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REPORT

OF THE

TRIAL

OF

WILLIAM KILFOYLE,

UPON THE

CHARGE OF KILLING MARY MULROONEY

AT

NEWTOWNBARRY, ON THE 18TH OF JUNE, 1831.

TRIED BEFORE THE HON. BARON FOSTER,

AT THE

SPRING ASSIZES OF WEXFORD, 1832.

TAKEN IN SHORTHAND BY

JAMES MONGAN, ESQ. BARRISTER AT LAW.

DUBLIN:

RICHARD MILLIKEN AND SON,
104, GRAFTON-STREET.

1832.



H E R O T

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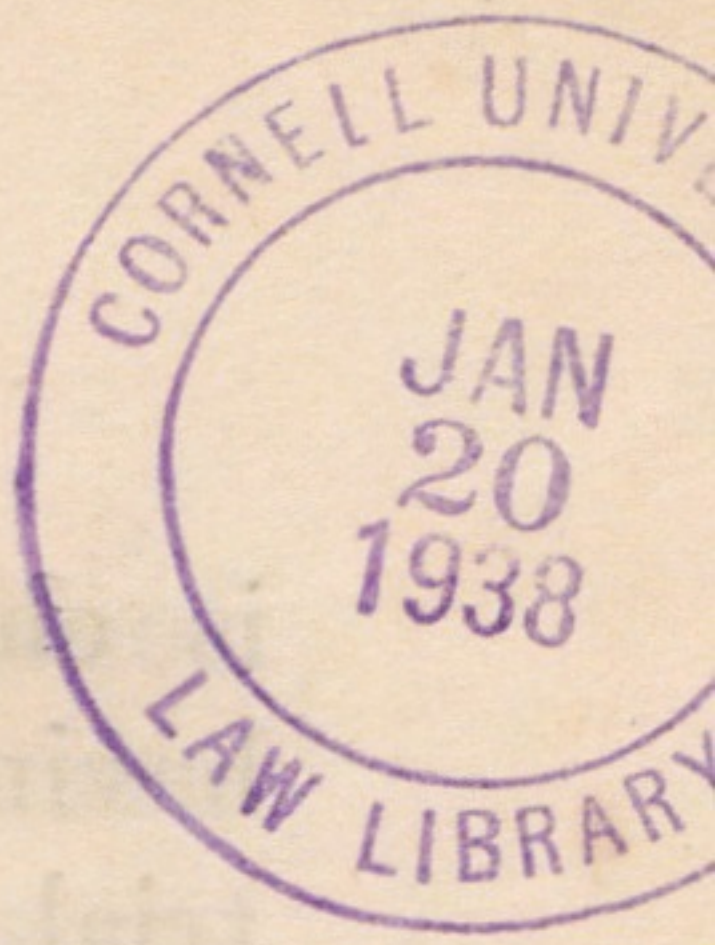
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CHARGE OF KILLING MARY MURDOGH

NEWSPAPER ON THE 12th OF JUNE 1851.
The paper says that the body of the
and the person of John White, having been put
to the test, the following day was found

THIRD BEFORE THE HON. BARON FOSTER
IN THE COURT OF THE HON. BARON FOSTER
AT THE COURT OF THE HON. BARON FOSTER
ON THE 12th OF JUNE 1851.
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WEXFORD ASSIZES,

SATURDAY, 3RD MARCH, 1832.

BARON FOSTER having taken his seat on the bench, and the prisoner, William Kilfoyle, having been put to the bar, the following Jury were sworn :

MAJOR PERCIVAL—FOREMAN.

HIGOTT TENCH,	CHARLES ELLIOT,
GEORGE PIGOTT,	THOMAS SMITH,
JOHN LEONARD,	J. B. GREAVES,
WHEELER SPARROW,	J. T. DEVEREUX,
NICHOLAS DEVEREUX,	RICHARD SPARROW, AND
JOHN RICHARDS, ESQRS.	

The Clerk of the Crown then read the indictment, charging the prisoner with killing Mary Mulrooney, at Newtownbarry, on the 18th of June, 1831.

MR. GREENE, K. C.—Gentlemen of the Jury—
In this case I appear as Counsel for the prosecution ;
you have heard that the prisoner William Kilfoyle

is charged with the crime of manslaughter, for having caused the death of Mary Mulrooney. This trial, Gentlemen, I did expect would have come on at the last assizes. From certain circumstances upon which I will not now particularly dwell, it has stood over until the present. I shall rejoice if the effect of the delay has been to enable us to enter into the investigation of it in that calm and cool spirit which should always characterize proceedings of a court of justice.

Gentlemen—The unfortunate woman, into the circumstances of whose death we are now about to enquire, was one of several persons who were killed at Newtownbarry on the 18th of June, 1831. It is impossible for any person of humanity or feeling not to deplore deeply the effusion of human blood which took place on that unfortunate occasion. It has been the anxious desire of the government which I have the honor to represent here, that the facts connected with it should be fully examined, and developed. Every exertion in its power has been made for that purpose.—Although on the one hand, Gentlemen, it must be admitted to be the duty of the government to protect the lives and liberties of all its subjects—yet on the other, it ought not unduly to press against those who ostensibly act in the execution of the law, and for the preservation of the public peace. It has therefore been from the commencement, the wish of the Crown accurately to collect and discover the facts of this melancholy occurrence, in order to guide it as to the proper line of conduct which it ought to pursue,

not with reference to the feelings or the passions of individuals, on either side, but with a view to secure as far as possible the fair and impartial administration of justice.

Gentlemen—The prisoner at the bar, William Kilfoyle, is a policeman, he was one of a party of police who were called out upon duty at Newtownbarry on the 18th of June last. It is not my intention to enter very fully or minutely into the details of the transactions of that day. I prefer to leave it to you to collect them from the testimony of the witnesses who will be produced to you. I am fully aware of the protection which in ordinary cases the law throws around persons standing in the situation of the prisoner at the bar. They are, I admit, when they properly conduct themselves, entitled to peculiar privileges and favour, and most properly ; because it would be most unjust to require them to assist in the preservation of the public peace, and in the execution of the law, if that law did not at the same time protect them whilst acting fairly and honestly in the discharge of their duty ; nor should I seek to visit a person in the situation of the prisoner, with the consequence of any act where his conduct had not exceeded the privilege which the law allows to its ministers. But I believe I may anticipate the concurrence of the learned Judge who presides, when I state to you, that though the officers of justice are entitled to indemnity, so long as they act within the line of their duty, yet if they transgress that line ; if they are guilty of any violence more than is necessary to enable them to

perform their duty ; if under the pretence of executing it, they indulge a malicious or hostile feeling, by unnecessary or wanton violence, they are like any other class of the king's subjects, responsible for the consequences of their acts. If therefore, Gentlemen, the case which we shall submit to you in evidence against this man, should satisfy you, that, though he was originally called upon to act in his character of constable, for the preservation of the public peace, he yet caused the death of this woman unnecessarily, and wantonly, I consider that he must be answerable for that act, as any other individual must, who without adequate justification should take away a human life.

Gentlemen, I shall without further preface proceed to give you a general outline of the transactions that occurred at Newtownbarry, so as to enable you fully to understand the facts which we shall detail in evidence, as applicable to the prisoner at the bar. I shall not go any further into them, than appears to me to be necessary for that purpose.

It appears, Gentlemen, that the origin of this lamentable occurrence was the seizure of some cattle for tithe-composition rent claimed to be due to the Rev. Mr. M'Clintock. These cattle were distrained, and advertised for sale in the town of Newtownbarry. The sale was to take place on the 18th of June. The cattle having been brought into the market place in that town, they, by some means or other, which it is not necessary now, very particularly to investigate, were taken from that place, and driven on the road leading to Enniscorthy.

It was represented to one of the magistrates of Newtownbarry, Captain Graham, that these cattle had been rescued, and were on the road towards the residence of the owner ; and he was called upon to interfere for the purpose of recovering the possession of them. Captain Graham upon this intimation, gave directions to a party of the police to pursue and re-take the cattle. He and the police left Newtownbarry in pursuit of the cattle—after some little time they overtook them and turned them round, for the purpose of driving them back again to the market place, where the sale had been advertised to take place. It is admitted, Gentlemen, on all hands, that upon the party of police, accompanied by Captain Graham, leaving Newtownbarry for this purpose, they were followed by a considerable body of persons. The numbers appearing to increase, when he, and the police were returning with the cattle, it was deemed advisable, for the better security of the latter, to put them into a pound, which lay at the side of the road, not far from the place where the cattle had been overtaken. Accordingly the cattle were placed in this pound, and I believe secured under lock and key.

The people at this time being in considerable numbers about the pound, and along the ditches of the road, some demonstrations of violence certainly took place. There was shouting, and I believe some of the mob had sticks ; but up to this time no serious alarm could, I think, be reasonably entertained, either from the acts or language of the multitude.

The appearances of violence having, as was thought, increased, Captain Graham was advised that the police force, which consisted of between thirty and forty men, would probably be insufficient to effect the safe removal of the cattle, and that some farther assistance would be necessary. Upon this suggestion, Captain Graham went back to Newtownbarry for an additional force, and shortly afterwards returned with a large body of yeomanry exceeding, according to the evidence one hundred in number, all of whom were all armed. The police, I should have told you, were also armed. I do not mean to say that it was not their duty to be so:—but such was the fact. Upon the re-appearance of Captain Graham with the yeomanry, the symptoms of tumult amongst the people considerably increased; and, Gentlemen, it will certainly be very material that you should attend minutely to the testimony of the witnesses, with respect to the acts and declarations of these men.

As soon as the yeomanry had reached the pound, it was determined to take the cattle out, and remove them to Newtownbarry, under the convoy, as I may call it, of the yeomanry and police. For this purpose, the former halted between the pound and Newtownbarry. They were drawn up along the road; the pound was then opened, and the cattle taken out, and placed under the care of the police, with whom they proceeded along the line of the yeomanry stationed on the road. The cattle were placed between the police in front, and the yeomanry in the rere. In this way, you will un-

derstand that the police who had been originally in the rear, became the front force upon the return, and the yeomanry then formed the rear of the whole body.

Gentlemen, during the whole of this proceeding, their noise and other demonstrations to which I have alluded, were with more or less violence continued, but no act of outrage had taken place. Shortly after the whole body began to move, a single shot was fired, but from what particular spot or direction, I think, is a matter left in some degree of obscurity. I will not take upon myself to state where it exactly came from, but I will leave it to you to draw your own inference upon that point from the testimony of the witnesses. That single shot was followed by another in a very short space of time; there also is some doubt whether previously to those shots, any command to fire was given by any particular person. Upon that subject, evidence will be submitted to you, from which you will draw your own conclusion. But be that fact as it may, these single shots were in a very short space of time followed by a general volley or round, the deplorable result of which was the loss of several lives.

BARON FOSTER.—Am I to understand there was but one volley?

MR. GREENE.—There is evidence that there was subsequently further firing, but I am stating the facts chronologically.

Some of the witnesses state that there was, besides that first general round or volley, a second.

It will be proved that the unfortunate persons who fell victims to this firing, were running away from the ditch or road where the yeomanry and police were stationed—that at the time they received the wounds which caused their deaths, they were flying towards the river on one side of the road, and a grove on the other.

Amongst those who fell upon that occasion, was the deceased Mary Mulrooney. We shall shew you, that she was shot shortly after the firing of the general volley or round. She was wounded by a musket ball which passed through her body.

Gentlemen, this brings me to the particular part of the transaction, with which the prisoner at the bar is more immediately connected.—He was one of the police on that day.—It will be distinctly sworn, that William Kilfoyle stepped forward, raised his firelock and deliberately aimed at Mary Mulrooney, and that the effect of that shot was to deprive her of life. Further, Gentlemen, we are prepared with evidence to shew that at the time William Kilfoyle fired that shot, whatever resistance, if any, had taken place, or whatever riot, if any had occurred, had altogether ceased. You will hear from the witnesses, that this shot was fired at a very late period of the transaction, and under circumstances, which, if those witnesses are to be believed, make it difficult to draw the conclusion that it could have been called for by any necessity, or justified upon any legal ground.

