this, by saying, “ that there was not even a tendency to a breach of the peace; that the people came into town merrily; and that when the speeches were over, the people retired quietly, and their wives and children with them.” The chief mottoes which welcomed Mr. O’Connell’s entrance into Longford were, *Cead mille Faltaiigh*, and *Repeal and no Separation*. In addition to this, the Crown have read in evidence against Dr. Gray, and, as they contend, against all the traversers, the *Freeman’s Journal* of the 30th May. That paper contains a retaliation on Lord Beaumont, who had thought proper to make a very severe onslaught on Mr. O’Connell, and he uses terms of a very severe character, for which Lord Beaumont might have instituted a prosecution if he pleased; but with the conduct of Lord Beaumont, you, Gentlemen, have nothing to do; that is not to be the foundation of your verdict. Gentlemen, the counsel for the Crown next read in evidence the *Freeman’s Journal* of the 31st of May. Several passages of Mr. O’Connell’s speech were read from that paper, which it was thought might be injurious to him; but I shall now read for you some passages that were not read by the Attorney-General; he says:—[Mr. Macdonogh here read and commented on a number of extracts from Mr. O’Connell’s speech at the Association, on the 31st of May, to prove that his intention was to promote good will and union among all classes of Her Majesty’s subjects.] Gentlemen, there were some passages which were not read by the Attorney-General, in which Mr. O’Connell says, the only efficacious mode of obtaining their freedom was the exclusion of physical force. [Mr. Macdonogh read the passages].

The next meeting to which the Attorney-General alluded was the Drogheda meeting. Not a single witness had been brought upon the table to prove that meeting, or to prove Mr. Barrett’s connexion with it. All the testimony with which we have been favoured on this point is, a copy of the *Pilot* newspaper of the 7th of June, which contains a report of the Drogheda Repeal demonstration. Now, Gentlemen, this newspaper is not evidence of the truth of the facts stated therein. This is not an original report, it is copied from the Drogheda *Argus* into the *Pilot*, and yet the proprietor is sought to be made answerable for this second-hand report. In an indictment for libel, he could only be made answerable for the report, as acknowledged in the paper, from the *Drogheda Argus*, and yet this second-hand copy is put forward as evidence of this conspiracy. [Mr. Macdonogh then read the address to Mr. O’Connell at Drogheda, and a number of passages from the *Pilot* of the 7th of June.] These are the sentiments of the minds of the people who were assem-

bled on that day. They have put them on record, and the Crown has proved them. Well, now hear the sentiments of the man to whom that address was presented; and, Gentlemen, I pray your most particular attention to it. [Mr. Macdonogh proceeded to read the observations made by Mr. O'Connell, in which he stated that he was ashamed of some people who had groaned at a certain house.] He made the people promise they would not groan any more. He said the law knew no distinction of parties, and that he was not working for any creed, sect, or party, but for Irishmen of all classes, creeds, and parties; he was struggling for all classes of Irishmen. He related a story of an Orangeman who sent him a pair of silk stockings, and stated that if the Union was repealed they would have more stockings, and two pair of feet for every one pair of stockings they had. He warned the people against joining any illegal or secret society, or taking of illegal or secret oaths, as that would be more ruinous than anything that could possibly befall them. He would shelter them under the privileges of the Constitution, and would violate no law, either of God or man. But here, Gentlemen, when he spoke hypothetically of a gross infraction of the Constitution with which the people were threatened, he said, "woe to the aggressors, and woe to the people if they violate the law and get themselves into a predicament." These were the expressions taken up by the Crown, and on which sentences the prosecution was founded. He said that notwithstanding Peel's threat, the people would not violate the law, and because he utters such sentiments as these, he is to be branded as a criminal. Monstrous doctrine! Is he to be charged with conspiracy, because he said he was working for the people of Ireland. You have now, Gentlemen, the vote of the assembly to that man—an assembly of most respectable and wealthy persons, who were met there for a perfectly legal and constitutional purpose. You have heard his reply to that vote, and if a sudden outbreak or burst of eloquence was used in the heat of the moment, is the man to be taken up and prosecuted as a conspirator for it? You were told about the army; did he not tell the people he was glad they came there? and one of the principal reasons was, that they would spend money in the country. [Mr. Macdonogh then read the petition adopted at the meeting, and continued.] There is the petition adopted, and that is the result of the meeting; and, Gentlemen, let me ask you on your solemn oaths was that meeting convened for criminal purposes? The Association was in existence on the 4th of April, 1840, and up to the year 1843, when the speeches were delivered, no charge of illegality was prepared against them. The Government could not have fastened on a single violent expression made use of during that time. Nothing was done to put down the Association, because it was perfectly tranquil and legal, and it was only mentioned in Parliament by that very man, Lord Beaumont, who expressed his opinion that the Association ought to be put down. Then, and then only, did the Government for the first time discover a treasonable and malicious design in the

Association. Gentlemen, at the dinner the chairman, in proposing the Queen's health, said that the Irish people, in the midst of oppression, had been always remarkable for their loyalty; and he was sure that it would be received as it usually had been. And how was this toast received, Gentlemen of the Jury? Why, with loud cheers and nine times nine. And this is the proof of their disloyalty. The next toast given by the chairman was, "The health of Prince Albert," which was received with similar plaudits. The chairman then observed that, whilst they paid their tribute of esteem and regard, they should not be unmindful of the mother who had educated such a daughter, and he then proposed "The Duchess of Kent." The next toast, the chairman observed, was one which would be received with cordiality—it was, "The People." To this toast, Gentlemen, Mr. Barrett, it appears, responded, as appears by a report of a speech given as his in the *Drogheda Argus*, which was copied into the *Pilot*. [Mr. Macdonogh then read Mr. Barrett's speech.]

The next meeting, Gentlemen, to which I shall call your attention was held at Kilkenny on the 8th June, and the proceedings at that meeting were proved by the *Pilot* of 12th June. No witness was produced to prove the proceedings at that meeting. Thus you find the poverty of this case; when it comes to be analyzed, there is not an atom of evidence, except a newspaper. They might as well take the files of the *Pilot* or *Freeman's Journal*, and lay them on the table, and ask you for a conviction. They have no evidence but the *Pilot*. Mr. Barrett has copied this report from the *Kilkenny Journal*, and yet you are told he is a conspirator. Why has not the editor of the *Kilkenny Journal* been prosecuted? why has not the editor of the *Evening Mail* or *Saunders's* been prosecuted, as those proceedings were also reported in those papers? They are liable to be indicted if this doctrine, put forward by the Crown, be correct. Well, Gentlemen, who was in the chair at that meeting? Mr. Butler, a Member of Parliament, and he presides at that meeting, thus committing, along with several other highly respectable persons, an overt act of this conspiracy. [Mr. Macdonogh then read the speech of Mr. Butler at the Kilkenny meeting, as reported in the *Pilot* of the 12th of June.] This is the evidence with which you are to convict persons. Evidence taken from the files of a newspaper. I hope it shall never be my duty to defend any of you, when the evidence against you will consist of the files of the *Dublin Evening Mail*. [Mr. Macdonogh here read several passages from Mr. O'Connell's speeches, both at the meeting and dinner, all breathing loyalty to the throne and attachment to the Sovereign, inculcating obedience to the laws and observance of peace and order. He cited those passages in which the healths of the Queen, Prince Albert, and the Royal Family, were given as toasts.]

Could such language, such sentiments, be the language and the sentiments of men conspiring against the throne and the peace of those realms? But, Gentlemen, certain texts were selected from thosespeeches, without reference to the meaning of the entire con-



text, which has been garbled to prop up the case put forward on the part of the Crown.

The next meeting I come to is that which was held at Mallow on the 11th of June. John Jolly, a Head Constable of Police, is the only witness to speak to any meeting in the south of Ireland. Certain passages of speeches, said to have been made by Mr. O'Connell, were read by the Attorney-General in stating the case; but he has not proved them. He read speeches made at Cork and Trim, of which he has given no evidence. John Jolly, then, and the *Pilot* newspaper of the 14th of June, are the only evidence of what took place at this meeting. How does Jolly describe it? Why as a very civil procession, with the women sitting on horseback on pillions behind their husbands. Mr. Anderson, the Sub-Inspector, one better acquainted with Mallow than Jolly, was there, and is not produced. To be sure, Jolly says that Anderson was twenty or thirty yards from the speakers, and he does not think that he could have heard them. How sadly off must this prosecution be, when they resort to a little incident that occurred at this crowded meeting. A person on the platform pointed to some person in the crowd, and desired him to leave that, and he called on the crowd to cut the reins, and drive him out of that, as he was an enemy. If such a circumstance ever occurred, it is but reasonable to infer that the meaning of the speaker was, that this man created a disturbance, or interfered rudely with the persons on foot, and that his turbulence made him an enemy to the advancement of that cause, which they were so frequently told could be successful only by the strictest observance of the law, and the preservation of quiet and good order in their assemblies. At that meeting Edmund Burke Roche, Esq., M.P., presided, and in the course of his speech he said the Irish people knew too well that the most powerful weapon they could put into the hands of the enemy was violence on their part. Mark, Gentlemen of the Jury, Mr. Roche said "enemy." Mr. O'Connell has been accused of using the word, but does it not clearly appear that they meant by the word those who were inimical to the cause, which they were determined by peace to advance? Mr. Roche, in another part of his speech, spoke of being superseded from the commission of the peace, and to the language used by Lord Lyndhurst, when he called the Irish aliens in blood, religion, and language. Harsh language, Gentlemen, generally begets harsh language, and it is the excess of injustice to attribute the language arising from what Mr. O'Connell considered an injury or attack on his private feelings, to a foul and a formidable conspiracy to plunge this country into war. It was supposed that counsel for the Crown would have proved that the Union was a just compact; that it was not carried by fraud, corruption, and every ingenuity that it is possible to conceive. But from the beginning to the end of these proceedings no one of the counsel at the other side have started such a proposition.

Gentlemen, the next meeting was held at Donnybrook on the 3rd of July. That meeting was held in the vicinity of our own metro-

polis, openly, in mid-day. There is a large force of police in this city and its environs, yet no one of them is produced to give you an account of *that* meeting; that would not have been quite safe. Any little invention or delicate colouring with which the subject might have been tinted, could not be received or credited *as to that meeting*. The public voice would have exclaimed against the man who should dare to assert, that there was the least disposition to a violation of the law in that assemblage, or that a single expression from the crowd indicated feelings of sectarianism, or hostility to the Constitution of the country. It is, indeed, a singular fact that not a single inhabitant of Ireland is brought forward, to aid this attempt at stifling free discussion in this country. Ross, the disguised spy, stands forth as the solitary witness. This man was discharged as an insolvent on the 25th of June: on the 2nd of July he arrives in Ireland, ostensibly as connected with the *Morning Chronicle*, in reality the paid agent of the Government. This distressed man receives £400. He reported after this fashion: he took verbatim notes of what *he* considered *material*, which I shall translate, "what he considered useful or agreeable to his employers." Of other passages he took *topical* notes. His words are: "I have taken a full short-hand note of all " matters which I considered important in this speech: and then when " I came to a passage which may be a description of the evils which " the country has suffered or may be supposed to have suffered from the " Union, of this I did not take so full a note." This man swore that not £50,000 would have induced him to come over to Ireland, if he had not come for a newspaper. Not being such Reporter, he would not come for less than £75,000. This person gives what I designate a garbled account of Mr. O'Connell's speech at Donnybrook. Imperfectly given though it be, it is a bold and eloquent reply to the Ministers of England. It refers to the declaration of his Grace, the Duke of Wellington, in the Lords, and the Right Honourable gentleman, Sir Robert Peel, in the House of Commons. His remarks are strong, decisive, severe, perhaps unjust; but had he not a right, is it not the privilege of the free subjects of Great Britain to canvass the conduct and sentiments of the responsible Ministers of the Crown? It is so; and to show that it is so, I shall read a passage to you from De Lolme, Book 2, chap. 12, pp. 212-213. He says: "We may, " therefore, look upon it as a further proof of the soundness of the " principles on which the English Constitution is founded, that it " has allotted to the people themselves the province of openly can- " vassing and arraigning the conduct of those who are invested with " any branch of public authority, and that it has thus delivered into " the hands of the people at large the exercise of the censorial power. " Every subject in England has not only the right to present petitions " to the King, or to the Houses of Parliament, but he has a right " also to lay his complaints and observations before the public by " means of an open Press. A formidable right this to those who rule " mankind; and which, continually dispelling the cloud of majesty

“ by which they are surrounded, brings them to a level with the rest of the people, and strikes at the very being of their authority. And indeed this privilege is that which has been obtained by the English nation with the greatest difficulty, and latest in point of time, at the expense of the executive power.” Ross has not entirely destroyed the effects of the speech, in his efforts at setting down what he conceived *material*. I find, even in his report, the following passages: “ Old Ireland and Liberty. Yes, there never was such a national uprising; such a *simultaneous declaration of opinion*; such a manifestation of popular determination; such a national resolve, recorded in the presence of high heaven, announcing to the nations of the earth, that Ireland shall be free, and *the Union repealed*.” Again, “ Let there be no riot, no violence, no tumult, no breach of the peace. Let us exhibit sobriety, order, tranquillity—all crowned by immortal and imperishable determination.” In allusion to the declaration before-mentioned, he says: “ We declared that we would not go to war; that we would observe the law; that we would be peaceable; that we would attack nobody: but we hurled defiance against those who would attempt to attack us, and accordingly we have gained one victory.” Again, he says: “ Nothing so irritates our enemies, as our dogged perseverance in keeping the peace.” Gentlemen, I have read those passages to show what was the whole tenor of Mr. O’Connell’s speeches.

The next meeting was held at Tullamore, on the 16th of July, of which M’Namara, note-taker, John Sampson Stewart, and Mr. Neal Brown, resident magistrate, are witnesses. At that meeting, Mr. O’Connell, whilst he shows the people how he met the declaration in reference to Repeal and civil war, most carefully and elaborately cautions the people against what might lead them into crime. He speaks first to the educated portion of the assemblage, in these terms: “ The Packet came in in the morning, and announced that determination, and next day I had the Association assembled. I stated that we broke *no law*; that we stood upon the constitution, and hurled back a high and haughty defiance.” To the lower class, who might not so well understand this language, he says: “ Spies and informers have invented the Ribbon Society; but if any man in your county becomes a Ribbonman, catch hold of the man who made him so, and bring him to justice. Let every man who promises me that he will catch a Ribbonman, hold up his hand.” And the witness remembered that the crowd did hold up their hands. Several other gentlemen delivered speeches at that meeting. They explained fully to the people the meaning of the word “ Repeal;” what its object was; and why it was to be struggled for. The Chairman, a very much respected person in that part of the country, stated Mr. O’Connell’s object, “ to bring back our native Parliament; to establish a legislature in this country that will make the laws for the benefit of the people.” The adoption of a petition to Parliament for a Repeal of the Union was moved, se-

conded, and carried. Mr. Robinson, a gentleman of the Society of Friends, spoke after Mr O'Connell. He said : " When Ireland asked bread, what did you get but a stone ; and when you asked for the amelioration of your sad condition, you got an Arms Bill, a proof of *their total* ignorance of your wants and condition. But, if the provisions of that Bill were not of the most insulting and unconstitutional nature, and if it did not give the petty tyrant an opportunity of trampling still further upon the liberties of the people, I should care nothing about it ; for we want no arms but our own *two arms*, and our head to guide them ; and whilst we were more under the counsel of the Liberator, we shall be sure never to make a bad use of them. We shall have recourse only to that moral warfare which tyrants never understood before ; a new species of warfare, a warfare more likely to restore the liberties of Ireland, than all the armies in Europe. We want amelioration, and are anxious to do harm to no one, but to do good for ourselves. Instead of an Arms Bill, they ought to give us another bill ; they ought to give us fixity of tenure, to better the condition of the poor landholders. Our tenants ought to be paid for their improvements, and the landlords ought not to be allowed to drive or distress their tenants, unless they gave leases for three lives, or thirty-one years. I think you like that ; that would be a good Arms Bill, that is the Arms Bill we want." Why have I read that extract ? for this reason : that whilst it is a part of the transactions at that meeting, it evinces the effect produced by Mr. O'Connell's speech, upon the mind of an educated gentleman belonging to a peaceful profession of men ; and it evinces the clearest exposition of Mr. O'Connell's peaceful, honest struggle for the benefit of his country. I may think those persons wrong, but that is no reason why they should not express their opinions. The unanimity of the crowd in their condemnation of Ribbonism is its further illustration. The people give three cheers for Her Majesty. They avow their hostility to secret societies. They agree to a petition, appealing to the Legislature for redress, and yet we are to be told, and you are to find upon your oaths, that what is thus enacted in the open day—in the broad theatre of a county town, and in the ostentatiously courted presence of the authorities, is an overt act to prove to your minds the *fact of conspiracy* entered into with the objects and motives imputed to the traversers upon this record. Find it if you please, find it if you can. But there is one circumstance in reference to that meeting, that requires, and shall receive explanation. I allude to the fact that early in the forenoon, and hours before the meeting, and before the arrival of Mr. O'Connell, there appeared an inscription or motto, to the effect, *Ireland ; her Parliament, or the World in a Blaze*. True, this was not at the place of meeting, nor in a street leading to the square, but in a back street ; and it was not brought there by any person coming to the meeting, but was placed there by some townsman. Yet, we shall go into proof upon this subject. We shall not



permit it to sully the character of a meeting which assembled for a peaceful purpose, recognized by the law, and which M'Namara admitted was most peaceable in its demeanour. That inscription or banner was instantly ordered to be taken down, the moment it fell under the observation of those who took a part in the meeting. One of the mottoes erected for the reception of Mr. O'Connell was: *Repeal; Justice and Prosperity for all Creeds and Classes*. Mr. Stewart admitted that the meeting was conducted as peaceably as possible, no riot or disturbance, or even a tendency to it. This gentleman, with the natural or acquired keenness of apprehension of a police officer, would seem to represent the persons on horseback as having come to the meeting with somewhat of regularity, whilst M'Namara describes them as arriving in the usual way, as to a market; but it is perfectly plain, as Mr. Stewart admitted, that this order was necessary to prevent accidents, where a large portion of the assemblage consisted of females and children. Mr. Stewart was unhappy in his apprehension, both of what was said, as well as what was exhibited on banners. When Ribbonism was spoken of, he lost the entire thread of the discourse, and he did not see the mottoes, *Repeal but no Separation, or God save the Queen*, surmounted by the rose, the thistle, and the shamrock; and Gentlemen, I trust in God, and I am sure I speak the sentiments of my client, that Her Majesty and her descendants may long wear that Crown, adorned with the rose, thistle, and shamrock around it. Mr. Neale Brown was produced for no very intelligible purpose. He states the temperance bands passed within about 100 yards of the mound on which the beautiful church of Tullamore is situate, at some distance from the town. I am happy to say, that the question was negatived, as to their playing during divine service. It was half-past two, and no person leaving the church states that he was incommoded, although some of those may have taken their route home through Mr. Neal Browne's field. That gentleman stated there was no riot or disturbance, or even a report to him. In fact, there can be no doubt, he added, that there *was* no riot or disturbance.

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#### SATURDAY, FEBRUARY 3RD.

Mr. O'Connell.—My Lords, I respectfully submit to the Court, that, 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. Macdonogh has will take a considerable part of this day, if it will not be interfering too much with the course of the trial, I should be glad your Lordships would hear me on Monday, and not call on me to-day. I can promise the Court that in what I have to say, and it is not much, I shall condense still more, if I am not called upon to speak until Monday.

The LORD 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. *Macdonogh*.—My Lords, and Gentlemen of the Jury,—In pursuance of the course I chalked out for myself yesterday, I will proceed to comment on the evidence in this case. The meeting next in order which I shall call your attention to, was held at Baltinglass on the 6th of August, and in reference to which there have been five witnesses examined—Henry Godfrey, Henry Twiss, Patrick Lenehan, Marcus Hughes, and John Taylor—all of whom were Constables of Police. There is something exceedingly suspicious about the evidence of Godfrey. He deposed to an expression used by some person in the crowd, before Mr. O'Connell's arrival. It was when the people cheered, and some pigeons rose, a man observed: "This is the shout that will frighten the pigeons;" "yes, and the Protestants too," said another. This was beside one of the ditches, whilst the people were waiting for Mr. O'Connell. Is it not strange that he did not look in the face of the man who said this—that he did not ask or take down his name, and there was no other human being present whom he can mention? This man was not ordered by his superior officer to take notes. He hesitated a long time before he answered that in the negative. He saw that a policeman doing a duty, which he was not ordered to do, excites, at the least, surprise. The original notes were burned. The process was this, as he said—he copied his report from the original; then he destroyed the original; then he made a copy from the report, and then he made a copy from that second-hand copy, in the house of a carpenter, who keeps a lodging-house, and whose name he does not know. He had taken a note of the expression, "Devil's cure to Saunders;" but it is not in the transcript. But, what most of all convinces me that this man's evidence is not to be depended upon, is, the opening of the learned Attorney-General. The Attorney-General found, in his brief, a certain statement as instructions in reference to what a witness could prove, to this effect: "That one of the people said that Father Lawler told them in the chapel, it was too far gone now, and that they should get it, but not without blood being shed." Gentlemen, Mr. Lawler was alive—could be produced; and, therefore, the witness did not dare to state this falsehood. The fact is incredible that he could have made use of so abominable an expression. The next witness produced is Henry Twiss; he took no notes. He was amongst the people as one of themselves, in plain clothes, and he gives you some expressions which fell from some of the crowd. One of them said they should wait patiently for a few months. Now, this witness did not undertake to ascribe a meaning to these expressions of an injurious tendency; but he admitted that the expressions were about the Repeal of the Union, and that these few months did not mean an interval of quiet before disturbance, the "time and the hour" have proved. This was a just witness. He saw no breach of the peace, or inclination to riot. Everything went off very peaceably. We next have Patrick Lenehan. This witness ad-

mitted that it was publicly known three weeks prior to the meeting that it would be held, and that its object was the Repeal of the Union. The constituted authorities had the fullest notification of the intention to hold this meeting—there was no disguise or concealment. The whole country were invited to be present. Everything was peaceable and quiet. There was no act of violence committed, nor anything like a breach of the peace. This man reports one sentence from Mr. O'Connell's speech: "I heard Mr. O'Connell tell the people, that he was glad to see them there, and hoped they would be all there when he came again." This produced great laughter at the meeting; and yet this humorous expression is construed as a sort of appointment for outbreak and massacre! Marcus Hughes is the next witness produced—not to prove anything personally affecting Mr. O'Connell or the other traversers, but merely the words of some persons prior to the arrival of Mr. O'Connell, upon being informed that Mr. O'Connell had ordered his coachman to pull up, in order to cheer Mr. Saunders. Again, he endeavoured to blurt out what some man said the night before, who told him he was going to the meeting; but it is quite obvious, that in fairness and good sense, these things, even if truly reported, ought not to weigh in the scale against the traversers. John Taylor, another policeman, a sub-constable of the lowest grade, is then produced, who, not having taken notes, affects to give one or two short sentences of Mr. O'Connell's speech: "That he would get Repeal if the people would stand to him." "That some of the landlords had tried to prevent their tenants from coming to the meeting, but they had come; . . . and if he wanted them again, would they not come? and they all signified that they would." The plain meaning of Mr. O'Connell in using these expressions was to impress upon the people union and perseverance. It was necessary, upon the one hand, that, in order to signify to the people of England the wants and wishes of the Irish people, that he should be supported by the people. He appears to have contemplated peaceful and constitutional changes through public opinion, enlarging gradually into universal will. *Union* was therefore necessary to repeal the *Union*. But it was said by many that this enthusiasm would abate—would melt away like the ice before the sun, and for this reason, and to demonstrate the futility of such an impression, Mr. O'Connell was used to ask the people, would they not come again, and thereby afford to the world the most persuasive evidence that their ardour was not evanescent, and that no amount of personal inconvenience should retard them in the pursuit of what they considered a national good. It is melancholy to reflect on the perversion of Mr. O'Connell's meaning which was hinted at in the suspicious testimony of those policemen. These men are prone to suspicion; it is their trade. They have sought in vain for anything criminal in the conduct of the Repealers. They found nothing in their line. They discovered no plot; ten thousand of them are located amongst the millions of the Irish people. If this horrid conspiracy existed, if these hundreds of thousands of persons, amounting in the whole to millions, understood

Mr. O'Connell to mean what these policemen would darkly insinuate, is it to be credited, that no trace of it should be found; that it should be like the source of some mighty river, undiscoverable and undiscovered? I have to complain, that from a county in which Lord Wicklow was spoken disparagingly of by Mr. O'Connell, none but the lowest and most ignorant policemen, who would gladly do the bidding, or gratify the wishes of their superiors, should be produced to mutilate, and not report the beautiful speeches of Mr. O'Connell. Let me not be supposed to insinuate that that nobleman, or any other gentleman would so employ these persons; but there is an aptitude in such men to become voluntary tools, and to anticipate or to gratify what they conceive to be the resentment of their superiors.

The next meeting to which I shall beg to call your attention, was held at Clontibret, on the 15th of August. That was an exclusively local meeting, having not the slightest connexion, in fact, with any of the other meetings. Every one of those meetings was held independent of the Association, with the exception of Mullaghmast and Donnybrook. All the others were founded upon local requisitions, altogether apart from, but influenced by the same wishes as the Association. At this meeting Captain Seaver, O'Neill Daunt, Mr. M'Mahon, a barrister, were present. Pray, why are not they indicted? Upon this trial that meeting is stigmatized as an illegal assembly, seditiously convened, and as an overt act in this conspiracy: and you have this solecism endeavoured to be made out, whilst those gentlemen are not indicted, the present traversers, who were not there, and who had no concern in the meeting, are indicted, whereas Captain Seaver, Mr. Daunt, and Mr. M'Mahon are not sought to be made amenable, and this is only given in evidence against the traversers, because Mr. Tierney was there. This meeting was held in presence of the police in their uniforms on the platform, in presence of the magistrates—the military drawn up at some distance, and yet you are to be told that a public meeting, in the face of day, in the presence of magistrates and police in uniforms, is a meeting convened for the purposes of a foul conspiracy.

The next meeting was held at Tara, on the 15th of August. With respect to that meeting, Mr. James Walker and Mr. George Despard were examined as witnesses. Mr. James Walker is a respectable gentleman, Sub-Inspector of Constabulary, under the orders of Captain Duff, the Stipendiary Magistrate of the District. Captain Duff is not produced; Mr. George Despard, who was not on duty, but an amateur, is produced. Mr. Walker, as was his duty, walked for some hours through the crowd. The entire demeanour of the crowd was peaceable; there was not the slightest tendency to a breach of the peace; there were females at the meeting; there was a good number of ladies. That is the seditious assembly; an overt act of conspiracy. As to Mr. George Despard, I will dismiss his evidence with a very few observations—that if he wanted to be in a condition to disclose the occurrences of that meeting, it would have been more befitting in him to have gone to the platform and



watched the proceedings there, than to be holding a conversation by the side of a ditch, and far away from the meeting, with some individual who was not taking an active part in the concerns of the meeting. At first I thought that *that* man's conversation with Mr. Despard was not that of an Irish peasant. "I knew by the curl of your lip that you didn't belong to our party." But I agree with Mr. Hatchell, that that affair was nothing more than a good joke of some clever Irishman, whom I believe I shall be able to produce. You have heard, I dare say, of a Mr. Trevelyan, a writer in one of the morning papers, who, 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 was humbugging just as the man was humbugging Captain Despard. I hope I shall be able to prove to you, that this Meathman was a clever Irishman; and on this subject, I refer to a speech of Mr. O'Connell, which the Crown have read in evidence. [Mr. Macdonogh read a passage from the *Evening Mail* of 19th January.] We believe, however, that it was a mere quiz, like "Trevelyan" and "G. P. O."—God preserve O'Connell. They produced the *Pilot* of 16th August on the subject of this Tara meeting. The Crown read the speech of Mr. O'Connell at that meeting. [Mr. Macdonogh then proceeded to read passages from Mr. O'Connell's speech on that occasion, in which he stated, "that the Union was not binding on conscience, was void on constitutional principle, and a nullity in point of law. He said he submitted to that law, but he denied the right of any Government to prevent the Irish people from seeking to obtain its repeal."] I assert that he reasons the question of the Union; that he does not invoke brute force; that he appeals to the gentry, and invites their aid; and that he enjoins to order, peacefulness, and law; and that his reference to the use of force is only contingent, and as resisting oppression—such oppression, or such cruelty, as was practised by the barbarous regicide Cromwell, who first murdered his King in England, and then slaughtered the people of Ireland. What was there illegal in trying to have an Act of Parliament repealed, or in presenting petitions for that purpose, which were adopted at public meetings? Do you not all know that there is at this moment, in the city of Dublin, a society which is doing all in its power to obtain a repeal of an Act of Parliament, the Catholic Emancipation Act, which is nothing more or less than Mr. O'Connell was endeavouring to do, with regard to the Act of Union, and the reports of its proceedings were weekly published in *Saunders's News-Letter*? [Mr. Macdonogh proceeded to read some further passages from Mr. O'Connell's speech at Tara, in which he called on the people to "violate no law, but to act peaceably, quietly, and determinedly." He also alluded "to the Ribbon Societies, cautioned the Repealers from joining them, and concluded by denouncing all secret societies, even as "traitors to their country." And next referred to the speeches of Nicholas Boylan, Esq., of Piltown, and Henry Grattan, Esq., M. P., at the same meeting, in which "they declared themselves to be Repealers, while they expressed their belief that being so was in no

“ way incompatible with their also being strenuous supporters of the “ connexion between Great Britain and Ireland, which they would “ firmly maintain.” Having read the letters of apology from Mr. W. S. O’Brien, Mr. S. Crawford, and Mr. E. W. Roche, to the secretary of the meeting and banquet, he proceeded to quote from the chairman’s speech, in which he called on the “ gentry of Ireland to come “ forward and join him in his struggle for Repeal, stating that there “ was no fear of Catholic ascendancy, as had been apprehended, be- “ cause the sole object of the Repealers was to obtain a universal be- “ nefit for all classes of the Irish people.”] I contend there was no- thing wrong in stating the Union was constitutionally and legally void, nor was there anything culpable in his endeavouring, by all proper means, to effect its repeal, when he believed it to be so, and in endeavouring to do so, said nothing unconstitutional, for he told the people that he submitted to it as a law supported by time, but at the same time he claimed his right to ask for its repeal.

The next meeting I shall refer to was held at Loughrea. This meeting was not convened by the authority of the Association ; it was altogether independent of it, springing from a local requisition. This was held on the 10th of September. Mr. Ross is the only witness brought forward to depose to the transactions of that meeting ; and it is observable, that Ross and his topical notes are exclusively relied upon by the Crown. It would be perilous to incur the chance of contradiction, if a second witness were adduced. Nay, even the public newspapers are not referred to ; but they prefer Mr. Ross’s notes, the worthlessness of which is demonstrated by their own intrinsic evidence. Ross, in reading his notes, says: “ In one instance, where Mr. O’Connell observed upon Geo. I., II., III., and IV., he had only topical notes ;” and, also, that by giving another passage literally, Mr. O’Connell appeared to say what he did not intend to say. The passage commenced, “ Ireland requires no monarchy.” I do not wonder that this falsification of his meaning occasioned, in open Court, a start of natural and indignant astonishment from Mr. O’Connell. But the witness said : “ Mr. “ O’Connell, my Lord, did not mean to convey that Ireland required no “ monarchy. I would have made the passage more clear if I were to make “ another transcript.” The passage which follows is: “ To the Sovereign we are attached with the firmness of honest and dutiful allegiance.” If that man had died, and his notes could be produced in evidence, the consequence would have been just this—that Mr. O’Connell would have been made to say something very much resembling treason, whereas, at the very same moment, he was expressing sentiments of devoted and affectionate loyalty to his Sovereign. Bad as Mr. Ross may be, I have from his reluctant lips, the following passages from the speeches of Mr. O’Connell at Loughrea. 1st. At the meeting, when speaking of the restoration of the National Legislature, he says : “ Our “ motto must be peace, order and law. You use *only constitu- “ tional exertions*. There must be no riot—not a single blow ; no “ drunkenness—teetotalism for ever. Believe me, my friends, that “ by following my advice, the day is not far distant when you shall “ have your Parliament restored to Ireland.” You are to convict Mr.

O'Connell for a conspiracy, when he tells the people you are to use constitutional exertions only, and they are to be deemed as overt acts, indicating his mind to be then engaged in the prosecution of a conspiracy antecedently formed. At the dinner he says: "In no part of her dominions indeed was the Queen so much beloved as in Ireland. In Ireland, the Queen's name was a 'tower of strength.'" Again: "I hope that which I say to-night will reach Her Majesty's ears. I respectfully suggest to her, that from the settlement of her family on the throne, to the period of her accession to it, Ireland has had received nothing but injustice and injury from them. 1st. We had George I., then George II., then George III.; lastly, William the Fourth. He denounced me under these circumstances. We hailed the accession of Victoria, and perhaps allegiance to the Sovereign was never more enwrapt in personal affection and regard than the allegiance which Ireland bore to her age, and bears her still: for we are

"True as the dial to the sun,  
Although it be not shone upon."

In another part of his discourse, he delivers sentiments not unbecoming a man engaged in conferring what he believed to be a benefit upon his native land: "And oh!" said he, "may Providence give wisdom to their advisers to conduct them in the paths of peace, quiet tranquillity, and morality to the temple of that genuine liberty, whose power is securely founded only on religious observances, and moral practices." I confess, I cannot be persuaded to think that the man who gave utterance to these aspirations, contemplated, at the same time, the horrible project of disturbing the peace of society, and introducing confusion into the country. I cannot think so meanly of human nature. On this occasion, my client, Mr. Barrett, who is said to be a conspirator, did not address the assembly. He was not at the meeting. He attended the dinner upon an invitation—so did Mr. Bodkin, the Member of Parliament, who occupied the chair. So did several other persons of station and respectability. Are they conspirators? Mr. Barrett was silent. Is that silence his offence? I presume it is: for the peacefulness of the Irish people is said to be their guilt! A strange and fearful mode of reasoning is suggested to you, upon your oaths. You behold arrayed before you the power of the Crown. The extent of that power may be inferred from the fact, that even Ross received £400. No money, no pains, no exertions have been spared in the advancement of this prosecution. Inquiries have been instituted in all parts of the country. The police have been on the alert. They are scattered over the face of the land. They join every assemblage; they are domiciled in every hamlet; they have watched for the development of some treasonable act; they have signally failed to discover that which they could not discover because it does not exist. They have not proved that preparations were being made for this imputed outbreak. No purchasing of arms or munitions of war, no drilling or training of the people, no military persons sought for or employed; but, forsooth, the story is this: that this very peaceful-

ness is the worst feature in the case, and that the unarmed and undisciplined peasantry of Ireland are prepared to rise to a man and with one accord, to pour their volcanic fire over their devoted country.

The next meeting was held at Clifden, on the 17th of September. The only witness to this meeting was James Robinson, a policeman. He saw a very respectable man, a Mr. Murray, and who is considered a wealthy man, going to the meeting. He wore a large Repeal card; three times as large as the others. There were about 100 mounted on Connemara ponies, some carrying double; some had leather saddles, others of hay or sedge, and bog wood bridles. There was a great number of women walking, and they were all very quiet people; and Captain Ireland was *there*, but is not *here*; whereas the policeman, who never left the barracks that day, and who was not at the meeting, is produced as a witness for the Crown, to tell you that he saw Mr. O'Connell and Mr. Steele going to that meeting. They did not produce a newspaper to prove the proceedings of this meeting, because there was nothing hostile to be found in it, and they therefore did not rake up anything from the files of the newspapers.

The next meeting I come to is Mullaghmast, which was held on the 1st of October, 1843. The witnesses are: Mr. Bond Hughes, Mr. Fleming Mathias Leatham, Mr. Charles Ross, and Mr. James Healy—being two Government Reporters, and an assistant, and one police officer. Mr. Hughes went to the meeting openly, in the character of Government Reporter. He virtually apprised the parties that he came there to watch their proceedings. He was received with cordiality, and no reserve was practised; every facility was afforded him to take notes. On the other hand, Mr. Charles Ross must have been deemed a person connected with the Liberal Press. He had been, previously to that period, introduced into the Association by a gentleman connected with the *Dublin Evening Post*; and it further appeared, upon his cross examination, that he had sent reports of the Clifden, and Loughrea, and Donnybrook meetings to the *Morning Chronicle*, and that the report of the Mullaghmast meeting was, at least, sent in his name to the same paper, and he received the price. He must, therefore, have associated familiarly with those upon the platform and in the pavilion, and had the fullest opportunity of judging of the conduct of unguarded men. Again, Healy was a stranger from the south of Ireland, selected on that very ground; he mingled with the crowd, he joined the groups of people, he minutely examined what was going on, and listened attentively to every thing. His own expression was—he listened to everything he could catch, and the very worst he did catch, was cheers “for Repeal and old Ireland.” He was there from the evening before the meeting until eleven o'clock at night after the meeting. Hughes, Ross, Leatham, and Healy all concur in characterizing this meeting as a peaceful and tranquil assemblage. The language of Mr. Hughes is this: “There was a great number of women and children among the crowd at Mullaghmast. It was a movement of a per-



fectly peaceful character. He did not, at that large meeting, perceive the *slightest* tendency to riot or disturbance. Whenever the Queen's name was mentioned, it was received with the loudest applause of loyalty." Again, he says: "There were some persons with tickets, with 'O'Connell's police,' in their hats, and wands; and I think it very proper that there should be such persons, and they appeared to me to have the effect of keeping the people in order." Even Ross, who, before he came here, had such a horror of Ireland, admitted, that now that he saw the manner in which these meetings were conducted, he would not entertain any apprehensions in coming to this country. He saw no one of the traversers do an act inconsistent with their duty, as peaceable citizens, and there was not even a tendency to a breach of the peace. As to the Temperance Bands, they were not so numerous as Healy has seen at one of Father Mathew's processions in the South of Ireland. He has seen so many as 300,000 at one procession, to advance the Temperance movement, and forty-five bands, and some attired in uniform, or rather fancy dresses, as Mr. Hughes more fairly called them. These bands, too, carried small flags, or banners; and Healy admitted, that these processions and assemblages of persons in aid of what they believe to be the cause of temperance and virtue, are common in the part of country where that modern phenomenon took its rise. Well, Mr. O'Connell attends that meeting of Mullaghmast, attired in the robes of peaceful and civic honour, as Lord Mayor of Dublin, and the first resolution which he proposes is, "a declaration of devoted loyalty to the throne and person of Her Gracious Majesty." The second resolution is an expression of opinion: "That no power ought of right to make laws to bind Ireland, save the Queen, Lords, and Commons of Ireland." They use the word *ought*, not as the Volunteers of 1782, who said, no power *can* make laws. And then it was resolved, "that we petition Parliament for a Repeal of the Legislative Union between England and Ireland, and for the restoration to Ireland of her native Parliament, and that the petition be presented to the Commons House of Parliament, the next Session, by a Repeal Member." In Mr. O'Connell's speech made upon that occasion, he repudiates any assistance from France or America. He boldly inveighs against the continuance of slavery in the United States, and disclaims connexion with the Republican party in France. He adds: "I like to have the sympathy of every good man, every where; but I want not armed support or physical strength for my country." [Mr. Macdonogh next read several passages from Mr. O'Connell's speeches, repudiating any connexion with France, America, or any foreign power.] The object of these speeches was not to create differences among the several classes of the community, but to prevent the Repeal being taken up as a religious or sectarian question; and one of the strongest injunctions which Mr. O'Connell gave was, that the people should show the most perfect obedience to every form of legal authority. He assured them that if they did so, Repeal was certain. And from the whole

course of the sentiments so expressed, it was impossible for the most subtle ingenuity to deduce the foul designs with which the traversers were charged. A placard, sold at Mullaghmast, has been adduced in evidence by the Crown; but it would be seen from the speeches that there was no community of sentiment between Mr. O'Connell and the writer of that placard. The placard left it to be inferred that the slaughter at Mullaghmast was perpetrated by Protestants on Catholics, and Mr. O'Connell distinctly stated that it was committed by Catholics upon Catholics. Why did not the Crown produce Hanvey, the printer of that placard, if they could connect the traversers with it? They produced Browne, the printer for the Repeal Association. I refer you to the general tone of these sentiments, as apparent in the speeches of Mr. O'Connell, nay, to the very words themselves, and I ask you can the most subtle ingenuity discover any trace of the foul and dark designs attributed to these traversers upon this record? Further, at that same meeting, he inculcates good will and unanimity between Protestants and Catholics. He says to the people: "But do not think that the massacre of Mullaghmast was a question between Protestants and Catholics. It was no such thing. The murdered persons, to be sure, were Catholics, but a great number of the murderers were also Catholics, and Irishmen. But we have now this advantage, that we have many Protestants joining us—joining us too heartily, in hand and heart, for old Ireland and liberty." There is no community of sentiment between this and the vile placard which Healy the constable said was sold at the meeting. That paper would fain represent the massacre of Catholics by Protestants, not of Catholics by Catholics. The course adopted by the Crown on this branch of the case is deserving of observation. The Attorney-General called Mr. Browne the printer of the Association. He proved that the Association, through Mr. Ray, had employed Mr. Browne to print a variety of documents and books, and so, proving authority, he read these documents in evidence against the traversers. But did he pretend, even in statement, that the Association, or Mr. Ray, or any of the traversers had authorized or sanctioned the publication of that placard? No. Although these papers never reached the platform—did not penetrate into the banquet-room, yet the Crown calls on you to connect the traversers with that placard, and visit upon them its guilt. The stratagem resorted to is this: those who have been instituting inquiries for the Crown must have learned that this paper was not authorized by the traversers or any of them. They therefore do not choose to call the printer who has affixed his name at the foot of this paper. But if the Crown did not think it right to throw the same light on this as they did on the publications printed by Mr. Browne, at least they might have abstained from impeaching the character of the man whose production they fancied they had thus cast upon the traversers. The Attorney-General was instructed to state that this man was the printer of all the seditious papers in Ireland. Why did they not produce Hanvey? It was unfair to throw the onus on the traversers. Mr. Barrett, in his speech at Mullaghmast, stated

that one of the effects which they sought for from Repeal was the removal of all sectarian animosities. A previous portion of that speech, in which Mr. Barrett had spoken of Glencoe, had been used by the Crown. You are aware of the circumstance of the slaughter at Glencoe. The King's soldiers murdered the confiding family of the Macdonalds; and even the officers killed the children who sat upon their laps the night before. The authority for this massacre was traced to the signet of the King, a fact which constituted the only stain upon that Sovereign's character. Mr. Barrett chose to comment upon that, it was his privilege to do so. And he would ask, were the people of Ireland to be denied the right to refer to history, and form their views upon it? That was a speech made in responding to an exciting toast—the people. Men adapt their language to their auditory; and in this speech there is not a sectarian feeling. It is the language of a man unacquainted with the fact of the existence of the placard about the 400 Catholics. As to the early part of the speech, in which he refers to Glencoe, and Elizabeth, his object was to show that the English nation were misled as to their history. It might have been more courtly to speak of Queen Elizabeth as “the fair vestal throned in the west”—but he is not a conspirator, because he has read history.

I will now come to the next meeting which was intended to have taken place: I allude to the intended meeting at Clontarf, and more particularly to the substituted meeting, which was held at Calvert's Theatre, on the 9th of October. It appears there had been a proposed or intended meeting to have been holden at Clontarf, on the 8th day of October. On the evening of the 7th October there appeared in the *Dublin Gazette* a proclamation prohibitory of that meeting. This was the first direct interposition of the Government, and it is obeyed immediately, and with a promptitude which merits commendation. It was the prevention of that meeting which occasioned the meeting at Calvert's Theatre. I pause here, to ask every honest mind, whether the instant obedience to the law then displayed, was not the best and truest practical illustration of the doctrines which Mr. O'Connell had so frequently enforced. We have his intent repeatedly expressed in words. His admonitions to observe the law were sounding in the ears of the entire Irish people, and he was the first amongst them himself called upon to practise the lesson which he had taught. I submit therefore, that Mr. O'Connell's words and deeds are the least fallible *indicia* to evidence to you the intentions of his mind. Well, the substituted meeting takes place, and the resolutions which had been prepared for Clontarf, are approved of in Abbey-street. They are: First, a declaration of devoted loyalty to the person and throne of the Queen. Second, the assertion of the principle so often contended for, as to the abstract right, and a pledge to use every constitutional exertion to obtain a Repeal of the Union. Third, a vote of confidence in Mr. O'Connell; and, Fourth, that petitions to the

Houses of Lords and Commons, then read, be adopted, praying for their recognition of the unalienable right of the Irish nation to a domestic legislature, and in order thereto, 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 every thing 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 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, we do not read this speech for ourselves—the Crown have actually read it against us. You will have observed that the Attorney-General selected all such passages as could, when dissociated from the context, be brought to bear with severity upon the traversers; and their speeches, stated to have been spoken at Trim and other places, were also opened to you; and if you have taken notes of such passages, as opened by the Attorney-General, you will erase them from your notes and discard them from your recollections, for of them no evidence has been laid before you. It is probable that the learned Solicitor-General may again recall some of these passages of speeches which are in proof to your attention; but, when you come to consider his text and my context, you will not fail to perceive that I have the advantage of the commentary on the text, because the peace was preserved in conformity with the recommendation given by the traversers, whilst the construction that outrage and outbreak were contemplated, relied on by the Crown, has been falsified by events. Certain sentiments of Mr. O'Connell's have been arraigned. He called the Union corrupt; he pronounced it void in constitutional law. The traversers had a perfect right to discuss the Queen's Speech, treating it as the speech of her Ministers, 1 Black. Com. 246; but it is quite wild, in the present age, to call these things conspiracy.

Gentlemen, this indictment embraces the proceedings and publications of Mr. Barrett for a period of about eight months. He published during that period three times a week; each paper contained three or four columns of leading articles. After all the assiduity exercised by the gentlemen on the part of the Crown, how stands the catalogue of offences as to him? Publications of speeches and reports of meetings; three attendances at dinners; three or four leading articles. As to the first, he did this only in common with contemporaneous papers, *Saunders*, the *Monitor*, and other papers; some perhaps in



a more abridged shape, and others more enlarged. Are they conspirators? This is a class of matter which proprietors scarcely ever see, and which are generally selected by sub-editors, or "scissors-men," as they are denominated. In Mr. Barrett's case they appear, in the great majority of instances, to have been copied from other papers. Is it decent, or befitting, or reconcilable with your notions of criminal justice, that reports of public meetings, copied and taken from the *Drogheda Argus*, *Kilkenny Moderator*, or the *Freeman's Journal*, should be relied upon, against Mr. Barrett, as overt acts to prove a dark and wicked conspiracy. Then, as to his attendance at dinners; he is charged with having been at three dinners, and his speeches at two of them are all in evidence. He never attended one of the out-of-door or monster meetings. He must have been a very inactive conspirator. As to speeches, he made two in nine months, twice as many of leading articles; the first—a sort of introduction to the report of the American meeting, at which Mr. Tyler, the son of the President, expressed certain sentiments, the adoption of which sentiments is attributed to Mr. Barrett. The introduction to that article is, in truth, not the act of 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 statesman-like 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 Legislature. [He proceeded to read certain passages from the speeches made at the meeting in America, to the following effect:] Mr. Tyler said they had assembled there to express their opinions on the wrongs of this country. That meeting was held at the city of Washington, in America; and the Crown seek to make what took place there evidence against Mr. Barrett, and says it is an overt act of the conspiracy with which it is sought to charge the defendants. A gentleman makes a speech in America, and the Crown fasten on certain passages of it, and charge my client with conspiracy for having published that speech. Is 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." I would ask, is 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. 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. Gentlemen, I will call your attention to a remarkable piece of evidence, which is all-important, as it is charged against Mr. Barrett that he published that speech of Mr. Tyler as an overt act; in fact, they gave the publication of it as a proof of the conspiracy. But what I, 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. [Mr. Macdonogh 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; and 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 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.] The other leading articles were not written by Mr. Barrett. He was out of town when they, or at least the most offensive of them, were written; and on his return he with just severity referred to that article in which the murder by Jubee is spoken of with unbecoming levity. He, further, prohibited any future references to the subject of the army, or any selections from country papers on the subject. I submit that we may fairly infer, that the rest of the articles in the *Pilot* during so considerable an interval of time must have been innocuous, or they would have been relied upon by the industry of the Crown. Then, as to the letter, bearing the signature of the Rev. Mr. Power, that gentleman shall be produced. He was no conspirator, and was at all times, and is now, perfectly ready to undertake the responsibility which may attach to his act. At the time that letter was received Mr. Barrett was absent at his country-house. Why should a letter, which was printed in his newspaper, during his absence, make him liable to pu-

nishment? or how can it prove that he entered into the conspiracy charged in the indictment? a letter, of whose contents he was, when written, altogether ignorant. Did that letter communicate the purpose of my 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 proves my assertion, "that unless they were satisfied of a *previous* conspiracy you are bound to acquit the defendants." That fact is 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; you are bound on the oath you have sworn to try whether there was a previous conspiracy. 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), that gentleman therein put forth his own 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. Then as to his having been seen at the Association on some few occasions, the evidence amounted to this—no more, that he, as a public journalist, received certain remittances, and had the honesty to bring them to the place of their destination, the Association. It is quite wild to talk of presence at that Association being a crime. Mr. Barrett, you will have observed, never staid at the Association for a moment longer than whilst handing in the subscriptions entrusted to him. He never made a speech at the Association in his life. After handing in the money, he returned immediately to his paper, and his own immediate profession. I do not say this as though Mr. Barrett repudiated the Association, but merely as observing upon the extent to which the evidence attempts to connect him with the acts of that Association. You will have observed, also, that he had nothing to say to the Arbitration Courts. He was not in any respect, either as one of the committee engaged in the preparation of rules, or as an Arbitrator; not because they were open to imputation, but because he was not a member. He confined himself exclusively to his proper business of journalist. It was in that character he was invited to the Mullingar dinner, it being the county town of a county in which his paper has considerable circulation. So to Drogheda, as being convenient to Dublin. I again repeat, that in making these observations, Mr. Barrett does not seek to disconnect himself from the Association, as if it were any thing discreditable. Certain matters were put in evidence, with the view of trying to damage the Association; to make a unit out of a variety of ciphers. For example, Mr. Bond Hughes stated, that he produced a manifold copy of a letter received by him on the 3rd of October, at the Association, purporting to have been written by Mr. Skerrett, from the town of Loughrea. The writer refers to one of the Commissioners, who was not a Repealer, and he intimates their intention, that is, of the majority of the town's-people, to put him

out of office. What does Mr. O'Connell remark on that? That when the proper opportunity should arrive, they would be right to put him out; that is, at the triennial election for Town Commissioners, under the Statute of 9 Geo. IV. c. 82. Why, this is the very principle of representation, that the elected should represent the wishes and feelings of their constituency. He does not say, put him out against the law, but when the law capacitates you, exercise your rights. I read for you a passage yesterday, in one of Mr. O'Connell's speeches, which were proved by the Crown, in which he says, that "no man should be interfered with in the private relations of life, for not being a Repealer, only in public relations," by which he meant, such as voting for him, &c. This is no more than a right we ourselves exercise. If either of our city representatives ceased to represent our sentiments, we should speedily, that is, at the next election, remove them.

The counsel for the Crown have thought fit to read in evidence the *Gazette* of the 29th of August, 1843. If this were offered with a view of showing the fact and date of the Queen's speech, it was very rightly referred to for these purposes; beyond that, I am convinced, it is not the intention of the Attorney-General to use the speech of our Sovereign. I feel assured, that no sort of use hostile to the interests of these traversers, will be made of that state paper. Before the trial of Hardy's case, the Legislature had passed a bill, reciting, that a conspiracy existed in England and Ireland, to create disaffection, and to subvert the monarchy; and the then Attorney-General for England, Sir William Scott, afterwards Lord Eldon, and Lord Chancellor of England, on the occasion of that trial said: "I have stated to you, that I may convey to you in as strong  
 " terms as I can express it, this observation, that as the 'proceedings  
 " of Parliament ought to have had (and I am persuaded, from the  
 " deliberation which they gave the subject, that they had) no influ-  
 " ence upon the judicial mind of the Grand Inquest; neither ought  
 " these proceedings to affect your inquiries, or to induce you to any  
 " determination, which you are to make upon the issue which you  
 " are now sworn to try. Gentlemen, there is no one circumstance  
 " of any proceedings before Parliament, with reference to which you  
 " ought to suffer yourselves to be influenced in the trial of the issue.  
 " It is obvious, that such proceedings as were had in Parliament,  
 " providing for great emergencies, may be required and authorized  
 " by the genuine spirit of the Constitution, even in cases in which a  
 " Grand Jury might not, upon anything that could be offered to  
 " their consideration, be justified in finding a bill. It is much more  
 " obvious, that in a proceeding before you a consideration of the  
 " wisdom and propriety of the acts of the Legislature is not called  
 " for. You, therefore, Gentlemen of the Jury, will consider the  
 " prisoner as standing before you, in full possession of an absolute  
 " right to the presumption of innocence, notwithstanding he is  
 " charged with guilt by this indictment, as you will hear, except so far



“ as that presumption is met by the single simple fact, that he has  
 “ been accused by a Grand Jury of his country. Gentlemen, before  
 “ I conclude these general observations, you will permit me to say, on  
 “ the other hand, that if there has been any thing that has fallen un-  
 “ der your observation, by act or publication—any attempt to make  
 “ an impression upon the minds of those who are this day impanel-  
 “ ed to try this great cause, to disparage that advice which, under the  
 “ most responsible sanction, may be given you in matter of law—to  
 “ work on your minds any prejudice, either against the prisoner or on  
 “ the prisoner’s behalf; on the one hand, I am perfectly sure that  
 “ your integrity will be security to the public that you will not per-  
 “ mit any attempt of that kind to have any operation; on the other  
 “ hand, Gentlemen of the Jury, I am equally sure that I need not  
 “ ask from an English jury, that they would permit no such attempt  
 “ to prejudice them against the prisoner at the bar—no, not even an  
 “ injudicious or ill executed attempt, to influence them in his favour.”  
 In that case, the Legislature passed an act characterizing the conduct  
 of the prisoners as conspirators, yet when the men were put upon  
 their trial the Attorney-General cautioned the jury against giving  
 any weight in their deliberations to the voice of the Legislature. I  
 have adverted to these sentiments of Lord Eldon, in order to pre-  
 clude any misconception upon this subject. I am sure that when the  
 Attorney-General read this speech he did not mean that it should  
 in the slightest degree influence your minds.

Gentlemen of the Jury it is a settled rule of law, that when a con-  
 spiracy or any other crime is charged, the question always is, whether  
 the conspiracy, as actually laid, has been proved by the evidence. This  
 has been decided in *Rex v. Pollman*, 2 Camp. 233. The jury must be  
 satisfied that the acts of the defendant arose from a previously formed  
 conspiracy to effectuate the objects, or one integral object, stated in  
 this record. 8 Carr. & P., 312. Conspiracy is a fact to be found by  
 your verdict, and so is the intent to be found as a matter of fact.  
 This proposition is so stated by Lord Erskine, in *Hardy’s* case, which  
 you will find fully reported in 3 Erskine’s Speeches, 353, where he  
 says: “ Whatever, therefore, is relevant or competent evidence to  
 “ be received in support of the traitorous intention, is a legal overt  
 “ act, and what acts are competent to that purpose is (as in other  
 “ cases) matter of law for the Judges; but whether, after the overt acts  
 “ are received upon the record as competent, and are established by  
 “ proof upon the trial, they be sufficient or insufficient in the parti-  
 “ cular instance to convince the jury of the traitorous conspiracy or  
 “ intention, is a mere matter of fact, which from its very nature, can  
 “ be reduced to no other standard than that which each man’s own con-  
 “ science and understanding erect in his mind as the arbiter of his  
 “ judgment. This doctrine is by no means new, nor peculiar to high  
 “ treason, but pervades the whole law, and may be well illustrated in  
 “ a memorable case lately decided upon a writ of error in the House  
 “ of Lords, and which must be in the memory of all the Judges now  
 “ present, who took a part in its decision. There the question was,  
 “ whether, upon the establishment of a number of facts by legal

“ evidence, the defendant had knowledge of a fact, the knowing  
 “ of which would leave him defenceless. To draw that question  
 “ from the jury to the Judges I demurred to the evidence, saying  
 “ that though each part of it was legally admitted, it was for the law,  
 “ by the mouth of the Judges, to pronounce whether this fact of  
 “ knowledge could be legally inferred from it; but the Lords, with  
 “ the assent of all the Judges, decided to my perfect satisfaction that  
 “ such a demurrer to the evidence was irregular and invalid, *that the*  
 “ *province of the jury over the effect of the evidence ought not to be so*  
 “ *transferred to the Judges, and converted into matter of law*; that  
 “ what was relevant evidence to come before a jury was the province  
 “ of the Court, but that the *conclusion* to be drawn from admissible  
 “ evidence, was the unalienable province of the country.” Thus,  
 Gentlemen, the question whether parties harbour specific intents,  
 and conspired with particular motives, are matters purely and en-  
 tirely within your province. I have to tell you that if you  
 entertain any rational doubt upon the guilt of the traversers,  
 you are bound, upon your oaths, to give them the benefit of  
 that doubt, and to acquit them. The rules of evidence in  
 civil and criminal cases are the same; but the effect of that evi-  
 dence in guiding to a conclusion is different. In civil cases, slight  
 probabilities are permitted to turn the scale; but, in a criminal case,  
 you do not so weigh the evidence, or accurately adjust the balance.  
 In cases of imputed crime, you are bound to take the whole case, and  
 you are required to declare, whether you are convinced beyond a  
 rational doubt, that the party is guilty. The evidence must be such  
 as to coerce your judgments to come to that conclusion; for, in  
 criminal cases, there is no *raçe* for judgment.

Something has been said in the course of this trial in re-  
 ference to the constitution of the jury. That is a subject into  
 which I forbear to enter, for I have never permitted myself  
 to doubt the strictness and purity of your judicial decision  
 upon this or any other case. Neither shall I refer to the pro-  
 bable consequences to this country of an adverse verdict. Mine  
 shall not be the hand to draw aside the curtain which shrouds  
 the future destinies of Ireland; but this at least I may be permitted  
 legitimately to observe, that if you shall not be thoroughly satisfied  
 with the case made for the Crown, if you entertain any reasonable  
 doubts of this alleged conspiracy, you will by finding a verdict of  
 acquittal do more to attach the people of this country to the admi-  
 nistration of the law, than any event which has occurred for centuries  
 of time. I confess I feel a sort of personal interest in the honour  
 which such a verdict will reflect upon a considerable class in this coun-  
 try. It would be, in itself, a practical refutation of, as well as a future  
 safeguard against, the detractions of calumny, and the Irish people  
 will have additional reason to rejoice at having been born subjects of  
 the British Crown, when they shall have received at your hands that  
 imperishable monument of your justice. And when you shall have  
 convinced them of that justice, then let us, in God’s name, discuss  
 this question with the Repealers. They are no despicable faction,

but on the contrary, they compose the numerical majority of the Irish people. Should the holding of a Triennial Parliament in Dublin be compatible with the true interests of the Empire, a British statesman may, possibly, entertain the subject; but whatever may be the result of speculations such as these, I think I cannot better or more becomingly conclude my observations to you, than by humbly imploring that Providence, which has been so long the guardian of the British Isles, to direct your judgments, and to lead your minds to a just and merciful conclusion.



MR. HENN.

