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R E P O R T

OF THE

T R I A L

OF

ARCHIBALD HAMILTON ROWAN, ESQ.

ON

A N I N F O R M A T I O N,

FILED, *EX OFFICIO*, BY

THE ATTORNEY GENERAL,

FOR THE

DISTRIBUTION OF A LIBEL;

WITH THE

SUBSEQUENT PROCEEDINGS THEREON.

CONTAINING

THE ARGUMENTS OF COUNSEL,

THE OPINION OF THE COURT,

AND

MR. ROWAN'S ADDRESS TO THE COURT,

AT FULL.

D U B L I N:

PRINTED FOR

ARCHIBALD HAMILTON ROWAN, ESQUIRE,

AND SOLD BY

P. BYRNE, GRAFTON-STREET.

1794.



K I N G ' S B E N C H .

THE FOLLOWING
I N F O R M A T I O N

WAS FILED BY

HIS MAJESTY'S ATTORNEY GENERAL,

EX OFFICIO,

AGAINST

ARCHIBALD HAMILTON ROWAN, ESQ.

OF TRINITY TERM in the thirty third year of the Reign of our Sovereign LORD GEORGE THE THIRD, now King of Great Britain, and soforth, and in the year of our Lord one thousand seven hundred and ninety-three.

County of the City of } BE it remembered that the Right
Dublin, to wit. } Honourable Arthur Wolfe, Attor-
ney General of our present Sovereign Lord the King, who for
our said Lord the King prosecutes in this behalf, in his proper
person comes into the Court of our said Lord the King, before the
King himself, at the city of Dublin, in the county of the said
city, on the eighth day of June in this same term, and for our
said Lord the King gives the court here to understand and be in-
formed, that Archibald Hamilton Rowan, of the city of Dublin,
Esquire, being a person of a wicked and turbulent disposition,
and maliciously designing and intending to excite and diffuse
amongst the subjects of this realm of Ireland, discontents, jealou-
sies, and suspicions of our said Lord the King and his government,
and disaffection and disloyalty to the person and government of
our said Lord the King, and to raise very dangerous seditions and
tumults within this kingdom of Ireland; and to draw the govern-
ment of this kingdom into great scandal, infamy, and disgrace,
B and

and to incite the subjects of our said Lord the King to attempt, by force and violence, and with arms, to make alterations in the government, state, and constitution of this kingdom, and to incite his Majesty's said subjects to tumult and anarchy, and to overturn the established constitution of this kingdom, and to overawe and intimidate the legislature of this kingdom, by an armed force, on the sixteenth day of December, in the thirty third year of the reign of our said present Sovereign Lord George the Third, by the grace of God of Great Britain, France, and Ireland, King, defender of the faith, and so forth, with force and arms, at Dublin aforesaid, to wit, in the parish and ward of Saint Michael the archangel, and in the county of the said city, wickedly, maliciously, and seditiously, did publish, and cause and procure to be published, a certain false, wicked, malicious, scandalous, and seditious libel, of and concerning the government, state, and constitution of this kingdom, according to the tenor and effect following, that is to say,—“ The Society of United Irishmen at Dublin, to the volunteers of Ireland. William Drennan, chairman, Archibald Hamilton Rowan, secretary.—Citizen soldiers, you first took up arms to protect your country from foreign enemies and from domestic disturbance; for the same purposes it now becomes necessary that you should resume them; a proclamation has been issued in England for embodying the Militia, and a proclamation has been issued by the Lord Lieutenant and Council in Ireland, [meaning a proclamation which issued under the great seal of the kingdom of Ireland, the eighth day of December, one thousand seven hundred and ninety-two,] for repressing all seditious associations; in consequence of both these proclamations it is reasonable to apprehend danger from abroad and danger at home, for whence but from apprehended danger are these menacing preparations for war drawn through the streets of this capital [meaning the city of Dublin] or whence if not to create that internal commotion which was not found, to shake that credit which was not affected, to blast that volunteer honour which was hitherto inviolate, are those terrible suggestions and rumours and whispers that meet us at every corner, and agitate at least our old men, our women, and children; whatever be the motive, or from whatever quarter it arises, alarm has arisen; and you volunteers of Ireland are therefore summoned to arms at the instance of government as well as by the responsibility attached to your character, and the permanent obligations of your institution. We will not at this day condescend to quote authorities for the right of having and of using arms, but we will cry aloud, even amidst the storm raised by the witchcraft of a proclamation, that to your formation was owing the peace and protection of this island, to your relaxation has been owing its relapse into impotence and insignificance, to your renovation must be owing its future freedom and its present tranquility; you are therefore summoned to arms, in order to preserve your country in that guarded quiet which may secure it from external

external hostility, and to maintain that internal regimen throughout the land, which, superseding a notorious police or a suspected militia, may preserve the blessings of peace by a vigilant preparation for war.—Citizen soldiers, to arms, take up the shield of freedom and the pledges of peace—peace, the motive and end of your virtuous institution—war, an occasional duty, ought never to be made an occupation; every man should become a soldier in the defence of his rights; no man ought to continue a soldier for offending the rights of others; the sacrifice of life in the service of our country is a duty much too honourable to be intrusted to mercenaries, and at this time, when your country has, by public authority, been declared in danger, we conjure you by your interest, your duty, and your glory, to stand to your arms, and in spite of a police, in spite of a fencible militia, in virtue of two proclamations, to maintain good order in your vicinage, and tranquility in Ireland; it is only by the military array of men in whom they confide, whom they have been accustomed to revere as the guardians of domestic peace, the protectors of their liberties and lives, that the present agitation of the people can be stilled, that tumult and licentiousness can be repressed, obedience secured to existing law, and a calm confidence diffused through the public mind in the speedy resurrection of a free constitution, [meaning that the people of Ireland had not at the time of the publishing aforesaid a free constitution] of liberty and of equality, words which we use for an opportunity of repelling calumny, and of saying, that by liberty we never understood unlimited freedom, nor by equality the leveling of property or the destruction of subordination; this is a calumny invented by that faction, or that gang, which misrepresents the King to the people, and the people to the King, traduces one half of the nation to cajole the other, and by keeping up distrust and division wishes to continue the proud arbitrators of the fortune and fate of Ireland; liberty is the exercise of all our rights, natural and political, secured to us and our posterity by a real representation of the people; and equality is the extension of the constituent to the fullest dimensions of the constitution, of the elective franchise to the whole body of the people, to the end that government, which is collective power, may be guided by collective will, and that legislation may originate from public reason, keep pace with public improvement, and terminate in public happiness. If our constitution be imperfect, nothing but a reform in representation will rectify its abuses; if it be perfect, nothing but the same reform will perpetuate its blessings. We now address you as citizens, for to be citizens you became soldiers, nor can we help wishing that all soldiers partaking the passions and interest of the people would remember, that they were once citizens, that seduction made them soldiers, but nature made them men. We address you without any authority save that of reason, and if we obtain the coincidence of public opinion, it is neither by

force nor stratagem, for we have no power to terrify, no artifice to cajole, no fund to seduce; here we sit without mace or beadle, neither a mystery nor a craft, nor a corporation; in four words lies all our power—universal emancipation and representative legislature—yet we are confident that on the pivot of this principle, a convention, still less a society, still less a single man, will be able first to move and then to raise the world: we therefore wish for Catholic emancipation without any modification, but still we consider this necessary enfranchisement as merely the portal to the temple of national freedom; wide as this entrance is, wide enough to admit three millions, it is narrow when compared to the capacity and comprehension of our beloved principle, which takes in every individual of the Irish nation, casts an equal eye over the whole island, embraces all that think, and feels for all that suffer; the Catholic cause is subordinate to our cause, and included in it; for, as United Irishmen, we adhere to no sect, but to society—to no cause, but Christianity—to no party, but the whole people. In the sincerity of our souls do we desire Catholic emancipation: but were it obtained to-morrow, to-morrow would we go on as we do to-day, in the pursuit of that reform, which would still be wanting to ratify their liberties as well as our own. For both these purposes it appears necessary that provincial conventions should assemble preparatory to the convention of the Protestant people; the delegates of the Catholic body are not justified in communicating with individuals or even bodies of inferior authority, and therefore an assembly of a similar nature and organisation is necessary to establish an intercourse of sentiments, an uniformity of conduct, an united cause and an united nation; if a convention on the one part does not soon follow, and is not soon connected with that on the other, the common cause will split into the partial interest, the people will relapse into inattention and inertness, the union of affection and exertion will dissolve, and too probably some local insurrections, instigated by the malignity of our common enemy, may commit the character and risque the tranquility of the island, which can be obviated only by the influence of an assembly arising from, assimilated with the people, and whose spirit may be, as it were, knit with the soul of the nation, unless the sense of the Protestant people be on their part as fairly collected and as judiciously directed, unless individual exertion consolidates into collective strength, unless the parts unite into one mass; we may perhaps serve some person or some party for a little, but the public not at all; the nation is neither insolent, nor rebellious, nor seditious; while it knows its rights, it is unwilling to manifest its powers; it would rather supplicate administration to anticipate revolution by well-timed reform, and to save their country in mercy to themselves. The fifteenth of February approaches, a day ever memorable in the annals of this country as the birth-day of new Ireland; let parochial meetings be held as soon as possible, let each parish return delegates, let the sense of Ulster be again declared

declared from *Dungannon* on a day auspicious to union, peace and freedom, and the spirit of the North will again become the spirit of the nation. The civil assembly ought to claim the attendance of the military associations, and we have addressed you, citizen soldiers, on this subject from the belief, that your body uniting conviction with zeal, and zeal with activity, may have much influence over your countrymen, your relations and friends. We offer only a general outline to the public, and meaning to address Ireland, presume not at present to fill up the plan or pre-occupy the mode of its execution, we have thought it our duty to speak.—Answer us by actions; you have taken time for consideration; fourteen long years are elapsed since the rise of your associations; and in 1782 did you imagine that in 1792 this nation would still remain unrepresented? How many nations, in this interval, have gotten the start of Ireland? How many of your countrymen have sunk into the grave?”—In contempt of our said Lord the King, in open violation of the laws of this kingdom, to the evil and pernicious example of all others in the like case offending, and against the peace of our said Lord the King, his crown and dignity.—WHEREUPON the said Attorney General of our said Lord the King, who for our said Lord the King in this behalf prosecutes, prays the consideration of the court here in the premisses, and due process of law may be awarded against him the said Archibald Hamilton Rowan in this behalf, to make him answer to our said Lord the King touching and concerning the premisses aforesaid.

ARTHUR WOLFE.

THOMAS KEMMIS, Attorney.

Received the 8th of June 1793.

(Copy.)

To this information Mr. ROWAN appeared by *Matthew Dowling*, gent. his attorney, and pleaded the general issue—Not Guilty—and the Court having appointed Wednesday the 29th day of January, 1794, for the trial of the said issue, the under-named persons were sworn upon the jury:

SIR F. HUTCHINSON, Bart.
 FREDERICK TRENCH, Esq.
 WILLIAM DUKE MOORE,
 HUMPHRY MINCHIN,
 RICHARD MANDERS,
 GEORGE PALMER,

JOHN READ,
 ROBERT LEA,
 RICHARD FOX,
 CHRISTOPHER HARRISON,
 GEORGE PERRIN,
 THOMAS SHERRARD.

Upon calling over the jury, *John Read* was objected to, as holding a place under the crown, but the Attorney General insisting upon the illegality of the objection, and observing that it went against all that was honourable and respectable in the land, it was

over-

over-ruled by the court. *Richard Fox*, when called to the book, was interrogated whether he had ever given an opinion upon the subject then to be tried, to which he answered, that he did not know what the subject of the trial was. The same question was put to *Thomas Sherrard*, who returned a similar answer.

Joshua Dixon, who had been sworn upon the jury, without any objection, here stated, that he had given an opinion upon the subject, upon which Mr. Attorney General consented that he should be withdrawn, but protested against the right of the defendant's counsel to examine the jurors as they had done. If they had any objection, they ought to make their challenge, and support it by evidence.

The counsel for the defendant answered, that they would not acquiesce in the consent of the Attorney General to withdraw the juror, if their examination was to be objected to, and intimated that the juror ought to be withdrawn upon the *desire* of the Attorney General, without any consent whatever being entered into.

Hereupon the Attorney General desired that the juror might be withdrawn.

Counsel for the Prosecution.

MR. ATTORNEY GENERAL,
PRIME SERJEANT,
SOLICITOR GENERAL,
MR. FRANKLAND,
MR. RUXTON,

Agent, Mr. KEMMIS.

Counsel for the Defendant.

MR. CURRAN,
MR. RECORDER,
MR. FLETCHER.

*

Agent, Mr. DOWLING.

Mr. *Ruxton* opened the pleadings.

MR. ATTORNEY GENERAL—*My Lord and Gentlemen of the Jury*, In this case, between the KING and ARCHIBALD HAMILTON ROWAN, Esq. it is my duty to prosecute on behalf of the crown. The traverser in this case, gentlemen, stands accused upon an information filed *ex officio*, by the King's Attorney General, for publishing a seditious libel. It is my duty to lay the facts of this case before you—it will be the duty of another of his majesty's servants to observe upon the evidence. I shall state the nature of the charge and the questions you are to try: I will then state such circumstances as are necessary to be taken into your consideration, for the purpose of understanding and expounding that paper which the information charges to be a malicious and seditious libel. The information charges, that

* *Mr. Emmet*, and some other gentlemen, who had been originally concerned in this cause, as counsel for the defendant, feeling a personal interest, declined any longer acting in that capacity.

ARCHIBALD HAMILTON ROWAN, maliciously designing and intending to excite and diffuse amongst the subjects of this realm discontents, disaffection and disloyalty to the king and government, and to raise very dangerous seditions and tumults, and to draw the government into scandal, infamy and disgrace, and to incite the subjects to attempt, by force and with arms, to make alterations in the government, and to excite the subjects to anarchy, to overturn the constitution and overawe the legislature of the kingdom, did publish the libel set forth in the information. In this case, therefore, it will be for you, gentlemen, upon the evidence which shall be laid before you, to determine, whether the traverser has been the publisher of that paper or not. I shall, in the course of what I am to offer to the court and to you, read the very libel itself, and make such observations as occur to me to be proper in the present state of the business. Previous, however, to my doing so, I will take the liberty, gentlemen, of stating to you some facts and circumstances that appear to me deserving of attention in the investigation of the matter before you; and in doing so, I shall carefully avoid mentioning many facts and circumstances which those disgraceful times have furnished, that might lead your verdict one way or the other. I shall not attempt to excite your passions. I am happy at length that this case has come before an impartial jury. It has long been the desire of every good man that this matter should come to trial before that constitutional tribunal who stand arbiters in this case, to protect the accused against the power of the crown; not resembling any of those prosecutions which the turbulence of former times have excited, you are assembled with that coolness which the solemnity of the occasion requires, to determine whether Mr. ROWAN be guilty, criminally, of the offence charged against him. Take the libel into your consideration, and determine, as the law now allows you to do, whether it be a libellous publication, tending to excite sedition, to overawe the government; or tending to produce any of the effects imputed to it. I shall now proceed to state a few facts which I said it was my duty to do. I shall call your attention to the history of the times about which this libel was published:—No man, let his situation be what it may, can be too cautious in uttering what ought not to be said, which might influence your judgment upon your oaths; and in that office which I hold, which is the office of the people, as well as of the crown, it is more than a common duty to take care not to step beyond that line which leads to common justice. I am warranted by the authority of a court of justice, by the proceedings of the King's Bench in England; by the opinion of a Judge of as much spirit and independence as any man, I allude to the case of the printer of the Morning Chronicle, in which Lord KENYON informs the jury, That it is necessary, in cases of this kind, to attend

attend to the circumstances and history of the times in which the libel was published. They tend to explain the motives which induced the publication, and the meaning of the libel itself. He says it is impossible for the court or a jury to shut their ears against the history of the times. Besides that common principle, I am the more justifiable in what I shall state, because the libel charged comes from that body of men who have constituted themselves by the name of "*The Society of UNITED IRISHMEN in Dublin.*" From the time of the restoration of our constitution—from the year 1784 to the year 1792—this country advanced in prosperity with a regular progress and gradation. The agriculture, commerce and police improved;—the civilization of the country proceeded uniformly from year to year;—the commonalty began to enjoy blessings they had been strangers to—ships crowded in our harbours—commerce occupied our ports—culture in our fields, and peace and happiness every where prevailed. The French revolution took place, when there were found many men, who from situation, from circumstances, from ambition, were desirous of commotion. Clubs were formed in the metropolis with the avowed intention of improving the constitution, for they must assume some pretext, but with a view, I fear, under colour of that, to overturn it. They subsisted here in this town under different names, till at length in 1791, they formed themselves into a club, called the Society of *United Irishmen*, consisting at first of a small number, composed of various classes of men, certainly some of them of the learned professions, some of the lowest members in the community. In 1791 they continued to pour upon the public daily publications, setting forth the distresses of the people, teaching them to be discontented with their situation and the government of the country. Things thus proceeded down to the latter end of the year 1792. In the latter end of autumn, 1792, the allied armies retired from the kingdom of France: the convention of that kingdom began to hold a high language, and to talk of oversetting the government of kings. An attack was made upon regal authority, a spirit was stirred among those desirous of such schemes—it seemed to inspire them. There was a talk of overturning the government of king, lords, and commons—success at the same time seemed to crown the arms of the French; they advanced beyond their own territory, and menaced an attack upon the United States of *Holland*. In this situation of things, there did pervade a gloomy apprehension for the safety of the country. Emissaries from France were spread throughout Europe; a new array of a new corps was made in Dublin in the noon day, decorated with emblems of sedition; they were to parade in your streets, and to be marshalled in your squares. The Volunteers of Ireland, a name revered by this country and by every good man loving the constitution, that sacred name was made a cloak for

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arming a banditti, that arraigned the constitution and degraded the name of Volunteer; a National Guard was formed upon the plan of those in Paris. It is notorious to every man in Ireland, to every man in the British dominions, that such men assembled with clothing of a particular uniform, with emblems of harps divested of the royal crown; every thing was undertaken to spread the spirit which animated themselves, and can any man forget the situation of Dublin in September, October, and November, 1792, which caused apprehensions in those who were well affected to the government and tranquillity of the country? Can any man forget the state of the nation at this period? her credit was shaken, good people stood appalled; those loving peace stood astonished at the languidness of government. At length that government came forward which had never slept, but had been proceeding with mildness, determined not to go forth to action, nor have recourse to any severer remedies until every man in the state, who had a moment's reflection, must see the necessity of the exertion. The troops are summoned to meet, the guards are summoned to assemble, and the first battalion of National Guards were to have paraded, clothed like Frenchmen. The night before, the Lord Lieutenant had summoned the council of the kingdom; upon that night, a proclamation issued, stating that there were intentions to assemble men in arms, with seditious signs, and apprehending danger from their so assembling; it prohibited their meeting. The proclamation issued on a Saturday night, and it produced that satisfaction which all good men desirous of order seek to enjoy; and they felt once more the pleasurable assurance that they had a government. Appalled by this proclamation, the corps did not meet on the 8th of December as it was intended, though some few were seen dressed in the National Guard uniform, parading the streets with a mob, crowding at their heels; but however nothing followed. They were seen, and blessed be God, they were seen no more. This proclamation, having for its object the preservation of the peace of this kingdom and the city in particular, mildly and coolly cautioning all men against those measures, held out the consequences that must necessarily follow, if they did not obey. A proclamation which received the applause of the great and good, of the lovers of society, and of every man not lost to the sense of order and the constitution; but odious to every man who was attached to the Society of United Irishmen, and whose views corresponded with it. While I speak of that Society let me not be understood as imputing to every man who is in it, those illegal motives which I impute to the Society in general: there might have been in it no doubt many well meaning persons, for there were men picked up industriously to lend their names, in the streets, in the lanes, in the markets, in the highways, and in the fields, even the rich and industrious grazier was procured to lend his name. To

the good, this proclamation gave pleasure and satisfaction, to the bad it became odious and detestable; and they accordingly formed the intention of bringing the government into disgrace for issuing that proclamation. A few days after, I am not aware of the particular day, but a few days after the issuing the proclamation, the society assembled; the proclamation was upon the 7th, the address I speak of was published the 16th of December. The meeting therefore must have been between the 7th and the 16th of December. The society, I say, assembled, and they agreed upon a certain address to the Volunteers of Ireland, and Dr. *Drennan* is there stated to have been in the chair, and the traverser *Secretary*. At that meeting—at that meeting the address to the Volunteers was agreed upon, which is the libel charged against Mr. *Rowan* as being guilty of publishing it. Under that address, this was to be done. The volunteers of Dublin were to be called into action, and those papers were to be dispersed among them. For that purpose the several volunteer corps at that time existing in Dublin were summoned to assemble in a house in Cope-street, belonging to *Pardon*, a fencing-master, upon the 16th of December. Accordingly upon that day, the several corps of volunteers did go with side arms to this fencing-school in Cope-street. The traverser was, I believe, at the head of one of these corps; another very celebrated name was at the head of another of them, *James Napper Tandy*. Who was at the head of the others I am not able to inform you. But in the afternoon of the 16th of December, several volunteers, with uniforms and side arms, assembled in the fencing-school. In this fencing-school, gentlemen, there was a gallery, and into that gallery there was such public access that what passed below may be said to have passed in the face of the world; to such excess had those persons carried their designs as to expose them to open view, and if I state what is not true, there are one hundred persons in the volunteer corps of the city of Dublin, out of whom a multitude may be called to contradict me. The corps, I say, assembled in that room. There stood in the middle of the room a table, and there was a vast number of printed papers brought in and placed on the table. The different corps entered into several resolutions, having taken into their wise consideration the proclamation issued by the Lord Lieutenant and Council; the necessity for issuing it is investigated, each of the corps took severally into their consideration the propriety of it, and next day published their different sentiments all expressive of strong disapprobation. So that it is manifest they were brought publicly together for a state purpose, and to debate a state matter. While these resolutions were in discussion, Mr. *Tandy* and Mr. *Rowan* were seen to take from the table the printed papers that lay upon it, and disperse them among the several volunteers who stood around them, and to hand them

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from the lower room to persons in the gallery, and to persons not in their confidence; they were handed up promiscuously to any man there, and to many persons in the streets that evening and the next day; they were flung out of the windows to the mob that stood round the room. These, gentlemen, are the circumstances which preceded the publication of this paper by the traverser: it will be for you to consider with what view and purpose a paper like this was composed and thus dispersed. If you believe it was a candid and fair discussion upon constitutional subjects, or upon grievances real or supposed, you will not consider it as a libel: but if from internal evidence in the paper itself, and from the circumstances attending it, you believe it was no such thing, but that it was published with a view to raise discontents against the government—to disturb the people—to overawe the parliament, or any branch of the state, then you must find him guilty. You, gentlemen, will take the paper into your room with you; consider it coolly, and discharged from all you have heard abroad respecting it, and determine in your own minds whether it be possible to give it any other construction than that which the information has ascribed to it. I will submit to you, gentlemen—to you alone I desire to submit the cool examination of that paper, upon the paper itself. It is impossible with all the ingenuity (and he who comes after me on the other side has as much ingenuity as any man) to shew that it was not written for the purpose of overawing the legislature, or to account for it in any other way. This brings me now to the libel itself, and as it has not been read to you in this court, for in open court I wish it to be read, I will read it, and make such observations as I think necessary. “*The Society of United Irishmen, at Dublin, to the Volunteers of Ireland. William Drennan, Chairman, Archibald Hamilton Rowan, Secretary. Citizen Soldiers.*” A language, gentlemen, which excites ideas in one’s mind that cannot be described. You will perceive in this publication the frippery of the French language as now used; and those ideas will be excited, which must fill the mind of every man who regards religion, society, or peace, with terror and alarm. “*Citizen Soldiers, you first took up arms to protect your country from foreign enemies, and from domestic disturbance. For the same purposes it now becomes necessary that you should resume them.*” The Society of United Irishmen, who say they are no corporation, yet as if they were a corporation, presume to tell the armed people of Ireland when it is they should assemble: Is that or is it not tending to sedition? Is it or is it not assuming a power to overawe the parliament and overturn the government itself? “*A proclamation has been issued in England for embodying the militia, and a proclamation has been issued by the Lord Lieutenant and Council in Ireland, for repressing all seditious associations. In consequence of both these proclamations, it is rea-*

sonable to apprehend danger from abroad, and danger at home.
For whence but from apprehended danger, are those menacing
preparations for war drawn through the streets of this capital,"
 (alluding to some cannon which were drawn through the streets
 a few days before to protect the inhabitants against the dangers
 apprehended,) *or whence if not to create that internal commotion*
which was not found, to shake that credit which was not affected,
to blast that Volunteer honour which was hitherto inviolate."
 What! did the proclamation forbidding seditious associations
 and assemblies of men, with banners expressive of disloyalty, violate
 the honour of that glorious institution, which was raised to protect
 and support that constitution, that those seditious men calling
 themselves volunteers were assembled to destroy, and this So-
 ciety of United Irishmen did wish to overturn? That is
 what is stated in this, for so I will call it until you
 teach me another language, this abominable seditious libel.
Are those terrible suggestions and rumours and whispers, that meet us
at every corner and agitate at least our old men, our women and chil-
dren. Whatever be the motive, or from whatever quarter it arises,
alarm has arisen; and you, VOLUNTEERS OF IRELAND,
are therefore summoned to arms at the instance of government, as
well as by the responsibility attached to your character, and the
permanent obligations of your institution." First you will
 observe gentlemen, they make the antient volunteers those whose
 honor was wounded and blasted by the proclamation, and then
 they tell them that the proclamation has summoned them to as-
 semble in arms—strange inconsistency of rhapsody! With re-
 gard to such parts as are unintelligible, for there are many parts
 the most bombastical and absurd that ever appeared in any pub-
 lication, I pass them over, it is not my wish to criticise upon
 them. *We will not at this day, condescend to quote authorities*
for the right of having and of using arms." Who had called in
 question the right of the people to carry arms? Is it because the
 government said, that arms should not be used to the destruction or
 danger of the people, that therefore the legality of carrying them
 is questioned? *But we will cry aloud, even amidst the storm raised*
by the witchcraft of a proclamation." Is that a direct charge
 against government, that they laid a scheme to raise a storm?
That to your formation was owing the peace and protection of this
island, to your relaxation has been owing its relapse into impotence
and insignificance, to your renovation must be owing its future free-
dom, and its present tranquillity. You are therefore summoned to
arms, in order to preserve your country in that guarded quiet, which
may secure it from external hostility, and to maintain that internal
regimen throughout the land, which superseding a notorious police or
a suspected militia, may preserve the blessings of peace by a vigilant
preparation for war." Now, gentlemen, here you see a
 reflection cast: if they meant to state a grievance, or to reason
 upon

upon a point of constitution why not do it?—they had a right. But does that mark the meaning and intention of the publication? Why reflect upon legal establishments, and why endeavour to cry down a body of men, which it was well known to be in the contemplation of government to raise? They endeavoured to render odious the militia before it was created, because they foresaw it would protect the state against the schemes which they had formed. They next inform these men, that they are not embodied as before stated, for the protection of their country, but to resist a body of men about to be constituted by government for the protection and safety of the state, but whom they are pleased to deem suspicious; is not this to raise disturbance? is not this to excite tumult? “*Citizen soldiers, to arms! Take up the shield of freedom and the pledges of peace,—peace the motive and end of your virtuous institution. War an occasional duty ought never to be made an occupation. Every man should become a soldier in the defence of his rights; no man ought to continue a soldier for offending the rights of others. The sacrifice of life in the service of our country is a duty much too honourable to be entrusted to mercenaries, and at this time, when your country has by public authority been declared in danger, we conjure you by your interest, your duty and your glory, to stand to your arms, and in spite of a police, in spite of a fencible militia.*” The police established in the different counties are first represented in an odious light to the volunteers; a reflection is cast upon the militia, and now the mercenaries are stigmatized and a distinction taken between them and the volunteers of Ireland, thus summoned by this corporation of United Irishmen. “*In virtue of two proclamations to maintain good order in your vicinage, and tranquillity in Ireland. It is only by the military array of men in whom they confide, whom they have been accustomed to revere as the guardians of domestic peace, the protectors of their liberties and lives, that the present agitation of the people can be stilled, that tumult and licentiousness can be repressed, obedience secured to existing law, and a calm confidence, diffused through the public mind, in the speedy resurrection of a free constitution, of liberty and of equality.*” Here, gentlemen, let me call your attention, what meaning can be given to these words by the plainest man in the hall of these courts? What! was our free constitution dead. Do the gentlemen intend by way of argument to excuse this as the consideration of a grievance? They tell the people they have no constitution, that they might look for another; is this a cool disquisition upon a matter that every man has a right to enquire into? is not this to excite tumult? *Liberty and Equality!* Words, gentlemen, that it would be painful to me to observe upon to the extent to which they go, words that suggest but too much to every good and reasonable mind; there is no man in this kingdom who would not lay down his life to preserve true liberty and equality; but these are but conceptions

ceptions to cajole the ignorant: the vulgar abuse of a constitution which we possess to the envy of the world. “ Liberty and
 “ equality, words which we use for an opportunity of repelling calumny
 “ and of saying, that by liberty we never understood unlimited freedom,
 “ nor by equality, the levelling of property or the destruction of sub-
 “ ordination. This is a calumny invented by that faction, or that
 “ gang, which misrepresents the king to the people, and the people to
 “ the king, traduces one half of the nation to cajole the other, and by
 “ keeping up distrust and division, wishes to continue the proud arbi-
 “ trators of the fortune and fate of Ireland”. Is not this traducing
 the government? But attend, gentlemen, to their definition of
 liberty. “ Liberty is the exercise of all our rights, natural and
 “ political, secured to us and our posterity by a real representation of
 “ the people; and equality is the extension of the constituent, to the ful-
 “ lest dimensions of the constitution, of the elective franchise to the
 “ whole body of the people, to the end that government, which is col-
 “ lective power, may be guided by collective will, and that legislation
 “ may originate from public reason, keep pace with public improve-
 “ ment, and terminate in public happiness.” Certainly, gentlemen,
 the sentence is very sonorous, and agreeable enough to the ear; but to the mind it conveys nothing but this, that government is to be conducted by the will of every man, high and low, rich and poor, ignorant and learned; the people are to govern the people, and how they will do so, unhappily for mankind, has been learned from experience. Mark this next passage gentlemen, for I confess I do not understand it. “ If our constitution
 “ be imperfect, nothing but a reform in the representation will rectify
 “ its abuses; if it be perfect, nothing but the same reform will per-
 “ petuate its blessings.” This is something like tobacco hic.—If our constitution be imperfect, nothing but a reform will render it perfect;—if it be perfect, still the reform is necessary to keep it perfect.—In whatever light it is viewed, reform is necessary, and a good constitution requires amendment as much as a bad one. I do not feel it necessary to dwell upon this, because it is so unintelligible, that it cannot deserve notice. But see next what endeavours have been used to render odious among the people, those forces upon whom our peace and tranquillity depend. “ We now address you as citizens, for to be citizens you
 “ became soldiers, nor can we help wishing that all soldiers, par-
 “ taking the passions and interests of the people, would remember that
 “ they were once citizens, that seduction made them soldiers, but nature
 “ made them men.” How will my learned friend when he comes to speak of this part of the case satisfy you, that it was necessary in a publication of this sort, recommending a reform in parliament, and to be disseminated among thousands, to tell the soldiers, the forces of the state, that their profession was dishonourable, that they were imposed upon, that they should not be entrusted with the protection of the state? Gentlemen, I am
 unwilling

unwilling to dwell upon these passages, it is but necessary to mention them to shew their danger, if they deserve consideration you will give it to them, if not, you will not waste your attention upon them. “ *That nature made them men.*” It required no authority to satisfy them of that. “ *We address you without any authority, save that of reason, and if we obtain the coincidence of public opinion, it is neither by force nor stratagem, for we have no power to terrify, no artifice to cajole, no fund to seduce. Here we sit without mace or beadle.*” What they allude to, I suppose you, gentlemen, apprehend, they seem to disdain any distinction in civil institutions. “ *Neither a mystery, nor a craft, nor a corporation.—In four words lies all our power, UNIVERSAL EMANCIPATION AND REPRESENTATIVE LEGISLATURE.*” In these four words lies all the power of the United Irishmen, according to this publication, approved of by the traverser; he himself a member of that society, and secretary of the meeting which composed it. “ *Universal Emancipation!*” By that I presume is meant the giving a right of voting to every man in the community. “ *And Representative Legislature!*” The meaning of these words is but too obvious. The constitution is often in the mouths of men, when the destruction of it is in their hearts. If the plan of these people were carried into effect, where would be the House of Peers?—for our legislature, gentlemen, consists of King, Lords and Commons. When government is guided by the will of all the people and their force carried into action, where will be the House of Peers? Where will be our constitution? buried in the anarchy of republican power, formed from the dregs of the people. A government consisting of all the people, guided by the will of all the people; what sense but this can be put upon these words? If indeed the context of the paper shews you, gentlemen, that any thing else was meant (than as I interpret the words) you will take it altogether in that sense in which it appears to have been meant. God forbid I should endeavour to wrest any thing to impute guilt to the gentleman who now stands at your bar that the *whole* of the paper does not warrant! But if the words bear that meaning which I give them, who will say, that guilt shall not be imputed to him? You will form your opinion from reading the whole, and comparing the several parts with each other. Here comes a sentence which will puzzle you a little, but which with some comment may be understood. “ *Yet we are confident that on the pivot of this principle, a convention, less still, a society, less a single man, will be able first to move and then to raise the world.*” Here is an open declaration of their wish to raise the people, not only of this country but of the whole world; a proof of peaceable intent. “ *We therefore wish for Catholic emancipation without any modification, but still we consider this necessary enfranchisement as*”

“ merely the portal to the temple of national freedom; wide as
 “ this entrance is—wide enough to admit three millions—it is nar-
 “ row when compared to the capacity and comprehension of our
 “ beloved principle, which takes in every individual of the
 “ Irish nation, casts an equal eye over the whole island, em-
 “ braces all that think, and feels for all that suffer. The Catholic
 “ cause is subordinate to our cause, and included in it; for, as
 “ United Irishmen, we adhere to no sect but to society—to no
 “ creed but Christianity—to no party but to the whole people.
 “ In the sincerity of our souls do we desire Catholic emancipation;
 “ but were it obtained to-morrow, to-morrow would we go on, as
 “ we do to-day, in the pursuit of that reform, which would
 “ still be wanting to ratify their liberties as well as our own.
 “ For both these purposes it appears necessary that provincial
 “ conventions should assemble preparatory to the convention of the
 “ Protestant people. The delegates of the Catholic body are not
 “ justified in communicating with individuals, or even bodies
 “ of inferior authority, and therefore an assembly of a similar
 “ nature and organization,” (French language still occurring
 with French ideas) “ is necessary to establish an intercourse of
 “ sentiment, an uniformity of conduct, an united cause and an
 “ united nation. If a convention on the one part does not soon fol-
 “ low, and is not soon connected with that on the other, the com-
 “ mon cause will split into the partial interest; the people
 “ relax into inattention and inertness; the union of affection and
 “ exertion will dissolve; and too probably some local insurrections,
 “ instigated by the malignity of our common enemy, may com-
 “ mit the character and risque the tranquillity of the island.”
 “ Gentlemen, the paper mentions here the common enemy, as to
 who is meant by the expression, you will judge; did they
 mean those who were about to defeat their machinations, and
 who would not commit the tranquillity of the island to the con-
 vention to be assembled? it says “ an assembly of a similar na-
 “ ture and organization is necessary.” These are Gallic sen-
 tences and suited only to the soil of France. “ And risque the
 “ tranquillity of the island, which can be obviated only by the
 “ influence of an assembly arising from, assimilated with the
 “ people, and whose spirit may be, as it were, knit with the
 “ soul of the nation, unless the sense of the Protestant people be,
 “ on their part, as fairly collected and as judiciously directed; un-
 “ less individual exertion consolidates into collective strength; un-
 “ less the particles unite into one mass, we may perhaps serve
 “ some person or some party for a little, but the public not at
 “ all. The nation is neither insolent, nor rebellious, nor sedi-
 “ tious. While it knows its rights, it is unwilling to mani-
 “ fest its powers; it would rather supplicate administration
 “ to anticipate revolution by a well-timed reform, and to
 “ save their country in mercy to themselves.” —An ad-
 dress

dress to the volunteers to obtain universal emancipation!—holding out, that this kind of remonstrance should be attended to, before the power of the nation should be exerted. What meaning does a common understanding annex to these words?—Was it not a threat?—Was it not to spirit up the minds of the people against the members of parliament?—Was it necessary for the purpose of cool investigation, or to obtain constitutional redress, that the people should exert their power? and to threaten parliament, by telling them there was a force to be raised against them? Unless a reasonable account is given why this language was inserted, and what the meaning of it was, I must presume, it was for the purpose I mention. “ *The fifteenth of February approaches, a day ever memorable in the annals of this country as the birth-day of new Ireland; let parochial meetings be held as soon as possible,—[here you have an exact delineation of the French government]—let each parish return delegates, let the sense of Ulster be again declared from Dungannon on a day auspicious to union, peace and freedom, and the spirit of the North will again become the spirit of the nation.*” Now, gentlemen of the jury, you will mark this next sentence, and it will be a clue to the whole. “ *The civil assembly ought to claim the attendance of the military associations, and we have addressed you, citizen soldiers, on this subject, from the belief, that your body uniting conviction with zeal, and zeal with activity, may have much influence over your countrymen, your relations and friends.*” The nation is in danger from foreign foes and from domestic enemies—so they state. The proclamation calls forth the forces of the state. The United Irishmen raise their audible voice, and call the people to arms. For what? Is it to assist the government to repel the foreign enemy and seditious foe? But how?—A convention is to be assembled, and they are to call around them the national forces. The convention was to meet at Dungannon—there assembled, were these forces to repress foreign foes and domestic sedition? Gentlemen, it is but too obvious for what purpose this was intended: this sentence speaks the language of the whole of this paper—and if it had been drawn with more art than it is, here is the clue to the whole:—the force of the nation was to be assembled under the controul of the convention assembled under the *great seal* of the *United Irishmen*, who say they are not a corporation; but who have a corporation seal:—For what purpose? to obtain *universal emancipation* and *representative legislature*! They are held up as such a force and controuling power as must produce that effect upon the king, lords and commons.—An effect which they profess to have designed for the good of their country—if they did, they should seek its accomplishment by reason and by argument. But to publish a call to arms to that power and authority which for years this country has

respected, and from which, certainly, since 1784 every blessing in society has been derived (and every man who looks for those blessings of life otherwise than by a due regard to all ranks of men, blasphemes the God which made us all)—I say, to call upon the whole body of the people to rise in arms and be their own rulers, is a species of government, which, when it comes, will be an equal misfortune to the poor and the rich.—The rich would lose that which they enjoy, and more—the power of contributing to the necessities of the poor—Industry will no longer continue to have the motives to labour and those habits of œconomy which the protection of a mild constitution encourages, but the people will be turned out to a system of plunder, robbery and murder, such as we find prevailing in another country. The paper goes on and recites, “*We offer only a general outline to the public, and meaning to address Ireland, we presume not at present to fill up the plan or pre-occupy the mode of its execution, we have thought it our duty to speak.—Answer us by actions.*—[An open invitation to force and violence]—“*You have taken time for consideration. Fourteen long years are elapsed since the rise of your associations; and in 1782 did you imagine that in 1792 this nation would still remain unrepresented?*” These volunteers of 1782 had not all these schemes in view—but this Society here expressly tells the people, with arms in their hands, that they remain unrepresented; and adds, “*How many nations, in this interval, have gotten the start of Ireland? How many of our countrymen have sunk into the grave?*”—What is meant by nations having got the start of Ireland? is it the revolution in France; they indeed have gotten the start of Ireland in calamity and distress, long may they hold their distance, and long, long may be the period before we shall overtake them, is my most sincere and earnest wish.