Gentlemen, even supposing that the general circumstances of this occurrence had been such as

originally to have warranted the police, and the yeomanry, in acting as they did, which it is for the prisoner to establish, yet if after those circumstances had terminated, and that justification had consequently ceased, any one of their body deprived a human creature of life, I would, with submission to the Court, say, that whatever might be the excuse of other persons who might have committed homicides upon that occasion, that man's case certainly would stand distinct from theirs, and must be considered as one falling at least within the description of manslaughter. If therefore, Gentlemen, you believe the evidence which we shall produce to you, as to the particular part which William Kilfoyle took in the transaction, and as to the circumstances under which he so fired the shot, which caused Mary Mulrooney's death; if you believe that evidence, it appears to me, that you will feel it your duty to say he was not justified, or excused in that act, upon the ground either of necessity, or of the execution of his duty.

Gentlemen, this woman must have been retreating at the time when this shot was fired; she appears to have been wounded in the back, and certainly that is a circumstance tending in a great degree to shew, that the infliction of that wound was unnecessary, and uncalled for.

Gentlemen, I do not think that it will be requisite for me to go more particularly into the circumstances of this case, so far as they affect William Kilfoyle. I do not wish to mix up with it any considerations which do not legitimately belong to

it. Our duty here is to examine into the question before us, divested of every other feeling, than the desire of doing strict and impartial justice. If you should upon a review of the evidence consider that this man was justified in what he did, it will be your duty to acquit him—but if you should upon the other hand be satisfied that that firing was wanton—that it was not done in the *bona fide*, and proper discharge of duty, that it was an act of cruelty, or malice, or even unnecessary, I think you will agree with me, that it is your duty to convict him of the offence with which he is charged.

Gentlemen, we shall produce to you every witness that we conceive calculated to throw light upon this transaction. It is not my wish to press unduly any evidence, of which I am in possession. But certainly upon the evidence which has been submitted to me, if it shall be credited, there is, to say the least, strong ground for supposing that the firing at Mary Mulrooney was one, which under the circumstances of the case, ought to subject the prisoner at the bar to the penalty which the law awards to the crime of manslaughter. With these observations I shall leave the case to you, satisfied that you will give your verdict unaffected by any other feeling than a desire of honestly doing your duty between the Crown and the subject.

*First Witness, MARKS DEVEREUX, Examined
by MR. SMITH.*

I was at Newtownbarry on the 18th of June last; I went there about twelve o'clock; I first went into a yard and left the beast and car that I had there; I then went into the street; being then market day, there were a great many persons in it; I then went down towards the pound, on the Enniscorthy road; I saw about thirty policemen coming down the road with three heifers or cows, which they put into the pound, and then stopped on the road, on the Enniscorthy side of the pound; after that I was talking to a policeman of the name of Dempsey that I knew, and I saw Mr. Feltus asking the circumstances of this case from some of the people; Mr Feltus is a gentleman of the county of Carlow; I next saw Captain Graham coming down the road from Newtownbarry; there was a party of yeomanry after him, I think more than a hundred; they stopped on the road, two deep, facing the river Slaney; there are fields between the road and the river Slaney; there were people before and after the yeomanry, because there were people on the road all day, as it was market-day; I think there were four hundred persons there, men, women, and children, as they were; it is as thronged a market as there is within fifty miles of it; when Captain Graham came down I saw him demand the cattle out of the pound, and I heard the people tell him that Mr Feltus had gone to Settle about them, and to leave them until he would come back;

Captain Graham would not do so, but got out the cattle ; the police took the cattle and went with them towards Newtownbarry ; the yeomen turned after the cattle and the people were going along with them ; I then saw the yeomen punching at the people with their bayonets, to make them stand back ; it appeared to me that they did not wish to let any person between them and the police ; there were five or six of the police before the cattle, and the remainder behind them ; I think the yeomen might have hurt the people with their bayonets, but to injure their lives or draw their blood I do not think that there was any of that ; as I was walking up after the yeomen I saw a flag pitched and it fell before me ; it was thrown from behind me ; it did not reach where the yeomanry were ; after that I saw two or three stones thrown, and I believe some of them fell among the yeomen ; I was at that time about the length of this Court House from the yeomen ; these two or three stones were thrown by persons who were behind me ; I then saw Captain Graham stoop down as if to speak to some of the yeomen, he was on horseback, and in rising I heard him say, “ fire ;” and with that a shot was fired ; it was at the same time that the stones fell that I heard Captain Graham say, “ fire ;” I saw the person who fired that shot, but I did not know him ; it was fired by a yeoman, he was very convenient to Captain Graham ; that shot was fired *skew-ways* towards the river Slaney ; I did not see the yeoman point the musket, nor take aim. I am positive that the shot came from among the yeo-

men ; some of the yeomen were in uniform and more of them were not ; I think the yeoman who fired that shot had a red coat ; after that shot was fired I did not see any more stones thrown ; immediately after that another shot was fired, and then another, and then a general fire commenced ; (here the witness clapped his hands to describe the rapid succession in which the shots were fired.) I cannot tell in what direction the general volley was fired on account of the smoke ; I ran down the road a piece when the shots were fired, I then looked round and saw the people running in every direction. This occurrence took place as the party was just moving off from the pound ; most of the people were then going on before the police and yeomanry, but there were people behind them and on the ditches ; several persons leapt in and threw themselves on their faces inside the ditches ; the first person I saw fall was at the pound side of the yeomanry ; I saw two other persons fall on the Slaney side of the road ; I saw Pat. Leary dead, and a person of the name of M'Donnell dead, and a small boy, of the name of Waters, dead ; I did not see Mary Mulrooney dead, but I saw her dying ; she was in a field at the upper side of the road, about twelve or fourteen perches from the pound ; she was about two perches from the road ; there was a man lying wounded in the same field, I thought he was dead, but he is not ; I do not know whether the police fired or not ; the yeomanry were between me and the police ; when the firing commenced the people ran away as fast as they could in every direc-

tion ; I saw persons dead at both sides of the road, there were dead and wounded between thirty and forty persons altogether ; it was at the Newtownbarry side of the road that I saw Mary Mulrooney lying ; I cannot tell by whom the shot was fired that wounded her ; I was about the length of this room, (the Court House,) from Captain Graham when I heard him say, “ fire.”

Cross Examined by MR. HAMILTON.

I am a quarry-man to Mr. Colclough ; I was at the fair at Newtownbarry the day before this transaction ; that fair was well attended ; it was late in the evening when I came to the fair ; I heard no talk that day about those cows ; I did not delay ten minutes there ; I did not hear at Newtownbarry that day, that the cattle were to be sold ; but I knew it. I saw no printed paper either at the fair or on the road ; I did not hear that there was such a thing ; I went to the fair to buy steel for my tools ; I bought it from Jack Kennedy ; Jack Kennedy has a son Ned ; I never saw Ned practising with a pistol ; I never saw a pistol with him in my life ; my reason for going to Newtownbarry on the market day was, an order from my master to get potatoes from Doyle, the man whose cows were to be sold. I did not go to his house that day, for the potatoes ; I cannot form any guess why the cattle were put into the pound ; I think they were as safe on the road as in the pound ; when the yeomen formed two deep, there were people on the road, and on the ditches,

and every where round them ; I heard one man say to Captain Graham, that he had a better right to the road, as he paid more for the expenses of it than he (Captain Graham) did ; I heard another man call a yeoman a rascal. The most of the crowd was going before the yeomen ; I saw some sticks, but I did not see anything particular in the size of them ; I do not know what boxing sticks are ; the sticks that I saw on that day I call walking sticks ; I did not hear the people talking about stones ; I do not know that the road was newly repaired ; I do not know that there was a load of lime stones on the road ; I saw a yeoman of the name of William Rogan shot ; I saw a boy of the name of Waters, shot, and I heard that he was a yeoman's son. When Captain Graham demanded the cattle out of the pound, he desired the people to disperse ; he said that every man there, both yeomen and police, had a ball cartridge in his piece and that he himself would drive the cattle into the town and cant them.

MR. SMITH.—You said that one of the people called a yeoman a rascal ; had the yeoman done any thing to him before that ? Yes, he pushed him with his bayonet to keep him back.

JUROR.—What reward are you to obtain for coming here to prosecute ? I dont know, I never was promised any reward.

MR. HAMILTON.—Were you here at the last assizes ? I was ; I went home the second day of the assizes. I believe I was bound to attend the assizes ; Mr. Costelloe told me to go home, and

two gentlemen more desired me to go home also ; it was between 12 and 11 o'clock, that I left this town ; a great many persons went with me ; I saw a man of the name of Terence O'Brien, quitting the town, but he did not go with me ; I know a man of the name of Walshe ; he did not bid me go home ; but he bid me, there without to go and see the bills for my expenses ; I gave the bills to one Myles Doyle of Newtownbarry ; I got no money ; I bore my own expenses at the last assizes ; I paid five shillings of my own expenses ; I dont know who paid the rest ; the Mr. Walshe I am speaking of is a priest at Newtownbarry ; I heard that there was money subscribed at Newtownbarry, for the wounded people.

BARON FOSTER.—Did you see the shot fired that shot the yeoman ? I did not, but I know that it was fired either by a yeoman or a policeman, because I saw nothing with any countryman that he could fire a shot with ; I certainly will not swear that the country people had no fire arms ; some of the stones that I saw thrown, might have been half a pound ; the heaviest of them were not more than that ; I am certain that it was either a yeoman or a policeman that shot Waters, where I saw him dead, was in a field at the Slaney side of the road ; he and Mary Mulrooney were about the same distance from the pound.

JUROR.—Do you think the people could have fire arms without your knowing it ? I do not think that they could have them without my seeing them ; the arms must be very small if they had them ;

upon your oath, did you hear a woman give the word to fire? Upon my oath, I did not.

Second Witness—TERENCE O'BRIEN, *Examined*
by MR. SCOTT.

I was at Newtownbarry on the 18th of June last ; I saw a great crowd of people near the pound ; as I was coming down towards the pound, the police were coming up towards the town, and the yeomen were in their rear, that was the first time that I saw the parties ; there was some noise down near the pound ; I cannot tell from what the noise proceeded ; I saw three heifers driven up before the police, I fell in near the front of the police, and walked with them a perch or two towards the town ; I heard a rattling of bayonets among the yeomen in the rear ; I mean the bayonets striking against each other ; the police then halted ; I was along-side with them ; there were between fifty and sixty police there, under the command of Captain King, I understood ; I did not see him at the time ; when I heard the rattling of the bayonets, the yeomen were eight or ten perches farther from the town, that is, the rear of them ; the first of them were only a couple of perches from me ; they were in a line marching after the police ; at that time I heard a shot, it seemed to me to be in the rear of the yeomen ; I cannot say whether the shot was fired from the rear of the yeomen, or fired towards the yeomen ; I heard no order to fire ; I saw no person struck by that shot ; after that shot, a couple of other shots followed in a moment or two from the same di-

rection ; I did not see these shots take effect in any way ; the police turned back to back after these shots were fired ; some of them were facing towards the Slaney, and more of them were facing towards the wood ; in a moment or so after that, I heard a great number of shots ; I believe they were fired from the yeomanry and police ; I saw some of the police fire, some towards the Slaney, and more towards the wood ; I believe that firing continued four or five minutes from the first shot, to the last ; the great number of shots, were only a few moments after the first three shots ; that great number of shots was like a general volley from the yeomen and police ; I heard another volley followed after they had time to charge ; it was not so great as the former ; that second volley appeared to me to come from the yeomen ; the yeomen were also turned back to back, and facing also the river and wood ; they had so turned before the general volley was fired ; when this firing commenced, I stepped in between the ranks of the police ; I went between them as a place of safety ; I knew some of the police ; I was not at that time prevented by any of them ; I remained between the ranks a minute or more ; there were shots fired after I got in ; I cannot say who they were fired by ; I moved down a little more in the ranks towards the pound, and two policemen thrust me out with their bayonets, over to the wood side of the road ; there were three men at that time going in over the wall ; one of them was over some distance in the field, in the line that I was going, and he fell in consequence of

a shot I suppose ; I got over the wall, it is about three feet high ; when I got over the wall I turned round, intending to come back again ; I then heard four or five shots ; one ball grazed me so, that I heard it going through my hair ; they were fired from off the road I think ; I then stooped down at the back of the wall ; I then heard a man cry out, “ murder, murder, don’t shoot that man ;” I knew the voice ; it was the voice of a policeman ; the same voice then said, “ Terry, Terry, rise and come here to me ;” I then rose and came out on the road, and the policeman that called out to me, brought me into the ranks, and so did Mr. John Ralph, the agent of Mr. M’Clintock ; at this time the firing was going on between the rear of the police and the yeomanry ; that was about two or three minutes from the time that I heard the first shot ; before I left the ranks, I saw three men killed on the Slaney side of the road ; I saw no man fall on the other side of the road, until I was going over the wall ; after I got back into the ranks, I saw a woman inside the ditch in the field at the wood side of the road, going towards the pound ; I knew that woman, her name was Mary Mulrooney, her maiden name was Keogh ; she was facing towards the pound ; her side was rather to the police ; as she was going in that way, I saw a policeman leave the ranks, and go in on the toe-path ; that policeman was about six yards from me ; that was immediately after I got back into the ranks of the policemen ; there were some separate shots firing down towards the rear of the yeomanry at that

time ; I did not at that time know that policeman that I saw step in on the toe-path ; I saw him level his piece in the direction towards this woman, and I saw her fall ; I did not see any other person in the direction in which the woman was standing when he fired that shot ; she was about six or eight perches from the policeman ; she immediately fell on the shot being fired ; there was no other person immediately in that part of the field at that time—there were people running into the wood about ten perches or more from where the woman was.