*My Lords, and Gentlemen of the Jury,*

It is with unfeigned regret that I feel compelled to obtrude myself on your notice at this stage of the proceedings. I was not myself aware until a very short time ago, that that duty would devolve on me. I am concerned for Mr. John O'Connell, having with me a leader that I am proud to serve under, Mr. Sheil. He is my senior, and, therefore, I did not think that I should have to address the Court at all; but Mr. Steele, who appeared at first without counsel, has thought fit to change his original intention, and has been unwise enough to select me as his advocate, and therefore, Gentlemen, I am compelled to undertake the duty which, under the circumstances, I could not feel justified in declining. But, Gentlemen, the regret I feel is not for my own, but for my client's sake, because I feel the honest conviction, that my client's cause is just, and I am apprehensive that the strength of it may be affected by the febleness of my advocacy. I know, Gentlemen, that it would be unbecoming in me, under these circumstances, to trespass on your time at any length, and I feel convinced that I shall best discharge my duty to my client, by trespassing on your valuable time for as short a period as possible. I feel that the subject has almost been exhausted by the learned gentlemen who have preceded me, and addressed you with such extraordinary ability. I believe that everything that eloquence, everything that wit, everything that sound reasoning can do, has already been done, and I tremble with apprehension lest I should, by anything that I may say, efface or weaken the impression that I feel must have been made upon you by the able counsel who have addressed you; I therefore sincerely regret that I am called upon to address you at all. But, Gentlemen of the Jury, as I am bound to do so, I shall abstain as much as possible from going over the topics which have been already discussed with so much more ability than I can approach them with, and I shall, if possible, introduce new matter. I cannot introduce much of importance, but I shall avoid, as much as I can, that which has been already pressed on your consideration, with this exception, Gentlemen of the Jury, that at the outset I shall repeat what has been said by some of those who have preceded me. I shall

implore you to recollect that you are not empannelled to try whether a Repeal of the Union would be beneficial to this country or not; nor whether the discussion of it is beneficial or not. At the outset I beg to impress this on your minds, because I know that at this moment there are hundreds out of this Court who actually believe that to be the question which you are trying. I know that before you were empannelled hundreds, thousands of your fellow-citizens were convinced that that was the question to be tried. I know, Gentlemen of the Jury, that before you were empannelled this case was tried and prejudged by hundreds and by thousands of honest, conscientious men, and I feel thoroughly convinced that before the facts of this case were opened, before the law of it was stated, there were not to be found, in your city, ten men who had not formed an opinion on the case; no, not two; I doubt if there was one; and well convinced I am that honest and conscientious men had come to a conclusion as to the guilt or innocence of the traversers before they were aware of the facts of the case, or of the question to be tried; thoroughly convinced I am that there is not a sincere and honest Repealer who did not conscientiously pronounce a verdict of "not guilty" before the trial came on, and that there is not an honest opponent of Repeal who did not pronounce a verdict of guilty. Gentlemen of the Jury, it is for that reason that I am anxious to impress on your minds that that is not the question which you have to try, and that it is immaterial what opinion you may entertain with regard to the policy of repealing the Union, or the benefit, or mischief, which may result from the discussion of that question. It may be unbecoming in me thus to obtrude on you in public my private opinions; but I do not hesitate to say, that I differ on this subject from the traversers. I do not hesitate to avow, that, notwithstanding all that I have heard, all that I have read upon the subject, I am still of opinion that a Repeal of the Union would be fraught with mischief to England, and with ruin to Ireland. I will not say that I have not heard much since this trial commenced calculated to shake the opinion which I previously had formed; and I am ready to confess that I should now have much greater reluctance to enter into an argument on the question than I should have had before this prosecution was instituted; but still I have the presumption to retain my previous opinion; and, although hundreds—aye, thousands, millions of my countrymen honestly entertain a different opinion, and although very many of those are much more competent to form a right opinion on the subject than I am, yet I have the presumption to retain my own. I claim a right to retain it; I claim a right to announce it; I claim a right to enforce it, by all legitimate means, and by every argument to urge and induce others to adopt it, and to ascertain what opinion is entertained by others on a subject so essential to the welfare of the country; and if I find a great body concurring with me in opinion, great in respectability, in numbers, and in intelligence, I claim a right to make known that opinion to the Government of the country, and to the Minister who holds the reins of Government. Gentlemen of the Jury, the



right I claim for myself I feel bound to concede to others ; nay, I claim it at your hands for the traverser on whose behalf I address you. I assert that the traverser, honestly and conscientiously believing that a Repeal of the Union is essential to the well-being of the country, has a right to entertain that opinion, a right to announce it to the Government, a right to collect the sense of the nation, and to collect it in such a manner as will most effectually apprise the Minister of the day of the real sentiments of the people. I therefore say again, that the question to be discussed here is not whether a Repeal of the Union 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, without being carried away by irrelevant matter ; and for the purpose of applying the evidence which you have heard in this case, and to which I with great pleasure have observed the close attention which you have paid, for without extraordinary attention the human intellect could not collect from the mass of evidence which has been placed on the table the means of arriving at a just conclusion, or of knowing what verdict any man ought to find.

Gentlemen of the Jury, you have heard it said over and over again that the indictment charges nothing but a conspiracy, and that is perfectly true ; but I do not think, though the indictment has been read more than once, that your attention has been called with sufficient accuracy to the object of the conspiracy with which these parties are charged ; but before I do so I wish respectfully to impress on your minds, under the direction of the Court, one or two propositions in point of law. My learned friend, Mr. Whiteside, has already told you, that originally the word “ conspiracy ” did not mean anything criminal ; it merely meant a common assent to a common purpose ; but, in legal acceptance, conspiracy implies a crime. You have heard it laid down, perhaps, that a conspiracy to effect an illegal, or, more correctly, a criminal object, is a crime. You have also heard it laid down, that a conspiracy to effect even a legal object by criminal means is in 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, by telling you that the law is, that a conspiracy to do a criminal act is in itself a crime. The two propositions which I have stated resolve themselves into this one—because a combination to effect a common legal purpose, such as to procure the repeal of an Act of Parliament, is not itself a crime ; but if the parties combine to effect that by the commission of a criminal act, then it is a crime. But what is the crime ? Not the combination to procure the legal object, but the combination to use the criminal means. To use the criminal means is to do a criminal act. Then it becomes a conspiracy to do a criminal act, and that is what constitutes the crime. Gentlemen of the Jury, I request that you will keep that proposition in your minds ; and I shall tell you why I wish you to do so. There is no principle in law better established than this—that if there be a clear and satisfactory proof of persons conspiring to do an illegal act, the act of each of them is not only evidence against that

individual himself, but in point of law it is the act of the others also. I admit that to be undoubted law; and if, therefore, several men conspire to do an illegal act—for instance, to waylay and assault a man, and one of them strikes a blow, the others are answerable for the consequences of that blow. But, on the other hand, if several men combine to do a legal act, and, in pursuance of the common design, one of them transgresses the law, he alone is answerable for his own act, and he cannot implicate the others in his guilt. The difficulty in this case—if any there be—arises from the law having been loosely laid down by the Attorney-General, in the course of his statement, although at the commencement he stated it correctly. I know he did not mean to mislead you; I know he is incapable of doing so, and I do assure him I do not mean, by anything I say, to cast any imputation or any reflection on him, but he did say what was calculated to mislead you, unless you had in your minds the distinctions which I am sure he had in his. He did say that an act done in furtherance of the common object, would be evidence against all engaged in the pursuit of it. That proposition is true, if the ultimate object of all was itself criminal; but it is not true, if the common object of all was to do a legal act. I think, Gentlemen, that if you keep that principle in your minds, it will assist you much in the consideration of the evidence given in this case, and help to lead you to a right conclusion.

Having made these introductory observations, I shall respectfully call your attention to the charges which have been preferred against the traversers. The Crown prosecutors have thought fit to put eight persons on their trial. They have put on the file of this Court what may well be called a monster indictment. They have included in that indictment a vast variety of charges, and they have spread over the face of it a vast number of what are called overt acts. Of that I do not complain, but I do complain that they have stated several overt acts in the indictment, of which they have not thought fit to offer a particle of evidence; and I do complain that they have thereby put us to the unnecessary trouble and expense of defending ourselves with regard to them, and also with regard to several overt acts which they have stated in their bill of particulars, and of which no evidence has been given. But, Gentlemen, you will keep in mind that your verdict does not depend on the proof or negation of the overt acts. You may be satisfied that every one of the overt acts is proved, and yet it does not necessarily follow that the traversers are guilty of the crime with which they are charged. The overt acts are only evidence of the crime, they may lead you to the conclusion that a particular charge has been proved. On the other hand, I admit, that although the overt acts are not all proved, you may be satisfied on the evidence that the offence is proved.

Gentlemen of the Jury, the indictment states that the traversers, naming them, “unlawfully and seditiously combining, 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, and to excite hatred, jealousy, 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 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 ;” so far the intents are recited : the indictment proceeds to say : “ heretofore, to wit, on the 13th day of February, &c., at, &c., 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 do what ? “ To raise and create discontent and disaffection amongst the liege subjects of our said Lady the Queen.” That is the first charge in this indictment. Now, Gentlemen of the Jury, let me just ask you, as men of sense, and as men of the world, have you any doubt at all as to what the common object of these persons was ? Have you a doubt that the common object was to procure a Repeal of the Union ? That was the real object, and it is not charged as an offence. It is not charged that they conspired to procure a Repeal of the Union. Why ? Because if that had been charged the indictment could not have stood a moment, and you would have been saved the trouble of trying this case. A demurrer to it must have been allowed, and saved a vast deal of time and trouble. You see the way this indictment is framed. Instead of charging a conspiracy to effect the ultimate object, it alleges a conspiracy to do that which possibly some might have done without the concurrence of the others, although for the purpose of furthering the common object. But if you are satisfied that the common object was legal, that it was to procure a Repeal of the Union, although you should be satisfied that in pursuance of that common design, the parties, or some of them, did an act, or acts, tending to raise and create discontent and disaffection amongst Her Majesty’s subjects, that would not amount to the crime here imputed, it would not warrant a charge of a conspiracy to raise and create discontent and disaffection, because the principle which I have laid down would then apply ; that if in furtherance of a legal object, one of the parties uses illegal means, that cannot affect the others unless there was a previous agreement that those illegal means should be used. But let us see what the nature of the charge is. Is it not preposterous and absurd—is it not so vague and so general as to render it truly unsafe for any jury to act on, or for any individual to say that it discloses the commission of a criminal offence ? If there was nothing more in the indictment than this charge, the trial could not last five minutes. A conspiracy to raise and create discontent and disaffection ! What is the meaning of that charge ? If it can be supported in a court of law, I ask you is there not an end to all discussion, to all improve-

ment, to all change, to all amelioration of the law. How is it possible to argue any question? How is it possible to reason with any reasoning men, and to satisfy them that an existing law is bad, and ought to be repealed without exciting discontent? How is it possible to convince them that it is necessary for the improvement of their condition that a new law should be introduced without exciting discontent? And am I to be gravely told by the prosecutors for the Crown, that a man is to be put on his trial, and to be charged with a criminal offence, because his arguments in support of a legal object may, perhaps, excite discontent? Gentlemen, it is preposterous to say, that such a charge as this amounts to a crime. But, Gentlemen of the Jury, you are told that the traversers conspired to excite disaffection. What is this disaffection? "Disaffection and discontent among the liege subjects of our Lady the Queen." Why, my Lords, that is a very vague charge. I have always understood that an indictment in which words of this kind are introduced, should allege when and against whom the disaffection was excited. Is it to the Queen? Is it to the Government? Is it to the Constitution? No such charge is stated in this indictment. It is a charge to excite disaffection among the liege subjects of our Lady the Queen! I am not quibbling. An indictment of this kind should contain charges intelligible and clear to ordinary understandings. Let me take it that it means disaffection to the Queen. I readily admit that to conspire to excite disaffection to the Queen is criminal. But I ask, can you convict the traversers of that? Is it disaffection to the Government? What means the Government? If it means the Ministry of the day, the charge is idle and absurd. I say it is not a criminal offence to excite discontent against the Ministry of the day. God forbid that I should live to see the day when it would be said to be a criminal offence to excite discontent against a Minister! Is it against the Government in another sense—the Constitution as by law established? Can you convict them of that? What means the Constitution? If it is the Government of the realm, by King, Lords, and Commons, it is consistent with that Constitution, that there should be separate Parliaments, and independent Legislatures, a House of Lords and a House of Commons in England, and a House of Lords and a House of Commons in Ireland, with a common Sovereign to both countries. That was the Constitution before the Act of Union incorporated the two Legislatures. That Act did not subvert the Constitution; the repeal of it would restore the independent Parliament, and would leave the Constitution as it was. It is idle and absurd to say—it will not be said—I have not heard it said—that it would be treason or a criminal offence to endeavour to procure a Repeal of the Union, on the grounds that it would endanger the Constitution. Now, 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 principal traverser I may say, never omitted to proclaim his loyalty and devoted affection to the Queen, to proclaim it in a manner the most impressive, and the best calculated to instil those feelings into the audience which he addressed.



I protest I can find no other evidence of disaffection. But you are told, Gentlemen of the Jury, that a man may say one thing, and mean another. No doubt he may. But they who impute crime, who impute to a man a meaning different from that expressed by his words, are bound to prove it; and it is only Christian charity, it is but justice, in the absence of such proof, to give to the expressions used, their plain and ordinary meaning, and no jury can act on the supposition that the meaning is different from that expressed. The expression itself is evidence of the meaning of the person who used it. How are you to judge of a man? How, but by his words, and by his actions. What are the words, and what are the actions of the traversers? If the object of Mr. O'Connell, or of any one of the traversers, had been to create disaffection to the Queen, do you think the expressions of loyalty would have been so often repeated, and would have elicited such expressions of applause and assent? Think you that he would have alluded to the Queen's name in such a manner, as to draw from the assembled multitudes, thunders of applause and cheers, which made the welkin ring? Think you that these assembled millions were all hypocrites; that the expressions of loyalty addressed to them were false, and were contrived for the purpose of exciting disaffection? The charge is idle. If Mr. O'Connell had so base a thought, he took the most effectual means to counteract his own object, and so far from being calculated to produce the effect which is attributed to him, that they produced the contrary effect is beyond all doubt. Gentlemen, I have now done with this charge, it is so idle, and so absurd, that I am persuaded that if there was nothing else in the indictment, the counsel for the Crown would not have stated the case to you.

The traversers are next charged with conspiring "to excite such subjects to hatred and contempt of the Government and Constitution of the realm as by law established." I have disposed of that charge by the observations which I have already made. I say with the most profound respect to you, that it is impossible to come to the conclusion that the traversers conspired to excite the subjects to hatred and contempt of the Government and Constitution of the realm. That they endeavoured to induce and convince persons that the Repeal of the Union would be a benefit to the country, is true. I admit that was their common object; but I again repeat, that if you could spell out evidence in support of this charge in the indictment, by extracting sentences from this or that speech or from this or that publication, calculated to excite hatred and contempt of the Government, I deny that that would support the charge of conspiracy, as alleged on the indictment, because you must see that the common object was a legal one; and if some have used intemperate language, that would not support the charge.

Gentlemen, the next charge is, that they endeavoured to excite "the said subjects to unlawful and seditious opposition to the said Government and Constitution." The observations which I have already made, are equally applicable to this as to the former charges: "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 the said united kingdom called England.” Now, Gentlemen of the Jury, let us deal with this charge. It is extraordinary and new to me, that such a charge as this can amount to an imputation of crime; but let us see what the evidence in the case is, and on what the Crown rely in support of this charge. Why, they rely on certain passages in the same speeches which they say are calculated to produce that effect. What are those passages? The speakers were showing and endeavouring to convince their hearers of what they themselves conscientiously believed, that a Repeal of the Union would be essentially beneficial to this country; and in doing so, they were justified in using all the fair arguments which they could think of; they were justified in resorting to the powerful arguments derived from the past history of Ireland: and if facts are disclosed in that history, which are calculated to produce hostility towards Her Majesty’s subjects in England, I deeply deplore it; but is it alleged that they falsified or misrepresented those facts, or misquoted history? Even if some of the speakers did, that was merely a method which they took of enforcing their arguments; but does that support the charge in the indictment, which is a conspiracy, not to procure a Repeal of the Union, but to excite the subjects to hatred and contempt of the laws and Constitution of the realm. And I tell you, Gentlemen of the Jury, under the correction of the Court, unless you are satisfied that these speeches and publications were calculated to produce that effect, and that the use of them was the result of a conspiracy for that purpose, the charge in the indictment is not supported. The next charge is: “ and further to excite discontent and disaffection amongst divers of Her Majesty’s subjects serving in Her said Majesty’s army.” Is that charge supported? What is the evidence of it? Precisely similar to that resorted to in support of the other charges in the progress of this trial; one or two speeches on which Mr. O’Connell spoke of the army in terms of high commendation, and because he did so, you are told that he is an arch-conspirator, and that he is using those means to excite them to disaffection.

Some publications were also read, which I do not stand here to defend, and were inserted in one or two of the newspapers produced in evidence; one was a letter from a Mr. Power. I will not trouble you, Gentlemen, by canvassing that letter; I care not what the tendency of it was; it is unfair, unjust, harsh, and oppressive, to make use of that evidence against any of the traversers, but him who published it in his newspaper. It might perhaps have been evidence against him to support a charge of libel or sedition; but the plain, the simple, the obvious, the manly, the direct course has been abandoned, and a circuitous route adopted; it is sought to convict one man by the acts of another, and they argue in a circle thus: admitting the proposition of law, that where the object is legal, the illegal act of the one is not the act of the other; and admitting that, if

the common intent be to do an illegal act, the illegal act of the one then becomes the act of the other ; they take the act of the one which they say is illegal, done in the furtherance of the common legal object, and they use that as evidence of the common intent, not to affect the general legal object, but to do the particular illegal act. By these means they have brought the acts of persons, over whom Mr. O'Connell had no control, nominally to support this conspiracy, but really and truly to procure, if they can, their great object, the conviction of the great Leviathan agitator. Gentlemen, I complain of that : it is not fair dealing. I say that publications, with such tendencies as these, ought to have been submitted to you in a clear, simple, and plain form. They ought to have made each man responsible for his own acts alone ; they ought to have put the question in due course of trial, in a manner which would have enabled the Crown to bring forward their case shortly, simply, and clearly, and to state to you simply and clearly, what their case was, and to lay their evidence before you, so that men of ordinary intelligence might be able to say whether the charge is supported, and not to involve you in a task which is almost beyond the power of the human intellect. The next charge, and that on which the greatest stress was laid in the prosecution of this case is, that the traversers conspired "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 as- "semble 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 es- "tablished." The change in the law adverted to is clearly a 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 succinctly as I can. Now, Gentlemen, is that charge substantiated ? Assuming for a moment, that there was a combination to procure a change in the law, I pray you to keep in your minds what I said at the outset, that unless there was a preconcert to do that which was criminal, an illegal act of the one in furtherance of the common purpose cannot affect the others. Where is the evidence of procuring these large assemblies to meet ? Suppose there is evidence of it, were these assemblies unlawful ? If they were assembled, in order, by intimidation in the sense here intended, to procure changes in the law, I admit that would be illegal ; but if they were not assembled for that purpose, they were legal. I say that the mere circumstance of assembling large masses of people does not constitute illegality. I admit, that if a great assemblage of persons takes place, under circumstances naturally calculated to excite alarm in the minds of firm and reasonable men, that, without reference to the object of it, it is illegal. But, I say, if men assem-

ble, no matter in what number, for the purpose, as Baron Alderson has laid it down, of stating their grievances, or what they think are grievances, and assemble in such a manner as not to excite alarm in the minds of reasonable and firm men, that assemblage is not illegal in consequence of its numbers. What is proved to demonstration in this case? The indictment sets out a large number of monster meetings, commencing on the 19th of March, 1843. There are not less than sixteen stated in the indictment, and twelve in the bill of particulars, making in all twenty-eight. Evidence has been offered of, I think, ten, but what are the facts? You have, from the 19th of March to the 3rd of October, twenty-eight of these monster meetings—have you any evidence that there was at any one of them a single act of outrage or tendency to a breach of the peace? Have you not before you, evidence by persons who attended, on the part of the Government, by policemen who took notes of the speeches, that these meetings were perfectly peaceable, and can it now be contended, that they were unlawful meetings? You have this fact, that from the commencement to the end of this agitation, if you so please to call it, Government was in possession of minute and accurate information of every thing that occurred. Have you not this fact also, that those concerned in these meetings anxiously and ostentatiously published the proceedings at these meetings, their intention of holding them, and the speeches which were delivered at them; and strange to say, some of the overt acts in the indictment to support this charge of conspiracy are, that the editors of newspapers published reports of those meetings. Gentlemen of the Jury, I speak 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 these meetings to be illegal, they would have permitted them to continue. From the 19th of March to the 3rd of October, they held twenty-eight of them. I do say, honestly and sincerely, that I do not think it credible, that the Government could have sanctioned these meetings by their silence. I am sincere in saying so—I make no charge against the Government—I cannot think it possible, that men placed at the head of the administration of the affairs of this country could so far forget their duty, as to remain passive, if they believed these meetings to be illegal, or that such consequences were likely to result from them as the imagination of the Attorney-General has depicted to you. I cannot believe that the law advisers of the Crown would have sat by and permitted them to continue. No other cause can be assigned for their being permitted to continue, than a conviction on the minds of those at the head of affairs, that they were lawful; and 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 injunctions were obeyed, and that peace prevailed. I do admit, that persons assembling in large masses may render it likely that danger may ensue: that men of ordinary courage may entertain alarm; though, in this in-



stance, it does not appear that they did, but each succeeding meeting negated the possibility of injury arising from them, and gave corroborative proof of the innocence and legality of the preceding ones. I can no otherwise account for the conduct of the Government, than that, from the information which they had received of the proceedings, and the result of these meetings, they came to the conclusion that they were perfectly lawful. The conduct of the Government would have been infamous in the extreme, if it had resulted from any other motive. It may appear somewhat strange that I should vindicate the conduct of the Government from the aspersions cast upon them by those who ought to be their defenders, but I can account for it on no other supposition.

But then, Gentlemen of the Jury, there is another species of illegality attributed in this charge; it is alleged that they procured them to assemble unlawfully, for the purpose of intimidation, by the exhibition of physical force. Gentlemen, is this charge supported? I will ask you, can you, as honest men, say that you believe there was, on the part of Mr. O'Connell, an intention to intimidate, by the exhibition of physical force? Do you not, as honest men, believe that the genuine sentiments of his heart were those which he constantly professed, as was perfectly justifiable, and that he wished to bring conviction to the mind of the Minister by this expression of the people's sentiments? I ask you, after all you have heard from the eloquent persons who have preceded me, whether you can doubt that the real object of Mr. O'Connell was to announce to the Government of the country, and to bring home to them a clear and satisfactory conviction, that these were the real sentiments of the majority of the Irish nation? Can you believe that Mr. O'Connell intended to march with the Repeal Wardens, with their peeled wands in their hands, at the head of these multitudes, in order to encounter the artillery of Britain, or to assail the House of Commons? Do you think that he even entertained the idea of inducing the Ministry of Great Britain to apprehend an outbreak or a resort to physical force? Gentlemen, the whole life of Mr. O'Connell belies this charge: there never was a man who wielded such extraordinary power over his fellow-men, but there never was a man who shrunk with such abhorrence from the idea of leading them to the commission of a crime, or from the shedding of human blood. His life belies the charge. The whole progress of that successful agitation which terminated in the granting of Catholic Emancipation, proved to him the great and beneficial effect to the cause which he advocates of preserving the peace, but at the same time, of making a moral demonstration which no Minister in his senses could disregard. I say, Gentlemen, that he has done nothing wrong, nothing illegal, in ascertaining what the opinion of the country is. I say he has done nothing wrong and nothing illegal in exhibiting that opinion; nothing wrong and nothing illegal in communicating that opinion to the Minister of the day. I say he is a weak Minister who would seek to exclude such information from his cabinet; he would be insane who would shut his eyes or close his ears to the acts or the voice of a nation; he

would be worse who, informed of the feelings of a nation, would venture to disregard them. But, Gentlemen of the Jury, what were the means pursued at these meetings? Every publicity was given to the proceedings; the speeches were published and reported. Not only did they assemble men to ask their opinions, but they discussed the question; they assigned their reasons, and they published those reasons, and they let them go forth to the world without reserve. I am not here to support those reasons; but if they are wrong, let them be answered by something else than by a state prosecution; let them be discussed in Parliament, and let the assembled intelligence of Britain decide on them. Is it to be said that the discussion of such a question can be suppressed by a state prosecution? The attempt is vain. I do feel firmly convinced that this prosecution, whatever may be its result, will tend to promote rather than to repress the evil which is complained of. I trust I shall never live to see the day when free discussion shall be put down by a state prosecution. Nothing but misery can result from it.

Gentlemen of the Jury, the next charge is: "That the traversers conspired to bring into hatred and disrespect the Courts by law established in Ireland, for the administration of justice." That has reference to the resolutions with regard to the Arbitration Courts. I do not mean to trespass on your attention, by repeating the arguments which you have already heard, as to the legality of those proceedings, because if you are of opinion, that the end of those Courts was to enable persons to obtain cheap justice, you will surely say that is no crime. It is idle and absurd to say, that recommending men to submit their disputes to the arbitration of their fellow-men, is calculated to bring into disrepute the constituted tribunals of the land. It is absurd to say that there is any thing criminal in wishing to save parties the expense of proceeding in the superior Courts. Gentlemen, if proceedings in the superior Courts were not canvassed—if they were not attended to—should we have obtained the beneficial reforms that have taken place in our own time? Was it not by exposing the mischievous exactions to which the suitors were obliged to submit, that a door was opened to those advantageous amendments. I say it is monstrous to impute crime to a man because he complains of the expense incident to proceedings in the superior tribunals, and to recommend others to submit their disputes to arbitration, and where nothing was to be done except by the consent of the parties, it is impossible to say that there was any thing illegal in this. I should like to have the question tried by an action of debt, brought on the award pronounced by these Arbitrators. Gentlemen, the next allegation is, that the traversers conspired "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 subjected the same to the judgment and determination of other tribunals, to be constituted and contrived for that purpose." This is the same charge, in the very same words.

I have yet to learn that it is a crime to endeavour to induce persons to withdraw their differences from the Courts of law. I have sometimes, though perhaps not often, been guilty of the offence myself; and I have unwisely recommended men not to go to law, and to submit their disputes to other tribunals than those constituted by law.

Well, Gentlemen, these are the charges which are all included in the first count. The other counts are not very material until we come to the seventh count, which states more explicitly than the first the change in the law which it charges the traversers with conspiring to procure, namely, a Repeal of the Union; it charges them with conspiring "to cause and procure, and aid and assist in causing and procuring divers subjects of our said Lady the Queen 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 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." I shall now call your attention to the eleventh count, which is an extraordinary production. It states that the traversers conspired, "to cause and procure large numbers of persons to meet and assemble together in divers places and at divers times within 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 respectively, and also by means of the publishing, and causing and procuring to be published to and amongst the subjects of Her said Majesty, divers unlawful, malicious, and seditious writings, and compositions;" to do what? "to intimidate the Lords spiritual and temporal, and the Commons of the Parliament of the United Kingdom of Great Britain and Ireland, and thereby to effect changes and alterations in the laws and constitution of this realm, as now by law established, &c." If the charge that they conspired to intimidate, by the exhibition of physical force, cannot be sustained, is it not absurd to say, that by causing large numbers to hear seditious speeches, they conspired to intimidate?

Gentlemen, 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 the charges is substantiated? If they conspired at all, it was to procure a Repeal of the Union; but is there evidence to satisfy you, that there has been a preconcerted arrangement, a conspiracy to do any illegal act which is specifically mentioned in the indictment? I confess to you, that at times, in the course of this trial, I was disgusted with my own Profession. I felt grieved, when I heard men of high intellect, of great information, and of unquestioned honour, resort to the species of argument which I heard urged in this case. They came down prepared with arguments to meet every possible state of facts—prepared to draw the same conclu-

sion from facts directly opposed to each other, and to ask you to come to that result which they wish you to establish, no matter what the evidence may be. If at any of these meetings, a single expression calculated to produce a breach of the peace had been used; if, as at some of the meetings in England, any person had sworn another that he never should be a Queen's man again, how triumphantly, and properly so, that would have been relied on as evidence of a criminal intention! but when we find no such expressions, and, on the contrary, expressions of enthusiastic loyalty, we have the counsel for the Crown alleging that they equally lead to the same conclusion. If declarations of loyalty are not made, you are to infer a conspiracy from their absence; if they are made, they are evidence of a conspiracy, and you are told they are used to conceal the treasonable designs of the conspirators. I protest I know not how any man can defend himself, if such reasoning is to prevail. Gentlemen of the Jury, I will not trouble you by going through a detail of the evidence, but I again beg of you, when you are applying it, to keep in your minds that before you pronounce a verdict against any one of the traversers, you must be satisfied, beyond all reasonable doubt, that they conspired together not only to procure a Repeal of the Union, but to do those illegal acts specified in the indictment. Upon what does the Attorney-General mainly rely? He says: "true it is the meetings were all peaceable; true it is there was no outbreak; there was nothing indicating a tendency to a breach of the peace; but I see into futurity; I see that the object is different from that which is propounded; true it is that no mischief has ensued—why? because fortunately it was put a stop to. I permitted the arrangements to proceed until they were ready to break out, and then by this Crown prosecution I prevented the outbreak." Gentlemen of the Jury, if this was not too serious a subject, I could epitomise the statement of the Attorney-General, by repeating what I have heard was once said by a learned advocate who thus addressed a jury: "Gentlemen, I smell a rat. I see it brewing in the storm, but please God I will crush it in the bud." Gentlemen, I know not whether his sense of smell is equally acute; but the learned Attorney-General hints to us that he sees the object of the conspiracy brewing in the storm, and by your verdict he intends to crush it in the bud.

Let us now consider the effect of the evidence as relates to my client, Mr. Thomas Steele. He avows and approves, and he would not permit me to stand here as his advocate, if I did not in his name avow and approve of every act of Daniel O'Connell, and perhaps that is the reason why he was introduced into this indictment at all. Let us shortly consider what the charges are which are preferred against him in this indictment. It is alleged that on a certain occasion, on the 3rd of October, 1843, Thomas Steele made the following speech. It is short and I shall read the entire from the indictment: "Sir, "I request to have the honour to second the resolution of the Liberator, inasmuch as I have expressed from the first very strong opinions with respect to the Loughrea meeting. I have from the first



“ considered that meeting of more national importance than Mullagh-  
 “ mast, on 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 or Peel, who have traito-  
 “ rously made their Sovereign the mouth-piece of their villainy, and  
 “ they have followed it up until they made her the subject of a cari-  
 “ cature in her own capital. I have looked at a caricature of the  
 “ Queen by that inimitable caricaturist, the best that ever handled a  
 “ pencil, who signs himself H. B., in which the Queen is represented  
 “ as taking the water like a duck, with a bonnet on its head, swim-  
 “ ming over to France, with Louis Philippe, the perjured tyrant, wait-  
 “ ing to meet her. It has been represented to be a mere voyage of  
 “ pleasure ; but every man who has common sense understands dis-  
 “ tinctly why she was sent by Peel and Wellington, namely, in the  
 “ undignified position of her own ambassadress, hoiking one day to  
 “ France, and another day hoiking to Belgium, for the purpose of  
 “ propping up the fallen destinies of England. Peel and Wellington,  
 “ who dared to give that threat, were met by the defiance at Mallow  
 “ of O’Connell ; he defies them.” Now, Gentlemen, how was it  
 possible, with a serious countenance, to introduce this speech as an  
 overt act of the conspiracy ? Gentlemen, I can conceive what the  
 delight of my learned friends must have been when they first dis-  
 covered this speech. At that time Sergeant Warren was enjoying  
 a luxurious repose in the Court of Chancery. The tranquillity of his  
 mind had not been then distracted by the frightful visions which  
 the lively imagination of the Attorney-General had conjured up ; in short  
 he had not then joined the conspiracy. I can fancy the three sages of  
 the law sitting in solemn conclave over this indictment, and imagine the  
 delight they felt when, from the mass of newspapers before them,  
 they were able to select a speech so full of treason as this, and when  
 they read it I have no doubt they formed as satisfactory an opinion  
 upon it as the sapient Dogberry himself could have pronounced. I  
 will tell you, my Lords, what brought Dogberry into my mind. I re-  
 collect to have read when I was in College, that one of the aids of  
 memory was the concatenation of ideas : now when I pictured to  
 myself these learned conspirators pondering over the speech of Mr.  
 Steele, the name of one of Shakspeare’s plays naturally occurred to  
 me ; it was, “ *Much Ado about Nothing* ;” this of course reminded  
 me of Dogberry, who is a distinguished character in it. On one  
 occasion a watchman says : “ I heard him say he received two  
 thousand ducats of Don John for accusing the lady Hero wrongfully.”  
 “ Flat burglary,” says Dogberry. So when my learned friends read  
 this speech, “ Treason,” says the Attorney-General ; “ Sedition,” says  
 the milder Solicitor ; “ Flat burglary,” says Brewster ; and having  
 found embodied in this short speech treason, sedition, and burglary,  
 they all agreed that it afforded convincing proof that Mr. Duffy

and Mr. Tierney, and the other traversers, who knew nothing at all about it, were guilty of a foul conspiracy. Accordingly the scissors were immediately put into requisition. Then the speech was removed from an ephemeral journal, where it would soon have sunk into oblivion, and has had immortality conferred upon it by having been transplanted into this monster indictment; and yet I can also fancy with what feeling the clerk did his duty on that occasion. The Solicitor-General's recording angel, with the scissors, blushed as he gave it in; and I should have thought that the gentle and compassionate nature of the Solicitor himself would have induced him to drop a tear on it, and blot it out for ever. However, it was otherwise ordained, and there it is, doomed to descend to posterity as a lasting memorial of the eloquence of Tom Steele, a convincing proof of the treason of H. B., satisfactory evidence of the clemency of the Attorney-General in not including him in the indictment, and a perpetual record of the wisdom and good sense of this prosecution. Now, Gentlemen, is there not some argument in this levity, and is it not monstrous, and absurd, and unjust to say, that the charge of conspiracy is supported by such evidence as this? It is a mockery of justice to rely on such a speech as this as establishing a charge of conspiracy.

I will not trouble you by going through the facts of the case, which have been spoken to with so much ability. I rejoice that it did not fall to my lot to address you in an early part of the case; I should have sunk under the task. I am not gifted with an intellect which would enable me to grasp the vast variety of facts and the mass of evidence which has been laid before you in this case. But, Gentlemen of the Jury, I implore you to consider the vast importance of this case. I am convinced that the foul mists of political prejudice, that pollute the atmosphere abroad, have not been permitted to come within the precincts of this sacred temple, and that you have brought your minds to the consideration of this case as free from the influence of such prejudice as the judicial ermine itself is free from taint. But you are discharging a great and important duty. Deep interest is excited by these proceedings; an interest which pervades Ireland, which extends through England, and reaches beyond the limits of Great Britain. This trial excites the attention of civilized Europe. There is not a city in Europe in which there are not thinking men observing the proceedings here, anxious to ascertain whether, in reality, that freedom of discussion, of which they have heard such eloquent panegyrics, of which Britain so loudly boasts, in reality exists, or is an unreal mockery, a fancied good. Beware how you pronounce a verdict that may interfere with that freedom of discussion, or tend to suppress the open expression of public opinion. Beware how you attempt to close what have been well called the safety valves of the State; while it is fearful to think what consequences may result from the compression of the steam. Your verdict, this day, will show whether the trial by jury is indeed that Palladium of British liberty which Britons fondly proclaim it to be; or the assertion, a vainglorious

boast. But, Gentlemen, I have no apprehensions as to the result. I have the most perfect reliance on your integrity and on your intelligence. I rejoice to observe the extraordinary attention which you have paid to this case; and I am convinced that your verdict will prove that there is not in the civilized world a tribunal to which the accused, no matter what his creed or politics may be, can look with greater certainty for impartial justice than to a Jury of Irish Protestants.

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MONDAY, FEBRUARY 5TH.

MR. O'CONNELL.

*My Lords, and Gentlemen of the Jury,*

I beg your patient attention while I show you, in as few sentences as I possibly can, and in my own plain, prosaic style, the right I have to demand from you a favourable verdict. I ask it without disrespect and without flattery; I ask it upon the grounds of common sense and common justice; and upon these grounds alone, I demand, as I said before, a favourable verdict from you—being thoroughly convinced that I am plainly entitled to it. I do not feel that I would have been warranted in addressing you at all, after the many speeches which you have already heard; and after the powerful display of talent that must have delighted as well as instructed you; but, Gentlemen, I do not stand here my own client—I have a client infinitely of more importance. My clients in this case are the Irish people; my client is Ireland, and I stand here the advocate of the rights, liberties, and constitutional privileges of that people. My only anxiety is, lest their sacred cause and right to independent legislation, should be in the slightest degree tarnished or impeded by anything in which I might have been an 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 object I had in view—the Repeal of the Union; for I openly assert that I cannot endure the Union, because it was founded upon the greatest injustice, and based on the grossest insult; from an intolerance of Irish prosperity. These were the motives that induced the malefactors who perpetrated that iniquity; and I have the highest authority—an ornament for years of that bench—now, although recently, in his honoured grave—for saying, that the motive for carrying the Union was an intolerance of Irish prosperity. Nor shall I leave it on his word alone, I have other authority for it, with which I shall trouble you in the course of my brief address—for I assure you I am as anxious to be as brief as possible in the observations which I shall address to you. As to myself, Gentlemen, I am not here to deny anything I have done, or to palliate anything I have done; on the contrary, I am ready to re-assert in Court all I have really said—not, of course, taking upon myself the clumsy mistakes of reporters; and not abiding by the fallibility which necessarily attends the reporting of speeches, particularly when they are squeezed

together, for the purposes of the newspaper Press. However, I do not hesitate to say, that there are several harsh things towards individuals, and clumsy jokes, which I would rather not have said; but the substance of what I did say, I avow, and I am here to respectfully vindicate it. You know all my actions, and I am ready here, not only to avow them, but to justify them; for the entire of what I said and what I have done, was said and done in the performance of a high and sacred duty—an endeavour to procure the restoration of the Irish Parliament. If I had no other objection to the Union, I should find one in the period at which it was carried. The Union was accomplished at a revolutionary period; the nations of Europe were overwhelmed with the military power of infidel France. The dynasty of nations was changed—princes were banished, and kingdoms were altered. The revolutionary period had passed with them all. Alas, the day of retribution came to every country, restored the natural order of things every where; every nation had its full day of retribution but Ireland, and she alone remained under the influence of the fatal revolution; and you, Gentlemen, are assembled to prevent justice being done to Ireland, as it has been to all other countries! It has been said to me, that I labour under great disadvantages in addressing you; and you may be sure, if I state those disadvantages, that I do so without any discontent whatsoever. I know, my Lords, too well the inestimable value to the public, of the perfect order and decorum which should be observed in a court of justice, to dare to violate it. Therefore, when I speak of the disadvantages of addressing you, you will not understand me as appealing for redress to those who cannot give it to me. If anything which has been done is wrong, this is not the time to discuss how you have been put into that box, this is not even the place for it; and I will now assume, that the Attorney-General has done nothing but what the law allowed him to do; because, if there is a wrong committed, the remedy lies elsewhere; and if all is right and legal, the proper tribunal will decide it to be so.

Now, Gentlemen, I will address you, without discourtesy, and, as I have already said, without flattery, as the tribunal to which I am to offer my arguments. It is quite certain that there are considerable discrepancies of opinion between you and me, upon subjects of the utmost importance; you differ with me on the question of the Repeal of the Union, for if you did not, there is not one of you would be in that box; you differ with me on a more important subject, in religious belief—if you were of the same faith that I am not one of you would be in that box. These differences are, perhaps, aggravated by the fact, that I am not only a Catholic, but that Catholic who (without boasting) has done most to pull down that Protestant ascendancy, of which, perhaps, you were the champions, but certainly not the antagonists, and who established that equality against which some of you contended, and against which all of your opinions were formed; but that does not terrify me from the performance of my duty. I care not what evil effects may occur to myself, or what punishment it may bring on me, I glory in what I have done—I glory that I have been the successful, and you



the beaten party. I know that I am in your power, but, Gentlemen; nevertheless, I trust in your honour and integrity, and to that I appeal. I said that there were three points on which we essentially differ—the Repeal of the Union, my maintenance of the voluntary payment system in every Church establishment, and my former conduct in relation to Catholic Emancipation. But you are here to administer justice and right between all parties, and all I wish to remark is, that I have no despair of your doing that perfect and full justice, without considering what may be the religious or political feelings upon one side or the other. I would have preferred, upon your account and upon my own, that those objections did not exist. I would have preferred matters were otherwise, and that neither you nor I were harassed with the thought that by any possibility, by even the infirmity of human nature, injustice should affect the verdict in this case; but I will not say any more upon that subject; I have done with it, and I will now pass from it to the consideration of the case itself.

I first come to the prosecution. Why, it really is the most curious—the strangest prosecution that ever was; it is not for one, or two, or ten facts that it is instituted, and remember that the criminal law of this country is most lauded for its simplicity; but it is the history of nine months you have to go through, the details of no less than nine months, a monstrous accumulation of matter flung before you, such an accumulation, that I defy the most brilliant understanding so to investigate and scan as to take in all the important points, which are necessary for forming a sound and just judgment upon the whole, at one view. The great difficulty created in this case was bringing such an immense quantity of matter under your consideration; it is impossible for the human memory not to fail; for it is always apt to recollect that which is strongest and most striking, while it is equally prone to forget that which ought to be the most important to a jury—the exculpatory and mitigatory matter. Gentlemen of the Jury, I arraign this prosecution, not with hostility or anger, but on constitutional principles: it is utterly impossible for you to find out or distinguish from that mighty mass of matter which was laid before you, what really is the question you have to try. Let me see whether I can help you. I will first endeavour to see how much is affirmative in this prosecution, and how much and what negations it contains. I will, as I tell you, endeavour to discover what is affirmative in it, and next I will try to find out the negative quantities and qualities it possesses, that is, I will see what it is, and what it is not. Its entire strength consists in that cabalistic word “conspiracy.” If, my Lords, I look into the dictionary for the meaning of that word, I find that it is “a secret agreement between several to commit a crime,” and that is the rational, common-sense definition of it. This word, however, in recent times, has been taken under special protection by the Bar, and the definition of it now is, not only an agreement between several to commit crime, but they have taken two hooks to their line, and the further description of it is to effect, or attempt to effect, even a legal object by means that are considered illegal; and thus a “conspiracy” is spelt out by the construction put upon the means that are used to attain

the object sought, however legitimate that object may be. However, whatever opinion I may form of the first definition given of "conspiracy," I do not think there is much of justice in the second branch, or that, at all events, it ought to be brought under your consideration, unless the offence was so clear and distinct as to be a substantial offence in itself, that it need not be spelt out in this way, if the ends sought were legitimate. Well now, let us take the conspiracy as it is, and let us see whether there are any negative qualities belonging to the evidence produced by the Crown. It has been admitted, even by the Crown, that in this case there is no privacy, no secrecy, no definite agreement to do any thing whatsoever, but above all no secret agreement—no secret society—no private information. It has been admitted by the Crown that there has not been even one act of private communication—that every thing was openly avowed, proclaimed, and published to the world—that this "secret conspiracy" has no secrecy at all. And the fact is so: for, Gentlemen, the evidence of our acts, as laid before you, was to be found in the *Dublin Evening Mail*, as well as in the *Dublin Evening Post*; and this charge of "conspiracy" was raked up from that most secret abyss, that most secret channel, the public newspapers. Really it is too ridiculous to be defending one's self from a charge of this sort. Every act was done before the world; these meetings were convened by public advertisements, with a bell ringing to invite people to attend; and yet those who did so have entered into a "private" conspiracy. To constitute a conspiracy there should be an agreement; whether necessarily private is another question; but there should be something concealed. It should not be an agreement, for instance, in the presence of the Attorney-General, or Solicitor-General, or of Her Majesty's Sergeants. What a monstrous thing it is to call that a conspiracy which every body knew of, every body heard of, and three-fifths of the people of this country were engaged in. And what was the evidence that those conspirators assembled together?—That Mr. Barrett attended at such a meeting; and that Mr. Duffy attended once or twice; and that I myself attended; and this is the way the charge of conspiracy is to be spelt out. Is it common sense? Is it to be endured, that that should be denominated a conspiracy? Conspiracy! Where was it made? When was it made? How was it made? Was it made in winter, or in summer, in spring or in autumn? Was it made on a holyday, or on a Sunday, or on a weekday? Tell me the hour, the week, the month, the year it was made? In which of the three quarters of the nine months did the gestation of this conspiracy commence? Who proposed it? Who seconded it? Who was present at it? Gentlemen, I appeal to your common sense—to your reason; place yourselves for one moment in my position; suppose yourselves addressing a Catholic jury. Consider for one moment, and see how you would feel, and with what conscious integrity you would laugh to scorn the opinions of that jury, who would dare to find you guilty of a conspiracy, under such circumstances. You have neither time, place, nor an individual with whom any secret communication was had—not the slightest shred of evidence of that fact—not the slightest par-

ticle of evidence which could sustain a charge of that nature. I do not know whether it was said that I was present at the concoction of this conspiracy, at this agreement, private or public; who else was there? When and where did it take place? Ought I not at all events to have the advantage of being able to prove an *alibi*? No, but you must go over nine months, and toss up which place or time you may select. I want to know whether this agreement was in writing or in mere parol? If an action at *Nisi Prius* was pending, and you were to try it, and that that action was for the recovery of a ten pound contract, could it be possible you could find that such a contract existed upon such vague evidence as that adduced in this case? I remember it was said of a Judge who has long since passed away, that in a case for the recovery of ten pounds before him, one of the counsel observed, that, although the evidence was not sufficient in a civil case, it would be quite sufficient in a criminal case in his lordship's court. And in this case I say to you that there is not evidence enough to support an action for the recovery of ten pounds. Is this agreement with which we are charged in the bill of particulars? How is the charge described? There are so many of them it is almost impossible to say; but why should we be charged with entering into an agreement (whether it should be private or not is another question), and not have that charge set out in the bill of particulars? My Lords, I do not mean to waive my right to the benefit of that point. I say this charge is not in the bill of particulars. If it was in writing, it should be given in evidence; but the Crown are now concluded by the omission of it in their particulars. Why should that escape your notice—your honest, impartial, conscientious view? Do you not believe that if there was a conspiracy, it would be proved, and that the only reason it was not proved, is because it did not exist. The Attorney-General told you it did exist—that it must have existed; but this is all imaginary, and you are called upon to find me guilty, if you “imagine” that this agreement was entered into. I do not want to speak disparagingly of the talents of the Attorney-General. I admit the ingenuity, the talent, and the industry with which he conducted this case. He was eleven hours—eleven mortal hours in laying the facts of it before you. What did he tell you the conspiracy consisted of? He made a long statement, and when he came to the end he told you to go back to the beginning and find out the conspiracy, and what it consisted of. I say, Gentlemen of the Jury, without the least affectation, if any gentleman could have found evidence of a conspiracy, it would have been found by the Attorney-General. Yes, he took eleven hours to throw all that garbage into your box. There, said he, is the *Pilot* and the *Nation* for you, and make out a conspiracy. I remember, on the Munster circuit, the celebrated Mr. Egan was engaged for a defendant. The case had been stated by a Mr. Hoare, a gentleman of dark appearance. Egan was sure of his jury; and on behalf of his client he merely said: “Gentlemen of the Jury, you are not, “in deciding this case, to be influenced by the dark oblivion of a “brow.” A learned friend sitting near him, said: “Why, Egan,

what do you mean ; that is nonsense you have been speaking." " To be sure it is," said Egan, " but it is good enough for the jury." So, eleven hours are good enough for you, Gentlemen. It is nonsense to talk of a conspiracy which takes eleven hours to develop it. I remember, after Hardy was tried for constructive high treason, the anniversary of his acquittal was for a long time celebrated by a dinner ; and one of the jury, whose health was regularly proposed, always made the same speech : " Mr. Chairman and gentlemen," said he, " I will tell you why I acquitted Mr. Hardy—Mr. Sergeant Scott took eleven hours to state the case, and ten days were spent in endeavouring to prove it. Now, I knew no man could be guilty whose guilt it took such a long time to show. Bring a case of treason, and I will convict a man, but I will not help an Attorney-General to make out a case for the Crown." That was his common-sense view of the case. If a conspiracy existed, the Attorney-General would not have taken an hour, or half an hour to state it, he would have stripped it of its garbage. If there was a conspiracy, he has ingenuity and talent enough to have shown its existence in an hour and a-half at the utmost, even giving full play to the verbiage of the Bar, for which, though not in my wig and gown, I have still a fellow-feeling. If it existed, unquestionably he would have shown you when, where, how ; he would have given you all the particulars of it. He, however, has given you none ; he made out none ; he has left that to you ; it was good enough for you. Remember that, in this alleged conspiracy, there is no secrecy imputed ; nothing is left to conjecture ; the entire is before you ; and therefore, as you know it all, there never was a cause in which the Attorney-General was less entitled to ask a jury to spell out something beyond the case—indeed it must be something curious which is beyond the entire. I am quite right in saying, you know it all. Why, before the trial, the whole country was full of rumours of the existence of a dark conspiracy, and of the disclosures made by persons who were said to have betrayed the conspirators—that they had a clue to everything. No less than seven persons were pointed out to me, as having betrayed the secrets and plans to the Government. One was pointed out as having been seen going to Mr. Kemmis, the Crown Solicitor, another as having been at the Castle, and a third as having been at a certain house, not far from Mr. Brewster's residence in Merrion-square ; no less than seven persons suffered in their characters by these rumours of treachery on their parts. I merely said, " do not mind these reports ; what can they disclose when there is nothing to betray ? They may invent, but they have no secrets of ours to disclose." Now, I ask you, when you came into that box, did you not expect to have heard something you had not heard before ? Did you not expect to have some plot discovered, some secret machination influencing and contradicting the nature of our public acts ? If you did expect it, was there ever disappointment so complete and unmitigated ? Why, throughout the city, in the clubs, when the Attorney-General's case was closed, everybody said, " is that all, why we knew all that before." 'Tis a conspiracy ! Yes, Gentlemen, what has become of



these secret plans, the proofs of this dark conspiracy, these "Gorgons and chimeras dire" of the imagination, what has become of them? Vanished; nothing to be disclosed—nothing concealed. It would have been the duty of the Government to have proved them if they could have done so. They had money enough to enable them to get at the secrets if they existed. They had the disposition, too, for it was their interest to do so. We cannot conceal from ourselves that this is not a case merely confined to the charge of conspiracy; it is a kind of ministerial trial, to see whether this Ministry, with their conciliation policy, with their proposal for an extended franchise in Ireland, are to retain office, or whether we are to have the Whigs again, promising a good deal, and doing very little. That is the real question to be tried. You, therefore, see what interest they had in forwarding this case; the strong stake, the interest they had to discover the real facts, and to bring this monstrous conspiracy to the light of day. No man could have a stronger motive in conducting this prosecution than the Attorney-General—no man has so totally failed, and why? The reason was clear, because they had nothing to betray. It is impossible the Government could have failed to discover all the secrets and plans, if any existed. They had influence enough to induce persons to betray. They had the patronage in the Post-Office, in the revenue police, and especially in the constabulary, to offer for information; yet they procure none. Why? because there was nothing to betray; and you know it.

Well, then, what is the evidence? If there was nothing new, what was the old evidence? The life of an old coat, they say, is a new button. They have stitched up their case with the newspapers which they have flung before you. The evidence consists of two things. First, of the meetings which have taken place, and next, of the newspapers. To spell out an undefined conspiracy existing in the imagination, without date, place, position, or time, they give as evidence of it accounts of meetings detailed in the columns of a newspaper. I will consider each branch of the evidence by itself, but, before I refer to them, let me make this observation. As there is nothing secret, as you know all that took place, what could tempt me at this period of my life, to enter into a public conspiracy? I have always boasted that I would keep myself and all others who acted with me, out of the meshes of the law. Twenty times have I boasted, that it is my principle and my policy to prevent an infraction of the law. If you had heard it charged, that I had entered into a private and secret conspiracy, you might have said that I had entered into it in my old days, calculating on being saved by the secrecy and fidelity of my co-conspirators. But there is nothing of a private conspiracy charged against me. I therefore ask, not only those who know my sentiments better than you can, but I ask you who know me principally by the calumnies of those opposed to me—if, from your opinion of my character, you deem me such an idiot or blockhead as to enter into a conspiracy to the ruin of a cause dear to my heart, and for which I refused, my Lords, the appointment of Master of the Rolls. It was a question whether I had been offered the office of Chief Baron—but as to my having been offered the appointment of Master of the Rolls,

there is no dispute. No, it was not to be supposed I would compromise the cause to which I am devoted, now, just at the closing years of my life, and on the eve of entering into eternity, where I shall receive that awful judgment which cannot now be long postponed. No, Gentlemen, you cannot believe that I would have the cruelty to enter into a conspiracy, the folly to enter into a conspiracy, the absurdity to enter into a conspiracy; I ask you, as Irish gentlemen, to put your hands to your hearts, and say if you can believe it of me. No; your verdict may imprison me, but it will not take from me the consciousness of my own innocence, and the conviction that there is not a man would pronounce that verdict who would not be convinced of his mistake. Perhaps the Attorney-General wants you to believe this, that I was a conspirator without knowing it. I say without knowing it; for there it was in open day. Yes, you must, to believe anything against me, believe that I was a conspirator, ignorant of the conspiracy; and that is the question for which you are selected to try me. In the technicalities of law, I could say even in that there could be no guilt, for there is no guilt without a guilty intention. But I scorn to make points of law upon matters so plain to common sense, so obvious, and, I trust I may say, so irresistible. There is something curious in this sweeping conspiracy of the Attorney-General.

Gentlemen, it has been so powerfully put to you, that I should not repeat it—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 that conspiracy which he has neither stated nor proved. It is a new invention on this side of the water. Some exceedingly sagacious person has dreamed of it. You are asleep. This imaginary conspiracy rests upon your imagination, but has no other solidity whatever. Would the slave trade be ever abolished if the present Attorney-General's doctrine of conspiracy had been law—if the Judges sitting in the King's Bench had given their sanction to it? The advocates for its abolition had their aggregate meetings, and their private meetings, and they published the guilt of the West Indian planters and owners of the slaves. They made themselves bitter and unrelenting enemies; for it is extraordinary how self-interest swayed the men opposed to that glorious measure for the liberation of the negro slaves. There never was a more formidable party existed than the West Indian party. Government might have searched all the newspapers of the day, and found evidence of their guilt, of their accumulated guilt. If their acts had been a conspiracy, why were they not indicted for a conspiracy? Why was not Wilberforce indicted for a conspiracy; that man who has written his name on the most brilliant pages of history; that man who will be revered as long as there is the feeling of generosity in the world. He might have stood—as the humble individual before you stands now—accused of a conspiracy, because he put an end to the slave trade. Blessed be heaven, the measure was not suffered to be carried until I had some part in it. The venerable Clarkson is yet alive; if there was a conspiracy, if the present doctrine of spelling out a conspiracy had been law, Clarkson is not safe in his honoured old age. Ah,

no, Gentlemen: don't venture to throw your censure not only upon this subject, but upon every subject interesting to the amelioration of every human institution, to take away the legal mode of holding public meetings, and of speaking the truth boldly and firmly. I, in the names of Wilberforce and Clarkson, I conjure you to dismiss from your box, with honest and zealous indignation, every attempt to shut out the freedom of discussion, and the raising of millions, peaceably and quietly, to ameliorate the condition of human institutions. Well, next to abolition of slavery, what was done? I do rejoice that I was a sharer in that measure; and I care not whether the gloom of a prison may close upon me. My heart rewards me, for, ungifted as I am—undistinguished as I am—I have had the honour of belonging to the conspiracy by which slavery was totally abolished. I attended the meetings, and I poured out the indignant lava of my contempt and hatred upon those who participated in the horrible practice of slavery. I had my share in the measure for its abolition, and I would have suffered if this new doctrine of conspiracy had been sooner invented. The bonds of the slave would have still continued as it does in America, calling down public indignation; but no! the heaven-descended inspiration of glorious humanity struck off the fetters of the negro, and will establish the freedom of Ireland. What would have become of Reform in Parliament were it not that meetings were held in Birmingham and elsewhere? Were there not hundreds of meetings held—would the Reform in Parliament have gone as far as it has done—would the additions promised in the King's Speech have gone as far as they have gone if the meetings did not assemble in several thousands to petition for it? There is then Catholic Emancipation. There was a most eminent lawyer at the head of the Profession of that day; and the present Attorney-General will not suppose that I mean any disrespect to him when I say that he was superior to him—certainly he was his equal. He was an eminent lawyer, and he had as strong and as conscientious an antipathy to Catholic Emancipation as any man could have. I do not believe there was a more decided, a more honest opponent to that measure than was William Saurin. He was an eminent lawyer; and he watched and saw, as he thought, the law violated as to delegation. He was defeated in one trial, but succeeded in another; but did the wildness of his imagination call the struggle for Catholic Emancipation a conspiracy? I was prosecuted for words spoken by me; my learned friend, Mr. Sheil, was prosecuted for words spoken by him; but that Attorney-General never dreamed of violating the Constitution, by turning the alleged offence into a conspiracy. Yet were not the ingredients used in agitating for Catholic Emancipation the same as that for Repeal? Had we not our county meetings, our provincial meetings, and a simultaneous meeting? On the 13th of January, 1829, did not all the Catholic parishes in Ireland meet one day? Why, indeed, that could have been wrested into evidence of a conspiracy, if anything could—for upon one day every parish in Ireland met, and upon one day they all proclaimed their determination to persevere in their exertions until they ob-

tained religious equality. No man dreamed of turning that into a conspiracy. It was reserved for this time, this day, for the glory of this Attorney-General, to introduce this doctrine—to discover what none of his predecessors could possibly find out. At the present moment there is a very serious question in agitation in England. There is the Anti-Corn Law League; they say, and I say, that their object is to produce cheap bread for the poor, and to increase the number of persons employed. But I am not going into that question, we have enough of our own, we know that they and the Anti-Slavery Society collected money from abroad, as well as at home; that they have used the boldest language, language for which he said that the Rev. Mr. Fisher accused them of promoting assassination and incendiarism. Gentlemen, we are free from even the accusation of this. But what is this precedent to be given for? Is it to be sent over to England, that there is the authority of this Court, or any part of the Court, to put down the glorious struggle there, which would give men markets, and give corn in exchange for manufactures, and give cheap bread to the poor? Is that to be turned into a conspiracy? Ah, no. The Englishmen were safe in the glorious integrity of the jury-box. Yes, they are safe, for there would not be a single juror sworn upon any such trial as this, who had been educated in strong opposite opinions to the accused. In England, whoever differs with violence, and upon principle, with the traversers, would not be sworn upon the jury. No, they are safe. The angel's wing, mounting from the pure jury-box, protects them from it. I would be mocking you in telling you that the English would be in danger; do you protect us as an English jury would protect them, and I will require no more, I will be satisfied with no less. In this mode will redress for the English people be worked out, despite of those who are now uneasy in the enjoyment of their monopolies under the accumulated weight of public opinion. A celebrated French author says, and I do not quote him in approval of the conduct of the French, for no man abhors more sincerely, or more intensely than I do their infidel republicanism. One of their great men has said: "You cannot make a revolution with rose water." He would effect it by blood, but I will effect by a little Irish spirit, enlivened by a little of Poteen, or at least of the Queen's whiskey.