Such is this paper—I have read it accurately. Gentlemen of the jury, it is for you to consider the whole of it, and determine whether it was published by Mr. Rowan, and whether it be a libel or not?—If you should be of opinion that Mr. Rowan is guilty of publishing this paper, then you are to consider whether it is a libel or not?—Gentlemen, it is the peculiar felicity of this country, the great blessing of our constitution, that we have a trial by jury; in France it is polluted; but it is the boast of our constitution that we have a trial by jury, and the great preservative of that blessing and of the constitution itself, is the liberty of the press; that is the great bulwark of our free constitution, we have a trial by jury, and of the freedom of the press you are the guardians. You, gentlemen, are by the constitution appointed to decide upon all these questions touching the freedom of the press. The freedom of the press cannot be destroyed but in two ways, first, by the overweening power of the crown, 2dly, by its own licentiousness corrupting the minds of the people; and when it is de-

stroyed

stroyed, then will our constitution be at an end. While the press is left open to cool and fair discussion upon legal and public topics of grievance and constitution, so long will the freedom of our constitution endure, and whenever an attempt is made to controul it, you will step in and guard and protect it as you would guard your property, your lives, and your liberties; you will secure it from licentiousness. Where its licentiousness is not punished through the weakness or timidity of a jury, its freedom can no longer exist. What does the paper which is the subject of the present question purport to be? it looks for a reform of parliament, it calls to arms the citizens under pretence of supporting the government by resisting it, by speaking of grievances which cannot be endured, it is overawing the parliament. If such licentiousness be tolerated, then the freedom of the press will be destroyed. You, gentlemen, will consider whether this paper contains in itself internal evidence to shew that the motives of its publication were not for the purpose of reasoning with the people, or for the necessary correction of any evil in the constitution, but to excite sedition and tumult. If in that case you believe that Mr. *Rewan* published it, then you must find him guilty. If, on the other hand, you are of opinion, that this was a cool and dispassionate paper, reasoning with the people in a becoming manner, acknowledging the authority of the law, then you will acquit him. Further, let the tendency of the paper be what it may, if you are of opinion, he did not publish it, then you must acquit him. We will produce a witness to shew he published an individual paper—we will prove that he took several others and dispersed them abroad—if you believe the evidence, it will be impossible but that you must be satisfied he is guilty. Thus stands the evidence. I have stated that the traverser was Secretary to the *United Irishmen*. It will be proved thus:—he published that paper; if he did, he acknowledged the contents of it to be true, and the paper states him to be secretary of the society. Gentlemen, such is the case as it appears to me on the part of the crown. I will not pretend to anticipate what may be offered by the gentlemen on the other side. Two topics, however, have occurred as likely to be introduced:—one is, the case of the volunteers—the other, the functions of a jury under the late act of parliament. Upon the first, I have said abundance to satisfy you. I will suppose however, that this paper was addressed to the old volunteers: what then? The tendency of the paper was to excite those volunteers to commit actions that would tarnish the honour acquired by their previous conduct. Let them shew that the proclamation (against which this was a counter-proclamation) went against the old volunteers—it meant no such thing—it describes them so and so. But there were among the old volunteers men actuated by new principles and new motives, that it became the duty

of government to suppress them. For your sake they did so—no government should be influenced but by the prosperity of the whole state. But in what respect did these men resemble the old volunteers? Not in a single feature: these men were assembled by the call of the *United Irishmen* in Back-lane; the ancient volunteers were assembled by the call of government and the Lord Lieutenant, who distributed arms among them from the arsenal, for the public defence; they added to these out of their own pockets whatever they thought necessary; they were collected to support that constitution which is now sought to be overturned. Were these new volunteers of that description? Were they so formed? How were they equipped? The green cockade was adopted in the place of the black. I have no necessity for this; but fearful that men will have recourse to such topics to cajole you, I think it necessary to take notice of them. Secondly, as to the act of parliament within this kingdom, I am not aware that it operates here; but even by it, as it now stands, and I told you so before, you have a right to enter into the guilt or innocence of intention upon this occasion, as you would upon the trial of any other offence. Gentlemen, to you, and most willingly, I commit this case; I desire no more than that you will by your verdict vindicate the freedom of the press and punish the licentiousness of it.

First witness for the Prosecution.

JOHN LYSTER. Examined by the *Prime Serjeant*.

Q. Do you recollect the 16th of December, 1792?

A. I do.

Q. Do you recollect having been at any place that day?

A. I do.

Q. Where?

A. At one *Pardon's* house in Cope-street.

Q. Were there many people assembled there?

A. There were to the amount of 150 or 200, with side-arms and uniforms, there was a table in the room.

Q. Did any person, and who, sit at that table?

A. There was Mr. *Hamilton Rowan* and Mr. *Napper Tandy* at it, and a good many others.

(Q. *By the court*—What do you mean by uniforms?

A. Regimental uniforms—scarlet with different facings.)

Q. Do you know the person of Mr. *Rowan*?

A. I do.

Q. (*By the court*—Do you know him now?

A. He is just opposite to me.)

Q. Was he sitting at the table?

A. At one time he was—at another time he was standing.

Q. What

Q. What brought you there ?

A. Merely curiosity.

Q. How was it excited ?

A. I happened to pass through Cope-street, and saw a great croud—I asked what it was—they said it was a meeting of the *United Irishmen*. My brother was with me, and we went into the room; we were in coloured clothes, and to the best of my recollection, Mr. *Rowan* said, no gentleman with coloured clothes could be there; but mentioned, that there was a gallery to which we might go.

Q. Did you perceive any person perform any particular part in that assembly ?

A. I perceived Mr. *Rowan* about the table very busy—he had papers in his hand, and there was pen and ink on the table; he walked about the room, with the papers in his hand.—*Napper Tandy* came up to him, read part of one of the papers—they were handed about—some were handed up to the gallery—I got one of them, and so did my brother, and several others in the gallery along with me.

Q. Look at that paper—is that the one ?

A. This is the paper I got there.

Q. Was it one of the papers handed up to the gallery ?

A. It was one of the papers handed by Mr. *Rowan* to some of the people about him, and by them handed up to the gallery.

Q. Your brother also got one ?

A. He did.

Q. Was there a number distributed ?

A. About 30 were thrown up to the gallery.

Q. Have you any reason to ascertain that to be the particular paper ?

A. I have, because it has my own hand-writing upon it.

Q. You made that memorandum upon it ?

A. I did.

Q. Read it.

A. “ *I got this paper at a meeting of the United Irishmen in Cope-street, the 16th of December—it came through the hands of ARCHIBALD HAMILTON ROWAN.*”

Q. (*By the court*—You say one of these papers was read by Mr. *Rowan*, how do you know that ?

A. Because I attended to the words he read, and they agreed with what are in this paper.

Q. Can you swear that one of these very papers was read by him ?

A. I can swear that part of the words were read, I cannot swear to the whole.)

Cross examined by the RECORDER.

Q. At what hour was this ?

A. To the best of my knowledge it was between one and two.

Q. Was this upon the 16th of December ?

A. It was upon the 16th of December, 1792.

Q. It was upon a Sunday ?

A. I believe it was.

Q. How long did you remain there ?

A. For about three quarters of an hour.

Q. There were about one or two hundred volunteers below stairs ?

A. There were.

Q. Were they dressed in the uniforms which you had seen the old volunteers wear ?

A. I cannot exactly say as to the facings of the uniforms—some of them were green.

Q. Had not some of the old volunteers green uniforms ?

A. They had, and there were some of the old volunteers in the room.

Q. Were not the old volunteer uniforms scarlet faced with different colours ?

A. They were.

Q. Were all these men sitting down, or walking up and down ?

A. They were walking—there were very few forms or chairs in the room.

Q. Were they conversing ?

A. They were chatting and talking.

Q. Did you see many of them go up to this table where the papers were ?

A. I saw a good many of them go up to it in the course of their walking back and forward.

Q. Did you see many take papers off the table ?

A. I did not see very many of them—I saw four or five or six of them.

Q. They read them and handed them about ?

A. Yes, I saw them do so.

Q. Did you not see them hand them about from one to another ?

A. I did.

Q. By virtue of your oath, did you ever see that paper in your hand, in the hands of Mr. Rowan.

A. I swear it was among the parcel upon the table, some of which were handed up to the gallery—I cannot say it was touched by his fingers.

Q. (By

Q. (*By the court*—You say it was among the parcel handed to the gallery?

A. Yes.

Q. By whom?

A. It was in the bundle handed by Mr. *Rowan* to several there, and by them handed up to the gallery.)

Q. Did that bundle of papers pass through the hands of more volunteers than one before it came to the gallery?

A. I believe it did.

Q. Did he hand several parcels?

A. I only saw him hand one to a volunteer who gave it to another.

Q. Then it went through the hands of several before it got to the gallery?

A. It did, through four or five.

Q. Can you tell the name of any man through whose hands it passed?

A. I cannot—I was not so well acquainted with the gentlemen.

Q. When this bundle of papers was handed up, do you know who in the gallery received it?

A. They were broken and separated, I held out my hand and got one of them—my brother another, and other people got some.

Q. Were there many in the gallery?

A. There were a great many?

Q. Did every man there get one?

A. I cannot say—every one that chose to take one might?

Q. Did they hand them about in the gallery?

A. The next man saw what his neighbour got, they gave them about, but I never parted with mine till yesterday.

Q. Did you know any other volunteers below stairs besides Mr. *Rowan*?

A. I did, Mr. *Tandy*; and to the best of my recollection, there was a Mr. *Kenny* whom I knew before.

Q. Did several of the volunteers below stairs hand up papers to the gallery or not?

A. I dare say several of them did.

Q. Did not several men take papers from the table?

A. I suppose they did—I did not observe whether they did or not. Several, as they passed back and forward, went to the table and might take them off.

Q. Do you not know that several did take papers off?

A. Several of them did.

Q. You saw those papers passed through the hands of four or five volunteers before they came to the gallery?

A. A parcel of the papers among which this was came up.

Q. How came you to pitch upon that paper so accurately?

A. I

A. I was the first who put out my hand.

Q. Did you watch this particular paper?

A. Not that particular paper, but the bundle in which it was.

Q. Will you swear there were no other papers handed up?

A. To the best of my knowledge there were not.

Q. When did you put that memorandum upon it?

A. The very day I got it.

Q. Where?

A. In my lodging.

Q. Did any body advise you to make a *memorandum*?

A. No one did:—I generally, when I get an improper paper make such memorandum.

Q. For what purpose?

A. Just a *fancy* of my own.

Q. Did you make that memorandum in order to enable you to prove it upon a prosecution?

A. I did not.

Q. To whom did you first communicate your having this paper and the memorandum?

A. I shall tell you. There was a brother of mine who did business for the late Mr. *Adderley*—there were different accounts between them—my brother went to the Castle to Mr. *Hobart* to shew the accounts—Mr. now Lord *Hobart*, desired my brother to call upon Mr. *Pollock*, the agent for young Mr. *Adderley*.—Mr. *Pollock* said he had heard that I and my brother were present at the meeting in Cope-street, and that he understood it was a very improper meeting.

Q. How long was this after the meeting?

A. I cannot say.

Q. Was it a week or a month?

A. I cannot recollect. Mr. *Pollock* said, “You have been there I understand.” I said, we were, and that we saw such things going forward. I had one of the papers in my pocket and shewed it to him. He said, Mr. *Hobart* heard I was there, and that I should give information of it as it was against the king and constitution. I said I would not encourage any thing against the king, but would do what was proper. Mr. *Kemmis* came to my lodging next day—the circumstances were talked over—we said we would make no delay in making any information concerning it, and it was in that manner they came to a knowledge of it.

Q. (*By the court*) What Mr. *Kemmis*?

A. The Crown Solicitor.

Q. Were you of any profession at the time you attended this meeting?

A. I was not.

Q. You are in the army now?

A. I have that honour.

Q. What

Q. What commission?

A. An ensign's commission.

Q. How long since did you obtain it?

A. I have been gazetted since the 27th of June last.

Q. In what regiment?

A. In the 40th.

Q. You say you heard some of that paper read?

A. I do, Sir, the greater part of it.

Q. Was this while all the volunteers were walking about?

A. Some were walking about, others gathered about the place while the paper was reading by Mr. Rowan.

Q. Can you point out any part of the paper you heard read?

A. I can.

Q. Shew such part as you heard?

A. He began, "The Society of United Irishmen," and so on.

Q. He did not read it all?

A. He read the greater part.

Q. Can you say where he stopped?

A. I cannot.

Q. Did you obtain your commission by purchase?

A. No, I did not:—I got it through the interest of a lady I have the honour of being related to—Lady Hobart.

Q. Pray, were you ever a witness to a bond or two bonds executed by your father to one of your brothers?

A. I was.

Q. To your younger brother?

A. Yes.

Q. Was there ever any suit or issue directed to try whether the bond was genuine or a forgery?

A. There was an issue to try whether it was my father's bond or not. I do not say it was to try whether it was a forgery.

Q. Was it not alledged by your father and your elder brother that it was a forgery?

A. My elder brother thought to keep my younger brother out of the property, and I suppose he alledged it was a forgery. I am sorry to mention these matters here. My father filed a bill against us, alledging the bonds to be forgeries, and Mr. *Simon Butler* *, a very honourable gentleman, to whom I am under many obligations, undertook the business, and we recovered the money. I see the defendant has brought parchments into court this day. I saw Mr. *Blake* who is to give evidence against me here. If I was aware of these things being mentioned, I should have the gentleman here who could prove them—I speak of the bonds for 500l.

Q. Was there not an issue to try them?

A. There was an order to have it tried in the country.

Q. Were you not examined in the country upon that trial?

* An intimate friend of Mr. Rowan.

A. I believe I was.

Q. You are not sure?

A. I am sure.

Q. Did you swear to the due execution of these bonds?

A. To the best of my knowledge I was examined—I was witness to the bond.

Q. Can you swear whether you were examined or not?

A. I cannot say positively whether I was or not—one of my brothers was examined—My elder brother, I believe, cried out to the jury, that he would leave it to a reference.

Q. You cannot swear positively whether you were examined or not?

A. I cannot.

Q. Do you not believe you were examined?

A. I cannot swear positively I was: I do believe to the best of my recollection I was—but I cannot swear positively.

Q. How long is this ago?

A. It is a good while—I cannot exactly say.

Q. Is it three years ago?

A. I believe it is.

Q. Only three years ago and you cannot say positively whether you were examined or not?

A. I know I was to be examined, but I cannot say whether I was or not.

Q. Were you not examined to the best of your belief?

A. To the best of my recollection I was: but I cannot swear positively.

Q. Do you recollect the judge before whom that issue was tried?

A. I do.

Q. Before whom was it?

A. Before one of their lordships on the bench (Judge *Boyd*).

Q. Were there not more witnesses than one examined to shew it was not your father's hand writing?

A. I do not know, I believe there were many examined, but they did not say positively it was not my father's hand-writing.

Q. What verdict was there?

A. There was no verdict at all.

Q. Was it not because the jury could not agree?

A. No, it was not.

Q. Will you swear to that?

A. I will not; but I think my elder brother called out, perceiving himself wrong, and said, he would leave it to a reference.

Q. Was it ever left to the reference?

A. It was.

Q. What was done?

A. I

A. I cannot say, I was not there; but most people imagined the referees were wrong in doing as they did.

Q. Did they give the amount of the bonds?

A. They did not.

Q. What was the amount of the bonds?

A. One was 500*l.* the other 300*l.* it is not yet decided, my brother intends to bring it into the courts to set aside the award.

Q. (*By the court.* Do you know what they allowed?)

A. I know not.

Q. Did you ever hear?

A. Some hundreds.)

Q. Did you hear it was 200*l.*?

A. I did not.

Q. Two hundred are some hundreds?

A. They are, but as I was not to get any of the money, I believe nothing about it.

Q. Did not a gentleman of the name of *Walter Lambert* file a bill against you?

A. He did.

Q. Was he executor of *Peter Hamilton*?

A. He was.

Q. Why did he file a bill?

A. It is a very unjust bill. *Peter Hamilton* had married my sister, he became insane and I went to stay with him in a mad-house in England; I had no support from my father at that time, and I thought Mr. *Hamilton's* relations should pay my expences and support me; a Mr. *Nagle* recommended me to bring Mr. *Hamilton* home; I did by force put him on board a ship and brought him to Cork, and from thence home to Galway; he had intervals of reason, and he gave me a bond for 150*l.* part of which was paid. I went to Judge *Kelly*, a relation of his, to interfere; in some time I got a note for the money, and after his death the executor filed a bill against me.

Q. Did he not charge the note not to be the hand-writing of *Peter Hamilton*?

A. No: the note was in my hand-writing with Mr. *Hamilton's* name signed by himself.

Q. Did you ever recover any part of it?

A. No, it is not yet determined.

Q. Is there an injunction against you?

A. No: I believe not; I was nonsuited by the neglect of Mr. *Morton*, my attorney, who left the papers in town, when the trial came on in the country.

Q. After you drew this note, Mr. *Peter Hamilton* put his name to it?

A. Yes.

Q. And you sued for it and did not recover?

A. He was perfectly in his senses when he put his name to it as I am: he transacted his own business as if he had not been mad.

Q. Did he not live many years after this?

A. No, he did not: he might have lived many years if he had not shot himself.

Q. (By Juror, Mr. *Minchin*. Did you see many more of the papers handed up?

A. I did.

Q. Were there any of another tendency?

A. There were not.)

Second Witness, Mr. *William Merton*.

Examined by the SOLICITOR GENERAL.

Q. Do you remember being at Cope-street, Dublin, on the 16th of December, 1792?

A. I do.

Q. Do you recollect to have seen any thing there, or to have got admittance into any place there?

A. I do: I saw a number of men assembled there, for what purpose I cannot say: they were arrayed in military dress.

Q. What were they doing?

A. They drew up a form of resolutions at a table.

Q. Do you recollect to have seen any particular person there?

A. I recollect to have seen Mr. *Hamilton Rowan* and Mr. *Napper Tandy*.

Q. (By the court. Do you know Mr. *Rowan*?

A. I do.

Q. Did you know him before that day?

A. I have seen, but was not acquainted with him.

Q. Do you know him now?

A. I do; he is there, (*pointing to him*.)

Q. Did or did not Mr. *Rowan* appear to take an active part in that meeting?

A. He did.

Q. Do you recollect any thing about papers of any description?

A. I shall mention what I know: I gained admittance into the gallery, there were a number of papers or advertisements brought in, as if wet from the press, and distributed about.

Q. Were they in large or small parcels?

A. There was a large parcel in a man's arm, wet as from the press.

Q. What became of them?

A. They were laid upon the table, and some were given to Mr. *Napper Tandy*.

Q. Did you see any of them?

A. I did.

Q. Had you an opportunity of reading them?

A. I had.

Q. How came you to have that opportunity?

A. I saw some of them taken up by Mr. *Rowan* and delivered to some of the members, and by them handed up to the gallery. A gentleman near me received one of them; I immediately took it out of his hand: there were many thrown up; one was read by a gentleman, and I remember while he read it, a number were thrown out of the windows to the mob, who desired more of them, and accordingly they were sent to them.

Q. Was the paper read in a loud manner; did every man know what was doing in the gallery?

A. Every man could hear it, I believe.

Q. Did you keep one of these papers?

A. I did.

Q. Where is it?

A. I gave it to a person, who, I understand, has since mislaid it.

Q. Do you recollect any part of it?

A. The beginning of it: it was from the association of United Irishmen: it began—"To arms citizens, to arms!"

Q. Did you hear it read?

A. I did.

Q. When it was begun, did that passage make an impression upon you that you remember it?

A. It was a young gentleman in the gallery who read it through; the people there called out, read it for the benefit of us all.

Cross-examined by Mr. FLETCHER.

Q. Are you of any profession?

A. I am a gold-beater.

Q. Do you get your livelihood by that?

A. I am an apprentice serving my time to that business.

Q. Is your father living?

A. He is not.

Q. How came you to be at this meeting?

A. It was on a Sunday, and I was unemployed. I met a young gentleman who asked me to go to Cope-street. I went from curiosity.

Q. At what hour did you go there?

A. It was in the forenoon, from eleven to one, there were several gentlemen in uniform.

Q. What

Q. What was their uniform?

A. Scarlet faced with green; there were some light infantry in their jackets; there were different corps.

Q. Upon your oath, were not all the uniforms you saw, the appropriated uniforms of the old volunteer corps?

A. I cannot say.

Q. Do you not believe they were?

A. I suppose they were; but I had been absent and had not seen them for some time.

Q. You were in the gallery when you saw those bundles of papers?

A. I was.

Q. Were there more than one?

A. Not that I remember; I saw but one.

Q. Did not several persons go up to the table and get these papers?

A. I cannot say; I believe not. I was in the gallery; there was a beam in the middle of the room, and when they went to the upper end of the room, the beam prevented me from seeing them.

Q. You said you saw Mr. Rowan take one of these papers and hand it to some other person?

A. I did not say one: I saw him take some papers and hand them about.

Q. What papers were they?

A. I cannot say, whether he took them off the table or not. He took part of those that came in: several of the members asked him for some; I suppose he gave them.

Q. Supposition will not do; say upon your oath, what you saw take place with regard to Mr. Rowan and these papers?

A. When they came in, Mr. Rowan and Mr. Tandy took some of them, they delivered them to the volunteers; one of the volunteers threw some up to the gallery, and I got one.

Q. Did you not say there was but one bundle?

A. I did.

Q. Did you say, that from your situation you could not see what passed at the table?

A. Part of the table I could see.

Q. Were you in such a situation as to see every thing which passed at the table?

A. The volunteers were walking up and down, and sometimes I could not see every thing there.

Q. Do you know the names of any of the persons from whom these papers came to the gallery?

A. No. I did not know any one in the room but Mr. Tandy and Mr. Rowan.

Q. Can you say who the person was who read the paper in the gallery?

A. I cannot. I never saw him before.

Q. Did

Q. Did he read it more than once?

A. I cannot say.

Q. Had you any of the papers in your hand when he read it?

A. I had.

Q. You kept that paper which you received?

A. I did for some time.

Q. How long?

A. I do not recollect: I kept it a week or less.

Q. Whom did you give it to?

A. An acquaintance of mine.

Q. Has he no name?

[Here the witness hesitating in his answer, Mr. Sheriff *Giffard* called out, that he was the person to whom the witness delivered the paper, upon which the witness said it was to Mr. *Giffard*.]

Q. Why did you resort to him?

A. I had no reason: I gave it by accident.

Q. You had no reason?

A. None, but that he was the first person I met that I was acquainted with.

Q. Did you not keep it a week?

A. No.

Q. Did you keep it five days?

A. No, I believe not one; for I think I gave it to him the day after I got it.

Q. When you said you gave it in a week, did you mean the day after?

A. It was less than a week.

Q. Did you mean to convey the idea that you had it but one day, when you said you had it less than a week?

A. I did.

Q. Upon your oath that was the meaning you intended to convey?

A. It was.

Q. Upon your oath you say so?

A. I do.

Q. Do you generally speak in riddles of that kind?

A. No.

Q. How long did you keep that paper?

A. Not one day: on the same day that I received it, I gave it to Mr. *Giffard*.

Q. This meeting was in the forenoon?

A. It was.

Q. How long after the paper was distributed did you continue at this assembly?

A. I do not remember when it broke up.

Q. Was it before or after dinner?

A. It was before dinner.

Q. (By the Court. Did you stay till the assembly broke up?

A. I

A. I did.)

Q. Can you say how long you remained in the place after getting that paper?

A. I cannot say.

Q. What do you believe?

A. Half the time was not elapsed when the papers were distributed, but I do not recollect, there was a young man with me and we were in conversation.

Q. What became of you afterwards?

A. We separated: he went to dinner I suppose.

Q. Where did you go?

A. I went to Mr. *Ryan*.

Q. You dined there?

A. No.

Q. Who is Mr. *Ryan*?

A. He is a surgeon.

Q. Did you shew the paper to Mr. *Ryan*?

A. No; but I met Mr. *Giffard* there and I gave it to him.

Q. Did you expect to meet him there?

A. I did not.

Q. Of what business is Mr. *Ryan*?

A. He is a surgeon.

Q. Does he get money by any other business?

A. I do not know.

Q. There is a paper printed in the house where he lives?

A. There is.

Q. What paper?

A. The *Dublin Journal*.

Q. Does not Mr. *Ryan* superintend the publication of that paper?

A. I believe he does not.

Q. Who is the proprietor of that paper?

A. *George Faulkner*.

Q. Do you believe he conducts that paper now?

A. I am not to know any thing about it.

Q. But can you not form a belief?

A. I cannot form a belief. I do not know.

Q. Did you never hear that Mr. *Giffard* had some interest in that paper?

A. I did hear it.

Q. Do you believe it?

A. I do not. I know not.

Q. What do you believe?

A. I believe he has not.

Q. Did you ever hear it?

A. I did.

Q. Why do you disbelieve it?

A. I heard it from several persons

Q. And

Q And you do not believe it?

A I do not.

Q You do not believe that he has any connexion with that paper?

A I do not believe it.

Q Have you heard it contradicted?

A I have.

Q By whom?

A I do not know?

Q What relation are you to Mr. *Giffard*?

A His nephew by marriage.

Q And will you, his nephew, say he has not any interest in that paper?

A I do.

Q Is not Mr. *Ryan* a relation of Mr. *Giffard*?

A He is.

Q What relation?

A I cannot say.

Q Who pays the rent of the house where Mr. *Ryan* lives?

A I do not know.

This witness retired, and then the paper * produced by Mr. *Lyster* was read—upon which the case for the prosecution was rested.

LORD CLONMELL, *Chief Justice*, asked the counsel for the defendant whether they wished to have the information read, in order to compare it with the publication.

MR. CURRAN.—We have instructions not to take any captious objections, and therefore do not think it necessary to accept of the offer of the court.

MR. ATTORNEY GENERAL.—A good reason why, Mr. *Curran*; there is no error in the record.

Evidence for the Defendant.

Francis Blake, Esq.

Examined by Mr. CURRAN.

Q You live in Galway?

A I live now in Dublin, but I did live in the county of Roscommon.

Q Do you know a gentleman who was examined here to-day, of the name of *John Lyster*?

A I believe I do.

Q The son of *Thomas Lyster* of Grange?

A I do know him.

* See the paper at large in the information.

Q. Do you think that Mr. *Lyster* is a person who would deserve credit in what he should swear in a court of justice?

A. That is a very hard question to answer, for I never had any dealing with him, so as to say from my own knowledge whether he should be believed or not.

Q. I only ask your opinion: is it your opinion that he deserves credit upon his oath? Do you believe it?

A. I cannot say he is: I might hesitate.

Q. Can you form an opinion?

A. I have made all the answer I can—I cannot say that he does not deserve credit—at the same time I might have doubts.

Lord CLONMELL.—He only says he might hesitate—he has doubts.

Mr. *John Smith*.

Examined by the RECORDER.

Q. Do you know *John Lyster*?

A. I have seen him, I have no acquaintance with him.

Q. Have you ever seen him examined as a witness?

A. I have.

Q. Where?

A. At Galway summer assizes, 1791.

Q. Was he the son of *Thomas Lyster* of Grange?

A. I believe he was.

Q. Did you see him on the table to-day?

A. I think I did while I was standing upon the steps of the Exchequer.

Q. Is it your opinion that he is a person to be believed upon his oath in a court of justice?

A. I cannot form a general opinion, with regard to the matter upon which he was examined to-day: from what I know of him I would give very little credit to him.

Q. What is his general character?

Mr. ATTORNEY GENERAL.—I object to that question.

Q. (*By the Court.*)—You are a man of business; upon your oath, do you know enough of this man to say whether you think he ought to be believed upon his oath?

A. I do not; for I know nothing of him, but what I saw at the trial in Galway.

Cross-examined by Mr. ATTORNEY GENERAL.

Q. Are you a member of the *United Irishmen*?

A. I really am not.

Mrs. *Mary Hatchell.*

Examined by Mr. FLETCHER.

Q. Do you know Mr. *John Lyster*, son of *Thomas Lyster* of *Grange*?

A. I know Mr. *John Lyster*.

Q. Is he in the army?

A. He is an ensign of the 40th.

Q. Have you known him long?

A. I have known him well for better than a year; by sight I know him a long time.

Q. From all that you know and have heard of this gentleman, can you form an opinion whether he is a person to be credited upon his oath?

A. From my opinion he is not.

Cross-examined by Mr. SOLICITOR GENERAL.

Q. Pray Madam where do you live?

A. Upper Ormond-quay.

Q. You know a brother of Mr. *Lyster*?

A. I do well: it calls painful remembrances to my mind by talking of him.

Q. Was there any particular infidelity imputed to this gentleman or his brother?

A. *George William Lyster* was married to a daughter of ours (my husband is living.)

Q. Who is *George William Lyster*?

A. The younger brother of *John Lyster*.

Q. Your first intercourse then originated from that connection between *George Lyster* and your daughter?

A. Yes: *George William Fitzgerald Lyster* married my daughter.

Q. It was not with your consent?

A. It was not.

Q. You have not been induced to any painful necessity of breaking the marriage?

A. *John Lyster* has found means to take away his brother from his wife, insisting that he had another wife.

Q. (*By the Jury.*) How do you know that *John Lyster* is the person who inveigled his brother from your daughter?

A. His elder brother told me so.

Q. (*By the Court.*) Is that the reason you do not believe him?

A. It is one of the reasons.

Q. What other reasons have you ?

A. Conversations with his elder brother.

[*Here the case was closed for the defendant.*]

A few moments before the defendant's counsel rose, a guard of soldiers was brought into the court-house by the sheriff.

Mr. CURRAN, for defendant.—Gentlemen of the Jury, when I consider the period at which this prosecution is brought forward ; when I behold the extraordinary safeguard of armed soldiers resorted to, no doubt for the preservation of peace and order : when I catch, as I cannot but do, the throb of public anxiety which beats from one end to the other of this hall ; when I reflect on what may be the fate of a man of the most beloved personal character, of one of the most respected families of our country ; himself the only individual of that family, I may almost say of that country, who can look to that possible fate with unconcern ? Feeling as I do all these impressions, it is in the honest simplicity of my heart I speak, when I say that I never rose in a court of justice with so much embarrassment, as upon this occasion.

If, gentlemen, I could entertain an hope of finding refuge for the disconcertion of my mind, in the perfect composure of yours ; if I could suppose that those awful vicissitudes of human events, which have been stated or alluded to, could leave your judgments undisturbed and your hearts at ease, I know I should form a most erroneous opinion of your character : I entertain no such chimerical hope ; I form no such unworthy opinion ; I expect not that your hearts can be more at ease than my own ; I have no right to expect it ; but I have a right to call upon you, in the name of your country, in the name of the living God, of whose eternal justice you are now administering that portion which dwells with us on this side of the grave, to discharge your breasts as far as you are able of every bias of prejudice or passion ; that, if my client is guilty of the offence charged upon him, you may give tranquility to the public by a firm verdict of conviction ; or if he is innocent, by as firm a verdict of acquittal ; and that you will do this in defiance of the paltry artifices and senseless clamours that have been resorted to in order to bring him to his trial with anticipated conviction. And, gentlemen, I feel an additional necessity of thus conjuring you to be upon your guard, from the able and imposing statement which you have just heard on the part of the prosecution. I know well the virtues and the talents of the excellent person who conducts that prosecution ; I know how much he would disdain to impose on you by the trappings of office ; but I also know how easily we mistake the lodgement which character and eloquence

eloquence can make upon our feelings, for those impressions that reason and fact and proof only ought to work upon our understandings.

Perhaps, gentlemen, I shall act not unwisely in waving any further observation of this sort, and giving your minds an opportunity of growing cool and resuming themselves, by coming to a calm and uncoloured statement of mere facts, premising only to you that I have it in strictest injunction from my client, to defend him upon facts and evidence only, and to avail myself of no technical artifice or subtilty that could withdraw his cause from the test of that enquiry, which it is your province to exercise, and to which only he wishes to be indebted for an acquittal.

In the month of December 1792, Mr. Rowan was arrested on an information, charging him with the offence for which he is now on his trial. He was taken before an honourable personage now on that bench, and admitted to bail.

He remained a considerable time in this city, soliciting the threatened prosecution, and offering himself to a fair trial by a jury of his country; but it was not then thought fit to yield to that solicitation; nor has it now been thought proper to prosecute him in the ordinary way, by sending up a bill of indictment to a grand jury. I do not mean by this to say that informations *ex officio* are always oppressive or unjust; but I cannot but observe to you, that when a petty jury is called upon to try a charge not previously found by the grand inquest, and supported by the naked assertion only of the king's prosecutor, that the accusation labours under a weakness of probability which it is difficult to assist. If the charge had no cause of dreading the light—if it was likely to find the sanction of a grand jury, it is not easy to account why it deserted the more usual, the more popular, and the more constitutional mode, and preferred to come forward in the ungracious form of an *ex officio* information.

If such bill had been sent up and found, Mr. Rowan would have been tried at the next commission; but a speedy trial was not the wish of his prosecutors. An information was filed, and when he expected to be tried upon it, an error, it seems, was discovered in the record. Mr. Rowan offered to wave it, or consent to any amendment desired. No—that proposal could not be accepted—a trial must have followed. That information, therefore, was withdrawn, and a new one filed, that is in fact a third prosecution was instituted upon the same charge. This last was filed on the 8th day of last July. Gentlemen, these facts cannot fail of a due impression upon you. You will find a material part of your inquiry must be, whether Mr. Rowan is pursued as a criminal or hunted down as a victim. It is not, therefore, by insinuation or circuitry, but it is boldly and directly that I assert that oppression has been intended and practised upon him,

him, and by those facts which I have stated I am warranted in the assertion.

His demand, his intreaty to be tried was refused, and why? a hue and cry was to be raised against him; the sword was to be suspended over his head—some time was necessary for the public mind to become heated by the circulation of artful clamours of anarchy and rebellion; those same clamours which with more probability, but not more success, had been circulated before through England and Scotland. In this country the causes and the swiftness of their progress were as obvious, as their folly has since become to every man of the smallest observation; I have been stopped myself, with, “ Good God, Sir, have you heard the news? No Sir, what?—Why one French emissary was seen travelling through Cennaught in a post chaise, and scattering from the windows as he passed little doses of political poison, made up in square bits of paper—another was actually surpris'd in the fact of seducing our good people from their allegiance, by discourses upon the indivisibility of French robbery and massacre, which he preached in the French language to a congregation of Irish peasants.”

Such are the bugbears and spectres to be raised to warrant the sacrifice of whatever little public spirit may remain amongst us—but time has also detected the imposture of these Cock-lane apparitions, and you cannot now, with your eyes open, give a verdict without asking your consciences this question; is this a fair and honest prosecution?—Is it brought forward with the single view of vindicating public justice, and promoting public good? And here let me remind you that you are not convened to try the guilt of a libel, affecting the personal character of any private man; I know no case in which a jury ought to be more severe than where personal calumny is conveyed through a vehicle, which ought to be consecrated to public information; neither, on the other hand, can I conceive any case in which the firmness and the caution of a jury should be more exerted, than when a subject is prosecuted for a libel on the state. The peculiarity of the British constitution, (to which in its fullest extent we have an undoubted right, however distant we may be from the actual enjoyment) and in which it surpasses every known government in Europe, is this; that its only professed object is the general good, and its only foundation the general will; hence the people have a right acknowledged from time immemorial, fortified by a pile of statutes, and authenticated by a revolution that speaks louder than them all, to see whether abuses have been committed, and whether their properties and their liberties have been attended to as they ought to be. This is a kind of subject which I feel myself overawed when I approach; there are certain fundamental principles which nothing but necessity should expose to public examination; they are pillars, the depth of
whose

whose foundation you cannot explore without endangering their strength; but let it be recollected that the discussion of such topics should not be condemned in me, nor visited upon my client. The blame, if any there be, should rest only with those who have forced them into discussion. I say, therefore, it is the right of the people to keep an eternal watch upon the conduct of their rulers; and in order to that, the freedom of the press has been cherished by the law of England. In private defamation let it never be tolerated; in wicked and wanton aspersion upon a good and honest administration let it never be supported; not that a good government can be exposed to danger by groundless accusation, but because a bad government is sure to find in the detected falsehood of a licentious press a security and a credit, which it could never otherwise obtain. I said a good government cannot be endangered; I say so again, for whether it be good or bad can never depend upon assertion, the question is decided by simple inspection: to try the tree look at its fruit; to judge of the government look at the people; what is the fruit of good government? The virtue and happiness of the people; do four millions of people in this country gather those fruits from that government to whose injured purity, to whose spotless virtue and violated honour, this seditious and atrocious libeller is to be immolated upon the altar of the constitution? To you, gentlemen of that jury, who are bound by the most sacred obligation to your country and your God, to speak nothing but the truth, I put the question—do they gather those fruits? are they orderly, industrious, religious and contented? do you find them free from bigotry and ignorance, those inseparable concomitants of systematic oppression? or to try them by a test as unerring as any of the former, are they united? The period has now elapsed in which considerations of this extent would have been deemed improper to a jury; happily for these countries, the legislature of each has lately changed, or, perhaps to speak more properly, revived and restored the law respecting trials of this kind. For the space of thirty or forty years a usage had prevailed in Westminster Hall, by which the judges assumed to themselves the decision of the question, whether libel or not; but the learned counsel for the prosecution are now obliged to admit that this is a question for the jury only to decide. You will naturally listen with respect to the opinion of the court, but you will receive it as matter of advice, not as matter of law; and you will give it credit not from any adventitious circumstances of authority, but merely so far as it meets the concurrence of your own understandings.

Give me leave now to state to you the charge, as it stands upon the record:—It is that Mr. Rowan “being a person of a
 “wicked and turbulent disposition, and maliciously designing
 “and intending to excite and diffuse amongst the subjects of
 “this

“ this realm of Ireland discontents, jealousies and suspicions of
 “ our Lord the King and his government, and disaffection and
 “ disloyalty to the person and government of our said Lord
 “ the King, and to raise very dangerous seditions and tumults
 “ within this kingdom of Ireland, and to draw the government
 “ of this kingdom into great scandal, infamy and disgrace, and
 “ to incite the subjects of our said Lord the King to attempt,
 “ by force and violence and with arms, to make alterations in
 “ the government, state and constitution of this kingdom, and
 “ to incite his Majesty’s said subjects to tumult and anarchy, and
 “ to overturn the established constitution of this kingdom, and
 “ to overawe and intimidate the legislature of this kingdom by
 “ an armed force;” did “ maliciously and seditiously” publish
 the paper in question.

Gentlemen, without any observation of mine, you must see
 that this information contains a direct charge upon Mr. Rowan;
 namely, that he did, with the intents set forth in the infor-
 mation, publish this paper; so that here you have in fact two
 or three questions for your decision: first, the matter of fact
 of the publication: namely, did Mr. Rowan publish that paper?
 If Mr. Rowan did not in fact publish that paper, you have no
 longer any question on which to employ your minds. If you
 think that he was in fact the publisher, then and not till then
 arises the great and important subject to which your judgments
 must be directed. And that comes shortly and simply to this,
 is the paper a libel? and did he publish it with the intent charged
 in the information? But whatever you may think of the abstract
 question; whether the paper be libellous or not, and of which
 paper it has not even been insinuated that he is the author, these
 can be no ground for a verdict against him, unless you also
 are persuaded that what he did was done with a criminal design.
 I wish, gentlemen, to simplify and not to perplex; I therefore say
 again, if these three circumstances conspire, that he published it,
 that it was a libel, and that it was published with the purposes
 alledged in the information, you ought unquestionably to find
 him guilty; if on the other hand, you do not find that all
 these circumstances concurred; if you cannot upon your oaths
 say that he published it; if it be not in your opinion a libel,
 and if he did not publish it with the intention alledged: I say
 upon the failure of any one of these points, my client is intitled,
 in justice, and upon your oaths, to a verdict of acquittal.

Gentlemen, Mr. Attorney General has thought proper to di-
 rect your attention to the state and circumstances of public af-
 fairs at the time of this transaction; let me also make a few re-
 trospective observations on a period, at which he has but slightly
 glanced; I speak of the events which took place before the close
 of the American war. You know gentlemen that France had
 espoused the cause of America, and we became thereby engaged
 in

in a war with that nation. *Heu nescia mens hominum futuri!* Little did that ill-fated monarch know that he was forming the first causes of those disastrous events, that were to end in the subversion of his throne, in the slaughter of his family, and the deluging of his country with the blood of his people. You cannot but remember that at a time, when we had scarcely a regular soldier for our defence; when the old and young were alarmed and terrified with apprehensions of descent upon our coasts; that Providence seemed to have worked a sort of miracle in our favour. You saw a band of armed men come forth at the great call of nature, of honour, and their country. You saw men of the greatest wealth and rank; you saw every class of the community give up its members, and send them armed into the field, to protect the public and private tranquillity of Ireland. It is impossible for any man to turn back to that period, without reviving those sentiments of tenderness and gratitude, which then beat in the public bosom: to recollect amidst what applause, what tears, what prayers, what benedictions, they walked forth amongst spectators, agitated by the mingled sensations of terror and reliance, of danger and protection; imploring the blessings of Heaven upon their heads, and its conquest upon their swords. That illustrious and adored, and *abused* body of men stood forward and assumed the title, which, I trust, the ingratitude of their country will never blot from its history, "THE VOLUNTEERS OF IRELAND."