BARON FOSTER.—Had you any means of knowing whether she was endeavouring to escape ? I think she was about to escape.

MR. SCOTT.—Upon your oath, would you know that policeman that stepped out of the ranks and fired that shot ? Would you know that man now ? I think I would.

BARON FOSTER.—If you only think you know him, you are not to tell us any thing about him—but if you have no doubt that you do know him you may point him out.

MR. SCOTT.—Unless you are perfectly certain of the identity of the prisoner, do not point him out. Upon your oath, was that the man, (pointing to the prisoner) that fired that shot ? Upon my oath it was. What did he do after firing that shot ? He returned back into the ranks, and he with three of the police fired again ; they seemingly were loading before they fired ; they were three yeomen and one policeman that fired. Did they fire after that second time that you know of ? They did ; in

which direction? Towards the wood or grove; there were three or four men running at that time into the grove; the woman was not in a right line between the policeman and the grove; she was not in a line between him and the men that I saw going into the grove; she was a perch or two out of the line; she was not in a line between the person who fired the shot, and any other person whatever to my knowledge; the prisoner was in a right line between me and the woman; he appeared to me to take aim at the woman; when the woman fell, several of the police cried out, "Oh! murder, murder, fie! shame! the woman, the woman!" I saw Captain King the chief constable come up from towards the pound, and I heard him say, "*shame, shame!* cease firing." He was within a yard or less of the prisoner, when he said that; that was in a few seconds after the shot was fired at the woman; it was after the second shots were fired; when he said that the firing ceased; I did not see the prisoner afterwards that day; he was in uniform, and the three yeomen that I saw fire were also in uniform; the prisoner returned to the ranks when Captain King spoke to him; they all stopped for some moments, and then they were ordered to march into town; I walked with them into town; after I heard the first shot, I saw the crowd dispersing in different directions; very few of the crowd remained in the neighbourhood of the police when the shot was fired at the woman; upon my oath, I neither saw nor heard stones thrown at the police or yeomen that day.

BARON FOSTER.—Did you see any fire arms with the people? I did not.

MR. SCOTT.—You said that at the time the shot was fired at the woman there were very few of the crowd remaining, now what were those few persons doing at that time? They were running, some of them towards the wood; there were none of them running towards the police or yeomen.

Cross Examined by MR. HATCHELL.

You live in Newtownbarry? I live within two or three miles of it. Do you not live in the parish where this dispute was about the tithe? I do. And you are one of those persons who disputed about the tithe? I was one of the parishioners. You know Doyle whose cows were seized? I do. Had you been speaking to him or any of his family the day before that? I had not. Had you been at the fair the day before? I was. Upon your oath did you not see a placard at the fair on the subject of Doyle's tithes? I did, but I did not read it. Where was it you saw it? It was carried on a boy's shoulder within about two or three perches of me. It was printed? It was. How did you know what it was? Somebody told me what it was. Had you seen it before? No, nor since. Had you any business in the market that day? I had. Did you hear any shouting? I did. From the crowd? Yes. Did you hear that shouting before the shot was fired? I did. Was there not a large assembly of people on the road close to

the yeomen and police? There was. Had the cattle been turned out of the pound when you arrived? They had. When you came the cattle were advancing towards the town? They were. By virtue of your oath how many people do you think were on the road between the police and Newtownbarry? There were not many. Were there a hundred? No. Were there fifty? No. Were there forty? I think not. Will you swear that there were not forty? I will not. There were people on the ditches? There were. Ranged along the ditches? Yes. People ranged on each side of the road on the ditches? Yes. Were there not people on the road within the gripe? There were.

BARON FOSTER.—There were people between the ditch and the Yeomanry? There were.

MR. HATCHELL.—Did you not hear shouting from the people? I did. Did you not hear that from the rear in the direction where the yeomanry were? It appeared to me to come from the rear. Was it not at that time that you heard the rattling of the bayonets? It was shortly after. But it was while the party were moving on? It was. By virtue of your oath will you take upon yourself to swear that that rattling was not the striking of stones on the arms of the yeomen? I cannot swear whether it was, or not. Did you see a stone thrown at all? I did not. When the firing commenced did not the police immediately form back to back? They did. Was not that a position for their own protection upon your oath? I did

not conceive that it was. Were you ever summoned before a magistrate? I was. For what? For a rape. Upon your oath, do you not believe that the police formed themselves into that posture of defence? (Witness pauses.) I do not.

You heard of the Coroner's inquest? I did. What day was that? It was on the Monday after. You went before the coroner to tell all you knew? I did not. Were you examined on that inquest? I was not. Did you not know that the woman was shot? I did. And by a policeman? Yes. You knew that the investigation was going on by the order of the government? I did. Did you give any information in the month of June, at all? No. Where were you? At home. Was it from your anxiety to pay the tithes, that you did not come forward? It was not. Did you ever pay a penny of tithes since? I did not. You swear that you knew the man? I do? Were you at Newtownbarry during the investigation? Part of the time I was. You did not go into the inquest? No. One of the Doyles was shot? He was. The Doyles were friends of yours? They were. You knew that the Newtownbarry police were there? I did. You knew that the Myshall police were there? I did. You knew the districts that all the police were from? I did. Now, knowing that fact, did you go to any of the magistrates, or to any of the gentlemen sent down by the government to tell that you knew the policeman that shot the woman? I did not. Did you tell it to any person? I told it to a policeman. Was the policeman the only per-

son that you told it to? He was. When did you tell it to the policeman? On the Tuesday after. Did you see Captain Graham there, before the firing was over? I did not. Did not a great many persons run into the wood? There did. And were running for some time? Yes. Did not some run into the wood after the woman was shot? They did. What is the extent of the wood in front? I don't know. How many perches to the right of the pound, was it that that the woman fell? I cannot say. Was it ten? It was. Was it twenty? I think it was not. When did you swear the informations? In about three weeks after. Upon your oath did any one desire you to go to Myshall to look for the prisoner? No. Were you here at the last assizes? I was. Where did you lodge? With a man of the name of Keogh. How long did you remain in town? Until the last day of the assizes. Who paid your bills? I paid my own bills. Did you attend the Court to be examined on the trial? I was in court from day to day. When called why did you not come forward to give evidence? I believe it was by the advice of counsel. Whom did you speak with? With Miles Doyle. He was a juror on the coroner's inquest? He was. He paid the bills of the witnesses? He did of some of the witnesses. Was it he that told you to go home? It was. Did any body else tell you to go home? Yes. Do you think you were bound to obey Miles Doyle, and abandon the prosecution? I did it all events. Who else desired you to go home? Father Walsh. Were

there any other persons in your presence desired to go home? Yes; I believe they were all. Upon your oath did you not see Kilfoyle the prisoner at Newtownbarry, examined before the coroner's inquest? I did not. Did you see him in Newtownbarry? I did. When? On the Tuesday after the inquest.

BARON FOSTER.—Did you prefer no accusation against Kilfoyle at the coroner's inquest? I did not. Will you tell me why? I was not called on. Were you ever called on to give evidence against him? I was. By whom? By Mr. Walsh. When? When Mr. Fitzgerald was there. When was that? It was about a fortnight after the transaction. Mr. Walsh desired you to give evidence, and afterwards desired you not to give evidence? Yes. Did he ever since desire you not to give evidence? He did not.

MR. GREENE.—Did any other person desire you to come forward? No. Why did you come forward then? I got a summons.

Third Witness JOHN CURRAN, *Examined by*
MR. O'DWYER.

I was in Newtownbarry on the 18th of June last, when the cattle were taken out of the pound: I saw Captain Graham there, he was on horseback: he was in the rear of the yeomen: there were people between him and the pound: I heard one man say to Captain Graham that he had as good a toleration to the road as he (Captain Graham) had: When Captain Graham rode up from the rear of

the yeomen towards the town, I saw stones thrown: these stones came from between me and the pound: they were thrown in the direction of the yeomen: I then heard the rattling of bayonets: I don't know what caused that rattling of the bayonets: I did not see any of the stones strike the bayonets: after this I heard Captain Graham give orders to fire: I was about four or five yards from him: he stooped down towards the yeomen and gave orders to fire: I heard one shot fired: that was nearer to the town than where I was: then I heard two more shots: I cannot tell where the shot proceeded from: the two shots immediately followed the first shot: I heard Captain Graham say but the one word, "*fire:*" I did not remain on the road, but went over the ditch: when I was in the field I heard a great number of shots fired together: I threw myself in the ditch and lay in the briers, and continued there until the firing stopped: after the firing was over I left it: I saw persons on the road, some dying, some dead, and some wounded: I saw a great many dead in a potatoe field: I saw a woman lying in the field, her name was Mary Mulrooney: she was shot in the finger; I asked her was she wounded any where but in her finger: she told me that she was shot in the belly; I was at her funeral; this was a very short time after the firing was over.

Cross Examined by MR. HAMILTON.

I saw a printed paper the day before; they told me it was about tithes; I don't know whether any one bid for the cattle or not; I saw the cattle put

into the pound ; I saw Captain Graham there ; I was in the crowd when I saw him ; I saw stones thrown ; I will not swear that there were not twenty stones thrown ; I saw the police go into the field ; it might have been to let the crowd pass ; the crowd was returning back to the town at this time ; the crowd went after the cattle and turned about to go to Newtownbarry ; the yeomen marched after the police ; the yeomen were standing when Captain Graham gave the order to fire ; I did not hear the word "*form*" used by Captain Graham ; it was "*fire*" he said and not *form* ; he stooped when he said "*fire* ;" he and the yeomen were then facing towards Newtownbarry ; I saw one stick there that day ; it was a walking-stick ; damn the one more did I see.

Fourth Witness, JOHN DOYLE, Examined by
MR. PLUNKET.

I was at Newtownbarry on the 18th of June last ; I saw the cattle brought out of the pound ; I believe it was Mr. Ralph that brought them out of the pound ; the police brought the cattle back towards Newtownbarry ; I was standing on the road at that time ; I was between the yeomanry and Newtownbarry ; I heard a shot fired ; I know that shot came from the yeomanry ; I saw no stones thrown ; I did not hear any directions given to the yeomanry to fire ; in about a second I heard two other shots, and then I heard a volley of firing ; I saw people falling at the slaney side of the road ; I saw a woman lying

dead in the field on the pound side of the road ; I heard her name was Mary Mulrooney ; she was about the length of the Court-house from the road ; I never saw her until I saw her lying dead on the field ; it was the yeomanry that fired the volley ; I saw no men with sticks or any other instruments to insult them.