Now let us come to the machinery of the evidence brought forward to sustain this case: I told you there were two classes of evidence, if I am not wrong in using the word brought forward by the Attorney-General, monster meetings and newspaper publications. I will take each separately. I am not here to deny that those meetings took place; on the contrary, I admit that they did, and that they were monster assemblages, consisting of tens and hundreds of thousands. It has been somewhere said that the magnitude of a meeting alone would make it illegal; but I give so little of weight to such an assertion, that, not thinking it worthy of refutation, I shall not stop to discuss it. But I at once admit that those meetings took place, and I will ask you, Gentlemen of the Jury, was the life of any man, woman, or child, nay, of any animal, lost at them? You unanimously answer that there was not. Was any one struck or injured in the slightest degree at those meetings? You unanimously answer



no. Was any female, young or old, exposed at them to any outrage or indelicacy of conduct? You answer not one. Was there one shilling's worth of property belonging to any individual destroyed or injured? You also answer unanimously in the negative. Oh yes, I forgot, I have perhaps exaggerated here; for a policeman, in coloured clothes, was put on the table, who swore that at Tara the crowd went near committing the violence of overturning an old woman's gingerbread stand. Now, Gentlemen, I put it to you, does not that speak a foregone conclusion? If any other violence, if this occurrence could be called so, were committed, would not the Crown be ready with the evidence to prove it? But the whole amount of injury done was, that a gingerbread stand was nearly upset, and even of that accident the poor woman who owned it did not complain. Yes, it is ridiculous, but it is the prosecution which is so. Well, then, it is conceded that there was no violation of the peace, that there was no injury to property; that there was no violation of morals or good manners; that not even an accident or casualty of the most insignificant nature occurred at any of those meetings. Now, is it not a strange, an extraordinary thing to tell me, that I infuriated the people to such an extent by those assemblages, that they were on the very verge of rebellion—while their conduct is so exemplary, and their courtesy to each other such, that not even an accident occurred on any of those occasions? At these meetings might be seen the grave matron, with her grown-up daughters—ay, and the young mother, with her infant in her arms, passed through the midst of the immense crowds unharmed, almost untouched. Oh! it would have delighted you to see the men make a living wall of protection for the females as they passed. Their brothers and their fathers were there too, and, knowing the spirit of the meetings, they confided them to the crowd without apprehension. And so help me heaven—no, I withdraw that solemn expression—there could not be more emphatic evidence of the total absence of outrage, violence, or anything tending to it, than the electricity of affectionate feeling and sentiment which pervaded those monster assemblages. There is not, Gentlemen, a country in the world, except our own, where such meetings could have taken place with the same results; and there is not in the world a people who could have conducted themselves in such an exemplary manner, except the persecuted and calumniated people of Ireland—that “filthy and felonious multitude,” as the *Times* calls them; yet there are no people on the face of the earth who could afford such a specimen of moral dignity and elevation. But they have been educated in this quiet and courteous demeanor—their peaceable struggle for forty years, for Emancipation and for Repeal, has educated them in the doctrine and practice of sublime and pacific determination; and, thank heaven, that pacific determination is not ruffled by anything occurring in this Court. No, Gentlemen of the Jury, they will abide your verdict patiently. They may disapprove of it as men usually do of a verdict adverse to their feelings and wishes; but there will be no violation of the law, whatever your verdict may be, and whatever may be the fate of the humble individual who addresses you.

and who boasts that he is the educator of the Irish people in the lesson of legal, peaceable, and continuous political exertion.

But it is said, Gentlemen of the Jury, that large meetings necessarily lead to intimidation. Do they? Gentlemen, ask yourselves that question. Were not all the Magistrates of the various districts in which those meetings occurred, witnesses of them, and most of those who remain in the commission of the peace, and unfavourable to Repeal, and why were they not produced? Why were not all the clergymen of the Established Church—why were not all the most timid persons, whether in pantaloons or petticoats, produced to bear testimony to this intimidation? Why, because they could not conscientiously swear that there was any thing approaching to intimidation. Thus, with the most ample opportunities of adducing the most abundant proofs of intimidation, if it existed, there was an utter absence of evidence, and did not that absence of evidence speak trumpet-tongued? I tell the Attorney-General, that, having at his command witnesses of the most unimpeachable character, if those meetings were productive of any dread to any portion of the public, he utterly neglected his duty in not producing them, if they could have deposed to such a statement. But not a particle of such evidence had been produced, for the sufficient reason that it did not exist. The police, to a man, deposed to the perfect tranquillity which existed. The police might have been asked did not any one—did not the most timid complain, but no such interrogatory was put, for they had already said, everything was perfectly quiet. But there is another feature in those meetings to which I shall call your attention. At not one of those meetings was there any mandate or authority disobeyed—no magisterial warrant was, in the slightest degree, resisted—no message from any official personage or quarter treated with disregard—no Police Inspector resisted or disobeyed—no announcement of their legal authority treated with contempt. If those meetings were dangerous to the public peace, why not proclaim them? If we were seditious, why not warn us? And, when they were at length proclaimed, after having been permitted for months to proceed without a hint of illegality, was not the proclamation at once obeyed? Yet, we are branded as conspirators; yes, conspirators obeying the law and enforcing it. Gentlemen of the Jury, we have witnessed many misfortunes in our country; we have many causes of bitter and relentless animosity amongst us. Oh, Gentlemen, your verdict, I feel the fullest confidence, will not be an addition to those misfortunes and to that animosity, but on the contrary, be the means of calming the troubled waters, and smoothing the asperity which has caused so much unhappiness. No, Gentlemen, no—these meetings were not illegal; they were peaceable meetings, suited to the purposes for which they were convened. If it had been at one, or two, or three, or ten of those meetings this peaceable conduct was observed—if it had been only at a few of them this conduct distinguished the behaviour of the people—it might be said to be casual. But no, it was the same at them all; they were peaceable by design. We have received the same answer—peace—in reference to every one of them. The Government

knew of those meetings; everybody knew of them; and why were they not impeded if they were illegal? I am not one of those who say that the Attorney-General endeavoured to entrap persons into criminality. I say no such thing. I do him more justice. I say that he did not prosecute or interfere, because there was no ground for prosecuting, because there was no ground for interference. I do not utter one word of reproach or calumny against him. I am told, my Lord, that a few minutes ago I used the equivocal word design, in reference to the peaceableness of those meetings, but I only used it in its true meaning. The design to be peaceable existed before one of those meetings took place. It exists now, and it will continue to exist on the part of the people. When I spoke of design I spoke of the education of the Irish people, that education which taught them that the only way to obtain valuable amelioration was by acting peaceably, and in strict conformity with the law.

I have now done with those meetings, and I ask you, Gentlemen of the Jury, what evidence are they of the existence of a conspiracy? I leave that matter to your consciences, to your integrity, as my countrymen. What care I about your political opinions? what care I about your political sentiments? you all know that you must answer before your Maker for your verdict. I leave the responsibility to you. Well, as I said before, I will leave those meetings, and come to the next evidence as to this conspiracy, which is, the newspapers. Do not imagine I am going to detain you canvassing the sentences in them; that has been very ably done already. I will only take up the general nature of the evidence in this respect, and I submit to you, Gentlemen, that with the exception of the speeches proved to have been delivered by me, those newspapers are no evidence against me, and see what a circle is pointed out for you to travel over, so far as they are concerned. Are you to go round and spell out conspiracy? for they are not evidence unless there be conspiracy. I leave that to the Court as a matter of law. But suppose they go to you as evidence at all, what is their substantial weight against me? There is not the least proof that I ever saw any of those newspapers, there is not the least proof of any connexion between me and any of those newspapers. It will be seen by their dates that at the time the very harshest paragraphs appeared in them I was not even in town. But it is proved that at the Association I distinctly disavowed that any newspaper was the organ of our body. It is said that we circulated those newspapers, but the effect of that evidence amounts to this only, that those who subscribed a certain sum of money allocated a part of that money to the choice of a newspaper, and they selected what newspaper they pleased. The newspaper sent to them was their own choice, and you will recollect, Gentlemen, it was we proclaimed that not one of them was the organ of the Association. It is also said that they contained libel; if they did, why were not the proprietors of them punished? You will recollect, my Lords, when we sent those newspapers according to the directions given to us by the parties, those newspapers were subject to the libel law; if there was libel in them it was the province of the Attorney-General to prosecute the publishers; but it is not proved that

we circulated that which was libellous. The fact is, the Attorney-General would have prosecuted in these cases, if he thought it worth his while, and he did not. What, after all, have those newspapers done? Of what have they been guilty? Of publishing a parcel of speeches, which I question if any one of them would be remembered if it were not for this trial. It is giving fictitious and absurd importance to these newspapers. But they are charged with exciting the people to riot, violence, and tumult. Did they ever produce it? Was it proved that it flowed from any one of them? No; they stand in that respect acquitted. They produced no deleterious effect whatsoever. There are, Gentlemen, belonging to this entire case, and especially on the topic on which I have just addressed you, other things to be observed. You have to decide whether that political problem I have sought to solve—whether that political theory I have endeavoured to realize—in fact, the avowed and boasted one of my political life, is of a nature to be considered fairly and honestly illegal? You will take my public actions into your consideration, and form your judgment upon them; and I ask you then to say, whether peace and obedience to the law have not been the great and leading principles of my life. The Attorney-General himself has admitted the peaceable nature of my intentions; and nothing could be more fair than the reading of those portions of the newspapers which showed this. My mottoes of peace were proved over and over again in this Court. One, you will recollect, is: *Whoever commits a crime gives strength to the enemy.* That motto is on the walls of the building in which we meet; it is inscribed on our banners, and it is the constant subject of our conversation. Peace in every shape and form has been the principle on which we acted. Another of our mottoes, and one which I have repeated over and over again, is: *That no political advantage whatever is worth one drop of human blood.* I disclaim physical force at all times, and in every contingency, except in the actual brutal attack of civil war. I proclaimed my abhorrence of the shedding of one drop of blood in looking for Catholic Emancipation. I succeeded in carrying it with the might and power of that principle. Look to the agitation of that measure; look to the struggles to attain it, and you will find that not one single drop of blood was shed. Look to our struggles for Repeal hitherto. It has been, and will always be our boast, that not one single drop of blood was shed. Is it right to prosecute the man who has laid that down as the basis of his political conduct? Is it right to call my acts a conspiracy, and leave open the man who would look for measures by violence and take them by force? I belong to a Christian persuasion, the principle of which is, that no quantity of advantage, no quantity of profit to Church or State, not even Heaven itself, was permitted to be attained at the expense of any one crime; and that no sin could be justified or palliated by any amount of advantage, however considerable. If there were in that box any co-believer with me, I need not repeat that principle, because he would be able to inform you of the doctrines which he and I profess. The entire tenor of my life proves the sincerity with which I have made the



announcement of my principle. I have announced it over and over again ; and so often that there is no circumstance of my life could make you doubt, for a moment, the sincerity of my professions.

My Lords, it has been proved sufficiently in the newspapers ; and, if not, it is perfectly well known that no man ever possessed so much of public confidence as I do. I will say "possessed it." No man has so unremittingly as I have obtained the confidence of the Catholic laity of every class, not only those who are our party, and may look to a change for amelioration, but the Catholics of the middle classes, the higher orders, the Catholic clergy, and the Catholic episcopacy. I have obtained their confidence by the assertion of the principles which I have stated ; by the sincerity with which I have entertained and announced them. How long could I have possessed that confidence, how long could I possess it, if I were a base deceiver, if I did not show by years and years of public activity, the energy as well as the continuance of my political career, and the purity of my sentiments. I stand before you surrounded by my fellow-countrymen. I have earned that confidence which no man could earn who wished to perpetrate crime ; which no man could preserve for nearly forty years unbroken, unmitigated, complete, and entire. Charge not your fellow-countrymen, with whom you differ in opinion, with being deceivers ; they cannot be so, they are not so ; do not tell them that they are countenancing hypocrisy and giving credence to pretence, protection to imposition. It is not so ; you cannot believe it ; the public would not believe it ; England, prejudiced as she is against us, would not believe it ; Europe would start at it. I, a Catholic, am pleading before a Protestant jury, in the presence, I may say, of the monarchs and people of the earth ; and I implore of you to consider whether you will tarnish all your fellow-countrymen, including many Protestants of the first respectability, by any verdict which would seem to doubt for a moment the perfect sincerity of the doctrine of my whole life, the pride and boast of my existence, the comfort and consolation of my declining years, and my hope for a higher and more awful tribunal. No, Gentlemen, I do not do you justice in urging this so strongly upon you ; you are incapable of taking such a view of the case. You may observe, and it is almost the only remaining observation I shall urge upon this point, that an imputation was never cast upon my sincerity. I doubt whether it was ever impugned ; I never heard it impugned, and I am quite sure it ought not to be so. It is not possible for you to believe that I would desert the principles of which I boast, or forsake those doctrines which have been the life-blood of my political existence, and enter into a foul conspiracy. I have been more successful by the course which I adopted than I would have been had I taken another. I have been successful, because I acted upon the principle of justice, charity, obedience to the law, and the total abhorrence of force and violence. You, therefore, cannot believe that I would desert every principle of my life, and enter into a conspiracy utterly inconsistent with everything that has yet occurred in my public conduct.

But it is not upon these grounds alone that I rely. There have been other incidents in my political career, which will enable you to

form a better estimate of my intentions and sentiments. There is not one of you, Gentlemen of the Jury, who does not, I presume, remember the fearful system of combination which prevailed eight years ago in Dublin. You know that, before that time, lives were sacrificed in the public streets, and violence had been offered, day after day, to persons. You know also that if death did not ensue, in some recent instances, it was rather an accidental circumstance than resulting from any forbearance upon the part of the combinator. You must remember it. The public authorities were insufficient to cope with the offenders. It is said that I am ready to sacrifice principle to popularity ; who dares to say it ? Could I not have easily made myself popular with these combinator ? I opposed them publicly—I stood alone—I opposed them at the peril of my life, and I owe the protection of my life, at the meeting held in the Royal Exchange, at which many operatives differing with me in religion and politics attended, to the protection of the police. I did not shrink from it ; what was the consequence ? I persuaded those who were at first so furious against me, of the folly and rashness of their conduct, and from that day to this, I believe there has not been a single act of violence committed by a combinator ; and, at the risk of my popularity—at the risk of my life—is it credible to believe that I would have taken that step, if I were not actuated by motives becoming a Christian and a citizen ? You will find, too, my perpetual opposition to Ribbonism. Has not my condemnation of Ribbonism been read over and over again ? Have not my warnings to the people—my denunciations to the police, publicly calling upon them to stop the progress of the evil system—been published to the world ? If I were in a conspiracy, would I not have been glad to have been assisted by other conspirators ? if my object and my end were iniquitous, would I not have had an advantage in that iniquity, by rousing the Ribbonmen upon my behalf in the various parts of Ireland ? I had great influence, and could have used it in this particular. You have the fact that I did not do so before you ; it has been read to you over and over again ; my discountenancing the Ribbon societies is notorious ; nay more, my resistance to all secret societies—my constant denunciations of them, are before the world. Take these things into your consideration, and say, if you believe in your consciences, that the man is a base hypocrite, who, without any worldly motive whatever, but adherence to principle, opposed and flung away all the instruments that could tarnish his cause, however useful they might be. There is another point, if you remarked my public life, which must have struck you, perhaps I differ from you, but you must have observed that I opposed it at the risk of my life and the loss of my popularity—I mean the present system of poor law. With the influence I possess, could I not have raised the poverty of Ireland against its property if I chose, and insisted that all those who were rich should feed all those who were poor ? No, I saw the danger which the measure threatened to property, and at the risk of popularity—taunted by many and many a sincere friend—bitterly sneered at by many men who had joined me—I consulted my

conscience—I consulted the real nature of a provision that makes more destitute than it relieves, and is at an expense so enormously great that the very expenditure itself would give poor law relief. I knew it was not fit for Ireland in its present state; but I am bound to say that, since it passed into a law, I have not given it any opposition. I look back to the time when I was unpopular with those whose favour I was most anxious to conciliate, and in whose estimation I was most desirous of standing high. To this part of my life do I appeal in answer to this foul charge which has been brought against me. You recollect—for it was given in evidence—the manner in which I answered young Mr. Tyler. You remember, too, the manner of that answer, and you saw the nature of it, from what was given in evidence by Mr. Bond Hughes. And here, my Lords, let me say a word with respect to that gentleman. I was among the number of those who took steps against Mr. Hughes, convinced, as we then were, that he had sworn falsely—(I am delighted I mentioned his name, for it gives me this opportunity of doing him justice.) I now openly state, that I never saw a witness give evidence in a more manly, straightforward manner; and I am thoroughly convinced that it was a mere mistake which he committed, and into which any honest man might have fallen. This declaration is not part of the case, but I trust your Lordships will not think it quite irrelevant or unnecessary. Again, with regard to American assistance, what was my conduct? I informed the Americans that the Irish people would not take any support from them, which could in the slightest degree prove disparaging to their allegiance to the Sovereign of these realms: this will be still more strongly impressed upon your minds, when you recollect my conduct on the slave question, and when you heard my indignant denunciations of slavery. The advocates of that horrid traffic were on the alert; the Southern States were collecting subscriptions, and large sums of money had been accumulated in Charleston, Carolina, to assist the Repealers. Did I shrink from doing my duty on the slave question then? Did I not denounce as enemies to God and man, as culprits and criminals, the infamous upholders of that trade? Did I not compare them to pickpockets and felons, and express in the most forcible language, my denunciation and abhorrence of those who carried on an execrable traffic in human beings? Oh, Gentlemen, if I were indeed a hypocrite, would I not have given them a few smooth words or glossed over them in the language of conciliation? but my heart is, and ever has been, actuated by love of liberty and humanity, and they do not speak the truth who say that I am, or ever have been, a hypocrite. You have had it in the newspapers, Gentlemen, that we were offered assistance from France. You have heard that the democratic party in France, headed by Monsieur Ledru Rollin, proffered us their sympathy and support. That party hates the English nation most of all; the ferocious hatred of England, which, perhaps not without reason, when they remember the blow their vanity got at Waterloo. Did I ask the support of his party; did I mitigate or frame my answer in such a way as could be construed into encouragement? No! I took the firm tone of allegiance and loyalty.

alty. I rejected his support,—indignantly rejected it. I cautioned him strongly against coming over to this country; I told him we would do nothing inconsistent with our loyalty. Is this the way to prove my hypocrisy? Would I have so acted had I been indeed a hypocrite? Even the present Monarch of France I have not attempted to win over. I have refused the slightest assistance from him; nay, more, have hurled defiance at him. The Attorney-General, with great ingenuity, introduces a report of a secret committee of the Irish House of Commons, in the year 1797, with respect to the United Irishmen, into the case before you, to show that we were acting on their plan. Was there the slightest comparison between them and the Repealers? Assuredly not. The United Irishmen were looking to assistance from France—had emissaries there; whilst, perhaps, French emissaries were travelling through this country. Acting on their plan—looking for French aid—looking for armed force and a violent revolution? Oh! Gentlemen, it was directly the reverse of ours. It may be said that I speculated upon the restoration of the elder branch of the Bourbons to the throne, and that I expected Henry the Fifth to be King; but really, Gentlemen, I should be very sorry indeed to wait for the Repeal of the Union till that event takes place. I do not conceal my opinion that Europe will not be perfectly safe till that branch of the family be restored to the throne. They have a better title than any other monarch. No! a better title than that of our gracious Sovereign does not exist; but they have a better title than the present King of France. From that King I have refused the slightest assistance. Nay, more. I hurled my indignation against the man who had delivered over the children of France to be instructed by infidel Professors. You have now seen my antagonism to the French Government; it is capable of proof. You have seen my conduct with respect to the Chartists. You remember they were up in arms; up in insurrection throughout England; crowding in thousands and tens of thousands through all her manufacturing towns; their doctrines were spreading; their disciples increasing, for there was something fascinating for the poorer classes in the principles of the Charter. It proposed, in truth and substance, a violation of all property; its followers were numerous; they offered me aid. If I were a hypocrite, should I have refused it? I denounced them; I denounced their doctrines; I drove them from Ireland; I prevented the Irish in Manchester from joining them. It has been read to you that the moment we discovered that a Chartist had joined the Association, his money was returned to him, and his name struck off the list of members. If my object were insurrection, think you I would have acted so? Gentlemen, do place yourselves for one moment in my situation. Good heaven! if you wished for an armed outbreak and insurrection, would you not wish for strength—would you not conciliate those who were the advocates of force? Did I do so with the Chartists? Did I not meet them, and hunt them out of Dublin—of Ireland, although there were none of the dangers in their doctrines, none of the penalties attached to Ribbonism? My Lords, I do firmly declare that if I had not opposed Chartism, it would have passed over, and spread from one end of Ire-



land to the other. Thank heaven that I did resist it ; and, whatever becomes of this trial, I will ever rejoice that I kept Ireland free from their pollution.

Gentlemen, there is another matter to which I would wish to call your attention—my constant avowed allegiance to the Sovereign ; that you will find in all the newspapers. Her name is never mentioned but with respect ; and when I had to make a speech in some degree derogatory to the respect due to a royal lady, you find me making a distinction between her and her Ministers. I made that clear distinction, that constitutional distinction, and I do complain somewhat of the Attorney-General's conduct here. He had no right to say that there was a particle of disloyalty in those remarks. If I did not make any distinction at all, it would have been quite open for me to comment on that speech ; but what becomes of the assertion that I have been guilty of disloyalty in the remarks I made, when I did draw a marked distinction so often that the repetition was almost nauseating. Thank heaven ! there is nothing to attain my loyalty, nor has the attempt ever been made. That I have proclaimed in language which admits of no dispute. I have come to that time of life at which it could do me no good, or procure anything for me, to boast of my loyalty ; but there is not an expectant in this court who could have more frequently or strongly expressed it. I do complain that the Attorney-General behaved unfairly in the remarks he made on this subject. He read the Queen's speech, and also, on the authority of a newspaper, stated that I had used the expression "Judy took an unfair advantage of us," in speaking of Her Majesty. Now, I said it was the Minister's speech, and it was of the ministerial scolding I spoke when I used that expression ; to that I referred, and nothing else ; and I did say, that in not allowing us to reply, "Judy was unfair—she did not let us make answer," speaking of the Ministers and of their speech. I have to complain here that I have been badly treated. I mean the learned gentleman no discourtesy, I do not wish to say anything harsh ; but I tell him it is utterly false that I ever used such a word with reference to Her Majesty. I disclaim, abhor, hate, and despise the man who could use such language with reference to Her Majesty. I have never been accused of discourtesy towards the gentler sex, who form so much of our happiness ; and, least of all, could I apply such terms to one who is at once our beloved Sovereign, and of a sex which forms our chief comfort and consolation. I have detained you longer than I thought respecting my public conduct. To you I leave it ; but having in reserve the consolation of knowing that, though my means may be feeble, my talents confessedly small, and my energies declining, my ardent, my enthusiastic, and burning love of Ireland and of liberty, is unquenchable ; it is a portion of my very vitality, and forms the entire object of my political and personal existence.

Gentlemen, these public meetings took place ; they must have had an object, and so they had ; their object was a Repeal of the Union. That it was a bad or injurious object, I utterly deny ; it was a most useful object, and I shall prove to you that there is not a man in this Court, the neutrality of the Bench alone excepted, that ought not to become a

Repealer. Before I sit down I hope to make Repealers of some of you. I am quite sure of this, that it is your duty, and if it is your duty, will it not be your pleasure, to join me. I shall now tell you what I mean to do. I mean first to demonstrate that the English Parliament has, from the remotest period at which she possessed the power, governed Ireland with a narrow, jealous, restrictive, and oppressive policy. By way of parenthesis, I would just beg of you to recollect the history of the woollen manufactures of Ireland, in the reign of a monarch whom you are not disposed to condemn. I shall next demonstrate in succession that the transactions of 1782 were intended to be a final adjustment, and that it was then intended and agreed that the Irish Parliament should be established for ever; that the greatest prosperity followed from the protective influence of that Parliament, after having achieved its independence, and that the Union was forced upon the Irish people against their consent by the most criminal means. I shall next show you in detail the many evils that resulted from the Union, and the gross injustice of the enactment of that Statute. I shall show you the increasing distress and destitution which have arisen from that Statute, and that there is no probability, I think no possible means, of restoring prosperity to this country, or of avoiding ultimate separation from England, save by the restoration of her Parliament. The ill treatment of Ireland by England is so confessedly true as matter of history, that I scarcely think it worth while detaining you upon that part of my subject; yet, having been brought here by the Attorney-General, by reason of my agitating for Repeal, I must defend myself, and my defence is, that, instead of looking for anything evil, destructive, or injurious, I am, and have been performing the sacred duty of endeavouring to procure the greatest possible blessing to Ireland—the protection of her own Parliament. I am too much devoted to the people of Ireland not to be devoted to them at all risks. I have represented the county of Clare with 250,000 inhabitants, Waterford with 300,000, Kerry with 260,000, Meath with 300,000, and stand representative of 730,000 inhabitants of the county of Cork. I have twice represented the city of Dublin, and once that of Kilkenny. Duties therefore fell upon me that belong to few. My gratitude to those people is boundless. I am their hired servant. Yes, I am their paid servant. It may derogate from the chivalry of my situation; but I avow it, and am ready to earn my salary.

I shall begin by showing you the scheme of misgovernment that was pursued by England towards this country, and my first proof is from a French historian of great reputation, at the present moment, one of the first of the French *littérati*—*M. Thierry*, who in his *History of the Conquest of England by the Normans*, says, in volume iii. page 430, “The conquest of Ireland “by the Anglo-Normans is perhaps the only one that has not been “followed by a gradual amelioration 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 conquerors, advanced rapidly in prosperity and civilization; while the natives of Ireland, after five centuries, exhibit a state of uniform decline, and yet

“ they 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 affairs of the former.”

There is a disinterested historian giving this melancholy picture of centuries passing away without improvement, of poverty and destitution increasing, all owing to the baneful influence, he says, of the English Government. The next authority I shall cite is that of Mr. Pitt, who, in discussing a commercial proposition in 1785, made this admission : “ The uniform policy of England has been to deprive Ireland of the use of her own resources, and to make her subservient to the interests and opulence of the English people.” That is not my language, read from newspapers against me, avowing distinctly that the policy of England was to use Ireland for her own purposes. My next authority is the late Lord Chief Justice of this Court, who, in opposing the Union in 1799, said : “ You are giving up your independence. To whom ? To a nation which for six hundred years has treated you with uniform oppression and injustice.” These are the words of Bushe ; and if I had the arranging of this language I could not put it so powerfully or so strongly ; and by what expressions has it been followed up ? “ 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, they are those of Charles Kendal Bushe. “ 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 Cook, which first broached the subject 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 itself, 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 amelioration 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 find by my own and others' inquiries 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 it is questioned whether (if there were occasion) the justices of the peace could be found who would be strict in disarming the Papists." Here, Gentlemen, we have an honoured prelate saying, that it is a most unhappy thing that the Papists and Whigs should come together on terms of intimacy and conciliation. This is the spirit of English domination which I complained of; and I ask you, have I not proved what I promised from Bushe Pitt, and Boulter?—and I conjure you above all things to remember the declaration of the first of these men, who said the Union was passed from "the intolerance of Irish prosperity."

I will next bring you to 1782, and detain you but a short time upon the subject, which, I am sure, is one familiar to every Irish mind, as the only bright spot in our history—the only green island in this desert, the oasis in the misrule and misconduct which surround us.



The transaction of '82 should never be forgotten. It was of the most consummate advantage to England; she assailed America—America was disaffected and resisted, and from her rebellion formed a revolution which made Ireland's assistance necessary for England's safety, for she had not troops to garrison the country. Did the Irish nobility or gentry then talk of separating from England? No! the idea was foreign from every Irish mind, but they required the assertion of their rights—free trade, and legislative independence. It was not prudent to refuse them, for they were loyal but determined. England conceded reluctantly at the very time when a letter was written to Ireland, saying, "will nobody stop that madman Grattan." Nobody did stop him, and he effected that glorious revolution. This is but a part of the history of the British monarchy, which declared the adjustment of 1782 final, in order to leave no question open for future discussion. The King, Lords, and Commons of England asserted, and the Lord Lieutenant in Ireland declared the same in the Irish Parliament—but how is it attempted to be got rid of?—for Mr. Fox said on the 8th of April, 1782, "that no country had a right to hold the sovereignty of another country without the will of that other." Such were the principles upon which the settlement was brought about, and does one of the Gentlemen whom I address know a volunteer of '82 that did not glory in the victory? No! for it gave them a firmer hold of England—redoubled their allegiance to the Crown, and the connexion which existed by reason of that salutary action. I may be asked whether I have proved that the prophecy of Fox was realized—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 a separate Legislature had worked badly, and produced calamities and not blessings, but the fact was too powerful for him. He had ingenuity to avail himself of the fact, which fact he admitted, and let us see how he admitted it. He admitted the prosperity of Ireland, and here 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 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 Foster, in which it is said : “ Britain imports annually, “ £2,500,000 of our products, all, or very nearly all, duty free, and “ we import almost a million of her’s, 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 Ire- “ land to the amount of more than three millions in the manufacture “ of linen and linen yarn, and between two and three millions in pro- “ visions and cattle, besides corn, and other articles of produce.” “ That,” said Mr. Pitt, “ was in 1785, three years after her legisla- tive independence, that was the state of Ireland.” You have seen, Gentlemen, that picture, you have heard 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 mil- lion 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 pounds 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 any thing 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 Foster (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 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, Foster, 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 ma-

“ 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 civilization, agriculture, and commerce, well pursued and understood ; a Constitution fully recognized and established ; *her revenues, her trade, her manufactures thriving beyond her 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. 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.”

Gentlemen of the Jury, 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 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 of January, 1799, and passed a resolution, declaring : “ That the commerce of Ireland has increased, and her manufactures im-

“proved beyond example, since the independence of this kingdom  
 “was restored by the exertions of our countrymen in 1782. Re-  
 “solved,—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 them-  
 “selves.” I have given abundance of proof, from extracts I have  
 read, of the prosperity of Ireland under the fostering care of her own  
 Parliament. I could multiply these extracts to show, from the most  
 unsuspecting authorities, that nothing could exceed the prosperity of  
 Ireland under the fostering care of her own Parliament. A Parliam-  
 entary document shows, that from 1785 to the period of the Union  
 the increase in the consumption of teas in Ireland was 84 per cent.,  
 while it was only 45 per cent. in England. The increase in tobacco  
 in Ireland was 100 per cent., in England 64; in wine in Ireland 74  
 per cent., in England 52; in sugar 57 per cent. in Ireland, and in  
 England 53; in coffee in Ireland 600 per cent., in England 75. You  
 have this proof of the growing prosperity of Ireland from the most in-  
 contestible evidence. No country ever so rapidly improved as Ireland did  
 in that period. There is a cant word used against Repealers. They  
 are charged with seeking a dismemberment of the empire. The  
 absurdity of that charge it is scarce necessary to demonstrate. If,  
 when Ireland prospered under her own Parliament, in connexion with  
 England, she showed no disposition to separate, why should she en-  
 tertain a disposition to break the connexion if placed in similarly pros-  
 perous circumstances? What would she do it for? I could understand  
 dismemberment as an object attributed to a state of poverty and des-  
 titution, but it is absurd to suppose such a disposition to exist with the  
 prosperity which Ireland enjoyed under her own Parliament, and  
 which, I trust, she will experience under her own Parliament again.  
 It is melancholy to reflect that such an opening scene should have  
 closed on Ireland, and that those fiends and monsters who closed  
 it, should have been able to throw Ireland under the feet of a  
 party who, in the words of Mr. Bushe, “were envious of the  
 prosperity of Ireland.” Yet it was so. It was that intolerance  
 of our prosperity that induced the destruction of the Irish Parliam-  
 ent, and the means taken to effect that destruction were  
 suited to the nature of so deleterious an object. You have the  
 authority of Mr. Fox, in 1806. “The Union was as atrocious in  
 “principle as it was abominable for the means by which it was  
 “carried. It was a measure the most disgraceful to the Govern-  
 “ment of the country that was ever proposed or carried.” The  
 Attorney-General had referred to the Report of the Secret Com-  
 mittee, in 1797; I refer you to a report in 1798, in which the Go-  
 vernment were charged by Plunket and by Bushe with having fomented  
 the rebellion until it was deemed safe that it should explode. The  
 first ingredient in the charge against the Government was that of  
 having fostered the rebellion. The Report shows that Magrane,  
 who was a Colonel in the organization of the United Irishmen in  
 Ulster; it will be recollected that the organization of the United  
 Irishmen commenced in Ulster, and not in any of the other provinces;



this Magrane, who was also a county deputy, and attended all their meetings, got into the pay of Government on the 4th of April, 1797, and from that day put the Government in possession of all the meetings, of all the names of the members who attended, and of all their proceedings; so that they could have arrested them at any moment, and put an end to the whole thing. But they did not do so. They waited for the ripening of the rebellion. This is confirmed by an authority quoted in the "Life of Grattan," vol. ii. p. 145: "Lord Clonmel shortly before his death, sent for his nephew, Dean Scott, and requested him to destroy all his papers; and from a letter in Lord Clonmel's possession, it appeared he had gone to the Lord Lieutenant, and told him it was wrong not to act on the information they had, and crush the conspiracy." The Government refused to do so. Their object was to foment the rebellion, in order to carry the Union. The entire country rose against the measure, as far as they could; but they were controlled and checked by the military power, and still more by their dissensions. 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 3000, 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 exerted to promote the Union. All the worst passions of the human heart were enlisted 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 was expended some years since to break an opposition—the same, or a 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, offices 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 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 rebellion—efforts in which they had succeeded before those troops arrived; whilst the *Habeas Corpus* Act was suspended; whilst trials by courts-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 them are so palsied 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 thralldom.” Such, Gentlemen, is the description given of the means by which the Union was carried; but they are only a part of them. You know that there were one million two hundred and seventy-five thousand pounds actually spent in the purchase of rotten boroughs. You know that there were near three millions besides expended in actual payment of the persons who voted for the Union. You know that there was no office in the State, from the highest in the Church to the lowest in the Constabulary, that was not used as a bribe. In short, there was nothing, sacred or profane, that was not made use of. That is the mode in which the Union was carried. It had nothing of contract, nothing of fairness or integrity in it. It had everything of force, fraud, and corruption. Gentlemen, you will easily imagine that the result of such a Union has been destructive to Ireland. You feel it in your own persons; you see it by the state of your streets; you know it by the position of your commerce.

Now, Gentlemen, having shown you the general spirit of the English Government while it had power here; having shown you the finality of the treaty of '82; having shown you the extreme advance in prosperity made from the independence of the Irish Parliament; having shown you shortly the means by which the Union was carried, I come now to detain you for as short a time as I can, by showing to you the evidences of the evil results of that measure. Gentlemen, in the year '94 the Irish debt was only seven millions; in the year '98 it was fourteen millions; and after that period the debt increased to three hundred and fifty millions. At the time of the Union the debt of Ireland amounted to twenty-one millions. It is

stated since that it was twenty-three millions, but that, was by a resolution of the House of Commons in England, in 1811, that Ireland should be chargeable with all the expenses of carrying the Union. But her debt was really only twenty-one millions, and that of England four hundred and forty-six millions. Now, what were the terms of the Union? That England was to bear the burden of those four hundred and forty-six millions, and a separate taxation of seventeen millions, and that Ireland was not to be chargeable with those four hundred and forty-six millions. You will ask were those conditions complied with? No; of course they were not, and Ireland is chargeable 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 in 1815. Recollect that the Irish Parliament had an interest in keeping the people of Ireland out of debt; recollect that England owed four hundred and forty-six millions, and that Ireland owed twenty-one 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 thrifty 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. 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. That between that year and 1815, additional taxes had been imposed, which were estimated to produce £3,376,000; 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, or £533,000 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 ob-

“jected to him on that occasion, that he sought, by giving large and  
 “exclusive advantages to Ireland, to raise her up into a manufactur-  
 “ing country, which should make her the rival of England and Scot-  
 “land. While he disclaimed any such intention, he feared Ireland  
 “was far indeed from any such prosperity.” 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 states-  
 man to disclaim anything so atrocious, so outrageous, and so abomin-  
 able as the intention of making Ireland the rival of England and  
 Scotland? You perceive from this the fatuity and folly of transfer-  
 ring the management of your affairs to a Parliament wherein it was  
 considered a reproach to make Ireland the equal of those countries,  
 and now 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 which 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 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 ex-  
 “penditure 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 consoli-  
 “dated, 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  
 “two to fifteen; provided also the fiscal ability of Ireland should be  
 “found to have increased. Now, that two to fifteen rate of contri-  
 “bution was denounced at the time by Irishmen as too high for  
 “Ireland, and afterwards so admitted by the British Ministers them-  
 “selves. Its consequence was, to exhaust and impoverish her to  
 “such a degree that her debt in sixteen years increased 2:30 per  
 “cent., while the British only increased 66 per cent. This dispro-  
 “portionate and unjust increase of the Irish debt brought about the  
 “two to fifteen 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. “*Ad-*  
 “*vantage was taken of that single branch of the contingency contem-*  
 “*plated in the Union Act, although the other branch of the contin-*  
 “*gency, 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 measures 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.”

[Mr. O’Connell read an abstract of the taxes repealed and remitted in Great Britain and Ireland in 1815.] Here we find that England was increasing the taxation of Ireland at the rate of £4,000,000 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 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 any thing 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 not 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, but in Ireland the diminution has been only £1,584,211, that is in the proportion of  $1\frac{1}{2}$  to 40. That is the way the English strike off taxes for themselves; that is the way they diminish 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 will now read for you a document of much im-

portance, as showing the opinions of those most competent to judge, respecting the means resorted to to carry the Union. It is the Protest of nineteen Irish peers against the Union. A number of resolutions and reasons are included in this Protest; but I shall give you only two or three of them. [Mr. O'Connell read the 9th, 10th, and 11th clauses of the Protest, in which the dissentients stated "that they considered the Union a breach of trust, the settlement of '82 having established the exclusive legislative authority of the Irish Parliament, without being liable to the interference of any other, and the basest means, including the exercise of force and corruption having been employed to carry it," and then proceeded as follows:] Such is the declaration of a large number of the Irish peerage as to the atrocity committed against this country by the carrying of the Union. I am sure there are none of their descendants living who must not glory in their relative who signed that Protest; and I hope the time is not far distant when the intentions and the wishes of their ancestors may be carried into effect, when they shall take their seats in an Irish parliament sitting in College-green.

Among other injuries resulting from the Union, is the total inadequacy of the representation of Ireland, as contrasted with that of England, and in particular, the infinitely less voice the people of this country have, by reason of the deficiency in the Parliamentary registry of voters. This is apparent from the Parliamentary Returns. I will take Westmoreland and Cork. The rural population of Westmoreland is 43,464, and the number of registered voters 4,392; the rural population of Cork is 703,716, while the number of registered electors is only 3,835. In Bedford, the rural population is 88,000, and the number of registered electors 3,966; in Antrim, the rural population is 316,909; the number of registered voters only 3,487. The population of Hertford is 95,000, and the number of electors is 5,000; the population of Galway is 381,000, and the number of voters is 3,000. The same disproportion exists in almost every instance. The population of Wales is 800,000, and that of Cork, as I said before, is 703,716, and yet Wales sends twenty-eight members to Parliament, and Cork only two. With regard to revenue also, the deficiency in the amount of which, in Ireland, was an argument used against giving her a greater number of representatives, I find in Parliamentary papers, published in 1832, that the revenue of Ireland amounts to £4,392,000; whereas the revenue of Wales only amounts to £348,000. I have looked into the statements of the amount of revenue collected in the single port of Cork, and I find that in one year it amounted to £263,000, and in another to £272,000; and yet the great disproportion I have stated in the number of representatives between that county and Wales is permitted to exist. Are you, Gentlemen, prepared to say that your countrymen are not qualified to exercise the elective franchise? Are you prepared to say that they are unfit to be represented? I am sure you are not. I am insisting that the Union is a mockery; that it is not a union, but a servitude, on the part of Ireland; that it is a compact entered into by England

for the purpose of holding greater power over us, of thwarting our prosperity for their own advantage, and of converting the property of Ireland to their own uses. Another complaint has been made, and justly made, of the inadequacy of the representation of Ireland. Ireland, as you are aware, has only 105 members in the House of Commons, and I am prepared to show that upon Lord Castlereagh's own calculations, we ought to have 150 members at least. The want of legislative protection is sufficiently demonstrated in the ruin of our trade, in the downfall of all our commercial prosperity. Lord Castlereagh, in making his calculations as to the number of representatives to which Ireland was entitled, used these ingredients—population, exports, imports, and revenue; and he settled it that Ireland should have 108 members; and with that 108 what did he do? Why, he cut off the eight because it pleased him, and because Ireland was in his power. He committed that injustice knowing it to be one. Mr. Newenham corrected many of Lord Castlereagh's statements, and showed that his calculations in reference to the proportion of revenue, were fallacies. Mr. Newenham took the rental in making his calculations. If you look to the finance report of 1831, you will see that the revenue of England was £48,325,215, and the revenue of Ireland, £5,000,000, and upon that calculation the proportion of members Ireland ought to have is 176. Thus it is demonstrated that Ireland has been defrauded in her franchise, defrauded in her representation, defrauded even in the details of her finances, and defrauded in every one of the details of the Union.

There is manifest inconvenience and injury inflicted by the Union as it stands. Is it not a great inconvenience to have a distant legislature? Is that not a great inconvenience to commercial pursuits, to agricultural prosperity, and to manufacturing purposes? Is there a single trade that does not suffer from distant legislation? Not one. I have many particulars of the state of the different trades in Dublin, showing how they have been affected by the total neglect of the English Parliament. I will take the coal trade for example. [Mr. O'Connell then read reports of the Committee of the Commercial Buildings, in reference to the oppressive nature of the coal duty—and continued to say:] For eight years the merchants of Dublin and of Ireland complained of this burden. The Tories were in office—the Whigs succeeded—the violation of the Act of Union was palpable. The merchants had no redress from the Whigs, nor from the Tories. At length, the agitation for Repeal took place—the discussion was coming on—and the Whigs put an end to the grievance: and what they would not do in justice to the mercantile interest, they did at length from a prudent and proper motive; and the articles of Union were in that respect carried into effect, and the duties taken off coal. I ask you, is it not inconvenient and unnecessarily expensive, that no private bill respecting any property, railway, or otherwise, could be passed without the enormous loss of time and money consequent upon going to London to attend a

Parliamentary Committee. What had happened in this very neighbourhood? No less a sum than £28,000 had been expended on the bill for the Dublin and Drogheda Railway; whereas if the Parliament were in College-green, £1,000 is as much as would have been expended; and I defy any man to think of carrying a bill in the British House of Commons without some unlooked-for accession of funds if any opposition were offered. Can any thing be more fearful than the expense attendant upon election committees? Every witness, if an Irish election be the question at issue, is taken to England, and kept there for a considerable time. If the witness is let to go for an hour, and new matter is started, the point probably will be decided in his absence, and you will lose your money, and possibly your seat. Would it not be just to the Irish Bar that these expenses should be circulated amongst them, while the fact is, not a single Irish lawyer profits by the matter—every shilling goes into the pockets of English barristers. Are you not aware that a considerable mitigation of the expenditure of the country has resulted from the different revenue boards existing in Ireland? Are they here now? What has become of the Treasury Board? It has been transplanted to England. The Customs and Board of Excise? Transplanted to England. The Stamp-Office, and other offices which have been greatly diminished in numbers, and are near extinction, the entire expenditure which mitigated the taxation of Ireland, have been all centered in England. The Old Man's Hospital was threatened with extinction. 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 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 from 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 PostOffice 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 ; Scotchman, 1 ; Irishman, 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. " 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 10 ; 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. We could easily swell 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 Mr. 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 the other."

Gentlemen, 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 by Mr. Halliday, 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 had diminished by the Union. Hear how the facts really are : " 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 at 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 Bal-  
 “ linasloe Fair, we shall find that Ireland had then *more for sale than*  
 “ *in 1835,* and consumed the greater part of the surplus over her ex-  
 “ port—exporting the remainder in the more valuable form of *pro-*  
 “ *visions.* The Parliamentary documents quoted before enable us  
 “ to show what the export of provisions was in the years 1799 and  
 “ 1835:

| Year. | Export of Cattle. | Swine. | Beef and 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* valu-  
 “ able 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 ex-  
 “ port, 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 fol-  
 “ lows 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 con-  
 “ siderably *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 benefi-  
 cial 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 among 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. Boyton 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 an extraordinary evidence of the condition of the labouring classes. The importation of flax seed (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, 92,091 lbs.; 1800, 79,060 lbs.; 1830, 3,190 lbs. 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 2,294 lbs; in 1800, 1,880 lbs.; in 1826, 662,750 lbs., an enormous increase. There were, I understand, upwards of thirty persons engaged in the woollen trade in Dublin, who have become bankrupts since 1821. There has been doubtless an increase in the exports 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, 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 exports of live cattle and of corn have 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 are now 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 of 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 artizan; 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 re-  
 “ turns made at the different periods is all that is necessary. In  
 “ 1798, patients, 3,640 ; income, £1,035 17s. 1d. 1841, patients,  
 “ 16,159 ; income, £367 4s. 10d.” 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 disas-  
 trous effects of the Union upon our national industry. I have a list  
 here of the houses of the noblemen and gentlemen in Dublin in 1800,  
 which are now converted into hotels, or divided into small  
 shops ; and, in fact, some of them are not occupied at all. I have a  
 list of the manufacturers in the woollen, silk, and cotton trades, from  
 which it appears that the number of tradesmen in Dublin in 1800  
 amounted to 61,075 ; the number existing in 1834 was 14,446 ; of  
 these there were then idle 4,412, showing a decrease of 51,041 in the  
 employed. 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 this 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 has been a stamp-office ; it is now the counting house of a respect-  
 able firm in the cotton, silk, and woollen trade. What has become  
 of Lord Moira’s house—that house which had been once the resi-  
 dence 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 in the building—the stairs alone cost £3,000 ; but the  
 whole premises were the other day sold for a school to the Jesuits for  
 £1,100. And are those things to meet us every hour without mak-  
 ing some effort for the restoration of the country ? It is not the want  
 of materials that prevents me going further into this detail, but there  
 is no necessity for it ; for you can see yourselves, Gentlemen, these  
 mansions, where wealth and splendour formerly resided and were  
 concentrated, ruined and neglected ; and the question is, will you  
 endeavour to prevent those who are struggling to make a change to  
 effect it ?

I have now gone through the documents, to show you the prosper-  
 ity that existed in Ireland before the Union ; the advantages that  
 she derived from her Parliament, and the violence of the means by  
 which it was taken from her ; its injustice and inequality ; and I  
 now ask you, I appeal to you, whether I have not presented a pic-  
 ture which would make it the duty of every honest man to rally with  
 me to remedy those evils by a restoration of that Parliament. You



have now distinctly my objects, and the objects of the men who are combined with me to obtain a Repeal, which is our proud boast, but that we are in a guilty combination we reject with scorn. We want to restore to Ireland, the authority and prerogative of the Queen, in the creation of the peerage—to the Irish peers their proper and hereditary judicial authority, and to the representatives of the people the right of making their laws. You have a right to ask me the mode of obtaining this measure; you have a right to ask me the question, and I will answer it. One of our modes is not to use sectarian means in looking for a Repeal; and while upon this subject, I wish to call your attention to what has already occurred on the part of those who labour with me. We never sought to sacrifice our country for any sect or party; on the contrary, there cannot be more strong proof of anything than our utter abhorrence of such means, or of those who profess such to be their object. The Roman Catholics of Dublin held a public meeting in Francis-street, on the 9th April, 1795, where they declared, that feeling sincerely attached to their native country, to its rights and liberties, and so fatal do they consider the Union between Great Britain and Ireland to be, that they were determined to resist it to the utmost, even though their own Emancipation was offered to them as a compromise. That was the way in which the Roman Catholics of Ireland met the question of the Union in 1795. [Mr. O'Connell then read a passage from the first speech he ever made in public. It was delivered on the 13th of January, 1800, and represented the opinions of the Catholics of Ireland then to be so hostile to the Union, that even if they were offered the alternative of the Union, or the re-enactment of the penal code, with all its horrors, they would prefer the latter; and even if emancipation was offered to them for their consent to the Union, they would reject it with scorn and indignation.] That was my first public speech. These were the sentiments of myself and the Catholics of Ireland, with reference to the Union. We then made that offer—it might have been taken up, for there was at that time a very strong party in this country, opposed to the assertion of the privileges of Roman Catholics. I then declared, as I do now declare, that I would prefer the enactment of the penal code, with all its black horrors, than have the Union; and that I would throw myself upon the consideration and justice of 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 will not distress you by reading any thing 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. “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. But I  
 " say not this to barter with you my countrymen, I require no equi-  
 " valent 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 offer me to-morrow the Repeal  
 " of the Union, upon the terms of re-enacting the entire penal code, I  
 " declare it from my heart, and in the presence of my God, that I  
 " would most cheerfully embrace his offer. Let us then, my be-  
 " loved countrymen, sacrifice our wicked and groundless animosities  
 " on the altar of our country ; let that spirit which heretofore ema-  
 " nating 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." Why then should  
 we be charged with sectarianism ? Is that sectarianism ? Gentlemen  
 of the Jury, you cannot but be all aware that the case of the Protes-  
 tant Dissenters of England was warmly advocated by me—that I  
 presented a petition in their favour, signed by 28,000 Roman Catho-  
 lics, and adopted at an aggregate meeting of Roman Catholics.  
 That petition was not on the table of the House of Commons six  
 weeks when the Protestant Dissenters of England were emancipated.  
 I scorn, therefore, and treat with the most sovereign contempt and  
 indifference the idea of sectarianism. Throughout the entire mass  
 of the voluminous evidence presented to you, has there been one  
 word of sectarianism, or any thing like it ? I made more speeches  
 than any other man alive, and I have been more abused than any  
 other man on earth ; yet there is one calumny which has never been  
 flung upon me—that one (and it is the only one) is bigotry of any  
 sort. Religious bigotry against my fellow-Christians I have never  
 been accused of, and why have my calumniators spared me upon  
 that subject ? Because they knew the utter folly of attempting to  
 make such a charge, while there never was the most trivial shadow  
 of pretext for it. Sectarianism, I again say, is out of the question ;  
 it, therefore, could not have been, nor is it even pretended to be  
 alleged as our motive : I need not remind you that I who possessed  
 the confidence of the Irish people, maintained it with the full and  
 oft repeated declaration that all should be peaceable, and that one  
 single act—one isolated act of violence of any sort—would detach  
 me from the further agitation of Repeal. Has any violence pro-  
 ceeded from me ? It has been said that I have made violent speeches ;  
 if I have, would it not be but fair to allow me the opportunity of  
 showing how far these speeches were accurate or inaccurate, or what  
 was explanatory or mitigatory, and not reserve them for so remote  
 a period as this is from the time some of them have been deli-  
 vered. But no—there has been no violence on our side ; if  
 violence is to be talked of, let us see is this violence. It is an ar-  
 ticle taken from the *Cheltenham Gazette and Stroud Herald*, Au-

gust 2nd, 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 ma-  
 "jority 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 command-  
 "ing 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 co-  
 "lonies, and there receive allotments of land, and there be kept under  
 "strict surveillance. Such is the simple outline of measures for the  
 "bloodless conquest of Ireland. It is for a *Conservative Govern-*  
 "*ment alone* to achieve this glory. Let Sir Robert Peel and his  
 "colleagues look to it." Gentlemen, it appears by those papers,  
 which were given in evidence, that we did not threaten any-  
 thing; and it appears distinctly that every disclaimer, and rep-  
 etition of disclaimer, to use anything but legal and peaceable 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 news-  
 paper 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-Gen-  
 eral had this facility if he wished, or if the libel law had been in-  
 fringed. 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—and then take the *Pilot*, which was also read  
 for you—all prose and no poetry—take up any of these arti-  
 cles, and can you say that one of the journals copied the other?  
 Can they produce any of these papers, where the other copied an ar-  
 ticle from it? No, they cannot, and they could not charge them  
 with conspiracy unless they joined for that purpose. In place of con-

spiracy 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 rivalry and jealousy relative to these articles. Was that like combination or crime? I will not go into that question at present, as it is so well ascertained.

Well, Gentlemen, one word about the 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 is 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 172,000 oaths taken in the Excise department; and in another year 158,000, in the excise also. This was an unnecessary profanation of the name of the Deity—158,000 oaths in one year, and 172,000 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 a law 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.

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 obtained if the entire Irish people had not called for the Repeal of that Union. A change of that description should not be made unless it was demanded by the Irish people. The words of Grattan were, that the demand should be made, backed by the Irish nation. I re-echo that word, and the Minister is bound to oppose the Repeal of the Union unless that measure is backed by the nation. 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. They have proclaimed it, they have declared it, from one end of the country to the other. The voice has gone abroad, and it only re-



mains for the peaceful organization of each locality to ensure success. 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 is 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]. 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, this combination is brought before you, and is called a 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 22nd 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. 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 Mr. O'Connell read the extract.] Part of the 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. [He 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; it is not I produced it; it is not we who have called upon it in our defence, though it does contain, I think, an admirable defence; 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 a 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.

Gentlemen, the competency of the Irish Parliament to pass the Act of Union was discussed long before the Union itself was

thought of. One of the works by which the Revolution of 1688 was consolidated, was a book written by 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 do not know the cause, it was withdrawn. But at one time it was a book of authority, and requiring not any college 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 than that this delegated Legislature, elected for a time, had no power or authority to transfer the rights of their constituents to any body 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 still more explicit authority. Hear this passage from the speech of Mr. Saurin, spoken on the 15th of 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 doctrine of passive obedience; they had declared that the King held his crown by compact with the people, and 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 doctrines 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 he called 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 of 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 Govern-  
 “ ment ; 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 com-  
 “ petent to annex it to the crown of Spain, or any other country ?  
 “ No ; but he may abdicate it, and every man who knows the Consti-  
 “ tution knows the consequence—the right reverts to the next in suc-  
 “ cession. 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 trans-  
 “ fer your legislative rights to the French Council of Five Hundred ?  
 “ Are you competent to transfer them to the British Parliament ? I  
 “ answer—No ! If you transfer, you abdicate ; and the great origi-  
 “ nal 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 eter-  
 “ nal 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 ; 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 Eman-  
 cipation 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 : “ That  
 it is binding as a law ; but not obligatory on conscience.” 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 be 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 by a country which had made so many irregular successions? Richard II. was dethroned by Parliament; so was Henry VI., so was Richard III., and Henry VII. set up. Where also the royal succession was altered over and over again in the reign of Henry VIII. and settled in 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 a crime to discuss the matter publicly, undisguisedly, and with the sustentation of the authorities I have cited. You have Saurin and Plunket, you have Locke, you have Lord Grey giving his opinion in favour of it.

Gentlemen, 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 a year pass out of this country; the Railway Commissioners reduce it to £6,000,000. Take the reduced amount, and I ask did ever a country suffer such an odious drain of £6,000,000 of absentee money? £6,000,000 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 are transplanted to foreign lands; sent there, but giving no return; leaving poverty to those whom it enriched. Take £6,000,000 for the last ten years. Look now at £60,000,000 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, 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, the surplus revenue, which exhausts the resources of this country, and that to the amount of nearly £2,000,000 annually; in the last year it was low as £700,000; 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 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 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, accounted for it by the never-failing bellyfull of potatoes; they had all a bellyfull 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 exported from this country; provisions were exported while the people were perishing with famine. 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, are the advantages 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? The Poor Law Commissioners go more into minute 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 harrow your feelings by reading any more, the book is full of them; and are 2,300,000 of your fellow-countrymen to live in a state of positive destitution, and nothing to be done for them? Is no effort to be made to rescue the country from this state of destitution? 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 read an extract from *Saunders*, detailing the misery which pervaded the city.] Can any language of mine describe the misery which exists more fully? Gentlemen, another hideous feature of Captain Larcom's Report is, that the population is diminished by 70,000 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

prosecuted 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 early 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 a 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 fall, it is a glorious struggle. It is a struggle to make the fairest land on earth possess that bounty and benefit which God and Nature intended.



TUESDAY, FEBRUARY 6TH.

Mr. *Moore*.—My Lords, the counsel for the traversers have availed themselves of the indulgence granted to them yesterday evening. We have gone through the evidence already adduced on the part of the Crown, and we mean to rest our defence on it. We have brought a considerable number of witnesses to town—they are in town at present, and are able to prove a number of facts; but under the circumstances which I have stated, we have come to the conclusion that we should not be warranted in taking up the time of the Court, to establish what has been already proved. We shall therefore examine but very few witnesses.

Mr. FREDERICK WILLIAM CONWAY sworn, and examined by  
Mr. HATCHELL.

I am proprietor of the *Dublin Evening Post*. I reside at Rathmines-road, near this city, and I was a resident of Dublin in the year

1810. I was editor of the *Freeman's Journal* at that time, and in that capacity I was in the habit of attending public meetings in this metropolis for the discussion of questions of importance. I recollect attending in 1810, at the Royal Exchange, at a public meeting convened for the discussion of Repeal. Mr. O'Connell, whom I knew personally at that time, also attended, and spoke at that meeting. Sir James Riddell, the High Sheriff of the city of Dublin, at the time, acted as chairman, and there were also several other persons of respectability and influence present. [The *Freeman's Journal* of September 19, 1810, was handed to the Witness]. I was present at that meeting myself. I acted as secretary to it. It purported to be a meeting of the citizens of Dublin. I read these proceedings last night, as reported in this newspaper, and I have a perfect recollection of what passed. The meeting was held on the 18th of September, 1810, and a petition, praying for a Repeal of the Union, was adopted. The leading persons at the meeting were, Mr. Shaw, the present Sir Robert Shaw, who acted as second chairman, Colonel Talbot, of Malahide, and many others. I am quite satisfied that the topics of Mr. O'Connell's speech, as reported, are correct; but a second speech appeared in the *Freeman's Journal*, and I think that was more correct, as the periods and sentences were better rounded. The reason the second report of Mr. O'Connell's speech appeared in the newspaper was, because the first was not very well reported, for we had not at that time so good a corps of reporters as we have at present.

[The Witness then read Mr. O'Connell's speech in support of Repeal. See *ante*, p. 113.]

I am now connected with the *Dublin Evening Post*. In the year 1800, John Magee was, I believe, proprietor of that paper. I perceive in the file of the *Evening Post* of the 4th of January, 1800, now handed to me a report, headed, "The Union—Catholic Meeting." [The report of the meeting, containing a speech of Mr. O'Connell against the Union, was here read by Sir Colman O'Loughlen. The resolutions against the Union agreed to at the meeting were then read, as were also addresses to Mr. Grattan and Sir Robert Shaw, members for the city of Dublin, with their answers, printed in the *Freeman's Journal* of the 5th of October, 1810. The addresses requested the honourable members to support the prayer of a petition adopted at an aggregate meeting of the freeholders and free-men of the city of Dublin, in favour of a Repeal of the Union. The honourable members, in their answers, promised to support the petition. The requisition, convening the meeting, with the signatures attached, was then also read.]

Mr. *Hatchell*.—Do you remember the Catholic Association previous to 1829? I do.

Were you a member of that Association? I was.

You then were connected with the *Evening Post*. Was it circulated by the Catholic Association in the same manner as other papers were circulated by the Repeal Association?

The *Attorney-General*.—This is not evidence. It has nothing to do with the question under discussion.



The LORD CHIEF JUSTICE.—I think the objection comes too late, after you have allowed the other documents to be read.

The *Attorney-General*.—The documents which were read, were speeches made by Mr. O'Connell, and had reference to the present questions, and we did not wish to exclude matters which had a distinct reference to a Repeal of the Union; but this is a distinct class of evidence altogether. The proceedings of the Catholic Association have nothing to say to the issue at present to be tried.

MR. JUSTICE CRAMPTON.—It cannot be received; it is quite outside all the issues on trial in the present case.

MR. JAMES PERRY *affirmed, and examined by MR. WHITESIDE.*

I am a member of the Society of Friends.

Mr. *Whiteside*.—What are the rules of the Society of Friends, in reference to arbitration?

The *Attorney-General*.—I object to that question.

Mr. *Whiteside*.—I submit we are entitled to show what their practice is in reference to arbitration, and that the traversers merely adopted it, and to show by that fact that they had no intention to interfere with or subvert the Courts of Justice.

The *Attorney-General*.—I entirely object to the rules of the Society of Friends being given in evidence, and I submit that they have no relation to the issue joined upon the charges in the present indictment.

Mr. *Macdonogh*.—It is alleged that the parties have entered into certain rules with a certain intent and object. We rely on this as evidence that similar rules have been adopted by a most respectable class in the community, to show that the traversers acted with a similar intention, and not with the object charged in the indictment.

Serjeant *Warren*.—Both upon principle and authority this evidence is inadmissible. If these regulations are legal, they do not require to be supported by the rules of any other body of men. If, on the other hand, those regulations are illegal in themselves, whether they have been followed by the Quakers or whether they have been derived from them, cannot affect the criminality or innocence of the traversers in their having adopted them. But it is said, that the Crown having permitted this to be stated, the objection now comes too late, we did not choose to interrupt counsel in his statement, for it is impracticable to abstain from stating something that may not be evidence, but may be considered as a fair line of argument to the jury. The same species of evidence was tendered by Mr. Erskine in *Horne Tooke's* case, and was unanimously rejected by the Court.