Give me leave now, with great respect, to put one question to you: Do you think the assembling of that glorious band of patriots was an insurrection? do you think the invitation to that assembling would have been sedition? They came under no commission but the call of their country; unauthorized and unfactioned except by public emergency and public danger. I ask was that meeting insurrection or not? I put another question: If any man then had published a call on that body, and stated that war was declared against the state; that the regular troops were withdrawn; that our coasts were hovered round by the ships of the enemy; that the moment was approaching when the unprotected feebleness of age and sex; when the sanctity of habitation would be disregarded and prophaned by the brutal ferocity of a rude invader; if any man had then said to them "leave your industry for a while, that you may return to it again, and come forth in arms for the public defence." I put the question boldly to you gentlemen? It is not the case of the volunteers of that day; it is the case of my client, at this hour, which I put to you. Would that call have been then pronounced in a court of justice, or by a jury on their oaths, a criminal and seditious invitation to insurrection? If it would not have been so then, upon what principle can it be so now? What is the force and perfection of the law? It is the permanency of the law; it is that whenever the fact is

the same, the law is also the same; it is that the law remains a written, monumented and recorded letter to pronounce the same decision, upon the same facts whenever they shall arise. I will not affect to conceal it; you know there has been an artful, ungrateful, and blasphemous clamour raised against these illustrious characters, the saviours of the kingdom of Ireland. Having mentioned this, let me read a few words of the paper alledged to be criminal: "You first took up arms to protect your country from foreign enemies, and from domestic disturbance. For the same purposes it now becomes necessary that you should resume them."

I should be the last in the world to impute any want of candour to the right honourable gentleman, who has stated the case on behalf of the prosecution: but he has certainly fallen into a mistake, which, if not explained, might be highly injurious to my client. He supposed that this publication was not addressed to those ancient volunteers, but to new combinations of them, formed upon new principles, and actuated by different motives. You have the words to which this construction is imputed upon the record; the meaning of his mind can be collected only from those words which he has made use of to convey it. The guilt imputable to him can only be inferred from the meaning ascribable to those words. Let his meaning then be fairly collected by resorting to them. Is there a foundation to suppose that this address was directed to any such body of men, as has been called a banditti, with what justice it is unnecessary to inquire, and not to the old volunteers? As to the sneer at the words *Citizen Soldiers*, I should feel that I was treating a very respected friend with an insidious and unmerited unkindness, if I affected to expose it by any gravity of refutation. I may, however, be permitted to observe, that those who are supposed to have disgraced this expression by adopting it, have taken it from the idea of the British constitution, "that no man in becoming a soldier ceases to be a citizen." Would to God, all enemies as they are, that that unfortunate people had borrowed more from that sacred source of liberty and virtue; and would to God, for the sake of humanity, that they had preserved even the little they did borrow. If even there could be an objection to that appellation, it must have been strongest when it was first assumed. * To that period the writer manifestly alludes; he addresses "those who first took up arms;" you first took up arms to protect your country from foreign enemies and from domestic disturbance. For the same purposes it now becomes necessary that you should

* Whoever will take the trouble of reading the resolutions and addresses of the old volunteers, at and prior to 1783, will find the terms *Citizen Soldiers*, and *Citizen Soldiery*, to have been no uncommon appellations to that body.

resume them. Is this applicable to those who had never taken up arms before? "A proclamation," says this paper, "has been issued in England for embodying the militia, and a proclamation has been issued by the lord lieutenant and council in Ireland, for repressing all seditious associations. In consequence of both these proclamations, it is reasonable to apprehend danger from abroad, and danger at home." God help us, from the situation of Europe at that time, we were threatened with too probable danger from abroad, and I am afraid it was not without foundation we were told of our having something to dread at home. I find much abuse has been lavished on the disrespect with which the proclamation is treated, in that part of the paper alledged to be a libel. To that my answer for my client is short; I do conceive it competent to a British subject—if he thinks that a proclamation has issued for the purpose of raising false terrors, I hold it to be not only the privilege, but the duty of a citizen, to set his countrymen right, with respect to such misrepresented danger; and until a proclamation, in this country, shall have the force of law, the reason and grounds of it are surely at least questionable by the people. Nay, I will go farther, if an actual law had passed receiving the sanction of the three estates, if it be exceptionable in any matter, it is warrantable to any man in the community to state, in a becoming manner, his ideas upon it. And I should be at a loss to know, if the positive laws of Great Britain are thus questionable, upon what ground the proclamation of an Irish government should not be open to the animadversion of Irish subjects.

"Whatever be the motive, or from whatever quarter it arises," says this paper, "alarm has arisen." Gentlemen, do you not know that to be the fact? It has been stated by the Attorney General, and most truly, that the most gloomy apprehensions were entertained by the whole country. "You volunteers of Ireland are therefore summoned to arms at the instance of government, as well as by the responsibility attached to your character, and the permanent obligations of your institution." I am free to confess if any man assuming the liberty of a British subject, to question public topics, should under the mask of that privilege publish a proclamation inviting the profligate and seditious, those in want and those in despair to rise up in arms to overawe the legislature, to rob us of whatever portion of the blessings of a free government we possess; I know of no offence involving greater enormity. But that, gentlemen, is the question you are to try. If my client acted with an honest mind and fair intention, and having, as he believed, the authority of government to support him in the idea that danger was to be apprehended, did apply to that body of so known and so revered character, calling upon them by their former honour, the principle of their glorious institution, and the great stake they possessed

in their country. If he interposed not upon a fictitious pretext, but a real belief of actual and imminent danger, and that their arming at that critical moment was necessary to the safety of their country; his intention was not only innocent, but highly meritorious. It is a question, gentlemen, upon which you only can decide; it is for you to say whether it was criminal in the defendant to be so misled, and whether he is to fall a sacrifice to the prosecution of that government by which he was so deceived. I say again, gentlemen, you can look only to his own words as the interpreter of his meaning; and to the state and circumstances of his country, as he was made to believe them, as the clue to his intention. The case then, gentlemen, is shortly and simply this: a man of the first family and fortune, and character and property among you, reads a proclamation stating the country to be in danger from abroad and at home, and thus alarmed—thus upon authority of the prosecutor, alarmed, applies to that august body, before whose awful presence sedition must vanish, and insurrection disappear. You must surrender, I hesitate not to say it, your oaths to unfounded assertion, if you can submit to say that such an act, of such a man, so warranted, is a wicked and seditious libel. If he was a dupe, let me ask you, who was the impostor? I blush and I shrink with shame and detestation from that meanness of dupery and servile complaisance, which could make that dupe a victim to the accusation of that impostor.

You perceive, gentlemen, that I am going into the merits of this publication, before I apply myself to the question which is first in order of time, namely, whether the publication, in point of fact, is to be ascribed to Mr. Rowan or not. I have been unintentionally led into this violation of order. I should effect no purpose of either brevity or clearness, by returning to the more methodical course of observation. I have been naturally drawn from it by the superior importance of the topic I am upon, namely, the merit of the publication in question.

This publication, if ascribable at all to Mr. Rowan, contains four distinct subjects: the first the invitation to the volunteers to arm: upon that I have already observed; but those that remain are surely of much importance, and no doubt are prosecuted as equally criminal. The paper next states the necessity of a reform in parliament; it states, thirdly, the necessity of an emancipation of the Catholic inhabitants of Ireland; and as necessary to the achievement of all these objects, does, fourthly, state the necessity of a general delegated convention of the people.

It has been alledged that Mr. Rowan intended by this publication to excite the subjects of this country to effect an alteration in the form of your constitution. And here, gentlemen, perhaps, you may not be unwilling to follow a little farther than Mr. Attorney General has done, the idea of a late prosecution in Great Britain upon the subject of a public libel. It is with
peculiar

peculiar fondness I look to that country for solid principles of constitutional liberty and judicial example. You have been pressed in no small degree with the manner in which this publication marks the different orders of our constitution, and comments upon them. Let me shew you what boldness of animadversion on such topics is thought justifiable in the British nation, and by a British jury. I have in my hand the report of the trial of the printers of the Morning Chronicle, for a supposed libel against the state, and of their acquittal: let me read to you some passages from that publication, which a jury of Englishmen were in vain called upon to brand with the name of libel.

“ Claiming it as our indefeasible right to associate together, in a peaceable and friendly manner, for the communication of thoughts, the formation of opinions, and to promote the general happiness, we think it unnecessary to offer any apology for inviting you to join us in this manly and benevolent pursuit; the necessity of the inhabitants of every community endeavouring to procure a true knowledge of their rights, their duties, and their interests, will not be denied, except by those who are the slaves of prejudice, or the interested in the continuation of abuses. As men who wish to aspire to the title of freemen, we totally deny the wisdom and the humanity of the advice, to approach the defects of government with “ pious awe and trembling solicitude.” What better doctrine could the pope or the tyrants of Europe desire? We think, therefore, that the cause of truth and justice can never be hurt by temperate and honest discussions; and that cause which will not bear such a scrutiny, must be systematically or practically bad. We are sensible that those who are not friends to the general good, have attempted to inflame the public mind with the cry of “ Danger,” whenever men have associated for discussing the principles of government; and we have little doubt but such conduct will be pursued in this place; we would therefore caution every honest man, who has really the welfare of the nation at heart, to avoid being led away by the prostituted clamours of those who live on the sources of corruption. We pity the fears of the timorous, and we are totally unconcerned respecting the false alarms of the venal.”——

——“ We view with concern the frequency of wars.—We are persuaded that the interests of the poor can never be promoted by accession of territory, when bought at the expence of their labour and blood; and we must say, in the language of a celebrated author—“ We, who are only the people, but who pay for wars with our substance and our blood, will not cease to tell kings,” or governments, “ that to them alone wars are profitable: that the true and just conquests are those which each makes at home, by comforting the peasantry, by promoting agriculture and manufactories: by multiplying men, and the other productions of nature, that then it is that kings may call themselves the image of God, whose will is perpetually directed to the creation of new beings. If they continue to make us fight and kill one another, in uniform, we will continue to write and

1
1 speak,

“speak, until nations shall be cured of this folly.”—We are certain our present heavy burthens are owing, in a great measure to cruel and impolitic wars, and therefore we will do all on our part, as peaceable citizens who have the good of the community at heart, to enlighten each other, and protest against them.

“The present state of the representation of the people, calls for the particular attention of every man who has humanity sufficient to feel for the honour and happiness of his country; to the defects and corruptions of which we are inclined to attribute unnecessary wars, &c. &c. We think it a deplorable case when the poor must support a corruption which is calculated to oppress them; when the labourer must give his money to afford the means of preventing him having a voice in its disposal; when the lower classes may say,—“We give you our money, for which we have toiled and sweat, and which would save our families from cold and hunger; but we think it more hard that there is nobody whom we have delegated, to see that it is not improperly and wickedly spent; we have none to watch over our interests; the rich only are represented.”——

——“An equal and uncorrupt representation would, we are persuaded, save us from heavy expences, and deliver us from many oppressions, we will therefore do our duty to procure this reform, which appears to us of the utmost importance.”

“In short we see with the most lively concern, an army of placemen, pensioners, &c. fighting in the cause of corruption and prejudice, and spreading the contagion far and wide.”——

——“We see with equal sensibility the present outcry against reforms, and a proclamation (tending to cramp the liberty of the press, and discredit the true friends of the people) receiving the support of numbers of our countrymen.”——

——“We see burdens multiplied—the lower classes sinking into poverty, disgrace, and excesses, and the means of these shocking abuses increased for the purposes of revenue.”——

——“We ask ourselves—“Are we in England?”—Have our forefathers fought, bled, and conquered for liberty? And did they not think that the fruits of their patriotism would be more abundant in peace, plenty, and happiness?”——

——“Is the condition of the poor never to be improved? Great Britain must have arrived at the highest degree of national happiness and prosperity, and our situation must be too good to be mended, or the present outcry against reforms and improvements is inhuman and criminal. But we hope our condition will be speedily improved, and to obtain so desirable a good is the object of our present association; an union founded on principles of benevolence and humanity; disclaiming all connection with riots and disorder, but firm in our purpose, and warm in our affections for liberty.

“Lastly—We invite the friends of freedom throughout Great Britain to form similar societies, and to act with unanimity and firmness, till the

the people be too wise to be imposed upon; and their influence in the government be commensurate with their dignity and importance.

“ THEN SHALL WE BE FREE AND HAPPY.”

Such, gentlemen, is the language, which a subject of Great Britain thinks himself warranted to hold, and upon such language has the corroborating sanction of a British jury been stamped by a verdict of acquittal. Such was the honest and manly freedom of publication, in a country too where the complaint of abuses has not half the foundation it has here. I said I loved to look to England for principles of judicial example, I cannot but say to you that it depends on your spirit whether I shall look to it hereafter with sympathy or with shame. Be pleased now, gentlemen, to consider whether the statement of the imperfection in your representation, has been made with a desire of inflaming an attack upon the public tranquillity, or with an honest purpose of procuring a remedy for an actually existing grievance.

It is impossible not to revert to the situation of the times, and let me remind you that whatever observations of this kind I am compelled thus to make in a court of justice, the uttering of them in this place is not imputable to my client, but to the necessity of defence imposed upon him by this extraordinary prosecution.

Gentlemen, the representation of your people is the vital principle of their political existence, without it they are dead, or they live only to servitude; without it there are two estates acting upon and against the third, instead of acting in co-operation with it; without it, if the people are oppressed by their judges, where is the tribunal to which their judges can be amenable? Without it, if they are trampled upon and plundered by a minister, where is the tribunal to which the offender shall be amenable? Without it, where is the ear to hear, or the heart to feel, or the hand to redress their sufferings? Shall they be found, let me ask you, in the accursed band of imps and minions that bask in their disgrace, and fatten upon their spoils, and flourish upon their ruin? But let me not put this to you as a merely speculative question. It is a plain question of fact: rely upon it, physical man is every where the same, it is only the various operation of moral causes that gives variety to the social or individual character and condition. How happens it that modern slavery looks quietly at the despot, on the very spot where Leonidas expired? The answer is easy, Sparta has not changed her climate, but she has lost that government which her liberty could not survive.

I call you, therefore, to the plain question of fact; this paper recommends a reform in parliament; I put that question to your consciences, do you think it needs that reform? I put it boldly and fairly to you, do you think the people of Ireland are represented as they ought to be? Do you hesitate for an answer? If
you

you do, let me remind you that until the last year three millions of your countrymen have by the express letter of the law been excluded from the reality of actual, and even from the phantom of virtual representation. Shall we then be told that this is only the affirmation of a wicked and seditious incendiary? If you do not feel the mockery of such a charge, look at your country, in what state do you find it? Is it in a state of tranquillity and general satisfaction? These are traces by which good is ever to be distinguished from bad government. Without any very minute enquiry or speculative refinement; do you feel that a veneration for the law, a pious and humble attachment to the constitution, form the political morality of your people? Do you find that comfort and competency among your people, which are always to be found where a government is mild and moderate; where taxes are imposed by a body who have an interest in treating the poorer orders with compassion, and preventing the weight of taxation from pressing fore upon them?

Gentlemen, I mean not to impeach the state of your representation, I am not saying that it is defective, or that it ought to be altered or amended, nor is this a place for me to say, whether I think that three millions of the inhabitants of a country whose whole number is but four, ought to be admitted to any efficient situation in the state; it may be said and truly, these are not questions for either of us directly to decide; but you cannot refuse them some passing consideration at least, when you remember that on this subject the real question for your decision is, whether the allegation of a defect in your constitution is so utterly unfounded and false, that you can ascribe it only to the malice and perverseness of a wicked mind, and not to the innocent mistake of an ordinary understanding;—whether it cannot be mistake; whether it can be only sedition.

And here, gentlemen, I own I cannot but regret, that one of our countrymen should be criminally pursued for asserting the necessity of a reform, at the moment when that necessity seems admitted by the parliament itself; that this unhappy reform shall at the same moment be a subject of legislative discussion, and criminal prosecution; far am I from imputing any sinister design to the virtue or wisdom of our government, but who can avoid feeling the deplorable impression that must be made on the public mind, when the demand for that reform is answered by a criminal information?

I am the more forcibly impressed by this concern, when I consider that when this information was first put upon the file, the subject was transiently mentioned in the House of Commons. Some circumstances retarded the progress of the inquiry there; and the progress of the information was equally retarded here. The first day of this session you all know, that subject was again brought forward in the House of Commons, and as if they had
slept

kept together, this prosecution was also revived in the Court of King's Bench; and that before a jury, taken from a pannel partly composed of those very members of parliament, who, in the House of Commons, must debate upon this subject as a measure of public advantage, which they might have here to consider as a public crime. *

This paper, gentlemen, insists upon the necessity of emancipating the Catholics of Ireland, and that is charged as part of the libel. If they had waited another year, if they had kept this prosecution impending for another year, how much would remain for a jury to decide upon, I should be at a loss to discover. It seems as if the progress of public reformation was eating away the ground of the prosecution. Since the commencement of the prosecution, this part of the libel has unluckily received the sanction of the legislature. In that interval our Catholic brethren have obtained that admission, which it seems it was a libel to propose: in what way to account for this, I am really at a loss. Have any alarms been occasioned by the emancipation of our Catholic brethren? Has the bigotted malignity of any individuals been crushed? Or has the stability of the government, or has that of the country been weakened? Or is one million of subjects stronger than four millions? Do you think that the benefit they received should be poisoned by the sting of vengeance? If you think so, you must say to them, "you have demanded emancipation and you have got it; but we abhor your persons, we are outraged at your success; and we will stigmatize by a criminal prosecution the relief which you have obtained from the voice of your country." I ask you, gentlemen, do you think as honest men, anxious for the public tranquillity, conscious that there are wounds not yet completely cicatrized, that you ought to speak this language at this time, to men who are too much disposed to think that in this very emancipation they have been saved from their own parliament by the humanity of their sovereign? Or do you wish to prepare them for the revocation of these improvident concessions? Do you think it wise or humane at this moment to insult them, by sticking up in a pillory the man who dared to stand forth their advocate? I put it to your oaths, do you think, that a blessing of that kind, that a victory obtained by justice over bigotry and oppression, should have a stigma cast upon it by an ignominious sentence upon men bold and honest enough to propose that measure? To propose the redeeming of religion from the abuses of the church, the reclaiming of three millions of men from bondage, and giving liberty to all who had a right to de-

* Among the names on the pannel were right hon. J. Cuffe, M. P.—Right hon. D. Latouche, M. P.—Sir W. G. Newcomen, Bart. M. P.—J. Maxwell, M. P.—C. H. Coote, M. P.—Henry Bruen, M. P.—H. V. Brooke, M. P.—J. Reilly, M. P.—J. Pomeroy, M. P.

mand it ; giving, I say, in the so much censured words of this paper, giving “ UNIVERSAL-EMANCIPATION !” I speak in the spirit of the British law, which makes liberty commensurate with and inseparable from British soil; which proclaims even to the stranger and the sojourner, the moment he sets his foot upon British earth, that the ground on which he treads is holy, and consecrated by the Genius of UNIVERSAL EMANCIPATION. No matter in what language his doom may have been pronounced;—no matter what complexion incompatible with freedom, an Indian or an African sun may have burnt upon him;—no matter in what disastrous battle his liberty may have been cloven down;—no matter with what solemnities he may have been devoted upon the altar of slavery ; the first moment he touches the sacred soil of Britain, the altar and the god sink together in the dust ; his soul walks abroad in her own majesty ; his body swells beyond the measure of his chains, that burst from around him, and he stands redeemed, regenerated, and disenthralled, by the irresistible Genius of UNIVERSAL EMANCIPATION.

[Here Mr. Curran was interrupted by a sudden burst of applause from the court and hall, silence however was restored after some minutes, by the interposition of Lord Clonmel, who declared the great pleasure he felt himself, at the exertion of professional talents, but disapproved any intemperate expression of applause in a court of justice.]

Mr. Curran then proceeded—Gentlemen, I am not such a fool, as to ascribe any effusion of this sort, to any merit of mine. It is the mighty theme, and not the inconsiderable advocate, that can excite interest in the hearer ! What you hear is but the testimony which nature bears to her own character ; it is the effusion of her gratitude to that power, which stamp that character upon her.

And, gentlemen, permit me to say, that if my client had occasion to defend his cause by any mad or drunken appeals to extravagance or licentiousness, I trust in God I stand in that situation, that humble as I am, he would not have resorted to me to be his advocate. I was not recommended to his choice by any connection of principle or party, or even private friendship, and saying this I cannot but add, that I consider not to be acquainted with such a man as Mr. Rowan, a want of personal good fortune.

Gentlemen, upon this great subject of reform and emancipation, there is a latitude and boldness of remark, justifiable in the people, and necessary to the defence of Mr. Rowan, for which the habits of professional studies, and technical adherence to established forms, have rendered me unfit. It is however my duty, standing here as his advocate, to make some few observations to you, which I conceive to be material.

Gentlemen,

Gentlemen, you are sitting in a country, which has a right to the British constitution, and which is bound by an indissoluble union with the British nation. If you were now even at liberty to debate upon that subject; if you even were not by the most solemn compacts, founded upon the authority of your ancestors and of yourselves, bound to that alliance, and had an election now to make; in the present unhappy state of Europe, if you had been heretofore a stranger to Great Britain, you would now say, we will enter into society and union with you;

Una salus ambobus erit, commune periculum;

But to accomplish that union let me tell you, you must learn to become like the English people; it is vain to say, you will protect their freedom if you abandon your own. The pillar whose base has no foundation, can give no support to the dome under which its head is placed, and if you profess to give England that assistance which you refuse to yourselves, she will laugh at your folly, and despise your meanness and insincerity. Let us follow this a little further, I know you will interpret what I say with the candour in which it is spoken. England is marked by a natural avarice of freedom, which she is studious to engross and accumulate, but most unwilling to impart, whether from any necessity of her policy, or from her weakness, or from her pride, I will not presume to say, but that so is the fact, you need not look to the East, or to the West, you need only look to yourselves.

In order to confirm that observation, I would appeal to what fell from the learned counsel for the crown, that notwithstanding the alliance subsisting for two centuries past, between the two countries, the date of liberty in one goes no further back than the year 1784.

If it required additional confirmation, I should state the case of the invaded American, and the subjugated Indian, to prove that the policy of England has ever been to govern her connexions more as colonies, than as allies; and it must be owing to the great spirit indeed of Ireland if she shall continue free. Rely upon it she will ever have to hold her course against an adverse current; rely upon it if the popular spring does not continue strong and elastic, rely upon it, a short interval of debilitated nerve and broken force will send you down the stream again, and reassign you to the condition of a province.

If such should become the fate of your constitution, ask yourselves what must be the motive of your government? It is easier to govern a province by a faction, than to govern a co-ordinate country by co-ordinate means. I do not say it is now, but it will be always thought easiest by the managers of the day, to govern the Irish nation by the agency of such a faction, as long as this country shall be found willing to let her connexion with Great Britain be preserved only by her own degradation. In such a

precarious and wretched state of things, if it shall ever be found to exist, the true friend of Irish liberty, and British connexion, will see, that the only means of saving both must be, as Lord Chatham expressed it, the infusion of new health and blood into the constitution. He will see how deep a stake each country has in the liberty of the other; he will see what a bulwark he adds to the common cause, by giving England a co-ordinate, and co-interested ally, instead of an oppressed, enfeebled and suspected dependant; he will see how grossly the credulity of Britain is abused by those, who make her believe that her solid interest is promoted by our depression; he will see the desperate precipice to which she approaches by such a conduct, and with an animated and generous piety he will labour to avert her danger. But, gentlemen of the jury, what is likely to be his fate? The interest of the sovereign must be for ever the interest of his people, because his interest lives beyond his life, it must live in his fame, it must live in the tenderness of his solicitude for an unborn posterity; it must live in that heart attaching bond by which millions of men have united the destinies of themselves and their children with his, and call him by the endearing appellation of king and father of his people.

But what can be the interest of such a government as I have described? Not the interest of the king, not the interest of the people, but the sordid interest of the hour; the interest in deceiving the one, and in oppressing and deforming the other: the interest of unpunished rapine and unmerited favour: that odious and abject interest, that prompts them to extinguish public spirit in punishment or in bribe; and to pursue every man, even to death, who has sense to see, and integrity and firmness enough to abhor and to oppose them. What therefore I say, gentlemen, will be the fate of the man, who embarks in an enterprize of so much difficulty and danger? I will not answer it. Upon that hazard has my client put every thing that can be dear to man;—his fame, his fortune, his person, his liberty and his children; but with what event your verdict only can answer, and to that I refer your country.

Gentlemen, there is a fourth point remaining. Says this paper,
 “ For both these purposes, it appears necessary that provincial
 “ conventions should assemble preparatory to the convention of
 “ the Protestant people. The delegates of the Catholic body
 “ are not justified in communicating with individuals, or even
 “ bodies of inferior authority, and therefore an assembly of a similar
 “ nature and organization, is necessary to establish an intercourse
 “ of sentiment, an uniformity of conduct, an united cause and an
 “ united nation. If a convention on the one part does not soon
 “ follow, and is not soon connected with that on the other, the
 “ common cause will split into the partial interest; the people will
 “ relax into inattention and inertness; the union of affection
 “ and

“ and exertion will dissolve, and too probably some local infur-
 “ rection, instigated by the malignity of our common enemy,
 “ may commit the character and risque the tranquillity of the
 “ island, which can be obviated only by the influence of an
 “ assembly arising from, assimilated with the people, and whose
 “ spirit may be, as it were, knit with the soul of the nation,
 “ unless the sense of the Protestant people be on their part as
 “ fairly collected and as judiciously directed, unless individual ex-
 “ ertion consolidates into collective strength, unless the particles
 “ unite into mass, we may perhaps serve some person or
 “ some party for a little, but the public not at all; the nation is
 “ neither insolent, nor rebellious, nor seditious; while it knows
 “ its rights, it is unwilling to manifest its powers; it would ra-
 “ ther supplicate administration to anticipate revolution by well-
 “ timed reform, and to save their country in mercy to them-
 “ selves.”

Gentlemen, it is with something more than common reverence,
 it is with a species of terror that I am obliged to tread this
 ground.—But what is the idea put in the strongest point of view.
 —We are willing not to manifest our powers, but to supplicate
 administration, to anticipate revolution, that the legislature may
 save the country in mercy to itself.

Let me suggest to you gentlemen, that there are some cir-
 cumstances which have happened in the history of this country,
 that may better serve as a comment upon this part of the case
 than any I can make. I am not bound to defend Mr. Rowan as
 to the truth or wisdom of the opinions he may have formed. But
 if he did really conceive the situation of the country such as that
 the not redressing her grievances might lead to a convulsion, and
 of such an opinion not even Mr. Rowan is answerable here for
 the wisdom, much less shall I insinuate any idea of my own upon
 so awful a subject, but if he did so conceive the fact to be, and
 acted from the fair and honest suggestion of a mind anxious
 for the public good, I must confess, gentlemen, I do not know in
 what part of the British constitution to find the principle of his
 criminality.

But, gentlemen, be pleased further to consider, that he cannot
 be understood to put the fact on which he argues on the autho-
 rity of his assertion. The condition of Ireland was as open to
 the observation of every other man as to that of Mr. Rowan;
 what then does this part of the publication amount to? In my
 mind, simply to this: ‘ the nature of oppression in all countries
 ‘ is such that although it may be borne to a certain degree, it
 ‘ cannot be borne beyond that degree; you find it exemplified in
 ‘ Great Britain; you find the people of England patient to a
 ‘ certain point, but patient no longer. That infatuated monarch,
 ‘ James II. experienced this; the time did come, when the mea-
 ‘ sure of popular suffering and popular patience was full; when
 ‘ a single

‘ a single drop was sufficient to make the waters of bitterness to
 ‘ overflow. I think this measure in Ireland is brimful at pre-
 ‘ sent ; I think the state of representation of the people in par-
 ‘ liament is a grievance, I think the utter exclusion of three mil-
 ‘ lions of people is a grievance of that kind that the people are
 ‘ not likely long to endure, and the continuation of which may
 ‘ plunge the country into that state of despair which wrongs ex-
 ‘ asperated by perseverance never fail to produce.’ But to whom
 is even this language addressed? Not to the body of the people,
 on whose temper and moderation if once excited, perhaps not
 much confidence could be placed ; but to that authoritative
 body whose influence and power would have restrained the ex-
 cesses of the irritable and tumultuous ; and for that purpose ex-
 pressly does this publication address the volunteers. ‘ We are
 ‘ told that we are in danger ;—I call upon you, the great con-
 ‘ stitutional saviours of Ireland, defend the country to which you
 ‘ have given political existence, and use whatever sanction your
 ‘ great name, your sacred character, and the weight you have in
 ‘ the community, must give you to repress wicked designs, if any
 ‘ there are.

‘ We feel ourselves strong, the people are always strong, the
 ‘ public chains can only be rivetted by the public hands ; look to
 ‘ those devoted regions of Southern despotism, behold the ex-
 ‘ piring victim on his knees, presenting the javelin reeking with
 ‘ his blood to the ferocious monster who returns it into his heart.
 ‘ Call not that monster the tyrant, he is no more than the execu-
 ‘ tioner of that inhuman tyranny which the people practice upon
 ‘ themselves, and of which he is only reserved to be a later
 ‘ victim than the wretch he has sent before. Look to a nearer coun-
 ‘ try, where the sanguinary characters are more legible ; whence
 ‘ you almost hear the groans of death and torture. Do you
 ‘ ascribe the rapine and murder of France to the few names that
 ‘ we are execrating here ? or do you not see that it is the phrenzy
 ‘ of an infuriated multitude abusing its own strength, and prac-
 ‘ tising those hideous abominations upon itself. Against the vio-
 ‘ lence of this strength let your virtue and influence be our safe-
 ‘ guard.” What criminality, gentlemen of the jury, can you
 find in this ? what at any time ? But I ask you, peculiarly at this
 momentous period, what guilt can you find in it ? My client saw
 the scene of horror and blood which covers almost the face of
 Europe : he feared that causes, which he thought similar, might
 produce similar effects, and he seeks to avert those dangers by
 calling the united virtue and tried moderation of the country in-
 to a state of strength and vigilance. Yet this is the conduct
 which the prosecution of this day seeks to punish and stigmatize.
 And this is the language for which this paper is reprobated to-
 day, as tending to turn the hearts of the people against their so-
 vereign, and inviting them to overturn the constitution. Let us

now, gentlemen, consider the concluding part of this publication: it recommends a meeting of the people to deliberate on constitutional methods of redressing grievances. Upon this subject I am inclined to suspect that I have in my youth taken up crude ideas, not founded, perhaps, in law; but I did imagine that when the bill of rights restored the right of petitioning for the redress of grievances, it was understood that the people might boldly state among themselves that grievances did exist; that they might lawfully assemble themselves in such manner as they might deem most orderly and decorous. I thought I had collected it from the greatest luminaries of the law. The power of petitioning seemed to me to imply the right of assembling for the purpose of deliberation. The law requiring a petition to be presented by a limited number, seemed to me to admit that the petition might be prepared by any number whatever, provided, in doing so, they did not commit any breach or violation of the public peace. I know that there has been a law passed in the Irish parliament of last year, which may bring my former opinion into a merited want of authority. That law declares that no body of men may delegate a power to any smaller number, to act, think or petition for them. If that law had not passed I should have thought that the assembling by a delegated convention was recommended, in order to avoid the tumult and disorder of a promiscuous assembly of the whole mass of the people. I should have conceived before that act that any law to abridge the orderly appointment of the few to consult for the interest of the many, and thus force the many to consult by themselves or not at all, would in fact be a law not to restrain but to promote insurrection, but that law has spoken and my error must stand corrected. Of this, however, let me remind you, you are to try this part of the publication by what the law was then, not by what it is now. How was it understood until last session of parliament? You had both in England and Ireland, for the last ten years, these delegated meetings. The volunteers of Ireland, in 1782, met by delegation; they framed a plan of parliamentary reform; they presented it to the representative wisdom of the nation; it was not received, but no man ever dreamed that it was not the undoubted right of the subject to assemble in that manner. They assembled by delegation at Dungannon, and to shew the idea then entertained of the legality of their public conduct, that same body of volunteers was thanked by both houses of parliament, and their delegates most graciously received at the throne. The other day, you had delegated representatives of the Catholics of Ireland, publicly elected by the members of that persuasion, and sitting in convention in the heart of your capital, carrying on an actual treaty with the existing government, and under the eye of your own parliament, which was then assembled; you have seen the delegates from that convention, carry the complaints of their

grievances

grievances to the foot of the throne; from whence they brought back to that convention, the auspicious tidings of that redress which they had been refused at home.

Such gentlemen, have been the means of popular communication and discussion, which until the last session have been deemed legal in this country; as happily for the sister kingdom, they are yet considered there.

I do not complain of this act as any infraction of popular liberty; I should not think it becoming in me to express any complaint against a law, when once become such. I observe only, that one mode of popular deliberation is thereby taken utterly away, and you are reduced to a situation in which you never stood before. You are living in a country, where the constitution is rightly stated to be only ten years old; where the people have not the ordinary rudiments of education. It is a melancholy story, that the lower orders of the people here have less means of being enlightened than the same class of people in any other country. If there be no means left by which public measures can be canvassed, what will be the consequence? Where the press is free, and discussion unrestrained, the mind by the collision of intercourse, gets rid of its own asperities, a sort of insensible perspiration takes place, by which those acrimonies, which would otherwise fester and inflame, are quietly dissolved and dissipated. But now, if any aggregate assembly shall meet, they are censured; if a printer publishes their resolutions he is punished; rightly to be sure in both cases, for it has been lately done. If the people say, let us not create tumult, but meet in delegation, they cannot do it; if they are anxious to promote parliamentary reform, in that way, they cannot do it; the law of the last session has for the first time declared such meetings to be a crime. What then remains? Only the liberty of the press, that sacred palladium, which no influence, no power, no minister, no government, which nothing but the depravity, or folly, or corruption of a jury, can ever destroy. And what calamity are the people saved from, by having public communication left open to them? I will tell you, gentlemen, what they are saved from, and what the government is saved from; I will tell you also, to what both are exposed by shutting up that communication; in one case sedition speaks aloud, and walks abroad; the demagogue goes forth, the public eye is upon him, he frets his busy hour upon the stage, but soon either weariness, or bribe, or punishment, or disappointment bear him down, or drive him off, and he appears no more; in the other case, how does the work of sedition go forward? Night after night the muffled rebel steals forth in the dark, and casts another and another brand upon the pile, to which, when the hour of fatal maturity shall arrive, he will apply the flame. If you doubt of the horrid consequences of suppressing the effusion even of individual discontent, look to those enslaved countries where the protection
of

of despotism is supposed to be secured by such restraints, even the person of the despot there is never in safety. Neither the fears of the despot, nor the machinations of the slave have any slumber, the one anticipating the moment of peril, the other watching the opportunity of aggression. The fatal crisis is equally a surprise upon both; the decisive instant is precipitated without warning, by folly on the one side or by frenzy on the other, and there is no notice of the treason till the traitor acts. In those unfortunate countries (one cannot read it without horror) there are officers whose province it is, to have the water, which is to be drank by their rulers, sealed up in bottles, lest some wretched miscreant should throw poison into the draught.

But, gentlemen, if you wish for a nearer and more interesting example, you have it in the history of your own revolution; you have it at that memorable period, when the monarch found a servile acquiescence in the ministers of his folly, when the liberty of the press was trodden under foot, when venal sheriffs returned packed juries to carry into effect those fatal conspiracies of the few against the many; when the devoted benches of public justice were filled by some of those Foundlings of Fortune, who, overwhelmed in the torrent of corruption at an early period, lay at the bottom like drowned bodies, while soundness or sanity remained in them; but at length becoming buoyant by putrefaction, they rose as they rotted, and floated to the surface of the polluted stream, where they were drifted along, the objects of terror, and contagion, and abomination.

In that awful moment of a nation's travail, of the last gasp of tyranny, and the first breath of freedom, how pregnant is the example? The press extinguished, the people enslaved, and the prince undone.

As the advocate of society, therefore, of peace, of domestic liberty, and the lasting union of the two countries, I conjure you to guard the liberty of the press, that great sentinel of the state, that grand detector of public imposture: guard it, because when it sinks, there sinks with it, in one common grave, the liberty of the subject and the security of the crown.

Gentlemen, I am glad that this question has not been brought forward earlier; I rejoice for the sake of the court, of the jury, and of the public repose, that this question has not been brought forward till now. In Great Britain analogous circumstances have taken place. At the commencement of that unfortunate war which has deluged Europe with blood, the spirit of the English people was tremblingly alive to the terror of French principles; at that moment of general paroxysm, to accuse was to convict. The danger loomed larger to the public eye, from the misty medium through which it was surveyed. We measure inaccessible heights by the shadows which they project; where the lowness and the distance of the light form the length of the shade.

There is a sort of aspiring and adventurous credulity, which disdains assenting to obvious truths, and delights in catching at the improbability of circumstances, as its best ground of faith. To what other cause, gentlemen, can you ascribe that in the wise, the reflecting and the philosophic nation of Great Britain, a printer has been gravely found guilty of a libel, for publishing those resolutions, to which the present minister of that kingdom had actually subscribed his name? To what other cause can you ascribe, what in my mind is still more astonishing, in such a country as Scotland, a nation cast in the happy medium between the spiritless acquiescence of submissive poverty, and the sturdy credulity of pampered wealth; cool and ardent, adventurous and persevering; winning her eagle flight against the blaze of every science, with an eye that never winks, and a wing that never tires; crowned as she is with the spoils of every art, and decked with the wreath of every muse; from the deep and scrutinizing researches of her Humes, to the sweet and simple, but not less sublime and pathetic morality of her Burns—how from the bosom of a country like that, genius and character, and talents, should be banished to a distant barbarous soil; condemned to pine under the horrid communion of vulgar vice and base-born profligacy, for twice the period that ordinary calculation gives to the continuance of human life? But I will not further press any idea that is painful to me, and I am sure must be painful to you: I will only say, you have now an example, of which neither England nor Scotland had the advantage; you have the example of the panic, the infatuation and the contrition of both. It is now for you to decide whether you will profit by their experience of idle panic and idle regret, or whether you meanly prefer to palliate a servile imitation of their frailty, by a paltry affectation of their repentance. It is now for you to shew that you are not carried away by the same hectic delusions, to acts, of which no tears can wash away the fatal consequences, or the indelible reproach.

Gentlemen, I have been warning you by instances of public intellect suspended or obscured; let me rather excite you by the example of that intellect recovered and restored. In that case which Mr. Attorney General has cited himself, I mean that of the trial of Lambert in England, is there a topic of invective against constituted authorities; is there a topic of abuse against every department of British government, that you do not find in the most glowing and unqualified terms in that publication, for which the printer of it was prosecuted, and acquitted by an English jury? See too what a difference there is between the case of a man publishing his own opinion of facts, thinking that he is bound by duty to hazard the promulgation of them, and without the remotest hope of any personal advantage, and that of a man who makes publication his trade. And saying this, let me not be

be misunderstood; it is not my province to enter into any abstract defence of the opinions of any man upon public subjects. I do not affirmatively state to you that these grievances, which this paper supposes, do in fact exist; yet I cannot but say, that the movers of this prosecution have forced that question upon you. Their motives and their merits, like those of all accusers, are put in issue before you; and I need not tell you how strongly the motive and merits of any informer ought to influence the fate of his accusation.

I agree most implicitly with Mr. Attorney General, that nothing can be more criminal than an attempt to work a change in the government by armed force; and I entreat that the court will not suffer any expression of mine to be considered as giving encouragement or defence to any design to excite disaffection, to overawe or to overturn the government; but I put my client's case upon another ground—if he was led into an opinion of grievances where there were none, if he thought there ought to be a reform where none was necessary, he is answerable only for his intention. He can be answerable to you in the same way only that he is answerable to that God before whom the accuser, the accused, and the judge must appear together, that is, not for the clearness of his understanding, but for the purity of his heart.