Cross Examined by MR. BREWSTER.

I came to the fair the day before, between 8 and 9 o'clock ; I left the fair late in the afternoon ; I saw a thing like a placard carried about the fair ; it was pasted on a board, and the man who carried it passed me by ; some of the words that were on the placard, to the best of my opinion, were "selling for tithe;" I believe there were a good many people looking at the placard ; when the man would stop the people would collect about him to read the placard ; there was a good deal of conversation about the cattle ; I was not as forward as the cattle when the first shot was fired ; I saw walking-sticks with the crowd ; I will not say how many ; I am married about seven years ; I was in Carlow gaol about seven years ago ; I was confined there three months for fighting ; I was in Carlow gaol at another time for a rape ; that was before I was married ; I heard the priest say the day after the murders that every person who knew any thing about it ought to attend at the investigation ; I attended here at the last assizes ; I was not examined before the Grand Jury the last time ; I did not hear my name called ; I went away the second day of the assizes ; I was

coming down to court and I met the witnesses going home ; they said that the trial was over, (*the placard handed to witness,*) did you see such a paper as that ? I did not read any such one. Did you see it ? I saw one with larger letters. Read that now yourself, did you ever read a paper containing anything like that before ? I do not think or recollect that I did.

Fifth Witness, MOSES DOYLE, Examined by Mr. GREEN.

I was at Newtownbarry on the 10th of June last ; I was on the road at the time the cattle were put into the pound ; I was at that time, about 40 yards from the cattle ; I was between the pound and Newtownbarry ; There were a good many people on the road ; I saw some police and yeomen there ; I saw the yeomanry come up with Captain Graham ; I saw the cattle in the town before they went to the pound ; I did not see them taken out of the pound ; the police were between me and the pound when I heard the first shot fired ; at least two parts of them ; I was at the slaney side of the road ; the first shot came from between me and the pound ; I heard 4 or 5 shots after that, one after the other, and then a full discharge ; the second shot was immediately after the first ; on the first shot being fired I ran away towards Newtownbarry ; I heard no order to fire ; I saw no violence with the people before that shot was fired ; I received a bullet myself, in my outside coat ; at the time of the volley, a man of the name of James

Doyle was shot dead ; I was going to lay my hand on his shoulder, and he dropped dead ; the volley was just over at the time he fell, I ran then into the town, and I heard shots firing while I was running, and I heard shots fired after I got into the town ; I ran my best about 60 or 80 perches, and the firing continued during that time ; that firing, that I heard was single shots ; I saw no arms among the people. I saw people on every part of the road ; I saw no arms of any kind with them ; the first shot was discharged quite close to where Captain Graham was on horseback ; he had a drawn sword in his hand ; I was told that the cattle were to be canted at the pound, and I went down after them ; after the firing had ceased, I went back to that part of the road where the yeomanry and police had been ; there were about thirty persons killed, and wounded there ; I saw a woman wounded at the wood side of the road, about 20 yards from the road ; there were great gores of blood about her ; the life was just in her ; I saw her the same day before that, in perfect health ; after that day I did not see her, either dead or alive ; I neither heard nor saw any stones thrown at all that day ; I heard no noise of bayonets before the shots were fired ; the woman that I saw wounded was Mary Mulrooney.

Cross Examined by Mr. HATCHELL.

I am a distant relation of the man whose cows were distrained ; I went to the market that day to

buy the cattle if I got them for value ; I had some other market business ; I was at the fair the day before, and saw the placard ; upon my oath I never saw it until I saw it in the fair, nor did I know any thing of it.

You saw the cows in the possession of the bailiff ? I did. Did you not ask Mr. Ralph where his auctioneer was ? I did. Did you not say “ boys open a passage and let the poor cows go home ? ” I did. And they went home ? Towards home. And you followed them immediately ? It was nearly half an hour before I followed them. When the first shot was fired, where were you ? Within about fifteen or twenty yards of the town side of them. Were you not near the pound ? I was before that but not at that time. When you came up to the road was there not a *row* going on ? There was, between Captain Graham, the Police, and the cattle. Do you mean to say that Captain Graham, the police, and the three heifers made the whole of the row ? Exactly. You saw no other persons in the row but these ? No other. You cannot tell who fired the first shot ? No. You did not see the ball ? No, but I saw the smoke. Upon your oath before the transaction, did any people assemble at your house ? They assembled in the street I live in. Who was in the chair ? There was no chair work. How many days before the transaction of Newtownbarry was it that you had that meeting ? I cannot tell the time. How many people were assembled ? About twenty. Upon your oath did

you not collect subscriptions on the subject of those tithes? Upon my oath I never did. Did you ever contribute any? I did, but I got it back again. Did you get it back before the transaction at Newtownbarry? It was after that.

Sixth Witness, ROBERT BOYCE, Examined by Mr. SMITH.

I am a medical man; I examined the body of the deceased—Mary Mulrooney; the cause of her death was a gun shot that entered her side and came out at the navel.

Mr. HATCHELL.—Which side of her was wounded? To the best of my knowledge the ball entered her right side.

Mr. SMITH.—Can you state whether the ball passed in through the side or navel? Through the side.

BARON FOSTER.—Was that woman pregnant? She was not.

Cross Examined by Mr. HAMILTON.

I examined some other persons who were wounded there. I extracted a small pellet from the thigh of a man of the name of Connors; he was not a yeoman.

The evidence for the Crown closed here.

EVIDENCE FOR THE DEFENCE.

First Witness, GEORGE ST. GEORGE IRWIN, ESQ.

Examined by Mr. HAMILTON.

I was a magistrate of this county on the 18th of June last ; in consequence of a placard which was exposed at the fair of Newtownbarry on the 17th of June last, my brother magistrates, Mr. Derinzy and Captain Graham, and myself, were afraid of a breach of the peace.

Did you in consequence of that send any directions to the yeomanry?

Yes, the only force that we thought we could collect was the yeomanry, and we therefore sent a requisition to the officers commanding the different yeomanry corps adjoining Newtownbarry ; we required them to be there as speedily as they could before the auction the next day.

Did you get any further intimation on the arrival of the stage coach as to the likelihood of a breach of the peace?

MR. GREENE.—I object to this question.

MR. HAMILTON.—I have no right to ask what the information was, but I have a right to ask did he receive the information.

Had you, (to the witness,) any further cause besides that placard that you saw, for fearing a breach

of the peace? Yes, I saw a greater number of strangers than usual in the town, and a Gentleman that came by the coach said, that he saw a similar placard at Baltinglass, and I think at Blessington.

MR. GREENE.—I do not think that this is strictly admissible evidence.

BARON FOSTER.—Whatever cause there existed, which led the magistrates to entertain an apprehension of a breach of the peace, must constitute their justification for calling in extraordinary assistance.

MR. GREENE.—This case must turn not so much upon that, as upon the conduct of the yeomanry and police, admitting them to have originally been legitimately called in.

BARON FOSTER.—Even upon your own evidence, it must be indisputably assumed, that Captain Graham and the prisoner at the bar, were acting in the course of their duty; it is quite a different question whether the prisoner went beyond the line of his duty.

MR. HAMILTON.—You say you saw more strangers than usual on the fair day? I certainly did; you issued that requisition, in consequence of those different causes? I did; and they accordingly attended. Do you know what corps attended? The Newtownbarry corps, the Enniscorthy corps, and Mr. Richards's corps, and Mr. Feltus's of Myeshall.

MR. GREENE.—You were not present at the transaction? No; I staid at the market place.

*Second Witness, JOHN DERENZY, Esq. Examined
by MR. HATCHELL.*

You were a magistrate of the County of Carlow and Wexford, when the transaction at Newtownbarry happened? I was. You saw Major Irwin on the 17th? I did. You were one of the magistrates who concurred in calling out the yeomanry? I was. Were you under any apprehensions of a breach of the peace? I was. Did you see this placard exhibited on the fair day? I did. You read it? I did. (Placard handed to witness;) Is that the placard you saw exhibited on the fair day? It is, I marked it. Were you in the town on the morning of the 18th? I was. Were you there when the cattle were in the town? I was. What was the appearance of the town when the cattle was in the market place? A number of people were collected in the front of Captain Graham's house and Mr. Ralph's. Did it appear to you to be a crowd of an ordinary number? It was certainly an unusually large crowd. Will you tell what took place in the market place? I scarcely know any thing of that. I was walking through the crowd to see how they felt. From what you did see, were you still under the apprehension that a riot might ensue? Although they were very peaceable, still I was apprehensive, for I knew how the feeling was. What next did you observe to attract your attention? I saw the cattle near the turn of the road to Enniscorthy, and I heard a shout from the people. Did you observe that the people proceeded

in any direction? A number of people followed out in that direction on the road to Enniscorthy. What did you then do? I remained in the town, and I went out afterwards with the yeomanry. You went up to the pound? I did. What was the appearance then with respect to the crowd? The numbers were increasing, still they were quiet. Was the crowd confined to the road? They were in a great measure confined to the road at that time. When you got up to the pound, were the cattle in pound then? They were. Were there many people about the pound? There were. Did you remain there any time? A short time. Did you remain there until the shots were fired? I did not. I went up towards the market place, as I thought that probably the riot might take place there, and I moved on before the yeomanry for the purpose of seeing how the people felt. Did you go by the same road into the town? I did. Was the crowd then as great as when you were coming from the town? The crowd was decidedly increasing. do you know a man of the name of Kennedy? I do know several of them. Did you at any time that evening, or any other time get a pistol on a person of that name? Not that evening. But I was present at the investigation before Mr. Greene, and a pistol was produced, out of which a ball and some powder was taken; that was produced by a person of the name of Kennedy. Did it appear that he had been out on the 18th.

MR. SMITH.—I object to this course of examination.

BARON FOSTER.—Who was Kennedy? The son of

a shopkeeper in Newtownbarry. Do you know any thing of that Kennedy? Had you any conversation with him since? I had. Did you see him that day at all? I did not.

MR. GREENE.—So far as you observed, the people were quiet and peaceable? They were.

Third Witness, JAMES M'MULLEN, Examined by
MR. HAMILTON.

I am a Printer, I reside in Exchequer-street, Dublin, (placard handed to witness) that placard was printed in my office; (another paper handed to him) that was also printed in my office; I printed twenty-five with Mr. M'Clintock's name, and twenty-five with blanks; the first placard was printed on the Wednesday evening before the affair at Newtownbarry, and the other was printed the next morning, Thursday; I was paid for printing them; I think it was six or seven shillings I got for printing them; two men came to my house, and paid me for them; I did not know them personally, but I asked them their names, and, (here the counsel for the prosecution interfered, insisting that this was not admissible evidence.)

Cross Examined by MR. GREENE.

You did not wish to have your name exposed to this? I did not. Are you aware that you are bound to put your name to this as well as to a pamphlet? I am not. Have you published many bills of this or any other kind without your name? I have pub-

lished some; (the first placard was then read,) it was in the following words:

“Reform!—Church in Danger!!—The Govern-
 “ment have sent circular letters to all the incum-
 “bents in Ireland, requiring them forthwith to fur-
 “nish a correct account of their incomes, with a
 “view, in order, in future, to pay them *out of the*
 “*Treasury*!!—Inhabitants of the parish of St.
 “Mary’s, Newtownbarry, there will be an end to
 “CHURCH PLUNDER: your pot, blanket, and pig
 “will not hereafter be sold by auction, to support in
 “LUXURY, IDLENESS, and EASE, persons who endea-
 “vour to make it appear that it is essential to the
 “peace and prosperity of the country, and to your
 “eternal salvation, while the most of you are
 “starving! Attend to an AUCTION of your neigh-
 “bour’s cattle, on Saturday next, the 18th Instant,
 “seized for Tithe by the *Reverend* Alexander
 “M’Clintock.”