The LORD CHIEF JUSTICE.—I am of opinion that this evidence is admissible. The indictment is to this effect, that the traversers conspired to bring into disrepute the Courts of Justice, as by law established in this country, by substituting other modes for the people to settle their differences, in derogation of the Queen's Courts. The *animus* and intention with which this was done, are the essence of the charge. The question is, whether this was done with a criminal intent; with the intent to bring the Courts into disrepute. Surely, to show *quo animo* the act was done, it is material to show

that a vast number of the respectable portion of the community have done the same thing, and have universally been considered as acting legally. These rules were adopted by a most respectable class, and had never been impeached. Surely these are clearly evidence.

Mr. JUSTICE CRAMPTON.—My opinion does not coincide with my Lord Chief Justice, or with the opinions of the other members of this Court. This is a matter of principle, and I feel bound to state that I cannot acquiesce in the reasoning by which this evidence is made admissible. It is quite true the question is as to the intention of the traversers, and their object is to show that a criminal intention is erroneously imputed to them; but I should apprehend that the intention with which parties do a particular act, is to be deduced from their own acts and declarations, and not from the acts and declarations of other persons. As it has been truly put by Sergeant Warren, if their principles are just, fair, and legal, they are just, fair, and legal to all classes of Her Majesty's subjects, and they do not require the support of any other body of men, however respectable or respected the body may be, if they are illegal; the fact that the Quakers have adopted them cannot make them legal. The institution of arbitration is in itself innocent and legal. No person ever thought of accusing the Quakers of having the intention thereby to bring the Courts of Justice into discredit and disrepute. That must be conceded. But the allegation here is, that the traversers have established and recommended those Arbitration Courts, but with a totally different intention from that of the Quakers. How then, can you estimate the intention of the traversers by the intentions of the Quakers? The acts themselves may be legal, but take the intention, and they may then become illegal. If you admit the acts of the Quakers, you may admit the acts of any other society; but how can we judge of the intentions of the parties, from the acts of others? The acts may be the same, but the intention can only be discovered from the acts of the parties themselves.

Mr. JUSTICE BURTON.—I concur with my Lord Chief Justice; I apprehend this is not a question of law for the Court to determine, but a question of intention for the jury to decide. There is no doubt that, abstractedly speaking, to establish a mode of settling differences by arbitration, is not in itself illegal; but the question here is, whether the mode proposed by the traversers for that purpose was adopted with the intention charged by the indictment, that is, to bring the Courts of Law into contempt; and the traversers wish to prove that it was not adopted with that intent; and for that purpose they seek to give in evidence the acts of the Society of Friends, who have established those Courts, for the purpose of having their differences settled without expense. They wish to show that the Arbitration Courts were instituted, not for the purpose of bringing the Courts in disrepute, but merely to settle differences and disputes, by following out the mode which has been practised by others. That is a question for the jury.

Mr. JUSTICE PERRIN.—I concur in opinion with my Lord Chief Justice, and my brother Burton. The charge against the traversers is, that they intended by the establishment of those Arbitra-

tion Courts, to bring the established Courts of Law into disrepute. Surely, it is a matter of inquiry for the jury, and most material for them to know, that a respectable body of Her Majesty's subjects have published rules, having the same tendency as the Arbitration Courts. This, as evidence, does not conclude the question, but it is a very important and material inquiry, as to what the intent of the traversers was, and in this respect the rules of the Quakers and of the Ouzel Galley are clearly evidence. It is powerful to go to the jury to show that their course of proceeding does not necessarily involve a criminal intent.

The Witness then read the following rules of the Society of Friends with respect to 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 going to law, and endeavour to live at peace with all men ; for  
 “ we are all 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 not to sue one another at law, but that all dif-  
 “ ferences among friends be speedily ended by themselves, or by re-  
 “ ference, 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 con-  
 “ cerned 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 dis-  
 “ courses 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 Ar-  
 “ bitrators 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 ar-  
 “ bitrators, 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  
 “ inconvenient, and advised, when any Friends shall hear of any such  
 “ difference betwixt any Friends, to 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 more and again exhort them to end their differences ; and if  
 “ they or either of them refuse, then to let them know that it is the ad-  
 “ vice 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 deter-  
 “ mination of the major part of them, that shall be made and signed  
 “ by the umpire, if there be one agreed unto. Also that this meeting  
 “ doth advise that if any Friend shall refuse speedily to end their  
 “ differences, or refer it, as 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 advised 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 Arbitra-  
 “ tors, that then the person or persons so refusing be required to give  
 “ the reason 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 tes-  
 “ tify against them, or either of them, as such as 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 re-  
 “ ferred, and judgment and award made, signed, and given to the  
 “ persons 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 they refuse, then the meeting do  
 “ testify against them.—1657. 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 herein before recommended,  
 “ such person doth therein depart from the principle of truth, 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 con-  
 “ demning it and himself therein, that then he be disavowed ; 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 com-  
 “ plain 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.”

*Examination resumed.*—These rules, as far I know, have been uniformly acted upon. I have no recollection of any instance of those who disobeyed them having been expelled; but persons who disobeyed them would be expelled. I am not a member of the Ouzel Galley; but I have been a party to an arbitration there. I saw Mr. Brewster there once.

WILLIAM COSGRAVE sworn, and examined by MR. MACDONOGH.

I am connected with the Ouzel Galley. I am Secretary and Registrar of it. I have been acting in that capacity since 1810. I have been present at almost all the arbitrations which have taken place since that time. The parties called on me and named arbitrators, then I handed them a printed deed of submission and they signed it. These proceedings are taken pursuant to the rules of the Society. The Society, when it is full, consists of forty persons. 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 arbitrators. The names of the gentlemen who now compose the Society are, Thomas Crosthwaite, Arthur Guinness, James Charles, Thomas Watson, William W. Colville, John Hone, Thomas Maxwell, George Law, Henry Wilson, S. Boileau, William Fortescue, Esqrs. 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. The deed of submission is signed by the parties that it may be binding, and confirmed in the Court.

*Cross-examined by MR. BENNETT.*

It is to those that choose to refer their differences to the Society that the 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 that it should be made a rule of Court. The parties referring to Arbitrators, name their own days for holding their arbitration.

To MR. JUSTICE CRAMPTON.—The parties choose the Arbitrators themselves out of the number of the Society. I don't believe the Society is incorporated by any Charter or Act of Parliament; but it is a very old Society.

MR. CHARLES VERNON sworn, and examined by MR. FITZGIBBON.

Mr. Fitzgibbon called on Mr. Vernon to produce the *Morning Register* of September 14, 1841. Mr. Vernon produced the paper.

Mr. Fitzgibbon.—I have no desire to have read the whole of a speech delivered by Mr. O'Connell, which was reported in this paper. I only require a portion of it to be read.

The *Attorney-General*.—I do not know how this paper, the *Morning Register*, can be made evidence for the traversers.

Mr. Fitzgibbon.—The published opinions of Mr. O'Connell, on the

Repeal of the Union, are contained in that paper, and those opinions are in issue.

The *Attorney-General*.—The *Morning Register* is a daily paper, and there is no daily paper ordered to be circulated by the Repeal Association. They only circulated weekly papers.

Mr. JUSTICE BURTON.—Is it a paper which is circulated by the Association?

Mr. *Fitzgibbon*.—No, my Lord; but in that paper there is a speech of Mr. O'Connell's on the Repeal of the Union, which we are entitled to read in evidence.

Mr. JUSTICE CRAMPTON. Unless you can prove this speech was spoken by Mr. O'Connell I do not see how you can make it evidence.

Mr. Vernon then produced the *Freeman's Journal*, 7th September, 1841.

The *Solicitor-General*.—I object to this being given in evidence on the part of the traversers. We did not object to their reading anything the traversers said in 1843; but they now propose to read a speech of Mr. O'Connell's made in 1841. The proper evidence of this must be the person who heard the speech. It is clear that the person who reported the speech must have been present when it was delivered, and he is not produced, nor his absence accounted for.

Mr. *Fitzgibbon*.—Dr. Gray was the proprietor of this paper, and has published those proceedings; it is, therefore, an act of his. One of the overt acts of conspiracy is, that he published seditious and inflammatory speeches made at the Association. Now I wish to show that he published speeches not calculated to inflame, but which had quite a contrary tendency.

Mr. *Sheil*.—In *Horne Tooke's* case, a book written by him twelve years before the prosecution was admitted in evidence.

Mr. *Macdonogh*.—The course taken when a similar objection was made in Cobbett's case, will govern the present case. Cobbett was tried in 1831 for the publication of a libel in a paper called *Cobbett's Political Register*, of which he was the editor and proprietor, and on his trial he proposed to read in his defence matter published by him in the year 1822. The *Attorney-General* objected that the article was of too remote a date, and Lord Tenterden was about to allow the objection, when Mr. Cobbett referred to *Horne Tooke's* case, and its admissibility was ruled in his favour by the Court.

Sergeant *Warren*.—The counsel for the traversers are going on the assumption that this paper has been published by Dr. Gray, but they have not yet proved the fact.

Mr. *Fitzgibbon*.—When did Dr. Gray become proprietor of the *Freeman's Journal*? On the 8th of February, 1841. This newspaper which I produce, is one of the newspapers sent according to the Statute to the Stamp-office, and was signed by the printer.

Sergeant *Warren*.—The Stamp Act has pointed out and provided for the production of express legal proof as against the publisher, by lodgment of a paper in a certain way, and it provides

expressly that the defendant could not resort to the statutory proof in his own favour or behalf. In the case of *Watts v. Frazer*, 7 Ad. & Ell. 223, there was an action brought against the proprietor of a newspaper. The party on trial wished to read some matters in other papers besides those put in evidence against him, and to give the statutory proof of it, but the Court decided against the application, and decided that he should prove them in the ordinary way. In the present case let the traversers bring forward the persons who had reported those speeches, and who having heard them, could of course prove them.

Mr. JUSTICE PERRIN.—The Crown has already given evidence of this gentleman being the proprietor of the *Freeman*, both before and after the date of the publication they wanted to use.

Sergeant *Warren*.—That would be unanswerable if the traversers had not better evidence.

Mr. *Macdonogh*.—The case of *Watts v. Frazer* has no bearing in the present case. In that case the defendant wanted in mitigation to show that the plaintiff had published a libel previously which had the effect of provoking. In order to prove it, he proposed to offer the statutory proof by producing the newspaper from the Stamp Office containing it, but the Court held that was no proof of publication, for *non constat* that any other paper had been issued.

The LORD CHIEF JUSTICE.—I am of opinion this evidence should be admitted.

Mr. *Vernon* then read from the *Freeman's Journal* of the 5th October, 1841, a speech of Mr. O'Connell, delivered at the Repeal Association, condemnatory of the means resorted to by the Americans to obtain their independence; and pledging the people of Ireland to use only peaceable means to effect their objects. Another speech of his made on the same occasion strongly censuring the Chartists and their proceedings was also read, and given in evidence.

The *Pilot* of the 15th April, 1840, was then handed to the Clerk of the Crown, who read therefrom "The Plan of the National Association of Ireland for full and prompt Justice, or Repeal."

The Officer, by Mr. *Macdonogh's* directions, read Mr. O'Connell's letter to Mr. Tyler, son of the President of the United States, as published in the *Pilot* of the 12th of April, 1843. He also read extracts from the *Pilot* of the 15th of April, 1843.

The following documents were then read:—

Report of the Repeal Association, dedicated to Ireland.

Report of the Committee of Arbitration.

Report of the Loyal National Repeal Association on the state of the Franchise, April 27, 1840.

The Report of a Committee of the Loyal National Repeal Association on the Means to be adopted for the Re-construction of the Irish House of Commons.

Report on the Financial Injustice inflicted on Ireland by the Union, signed by Daniel O'Connell.

The Officer next read a pamphlet, entitled, "Series of Reports of the Loyal National Repeal Association of Ireland," containing

a report of the resolutions passed at the period of the Union against that measure, published in 1843, and printed by J. Browne, 36, Nassau-street; and on the distressing effects of the Union as felt in the cotton, silk, and other manufactures of Ireland.

Report of the Committee of the National Repeal Association on the number of Representatives for Ireland.

Report on the means by which the Union was carried.

WILLIAM MORGAN sworn, and examined by MR. HATCHELL.

I live in Tullamore, and am a coachmaker by trade. I remember the Repeal meeting which took place on the 16th July in that town. I know where a Mr. Deane lives. A Mr. Hand lives on the opposite side of the street. I recollect about ten o'clock in the morning seeing an arch stretching across the street, from the house of Deane and that of Hand. There was written on it: *Ireland, her Parliament, or the World in a Blaze*. I afterwards assisted in taking it down. It was taken down by Mr. Steele's orders. Mr. Steele came to Deane's house and desired him to remove it immediately. Deane at first hesitated, and asked him by what authority he desired him to take it down. Mr. Steele said by Mr. O'Connell's express directions, who was much displeased at its having been put up. It was taken down at a quarter before eleven, after second mass. The meeting took place at two o'clock.

Cross-examined by MR. BREWSTER.

I attended the meeting. I do not know that there was a committee formed to get up the meeting, but heard there was. I did not subscribe. Deane is a painter, and assisted to take down the arch. It was opposite to one of the entrances to the chapel, but not to the principal one. There was a large attendance at the chapel that day. I did not see any of the processions coming into the town. Deane is in town, and came up with me as a witness who was to be examined.

The resolutions proposed at the meetings at Mullingar, Longford, Drogheda and Tara, that petitions for a Repeal of the Union should be presented, were then proved in evidence. The requisition concerning the Loughrea meeting was also put in and read.

Mr. *Vernon* was recalled, and read from the *Freeman's Journal* of the 27th of October, 1841, the report of the proceedings at a meeting of the Repeal Association, at which Mr. O'Connell moved that certain communications from Quebec be inserted on the minutes; and, in doing so, observed that that was the time to let their Canadian friends know that there was no difficulty in enrolling them as Members and Volunteers, as they were British subjects. In the same speech Mr. O'Connell deprecated the system of physical force which had been resorted to by the people of Lower Canada; and stated that in Ireland, the struggle for liberty and right should be a peaceable and constitutional one.

The Witness next read, from the *Freeman's Journal* of the 5th of April, 1842, a report of a speech made by Mr. O'Connell at the



Association, in which he stated his desire to join with any party in endeavouring to obtain reform measures, at the same time denouncing the course that was being pursued by the Chartists in England.

He next read the reports of speeches delivered by Mr. O'Connell when Lord Mayor, published in the *Freeman's Journal* of the 6th of January, 1842, the 25th of March, 1842, and the 11th of May, 1842; also the report of a speech of Mr. O'Connell, in which he stated that Her Majesty had the power to restore the Parliament, and warned the people not to enter into any secret societies, but keep clear of the villains who were only employed for their destruction.

Mr. *Vernon* next proved the *Freeman's Journals* of the 17th, 23rd, 24th, and 25th of May, and 16th of August, 1842, and 14th of September, 1841, from which he read speeches delivered by Mr. O'Connell at the Repeal Association, and at meetings for the promotion of Irish manufacture, in which he spoke of the decline of trade owing to the Union, called on the people to obey the laws and preserve the peace, and expressed his devoted attachment and allegiance to the Queen.

The LORD CHIEF JUSTICE.—I am of opinion that this evidence should be admitted.

Mr. *Fitzgibbon*.—Your Lordships may remember that I and the other counsel for the traversers, in the course of our statements, adverted to the evidence of the Rev. Mr. Power, whom we intended to examine. He was served with a Crown summons to attend, and is now actually on the road to Dublin; but in consequence of the very bad state of health in which he was, his physician could with difficulty be persuaded to allow him to travel at all, and gave strict directions that the journey should be performed by easy stages. He will be in attendance to-morrow at two o'clock, and under those circumstances it is hoped that the Court will not object to the postponement of the case until that hour. Let the Court intimate whatever course will be most convenient, we cannot have the witness here until to-morrow about two o'clock. The case may be adjourned until that hour, or, let the Witness be examined at the sitting of the Court next morning.

The LORD CHIEF JUSTICE.—Have you done with every thing else?

Mr. *Fitzgibbon*.—Yes, my Lord. We might protract this trial to any hour; but we do not wish to take up the public time unnecessarily, or to occupy that of your Lordships, by reading documents we do not think necessary to be read. There is nothing else which we are desirous of reading, and no other fact necessary to prove but that respecting the letter signed by Mr. Power, and entitled "The Duty of a Soldier." Let the Solicitor General refrain from making any observations upon that letter, and let it be put out of the case until Mr. Power has been examined, and given his explanation to the Court and to the jury; or will the Solicitor General undertake that no observations be made upon the case, because he is not produced?

The *Solicitor General*.—I do not intend to make any observations on his not being produced.

Mr. *Fitzgibbon*.—We think his evidence would completely ex-

culpate the traversers from the charge sought to be deduced from that letter.

The LORD CHIEF JUSTICE.—You had better prove the service of the subpoena.

Mr. *Fitzgibbon*.—We are prepared to prove that.

PATRICK GAYNOR sworn, and examined by Mr. MONAHAN.

I am in the employment of Mr. Mahony. I am a clerk. I served a subpoena on the Rev. Richard Power, on Saturday last. He was then in apparently a very weak state. He said he was entirely in the hands of his physician, and would come to town if he desired him. I saw his physician the next day. We all met at Mr. Barron's, on Sunday last, and after a good deal of conversation between Mr. Barron and the physician, the latter said that Mr. Power might travel to Dublin by slow stages. He and Mr. Barron were to travel together, and they were to be in town on Wednesday. Mr. Power resides at Kilrossenty, near Dungarvan. He said he could not come sooner on account of his illness.

Cross-examined by Mr. FREEMAN.

I got directions from Mr. Mahony to serve a subpoena on Mr. Power, on Friday evening last, about five or six o'clock. I arrived at Waterford on Saturday morning. I was at Kilrossenty about five o'clock the same evening. Mr. Power was in his own parlour, and his curate, the Rev. Mr. Casey, was with him. They had dined. I saw nothing particular on the table at first, but Mr. Power afterwards asked me to take some dinner and a glass of wine. He sent his girl for it. He gave me one glass, and took one himself.

Mr. *Hatchell*.—Having examined this Witness to account for our not being able to produce Mr. Power, we trust the Crown will not make any comments arising from his not being examined.

The *Solicitor-General*.—I do not mean to comment on his absence.

Mr. *Hatchell*.—But will you promise not to comment on the document itself.

The *Solicitor-General*.—I can make no such promise; and as to accounting for the absence of the Witness, surely he ought to have been served with a subpoena before Saturday when the trial had been going on for three weeks.

Mr. *Whiteside*.—A letter was sent to the gentleman before, requiring his attendance.

Mr. *Fitzgibbon* submitted that the *Solicitor-General* ought not to make any observations upon the letter, purporting to be signed by Mr. Power, until after that gentleman had been examined. He would have sufficient materials to occupy the Court during more than one day, and therefore why comment on that particular document?

The *Solicitor-General*.—I shall not make any observations on the case until the evidence I am called on to answer is closed; at the same time, I undertake not to make any observations upon the non-

production of Mr. Power, and I assume they had satisfactory reasons for not producing him.

Mr. *Fitzgibbon*.—His testimony would take away the effect of that letter.

The LORD CHIEF JUSTICE.—We think that the Solicitor-General should not be called upon to make his statement until he is satisfied, that no undue interruption would take place, and we do not mean to impose on him any course to adopt which he does not think right.

Mr. *Moore*.—We do not press to have Mr. Power examined, and we close on the part of the traversers.

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WEDNESDAY, FEBRUARY 7TH.

THE SOLICITOR-GENERAL.

*May it please your Lordships, and Gentlemen of the Jury,*

At length it has become my duty to address you upon the evidence which you have heard in this case, 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 talent, the eloquence, the ingenuity of the host of counsel against whom I am now called on single-handed to contend—the consequences of your verdict as affecting the law of the land, and the peace, tranquillity, and I may add, the happiness of this country—all these considerations may well appal even a person of much greater confidence in his powers, both of mind and body, than I possess, when called on to discharge so formidable a task. It is, therefore, with no small share of anxiety and apprehension, I approach the execution of this important duty. Great, however, as is my sense of the responsibility attached to it, yet there is a still greater one, I mean your's, Gentlemen of the Jury. You have sworn, by the most solemn of all obligations, to find a verdict according to the evidence, unaffected by prejudice, political, sectarian, or religious—unaffected by fear, favour, or affection; uninfluenced by any other consideration than the truth and justice of the case. That you feel to the fullest extent the responsibility imposed upon you, the close attention you have paid to the progress of this trial abundantly proves, and it is my conviction of this which emboldens me to expect a little further indulgence from that patience which already has been so severely taxed. I despair of enlivening the case by any ebullition of wit, fancy, or eloquence. I am not gifted with the powers which belong to my learned friends, and if I were, I should not feel myself justified in resorting to them in order to influence your judgment. I ask a verdict from you, not by appealing to your passions, or your prepossessions and prejudices; but by calling upon you as honest men, to exercise a sound judgment, and if you cannot give a verdict of guilty upon a fair exercise of that judgment, I do not ask it at your hands. But before I have concluded, I think I shall present the 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 will vindicate the verdict, which I confidently

anticipate from you, in the eyes of every honest and fair man in the country. Our's, Gentlemen, is a plain, straightforward, just cause ; it needs nothing but the exercise of a sound judgment and an honest heart to arrive at a proper conclusion with regard to it. There has, however, been so much misrepresentation, both in point of law and fact, so many irrelevant and extraneous topics have been introduced, so much obscurity and confusion have been heaped upon the case by the ingenuity, learning, and talent of the counsel for the traversers, that before I can hope to make the case intelligible, it will be necessary to divest it of all the topics which I may say do not properly belong to it, and which cannot have been introduced for any other reason than to divert your attention from the real question which you have to try.

Gentlemen, you have heard eight addresses by different counsel on the part of the several traversers. Many of those gentlemen introduced matter not only different, but inconsistent. In one respect, however, there is a marvellous coincidence in all, that is the total absence of any the slightest comment upon, or any the least reference to, the evidence in the case. Not a single observation has been addressed to the real matters in question. Before, however, I apply myself to the details of the case as proved by the Crown, it is necessary that I should advert as briefly as possible to these topics which have been thus introduced, and I think you will say that they have not the slightest bearing upon the case, and that they have been introduced for no other reason than from the necessity which lay upon the defendants to evade touching the question which you have sworn to investigate, namely, the existence or non-existence of this conspiracy with which they have been charged. My learned friend, Mr. Sheil, who has not often favoured us lately by appearing in those Courts to delight us with his splendid eloquence, his visits being, like angels' visits, very few and far between. This, however, was conceived to be an occasion where it was necessary to resort to something extraordinary. He appeared as counsel for Mr. John O'Connell ; and I was certainly delighted by the most splendid exhibition of eloquence I have ever heard.

“ *Materiam superabat opus.* ”

The execution was brilliant and elaborate ; but the matter was meagre indeed. In fact he threw his client overboard, as his client appeared to consider, for he disclaimed, in a great measure, the line of defence his counsel had taken. Am I not, Gentlemen of the Jury, justified in saying, that from the beginning to the end of his address, there is not a single explanation or denial of any one fact, proved on the part of the Crown, as involving the case of his client. Do you recollect Mr. Sheil's promise ? “ I will now show you that my client is innocent of this charge.” Now, I would ask you, Gentlemen of the Jury, can you point out one single fact relied on *by him*, or any observation made by Mr. Sheil tending to show the innocence of his client in this case. There were topics of general interest brought forward by him, not at all bearing upon the case. The first was an attack on the Crown for allowing such a length of time to elapse before insti-



tuting this prosecution. Gentlemen, I must say that struck me as a most singular species of defence, because it involves something like an admission of the guilt of those parties, for what does it come to? "You suffered us to go on; you enticed us into crime." My learned friend the Attorney-General was called by Mr. Sheil, "the artful dodger of the State," and compared to "the delator of Roman Empire," which comes to this, that the Crown or Government had actually seduced these people into the commission of crime, and after they had suffered them to go on from day to day, from week to week, they then come down upon them and say they have violated the law. Is it not monstrous to set up such an allegation as this, on the question of the guilt or innocence of the traversers. If they have not violated the law they must be acquitted; but if they have violated the law, what sort of a defence is it to say, that the Government, by their forbearance to prosecute, can affect the guilt of the parties? I merely make these observations at present, because by-and-by I mean to account for it, and I shall demonstrate to you, and I hope to the public, that there has been no connivance on the part of the Government, or seducing into crime, but, on the contrary, that every warning was held out to them, and that this prosecution, which they had reason to expect, could not have been brought forward with effect at an earlier period.

But before I proceed further to the topics which Mr. Sheil has introduced, I think it right to disabuse your minds of the impression which it has been sedulously attempted to make on you with regard to what the Crown is prosecuting for. Gentlemen, you have heard over and over again that this was an indictment against the people of Ireland for the purpose of putting down free discussion, of extinguishing their right of petitioning, and introducing an arbitrary control over their legal rights. You have heard this over and over again repeated *usque ad nauseam*. Allow me to say, that this is not a prosecution against the people of Ireland, to prevent them from exercising their legal rights. It is not a prosecution against any of those deluded people, who attended those meetings at the instance of the traversers; they are not the persons prosecuted. It would have been more fair, more just, more true, to say that this is a prosecution on behalf of those unfortunate people. It is my firm conviction and persuasion, that your verdict will have the effect of stopping the proceedings to which they have become victims, and will turn to their amelioration in every respect. But it is then said we are prosecuting to put an end to free discussion. We are not prosecuting any particular political or religious opinions. I admit that every one of the traversers had the fullest right to express his opinions upon any public subject whatever; nay, more, to use his best exertions to propagate those opinions, and to have them entertained, as far as possible, by all persons in the community, and to use all legitimate means to accomplish that end; but I deny the right of any person to attempt to bring about that object by the means charged in this indictment, to which I shall more particularly call your attention in the course of my address. Now, Gentlemen, is this a prosecution against the liberty of the Press? It is true that there are in-

volved in this indictment three gentlemen who are the proprietors of newspapers, but they are not included in this indictment as the proprietors of these newspapers, but as conspirators. I deny the imputation that this is a prosecution against the Press; if it was, why were not the editors of other Liberal papers included in this prosecution? you all know that papers in Dublin and in the country parts of Ireland, advocate the same views, namely, a Repeal of the Union, but they are not included in the indictment; why? because they have not become the agents and instruments for carrying out the designs which I shall have hereafter more particularly to call your attention to. Your verdict in this case will not interfere with the liberty of the Press, nor with the exercise of any other constitutional right. Nor are we prosecuting for any breach or disturbance of the peace, though you might have supposed, from what has been said by the counsel for the traversers, that that was the nature of the charge. No. The 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 on behalf of the traversers, over and over again, stated, that the offence of conspiracy necessarily implies secrecy; and I do not doubt but that some persons are under the impression, from the reiteration of this assertion, that no person can, in point of law, be guilty of a conspiracy, unless it be proved that they had retired to some dark place, to some secret cavern, there to concoct their schemes. In a popular sense, conspiracy may imply secrecy, because it seldom happens that persons enter into a design of that kind publicly; but, in point of law, a conspiracy may be as public as any other offence which is the subject of prosecution under our law. Suppose a number of tradesmen publicly meet, and enter into resolutions that they will allow no man to work under a certain sum, and if he presumes to do so, he will be subject to a penalty. That would be open and public; but could it therefore be contended for a moment, that it was not a conspiracy? Mr. Sheil takes the definition of conspiracy from Shakspeare’s tragedy of Julius Cæsar; Mr. O’Connell from Johnson. I must beg in this place to dispute the authority of those writers, and I say, in point of law, a conspiracy means where two or more persons concur in the prosecution of an illegal object, or if they concur in the execution of a common legal design, by means which are contrary to law, they are guilty of a conspiracy, no matter whether it be open or secret, no matter what its nature is, because the test is not the secrecy, but the object of it. Gentlemen, we say the traversers have concurred in a common and unlawful design, which I characterize as an attempt to procure, by means of intimidation, the Repeal of the Union, which, according to the law of this country, cannot be repealed but by an Act of Parliament—the result of the free-will of the Legislature. With regard to secrecy, some conspiracies may be of such a nature as would necessarily involve publicity. What does the indictment charge? that the

traversers entered into a common plan by means of seditious speeches, and large meetings, and other means set forth in the indictment, to effect changes which can only be brought about legally by the intervention of Parliament. It is therefore not only a part, but a necessary part of the design, that the means used should be public. It is therefore monstrous to tell a jury that this is no conspiracy, because it is public. Gentlemen, I am now addressing you in the popular meaning of conspiracy, but its legal consideration you will take from the Court. Gentlemen, you will take the law not from me, nor from the counsel for the traversers, but from the high tribunal before whom the case is trying. The Judges will direct you as to the law of the case—the facts are exclusively for you. But I was anxious to disabuse your minds of what was pressed on them, with regard to conspiracy necessarily meaning a secret proceeding. A conspiracy may be a combination to do an illegal act, a conspiracy, for instance, to murder, or rob a man, or to commit any other crime, that is, any crime which, if he did commit, he would be liable to punishment for; but a conspiracy may also exist to bring about an object which *per se* is not unlawful, by unlawful means, and it is curious to observe the anxiety of counsel to dispute the soundness of this definition in point of law. You find they were labouring to convince you that the traversers are prosecuting a legal object, and that they might fairly and legally accomplish that object, and that this was an attempt to put a stop to the legal and constitutional rights which the subject is entitled to exercise. It is, therefore, of great importance that you should understand that no matter what the object is, if they seek to bring it about by improper and unlawful means, they are guilty of a conspiracy. Suppose, for instance, I am entitled to an estate, and my object was to get back the possession of it, it would be fair and legal for me to do so by legal and constitutional means; but if I conspire with other persons to turn out the person in possession by forcible means, or to bring witnesses to swear what is false, in order to obtain possession of the estate, then I am guilty of a conspiracy, no matter whether the object which I intend to accomplish is legal or not.

Now, Gentlemen, I will call your particular attention to the nature of the charges in the indictment, which I am not sure you yet fully understand. The first allegation is, that these traversers, with others, entertained the common and unlawful design of exciting disaffection in the minds of Her Majesty's subjects, and to excite them to seditious opposition to the Government and Constitution. We next charge them with having combined and confederated for the purpose of creating animosity, jealousy, and ill-will between different classes of Her Majesty's subjects, and more particularly with exciting that feeling in the minds of the people of Ireland towards their fellow-subjects in England. The next was for combining to excite in the army a spirit of discontent and disaffection. All these attempts, I admit, are so many means to bring about their ultimate object, the Repeal of the Union. I concede that to have been their ultimate object. That is not the question we are trying. We say that they have resorted to illegal means to obtain that object,

and this is the only question you have to determine. We next say that the traversers have combined to cause large multitudes to assemble together in different parts of the country, for the purpose of exciting alarm and intimidation, and procuring thereby, and by the demonstration and exhibition, not the use, of physical force, the Repeal of the Union, which only can be legitimately repealed by an uncontrolled Act of the Legislature. I say by the exhibition, not the use of physical force, because you will find that all the evidence shows the peaceable nature of these meetings, and so far from that being evidence in their favour, it shows that these were the only means by which a plan of this sort could be accomplished. Tranquillity and peace at each particular meeting were indispensable to the success of their scheme, and it is ridiculous for them to say, that the Attorney-General said that the more peaceable the meetings the greater the crime; he did not say any such thing; what he did say was that a single meeting cannot be said to be illegal because it is peaceable, but where there is a succession of meetings, and there is no breach of the peace, we say it was so because the conspiracy was that there should be no breach of the peace. It is said we are prosecuting the people of Ireland because they exercised a legal right. We are not prosecuting the 250,000 persons who assembled at Tara, but we are prosecuting those persons who assembled and got up those meetings in order to make these multitudes the instruments, by this exhibition of physical force, of intimidating the Legislature. Lastly, the traversers are charged for having combined to bring into discredit the Courts for the administration of justice; to bring into disrepute the legal tribunals, and to establish in their room Arbitrators, not to decide, on one particular occasion, a dispute between two parties, but to usurp the prerogative of the Crown, by putting men in authority as Judges, with a diploma from the Loyal National Repeal Association of Ireland. Now, from this you will at once see what these charges comprise.

We charge the traversers with a conspiracy to do an illegal thing, and also to bring about that which is legal 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. It is immaterial, therefore, to see whether the division which I have referred to is well founded or not, or whether these two branches of the conspiracy are only one. We have brought forward charges applicable to each; and before I have done, I have no doubt that each branch of the conspiracy will be as clearly proved, and as manifest to every person, as ever a charge was in a Court of Justice.

There is another point upon which I think it right you should be informed, as respects the law of conspiracy. As I have collected from the observations of some of my learned friends who addressed you, it was argued, that unless you are satisfied that the traversers entertained all the designs which the Crown impute to them, you cannot convict them on this indictment. Gentlemen, the Court will inform you, that that is not so. If you are satisfied with regard to any part of it, if you conceive that any one part has been proved,



you must find a verdict on that part, although you may not think the whole has been proved, because there are 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 is separate and distinct. The indictment says, that they were banded together for a certain purpose; and if you should doubt that one of them went the whole length with the rest, if you think that any one was fully innocent of the object of the rest, if you conscientiously believe that one of them was innocently involved, without a guilty intention, I am far from saying he should not have the benefit of that doubt. Therefore, if you come to the conclusion that the traversers, or any two or more of them, combined with the design, and for the purposes alleged in the indictment, or any one or more of them, you must find them guilty; but if you are not satisfied that the traversers, or any two or more of them, combined for all these purposes, or for any one or more of them, you must acquit them.

I shall now, Gentlemen, for a few moments, address myself to their Lordships, on the law of conspiracy; and I beg you to attend to these observations, although I address them more particularly to the Court, because it is from the Court you will receive those directions, which will enable you rightly to guide yourselves upon the law of the case. There has been a sort of doubt thrown, by the counsel for some of the traversers, upon the definition of conspiracy, as laid down in some recent authorities. That definition is this,—a conspiracy is an agreement or combination, either to effect a purpose illegal in itself, or to bring about a legal purpose by unlawful means; that is the definition laid down by Lord Denman, in *Rex v. Jones*, 4 B. & Ad. 349. I beg your attention to his observations, because I think Lord Denman never did contradict that definition: “The indictment ought to charge a conspiracy, either to do an unlawful act, or a lawful act by unlawful means.” Mr. Fitzgibbon has taken upon himself to say that this was a mere *dictum* in this part of his judgment. My Lords, it is no *obiter dictum*, it is part of the judgment of the Court, the law is there distinctly laid down, because if the indictment contained either charge, it would have been good, but it did not contain either, and it was therefore held bad. Mr. Justice Parke, who was a very distinguished Judge, and particularly conversant with criminal law, uses the same language, he says: “I am of the same opinion. This indictment ought to have shown a conspiracy, to do an unlawful act, or to do a lawful act by unlawful means.” It therefore was not a *dictum*, but an elaborate decision of the Judges who presided. In the case of *Rex v. Seward*, 1 Ad. & Ellis, 713, Lord Denman repeats the same language, and in the same case, Justice Littledale says: “The mere procuring this marriage was a legal act in itself, and the indictment does not state that such procuring was effected by any unlawful means or devices, or false pretences. If it had been alleged to have been done with a sinister purpose, and by unlawful means, the statement would have been sufficient.” And Justice Taunton says: “Merely

“persuading an unmarried man and woman in poor circumstances, to contract matrimony, is not an offence. If, indeed, it were done by unfair and undue means, it might be unlawful.” Then comes the case of *Regina v. Peak*, 9 Ad. & El. 690, in which Mr. Fitzgibbon said Lord Denman retracted his definition of conspiracy. I must confess, when I first read it, I did not understand, as I think I do now, his observations. The counsel who argued the case cited Lord Denman’s definition in these words: “An indictment for a conspiracy ought to show, either that it was for an unlawful purpose, or to effect a lawful purpose by unlawful means.” And Lord Denman said, “I do not think the antithesis very correct.” Now I take his meaning to be this. It was incorrect to use the word “purpose,” because it cannot be the procuring of an unlawful purpose. It is the purpose which makes the crime. You will find the word used in another report is “act.” The purpose is what is in the mind of the party who does the act, whether a man combine to effect an illegal act, or a legal act by unlawful means, the purpose in both cases is illegal, because the purpose is the object, or perhaps the conspiracy, and therefore it was not correct to say, that in case of conspiracy, there was a lawful purpose, and consequently Lord Denman’s criticising that the antithesis was not correct, implied that there could be no legal purpose in a conspiracy. In the report of the same case in 1 Per. & Dav. 510, these words are omitted. The same definition is also laid down by the late Lord Chief Justice of this Court in *Rex v. Forbes*, 1 East, 462; and *Regina v. Vincent*, 9 Carr. & P. 109; and in *Watson’s Case*, 32 St. Tr. 7; and yet Mr. Fitzgibbon has taken upon him to question the soundness of that definition; but he has not cited or referred to any authority to the contrary. You will find the case of *Rex v. Seward*, which is reported in 9 Ad. & El. 690; also reported 3 Nev. & Man. 561, in which the reporter gives the words of Lord Denman more correctly. Lord Denman there says: “No indictment for a conspiracy can be maintained unless it charge that the defendants conspired to do an unlawful act, or to do a lawful act by unlawful means;” there the reporter correctly gives the words; he does not use the word “purposes.”

Gentlemen, I shall now proceed to explain to you the cause, the necessary cause, why this prosecution was delayed until the period at which it was commenced. I have already observed upon the singular nature of a defence of that sort. Do you remember how often, over and over again, Mr. O’Connell told the persons assembled at these meetings that he was violating no law whatever, that he would carry them safely through the Convention Act; that he would have his council of 300 sitting in the presence of the Attorney-General, and that he hurled his high and haughty defiance at the law officers of the Crown. Is such language as that consistent with the defence which he has adopted? “You suffered us [he says] to hold those meetings without prosecuting us; you suffered us to go on.” When Mr. O’Connell challenged us to come forward, was it not his duty to have shown you that he did not violate the law? Does he

not owe it to those unfortunate persons he has deluded—does he not owe it to the Public—does he not owe it to his co-traversers to show in point of fact that there was no violation of the law in his proceedings? Gentlemen, you have already heard we did not impute to any one of those meetings the character of illegality, on the ground that they had a tendency to disturb the public peace, and if this fact had been kept in view, they might have saved themselves a vast deal of unnecessary trouble in quoting long extracts from Mr. O'Connell's speeches, and calling the attention of the jury again and again to the circumstances of his having repeatedly admonished his hearers to conduct themselves in a peaceable manner, and not to outrage the public tranquillity. They might have spared themselves those observations, because none of these meetings was open to prosecution so far as they were concerned. Apply that observation to the argument that we commenced no prosecution during the whole of last year. Suppose we had selected a meeting in the month of March last, and prosecuted those who had attended it for being present at an unlawful assembly; what would have been the defence, and the triumphant defence in that case? Why that the meeting terminated peaceably; that, though numerously attended, it did not cause any alarm to the public; that the parties met for the ostensible purpose of exercising the legal right of petitioning the Legislature for the repeal of an Act of Parliament. That defence it would be impossible for us to meet. If we had prosecuted them we should have been deservedly defeated. But, Gentlemen, you have yet to learn, and the Court will, I think, tell you, that I am right when I say, that with respect to that, it is not merely the conduct or demeanor of the persons who attended a meeting which will render that meeting criminal or illegal: violence, breach of the peace, intimidation, or injury to life or property, are not the only circumstances that may make a meeting illegal. No doubt, if a number of persons tumultuously assemble together to commit an injury to property, that is illegal; but, Gentlemen, a meeting may also be unlawful, because it had an unlawful object, because it is the means resorted to to bring about an unlawful end; and until you know what the end is, until the object of the conspiracy to which that meeting was ancillary be fully developed and disclosed, until it is capable of legal proof, 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; when the conspiracy has proceeded to its consummation, then the original meeting, which, standing by itself is lawful by reference to the whole conspiracy, becomes at once criminal, unlawful, and open to prosecution. Therefore, I say that every one of those meetings was unlawful, not because the persons assembled had offered injury to life or property, but because, as it now appears, they were for the unlawful purpose of exhibiting to the Legislature a phy-

sical force, whereby it was expected they would frighten the Legislature into a concession of a Repeal of the Union.

Gentlemen, I do not know where my learned friend, Mr. Fitzgibbon, found the fact which authorized him in charging the Government, or the Attorney-General, in conniving at what now appears to be an infraction of the law. Is it in the speech of Sir Robert Peel? Is it in the speech from the throne? Is it by the dismissal of the Magistrates for attending Repeal meetings? Are these marks of sanction of the prosecution of this insane and mischievous agitation? Are those facts upon which they can say that we have encouraged and seduced the traversers to the commission of a crime; No, there never were offenders who had less reason to complain of being seduced into crime than Mr. O'Connell and his associates. Gentlemen, I stated to you, in order to enable the Government effectually to vindicate the law, as I trust they now will; it was necessary, not only that we should understand what their object was, and that we should be prepared with evidence for a jury, of the existence of that object and the nature of it, and to make such case in the eye of the world as would not only justify the prosecution, but coerce the jury to find a verdict against the offenders, because it would be most improper in a Government to institute a prosecution until they have procured these means. Do you suppose that this required no time and trouble to collect this evidence? Do you suppose the facts which have been proved, could have been proved without great care and trouble. But when we find by certain proceedings which have been studiously kept out of your view for the last fortnight of the trial; when we found what the parties had in view, then it became the duty of those entrusted with the administration of the law, to use every exertion to vindicate the law, and to avert the progress of this frightful evil. Gentlemen, I was surprised to hear it contended by the advocates for the rights and constitutional privileges of the subject, that there should have been a Coercion Act. Why, if a Coercion Act had been resorted to, would it not have been said that it was an attempt by the Legislature to crush public discussion. They would say: "Why not assert the common law? You should have resorted to a jury?" We have done so, and we have prosecuted this case in a regular, legal, and constitutional way; with a degree of temperance, not in any manner showing a vindictive feeling. I think we cannot be charged with not giving the traversers the fullest latitude to defend themselves. There were many irrelevant topics introduced, to which we made no objection. We raised no technical objections; we permitted them to read speeches, and make their comments on them. Therefore, I say, it was most unfair to impute to the Government a criminal apathy, with regard to the progress of this evil; or when they had taken up the case, to impute to them any thing like an attempt to overbear public discussion, or to crush constitutional rights in not resorting to an Act of Parliament until the common law had been found ineffectual.

I have said that a meeting might be unlawful, not merely from the



circumstances which accompanied it at the time it took place, but from its tendency and object. In the case of *Redford v. Birley*, 3 Stark. 102, the Court distinguish between a riot and an unlawful assembly; they say: "A riot is where three or more are unlawfully collected together, to do an unlawful act, as, if they are removing 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 and terrify other persons, that of itself may, perhaps, under such circumstances, be an unlawful assembly. A riot or riotous assembly is, where they come for some unlawful purpose, intending to do something in violence, but do not go to the full extent, or take any actual step for accomplishing their purpose. But 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, it is impossible that we could satisfy you what the purpose of those meetings were, until that purpose had been avowed, and I shall show you by-and-by, that it has been avowed. But it is right to disabuse the public mind with respect to another objection urged against those proceedings. It is said, if these meetings were unlawful, why not prosecute them as such? and if we could now show that such a meeting was unlawful, even with reference to its purpose, why did we not indict the parties present then for attending an unlawful assembly? Now, first being persuaded that this combination did exist, and feeling it to be our duty not to prosecute the inferior and subordinate instruments, by whom, and through whose intervention, the purpose of that combination was sought to be effected, but that we ought to bring forward the heads of it to trial, feeling that to be the bold, straightforward, manly course, we saw that that could not be done except through the medium of an indictment for a conspiracy. If we had included in the indictment for a conspiracy, counts for attending unlawful assemblies, we should have been exposed to the risk of a defeat upon technical and legal grounds; because it has been decided that if you include several defendants in one indictment on a charge of conspiracy, and also put in a charge for attending an unlawful meeting, and if you fail to prove that all the defendants attended at that meeting, you must elect between the two charges, and cannot proceed on both; that has been so decided in the *Queen v. Murphy*, 8 C. & P. But there is another and still more serious and insuperable difficulty which would have attended this course, which they say we ought to have pursued, that is, including counts for attending unlawful assemblies with counts for a conspiracy. Your Lordships will recollect that the gist of the charge, is a conspiracy evidenced by the number of meetings which took place, by the continuity, and unity of purpose evinced at each of these successive meetings, every one of them was a link in

the combination, every one of them was a step in the prosecution of it; it was, therefore, indispensable that all the meetings should be brought before the Court and the jury. Now, Gentlemen, these meetings took place in many parts of Ireland, in Galway, Waterford, Meath, &c. and their Lordships will tell you that not one of those meetings could have been tried in this indictment, because it is a principle in the criminal law that the trial must take place in the county where the offence has been committed. Now there were twenty meetings, and there must have been twenty indictments before twenty different juries, if we adopted the course of prosecuting them for attending unlawful assemblies; you could not try any one of those meetings save and except as we charged it to be, as an ingredient in the conspiracy of which those meetings were so many links; it is therefore idle and preposterous to say, that we could have adopted any other course to bring to justice, through the intervention of the law and of a jury, the real delinquents in this case.

Gentlemen I will not take up more of your time by observations on that part of this case as to the conduct of the Government in adopting this mode of prosecution, and not bringing it forward at an earlier stage. But Mr. Sheil having dwelt at considerable length upon this, has thought it his duty to address himself to another topic, which, if he recollected what took place before this trial, he might have spared. He paid the Court the compliment of saying, that he did not believe the Judges were corrupt. He said he would not throw out such an insinuation, and he ultimately went the length of saying, that he believed they were not. Gentlemen, I will not take upon me to vindicate that high tribunal before which I now stand. It would be presumptuous in me to attempt it; but that was followed up by another, to which I think it right to refer, I mean his observations as to the constitution of the jury who are trying this case. You will recollect his quotation from the speech of Mr. Burrowes. Mr. Burrowes, at the trial of Sheridan and Kirwan, animadverted upon the array of the jury upon that occasion. He impugned the conduct of the officer who arrayed that jury, for not having put upon it some Roman Catholics. It is not for me to say whether he acted correctly or not, but it is a most monstrous perversion of justice to apply an observation of that sort to a jury like the present—to a jury not returned by the Sheriff, but selected by ballot, out of seven hundred and seventeen names. Do they mean to say there was any impropriety in the ballot before the officer? How could we influence the result of the ballot? But, says Mr. Sheil, when forty-eight names were drawn out, ten or eleven Roman Catholics were struck off by the Crown Solicitor, and, consequently, the jury was packed for the purpose of trying this case. Now, I must say I was astonished at the temerity of my Right Hon. friend, in again calling public attention to this subject. Upon a motion which took place in this case prior to the trial, the foul insinuation was made; foul I call it, because I think the Crown Solicitor was never actuated by the feeling which was imputed to him; that those gentlemen were struck off merely because they were Roman Catholics. The Crown Solicitor was bound to

strike off twelve; he struck off twelve accordingly, and in these were included the names of ten gentlemen professing the Roman Catholic faith. Upon that occasion Mr. Kemmis, the Crown Solicitor made an affidavit, in which he stated that he had received information which he then believed, and still believed to be true, that these ten gentlemen were members of the Repeal Association. The answer to that fact was that it was not so, and it was distinctly stated that that statement would be verified by affidavit. Who made that statement? Why Mr. Sheil himself—he distinctly said he was authorized to contradict that statement, and that it would be shown, that it was not so, by affidavit. From that hour to this moment, no such affidavit has ever been made. Whether it can be made, I have my own opinion. The making of such an affidavit is a serious thing, but suffice it to say, that the affidavit has not been made. I should not have adverted to this most irrelevant and most improper topic, but that it made a prominent point in Mr. Sheil's statement, and I think it would have been the greatest dereliction of my public duty not to give a full, explicit, and satisfactory answer to this assertion; and I think I may fearlessly appeal, on the sufficiency of that answer, to every individual present at this trial; it was therefore wrong in my learned friend to insinuate, if not directly charge that the jury was, in any degree, selected by the Crown, or that the exclusion of any person was the result of his religious opinions. I ask you, Gentlemen, would it be right for the law officers of the Crown to have allowed the members of the Association—the legality of whose acts it will be your duty to determine—to sit in judgment upon the acts of the body to which they belong. Is that the fair, impartial mode on which they say the jury should be constructed? If that be their opinion, it is not what I would call a fair and impartial jury. I call that a fair and impartial jury, one which is not prejudiced, and which are not, from their acts or from their declarations, in such a situation as to preclude them from doing that duty and finding that verdict which the law and justice require from them. Mr. Sheil made another use of this alleged partiality or alleged prejudice which might exist in your minds with respect to his clients, which I find difficult to reconcile with the law or the Constitution—it is this; he said: "You are a jury of Protestants, sworn to decide a case in which some of the traversers at the bar are Roman Catholics, that your verdict ought to be satisfactory to the public; I therefore call upon you to make compensation to the traversers at the bar, for the disadvantages under which they labour, in having the merits of their case decided by those who differ from them in religious opinions."

Mr. *Sheil*.—My learned friend is not quite accurate. What I said was, that I thought the jury would be more solicitous in taking into consideration the nature of the case as it affected the traversers, in consequence of the names of sixty-five Roman Catholics having been struck out of the panel.

The *Solicitor-General*.—However, I will not dwell upon the subject, further than to make this observation, that you will not suffer these observations to have the effect of inducing you to swerve

in the slightest degree from the duty you have to perform. You have a solemn and sacred duty to discharge, and I should not call upon you to find a verdict, because you entertain religious opinions different from some of the traversers. I deprecate using an argument of that sort for the purpose of inducing you not to do that duty which you are imperatively called on by your oaths and the evidence to do. As I understand Mr. Sheil's observation now, I agree with him, it is your duty, for the reasons which he has stated, anxiously to weigh this case, anxiously to examine whether it has been proved, and if you are satisfied on the evidence that it is proved, not to suffer the imputation that you are of a different religious opinion with the traversers, to interfere with the firm and proper discharge of your duty.

Mr. Sheil then adverted to the nature of the charge itself, from which, he said, he would rescue his client, and he did attempt to do so, not by addressing observations to the evidence, but by asserting their right to meet together in a constitutional manner, to state their grievances, and to petition for their redress. With respect to that, I must say, that I do not attempt to dispute the existence of that right. I, for the present, only make these observations, but when I come to advert to the evidence, I think I shall satisfy you, Gentlemen of the Jury, that this right was, in the course of these proceedings, a mere pretext; I say, in the course of these proceedings, for I do not at present mean to say, that any thing that occurred in the Repeal Association in 1841 or 1842, so far as I know of, ought to be made the subject of a prosecution, or could be successfully prosecuted; but I will make this observation, and I beg to call your attention to it, that it is for their conduct in 1843 they are now brought before you, and I think you will see by-and-by, that whatever may have been the original Constitution—whatever may have been the original object—whatever the original conduct of the Society, which was formed in 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. I therefore make them a present of all the speeches that were made during the years 1840, 1841, and 1842. I am not impeaching their conduct at that period. I am willing to concede for the purposes of this trial, that nothing exceptionable appeared during that period. With regard to the meeting in 1810, at which Mr. O'Connell delivered a speech, which was read to you, the High Sheriff presided, and many respectable citizens attended. I also fully and freely admit that there was nothing at that meeting, or the proceedings of it, at all at variance with the law. I admit further, that the sentiments of Mr. O'Connell on 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 for inconsistency in any political opinion. We are not saying that the traversers have, for the first time, proclaimed themselves friends to the severance of the Legislative connexion. I am willing to concede that they always entertained them; but we are prosecuting them for endeavouring to carry out those principles in 1843, by unlawful means. If in 1800, or 1810, or in any



period antecedent to 1843, the same course had been adopted as has been pursued in 1843, I should unhesitatingly say they would have been at that time liable to a prosecution. The meeting in 1810 was perfectly constitutional and legal; a requisition of the most respectable merchants was presented to the sheriff, and he convened that meeting; but why bring forward these proceedings to bear upon the case? They have no reference to this case, because on that occasion there was but one meeting, not a succession of multitudinous meetings, assembled for the purpose of intimidating the Legislature. A reference was made by Mr. Sheil to meetings held by other parties; he spoke of the Hillsborough meeting. I will not take upon me to say whether that meeting was legal or not, but I do not see that there was anything occurred at that which would subject the parties to a prosecution. Their former conduct is then pressed into the service for the purpose of offering it as a justification of what they have done in 1843. Mr. Sheil said that Catholic Emancipation was carried in the same way, namely, by the peaceable demonstration of what he calls moral force. Now, Gentlemen of the Jury, as an abstract proposition, I do not dispute the right to meet in order to demonstrate to the Legislature what are the wishes of a great majority of the people of the country, but let this be done by petition, by peaceable meeting, or in any constitutional way the parties think fit to adopt. Had the traversers acted in this manner, no prosecution would have been instituted against them, but what I charge them with, is the demonstration, not of moral, but of physical force. Whether I am right or they are right, is a matter for you to decide; I am merely answering a topic introduced by counsel which did not apply to the evidence; but I say our case is not that there was an exhibition of merely moral force, or a union of the will of a great number of persons, but that it was an exhibition of physical force not intended to satisfy the Parliament of the unanimity of opinion of a respectable, peaceable, and loyal part of the community, but for the purpose of showing that if the Union was not repealed, the effect would probably be a convulsion. But, Gentlemen, with regard to professions of peace, and reluctance to resort to violence, where credit is taken by Mr. O'Connell for having interfered to prevent these consequences, I will only ask you to give it that degree of credit to which you will think it entitled, when you contrast it with his acts. There was another topic alluded to by Mr. Sheil, with respect to the manner in which Mr. O'Connell acted in the case of Sir Abraham Bradley King. No doubt that was very liberal, and Sir Abraham Bradley King testified his gratitude for it, and Mr. O'Connell has not lost the benefit of it, for it has been frequently adverted to by himself and by his counsel on this occasion; but, that that, however meritorious it may be, should be offered as a defence, or an explanation of the conduct charged in the indictment, is really quite preposterous.

I shall now pass on to the observations of Mr. Moore, who appeared on behalf of Mr. Tierney. He arraigned the policy of the

Government in instituting this prosecution, and asked did the Government think that the result of it, one way or the other, would tend to allay this agitation? Whether it will or not, is not for me to say, nor for you. Gentlemen of the Jury, I have my own opinion on that subject; so may others, so may you; but I call upon you not to act on any opinion of the kind. If you are persuaded that the result of a verdict of guilty, against the traversers, would tend to allay this pernicious agitation, yet, if you are not satisfied, upon the evidence, that you ought to find that verdict, I call upon you not to find it; if, on the other hand, you are of opinion, that a contrary verdict would have an opposite effect, yet, if you are satisfied of the innocence of the traversers, I call upon you to find that verdict. I call upon you to discard such opinions from your minds, and to find a verdict which the evidence will warrant, regardless of what the consequences of that verdict may be. Mr. Moore has said that if Repeal be unattainable, it will drop of itself. Does that follow? Because I find the respectable portion of the community of opinion that it is unattainable—does it follow from that, that the mischievous consequences attending the exhibition of these multitudes of persons, should be allowed to continue? Is this a state of things that should not be averted?

If I find that such consequences will result from those proceedings, it is the bounden duty of the Crown to use their utmost endeavours to use all lawful means in their power to put it down. Mr. Moore then said, that our proceedings have not been very consistent. He says that we ought to have proceeded against the publishers of those seditious speeches and papers, and prosecuted those persons; but that would not have put an end to the evil complained of; where would be the use of prosecuting Mr. Duffy or Mr. Gray? But, said Mr. Moore: "Here is an unfair, oppressive, and unjust proceeding, "grouping all the traversers in one indictment; and throwing down "what he calls a monster indictment, and calling on the jury "to select from this mass, and spell out a conspiracy." No doubt this indictment is a long one. Why was it so? Because the overt acts necessary to sustain the charge were numerous, but the charge itself is perfectly distinct and plain. You have heard that charge read to you, and you cannot have the slightest difficulty in comprehending it. But because the facts necessary to enable you to judge of the guilt or innocence of the traversers were numerous and complicated, and the evidence is various, are we to be taunted and told that this is an unfair and unjust mode of proceeding? Why those matters which we have put forward might have been altogether omitted; they are only evidence, and nothing but evidence. Mr. Moore then says that the Attorney-General has lain by; he does not say, what was insinuated by Mr. Sheil, that he had done so for the purpose of seducing those persons into crime, but that it was the duty of the law officer of the Crown not to suffer those persons to do those acts, as they were acts in violation of the law. I have already answered that. But, besides this, Mr.

Moore has insisted in strong language—I will not use personalities—but before he used such language, he should have considered what the real nature of the case was. He must have known perfectly well the nature of the charge was not for attending illegal meetings; that it was not for the publication of a libel; that it was not for a breach of the public peace; but that it was for the formation of a settled design, testified by the acts of the parties, to procure a Repeal of the Union by intimidation; first, by raising discontent and disaffection among the subjects of the Queen, and to excite them to hatred and contempt of the Government; secondly, to excite jealousies and ill-will among different classes of said subjects; thirdly, to create discontent and disaffection amongst Her Majesty's subjects serving in the army; fourthly, intending to bring into disrepute the established tribunals of the country; and fifthly, by means of intimidation and the demonstration of great physical force, to procure changes to be made in the Government and Constitution of the realm. Mr. Moore should have known, and did know, that these were the charges, and he was certainly not warranted in ascribing to us the motives which he has done. He then said, that the Government had no right to interfere in dispersing the Clontarf meeting. It will be more convenient that I should pass that by for the present. He then adverted to another topic; he said that the Grand Jury had taken a long time to deliberate before they found this bill. That was not a legitimate topic to advert to. How could it have been disposed of without taking time to consider it? He then alluded to a most extraordinary circumstance—that one of the Grand Jury had stated that he did not concur in that finding. I must say that was a most improper observation as could have been made. You are all well aware, that the Grand Jury are sworn not to disclose what takes place in their jury-room. When Mr. Moore stated that, notwithstanding that oath, one gentleman did state in Court that he dissented from the finding of the bill, it is improper to allude to that circumstance; first, because it is irregular; secondly, because evidence is often brought before a petty jury that was not before a Grand Jury. He then says, that this is a charge of conspiracy, and that we should have given the date and time when it was concocted. I never heard of such an assertion upon a charge of this sort. Mr. Moore, when he addressed you, admitted that we were not bound to prove that Mr. O'Connell and the other traversers went into a room together, and signed an agreement for this purpose. We were not bound to prove the original concoction of this conspiracy; all that we could prove were the acts of the parties; and to say that the charge is not proved, because we have not shown the day or the time it was concocted is a fallacy. We say that it took place in 1843; and if we satisfy you of that fact, you must convict the traversers, although we have not produced any documents to show the day it was entered into. All we are called upon to prove, or that we professed to prove, was, that there was a community of purpose between several persons, amongst whom were the traversers

at the bar, and that each of those persons acted for the prosecution of a common object. The *Queen v. Murphy*, 8 Carr. & Payne, and the *Queen v. Frost*, 9 Carr. & Payne, which have been already cited, sufficiently prove that evidence of the acts of the party was sufficient to sustain a charge of conspiracy. Mr. Moore said that the Attorney-General impeached the loyalty of the traversers. I do not impeach their loyalty; I only say that they have embarked in an enterprise which is illegal; and, although any person violating the law might be said to be disloyal, yet I do not feel it necessary to impeach the general loyalty of the traversers.