Gentlemen, Mr. Attorney General has said, that Mr. Rowan did by this publication (supposing it to be his) recommend, under the name of equality, a general indiscriminate assumption of public rule by every the meanest person in the state. Low as we are in point of public information, there is not, I believe, any man, who thinks for a moment, that does not know, that all which the great body of the people, of any country, can have from any government, is a fair encouragement to their industry, and protection for the fruits of their labour. And there is scarcely any man, I believe, who does not know, that if a people could become so silly as to abandon their stations in society, under pretence of governing themselves, they would become the dupes and the victims of their own folly. But does this publication recommend any such infatuated abandonment, or any such desperate assumption? I will read the words which relate to that subject, “By liberty we never understood unlimited freedom, nor by equality the levelling of property or the destruction of subordination.” I ask you with what justice, upon what principle of common sense, you can charge a man with the publication of sentiments, the very reverse of what his words avow? and that, when there is no collateral evidence, where there is no foundation whatever, save those very words, by which his meaning can be ascertained? or if you do adopt an arbitrary principle of imputing to him *your* meaning instead of his own, what publication can be guiltless or safe? It is a sort of accusation

that I am ashamed and sorry to see introduced in a court acting on the principles of the British constitution.

In the bitterness of reproach it was said, 'out of thine own mouth will I condemn thee;' from the severity of justice I demand no more. See if in the words that have been spoken, you can find matter to acquit, or to condemn. "By liberty we never understood unlimited freedom, nor by equality the levelling of property, or the destruction of subordination.— This is a calumny invented by that faction or that gang, which misrepresents the king to the people, and the people to the king, traduces one half of the nation to cajole the other, and, by keeping up distrust and division, wishes to continue the proud arbitrators of the fortune and fate of Ireland." Here you find that meaning disclaimed as a calumny, which is artfully imputed as a crime.

I say therefore, gentlemen of the jury, as to the four parts into which the publication must be divided, I answer thus: it calls upon the volunteers. Consider the time, the danger, the authority of the prosecutors themselves for believing that danger to exist, the high character, the known moderation, the approved loyalty of that venerable institution, the similarity of the circumstances between the period at which they were summoned to take arms, and that in which they have been called upon to reassume them. Upon this simple ground, gentlemen, you will decide, whether this part of the publication was libellous and criminal or not.

As to reform, I could wish to have said nothing upon it, I believe I have said enough; if he thought the state required it, he acted like an honest man; for the rectitude of the opinion he was not answerable, he discharged his duty in telling the country that he thought so.

As to the emancipation of the Catholics, I cannot but say that Mr. Attorney General did very wisely in keeping clear of that. Yet gentlemen, I need not tell you how important a figure it was intended to make upon the scene, though from unlucky accidents, it has become necessary to expunge it during the rehearsal.

Of the concluding part of this publication, the convention which it recommends, I have spoken already. I wish not to trouble you with saying more upon it. I feel that I have already trespassed much upon your patience. In truth, upon a subject embracing such a variety of topics, a rigid observance either of conciseness or arrangement could perhaps scarcely be expected. It is however with pleasure I feel I am drawing to a close, and that only one question remains, to which I would beg your attention.

Whatever, gentlemen, may be your opinion of the meaning of this publication, there yet remains a great point for you
to

to decide upon: namely, whether, in point of fact, this publication be imputable to Mr. Rowan or not? Whether he did publish it or not? And two witnesses are called to that fact, one of the name of Lyfter, and the other of the name of Morton. You must have observed that Morton gave no evidence upon which that paper could have even been read; he produced no paper, he identified no paper, he said that he got some paper, but that he had given it away. So that, in point of law, there was no evidence given by him, on which it could have gone to a jury, and, therefore, it turns entirely upon the evidence of the other witness. He has stated that he went to a public meeting, in a place where there was a gallery crowded with spectators; and that he there got a printed paper, the same which has been read to you. I know you are well acquainted with the fact, that the credit of every witness must be considered by, and rest with the jury. They are the sovereign judges of that, and I will not insult your feelings, by insisting on the caution with which you should watch the testimony of a witness that seeks to affect the liberty, or property, or character of your fellow citizens. Under what circumstances does this evidence come before you? The witness says he has got a commission in the army by the interest of a lady, from a person then high in administration. He told you that he made a memorandum upon the back of that paper, it being his general custom, when he got such papers, to make an indorsement upon them; that he did this from mere fancy; that he had no intention of giving any evidence on the subject; he "took it with no such view." There is something whimsical enough in this curious story. Put his credit upon the positive evidence adduced to his character. Who he is I know not, I know not the man; but his credit is impeached. Mr. Blake was called, he said he knew him. I asked him, "do you think, Sir, that Mr. Lyfter is or is not a man deserving credit upon his oath?" If you find a verdict of conviction, it can be only upon the credit of Mr. Lyfter. What said Mr. Blake? Did he tell you that he believed he was a man to be believed upon his oath? He did not attempt to say that he was. The best he could say was, that he would hesitate. Do you believe Blake? Have you the same opinion of Lyfter's testimony that Mr. Blake has? Do you know Lyfter, if you do know him, and know that he is credible, your knowledge should not be shaken by the doubts of any man. But if you do not know him, you must take his credit from an unimpeached witness, swearing that he would hesitate to believe him. In my mind there is a circumstance of the strongest nature that came out from Lyfter on the table. I am aware that a most respectable man, if impeached by surprize, may not be prepared to repel a wanton calumny by contrary testimony. But was Lyfter unapprized of this attack upon him? What said he? 'I knew that
' you

‘ you had Blake to examine against me, you have brought him here for that purpose.’ He knew the very witness that was to be produced against him, he knew that his credit was impeached, and yet he produced no person to support that credit. What said Mr. Smyth, “ From my knowledge of him I would not believe him upon his oath.”

Mr. ATTORNEY GENERAL.—I beg pardon, but I must set Mr. Curran right. Mr. Lyster said he had heard Blake would be here, but not in time to prepare himself.

Mr. CURRAN.—But what said Mrs. Hatchell? Was the production of that witness a surprize upon Mr. Lyster? Her cross examination shews the fact to be the contrary. The learned counsel, you see, was perfectly apprized of a chain of private circumstances, to which he pointed his questions. Did he know these circumstances, by inspiration? No; they could come only from Lyster himself. I insist, therefore, the gentleman knew his character was to be impeached, his counsel knew it, and not a single witness has been produced to support it; then consider, gentlemen, upon what ground you can find a verdict of conviction against my client, when the only witness produced to the fact of publication is impeached, without even an attempt to defend his character. Many hundreds, he said, were at that meeting, why not produce one of them to swear to the fact of such a meeting? One he has ventured to name, but he was certainly very safe in naming a person, who he has told you is not in the kingdom, and could not therefore be called to confront him.

Gentlemen, let me suggest another observation or two. If still you have any doubt as to the guilt or innocence of the defendant, give me leave to suggest to you what circumstances you ought to consider, in order to found your verdict: You should consider the character of the person accused, and in this your task is easy. I will venture to say, there is not a man in this nation, more known than the gentleman who is the subject of this prosecution, not only by the part he has taken in public concerns, and which he has taken in common with many, but still more so, by that extraordinary sympathy for human affliction, which, I am sorry to think, he shares with so small a number. There is not a day that you hear the cries of your starving manufacturers in your streets, that you do not also see the advocate of their sufferings—that you do not see his honest and manly figure, with uncovered head, soliciting for their relief, searching the frozen heart of charity, for every string that can be touched by compassion, and urging the force of every argument and every motive, save that which his modesty suppresses—the authority of his own generous example. Or if you see him not there, you may trace his steps to the private

vate abode of disease and famine and despair, the messenger of heaven, bearing with him food and medicine and consolation. Are these the materials, of which you suppose anarchy and public rapine to be formed? Is this the man, on whom to fasten the abominable charge of goading on a frantic populace to mutiny and bloodshed? Is this the man likely to apostatize from every principle that can bind him to the state; his birth, his property, his education, his character and his children? Let me tell you, gentlemen of the jury, if you agree with his prosecutors, in thinking that there ought to be a sacrifice of such a man, on such an occasion; and upon the credit of such evidence, you are to convict him—never did you, never can you give a sentence, consigning any man to public punishment with less danger to his person or to his fame: For where could the hireling be found to fling contumely or ingratitude at his head, whose private distresses he had not laboured to alleviate, or whose public condition he had not laboured to improve.

I cannot, however, avoid adverting to a circumstance that distinguishes the case of Mr. Rowan, from that of a late sacrifice in a neighbouring kingdom.

The severer law of that country, it seems, and happy for them that it should, enables them to remove from their sight the victim of their infatuation;—the more merciful spirit of our law deprives you of that consolation; his sufferings must remain for ever before your eyes, a continual call upon your shame and your remorse. But those sufferings will do more; they will not rest satisfied with your unavailing contrition, they will challenge the great and paramount inquest of society, the man will be weighed against the charge, the witness and the sentence; and impartial justice will demand, why has an Irish jury done this deed? the moment he ceases to be regarded as a criminal, he becomes of necessity an accuser; and let me ask you, what can your most zealous defenders be prepared to answer to such a charge? When your sentence shall have sent him forth to that stage, which guilt alone can render infamous; let me tell you, he will not be like a little statue upon a mighty pedestal, diminishing by elevation; but he will stand a striking and imposing object upon a monument, which, if it does not, and it cannot, record the atrocity of his crime, must record the atrocity of his conviction. And upon this subject, credit me when I say, that I am still more anxious for you, than I can possibly be for him. I cannot but feel the peculiarity of your situation. Not the jury of his own choice, which the law of England allows, but which ours refuses: collected in that box by a person, certainly no friend to Mr. Rowan, certainly not very deeply interested in giving him a very impartial jury. Feeling this, as I am persuaded you do, you cannot be surprized, however you may be distressed at the mournful presage, with which an anxious public is led to
fear

fear the worst from your possible determination. But I will not, for the justice and honour of our common country, suffer my mind to be borne away by such melancholy anticipation, I will not relinquish the confidence that this day will be the period of his sufferings; and, however mercilessly he has been hitherto pursued, that your verdict will send him home to the arms of his family, and the wishes of his country. But if, which heaven forbid, it hath still been unfortunately determined, that because he has not bent to power and authority, because he would not bow down before the golden calf and worship it, he is to be bound and cast into the furnace; I do trust in God, that there is a redeeming spirit in the constitution, which will be seen to walk with the sufferer through the flames, and to preserve him unhurt by the conflagration.

[After Mr. *Curran* had concluded, there was another universal burst of applause through the court and hall, for some minutes, which was again silenced by the interference of Lord *Clanmell*.]

MR. ATTORNEY GENERAL.—*My Lords!* It is Mr. Prime Serjeant's duty to speak to the evidence, but as Mr. *Curran* has let fall some things to make an impression not barely upon those who surround us, I must be excused in stating some facts known to no human being but myself. It has been stated that this was an oppressive prosecution, and that oppression has been intended by the delay. Now, I do aver that the instructions he has received are false; that I received no instructions of the sort from government, and no government could think of prevailing with me in such a measure. I feel within myself, that no man could ask me such a thing twice in the office I hold. Let the jury consider the fact as it is, let them consider the evidence, and God forbid! they should be influenced by any thing but the evidence. Mr. *Curran* states that oppression is practised—I am responsible to the court for my conduct here, and if I have carried on this prosecution with oppression, I am responsible to the country. Let this gentleman, if he thinks he has been oppressed, call me to punishment—let me be a disgrace in the eye of the country, and let me be driven from that profession, in which I have so long been honoured. The facts are these;—the accusation against Mr. ROWAN was made in the month of December, 1792, he was arrested in January following, and brought before Mr. Justice DOWNES and discharged upon bail. The information was filed in Hilary term; as soon as it was possible by the rules of the court, Mr. ROWAN pleaded, and the *venire* issued, I do protest with a *bonâ fide* intention to try Mr. ROWAN: After that an error was found in the record, though it had been compared before; the error was this; in the
record

record the words were "*We would do*" so and so; in the publication it was "*Would we do*" so and so. As soon as that error was discovered, notice was given that the trial could not come forward, and the witnesses were dismissed. In Trinity term application was made to issue the *venire*, and it appeared from the RECORDER, that he was aware of the defects; I am above concealing any thing, I admit he did offer to waive any objection to the error and go to trial directly. I asked Mr. Kemmis, "are the witnesses gone out of town?"—"They are gone to Galway." I was therefore obliged to refuse the offer, but entered a *Noli prosequi* and filed a new information. Mr. ROWAN put his plea upon the file, and in Michaelmas term I applied for a trial. There were several trials at bar appointed, and the court refused, in consequence of the business before them, to try it in that term; and appointed it for this term. These are the facts which I think it my duty to mention, and have no more to say upon the subject, but will leave the case entirely to the jury, whose verdict will not be influenced by such topics as have been thrown out.

Mr. CURRAN.—Mr. Attorney, I could not know the circumstance you mention, of your witnesses being gone out of town.

ATTORNEY GENERAL.—It was impossible you should.*

Mr.

* In the latter end of December, 1792, Mr. Rowan was arrested by virtue of Mr. Justice Downes's warrant, on a charge of distributing a seditious paper.—Mr. Justice Downes having assured Mr. Rowan, that the examinations, upon which the warrant was grounded, would be returned to the Clerk of the Crown, and that they would, he supposed, be in course by him laid before the next term grand jury, Mr. Rowan, instead of going to jail, in pursuance of his own opinion, followed the advice of his law friends, and gave bail for his appearance in the King's Bench, to answer such charges as should be there made against him. During the succeeding Hilary term, Mr. Rowan daily attended in the King's Bench, and on the last day of that term, finding that no examinations had been laid before the grand jury against him, he applied, by counsel, to the court, that the examinations should be forthwith returned, particularly as Mr. Attorney General had, in the course of the term, filed two informations *ex officio* against him, the one for the same alledged offence of distributing a seditious paper, and the other for a seditious conspiracy; whereupon, Mr. Justice Downes, who was on the bench, having asserted that he had on the first day of the term, returned the examinations to the Clerk of the Crown, and the Clerk of the Crown having said that from the multiplicity of examinations returned to him on the first day of the term, in the course of the term, and even on that day, he had not had time to look them over, the court refused to make any order. Mr. Rowan daily attended the King's Bench in the following Easter Term, until the same was nearly spent, and finding that no bills were sent up to the Grand Jury against him, he moved the court, by counsel, that the recognizance entered into by him and his bail, should be vacated, and publicly declared that if this motion was not granted, he would surrender himself in discharge

Mr. PRIME SERJEANT.—Wearied and exhausted as you, my lords, and gentlemen of the jury, must be at this late hour, I yet feel it my duty to trespass a short time upon you, in a prosecution which the Attorney General has been obliged to institute: Gentlemen, I say *obliged*, because prosecution is painful to him, as well as to those who act with him. The infliction of punishment is disagreeable to the court, but in our public duty these weaknesses must give way. There is justice due to the public; my learn-

ed

of his bail. The Attorney General consenting, the motion was granted, and the recognizance was vacated.

[It may not be improper here to state, that the above examinations having charged Mr James Napper Tandy with distributing a seditious paper equally with Mr. Rowan, he likewise gave bail; but not having appeared in court pursuant to his recognizance, it was estreated, green wax process issued against the bail, and the amount of the recognizance levied from them, though no bill of indictment, grounded on these examinations, was ever preferred against him, and though his absence was notoriously on another account.]

In the above mentioned Easter Term, a motion was made, on behalf of Mr. Rowan, to fix certain days for trial of the informations filed *ex officio* against him, and the Attorney General having agreed to the appointment of two days in the ensuing Trinity Term, *viz.* the 3d and 7th days of May, those days were accordingly appointed for the purpose. However, in the Easter vacation, the Attorney General served a notice on Mr. Rowan, that he would not proceed to trial on those days, and would apply to the court to appoint other days, grounded on an affidavit to be filed, of which notice would be given: nothing was done upon this notice, and no affidavit was filed, or motion made thereon, and the *venire*, the process necessary for impannelling juries on the days appointed, having been, after being issued, kept by Mr. Kemmis, the crown solicitor, instead of being delivered to the sheriff, a motion was made, on behalf of Mr. Rowan, in the last Trinity Term, that the *venire* should be delivered to the proper officer, in order, that the trials might be had on the days appointed, in case the court should not grant any motion the Attorney General might make for postponing the trials. This motion was opposed by the Attorney General—he declared, that there was error in the information for distributing a seditious paper. Mr. Rowan offered to agree to an immediate amendment of the Information, or that a fresh one should be filed and pleaded to *instanter*, or that he would release all errors;—all these offers were severally refused. The object of the Attorney General appeared to be to postpone the trials, and though only one of the informations was stated to be informal, yet the day appointed for the trial of the other, which was supposed to be formal, passed away without trial, equally with the day appointed for the trial of the one which was stated to be informal. The Attorney General afterwards withdrew the information stated to have been informal, and filed another in the stead thereof. Many of Mr. Rowan's friends suspected, that the motive for postponing the trials was the expectation of having, under the shrievalty of Mr. Giffard, juries more favourable to government prosecutions, than they could entertain any hopes of having during the shrievalty of Mr. Hutton. In Micheltmas Term last, the Attorney General applied to the court, that a day should be appointed for the trial of the information for distributing a seditious paper; the court would not appoint a day in that term, but appointed a day for the trial of that information in Hilary Term

ed friend is the advocate of justice to the public, not of persecution against the defendant. There is no man, who recollects the period at which this publication came out, too notorious and shameful to be forgotten, who must not have thought it highly proper to bring the publisher to a legal trial. To the exertions of government, at that time, it is to be attributed that the trial by jury still subsists among us, and that he has not been before now tried at another court; that the King's Bench has not been superseded by a *Revolutionary Tribunal*; and that my learned friend has not, ere now, made room for the Public Accuser. The defendant must think it fortunate that he is tried according to established law, and defended by counsel of his own election, and before a jury, bound by a solemn appeal to God, to find according to the evidence given to them, notwithstanding that disgraceful situation in which it has been stated they will be held, if they presume to find a verdict of conviction. I feel no danger that this jury can be intimidated by apprehensions, or influenced by prejudice. My learned friend and I have been represented as instruments of oppression against the gentleman at the bar. I consider it as the talk of the moment, because his learned counsel little knows us, if he thinks us capable of acting so abominable a part; he could not mean it in the extent to which it reaches the common ear. I can consider it only as the splendid effusion of his talents; he was anxious to lead you, gentlemen, from that which was the true object of consideration. You have been told, the defendant was prosecuted because he published an invitation to the volunteers, entered into the discussion of a reform and Catholic emancipation, and endeavoured to have a national convention assembled. I will tell the jury it is not a prosecution upon any one of these grounds; but a prosecution, because these subjects were thrown before the public in a paper crammed with libellous and seditious matter, calculated to inflame. These measures, which were sought after, should be procured by the power of reason and not by an intimidation of the legislature. Little does the defendant's counsel know me, if he thinks I could prosecute a man for calling upon the volunteers to suppress domestic tumult or resist a foreign foe; these are the subjects to which he calls your attention, totally evading the offensive matter in the publication. Gentlemen, the questions which you are to try are these:

Term following, *viz.* the 29th January last. After Mr. Rowan had received his sentence, being desirous of having the information for a seditious conspiracy also tried and disposed of, he instructed his counsel to move for the appointment of a day for the purpose; and the counsel having mentioned to the Attorney General such his instruction, the Attorney General said, that it was not his intention to proceed upon that information, and that he had been prevented only by a press of business from withdrawing it, but would without further delay, and accordingly the Attorney General has since entered a *noli prosequi* as to that information.

Was this matter published? Is it a libel? And was the intention criminal? Can he desire more? If it was not published, if it be not libellous and the intention was not criminal, I agree that the defendant ought to be acquitted; and if the jury acquit him after a fair and candid discussion of the case, no man will be more satisfied than I shall. But if, without such a consideration, a jury, in times of distraction and disorder should, acquit the factious, I agree with the gentleman, that the world would bear hard upon a jury, who from fear or favour betrayed that situation in which the law and the constitution placed them.

Let me now, gentlemen, take that place which it is my duty to take, and which the gentleman on the other side, I suppose from address, so lightly touched upon. I shall reverse the order he adopted. The first question then is, "Whether the publication of this libel was by the defendant?" If there be a man, entertaining a doubt after the evidence stated, it is in vain for me to address him: In support of the fact of publication Mr. *Lyster* has been examined; he states that, upon the day of the publication of the paper, he was passing through Cope-street, in this city, and seeing a great crowd at the house of Mr. *Pardon*, he went there to know what the object of the meeting was; he says, that on going to the door he saw Mr. *Rowan*, who prevented him from going to that part where the assembly was, saying he could not be let in with coloured clothes: afterwards he went up to the gallery: a bundle of papers was brought, some were thrown upon the table, and some handed up to the gallery, and this particular paper which he produced was thrown from a parcel which Mr. *Hamilton Rowan* had in his hand. The witness got this paper, which was thus for the first time put into circulation: he gave an account of the manner in which this matter was communicated to the Crown Solicitor. The witness was questioned much as to family matters, with a view to impeach his character, but it has had a contrary effect, for the matter was submitted to reference, and the authenticity of the instrument under which his brother claimed, has been established, and some hundreds awarded, one shilling of which would not have been given if they believed the instrument to be forged. When he was interrogated as to these matters, he said he heard, this day, that Mr. *Blake* was to be examined to impeach his character, "If I knew it before, said he, I could have had witnesses from the country to support me." But when Mr. *Blake* was called, did he in any respect whatever impeach the character of Mr. *Lyster*? he would not say that Mr. *Lyster* was not to be believed. What then must you think, when resort has been had to distant counties to find witnesses to impeach the character of Mr. *Lyster*, and out of the 150 men assembled in Cope-street, no one has been brought forward to deny the fact which has been sworn

sworn to? Will the jury believe that if the fact could be controverted, men would not come forward with emulation to acquit Mr. ROWAN? I there join with his counsel: he is far above bringing any man forward to swear that which is not the fact; he would not purchase an acquittal by such means, and therefore it is, gentlemen, that you have not witnesses to prove he was not there, or to prove he was inactive upon the occasion.

The next witness, gentlemen, was Mr. *Morton*: he goes in direct confirmation of every thing sworn to by *Lyster*, though he does not prove the same individual paper; but he remembered hearing the words of such another paper read, it began with the words, "*Citizen soldiers, to arms!*" This evidence, though not decisive of itself as to the identity of the paper, is corroborative of the testimony of *Lyster*, and shews that Mr. ROWAN was there. Thus stands the evidence as to the publication. Can any man doubt that this paper was published by Mr. ROWAN? It is not necessary for me to tell you what is a publication in point of law, as to writing or printing; but putting it into circulation is a publication in law and fact. I forgot to take notice of the other impotent attempts to impeach the credit of Mr. *Lyster* by the evidence of *Smyth*, who could not prove any thing; and the evidence of an unfortunate woman, between whose daughter and Mr. *Lyster*'s brother there had been some attachment. But that I leave as matter of law to your lordships to state to the jury. Thus stands the evidence; and with regard to the publication, if I were upon the jury, no earthly consideration could induce me not to give a verdict of conviction.

I shall now beg leave to call your attention to the publication itself. It is charged in the information that it was designed to overthrow the government, to overawe the legislature, to create tumult and disorder; there are paragraphs in the paper to warrant every charge contained in the information, which is, in point of law, sufficiently sustained. If there be a single paragraph of this paper to warrant the jury to draw this conclusion, that it was intended to throw the government into disgrace, to excite the subjects to make alterations in the government by force, to excite them to tumult, to overawe the legislature by an armed force; if, I say, there is a single paragraph in this paper, from which you can draw that inference, it sufficiently proves the subject matter of the information. The gentleman concerned for the defendant read, from the account of a trial, what an English jury did in the case of the *Morning Chronicle*, as an example for an Irish jury, as if that was to bind you upon your oaths; and yet what was the case? The jury thought that a printer, endeavouring to get his bread, was not as guilty as the person composing the libel, and that the former did not distribute it with any malicious view.

view. But suppose 500 juries found such a verdict, are you to follow their example? I am wishing to take up the distinction made by the defendant's counsel and my learned friend in the prosecution. If this paper had rested with the invitation of the volunteers to arms, he never would have instituted this prosecution upon that account. As in the case in England, Lord KENYON said, "there may be much innocent matter in the publication, but *latet, anguis in herbâ*, there may be much to censure." But here is a publication teeming with faction, tumult, and sedition; it is impossible to suppose it was intended for the old volunteers, it comes from the Society of *United Irishmen*. The first words have been passed over by the defendant's counsel, but they shew at once the wicked adoption of French principles and French language. Is there any man who does not know that at that period, the French revolutionists universally adopted the expression of "*Citizens*." This paper begins, "*Citizen soldiers, you first took up arms to protect your country from foreign enemies and domestic disturbance; for the same purposes it now becomes necessary that you should resume them.*" It is not confined to summoning the volunteers to protect their country, it calls them to political discussion: was this a period for such proceedings? "*A proclamation has been issued in England for embodying the Militia, and a proclamation has been issued by the Lord Lieutenant and Council in Ireland, for repressing all seditious associations; in consequence of both these proclamations it is reasonable to apprehend danger from abroad and danger at home. For whence but from apprehended danger are those menacing preparations for war drawn through the streets of this capital? or whence if not to create that internal commotion which was not found, to shake that credit which was not affected, to blast that volunteer honour which was hitherto inviolate.*" Gentlemen, was public credit affected or not? Was there a man at that time who could reckon upon the security of his house for a night? "*Are those terrible suggestions and rumours and whispers that meet us at every corner, and agitate at least our old men, our women, and our children. Whatever be the motive, or from whatever quarter it arises, alarm has arisen; and you volunteers of Ireland are therefore summoned to arms at the instance of government, as well as by the responsibility attached to your character, and the permanent obligations of your institution.*" If this were a real invitation to the volunteers, it would endeavour to reconcile them to government. They were called upon to defend, to stand or fall with the constitution, which they had, so much to their honour, exerted themselves to establish. But here follows a direct insinuation calculated to excite jealousy between the government and them. "*We will not at this day condescend to quote authorities for the right of having and of using arms, but we will cry aloud, even amidst the storm raised by the witch-craft of a procla-*"

"mation;"

“*mation.*” Is that a peaceable invitation to the volunteers?
 “*that to your formation was owing the peace and protection of*
 “*this island, to your relaxation has been owing its relapse into*
 “*impotence and insignificance*”; here the country is represented
 to be in such a state, that every man is called upon to rescue
 it from insignificance; “*to your renovation must be owing its*
 “*future freedom and its present tranquility; you are there-*
 “*fore summoned to arms, in order to preserve your country in*
 “*that guarded quiet which may secure it from external hosti-*
 “*lity, and to maintain that internal regimen throughout the land*
 “*which, superseding a notorious police or a suspected militia,*
 “*may preserve the blessings of peace by a vigilant preparation for*
 “*war.*”—This is a peaceable, quiet invitation to the Volunteers,
 setting them against the legalized establishments of the country,
 and against that measure which was in agitation.

It is called a *suspected* militia. The establishment of a great
 constitutional force, a militia, will be soon experienced to be of ad-
 vantage to the kingdom, and not an oppression; but too fatal
 have been the consequences of decrying it; opposition was given
 to the militia law, and numbers have fallen sacrifices to their
 error. It is nothing less than an order to the army to disband;
 that body of men to whom we owe the safety of the state, are
 told they are not to be entrusted.—“*Citizen soldiers, to arms,*
 “*take up the shield of freedom and the pledges of peace—peace,*
 “*the motive and end of your virtuous institution—war, an occa-*
 “*sional duty, ought never to be made an occupation; every man*
 “*should become a soldier in the defence of his rights; no man*
 “*ought to continue a soldier for offending the rights of others;*
 “*the sacrifice of life in the service of our country is a duty*
 “*much too honourable to be intrusted to mercenaries.*” In
 another paragraph it says, “*By liberty we never understood un-*
 “*limited freedom, nor by equality the levelling of property or*
 “*the destruction of subordination; this is a calumny invented by*
 “*that faction, or that gang, which misrepresents the King to*
 “*the people, and the people to the King.*” What is the
 meaning of this paragraph? it was unintelligible to me, un-
 til I heard the argument of the counsel; he did fairly avow it to
 be the government of this country, that a gang was formed to
 preserve themselves in power; otherwise indeed it is the most
 rank nonsense and ribaldry that ever fell from the pen of
 man; it seems to be a French idea, to excite tumult in the
 whole body of the people. The publication goes on and says—
 “*Here we sit without mace or beadle, neither a mystery nor a*
 “*craft, nor a corporation—in four words lies all our power,*
 “**UNIVERSAL EMANCIPATION AND REPRES-**
 “**TATIVE LEGISLATURE;** yet we are confident that on
 “*the pivot of this principle, a convention, still less a society,*
 “*less still a single man, will be able first to move and then to raise the*
 “*world. We therefore wish for Catholic emancipation, without any*
 “*modification,*

“ modification, but still we consider this necessary enfranchisement as
 “ merely the portal to the temple of national freedom; wide as
 “ this entrance is—wide enough to admit three millions—it is nar-
 “ row when compared to the capacity and comprehension of our
 “ beloved principle, which takes in every individual of the
 “ Irish nation, casts an equal eye over the whole island, em-
 “ braces all that think, and feels for all that suffer. The Catholic
 “ cause is subordinate to our cause, and included in it; for, as
 “ United Irishmen, we adhere to no sect but to society—to no
 “ creed but Christianity—to no party but the whole people.
 “ In the sincerity of our souls do we desire Catholic emancipation;
 “ but were it obtained to-morrow, to-morrow would we go on, as
 “ we do to-day, in the pursuit of that reform, which would
 “ still be wanting to ratify their liberties as well as our own.

Here the libel recommends an emancipation to the Catholics, as a colourable pretence for accomplishing their other schemes.

“ For both these purposes,” says it, “ it appears necessary that
 “ provincial conventions should assemble preparatory to the conven-
 “ tion of the Protestant people. The delegates of the Catholic
 “ body are not justified in communicating with individuals, or
 “ even bodies of inferior authority, and therefore an assembly
 “ of a similar nature and organization,” Here the very terms
 made use of by the French revolutionists are again adopted in
 this publication—he says, “ organization is necessary to establish
 “ an intercourse of sentiment, an uniformity of conduct, an united
 “ cause and an united nation.”

In the subsequent paragraph, the author enforces the necessity
 of the speedy meeting of conventions.—“ If,” says he, “ a
 “ convention on the one part does not soon follow, and is not soon
 “ connected with that on the other, the common cause will split into
 “ the partial interest; the people will relax into inattention and
 “ inertness; the union of affection and exertion will dissolve; and
 “ too probably some local insurrections, instigated by the malignity
 “ of our common enemy, may commit the character and risque
 “ the tranquility of the island, which can be obviated only by
 “ the influence of an assembly arising from, assimilated with the
 “ people, and whose spirit may be, as it were, knit with the
 “ soul of the nation—unless the sense of the Protestant people be,
 “ on their part, as fairly collected and as judiciously directed; un-
 “ less individual exertion consolidates into collective strength; un-
 “ less the particles unite into mass, we may perhaps serve
 “ some person or some party for a little, but the public not at all.”

Does this mean to give the fullest dominion to the whole body of
 the people, to overawe the governing executive power? Gentle-
 men, the mass of the people is to be collected after the French
 manner, and bear down all before them. French doctrines were to
 be carried into execution. Are those the innocent examination
 of claims and the discussion of great political subjects? To what
 part of the discussion was it necessary to tell the army, that

“ seduction made them soldiers ?” Was it necessary for the deliberation of that great question, the emancipation of the Catholics of Ireland, to say to the army, *“ seduction made them soldiers, but nature made them men ?”* The words are, *“ We now address you as citizens, for to be citizens you became soldiers, nor can we help wishing that all soldiers partaking the passions and interest of the people would remember, that they were once citizens, that seduction made them soldiers, but ‘ Nature made them men.’* I say gentlemen, where was the necessity of telling the army, that seduction made them soldiers? Was it necessary to detach them from their duty, for the purposes which this publication intended to accomplish? You are told that their whole creed, their whole system *“ lay in four words, UNIVERSAL EMAN- CIPATION AND REPRESENTATIVE LEGISLA- TURE.”* I say, without universal slavery there cannot be universal emancipation, and without the ruin of that constitution, the panegyric upon which produced such a burst of applause in favour of the learned counsel, there cannot be a representative legislature. The legislative authority consists of King, Lords and Commons.—But they must have an elected king, and elected nobles to answer their ideas of representative legislature. I am unwilling to state the seditiousness of this libel farther: but there is another paragraph that deserves to be considered, it says, *“ The nation is neither insolent, nor rebellious, nor seditious; while it knows its rights, it is unwilling to manifest its powers; it would rather supplicate administration to anticipate revolution by a well-timed reform, and to save their country in mercy to themselves.”* Here the government of this country was called upon to yield to this reform, to anticipate revolution, and save this country in mercy to themselves. The peaceable language of discussion! Can you read this publication and say it was not the intention of the publisher to intimidate and overawe the government of this country? The people are invited to arms to catch a revolution by force, and then the government is called upon to anticipate the revolution by a reform. Is this the peaceable discussion for which the counsel contend? Or is this the freedom of the press, for which I would go as far as any man. Here the libel appoints a particular day for the convention to meet; it says *“ The 15th of February approaches—a day ever memorable in the annals of this country, as the birth day of New Ireland; let parochial meetings be held as soon as possible; let each parish return delegates; let the sense of Ulster be again declared from Dungannon, on a day auspicious to union, peace and freedom, and the spirit of the North will again become the spirit of the nation. The civil assembly ought to claim the attendance of the military associations.”* Here the military associations were particularly called on to attend the civil assembly at Dungannon: Was it for the purpose of giving weight to their resolutions? Was it for the purpose of sending their resolutions

to parliament, backed by the people in arms? It was a national convention to be attended by a national guard. This was the object of this publication as it strikes me; the very able manner in which it was gone through by my learned friend, makes it unnecessary for me to dwell upon it, least I should weaken the force of his remarks. If you are satisfied of the fact that Mr. Rowan did publish the instrument in question, then you will consider whether that publication, was likely to produce the effects mentioned in the information, and you will decide whether the publication was an innocent or a criminal one? I will agree it is matter for your consideration what was the immediate effect of publishing this libel? Immediately after it was read, some copies of it were thrown out to the mob in the street, who called out for more of them, and more of them were thrown out. Here is a fact, which if you believe, is of considerable weight. Gentlemen, in this case there has been no justification, nothing has been said to palliate the publication. You will decide on the matter of this libel, and whether it was published with an innocent intention, or with that seditious view charged in the information.

Gentlemen of the jury, in any case where a man kills another, it is *prima facie* evidence of malice, but it admits of proof to shew the manner in which it was done, and whether the party accused killed the person with a felonious intent, or whether the killing was by accident, and not done with any intention of taking away the life of the party. The allusion comes home; here is a libel, and unless it is shewn by excuse or justification, that it can be qualified, the law will say it is libellous.

In the present case, the learned counsel on the part of the defendant has endeavoured to fet your hearts and passions against your consciences and judgments, by representing that the liberty of the press would be destroyed by a verdict against the defendant; but I appeal to the authority to which he appealed to shew what the liberty of the press is, "It is employed as the sentinel
" to alarm us; we should take care it is not abused and convert-
" ed into a traitor; the instant it degenerates into licentiousness
" it must be punished." That is an opinion to which every man must subscribe, and which should be as lasting as the constitution itself. Gentlemen, I have trespassed too long upon your patience; if you can reconcile it to your oaths, that Mr. ROWAN did not publish this paper, or that it does not contain any matter libellous, no man will be better pleased at an acquittal than I shall. But on the other hand, I conjure you by your oaths, that uninfluenced by power or prejudice, favour or affection, you discharge your duty to God, your country, and yourselves.

Earl CLONMELL, *Lord Chief Justice*.—Gentlemen of the Jury. At this late hour, it is some relief to the bench and myself that
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the learned gentlemen of the bar, on both sides, have so ably spoken in this case, that it is not now necessary for me to be very prolix or voluminous in my observations. I shall therefore, for your convenience and that of the bench, contract my observations within as short a space as, in the discharge of my duty, I think I ought to do. Before I go into the particulars or give any opinion upon the publication, I think it my duty to state and fully apprize you of a statute which passed the last session of parliament in this kingdom, by which it is declared and enacted, that upon all trials by indictment or information, (which, if it wanted it, is an additional solemnization of this mode of trial) where issue is joined, as in the present case, for making or publishing any libel, the jury may give a verdict of guilty or not, upon the whole matter put in issue, and shall not be required or directed, by the court, to find guilty merely upon proof of publication, provided the court shall, according to their discretion, give their opinion upon the matter in issue, in like manner as in other criminal cases. I shall endeavour, as far as I can, to conform to the spirit and words of the law. You had the power to do so before, perhaps you had the right; this act of parliament is a legislative exposition of that right, and you will exercise it as becomes you. Though the evidence is not long or complicated, yet the paper is both long and complicated, therefore I will adopt that order which has been made by the bar, and class my observations under four heads, being the leading objects complained of in this information:

1st. The making the government odious by endeavouring to disparage and degrade it.

2d. To render the people discontented, not only with the government, but the constitution.

3d. To solicit the people to take up arms, to intimidate the legislature.

4th. Endeavouring, by tumult and by force, to make alterations in the constitution and government, and overturn them both.