(The second placard was then proposed to be read, but it was objected to by counsel for the Crown, upon the ground of its not having been identified as one of those exhibited at the fair.

Fourth Witness, JOHN RALPH, Examined by
 MR. HAMILTON.

I am Post Master of Newtownbarry; I was acting as tithe agent for the Rev. Mr. M’Clintock,

in June last ; I distrained these three heifers ; I put them into the pound of Newtownbarry, and advertised them to be sold on the 18th of June.

BARON FOSTER.—For how much did you distrain them ? For about £2. 11s. Two of the heifers were distrained for that ; they were separate property ; two of them belonged to Doyle, and the other to a man of the name of Nowlan.

TO MR. HAMILTON.—I brought them from the pound to Newtownbarry to be sold ; they came into the town a few minutes before 12 o'clock ; the sale was to be between twelve and one ; I saw a printed paper, the words on it were “ *This Sale is for Tithes,*” or words to that effect ; they were in very large letters on a board carried by a boy ; (placard handed to witness,) it was something like that ; I do not recollect the exact words ; they were “ this sale is for tithes,” or “ selling for tithes.”

What became of the cattle ? They were driven out of the town on the Enniscorthy road ; I saw a great crowd on the Enniscorthy road, in which I supposed the cattle to be ; the crowd was so very dense that I could not see the cattle.

BARON FOSTER.—Do you mean to allege, that the cattle were wandering away ? I do not think they would unless a road was made for them.

MR. HAMILTON.—Will you state what took place when the cattle were in the town ? I requested of the people to be quiet, and let the sale go on quietly, and if there was any thing illegal in it, an action would lie against Mr. M'Clintock or me ; the cattle were forced from the place where I first

left them ; some persons among the crowd, said “ Why dont you sell them now ? Where is your auctioneer ? ”

Do you know the individuals who said that ? I dare say I would know one or two of them. Do you recollect them now ? I do. When you saw the crowd going on the Enniscorthy road what did you do ? I met Captain Graham, and told him that the cattle had been driven away ; he said to Captain King who was then coming with the police, that he ought to be there before that ; they both and I went after the cattle ; I recovered the cattle a little below the pound, and brought them back and put them into the pound ; we met a very large crowd at the bridge ; Captain King desired his men to prime and load, the crowd was so great, and before he had time to prime and load, Captain Graham rode up and told Captain King it was better to take his men into the field ; and then Captain King took the men into the field. When you came back to the pound with the cattle, was there a crowd there ? Not immediately at the pound, but we saw an immense crowd coming from Newtownbarry.

BARON FOSTER.—What do you mean by an immense crowd ? Four or five hundred people. Were there many women among them ? I do not recollect seeing many women at that time.

To Mr. HAMILTON.—We were both approaching the pound at the same time ; the crowd on one side and we on the other ; the police were then guarding the cattle ; they were drawn up across the road facing Newtownbarry. The yeomen came after-

wards? They did. How came they to come? Captain Graham asked Captain King, did he think his force of police sufficient to bring the cattle to Newtownbarry; Captain King said he thought not, and that he (Captain Graham) had better go for the yeomanry; Captain Graham then went back to Newtownbarry for the yeomanry, and he returned with them; during this time the crowds were increasing very much, and were very large when the yeomanry came; a great many followed them out of the market.

BARON FOSTER.—When the yeomanry reached the pound, what do you think was the number of persons near the pound? I think beyond a thousand altogether.

Mr. HAMILTON.—Was there much noise made by the crowd? They made a great deal of noise, and asked why the cattle would not be sold there; when told that they could not be sold there, they insisted that they should be turned out. Can you remember any other expressions you heard among the crowd? There were a great many very unhandsome expressions used to Captain Graham. What were the expressions? Captain Graham said that if they did not disperse, he should read the Riot Act; it was then said, that they would put the riot act into a certain place, using a very indecent word. Did Captain Graham make any further address to the people? Yes, he told them that he did not come there so much for tithes as to protect the laws of the country, or words to that effect; and he said to them that every musket there was

loaded with a ball catridge. Did they make any reply to that? They said that they did not care about his old rusty muskets. Did you see any stones there with any of the people? I observed a good many of them having stones in their hands, and they seemed endeavouring to conceal them; the stones were larger than would fill a man's hand; the cattle were then turned out of the pound; there were some of the police with bayonets in advance of the cattle, and the people were pressing in on the bayonets.

Did they then say any thing? They said that they had as good a right to the road as the police. What next did you do? I proceeded with the police, and the cattle in front of the yeomanry, and they filed off after the police and me, and nothing particular occurred until I heard a shot; I was then about 150 yards from the pound; that shot was entirely in the rear of me to the right.

BARON FOSTER.—How far were you from the yeomen when the shot was fired? I suppose within four or five yards of some of them. How far was the shot fired from you? It was a good deal in the rear of me. Am I to understand you to negative the possibility of its having been fired by a yeoman? No. Was the whole body of the yeomanry behind you? It was.

Mr. HAMILTON.—Did you after this on any occasion see Captain Graham? I saw him ride up one side of the line, and down the other, saying, "*fie, fie, cease firing—shame!*" Will you describe how the shots were fired? I heard one shot first,

and then another, and then another, and then a volley like the roll of a drum. Did you see any stones thrown that day? I did not. Did you know William Kilfoyle before that day? I did not.

Cross Examined by MR. GREEN.

You acted as the agent of Mr. M'Clintock? I did? His tithes were under the Composition Act? Yes. The sum due to him was £2. 11s. Yes; from Doyle. Had there not been some difference between Doyle and Mr. M'Clintock? Not as to the sum. But there was about the tithe? Yes. What was the value of these three heifers? Not more than £6. Did it not appear to you to be an unreasonable distress for £2. 11s. It did not. I asked Doyle what beast he could best spare, and he pointed out these two heifers; he said it would be better to take the two as they would not then miss each other, and would go quieter. How soon did Captain Graham return with the yeomanry after he was desired to go for them by Captain King? He returned without any delay. Between yeomanry and police how many men were there altogether? Between 130 and 140, at least. Can you form any idea how many shots were fired in all? I can not. Is it because they were so numerous? No; but they were so quick. There had been some indecent language used to Captain Graham? Very indecent. The first shot was the first thing that attracted your attention? That was the first thing. The line of the yeomanry must have extended a considerable way down the road? It did. Can you form any

judgment how far behind you that line of police and yeomanry might have extended down the road? Perhaps better than 100 yards—it might have exceeded that. You say that Captain Graham rode up and down the line crying out “fie, fie, shame, “cease firing;” He did. Whom did he address that to? To no one in particular. At the time you heard him crying out these words was there any firing going on? There was not. Was there any more firing after that? There was not.

GEORGE ROBERT HYDE, ESQ. *Examined by*
MR. MOORE.

I live at present in Ayrshire; I lived in June last in Newtownbarry; I am a surgeon; I was then a lieutenant in the Newtownbarry yeomanry; that corps was out on the 18th of June last; I was with them; I know where the pound is; I went with my corps down to the pound; there were several hundreds of people about us in the first instance, and they increased to several thousands.

BARON FOSTER.—What do you mean by several thousands? There were three thousand, and I am much under the number when I say three thousand; in going along I heard them groaning, and I heard one person say, “You have got the Doctor with you, by my *sowl* you will want him before you get back;” “damn your musty muskets”—“we will give you mail-coach law”—“we are the Graiguenamana boys;” these expressions were used by several individuals; the dispensary lies between Newtownbarry

and the pound, and when passing it, two yeomen were struck with stones ; one man had his hat knocked off, and he shewed it to me, and another was struck in the leg ; I desired them to take no notice of it ; the crowd was at this time beginning to increase, and was very near us ; they were within two yards of the extreme left person ; there were as many people as the road could contain ; I heard noise among the bayonets, but before I heard it, I heard a person cry out “ turn out the cattle ;” when the cattle were turned out, the line was toled off into sections ; when the second last section was about to wheel round, I saw a perfect *arch* of stones descending among the arms of the yeomanry ; they were water-worn stones, the size of common paving stones ; the noise that I heard among the bayonets appeared manifestly to have been caused by the striking of the stones against them ; the stones were thrown up, so as to fall among the yeomen, and not projected at them ; just at that moment the crowd which had increased very considerably from the Enniscorthy side came down *en masse* upon the position which had been occupied by the yeomanry ; the throwing of the stones and this motion were simultaneous ; there was a vast crowd ; they had been moving with a certain velocity which they suddenly encreased doubly or trebly ; several of the yeomen were knocked down ; at least they said that they had been knocked down.

MR. GREENE.—Did you see them knocked down? I did not.

MR. MOORE.—Did the yeomen say any thing

more? They said, "are we to stand this?" "we shall be murdered if we do;" "they are peppering us from the grove;" and then, "there is a man of ours down;" at that instant I looked forward expecting that there would be orders issued to act, and instantly the firing broke out in the rear; I then saw Captain Graham galloping up the line shouting out "cease firing, fie, fie!" from what I saw I think it was quite necessary for the protection of the party that the firing should take place. I believe it is the nature of your profession to understand time pretty accurately? Short spaces of time do come under the consideration of medical men. What was the portion of time in your opinion which the firing lasted? I think it was comprised in a minute and a quarter: less than a minute and a half I should say; there was a yeoman killed; the wound seemed to be made by a musket ball, which passed in at the angle of the right eye, and passed out over his left ear; the track was made by a large ball.

Cross Examined by MR. SCOTT.

Where were the yeomen when you say, you saw the yeoman fall? I did not see any yeoman fall. Did you see the yeoman dead? I saw him lying on the road. Was that the person of whom you heard it said, "there is one of our men down," before the shots were fired? It was. At the time that you heard there was a man down, had you heard a shot fired? I had heard three shots. From what direction were these shots? Beyond what any of our party were in that direction.

The shots were in the rear? I think so. Could you be mistaken in that? I might. Could those shots be fired by any of the party who were between you and the town? I can hardly say where they were fired from.

MR. MOORE.—Did you attend any of the yeomen professionally? I saw a man of the name of Rothwell, who had been struck in the head, and a man of Mr. Richards's corps who had been wounded in the heel. I only took cognizance of serious hurts. He was wounded with a slug in the heel; it was extracted in the Carlow infirmary. Are you able to form a judgment from the appearance of the wound, what it was occasioned by? By a swan drop or slug; it made so small a hole that it could not be by a musket ball. I attended a man of the name of Mc. Laughlin, who was hit in the knee, with a piece of curled lead.

MR. SCOTT.—How do you know that he was struck with a piece of curled lead? I extracted it. When? At the time of the investigation by Mr. Greene. Where was it that you so extracted it? In Mr. Graham's house. Was that man a yeoman? He was. How many did you attend altogether? Four or five, the rest did not require attendance. Were you in that part of the line which was exposed to the shower of stones? There were eight or ten men between me and it. You were a good deal agitated? I was. Did you see a person of the name of Ralph there, at that time? I did not. Did you see him at all that day? I did, but I am not aware that I spoke to him that day. Did

you see him about the time that the firing was going on? Certainly not. How do you take upon yourself to estimate the numbers exceeding three thousand? They filled up the entire of the road, at our extremes, and they were six or seven deep on the road. Did you see any of the yeomen reload and fire a second time? I did not. Can you take upon yourself to say whether or not, any of them did reload? I cannot say. Did you give any orders to the men either to reload or fire? No, I told them to cease firing. Did you see any fire arms with any of the people that were there that day? I did not. Did you see any offensive weapon? I did not, with the exception of one man that had a ribbery.

Sixth Witness, GEORGE RICHARDS, ESQ. Examined by MR. HATCHELL.