Gentlemen, Mr. Hatchell, who was the next counsel, appeared on behalf of Mr. Ray. He insisted that his case was different from the other traversers, inasmuch as Mr. Ray was the paid officer of the Repeal Association—that he was paid a salary for the functions he had to perform, and that he was, therefore, merely discharging his duty. Now, if the acts of the Association were unlawful, Mr. Ray had unquestionably made himself as responsible as any body else connected with it by concurring in them. He then said that Mr. Ray should have been omitted from the indictment, and that we should have examined him as a witness. If we had done so, the first thing that would be said would be, that Mr. Ray had become a hired spy, the paid informer and servant of the Government. Would it not be said that his evidence should be received with caution and jealousy, for he had got the pay of the Government to betray his associates. In the whole course of the case we have not produced any person who could be called a spy or informer. No such evidence was resorted to. The witnesses we produced had no connexion with that body. Further, suppose Mr. Ray had been produced as a witness, why, in answer to the first question put to him, he would have appealed to the Court whether he was bound to answer questions which might criminate himself. Are we then to be told that we are keeping back evidence, when, in fact, the proceedings of this Association are all recorded; books are kept, and why are not they produced? If we prevented them from having Mr. Ray as a witness, by putting him in the indictment, we have not prevented them from showing, by the books of the Association, what had been done at it. Did you ever hear of a case where such evidence was brought forward in answer to a charge of this description as you heard yesterday? Not a person brought forward; no document; no officer connected with the Association, nothing to throw a ray of light upon the subject, which I will more clearly show when I advert to the evidence in detail; so that instead of detracting from the case made by the Crown, the traversers' case would be found strongly to support it. It was then said that trials of this kind took place in England, and that there was no conviction, and Hunt's case was referred to. In that case Hunt was prosecuted for a conspiracy, and also for attending an unlawful assembly. The answer to that case is, he only attended one meeting, and that was not supposed sufficient evidence of a conspiracy, and the jury acquitted him of that charge, but convicted him



on the count for attending an unlawful assembly; I therefore must protest against such cases being brought forward. In the *Queen v. Vincent* the traversers were found guilty of a conspiracy.

Gentlemen of the Jury, Mr. Fitzgibbon next came forward as counsel for Dr. Gray. He stigmatized this prosecution as illegal and unfair, he termed it a ministerial scourge to lash the people with. Now I must protest against an imputation of such a kind, which is not justified by the mode in which this trial has been conducted; on the contrary, have we not shown abundance of grounds why it should be tried, for the purpose of trying what Mr. O'Connell challenged us to try—the legality of those proceedings? But I must say he has shown every disposition to evade that when he was prosecuted; but, said Mr. Fitzgibbon, it was unfairly conducted, or, to use his own words, “a blow had been given below the belt.” If he means by that that we struck an unfair blow, I deny it; it was as fair and straightforward a blow as ever was struck; no man can say but that they have had every topic, every benefit allowed them, that the wildest imagination could suggest. Mr. Fitzgibbon differs from Mr. Moore with regard to the law of conspiracy. He contended that every act of the conspirators should be connected, and that when one does one part connected with it, and another another part, that will not involve both; but I consider the law to be this.—All that it is necessary to show is, not that those persons concurred in a particular act, or that each of them took part in that act, but that each were labouring in their way to effect the common object they had in view, and therefore those became evidence against all. I think that the act of one becomes the act of all, and that if Mr. O'Connell by his speeches, and Mr. Duffy and Mr. Barrett by publishing them, and if another of the traversers by some other act, were labouring in one common cause; though one might not know what the other was doing at a particular time, nevertheless the act of one, in furtherance of that common design, will become the act of all. We are not seeking to visit upon one man the guilt of another, but we are seeking to charge him, not with doing a particular act, but that he was implicated in an unlawful design with others, to further their common object; he therefore is guilty and answerable, not for the guilt of another but for his own. Mr. Fitzgibbon says, it is not unlawful to combine to obtain a Repeal of the Union; certainly not, but it is illegal to combine to obtain it by intimidation, and the various other means charged by this indictment; but then he says, you seek to convict my client for the public good. If you believe that Dr. Gray is not guilty, say so; but do not be turned from your duty by such assertions as these. Mr. Fitzgibbon stated, he would explain every part of his client's conduct, and attempted to do so; but it is a very remarkable circumstance, that he never adverted to any single meeting, from the beginning to the end of 1843, except the meeting at Mullaghmast. He certainly approached that subject, but having taken it up, he in a very great hurry dropped it again, totally forgetting to advert to one single circumstance connected with it. But, says Mr. Fitzgibbon: “all great

"improvements have been effected by a demonstration of physical force; that Governments would not make a change, unless they saw that the people wished it to be made. Therefore it is, that you put a stop to large masses meeting to express their opinion; if so, you put an end to all improvement." Does Mr. Fitzgibbon mean to justify those proceedings on that ground? if so, I will leave that to you to determine. Mr. Fitzgibbon says, that the Attorney-General had no right to refer to transactions which took place in 1797, or to former prosecutions and proclamations; why they were referred to as matters of history, and the traversers themselves referred to similar transactions, as such. Mr. Fitzgibbon then says, that his client merely interfered with those proceedings as the editor of a newspaper, and that he has not lent himself to this conspiracy; that you might as well prosecute the editor of any other newspaper. I mean to call your attention not only to those publications of Dr. Gray, but to his acts done in furtherance of this common design, and it will be impossible to attribute the conduct adopted by him to anything but a participation in this design. He then said, true it is, they have used violent language; but can you expect that men in the heat of a debate will conduct themselves with that decorum which is to be expected in a Court of justice? my answer to that is, that from the length of time this agitation continued, I have a right to say these speeches were deliberately made, and these documents deliberately drawn up; and I think you will say that these effusions were not the language of men using words which they might afterwards regret, but that it was their deliberate sentiment, calculated for the purpose of carrying out the objects which they had in view. Next, Mr. Fitzgibbon contended, that the offence had merged in the crime of high treason. I do not say, whether if those proceedings had been allowed to go on, they might not have come to that which would have warranted an indictment for the greater offence; but it was strange to expect that we should prosecute for high treason, when we deemed that their conduct amounted to a misdemeanor. He then says, in excuse for some observations made by Mr. O'Connell, in reference to the army, that his object was to make the people fond of the army. When I come to examine the language of Mr. O'Connell, you will see whether his object was to make them fond of the army, when, in consequence of these meetings, it was deemed necessary to have a large number of the army in this country to prevent an outbreak, which was perfectly feasible and practicable at a moment's warning. He then adverted to the use of the word "Saxon," and asked why should its application offend? Was it not true that they had sprung from a Saxon origin? That entirely is true; but I think you will have no doubt that the reason why this was resorted to was, to excite a feeling of hostility against the English people as strangers, invaders, and conquerors. Mr. Fitzgibbon then read the speeches of Mr. O'Connell denouncing physical force. Why, if he repeated that one thousand times it would not affect this case. What he meant by re-

sorting to this species of topic I know not ; I shall not detain you by commenting on them. He then said that Mr. O'Connell had shown an aversion to Chartism and Ribbonism. I admit it, and for the best reason—because the existence of Chartism or Ribbonism, or any other kind of machinery, would be fatal to his scheme. His object was this—present tranquillity, present obedience to the law, perfect organization, and constant agitation, the spirit of hostility to be preserved and kept up, but no present violation of the law, so as to place them within the fangs of the law, and thereby deprive them of the machinery necessary for success. He then says, that the language used in reference to the army is not addressed to the soldiers. That would be all very well, if the language was not to be circulated through the country ; but you will not fail to remember, that one of the modes by which the object of the traversers was to be effected was the circulation of that very language through the country ; they, therefore, must have been read by, and communicated to, the soldiers. One of the traversers said, in an article in his paper, that it was a cruel thing that the soldiers should not be allowed to read the newspapers. It was clear then that he meant that they should have this language conveyed to them. This suggests to me another ground why they thought it necessary to enforce a present obedience to the law. You will find that their great object was to collect as many persons as possible together, and to enrol them in this Association ; that could only be done by personal contact, through agents and emissaries from the Association. It would never do to have them committing riot and disturbance. It was necessary that this scheme should have time to work, that the Repeal Wardens should have an opportunity of enrolling the people, to have them ready, to have instructions circulated ; so that when the time should arrive, there should be no difficulty in convening them for any purpose, legal or otherwise, which might be in contemplation. Mr. Fitzgibbon then said, that Mr. O'Connell advised the people not to enter into correspondence with the army. He did so, because, if he had not done so, they would have fallen into the error, which it was his object to avoid. That would have been a breach of the law, for by the 37 Geo. III. c. 40, made perpetual by the 57 Geo. III. c. 7, it is made a transportable offence to tamper with the army ; and, therefore, to enter into a correspondence with the soldiers would have been a dangerous proceeding.

Gentlemen of the Jury, Mr. Whiteside next addressed you, and I certainly never heard a more splendid exhibition of eloquence than my learned friend displayed. It did honour to him and the Profession to which he belongs, and, indeed, I may say to this country. I certainly listened to him with pleasure, for his speech was characterized by a tone of perfect good feeling. He attempted to do, what was the only thing that could be attempted with any hope of success. He endeavoured to divert your attention from the merits of the case, and to raise a laugh. He did profess to argue some points applicable to the merits, and left you to imagine the rest. He stated that Mr. Duffy was no more than the editor of a newspaper, and that

what he did, he did in the legitimate exercise of his profession. All this is very well as matter of argument, but I must beg leave to differ from him when he says that Mr. Duffy appears on his trial in no other character than the editor of a newspaper. The *Nation* appears to have been established in November, 1842. You will bear in mind that the strength of the case for the Crown depends upon the acts of the parties done subsequent to that period. Gentlemen, I do not know whether you have read many numbers of that paper, but there appears, from the portions of it that have been read, enough to warrant me in saying, that it was set up for the purpose of advocating and disseminating the sentiments and opinions of the Association. Mr. Whiteside says, "you might as well have indicted any other editors of newspapers, as his client, because you did not show a community of purpose." Why, that is the very question you are to try. I say we have shown a community of purpose, and I evidence that community of purpose by the acts of each of those persons, of Duffy, of Barrett, and of Gray; we shall show that these men embarked in the plan; that they assisted in the prosecution of it; and if we show that, they are as guilty in point of law of conspiracy as if they had assisted at the commencing and forming of it. Mr. Whiteside referred to the case of *Redford v. Birley*, to show that there was no ground for the prosecution in this case, by reason of the conduct of the parties at the meetings, but in page 105 of that case it is said by Judge Holroyd: "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, would be illegal." Mr. Whiteside also referred to *Hunt's case*, and he read the circumstances of that case, for the purpose of contrasting it with the present case, as showing that it was one in which the jury acquitted the party of the charge of conspiracy, but every fact in that case shows that the meeting was illegal in itself, and so far from furnishing an argument in support of his view of the case, it shows quite the contrary. He says that the legality or illegality of those meetings is not to be judged of by the numbers which attended them, and he went in detail through all those meetings which had taken place at Manchester and elsewhere, and contended that if they were illegal they should not have been allowed; but our's is not the case of a single meeting, but of a series of meetings for a common object.

Mr. Whiteside said that Mr. O'Connell need not have taken notice of the speech of Sir Robert Peel; but he did take notice of it, and you will see whether he did so with the object of doing what we charge he had in view—misleading the people assembled at those meetings with regard to the intention of the Sovereign and the law of the land. He then adverted to a topic which I do not think belonged to the case, he alluded to the provisions of the Party Processions Act,



2 & 3 Will. IV. c. 118, and said that the provisions of that Statute applied exclusively to the Orangemen. Gentlemen, there is nothing on the face of that Act to warrant that allegation; that it is not generally applicable to all cases of assemblies of this nature. He then alluded to the opinions of men in Parliament at the time the Union was passed, to the effect, that they doubted whether posterity would validate the Act. If he means that they are at liberty to resist by force or illegal means, I deny that proposition; if by legal means, I fully admit it. Mr. Whiteside alluded to the trial in Hardy's case, 24 State Trials, 1048. In that case a letter from the Duke of Richmond was proved, in which this passage occurred: "Before I conclude, I beg leave to express a wish that the mutually essential connexion 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; formed 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 are 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 a 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; and an union of this sort may now be formed with much greater propriety than before, as it will be sanctified by the free consent of independent nations." So much was read by Mr. Whiteside; but in the latter part of the letter you will find he says: "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. 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 those 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 connexion." Such is the view of that nobleman as to the consequences of a separa-

rate Legislature. I may have to advert to this more fully hereafter, when I come to what I may call my case. I am now merely answering the topics that have been thrown out by the traversers' counsel. When called on to decide whether the Union ought to be repealed or not, these circumstances may be proper to consider; but this is not the question that you have to try, although Mr. O'Connell may think so. I come now to the case cited by Mr. Whiteside, *Rex v. Reeves*, 1 Peake, Add. Cases, 84. That was an information filed for a libel. That libel was certainly a very gross one; no less than this: that it was competent for the Crown to make laws without the intervention of the Houses of Parliament at all. The House of Commons voted that to be a seditious libel, and that it ought to be prosecuted. It was, however, relied upon that the book was published for a good purpose and with a good intent, and the jury who tried the case acquitted the defendant. The jury acquitted him, because in an indictment for a libel, the question is whether the party published the libel with a bad intent, and the jury must believe and be satisfied that it was published with that intention; but if they believe that the man acted with an honest though mistaken view, they ought not to convict him. But what bearing can that have upon a question of this kind? We admit that the guilt depends upon the intention of the parties: but that is to be demonstrated by the acts and declarations of the parties themselves, not by reference to books, or to the acts of others.

Gentlemen, I now come to make a few remarks upon what was stated by Mr. Henn. He told you that he was unexpectedly called on to address you, and I believe that to be quite true. I suspect it was felt, that up to that time, that there had not been a satisfactory explanation given of the main features of the case, or any plausible solution of the designs of the parties who were charged with this conspiracy, or of the offence with which they were charged, and accordingly Mr. Henn was called on to buckle on his armour at the eleventh hour; and certainly it showed very great discretion on the part of the traversers to call on him to do so. But when you come to consider what was relied on by Mr. Henn, it is nothing more or less than this: a sophistical repetition of certain arguments which had been brought forward before, and which it was thought could not be safely relied on, as they stood, before the Court and the jury. His argument was this: "I admit, in the fullest sense of the word, that the act of one party is evidence against the other, if they have embarked in the prosecution of any crime or unlawful purpose, because all were engaged in an illegal object; but if the purpose of the parties is legal, then it is most unjustifiable that the act of one should be made evidence against all, because all were engaged in a legal object; but when the object is for a constitutional purpose, it is monstrous to say, that you will infer, for instance, that what is said or done by Mr. Duffy or Mr. O'Connell, that that is to be relied on as evidence against the other traversers, that is what is attempted to be done here. I admit, and candidly avow," he says, "that the object of my client, and the other traversers, was

“ to attain a Repeal of the Union ; I must concede they had that  
 “ common object, but that was a legal object, and therefore to say  
 “ that what Mr. O’Connell said, or what Mr. Duffy or Mr. Barrett  
 “ published, should be relied on as evidence against the others, is un-  
 “ fair and unjust.” Now this is all very plausible ; but unfortunately it  
 involves in it the assumption of the very question you are called upon  
 to decide. I do admit, that the common object of those parties was,  
 to obtain a Repeal of the Union ; but I say, that they had a further  
 and ultimate object in view of attaining it, not by the use of legal  
 and constitutional means, but that they sought to obtain it by those  
 illegal means charged in the indictment. We are not trying whether  
 they had a common design to obtain a Repeal of the Union. It is  
 notorious that there are many joined with them who have that in  
 view. For that alone, they could not be prosecuted ; they may  
 combine by legal means to further that object, but they are charged  
 with attempting to procure it by intimidation, and the other means  
 charged in the indictment ; and I hope that the jury will understand  
 that the Crown are not prosecuting the traversers for any but an  
 unlawful purpose. Mr. Henn stated, that the charge of exciting  
 discontent and disaffection was very vague and very general ; it  
 follows the precedent, *Regina v. Vincent*, 9 C. & P. 275 ; and the  
 eighth plea in *Redford v. Birley*. In the case of *Regina v. Vincent*,  
 the defendants were found guilty ; and in *Regina v. Shelford*, 9 C. &  
 P. 277, which was an indictment like the present, the defendants  
 were also found guilty.

MR. JUSTICE PERRIN.—In *Regina v. O’Connor*, cited by Mr.  
 Whiteside, Baron Rolfe appears to treat that case as too general.

THE LORD CHIEF JUSTICE.—That case was reported by the  
 defendant himself ; and I do not think we can receive it as an  
 authority.

Gentlemen, hitherto I have not been submitting to you what I  
 call the strength of the case in this prosecution. I have so far  
 confined myself to the topics used by the traversers’ counsel, irrelevant  
 to the merits, excusable enough introduced in the absence of better  
 material, but which might have the effect of preventing your having  
 a clear view of what you have to try, for until you know what the  
 real question is, it is impossible to know the bearing of the  
 evidence on it, and until the case is divested of an immense  
 quantity of extraneous matter which had been heaped upon it.  
 It is necessary that I should call your attention specifically  
 to this indictment. [The Solicitor-General here read the first  
 count of the indictment]. I have already touched upon the  
 subject to which I am now about to call your attention, namely,  
 the alleged necessity of the conspiracy having comprised all the  
 objects. Upon this you will receive the direction of the Court,  
 and of course you will act upon that direction. Now it is the  
 nature of every criminal charge, that although you may lay the  
 offence more extensively than the evidence is found to support,  
 yet if enough be proved to show the existence of what is in law  
 a criminal offence, it is your duty to convict upon so much of  
 the charge.

I shall refer your Lordships to some authorities upon this principle. In *Rex v. Hollinbury*, 4 B. & C. 329. There the defendants were indicted for conspiring falsely to indict one A. B., for keeping a gaming house, for the purpose of extorting money from A. B. "The jury found the defendant guilty of conspiring to indict A. B., for the purpose of extorting money, but not to indict him falsely, and on motion for a new trial the Court said: 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 misdemeanor, whether the charge be or be not false." That shows that even upon a single count laying a single conspiracy, that though it was not proved exactly in the form and manner in which it was charged, nevertheless if there be sufficient to amount to a criminal offence, the indictment is proved. The next case I shall call your attention to is *Rex v. Hunt*, 2 Camp. 583. That was an indictment for printing and publishing a libel. The only proof was the proof of publication, and Lord Ellenborough said: "it was invariably enough to prove so much of the indictment, as shows that the defendant has committed the substantive crime specified in it." The same principle is recognized in *Rex v. Dawson*, 2 Stark. 64. I state these authorities to show you what you have to try is this: are the objects of the conspiracy proved? Is one of them, or more than one of them proved? If so, then it is your duty to convict, though you are not satisfied that all were proved. I intend to submit, and I have not the slightest doubt I shall be able to establish, that every one of those acts has been as clearly proved as anything that ever came before a jury. But I am anxious to guard against every mistake, as to the duty of a jury in deciding upon an indictment, as if the question was not whether there was any evidence, but whether there was evidence as to all the charges. Again, there are several traversers. If six of them be guilty, you ought to convict them, if there be four, you should only convict them, it is not necessary that you should believe them all to be guilty.

Having made these observations upon what the law is, and having discussed the merits of this case, I shall now proceed to what I shall call the history of the case, and the details of the evidence upon which we rely in support of this present prosecution; and I am very much mistaken if you will not see in the history and progress of that evidence, the most convincing proof that the traversers entertained the common design of endeavouring to effect the object which they admit they have; to effect that by the use of those unconstitutional and unlawful means which are stated in this indictment, to each of which I mean to apply the particular evidence that supports it. There is no doubt that this conspiracy which we say existed between the traversers and others, is more or less connected with the heads of the Repeal Association. It is through the medium of their connexion with this body—



their respective execution of its behests—their participation in its proceedings, and their common combination for effecting the designs of it. It is in this way, and for this purpose the conspiracy was formed. The “Loyal National Repeal Association” appears to have originated, so far as the evidence goes, in July, 1840. It was at first called the “National Repeal Association;” it shortly after added the name Loyal. I am not now going to argue that they had not a right to give it any name they pleased; nor am I going to argue against the abstract right of forming an Association for the legal purpose of procuring the redress of any grievance, or the correction of any abuse. I therefore am not saying that in 1840 for aught that appears, that the mere constitution of this Association was a violation of the law. The evidence does not authorize me to go that length; but I think that no man who heard the evidence, not merely the evidence for the Crown, but the evidence for the traversers, can entertain a doubt, that whatever may have been the real object of that body of persons when first established in 1840, in the year 1843, and early in that year, the purposes which they had in view became illegal, and supposing them to have been within the pale of the law up to that period, their conduct afterwards demonstrated that they were actuated by the motives which we have ascribed to the participators by the indictment; and that the traversers were each and every of them participators in these motives. Gentlemen, I have already remarked that the *Nation* newspaper was set up in November, 1842. Now, have you remarked that the great bulk of the evidence which the traversers have brought forward—I mean the speeches and proceedings of this body—had reference to the years 1841 and 1842. I do not mean to say that Mr. O’Connell or any other member of the Society, was guilty of a violation of the law in making those speeches. But what is the fact with regard to the present nature and the present constitution of this Association, which bears the same name as the Association which was formed in 1840, but which has been reconstructed and remodelled at a subsequent period. We have not been informed by those persons who had the evidence in their power what the objects of the Association were in 1841 and 1842. We do not know them, and when I confess them to be legal, I make that confession through ignorance of the facts. However, you will see there was an organization of that Association, and its affiliated bodies, most carefully constructed and carried on in a manner which demonstrated what was the object of the parties who assisted in its organization.

Gentlemen, you have heard generally of the nature of this Association, so far as relates to its members and officers. You have before you the Associates’ card, which issued for the purpose of enrolling in the body persons who contributed one shilling. Mr. O’Connell’s plan was: “Give me three millions of Repealers, and I will undertake to procure a Repeal of the Union.” One mode, according to the plan of the Association, is a subscription of one shilling, and the Associate is then entitled to a card to show that he is enrolled as a Repealer. Here, in passing, I may observe on one of the topics relied on by the counsel for Mr. Barrett, that he was not a

member of the Association. Whether he was or was not a member is not material to the present indictment, because it is not for being members of this Association they are prosecuted, but for co-operating for certain purposes; because, whether a member of the body or not, he, by so doing, would be guilty of the charge in this indictment. But before he is entitled to credit for the assertion that he is not a member of the Association, I will call on you to recollect that, by the constitution of the Association, every member must be enrolled, it was, therefore, competent for Mr. Barrett to prove that he was not a member; but when it is alleged as a matter of fact, with a view of producing some effect on your verdict, I must call your attention to this, that proof of that fact was in their power, and they did not give it. The next order of this Association were Members, who are entitled to a different species of card upon collecting or producing a subscription to a certain amount. Now, I said I thought I could satisfy you, both as to the nature of this Association and the means used by the persons engaged in the prosecution of this design, and what their objects were. This Members' card you will have before you. Now, I beg leave to call your attention to the nature of this card, and why it was this species of emblem, and why these particular inscriptions on it were selected. You will find, on reference to each side of it, that it contains places where battles were fought in which the Irish were successful; and you will also find on it a reference to certain states of Europe which were independent States, with separate Governments, separate kingdoms, and the population of which is contrasted with the population of Ireland. Such, Gentlemen, is one of the cards of union belonging to this Association so connected. Allow me to recall to your recollection a material document, which, in common with every other material piece of evidence which was proved on the part of the Crown, they were wholly silent about; it is a letter written to the Secretary of the Loyal National Repeal Association, explanatory of this new card for Members. What does that import? Does it not speak trumpet-tongued, that something was to be effected through the medium of that card, something not contemplated by the Association. I do not care if the traversers were to spend four weeks more in explanation of their conduct in 1840, '41, and '42. I call upon them to meet the charge, commencing here in 1843, which they have not attempted to do, nor do I believe they could do. This letter is written by the author of the "Green Book," it bears date the 11th of April, 1843, and was proved by Browne. The reading of it was received with acclamation at the meeting of the Association, and it was enrolled on the minutes on the motion of Mr. O'Connell. It is headed "*Nation* Office," and signed "J. C. O'Callaghan. Upon this subject I would observe, that this letter was entered on the minutes and ordered to be generally circulated, and this card would not be issued to any person who did not procure or pay a subscription of £10. One of the objects of this letter was, to excite confidence in the people in their own strength, and ill-will against the Saxon, as our English fellow-subjects are called. The writer having stated the object and design of that card, refers to a part of it in which a reference is made to Mr. Saurin's speech against

the Union, he says: "The force of such an opinion against the validity of the Union, as that of the Tory or Orange Attorney-General of Ireland for so many years, needs no comment." This is for the purpose of having it believed, that it was the opinion of the then Attorney-General, that the Act of Union was not valid. I will come by-and-by to the miserable subterfuge by which it was attempted to explain away that. He then gives a detail of the population of various Continental countries compared with Ireland, and says, "Ireland has not a Parliament," and describes various victories which had been won by the Irish. [See *ante*, p. 215, where this letter is fully set out.] Now, Gentlemen, if I had not this document, and were to take the card and draw the comments which the writer had made on its contents, it might be said that I was straining a point; but here we have the act of the Association itself explaining the document, and directly stating what its objects and what its meaning were, by moral force—moral combination! Is this the mode of collecting together a moral force? It is absurd to assert that it is capable of that meaning; in the first place they could not do so, and in the second place, if they did, it would contradict the act of the Association. I suppose it will be contended, that those victories referred to were bloodless victories—the victories of public opinion, of reason and intellect over prejudice; but, Gentlemen, it is for you to say, whether that explanation will satisfy the meaning of it. The writer further says: "The object of the heathen Daues, who, at this period, determined to make up for the failure of their constant attempts, during above 200 years, to conquer Ireland, bears too strong a resemblance to the subsequent conduct of another country towards us, not to be mentioned. They 'invaded,' says a cotemporary French chronicler, 'with an innumerable fleet, and accompanied by their wives, their children, and their Christian captives, whom they reduced to be their slaves, the island Hibernia, likewise called Irlanda, in order that, the Irish being exterminated, they might colonize that most opulent country for themselves.'" The words, "pushing a pike," were also quoted in inverted commas; where they were taken from, I do not profess to say, but the reference was made to victories gained by the Irish by "pushing the pike" against the rebels. Gentlemen, the next document is the Volunteers' Card. This machinery appears to have been constructed with a view to the proceedings of the Volunteers in 1782, and I think you will find the real design was concealed under pretext of founding the steps that were to be adopted in the prosecution of that design, upon something like the precedent and legal authority of that Association. A resolution similar to one of that Association and a card, is given to a person who contributes £20, and this is called the "Volunteers' Card." This card is embellished with a likeness of Mr. O'Connell, Mr. Grattan, and Mr. Flood, and two other persons, in reference to whom Mr. Whiteside was particularly facetious. He alluded to Ollam Fodhla and King Dathi, but he overlooked Sarsfield, the O'Neills, and Brian Boroihme. You will recollect that Brian Boroihme was the Irish King at the battle of Clontarf, the description of which was contained in Mr.

O'Callaghan's letter. Sarsfield was also passed by in silence, because it was plain the intention was to keep before the minds of the Irish people the former victories in which they were successful by physical force against foreign invaders. Now I do not pretend to be able to tell what the duties may have been of those to whom those cards were given. I do not know, nor does it appear upon the card what they were required or bound to do. I do not know what were the whole of the duties of the Repeal Wardens, the confidential and accredited officers and emissaries of this body. All I know is this, that by means of them it was found possible to collect together, at the bidding of a single person, any number of persons at any particular place, from any distance almost, however remote.

Gentlemen, I think I should not be able to convey to you a distinct or intelligible view of the true character or nature of this conspiracy, without taking you in some certain and determinate order, and I shall be able to do this by taking them in their chronological order, then according to the different charges contained in the indictment. The first part of the evidence to which I shall advert is the *Pilot* newspaper, of the 10th of March, 1843, having reference to Mr. Tyler's speech in America. I would call your attention particularly to the dates of these transactions, the period when those cards were issued, the date of those letters and speeches, and the other documents; and looking at all together you will see whether they do not develop a regularly organized plan and scheme of attaining the Repeal of the Legislative Union, by the exhibition of physical force; by attempting to create disaffection in the army; by sowing discontent and disaffection amongst different classes of people in this country, and by the several other means charged in this indictment. Mr. Tyler, the President's son, made a speech in America, and commented on the question of the Repeal of the Union; amongst other things he said: "That he had, through the medium of respected relatives, become acquainted with the character of some of the sons of Ireland, who were driven from their homes by unjust judges and unjust juries in the struggle of Ireland for her independence in 1798, and that they had sought and found an asylum in that land of freedom, America." Mr. Tyler went on to speak about the oppression under which Ireland suffered, and concluded by stating "that the libations to freedom must sometimes be quaffed in blood."

Now, let us see how that speech was commented upon by Mr. Barrett, in the *Pilot* of the 10th of March. After some other observations, Mr. Barrett called "the attention of Her Majesty's Government to the fact, that the son of the President of the United States of America, who took a leading part in the meeting held there, moved the first resolution; that he delivered a bold and statesmanlike speech upon the occasion; that the young gentleman was secretary to his father; and that he was, of course, the representative and expounder of his father's views and opinions. "Let it be recollected," said he, "that the President of the United



“ States of America was a Repealer of the Union, and here was his son and secretary, with Members of Congress, gathered round the green standard of Ireland and Repeal. The United States were studded all over with Repeal Associations; they were about to bind themselves together by means of executive bodies, which should never be dissolved until Ireland was again restored to her liberty.” Am I not therefore well warranted in stating that at this time Mr. Barrett entertained the opinion, and circulated it through the medium of his newspaper, that the United States of America were in such a condition, that it would be unsafe for the Government or for the Ministry of England to refuse compliance with the demands made by the Repeal Association? Is not that evidence of attempting to intimidate the Government? Does it not support the charge, this first document which I produce? There have been no observations offered upon it; no explanation given of it, and am I not right in calling on you to give it the meaning it plainly imports? The observations then went on to state, that “America naturally considered that Ireland would be attached to her interests. Ireland is, after all, an important portion or 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 altered the destinies of the whole world”—“curious coincidence!” The same state of things, which, if Napoleon had taken advantage of by sending his army into Ireland, and thereby alter the destinies of the whole world, might occur again! “England may get into war with her neighbours.” “Ireland is an important part of the national family,” and if England happened to be at war hereafter, persons might be found, who would adopt a wiser course, by not sending the armies to Egypt but to Ireland; who knows what the result might be? Curious coincidence!! That took place on the 10th of March, 1843, and there was an article in the *Nation*, entitled “*The Memory of the Dead*,” upon the 1st of April, and you will remark how the actions of the different traversers concurrently agreed on the different subjects. Mr. Barrett in the *Pilot*, Dr. Gray in the *Freeman*, and Mr. Duffy in the *Nation*, all coincided in their different spheres. These lines commence with :

“ Who fears to speak of Ninety-eight?  
Who blushes at the name?”

And yet you are told that there is no meaning in it, and that it was only an imitation of the Jacobite songs. It was compared to “*The Exile of Erin*,” and other ballads; and it was said that no person could suppose that the mere publication of it showed the slightest guilty intention. Mr. Whiteside went even so far as to say, that it could not be said even to allude to 1798, as '98 was all that was mentioned; and it might as well be the year '98 in the first century, 1698, or 1398, as 1798; but it will be for you to judge what was the object of its publication, and what '98 it was intended to

allude to. If I were to give Mr. Whiteside the full benefit of his commentaries on the facts in question, saying that it was a mere effusion indicating a commiseration at the unhappy fate of the unhappy men who died in that year, supposing that it was capable of such a construction, judging from the first part, who could think so when he read another verse :

“ And we will pray that from their clay  
Full many a race will start,  
Of true men, like you, men,  
To act so brave a part.”

Was that commiseration for the unhappy fate of the misguided men, or was it likely to encourage the men of the present day to follow their example? How was that rebellion of 1798, which was so eloquently denounced by Mr. O’Connell, characterized by this effusion? As “ the struggle of *right* against *might*,” and this was the publication of Mr. Duffy, one of the traversers.

The next document I will refer to, was the *Freeman’s Journal* of the 4th of April, 1843, which contained the proceedings of a meeting upon the previous day, when it will be seen that Mr. Ray read a letter from General Clooney, dated on the 2nd of April, 1843, in which he remitted money, and the names of Members, Associates, &c., which, upon the motion of Mr. O’Connell, was ordered to be inserted on the minutes. Then, on the 29th of the same month, there appeared an article in the *Nation*, headed, “ *Something is coming* ;” and you will remember that one of the allegations of the traversers was, “ that their object was to effect a measure— “ to procure from the Legislature, by peaceable and constitutional “ means, the Repeal of the Union.” Parliament was then sitting, and for a long time after, and what was it that was coming? Was it the discussion of Repeal in the Houses of Parliament they meant? Is it the presenting of a petition for that purpose? I think you will not be of that opinion when I call your attention to the topics introduced into this article. It proceeds thus: “ Something is coming; “ aye, let it be for good or evil, something is coming. Some crisis, “ some decided swell or ebb of Ireland’s fortune is not far off. The “ country at leng this roused; gathering, and darkening, and accumu- “ lating have its forces been for long, and men said, ‘ it will be a “ shower, and ’twill pass away,’ but now the masses are suddenly “ rolling together, and crowding the firmament. The heart of Ire- “ land begins to beat strongly. This is a solemn time for all men who “ can influence the people.” Now, Gentlemen, you will observe that upto this time no declaration had been made in the House of Commons by Sir Robert Peel on the question of Repeal, and there was no pre- tence, therefore, for saying that this publication could be accounted for, or justified by, any expression of opinion in England. Again: “ Let no man mistake us. We do not wish to discourage the people, “ but to put them in a state of mind as remote from depression as from “ frivolous confidence—confidence has no safe basis except in thorough “ knowledge. 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 know they are to succeed.” I do not  
 quarrel with figurative language; we are not prosecuting for figurative  
 language, but it is for plain, direct speaking. “ But we will never  
 “ 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. We  
 “ repeat, then, that there are signs and storms abroad, and we wish  
 “ the people to look into the tempest, and measure its strength, and  
 “ prepare to conquer it. Ireland has the means of a present and par-  
 “ tial and of an ultimate and complete success in her own hands, if  
 “ she go on wisely, and, therefore, sternly, coolly, and vigorously to  
 “ work. Let no man believe that they have undertaken a holi-  
 “ day mumming in meeting England’s remorseless and subtle des-  
 “ potism. Let us have no bragging or foolhardiness. There has  
 “ been too much of this at all times in Ireland. If we are 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. Let us look  
 “ about us for the elements of success; let us throw away no re-  
 “ sources, offend no ally, arouse no neutral, and abandon no strong  
 “ position. We have the opportunity and the means themselves to  
 “ our hands. America is more unanimous in its friendship and more  
 “ powerful in its means than in 1829. Let America be told the whole  
 “ truth of our position, and she will do her best. We can promise  
 “ for some of the ablest and greatest in France. The French people  
 “ long to serve us. England is in distress. Her finances are in dif-  
 “ ficulty. Her colonial empire—India, the Cape, China, Canada,  
 “ &c., make such a demand on her, that out of 103 battalions, which  
 “ constitute her infantry of the line, 80 are abroad, and only 23 in  
 “ the three kingdoms. And unless the late blows received from Por-  
 “ tugal and Brazil tend to keep her up against the staggering shocks  
 “ without, and the huge cancer of aristocracy within, her pecuniary  
 “ resources will diminish as the demand for them increases.” This is  
 to show them that England could not resist an outbreak; the utmost  
 she could do would be to maintain her own empire; and that they  
 “ must be successful when England was so crippled. What, then, is  
 “ necessary? Exertion, coolness, patience, and courage. The peo-  
 “ ple of Ireland are now more sober and orderly, though not more  
 “ excited, than in some of their former movements. Let them endea-  
 “ vour to get more order and more intelligence; let them do and pre-  
 “ pare more than hitherto; let them be kind, conciliatory, and forgiv-  
 “ ing, to such of the Protestants as have not yet joined.” How often  
 have you been told that there is nothing sectarian in this proceed-  
 ing; that the difference of religious creed is not to interpose. Why

they are not charged with fomenting ill-will against the Protestants, but against the English; and what answer is that to the charge? It shows that they are adopting this conciliatory proceeding for the purpose of inducing the Protestants to join them. "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." Now, it would appear very strange if anything did prevail at these meetings but perfect peace and tranquillity, when the people are told to abstain from any conflict with the police or the military, that they are Irishmen, and that they will not draw the sword against their countrymen. "Do not get into collision with them; trust them when the time arrives; why should you suspect their patriotism? Why should the people despair of their patriotism, or injure them in any way? Premature insurrection, and needless provocation of party, and military hostility, have, before now, ruined as good hopes as ours." The morality they would inculcate is this—Do not violate the law; do not interfere with the police; come into no collision with the military; do not commit any breach of the peace; not because it is contrary to law, but because such an outbreak has before now ruined such a case 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. 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. We did not hesitate to differ from that illustrious man upon smaller questions. 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. We speak then not as flatterers, nor thoughtless assertors, when we call this project the wisest, the boldest, and the most pregnant with great result, of any measure he ever proposed in Ireland; if the people do their duty, this machinery must triumph. But upon the composition of that body, on the just and judicious zeal with which it is matured, and on the firm courage with which it is backed by the people, everything depends. If the people, flattered at the thought of a new plan, grow negligent in their organization and remiss in their agitation, or if they hastily promise, and blindly appoint as the trustees of their subscriptions cowards, blockheads, knaves, or bigots, men of doubtful courage, vain or clumsy intellects, or uncertain devotion to Ireland; if these trustees are not confided in, no matter what they may or will do, and if they are not supported to the last shilling, and to 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 these they trust, without cavil or flinching, Ireland will soon be a nation." It is said that we ought to have prosecuted the editor of the paper for this article. Had we done



so, we should not have been able to arrive at what we have now established—the true nature and object of this conspiracy.

Mr. Duffy is not content with that article ; in the same paper is one, entitled “ Our Nationality,” and I pray your attention to this passage in it : “ 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 I must protest against being implicated in the charge that I am prosecuting the Irish nation. I am prosecuting those *few* who thus work upon the deluded people, and who are sought to be made their victims. “ The lessons of sanguine men, among whom we have had an humble place—the history of truth, confirmed and matured by wrong. Men’s thoughts were troubled : they were told to garner their individual sufferings—to forget them in their country’s dependence. History was open to them, and it showed them those on whose fiat their hopes are based remorseless, truthless, cold, selfish, and bloody, in every age, in every clime. They have resolved to trust no more to 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 this 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 objects to be followed out, one designating England to be such a clumsy and decrepid thing as to be unable to resist aggression, and the other holding them up to the people as remorseless, cold, selfish, and bloody. “ With so little to deter us, with heaven above us and the earth below us where our martyred fathers lie, with our conscience as our guide and the world to cheer us, is it not marvellous that we could have so long stooped to a beggarly servility ? But this is unavailing. Let us look back only to be assured. If the past supply no higher impulses than the present let it be forgotten. It has lessons which, when we are called on to forgive, will afford ample scope for the exercise of the most difficult of Christian virtues, and till then it shall rest with those unavenged heroes who have become a portion of itself. At present other thoughts must animate, and other impulses must be obeyed ; there is yet work to be done, danger to be braved, 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 prevailed among the people there a senseless indifference—a disinclination for so high an enterprise—they felt that until now the time was not come. Their present earnestness demonstrated that they but waited for an 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 meet-  
 “ ings, one in each Riding. Neither is meant for show : the multi-  
 “ tude will not come to gaze and shout, and return to a listless indif-  
 “ ference in their country’s fate. They will come pledged to purchase  
 “ its redemption at whatever cost. The demonstration will be one of  
 “ words. Each parish will be prepared to show, not what it thinks,  
 “ but what it has done. They will appoint representative delegates  
 “ from every locality, who will tender to the Liberator the allegiance  
 “ of those who are willing to pay for the honour of rescuing their  
 “ country. Those two meetings will come off on the 23rd and 25th  
 “ of May, and if we be not misinformed, these days will form a me-  
 “ morable era in the struggle for native liberty. 20,000 native Tip-  
 “ perary men, who would as soon, if called on, pay their blood as their  
 “ subscriptions, would not form a bad National Guard for Ireland.”  
 The damning effect of this 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 ? I own I felt  
 something like indignation, but which I am willing to excuse  
 by reason of the peculiar difficulty in which this evidence placed  
 any counsel who had to defend Mr. Duffy. You will recollect,  
 that it was arranged on both sides, during the trial, that the ar-  
 ticles in the newspapers relied on by the Crown should be read  
 first, and that the articles in the same papers, which might be  
 considered to be favourable to the case of the traversers, should be  
 read next. This was done for convenience. The regular and proper  
 course would have been, to have delayed the reading of those articles  
 considered favourable to the traversers until the statement of their  
 case. Now how was it the article I have just read was sought to  
 be got rid of ? Mr. Whiteside called for the production of another  
 article in the same paper. What was it ? A love song ! You recol-  
 lect the shouts of laughter that this excited. Now it struck me with  
 astonishment when I heard an attempt made to get rid of evidence  
 of the nature I have read, by calling for the reading of a love song,  
 and the irrelevancy of this piece of evidence on the part of Duffy must  
 have struck you at the time. I shall now come to another subject.

Gentlemen, amongst the principal instruments by which the  
 purposes of these parties were to be accomplished were, the Re-  
 peal Wardens. Now I do not profess to be able to tell you all the  
 duties they have to discharge. I am only able to call your attention  
 to certain instructions given them on their appointment, and which  
 we have succeeded in procuring evidence of. These are very neces-  
 sary to show the direct intention of those parties. You will find  
 every speech, every fact, all have the same tendency, the same object,  
 and all evidence to the same end. This book, entitled, “ Instructions  
 for Repeal Wardens,” specifies what their duties are. [See *ante*,  
 p. 206.] The second duty of the Repeal Warden is, “ to collect the  
 “ repeal fund from each individual willing to contribute one farthing  
 “ a week, one penny a month, or one shilling a year—taking care to  
 “ make every person favourable to the Repeal understand, that, unless

“ he contributes to the amount of one shilling a year, his name cannot be enrolled as a Repealer, and, therefore, he will be looked 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, and I think that the evidence in the case bears me out in saying so, otherwise what would be the meaning of having persons held up as enemies to their country? Can you suffer to be called an enemy to your country?—and, therefore, one of the duties of the Repeal Wardens was, to tell them that unless they subscribed they should be set down as enemies to their country. The ninth duty of the Repeal Wardens is, to see that newspapers are transmitted from the Association to each locality which has subscribed the necessary sums. The tenth duty is, that they are to take care to have those papers circulated as widely as possible: and it adds: “ That no person is to be recommended for the appointment, but one who is thoroughly convinced that whoever violates the law, strengthens the enemies of Ireland: this is an axiom of most undoubted truth. It ought, we repeat it, to be engraved on the mind of every Repealer, that ‘ whoever violates the law, strengthens the enemies of Ireland.’ ” We have heard this maxim relied on, and you can now from the evidence understand the materiality of this, the principle was—whoever puts himself in the power of the law thereby paralyses our exertions, and puts it in the power of our enemies to frustrate our designs. We shall hear, by-and-by, Mr. Duffy, on the Morality of War; this was the morality of peace; this was what was to guide the members of this Association. I read these, not because they are not in themselves perfectly proper, but for the purpose of neutralizing the only thing like an argument put forward by the counsel for the traversers, —that because these meetings were peaceable, and no alarm was created, therefore they had nothing illegal in view.

Gentlemen, I now come to a stage in those proceedings of considerable importance. I mean the statement made by Sir Robert Peel. [See *ante*, page 76.] I do not think there could be stronger language used to express the determination of the Government to maintain the Union as it existed, by all constitutional means in their power, and by the ordinary means afforded them—the ordinary tribunals of the law of the land; and it is that mode that we have adopted in the present prosecution. I make this observation for this reason, that in the first place it answered the absurd charge, that it was the duty of the Government to call upon Parliament to give them extraordinary powers at variance to or out of the ordinary principles of the constitution. 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. Another reason is, you will recollect that in a speech made by Mr. O’Connell, subsequent to that made by Sir R. Peel, and in reference

to it, Mr. O'Connell said it was the intention of the Government to coerce by military force the free expression of the Irish people—to introduce military power into the country, to coerce public opinion, and to put it down by the sword; but Mr. O'Connell always wrapped up his real object by the qualification of “if they attack us.” He was not warranted in using that observation in consequence of the speech of Sir Robert Peel. It was true, no doubt, that military were sent into this country, but why were they sent here? It was the acts of the Association that caused them to be sent here, when apprehension was entertained that this agitation might not end peaceably, and that at once tore off the flimsy pretext made use of, or thrown out by Mr. O'Connell.

Gentlemen, I come now to the first of those monster meetings, which appears to have been held at Mullingar, on the 14th of May, and the proceedings of which have been published in the *Pilot* newspaper of the 15th of May. I will not trouble you with a detail of all the preliminaries of that meeting; the flags, the banners, and the processions; but I shall make this general remark with respect to those temperance bands; I regret that such a use has been made of them; I think that no greater blessing could have been conferred on this country, than that extraordinary reformation which had been effected by the Rev. Mr. Mathew, and I think it is greatly to be regretted, that many well-meaning persons are deterred from expressing their approbation, which, no doubt, they entertained of the value of that movement, by a dread of encouraging those temperance bands in the course which they were led to adopt at political meetings; and I am perfectly satisfied that the Rev. Gentleman, with whom that temperance society originated, never contemplated that the movement which he intended to work only for good, should be thwarted in its progress by the purposes which it was mixed up with. At that meeting of the 14th of May, Mr. Barrett took a conspicuous part; and I think I shall fully satisfy you of his participation in the objects of those conspirators, for such they were, and his department in it seemed to be principally the circulation of the intelligence of their proceedings. He said there: “The Union is the atrocious measure that we have met here to-day to put an end to, and which Peel and Wellington had fulminated their determination to perpetuate.” You will observe that was after Sir Robert Peel's declaration of the determination of Her Majesty's Government to maintain the Union. He says: “If they use force against us, that is a game two can play at. Violence against Ireland would be a war, and not merely a riot or rebellion. I have my own opinion as to the result of it; but this is certain, that be the result of it what it may, England would come out of it a broken down and third-rate power.” To the people of England that means, “if you dare to assail us you will come out of the conflict a broken and third-rate power.” To the people of Ireland it means, the English will not dare to carry into effect the declaration of Sir Robert Peel, for that they would feel themselves too weak to do it. He went on to ask, “would they dare to silence them?”



Why, what have the Government done to silence them? They have said, that until the ordinary powers of the law were tried, and failed, there would be no Gagging Bill; no Coercion Act would be tried. It is therefore a gross perversion of Sir Robert Peel's declaration in Parliament to put any such construction upon it as that he meant to silence the expression of public opinion. Again, he says: "We may be silent, but it will be the silence of 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." You all remember the dramatic effect with which Mr. Whiteside dwelt upon that passage; but what is the meaning of it? It is this, we are silent for the present, it is true, but it is the silence of determined preparation, which, when the proper time arrives, will enable us "to take the sure but terrible spring, and clutch the independence of Ireland." This was figurative language, but it was sufficiently intelligible. "The moment has passed for vain regrets, and to suppose that you would neglect your opportunity would be to suppose that you would reject that which Providence in its mercy has presented to you." Had that reference to any expected Act of Parliament to repeal the Union? No, the opportunity referred to was that to be afforded by the organization of the people to be called forth at the proper time.

Gentlemen, I will now proceed to the next meeting, which was held at Longford on the 28th of May. Two witnesses have been examined with respect to that meeting, and to a few passages in their evidence I will take leave to direct your attention. These witnesses' names were Johnson and Maguire. Johnson deposed that he was a Head-constable, and that he was stationed at Sligo in the month of May last; that he was at the Longford meeting, which was attended by 50,000 persons; that he saw large bodies of horsemen who were usually led on by priests, and that he saw Mr. O'Connell there, and also Mr. Steele, who distributed amongst the crowd bundles of papers which were said to be copies of Mr. O'Connell's speeches. He also deposed that Mr. O'Connell delivered a speech there, in the course of which he made a very significant pause. Witness was likewise asked was there any appearance of tumult at the meeting, and his reply was a very sensible one. He said, "there was not, for they were not going to fight with one another." They were all of the same way of thinking. He said that the people appeared perfectly willing to do anything that Mr. O'Connell bid them, and that they were so numerous and united, that the police dare not face them. The second witness was a Constable of the name of Maguire, who deposed that he heard Mr. O'Connell make a speech, at the conclusion of which he told the people to go home quietly to their friends, and that when he wanted them again he would let them know the day. That expression was used at almost all the meetings, and it was a most significant one. An attempt had been made to cast aspersions on the veracity of Maguire, on the ground, forsooth, that he was anxious to be promoted in the service; but I want to know what right have the counsel at the other side to cast imputations on the Crown witnesses, and accuse them of perjury, when they have not brought upon the table a single witness

to contradict him. I will read for you the notes taken of Mr. O'Connell's speech at Longford: "Let them but attack us," said Mr. O'Connell, "and then"—then came the pause, and thereby the meaning of that pause was too plain for any one to doubt. It was at Longford that, according to this witness, the arbitration system was first broached. The witness further deposed, that Mr. O'Connell told the people to go home quietly, and that when he wanted them again he would let them know the day. This took place at a 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, had been commented upon on the part of the traversers, or even read by them. It appears that Lord Beaumont, an English Roman Catholic peer, had expressed his dissatisfaction at the course that was pursued in this country with regard to the agitation of the Repeal of the Union; and expressed his determination not merely to discountenance it, but if necessary, to vote that the Government be armed with additional power in any step they might find it necessary to make. That was his proposition. At this dinner to which he referred, a speech was made, on the introduction of Lord Beaumont's name by Mr. O'Connell; what Mr. Whiteside said, was merely a scolding match between Mr. O'Connell and Lord Beaumont; that you could not expect him to be very measured in his language; and that you could not be supposed that he was engaged in a conspiracy, by his using such language. Certainly not; but let me read the remainder of his speech. Mr. O'Connell said: "I ask you, mongrel, "heartless Beaumont, do you wish it to go to the people of Ireland, "that you would support the English Minister if he was mad "enough to make war upon the Catholics of Ireland?" Why, Lord Beaumont never expressed any intention of supporting the Minister in making war upon the Catholics of Ireland, but that, if it was necessary, if the Government found the common law of the land were ineffectual, he would support any measure that would give them additional aid, and not to make any war upon the Catholics of Ireland. Then Mr. O'Connell went on to say: "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 "should say to one—'Jemmy, your father has been killed.' To "another: 'Tom, your brother has been shot.' A third would ask "him: 'but my sister, Eleanor, does she live?' He would say: "'your sister is not dead.' 'But is my father alive?' 'No; your "'sister watched his corpse, but she is herself worse than dead—she "is now a sad maniac roaming the wilds, and, like the wretched "'maniac of song, warning her sex against the ruffian soldiers of "'Britain.' Yes, my Lord Beaumont, the brother of Ellen O'Moore "would be near your castle; 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 Beau- "mont?" This was the interchange of scurrilous language between

Lord Beaumont and Mr. O'Connell. I say this was a direct incentive to the people of this country, if occasion should arrive. Upon that course of proceeding I cannot trust myself in making any comment. Mr. O'Connell went on to say: "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 shore." Mr. O'Connell may preach as long as he pleases the doctrine of obedience to the law; he may profess to inculcate on his hearers the sentiment of charity and good will, but he never can neutralize that speech; he never can qualify it, nor explain it; he never can say that it has any other meaning than that which necessarily pressed upon the mind of everybody who read it, that when the time arrived, the people of this country would fire the manufactories of England. Now, I charge the traversers with seeking to intimidate the people of England; I charge them with inciting the people of Ireland against their English neighbours. Have I not proof of both in this speech? Even suppose Mr. O'Connell did not really mean to suggest to the people to fire the manufactories, what would be the necessary effect of his speech? Would it not be to give cause for apprehension to the people of England? I am far from saying that Mr. O'Connell ever intended such a proceeding as that.

Gentlemen, in the *Freeman's Journal* of the 31st of May, there is a report of the proceedings of the Association of the previous day, and I shall beg leave to call your attention to that part of the evidence which was used for the defence. Mr. O'Connell on that occasion appears to have corrected the report of the speech he made at Longford. He denied having called the soldiers of Great Britain a "ruffian soldiery, because he knew that any such statement, if it were made, would be false;" and with regard to the sergeants especially he said: "that if justice were done to them there was not one of them that would not be raised to the rank of an officer." In another speech, at a later part of the proceedings at the same meeting, he stated that he had undoubted authority for telling the people of Ireland, that the declaration to maintain the Union, made by Sir Robert Peel in the House of Commons, was unauthorized by Her Majesty, and that the Queen had reproached Sir Robert Peel for having used her name for such a purpose without her sanction. Now, upon what authority Mr. O'Connell has thought fit to make that assertion, it is impossible for me to conjecture; but I advert to this, not for the purpose alone of expressing my astonishment that he should make this assertion, but for the further purpose to show that the object he had in making such a statement, was that of endeavouring to make the people believe that the Queen was favourable to a Repeal of the Union, and was only prevented from granting it by the hostility of the people of England and of the British Ministry to Ireland. I do not mean, Gentlemen

of the Jury, far be it from me, to arraign the loyalty of those poor people; but I must say, since the loyalty of these proceedings is so strongly dwelt upon by the traversers, it is rather inconsistent with that loyalty, to endeavour to impress on the minds of the people the notion that the Queen had both the inclination and the power to accomplish the object which they had in view, the restoring of a native Parliament. However, I do not wish to derogate from the loyalty of these people; that is not the question here. You will find that this is only one of the several delusions which have been industriously practised on these poor people; a delusion both in point of fact and in point of law, as I shall show you more particularly hereafter. There is this observation also to be made: Mr. O'Connell on that occasion corrected the report of his having used the expression, "the ruffian soldiery of Britain." It is perfectly plain, therefore, that he read the report. Do you find that he retracted the other parts of the speech? They were, therefore, substantially confirmed; no part was contradicted except the expressions with regard to the soldiery.

I will now call your attention to the meeting at Drogheda, at which Mr. Steele delivered a speech, and said he would solicit of his august friend O'Connell to appoint him to the leadership of whatever enterprise was most desperate, and that he was ready to share the dangers of the Irish people, if they were driven to extremities by the Cromwells of England. [The Solicitor-General then read and commented on the report of the Drogheda meeting in the *Pilot* of the 7th June, 1843.] Gentlemen, I now come to an article in the *Nation* newspaper, entitled "The Morality of War." [The Solicitor-General then read the article; see *ante*, page 82.] Nothing can be stronger than the language used in that article. Mr. Duffy's counsel have not attempted to explain what right he had to instruct the military in their duties. Mr. Whiteside said in excuse for these strong articles, that they were suggested by the unfortunate occurrence of the death of a private soldier from over-drilling. Recollect, that transaction took place far on in the summer, and this appears on the 10th of June; Mr. Whiteside's excuse therefore has no reference to this article, and it remains undefended.

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THURSDAY, FEBRUARY 8TH.

THE SOLICITOR-GENERAL.

*My Lords,*

Since I addressed the Court yesterday, I have looked into the case of *Rex v. Hunt*, and I find that it is an authority in support of that part of the indictment which charges a conspiracy to create discontent and disaffection, and ill-will and hatred, amongst her Majesty's subjects. The case is reported in 3 B. & Ald. 567. The fourth count in that indictment charges, that the defendants unlawfully did



meet together, with divers other persons unknown, to a large number, to wit 60,000, for the purpose of exciting discontent and disaffection, and for the purpose of exciting the subjects to hatred of the Government and Constitution. And Chief Justice Abbott says, in pp. 571-2, "It appears to me, therefore, that the proposed evidence relating to the conduct of other persons, in a matter subsequent, was properly rejected; but, if this were more doubtful than it appears to me to be, with reference to the whole charge originally preferred against the defendants, still that doubt would be altogether removed by the verdict, which, having narrowed the offence of the defendants to the fourth count, which charges 'an unlawful assembly for the purpose of exciting discontent and disaffection,' and does not charge any actual or intended violence, has, in my opinion, unquestionably rendered the proposed evidence irrelevant, as having no bearing upon that charge."

Gentlemen of the Jury, I shall now call your attention to the next piece of evidence given on behalf of the Crown; that is, a report of the proceedings of the Kilkenny meeting, which has been read from the *Pilot* newspaper of the 12th June, 1843. On that occasion Mr. O'Connell made a speech, to which I shall beg leave to call your attention. He alluded to the Repeal wardens, and said they were the men by whom he hoped to obtain the Repeal; and that there was no more honourable station than theirs; and he also stated, that the Irish people were threatened with civil war by the Ministers. Gentlemen, this allusion to civil war was made in 1834, not by the members of the present Government. I told you yesterday the construction to be put on Sir Robert Peel's statement in the House of Commons, on the 9th of May; it was nothing more than this.—When asked whether it was the intention of the Government to put a stop to this agitation, he expressed the reluctance of the Government to apply for additional powers until it should be ascertained whether, in point of law, the conduct of those concerned in this agitation was criminally cognizable at common law; and he did not threaten to put it down by civil war, as Mr. O'Connell has said.

Mr. *Sheil*.—I think my learned friend has no right to advert to motives expressed by Sir Robert Peel in Parliament; and he had no right yesterday to tell the jury, that, unless they found a verdict for the Crown, a Coercion Bill would be introduced.

The *Solicitor-General*.—I have endeavoured, as much as possible, not to advert to topics not given in evidence. I have made no observations I did not feel perfectly warranted in making, from the evidence. What I intended to say yesterday was this, that Mr. O'Connell having, in some of his speeches, attempted to justify an appeal to physical force, by the supposition that a declaration of civil war had been made by Sir Robert Peel in Parliament, my intention was to show you that there was no ground for the apprehension of such a consequence from Sir Robert Peel's reply, and that it did not warrant the language used by Mr. O'Connell. There certainly was nothing further from my intention than to hold out anything like a minacious

argument to you, and if I did use words capable of that construction I in the most unqualified manner call upon you not to let them in the slightest degree influence your verdict. Gentlemen, Mr. O'Connell has repeatedly asserted that he would keep the parties out of the law, that there should be no violation of the law—and we have now brought the question to issue between us and Mr. O'Connell, whether what has taken place is cognizable at common law, or not. Gentlemen, Mr. O'Connell on that occasion also alluded to the sergeants in the British army, and said, if they were fairly treated they ought to be raised to the rank of officers. I have already read an article in the *Nation*, on the "Morality of War," and I shall have occasion to advert by-and-by to another document on the same subject, by which you will find that each of the traversers was pursuing the same objects in a different way, one of these being to tamper with the army, or at least to lead the people of this country to believe that the army would be passive in the event of an outbreak. Again, he says: "Oh what a mass of physical force have we not witnessed to-day? We stand at the head of a body of men that, if organized by military discipline, would be quite abundant for the conquest of Europe. Wellington had never such an army as we saw here to-day. There were not at Waterloo, on both sides, so many stout, active, energetic men as we saw to-day. Oh! but it will be said, 'they are not disciplined;' if you tell them what to do you will have them all disciplined in an hour." Now allow me to call your attention to this language of Mr. O'Connell, and to ask you whether you can reconcile that with his language about the concentration of moral force, and the union of public opinion? Do you believe that the people would understand that they should be called on for something, or that it should be understood in England, that such was the state of discipline and organization amongst the people in this country, that it would not be safe to refuse a Repeal of the Union. Again he says, "Do not you think that they are 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 the Repeal Wardens as if they were called sergeants or captains?" Am I to be told that this is not an allusion to anything like physical force? It is needless to follow that subject further, but it cannot have any reference but to physical force.

Gentlemen, I will now draw your attention to a meeting which took place at Mallow, on the 11th of June. Before I shall call your attention to the language used on that occasion, I shall advert to the evidence of John Jolly, with respect to that meeting. He states that he is in the Police, and attended that meeting, which was very numerous. That they marched in regular order, with bands playing and banners flying, four and six abreast in column. That there were persons taking command. He said Mr. O'Connell addressed the meeting, and told them that they should have Repeal, that they should have Ireland for the Irish. He asked them would they be ready to come again if he wanted them, and desired as many as would to hold up their hands; and he said, when they came again, he would require them to come armed—but the arms would be Repeal cards.