Gentlemen, every thing which I shall say to you, will fall under one of these heads. The information, of which I have an abstract in my hand, is that ARCHIBALD HAMILTON ROWAN, maliciously designing and intending to excite and diffuse among the subjects of this realm, discontents, jealousies, and suspicions of our lord the king and his government, and to raise dangerous seditions within this kingdom of Ireland, and to draw it into scandal and disgrace, and to incite the subjects of our said lord the king to attempt by force and violence to make alterations in the state and constitution, and to excite the subjects of our said lord the king to overturn the established constitution of this kingdom, and to intimidate the legislature of this kingdom.

by an armed force, on the 16th of December, in the 32^d year of the king, in the county of the city of Dublin, wickedly, seditiously, and maliciously, did publish a libel of and concerning the government of this kingdom, according to the tenour and effect following:—“ *Society of United Irishmen to the volunteers of Ireland,*” &c. They state themselves to be a self-created body; they state it vauntingly, they say they have no authority save that of reason, they have no authority in the state. I will therefore consider the language of this paper as that of a body not known to the constitution, calling upon the *subjects* at large, though they scorn to call them so. Let me bring to your minds, that one gentleman thought the address was to a new created body of volunteers; another gentleman thought it was addressed to the original and respectable volunteers; take it either way, if addressed to the new created volunteers, it was for the purposes of sedition, and if to the old original volunteers, it would be still more dangerous if they were to succeed with them in altering the constitution by force. It is stated, “ *William Drennan, President. Archibald Hamilton Rowan, Secretary.*” This is a strong presumption that Mr. ROWAN was acquainted with every part of the paper; it professes upon the face of it that he was secretary of this society. I shall come, by and by, to the question of publication; if he published it, there does arise a presumption that he knew what he published: I go no farther with that observation. He says, “ *Citizen soldiers, you first took up arms to protect your country from foreign enemies, and from domestic disturbances. For the same purposes it now becomes necessary that you should resume them.*” Citizen soldiers, you first took up arms, that is, in my judgment, you took them up originally for these two purposes, it now becomes necessary you should resume them for those purposes. “ *A proclamation has been issued in England for embodying the militia, and one in Ireland for repressing seditious associations. In consequence of both these proclamations, it is reasonable to apprehend danger from abroad and danger at home.*” The printed paper has been proved and read; it says, “ *For whence but from apprehended danger, are those menacing preparations for war drawn through the streets of this capital, (inuendo, meaning the city of Dublin) or whence if not to create that internal commotion which was not found, to shake that credit which was not affected, to blast that volunteer honour which was hitherto inviolate.*” In my opinion these words fall directly within one of those heads I have stated, as rendering odious to the king’s subjects the proclamation as insincere and hypocritical, as creating internal commotions, which it intended to restrain, and that embarrassment, which was not found; that it went further to the ruin of the country, shaking the credit which was not affected, and blasting the volunteer honour which was hitherto inviolate; as if it was said to

be blasted by the executive government. This was, in my mind, a charge of having created disorder, not before existing, of shaking the credit of the country contrary to the duty of government; and blasting that volunteer honour, which until this instrument appeared never was violated. It is charging them, in my opinion, as insidiously as the meanest mind can conceive, in a most vital part, the peace and the credit of the country. Whether it was calculated to inflame the minds of the subjects, will be for your consideration, on your oaths. It says, "*There were rumours and suggestions which agitated our old men, our women, and children.*" What is that? Why, this is all an imposition of government, they wanted to frighten you by a bugbear, "*Whatever be the motive, or from whatever quarter it arises, alarm has arisen; and you, Volunteers of Ireland, are therefore summoned to arms at the instance of government, as well as by the responsibility attached to your character, and the permanent obligations of your institution.*" Here was another imputation upon government; they have raised apprehensions and summoned these persons to take up arms. It goes on and says, "*We will not at this day quote authorities for the right of using arms; but we will cry aloud even amidst the storm raised by the witchcraft of a proclamation.*" "*We will cry aloud in the storm.*" Where or how was it raised? It says, "*By the witchcraft of a proclamation.*" Here was an imputation charged upon the proclamations of government, as raising a storm in the country. It says, "*To your formation was owing the peace and protection of this island, to your relaxation has been owing its relapse into impotence and insignificance;*" that is, when you were in arms this island was protected and in peace, and appeared to be of consideration; to your relaxation has been owing its impotence and insignificance, therefore it can only be raised again into importance by your taking up arms. If that is the impression of this paragraph, you will consider whether this is a libel upon the government or not. It was a publication not only to the people of this kingdom, but to all the enemies of this nation, saying that this country was in a state of impotence and insignificance. It goes on and says, "*That to your renovation must be owing its future freedom and its present tranquility. You are therefore summoned to arms, in order to preserve your country in that guarded quiet, which may secure it from external hostility, and to maintain that internal regimen throughout the land, which superseding a notorious police or a suspected militia, may preserve the blessings of peace by a vigilant preparation for war.*" It is impossible in a work of this kind, were it twice as libellous as it is, if it could be so, that it should not be mixed with some professions, some parts better than others; it must profess something to be received. But it complains of a police and a militia that is suspected. It says, if you do not supersede a police and

and militia, you cannot preserve the blessings of peace. I say, therefore, in my opinion, no words can be more inflammatory than these are. You are charging the police as an evil sort of an establishment; it is called a "notorious police," and the militia as consisting of persons proper to be suspected, not to be confided in. It says, "*You must preserve the blessings of peace by a vigilant preparation for war. Citizen Soldiers, to arms! take up the shield of freedom and the pledges of peace.*" What does that say? *Your arms* only are the shield of freedom and pledges of peace; therefore take up arms. "*Peace the motive and end of your virtuous institution. War, an occasional duty, ought never to be made an occupation. Every man should become a soldier in defence of his rights.*" Was it necessary to call them together; if their rights were not attacked, why invite them to collect themselves to defend that right. It says, "*No man ought to continue a soldier for offending the rights of others. The sacrifice of life in the service of our country is a duty much too honourable to be entrusted to mercenaries.*" They assume, or endeavour to assume, the power of the sword, and degrading the king's forces from that power with which they are entrusted, it says, the duty we suggest is too honourable for mercenaries: Is not this saying, do not trust to the military, and at that time when by public authority it was declared that the country was in danger. The volunteers, in that paper, were called upon to stand to their arms. Every expression of solicitation and stimulation is used. The volunteers were called upon to resume their arms; the nation was impotent and insignificant without it. Citizens to arms! you are summoned to arms: take up arms in spite of a notorious police and a suspected militia, and in spite of two proclamations. You are to do your duty to preserve good order in your vicinage, in spite of a police and fencible militia, for they resist peace, and you are to do your duty in spite of those constituted authorities, and the phrase is varied, you are invited by the proclamation, that is, this proclamation has done as much mischief as those men they condemn. "*It is only by the military array of men in whom they confide, whom they have been accustomed to revere as guardians of domestic peace, the protectors of their liberties and lives, that the present agitation of the people can be stilled, that tumult and licentiousness can be repressed, obedience secured to existing law, and a calm confidence diffused through the public mind, in the speedy resurrection of a free constitution, of liberty and of equality,—words which we use for an opportunity of repelling calumny.*" That is, it is only by a military array of men you can have a Free Constitution; that is as much as to say, *the people of Ireland have not a Free Constitution.* Whether that be the meaning of the paper, as charged in the information, will be for your consideration. The words Liberty and Equality are introduced

introduced for an opportunity, say they, of repelling calumny; Where did it come from? Why did the Society find it necessary to repel it? How did they repel it? By the words Liberty and Equality, which they think proper to explain in this way.

“ By liberty we never understood unlimited freedom, nor by equality, the levelling of property or the destruction of subordination. This is a calumny invented by that faction, or that gang, which misrepresents the king to the people, and the people to the king; trades one half of the nation to cajole the other, and by keeping up distrust and division, wishes to continue the proud arbitrators of the fortune and fate of Ireland.” Here, he says, a *Faction* or *Gang* misrepresents the king to the people. Is not this an aspersion, endeavouring to render the governing power odious? What is this gang which he says misrepresents the king to the people? I leave you to determine. Why is the misrepresentation? The paper insinuates for the purposes of power which they abuse. *“ Liberty is the exercise of all our rights, natural and political, secured to us and our posterity by a real representation of the people; and equality is the extension of the constituent to the fullest dimensions of the constitution, of the elective franchise to the whole body of the people, to the end that government, which is collective power, may be guided by collective will.”*

These are terms, gentlemen, which you may probably understand, tho' they are conveyed in an unascertained and declamatory stile. —Gentlemen of the jury, at the time that the qualification of a voter to give his suffrage to a candidate for a seat in parliament was originally ascertained, forty shillings was equivalent then, as it is calculated, to forty pounds of our present currency; from the time of Henry I. to Queen Anne, the value of money had advanced in a ratio of one to twelve; from that time to this it has been as one to twenty; so that a man then having an estate of twenty shillings a year was equal to a man's having an estate of twenty pounds of our present money. The elective franchise never was in the *whole* body of the people in Great Britain or Ireland.* It says, *“ That legislation may originate from public reason, keep pace with public improvement, and terminate in public happiness.—If our constitution be imperfect, nothing but a reform in representation will rectify its abuses.”* In figurative abstracted expressions it is not easy to ascertain the meaning; although you have an impression of the object. This may be a very innocent proposition; but to me it may be a very wicked one, when applied to be obtained in the manner here pointed out: it says, *“ nothing but a Reform will rectify its abuses—nothing but a Reform will perpetuate its blessings; ”*—and then it goes on and says, *“ We now address you as Citizens,”* &c.—Not a word of *subjects* from beginning to end—that is a word driven out of fashion, at least in this publication—*“ Seduction made*

* Vide Prynne Brev. Parl. red. p. 187. & 2 Whitelock p. 90. *contra.*

“ *them soldiers, but nature made them men.*” What had this charge to the soldiers to do with a parliamentary reform? I quarrel not with the composition, it is not my duty, but in my mind here is a direct charge upon the military, that they were imposed upon, that seduction had made them soldiers. The sword is put into the hands of the sovereign, he is vested with it by the constitution, and yet this paper says, it was made an instrument of seduction. “ *We address you without any authority, save that of reason, and if we obtain the coincidence of public opinion, it is neither by force nor stratagem, for we have no power to terrify, no artifice to cajole, no fund to seduce—here we sit without mace or beadle, neither a mystery, nor a craft, nor a corporation.*”

Here they acknowledge they had no proper authority to call the people to arms, which they assume to do by that publication; they avow that this society did make no corporate body or legal authority. They add “ *In four words lies all our power, UNIVER-* “ *SAL EMANCIPATION and REPRESENTATIVE LE-* “ *GISLATURE. Yet we are confident that on the pivot of this principle, a convention, still less a society, less still a single man, will be able first to move and then to raise the world.*” I rest here a little to consider what idea this writer must have of the power of the paper, when a single man will be able first to move and then to raise the world; one of the charges is, that this paper intended to stir the people to arms, it is an admission here, a profession, a vaunt, that the society, nay less, a single man, may move and then raise the world; the expression is not one kingdom, but to raise *the world*. If any thing like it has happened, it is a miserable consideration. “ *We therefore wish for Catholic emancipation without any modification, but still we consider this necessary enfranchisement as merely the portal to the temple of national freedom; wide as this entrance is—wide enough to admit three millions, it is narrow, when compared to the capacity and comprehension of our beloved principle, which takes in every individual of the Irish nation.*” It is but a portal to freedom: what, unqualified emancipation!—It is for you to consider what the beloved principle is. Emancipating three millions is opening a portal—what portal? one which takes in every individual of the Irish nation—where? into power, into the elective franchise; it embraces all that think, and feels for all that suffer. “ *The Catholic cause is subordinate to our cause, and included in it, for as United Irishmen, we adhere to no sect but to society, to no creed but christianity, to no party but the whole people. In the sincerity of our souls do we desire Catholic emancipation: but were it obtained to-morrow, to-morrow would we go on, as we do to-day, in the pursuit of that reform which would still be wanting to ratify their liberties as well as our own.*” You, Roman Catholics, emancipated to-morrow, will not stop as, we will go on, and unless you go on with us, it will not be sufficient to establish your liberty. “ *For both these purposes, it appears necessary that provincial conventions should assemble prepa-* “ *ratory*

" ratory to the convention of the Protestant people. The delegates
 " of the Catholic body are not justified in communicating with indi-
 " viduals, or even bodies of inferior authority, and therefore an
 " assembly of a similar nature and organization is necessary to esta-
 " blish an intercourse of sentiment, an uniformity of conduct, an
 " united cause, and an united nation. If a convention on the
 " one part does not soon follow, and is not soon connected with that
 " on the other, the common cause will split into the partial interest ;
 " the people will relax into inattention and inertness, the union of
 " affection and exertion will dissolve, and too probably some local
 " insurrection, instigated by the malignity of our common enemy, may
 " commit the character and risque the tranquility of the island,
 " which can be obviated only by the influence of an assembly arising
 " from, assimilated with the people, and whose spirit may be, as it
 " were, knit with the soul of the nation : unless the sense of the Pro-
 " testant people be, on their part, as fairly collected and as judici-
 " ously directed, unless individual exertion consolidates into collective
 " strength, unless the particles unite into mass, we may perhaps serve
 " some person, or some party for a little, but the public not at all :
 " the nation is neither insolent, nor rebellious, nor seditious ; while
 " it knows its rights it is unwilling to manifest its powers ; it would
 " rather supplicate administration to anticipate revolution by a well-
 " timed reform, and to save their country in mercy to themselves."

Gentlemen, this last paragraph is a menace ; for if the pro-
 posal made is not accepted, a revolution is threatened. The
 paper in question proceeds in the following words : " The 15th
 " of February approaches, a day ever memorable in the annals of
 " this country as the birth-day of New Ireland ; let parochial meet-
 " ings be held as soon as possible ; let each parish return delegates.
 " Let the sense of Ulster be again declared from Dungannon, on a
 " day auspicious to union, peace and freedom, and the spirit of the
 " North will again become the spirit of the nation. The civil assembly
 " ought to claim the attention of the military associations." The civil
 assembly was to be attended by military forces ; was not the inten-
 tion to alter the constitution ? " We have addressed you, citizen sol-
 " diers, on this subject, from a belief that your body, uniting conviction
 " with zeal, and zeal with activity, may have much influence over
 " your countrymen, your relations and friends." Armed citizens
 was the favourite object that was to be gained ; it says, " We
 " presume not at present to fill up the plan or pre-occupy the mode
 " of its execution, we have thought it our duty to speak.—Answer
 " us by actions. You have taken time for consideration. Four-
 " teen long years are elapsed since the rise of your associations."—
 This part is very material, it says to the people, " take up
 " your arms," and it says, " answer us by actions." What
 are the actions of men in arms ? Armed associations will support the
 different meetings. We have spoken out to you ; answer us with
 your actions. " Fourteen long years are elapsed since the rise of your
 M " associations ;

“ associations ; and in 1782 did you imagine that in 1792 this nation
 “ would still remain unrepresented ? How many nations, in this in-
 “ terval, have gotten the start of Ireland ?” How far Ireland has
 been backward in the number of good subjects, have they asked ?
 No. The question here is, how many nations have gotten the
 start of Ireland ? What is meant by this start ? What nations
 are there, that have in fourteen years advanced more than our-
 selves in happiness ? None. What actions of other nations
 would that publication recommend to Ireland to follow ? It con-
 cludes with this sentence ; “ How many of our countrymen have
 “ sunk into the grave ?” Gentlemen, I have gone through the
 paper mentioned in the information, and made such observa-
 tions as I thought necessary. I do, as it is my duty, tell you,
 that I think it deserves the appellations given to it by the in-
 formation. I take it to be a scandalous and seditious libel ; but
 that is my opinion only. Gentlemen of the jury, it is you who
 are to decide this question, whether you think it is a scandalous
 or seditious libel ? the verdict will be yours, and not mine.

Gentlemen, in order to support this prosecution, the first wit-
 nefs that was produced is *John Lyster* ; he told you (*here his
 lordship stated the testimony of Lyster, as given upon his direct exa-
 mination.*) On his cross examination he gave an account of the
 manner in which he communicated this matter to Mr. Kemmis,
 the Crown Solicitor ; said he would communicate to him what
 he knew ; produced the paper that was read in part by Mr.
 ROWAN. Said he did not know where Mr. ROWAN stopt read-
 ing. Says he, the witness, did not purchase his commission as
 ensign in the army ; got it through the interest of Lady HOBART,
 his relation. The witness attested two bonds, there was an issue
 directed to try whether those bonds were genuine. Was asked
 whether he was examined as a witness at that trial ; believes he
 was examined as a witness ; the issue was tryed before Mr. Jus-
 tice BORD ; there was an award of 200*l.* out of 800*l.* Says
 Mr. *Lambert* filed a bill against him, about a note for 147*l.* which
Peter Hamilton passed to witness. Attempts were made to im-
 peach the credit of this witness upon three or four grounds :
 1st, He was a witness to the bonds which were alledged to have
 been forged—an unfair transaction. 2d, That he got the note
 from a person alledged to have been insane. 3d, That he had
 got a commission. 4th, That it was not probable he made
 this memorandum. I can only say, he has given a rational
 account of this business ; but it is your duty to judge of his
 credit ; it is my duty to make observations, which it is your
 duty to reject if they are not well founded. He says he is an
 ensign in the 40th regiment. He got the commission through
 the interest of a relation ; and it appears the arbitrators did
 give his brother since, part of the demand, by which, if it
 weighed a feather in the case, they thought the bond was not
 a forgery

a forgery. Says it was usual to take memorandums on getting papers of this kind. Says there was about 150 or 200 volunteers in the room. Was *LYSTER's* evidence not satisfactory to you, he was the only witness to this great part of the case. This observation has been made: "What! 150 persons present, and not one of them comes forward to attest the innocence of Mr. *ROWAN!*"*

* * * * *

But the next witness does, in my apprehension, as far as he goes, confirm every word said by *Lyster*. *Morton* says, he saw numbers of persons in the room doing some business at the table. Saw Mr. *TANDY* and Mr. *ROWAN* in the room. The witness had seen them before that day. He identified Mr. *ROWAN* in court. He appeared to take an active part in the business. Witness got admission into the gallery. He saw a bundle of papers on the table, several were distributed to the mob in the street, who called out for more. The witness got a paper, which he gave to a person who said he had lost it. Witness said he heard part of a paper read, containing the words "*Citizen Soldiers, to arms.*" If it stood upon this man's evidence, here was not evidence of publication; and if it rested upon him alone, you should acquit the defendant; but as corroborating the testimony of *Lyster*, it is very material. If the counsel for the defendant intended to discredit the witnesses for the prosecution, they have failed. A gentleman from Galway, a Mr. *Blake*, was produced, who says he now lives in Dublin, gave his evidence as to *Lyster*, which I shall come to by-and-by. *Morton's* credit was not questioned. *Morton*, on his cross-examination, said, he was an apprentice to a gold-beater—Believes the persons he saw at the room in Copestreet were in the uniform of the old volunteers—Is sure he saw Mr. *ROWAN* there—Some of the persons wore scarlet with different coloured facings—witness said he could see from the gallery what was done at the table. He gave the paper, the day he received it, to a person in the house where the Dublin Journal is printed. The paper was then read which I have stated to you, and you have heard so much of. Here the prosecution was rested. On the part of the defendant was produced Mr. *Francis Blake*, to shew that *John Lyster* was a person not to be credited upon his oath. Mr. *Blake* was asked whether *Lyster* was a man to be believed upon his oath; he answered he could not say he is not to be believed upon his oath; but he would hesitate. The witness was produced to shew that

* The editor is here under a necessity of introducing an hiatus, the printer having refused to print this part according to the notes furnished to him by the editor.

Lyster should not be believed upon his oath, but *Blake* said no such thing. In a question, whether the oath of one man ought to be received, where another man swears he ought not to be believed upon his oath; then you would have one man's oath against another. The credit of *Lyster* is not affected by what *Mr. Smith* the second witness has said. The third witness to this point was *Mrs. Hatchell*; she said she knew *John Lyster*; she was asked whether he was to be believed upon his oath? she said, according to her opinion, he was not to be believed upon his oath—She said the witness, *John*, had prevailed on his brother to quit his wife, and said he was married to another woman, which was not truth—said she heard declarations from *John's* elder brother, and that was one of the reasons why she said the witness, *John*, ought not to be believed upon his oath. In the usual course of evidence no proof has been adduced to prove that the witness *Lyster* ought not to be believed upon his oath.

Gentlemen of the jury, I think this is the evidence on both sides, as correctly as I have been able to take it. As to the fact of publication, it is my duty to tell you, there is very strong evidence that *Mr. Rowan* did publish that paper, and did publish it knowing what he published, and as to the other matter, whether it is a libel, I have told you I thought the matter libellous—libellous in the extreme; I now tell you, that is my opinion. If you, upon the whole matter, believe, upon your oaths, that *Mr. Rowan* published the paper, and with the criminal intention stated in the information, and for the purposes ascribed to him, you ought to find him guilty, for I think the paper entitled to, and deserves the appellation annexed to it—it is a seditious libel. If you believe he did not publish it; if you disbelieve the evidences which have been uncontradicted; if you believe he published it by *mistake* or *ignorance*, not meaning to publish this paper, which might happen, but of which there is not a tittle of evidence in this case, you will find him not guilty. I will state this direction in other words; if you find him guilty, it must be, because you believe in your consciences he published it, and that you believe the innuendos are true; meaning, as well as you understand this paper, reading it separately or collectively together, that he published it with a criminal intention; that is, adopting its sense and meaning. If you acquit him, it must be, because you do not believe he published it, or that he did not mean to adopt its sense and meaning. I must tell you, his thinking it not mischievous, is not a reason why you should acquit him. His thinking he was doing right, if you believe the intention of the paper was to raise forces to intimidate the legislature, which is the great object complained of, though he was thinking he was right to accomplish his object by every means, will not be an excuse; that

that would lead to the acquittal of every felon upon earth. If a man was accused of a felony, and he thought he was doing a right thing to murder his neighbour, thinking he was doing a right thing would be no excuse to him. If the defendant's object was merely a reform in parliament, yet if he endeavoured by force, or by illegal means, to obtain it, you ought to find him guilty. I have stated the facts, and made such observations as occur to me to be necessary—I have stated the point of crimination, and I now leave to you to dispose of the question; and have not the least doubt you will do as becomes you. If I have been defective, I shall be corrected by my brethren, whom you will hear with pleasure and information.

The Honourable Mr. JUSTICE BOYD.—Gentlemen of the Jury. My Lord CLONMELL has so fully stated the information, it is not necessary for me to repeat it. With regard to his observations, I adopt them every one in the same degree of latitude in which he delivered them: I think the paper deserves the appellation in the information; it is a false, scandalous, and malicious libel. My Lord CLONMELL mentioned an act of parliament which was made upon its being thought the judges went too far in former cases, it gives you power to decide on questions of this kind, whether libel or not; you are to give your opinion upon the whole of the matter, and therefore you are not bound to find according to our direction. My opinion concurs with Lord CLONMELL's, that the paper is a libel. If you, gentlemen of the jury, are of a different opinion, you are not bound to go by the opinion of the court, in point of law, in a case of libel. You have heard the evidence, and the first question which arises is, whether there was any publication of this paper by Mr. ROWAN? If you are of opinion, that Mr. ROWAN did not publish the paper in question, you must acquit him. If you think it is not a libel, even though he did publish it, you ought to acquit him. If he published it by mistake or ignorantly, that is a ground for acquittal. But his own opinion of what he thought right, even in obtaining the emancipation of the Catholics, or a parliamentary reform by force of arms; however laudable he thought himself, the intention of the publication was a criminal one, and in that case you ought to find him guilty.

The Honourable Mr. JUSTICE DOWNES.—Gentlemen of the Jury. The few words I shall trouble you with, will be in concurrence with what you have heard from the rest of the court. The fact of publication depends upon the evidence you have heard, and the degree of credit you will give to the witness. I agree in the observations upon *Lyster's* testimony, no degree of difficulty occurs in contradicting him, if what he said was false. If you do believe that *Lyster* deserves credit, the publication of this paper is proved to have been made, industriously, by the defendant

defendant, knowing its contents; and under such circumstances as, I should not hesitate to say, adopted its contents. If you believe it was published under these circumstances which you have heard, it will be for your consideration to determine, whether it be a libel, and with what intent it was published? I concur in the observations upon its contents, and I am unable to read it without being of opinion that the tendency of this paper is to excite to arms the persons to whom it was addressed, and for the purpose of making alterations in the government of this kingdom, as charged in the introductory part of the information. If you believe the account of the mode of publication given by *Lyster*, and believe the defendant adopted this paper as his act, you are to look for the intent upon the paper itself, and on which you are to decide. If you believe that the general tendency of it was to excite tumult in the country, and to call to arms any description of men, no doubt can be entertained, that it is libellous, and it must be imputed to the defendant, he having given no evidence of a contrary intention. To attempt to effect by force any alteration in the constitution of the country, or to overawe the legislature by force—any such act of force would be High Treason; and to publish a paper to excite people to do such an act, no man can doubt is a libel. If you do think such was the tendency of the paper in question, you cannot hesitate to find the defendant guilty. There was no evidence to shew the tendency of the paper was of a contrary nature. The intentions of the publisher are deducible from the paper itself; if it was the purpose of the publisher of the paper to attain an alteration in the state by force, it was a criminal intention, however desirable the alteration might be supposed to be, or whether the object sought for was in itself right, or not. I will not trouble you any farther. I have given the case the best consideration I am able. You will decide upon it according to your oaths, and I have no doubt the defendant will have every justice in your hands.

The jury withdrew, taking with them the printed paper which had been read in court, and in about ten minutes returned, and brought in their verdict,

WE FIND ARCHIBALD HAMILTON ROWAN—*GUILTY*.*

LORD CLONMELL.—Do the counsel for the defendant desire four days time to move in arrest of judgment?

* When this verdict was first brought in, there was a loud clap of approbation commenced in the outer hall, it is presumed from a misconception that the jury had acquitted the defendant; for when the verdict was repeated, and the word *guilty*, sufficiently stressed, the clap was changed into hootings, and hissings, and groans, that lasted with very little remission, during the remainder of the sitting of the court.

Mr. CURRAN.—The only instructions I have from my client are to disclaim any application of that kind: he does not wish to take advantage of errors in the record, if any there be, but is now ready to attend to receive what sentence the court may be pleased to pronounce.

Lord CLONMELL.—(After conferring with the other judges) We will not pronounce judgment till four days.—Mr. Sheriff, take care of your prisoner.

The counsel for Mr. *Rowan* here objected, that he was not a prisoner—he had not been in custody—he had not given bail upon this information—he was bound in no recognizance—was served with no process—he had appeared to the information by attorney;—he pleaded by attorney—the issue was tried after the manner of a civil action, a word merely of the record being read, and the defendant was not given in charge to the jury as the practice is, where he appears in custody. Mr. ROWAN attended the trial, it is true, but the court had no judicial cognizance of him; the information could have been tried in his absence—he attended as a common auditor, and the witness being called upon to point him out at the desire of the bench, might have been a satisfaction to them to see that the witnesses were speaking of the same person, but it was altogether unprecedented in such cases as the present. Mr. ROWAN was ready for sentence—he claims no indulgence—does not insist upon the four day rule; but if the court, for their own accommodation, choose to defer the sentence for four days, they have no legal authority for sending Mr. ROWAN to prison, until sentence pronounced, or the usual and accustomed process issued against him.

Lord CLONMELL.—If the Attorney General consents, I have no objection.

The Attorney General had left court, and the Solicitor for the Crown remained silent.

Lord CLONMELL.—The defendant is a convict, as such he is a prisoner—the law must have its course. Adjourn the court.

Accordingly the court was adjourned.

Mr. ROWAN was conveyed to the New Prison, attended by both the Sheriffs, and a formidable array of horse and foot guards.

MONDAY,

MONDAY, FEBRUARY 3, 1794.

A *Habeas Corpus*, grounded on the affidavit of Mr. Matthew Dowling, Mr. Rowan's Solicitor, was granted to bring up John Coultrey, confined in Newgate for debt, to swear an affidavit; Mr. Rowan was also ordered up for the same purpose; when their affidavits, together with those of William Porter, John William Atkinson, and Francis Clarke, were sworn.

Mr. RECORDER moved the court to set aside the verdict obtained on Wednesday last and grant a new trial in this cause, pursuant to a notice served on Mr. Attorney General, and grounded on these affidavits, the contents of which he set forth.

Mr. ATTORNEY GENERAL, having after some time come into court, moved the court to appoint a day to have Mr. Rowan brought up for judgment.

Lord CLONMELL appointed to-morrow, and at the same time acquainted the Attorney General with the Recorder's motion, and the nature of the affidavits.

The ATTORNEY GENERAL then desired to have them read; which they were as follows:

*The King, at the prosecution of
the Right Honourable Ar-
thur Wolfe, his Majesty's
Attorney General,*
AGAINST
Archibald Hamilton Rowan.

WILLIAM PORTER of the city of Dublin, Printer, maketh oath, that since the commencement of the prosecution in this cause, and previous to the trial had on Wednesday last, he this deponent had a conversation with George Perrin, of Castle-street, in the city of Dublin, Bookseller, in the course of which the said George Perrin declared to this deponent, that this country and its trade never could flourish until Napper Tandy and Hamilton Rowan were transported or hanged, or words to that effect: and deponent was much astonished and concerned, recollecting the declaration made, when he discovered that the said George Perrin had been one of the jury who tried the said defendant, and found him guilty of the misdemeanour in this cause.

WILLIAM PORTER.

Sworn in court this third day of
February, 1794.

CARMICHAEL and BRADSHAW, D. C. C.

*The King, at the prosecution of
the Right Honourable Ar-
thur Wolfe, his Majesty's
Attorney General,*

AGAINST

Archibald Hamilton Rowan.

JOHN WILLIAM ATKIN-
SON, of Skinner-row, in the city
of Dublin, Watch-maker, maketh
oath, that some time in the month
of August last past, as deponent best
recollects the time, on the morning
after the night whereon some illu-

minations had been made upon the event of the capitulation of Valenciennes, this deponent had some conversation with George Perrin, of Castle-street, Bookseller, respecting the volunteers of Ireland; in the course of which the name of Archibald Hamilton Rowan, the defendant, with several others, was frequently mentioned; and the said George Perrin did, upon that occasion, utter a good deal of acrimonious and disparaging language and observations against the body of volunteers in general, and against the said Archibald Hamilton Rowan in particular, with several others; and the said George Perrin did then, upon that occasion, also say that they (meaning as deponent well understood and is convinced) the said Archibald Hamilton Rowan, with several others, deserved and ought to be hanged. Deponent saith he is credibly informed, and verily believes, that the said George Perrin was one of the jury who on Wednesday night last found the said Archibald Hamilton Rowan guilty of the misdemeanour in this case.

JOHN WILLIAM ATKINSON.

Sworn in court the third day of
February, 1794.

CARMICHAEL and BRADSHAW, D. C. C.

*The King, at the prosecution of
the Right Honourable Ar-
thur Wolfe, his Majesty's
Attorney General,*

AGAINST

Archibald Hamilton Rowan.

JAMES COULTRY, of the city
of Dublin, Gentleman, maketh
oath, that he has known John Lyf-
ter, who appeared and gave evidence
on the trial in this cause on Wed-
nesday last, as deponent is cre-
dibly informed and believes, and

saith, that from his own knowledge, the said John Lyfter ought not to be credited upon his oath in a court of justice; in as much as this deponent saw the said John Lyfter take a false oath upon the holy Evangelists, stating that a horse or mare his property, which was seized for debt, was the property of George William Lyfter, and not the property of any other person whatsoever; and deponent saith that he the said John did personate his said brother George William Lyfter, and impose
N himself

himself on a magistrate of the city of Dublin in that name; and that under the character and in the name of the said George he the said John did take the said false oath, although the said George was then labouring under a wound, unable to leave his bed; which oath he took in a deliberate, cool manner, notwithstanding deponent had previously remonstrated in a particular manner upon the enormity and danger of his doing so; and deponent further saith, that shortly after the time said John Lyfter took the said false oath as aforesaid, he received a letter from a man of reputation, resident in the neighbourhood of the country where said John Lyfter and his two brothers, Thomas and George Lyfter, had lived; by which letter deponent was informed, and which he verily believes to be true, the said Thomas Lyfter had made an affidavit in the country, precisely contradicting, upon his oath, the fact sworn to by John in the name of George, as the said Thomas swore said horse was his particular property, sworn to as aforesaid, in Dublin, by the said John Lyfter;—and which two affidavits deponent has frequently seen.

JAMES COULTRY.

Sworn in court the third day of
February, 1794.

A. CARMICHAEL.

The King, at the prosecution of } FRANCIS CLARKE, of Den-
the Right Honourable Ar- } mark-street, in the city of Dublin,
thur Wolfe, his Majesty's } Peruke-maker, maketh oath, that
Attorney General, } he is well acquainted with John
} Lyfter, the person who, as depo-
} nent is credibly informed and be-
} lieves, appeared and gave evidence
Archibald Hamilton Rowan. } on Wednesday last, in this case,
} on behalf of the prosecutor; and deponent saith that, from his
} own knowledge, the said John Lyfter ought not to be credited
} on his oath, in a court of justice, as this deponent has known the
} said John Lyfter to have perjured himself; for deponent saith
} that having been well acquainted with the said John Lyfter for
} five or six years past, during which time the said John Lyfter had
} been frequently in the house and shop of deponent, and during
} which time deponent had constantly dressed his hair: about three
} years ago, or upwards, upon deponent having caused the said
} John Lyfter to have been summoned to the Court of Conscience
} for a small sum of money due deponent by said Lyfter, he the
} said

said Lyfter attended in said court pursuant to said summons, and being sworn on the holy Evangelists by Alderman Emerson, in presence of this deponent and several others, in a peremptory manner, said Lyfter deposed that he never had known, or seen deponent before, or been in deponent's house, and that he did not know deponent's name, notwithstanding deponent positively saith the said John Lyfter had, for near three years previous to that time, frequently, from time to time, been in the house and shop of this deponent, in presence of many persons, and nevertheless deponent had two or three days previous to said Lyfter's taking said oath, met said John Lyfter passing over Essex-bridge, and there talked to him for some time; and deponent further saith, that in the course of three years last past, the said John Lyfter, as deponent has good reason to be convinced, has been guilty of perjury in various other instances.

FRANCIS CLARKE.

Sworn in court the third day of
February, 1794.

CARMICHAEL and BRADSHAW, D. C. C.

*The King, at the prosecution of
the Right Honourable Ar-
thur Wolfe, his Majesty's
Attorney General,*
AGAINST
Archibald Hamilton Rowan.

THE defendant, Archibald Hamilton Rowan, maketh oath that, since the trial had on Wednesday last, in this case, and after defendant had been pronounced guilty by the verdict of a jury impannelled and sworn on the said trial, deponent has received credible information, which he is convinced is true, that several persons, who had until after said trial and verdict been strangers and utterly unknown to deponent, would be material witnesses, on behalf of deponent, upon said trial; and that had the said witnesses been known and attended thereon, the testimony of John Lyfter, who was the principal evidence on behalf of the prosecution, would have been fully discredited. Deponent further saith he has also, since said trial and verdict, been credibly informed, and verily believes, some of the persons who were on said jury have, previous to said trial, made use of expressions tending to disapprove of deponent and his conduct, respecting the subject matter of this prosecution; and which induces deponent to believe they had, previous to said trial, been biassed against, and had formed impressions in their mind unfavourable to deponent. Deponent further saith, that from the daily information and accounts which deponent and his friends

have

have received, and are receiving, of the life, conduct and character of said John Lyfter, he has no doubt of proving fully and satisfactorily, that the said John Lyfter ought not to be believed on his oath.

ARCHIBALD HAMILTON ROWAN.

Sworn in court the third day of
February, 1794.

A. CARMICHAEL.

After Mr. Rowan's affidavit was read, it was deemed advisable by his counsel, that he should make a further one. The court were accordingly pleased to wait until it was prepared and sworn. It was then read as follows:

<p><i>The King, at the prosecution of the Right Honourable Ar- thur Wolfe, his Majesty's Attorney General,</i></p> <p style="text-align: center;">AGAINST</p> <p><i>Archibald Hamilton Rowan.</i></p>	}	<p>THE defendant, Archibald Hamilton Rowan, maketh oath, that he hath heard the several affidavits of Francis Clarke, James Coultrey, William Porter, and John William Atkinson, this day made in this cause, read in open court, and</p>
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with that all and every the matters contained in said affidavits, and every of them, were utterly unknown to this deponent until after the trial and verdict in this cause; and that this deponent had no reason to believe, and never heard until after said trial, that said persons or any of them could have given evidence of the facts sworn to this day by them, or any of them, in their said affidavits mentioned; or any other material evidence upon the trial of the issue in this cause. This deponent further saith that he heard the evidence given by John Lyfter and William Morton upon the said trial, charging deponent with having read, distributed and published the paper in the information in this cause mentioned, at Cope-street, in Pardon's fencing-room; and this deponent positively swears that the said testimony was utterly false. Deponent further saith that he heard, and believes, John Giffard, one of the sheriffs, and by whom, or his under-sheriff, the pannel of the jury was arrayed to try this cause, is and has been for some years the conductor or proprietor of a news-paper generally considered a government paper; that the said Giffard has also some lucrative employment in the revenue, and a commission in the Dublin militia; and that he verily believes the said Giffard was, and is, strongly prejudiced against deponent; and that the said Giffard did labour to have a pannel of

of

of such persons arrayed, as he knew, or believed, to be unfairly prejudiced against this deponent.

ARCHIBALD HAMILTON ROWAN.

Sworn in court the third day of
February, 1794.

G. JAMES.

After it was read the court asked the Attorney General, whether he wished for time to have these affidavits answered; to which he having replied in the negative, the court ordered Mr. Rowan to be brought up to-morrow; and adjourned.

TUESDAY, FEBRUARY 4, 1794.

Mr. RECORDER said he was instructed that there were four new affidavits, sworn to the same purpose as those read yesterday, to prove that others of the jurors had used expressions of enmity against Mr. Rowan before the trial, and prayed that they might be read.

Mr. ATTORNEY GENERAL objected, for that yesterday was the last day, in which any affidavits could be made, and now it was attempted to bring others without any notice; he was willing that this case should meet the fairest and fullest investigation, but would not consent that the rules of court should be departed from on this, more than on any other occasion.

Mr. RECORDER.—I am very sensible that in ordinary civil cases, where any motion is made to set aside a verdict, the party must apply within four days, and lay a sufficient ground for the motion; but even then the court would sometimes indulge the party with another day, to lay before it new materials, in advancement of justice. The intention of the traverser, or his counsel, was not to do any thing by surprise, or to bring these affidavits hastily forward, to prevent the crown from answering them; we are willing to give any reasonable time for that purpose. But your lordships will consider the circumstances in which this traverser stands; that he is in confinement and not at liberty to search for evidence, or the necessary materials for his defence; not standing in the situation of a defendant in any civil action, but in a situation which the law regards so far, as never to impute
laches

laches to any man whilst he is in prison. If it is necessary, I am instructed that affidavits can be made, that the matters, now brought forward, were only discovered since the rising of the court yesterday, and there is scarce an hour that further evidence does not come forward, tending to shew the truth and reality of the present case. The information now offered to the court has been so lately brought to light, that the agent has not had time to brief the affidavits; I have only been informed, on my way into court, of the purpose for which they are brought forward, and am still ignorant of their contents; and as the justice of the case may be advanced, and no inconvenience can result from it, I trust your lordships will allow these affidavits to be read, and the motion either to go forward now, or to wait till the counsel for the crown shall have an opportunity of answering them.

Mr. ATTORNEY GENERAL.—The rank, character, or situation of any man standing in this court accused of a crime, I conceive to be a matter of perfect insignificance, when put in competition with the settled rules of distributive justice. There are a certain number of days given to move in arrest of judgment, or for a new trial; within which the party is to lay before the court the ground upon which he means to move: all then that is insisted upon is that this defendant should be bound by the same rule that binds every man in the like circumstances: for if a party should be at liberty from day to day to bring forward new affidavits, there never would be an end of any prosecution. Mr. Recorder's observation shews the good sense of this rule; he says new materials are pouring in every hour—I doubt it not; and that new affidavits may come in to-night; and the same arguments used to-day will be used to-morrow.

Mr. CURRAN.—There was no objection made yesterday to the reading of affidavits, which were made and sworn in the presence of the court. Mr. Attorney General has himself said that the defendant was at liberty yesterday; if so, he is equally within the rule to-day, for this is only a continuation of the same motion:—this is a question put, as it were, to the conscience of the court, *viz.* do your lordships think that justice has been so done, that it ought not to be sent to a new enquiry; and shall any rule of practice be suffered to preclude the light, which should inform that conscience?—It would be absurd that no distinction should be made between ordinary and extraordinary cases; in small matters summary justice is enforced; but in such a case as this (he would speak as guardedly as possible) the court will consider that punishment is not inflicted vindictively, but for example and prevention; and that nothing gives so much force to the preventive effect of sentences of courts of justice, as all the world being able to say, every fair enquiry has been made, and the sentence has passed in consequence

sequence of an impartial verdict. There is a way known to our law to set verdicts aside, where there has been any abuse of justice; any fault in the returning officer, the jury, or the witnesses; or any mistake in the court:—all applications and information for this purpose have been received with indulgence; and upon the most cool enquiry it has been found that the verdict, upon which the sentence was had, must have satisfied the reasonable, fair, conscientious mind of any man;—this it is which gives to the sentence of the law that good and tranquilising effect, for which alone it is intended.

We are now prepared to shew that more of these jurors have made express declarations of malice, and shall it lie in the mouth of the prosecutor to say, there is a rule which operates like a trap upon the conscience of the court of King's Bench; that after a certain moment it becomes so helpless, that let what will arise it can do justice no longer?

I say the rules are the instruments, not the tyrants of the court; as to the point of practice it is conceived that trials at bar are not within the four day rule; but I go upon a more solid ground, and appeal to this, that the court has a right to receive information, at any time, in furtherance of justice; if it were necessary to cite cases, there has been a very late one in this court, where it has exercised the very same discretion.

After the verdict was brought in, not having the least idea that there was any fact existing, which could impeach the verdict, the traverser's counsel stated, that if it was the pleasure of the court, he should appear to receive sentence; and let me observe that he did not at that time conceive that he was in custody; he was not called on to appear; there was no order, and the only judicial knowledge the court had of his being present, was that a witness turned to him, to identify him; if then instead of being at large, as he ought to have been, he was put into prison, where he had not the same opportunity of procuring evidence, however universally it might exist, can there be a stronger circumstance to shew that he is peculiarly entitled to the indulgence he seeks.

MR FLETCHER, *on the same side*.—When I see the temper of the audience which surrounds me, I shall avoid touching upon public topics with the same delicacy, which the gentleman who preceded me has done. If justice is the object of this prosecution, why stand upon such punctilious points of practice, and *inter apices juris*: in the case alluded to, it was insisted that the four day rule did apply to trials at bar, but the court decided otherwise, and there is good reason for the distinction; in cases coming from the country this rule is necessary, to prevent the one party from keeping the *postea* in his pocket, until he could surprise the other at a time when he was not, perhaps, so well prepared

pared to impeach the verdict; it is necessary, then, that there should be a fixed time that no advantage may be snatched; but there is no analogy to a case of this kind, which is entirely in the breast of the court.