I was an officer of the Solsborough and Farmley corps of yeomanry in June last: I marched with a detachment of that corps under the command of Captain Richards to Newtownbarry, on the 18th of June last; I remember to have proceeded towards the pound; there were detachments of other corps joined with us; there was a large crowd of people about us, reaching down at each side of the line many of them outstripped us, and were shouting as they went along. Upon our arrival at the pound there was a large crowd which re-echoed the shouting near the town; there was a large crowd about the pound; when I

arrived there the police were surrounded by a large body of the crowd ; when the police moved on with the cattle, that crowd which followed us from the town, joined the crowd that were at the pound ; when Captain Graham came down and saw the riotous demeanour of the people, he called upon them several times to disperse quietly, saying, “ that he came there to protect the law ;” to every thing he said, a shout was the reply ; the people generally had oak sticks, boxing sticks they are called ; they appeared to be recently peeled ; others of them had ordinary walking sticks, but the greater number of them had peeled oak sticks ; I was in the right centre ; the Myshal corps were on the left centre ; and in the extreme left was the Newtownbarry corps ; Mr. Hyde had command of the Newtownbarry corps ; I was near the pound ; I observed a middle sized man with a large drab coat and white stockings, who seemed to have the command over them ; he appeared to me to have his eyes blackened, but I am not able to say whether it was artificial or natural ; my opinion is, that it was not natural ; I heard that man address Captain Graham in very offensive language ; Captain Graham told the people not to be misled, for that every firelock they had there was loaded with ball cartridge ; some of them cried out that they did not value his rusty old guns, and this man that I speak of said that he had as good men there as Captain Graham had ; Captain Graham desired him not to be insolent, and he desired Captain Graham not to be insolent ; Captain Graham said that he

would read the Riot Act, and this man said he did not care for it, that they were "*Graigue-na-mana boys, that they had Graigue laws, and that they would pay no tithes.*" This was cheered by the people ; Captain Graham said, "will you not hear me," and they then shouted ; then a person, whom I believe to be Doyle's son, said, "well, the sale may now go on, but I require these men to lay down their arms." This was about five minutes before the firing ; Captain Graham said emphatically, "*you require ;*" then this man with the drab coat said to the people on the ditch, "why dont you come down out of that," these were the people that were fronting the line, there were people also in the rear of the line ; upon that being said, the people in front jumped down on the road ; their place was supplied by another line of people, who also jumped down, the greater part of them, and their places were taken by a third body, a few of whom jumped down ; these lines that descended on the road, extended to a great length, and when they came down off the ditch, they shouted ; this was what took place from the time that we halted and fronted, until the cattle drove on ; the police and the cattle passed up in front ; the yeomanry previous to this, had been formed into sections, by the command of Captain Graham ; the yeomen covered the advance of the police, and the people that descended on the road, got up again on the ditch ; the line had been toled off in sections before this ; I was placed with the left section ; when moved on about fifty paces, there was a tremendous rush

from the people, so that my section was broken ; I used my best exertions to get them into order again ; I then saw an immense number of stones descend among the yeomanry, this threw them entirely into disorder ; when I looked round I heard a shot ; I was struck with a stone in the foot ; we had proceeded about fifty yards when the shower of stones came ; Kilfoyle had the command of the Myshal corps ; the first shot I heard was a weak shot ; it did not appear to me to come from a musket, or if it did, it came from a distance ; while I could reckon four or five, I heard three shots, and in a second an independant fire commenced up the yeomanry line ; I was struck again on the cap with a stone, which forced it down over my face, and staggered me ; that could not have been done by a pebble ; when I recovered myself from the blow of the second stone, I heard Captain Richards say, “cease firing,” just at this time, when I looked round, I observed Captain Graham riding up the line, giving the same orders, “to cease firing ;” the firing lasted about a minute and a half ; I was standing in the ranks, because I was under command ; Captain Richards had the command of my corps ; upon my oath it is my decided opinion that it was necessary for the safety of the yeomanry, and the preservation of their arms, that they should fire.

Cross Examined by MR. SMITH.

At the time the firing commenced, were you at the Newtownbarry side of the pound, or at the

Enniscorthy side? At the Newtownbarry side. About how far from the pound? About sixty yards. Whereabouts was the Myshal corps at this time? Next to my rear, they were nearer the pound than my rear. So that the Myshal corps were not far from the pound? They must have been fifty or sixty yards from it. There is a field adjoining the pound? There is. Kilfoyle had the command of the Myshal yeomanry corps? He had. And therefore he was opposite that field when the firing took place? He was. Whereabouts was Mr. Hyde's corps at this time, with reference to the pound? It was nearer still than the Myshal corps. What corps did Rogan belong to? I heard he belonged to the Newtownbarry corps. There were persons standing near Rogan when he fell? Of course. And it is clear that those persons could give a better account of his death than those who were fifty or sixty yards from him? It is. Will you positively swear that the first shot must have been a pistol shot? I will not. Can you take upon yourself to swear positively that that shot did not come from the yeomen who were in your rear? I will not take upon myself to say who fired it. Now when that young man called upon the yeomen to lay down their arms, do you mean to say, that he required you to lay down your arms? I so understood it. Would you not consider it a very absurd thing that one man should make such a demand from so many armed men? There were a great number of persons with him, who appeared to be co-operating with him. But without

fire arms ? I saw no fire arms, but I saw plenty of sticks. On the second or third shot that you heard, did you see any of the crowd disperse ? I did not. Do you then say, that after the general discharge of shots, the crowd still remained stationary ? They did not remain in the position they were in when the firing commenced. Did they not run away ? Many of them disappeared, and many of them did not. They did not sink into the earth ? They did not. Did not all the people who were in the field run towards the wood ? Not all. I believe some of them lay down beside the ditch. After the general discharge, did any of the party re-load for the purpose of firing again ? Upon my oath, I saw no man re-load. Was there any firing after the general discharge ? There was ; there was one man going to fire, and I stopped him. After that general discharge of musketry, did you see a woman going in the direction of the pound or wood ? I did not. Who gave you the orders to fire ? Nobody. Did you keep your eyes directed towards the wood from the time of the general discharge, until the firing ceased altogether ? I did not. Did you until you got the orders to cease firing keep your eyes in the same direction ? I did. Were there any shots fired after you got the orders to cease firing ? There were. Was that order given in an audible tone ? Those in the rear might not have heard the direction to cease firing. Did not Captain Graham ride down the line exclaiming, “ cease firing ? ” He did. How far were you then from the Myshal corps ? About four or five yards. You said that there were some shots fired

after the exclamation to cease firing; was that after Captain Graham gave the order to cease firing? It was. How far was Captain Richards from the Myshal corps, when he called out to cease firing? About five yards. Can you state from whence the shots were fired after the orders were given to cease firing? They appeared to me to be far advanced to the rear. Will you take upon yourself to swear that those shots did not come from the Myshal corps? I will not.

BARON FOSTER.—Can you state how long it was after the order to cease firing until those last shots were fired? Immediately after, for the whole did not last two minutes.

MR. SMITH.—Did you hear any person exclaim, after the shots were fired, “fie, fie, the woman?” I did not.

MR. HATCHELL.—Captain Richards commanded your corps? He did. It was the duty of the person having the command of the corps, to have the command of the first section? It was. You had the command of the second section? I had. Therefore the person who had the command of the Myshal corps, was immediately to your rear? Yes. Now with respect to those two or three shots that were fired immediately after the order to cease firing had been given, upon your oath do you think that they could have come from the first section that was immediately to your own rear? I dont think they could.

JUROR.—Will you describe the positions of the corps? The Enniscorthy corps was to the right; the Farmley to the right centre; the Myshal to the

left centre ; the Newtownbarry, to the extreme left, and we moved by sections, to the right. How many sections were between you and the police ? I believe four sections.

THOMAS GILL, *Examined by* MR. BREWSTER.

I was on duty at Newtownbarry, on the 18th June last ; I was with the party of police at the pound, before the yeomen came up ; there was a crowd collected about the place before the yeomen came up ; after the cattle were taken out of the pound, I accompanied them towards the town ; there was a man running up, and he caught hold of the muzzle of my carbine ; there were some shots fired before this.

Examined by MR. O'DWYER.

Might not the man have put his hand against it without intending to take it from you ? He might.

BARON FOSTER.—Did he try to wrest it from you ? He did not.

MR. BREWSTER.—What did you do ? I pulled it out of his hand. Did the man strike you ? He did not.

LOUGHLIN DILLON, *Examined by* MR. HAMILTON.

I am a sub-constable of Police ; I was at Newtownbarry on the 18th June last ; I was in the outside flank of the line of Police ; there was a tremendous large crowd ; they came so close as to push me, when

they were leaping down off the ditch ; some of them said, that they had a better right to the road than the yeomen, because they paid for it ; I said that they should keep off my post ; I asked them if they intended to take my arms from me, and they said "if we choose we will take them from every one of you," I levelled my firelock, and two men endeavoured to wrest it from me ; I pulled the bayonet out of the hands of the man who seized it ; his hand was cut ; I saw stones thrown immediately after that ; my comrade Woodhouse, said, the captain is moving with the cattle, and if we do not go away they will murder us with the stones they are lifting up ; I saw one yeoman step out as if to cover an object, and while I watched his level, I saw him fall, at the same time, I saw a man belonging to the mob with a firelock, at the wall, that man fired, and the yeomen fell ; that yeoman was Rogan.

Cross Examined by MR. PLUNKETT.

What corps did Rogan belong to ? To the Newtownbarry I think. When this man fell, you were with your own party of police following the cattle ? I was. Were there many people on the road at that time ? They were as thick as ever they could stand. How far was this man from the yeoman when you saw him level his piece ? About three paces. Were all the yeomanry in uniform ? No, but they had cross belts. Had they all cross belts ? All that I saw had. Had the man that you saw at

the wall a cross belt? He had not. Was it after the general volley that the yeoman was shot? No, there were only a few shots fired at that time.

THOMAS WEBB, (*a policeman*), *Examined by*
MR. MOORE.

I was with the party of police between the pound and Newtownbarry; I knew a man of the name of Rogan; I did not see him, until I saw him on the ground dead; I saw a man inside in the field, that day, with what I took to be a carbine, he was a common man, dressed in coloured clothes; I saw him present that piece; he presented it from the Slaney side, towards where I and my comrade were standing; I saw him present it, and fire it; it was after that, that I saw Rogan on the ground, when I saw the man present the piece, I said to my comrade, King, "you will be shot," and I pulled him out of the way."

Cross Examined by MR. GREENE.

Do you know Loughlin Dillon? I do. Did you see him there? I did. Did you see him at the time this man fired? I did not. How near were you to the man when you saw the shot fired? About five paces. Had you seen that man any time before that day? Not to my knowledge. Did you see any man levelling at him? I did not. How many shots had you heard before this? A good many. Did you pursue that man that fired? I did

not. Did any body attempt to take that man that fired that shot? Not to my knowledge. Did you see the people running away? I did. Were they not running away in all directions? They were, after several shots were fired. Upon your oath was there not firing when they were running away? There was, when some of them were running away. Did you see any other countrymen with arms but that man? Not one. Why did you not pursue that man? I would not leave my ranks because the balls were whistling about me.

THOMAS EDWARD BYRNE, *Examined by*
MR. HAMILTON.

I am surgeon to the Carlow infirmary; I remember to have received a man of the name of Murray into that infirmary on the 25th of June last; he had a wound; in about a fortnight a few bits of leather came away, and I afterwards extracted a piece of lead from it, which had the appearance of an irregular body—(the piece of lead produced.)

Cross Examined by MR. SMITH.

You cannot say where he received that wound? Certainly not.

Here the case closed for the defence.

His Lordship then proceeded to charge the Jury thus :

CHARGE.

GENTLEMEN OF THE JURY.—In this case there are mixed considerations of law and fact for your attention. It shall be my endeavour to explain to you the former, and to interfere as little as may be with your judgment in respect to the latter.

When magistrates receive credible information that a riot, or serious opposition to the law is in contemplation, it becomes their bounden duty to take measures to prevent it, and for this purpose to call in to their assistance the constables placed at their disposal, and in case it should appear to them probable, that further aid may be required, they may call also upon others of the king's subjects, and these latter are bound to obey their mandate.