Gentlemen, you will always find a qualification of this sentence in allusion to force; whether that qualification be *bonâ fide* or not, is for you to say; but as to the effect it had on the crowd assembled you will have little doubt from what I shall show by-and-by. This man was cross-examined, and not the slightest evidence was produced to contradict him. We find a report of that meeting in the *Pilot* newspaper of the 12th of June. At the dinner on that occasion Mr. O'Connell said: "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. 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." In another part of his speech he says, "Have we not the ordinary courage of Englishmen? 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 shall be my dead body they will trample on, not the living man." Now, what is the meaning of this, but that if the necessity should arrive he would resist by force, and that he would suffer death, and have his body trampled on, rather than desert them. Gentlemen, you are not to put the ingenious construction upon these words, given to them by gentlemen on the other side; but you are to take the natural signification in which they are understood by the parties to whom they are addressed. Again, he says: "They have taken one step of coercion, and may I ask them what is to prevent them from taking another? May not they send us to the West Indies, as they have lately emancipated the negroes, to fill up their places. Oh! it is not an imaginary case at all, for the only Englishman that ever possessed Ireland sent eighty thousand Irishmen to work as slaves, every one of whom perished in the short space of twelve years beneath the ungenial sun of the Indies. 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." This is one of the modes by which the objects of those parties were to be effected, keeping up a recollection of the massacres that had taken place in Ireland, and thus keeping up a feeling of ill-will towards the English. Now, Gentlemen, does anything appear to warrant the assertion that Mr. O'Connell has thought proper to make, that he had any other purpose than that of exciting a bitter hostility towards the English people.

Gentlemen, I now approach a part of the case that will require a great deal of attention. I have postponed the consideration of it in conformity with the rule I have laid down of treating this subject according to the order of counts. This was a meeting held at Donnybrook, on the 3rd of July. Mr. O'Connell upon that occasion made

a speech in which he commented at great length upon the evil effects which he said resulted from the Union, and then he proceeds to hold out to the people the advantages which they may expect to gain from its repeal. In another part of his speech, he says: "They say we shall have to get the English Parliament to prepare an act for the Repeal; but listen to me. I'm going to tell you something that will interest you. I was told that we would not get the Emancipation Act; that no bill would be passed through the House; and the heir apparent to the throne took the trouble of swearing an oath to that effect; but he was obliged to swallow that oath, and we were emancipated. In order to get the Repeal, it is not necessary to pass an Act in the English Parliament at all. The first men of their day, and the ablest constitutional lawyers, Saurin, Bushe, and Plunket, said, the Irish Parliament had no right to pass the Union Statute." Such was the doctrine laid down by Mr. O'Connell, that a reference to the Legislature, as now constituted, in order to repeal the Act of Union, was unnecessary. He then said that the Irish Parliament was not dead but slumbered, and that by virtue of the Royal prerogative, the Queen could issue writs from Chancery, and the Irish people would obey them, and by that means the Parliament would be re-created without any reference to the Saxon authority. The people at all those meetings had been instructed that the Queen was favourable to this measure, and he there lays it down that she might do so, and that there was no legal objection to the Queen doing so.

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. When my learned friend the Attorney-General, in his very luminous statement of this case, arrived at this part of it, he threw out a challenge to the able counsel on the other side, and he asked them how far they were prepared to establish or support the opinion of their client on this point? I do not know that I exactly understand up to this moment whether they mean at all to insist upon the legality of that proposition, or if they do, to what extent they mean to carry it. I think, however, 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. Such must be the necessary consequence of the proposition that the Union was illegally enacted; all the Acts of Parliament subsequently passed would be void. Mr. O'Connell's remedy for that, as you have heard from himself, was this, that when a new Parliament shall be constructed under his auspices, a bill may be introduced to validate all those Acts.



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 contradistinguished 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, how-

ever, 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 are 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 purpose of electing any person or persons to serve or act, or to be considered as representative or representatives of any other place, town, 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. Mr. O'Connell affects to say, and his counsel, or Mr.

Whiteside (I believe) one of the counsel, also went the length of saying, that it was not meant by that to say, that the Union was not binding in point of law, but that it was merely void on what is called constitutional principle, and is not binding on conscience. I think, however, that I can give a very good explanation of Mr. O'Connell's meaning, that is, of the meaning he intended to be conveyed to the people of Ireland, by a reference to a document which they themselves offered in evidence the day before yesterday, which they gave in evidence, I should rather say. 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? "It is right to see how this inherent vice in the creation of the Union, was exhibited by another eminent lawyer." And he goes on to cite another passage, of which we have heard a great deal in the course of this discussion. He then, in page 53, says: "The Queen might be advised to act in either of these two ways. Firstly, she may call together, in Dublin, by intimation or invitation, the one hundred and five members now representing Irish constituencies; more than forty of them, that is more than sufficient to make a House, would certainly attend any royal summons, however informal. And Her Majesty might easily bring together a sufficient number of the Irish Peers. And thus, with the assent of Her Majesty, an ordinance might be enacted, adopting the plan we have suggested for re-constructing the Irish Parliament, and authorizing the issuing of writs or summonses accordingly. The Parliament, when met under such writs or summonses, would have no difficulty in enacting laws, with the assent of the Queen, sanctioning their own appointment, and confirmatory of their own legislative powers." And then he refers to precedents, where the two branches of the Legislature had enacted certain measures, with respect to the Government and Constitution of England, which had been validated afterwards, although irregularly done. On those precedents, he holds out to the Irish people the possibility that writs might be issued for the calling together of the Irish Parliament; and that that Parliament, when called together, might validate its own powers. And with respect to those precedents on which he founds this doctrine, he says, in page 55: "But what a host of legal and technical objec-

“ tions were and may be raised against each and all the precedents which we have thus cited, including the glorious Revolution itself! We venture to assert that none greater could be stated to either of the modes of repealing the Union we have suggested—no, nor by any comparison so great! It was indeed from these instances that our constitutional lawyers, and particularly Judge Blackstone, have spoken of ‘the omnipotence of Parliament.’ There is no possible reason why an Irish Parliament should not be as omnipotent in Ireland as an English Parliament in England.” 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 document 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.

Gentlemen of the Jury, the professed object of these meetings was to petition the United Parliament for a Repeal of this Act. We have been more than once asked, why do you seek to fetter the right of petitioning? We have the right to petition Parliament to get this obnoxious Act repealed. According to the doctrine which I am now considering, this is quite unnecessary. If the Queen can issue these writs, no resort to Parliament is necessary. If it be the *bonâ fide* object of Mr. O’Connell to petition Parliament for a Repeal of the Union, he must admit the right of the Parliament to have originally passed that measure; otherwise the Legislature would not be the proper quarter to which this petition ought to be addressed. I say it is seditious, and I call it unlawful for any individual to tell Her Majesty’s subjects that any part of the law of the land of this country is not binding. 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 al-



ready 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 shall be brought back to the state of things prior to the passing of the Union. I will not dwell further on such a state of things at present. But, besides being unlawful, I say this doctrine is delusive; it is one of the means by which the objects of this combination were attempted to be effected. The people were totally misled as to the binding nature of this Act of Parliament, for the purpose of exciting their dissatisfaction against it, and inducing them to suppose that by obeying Mr. O'Connell's mandates, they would be enabled to get rid of this which was thus represented as not binding upon their consciences. It was further 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. It is most unjust to these great men, to attribute to them such a doctrine as this; and it is most unfair to the people, who are deluded and deceived by 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. They are both unfounded; they are based upon what I call an unfair and unfounded statement of the high authority of these eminent persons. 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 shorthand-writer, Mr. Macnamara. I must call your attention particularly

to some of the transactions of that meeting. Mr. Macnamara was present at the whole of it; he gave you a description of the banners, and the numbers of people and other particulars which are generally of the same character in all these meetings, and I shall not go over them again; I shall come to Mr. O'Connell's speech. He adverts to the question of the Repeal of the Union, and the conduct of the Whigs and Tories, whom he indiscriminately abuses, and then he goes on: "When I began this agitation;" mark his words, "*When I began* this agitation." He arrogates here to himself, and very justly, the exclusive merit of introducing this agitation. "When I began this agitation, I pointed to Emancipation, and I turned to the Irish people, and told them I would like them to join me once more. I now turn to you, and tell you I wish you to join me till you put yourselves on an equality with Protestant and Presbyterian. O yes; we look for nothing but equality. For a long time we struggled for Emancipation in vain; they said they never would grant it. Peel swore he never would do it." Then he says: "Wholesale murders were committed." And then he goes into a long detail of transactions past. "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 valutors; 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. You know no one could register now, without a solvent tenant to swear that he would give him ten pounds over and above the rent and taxes. I would have an engineer appointed by the Government, and he should decide what the tenant ought fairly to give, in order that the landlord might be entitled to his rent. It might be said that the landlord had the cure at the end of twenty-one years, but I would allow the tenant to register, with the Clerk of the Peace, every improvement he had made, after due notice given to the landlord; just as at present, if the tenant plant trees he can register them, and have the first cutting, even though he should be deprived of the land. Then the tenant would be enabled to build a good cow-house for himself, and to build a better pig-sty than he now inhabited himself, and the landlord should either give him a new lease, or else pay him for every improvement he had made. We do not want to turn the landlords adrift, but then they must be in a hurry to join us, because we are about to carry Repeal immediately; and from this spot, which is about the centre of Ireland, I now call upon them to join me; but if they do not, let them

“take care they do not regret it. Let them now come forward, and join the people, and they will be paid more in respect, than they are now paid in money. 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 thereby 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. It may be capable of that signification as well as the other, and it is that latter one which would support the view the indictment takes of it. The object of this meeting was to hold out a state of things, to present an appearance to the people of England, and the country generally, which would have the effect of intimidating the Legislature, and procuring the Repeal of the Act of Parliament. The question is, how this language was understood by the people to whom it was addressed. We find, on this very occasion, a strong proof of the mode in which it was understood by them. “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.*”] How, I ask, did the person who made use of that expression understand Mr. O’Connell’s language? Why, we are ready to do anything at any time you think fit. This was not the mere repealing an Act of Parliament; it was a general invitation to assemble at any time he should call them, and the answer is, “the sooner you want us the better.” Then he goes into the Grand Jury cess, and, after some other remarks, he says: “I am not deluding you, but am able to prove in any Court, that these are the blessings of Repeal: and it is impossible that the people of Ireland can remain longer in slavery. I am able to demonstrate that the people of Ireland are the most manly in the world, because distinguished professors in Spain and France have proved by tables, that there is not such a people on the face of the earth; and as for civilization 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 ear-

"liest 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 one else but a Repealer." In a subsequent part of his speech, he explains what he means by this—"you must combine." You will understand from the subsequent passage, what is the kind of combination to which he alluded, and what is the kind of combination that exists. "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 together near him, but left him to work in a part by himself, solitary and alone, and refused to hold any intercourse with him. My friend was afraid that they belonged to some secret society, and addressing them said, that he hoped that they were not Ribbonmen, that they refused to let that poor fellow into their company; but what was their answer? 'Oh! that fellow refused to become a Repealer.' *These good men were combined for the cause of Repeal.*" That is to say, any person who did not join the combination was to be put into a kind of Botany Bay of his own; he was to be excluded from the society and fellowship of the people about him, he was to be in short expatriated, put out of the pale of society, and compelled to join the ranks of combiners, as they are called, by this species of treatment. I ventured to say yesterday, that I thought there was evidence in the case to show, and accordingly expressed my opinion to be, that persons had been induced to join this combination by this species of coercion. Have I not here abundant proof in support of that observation? The kind of coercion is the banishing from the society of those about him any person who thinks fit to dissent from this movement, and refuses to join it. And this, Gentlemen, is what is called freedom of discussion. I protest I do think I am perfectly warranted in saying, that if anything was ever calculated to prevent freedom of discussion, it is the machinery and the proceedings of this Association, and the mode in which its objects are carried out. So far from promoting free discussion, the necessary effect and object of it are to prevent free discussion, and to coerce persons to join its objects and purposes.

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. Dean was the person applied to to take it down. "Dean said, by whose authority? at first he objected; Dean said, by whose authority? Mr. Steele observed, by Mr. O'Connell's, who was displeased with having it up. And, thereupon, Dean being satisfied by Mr. Steele, that it was Mr. O'Connell's desire that it should be taken down, consented to take it down, and it was accordingly taken down." 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. This witness was asked—Do you know why this was put up? He could not tell. On his cross-examination what turned out? That that very Dean had come 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 connexion 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. It is a perfectly legitimate topic for me to observe upon, perfectly within the rules of law; and I do insist on my right to observe on it to the fullest extent the case calls for. 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. Dean, the person who had authority to take it down, at whose house it was, and who probably had caused it to be put up; that Dean is not produced. Suppose he had been produced, should we not have been at liberty to ask him certain questions with respect to the authority to put it up; and if it turned out that Dean, or

any person connected with him, was promoting this meeting, would it not be evidence to go the jury of some authority to erect this arch? I do not mean to say a previous authority by Mr. O'Connell, because many persons engaged in this combination with Mr. O'Connell, erroneously, and mistakenly perhaps, go too far, and it becomes necessary to check them afterwards, by showing they have been indiscreet. It is, therefore, very likely, that when Mr. O'Connell saw this inscription, he thought it improper it should continue there, and he directed it to be taken down. But, Gentlemen of the Jury, it shows this clearly—what was the feeling of the people at that meeting, what were the sentiments entertained until they were discountenanced by Mr. O'Connell, who had this taken down. I say the non-production of this person does furnish the strongest ground for my conjecturing, or for our conjecturing, that this Dean, if he had been produced, might have made this inscription, or this arch, distinctly evidence against these defendants. They attempt to get rid of the effect of this, by saying they will satisfactorily account for it, and satisfactorily prove the removal of it; I admit they have proved the removal of it, but they have not satisfactorily accounted for the erection of it, it appearing, on their own witness's evidence, that that was in their power.

Gentlemen of the Jury, I now come to the meeting at Balinglass 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 Balinglass on this occasion. He says he was stationed at Donard. "He reached Balinglass the evening before. He saw the people come with bands playing in a waggon from Rathvilly. He saw the Rev. Mr. Nolan there. He saw him when the people came in. They had banners. The meeting was held a little outside the town, and one man said: 'The shouts are frightening the pigeons;' 'yes,' said another, 'and the Protestants too.'" Now, Gentlemen, the language, the expressions, the conduct of the persons assembled at these meetings, are always admitted in evidence as indicative of the character of the meetings themselves; and you may judge from the expressions of these persons, what the feelings were by which the people were actuated who formed that assembly to receive Mr. O'Connell. "He heard this on the bridge, after the waggon had passed. He heard a man say, 'That was the day that would frighten Saunders,'" a gentleman living in that neighbourhood. "He says he saw Mr. O'Connell with the other gentleman whom he named, some clergyman; and 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. "He said something about their coming again. He said they must get the Repeal, and could not be refused it, as they were all sober, determined

“men. He heard the Rev. Mr. Lawler say they should get the Repeal, and that there should be no tithes; that if the clergy were civil, and joined them, they should get the tithes for their natural lives.” He says, Gentlemen, that he recorded these expressions the same day. He is called on to read them from a book; he produced that book. He states he burned the original note. He fully explains that the report was perfectly accurate. But here, as in every other instance, there is no attempt to contradict, no reporter comes forward to show it is incorrect. Gentlemen, the next witness is a person of the name of Henry Twiss, and he says: “The number of persons assembled was very great; and he heard the people in the crowd say, ‘that Ireland was trampled on, but she shall be no longer so.’ And 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? A person of the name of Lynam was then examined, and he says he heard Mr. O’Connell tell the people: “He was glad to see them all there, and hoped they would be there when he came again.” Then Manus Hughes was examined, and he said: “He had heard three or four say, that Mr. Saunders’ house ought to be attacked, because it was once the seat of blood. A man came and said that Mr. O’Connell had ordered the coachman to pull up at Saunders’, and to give Mr. Saunders three cheers. He heard part of Mr. O’Connell’s speech. He heard him say he would do away with the poor law and taxes, and have the poor supported out of a consolidated fund. He heard the crowd say, ‘that they would and should have the Repeal.’” This was at the meeting. A person of the name of Taylor was also examined, and he says that he heard Mr. O’Connell say: “He was able to get the Repeal if the people would stand by him. What a blessed thing it would be to have an Irish Parliament.” He then abused Lord Wicklow and Mr. Fenton, and said: “He was happy to see them there, and asked if they would come again, if so, to put up their hands. They all did so. He heard some say they would, and would willingly fight for it. He heard others speak. A Mr. O’Reilly made mention of the villainous English Government, who had sent them to perish in foreign countries like Cabul. He said, ‘devil’s cure to them for going,’ and that they should not expose themselves to it again. They said they would not.” There were other expressions which the Attorney-General stated; but it appeared that the meeting had separated at the time, and they were not allowed to be given in evidence, and I merely advert to them, because one of the counsel for the traversers referred to that part of the Attorney-General’s statement, and accused the Crown of having made a statement which they had not

proved. In point of fact evidence to that effect was offered, but there was an argument as to the reception of it, and the Court decided that it could not be admitted.

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, and Newbridge, 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 Lorgan. More than a thousand horsemen added a military dignity to the myriads of 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 cavalades 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." Then, 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: "He got emancipation for them in order to give the people additional strength, but they could not get the benefit of that strength until they had the Union repealed. He was there exactly for the purpose Mr. Connor had described, and they were there to back him in obtaining it; and neither Wellington nor Napoleon ever had such a back as he had. 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." That language, I submit to you, Gentlemen, is sufficiently unequivocal. "If he wanted them again, would they not be ready at his word? 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." Then Mr. Lalor states: "He [Mr. Lalor] inquired what they meant by the new tariff?" He represents himself as having a conversation with certain Protestant clergymen. "He [Mr.



“Lalor] inquired what they meant by the new tariff; the tariff, they said, that was got up in Connaught to cut down the priests’ dues. Oh, said he [Mr. Lalor], don’t halloo until you are out of the wood; we are not done with you yet. If you are civil, we will give you a life interest in your tithes; but if not, we shall apply them to the support of the poor of the country.” *We* shall. Whom the reverend gentleman meant by “we,” I think you will have no difficulty in conjecturing, when you shall have heard what the constitution of this new Irish Parliament is to be.

Gentlemen, at the dinner on this occasion, Mr. O’Connell made a speech. “We will not enter into any compromise of any kind; and we feel that 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. Remember, my motto is—‘Whoever commits a crime gives strength to the enemy.’ [Cheers.] That is the doctrine we preach everywhere, and we will soon have three millions of men who have preached and practised it, and I tell you that no statesmen ever lived who could resist a population of that kind. [Cheers.] But we must persevere. Those meetings I intend to go on with until such time that no part of Ireland shall not have 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 [hear, and cheers]—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.” Gentlemen, I shall not further dwell upon 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. What were we a year ago? The squabbling  
 " and impotent serfs of England. Here a master mind, and there  
 " a heart prophetic with enthusiasm, foresaw the time when a peo-  
 " ple owning all that gives the power to be a nation, would scorn  
 " to serve. They foretold that eight millions, with all that en-  
 " forces independence upon man, with the oldest and most varied  
 " history in Europe, with the deepest wrongs, and having their old  
 " wronger for their present tyrant; with a home marked apart by  
 " the ocean; with limitless misery and limitless resources; were des-  
 " tined to be admirable and strong among the nations of the earth."  
 This is Mr. Duffy's, or his correspondent's description of the state of the  
 Repeal question, and the motives to induce those who were engaged  
 in it to go on with the prosecution of it: " 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 hun-  
 " dred thousand, 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 democrac y  
 " 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. Most of the counties of Leinster and Mun-  
 " ster, and some in Ulster and Connaught, have come in masses  
 " together, to declare that they are ready to make any sacrifice,  
 " money, repose, or life, to achieve their independence." This is  
 the peaceful, moral combination of the will of the people, peaceably  
 shown, and having no other than a peaceable object! Here is the  
 newspaper of one of these traversers sanctioning what has taken  
 place; advertng to it, pointing out the mode by which it is to be ac-  
 complished, and the ends it was likely to serve. Then he goes on:  
 " 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.*" The very " absence of riot and  
 disorder" made the meeting " a strange and formidable event;" that  
 very absence of riot and disorder being now the only plausible argu-  
 ment put forward by these traversers, as a vindication for these proceed-  
 ings and meetings. Now attend to this: " 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." That is the effect of the organization; that is the  
 effect of the serious good temper; that is the effect of the sobriety,  
 and the absence of any breach of the law, the absence of any ten-  
 dency to riot or disturbance of the public peace. " 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"—

" 'not on the instant'—for the people know their policy too well for  
 " that." This is the morality inculcated on the people: it is most  
 desirable you should not violate the peace, or commit a crime, not  
 because the law prohibits it, but because it is not your policy to do so  
 at present. " But such oppressions 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 organiza-  
 " tion, by general, provincial, and baronial Inspectors, by Wardens  
 " and Collectors, by Volunteers, Members, and Associates, has any effi-  
 " ciency 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 per-  
 " fected 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 gradu-  
 " ally, but surely, be arranged, classed, organized, and bound toge-  
 " ther. Subordination of ranks, community of thought, obedience to  
 " orders, firm trust in those who command, constant activity in teach-  
 " ing and learning the means of liberation, are rapidly becoming  
 " general. Nor will the organization stop at arraying the people in  
 " their parishes, and massing them all under one will; it will every  
 " day extend its operations. It has resources in it to advance as well  
 " as to maintain itself." 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 hun-  
 dred trustees shall have assembled in Dublin, he takes for granted  
 that what they say will be law for the Irish people. Your Lordships  
 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." "Taxation, justice, legislation." "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. That 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. "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. He had the armed and clothed, but unstained Volunteers, and he succeeded. He had none of the machinery of a Government "in his hands."—"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." Better off than Grattan when he marched with his armed Volunteers. "We will before another year be infinitely stronger." Then comes this passage: "We have an organization well understood by the people." That is the organization, observe, that Mr. Duffy adverts to. The organization of the people, understood by the people, is that species of organization which they were called on at the meeting to assist in, and of which they demonstrated their understanding by their expressions: "the sooner you want us the better." That is the organization well understood by the people, "and applicable to any national exigency." Any national exigency! "We have an indestructible tie binding the highest and the lowest for a common end; we have many even of the accessaries 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? We need not again refer to the state of our foreign policy." You might well suppose, Gentlemen, that this was the delivery of a Speech from the Throne; the head of the Government of a distinct, independent state, laying before the subjects of it an *exposé* of its policy. "We need not again refer to 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." What is the interest Europe and America have in the freedom of Ireland, except as a separate state? What have Europe or America otherwise to say to that? But they have a great deal, or might have a great deal to say to the separation of Ireland from England. "The declaration of disciplined masses in America, that if lawless force were to come upon Ireland, their



"sword would mix in the fray, and the well-understood will"—that is, *well understood* in this country—"And the well understood will of the finest spirits and most potent citizens of France, not to let us contend alone, are full of warning to England. But their first service is to diminish the likelihood of a contest. He will be a bold Minister who believes that the professions of France and America are not an idle boast, and yet draws his sword against Ireland. We have some chance now, notwithstanding the hot words of the fallen Henry Brougham, that we will be allowed to work out our liberties unrestricted. This chance is in part owing to our foreign relations. Nor is England combined against us. Her people groan under the sway that ruins us. The successors of the Norman aristocracy still monopolize their land and harass their industry; and they begin to murmur that they will not legislate nor fight against us. But, again we tell Ireland she must free herself by her own might. We have much to do. After all that has been done, we are only at the gate of the temple. Ere we reach the altar we must overcome many a foe, and correct many a vice, and we must bear, and battle, and be steadfast. 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? If they are not sure that the people are qualified, by simplicity and completeness of organization, by self-denying obedience, by a 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." 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 any thing 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 Wardens' 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 Reverend 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 circumstances 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. He stated, "that he saw Mr. Tierney at the Clontibret meeting, which took place on the 15th of August." At that meeting Mr. O'Neill Daunt was present, and Mr. Tierney spoke very briefly. He says: "That the chairman was a gentleman of the name of Captain Seaver; that a Mr. Jackson was there, and Mr. Conway, the editor of the *Newry Examiner*. Mr. Tierney said the Union was carried by every species of fraud and corruption. He says he saw Mr. Tierney some time before the meeting; that he had a conversation with him as to the meeting." Mr. M'Cann had been desired, by his superior officer, to ascertain what day the meeting was to take place at Clontibret, in order that the police might be in readiness, in case of necessity, and for that purpose he called on Mr. Tierney; and Mr. Tierney, in answer to the question, said: "The day was not yet fixed; it depended on the convenience of some barristers, for whom he had sent or written." 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 Union was not binding on conscience; and he talked as to the feeling of Repeal, that it was becoming general, that it had extended to the army, and that they participated in the enthusiasm of the people." This was the way that I took down his evidence: "That they 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 ob-

serve on the statement of counsel, and its not having been substantiated in proof.

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 must take the same course as any other trial. 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 has made a statement which is utterly unfounded—unproved, and, therefore, I have a right to say, unfounded. When a witness is produced on this table,



a respectable man, who, on his oath, swears that on a particular occasion a certain conversation took place, and when counsel on the opposite side charge that witness with deliberate perjury, and say that there are newspapers, or other evidence to show he has sworn falsely, am I to be stopped afterwards, when the proof fails, and is not given—am I to be debarred the right of saying that that is an unfounded charge? It is for the sake of this man, as much as the merits of this case, that I assert my right so to do. I say that man has been falsely traduced. That conversation is proved; and what is it? It couples Mr. Tierney with these proceedings, and also assigns to him certain opinions with respect to the movement in Spain, which bear a very strong affinity with those of the other traversers included in the indictment.

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 Clontibret meeting, at which Mr. Tierney attended.

Gentlemen, before I direct your particular attention to certain passages in the speeches delivered on that occasion, which, as it appears to me, develop the still further progress of this conspiracy, I think it right to call your attention to some parol evidence as to what occurred at the meeting itself. 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. He was at the meeting. He was first at Trim in the morning. He says: “There was a large body of persons assembling at Trim, who marched through the town towards Tara. They formed on the Green of Trim, and marched through the town in ranks of four deep. There were bands in a carriage, and some people on horseback. Some had wands, whom he understood to be Repeal Wardens. He went to the end of the town and heard the leaders say, ‘keep your ranks.’ They had to march a distance of six miles to Tara. I know,” says he, “there were persons from Kildare at Tara, and one from Wexford, some from Dublin, and some from Westmeath. One man said he came from Nenagh. I was at Tara some time before Mr. O’Connell’s arrival, and various parties came up with bands and flags flying. I think,” he says, “there were at least one hundred thousand men.” 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 at that time, and they went away in bodies of about twenty thousand each.” And then, Gentlemen, he details a most remarkable transaction, to which I beg to call your particular attention. “ I was standing on the ditch when the procession was coming up ; a person said to me, it is not gentlemen that O'Connell wants here. I looked at him and said, who does he want? The man said, ‘ he wants men of bone and sinew like me, who are able to do the work for him.’” Bone and sinew work! “ I said, ‘ I suppose such men as these frieze-coated men.’ He said, ‘ just so.’ I said, ‘ where do you come from?’ He said, ‘ he had come from Shilmalier, in Wexford.’ I said, ‘ did any one come with you?’ He said, ‘ two thousand, and that three thousand had joined at Kildare, from another part of the country.’ He said, ‘ you did not take off your hat to Mr. O'Connell.’ I said, ‘ no, I had not.’ He said, ‘ you do not belong to our party.’ I said, ‘ certainly not, I did not belong to any party.’ He said, ‘ I knew by the curl of your lip that you did not.’ I said, ‘ I was amusing myself there.’ He said, ‘ Oh, well, well, we will let you come in for all that.’ A man came up and told him to let me alone.” Then he says : “ I heard them cry out, long life to the foreigners; we will never get the Repeal without the foreigners.” 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 neutralizing 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*.—Some one said, we hope to produce the very man who had this conversation with Captain Despard—remember that, Gentlemen—and he will tell you either that he never had such a conversation, or that when he did say it, he was only boaxing Captain Despard. 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. What may have been probably the case? Why they may have placed this puppet behind the ditch to address this conversation to Captain Despard, in order that Captain Despard might have it to prove on the trial.” Now, I really was astonished, I must say, when I heard

that solution given of this conversation; that Walker and Westerra (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, Major Westerra, or Mr. Walker, the *dramatis personæ* in this farce, had any idea there was to be a prosecution in the following December? Do you suppose they foresaw that? The resorting to any such statement shows that it was found impossible to get rid of this man's conversation. What said Mr. Macdonogh? The man who spoke behind the ditch was one of the English assassins—one of the Chartists—one of the Bronterre O'Brien men, against whom Mr. O'Connell has always fulminated his denunciations. This, it is said, was a fellow sent to create bloodshed and dissension—an English assassin. Gentlemen of the Jury, you have no evidence whatever to that effect. It happens most unfortunately for these several hypotheses, that the fact of the conversation is distinctly sworn to by Captain Despard, and the probability of it confirmed by the *Pilot* newspaper of the 16th of August. "There were no Wexford men there at all," says Mr. Hatchell. "Do you suppose they would come such a distance as from Shilmalier to Tara—two thousand men from Wexford to Tara! I know Wexford right well: this could be nothing but a hoax. There were no people at Tara from Wexford any more than I was there." Upon turning, however, to the *Pilot* of the 16th of August, 1843, describing this meeting, I find this: "We may again repeat what we have stated in the beginning of this very imperfect account of the scenes of yesterday, that Europe, perhaps the world, never witnessed such a meeting before. With regard to the number of persons present it would be impossible to form anything like a correct estimate; but we took the trouble of requesting an old military friend of our's, who rode over the hill on Monday, and viewed the assembly yesterday from a commanding position, to give what he thought a fair estimate, and he declared his opinion that there were yesterday, on the plains of Tara, a million of persons. This may seem impossible." Now observe. "This may seem impossible, but when we state that, to our own knowledge, beside the great bulk of the population of Dublin, and the counties of Leinster adjoining Meath and Westmeath, there were a large number 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 distinct account to the contrary in his paper. But we go on a little: "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. So much for the “English assassin” that came over from England for the purpose of deceiving Captain Despard, and giving an illegal character to the meeting. So much for the concoction of the plot between Walker, the Head Constable, and Major Westenra, the officer, for the purpose of getting up a scene, which Captain Despard might afterwards be able to prove in a Court of Justice. Here is an admission of the fact, and they glory in it, that persons had come from very many districts, and, amongst others, from the county of Wexford, sixty miles, to be present at that meeting. Have any of you a shadow of doubt that this conversation took place? And what does it show? It shows that this man, and those who were with him—two thousand from Wexford, and three thousand afterwards from Kildare—came there as men “of bone and sinew;” that they were the sort of men that Mr. O’Connell wanted. The question is, what the people assembled at this meeting understood? What they thought they were called on to do? And what they were to hold themselves in readiness to do, when called on?

Gentlemen, I now come to the speech, and some of the proceedings at this meeting. We have here what I may call a new act in the drama. Hitherto we have had meetings at different localities in Ireland, not for any definite or particular reason assigned; but you will now find that the movers in this conspiracy, by way of maintaining the necessary degree of excitement in the Irish mind, and keeping the people in that state of preparation, which it was indispensable they should preserve until the proper time arrived, conceived the idea of having meetings at particular places in Ireland, where there had been battles, or victories, or massacres, or other events in Irish history, associated in the minds of the people with that feeling of ill-will and hostility, which it was sought to excite and perpetuate in their minds. The first of these meetings was this of Tara. Mr. O’Connell sufficiently indicates his intention in calling a meeting there by what I am now about to read to you. He says: “History may be “tarnished by exaggeration, but the fact is undoubted that we are at “Tara of the Kings. We are on the spot where the monarchs of “Ireland were elected, and where the chieftans of Ireland bound “themselves by the sacred pledge of honour and the tie of religion, to stand by their native land against the Danes or any other “stranger. This is emphatically the spot from which emanated— “the social power—the legal authority—the right to dominion over “the furthest extremes of the island—and the power of concentrating “the force of the entire nation, for the purpose of national defence. “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. 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. I protest every thing that  
 “ is sacred, without being profane, to the truth of my assertion—  
 “ 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 eyelit 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. I am glad to find that a great  
 “ quantity of bread and biscuit has been lately imported, and I hope  
 “ the poor soldiers get some of them. 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 con-  
 “ ducted—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. At the last fight for Ireland,  
 “ when she was betrayed by having confided in England’s honour ;  
 “ but, oh! English honour will never again betray our land, for the  
 “ man would deserve to be betrayed who would confide again in Eng-  
 “ land. 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 faint-  
 “ ing and retiring, when the women of Limerick threw themselves  
 “ between the contending forces, and actually stayed the progress of  
 “ the advancing army.” Then he goes on: “ We will break no law.”  
 In all the speeches he says, “ We will break no law.” That is the ques-  
 tion 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. In this respect  
 I again desire not to be misunderstood: “ See how we have accumu-  
 “ lated the people of Ireland for this Repeal year. When on the 2nd  
 “ 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 de-  
 “ prive the people of that right, or take away the authority to have  
 “ self-legislation.” Is this, or is it not, questioning the legal vali-  
 dity of the Act of Union? “ I told you that the Union did not de-

"prive the people of that right, or take away the authority to have self-legislation." He then goes on to abuse the Lord Chancellor, and then he says: "We have a list of the towns to return Members." Here, Gentlemen, you observe, a new scene opens. "We have a list of the towns to return members (the counties, as a matter of course, will return them), according to their population, and the Queen has only to order writs to issue, and to have honest Ministers to advise her to issue those writs, and the Irish Parliament is revived by its own energy, and the force of the Sovereign's prerogative. I will only require the Queen to exercise her prerogative, and the Irish people will obtain their nationality again." This is the compact or bargain into which Mr. O'Connell is desiring to enter with his followers, if they will stand by him. He says he will only require the Queen to issue writs. "If, at the present moment, the Irish Parliament was in existence, even as it was 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? 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. You may say it is the act of the Ministry, if you please. To be sure, it would be the act of her Ministry, and the people of Ireland are entitled to have their friends appointed to the Ministry. The Irish parliament will then assemble; and I defy all the generals, old and young, and all the old women in pantaloons—nay, I defy all the chivalry of the earth to take away that Parliament from us again. 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.* On next Monday we will submit a plan to choose persons to be Arbitrators; to settle the differences of the people without expense; and I call on every man who wishes to be thought the friend of Ireland, to have his disputes settled by the Arbitrators; and not again to go to the Petty Sessions. *We shall shortly have the Preservative Society* [this is a new thing] to arrange the means." Of what? "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." 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. That is the sole reason, as the counsel would have you believe, why these Arbi-

tration Courts were instituted. It was, with a view, forsooth, to prevent the profligate taking of oaths, and the outrage of morality thereby so frequently committed in the ordinary tribunals of justice ! Mr. O'Connell proceeds : " 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."

Gentlemen, there was, upon this occasion, also a dinner—a banquet it is called in the paper,—at which some of the traversers attended, and Mr. O'Connell again made a speech, from which I shall read some extracts : " It may be imagined that they are not brave, because they are submissive. But he is no statesman who does not recollect the might that slumbers in a peasant's arm." 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 maybe 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 a 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." 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, he goes on thus : " But sooner or later, if they do not correct the evil, and restore to Ireland her power of self-government, the day will come when they will rue their present want of policy, and will weep, perhaps in tears of blood, for their want of consideration and kindness to a country, whose people could reward them amply by the devotion of their hearts and the vigour of their arms." Then he says : " Why don't the landlords join, and the gentry ; if they do not join very speedily, it will be the worse for them, for we are in a hurry to pass Repeal." Then he says : " From this I turn to the splendid spectacle of to-day. Thousands upon thousands were around us, but where are they now ? They

“ are dissolved like the snow before the returning south wind and the  
 “ genial sun. They are gone home in peace—in quiet and in tran-  
 “ quillity. But if I were to call them together again, to-morrow, and  
 “ to tell them that the Saxons were at their doors—that the scenes  
 “ that had so often been repeated, from the day when the vile Crom-  
 “ well deliberately massacred three hundred women grouped around  
 “ the Cross of the Redeemer, in the town of Wexford—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 ; if such  
 “ another force were brought from England now, if it was announced  
 “ to the people that some paltry Orangemen were armed, and that  
 “ foreign soldiers were brought over to butcher, to slaughter, and to  
 “ dishonour, oh ! tell the people that, and see whether they have  
 “ melted away like the snow.” Gentlemen, Dr. Gray appears to  
 have made a speech at this meeting, which, in my judgment, is suffi-  
 ciently 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. 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 might 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. Aye, 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 passed 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 re- “ vived, 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.”

The LORD CHIEF JUSTICE.—Hand me up that paper.

The *Solicitor-General*.—Gentlemen, there were certain meetings of the Association on the 18th and the 25th of July, which were adverted to, merely for the purpose of showing the payment of money and proving the presence of Mr. Ray, Mr. O’Connell, Mr. Duffy, and Mr. John O’Connell. I do not mean to trouble you with those. For the purpose of saving time, and my own strength, I mean to confine myself merely to those matters of evidence, upon which it is necessary I should comment.

Gentlemen, I now come to certain transactions, which took place at the meeting of the Association, I think upon the 22nd 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 princi- “ ple, and in constitutional law there was no Union ; that their rights “ were unimpeached ; that the Queen’s prerogative was untouched ; “ that her privileges were unfettered ; that the rights of the Irish “ people were broken in upon and destroyed by a parchment union, “ put into the shape of an Act of Parliament.” “ It was an Act of Parli- “ ament without force or validity.” This is most unequivocal language ; it is impossible to qualify this language by the ingenious construction or supposition 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 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 exhi- “ bition of that resistance be a simple question of prudence. He

“ [Mr. O’Connell] thought it was now prudent to resist the Union. He was of that opinion at present, 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 that Union. 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 Solon has favoured us. This is his plan for the renewed action of the Irish Parliament : “ Plan for the renewed action of the Irish Parliament. Firstly.—The Irish people recognize, acknowledge, maintain, and will continually preserve and uphold 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.” Gentlemen, so far that is right. “ The people of Ireland recognize, acknowledge, maintain, and will continually preserve and uphold, all the prerogatives of Her Majesty, and her heirs and successors, belonging to, and inherent in, the imperial crown of Ireland.”

Here, Gentlemen, this document professes to be a declaration, and national manifesto of the people of Ireland, expressing their opinion, and their readiness to have a Constitution formed for this country, on certain terms, and that the materials of that Constitution, and the several ranks and orders in it, shall be according to the plan which is here proposed for the adoption of the Association. “ And they will true allegiance bear, pure, undivided, and indivisible, to Her Majesty, her heirs and successors for ever. Secondly.—The “ People of Ireland”—*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 exist before the year 1800.” The people of Ireland will acknowledge and maintain that. Suppose the people of Ireland thought the contrary, would they not have equally the power to assert it ? “ Thirdly.—The people of Ireland do firmly insist upon the restoration of the Irish House, 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.” Observe, this is not a Repeal of the Legislative Union, not a petition to Parliament to repeal the Union, but it is a demand from the Irish people, insisting on the restoration of the Irish House of Commons, and three hundred representatives. “ 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 principle, 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.” That is Article three in the renewed plan—“*the only binding power.*” 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.” I do not know, Gentlemen, what is meant by “resisting the Union.” It is an expression which I do not profess to understand. No explanation has been given of it on this trial. “By all legal and constitutional means.” These means have not been stated to us. “Resisting the Union by legal, peaceable, and constitutional means,” I confess myself unable to comprehend. “Fourthly.—The plan for the restoration of the Irish Parliament 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. [The Solicitor-General here read the number of Members to be returned, as set out in the article.] Such 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 connexion 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. There is another which you shall hear by-and-by. These are the only measures which at present they have noticed as likely to be introduced into the new Parliament. But, Gentlemen of the Jury, when we hear this Constitution read, and when we find the connexion between the two countries is to be continued, that no separation is to be contemplated, as a consequence of the Repeal of the Union, allow me to ask what security there would be in such a Constitution, or in a Parliament thus appointed, against anything that the persons influential in returning those members to Parliament might think fit to introduce?

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 number 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. It might happen that the Irish Parliament should choose to have one person Regent, in case of the temporary disqualification or disability of the Sovereign, and the British Parliament might choose to have another. Such a case is provided for: “ 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 connexion 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! as if the framers of this or that Constitution could impose shackles upon the power that they themselves had created—the legislative power—and make it a species of condition that must be ever after complied with, that any connexion between the two countries should subsist and be incapable of change. “ The foregoing plan to be carried into effect according to recognized 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 22nd 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, 22nd 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.



Gentlemen, I propose next to refer to the proceedings of the Association upon the 23rd 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 23rd 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 to 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. Bearing in mind this object, and the view which I attribute to them, you will be pleased to observe the first sentence in this report. “Your Committee are strongly of opinion, “that inasmuch as many of the magistrates, who possessed 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 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, prepare the requisite forms, and superintend the practical working of the system after it shall have “been put in operation.” That is the judicial system. Now to compare this 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 system 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. In defining those districts, your Committee would suggest that advantage be taken “of the divisions at present established for the purpose of Petty “Sessions’ Courts.” What is the meaning of 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. This we recommend. 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 irreconcilable with the law—a system of appointing persons among whom parties litigant are to choose Arbitrators, without being left to the exercise of their own free will. 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. I can understand a recommendation, that if A. B. or C. D. have a matter of controversy between them, they shall refer that to the arbitration of a private individual ; but I do not understand the appointing, *a priori*, a set of Arbitrators, or Judges, for the purpose of determining all differences or disputes, which may hereafter arise between the inhabitants of a particular district. “ 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 the best qualified to act as Arbitrators, and that they be directed, in making their selection, to request the aid of the Repeal clergy and gentry in their several districts. That the names of the persons so selected and approved of be transmitted to the Association, through the Provincial Inspector of Wardens, and be accompanied by a report from him on the qualifications of the persons so recommended, and that such recommendations and reports be referred for consideration to the standing Committee. In giving the sanction of your Association to the recommendation of any Arbitrator, your Committee suggest that it be given by vote of the Association, at one of the ordinary or adjourned public meetings, on special motion made, and that of such motion it is necessary that at least one week’s public notice be given.” They then recommend the mode of proceeding for Arbitrators, by keeping books, and so on ; and then they recommend, “ that any person having any difference with, or claim upon, another, shall serve notice upon that other, calling upon him to come before the Arbitrators upon the next day of sitting, and submit to have the matter in dispute arbitrated upon.” Now what is this ? They recommend that any person who has a matter of 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 : “ Which award shall be final and conclusive ; and that they endorse same upon the deed of submission, and see that the proper entry of the proceedings be made in the minute book by the Secretary, and that a copy of the award be given to each party, and that the original deed of submission and award be preserved.” That is to say, 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. "Your Committee also recommend that "after the publication of the award, should either party refuse to "comply therewith, the party so refusing shall be reported by the "Arbitrators to the Association, and that the standing Committee do "then proceed to inquire into the cause of said refusal; and that "should the party so refusing fail to give satisfactory reasons to the "Committee for such his refusal, the Committee do recommend that "the party so refusing be expelled from the Association by a public "vote." 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 of 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 by 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. But what is this document? "These presents are to testify, that the Loyal National "Repeal Association, having perfect confidence in, and firm reliance on, the integrity, ability, and sound discretion of ———, "at a meeting holden ———, at the Great Rooms, Corn Exchange, "did by public vote, and now by these presents doth sanction, approve of, and recommend him, the said ———, to act for the district "of ———, as an Arbitrator, to dispose of and decide, and adjudicate "upon, all such differences and disputes as may arise within the said "district of ———, and which may be duly submitted to him by the "parties litigant. In witness whereof we herewith subscribe our "names.

"——— *Chairman.*

"——— *Secretary.*"

This is the judicial commission issued to the Arbitrators. Well, now, what is the summons? "Mullagh Arbitration Court." There is the figure of the Crown, and the Shamrock, I suppose it is, underneath "Arbitration Court," like the Insolvent Court. "No. ———. "Notice. To Mr. Michael Lynch, of Cloghbally, farmer. You are "hereby required to attend at the Court of Arbitration, at Mrs.



“Dunn’s, Mullagh, on Monday, the 11th day of December, instant, at the hour of 10 o’clock in the forenoon, in order to submit the difference and dispute now subsisting between us, concerning wages earned by the complainant in Spring last, twenty-seven days, at 10*d.* per day, amounting to £1 2*s.* 6*d.*, to the arbitration and award of indifferently chosen Arbitrators. Michael Carrolan, complainant. The members of the Court of Arbitration will attend punctually at the hour and place above mentioned, to arbitrate and finally determine upon the difference and dispute above specified, if duly submitted to them. Signed this 8th day of December, 1843.  
“PATT. FARRELLY.”

This is what I call the process for bringing in the party, and making him amenable to the jurisdiction of the Court. After this 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 23rd 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 had been taking place, the public mind was disquieted on the matter, and the Queen’s Speech, which was read in evidence, thus adverts to the subject: “I have observed, with the deepest concern, the persevering efforts which are made to stir up discontent and dis-

“ affection 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 develop 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 connexion 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.”

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*.” Here is no qualification. “*An illegal and invalid Act*. The natural rights of the people were trampled down, in utter disregard of the forms and spirit of the Constitution. The statesman’s wisdom and the lawyer’s learning lent authority to the instinctive repudiation of the patriot. *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? “Resistance to the Union has become a duty. This, the forty-third year of provincial degradation, may if the

“people have worth and energy, become the first of restored independence.” How? How is it to become the year of restored independence, Parliament having separated? Has that question been answered by any of the Gentlemen on the other side? This document was read; they all had it in their briefs; it was read over and over again; they perfectly well knew the contents of it. 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 knot which had baffled every attempt to unravel its complications has been severed with one final, decisive blow, struck with the sword of peace consecrated on the height of Tara.” I ask how it was proposed this should be done, Parliament having been prorogued. The article goes on: “There is a way, if there exists a will, for the liberation of Ireland—for the reconstruction of her Legislature. The case between the people and her leaders stands thus.” You would not understand from the title of this article, “The Crisis is upon us,” what the writer would intend to convey or do. You will find the several efforts that had been made, on the one hand by the leaders, as he calls them, and on the other hand by the people—one mutually answering the call of the other; and he proceeds to contrast what each had done, and to draw a parallel between them, and lay before the Irish people the exact condition in which the question between the leaders and the people then stood. The case between the people and their 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.” What is the meaning of that? The people were quiet enough. 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. “He cast to the winds the soothing system, and aroused his countrymen from

“ the delirious repose, produced by dependance on the sympathies of  
 “ foreign faction. The memories of the past, blending glorious tra-  
 “ ditions of remote days 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 una-  
 “ nimity of one man.” That is to say, here the leader was active,  
 and did his part. “ It seemed as if the time had come to evoke the  
 “ slumbering might of that Irish army which the legend tells us was  
 “ doomed to sleep entranced in panoplied array, until aroused by  
 “ some potent spell, for the expulsion of foreign tyrants. So sudden,  
 “ so enthusiastic, so resistless was the response of the Irish mind to  
 “ the call of the Irish leader ! Meeting was held after meeting, each  
 “ exceeding its predecessor in numbers, and all, without excep-  
 “ tion, challenging respect for the demeanor of the masses who  
 “ attended.”

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 and 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. These are the features which we say are illegal, and which we make the subject of prosecution. And the question now at issue is, are these proceedings consistent with the law of the land? Is this plan, thus organized, legal or not legal? Have we or not a common law sufficient to meet it? If the common law be sufficient, we can meet it; if the common law be not sufficient, it will then remain to be considered what is to be done. I mean not to coerce your verdict in any way, but merely to say that the ordinary powers of the law will be resorted to in the first instance, by taking the opinion of the constitutional tribunals of the country on the question, whether these proceedings are or are not legal. 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 responsi-  
 “ bility again upon the leaders.” The people had so far answered the call that they had done their duty. “ Yes! the people had suf-  
 “ ficiently shown their willingness and worthiness to be led, by a thou-  
 “ sand 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 lead-  
 “ ers 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 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. In the making or marring of our own fortunes, we involve to an incalculable extent the hopes of the whole human family. We have gloried in the irresistible efficacy of a new element in political warfare, which we boast to have invented, and by whose employment we have already won many outposts. Will the principle or the men fail now in this last decisive struggle? Shall the nations who have given us their admiration, and sympathy, and trust, mock at us for braggarts—our children’s children curse our memories as they spit on our dishonoured clay? The world looks to 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—contending ourselves to admire, and inviting our countrymen to admire with us, the symmetry of the temple of freedom raised for their reception. 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. The number of representatives who will occupy seats in the future Irish House of Commons, happens to coincide with that determined upon as the most eligible limit for the intended Preservative Society.” Here, you see, Mr. Duffy treats the thing as *un fait accompli*; as if the whole thing were accomplished. “ It is desirable, for many reasons, that the distribution of representation should be the same, so that the transition may be easy and natural to the recognized and technically legal condition of a Parliament. The chosen trustees of the people’s money now”—your Lordships will recollect the use of that phrase in the early part of the case—“ 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 less fortunate localities their surplus of ability and pecuniary weight, with advantage and honour to both parties. On the character of the gentlemen who will be in-

“ vested with the confidence of the people, as members of the Preser-  
 vative Society [that is a society, of which your Lordships will  
 soon hear more] will depend, in a great measure, the destinies of  
 Ireland. They must be *men*—not mere talking or voting machines,  
 earnest men with hearts, and rational men with heads, having  
 brains in them as well as tongues—self-reliant men, that each may  
 regulate his conduct as if the fate of the national cause rested  
 on his individual exertions—not vainly confident, that from the  
 highest downwards, they may one and all determine and act with  
 the concentrated authority of a body. Men, in fine, whose per-  
 sonal character will secure respect. Caution in such a choice  
 is indispensable for the credit of the people, lest they be shamed  
 or betrayed. We urge these considerations at once, because we  
 know that another step in advance has been resolved on, and will  
 probably be announced at the next meeting of the Association.  
 The hour is approaching which will test the leaders of the people,  
 and try the souls of the millions. The curtain has risen on the  
 fifth act of the drama; shall it fall to hide from the world’s scornful  
 gaze the disgraceful sight of our efforts, baffled through our own  
 weakness and criminal folly; or descend amidst the applause of ad-  
 miring nations, upon the sublime spectacle of a happy and emanci-  
 pated people, chaunting in harmony their song of peace and blood-  
 less triumph? ‘Men of Ireland, in your own hands is the issue!’”

I have now to advert to a meeting of the Association, at which a  
 very remarkable speech was made, which has been deposed to by two  
 witnesses. The Association meeting to which I at present allude,  
 took place on the 28th of August. There were present Mr. Steele,  
 Mr. O’Connell, Mr. John O’Connell, Mr. Ray, and Dr. Gray. Mr.  
 O’Connell stated, that he was ready to make any alteration that  
 might be thought fit, or proposed in the plan for the renewed action  
 of the Irish Parliament; and he made a speech, which will in some  
 measure explain a passage in that last document, as to the step in  
 advance, which was foretold by Mr. Duffy. “Mr. O’Connell then  
 adverted to the plan which he had proposed at the last meeting, of  
 a constitution for an Irish Parliament. He had taken as the basis  
 of his plan, the population returns of 1831, which could not be  
 suspected of having been drawn up for any purpose connected with  
 the Repeal of the Union. He was disposed to adhere to the cen-  
 sus, unless serious errors could be pointed out in any particular de-  
 tails. He had been asked why Cavan was not included in the list  
 of boroughs which were to return members; his answer was, that  
 no town was included which did not contain a population of at least  
 3,000 persons. It was to be expected, that difficulties would occur  
 in adapting the plan to the circumstances of various localities. This  
 had been found to be the case under the Reform Act. To obvi-  
 ate these difficulties as much as possible, he would propose that a  
 Repeal Warden should be sent to each of two towns which stood  
 first in the representative plan, namely, Ardee and Arklow. It  
 should be their duty, first, to ascertain the number of householders;  
 secondly, the number of married men; and thirdly, the number of

"Repealers in each town. This would be attended with some ex-  
 "pense, for it would be necessary to have clerks and books ; but the  
 "expense was one which he trusted the Association would cheer-  
 "fully incur. The object of the proceeding was, to make the dis-  
 "trict Repeal Wardens a kind of returning officers whose duty it  
 "would be to communicate with the Association. They would  
 "have no other authority ; no authority as delegates, or representa-  
 "tives, or anything of that kind. He knew that in point of common  
 "sense and fact, no delegation could be imputed to them, but  
 "he thought it was better to make the thing known, because that  
 "would preclude any dispute. No one could be a Repeal War-  
 "den without previously being a member of the Association ; he  
 "would therefore be one of themselves." He continues : " If this  
 "plan succeeds in Ardee and Arklow, we can go on to other  
 "towns and take them *seriatim*. It is most important to the  
 "Irish nation to know how the source of its representative body  
 "shall be. We know the Queen, and submit cheerfully and  
 "readily to her authority ; we know the House of Lords, and sub-  
 "mit to its authority. The Irish House of Commons is practically  
 "broken up ; the different boroughs were bought and sold ; and let  
 "it not be said, that it is an unconstitutional act to have represen-  
 "tatives for places, that once had representatives in the Irish Parlia-  
 "ment. Nothing is more familiar to those acquainted with the re-  
 "presentation of Great Britain, than that many towns which formerly  
 "returned members to the English House of Commons did not do  
 "so at the time of the Reform Bill." Then he goes on : " This is  
 "another of the steps that I am taking, deliberately and legally,  
 "in the prosecution of my plan. I expose no man to danger. I  
 "will take my steps by degrees till I have Ireland so arranged, that  
 "it will be the wisest and (speaking constitutionally) safest for the  
 "British minister to yield at once, and not think of refusing a nation  
 "that which that nation has a right to demand." That is pretty plain  
 "language. " When I opened the subject at first, my ideas were  
 "more crude than they are at present. The nearer I approach the  
 "working out of the plan, the greater are the difficulties which lie  
 "in my way." That is to say, the thing had not been fully con-  
 "cocted. " More crude than they are at present ; the nearer I ap-  
 "proach the working out of the plan, the greater are the difficulties  
 "which lie in my way." So I think he will find. " I must so ar-  
 "range my proceedings, that no construction of law shall ever reach  
 "them. We must keep within the particular letter and spirit of the  
 "law, as far as the spirit is embodied in the principle that penal and  
 "restrictive Statutes are always to be construed closely and in the  
 "most restrictive sense. I, therefore, wish it to be known that I am  
 "not at present prepared, nor do I think it necessary, with the  
 "scheme of the Preservative Association." That is the new one.  
 " But I am now working out my plan for the constitution of the Irish  
 "House of Commons, when it shall be established by Act of Par-  
 "liament, or the exercise of the prerogative of the Crown." We thus  
 "have the next step announced in the progress of this confederacy.

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 fights 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. This bears date the 28th of August, and is signed, "Richard Power." 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 you attention to some passages in this article. There is a long preface, and then it says: "There are 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, or who intends to do the slightest personal injury to any human being by joining in the great national revolution, upon which they are now unalterably determined. This is the highest degree of political training to which a nation ever yet was brought. It is a condition of society which no one ever imagined until the great apostle of peaceful agitation has exhibited it to the astonishment of the world. This, after all, is not depriving the thief of his physical force, but creating an overwhelming force which he dare not encounter—constructed, however, upon such a principle, that no other thief can use it—its animating principle being justice—*peace, if possible—but, peace or war, justice.*" *Peace or war!* "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 not taken that class of persons into his school; it remains for me to discharge that part of the common duty." Accordingly he goes on: "Mr. O'Connell is the best abused man in the world; his motives are misconstrued, his objects misrepresented, his character



“ maligned, his person insulted, and his conduct held up to scorn—  
 “ his course must be cautious. If he touched upon this subject, he  
 “ would be cried up at once as an open rebel.” *If he touched upon*  
 it. You see the meaning of that sentence. Mr. O’Connell has al-  
 ways preached peace, and always counselled his followers not to in-  
 terfere 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.” The author goes on. [The Solicitor General then  
 read the remainder of the letter, see *ante*, page 113]. One asks  
 naturally, why the thing is written at all ? It has not been ex-  
 plained, why it was published, or why the Rev. Mr. Power, of Kil-  
 rossenty, thought it his duty to instruct her Majesty’s army in the dis-  
 charge of their duties ; in what case they were bound to obey, and in  
 what case they were bound to disobey. The reason for this inter-  
 ference 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, 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 emer-  
 gency arise to render it necessary to call on them to discharge their  
 duty to their officers. This is instructing them how to guide them-  
 selves 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 re-  
 quest your particular attention. When I use that word, always  
 understand me as not doing so because your attention has not been  
 marked ; on the contrary, it has, from the commencement of this  
 trial, been most extraordinary. I claim your particular attention  
 simply because there is a passage in Mr. O’Connell’s speech which  
 appears to me to be strongly characteristic of the meeting, and of  
 the intentions of those concerned in the proceedings. You will re-  
 collect, 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." That was Mr. Jackson's evidence, on which strong observations have been made; and 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. Indeed, unless my memory fails me, they actually undertook to produce a witness to contradict Mr. Jackson in that particular. Well, Mr. Jackson has sworn positively to the use of 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: "It is my business to show it to the Public and to "the universe—for foreign nations have their eyes upon us, as well as "the inhabitants of these realms. 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." He then goes into the usual topics about 1782, and the Union; and after stating the prosperity which he says existed between 1782 and 1799, he adds: "I have another testimonial in favour of this prosperity, more eloquent than anything I can offer: it is in a book published in 1823, long before the Repeal agitation was thought of." "In 1823, long before the Repeal agitation was thought of," this book was published; that is to say, twenty-four or twenty-five years were suffered to elapse, during all which time these grievances were existing, and no attempt to get up an agitation till after 1823. It is not in evidence when, from 1810, down to the present time, Mr. O'Connell began this agitation; it is not stated that anything was in agitation about the Union. "No man spoke of Repeal at that time excepting myself." We are not charging him with inconsistency; we give him credit for having entertained those sentiments from his earliest youth. "For, in looking for Catholic Emancipation, I always said I looked to it only as a step towards Repeal. "I always avowed that sentiment cautiously, and, perhaps, with even "unnecessary repetition, lest that should happen, which, notwithstanding all my caution, has happened, that I should be accused of

“concealing the desire for Repeal till England made fair concessions, which they would not, if Repeal was in the rear of Emancipation.” He then, in a subsequent part of the speech, says: “Let it be remarked, I am not speaking disparagingly of the Queen.” The Queen’s Speech had by this time reached Ireland. “I am not speaking disparagingly of the Queen. I distinguish, emphatically, her acts from the acts of her ministers. I heard William the Fourth 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. When I come to advert to some passages in Mr. O’Connell’s remarks on the Queen’s Speech, you will find that it is not his doctrine that the ministers are responsible for that speech as their’s, but what he teaches the people to believe is, that the ministers have put into her mouth that which she was not inclined to speak, and that she really delivered to the people of England, and her dominions, sentiments contrary to her own, and which were forced on her by the Ministry whom she had in her councils. That is not what I call either loyal or constitutional doctrine. “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 choose 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.” The constitutional doctrine is, that the Queen is not responsible for what she does say; but it is not constitutional doctrine to say, that any majority or Ministry has forced into the lips of the Sovereign that which the Sovereign was not willing to say. “It is the Minister’s speech, and not her’s.” So it is in one sense. “I wish they had been advised to allow the speech to be spoken by commission. I wish they had not carried the thralldom over her to the extent of making her speak those things herself.” That is, I wish they would not expose Her Ma-

jesty to the humiliation of expressing sentiments which really were adverse and contrary to the feelings of her own heart. Well, 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?" 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. He then comments on the speech, which he reads passage by passage. "What a scene for the conqueror of Waterloo? He has the Queen in his hands to make a speech to Parliament, the pride of England before her, and she is made to whine something half piteously, half imploringly, about the zeal of her subjects. The Queen is made to say, I have done something for the good of the Church, but being unable to do more, I leave the rest to the zeal of my subjects. Oh! Duke of Wellington, if poor Napoleon had been alive to witness your defeat." Then there is a paragraph about the Church of Scotland, and he says: "So spoke Peel, Wellington, Stanley, and Graham; but 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; instead of being a bond of connexion between the two countries, it is the very thing which puts their continued connexion in jeopardy." 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 such 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 our's; 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, 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 unjustifiable means to be used against the perpetuity of the Union;” and then he goes on: “In despair of carrying Repeal”—that is to say, should the thing be despaired of, in that event—“in despair of carrying Repeal, I do not say that would be the natural result, or the unavoidable result. All I say is, that while I live I hope my countrymen will never despair. While I exist I will, unless prevented by a Parliament in College-green, not cease to rouse and keep alive the Irish hope, and animate it to legitimate and constitutional exertion. By those means I keep away the danger of despair, and the connexion between the two countries will be maintained, by the expectation of the Irish people that it will be placed on a rational footing; and while I live, at least, Ireland shall struggle legitimately and constitutionally. I bequeath to those who follow me their own course of proceeding.” As long as I live I shall endeavour to keep the people in the struggle to obtain the Repeal of the Union legitimately and constitutionally; while I live, at least, that shall be the struggle: I will bequeath to those who follow me their own course of proceeding. 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 organization, when he delivered that speech on the 29th of August last.