In the Dean of St. Asaph's case, a great prosecution instituted, like this, to answer the ends of public peace and public policy, the court did exercise its wisdom upon the merits of the business before it; the rule was not adhered to, but the parties were let in after the four days had expired. As to the objection which has been thrown out, that if this matter is postponed we may come in to-morrow, and the next day, and so on; it is answered, that we will undertake, if it should lie over till to-morrow, to rest satisfied, and seek for no more materials.

This is merely a point of practice, and it strikes my mind as folly to say, that so high a court as this has not its practice within its own power.

Lord CLONMEL, *Chief Justice*.—On the day that Mr. Rowan was convicted, we were called upon for judgment; but we conceived, that even if it was not a matter of right upon adjudged cases, it was still proper, that the defendant should have four days to question the verdict, or move in arrest of judgment: Suppose, instead of that, we had then pronounced judgment, all argument would have been concluded, for it would have been absurd to say, that he should have been suffered, after that, to unravel the proceedings; then what has passed since? A motion has been made and entertained upon affidavits, stating facts, of which the party has had information since that day; I mention this to shew, that there has been no precipitancy in the court, nor possible hardship in what it has done. Yesterday Mr. Rowan made an affidavit, some others were also made; Mr. Rowan desired to make a further one, and the court waited till a late hour, till it was composed and sworn; the Attorney General was then called upon, who declined to answer these affidavits; the court then certainly concluded it was to hear no more of the collecting of materials for this motion, but that it should go on and be argued like every other of the same kind.

It is said the rule of court, with respect to moving for new trials, does not extend to cases tried at bar, in the city of Dublin; that does not apply to this case, for the reason before mentioned, that within four days judgment would be pronounced; so that from the nature of the thing, this motion must be made within four days.

See what consequences would follow, from the letting in affidavits pending a motion of this kind; there is not an argument to be used by counsel on either side, that would not lay the foundation for a new affidavit, so that a motion would never have an end.

We are all of opinion, that it would introduce confusion into the practice of the court and be a pernicious precedent, and that the affidavits cannot be read.

[Here there took place some altercation upon the question of practice, who should first go on; the traverser's counsel insisting, that the affidavits *primâ facie* entitled them to their motion, and that the usual practice of giving the last word to the crown did not extend to a motion of this kind; but the court upon the authority of the King against Horne, desired the defendant's counsel to proceed in support of the motion.]

Mr. FLETCHER.—This is a prosecution highly interesting, not only to that most respectable individual, who is the immediate object of it (for so I shall continue to call him notwithstanding the verdict) but also to the community at large; it is a great prosecution directed upon solemn and deliberate grounds, to attain the ends of public peace and public justice; the court will scrutinize into a verdict that affixes the guilt of a high misdemeanor on a character so respectable; the only end of such prosecutions must be to deter others from the commission of similar crimes, and to satisfy the public mind, and to convince the world that guilty practices do not go unpunished; it therefore becomes necessary, that such a verdict should be free from the shadow of objection, otherwise so far from having the salutary effect proposed, it might have a very different one; men will scan the ground upon which such verdicts have been had; points of practice, and objections *inter apices juris*, amongst the quirks and pranks of the law will then vanish, and the public will stamp reprobation on a verdict obtained under circumstances of suspicion and unfairness.

The affidavits, on which we ground our motion, are now to be taken as true as the gospel, the verity of them cannot be shaken; the gentlemen concerned for the prosecution have been called on to answer them, and have not done it; these affidavits then, furnish three objections to the verdict.

1st. As to the person upon whose evidence alone (upon the face of your lordships notes) the verdict could be sustained, two or three affidavits go pointedly to shew that he is utterly destitute of credit.

2^{dly}. There is another class of affidavits impeaching one of the jurors for deep malignity conceived against my client.

3^{dly}. There is that of the traverser himself, who swears that the testimony of the witnesses was false, and further that he has reason to believe that the person, who arrayed the pannel, did it through favour, and purposely chose men hostile to him and to his principles.

Now even if any one of these grounds taken separately, were not sufficient to shake the verdict, it becomes a matter of high

concern to see whether the result of the whole does not, at the least, furnish a doubt that *justice has not been done*; if so, it brings it within the great principle upon which alone new trials should be granted. It cannot be expected that a case should be found, apposite in every minute particular; the present case has a good deal of novelty, and I cannot find any accurately agreeing with it; but you have the high authority of that luminary of the law, Lord Mansfield, thus declaring himself in the case of Bright and Enyon, 1 *Bur.* “ If we have reason to think that “ justice has not been done, we will send it to *another examination.*” It is upon such broad principles that I go, and if that was the opinion of his lordship, in a civil action, between man and man, with how much greater reason should it be so in a trial between the sovereign of the land and so respectable a citizen, who is accused of violating the laws of that land, to which it was his duty to be amenable. Will any man in his right reason say, that the great broad liberal principle should not be applied *a fortiori* to a case of this kind, where the liberty of the subject is at stake, with all that he holds dear;—where the public peace, and the opinion the world may entertain of public justice, are involved.

Taking it then for granted, that this principle applies at least as strongly to criminal cases, as to civil, there are abundance of authorities in the books—[Here he apologised for not being better prepared, having only got his brief on his way to court.]—In *Bac. tit. New Trials*, there is a case where new evidence was let in, and it is true, there are in the same page, cases where it was refused; what conclusion is to be drawn from this, but that every case of this nature stands upon its own peculiar foundation, and is not to be strictly governed by any decided case, because when it is not a question of abstract law, but a consideration emanating and flowing from a combination of circumstances, never the same in any two cases, it is of all questions that can come before a court of common law, that most peculiarly within its own sound judicial discretion, that can be gathered from reporters, differing in attention and ability, in some broad principles of general analogy: wherever there is any strong leading feature in the case, it must be judged of according to its own tendency and effect; it is apparently from the oscitancy of the reporters, from their being unacquainted with the facts, and for want of more correct and particular notes, that we find so much seeming contradiction, otherwise we should find the opinions of the judges nearly the same in all similar cases, but varying with the peculiar circumstances of each particular case; as in the present, the verdict certainly would not be set aside, unless it appeared that the new evidence came to the parties knowledge since the trial.

But

But there is a circumstance which, in my opinion, pointedly distinguishes this from all other cases, *viz.* that the new evidence is applicable to the credit of the principal witness, upon whose testimony the verdict must have been found, and not to any substantive matter, making a particular ingredient in the case. Nor is it a new substantive defence. For the court has wisely said, we will not set aside verdicts on account of evidence, which might reasonably have come to the knowledge of the party before, for then whenever the point, upon which he rested, proved insufficient, he would next shift his ground, and try some new sort of defence.

Having often searched for cases of this kind, I can say, upon my recollection, that there is none like the present to be found; your lordships then have no guide but your own discretion, and your own notes to recur to, where you will see in what point of view this gentleman's evidence appeared.

At the trial, he admitted that two bonds had been set up by his younger brother against his elder, which he was called to prove, as a subscribing witness: he admitted, that the genuineness of these bonds had been the subject matter of suits in courts of justice; that both his father in his life-time, and since his death, his eldest brother, had impeached the authenticity of these bonds, to which he had signed his name, as a witness: he admits an issue out of Chancery to try their authenticity: that they went down and were the subject matter of a trial; but that some compromise being mentioned, a juror was withdrawn and the matter submitted to referees, who gave only 200*l.* instead of 800*l.* which was the value of the bonds. He was asked whether he was examined at the trial, to prove the validity of these bonds; his answer was, I cannot charge my memory with these facts; a pretty extraordinary answer from one who, in other respects, has been so accurate. Since the commencement of this business, he has got a commission by the good offices of a lady, who was his relation, and before that, he had no business nor profession.

Thus did the testimony of this witness, who alone attempted to bring the publication home to the traverser, appear extremely suspicious, even upon his own examination. It will appear upon your lordships notes, that a gentleman from the same neighbourhood was afterwards asked, is such a person to be credited upon his oath? he answered, it was a very hard matter to say; but made use of the words, "I might hesitate." Another was examined; what did he say?—"It is a very hard question—I know but little more than what happened on the trial, where he was examined; I would for my own part give him very little credit". But being pressed again, he said he did not think himself warranted to say, he was not to be credited, from any particular knowledge of his own. A very respectable witness of the other sex was then called, who said she would not credit

him upon his oath. She was cross-examined in a manner which plainly shewed, that the conductors of the prosecution were aware that the character and credit of the witness was to be impeached, and by whom it was to be impeached, and yet have been able to bring forward nothing to support it. This lady was asked, if there was any particular infidelity which she had to complain of in the witness? she answered, that he had a brother who was married to her daughter, whom he had endeavoured to seduce from his wife. This however not proving sufficient at the trial to discredit the witness, I trust we shall now be allowed to bring forward the new matter, which has since come to our knowledge, in corroboration, explanation, and illustration of what passed there.

The hair-dresser charges the witness with direct perjury; he states that he knew him, and dressed his hair for a length of time, and sued him for the debt thereby incurred, in the Court of Conscience, where the other on his oath, denied that he had ever seen him, or that he ever knew his name, although the hair-dresser swears to a conversation that passed between them that day, upon Essex-bridge; there has been time to answer that affidavit, it remains however uncontradicted, therefore I am entitled to take it as true, and it ought to have as much weight as that of the most dignified person in the state. It is the same thing as if this witness had been called upon the table, and gone down without cross-examination, and then where would have been the evidence to support the publication?

There is also another witness who tells a story about a horse cause, when Lyster made an affidavit, and therein perjured himself, by personating and swearing in the name of his brother.

It is true, at the trial, the jury would have been judges of the credit of the witnesses, but your lordships would not have passed over the testimony of these two men, and if you had then stated, that there was not a single witness but himself, to give any legal proof of publication, it is for your lordships to judge, whether the jury would have found the verdict they did; and it is enough for me, if I can even raise a doubt, to use Lord Mansfield's words, in *Bright v. Enyon*—whether justice has been done.

But it does not stand upon the ground alone, of the impeachment of the witness, there are two other affidavits impeaching the conduct of one of the jurors. Perhaps it may be argued from public convenience, that when the party has not been fortunate enough to find evidence of this kind before the trial, upon which to challenge the array or the particular jurors, it is better that the individual should abide his misfortune, than that confusion and irregularity should be introduced into the jurisprudence of the country; but I trust your lordships will make that consideration bend to the greater question—has justice been done.

What

What is judicial discretion? It is the sound application of judicial knowledge and good judgment to the peculiar circumstances of each individual case;—it is the investigation of every minute circumstance in a proceeding, to which sound sense and liberal understanding can be applied.

But you have also the affidavits of that respectable man, of whom the voice of the kingdom of Ireland will say, that he would not sully his unspotted honor by using any unworthy artifice for the purpose of evading any punishment however great.

This alone ought not to shake the verdict; but will any man attempt to say, that an affidavit of that kind, which has been admitted, and has been read, and must obtain the belief of every man in and out of court, will not have some weight to induce your lordships to suspect that justice has not been done.

Mr. FLETCHER then recapitulated the four grounds of the motion.

1st. New evidence not discovered till after the trial.

2^d. New evidence to impeach that witness without whom (had he been out of the way) there could have been no verdict of conviction.

3^d. Evidence to impeach the jury.

4th. The evidence of the traverser as well to the witnesses as the sheriff.

And concluded, that it would be more becoming the officers of the crown to say—we will not have such a verdict as this to go abroad and be scrutinised in every country, where the English language is read. If we cannot have a conviction consistent with justice and with decency, we will have none.

Mr. RECORDER, *on the same side*, followed Mr. Fletcher, putting the same arguments in a striking and varied point of view;—he observed, that by setting aside this verdict and sending the cause back again to receive a solemn, serious and deliberate investigation, from a fair jury of the country, returned by a returning officer whom the traverser has no reason to distrust, there could not follow the smallest mischief, and then, if upon fair evidence laid before the court on one side and the other, he should happen to be convicted, that conviction would have the effect which was intended; but if this verdict was to stand after the evidence which had appeared upon the trial, and after the lights which had been thrown upon it since, there is not a person present in the court, and believing that testimony false, that would not feel sorrow, to see the judgment of a court of justice so founded.

If this gentleman had been indicted in the ordinary way, for a misdemeanor, he would have had an opportunity of knowing the party prosecuting, and the specific charge made against him.

But

But when an information is filed *ex officio*, it is the practice of the officers of the crown to keep the information they receive in their pocket for their own justification, and the defendant is not authorized to call upon the crown for a copy of the examinations sworn.

LORD CLONMELL, *Chief Justice*.—When this was mentioned before, it occurred to me that there had been an examination sworn before a magistrate, and he was not prevented from applying for it.

Here Mr. ROWAN appealed to Mr. Justice DOWNES, whether he had not, when before him, requested to know who the perjured villain was that could have sworn against him, and whether, for that purpose, he had not been inclined to refuse the offer of bail, chusing rather to go to prison, that he might know his accuser and prosecute him, (for he had been refused a copy of the examinations) and said, that had he gone to gaol then, as he was inclined, he would have been, without doubt, acquitted, when the former sheriffs were in office, and when there was not the same *selection* of jurors.

DOWNES, *Justice*.—Admitted that the defendant had stated nothing but what passed, and that he had got no information from him respecting the prosecutor.

Mr. RECORDER.—The person prosecuted, *ex officio*, knows nothing more than what appears upon the information filed, which gives him not the smallest intimation of the witness who is to prosecute him.

He then made some pointed observations upon the testimony of Lyfter, who swore that there were one or two hundred people walking up and down, having no seats; and yet in the midst of so much confusion, he was able, from a distant gallery, to distinguish that gentleman's voice, which did not appear very loud, nor very shrill, nor very remarkably articulate, in reading a paper which he presumes to swear was the very paper which is the subject of this prosecution; nor could he remember whether he had been examined some time within three years, upon so important a question as a forgery imputed by one of his brothers to another, and in which he was himself involved.

But even if he could be supposed an honest man, his testimony was bad, as, to say the best, his memory and apprehensions must have been very defective.

If those circumstances of discredit had not appeared upon the trial, it might have been improper to admit them now; but in the present situation of things, it would be a favour to the

the

the witness, if he thinks he has been slandered, to give him an opportunity of shewing, upon a new trial, that he is not perjured; and as it was said to be an easy matter for the defendant to bring a third person out of this crowded and promiscuous assembly to contradict him, so it cannot be difficult for him to bring some individual out of a private gallery to support him.

The evidence of Morton was most palpably false, for he swore that his uncle Giffard, to his belief, had not any thing to say to the conduct of the Dublin Journal, nor could he say any thing of the relationship that subsisted between his cousin Ryan and the sheriff, who was their common uncle.

And he concluded by observing, respecting the traverser, that at all events it would not convict him in the opinion of unprejudiced and moderate men, to have gone further in such circumstances than moderate men would go; that the traverser, whose affidavit scarcely any man in the community would doubt, had sworn that the evidence of Lyfter was false, and that the jury were prejudiced, and returned by a person adverse and hostile to him; and that the public could not but feel horror at a sentence pronounced upon such a foundation.

He protested solemnly, that feeling for the dignity and character of the administration of justice in this country, he was more interested in the event of the present motion, than in that of any other in which he was ever concerned. The King had not in his dominions a subject more warmly attached to the constitution in church and state than he; but he was, at the same time, a friend to the civil and religious liberties of the people. The man who goes too far in doing what he thinks may tend to secure these, may be censured by moderate men, but he will not, therefore, cease to be esteemed by moderate men. Mr. ROWAN may, perhaps in some instances, have gone too far on this subject; but his conduct has always been known to originate in the best and purest motives, and there was not in society a man more respected, nay, admired—than he.—It was, therefore, essential in the highest degree, that a verdict, by which such a man was subjected to public and exemplary punishment, should be above all exception.

Mr. CURRAN, *on the same side*.—It was an early idea, that a verdict in a criminal case could not be set aside, *inconsulto rege*, but the law had stood otherwise without a doubt, to impeach its principle for the last two reigns.

Common sense would say, that the discretion of the court should go at least as far in criminal as in civil cases, and very often to go no further would be to stop far short of what was right, as in those great questions where the prosecution may be considered either as an attempt to extinguish liberty, or as
a necessary

a necessary measure for the purpose of repressing the virulence of public licentiousness and dangerous faction; where there can be no alternative between guilt or martyrdom, where the party prosecuted must either be considered as a culprit sinking beneath the punishment of his own crimes, or a victim sacrificed to the vices of others. But when it clearly appears that the party has fallen a prey to a persecuting combination, there remains but one melancholy question, *how far did that combination reach?*

There have been two cases lately decided in this very court, the King and Pentland, where the motion was made and refused, and the King and Bowen, where it was granted; both of which shew, that captious sophistry, and technical pedantry, had here, as well as in England, given way to liberal and rational enquiry; and that the court would not now, in their discretion, refuse a motion of this kind, unless they could, at the same time, lay their hands upon their hearts, and say, they believed in their consciences that justice had been done; such was the manly language of one of their lordships (Mr. Justice Downes); and such the opinion of the court on a former occasion.

He then cited 7 Modern 57. as referred to in Bacon tit. Trial, to shew that where there was good ground of challenge to a juror, not known at the trial, it was sufficient cause for setting aside the verdict.

In England they have a particular act of parliament, entitling the party to strike a special jury to try the fact, and then he has time between the striking and the trial, to question the propriety of that jury: here my client had no previous information till the instant of trial, who his jurors are to be.

There are certain indulgences granted at times, perhaps by the connivance of humanity, which men, who are not entitled to demand them in an open court, obtain nevertheless by sidelong means, and perhaps the little breach which affords that light to the mind of the man accused, is a circumstance which the court would feel pain, even if called upon, to say, should in all cases be prevented; but to overturn principles and authorities, for the purpose of oppressing the subject, is what this court will never do.

The first of the affidavits I shall consider, is that of the traverser. I do not recollect whether it states the sheriff, in avowed terms, to be an emissary or a hireling agent of the Castle, therefore do not state it from the affidavit; but he swears, that he does believe that he did labour to bring into the box a jury full of prejudices, and of the blackest impressions; instead of having, as they ought, fair and impartial minds, and souls like white paper.

This sheriff now stands in court, he might have denied it if he would, he had an opportunity of answering it; but he has left it an undenied assertion—he was not certainly obliged to answer

it, for no man is bound to convict himself. But there is a part of that charge which amounts, at the least, to this, "Your heart was poisoned against me, and you collected those to be my judges, who, if they could not be under the dominion of bad dispositions, might be at least the dupes of good." The most favourable thing that can be said is this, you sought to bring against me honest prejudices, but you brought against me wicked ones. The very general charge, that he sought for persons, who he knew were most likely to bring prejudices with them into the jury box, is a part of the affidavit, that it was incumbent on him to answer if he could.

I do not contend, that what is charged in the affidavit, would have been a ground of principal challenge to the array; but hold it to be the better opinion, that a challenge to the array for favour, does well lie in the mouth of the defendant.

The antient notion was, you shall not challenge the array for favour where the king is a party; the king only can challenge for favour, for the principle was, that every man ought to be favourable to the crown, but thank God, the advancement of legal knowledge and the growing understanding of the age, has dissipated such illiberal and mischievous conceptions.

But I am putting too much stress upon such technical, discarded, and antiquated scruples. The true question has been already stated from the authority of Mr. Justice Downes, and that question is, Has justice been done?

Is it a matter, upon which scarce any understanding would condescend to hesitate, whether a man had been fairly tried, whose triors had been collected together by an avowed enemy, whose conduct had been such, as to leave no doubt that he had purposely brought prejudiced men into the box.

In every country, where freedom obtains, there must subsist parties. In this country and in Great Britain, I trust there never will be a time, when there shall not be men found zealous for the actual government of the day. So, on the other hand, I trust, there will never be a time, when there will not be found men zealous and enthusiastic in the cause of popular freedom and of the public rights. If, therefore, a person in public office suffers his own prejudices, however honestly anxious he may be for a prosecution carried on by those to whom he is attached, to influence him so far as to choose men, to his knowledge, devoted to the principles he espouses, it is an error which a high court of judicature, seeking to do right and justice, will not fail to correct.

A sheriff, in such a case, might not have perceived the partiality of his conduct, because he was surveying it through the medium of prejudice and habitual corruption. But it is impossible to think that this sheriff meant to be impartial, it is an in-

terpretation more favourable than his conduct will allow of; if he deserves any credit at all, it is in not answering the charge made against him: At the same time, that, by not answering it, he has left unimpeached the credit of the charge itself.

[Here the Sheriff tendered some form of an affidavit, which the court refused to have sworn or read, for the same reason that those, sworn and tendered by the defendant's counsel, had been before refused. Mr. Curran, however, consented to its being sworn and read; but the Attorney General declined it, being unacquainted with the contents, and uninstructed as to its tendency; it therefore was not sworn.]

MR. CURRAN—Is this then the way to meet a fair application to the court, to see whether justice has been done between the subject and the crown. I offer it again, let the affidavit be read. And let me remind the court, that the great reason for sending a cause back to a jury, is that new light may be shed upon it; and how must your lordships feel, when you see that indulgence granted to the conscience of the jury, denied to the court?

MR. ATTORNEY GENERAL.—I am concerned that any lawyer should make a proposition in the manner Mr. Curran has done; he proposes to have an affidavit read, provided we consent that others, which the court have already refused, should be now read*. I did not hear it offered; but is it to be presumed I will consent to have an affidavit read, about which I know nothing. Yesterday, without any communication with a human being, I did say, that I conceived it unnecessary to answer any of the affidavits, thinking that they were not sufficient to ground the application made to the court. And it is presumed I am so mad as to consent to the reading of affidavits, which I have not seen.

[Here some altercation took place, and Lord Clonmell, Chief Justice, interposed, saying, that the counsel had certainly a right to argue it upon the ground, that the sheriff was biased, and did return a jury prejudiced against the traverser.]

MR. CURRAN was then proceeding to observe upon the expression of one of the jury, sworn to in another affidavit, "That there would be no safety in the country, until the defendant was either hanged or banished." When it was asked by the court, Whether the time of its coming to the knowledge of the traverser, that the sheriff was biased, was stated in his affidavit?

* It may not be improper to observe, that Mr. Attorney General mistook Mr. Curran's proposal, which was an *unqualified* offer to have Mr. Giffard's affidavit read.

Mr. CURRAN answered, he was in prison, and could not have the attendance of those counsel, whose assistance he had in court, and besides, from the nature of the circumstances, it was impossible he could have been sufficiently apprized of its consequences, for he saw not that pannel till the day of the trial, when he could not have had time to make any enquiry into the characters, dispositions, or connections of the jury. Mr. Curran then reverted to his argument on the expression of the juror.

If triors had been appointed to determine the issue, favourable or not, what would have been their finding? Could they say upon their oaths, that he was not unfavourable to that party, against whom he could make such a declaration?

Favour is not cause of principal challenge, which if put upon a pleading, would conclude the party. Favour is that which makes the man, in vulgar parlance, unfit to try the question. And as to the time these facts came to his knowledge, he has sworn that he was utterly ignorant of them at the time of his coming into court to take his trial.

I will not glance at the character of any absent noble person, high in office, but let it be remembered, that it is a government prosecution, and that the witness has, from a low and handicap situation, scraped himself into preferment, perhaps, for I will put the best construction upon it, by offering himself as a man honestly anxious for the welfare of his country; in short, it is too obvious to require any comment, what the nature of the whole transaction has been, that he had got his commission as a compensation, *pro labore impendendo*, and came afterwards into court to pay down the stipulated purchase.

Had this then been an unbiassed jury, was there not something in all these circumstances, that might have afforded more deliberation, than that of one minute per man, for only so long was the jury out; and had this been a fair witness, would he have lain down under a charge, which if true, ought not only to damn this verdict, but his character for ever? What would a corps of brother officers think of a person charged, upon oath; with the commission of two wilful perjuries, and that charge remaining undenied? Here is an undenied charge, in point of fact, and although I do not call upon the court to say, that this is a guilty and abominable person, yet surely the suspicion is strongly so, and must be considered. This was at least a verdict, where the evidence went to the jury under slighter blemishes than it will if my client has the advantage of another trial, for then he will put out of the power of man to doubt that this witness has been perjured. This witness, who has had notice, both here and at the trial, of the aspersions on his character, and yet has not called a human being to say that he entertained a contrary opinion of him.

Was he known any where? Did he crawl unobserved to the castle? Was it without the aid or knowledge of any body, that that gaudy plumage grew on him, in which he appeared in court? If he was known for any thing else than what he is stated to be, it was, upon that day, almost a physical impossibility, in a court-house, which almost contained the country, not to have found some person, to give some sort of testimony respecting his general character. For though no man is bound to be ready at all times to answer particular charges, yet every man is supposed to come with his public attestation of common and general probity. But he has left that character, upon the merits of which my client is convicted, unsupported, even by his own poor corporal swearing. You are called upon, then, to say, whether upon the evidence of a being of this kind, such a man as that is to be convicted, and sentenced to punishment, in a country where humanity is the leading feature, even of the criminal law.

He then observed upon the second witness.—A man coming to support the credit of another collaterally, is himself particularly pledged; then what was his testimony! He did not know whether Mr. Giffard was concerned in the newspaper!!! And now, you have the silence of Giffard himself, in not answering Mr. Rowan's affidavit to contradict that. And next, he did not know whether his own cousin-german was the relation of their common uncle!!! I call upon you, my lords, in the name of sacred justice, and your country, to declare whether the melancholy scenes and murderous plots of the Meal-tub and the Rye-house, are to be acted over again. And whether every Titus Oates that can be found, is to be called into your courts, as the common vouchee of base and perjured accusation.

He then proceeded to another ground, namely, that the direction of the court was not, as he conceived, agreeable to the law of Ireland. The defence of my client (he added) was rested upon this, that there was no evidence of the fact of publication, upon the incredibility of the fact, and the circumstances of discredit in the character of the witness; yet the court made this observation: "gentlemen, it scarcely lies in the mouth of Mr. Rowan
 "to build a defence upon objections of this kind to the cha-
 "racters of witnesses, because the fact was public; there were
 "many there, the room was crowded below; the gallery was
 "crowded above; and the publicity of the fact enabled him to
 "produce a number of witnesses to falsify the assertion of the
 "prosecutor, if in fact it could be falsified!" Is that the principle of criminal law? Is it a part of the British law that the fate of the accused shall abide, not the positive establishment of guilt by the prosecutor, but the negative proof of innocence by himself? Why has it been said in foolish old books, that the law supposes the innocence of every man 'till the contrary is proved? How has it happened that that language has been admired for its
 4 humanity,

humanity, and not laughed at for its absurdity, in which the prayers of the court are addressed to Heaven for the safe deliverance of the man accused? How comes it that so much public time is wasted in going into evidence of guilt, if the bare accusation of a man did call upon him to go into evidence of his innocence? The force of the observation is this, Mr. Rowan impeaches the credit of a witness, who has sworn that he saw him present, and doing certain acts at a certain meeting; but it is asked has he substantiated that discredit, by calling all the persons, who were present, to prove his absence from that meeting, which is only stated to have existed, by a witness whom he alledges to have perjured himself? I call upon the example of judicial character; upon the faith of that high office, which is never so dignified as when it sees its errors and corrects them, to say, that the court was for a moment led away, so as to argue from the most seductive of all sophisms, that of the *positio principii*.

See what meaning is to be gathered from such words; we say the whole that this man has sworn is a consummate lie; shew it to be so, says the court, by admitting a part of it to be true. It is a false swearing; it is a conspiracy of two witnesses against this defendant; well then it lies upon him to rebut their testimony, by proving a great deal of it to be true! Is conjecture then, in criminal cases, to stand in the place of truth and demonstration? Why were not some of those—(I will strip the case of the honour of names which I respect)—but why were not some of those, who knew that these two persons were to be brought forward, and that there were to be objections to their credit—if, as it is stated, it happened in the presence of a public crowd, rushing in from motives of curiosity, why were not numbers called on to establish that fact? On the contrary the court have said to this effect: Mr. Rowan, you say you were not there; produce any of those persons with whom you were there, to swear you were not there! You say it was a perjury; if so, produce the people that he has perjured himself in swearing to have been there! But as to your own being there you can easily shew the contrary of that, by producing some man that saw you there! You say you were not there? Yes. There were one hundred and fifty persons there; now produce any one of those to swear they saw you there!

It is impossible for the human mind to suppose a case, in which infatuation must have prevailed in a more progressive degree, than when a jury are thus, in fact, directed to receive no refutation, nor proof of the perjury of the witness, but only of his truth. We will permit you to deny the charge by establishing the fact: we will permit you to prove that they swore falsely to your being there, by producing another witness to prove to a certainty that you were there.—[Interrupted by Lord Clonmell.]

LORD CLONMELL, *Chief Justice*.—The reasoning of the court was strong upon that point; this is a transaction stated by the witness to have happened in open day, in a crowded assembly in the capital, amidst a number of persons dressed in the uniform of *Hamilton Rowan*. There has been nothing suddenly brought forward to surprise the traverser; yet what has he done, did he offer as in the common course to prove an alibi? It is stated to be at such a day; the witness swears at such an hour—the place is sworn to have been full of people, of Mr. Rowan's friends: but if there was even a partial assembly, it would be easy still to produce some one of those persons who were present to say, that the fact did not happen which has been sworn to, or if you say Mr. Rowan was not there, it is easier still to prove it by shewing where he was; as thus: I breakfasted with him, I dined with him, I supped with him, he was with me, he was not at Pardon's; disprove that assertion by proving an affirmation inconsistent with it.

MRS. CURRAN.—I beg leave to remind the court of what fell from it. “He may call” (said the court) “any of those persons, “he has not produced one of them;” upon this, I think, a most material point does hang “He might have called them, “for they were all of his own party.”

LORD CLONMELL.—That is if there were such persons there; or if there was no meeting at all he might have proved that.

MRS. CURRAN.—There was no such idea put to the jury, as whether there was a meeting or not: it was said they were all of his party, he might have produced them, and the non-production of them was a “volume of evidence” upon that point. No refinement can avoid this conclusion, that even as your lordship now states the charge, the fate of the man must depend upon proving the negative.

Until the credit of the witness was established he could not be called upon to bring any contrary evidence. What does the duty of every counsel dictate to him; if the case is not made out by his adversary or prosecutor? Let it rest; the court is bound to tell the jury so, and the jury are bound to find him not guilty. It is a most unshaken maxim, that *nemo tenetur prodere se ipsum*. And it would indeed be a very inquisitorial exercise of power, to call upon a man to run the risque of confirming the charge, under the penalty of being convicted by *nil dicit*. Surely at the criminal side of this court, as yet, there has been no such judgment pronounced. It is only when the party stands mute of malice, that such extremes can be resorted to. I never before heard an intimation from any judge to a jury, that bad evidence liable to any and every exception ought to receive a sanction from the
silence

silence of the party. The substance of the charge was neither more nor less than this: that the falsehood of the evidence shall receive support and credit from the silence of the man accused. With anxiety for the honour and religion of the law, I demand it of you, must not the jury have understood that this silence was evidence to go to them; is the meaning contained in the expression "a volume of evidence" only insinuation! I do not know where any man would be safe. I do not know what any man could do to screen himself from persecution; I know not how he could be sure, even when he was at his prayers before the throne of Heaven, that he was not passing that moment of his life, on which he was to be charged with the commission of some crime, to be expiated to society by the forfeiture of his liberty or of his life. I do not know what shall become of the subject, if a jury are to be told that the silence of the man charged is a "volume of evidence" that he is guilty of the crime; where is it written? I know there is a place where vulgar frenzy cries out, that the public instrument must be drenched in blood; where defence is gagged, and the devoted wretch must perish. But even there the victim of such tyranny is not made to fill, by voluntary silence, the defects of his accusation, for his tongue is tied, and therefore no advantage is taken of him by construction; it cannot be there said that his not speaking is a volume of evidence to prove his guilt.

But to avoid all misunderstanding, see what is the force of my objection: is it that the charge of the court cannot receive a practicable interpretation, that may not terrify mens minds with ideas such as I have presented? No—I am saying no such thing, I have lived too long and observed too much not to know, that every word in a phrase is one of the feet upon which it runs, and how the shortening or lengthening of one of those feet, will alter the progress or direction of its motion. I am not arguing that the charge of the court cannot by any possibility be reconciled to the principles of law; I am agitating a bigger question; I am putting it to the conscience of the court, whether a jury may not have probably collected the same meaning from it, which I have affixed to it, and whether there ought not to have been a volume of explanation, to do away the fatal consequences of such mistake.

On what sort of a case am I now speaking? on one of that kind, which it is known has been beating the public heart for many months: which, from a single being in society, has scarcely received a cool or tranquil examination. I am making that sort of application, which the expansion of liberal reason and the decay of technical bigotry have made a favoured application.

In earlier times it might have been thought sacrilege to have meddled with a verdict once pronounced; since that the true principles

principles of justice have been better understood ; so that now, the whole wisdom of the whole court will have an opportunity of looking over that verdict, and setting right the mistake which has occasioned it.

Mr. Curran made other observations, either to corroborate his own, or to answer the opposite counsel ; of which it is impossible to give an exact detail ; and concluded thus : You are standing on the scanty isthmus that divides the great ocean of duration ; on one side of the past, on the other of the future : a ground, that while you yet hear me, is washed from beneath our feet. Let me remind you, my lord, while your determination is yet in your power, *dum versatur adhuc intra penetralia Vestæ*, that on that ocean of future you must set your judgment afloat. And future ages will assume the same authority, which you have assumed ; posterity feel the same emotions which you have felt, when your little hearts have beaten, and your infant eyes have overflowed, at reading the sad history of the sufferings of a Ruffel or a Sidney.

[The conclusion of Mr. Curran's speech was marked by another burst of applause, similar to those which accompanied his former exertions in this cause.]

WEDNESDAY, FEBRUARY 5, 1794.

Mr. ATTORNEY GENERAL, *for the crown*.—My Lords, it is my business to offer such arguments as occur to me, to resist what has been advanced in favour of Mr. ROWAN, upon this motion to set aside the verdict and grant a new trial. It is to me, my lords, a great happiness, that it has arrived at this stage, when the subject will be examined by the rules of legal reasoning, without an appeal to the passions of men, or any attempt to influence the argument by topics deduced from extrinsic matter. I should be sorry when I return to my own house, that passion should so far make me forget my reason. It is the duty of every man, whether prosecutor or advocate for the prosecuted, to promote the ends of justice, and obtain decisions upon argument, and argument alone. It is not the duty of counsel to determine the weight of argument: they are to offer the best arguments they can; when they pass that, they pass the bounds of duty.

This, my lords, is said to be a verdict against evidence, because the credit of the principal witness was such, as that he deserved no credit, and that now, if the verdict be set aside, new evidence will be offered, since come to the knowledge of the party, further to shew that the witness did not deserve credit.—Another ground is this, that the sheriff, who returned the jury, had a prejudice against the accused, and laboured to procure a pannel prejudicial against Mr. ROWAN. Another ground is, that one of the jurors had expressed himself in a certain way, shewing he had an ill opinion of Mr. ROWAN upon some subject or other. Such, my lords, are the grounds specified in the notice. A further objection was made from the bar, of which no notice was given, namely, that one of the judges had misdirected the jury. If there be any weight in it, the party by strict form can derive no advantage from it—but I do not confine myself to form, it is my desire that this matter should be fairly enquired into according to the rules of law; therefore I will observe upon that, and make such answer to it as occurs to me, first calling upon your lordships and the gentlemen in this court, for beyond that I desire no attention, to give me an impartial hearing. I appeal to those only who have knowledge of law and the rules of cool reason; the rest is matter of indifference. My lords, this information was filed a year since against Mr. ROWAN; he was arrested upon a previous information which was returned to the Crown-office in Hilary Term, 1793; a *noli prosequi* was entered upon that, by reason of a mistake in copying one of the words, so that if brought to trial, he must have been acquitted without entering into the merits. Another information was filed; that was pleaded to, and immediately an application was made to have him tried in Michaelmas Term. The court conceived that, consistent with

the discharge of general duty, it was impossible to have him tried then, and this term was appointed. The pannel was returned to the office in the usual manner; I have a right to say so, because there is no suggestion to the contrary; and it was open to any man who pleased to look at it. On Wednesday se'nnight the record came to be tried. The jury were called at ten o'clock; they were called a second time, a third time, and a fourth time; and it was not till near twelve o'clock that the jury were sworn. All that time there was no challenge taken to the array. No application was previously made, no suggestion filed to have the *venire* directed to any other officer than the gentleman who returned the pannel. But when the jurors were called to the book, several were challenged and a pretty general question was put to several, I do not say to all of them, to declare whether they had delivered any opinion upon the case. To that question I beg attention from every impartial man—They were permitted to give answers, though I rely upon it, that by law, in a criminal case, the party had no right to put such a question. So that after an hour and half's deliberation, the party knowing who were to be called, such as were thought proper to be questioned, were examined and permitted to answer. But the fairness with which this prosecution was intended to be conducted is manifested by another circumstance. A juror of the name of *Dickson* was actually sworn, and afterwards he said he had given an opinion—it was desired that he might be discharged. I instantly gave my consent. Mr. CURRAN desired not my consent, but that I should move it myself; I did move it, because I thought it was right to have him discharged. The jury were then sworn and the merits were gone into. Two witnesses were produced, one swearing to the actual fact of publishing the very paper in the record; another, who though he did not swear to the very paper, yet did give such evidence as, if he was worthy of credit, must give every reasonable man conviction, that it was the very same libel. Three witnesses were produced and examined to the credit of *Lyster*, the witness for the crown;—one did not say he was unworthy of credit, but that he would hesitate: another was not much inclined to give him belief; and it is insisted that such evidence was direct and positive to take away his credit, and therefore your lordships should set aside this verdict. The cross-examination by the counsel for Mr. ROWAN throughout, directly and in terms, admitted that there was a meeting that day at Cope-street, that Mr. ROWAN was there, and that the Volunteers were there assembled; the whole cross-examination went to that fact; the dress and uniform of the Old Volunteers, every fact was insisted upon, and it was not until yesterday, in a kind of joke, that the contrary was insisted upon. Mr. ROWAN's affidavit does not deny the meeting.—Away, therefore,

with

with the childish observation, that a man could not be called from a meeting which did not appear to exist.