Gentlemen, however widely the witnesses for the prosecution, and defence, may differ in other respects, they agree in this, that they lead you alike to the conclusion, that the prisoner was acting as the assistant of the magistrates on the occasion in question ; that he was a constable obeying their lawful commands, and that he was at the pound of Newtownbarry for the purpose of executing the duty. It is equally clear that the magistrates had gone to the pound in consequence of credible information, not merely that a rescue had been made of

cattle under distress, but also that a great riot was to be apprehended. It has been admitted by the witnesses for the prosecution, as well as proved by the witnesses for the defence, that a Placard had been exhibited in the Fair of Newtownbarry, on the day preceding, of the same tenor, as the one which has been proved in evidence before you; and it is for you to say, whether one more calculated to rouse the peasantry of the whole adjoining country to a sudden deed of desperation, could have been constructed by any incendiary, whose object it might be to attain that end.

It has been proved to you that these Placards were printed in Dublin, and further that they were seen posted on the morning of this transaction, in places even thirty miles removed from Newtownbarry, and that the knowledge of that fact was communicated to the magistrates, whose duty it was to provide for the maintenance of the public peace. I have no hesitation in telling you that the magistrates did nothing more than their duty in calling out the police under such circumstances, and that they were further justified in calling also upon the yeomanry to be ready in case their services should be required.

It is admitted by the evidence on both sides, that on the 18th of June, the day to which your attention is now more particularly to be directed, the three heifers, which had been distrained for non-payment of the tithe composition rent, were in some manner liberated from their position in the market square, where they had been placed prepa-

ratory to their being set up for auction ; whether this arose from a mere movement of the animals themselves, or from an actual rescue by the assembled crowd, or rather perhaps from an opening and closing of their ranks, calculated to favor the escape of the cattle, does not appear ; but thus much is certain, that the cows were no longer in the square, where they had been placed, but were upon the road, and proceeding out of the town, followed by a large number of the people. The witnesses on both sides are further agreed, that the first interference of the police, acting under the authority of the magistrates, was to pursue these cows, for the purpose of bringing them back from the road on which they were passing, to the square which they had left ; that the yeomanry had not as yet appeared upon the scene, but that they were subsequently called to the assistance of the police, by Captain Graham, the magistrate who had accompanied the police in the first instance in the pursuit of the cattle, but who returned to the town for the yeomen, in consequence of a large multitude having surrounded the police at the pound of Newtownbarry, about a quarter of a mile from the village, in which the police had placed the cattle for temporary protection. So far the witnesses on both sides are agreed, but here their agreement ceases, and their accounts of the events which subsequently occurred, are so entirely at variance, that it becomes in vain to endeavour to reconcile them, and you are reduced to the necessity of electing, as to which of the two irreconcilable narrations you will believe.

The outline of the story as stated by the witnesses for the prosecution is, that after Captain Graham had brought down the yeomanry from the village, to act in conjunction with the police, the cattle were taken by them out of the pound—that a party of the police then formed the advance of the party on its return to the town; that the cattle followed next, and that the yeomanry brought up the rear; that there was a crowd of about four hundred persons who had followed the police from the market place; that a few of this number preceded the police on their return towards the village; that some more were passing parallel to their line upon the road, and that the major part of them followed the yeomen in the rear; that two or three stones were thrown, as is admitted, and fell among the yeomen; that Captain Graham then gave orders to fire, when one shot was immediately discharged; then two or three more, and then a rolling fire which continued, according to the witnesses for the prosecution, between four or five minutes; that during this firing the prisoner at the bar stepped out of the ranks, took deliberate aim at a woman, Mary Mulroony, who was passing through an adjoining field, and shot her dead.

The representation of the transaction on the part of the defence is widely different indeed. It states the numbers of the mob at between three and four thousand; that the yeomanry were not only threatened on their way to the pound, but that two of them were struck with stones without producing any retribution on their part; that commencing

their return from the pound towards the town, the stones thrown at them were so numerous as to form the appearance of an arch ; that many of the men were knocked down, and that shots were fired at them by the country people before the discharge of fire arms was made upon their part ; that their firing was limited to a space of time, not longer than a minute and a half, or at most two minutes, and that Captain Graham's interference was not to desire the fire to commence, but to cease.

Gentlemen, if you believe this statement on the part of the witnesses for the prisoner, I have no difficulty in telling you, that the the only question for your consideration is, whether it amounts to shewing a reasonable necessity for the assistants of the magistrates, to fire either for the purpose of self defence, or in order to subdue the resistance which was made to their performance of duty, and that if you believe such reasonable necessity to have existed, the homicide which occurred was justifiable and the prisoner entitled to an acquittal, provided you think that the shot he fired (if he fired any) was discharged in the fair execution of that duty. On the contrary, if you believe the evidence brought forward for the prosecution, and that no greater provocation was offered than that which it described, the homicide which the prisoner is stated to have committed, so deliberately upon the deceased, would be, to say the least of it, a very aggravated manslaughter ; but no question as to its having amounted to murder can arise upon the present form of indictment.

Let us now follow the principal witnesses a little more particularly through their evidence. I do not find any thing in the testimony of Marks Devereux, the first witness for the prosecution, except that which I have already stated to you ; his account of the transaction is exactly what I have laid before you, as the representation of the transaction on the part of the prosecution.

The next witness is Terence O'Brien, whose evidence is of the utmost importance in this case, as there is matter which goes to implicate the prisoner, William Kilfoyle, in the death of Mary Mulrooney. Here it is most necessary to apprize you, that it is a principle of law, that where a number of persons are acting in the performance of their common duty, an illegal or criminal act performed by one cannot affect his companions. Each man must answer for himself, but is not responsible for the act of any other. The rule of law in such a case is exactly the converse of that which, you know, prevails where the purpose of the party is criminal ; in the latter case, the act of one is the act of all—the shot of one is the shot of all ; but where the common enterprise is an act of duty, if one man transgresses the line of right, and commits even murder, his next companion is perfectly free from crime unless he had actually and not constructively assisted in it—therefore, if on this occasion, any other person than William Kilfoyle the prisoner shot Mary Mulrooney, even though the homicide should turn out to be manslaughter, still William Kilfoyle would be wholly free from blame.

You will now perceive the vast importance of the principle as applied to O'Brien's evidence. He represents himself as having secured an asylum between the double rows of the police, after having narrowly escaped being shot while in the adjoining field ; such was the spot from which he took his observation, and from whence he says he saw Kilfoyle step forth from the ranks, and fire so deliberately at the deceased. Now the police, it is admitted, formed the head of the column, and O'Brien describes his own particular station as about six yards from that of the nearest yeoman. He never knew Kilfoyle before, and it is for you to say, whether a man who may have been a little flurried by his own escape, from being shot the instant before, and with smoke, fire, confusion and death on all sides of him, could identify a stranger, under such opportunities of observation. But this is not all ; Kilfoyle must have been far more remote from O'Brien, than was the situation of the nearest yeoman, for it is manifest that Kilfoyle, though a policeman, was in command of the Myshal yeomen on this occasion, and that their corps were not in front of the column which was nearest to the police, and consequently nearest to the station of O'Brien, but almost at the opposite extremity of the line. It seems necessarily to follow, either that Kilfoyle was not the person who shot Mary Mulrooney, or that if he was, it was nothing less than impossible for O'Brien to have seen him do it ; and you will observe that there is no other evidence except

O'Brien's to connect Kilfoyle with that part of the transaction.

But Gentlemen, there are other circumstances in O'Brien's evidence, to which I must direct your attention. He swears he was in Newtownbarry on the day of the coroner's inquest ; that he then saw Kilfoyle in the village, that he then knew him to be the person who had shot the deceased ; that he then recognised him as such, though he had never known him before, but that he mentioned the circumstance to no one at the time, when it was so natural for him to have disclosed it ; a silence for which he gives no intelligible reason—that he at length in about a fortnight afterwards came forward to declare his knowledge at the bidding of Father Walshe ; that at the bidding of the same director, he afterwards declined to give evidence at the last assizes, though under recognizance to do so, and that now at length he comes forward once again to give it, at the bidding he declares of no person whatever. It is for you, Gentlemen, to say, whether you can believe under all these circumstances that he is certain that Kilfoyle fired that shot.

Consider his testimony under still another point of view ; suppose that he saw some one, though perhaps not Kilfoyle, fire such a shot as he describes, let us see whether it can amount to manslaughter. On his own shewing it was discharged almost in the midst of the firing which he described. He places it at the end of the third minute of the fire which he says was the entire duration of the firing. You will remember however, that other witnesses have described it as

not having lasted above a minute and a half, or two minutes. Be the time a little longer, or a little shorter, this fatal shot must be taken, on his evidence, to have been discharged nearly about the middle of it, and no great deliberation can possibly be assigned for such an act ; but consider still farther whether you can believe that the aim which he describes was really taken at the woman. The man who discharged it was on the road, the flying mob were rushing into the adjoining grove which was parallel to the road, and only fifteen or twenty perches removed from it. Now it is obvious from the map, that Mary Mulrooney in the field was exactly in a line between the person who fired the shot and the people who were rushing for refuge into the grove. O'Brien admits they were entering it the minute before, and the minute after the shot was discharged, and what they were doing at the instant it was fired, I leave for your consideration. It was the woman's misfortune to be exactly in the way between and passing in a diagonal direction across the field. The shots fired at the mob must have passed before her and behind her, and over her head ; but to suppose that the person who fired this shot, singled her out as his mark, rather than the men who were immediately beyond her, seems to impute to him not merely a malignity, but also a singularity of purpose, which I imagine you may find some difficulty in attributing to him.

Gentlemen, I repeat it, if you are not satisfied with the evidence of O'Brien, there is an end to the case as against Kilfoyle. But there will be a

still shorter end of it, if you believe the evidence of Mr. Hyde a surgeon, now settled in Scotland; fortunately for him, removed from the partialities and excitements naturally incident to a residence in the midst of these our miserable domestic contentions. His evidence is fresh in your recollection, and I will say, that if even the half of the aggression which he describes, shall appear to you to have taken place on the part of those who assailed the assistants of the magistrates, no doubt can be entertained, of a reasonable necessity having existed for their having used their arms as they did, nor much doubt perhaps that had they abstained from doing so, they would probably have been deprived in the course of another minute at the least, of their arms, and not improbably also of their lives. You will here recollect the evidence of Mr. George Richards, which leads exactly to the same conclusion, and you will recollect also his evidence that the son of the proprietor of the cattle, shortly before the firing, summoned the party to surrender their arms; and you will particularly observe that part of the evidence of Mr. Hyde, where he states, that as they were going down to the pound, they heard the following expressions: "You have got the doctor with you, by my *sowl* you will want him, before you come back," "damn your rusty muskets," "we'll give you mail coach law, we are the Graigue-namana boys."

Gentlemen, you are not trying Captain Graham, but after it has been his fortune to have been indicted for the same alleged murder before two successive

Grand Juries, and his name called so much in question, it may not be improper here to declare to you, that if you believe the witnesses brought forward for the defence, he appears to have conducted himself throughout, not merely with a high sense of magisterial duty, but with prudence, moderation, and humanity.

Gentlemen, it is for you to weigh the credibility of the two stories which you have this day heard ; if you believe the witnesses tendered for the prisoner, the homicide appears to me to have been perfectly justifiable. But if you do not believe them and prefer the account given for the prosecution, still you will have to satisfy yourselves that O'Brien's evidence is true in respect to Kilfoyle's particular share in the transaction before you can find him guilty of manslaughter.

The Jury then retired to their chambers, and in a few minutes returned into Court with a verdict of *Acquittal*.

Counsel for the Crown.

MR. ATTORNEY GENERAL.	MR. SMITH.
MR. GREENE.	MR. O'DWYER.
MR. SCOTT.	THE HON. MR. PLUNKET.

CROWN SOLICITOR, MR. KEMMIS.

Counsel for the Prisoner.

MR. MOORE.	MR. HATCHELL.
MR. ARTHUR HAMILTON.	MR. BREWSTER.

AGENT FOR CAPTAIN GRAHAM, YEOMANRY, AND POLICE, MR. JAPHET ALLEY.

5th March, 1832.

Thirty persons, consisting of yeomen and police, having been held over to bail ; the Judge upon an application made to him this morning, discharged the bail from their recognizances.