Well, 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 venders of ballads should circulate *The Spirit of the Nation*, and abandon the trash they had spread among the people. Mr. O’Connell said he would at Loughrea, where he expected to have three hundred thousand or four hundred thousand persons, appoint two hundred and fifty hired Repealers to keep the peace.” The speech delivered by Mr. O’Connell upon 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. The harvest is now cut. I speak the day after the  
 “fair, and therefore with particular safety. The resolution for non-  
 “consumption of exciseable and customable articles is not proposed  
 “at present, it is reserved for a greater emergency, but I am far  
 “from saying that it may not be proposed. I will shrink from  
 “nothing; I will state candidly every thing, and I come now to the  
 “actual state in which we are placed. I am sure I shall be forgiven  
 “for this discussion, but the matter is of such a nature, that I feel I  
 “am doing nothing but my duty, in denouncing the possibility of  
 “such a crime. Next Sunday I shall be at Loughrea, when I shall  
 “probably have three or four hundred thousand men of Connaught  
 “about me; and I defy all the informers and spies of England to  
 “create a disturbance there.” He alludes then to the police, and  
 says: “I am not abusing the police at all; but this will serve as a  
 “caution; it is quite enough. The Sunday after next I shall attend  
 “a meeting at Connemara.” One of the things we are to prove in  
 this case is, the connexion of these great meetings with the leaders  
 in Dublin, and here is one of such proofs. “I shall have certainly a  
 “hundred thousand men there; but my object now is to bring your  
 “more immediate attention to my plans. I have talked imaginatively  
 “of the resources that may hereafter be necessary. I now come to  
 “our present position. We have at present in preparation two sepa-  
 “rate 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 repre-  
 “sentation 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 mis-  
 “take. 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 popula-  
 “tion 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 sepa-  
 “rate and distinct parts of my plan. They are placed chronologically  
 “one after another. We have just transmitted to Arklow and Ardee  
 “notice of the appointment of the Repeal Wardens. This shows, as I  
 “said before, that we will proceed slowly and deliberately with a full  
 “knowledge of facts. The letters, indeed, have not yet left the  
 “office, but they will by to-day’s post. Of course there can be no

“ reply to a letter that has not reached its destination, but before  
 “ this day week we shall have a reply ; and I think we ought to take  
 “ up all the boroughs in letter A., and send resolutions similar to  
 “ those sent to Ardee and Arklow, so that we shall have, by this day  
 “ week, a sufficient number of returns to enable us to form a judg-  
 “ ment. What I want is to put these things in working order, so  
 “ that when any practical difficulty arises it shall not impede the  
 “ working of the system. I want to know the amount of the consti-  
 “ tuencies in every district that we conceive ought to send represen-  
 “ tatives to the Irish Parliament. It has been said that there ought  
 “ to be more members than three hundred. I deny it. I think it  
 “ would be better if the number were rather less; but as three  
 “ hundred was formerly the number of the Irish Parliament, and  
 “ as our plan is restoration, on that account I fix our number at  
 “ three hundred. Counsellor Doheny has offered to take on him-  
 “ self the arrangement of Tipperary. I shall move that he be re-  
 “ quested 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 dele-  
 “ gated authority. They are appointed for the ascertainment of  
 “ a particular fact.” He then goes to the Preservative Society,  
 and he says finally : “ In 1829, England granted us Emancipation,  
 “ but not equality. Another topic is the relation between landlord  
 “ and tenant. The law is most unjust, which gives every thing to  
 “ the landlord, and nothing to the tenant.” One of the offences  
 charged in this indictment is, a conspiracy to bring the administration  
 of justice into disrepute and contempt, and here we find Mr. O’Con-  
 nell taking on himself to assert to the people assembled, that the law  
 is unjust, and gives every thing to the landlord and nothing to the  
 tenant. 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 con-  
 “ ‘ templation 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 are the  
 “ words of a Tory Chief Justice, and they state the truth. The law  
 “ does every thing 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 307 ; 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 Lordship 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 instrument 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, 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 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. [The Solicitor-General here read the article, see *ante*, page 119].

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 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 shilelaghs. 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. If anything could resist the Repeal it will not be a few paltry words in a respectable lady's mouth." Now, I must say, that this seems to me to be language which it is very difficult to reconcile with that peculiarly high degree of loyalty to which the members of this Association lay claim. It is not a very respectful way, to say the least of it, of alluding to Her Majesty: "What plan can they have to resist us?" Then he goes on to say, that "the Irish nation demands liberty in a voice of thunder," and uses some language which is metaphorical, and, therefore, I will not lay any stress on it. But he proceeds in less equivocal terms: "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 be 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 a 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 : “ They allow the fiery spirit to be allayed ; anger and irritation pass away, and do not carry men beyond the rules of right and propriety ; they make them hope in each other, and raise in them “ a higher and diviner hope, that the days of the woes of Ireland “ will not last for ever. That being virtuous, good tempered, and “ moral, their triumph is certain, and the defeat of their enemies inevitable. 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. “ 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, 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.”

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. London, Bath, Bristol, and bigotted Liverpool shall be placarded with it. We will send copies of it to the British Colonies, and have them placarded wherever the British Crown has power. It is our proclamation; it is no haughty declaration of independence. It is a description of grievances, for which we insist on redress. It is putting an end to all compromise. To be sure, if the English Government had the good sense to-morrow to do all that we want it might take away from me some unwilling Repealers." It appears there are unwilling Repealers. "But it would not take the people from me, who know, by experience, that we never trusted England that we were not deceived, and who are now too sagacious, as well as strong, to be mocked or deluded by any other measure offered to them, except the one measure they look for, the Repeal of the Legislative Union." 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.

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 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 them-  
 “selves 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 Eng-  
 “land has inflicted more grievous calamities upon Ireland than any  
 “country on the face of the earth besides has done upon any other.”  
 This single sentence, being the expressed will and opinion of this  
 body, would, in itself, be decisive to prove their object to be, to  
 create in the minds of the Irish people that feeling of hostility  
 towards the English, which must necessarily arise from their convic-  
 tion that the sole object of England, from first to last, has been to  
 oppress and ruin them. 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 ori-  
 “ginal virulence.” That is, the same feelings which centuries ago  
 dictated all the oppressions and all the wrongs which England has  
 inflicted on this country, subsists at the present moment in an un-  
 mitigated degree. Then follows a long detail of what you have re-  
 peatedly heard, during this trial, of those grievances about the repre-  
 sentation, about the Union, about absenteeism, and other such mat-  
 ters ; and then, 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 sup-  
 “planting 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 civilized 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 announce-  
 ment 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 ad-  
 “mitted 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 benevo-  
 “lent few are overpowered by the anti-national antipathy to Ireland,  
 “and the virulent bigotry against the Catholic religion of the over-  
 “whelming 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 fel-  
 “low-subjects all over the globe. Signed by order, *Daniel O’Con-*  
 “*nell*.” You will recollect that we produced a witness who proved,  
 that this document, and several copies of it, were actually posted or  
 placarded in Liverpool, and he took down that which was offered in  
 evidence. I do not know whether it was this one which I have  
 read, which was placarded in the streets of Liverpool. The address  
 was moved by Mr. O’Connell at the Association on the 13th Sep-  
 tember, and adopted as the act of that body.

Gentlemen, I come next to a meeting at Clifden, on the 17th of  
 September. I shall not detain you at length on each of these meet-  
 ings; I shall be as brief as I possibly can after the very great tres-  
 pass I have already made on your patience. But I think you will  
 find, as these meetings progress, the language used at each is less equi-  
 vocal. Mr. Dillon Browne attended the meeting at Clifden, Conne-  
 mara. 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 neces-  
 “sary; but it would not be necessary, as the Government knew they  
 “had as well as he; but would their enemies attack them—for he  
 “then dared them there to the attack? Ah! they would not, for  
 “they feared to do so. He was there surrounded by many a brave  
 “and stout Irishman, by men who knew not what fear was, and who  
 “were ready for him if it became necessary.” Language more un-  
 disguised certainly could not be used. “If their grievances were not  
 “immediately redressed, and that they were attacked, all he would  
 “then say was, wo to them who would attack them, as it would be  
 “then—war to the knife. 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 that is pretty “minacious,”  
 as one of the counsel on the other side expressed it. At the banquet at  
 Clifden Mr. O’Connell again said, “that he felt great admiration at the  
 “readiness as well as the steadiness with which the Connemara cavalry  
 “had formed themselves in military array on that day.” If this had been  
 our language, interpreting what Mr. O’Connell said, there would have

been a great outcry ; but I am using Mr. O'Connell's own words : " The Connemara cavalry had formed themselves in military array on that day. He then said that he was about to establish Arbitration Courts, and added, that he would take all power out of the hands of the 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." It was as if he had said this : " I myself, or my associates, mean to take upon us the government of this country ; we will take, amongst other things, into our hands the administration of the law ; we will take all power out of the hands of the Government, as regards the Courts of law ; and I now announce to you, for that purpose, and with that view, we are instituting Arbitration Courts." Why, I am calling upon you, in this case, to act upon the confession and admission of the parties themselves ; it does appear to my humble judgment to come to that. What earthly object can you suppose the institution of these Courts of Arbitration had, except that which Mr. O'Connell avowed in the presence of thousands of people that it had ? " For he would give the people cheap and impartial justice." He then proceeded to say, that " he had by that time demonstrated to England that more men of an adult age—why should he hesitate to say it?—that more men of a fighting age, than had ever made a declaration for any other country in the world, had met together in Ireland to denounce the abominable and nefarious Union, and yet they had been all quiet. Their enemies had, however, 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 I will make my experiment on them ; 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 ?" He then says : " 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 ?" He then says : " 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." 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. [ ' We will. ' ] I know it, and I will tell you why it is unnecessary—because your enemies know it as well as I do.

"The enemy has but one resource, the British Ministry has but one resource left; they think you will be tired of looking for freedom; you will when you have the Parliament in College-green, and not a moment sooner. They might as well stand by the stream, in expectation of seeing the last of its waters run by, as imagine that the people of Ireland will be tired of looking for liberty. What I propose are not imaginary benefits; they are real ones. I would make your streams turn the wheels of busy manufactories, and your noble harbours the refuge for the shipping of the Western world. Yours are the nearest ports to America, and are better suited for commerce than those of any other district; but you have no commerce because you have no genial Government." Then he says: "I caution you that any man who commits a crime will strengthen the enemy. Force and violence are not to be used." Observe now: "If the time for using them should come, there is one here will tell you that the time has come. [*'We will follow you.'*]" 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 cannot 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.* We are appointing men to act as Arbitrators in the room of the Magistrates who were struck off, and those who are left in the commission, who are infinitely worse. Last year, the duty was taken off arbitrations. The Courts will sit on every Friday afterwards. They will spread through the country. We have had a number of applications for the establishment of Courts in various parts of Ireland, and I am convinced that it will work well." Then he says: "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. This is laying the basis of a judicial system, and above all, it is safe. I defy all the Crown lawyers to find a flaw in the plan." There again he throws off all disguise, and tells you in so many words, what his course is. Now comes another part of his plan: "We are to have an Association which is to

meet by chance in *Dublin*, I hope before this year closes." That is, the year 1843. "But at all events, I am sure early in the next, three hundred gentlemen will find themselves together in Dublin, by one accident or another. The newspapers have described how this is to be done. I never take advice from newspapers in matters of law; I am glad to take facts from newspapers, and I am happy to say that no country in Europe has a more honest and powerful Press than we have in Ireland. One thing that shows we are in the right road is the amount of talent possessed by the liberal Press. But I will not take my law from them. Without going into the Convention Act, or any other Act, I say, at the time I have stated, we shall have three hundred gentlemen assembled, ready to enter into immediate negotiation with the British minister." *Negotiation!* Observe now, what the negotiation is to be: "To show him the state of Ireland; to show him our further resources; to show how we could paralyze the entire state, and that it would be done by nothing but sowing more potatoes, and leaving the harvest to rot on the field, except the poor man's part—the potatoes; to show him that we have physical power, and that, if assailed, we will use it." Such were the peaceful, legal, and constitutional means by which this consummation 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 would be paralyzed, 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. I have more projects in my mind, but I will not speak of them now, by which I can checkmate the Government tranquilly and quietly. It is avowed that proud England dare not assume an attitude of menace towards any state in the world, however insignificant. 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. They have not conciliated Ireland, because they offered nothing as a remedy for our grievances, but a miserable paltry compromise, giving what children call the smallest half—and what have we replied? We have said that there shall be no compromise. Repeal, nothing but Repeal." Now, observe the passage I am now going to read; this is the 17th of September: "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. No aide-de-camp of the Lord Lieutenant was ever obeyed so cheerfully as he was." 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, 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 negated their's? 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. A revolution is "a change by which the people are enabled to divide the land amongst each other like brothers." Well, 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*, but of which we "can convey a better idea by the word 'idlers.' 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. "How "long this state of things is likely to continue in these countries "we do not know; but we think we see what Talleyrand called " 'a beginning of the end.' '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* [in italics] adopted in France, when maddened by oppression, "they rose up, and knocked their tyrants on their heads? Of course, "we, the moral instructors of the Irish people, do not 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." 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. He then goes on to say: "We are pretty sure,

" they are not inclined to strengthen *her* at any rate. But, to come  
 " to the point—the state of the army—what the devil are those *per-*  
 " *sons in command* about? Are they blind? Are they mad? Will  
 " they be warned by us, whom they know well to be their friend?  
 " for, if our columns were not open to the poor soldier, and if our  
 " pen was not used as a peace-preserver, we really believe there would  
 " have been a mutiny long since." Very kind of him to interfere  
 certainly. " Yes, persecute the soldier to the utmost, *over-drill him*  
 " *in the dog days, withhold his furlough, deprive him of his news-*  
 " *paper, confine him for the slightest fault, march him to the house*  
 " *of God armed and accoutred, as if for battle ;* but leave him the  
 " Press open, and *he has STILL some hope !*" He then goes on to  
 the matter of the 5th Fusileers, which I shall not trouble you by  
 repeating, and he says: " Thus, the country appears to have never  
 " been so safe, as when *the people and the army are on the best*  
 " *terms !* 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. But those untried and unim-  
 " peached villains would do well to first consider the feelings of the  
 " army. An army has often proved a two-edged weapon, which is  
 " liable to wound the hand that wields it. Thank God! we have,  
 " however, lived to see the army morally reformed, as far as the  
 " *soldiers* are concerned. We, therefore, would wish to see promo-  
 " tion from the ranks general, and flogging, or back-mangling, totally  
 " abolished! Let a soldier be shot, but not flogged. The soldiers  
 " are now as decent, sober, orderly a body of men as any in society.  
 " They are patient, too, and, Heaven knows! they require to be so.  
 " Many of them are teetotallers. They mind their religion, and if  
 " not prevented by their money-promoted commanders, would im-  
 " prove their minds by reading the newspapers, which we think, after  
 " fulfilling their duties (including over-drilling), that 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. While we are on this important subject,  
 " we feel it to be our duty to again direct the people, and the per-  
 " sons who temporarily occupy the places of profit called Govern-  
 " ment, to the admirable military letters of John Cornelius O'Cal-  
 " laghan, author of '*The Green Book.*' These letters settle for  
 " ever the question of the *army*, that source of England's weakness." You will recollect that those letters (as a former publication stated) declare the fact, that of the soldiers in the British army, forty-one thousand were Irishmen. That is what Mr. Barrett means by this allusion. " These letters first 'let the cat out of the bag.' They teach the  
 " soldier *his* importance; showing him that he is an accountable  
 " being, not what certain traitors would make him, an uncondition-  
 " al murderer. They teach Ireland her strength, and also teach  
 " England her's, which the whole world now admits to consist of  
 " Irish soldiers and sailors. 'Ireland is England's right arm.' So say  
 " the English themselves, and 'so say we all of us.' Take away the

“ ‘right arm,’ and what a way she’d be in, ‘what a figure she’d cut.’  
 “ With *O’Callaghan’s Letters* in one hand, and his ‘*Green Book*’  
 “ in the other, we set at defiance the conspirators who would DARE  
 “ talk of warring against the Irish nation, the best and most loyal sub-  
 “ jects the Queen has. To the patriotic author an eternal debt of grati-  
 “ tude is due by his countrymen. He first directed the public attention  
 “ to the army, showing up its component parts, and revealing the  
 “ astounding fact of *forty-two thousand Paddies* serving in the pay of  
 “ England.” You see here 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 ten-  
 dency 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 re-  
 cently before arrived. Commenting on that fact, it makes certain al-  
 lusions to the then state of things in Ireland, to which I shall pre-  
 sently refer, and which, in my judgment, admit of but one interpre-  
 tation. 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.” Can that have any other meaning than this, that Mr. O’Con-  
 nell had engaged to put himself at the head of any movement which  
 might become necessary, and that he might be successful in such a  
 movement, notwithstanding he was a lawyer, for that Jackson, who  
 was at the siege of New Orleans, was no more than a lawyer also.  
 “ The former surprised the British by attacking them twice in the  
 “ night. So might the latter, were he driven to it—especially as  
 “ darkness equalizes 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 com-  
 pares 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. 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. Once more, men of Leinster, remember Mullaghmast." 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. 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 what a struggle was made to exclude this piece of evidence, and very fairly and properly made, by the counsel for the traversers. Strong observations have been made as to our not having proved that this document emanated from the Association, in the same manner as we proved the publication of the books, pamphlets, and hand-bills. I think it right, in answer to that, to observe, that our object in proving this was to show, not so much that it was concocted at the Association, as that it was circulated at that meeting which the Association called together. 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; but I am merely now rescuing ourselves from the imputation of attempting to fasten upon the Association what we have not proved to be issued by them, in the same manner as we have proved the other documents. You will see, by-and-by, that is altogether immaterial. This statement purports to be: "*The full and true Account of the dreadful Slaughter and Murder.*—The fate of those murdered martyrs is calculated to brace the sinews, and rouse in the mind of every Irishman a spirit of desperation; their blood cries yet to Heaven for vengeance. The day may not, we trust will not, come—brought about as it must be by British aggression, when that cry will be heard; but, if it should, woe be to the conquered." This is not the production of a ballad-singer, or a person who composes for ballad singers, who go about to fairs and sell ballads. This is the language of a far superior class. "But if it should, woe be to the conquered." "That our readers may know beforehand, the circumstances under which that black



“deed in the annals of British crime, the slaughter at Mullaghmast,  
 “was perpetrated, we publish the following account of it, extracted  
 “from *Taaffe’s History of Ireland*. His account may give some,  
 “perhaps, a higher gusto for attending the meeting.” The recital of  
 this massacre may increase the anxiety or the taste of certain persons  
 to attend the meeting. Then the document goes on, and quotes an  
 extract from *Taaffe*, to this effect, that there was a treacherous invi-  
 tation to a number of chiefs, and that they were all massacred sud-  
 denly, without the slightest preparation. Then, in the sequel, it  
 says: “The army, thus glutted with the noble blood of the magna-  
 “nimous, the pious, the hospitable, the brave, were let loose like  
 “bloodhounds on the multitude dispersed in their villages, now with-  
 “out council, union, or leader; a miserable massacre was made of  
 “those unhappy people over the whole extent of what is now called  
 “the King and Queen’s Counties, without regarding either age or  
 “sex. The detail of the diabolical outrages committed in those  
 “large and populous districts would make hell blush to be outdone  
 “by devils in human shape. I leave the reader to surmise the scenes  
 “of horror that ensued when the whole population of an extensive  
 “territory was consigned to military execution. A few brave men,  
 “here and there, sold their lives as dearly as they could. What  
 “conflagration of villages and unfortunate victims rushing from the  
 “flames on the spears of their murderers! What shrieks and lamen-  
 “tations of women and children! A brutal soldiery, drunk with  
 “blood and the contents of the cellar, raging with fire and sword  
 “through the country, cutting down men, women, and children, with  
 “indiscriminate slaughter; children massacred before their affrighted  
 “parents, reserved for their greater torture to die a double death;  
 “the first in witnessing the massacre of their innocents, and then  
 “being cut down themselves. The contemplation is horrible.”  
 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 Irish-  
 “men of every class that the antipathy exhibited by England to Ire-  
 “land is more a national than a religious one; fully as much trea-  
 “chery, 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 perpetra-  
 “ted by Protestant England. Teutonics and Celts, the races of the  
 “two countries, are different; like acids, they will not amalgamate,  
 “nor cannot meet without one neutralizing the other. For this rea-  
 “son, 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 connexion was to  
 cease between the two countries? Or what does it mean? What is the  
 meaning of this language thus circulated? The two people are

“acids neutralizing each other;” “nature has forbid it;” “there can be no meeting between such hostile people.” Can language be conceived more destructive of anything like peace and harmony between the people of the two countries? Is it possible, that subjects of the same empire can ever have anything but bitter hatred towards each other, while this language is circulated?

If no other piece of evidence had been laid before you than this, which I have just read, could you go out and meet your fellow-citizens, after finding that there was no intention, no agreement, no conspiracy, no common object, by means of this and other publications, to excite in the minds of the people of this country the bitterest hostility and hatred against England?

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FRIDAY, FEBRUARY 9TH.

THE SOLICITOR-GENERAL.

Gentlemen, from the nature and contents of the document which I read to you when I closed yesterday, you can be at no loss to conjecture what sort of feelings it was calculated to excite in the minds of the persons assembled at Mullaghmast. I proceed now to call your attention to some of the transactions which occurred, and to the speeches which were made upon that occasion; and I think you will see that they were in perfect accordance with the sentiments intended to be created by that document.

A person of the name of Healy 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: “They had about fifty bands, that they had banners, that the bands wore what he calls a sort of uniform, that they had persons leading them, who appeared to be in the rank of officers or conductors; and he was asked whether the dresses which the bands appeared to wear, were not such as had been usually worn by temperance bands?” His answer to that was: “That the uniform which they wore was not such as in the commencement of the temperance movement those bands had been distinguished by; that a new kind of dress had been used for the occasion.” And I think you will have arrived already at this conclusion, that as this conspiracy progressed, the approach to an actual military display of force became closer and closer. He says: “that the people came huzzing, with branches of trees, and screeching.” 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 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. The reason that I feel so confident about it is this, that up to that time no imputation had been cast on the character of Mr. Hughes; and I was particularly watchful with respect to that, remembering what had been thrown out against that gentleman, prior to the commencement of this trial. 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. But I must protest against any impeachment of Mr. Hughes's character now, grounded upon his being regarded in the light of a spy, employed to procure evidence secretly, or coming forward in the character of an informer. With respect to Mr. Ross, he also 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 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. 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. I admit that it has the force of law, be-  
 “cause 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. The Union,  
 “therefore, in my thorough conviction, is totally void, and I will avail  
 “myself of this opportunity to announce to several hundred thousands  
 “of my fellow-subjects, that that unconstitutional law, the Union, is  
 “not fated to last long.” 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. I will protect  
 “you all, and I will obtain for you all the Repeal of the Union.”  
 He then adverts to the Speech at the closing of the Session of Par-  
 liament; and this is the way in which he proceeds with reference to  
 the declaration made by Her Majesty at the prorogation of the Ses-  
 sion: “I am obliged to them” [that is, the Ministers] “for that  
 “speech, because it gives me, among other things, the pleasure of  
 “addressing such an assembly to-day. I thought the monster meet-  
 “ings 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 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 meet-  
 “ing; and here we are now upon the Rath of Mullaghmast.” Here  
 is an explicit avowal, that these several monster meetings had been  
 called by him, and the other members leagued with him in the Asso-  
 ciation. “At Mullaghmast”—Mark this; recollect the sentiments  
 contained in that document read yesterday, diffused through the  
 crowd, the remote part of the crowd, who could not hear the lan-  
 guage addressed by the speakers from the platform. It was necessary  
 to have something conveyed to them which could not be conveyed  
 by words, and for that reason this mode of circulating the same senti-  
 ments, and the same incentives, was adopted. “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.” 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 he says: “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 cer-  
 “ tain, 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.  
 “ I 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 Com-  
 “ mons. It is a theory, but it is a theory that may be realized in three  
 “ weeks.” How to be realized in three weeks by anything like con-  
 “ stitutional or peaceable means, I am utterly at a loss to conjecture;  
 “ and Mr. O’Connell himself has not thought fit to explain. Then  
 “ 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 had been unjustly de-  
 “ prived. We will submit all our differences to them, and will en-  
 “ deavour to do justice to all parties, and it will not cost you a single  
 “ farthing. I shall go on with that plan until I have all disputes de-  
 “ cided by judges appointed by the people themselves.” What now  
 “ becomes of the flimsy pretext and allegation, that all that was in-  
 “ tended here was to prevent parties going before magistrates 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 administra-  
 “ tion of the justice of the country? “ I wish to live long enough to  
 “ see justice realized in Ireland.” 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 goes on to an article in the *Times* newspaper, about the three  
 “ hundred persons whom he had announced he would call together,  
 “ and with respect to whom some observations were made by that  
 “ paper; and he says: “ The *Times* newspaper called them ‘ bog-trot-  
 “ ters,’ but better men never stepped upon pavement. I will have  
 “ three hundred, and no thanks to them.” He then proceeds to  
 “ call the attention of the meeting to the condition of Wales, which he

says is in a state of insurrection ; and then he adds : “ Let the English have England, let the Scotch have Scotland, but we must have Ireland for the Irish.” Then he says : “ We will be obedient to the Queen, joined to England by the golden link of the Crown.” How long that link would last or continue, in case this scheme, which he then had in agitation, had been carried to its consummation, you may, I think, very easily conjecture. 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!* Who are the “ traitors ?” The “ traitors” are those persons who left the rebels of 1798 exposed to the swords of “ 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 organized ; 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 organization and preparation. “ Oh ! how delighted I am with the thorough conviction that has come upon the minds of the people, that they could not gratify their enemies more than by committing a crime. No, your ancestors suffered for it ; they suffered for confiding in the English ; but we will never confide in them.” Now you cannot fail to remark as this goes on, how much more plain and undisguised the language and declarations of these parties become : “ I was delighted with the stalwart and strong men of Kildare. I was delighted with the activity and force that I saw around me ; and my old heart grew warm again in admiring the beauties of the dark-eyed maids and matrons of Kildare. Oh ! there is a star-light sparkling from the eye of a Kildare beauty that is scarcely equalled all over the world ; and remember you are the sons, you are the brothers, you are the husbands of such women, and traitor or coward can never be attributed to you. Yes, I am in a county remarkable in the history of Ireland for its bravery, and for its misfortunes ; for its credulity in the faith of others instead of judging for themselves ; in the sacredness of its shrines and its fanes. I am in a county where Kildare’s holy shrine burned with its sacred fire through ages of darkness and of storm. The fire was never extinguished, and the light was never quenched before the high altar of Kildare’s cathedral for more than five or six centuries ; it blazed constantly and unremittingly ; it was fed continuously, and without the slightest interruption ; and it seems to me a guarantee, or an assurance, of the religious fidelity and continuous love of country. Even your enemies admit that the world has not produced any men that can

“ exceed the Irishmen, in activity and strength. The Scotch philo-  
 “ sopher 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 teetotalers there? [Cries of ‘Yes.’] Yes; it is teetotalism  
 “ that is repealing the Union. I could not afford to bring you to-  
 “ gether, I would not dare to do it, if I had not had teetotalers for  
 “ my police.” I would not have dared to do it. Why? “ I would  
 “ not have ventured to bring together so many individuals as I have  
 “ now assembled round me, because the necessary consequence of it  
 “ would have been an outbreak, were I not perfectly assured from  
 “ the previous preparation and discipline to which I knew they had  
 “ been subjected, and their temperance habits, that I might do so  
 “ with safety.” Is not this the strongest expression of Mr. O’Con-  
 nell’s own conviction of the natural tendency of these meetings, and  
 of the difficulties of restraining them from actual violence? Nothing  
 but his own conviction of the complete success of the organization,  
 which he had consummated by the Repeal Wardens, and the other  
 organs of this Association—nothing but that conviction would have  
 induced him to run the hazard of bringing them together.

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’Con-  
 nell, 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 an-  
 “ ticipate, 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 distin-  
 “ guished 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.” Bloody deeds and hard  
 blows. “ 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. 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 meet-  
 ing; and, amongst the rest, one from Mr. Thomas Ffrench was read,  
 containing this passage: “ This mighty movement, unprecedented in  
 “ the history of nations, has now assumed a magnitude much too im-  
 “ mense to admit of retrograde or compromise. It has, in fact, terri-  
 “ fied the foes, as much as it has delighted the friends of Ireland.

“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 next speaker appears to have been Mr. Barrett; and in a speech delivered by that gentleman 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. “It has been said, that as we visited the hill of Tara, to recall the virtues and glorious days of Irishmen, in order to awaken the sentiments by which we may be restored to independence, so we visited 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.” He then 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 manifest in the breaking of the solemn pledge of hospitality”—that is, by the massacre—“or the solemn pledge of political justice.” He then adverts to the progress of the Repeal question, and says: “That Mr. O’Connell had called the meeting, for the purpose of showing that the Queen’s Speech had not, in the slightest degree, affected the progress of the movement.” Mr. Barrett, I think, has very unequivocally expressed his sentiments in that part of his speech.

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; but I take her speech, and that very speech is the very reason we are here this very evening for Ireland; we had made those demonstrations before hundreds of thousands of fighting men. One would think you had a taste for fighting.” This he says to the people assembled, in consequence, I suppose, of some expression of approbation. “One would think you had a taste for fighting. They had met, and they had proclaimed by their meeting, the national determination for the regeneration of the country. Yes, it would have been enough to have exhibited the national will in the meetings that preceded that speech, but it becomes 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.” “Dear lady! I have the greatest respect for her!!” He then proceeds to a declaration of



the motives which influenced him, and those associated with him, in calling this meeting; I mean at this particular place. "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 mark this: "A few more we shall have by way of tilly. I have five or six or seven yet unarranged: these at least we shall have, and I think by that time the Ministry will be tolerably convinced that the do-nothing policy will not heal the sores of Ireland, or profit their policy much." He then says: "No country ever yet prospered that was governed by other people; and our country's only prospect of prosperity is governing herself." 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 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"—he might have added, "knowing the state of desperate excitement to which I have worked them up;"—"knowing all this—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 outbreak to gratify the enemy, that would delight Sir Henry Har- dinge, 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?" Notwithstanding all the care I had taken to prevent it, says Mr. O'Connell, it came occasionally over my mind, like the incubus of a sickly dream; I had a dreadful apprehension that all my precautions would have been frustrated, that an occasion would have been afforded by the appearance of the military and the authorities for some violence, the effect of which would be, to check the progress of this conspiracy. My heart is relieved from that uneasiness by the confidence you still manifest in your leader; by your showing that you are still ready to abide your time, and wait the event. 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. "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 them-

“ selves. [A cry of ‘Blackrock.’] Oh! there is not a rock of any colour but where we will have them. I want to show the nations of Europe that we are capable of administering our judicial business ourselves.” Not merely the Petty Sessions’ business, but the whole judicial administration of the country is to be confided to their hands; they are fully capable of conducting it to the satisfaction of the world at large. “ 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.” We do not want judges appointed according to the law and Constitution of this country, where the Saxons have a voice in the Legislature, but we want the administration of justice lodged in the hands of people in whom we ourselves have confidence, whom we consider sufficient to conduct our judicial business. We do not want the assistance of the Saxon and the stranger.

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 such a strenuous struggle was made to exclude it from the evidence. “ 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. I anticipated it, and I now rejoice in it; where my voice is sounding, and you are quiet hearers, attentively listening; there, was once raised the yell of despair, the groan 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 Saxons, 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. They 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!” 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 here, from Mr. O’Connell’s own lips, the same sentiments, expressed in language, if possible, stronger and more exciting? 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 ani-

mated 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: "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." He then goes on in the same strain, and in the most exciting language. He says that "the Union has deprived us of our franchise power; the power of returning members is going out of Ireland; amongst the iniquities of England towards Ireland it did not give us a sufficient franchise." But he goes on to say: "I was sorry for it then," That is, when he formerly adverted to it, I suppose: "But I am glad of it now, for the more cause of quarrel I have with them, the better I like it. I should be sorry if they attempted to bungle up any good for Ireland." I should be sorry that the feeling of hatred which I am endeavouring to instil into your minds against your fellow-subjects in England, should be mitigated in any degree by any thing like an attempt, even a successful attempt, to make any improvement in Ireland by the Imperial Legislature.

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? "For a long time past they were in the habit of being ruled, and governed, and trampled upon by aliens and enemies." All this, observe, relates to the judicial administration of the country: "By enemies who, though living among us, were not our friends; but 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." Bear in mind, while this observation is made, the attempt to answer this by the counsel, that this had reference merely to Petty Sessions' Courts, and small disputes between parties, which it was expedient to have settled without resorting to an oath. "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 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." 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 connexion 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 organization," "cavalry and infantry," and so on. On this day there appeared this advertisement : "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, re- "commend the following rules to be observed for the regulation of "the cavalcade at this first muster and march of the mounted Re- "pealers. "First.—All mounted Repealers of this 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 a-breast, half distance, each bearing a wand and "cockade, distinguishing the number of his respective troop. Se- "cond.—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 per- "son 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 Committtee 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 meet- "ing-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, Sum- "mer-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.” It then proceeds to say that great care must be taken “to preserve the order and regularity of the march.” And concludes: “God save the Queen—mount for Repeal—march for Clontarf.” That appeared in the *Nation* of the 30th of September. 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 the 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 2nd 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.’” “In some of the newspapers on Saturday?” Now, do you think it likely, in the first place, that the proprietors of those newspapers, the *Nation*, and the other papers in which it appeared, would have inserted that advertisement of themselves? Do you think it would be the unprompted act of the publisher, merely as a newspaper editor? Can you have the least doubt, that it came from a source which he considered as an authentic and proper one, and that he acted upon it accordingly? But the effect produced by it having been found such as I have stated, it was then thought necessary to draw back; and accordingly Mr. O’Connell expressed 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; of course every gentleman, every Repealer, who has a horse in Dublin, is likely to ride there.” This is what “we were considering.” “They must observe the most perfect order, because if the horsemen mingled with the carriages those on foot might be trampled on. Yesterday the horsemen at Mullaghmast behaved with the utmost regularity and order, and did not infringe upon the people on foot in the slightest degree. I am sure that will happen at

“Clontarf. We will take every precaution, that is all that is necessary; and the advertisement on Saturday is one of the best quizes I have seen.” 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, and that it was desirable to preserve order, and therefore were deliberating how this thing should be done; but it was a quiz to say that it should be done in the manner advertised; it was wrong to *print* that. And I will now tell you what we did intend, and what we mean to abide by. Accordingly another advertisement appears which substitutes the word “groups” for “troops.” The person who corrected the advertisement of Saturday expunges the phrases throughout which have a purely military signification, and substitutes a few other words, adopting the whole, however, substantially, as the basis of the advertisement, which issues and goes forth on the Tuesday, as the proper and authentic document. What is the truth? That the document which had been unadvisedly approved of by the Committee was found to be too strong, and that the same Committee (I do not know whether Mr. O’Connell was present at it or not; it would appear that he was from his own language) found its effect on Saturday and Sunday to be such as made it imprudent to avow it as authentic; and one of them therefore takes a pen and strikes out the word “conquer,” the word “parade,” and the word “troop,” 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 an opportunity of attending their several places of Divine worship. What does this demonstrate? It demonstrates that this movement was regularly assuming a military character. On this particular occasion the Public took the alarm, it was found they were going a little too far, and this document was disavowed, but disavowed in such a manner as to convince any man that it was the document originally intended to be acted on, that it was repudiated only because they were afraid they could not yet safely maintain it.

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, to which it is necessary to advert, because it is one of the strong circumstances in the case as

affecting him, and connecting him with this combination; I mean the Rev. Mr. Tierney. The Association met on the 3rd 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 is another of the means of coercion which appear to have been resorted to, for the purpose of obtaining recruits for this agitation. Mr. O’Connell himself says, that “he had received that letter,” and then he goes on: “The people of Loughrea responded; there were two or three hundred thousand people (for I never differ with any body about a hundred thousand persons) assembled there, and a noble race they were. I had occasion before to observe, that such a sight of able-bodied men, light limbed and broad shouldered, fit for any light infantry in the world, never congregated together.” And then he says they showed a perfect good humour, as of course they did.

Mr. Steele then made a speech, which I need not advert to, because Mr. Steele’s connexion 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, one or two passages of which I shall have occasion to allude to. “The salutary institution of Arbitration Courts is here hailed by all classes of the people with nothing short of ecstatic joy, opening, as it does, a vista through which the coming glories of Ireland’s nationality can with delightful distinctness be described, and bringing present positive redemption from a degrading, galling bondage to an alien and hostile magistracy. The patriot prides in the emancipating effects of this magnificent system, while the priest glories in contemplating suppressed litigation, the discontinued profane use of God’s adorable name, extinguished animosity and hate, the general diffusion of uninterrupted peace and charity, and the bringing down of Heaven’s promised benediction upon the ‘peacemakers’ and the pacified. In conclusion, let me assure the Association that our selection of Arbitrators has been made under the influence of a due appreciation of the highly responsible duties, having to enact the first important prelude to Repeal, and to revive a venerable and hallowed relic of Catholic discipline, ancient as the days of the Apostles, and enforced by as energetic and inspired authority.” Now what does this show? “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 for confining this to the Petty Sessions' Courts: "when the hall of the Four Courts will be very empty." That seemed to produce some 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 to 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 3rd 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? Is it for the purpose of looking at the illustrious individual, to do honour to his presence? Is it to gaze on 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 well 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 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. 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 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." He then 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 £92.”

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 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 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. I have already said, the case of each gentleman here is perfectly separate and distinct—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 3rd 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. But you will judge of the meaning of Mr. Tier-

ney's language, how far it shows him to have been cognizant of, and participating in, the designs of the other persons who are indicted.

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. And observe, Gentlemen, that I am now reading against each person, and proving against each person, his own act, and not seeking to visit upon any one traverser the guilt of another. I am showing from each individual's own act that he was himself concurring in one common design—a design evinced by the identity and the coincidence of the acts of the several parties, proved to have been committed by them. It is, therefore, a fallacy and mistake to say, that this charge of conspiracy is an unjust attempt to fasten upon one person the guilt of another. You will say, whether each person here has not by his own act placed himself in that position, which entitles me to say that he is a person engaged in this conspiracy; and if this be so, each individual is visited, not with the misconduct of another, but with the consequences of his own actions, and his own declarations.

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, as at Mullaghmast, a description was given of the circumstances of the massacre which is alleged to have been perpetrated at that place, so when they come to hold the meeting at Clontarf, it is deemed expedient that the people should be put in possession of what event had occurred at Clontarf, in order that the desired associations might be created in their minds. 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." "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." There is the policy of the thing avowed. "It is, as it were, treading over the days that are past, or reading the history of Ireland anew." Reading the history of Ireland anew for such a purpose as this! "It is recalling to our minds, as in a picture, the calamities that our fathers experienced, or the feats they achieved. For this reason it was wise that meetings should have been held at Tara and Mullaghmast, and for this reason it is particularly wise that another should be held at Clontarf. In the whole range of Irish topography no spot is more celebrated than this. It was here that Irishmen, under a commander as prudent as brave, taught a lesson to their Danish invaders that has never been forgotten. Would to God that there had been soldiers of equal spirit, and commanders of equal pru-

"dence and bravery, to meet the plundering and blood-thirsty Saxons, in subsequent years, when they first set their feet upon our soil." These are the parties who are not looking to anything like separation; who mean to have the countries united by the golden link of the Crown! "Oh! if there had, what a world of misery Ireland had been spared! Should the game of subduing us be attempted now, however, such a people exists, and such a commander could be found. 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 conquered 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!" Mr. Barrett, in a subsequent part of the same paper, gives an historical account of the battle. 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 a 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. 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 connexion with it, and which ought to have no influence upon your verdict. If 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 interruption of that meeting. 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 legis-

lators, or at all events, of negotiators with the British parliament. They were to hold their sitting here. This he would do in spite of the Convention Act, or any other Act. In short, 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 those proceedings. How they might have otherwise 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.

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 of 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. In that address, the Manchester Repeal body, after paying a very high compliment to the exertions of Mr. O'Connell in the cause of Repeal, say: "Yes, illustrious Sir, though unwillingly located in a stranger land, our feelings are still keenly alive to the numberless wrongs and persecutions inflicted upon our unhappy country by those alien legislators, whose cruel and unjust laws have made us exiles from the homes and hearths of our fathers." What these persons meant by that I really do not profess to understand. I am not aware what part of the policy of the Legislature of the sister country made these persons "exiles from the homes and hearths of their fathers," or what there is suggested to justify the assertion that they had been expatriated: "And our regret for the ties we have left behind us still remains undiminished. Absence but strengthens our love for the land which gave us birth." They then say that "Saxon tyranny has adopted a barbarous policy in withholding from this country her just and sacred rights, and that their hearts 'pant with eagerness to reach the destined goal of liberty.'" Then they go on: "But should our despotic rulers—our cruel and relentless Saxon task-masters, men possessed of hearts devoid of feeling, and of power but to destroy—attempt by brute force to crush the struggle for Irish liberty which has now ripened into maturity, we are as firmly resolved to sacrifice our lives as the price by which the blood-stained standard of Saxon despotism shall ever again be permitted to rear its distorted head, or float triumphant throughout our green and lovely isle, while it is our earnest and increasing prayer that the same illustrious being who has become the triumphant and bloodless victor of the religion, rights, and privileges of his grateful and attached countrymen"—and so on—"may bring the cause to a consummation." And then they



proceed to say, that they had abstained from all illegal societies, for the purpose of giving their oppressors no cause of triumph.

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, or the 6th of October, I forget exactly on which, 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 he then proceeds: "If there be language of a stronger nature contained in this address;" there was language, you will recollect, 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 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 he not 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? 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. I merely advert to that which was relied upon by Mr. O'Connell himself, or by his counsel, as in the nature

of a defence in this case. Observe the language there used, and contrast it with what had been previously expressed. It appears to me that so far from vindicating Mr. O'Connell, it amounts to this: "We have gone too far; I find it out now that the proclamation is issued; I was not aware of it before; we have used language too strong."

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 organized 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 this indictment.

Gentlemen of the Jury, I say that there is no man who has heard the evidence which I have here gone through, which is not the evidence of this man's acts against another man, but of each man's own

act, and of each man's own publications, and each man's own declarations—I say, so far as that, that you cannot have the slightest doubt, that each and every of those persons, in a greater or less degree, entertained these common designs, and had these common objects. The case for a prosecution may be met and encountered by evidence upon the other side. But 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. The requisition was read, signed by some most respectable citizens, and the meeting was convened by the High Sheriff. That was a legal and constitutional meeting; but what has it to do with this case? Nothing upon earth. I have already adverted to the statement made by Mr. Conway; he was suffered to go down without any cross-examination on our part; in truth he had nothing to prove in the case.

Then 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. I believe that is the rule amongst the members, as between each other; I do not know whether it extends to prevent a member going to law against a person who is not a member, or *vice versâ*. But, supposing that it did, 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? What upon earth have the rules of the Quakers, as to referring their differences to private arbitration, to do with that? 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 I think that they would have been better without that witness than with him; for it appeared, from his testimony, that there was a witness who could have thrown light upon this part of the transaction, and that that person was actually in town. Have you the slightest doubt, that that person had been applied to; that the able gentlemen who are conducting this defence, comprising some of the most eminent and clever men in both professions, had a conference with him, and that they found out that it would not do to produce him? To me this is perfect demonstration as to the real fact with regard to this arch; and I have no doubt that, though it was



afterwards deemed prudent to take it down, just as it was deemed expedient to recal the first advertisement at Clontarf, it had been erected by some persons who considered it descriptive of the feelings intended to be excited in the minds of the people who were to attend, and it shows what was conceived and understood to be the nature and the object of all these demonstrations.

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 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. Why, it might as well be attempted to meet the case of the Crown by what Mr. O'Connell said in the year 1802, or at the earliest period of his life, or what any other of these traversers did or said at any antecedent part of his life, to bring that up in answer to this charge, as to call your attention to what Mr. O'Connell did, or what this Association did, in 1842.

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 our's. 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; that was done all through the year 1843; I have applied myself to that part of the case. But besides this, distinct and substantive evidence on the part of the defendants has been attempted, in answer to the case of the Crown; and that is the subject of my present observations. 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. It was necessary to have some pretext for calling these meetings. Mr. O'Connell and his associates were not to go and tell the public: "We want to excite the people against the State, and to promote ill-will against our fellow-subjects, and for that purpose we must have a meeting of two or three hundred thousand people." They would not say that; no, the pretext is "petitioning;" the pretext is, "we want to exercise a lawful right." And it is not till a great number of these meetings have taken place, that we find their real object, and that the pretext for which they were called was merely fallacious. It is then, and not till then, that we



find the real character of them. I say, therefore, 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. The two hundred and fifty thousand people that assembled at Mullaghmast, amongst whom those documents were circulated, are not called upon, or any of them who could write, or who could even affix their mark, to put their mark to a petition. Not a single petition appears; not one.

Now, 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 empannelled 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. 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? He has repeatedly dared the Government to the discussion of the legality of his proceedings; but has he announced to you, or to their Lordships, any one legal, peaceful, or constitutional mode, by which he proposed that the Union should be repealed? How does he justify, how does he attempt to justify, his concoction of a new Constitution for this country—the number of commoners that are to sit in the House of Commons—the places that are to return members—the elective franchise—the issuing of writs to boroughs? Has he attempted to vindicate or support the legality of these propositions? He has repeatedly asserted it to his multitudes who assembled at the meetings. But he has not here attempted to show that these legal, peaceful, and constitutional means exist. 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, *si sic omnia* he would not have been now an object of prosecution. This is a circumstance to which he has a right to refer with satisfaction; and I am very far from wishing to detract from its merit. 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 connexion with this combination, or any redemption of his pledge, to prove that his proceedings have been legal? He has not attempted that at all. I must, therefore, take leave to say, that on the part of Mr. O'Connell, this is an unexplained and an undenied charge. I ask you, on what ground, put forward by Mr. O'Connell himself, could you say that he was innocent of the present charge?

Gentlemen, he did, in one part of his address, appear to me to make a complaint, that an opportunity should have been afforded to him to explain his violent speeches. I really did not know what Mr. O'Connell meant by that. In the first place it would appear to me to admit that there were passages in his speeches, that at all events would require explanation; but recollect Mr. O'Connell's case, till he came here, was, that he was acting in strict accordance with the law; that he was violating no principle of the law or Constitution in his proceedings: he is called upon to show that that is so, and of what does he then complain? Why, that he had had no opportunity allowed him to explain himself. If he had no opportunity before the prosecution, has he not had the opportunity now? And has he availed himself of it? Are his acts or speeches either explained or denied? Is not this a case on the part of the Crown, wholly unrebuted on the part of the traversers?

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. 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, as to the beneficial consequences to that class of men in the army, in case these confederates had their way, (those publications going on, you will observe, simultaneously with the speeches, and with the progress of what I may call the military organization of the people themselves)—you will have no doubt, from all this, 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, the calling the people to assemble together to be ready when required, the frequent and constant allusions to their immense physical force, the accounts laid before them of the victories obtained by their ancestors over the persons who invaded this country, the descriptions given to them of the military positions which might be safely defended in case of attack, and the display of the military music, banners, and flags, and the accustoming them in this way to military exhibition, and military discipline; that all this places beyond the shadow of a 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. Mr. O'Connell had pledged himself to carry the Repeal, at one time in three months, at another time at the expiration of a month. He had pledged himself to effect that object in some manner, in answer to those persons who had thus trusted him, advanced their money, and enrolled themselves as Repealers; and finding that to be impracticable by the regular and constitutional modes, he was driven—I will not say he originally contemplated it—but he was driven to make those exhibitions of physical force. I am not saying that he had formed the intention of using it. 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. Why, then, what have we here? We really have here a body usurping and assuming all the functions of the State. It is the language, I think, of Mr. Duffy, in one of his publications: "We are now in fact a nation; we have the administration of justice, we have taxation, we have order, we have military discipline, we have foreign policy, and lastly, we have legislation." My learned friends on the other side may collect from the history of England, or of Ireland, or of any other country, specimens, or instances, of meetings called together; they may collect instances of speeches made, they may collect demonstrations of large numbers of persons for particular purposes; but is there on record, allow me to ask, any thing at all approaching to such a state of things as this? 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. 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, 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, 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, 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 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? Recollect Mr. O'Connell's language. He began this agitation himself, he says, long after the speech which he made in 1810. He commenced it a very short time after the passing of the Catholic Relief Bill. He says he always entertained these notions; but that for a long time they were confined entirely to himself. He has thus arrogated to himself the exclusive merit of this agitation. But what is the inevitable and necessary consequence of it? 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? It is not to be expected; it cannot possibly be expected. Topics of this sort, I think, would be as well spared on both sides, because I freely admit they ought not to affect your verdict; and I confess I feel myself fettered by the rules within which, I admit freely, I think a counsel for the prosecution ought to confine himself, from going into a great number of observations, which, but for that consideration, I might very properly and naturally make, in reply to those offered by my learned opponents. But, when it is suggested to you, as an ingredient that ought to influence you in coming to a conclusion as to the verdict you ought to find, that the state of this country is poor; when this is urged as a justification, or palliation, of the adoption of these proceedings, I must be allowed to observe that 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.

Gentlemen of the Jury, Mr. O'Connell's speech appears to me, as I have already stated, to be an admission of this charge, so far as relates to the facts. It appeared to me rather to be a speech in mitigation, or excuse, than in justification of the course he admits himself to have pursued. Whether that course is legal or not, is the point on which he and we are at issue; 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 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 observation 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, with regard to the law, their Lordships will direct you, and of course you will follow implicitly their guidance. Their Lordships will tell you, that conspiracy does not necessarily imply a secret proceeding; that it does not necessarily imply, that every thing a conspirator does must be done in the dark, because a conspiracy may, from its very nature, be such (and this is one), that though the agreement may be concealed, although the illegal object be not avowed, yet the modes by which it is to be effected not only may be, but must be, open and undisguised. It may be impossible to carry into effect a conspiracy in a secret manner, so far as relates to the means of attaining its objects. Thus, in the present case, you cannot collect hundreds of thousands of people together secretly; and, therefore, you may discard from your minds the notion that secrecy is necessary to constitute a conspiracy. Conspiracy is no more than this—it is the joint acting of two or more persons in a common design which is unlawful, either because the end is unlawful for which they combine, or because, the end being lawful, they pursue that object by illegal means. Now, this being the law of the case, we have charged in our indictment, that there was (in that understanding of the word) a conspiracy, or, in other words, an illegal acting in concert by these defendants. How is that made out? We find one presiding mind in the concoction of the whole; we find each and every of the traversers following out the purposes of that conspiracy or combination, so arranged, in his own particular department. We find the publisher of one paper inserting an article having this object, the publisher of another paper inserting an article having the same object, each of them tending to the common design. We find

meetings held, at which this person and that person of the traversers attend; we find speeches made at each of those meetings; we find the purposes for which those meetings were held, avowed. We find the thing carried on, regularly and systematically carried on from first to last, till at last the purposes are scarcely disguised; till that which at first was, to a certain extent, secret and unknown, is so fully developed, and so clearly expressed, if I may so say, that "he who runs may read." 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 neutralize 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. 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. The effect of the Volunteers' declaration was no more than this, that it was not right or fair that a Legislature in which the Irish people had no voice, should have power to govern them, and that of right none should have that power except the 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, where they return a hundred members, and to tell the people in the present tense, that no power, in 1843, or 1844, has, or ought to have, a right to bind Ireland, except the King, Lords, and Commons of Ireland—to lay down that doctrine in 1843, and to justify it by analogy to a declaration of the Volunteers in 1782, 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. It is neither more nor less than saying this—telling the people of Ireland (and this is the very first charge in the indictment), “you are legislated for, you are governed by a power that has no right to govern you.” To hold out the declaration of the Volunteers in 1782 as binding, or as to guide the people in 1843, is just saying this: “you are legislated for by a body that have no right so to legislate; no person has that power, and no body has that power, but the Queen, Lords, and Commons of Ireland.” I say, to lay down that doctrine in 1843 is unconstitutional, illegal, and seditious.

Mr. Molyneux, who has been so often referred to, published his celebrated letter to vindicate the rights of the Irish people to have representatives in Parliament; and he says: “If from these last-mentioned records it be concluded that the Parliament of England may bind Ireland, it must also be allowed that the people of Ireland ought to have their representatives in the Parliament of England.” That was the grievance against which the movement of 1782 was directed; and it is a mere pretext to take that as the basis of the present movement, which is directed, not against an unconstitutional exercise of authority over Ireland, but against the law and Constitution of this country, as by law established. Mr. Molyneux goes on, alluding to their having representatives in the Parliament of England: “And this, I believe,” he says, “we should be willing enough to embrace, but this is an happiness we can hardly hope for.” Mr. Molyneux’s idea was, that the incorporation of the two Legislatures in one, was a happiness, for the sake of this country, which was hardly to be hoped for; evidently showing that great man’s notions of what would be desirable for the two countries in the way of legislation.

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 any thing 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 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 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 defendant's 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, 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 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. 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 *fidus 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, 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, 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." Not a single individual of that description is brought forward; the greatest caution has been observed in keeping them back. I do not say that it is incumbent upon persons who are charged with offence and crime, to come forward and vindicate themselves till they are implicated by evidence; I do not mean to say, that this Association is bound, at the bidding of the Crown, or merely on being prosecuted, to come forward and show you what the real nature of their constitution is. I do not say that; but when I find the persons connected with that Association conducting themselves in such a way, as clearly to bring themselves within the law; and when it is said on the other side, "We are not violating the law, but keeping within the limits of it;" I think I have a right to say to them, show me by evidence, which I know is in your power, what your objects really are, or how far they have gone, and to what they tend. I do not profess to know in what state we might have been at this moment, but for the stopping of these proceedings in the month of October. You will recollect, the last time we heard Mr. O'Connell speaking, before the commencement of this prosecution, he says to the people, "I have one or two more steps which I shall not at present disclose." He doles out his information to the assembled multitudes, piece by piece, as he finds occasion will justify; you find there is a regular scheme in progress and concoction, but it is not until he conceives the other machinery sufficiently perfect, that the head of the combination thinks fit to disclose what it is. I will not at present say what might have been the consequences to the persons connected with this movement, if three hundred 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 he 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 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 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, 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 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.

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### 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, that on conference with my learned Brethren of the Bench, there is a concurrence of 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 reference 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, or upon the facts on 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 good deal of what might be more 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 decide on. Gentlemen, there are many questions made both of law and of fact. On the latter subject you are the constitutional judges. 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 as 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, Dr. John Gray, and Mr. Richard Barret. 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 disaffection 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 disaffection amongst the Queen's subjects, and to excite to hatred and unlawful opposition to the Government and Constitution of the realm. The second 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 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. The latter is rather a repetition of the previous object of conspiracy, and we may say the last 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 overt acts, or means by which those objects were to be carried into effect. These overt acts are not part of the conspiracy, but they are inserted in the count, and in the indictment, as statements of the evidence by which the charge of conspiracy is to be supported; 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 only evidence; and the question is not so much as to the existence of the particular overt acts named, as the conspiracy of which they are stated as the evidence. But it is not upon the fact of the evidence, but upon its 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, it is very important in the outset, that you should take and store up 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; I will go over the charges again, because it is very necessary that these matters should be kept 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. The second is, to stir up jealousies amongst the Queen's subjects, and to promote ill-will from one class of the subjects against another, especially from Ireland against England. The third, 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, as a whole, it is an indictment for a conspiracy, and nothing else. There is no indictment against any of the traversers for a 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 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 set against him in concert with some other person. A single person, an individual, cannot *per se*, without joining in concert with somebody else, 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 a conspiracy, which according to law I can, not only safely, but which I am bound to put to you. Gentlemen, you see 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, or the existence of secrecy, which was insisted upon on the second day that he addressed you, and which was afterwards repeated by Mr. O'Connell the traverser, when he addressed 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 prosecutor to prove the existence either of treachery or of secrecy, in order to complete this charge. I do not mean to say, but rather the contrary, that very often both treachery and secrecy do not 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 notion—I do not very well know how to designate it—a sort of disagreeable name, or 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, 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 find 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, I am bound to say, that it does not 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 in my opinion, 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—(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)—if secrecy was a necessary ingredient in the crime of conspiracy, the present alleged conspiracy might have been carried on from its beginning to its final consummation, and the parties could never have been stopped in their progress, or charged with the crime of that nature. 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, it may be rejected from your minds altogether as if I were giving any thing like an opinion, or any thing bordering upon an opinion, with regard to the facts of this case, which will be for your final decision. But I am putting it in the way of exemplification. Secrecy is not necessary. If the parties conspired—that is, agreed together, upon a common illegal intent and design, to overawe the Parliament of the country, to cause alarm and terror amongst Her Majesty's subjects, by collecting together in the open day large bodies of the people, the more numerous, the more public, the more likely the means would be to accomplish the end of the parties who called them together, and forming part of the crime with which they are charged, their object being to create terror, intimidation, and overawing, which would be brought about more by public demonstration than by secrecy or concealment. Therefore, I put that as an instance 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 further, 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 am bound 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, is the mutual concert of two or more to bring about an end illegal in itself, or an end abstractly 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, treachery, or secrecy, but they are not 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, 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 therefore an *obiter dictum*, or an *ipse dixit*. Those are the terms he made use of: *obiter dictum*, that is, inconsiderately—not necessary to determine the 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 & Ellis, 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—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 laid down, and adopting it as the foundation of their judgment. So far with regard to the statement of its being *ipse dixit*. But it is not only so: because 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 justice 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 & Payne, the ninth volume, which I believe is the last of those Reporters. 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, 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, "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 deliberate 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. That is the whole of it. 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), have reiterated and re-stated the existence of the same rule, and have acted upon it accordingly. Mr. Fitzgibbon the first day, with a good 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 existing 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 nothing was conspiracy except an unlawful association of men bound together by oath or other illegal obligation, for the purpose of imposing a false crime, a false accusation upon another man, or something to the same effect. And he referred to a passage in Hawkins, as stating that to be the law of conspiracy. 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 Act of Parliament in the reign of Ed-

ward the First. That was stated by him from 1st Hawkins, 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, in the opinion of Lord Ellenborough not to be pushed farther,” 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 of course was carrying the law too far, and, according to Lord Ellenborough, that is too much. “ Formerly 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 applied, namely, in the reign of Edward the First. I need not go through the 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 in which I give it. It is by no means necessary, that treachery or secrecy should, one or either of them, form an ingredient in the charge of conspiracy, as the law now looks upon it. Now I believe, Gentlemen, I have told you you are to take the law from the Court ; and having thus told you explicitly what the law of conspiracy is not, and what it is, I forbear troubling you with cases upon the subject, upon which I and the rest of my brethren with me have come to the conclusion I have stated.