I will now come to the merits of the case upon the objections made. There was nothing omitted which could be said for Mr. ROWAN: it is not fit for me to say that any thing was said which ought not to have been said. But, my lords, something was said with regard to the right of courts to set aside verdicts in criminal cases, not capital: no man disputed the right, or questioned it. Mr. CURRAN went into the history of that branch of the law and the doctrine of setting aside verdicts *rege incon- sulto*; how it was with regard to ancient times, I am not satisfied; but sure I am, and so I hope it will remain, that this court will have a right in favour of the defendant, and in his favour only, to set aside a verdict against him. But the exercise of that great power, touching the trial by jury, must be applied according to the known rules of law. Mr. CURRAN stated that an exact instance was not to be found in the books, and from the hurry, I suppose, in which he had considered the subject, he fell into the observation that the practice is of so modern a date that many precedents could not be found: he confined it to the two last reigns; but, my lords, the reports in William III's. time are full of such applications; the practice prevailed in the reign of *Car. II.* how much earlier I cannot say—there are an infinity of cases upon the subject, and he was right when he said there was no such case as this; and before your lordships make a precedent of this, I am sure you will give it all the attention it deserves. I repeat the observation, that the consequence of this determination to the public and the administration of criminal justice, is of the last importance; and that, however right it is, that Mr. ROWAN should seek redress by these means, and that every possible exertion should be made in favour of a man standing a culprit at your bar; yet, my lords, the consideration of that man, or any other, let him be who he may, dwindles to a thing of no value, when compared to the general justice of the country. There can be no distinction here; and here alone there is equality among subjects, between the highest man in the state, and the men who shout in the hall at the names of *Titus Oates and Algernon Sidney*. The case, my Lords, comes then to this, whether upon the affidavits which have been made you should set aside this verdict? They say these affidavits are to be taken as true—I say they are not: they were made and produced in court in my absence. I was called—I knew no more of them than the man in Westminster-hall. I heard them read, and it did strike me, that they were of such a nature, that I ought not to give an answer to them; I therefore did not consent to a rule unless cause, but was ready to meet the counsel at the moment. It is to be taken as true that such affidavits are made; that Mr. ROWAN can find two witnesses swearing to those facts which

have been mentioned ; but it cannot be taken as true, that those alledged facts are true ; it is not for your lordships to say they are true or false ; nor if witnesses were found to say that what has been stated respecting *Perrin* was false, could you determine that ? but whether you send it back to see whether a jury would give them credit or not, that is what you are to determine ; you are to send it back to let in the same species of evidence which has been already adduced without success. As to Mr. ROWAN'S affidavit, he swears to something he heard, and something he believes—that must be taken as true ; that is, that he heard something and that he believes it—if that were a ground for a new trial, verdict may be had after verdict. Something has been spread abroad, that your minds might be influenced by something without doors—a thing impossible. Let the cry be what it may by the seditious and the turbulent, the whole will be thought of rightly on a future day. What has been said cannot influence you, who will determine according to the rules of law. It is desired, that you will set aside this verdict, that evidence may be given to shew *Lyster* is not worthy of credit. Gentlemen have argued this case, certainly of the first talents and ingenuity, some of them have had as much experience in these matters as any gentleman who has the honour of wearing a bar gown ; but I must say some little things fell from them, which were rather extraordinary ; one gentleman said he had only got his brief the night before ; another said he had got his on his way to court ; but they knew the affidavits were to be made, they heard them read the day before ; something was said of a case which had *M. S.* opposite to it in the margin. I believe there are not many gentlemen who could recollect cases in the books cited as from manuscript cases, and quote them as such from memory. I have used great diligence upon the subject, and agree with Mr. CURRAN, there is not one to be found. You are desired to set aside the verdict, because the witness was not to be credited. Who made you judges of that ? Are you the guardians of the lives, the liberties and the properties of the people ? Which of you determines the credit of the witnesses ? I have sat at my lamp the most of the night and have found nothing like this. But I will, for a moment, suppose what I do not admit, that it might be a ground for setting aside the verdict : bring it to the test of reason, bring it to the bar of sense where it should be tried. You are to set aside a verdict, to let in evidence to the credit of a witness, when his credit was impeached ; witnesses were examined to his credit, and so strong say they was the evidence against him, that it ought to have destroyed his credit. The case was made, witnesses were examined, and the whole was left to the jury. For, my lords, it is a sad mistake which has been sent abroad, that because one witness says another is not to be believed, that therefore,

fore, what the first says is true. Are the jury to give up all the circumstances? Their own observation to the opinion of another man perhaps as much prejudiced as any? But here the matter was examined; they were prepared with evidence to the history of this man's life, and after a verdict is had upon that, some men are picked up in the streets to give some evidence, that is, that they do not believe the witness, to eke out a ground for setting aside the verdict, in a case where the objection has been already made and already tried. Here incidentally let me observe upon another part of the case. The verdict is against evidence, because the witnesses were not to be believed: there is no man so young at the bar as not to see the futility of such an argument: a man may have discredited himself upon various occasions, and yet may give such testimony, accompanied with other circumstances, as shall entitle him to belief, though a thousand should oppose him. "My Good Lord Primate of Armagh, do you know Mr. Lyfter?" "I do, I have known him concerned in many transactions of a base nature, he is not to be believed." What? if that was sworn to by that saint upon earth, shall the positive swearing discredit the testimony though it be accompanied with circumstances which speak its truth? Can that be law? I hope not, for it is not reason. There are cases which say a verdict shall not be set aside, though an incompetent witness has been examined, who was not known to be incompetent at the time. That is a stronger case than the present, and applies to the ground of objection with respect to the jury. *Turner v. Pearce*, 1 *Durnf. & East*. 717.—*Wright v. Littler*. 3 *Bur.* 1244.—Here I must trespass upon your lordships time to take notice of another observation. It is insisted that you ought the rather to let him in, because this was an information filed *ex officio* by the Attorney General, by which he was deprived of an opportunity of knowing the witness against him, and consequently that though in ordinary cases a new trial ought not to be granted upon that ground, yet here it ought. The gentleman who made this observation, was here again a little hurried, for if he had reflected one moment, he would see that the cases are precisely the same. The party in an indictment has no right to see the examinations till trial, and sometimes not even then. In an information he has no right to see them. So that whether it be an information or an indictment, he is alike forbid to see the examination. If he be prosecuted by indictment, the examination will be returned to the crown-office. If by information, the examinations are put into the same crown-office on the first day of the term. It was said that in the case of an indictment, what was sworn could be known. All that could appear would be that some of the grand jury might forget their oaths and disclose the secrets of the prosecution, though they are specially sworn

sworn not to mention what appears upon the examinations. This observation was made without thought, therefore, and could not have been made for any good purpose with respect to this motion; it was made for nothing but to impress the people with an idea that there has been severity or oppression in this case, not allowable, and that the subject has been put under difficulties, not occurring in the ordinary course of justice. But upon a cool enquiry it will be found that the manner of proceeding makes no difference in the case. If there be any way by which the informations in the crown-office can be got at (I hope there is not) he might have made use of that; but Mr. ROWAN was apprized; he came here with witnesses to trace facts happening at various times; he put his defence on that. Mr. *Lyster's* name was inserted in the papers, and it was notorious for many months that he was the man. But I disclaim that, your lordships have no right to know it, but you know that Mr. ROWAN came prepared with witnesses against him. Another observation occurs. I will suppose, what I never will admit till a solemn decision is had, that the objection made on account of the want of credit would be a good ground for setting aside the verdict, even after that credit had been examined to, or provided no witness was found to come forward, yet you cannot entertain this motion, for the knowledge of the existence of the evidence since the trial is not sworn to. Mr. ROWAN has made an affidavit that he did not know it; that affidavit is to be taken as true—I believe he did not. But he appeared by attorney, he defended by attorney, and it is not sworn even to his belief, nor has his attorney sworn, nor is there a syllable to tell you that those concerned for him were not apprized of the fact. If these affidavits be admitted, there is nothing to be done but conceal every thing from the party, to keep back that which may eventually serve the motion for a new trial, in case of any thing against him. I feel that if this were an ordinary case, the bare statement of the fact would drive the motion out of court; the fact has been enquired into by the jury; notwithstanding what has been said of the witness, he may have told the truth, and it is impossible it should be otherwise.

The other objection is that one of the jurors did not stand indifferent; a ground of challenge which was not taken, and not having been taken, the verdict shall be set aside and the party have a new trial. The statute law has directed that in treason the party shall have a copy of the pannel a certain number of days; in no other case has the party such a right, he is to take his challenge as the party comes to the book; that is the law of the land, that has been the simple law under which our ancestors lived happy for ages, by which juries have been chosen and formed, who have for ages protected every thing dear to Britons and Irishmen; and now, for the first time, I will be bold

to say, in any criminal or civil case, the verdict is to be set aside because there lay a challenge to a juror, not known to the party at the time of the verdict. I will suppose that there was a principal cause of challenge to this man; no instance of such a case can be produced where that was a ground for a new trial; there is no necessity to examine further into the circumstances; there is no cause of challenge now stated—What is it? There was an illumination in Dublin last August, when the juror and *Atkinson* fell into conversation of and concerning—What? the libel calling the citizens to arms? No such thing—But an illumination takes place for the capture of a town, they fall into a conversation about the Volunteers in general, in which the juror said, the country could not prosper unless *Hamilton Rowan* and *Napper Tandy* were hanged or transported; not a syllable respecting the matter in hand—Not one word of this matter. Would that be a cause of challenge to a juror? Most undoubtedly not—and the man who used the expression, supposing he did use it, gave no cause of challenge, and now, though the eleven others agreed in that verdict, you are to send it back to a new trial—For what? to have two triors sworn to ascertain whether Mr. *Perrin* was a person to be challenged or not. The juror gave an opinion of different men upon a political subject. What man is there who has not given an opinion upon such a subject? If there be, he is cold to the interests of his country. But does it apply, that the man using such expressions is not competent to meet a question of facts upon evidence before him, though the party may be concerned in a particular measure not agreeing with his opinion. I may think the conduct of a man dangerous; I may speak of the consequences of his conduct as I think. But does it follow that such a man passing a verdict upon his oath upon the examination of witnesses to a particular fact, is therefore to be unfavourable to the person of whom he had entertained the opinion? Was there a single allusion to the matter in question? It is not a cause of challenge to a man, that he has delivered an opinion upon the very subject: he must have done it through malice and with an improper view; and the reason is, that an honest man, may deliver an opinion upon what appears before him, concerning which, when examined, he may have a different opinion; even upon the subject itself, it must be clearly shewn, that the opinion was unfair or malicious, 2 *Salk.* 589. But see what is desired; suppose it a cause of challenge, suppose it a principal cause of challenge, then, my lords, I submit, that the verdict should not be set aside; because, by law the challenge must be taken, if to the array, before a juror is sworn; if to the polls, it must be as each man comes to the book.—So very strong is it, that after one juror is sworn, the law will not allow a challenge to the array; and yet where would be

the difficulty? but such was the simplicity of our ancient law, that it would not allow it, *Hob.* 235. And now, my lords, after the party has taken all the advantages which he could take, asking questions he had no right to ask, putting aside a juror actually sworn, after having the advantage of every thing which he could desire; you, my lords, and the people, (for they are appealed to upon a judicial trial!) have been told, that this trial was carried on by cruel and unjust means, and you are desired to set aside this verdict, upon matters, suggested in these affidavits, respecting a juror, which was no cause of challenge, upon a supposed conversation, as it seems to me, touching the volunteers, probably over a bowl of punch, and not about the subject of any trial.

I now come to the third objection, that the sheriff has been partial: Mr. *Rowan* swears, as to his belief, that the sheriff has an office under government—is a militia officer, and conductor of a paper, commonly called a government newspaper—that the sheriff is prejudiced against him—and that the pannel was returned by Mr. *Giffard*, or his sub-sheriff, and that he laboured to return a pannel which he either knew or believed to be prejudiced against Mr. ROWAN. If the affidavit has any meaning, it means this, that there lay a challenge to the array, for that the sheriff was partial, and procured a jury for the purpose of convicting Mr. ROWAN. He is not pleased to inform your lordships when he heard of these facts, or when he first formed his belief. This was not omitted from want of recollection in himself, or those who advised him; because, in his affidavit touching the evidence, he takes care to tell you, that he did not hear of it till after the trial; so that it does not appear that Mr. ROWAN was not apprized of this when the jury came into the box—when the *venire* issued—when the trial at bar was moved for in Michaelmas term, or when he put in his plea—look at the situation in which your lordships stand—look at what precedent you are called upon to make—you let the man take his trial, with an objection in his possession that may set aside all the proceedings, and he declines to make it—the party is to be tried by a jury—he submits to the jury, for he made no challenge, he is found guilty, and now he says, I had a cause of challenge, I took my chance—send me to another trial, that I may make it. My lords, I would almost ask, is this decent?—the law protects every man, gives him a right to have a fair jury, the law points him out the way, and he is not to overbound those limits, to do that which has not been done since the days of our Saxon ancestors. He knew these facts, that *Giffard* was sheriff, that he was an officer in the militia, that he had a place in the revenue—what had he to do? Mr. ROWAN had able counsel, men of the first talents and information—his remedy was easy and without delay or expence—why

—why not come in here and suggest the facts? If he had, the *venire* would have gone to the other sheriff, and *Giffard* could not have meddled. But mayhap the other sheriff is partial—suggest that then, and if the objection be well founded, the *venire* will go to the coroner. If the objection would not be sufficient for that purpose, it cannot be sufficient for this purpose; but it is said he was not aware of this suggestion; I will not impute it to the counsel—Mr. ROWAN must have been aware of it when they came into the box—why not challenge the array? He forgot to do that, till one of them was sworn;—then why not challenge for favour? Where are these men who have told him these stories? Why do they not make affidavits? Why does he take a chance for a verdict, knowing these facts? Having taken his chance, he now calls upon you to set aside the verdict upon that. Make that example, my lords, and you overset the criminal law, that which is the guardian of our lives and properties, and you make it depend upon the art, design and knavish conduct of those concerned. The objection is founded upon the conduct of the sheriff; that conduct was known previous to the trial, therefore I rely upon it, that this verdict ought not to be set aside; and if it be, it will be an example big with dangerous consequences. It has been said, Mr. *Giffard* did not answer the affidavits, and therefore they must be taken as true—Mr. ROWAN believes what he has sworn, but are the facts true still? No. He might have produced persons to prove the facts—*Giffard* has not answered the affidavits, it was offered to let him answer; but you must put that out of the case; whether he be ready to answer them or not, I do not know, and I do not care. I at once said to the gentlemen, I meet you on your own ground—*Giffard* could not make an affidavit in this case, he may make one extra-judicially if he pleases.

I come now to the other objection, which they had no right to make—the misdirection of the judge: the eloquent gentleman applied it as pleasantly as any serious subject could be applied; the whole was sophistry or joke.—He imputed this to one of your lordships, that the jury were to find against Mr. ROWAN, because he did not shew that the facts did not happen, where so many persons were present. Your lordships best know what the observations you made were—the trial stood thus, witnesses were examined for the prosecution—witnesses were examined to discredit these, which is always matter for the jury: there was clear evidence of the guilt of Mr. ROWAN, if they believed the witnesses; but witnesses were produced to discredit the first. The jury were to consider how far the opinions of those persons were to have weight, and every circumstance was to be taken into consideration. It was taken as true, that there was a meeting, that Mr. ROWAN was present at the meeting, and the question was, Whether he published such a paper there? If there

was such a meeting and he was there, it must occur to every person, that if he wanted to discredit the witnesses, it could be best done by shewing that he did not publish the paper. It was a judicial enquiry into a question of fact, and it was a proper observation, suggesting itself to the mind of any honest judge, to say, you are to consider, here there was a meeting; if you believe that there is not a witness produced from this number to contradict the evidence, it was a natural observation, but no direction was given to the jury; your lordships gave your opinion upon the libel, whether right or wrong is not the enquiry: there are few reasonable men, who have read or shall hereafter read that paper, who will not feel that it was the most dangerous and seditious libel, published at the time it was, that ever came from the press. But your lordships told the jury, that notwithstanding what you said, they were to form their own opinion; I do not rely upon the want of notice, but upon a full and fair discussion, let this case be decided as the law admits. One topic more remains, my lords, I should never touch upon it, if so much had not been said about it, more than ever was known to pass from the lips of counsel—I speak of Mr. ROWAN'S own affidavit, and the credit to be given to it. I am not to speak of the credit given to any man, it is not my province; but it is the first time I ever heard, that a man swearing to his own innocence should affect the determination of a judge in a criminal case. A great press was made upon this:—we were told—I know not what—and what if I did know, I choose not to repeat—of the consequences that might attend a belief of this gentleman's affidavit: I am not apprehensive of any consequences from it: the public mind is tranquil upon subjects, and whatever tumult or noise is made by the little mob behind me, or any where else, for a few hours, or a few days, the learned and the good will see, that the case has been determined upon the known rules of law, and that justice has been administered to this gentleman, as to every other. But the fact is not as it has been insinuated; he has not sworn to his innocence; he has not sworn, that if the verdict be set aside, he has a good cause of defence. He swears generally, that the testimony of the witnesses is not true; not a syllable with regard to his innocence. I desire to infer nothing from this; but I desire that nothing may be inferred from what he has sworn, to what he has not sworn. It is said, he is a gentleman of great worth, I know him not, I dare say he is; if he be, it may furnish some deduction, that there was something which he could not deny;—I desire not to press it further, that affidavit can have no weight in the disposal of this case, and I feel sensible, that the time will come, when it can have no effect upon the people. But be their opinion what it may, be the consequence what it may—*Fiat justitia—ruat cælum.*

Mr. SOLICITOR GENERAL, *same side*.—My lords, I was in hopes it would not be necessary for me to address you. This is the sixth day that this subject has taken up the time of the court, it is impossible not to feel it as trespassing much upon your time. The subject has been magnified into consequence not necessarily belonging to it; you have heard this case with dignified patience and with dignified attention, with an exemplary degree of temper, not disturbed by the efforts of unbridled eloquence. It is impossible to escape your lordships wisdom, that by the late act of parliament there was a latitude given to the jury upon the subject of libels. The learned gentleman who laboured this argument, went into an investigation of the facts, very briefly. He, in an argument of three hours or more, a few days ago, scarcely took up ten minutes in the investigation of facts: he has fastened the fact of publication “round the neck of his client;” that publication was a calling to arms to introduce a reform in the representation of the people, and an emancipation of the Catholics. He said the present publication was the “honest effusion of a manly mind.”—Instead of disclaiming the publication, the learned counsel has made a “wreath of it to decorate the brows of his client.” This motion is to set aside the verdict. In 3 *Wils.* 45. *Swaine v. Hall*. Lord Chief Justice Wilmot said in this case, there was a contrariety of evidence on both sides; and although I am still of opinion that the weight of evidence was with the plaintiff, yet I disclaim any power to controul this verdict of the jury, who are the legal constitutional judges of the fact.

My lords, I forbear to follow the learned counsel for the defendant through the vast variety of matter which he has introduced upon the occasion of the trial, with a degree of *boldness* and *freedom*, that was very unusual to my ear, scarcely admissible in any assembly, the most popular known to the country. There was another circumstance, I beg to put to your lordships mind; in the progress of the cross-examinations, it appeared, that at the meeting in Cope-street, there was a new species of men, under the cloak of old volunteers, with new devices and new badges of sedition, as a harp divested of the royal crown.* It was most industriously pointed out, that they were the old anti-ent volunteers. The witness said the men were dressed in scarlet turned up with blue, yellow, &c. Here was a declaration of the fact, that there was a meeting: give me leave to ask, was that fact capable of disproof, namely, was there a meeting of volunteers in Cope-street?—Did that fact rest on the testimony of an incredible witness?—The fact happened thirteen months ago; there was full opportunity to collect materials,

* No such fact appeared, or was asserted, on the direct or cross-examination of any of the witnesses.

to disprove what was sworn to, with regard to that meeting. Was it not competent to Mr. ROWAN to discredit the man if his evidence was untrue, to prove there was not a meeting on the 16th December, 1792, of volunteers at *Pardon's*?—That no man appeared there with side arms, or did wear those badges of sedition. Was it capable of disproof?—Not one of the 150 persons have been brought to disprove the evidence of *Lyster*, that there was such a meeting. There is not an affidavit to prove the innocency of the party accused, that he did not publish the paper in question. My lords, is this a case in which your lordships can say, you are dissatisfied with the verdict? Or that case in which the court can say, that justice has not been done? It was said, that it will do no harm to send this case back to another investigation; but, my lords, can you send it back, without deciding upon the credit of witnesses, which it is the province of the jury to decide upon? Give me leave to observe, upon the concurring evidence of *Morton*; he does not go to the collateral part of the case, he goes to the very principal part, namely, the publication of the paper; he was able to repeat part of the paper (which he said was read) by memory, viz. "*Citizens soldiers, to arms.*"

This verdict is sought to be set aside, in order to give the defendant an opportunity of being able to find more witnesses against the credit of *Lyster*, when he has already ransacked the province of Connaught for evidence.

If you do set aside the verdict, upon the ground of these affidavits, you do not give *Lyster* an opportunity of vindicating his character, which has been depreciated on the present occasion.

This verdict is sought to be set aside upon the ground of the challenge to the jury. I am bold to say, there is not a single authority in the law books to shew where a verdict has been set aside for matter of challenge. If the juror was competent at the time, you will not set the verdict aside for challenge to the jury. There are authorities which do say, that a challenge for competency is not a ground for granting a new trial. See the *Compleat Jurymen*, 261. There the law with respect to challenges to jurors, is fully laid down, and several cases referred to.

As to the objection, that the sheriff was partial; a sheriff is the returning officer intrusted by law; if Mr. ROWAN had suggested the objection at the time, before any of the jurors was sworn, no doubt your lordships would have postponed the trial, or issued a *venire* to the coroner; on this ground therefore this motion cannot be supported.

This is the first time, in the history of criminal proceedings, where an eloquent character has with unbridled liberty said, that there were conspiracies formed against his client, who stood in the alternative between guilt and martyrdom;—if, said he,

he, his client should be found guilty, he has been the victim of a persecuting combination, it was one question how far this combination was to reach. Give me leave to consider this eulogium to be of a dangerous and seditious tendency, against the jurisdiction of this country. The solemn and cool investigation of matters criminal, is not driven as yet to appeals to the people. Much has been said about the liberty of the press; the best mode to preserve the freedom of the press, is to curb its licentiousness. The most popular character that ever existed in England, Lord CAMDEN, on the decision of a case mentioned in the 11th volume of the *State Trials* 1122, gave his opinion on the dangerous consequences of libels; he said, that they excited discontent against the government, and tended to destroy the liberty of the press by its licentiousness, and said that the worst government was better than no government at all.

It has been a fortunate event for this country, that this matter has been brought to trial; if, in consequence of the summons to arms by the publication of this paper, the people in arms had by force overawed the government; if the people in arms had proceeded to act, the gentleman who now stands at the bar for publishing a libel and charged to be a misdemeanor, would be accused of high treason against the state; if there had been one act of force committed, by the clamorous rabble, who shouted yesterday at your bar, in consequence of this summons to arms, it would fasten the crime of high treason upon this gentleman. It has been a most fortunate circumstance, that a proclamation did issue, it quelled this paper trumpet of sedition. The gentleman at the bar, in every other department of life, is an honourable, a good, and a virtuous citizen, the friend of his country; but he is a mistaken zealot in point of politics; a mad philanthropist.

The new scheme of searching for an *Utopia*, a nation perfect in every respect, has driven millions to their graves; is that the country which has, in the language of the paper in question, got the *start* of us?

I do rejoice that this trial was had, for it has saved that individual character, of whom most men speak good things, and I am one of those, who have the honour of knowing him; but to let him go on uncontrouled, might be dangerous to himself, he might pull down the building upon himself—he lives to look at the image of his king before him. He has had the most patient trial I ever knew in the annals of this country.

Mr. FRANKLAND, *same side*.—Every observation, every case, and every principle of law, has been so very fully stated by Mr. Attorney General, that I feel it necessary to compress what I have to say, into the narrowest compass; and after so much has been said by the learned gentleman who spoke last, I shall be
very

very brief. The avowed personal regards for the gentleman at the bar, which the learned counsel have for him, have called forth the most splendid display of talents that has been known; but I consider this case merely as a case between the king and a common traverser; if this motive had not called forth the exertion of the eminent abilities of the learned counsel, this motion ought to have been decided in ten minutes.

Mr. ROWAN now applies to the discretion of this court upon many affidavits, in none of which he has stated one substantive case to make upon a new trial. He has made two affidavits himself, in neither of which he has stated, that he is not guilty of the crime charged. Upon these affidavits have you ground to say, first, that this verdict is contrary to justice? That the verdict was found upon false evidence, not deserving any credit?

I will admit that there is an analogy in principle, between criminal and civil cases; but I will be bold to say, there is not a case in the books, considering the circumstances that arise in this case, where an application has been made for a new trial. There is no case where a new trial has been granted, merely because the witness produced had spoken falsely. However, supposing it was a ground for an application, then look to the circumstances attending this case. You cannot forget that the traverser and his counsel came prepared to impeach the character of *Lyster*. The jury, it must be presumed, has weighed the evidence; they found a verdict. Do you now send back this case to a new trial, because the person who has sworn that Mr. ROWAN did publish the paper at such a meeting in Cope-street, has sworn false?

In cases of this kind, your lordships will look with eagles eyes. The court will never set aside a verdict on the ground, that a *witness produced has sworn false*. This *Lyster* should be indicted for perjury, and then these two men may bring forward the circumstances; but it would be absurd to set aside the verdict against Mr. ROWAN upon the affidavits of those two persons, who have sworn that *Lyster* perjured himself on some other particular transactions. In every application for a new trial, upon the allegation that evidence has been discovered which was not known antecedent to the trial; an affidavit of not only the *party* himself, but also of his *attorney* is required. Now, give me leave to ask, why these grounds are stated upon this affidavit of Mr. ROWAN himself, and not of Mr. *Dowling*, his attorney upon record? If you should grant a new trial, when this necessary ingredient, the affidavit of his attorney, has not been complied with, would not every attorney in the hall, the instant he was employed to defend a client charging him with a misdemeanour, say to him, do you listen to no one; do not enquire about your defence; I shall shut the mouth of every man to you upon the subject, and

go to trial, and give yourself a chance of a verdict of acquittal; if you should happen to be acquitted, it is well, but if the verdict should be against you, then apply to the court to set aside that verdict, upon the ground of facts which I now tell you of, and which you can swear has come to your knowledge since the trial. Let it not be understood that I mean to apply that there was such a scheme between the present parties. No; but I am adducing a case to the court. I would not have it imagined that I impute any thing in the case I have supposed, to the present defendant; he is a man of honour; but courts will decide upon established general rules, applicable to the case of every man.

The notice in this case is very generally shaped: Is he to be granted a new trial upon the ground stated by these affidavits? Nothing can be more clear than that the defendant had a knowledge that *Lyster* was to be produced against him. *Lyster* was examined, and witnesses were examined to discredit him. Will it be contended that there was not evidence for the jury to weigh and deliberate upon? The verdict of the jury shews they did decide on *Lyster's* evidence. To say, therefore, that this is a verdict against evidence, is utterly untenable; it is not a verdict against evidence; it comes then to this, is it a verdict against the weight of evidence; will your lordships establish such a rule as this? You never will interpose with the province of the jury: the court will not say it was a verdict against the weight of evidence, the whole of the evidence did go to the jury, and upon that evidence the jury were competent to decide.

As to the second ground, that some of the jury were prejudiced against, and at enmity with the traverser: Upon that ground I was told, that Mr. Curran laid down the position from a case in 5th *Bacon* which referred to 7th *Modern*, 57. where a challenge for favour is a good cause of setting aside a verdict. Supposing the case to be in point, yet in the present case the facts set forth in these affidavits would not constitute a good challenge to the poll, or to the array. This appears from the triors oath in *Co. Lit.* to determine whether you are bound to look to the words of this affidavit; supposing, but not admitting, that the jurymen did use the words mentioned six months before the trial; before he was sworn, it was not a good cause of challenge to the poll. Suppose that six months ago, the words used by a jurymen were these, "Mr. Rowan has committed murder," when the juror came to be sworn on the trial four days ago, on a charge for a misdemeanor, the juror might say, my mind is now disabused, I was under an error when I did speak the words mentioned, but I never made any declarations upon the matter in issue. The trior's oath is, "to enquire whether the juror stands indifferent as to the matter in issue between the parties." Give me leave to say, that by the principles of law, the court will
never

never send a cause back to be tried on account of the words spoken, as charged in this affidavit, unless the words spoken were such as in law would be a good legal challenge to favour.

The objection made to the sheriff, as returning officer, is for partiality. I was astonished when the traverser and the counsel came forward on a motion to set aside the verdict, because the defendant knew a fact, without stating when he came to the knowledge of that fact, which would be considered as a good legal challenge to the array. Is it because a man is proprietor of a newspaper, has a place in the revenue, and holds a commission in the militia, and he returns the jury—is that a good cause of challenge to the array? But, if it has any weight, when did Mr. ROWAN come to the knowledge of those facts? Mr. ROWAN could have made his objections before the trial; he had a knowledge of these facts, he knew that Mr. *Giffard* was proprietor of a newspaper called a government newspaper, had a place in the revenue, and held a commission in the militia. He could then, by an affidavit, have applied to the court, stating that he could not have a fair trial. Your lordships would no doubt have postponed the trial. I do not find in the notice, any mention made relative to any misdirection in the judge. The court was unanimous, the whole matter was left to the jury, who were told that they were to judge of the credit they would give to the witnesses. Mr. ROWAN's being at the meeting was a fact admitted; for on the cross examination of *Lyster* it was pressed by the counsel, that the meeting consisted of the old volunteers, that their uniform was scarlet with different coloured facings. The fact of Mr. ROWAN being at that meeting was proved by *Morton*, and he said he heard part of the paper read, as "*Citizen Soldiers, to arms!*" There were near 200 persons at that meeting; that was the fact capable of disproof; if so, there has not been a single person produced to disprove it; that is as a volume of evidence of the truth. I must say I rejoice at hearing this voluntary eulogium on his private character. That has nothing to do with applying to your discretion to set aside the verdict, which twelve men on their oaths have found. This motion ought not to have taken up ten minutes of your lordships time. I think there is no ground to set aside the verdict.

Mr. PRIME SERJEANT, *same side*.—My lords, unless your lordships please, I have no desire to speak on this motion.

COURT.—As you please—use your own discretion.

Mr. PRIME SERJEANT.—My lords, I am counsel on the part of the Crown. This case is totally different from any case in the books. It is unnecessary to go into the detail of the evidence

dence on which your lordships have, in fact, given your opinion. This is a motion made to set aside the verdict, where no evidence on the part of the defendant was adduced, but merely to discredit the witness produced on the part of the prosecution. They ask you to step out of your proper sphere, to judge of the credit of the witnesses, which is the province of the jury only to do. Where evidence has been adduced on both sides, the court may give their opinion to the jury, where the weight of evidence lies, but the jury are to determine as to the evidence and the credit they will give to it. I should apprehend there would be a clamour against the court, if your lordships were to step off the bench into the jury box; because the court has nothing to say to the credit of the witnesses. Were you to set aside this verdict, it would be taking away the opinion which twelve men on their oaths have formed, and which opinion the jury were bound by the law of the land to entertain. Therefore, on the ground of the verdict being contrary to evidence, or to the weight of evidence, in a case where there was no evidence on one side, there is not a man of common understanding that cannot say there is no ground for this motion.

It is said, that a juror was prejudiced against the traverser. If there was any contrariety of evidence, if there was any point on which that prejudice was to operate, if there was any scruple of evidence on one side, and prejudice was to give way to that scruple, there might be some weight in the objection, but here there was nothing to exercise his prejudice upon; there is therefore nothing in this objection as a ground to set the verdict aside. If five hundred witnesses had come forward to say, that *Lyster* is not to be believed upon his oath, it is not for the court to determine, but solely for the consideration of the jurors. The jury must determine whether *Lyster* was deserving of credit, or not; even if this objection had more weight than it has, the door is shut upon it, as against the traverser. The whole of the case went to the jury, and by their verdict it appears, that they did give credit to what was said by *Lyster*.—2 *Atkins* 319. An issue was directed to try the validity of a deed, a witness swore to the execution of the bond *at a certain time and place*. Before the trial, the defendant in the action gave notice, he would impeach the credit of the witness, because he was abroad at the time of the alledged attestation to the deed. The case went to trial; there was a verdict on the evidence intended to be impeached. The party applied for a new trial, on affidavit, that the person was at a *different place* when the deed was alledged to have been executed. The court said they would not entertain the motion; he ought to have come prepared at the trial; we will not now give you an opportunity of bringing on your witnesses at a new trial.

With respect to the incredibility of *Lyster*, three witnesses were examined, and now your lordships are called upon to have an examination of *Clarke*, who appears to have been the hair-dresser of *Lyster*, and to let in the evidence of Mr. *Coultry* that *Lyster* does not deserve credit, after the examination of three witnesses to that point at the trial. Is the hesitation of Mr. *Blake* to impeach the character of Mr. *Lyster*? Or the positive assertion of any man? With respect to the public principles and character of witnesses, are they to be again enquired into, after they had gone through the fiery *ordeal* of a cross-examination? The court would not permit it, after the witness had gone from the table. As to the general character of *Lyster*, it could not be gone into: evidence did not go to the point that he did deserve credit or not. An objection is made on account of the declaration of the juror; it was not a declaration of any opinion as to the matter in issue between the parties; such declarations therefore, could not be the ground of a challenge to the juror. 2 *Hawkins* 589.

If there be objections to a juror for partiality, it would be a ground of challenge, if accompanied with some particular instances of malice. The law makes ill will in a juror necessary to support the cause of challenge.

The charge against the sheriff is that he did impanel persons prejudiced, and at enmity against the defendant; but no particular prejudice is mentioned in the affidavit: Mr. *Rowan* does state he heard, and believes, that Mr. *Giffard* is conductor of a news-paper, called a government news-paper, &c. It is not said that *Giffard's* labours were successful, so as to have a single person on the jury who was unfairly prejudiced against defendant. Mr. *Rowan* has not sworn that the pannel was absolutely composed of persons prejudiced against him, and such were chosen by the contrivance of Mr. *Giffard*; this was in the nature of a challenge to the array made partially, through the misconduct of the returning officer.

As to the incompetency, it is no ground to set aside the verdict; judge *Grose* says, "as to the question of competency of witnesses after trial, on a motion for a new trial, we are bound to reject such testimony now;" though a decision of competency peculiarly belongs to the court. 1 *Durnford and East's Reports*, 717.

Locke says, that where a transaction is done in open day, where there is a possibility of contradicting it, not contradicting it is an admission of the fact. The observations mentioned will have a conclusive effect upon the mind of every man that hears me.

Adjourned to Friday, February the 7th, 1794.

FRIDAY,

FRIDAY, FEBRUARY 7, 1794.

This day the court proceeded to deliver their opinions, *seriatim*.

Lord CLONMELL, *Chief Justice*.—This is a motion made on behalf of the traverser, Archibald Hamilton Rowan, founded on a notice dated the third of February instant; and it is to set aside the verdict had against him in this cause: first, as being contrary to the justice of the case; as founded upon false evidence, and upon testimony not deserving of any credit. The second ground is, that some of the jury, who found the verdict, were prejudiced and at enmity with the traverser, and had declared that opinion before they were sworn upon the jury. The third ground is, because the sheriff who arrayed the pannel was prejudiced against the defendant, and did array the pannel so as to have him tried by an unfair jury.

The motion is stated to be founded upon six affidavits, (of which I have copies, as have my brothers) stated to have been filed in this cause on the third of February, stating the nature of the case, and the reasons to be offered. The motion was called on that day and ordered to stand for the next day, when another ground of objection was made in the argument of the motion, or suggested by counsel, founded upon an observation stated from his memory, and unsupported by any oath; which he argued from, as if used by me in my charge to the jury; which I shall take notice of in its proper place. The affidavits to the first point in the notice, for I have endeavoured to class them so as to make them intelligible to every person; the affidavits, I say, to the credit of Lyster, are three:

1st. *Clarke*, the peruke-maker, who is of opinion that Lyster is not to be credited, as he believes, because in a suit in the Court of Conscience he, *Lyster*, perjured himself, by denying any acquaintance with him. The next is *Coultry*, a gentleman, who is of the same opinion, because, he says, *Lyster* perjured himself respecting a horse, and made a false affidavit in the name of his brother, whom he personated. Mr. ROWAN, in one of his affidavits, for he has made two, also swears to the same points: that he believes, if these two persons had attended at the trial and been examined, this witness, *Lyster*, would have been totally discredited. That he swears is his belief, and I dare say, that impression is made upon his mind. And he adds further, that from what he and his friends are daily hearing, he has no doubt of proving fully, that *Lyster* is deserving of no credit on his oath. These are to the first point. Touching the second point in the notice, that is, the partiality or prejudice of the jury, or some of them, *William Atkinson*, a watch-maker, has made an affidavit, stating

that in August last, on an occasion of some illumination, he had a conversation with Mr. *Perrin*, one of the jurors, respecting the volunteers; and that, with respect to the body in general, he spoke with acrimonious language; but particularly with respect to HAMILTON ROWAN; that he and NAPPER TANDY deserved to be hanged, or the country would never prosper, or to that effect; and Mr. *Porter* swears that, since the commencement of this prosecution, and before the trial, Mr. *Perrin* made use of some other expressions of the same sort; and Mr. ROWAN swears, that he believes that some of the jurors did, previous to this trial, use expressions tending to asperse him, therefore they were heated against him, and had impressions in their minds unfavourable to him.

With respect to the third point in the notice, Mr. ROWAN swears he heard and believes that Sheriff *Giffard*, by whom, or by whose under-sheriff, the pannel has been arrayed, is the conductor of a paper generally understood to be a government paper; that he has a lucrative office in the revenue, and is an officer in the Dublin militia; and that he is strongly prejudiced against him, and did labour to have such a pannel arrayed, of such men as he knew were unfairly prejudiced against him. These are the affidavits touching the three grounds stated in the traverser's notice. And as to the general merits, Mr. ROWAN further states, that he was present during the trial, and that he heard the evidence given by *Lyffer* and *Morton*, charging him with having read, distributed and published the paper in *Pardon's* school, and he swears that said testimony is utterly false. This he positively swears to; but he does not, however, deny any of the particular facts alledged in the information against him; as to that he is silent, and he undertakes to contradict no fact sworn in the evidence against him, but that which I have mentioned.

Thus stand the affidavits upon which this motion is grounded. It may not be amiss to give a short history of this case, so far as we have judicial knowledge of it, in order to throw light upon the situation in which Mr. ROWAN stood when his trial came on. He was arrested in consequence of the publication in question, above a year ago, and gave bail to that arrest, before Hilary 1793, viz. on the 20th of December, 1792, (I believe I am not mistaken, but it is not very material) and the first information *ex officio*, for that is not the one on which he has been tried, was filed Hilary 1793; and now I speak of what passed in this court. On the sixth of May last, near nine months before his trial, in Easter Term, which ended the thirteenth of May, Mr. *Emmet* moved to vacate his recognizance: Mr. Attorney General consented. Mr. ROWAN and his bail appeared in court, and it was vacated, as he was ready to be tried upon that information: next was a motion on his behalf, by the Recorder of the city of Dublin, to appoint a day for his trial in the term following; that
 motion

motion was made in Trinity Term, but the Attorney General applied to the court stating, that he had discovered an error in the information, and entered a *noli prosequi*; accordingly no trial was appointed. A new information was filed, and in Michaelmas term, several weeks after the city sheriffs were chosen, a trial at bar was moved for, and a day appointed in this present Term (the twenty-ninth of January). On the eleventh of November last the Attorney General moved to amend the information, by striking out one of the innuendos. The Recorder appeared on behalf of Mr. Rowan, and said he was instructed not to oppose it. On the twenty-ninth of January the trial was called on, and no challenge having been taken either to the array, or to the polls, either principal, or to the favour, the jury were sworn, and tried the cause. There were questions put to some of the jury touching their opinions, whether they had declared them or not, upon the matter in issue: one of them having said, after he was sworn, that he had given some opinion, he was withdrawn by consent; nor was it objected to by the crown lawyers; and these questions, which are said in the books to tend to reproach, were asked, and not objected to.

I must here invert the order of the points, to make it more clear, by following the order of time: the first objection then, is that stated by Mr. Rowan's affidavit to the sheriff's pannel. He swears that *Giffard*, by whom, or by whose sub sheriff, the pannel was arrayed, is conductor of a news-paper, generally considered a government paper; that he has a lucrative office in the revenue, and is in the militia; and he believes he laboured to have such a pannel arrayed, as were prejudiced against him. This I shall first consider in point of law, and then of hardship, as addressed to the discretion of the court: first then, would it have been a cause of challenge upon a demurrer? Clearly not; there is nothing certain nor ascertained in it; is it in law, a ground of challenge, that a man conducts, what is considered, a government news-paper? what is a government news paper in legal estimation? A chimera of the brain. Is it meant to be insinuated that government, or the crown, to use a more proper expression, was at war with Mr. Rowan, or that any thing done, on the part of government, was to be injurious to him? I hope not; nor that any thing he did is to be injurious to government; I trust not. I put it the other way: suppose it had been objected, on the other side, that a juror had published a paper called Mr. Rowan's paper, or the Freeman's Journal, or any paper of that kind; would it be an objection that could have any weight? Undoubtedly not; no denomination of subjects, under that general name, can furnish an objection even to the prosecution.

Then again it is stated that he held an office under government, and was in the militia. If this were to be a disqualification, then mark the consequence: every sheriff in the thirty-two counties

counties of Ireland at large, would be disqualified to return a pannel; which amounts to this absurdity, that the very grant which qualifies, by law, every sheriff to make returns, does *ipso facto* disqualify him, because the office of sheriff is under the crown: and if holding an office under the crown disqualify a man, it involves this palpable absurdity, that the very grant, which makes him, disqualifies him from acting. But it is still weaker with respect to the sheriff of Dublin, for that sheriff is not appointed immediately by the crown, but by election: however I have exposed this objection: upon the other ground I put it, that it would be absurd that the very office should be a direct disqualification, from the fulfilling of the most important duty of it. But then Mr. ROWAN *believes* him to be prejudiced against him, and that he laboured to return a prejudiced pannel. Would his belief be evidence of favour? Surely not; but the law, not grounded on weak suspicions, disregards such conjectures, and rejects the surmises of interested parties. Our law, also, appoints a proper time, when even legal objections can only be received. The time for challenging the array, is before *any* of the jury are sworn, and for challenging the polls, when they come to the book; but if the party accused takes his chance with the jury, he afterwards comes too late to object to them; so is the language of the law, and the manifest principle of justice. But to take it upon the point of hardship, which has been insisted upon, there appears to be none; he had three months notice, and near two terms had elapsed, during which time he never expressed any discontent against the sheriff, nor suggested to the court, by affidavit or otherwise, that the sheriff was partial, or adverse to him. He and his attorney must both have known that this man was sheriff, and yet never applied to have the trial postponed, or the process directed to any other officer; and even in his affidavit, made since the trial, which is unsupported by any other, he does not state that this cause of complaint came to his knowledge subsequent to the trial; indeed the reason of his belief speaks the contrary, namely his being the conductor of, what is called, a government paper, an officer in the militia, and in the revenue; which facts, it is presumable, he could not have been a stranger to at the time of the trial.