WEXFORD ASSIZES,

FRIDAY, 2^D MARCH, 1832.

BARON FOSTER'S CHARGE

To the Grand Jury.

THIS day the Commission was opened by the Hon. BARON FOSTER, and the following Gentlemen were sworn on the GRAND JURY :

Lord Stopford,
Lord Valentia,
Sir T. Esmonde,
C. Tottenham,
H. Grogan Morgan,
F. Leigh,
Robert Doyne,
Grogan Morgan,
Robert Phayre,
Peter Moore,
J. Goddard Richards,
Robert Jones Sankey,

W. P. Pigott,
Richard Donovan,
Wm. M. Glascott,
William Bolton,
F. Dennys,
Edward Cookman,
Henry Archer,
Edward Beatty,
John Maher,
G. W. Goff, Esqrs.
and
Sir William Cox.

As it was not then determined whether any Bills were to go before the Grand Jury in reference to the Newtownbarry affair, the learned Judge reserved his observations upon the subject until the

Counsel for the Crown had agreed upon the course they would adopt.

It having been determined in the course of the day to send up Bills for Murder against Captain GRAHAM, JOHN PERRIN, and JOHN MOULTON, the Grand Jury were called into Court, and his Lordship addressed them as follows :—

Gentlemen of the Grand Jury—In my general charge to you this morning I expressed to you the uncertainty under which I then continued, notwithstanding the inquiries I had made, as to the course which it was likely would be taken on the part of the Crown in relation to the events which took place at Newtownbarry in the early part of last summer, and which formed so melancholy an exception to the general tranquillity and good feeling which, during the last thirty years, have so honorably distinguished the County of Wexford ; and I abstained from addressing to you any observations in relation to that transaction until it should be ascertained whether you were to be called on to exercise any of the functions of Grand Jurors in respect to the homicides which took place on that occasion. I have now to inform you that all doubt upon that subject has ceased to exist, and that the Gentlemen concerned for the Crown are now prepared to send up to you an indictment for murder against William Graham, a Magistrate of the County, and two yeomen who acted in conjunction with him.—I understand in the character of his assistants.

It becomes, therefore, now my duty to submit to

you those principles of law by which the conduct of a Grand Jury should be regulated in the discharge of the solemn duty which now devolves upon you to perform ; and the first of these principles which I would submit to you is this, that where a homicide has been committed the law departs, as it were, from its usual benignity of construction, and presumes the worst. The homicide is taken to be murder until the contrary is made to appear ; but you must not understand me as wishing to convey to you that a Grand Jury are therefore to close their eyes against what may be the evidence before them, and to find a true bill for murder against those by whom the homicide may appear to have been committed. I merely mean, that the Grand Jury should advance to the discharge of their duty under a due sense of the jealousy with which the law regards the case of homicide, and not hastily be disposed to extenuate the offence, unless they should be very clear indeed that it is entitled to the mitigated character.

Gentlemen, I collect from the Informations in this case, that the homicide in question occurred upon the occasion of an alleged endeavour by some magistrates and their assistants to enforce the execution of the law, either by the repression of a riot which had actually taken place, or the prevention of one which was supposed to be on the point of commencing. How those facts may ultimately turn out, it is not, at present, my duty so much as to attempt to form an opinion—but it is about immediately to become yours, to affix the true character

upon the proceeding—and you ought to have a very clear view of the rules by which that character is to be determined. Homicide committed by a magistrate or his assistants may, by possibility, possess any one of the three following characters. It may be either perfectly justifiable, free from every imputation of guilt, or it may be manslaughter, or it may amount to murder.—You are now to pronounce as to which of these three classes the homicide in question properly belongs; and for this purpose it is necessary that you should be distinctly apprized—first, of the extent and nature of the duties which devolve on magistrates in relation to the suppression of riots. Secondly, of the powers which they possess to call on others for their assistance. Thirdly, of the obligation which that call imposes on such persons to obey it. Fourthly, of the manner in which both should conduct themselves for the purpose of suppressing it. Fifthly, of the protection which the law casts around them in the honest execution of their duty; and sixthly, of the consequences of their transgressing those limits within which their course should be confined.

The suppression of a riot, and, indeed, universally the preservation of the peace, are emphatically the first magisterial duties; first, in point of time, as being the earliest that are recognised by our law, and the first also in point of importance, as being those to which most of their other duties are subservient. By an Act of Parliament so early as the 34th Edward III. c. 1, a single justice may arrest persons riotously assembled, and may by parole,

call in the assistance of others to arrest them. By a subsequent Act of 13th Henry IV. c. 7, two justices, with the sheriff or under sheriff, and the force of the country, if need be, shall come and arrest the rioters; and what is very material, all persons, nobles as well as others, are bound to attend the justices in suppressing the riot; few classes of persons only being excepted, and the nature of the exceptions very strongly illustrating the otherwise universal extent of the obligation. All must attend, if called on, save only women, clergymen, infants, and those who are decrepid. The same principle is recognised in the subsequent statute of the 3d Henry VII. c. 10, which enacts, that the lords and other liege people shall attend on such occasions, and which evinces the continuing sense of the Legislature on the subject.

The next question which arises in the present case is, as to the obligation of the police and the yeomanry to lend such assistance. As for the police, it is pre-eminently their duty, for it is for that they were called into existence. They are the constables of Ireland, the chosen servants to whom the magistrates are to look for the execution of their lawful commands. As to the yeomanry, their case is different—they are neither more nor less bound than the other subjects to attend for the assistance of the magistrates; the circumstance of their being yeomen imposes on them no peculiar obligations, neither does it clothe them with any peculiar protection. In fact they act not as yeomen, but as citizens, called on to be assistants to the justices. The

circumstance of their being yeomen, may supply prudential considerations to the magistrates for calling on them; they may possibly deem such persons to be of a description the most easily brought together, or for aught I know the most to be relied on for the execution of the law, or the most certainly provided with the arms that may eventually become necessary in case the riot should be a serious one. For here, Gentlemen, it is material to observe, that it is undoubted law, that he who is so called on to suppress a riot, may take along with him such weapons as may possibly become necessary for the purpose. The Case of Arms, as it is emphatically called, reported by Popham in the time of Queen Elizabeth, has set that point at rest.

We have now to consider under what circumstances it is that the magistrate is to feel himself called upon to go for the suppression of the riot—and it is here material to observe that this duty is not confined to such riots as take place within his actual view—but extends equally to those of which he may have credible information. Few riots indeed would else be likely to fall within the range of magisterial interference—and here again I must beg of you to observe, that it is not merely upon certain, but also upon credible information, that the magistrate is to act, lest, as the law says, it might be too late, that is, that the evil might be accomplished while the magistrate should be deliberating on its probability. If then the magistrate has just cause, founded on credible information, to apprehend a violent resist-

ance to the law, or any other case of aggravated riot, I hold it to be his clear duty to call in such assistance, by way of precaution, as may enable him if necessary to subdue it.

We are now arrived at the consideration of what course the magistrates and their assistants should pursue when arrived at the scene of riot. It is a very general but most unfounded error to suppose, that no course remains for them but to read the Riot Act, and that the assemblage may then be continued with impunity for no less than an hour. There cannot be a more dangerous mistake—the Riot Act is all affirmative—it superadds new penalties, but does not affect, or modify, or diminish any power or duties attached to the magistrates, by the antecedent statutes which I have adverted to. The true character of the Riot Act is this, that it enacts that what is a misdemeanor, independent of its provisions, may become a felony if persevered in—that a riot committed by twelve persons may eventually be transformed into a more serious offence than a riot by three or more is intrinsically in itself: and the Magistrate has in fact a complete option to adopt either course; he may proceed under the Riot Act and will exercise a sound discretion in so doing, if under the circumstances he sees reason to believe that an hour afforded for reflection may end in the dissolution of the danger. But if the danger is pressing—if circumstances are too urgent for either the reading or the reflection, he is equally at liberty to act under these powers—vested in him by the antecedent statutes—powers which

continue in him concurrently with those powers which are vested in him by the Riot Act. Nay, I will go further and say, that even after he may have to proceed under the Riot Act—if circumstances within the hour should become so urgent that it is impossible to wait for its expiration, he may still suppress the riot under the powers vested in him by the more ancient statutes; and I presume it can be scarcely necessary for me to state to you that everything which he may do for the suppression of the original riot he may do, *a fortiori*, if he and his assistants should be seriously assailed in the performance of their duty.

Let us now consider the degrees of violence which may be resorted to by the magistrate and his assistants upon such occasions; and here I repeat the statement with which I commenced, that any homicide which they commit may eventually prove to be either murder, or manslaughter, or homicide, involving no guilt whatever. Their situation is, however, not to be judged by exactly the same rules which we should apply to the conduct of ordinary individuals.—If an ordinary individual when assaulted slays the assailant, the law, before it will hold him to be absolved from all guilt whatever, requires him, according to his own language, “to have given back to the wall,” that is, to have even fled from his assailant so long as retreat was possible; and the law considers as manslaughter those more frequent instances in which the proud feelings of human passion lead to homicide, such flight not having taken place—but such is *not* the

view of the law with respect to the magistrate or his assistants—their duty is not “to give back to the wall,” but their duty is, on the contrary, to stand fast, and to execute the lawful purpose in which they are engaged, with as little violence as can reasonably be employed, but to execute it at all events. If resisted, they are bound to overcome the resistance; and if assailed, they are *a fortiori* bound to repel the assailants, independent of the consideration that they also are at liberty, like all the rest of their fellow-subjects, to use such means as may be necessary for their self-defence.

Still, however, you must not forget that force may be extreme—it may be too soon appealed to—too long persevered in—or too cruelly inflicted. In what manner then are we to determine the legitimate limits for its exercise? I will suppose extreme cases for illustration, and I must then add, that every case that may arise must stand upon its own circumstances. If we suppose the magistrate and his assistants employed in the execution of their duty, to be neither resisted nor assailed, but yet to inflict death, no doubt it would be murder in all such of the party as should be engaged in the act. On the other hand, should they be so resisted or assailed, that there should be what the law terms a “*reasonable necessity*” for resorting to force, either for the purpose of overcoming the resistance, or of defending themselves, and that death should ensue, the homicide would be perfectly justifiable. Much would of course depend upon the nature of the assault. If the officers of the law should be fired on, all doubt must be at an end. If stones should

be thrown, much must depend on the size of such as are employed, as well as upon the distance of the person who makes use of them. A stone may be cast in sport by a school-boy, or it may be hurled as amongst the most formidable instruments for the destruction of life.

But between the extreme cases which I have supposed, a far more numerous class will be found to occur, in which the officer of justice may slay neither in mere wantonness nor cruelty, nor yet under the influence of that indisputable or overwhelming necessity which would put an end to all doubt upon the subject. I refer to such circumstances of pardonable apprehension as by persons not engaged in the excitement of the transaction might be deemed of rather dubious character; in all such cases it appears to me, that if you believe the resistance or the assault made upon the ministers of justice to have been in any degree serious, the most that can be made of the homicide is manslaughter; unless you suppose the resistance to have wholly ceased, or sufficient cooling time to have been afforded before the commission of the homicide, which, I take it, would divest the officer of his special protection, and subject him to be judged by ordinary rules.

Gentlemen, what the facts of this case may turn out to be, I have not the least anticipation, but it has been my endeavour to submit to you the rules to which you should apply them when they come before you in evidence. Ask yourselves the questions—were the prisoners acting in the characters

of magistrate and magistrate's assistants?—were they acting *bona fide* in those characters?—were they seriously resisted or assailed?—was there a reasonable necessity for their resorting to the violence they employed—was their danger real or imaginary—was the provocation caught at as a pretence, or was it such as might have led you, under similar circumstances, to have acted in the same manner? And remember throughout, that the magistrate and his assistants are entitled to the same protection. Gentlemen, I have not the smallest doubt, I say it in the most perfect sincerity, that you will conscientiously, upon your oaths, proceed to give the fairest answers to those questions.

Note.—The Bills against Captain Graham, John Perrin, and John Moulton, were ignored.