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 satis-

fied that such an agreement, a criminal agreement, has taken place, from thenceforward the acts of each one associated in this conspiracy, are reciprocally evidence against the other of them, if conducing to the same criminal end, though it be not proved that each and all of the several conspirators have 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 towards 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 concoct the common illegal agreement, it is not necessary should be absolutely proved to you ; it is enough, and you are 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 Reverend 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 3rd of October ; “if a conspiracy be already formed, and a person joins it afterwards, he is equally guilty.” Certainly, 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 you will have to decide the question whether or not Mr. Tierney, who does not appear to have joined the Association until the 3rd 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, for which the several traversers are here upon their trial, were for the most part committed before the 2nd of October, 1843, when he joined ; and though the general way in which Judge Coleridge has laid down the proposition which I have read distinctly to you, would, as a matter of course, involve a party in the previous guilt, though he did not join the Association until a late time, yet I think that in reference to Mr. Tierney I should put the question to you—if you be satisfied that he did then join it, did he at that time adopt

the Association as it stood, with all its acts and criminality (if such existed), as they 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 and to state to you 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 Mr. Justice Coleridge said, but in this case I prefer to leave it to you to consider and pronounce whether the qualification applies to Mr. Tierney, or not. I hope you have taken down the 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 misapprehension.

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 *Rex 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 a Court 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 misdemeanor." I subscribe to that position. 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 proceeded 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 staple 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 su-  
 “ premacy are the reserved popular right of a free press and an un-  
 “ shackled right of petitioning. They are the great pedestals of our  
 “ free and balanced Constitution. Impair either, and it totters; with-  
 “ draw 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 assem-  
 “ ble and violate the law, vindicate the violated law.” Those, Gentle-  
 men, 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 enuncia-  
 ted by that distinguished man.

Now, Gentlemen, what is the law, the violation of which we are  
 called upon to bring into judgment—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 Co-  
 ronation 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 235: “ 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 so to do.’ ” That is the Coronation Oath.  
 Now what, with regard to this country and its connections with Great  
 Britain, are the Statutes which she has sworn by her Coronation Oath  
 to abide by, administer, and preserve? We have heard, Gentlemen, a  
 great deal of assertion; we have heard a vast quantity of declamation;  
 we have heard much of complaints, of grievances; we have heard a  
 great deal of what the law ought to be; we have heard you called upon  
 to decide whether 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 pre-  
 serve; 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 Act of Union, which I am now going to state to you.

Gentlemen, in the Fortieth year of George the Third, an Act passed for the Union of Great Britain and Ireland. It recites: "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 connexion 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 the 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: "And whereas in furtherance of the said resolution, both Houses of the said Two Parliaments respectively have likewise agreed upon certain Articles for effectuating and establishing the said purposes in the tenor following:—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;" and that the royal style and titles appertaining to the Imperial Crown of the said United Kingdom and its dependencies, and also the ensigns, armorial flags, and banners thereof, shall be such as His Majesty, by His royal proclamation, under the great seal of the United Kingdom, shall be pleased to appoint.'" 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 the Article; and the idea 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 passing of the Act of Union, there is one Sovereign over one kingdom, incapable by himself 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 pleased to condescend to treat and negotiate with him separately from her Parliament, and to adopt his suggestions, she has not the power of doing 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 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 have sworn to preserve these laws, 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 which 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 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 an essential article of agreement upon the basis of which these three great countries, England, Scotland, and Ireland, agreed together to dissolve themselves and to become united into one great empire, under the denomination of the United Kingdom of Great Britain and Ireland. I need not go through the other articles which regulate other matters which are thenceforward to subsist between the contracting Parliaments. All those being duly enumerated, 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. There, then, Gentlemen, is the law ratified by 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. But, 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."

Gentlemen, Mr. Sheil required me, when I should 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 & Payne's Reports, page 93. Now this, Gentlemen, is what he requires me to refer to. I acquiesce both in his request 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 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 coun-  
 “ try.’ ” 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 stand-  
 ing their trial. “ This charge,” says Baron Alderson, “ is a misdemea-  
 “ nor 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 law-  
 “ yers have laid down with respect to unlawful assemblies. Mr. Sergeant  
 “ Hawkins, one of the best authorities on this subject, says that ‘ any  
 “ ‘ meeting whatsoever of great numbers of people, with such circum-  
 “ ‘ stances 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 com-  
 “ ‘ plaining 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 propo-  
 “ sed 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 sub-  
 “ jects; 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 was the case which Mr. Sheil required me to read, and I could not read one part without 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 stated 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 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 it in order to represent any part of Scotland or the English Universities.” Attend to 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 toward 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 upon the English bench of justice.

Mr. *Whiteside*.—I believe they were acquitted of the conspiracy, my Lord.

The LORD CHIEF JUSTICE.—But they were found guilty of attending an unlawful assembly. That is not part of what Baron Alderson said.

Now, Gentlemen, what I have said is, that I fully concur with Baron Alderson in both charges, 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 of the Bench. Gentlemen of the Jury, let us not be misunderstood, as Baron Alderson said, let me not be 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 fellow-subjects, 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, it may happen indeed to be dangerous in regard 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, to 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 no crime, that is the law, and the liberality of the law, as stated by Baron Alderson, “ God forbid we should ever



be without it ;” and so 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 privileges 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 masses and 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 case always here), it does not follow, therefore, that that meeting will be lawful. I do not mean to say that the mere attending 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. 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 to be an illegal assembly, for which the parties so assembling would be answerable. But it is not necessary that that should have been 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 ; suppose they conducted themselves with great propriety and regularity ; suppose no breach of the peace was committed ; suppose there was no tendency to a breach of the peace, 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 every person attending it would be guilty of a misdemeanor. 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 mass and 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 pur-



pose 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, 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 were 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 concur and are agreed with him in procuring such means for such an end. I have not gone the length to say that I suppose that any of the traversers are guilty; on the contrary, I am merely telling to you, and explaining to you, 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. They may be not only admissible, but they may be 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 that particular question. But I should be glad to know, are the Parliament of the country, or the Queen's Ministers, or those who are intrusted, necessarily intrusted, with the management of state affairs—are they to be the only persons in the country who are not to have the benefit of free discussion, and the benefit of fair, cool, impartial deliberation? Are they to lay aside fair discussion and deliberate judgment, and to be influenced and led astray by the intimidations of fear, or the demonstrations of physical power and force? If the members of the Legislature 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 secret societies—they have been guilty of no breach of the law—they have not appeared in arms, but they are, physically speaking, the finest 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 take, 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. Now is that the way in which the transactions of the government of the country are to be influenced? I have no hesitation in saying, Gentlemen, if you come to be of opinion that that was the object of the persons who collected those multitudinous

meetings one after another all over the country—if you be of opinion that their object was not what they professed, to consider of grievances, to talk of 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 changes by 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.

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 object of Repeal as best suited to the interest of the country. They say, that by means of the Union they have suffered 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 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, of speaking, 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 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 co-operation of the Monarch of the two countries, making 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 would be entitled to stand in the position in which he now stands, or exercise those rights which he deservedly enjoys, if it were not for that Act, passed by that Parliament, which is alleged to be, as they assert, totally incapable of passing any Act. The Reform Act 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, gave their votes and their voices, and they concurred in, or might have altered, those Acts as they passed through the Legislature. If the proposition be true,

which I have so often heard contended for, that the Act of Union was a nullity, and if Mr. O'Connell was right in proclaiming it so to hundreds of thousands assembled at Mullaghmast and elsewhere, the result would be that Mr. O'Connell would have no right to sit in the Imperial Parliament, and no emancipated Roman Catholic would be entitled, as a free citizen, to the rights and privileges which he ought to enjoy as such.

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; and if the last proposition I have stated to you were correct, it would render it useless for these persons, or any of them, to take the present step. If the Act of Union be void, where is the necessity, or where the power, for repealing a nullity? The two things are inconsistent; for 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 those questions. 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) to interfere with it directly or indirectly, it would be very difficult indeed for me to tell you whether you 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 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 those sentiments in public. That was given in free discussion, and nobody prevented his doing so; every body perhaps did not agree with him, but that is another matter. He had the right; he exercised the right of delivering his sentiments 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 attended that meeting and made that speech? It is perfectly irrelevant. In 1810 he attended another meeting; this was ten years after the Act of Union had been in force and operation. This last 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, perhaps persons of high rank within the city of Dublin. Every freeman and freeholder was invited to attend—was invited to attend for the purpose of free discussion, and giving his deliberate opinion as to what should be done, either in concurring in a petition for 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 fear or without control; as far as he confined himself to free discussion, giving

no undue offence to any body present, he had a right so to deliver himself, and so he did. 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 himself from that charge, by proof of what he or they respectively did forty or thirty or twenty years before. Does this show anything like a continuity of purpose? What a person expressed in the way of political rights 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; is it to be inferred from that, that, therefore, in what is not a similar case, or anything like a similar case, a similar course of proceeding may be pursued? Now there is this wide difference between the two. 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 of them 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? Public speeches made at a public meeting, convened by the Sheriffs of the city of Dublin in the one case, and 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 position in which Mr. Daniel O'Connell is represented to have stood in 1843? Were these meetings convened by the magistrates? Was there any one magistrate 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 (and it is very right you should take notice, Gentlemen), 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; whether that be or not of any importance is for you to judge.



I do not mean, Gentlemen of the Jury, in any respect to take the facts from you, and I wish to submit them all fairly to you, but at the same time 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 anything in that or not, it is for you to say. At that Association Mr. O'Connell obtained and possessed unquestionably an authority, I would say—but I believe he has said so himself—bordering upon an absolute. Now 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; you will say whether or not he does not take upon himself, in all those addresses, the position of leader of the people to whom those addresses were issued. These have been given in evidence on the part of the traversers, and they are properly submitted to you, and 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 whether there 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 a legal purpose in their Association, to procure a Repeal of the Union in such ways, as they say the law and the Constitution allow. The Solicitor General says: up to 1843 I do not deny the proposition that you advance; the Act of Union is what you consider to be a grievance and a great grievance, and you have a right, by freedom of discussion, by petitions to the Crown, by petitions to Par-

liament, by every other legal and constitutional way, to endeavour to relieve yourselves from those grievances, or supposed grievances, and thereby, and so to procure a Repeal of the Union. They at the other side say, 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, 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 henceforth, whatever may have been their antecedent proceedings, of which he says nothing, from thenceforth, the means by which they attempted to effect the Repeal of the Union, if that were their object, became illegal. Now, Gentlemen, it lies upon the Crown to maintain that proposition; it lies upon the Crown to maintain it, and prove it by evidence to your satisfaction, that from some time in 1843, such a conspiracy as has been charged in the indictment existed; the precise time, or day, or place, is not material. Mr. O'Connell said he was deprived of the means of proving an *alibi*—why, it is not necessary; he has had notice of the facts imputed to him, he has had a bill of particulars, and he has had overt acts stated upon the face of the indictment; but without proving a direct time or place in which an illegal agreement was concocted between two or more of the traversers, it is for you to say, are you satisfied upon the facts laid before you, that though the actual time of the conspiracy is not proved, yet that such a conspiracy as is imputed must have taken place, from the facts that are admitted, or proved, coming from one or more different parties charged with this conspiracy, and in 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 is 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 satisfactory proof, either direct or inferential. 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. 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.

Gentlemen of the Jury, the Crown say, and I think there is evidence to support the statement (the weight is with you), 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 extending and ramifying in various directions. But in 1843, proceedings were adopted, for the purpose of rendering those communications, 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 organization, 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 collected. 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 organization. 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 they were spread over the country. But the main-spring by which the machinery was conducted, the grand plan that was had recourse to, in order to consolidate and direct the energies of the Association, consisted in the appointment of what are called Repeal Wardens. Now, Gentleman of the Jury, the Repeal Wardens, at least in their present system, were 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 Repeal Wardens got their instructions; the duties prescribed to them were all acts of the Association—committees appointed to report upon them, reports adopted and acted on by the creation of a system of Repeal Wardens extending all over Ireland, having their duties confined to particular districts, communicating with the interior, receiving their instructions from the Association itself, and making regular reports or communications of every thing that occurred to the Association. That, with the assistance of Repeal Inspectors, I would have said, amounted to something like a very well regulated police. I 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, persons very competent to be at the head of the people, in the same way that officers or sergeants in the army might be.

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 of the other side to 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. It is quite right that they should be aware of that; I shall state no document they have not, and for the end of justice it is essential, that if I misstate at all, I should be corrected. They had, Gentlemen, besides collecting and taking care that every person became a member of the Society, a duty imposed upon them, that all the people in their respective districts should be furnished with newspapers. Now, Gentlemen, there were in connexion 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 fur-



nished 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 gave directions for that purpose, that they should be furnished accordingly; that is, another paper of the same side of politics.

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, the Repeal Wardens taking care that they should read them, or have them read to them; and for that purpose, the instructions that I have here in print before me, give 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; a society for the diffusion of useful knowledge; 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 anything 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 general 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 beyond 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 a 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 Associates'; the green one, the Members'; the other one, which is a fancy piece rather, the Volunteers'. 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 connexion 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. My brother Crampton 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, 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 Members' 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." And thus it became the act, to all intents and purposes, of the Association itself. 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 bearings, 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 is more recently 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 ourselves 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 Members' 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 a Parliament; 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 or wrong. 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 give 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 fair intention of free discussion, 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?

SATURDAY, FEBRUARY 10, 1844.

## THE LORD CHIEF JUSTICE.

Before I resume this case, 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 myself very explicitly respecting 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. 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 organization, the appointment of officers, and so forth, 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, and 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 England, in Scotland, and several parts of Ireland, and various 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 personal or 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 considerable 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 in to the Association a sum of upwards of £1100 which he had received from America for the purpose. The Association, thus organized, thus disciplined, thus provided with funds, with numbers unexampled, is the instrument 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 various counsel make the case that this is all legitimate, and 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, or whether, in pursuing their objects by the methods 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. They might do more; they might, by the introduction of free and fair discussion give weight and extent to their opinions 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 since the Union; a law which has been passed by the Sovereign and Legislature of the country at the time.

Now having called your attention to the state of power, and organization, and discipline to which they had carried that Association, and its connexions, 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 22nd 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 recognize, "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 and Queens of Ireland; by the effect of the Act of Union Ireland was swallowed up in the United Kingdom, and the previous sovereign ceased to be 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. It is a plan to propose in lieu of it, placing Her Majesty, the undoubted Queen of the United Kingdom, in a separate situation as Queen of Ireland, which she could not then become, without the consent and concurrence of the Legislature of the United Kingdom, together with the sanction of the Throne. Then it goes on to say :—"The people of Ireland recognize, acknowledge, 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 undivisible 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 exist 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." 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 rather a demand? The tone, 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 for a common purpose, in which each person, without distinctly knowing what it was, had committed and bound himself, more or less, by advancing money in its support.

"Fourthly, the plan for the restoration of the Irish Parliament is  
 "as follows:—Firstly, that the county members should be in-  
 "creased to one hundred and seventy three, in the manner here-  
 "in-after specified. Secondly, that there should be one hundred  
 "and twenty-seven 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 one hun-  
 "dred thousand inhabitants, should get an increase of one member,  
 "so as to have three representatives; that every other county having  
 "above one hundred thousand inhabitants should get an increase  
 "of two members; that every county ranging above one hundred  
 "and fifty thousand inhabitants should get an increase of three  
 "members; that every county ranging above two hundred and fifty  
 "thousand inhabitants should get an increase of four members."  
 And so he goes on with the other counties, according to their size  
 and increase in inhabitants, And then there is: "The following  
 "schedule of the different places to return members to the Irish  
 "Parliament will show their relative population, and the number  
 "of members to be assigned to each." I need not go through the  
 particulars of that schedule. "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 addition  
 "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 bal-  
 "lot. Eighthly.—The Monarch *de facto* of England at all times  
 "hereafter, whosoever he may be, shall be Monarch *de jure* in Ire-  
 "land; and so, in case of a future regency, the regent *de facto* in  
 "England to be regent *de jure* in Ireland. Ninthly.—The con-  
 "nexion between Great Britain and Ireland, by means of the power,  
 "authority, and prerogative of the Crown"—not in any other way—  
 "to be perpetual, and incapable of change, or any severance or se-  
 "paration. The foregoing plan to be carried into effect according  
 "to recognized law and strict constitutional principle." What that  
 may be is not defined, nor do I see how such a plan as that, essen-  
 tially 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 "recognized law and strict constitutional prin-  
 ciple. 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 King-  
 dom, with the concurrence and sanction of the Crown, think proper  
 to pass a new Act of Parliament, either repealing the Union, or mo-  
 difying it as it at present stands with regard to the connexion be-  
 tween 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 the fortieth of  
 George the Third, which it expressly endeavours 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, organized 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? I shall leave to you, Gentlemen, to say the true character of that in which they were engaged, 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 topics.

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 reported 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 or 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, the attempt by intimidation and by demonstration of physical power to overawe the councils of the nation. Those bands are a little thing in consideration. They may in some measure relate to the question of organization and discipline, something contributory 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 violence of the speeches made to the assembled multitudes on these 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 afforded of making their sentiments known to the assembled multitudes. You will say, Gentlemen of the Jury, whether from the nature of those speeches they were acting in pursuance or promotion of a common design, and that a criminal one; it will be for you to judge on this point. 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. 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 unpremeditatedly, 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 *Pilot*. This is not a chance speech, a heated effusion which a man may let out and afterwards be sorry for; no, it is the premeditated speech of this gentleman, first spoken deliberately 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: "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"—or fall, I do not know which it is—"to recede were ruin. [Cheers]. To suppose you will neglect your present opportunity, would be to suppose you would ungratefully [I believe it is] neglect that cup of national independence and prosperity, which, Providence, in its mercy, seems at last to

“ have presented to your parched and feverish lips. [Tremendous cheering].” 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 unrepeat us by silencing us? No; we know—England now knows—Europe knows—and the world knows—that Ireland is united. 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. [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 the introduction of free discussion, the introduction of fair 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. Come what may, the die is cast—Repeal must be successful. We have a leader worthy of our people, and a people worthy of such a leader. A people sober, forbearing, resolved, and possessing all the virtues which will enable them to obtain, by showing that they are worthy of national 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 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 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. “ 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 one of his former neighbours; they would ask him the news, but what would be the tidings he would have to bring them? He should say to one, ‘ Jemmy, your

“ father has been killed ;’ to another, ‘ Tom, your brother has been shot.’ A third would ask, ‘ but my sister Eleanor, does she live?’ He would say, ‘ your sister is not dead.’ ‘ But is my father alive?’ ‘ 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.’” You recollect, one 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 ? “ Yes, my Lord Beaumont, the brother of Ellen O’ Moore would be near your castle ; 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.” This was something existing in the mind and imagination of Mr. O’Connell, who framed and fabricated this story for the purpose of having its effect. No such story 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 violence provoked by the introduction of an unfounded 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 monster meetings, for the purpose of producing 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. 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. “ Mr. O’Connell rose, and was received with most



" tremendous bursts of applause, which were repeated at least half a  
 " dozen times. After the lapse of some minutes, when order had been  
 " restored, the learned gentleman proceeded to speak as follows :  
 " " My friend, Counsellor Maguire, made an excellent speech—I  
 " " think one of the most effective I ever heard—powerful in dic-  
 " " tion—strong in imagery, and above all, transcendant in the out-  
 " " burstings of genius and patriotism. It was, in a word, a most  
 " " excellent speech. 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 : no, you will  
 " " not be freemen if you be not perfectly in the right, and your  
 " " enemies in the wrong." 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. The efforts already made by them have been  
 " most abortive and ridiculous ; in the midst of peace and tranquil-  
 " lity they are covering over our land with troops. Yes, I speak  
 " with the awful determination with which I commenced my ad-  
 " dress, in consequence of the news received this day. There was  
 " no House of Commons on Thursday, for the Cabinet was consi-  
 " dering what they should do—not for Ireland, but against her." Now  
 it is true, as I before observed, that not only at the Association,  
 but also, I believe, without exception, at all those public meet-  
 ings, 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 actu-  
 ally 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 be arrived when they would be prepared  
 to make such a 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 to 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, hear.] Thursday  
 " was spent in an endeavour to discover whether or not they should  
 " use coercive measures. [Hear, and hisses]. Yes, coercive mea-



“sures—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 with-  
 “in it. [Laughter and cheers]. But, gentlemen, to leave this  
 “subject, I hold that I would not be deserving of the station  
 “I hold amongst you, if I disguised for a moment the magnitude  
 “of the peril in which we are placed. Why were the troops sent  
 “over here? Why, from mis-information given to them by the  
 “low vile Orangemen of former tyranny [groans], and it is through  
 “the agency of the same materials that they now seek to coerce  
 “us. [Cries of ‘never,’ and cheers.] 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 was dropped in a fold would it be a lamb? [Hear and  
 “cheers.] But perhaps I am wrong in anticipating, perhaps I am  
 “mistaken in warning you [‘no, no’]; but is there not reason to  
 “caution you? [Cheers.] The Council sat for an entire day,  
 “and even then did not conclude its deliberations, but adjourned  
 “to the next day, while the business of the country was allowed  
 “to stand still. [Hear, hear.] What had they to deliberate  
 “about? The Repealers were peaceable, loyal, and attached, af-  
 “fectionately 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,”—what power or right have they to do that?  
 “and whose conduct has ever been full of sympathy and emotion  
 “for our sufferings. What I want you and them to understand  
 “is, that we are sensible of the position in which we are placed  
 “[cheers], that we have our apprehensions. By apprehensions I  
 “do not mean fears. [Cheers.] But they are threatening us,  
 “Irishmen, peaceful and tranquil, for what offence? An Act of  
 “Parliament binding two countries together, is insisted to be re-  
 “pealed by the Irish people. It was not a compact, but a fraud  
 “and an imposition, and we are those that should have been parties  
 “to the contract; and let me ask you if any of your properties  
 “were taken by fraud or violence, have you not a remedy in the  
 “existing law? [Hear, and cheers.] Suppose, then, for a mo-  
 “ment, 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 by-word of the

“ world, would she not have a right to call for a repeal of that  
 “ Act?” She would, in a legitimate way. “ 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 cheer-  
 “ ing, that lasted for several minutes.] I was wrong; they may  
 “ trample me under foot. [‘ 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. [Cheers.] 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  
 “ eighty thousand 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 Wel-  
 “ lington may be second Cromwells [loud hisses]; they may get  
 “ his blunted truncheon, and they may, oh! sacred Heaven! en-  
 “ act on the fair occupants of that gallery [pointing to the ladies’  
 “ gallery], the murder of the Wexford ladies. But I am wrong;  
 “ they never shall. [Tremendous cheering and waving of hand-  
 “ kerchiefs.]” This is all peaceable discussion, I suppose! “ 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 sup-  
 “ posed, that I made that appeal to the ladies as a flight of my  
 “ imagination. No, the number of three hundred ladies, the beauty  
 “ and loveliness of Wexford—the young and the old—the maid  
 “ and matron—when Cromwell entered the town by treachery,  
 “ three hundred 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. I tell you this—three hundred  
 “ of the grace and beauty and virtue of Wexford were slaughtered  
 “ by the English ruffians—Sacred Heaven! I am not at all ima-  
 “ ginative when I talk of the possibility of such occurrences anew.”  
 What is the meaning of introducing a story of that nature, which,  
 if it ever existed, or if there be a word of truth in it, took place  
 two hundred years ago? For what purpose is that introduced?  
 Is that, Gentlemen, ask yourselves, for the purpose of free discus-  
 sion 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, as the place for the enormous meeting. 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. “ I am not standing on what are called, “ foolishly, points of honour. If I could do good by imploring of “ them in the abject position of placing myself on my bended “ knees before my fellow-creature, I would cheerfully do so for the “ sake of Ireland ; but while I have that disposition I have also the “ high and haughty spirit of the leader of the Irish people.” That is the position which he has assumed. “ I feel that entreaty would “ be condescension, but in the hearty spirit of brotherly conciliation “ I meet them as Irishmen, and our object is to have Ireland for the “ Irish. This day is a proof of how certain we are of success. “ Within the last week I have addressed I am certain two millions “ of Irish people. I thought in the glens of Wicklow, that the “ assemblage which met my view was the most majestic I ever witnessed.” That was at Baltinglass. “ And since then, in the “ Queen's County, where I expected comparative paucity of numbers, and perhaps too a laxity of zeal, I was met by a still “ more majestic meeting, and the procession entirely covered “ that curious natural production, extending for three and a half “ miles of a winding road, and contained tens and hundreds of “ thousands of enthusiastic people.” That is the way in which he describes these multitudes. From this I turn to the splendid spectacle of to day. Thousands upon thousands were around us, but where are they now ?” This was at the dinner. They are dissolved like the snow before the returning of the south wind and the genial sun. They are gone home in peace, in quiet, and in tranquillity. But if I were to call them together again to-

"morrow, and to tell them that the Saxons were at their doors ;  
 "that the scenes that had been so often repeated from the day when  
 "the vile Cromwell deliberately massacred three hundred women  
 "grouped around the Cross of the Redeemer in the town of Wex-  
 "ford ; 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." 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 ex-  
 cited by the same detail of British cruelty, British barbarity, com-  
 mitted 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 Orange-  
 "men 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 ;  
 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 intima-  
 tion, 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 are the meaning  
 and object of those speeches ? What is the meaning of those dis-  
 plays, 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 organization and discipline of this immense  
 body of persons. But, however, Gentlemen, I do not wish to anti-  
 pate 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 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]. "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." Here then he turns to another subject, part also of the alleged conspiracy. "We are appointing men to act as Arbitrators in the room of magistrates who were struck off, and those who are left in the commission, who are infinitely worse. Last year Goulburn took off the duty on arbitrations, as if he had actually seen what was coming. I have them there, and do they think that they will catch an old bird with chaff? 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." Was there concert between them? "It will sit every Friday afterwards." How did he know that except by previous concert and arrangement? "They will spread through the country. We have had a number of applications for the establishment of Courts," not of arbitrations, "in various parts of Ireland; and 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." *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 prerogative, judicial or otherwise, is guilty of an high misdemeanor. "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. "I have made arrangements to ascertain what parts of Ireland ought to return members to the Irish Parliament; I am getting returns of notices, and whenever the Queen's writs may issue, it will only be necessary to put a bit of wax at the end of a piece of parchment and we shall have a Parliament at once. I want to know how they will catch me at that?" He and the Queen, I suppose, were acting in concert together for the purpose of violating her Coronation Oath. "I will play the game, until I checkmate them. It may be necessary

“ for me to go slowly, and to ask the people of Ireland to continue  
 “ their confidence in me whilst I go slowly. It is better to be slow  
 “ and sure, than fast and uncertain. I will not go a bit faster  
 “ for the taunts of enemies or the sneers of pretended friends.”  
 Here is another plan. “ We are to have an Association which is  
 “ to meet by chance in Dublin”—by chance—“ I hope before this  
 “ year closes, but at all events I am sure early in the next, three  
 “ hundred gentlemen will find themselves together in Dublin by  
 “ one accident or another.” How this was to be done, I cannot  
 say, except by the temporary loan of the lamp of Aladdin. Now  
 here is another part of this meeting for full, and free, and fair dis-  
 cussion. “ Without going into the Convention Act, or any other  
 “ Act, I say, at the time I have stated, we shall have three hundred  
 “ gentlemen assembled, ready to enter into immediate negotiation  
 “ with the British Minister, to show him the state of Ireland, to  
 “ show him our further resources, to show him how we could  
 “ paralyse the entire State, and that it would be done by nothing but  
 “ sowing more potatoes and leaving the harvest to rot on the field,  
 “ except the poor man’s part, the potatoes, to show him that we  
 “ have physical power, and that, if assailed, we will use it. I have  
 “ more projects in my mind, but I will not speak of them now, by  
 “ which I can checkmate the Government tranquilly and quietly.  
 “ 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, be-  
 “ cause it has withered the strong arm of Irish affection. They  
 “ have not conciliated Ireland, because they offered nothing as a re-  
 “ medy for our grievances but a miserable paltry compromise,  
 “ giving what children call the smallest half, and what have we re-  
 “ plied ? We have said that there shall be no compromise. Repeal,  
 “ nothing but Repeal. [Cheers.] 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 disci-  
 “ pline 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 cheer-  
 “ fully 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 Conne-  
 mara. 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 will 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 some time 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 ocean 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 multiudes 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 the 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 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 inconsis-

tency 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. [His Lordship having read the document which has been before set out, *ante*, p. 278, then proceeded.] 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 one of Mr. O'Connell's police to prevent the circulation of that 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 this: "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 honoured 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 between them. There are the same incalculable numbers, there is the same firmness, there is the same determination, 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 man, and in the presence of God, against the iniquity of continuing the Union." [Loud cheers.] "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. 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 rights. The Union, therefore, in my thorough conviction, is totally void." That is Mr. O'Connell's assertion, in the presence of the assembled thousands—" 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." Why does he not submit to it, then ? " But I say solemnly, it is not supported by constitutional rights. The Union, therefore, in my thorough conviction, is totally void, and I will avail myself of this opportunity to announce to several hundred thousands of my fellow-subjects, that that unconstitutional law, the Union, is not fated to last long, its hour is approaching. America offered us her sympathy and support, we refused the support, but 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, declare that no support obtained from America shall be purchased by the price of our abandoning principle for one moment ; and our principle is, that every human being is entitled to freedom. I therefore denounced it at the Association, and in this enormous multitude I again denounce the slavery of the negro in America ; I pronounce it an injustice against man, and a sin in its operation against the Eternal God ; and 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 them. What I say upon this subject, you one and all join me in. [Immense cries of ' We do, we do !' ] Let that cry go to America. Yes, my friends, I want nothing but Ireland for the Irish ; I think the Irish competent to obtain their own country for themselves. I like to have the sympathy of every good man every where, but I want not the armed support of physical strength from any country." Then he states that the republican party in France offered him assistance, and his rejection of it. " I have physical force enough about me to-day to achieve anything ; but you know full well that is not my plan. I won't risk one of you. I could not afford to lose one of you. I will protect you all ; and I will obtain for you all the Repeal of the Union. 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 were displayed.] " The assertion of that sentiment is our sure protection ; for nobody will attack us, and we will attack nobody. Indeed it will be the height of absurdity in

“ us to think of making an attack, when we can play the game peace-  
 “ ably and quietly. There is not a man in his senses in Europe  
 “ or America, that does not admit that the Repeal of the Union  
 “ is now inevitable. The English newspapers taunted us, and their  
 “ writers, who first laughed us to scorn, now admit that it is im-  
 “ possible to resist the application for Repeal.” [Cries of ‘ more  
 “ power to you.’] That is the answer of the people. “ Oh! we  
 “ have power enough, and we know how to use it. Why, it is  
 “ only this week that one of the leading London newspapers,  
 “ called the *Morning Herald*, who had a Reporter at the Lis-  
 “ more meeting, published an account of that great and mighty  
 “ meeting, and in that account the writer expressly says, that it  
 “ will be impossible to refuse so peaceable, so determined, and so  
 “ unanimous a people, as the people of Ireland, the restoration of  
 “ their domestic legislation. For my own part I would have thought  
 “ it totally unnecessary to call together so large a meeting as this,  
 “ but for a trick played by Wellington and Peel, and Graham and  
 “ Stanley, and the rest of that paltry Administration, by whose go-  
 “ vernement this country is disgraced. I do not suppose that so  
 “ worthless an Administration was ever got together.” He then  
 goes into abuse of several of the Ministers, which I shall not repeat.  
 “ I was angry at first, but I am glad of it; they”—that is the Minis-  
 ters—“ have put a speech, abusing the Irish, into the Queen’s mouth;  
 “ abusing the Irish nobility, accusing us of disaffection. Oh! they  
 “ lie, it is their speech; there is no disaffection in Ireland; we were  
 “ loyal to the House of Brunswick when they were our enemies; we  
 “ were loyal to George the Third when he betrayed us; we were loyal  
 “ to George the Fourth when he blubbered and cried because we  
 “ forced him to emancipate us; we were loyal to old Billy, though  
 “ his Ministers put into his mouth a base, bloody, and intolerant  
 “ speech against Ireland; and we are loyal to the Queen, notwith-  
 “ standing anything they may say; but their speech it is, and I pro-  
 “ nounce it a lie; there is no disaffection in Ireland; but there is  
 “ this, a full determination to obtain justice and liberty.” Those  
 are very high sounding words. “ I am obliged to them for that  
 “ speech, because it gives me, among other things, the pleasure of  
 “ addressing such an assembly to-day. I thought the monster meet-  
 “ ings had demonstrated the opinion of Ireland.” Whatever that  
 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 deliv-  
 ered 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 meet-



ing at Lismore, a monster meeting; and here we are now upon the Rath of Mullaghmast. 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. 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. But do not 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, many of them joining us in heart and in hand, going for old Ireland and liberty. I thought this a fit and becoming spot to celebrate our unanimity in declaring in open day, our determination not to be misled by any treachery." Is that, or is that not, in unison with the printed paper circulated over the Rath of Mullaghmast? "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 hand; 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. I have led you thus far in safety; 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 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 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 es-  
 tablishment 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, I am laying the foundation of a new judicial system for  
 " Courts of Justice. I shall go on with that plan until I have all dis-  
 " putes decided by judges appointed by the people themselves. I  
 " wish to live long enough to see justice realized in Ireland, and li-  
 " berty 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 Ire-  
 land 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 Ma-  
 " jesty, when she has got rid of the present miserable and paltry Ad-  
 " ministration, and has an Administration that I can support, consti-  
 " tuted of friends of Ireland : we will have a Parliament ; but I must  
 " finish that part of the job before I go further, and one of my rea-  
 " sons for calling you together was, to proclaim throughout Ireland  
 " that I want to arrange that before I go a step further. Let the  
 " English have England, let the Scotch have Scotland, but we must  
 " have Ireland for the Irish. I will not 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 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 insurrec-  
 " tion ; but you have a leader now who never will allow you to be led  
 " astray. Oh ! how delighted I am with the thorough conviction  
 " that has come upon the minds of the people, that they could not  
 " gratify their enemies more than by committing a crime. No, your  
 " ancestors suffered for it ; they suffered for confiding in the English ;  
 " but we will never confide in them. They suffered for being divided  
 " among themselves, but there is no division amongst us. They suffered  
 " for their own dissensions, and not for standing man by man by each

“ other’s side. We will stand peaceably in the open day, side by side, “ in defiance of every enemy. Oh! how delighted I was in the scenes “ which I came through here. How my heart throbbed; how my “ spirit was elevated with the countenances I beheld. I was de- “ lighted with the stalwart and strong men of Kildare.” 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, and “ its determination to uphold and maintain inviolate all the preroga- “ tives of the Crown, as guaranteed by the Constitution.” 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.

Now, Gentlemen of the Jury, the next transaction at that meet- ing at Mullaghmast, to which I shall 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: “ In the public prints, of which “ I know something, we have been in the habit of comparing the pro- “ gressively accumulating county meetings; we have been in the “ habit of comparing county meetings to the meeting at Tara; we “ have been in the habit of saying, it was the best meeting except the “ meeting at Tara; from this time forth we shall always say, it was “ the best meeting we have had except Tara and Mullaghmast. This “ was a most magnificent meeting, and an honour to the country, an “ honour to the locality, and to the town which produced it. 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. “ It is one of those incidents “ of a great political secret, a secret invented by an illustrious indi- “ vidual present, suggested, no doubt, and blessed as it has been, by “ an all-wise Providence, that wills the regeneration of this country. “ It is a great political secret, which has at last proved to the people “ of this country, and will prove to mankind, that the many who “ openly and peaceably combine, shall be more than a match for the “ few who have hitherto successfully conspired, and cheated, and “ trampled upon them. 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 were the  
 means by which, it may be said in history, these ends were accom-  
 plished. “ And when it has generated so many virtues in a long op-  
 “ pressed people, it is almost worth the ordeal we have gone through.  
 “ It has been said, that as we visited the Hill of Tara to recall the  
 “ virtues and glorious days of Irishmen, in order to awaken the sen-  
 “ timents 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 ; and they say, if there was, was  
 “ it not ill-natured to revive recollections to embitter the feud be-  
 “ tween the two countries, when England is so tremblingly anxious to  
 “ do every justice to this country ? Is England thus anxious to do  
 “ it ? Are there symptoms of England being so anxious ? I know  
 “ that English writers at a later period have often been deceived  
 “ about the country, which has been so often written up or down.  
 “ The wretch of Glencore was called the good William ; and the  
 “ profligate harridan, Queen Elizabeth, the people called good Queen  
 “ Bess ; and when, even in our own times, Castlereagh said, in the  
 “ face of England, that he never heard of flogging of people in Ire-  
 “ land, 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 ;  
 “ and when we were taunted by the English press, most satisfactorily  
 “ and most conclusively, that there was no cruelty, because Sir Henry  
 “ Hardinge said it, a second Lord Castlereagh ; why, do you think  
 “ they will persuade you that there was no massacre at Mullaghmast.  
 “ They will persuade you it is not so in the books, because she never  
 “ confessed it ; but they say that we should not mention that. Are  
 “ we so well treated by the English people ? What confidence can  
 “ we place in her, when she will not even acknowledge her errors ?  
 “ Was there nothing like the massacre of Mullaghmast in the rebel-  
 “ lion of 1798, after the people were instigated to rebellion, and then  
 “ betrayed ? I will give you a more recent instance—the Reform  
 “ Bill. Did they give us our due share ? Was not that Reform  
 “ Bill to betray the liberties of the country ? 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. O’Connell made a speech  
 also at the dinner or banquet at Mullaghmast. You are to judge whe-  
 ther 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! Yes, it has scattered into thin air every conclusion that our enemies could entertain adverse to the progress of the majestic cause of Repeal. They had two distinct propositions to guard, the pernicious system of corruption: they first allege that a feeling of indifference would follow from our recent exertions; they said, that we had been too fiery, and too sturdy, and bustling; that we had too many great meetings, that the public ear was palled, and the public taste disgusted, by the repetition of similar scenes. They declared that the people would become indifferent, and that in apathy and in silence our efforts for the regeneration of Ireland would terminate. Oh! no, I knew there was no fear of it, but that was the assertion of our enemies; it was the assertion of Government, and it was the policy of the Government. They have acted upon it, and would do nothing during the last Session, because they said, that if we were left alone we would do nothing. 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. 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 very reason why we are here this evening for Ireland. We had made those demonstrations of hundreds of thousands of fighting men; one would think you had a taste for fighting. They had met, and they had proclaimed by their meeting the national determination for the regeneration of their country. 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. 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; a few more we shall now have by way of a tilly." He continued still to be the manager of those meetings. "I have five or six or seven yet unarranged; these at least we shall have; and I think by that time the Ministry will be tolerably convinced that the do-nothing policy will not heal the sores of Ireland, or profit their policy much. I confess my apprehensions were of a different kind. I was afraid that, instead of indifference, over impatience would have sprung. 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—no, you need not—was not  
 “ the determination expressed for every man to abide his hour, to  
 “ wait his time, to take no other step but those which the counsel  
 “ of wise men, and the sanction of the annointed priests of God,  
 “ should offer to him, as the mode of obtaining the liberty of his  
 “ country. 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 pro-  
 “ gress of freedom, and those steps are not difficult. The adminis-  
 “ tration 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 work-  
 “ ing well, and there are already Judges selected by themselves.—  
 “ [A cry of ‘ Blackrock.’] Oh! there is not a rock of any colour  
 “ but where we will have them. I want to show the nations of Eu-  
 “ rope that we are capable of administering our judicial business our-  
 “ selves, that we do not want the Saxon and the stranger, and above  
 “ all, we do not want bigoted men to serve us to do our business.  
 “ We will show we are capable and worthy of making our own laws,  
 “ for we will administer the law that others make; but we will ad-  
 “ minister it,”—we will administer it,—“ in the spirit of equity and  
 “ of justice, mitigating its harshness, and doing impartial justice to  
 “ every one who approaches our tribunal.” “ 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. And yet it is curious what a spot we are  
 “ assembled on; I anticipated it, and I now rejoice in it; where my  
 “ voice is sounding, and you are quiet hearers attentively listening,  
 “ there was once raised the yell of despair, the groans of approach-  
 “ ing 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, grinding their  
 “ victims to death. Here the Saxon triumphed; here he 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 merri-  
 “ ment of the banquet they were slaughtered.” Is not that the  
 very story that was circulated round the Rath of Mullaghmast in the  
 morning? “ They 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!" Not that you would not, but that you dare not. "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 mother of these Irish chieftains. 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." 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. 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. Oh! my glorious countrymen, endowed with every virtue, the contrast between you and your oppressors is to me the subject of exultation. In everything 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 steeped in an infusion of gall and 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 im-

peachment, 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 Dunkerrin, 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 anybody, 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 Reverend 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 enlarging 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; he was too wise for them; he was never yet overreached 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 every thing 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 Reverend 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 he would be professing one thing, and acting upon another; that that would be base and disin-



genuous; 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 any thing we get now, but if they delay, we will take the whole; we will have egg, shell, and all; but at present, such an arrangement might be made as would fully secure to them the benefit of their vested rights." 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. 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 together near him, but left him to work in a part by himself, solitary and alone, and refused to hold any intercourse with him. My friend was afraid that they belonged to some secret society, and addressing them said, that he hoped they were not Ribbonmen, that they refused to let that poor fellow into their company; but what was their answer? 'Oh! that fellow refused to become a Repealer.' These good men were combined for the cause of Repeal, and it is absolutely necessary that you should be doubly active now; I cannot afford to leave out man, woman, or child, without becoming Repealers. 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 by the counsel for 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 do, 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.—The toast which you have proposed, and which I have the honour to respond to, presents a most gratifying theme; and who would have thought a twelvemonth ago that our Repeal Association would be at the present moment in its towering career? No one could have supposed it except one, the master-mind who designed it; he knew very well where native sentiment existed, and his power; all I now ask you is, where is the Government that can measure our power? Where is the Ministry that would dare coerce us? and what are the objects of the Repeal Association?" This is at Mullaghmast, Gentlemen; 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 neutralizes or mitigates his bitter draught. It only remains for the people to persevere as they will. Have you any security for your rights? Have you any protection for the remainder of your liberties? You have not, except by compact and organization; organization, therefore, is policy and safety. If you are not willing to lie down as slaves, you must join the Association, upon which your only hopes of redress ever can be placed. It is your duty to follow the advice of the great Liberator, who never led you astray, or will—whom you are prepared, I will say, to follow in whatever course he may suggest to you, come woe, come weal, for the purpose of asserting the liberties of your country; he has never led you from the proper course, and I am sure he never will. Your unlimited confidence is justly and properly placed in him, and his will is and must be your law. I am now addressing an enlightened audience, the representatives of the feelings of the people of Ireland, and I appeal to you, Gentlemen, that you do not suffer this meeting, or the like, to evaporate and to vanish without carrying out those principles, the

“ details of which are equally important to the exhibition of the power of the masses.” Which is so necessary for the achievement of their ends? “ You will organize your districts, and do not stop until the length and breadth of the land is ascertained by Repeal Wardens, and the simple machinery, and the system proposed by the Repeal Association—until the spirit of Ireland be ample—until all act with one will. Such will be the means of attaining our independence, and the consummation of that rests only upon the period of time in which the result will be followed and carried out. 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. We will pursue our objects firmly and steadily, without deviating on the one side or the other, till the *palladium* of Irish liberty shall be safely enshrined in its congenial temple in College-green.”

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. He said: “ I have often felt proud on many occasions, when I was warmly received by my fellow-coutrymen, 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 recall 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 portrayed 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, organized and disciplined, excited in the manner that you have heard stated by the parties themselves, existed in the country in such a state of discipline, that the moment Mr. O'Connell thought proper to stamp his foot, or to raise his hand, those multitudes would re-assemble, 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 Court, 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 Rev. 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 3rd 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 Rev. 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 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 3rd of October, and this is worth your consideration. Mr. Tierney attended at the Repeal Association on Monday the 3rd 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; 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?” That was in reference to what had taken place a few days ago. “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, and for a holier 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 of being 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.” 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 members' card, is illustrated by these 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 bygone times, permit me to bring to your recollection a few facts connected with the history of my country." Facts *ejusdem generis* with the massacre of Mullaghmast; facts of cruelty and treachery perpetrated by Englishmen against Irishmen in the manner which he details; facts of bygone 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 whether they are not gratuitously brought forward by this reverend gentleman:

"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 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"—that is the same as Lord Lieutenant—"he was a bloody and inhuman monster; he was 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 house. On his arrival there, he was seized by the English soldiers under the command of Sir Henry Bagnall." Had this Rev. 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 Reverend Mr. Tierney? "On his arrival there, he was seized by the English soldiers under the command of Sir Henry Bagnal; he was executed at his own door; his head was struck off, and sent to the Castle of Dublin, and his lands and 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 comprising a history of 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. Why did he introduce these topics? 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 con-



sideration, 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 Reverend 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." United 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. 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 he 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 country 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."

To 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 be-

tween 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 at Tara, the greatest meeting but one they ever had, or repeated at the meeting at Mallow, the same facts, though perhaps dressed in different words? 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 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 connexion 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 those articles, "Something is coming," and "Our Nationality." [His Lordship here read the articles, which have been already set out, *ante*, pp. 71—74; and also an article in the *Nation* of the 12th of August, stated *ante*, p. 98.]

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. [See *ante*, p. 108.]

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 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 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 Members' card of the Association. "The Irish in the English Army—Mr. O'Callaghan's Letters." [See *ante*, p. 119.]

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 that are, on a smaller scale, 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, which has been also read to you, and dwelt upon at much length by the officers for the Crown, also connected with the subject of the army—I mean the letter published by Mr. Barrett, in the *Pilot*, 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.

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 upon 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 to 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 to carry out 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 conspiring 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 country subject to the British Crown." It begins—(see p. 168).

Gentlemen, there is one subject in particular which requires a little more detail; 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 the 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 in the habit of being 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 analogous 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 judicial 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 verymuch 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 *bond 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 *bond 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 invented, 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 there is 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 to, 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 cognizance 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 or encroachment on the Queen's prerogative, in that respect, has always been considered a high misdemeanor.

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 267, 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 ori-  
 “ ginal power of judicature, by the fundamental principles of society,  
 “ is lodged in 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 ex-  
 “ pedition, 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 execu-  
 “ ting 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 geuerally 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 in 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  
 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 attempt to deny 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 establish 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 charge 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 Clifden, 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 unneces-  
 “ sary 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 har-  
 “ monious 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 Commit-  
 “ tee suggest, that the dismissed magistrates, and such Repeal jus-  
 “ tices as have resigned, be in the first instance recommended as Ar-  
 “ bitrators 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 re-  
 sign; 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 substi-  
 tution of these Courts. It is not based on the principle of reli-  
 gion, 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  
 have thought proper, upon several occasions, in several places, and  
 with the utmost publicity, to disparage and decry the Courts of Jus-  
 tice, 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 alto-  
 gether independent both of the Crown and of the subject. They are  
 placed here to administer the laws of the land, for which 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 not worthy to continue in the administration of 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 misdemeanor, 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 conspiracy alleged against the traversers 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 and hostility 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 law 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 traverser or traversers 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 may 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 a 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 no-

thing 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 have, 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.

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The Foreman of the Jury stated the jury were much fatigued, and wished to know whether it would be necessary for them to go into the consideration of the case to-night.

The LORD CHIEF JUSTICE.—Gentlemen, I am sorry to tell you it is not possible for me to allow you to separate for the night, now that the charge has been delivered. I am sorry to say I have not the power to give you the liberty of retiring to your own homes. You must remain in the custody of the Sheriff, holding no communication with any but each other. I am not aware that the Court is at liberty to give any other answer to your question.

The issue paper was then handed up to the jury, and they retired at half-past five o'clock.

Mr. *Henn*.—Before your Lordships leave the Court, I submit that there is no evidence that any of the acts were done within the county of the city of Dublin.

The LORD CHIEF JUSTICE.—What do you call the meetings of the Association?

Mr. *Henn*.—There is no evidence that those meetings were held in the county of the city of Dublin.

The LORD CHIEF JUSTICE having left the Court,

Mr. JUSTICE CRAMPTON took a note that there was no evidence in support of the charge, to show that the venue was properly laid in the county of the city of Dublin.

Their Lordships retired, with the exception of Mr. Justice Perrin.

Mr. *Moore*, on the part of the Traversers.—I am quite satisfied that all the documents should be given to the jury, but I have been instructed that marks and scores have been made under particular parts of them, and I do not think that they should go to the jury in that state. It appears also that the Clerk of the Crown has all the documents on one side, and only a few on the other.

Mr. JUSTICE PERRIN.—They will be forthcoming. Mr. Vernon has got some of the newspapers. A messenger has gone for him.

Mr. *Henn*.—My Lord, I object to any of the newspapers going to the jury without our seeing them.

Mr. Justice Perrin then retired.



At half-past seven Mr. Justice Crampton came into Court.

The *Attorney-General*.—All the documents are now in Court; I wish to know if they are to go to the jury.

Mr. *Moore*.—Some of the documents are marked. If they went to the jury, the consequence would be, that their attention would be directed to that which is prejudicial, and there would be nothing to direct their attention to that which is favourable to the traversers.

Mr. JUSTICE 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. As the jury are not coming out, the better course will be to swear in bailiffs, and to adjourn the Court until nine o'clock.

Five bailiffs were sworn, and the Court adjourned.

At a quarter past nine Mr. Justice Crampton returned.

The Sheriff having been sent for the jury, the Foreman in a few minutes appeared, and stated that the jury were not quite ready.

Mr. JUSTICE CRAMPTON.—I shall wait for you: let me know when you are ready.

At eleven o'clock his Lordship returned, and sent for the jury.

The Foreman came into Court, and asked whether the jury were to give a verdict on every count, whether they had agreed or not agreed?

Mr. JUSTICE CRAMPTON.—If you are agreed upon each count, some of 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. But there must be a finding, one way or the other, on each count.

The Foreman then retired.

Mr. JUSTICE CRAMPTON.—Mr. Attorney and Mr. Moore, I am disposed to think that if the jury agreed on certain counts, and not on others, I should be at liberty to receive their verdict so stated. I wish you to consider that.

At twenty minutes before twelve the jury came into Court.

The Clerk of the Crown called over the names of the jury.

The traversers were called on their recognizances. Mr. Steele, Dr. Gray, Mr. Ray, and Mr. Barrett, appeared.

Mr. JUSTICE CRAMPTON.—If the traversers have appeared by attorney, we cannot require their appearance personally.

The *Attorney-General*.—They have been called on their recognizances merely for form's sake, and not with a view to any ulterior proceedings.

The *Clerk of the Crown*.—Gentlemen, are you agreed?

*Foreman*.—Yes.

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.

Mr. JUSTICE CRAMPTON.—There is no finding on that count against the others.

*Clerk of the Crown.*—No.

Mr. JUSTICE 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 Matthew Ray, John Gray, Thomas Steele, Charles Gavan Duffy, and Richard Barrett, are GUILTY. Mr. Tierney is not included in that count. On the *fifth* count, Daniel O'Connell, John O'Connell, T. 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 Matthew Ray, John Gray, Thomas Steele, Richard Barrett, and Charles Gavan Duffy, GUILTY. No finding in this count with regard to 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 Matthew 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.

Mr. JUSTICE CRAMPTON.—You must take your verdict back, 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 every thing.

Mr. JUSTICE 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 have.

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*.—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 *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 do not 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, that they should express that disagreement. We respectfully submit that such a verdict could not be received.

Mr. JUSTICE CRAMPTON.—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.

Mr. JUSTICE CRAMPTON.—The jury handed in their verdict, containing a finding upon certain counts, and it remains for the Court to see whether that is a verdict that can be received at all.

The jury then retired.

The *Attorney-General*.—Perhaps your Lordship is not aware that it is very close upon twelve o'clock, and the verdict cannot be received on Sunday. It may be right, therefore, to adjourn to Monday morning.

Mr. JUSTICE CRAMPTON.—It has not struck twelve yet. I should wish to be quite satisfied that the verdict cannot 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.

Mr. JUSTICE CRAMPTON.—Have you now arranged your verdict.

*Foreman*.—Not yet, my Lord.

The jury again retired.

Mr. *Henn*.—It is now past twelve o'clock.

The *Attorney-General*.—I cannot possibly consent to the jury being allowed to separate now. I think there must be an adjournment till Monday morning.

Mr. JUSTICE CRAMPTON.—I want to know whether you contend that the verdict is not receivable now.

The *Attorney-General*.—Under the circumstances, I think the jury should not be allowed to separate at this hour.

Mr. JUSTICE CRAMPTON.—That is a different question. I want to know whether you mean to say that the verdict is receivable.

The *Attorney-General*.—I do not 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.

Mr. JUSTICE CRAMPTON.—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.

Mr. JUSTICE CRAMPTON.—Very well, you do not commit yourself much by that. What do you say, Mr. Henn?

Mr. *Henn*.—My Lord, we do not consent to any arrangement; we have nothing to say to it.

Mr. JUSTICE CRAMPTON.—I see that I cannot get any information or assistance from either side.

The *Attorney-General*.—I will endeavour, as far as I can, to give information to the Court; but 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 do not think I could be justified in not stating that I am of opinion the Court ought to adjourn until Monday morning.

Mr. JUSTICE CRAMPTON.—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.

Mr. JUSTICE CRAMPTON.—I know you are not actually doing so, but then you do not 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.

Mr. JUSTICE CRAMPTON.—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. 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.

Mr. JUSTICE CRAMPTON.—I have not my note-book here, but I shall remember your objection, Mr. Monahan, though I do not think it likely that you will hear anything more of it.

Mr. JUSTICE CRAMPTON.—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 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 other of the 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 the Court adjourned to nine o'clock on Monday morning.

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#### MONDAY, FEBRUARY 12.

Mr. Justice *Perrin* was absent.

Mr. Justice *Crampton*.—I wish to inform my learned brethren, the Lord 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 own room; after which I had an intimation, through the Sheriff, from them, that they would not be ready with their verdict for an hour; accordingly I adjourned the Court for an hour and a half, until nine o'clock, at which time I returned, and found that still they were not prepared to meet me. I 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 I heard that they were not; however, shortly after eleven o'clock, I called them out, when they came with a verdict in their hands, which they handed in, but which I considered informal, and such as I 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 among themselves as to the verdict they should give. Their difficulty was only as to a matter of form, which I endeavoured to explain, but I fear I failed to convey myself sufficiently. They again retired, and after some time the Attorney-General said he thought that I 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),

I thought it right to adjourn the Court until this morning, having previously ordered the jury every accommodation which it was in my power to have provided under the circumstances. These were the facts of what occurred ; but I should mention that while the jury were out, I drew up in a more specific form, the issue for which they were to find their verdict. Now, I understand that there is but one issue in the first count sent to the jury, which, in point of form, is regular enough, but in point of fact it is not sufficient, as there are 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 is necessary to divide it into five distinct branches ; accordingly I occupied myself in framing those issues, and, with the consent of the Court, I will state what I consider to be the proper and specific form. [His Lordship then went through the different counts, and the issues under each count.] An objection was taken up on 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 I will inform the Court of, 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 called over the names of the jury, who were in Court. When they had all appeared,

MR. JUSTICE 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.

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 mis-trial, by reason of a misnomer of one of the jury, who, when called on, answered as John Jason Rigby, but who appeared on the panel as John Rigby. They contended that, under these circumstances, there was a mis-trial by reason of the misnomer.

The *Attorney-General* said that the juror had been sworn as John Rigby, the name which appeared on the panel, 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 following verdict :

*First and Second Count.*

**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 Barrett, 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 Matthew 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 Matthew 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.**—Reverend 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.

*Third Count.*

**GUILTY.**—Daniel O'Connell, Richard Barrett, and Charles Gavan Duffy.

**GUILTY.**—John O'Connell, Thomas Steele, Thomas Matthew Ray, and John Gray, omitting the words, "and to excite discontent" and "and disaffection amongst divers of Her Majesty's subjects serving in the army."

**NOT GUILTY.**—John O'Connell, Thomas Steele, Thomas Matthew Ray, and John Gray, as to the words, "and to excite discontent" and "and disaffection amongst divers of Her Majesty's subjects serving in the army."

**GUILTY.**—Reverend Thomas Tierney, from the commencement so far and including the words, "especially in England."

**NOT GUILTY.**—Reverend Thomas Tierney of the remainder of this Count.

*Fourth Count.*

**GUILTY.**—Daniel O'Connell, John O'Connell, Thomas Matthew Ray, John Gray, Thomas Steele, Charles Gavan Duffy, and Richard Barrett.

**GUILTY.**—Reverend Thomas Tierney from the commencement so far as and including the words, "especially in England."

**NOT GUILTY.**—The Reverend Thomas Tierney of the remainder of the Fourth Count.

*Fifth Count.*

GUILTY.—Daniel O'Connell, John O'Connell, Thomas Matthew Ray, John Gray, Thomas Steele, Charles Gavan Duffy, Richard Barrett, Reverend Thomas Tierney.

*Sixth Count.*

GUILTY.—Daniel O'Connell, John O'Connell, Thomas Steele, Thomas Matthew Ray, Charles Gavan Duffy, John Gray, Richard Barrett.

NOT GUILTY.—Reverend Thomas Tierney.

*Seventh Count.*

GUILTY.—Daniel O'Connell, John O'Connell, Thomas Steele, Thomas Matthew Ray, Charles Gavan Duffy, John Gray, Richard Barrett.

NOT GUILTY.—Reverend Thomas Tierney.

*Eighth Count.*

GUILTY.—Daniel O'Connell, John O'Connell, Thomas Steele, Thomas Matthew Ray, Charles Gavan Duffy, John Gray, Richard Barrett.

NOT GUILTY.—Reverend Thomas Tierney.

*Ninth Count.*

GUILTY.—Daniel O'Connell, John O'Connell, Thomas Steele, Thomas Matthew Ray, Charles Gavan Duffy, John Gray, Richard Barrett.

NOT GUILTY.—Reverend Thomas Tierney.

*Tenth Count.*

GUILTY.—Daniel O'Connell, John O'Connell, Thomas Steele, Thomas Matthew Ray, Charles Gavan Duffy, John Gray, Richard Barrett.

NOT GUILTY.—Reverend Thomas Tierney.

*Eleventh Count.*

GUILTY.—Daniel O'Connell, John O'Connell, Thomas Steele, Thomas Matthew Ray, Charles Gavan Duffy, John Gray, Richard Barrett.

NOT GUILTY.—Reverend Thomas Tierney.

The LORD CHIEF JUSTICE.—I suppose that there is nothing further to detain the jury.

The *Attorney-General*.—There is not.

The LORD CHIEF JUSTICE.—Gentlemen, after the very laudable pains and attention which you have paid to the case, from the beginning to the end, when I consider the great inconvenience which your loss of time and absence from your pursuits must have caused you; I am sorry it is not in the power of the Court to order you compensation. The Act of Parliament does not warrant us to do so, nor



is there any law made, I believe, to meet the necessities of such an extraordinary case as this has been. The duty of a jurymen is one imposed on every member of society; each must perform it in his turn, when called on; and I trust that all jurors so called on will follow the example set by the gentlemen whom I address, in paying such strict attention to what is brought under their consideration. It is, indeed, highly creditable and laudable, and I am sorry that my saying so is all I can do for you. I repeat, I have no power to order you compensation, and can do no more than thank you for your attendance, and dismiss you.

The Jury were then discharged.

Mr. *Moore* asked if there was any objection to furnish the traversers with a copy of the finding?

Mr. JUSTICE CRAMPTON.—I can see no objection. I suppose you 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 following should have been inserted immediately before Mr. Moore's speech, but was accidentally omitted:

MONDAY, JANUARY 29TH.

The names of the traversers having been called over, Mr. John O'Connell rose and addressing the Court said:—My Lord Chief Justice, I wish to make a few observations to the jury if your Lordship pleases. Something dropped from my counsel in his admirable speech on my behalf on Saturday, which, I fear, is calculated to create a misapprehension in the minds of the jury with regard to me, and if your Lordship will permit me I will not detain the Court many moments. I wish to say, Gentlemen, that humble as I am, I have always been the advocate, and always will be the advocate of the full, entire, and perfect right of the people of Ireland to an independent Parliament. I am not, therefore, one of those of whom my counsel spoke, who would accept of an occasional, or even an annual visit of the Imperial Parliament to Dublin, or anything short of what I speak. I do not know whether this will prejudice me in your minds, Gentlemen of the Jury, but I would infinitely prefer that it should prejudice me, rather than allow it to be supposed I would for a moment compromise what I consider to be the inalienable right of our country to an independent Legislature.

THE END.





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