Next comes that objection to the juror *Perrin*, in answer to which, what I have already said, respecting time, that the challenge should have been made before the juror was sworn, and if a challenge had been made, there is not enough in the affidavit, even supposing the facts true, to support it. It is not sworn that he made any declaration respecting the matter in issue, nor in malice, to the defendant. 2 *Hawk. P. C.* 589. *Leech's ed. Irish octavo*; cited by Mr. Prime Serjeant. The prior's oath illustrates and is applicable, it is to try, whether the jurors are indifferent upon the *matter in issue*; but I still resort to what I said before, the objection now

comes too late. A third objection goes to vitiate the verdict as unjust, founded upon false, on uncreditable testimony. This is a question of great extent, and of great consequence to the administration of criminal law; the object desired is, to be let in, it is said, to impeach further by new witnesses, the credit of persons, already attempted to be discredited on the trial. If that were yielded to, no verdicts for misdemeanours against the traverser could stand, as long as a man could be found to swear that the witness did not deserve credit. It would be a direct and general invitation to such perjury as could not be punished by an indictment, and would tend to withhold a part of that evidence by which the witness on the first trial might be impeached, and hold out an invitation to persons to offer themselves after the trial, to discredit the witnesses with safety, perhaps profit to themselves. It would wound the constitution deeply, by transferring the jurisdiction of the jury to the court, and would totally overturn the trial by jury. It is admitted by the defendant's counsel, that no case has been found to authorise it, and the case cited 7 *Mod.* 57. has been searched for, and cannot be found: I have found a case in page 54, which, so far as it goes, is against him; it would be strange and unjust if it could, but there are other cases, which go much more strongly against him, where it has been attempted to set aside the verdict where the witness has been incompetent, of which the court, and not the jury, are by law the judges. *Hyan* and *Ballan* cited 7 *Mod.* 54, referred to 5 *Bacon*, was the case of a non-suit, and the court refused to set it aside, although the deed, upon which the defendant relied, was sworn to be a forgery; and *Turner* and *Pearte* 1 *Term Rep.* 717. is much stronger than this, against what is applied for. An application was made for a new trial upon affidavit, that five of the witnesses produced by the party, who obtained a verdict, were incompetent, and ought not to be examined at all; there is an affidavit in answer, that the party who called these witnesses did not know that there was any objection to them. *Asburst*, J. said they came too late after trial. Now there their evidence was to be considered as a nullity, that they never should have been examined at all; not what credit they deserved, whether more or less, which the jury are judges of, not the court. And in that case, where the matter was of law within the power of the judges, whether competent or not, though it was sworn that five of them were interested, and incompetent of course, yet the court would not hear the objection because it came too late, and Mr. Justice *Buller*, a very great lawyer, says "there has been no instance of this court's granting a new trial, on an allegation, that some of the witnesses examined were interested, and I should be very sorry to make the first precedent." "There never yet has been a case in which the party has been permitted *after trial* to avail himself of any objection
" which

“ which was not made at the time of the examination.” Mr. Justice GROSE, in the same case, says, “ In the first place it does not clearly appear, that the plaintiffs did not know of the objection at the time of the trial. It is sworn very loosely; and if they knew of it, at that time, that would be a decisive reason for refusing to allow it now.” And now I shall apply this opinion, in this case, to the last objection made by counsel, as well as to what I have already said; but there it was said by Mr. Justice GROSE, that the objection to the witness might be an ingredient if the party applying had merits. In 2 *Term Rep.* 113 in the case of *Vernon* and others, the assignees of *Tyler v. Hankey*, the court would not grant a new trial, to let the party into a defence, of which he was apprized at the first trial. I have cited these cases to shew, that even in case of incompetency, where the witness ought not to be permitted to stand upon the table, or open his lips,—thereafter trial, the court would not set aside a verdict upon that ground. But see what Mr. ROWAN’s affidavit is, even if it could be listened to as to his own innocence; he says, he heard the evidence of *Lyster* and *Morton*, charging him with having read, distributed and published the paper in the information, in Cope-street, at Pardon’s fencing school, and positively swears, that their testimony was utterly false. Now first, I say, that no trial or verdict was ever set aside, in a case like this, upon such an affidavit. It is at best the oath of the party to his own innocence; but it is not so much; here he does not deny the facts, not one of them; and let me take the words “ *utterly false*” in every sense they convey; if he means false in every thing, then he has surely made an affidavit stating that he has heard the evidence of *Lyster* and *Morton*, charging him with having read, distributed and published the paper, that, he says, is utterly false. To use the expression of one of the judges in that case I cited, it is a great deal too loose; the party swearing for himself does not even contradict *Lyster*; he does not contradict any one of these facts specifically. I will ask, could he be found guilty of perjury, upon such loose swearing, supposing it to be false? I should think not. But it is material to another part, that this is the only part of their testimony which he has contradicted, and he might, when he undertook to contradict any of the facts, have contradicted the whole, or any other part, as far as the truth would justify him, at least upon hearsay or belief; he has not done that.

But it is urged from the bar, upon a point not stated in the notice, but from the recollection of one of the counsel, unto which no affidavit refers, that I assumed to the jury the fact of a meeting, at Cope-street, of 150 men, at which Mr. ROWAN was present, which he has not contradicted; upon that I have built a strong inference of guilt, upon the presumption arising from their silence. Here I will state, as accurately as I can, what I did say;

what

what I did not say, which has been imputed to me ; in which I have the concurrence of my brethren as to their recollection. I told the jury, and meant to have told them, as far as my recollection serves me, that the observation made by one of the prosecutors counsel, indeed by two of them, first Mr. Attorney General, and afterwards Mr. Prime Serjeant, struck me, as obvious and strong, *viz.* that the defendant did not contradict by a single witness, any one fact sworn to against him ; I then stated some of the leading facts sworn to, those facts as I thought easiest to be contradicted, and those facts which brought with them, if they were true, the means of defence ; for example, that there was a meeting in open day at a public fencing school, where from one to two hundred persons, many of them in volunteer uniforms, were sworn to have been present ; this fact, I told them, was sworn to by two witnesses, and if the jury believed there was a meeting of the kind and number sworn to, it was to my mind, a *volume of evidence* : I say so still, that the defendant did not produce any of the persons to contradict any of these facts, or prove that he did not read, publish or disperse the libel in question. He has now made an affidavit, and see the power of perverting fancy : Gentlemen argue for an hour upon affidavits, because the facts sworn to are not contradicted, and they insist upon these uncontradicted facts as truths ; these six affidavits, say the counsel, are strong and uncontradicted, and therefore the facts in them must be assumed ; but on the other hand, Mr. ROWAN has made an affidavit, and he has not to this hour, ventured to contradict all the facts proved against him on the trial ; and shall we not be at liberty in our turn, to assume upon this motion that he cannot contradict them. He swears he heard the evidence ; he has not ventured to contradict any of those facts ; he has not sworn that there was not a meeting of so many persons, nor any thing of that nature.

Now I will state what the evidence was: *Lyster* swore, that on the 16th December, 1792, he was at *Pardon's* fencing-school, in Cope-street, in the city of Dublin ; that there was from one to two hundred persons present in scarlet uniforms ; that *NAPPER TANDY*, *HAMILTON ROWAN*, and others, were sitting at a table ; the witness went in from curiosity, and he was told by Mr. *ROWAN*, to the best of his knowledge, that no man in coloured clothes could be admitted there. He does not contradict that conversation with this man—that there was a gallery, to which he might go ; that is not contradicted—that *HAMILTON ROWAN* was very busy, and walked about with papers in his hand ; these facts, let it be remembered too, that he swore upon belief and vague recollection to the best of his knowledge. I told the jury this was not evidence, and should be rejected ; but he does not now contradict any of those facts ; then he goes to the publication. So it was with respect to *Morton*, what did I tell the jury ?

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after stating the act of parliament which declares, if not gives, a power to the jury, to find upon the whole matter, which I told them they had a right to do; that the credit of the witnesses was with them, and not with me; that they were to find, upon the whole matter in issue, and that they were the judges of the fact, and the intention. Did I assume any fact? No; that fact, as well as every other, was to be determined upon belief or disbelief of the witnesses. Such may not have been my identical words, but such must have been my manifest meaning, and the court approved of what I said. And I say now with certainty, I never said to the jury, that the defendant's silence upon those facts, was to supply any defect in the prosecutors evidence; I disclaim it. I did not assume the fact, nor did I mean or direct that the jury should take it for granted, that there was any meeting whatsoever.

These facts were sworn to, like the others, by two witnesses, except the fact of publication, which was the criminal fact, and which was sworn to by one witness only, and so I stated to the jury, that *Lyster* whose credit was attacked, if they did not believe, I told them, they ought to acquit. I then left the whole of the facts and credit of the witnesses and the intention of the paper (if they believed the defendant published it) to the jury, who were, I told them, to determine upon the whole matter.

But suppose the fact otherwise, and as favourable to the defendant as his counsel wished to have it taken, it cannot avail upon this motion either in law, or justice, or fact, or legal discretion; first it makes no part of the notice; next it should have been objected to below. It was the duty of the gentleman who urged it now, and he was not remiss, to have taken notice of it at the time; thirdly, it falls under the general rule that any objection which could have been made below, and contradicted or refuted by evidence, cannot afterwards be taken advantage of. It might have been instantly answered, qualified, contradicted, or adhered to; but in truth, the general course of the defence rejected all idea of disproof, it was to justify that paper; and standing upon that ground, it scorned to deny the publication, I take for granted; for no attempt was made to contradict a single fact sworn to by one or other of those witnesses. But, upon this motion, how is it to affect our discretion? Does it appear now that any of those facts are contradicted? What are we then to judge of? Is it that manifest injustice has been done, which is the principle that governs motions for new trials. Is there any thing like a new substantive defence set up, which has not been made before? Is it said by any of the persons who have made affidavits here, or by the traverser himself, that he can by witnesses contradict these facts? Not a word of any such thing;

thing; and if we are to draw the same inference from the silence of the affidavits, which was drawn from not answering them in the arguments of the case; see how it stands, what he has not contradicted he has admitted—but I have no occasion for that. This motion is addressed to the discretion of the court; that is to the court bound by the curb of legal discretion, for we cannot indulge our feelings be they what they may, and legal discretion is as well ascertained as any express point of law adjudications are evidence—we are obliged to follow these, as evidence of what the law is. It is said there is an analogy respecting the granting of new trials, between cases of misdemeanors and civil cases, and yet, in order to determine this motion, as defendant's counsel desire, we must abandon that very ground of analogy: the great principle is that, and that alone, which is recognized in *Bright and Eynon*, 1 *Bur.* 390, alluded to and adopted in many others, from the case in *Styles* to this hour—Has substantial justice been done? Has the party who requires a new trial been manifestly injured? Upon what ground is it we are to presume an injury done to the traverser? He has had fourteen months to prepare himself. In trials for their lives, men have often not more than one, and very seldom more than six months; he had fourteen—they, though confined and in prison, are supposed to have time to defend themselves in felonies of death—here the party at large, complains, invites, provokes the trial. Has he been surprized? Has he wanted the aid of counsel? has he been unattended with friends and followers? Look at the history of the trial. What new defence has he alledged? has he, even himself, contradicted the facts charged against him? No; from what then are we to infer, that injustice has been done to him? It was said that whether by right or by courtesy, by indulgence, or connivance, persons in his situation find a way to the matter charged against them. See how that stands: there may be very good and sufficient and proper reasons, not to disclose the name of the party swearing the information; to protect him from violence or corruption of the party sworn against. How is this case? The very thing, which most deserves to be concealed, was made known to him and his agent; for the person, that is to swear against him, is disclosed to them, they trace him to the place of his birth, they enquire into his family and connections, they follow him through his private bargains and engagements, they become acquainted with his indiscreet, and perhaps immoral conduct; shall we presume, that this man, whose name was then at the foot of the examination, was unknown to him? Where are we to look for that substantial justice, by which he can protect himself on another trial? I find it no where; I find it not in the principle of the criminal law; I find it not in adjudged cases; I find it not in the sound discretion of the court; he has had every possible indulgence; he has had every latitude of defence by justification,

(at the least as far as it would go) by insinuation, by address; I believe, and hope he has had, and I trust, in this free country, I am not mistaken when I suffer counsel to go as large, and take as wide a range, as decent language will admit, to convey every sentiment which may assist his client: can we say the merits are not tried? Is it said the merits are in his favour? But see, as I said before, how perverting imagination can change the most common maxim: is it alledged that the juror, who is complained of, exerted himself to influence the others? that this was a case of a struggle amongst the jury? Oh! No; but the case was so clear, that there was not a minute a man in the deliberation. Then where there is not a struggle, and it is not said that he did act partially, or work upon the other eleven, or that by his unjust means, the verdict was obtained; yet we are desired to step out of our way—to go unconstitutionally into the jury box, and say, that they should not have given credit to the witnesses, where the constitution gives them a power to decide. I am therefore, clearly of opinion, that the verdict cannot, upon any principle of law or justice, be disturbed.

Mr. Justice BOYD.—This is an application to set aside a verdict upon an information. My Lord CLONMEL has stated the affidavits so much at large, that it is not necessary for me to take up much time. The counsel in the argument rested the case,

1st. Upon the declaration of a juror against Mr. ROWAN.

2^d. Upon the partiality of the sheriff.

3^{dly}. The incredibility of *Lyster* the witness, and,

Lastly, the misdirection of the court.

As to the declaration of the juror, there are two affidavits, which state it, but it was upon a common subject; it had no relation whatever to the matter in issue; it does not appear that this declaration was malicious, and the authority in *Hawkins* establishes that a declaration to prevent a man from being a juror, must be pertinent to the matter in issue, and malicious. The declaration of *Perrin*, in my opinion, if laid before the court in proper time, was not a ground of challenge in point of law; and I must conclude it now comes too late; it was an objection meerly to the favour; it is a matter *in Pais*, to be determined by triors appointed; and here the court are desired to assume the province of a jury and try it here. But I think it now comes too late. In this case it does not appear, that justice has not been done, which is the true ground of setting aside verdicts. It is no where suggested, that the misconduct of this juror was the cause, by which the verdict was obtained. The shortness of the time, that the jury were withdrawn, is a strong ground to presume, they were not persuaded by him.

2dly, As to the charge of partiality in the sheriff, Mr. ROWAN in his affidavit speaks only as to belief; he does not charge it positively. The same observation I have already mentioned, goes to this point; there was not a challenge taken to the array, on the ground of partiality in the returning officer. This being an application to the discretion of the court to set aside the verdict, the question is, has justice not been done? The charge is general upon belief; and yet the affidavit does not say, that the sheriff did procure a partial jury, or that he could procure it; and in this case, as in every other, the not making objections at the trial, is a strong ground to prevent the court from interfering, especially where the traverser in no part of his affidavit, swears he is not guilty; or has a good cause of defence to make upon a new trial, which, in my opinion, are two material grounds, in granting new trials. As to the incredibility of *Lyster's* evidence, I must observe that evidence was offered at the trial, which shews to demonstration, that the defendant was prepared; he produced three witnesses against *Lyster*, for he did produce *Blake*, *Smith* and *Hatchell*, their evidence and *Lyster* and *Morton*, all went up to the jury; the jury have found their verdict; and this application is made to the discretion of the court, to set that verdict aside and to grant a new trial, to let in further evidence in support of that, which the jury did not credit, that is, of the witnesses, who charge that *Lyster* ought not be believed on his oath. There is no instance in the books to be met with to warrant such a proceeding.—There are instances, where a court has refused to set aside a verdict, on the ground of incompetency of the witnesses on the former trial, because the defendant had taken a chance of a verdict in his favour. Suppose a new trial granted, what would be the consequence? *Lyster* would be examined before another jury; with the suspicion of the court of King's Bench falling upon him, that he was an incredible witness.

As to the misdirection of the judge;—I attended to every word, as I always do to what falls from his lordship; I recollect the substance of the charge, it had my entire approbation, it was, that the defendant did not contradict, by a single witness, any one fact charged against him. His lordship stated several of the facts, which he thought might be disproved, if not true; the meeting was at noon day, in a public room, and 150 persons present, in uniform; the evidence of *Lyster* was confirmed by *Morton*, but *Morton* had not the paper, but heard the expression, “*citizen soldiers, to arms.*” On the whole the evidence went to the jury, but there was only one witness to the fact of publication. If the jury believed there was any meeting of the kind and number that was so mentioned, the defendant did not produce a witness to contradict one of the facts so alledged. His lordship did not say, that the defendant's silence was to supply the

the defects in the prosecutors evidence. All the facts were left to the jury by the court, and each of us made such observations as occurred to him. By the verdict the jury, it appears, did give credit to the witnesses, and did believe there was a meeting. The description given of the meeting was, that there were 150 persons present. These were strong circumstances to go to the jury. If you believe there was a meeting, not one of those persons has been brought forward to contradict these assertions. I know of no judicial determination of any case similar to the present. In this case, the traverser does not swear he is not guilty. If this was a civil case, here is not ground for a good demurrer. On the whole, I concur with Lord CLONMELL, that this verdict ought not to be impeached.

Mr Justice DOWNES.—This is an application, to set aside a verdict of guilty in a criminal case, on several affidavits. I hope that it will be recollected, that the affidavits have been read without opposition from the counsel for the crown, and that the court have not given any opinion whether after a verdict of guilty in a criminal case, the defendant has a right to have such affidavits read, as have been produced in this case; but as they have been read, I shall examine the grounds of the motion, which is founded on them.

1st. The verdict is sought to be set aside (according to the notice) on this ground, that it is *contrary to justice, founded on false testimony not deserving any credit*; those are the words of the notice.

This is a direct appeal from the jury to the court, in a matter solely within the province of the jury; the court cannot decide on the truth or falsehood of evidence, and yet we are desired to set aside this verdict on the ground, that the evidence was *false*, and that the jury ought not to have believed the witnesses.

No *fact* sworn to by either of the witnesses for the crown, on the trial, was *then* contradicted by evidence, no new witness is discovered, who can, in case of a new trial, contradict any *fact* sworn by either of those witnesses.

The truth of their testimony as given on the trial, is *even now* contradicted only by the affidavit of the defendant; the court can make no distinction between defendants, and no instance is, or I believe can be shewn, where the oath of a person found guilty, contradicting the witnesses examined against him on the trial, has been allowed to shake the verdict that convicted him: and if it should be suffered to do so, I believe few convictions would stand.

But it is said, that if the verdict should be set aside, *new light* will be let in upon the case by the evidence disclosed in these affidavits.

But

But what is the new light that is suggested; not upon the *merits* of the case; it is not alledged that any new ground of defence is discovered; no affidavit of any of the new witnesses says one word of the matter in issue in the cause, and the defendant himself does not in his affidavit state, that if the verdict shall be set aside, he can at a future trial, produce any evidence, as to the fact with which he is charged.

But it is said, that new light can be thrown upon the defect of credit in *Lyster*, the principal witness for the crown.

Not by shewing that any *fact* he swore was *false*, the best mode of discrediting a witness; it is not suggested that the defendant can produce any evidence to that effect.

But, two witnesses can be produced, who will swear, that *they* think he ought not to be believed, and to let in these *opinions*, we are desired to set aside the verdict.

I say, to let in these opinions, for the particular facts of perjury, which they state, could not be suffered to be proved at the trial.

And I think it is at least doubtful, whether if they had appeared on the trial, which has been had, they could (from any thing appearing on their affidavits) have given any evidence at all; for neither of them speaks as to *Lyster's* general character; whether that be such as not to deserve credit in a court of justice, and it is with respect to his general character only, that a witness can be prepared to defend himself, and not against the opinion of an individual.

But if it were admitted, that a verdict might be set aside, where a party is surpris'd by the production of a suspicious witness, who he had no reason to suppose would be examined against him; yet this is not that case; here it is evident, that there was no such surpris'e; the defendant knew before trial, that *Lyster* was his prosecutor, he was prepared at the trial to impeach his credit; he examined three witnesses for that purpose, the jury have weigh'd and decided upon that credit; and can we say, after the credit of this witness has been examined by the jury, that particular facts, sworn by him, in some of which he was *corroborated* by another witness, and *contradicted* by *none*, ought not to be believed, because persons come forward and state that *they* would not give him credit on his oath; it would in my apprehension be a most mischievous decision, if the court were to do so. And I know not how any verdict could ever stand, if it were sufficient ground to set it aside, that new witnesses come and tell us, that the former witnesses ought not to be believed.

My lord has cited cases on this point, which I need not take up time in again going over.

As to the declarations sworn to have been made by a juror—

Mr. Curran cited a case, which cannot be found in the book referred to; but supposing it has been decided, that a cause of challenge not known at the trial, is sufficient to set aside a verdict, I cannot feel, that *mere general declarations*, though severe ones, relative to the defendants political conduct, made long before the trial, upon a conversation, no way concerning the matter in issue, would have been sufficient cause for a challenge. I cannot think that such general declarations could form any ground of challenge, for if they would, suppose a rebellion in the country, no loyal subject could be a juror on the trial of any of the principal persons concerned in it.

As to the objection grounded on the conduct of the sheriff, it is enough to say, that no particular *act* of partiality is stated, and that his having endeavoured to procure a prejudiced jury is stated, only on belief—no act of the sheriff is stated, upon which that belief is founded; nor whether it was formed before the trial or not; and if the defendant had apprehended that the sheriff would misconduct himself, he ought to have taken the proper steps to have the jury process directed to another officer, which could easily have been done, if sufficient grounds existed.

These objections—to the witnesses, the juror and the sheriff, are all the grounds, upon which the verdict is impeached by the notice served on the part of the defendant; and, in my mind, it would be a severe and dangerous injury to the trial by jury, if we were to disturb this verdict on *any* or *all* of those grounds.

But an objection is taken to my lords charge to the jury, and it is contended, that there has been a misdirection; that an illegal charge has been given, and that, on that account, the verdict ought to be set aside.

When that charge was given to the jury, I thought it a clear, able, fair and legal charge.—I think so still.

I attended to it minutely; as it was my duty to do; if I had perceived any assumption of any fact, any observation in my opinion unwarranted by law; I should have pointed it out to his lordship on the spot;—and from the manner, in which my humble assistance has been at all times received by him, I am confident that I should have had his thanks for so doing.

I saw no reason to object to any part of the charge when it was delivered, and I expressly concurred in it.

When, upon the recollection of counsel, without affidavit, of the words of the charge, my lord was stated to have used expressions to the jury, which conveyed to them—*absolutely* that there *was* a *meeting* of a great number of persons—I had no recollection of the fact of a meeting been assumed in the charge.

And,

And, when it was contended, at the bar, that it was put to the jury in words amounting to this position or effect, *that the silence of the defendant would establish a charge, or supply evidence not fully proving the case*, I must say, that the impression made on my mind, by the charge, excited no such idea. I conceived the charge to have left the fact of the existence of a meeting, and the other facts of the case, fairly to the jury, upon the evidence given by the prosecutors witnesses, without assuming the truth of any of those facts, but leaving the credit of the witnesses to the jury. I requested his lordship to give me, in writing, his charge, as to this part of the case, according to his recollection of it, and he gave it to me as stated by him to-day—and the substance and effect of it corresponded with my own recollection. As to the observation objected to, that *the silence of the defendant was strong evidence*, which was the meaning conveyed by the words, *a volume of evidence*: I think the observation justifiable, prefaced, as it is by my lord stated to have been, and from whose statement I must take it, in this manner—“ if the jury should believe there
 “ was a meeting of the kind and number sworn to by the two
 “ witnesses, the not producing any person who was at that meet-
 “ ing to contradict any of the particular facts, sworn by them,
 “ or to prove that he did not publish the libel in the manner
 “ sworn.” Is this a violation of the maxim, that no man is bound to accuse himself? Does this amount to the position, that the silence of the defendant will prove a charge? It will not; it would be monstrous if it were so held. If no charge is proved, he may be for ever silent; but where one witness has fully proved the fact of publication, if believed; where he stated that fact, attended with a number of circumstances, easy to be contradicted if false; where many of those circumstances are corroborated by the evidence of another witness, who swore he was at such a meeting as, *Lyster* described. Is it not a fair observation in a judge to say, (where no manner of evidence to contradict any of those facts is given) that if the jury believe that there was such a meeting as sworn, the silence of the defendant is strong evidence—strong evidence that the facts which are sworn to have passed at that meeting, and which might, if false, be readily contradicted—were truly sworn.

If no case is made out in evidence, by the prosecutor, the defendant may be safely silent, and the jury ought to be told by the judge, that no case is proved; but if a case is sworn to, and fully by the prosecutor, if the defendant chuses to be silent, as to the facts, and to rest on the discredit of the witnesses against him, he runs the risk of their being believed; and if the account they

give is such, and circumstances sworn to by them, strike the jury to be such, as that they might be easily answered and contradicted if false, then if no answer is given, *the jury may be well warranted to believe them*; and a charge of a judge, fully and strongly putting such case before the jury, and with such an observation, would not in my mind be reprehensible.

Suppose the only witness in a case of felony, should be an approver, a witness whose credit is reduced to the lowest point of degradation; he may state such circumstances, as from the facility of contradicting them, may force credit from a jury, and would it be unjust or illegal for the court to observe, that where the facts sworn to, were easy to be contradicted if false, it was a strong circumstance against the prisoner, that he had produced no evidence to contradict them; that such conduct furnished evidence to strengthen the credit of the witness?

This objection was made for the first time, when the motion came on to be argued; it is not stated in the notice that there was any misdirection; from whence it might be conjectured, that it had not struck the counsel, *then*, that there was any ground in the charge, on which the verdict could be attacked; two very able counsel spoke to the motion for the defendant, without touching upon any objection to the charge.

And the learned gentleman, who took the objection, had immediately after the verdict came in, informed the court, that his client would (if the court thought fit) *then* receive the sentence of the court. It is hard to imagine, that if that counsel, the only one who attacked the charge, then thought that there was a misdirection in the court, which would have intitled his client to set aside the verdict; it is hard, I say, to imagine that he would have informed the court, that his client was willing to appear, and receive judgment, which, if the court had then pronounced, he must know, would have shut his mouth for ever from taking any advantage of any misdirection of the court, if any had existed.

I think there has been no misdirection, and therefore, and because I think the other grounds stated, are insufficient to set aside the verdict, I think the motion must be refused.

MR. ATTORNEY GENERAL.—My lords, it is my duty to apply to the court to pronounce sentence upon the traverser.

MR. JUSTICE BOYD.—ARCHIBALD HAMILTON ROWAN, you have been found guilty by a jury of your country, of publishing a false, wicked, and seditious libel, of and concerning the government and constitution of this kingdom, with an intent to excite and diffuse among the subjects, discontents, jealousies, and suspicions of the king and his government; to raise dangerous
 seditions

seditions and tumults; to throw the government of this country into scandal and disgrace; to excite the people to make alterations in the government, and to overawe and to intimidate the legislature by an armed force. This charge was exhibited in an information filed against you by his Majesty's Attorney General, and the whole matter was, as it ought to be, left to the jury, who have found, first, that the instrument set forth is a libel;—secondly, that you did publish it;—thirdly, that you published it with the intentions stated in the information. The libel is contained in a printed paper, intitled, “*An Address from the Society of United Irishmen at Dublin, to the Volunteers of Ireland.*” This publication followed and animadverted upon a proclamation published by order of the lord lieutenant and council, to which you have attributed an intention to create internal commotion, to shake the public credit, and to blast the volunteer honour. This proclamation has had the sanction of both houses of parliament. At this period, and it is upon the records of parliament, the great body of the Roman Catholics were seeking relief; they presented dutiful addresses, stating they were anxious to be liberated from restraints they laboured under;—but you addressed them to take up arms, and by force to obtain their measures; they were palpably to be made a dupe to your designs, because you say you will proceed to the accomplishment of your beloved principles—UNIVERSAL EMANCIPATION and REPRESENTATIVE LEGISLATURE.—Seduction, calumny, and terror are the means by which you intend to effect them. The volunteers are to become instruments in your hands, and despairing to seduce the army, you calumniate them with the opprobrious epithet of mercenaries. You say seduction made them soldiers, but nature made them men. You stigmatize the legal establishments for the preservation of order, as a notorious police, and the militia, the pride and the strength of the kingdom, are to be looked upon as suspicious. You called upon the people to arm—all are summoned to arms to introduce a wild system of anarchy, such as now involves France in the horrors of civil war, and deluges the country with blood. It is happy for you, and those who were to have been your instruments, that they did not obey you. It is happy for you that this insidious summons to arms was not observed, if it had, and the people with force of arms had attempted to make alterations in the constitution of this country, every man concerned would have been guilty of High Treason.

The sentence of the Court is—

Mr. HAMILTON ROWAN.—My lords, I am perfectly sensible of the forbearance of the court in this trial, and particularly during the arrangement of a long affidavit; I hope therefore

that I shall be allowed a few words, either in mitigation, or in whatever other character I may have a right to address the court, before they pronounce their sentence. (Mr. Justice Boyd desired Mr. Hamilton Rowan to proceed.) I need not apologise, my lords, for any little errors I may fall into, for I am known to be a man unlearned in the forms of these courts, but I shall as plainly, and as shortly as I can, state every thing as it struck my ear and understanding. My lord, if I understood rightly, the three heads under which this matter has been argued are, *the evidence*, *the jury*, and *the sheriff*; I did hope that the objections taken to these, by my counsel, would have set aside the verdict.

There are some parts concerning *the evidence*, in which the court, as well as the prosecutor, seem to have been mistaken. They have taken it for granted, that I knew the person who was to be brought to give evidence against me; and it was asserted by the bench, that I had ransacked Connaught for evidence against the character of *Lyster*. I do not know what impression this might have made upon some of the jury; it was indeed corrected at the time, but it was not sufficiently done away; it is plain it was not, for Mr. Solicitor General who was present the whole time, whose duty it is, and whose inclination he declared it to be, to listen with attention and deference to every thing which fell from the bench, has since repeated the same assertion. I certainly did suspect, that the person who has now been brought forward, was the man who had lodged the informations against me; but I hoped that my trial had been postponed by the prosecutor, from a knowledge of his character, and a wish to procure more credible testimony, as to the fact of the distribution. I had certainly every reason to suppose this had been the case, as I knew that several of my friends, men who belong to the old volunteer corps, and who probably were at that meeting, if there were any such assembly, had been summoned on this trial by the prosecutor. They attended in the court, but were never called upon, perhaps I am wrong to mention this, but had they been called upon, I know the charge exhibited against me by Mr. *Lyster* would have fallen to the ground, I had been certain of an acquittal.

As to the jury, my lord, I can conceive some of them to have been very honourable men, and yet prejudiced, much prejudiced; I did not conceive however, that any man would have gone into that box, taking an oath to try me impartially, yet having publicly declared an enmity against me. It was certainly very ingenious in one of the crown lawyers to suppose, that the jurors who used those expressions, might have thought at that time, that I had been guilty of murder, or some heinous crime, and had been disabused before the trial came on, but, without recurring to my general character, that suggestion, in my opinion, falls to the ground, for the conversation was on the subject of
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the volunteers; and it is for an address to the volunteers that I am now prosecuted; I certainly did wish for a revival of the volunteers, and I did attempt it: I thought they had already done honour to the nation, that they had been acknowledged honourable by the legislature; this I did attempt, if this be a crime. It has been said by one of my prosecutors, that it was not with the jurors, but with their verdict that I was discontented; I ask, what was my conduct when the verdict was delivered in? Did that prove a mere discontent against the verdict? No. I thought it a severe one, unfounded in evidence, but I called for the sentence of the court; I was ready to abide by that sentence; and it was not until my return to Newgate, when I found my prison doors crowded with utter strangers to me, each recapitulating instances of declared partiality in the jurors, and further acts of infamy in the evidence, that I had thoughts of setting aside their verdict.

As to the Sheriff, and the circumstance of my not having made some application to the court prior to my affidavit of the day before yesterday, and the question of, *when* I became acquainted with his partiality, the fact is, that it was with the utmost reluctance I now stood forward, to accuse a man of what must, in my opinion, render him infamous. I well knew that in every public act of my life since I came to this country, trifling as they were, I had been calumniated by him; but that was in his province of editor; he is now become the representative of the executive power—is he not.—I thought the station he now holds, would give him some pride, instill some spark of honour into him, and that, relinquishing that conduct and those proceedings which were calculated to procure a sale for his journal, in some corners of the city, he would consider himself bound to return a jury which should be unsuspected. Was it likely that he did not know of these declarations of the jurors? It is not probable. Before the recognizances were given up, while I was out on bail, the death of a near relation obliged me to go to England, where my attendance was necessary for the arrangement of my private affairs; I returned however at great inconvenience, and some pecuniary loss, to attend this court; yet, during my absence, I was branded by this man as a fugitive; and here permit me to observe, that your lordship, in your recapitulation of the events of this trial, omitted to mention the motion made for me by my friend, Mr. *Blennerhasset*, that the examinations against me should be forthwith returned; Day after day I had attended the court; the little enquiry I could make, informed me that no such examination had gone up to the grand jury, I believe it was on the last day of the term, or it was not motion day, or something of that kind, and there was no order of the court made. It had been suggested to me by some of my friends, when notice for this trial was served upon me, that I ought to attempt to put it off; but what would have been the consequence? Your lordship

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has said that *I had called for, that I had provoked this trial, that I had complained* it was not brought forward; it is true I *did call for, I did provoke* this trial; I have *complained* that it was not brought forward. I wished to be brought to trial, but I did wish also to be tried by an impartial jury, summoned by an impartial man; such I thought the sheriff of that time * to be, although I was not one of his acquaintance. The very words your lordship used, shew why I did not put off my trial. What would then have been said by that Journal, which is perpetually stigmatizing my conduct, and vilifying my private character? It would have repeated, what was said in another country, that I was "AN INFAMOUS WRETCH, WHO HAD FLED FROM THE PUNISHMENT THAT AWAITED ME †." But still those friends urged me to put off this trial: The sheriff is your enemy—No—I have called for trial, I will trust to his oath of office: though, as editor of a newspaper, he has acted thus, yet when bound by oath "to return pannels of persons able and sufficient, and not suspected or procured, and to do justice impartially," (these are merely the words of the oath of a county sheriff) I hoped he would rise superior to his editorial capacity, and act with justice. Nay even in my first affidavit, I did not throw out this imputation. As to the sub-sheriff, I know him not, but I am informed that the sheriff himself returned the whole pannel upon this occasion; contrary to the usual custom, as I am informed: Why this was so, I know not; I cannot dive into the breast of any man; God forbid I should be capable of diving into his.—My lord, perhaps what I am going to observe may be improper, but I once thought that, Intention constituted Guilt. I thought I heard from the bench, that my intention did not signify.

Lord CLONMELL.—You have said nothing improper yet, Sir: go on, you do not seem to recollect the idea perfectly.

Mr. HAMILTON ROWAN.—It was not from your lordship.

Mr. Justice DOWNES.—Certainly it is an opinion no judge could hold.

Mr. HAMILTON ROWAN.—I have been mistaken then, it was something like it, it struck me so. As to the paper it has been said to come from a *Society of United Irishmen*. One of my witnesses was asked was he an *United Irishman*. I have heard much of *United Irishmen*, much calumny here and elsewhere; I avow myself to be one, my name has appeared to several of their publications, I glory in the name. On entering that Society I took a test, by which I am bound to seek for the emanci-

* Henry Hutton, Esq.

† Vide the Lord Advocate's speech on Mr. Muir's trial, printed by Robertson, Edinburgh.

putation of every class of my fellow-citizens, and to procure (by spreading information, for that is the only mode a few men assembled in Back-lane can adopt) a Reform in the Representation of the People * : a Reform, the necessity of which has been allowed even in parliament. These are our objects, objects which I am bound to pursue to their completion. As to the paper, I honour the head that conceived it, and I love the hand that penned it. Much stress has been laid upon the words UNIVERSAL EMANCIPATION AND REPRESENTATIVE LEGISLATURE; it may be owing to a want of logical precision in me, but I do not consider these words as carrying the meaning which has been imputed to them. I did imagine that the British constitution was a representative legislature, that the people were represented by the house of commons; that the lords represented the territory, the property; and that the king represented the power of the state, the united force, the power of the whole, placed in his hands for the benefit of the whole. As a person, as a man, I know nothing of the king; I can know nothing of him, except as wielding the force of the nation, to be exercised for the benefit of the nation †; and if ever that force should be misapplied, or abused, it then remains for the people to decide in what hands it ought to be placed ‡.

I really feel myself in an awkward situation, thus declaring my sentiments, seeing intentions different from those both of the author and myself are fixed upon that paper, for the distribution of which I am persecuted. From my situation however,

* It being the interest as well as the intention of the people to have a fair and equal representation, whoever brings it nearest to that, is an undoubted friend to and establisher of the government, and cannot miss the consent and approbation of the community.

Locke on Government, sect. 158.

† But yet it is to be observed, that although oaths of allegiance and fealty are taken to him, (the king) it is not to him, as supreme legislator, but as supreme *executor* of the law, made by a *joint* power of him with others; allegiance being nothing but an obedience according to law, which, when he violates, he has no right to obedience, nor can claim it otherwise than as the *public person* vested with the *power* of the *law*, and so is to be considered as the image, phantom or *representative* of the commonwealth, acted by the will of society, declared in its laws; and then he has no will, no power but that of the law. But when he quits this representation, this public will, and acts by his own private will, he degrades himself, and is but a single private person, without power, and without will, that has any right to obedience; the members owing no obedience but to the public will of the society.

Locke on Government, Sect. 151.

‡ This doctrine of a power in the people of providing for their safety anew, by a *new legislative*, when their legislators have acted contrary to their trust by invading their property, is the best fence against rebellion, and the probablest means to hinder it. *Locke, Sect. 226.* — When king Charles's deluded brother attempted to enslave the nation, he found it was beyond his power: *The people both could and did resist him; and in consequence of such resistance, obliged him to quit his enterprize and his throne together.*

Blackstone, Public Wrongs, B. 4. c. 33. f. 5.

having

having an independent fortune, easy in my circumstances and with a large family, infurrection of any sort would surely be the last thing I could wish for. I ask no favour, but I submit myself to the clemency and the justice of the court, and I trust that whatever may be their sentence, I shall bear it with becoming fortitude.

LORD CLONMELL.—I have conferred with my brethren upon what has fallen from you, confessedly in mitigation and with that view. There are two facts which you seem to insist upon as new. If it made for you, that Mr. HASSET made the motion you state, I willingly adopt it. If I had known it in giving the history of this case, I should not have omitted that or any thing else done in this court. You mentioned that the informations should have been returned, they were returned into the crown office.

MR. ROWAN.—My Lord, I meant they were not returned to the grand jury.

LORD CLONMELL.—The proceeding was not by way of Bill of Indictment, therefore what you desire could not have been adopted. The proceedings here were by information *ex officio*, and when the informations were lodged in the crown office, which I am instructed to say, was the first day of Hilary Term, 1793, the first day the court sat afterwards, the information was filed and the other proceedings had. There is nothing else that has not been touched upon. As to the meaning of the libel, I owe justice to every man, and here and every where I have said, that no inference can be drawn from any construction in your favour that was omitted. I think I will be justified in saying, that you were well and ably defended by your counsel. Nothing has fallen from you that affected the minds of the court in mitigation, to change the judgment which we have thought proper should be pronounced upon you. I shall not adopt any idea, or suffer any idea to arise in my mind, from what you last let fall from you, to increase that punishment. The judgment of this court will therefore be pronounced as is the practice in Westminster Hall, by the second judge of the court. It shall be pronounced by my brother BOYD.

MR. JUSTICE BOYD.—The sentence of the court is—That you, ARCHIBALD HAMILTON ROWAN, do pay to his Majesty a fine of Five Hundred Pounds, and be imprisoned for two years, to be computed from the 29th of January, 1794, and until that fine be paid; and to find security for your good behaviour for seven years, yourself in the sum of Two Thousand Pounds, and two sureties in One Thousand Pounds each.