

Second Edition.

T R I A L

BY

NISI PRIUS,

IN THE

COURT OF KING'S BENCH, IRELAND,

IN THE CASE WHEREIN

MR. JOHN HEVEY

WAS

PLAINTIFF,

AND

CHARLES HENRY SIRR, Esq.

WAS

DEFENDANT.

ON AN

ACTION FOR AN ASSAULT,

AND

FALSE IMPRISONMENT.

*This Trial was had before the Right Honourable Arthur Lord
Viscount Kilwarden, Lord Chief Justice of the King's Bench.*

AND A

SPECIAL JURY.

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1802.

J A I R T

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2019 2010

THE

OFFICE OF THE ATTORNEY GENERAL

IN THE CASE OF

JOHN HENRY

VS

PLAINTIFF

AND

CIVIL RIGHTS

VS

DEFENDANT

ON

APPEAL FOR IN ASSAULT

THE

STATE OF MISSISSIPPI

IN THE COURT OF THE ATTORNEY GENERAL
AT THE CITY OF JACKSON

AND

SPECIAL JURY

IN THE MATTER OF

JOHN HENRY

IN THE MATTER OF

1962

1319399.

COURT OF KING'S BENCH, IRELAND.

IN THE CASE WHEREIN,

MR. JOHN HEVEY was PLAINTIFF,

AND

CHARLES HENRY SIRR Esq. was DEFENDENT.

ON AN

ACTION FOR AN ASSAULT AND FALSE IMPRISONMENT.

This Trial was had before the *Right Honourable Arthur Lord Viscount Kilwarden, Lord Chief Justice of the King's Bench:*

And a Respectable Jury of the City of Dublin, was then sworn

John Lindsay,
B. Maziere,
Richard Litton,
Thomas Kennan,
Wm. G. Galway,
John Dickinson,

James Blacker,
Bennett Dugdale,
John Norton,
Francis Hamilton,
Edward Rice,
Isaac Manders,

MONDAY, SEVENTEENTH OF MAY, 1802.

MR. CURRAN stated the case for the plaintiff, in substance nearly to the following effect.

He began by telling the jury, it was the most extraordinary action he had ever met with. It must have proceeded from the most unexampled impudence in the plaintiff, if he has brought it wantonly; or the most unparalelled miscreancy in the defendant, if it shall appear supported by proof. And the event must stamp the most condign and indelible disgrace on the guilty defendant, unless an unworthy verdict should shift the scandal upon another quarter. On the record the action he said appeared short and simple; it was an action of trespass, *vi et armis*, for an assault, battery, and false

false imprisonment. But the facts that led to it that explain its nature, and its enormity, and of course that should measure the damages, were neither short nor simple; the novelty of them might surprise, the atrocity must shock their feelings, if they had feelings to be shocked;—but he said, he did not mean to address himself to any of their proud feelings of liberty. The season for that was past. There was indeed he said, a time when, in addressing a jury upon very inferior violations of human rights, he had felt his bosom glow, and swell with the noble and elevating consciousness of being a Free-man, speaking to Free-men, and in a Free Country; where, if he was not able to communicate the generous flame to their bosoms, he was not at least so cold as not to catch it from them. But that was a sympathy, which he was not now so foolish as to affect either to inspire, or participate. He would not insult them by the bitter mockery of such an affectation; buried as they were, he did not wish to conjure up the shades of departed Freedom to flutter round their tomb, to haunt or to reproach them. Where freedom is no more, it is a mischievous prophanation to use her language; because it tends to deceive the man who is no longer free, upon the most important of all points; that is, the nature of the situation to which he is reduced; and to make him confound the licentiousness of words, with the real possession of freedom. He meant not therefore, he said, to call for an haughty verdict, that might humble the insolence of oppression, or assert the fancied rights of Independence. Far from it; he only asked for such a verdict, as might make some reparation for the most extreme and unmerited suffering, and might also tend to some probable mitigation of the public, and general destiny. For this purpose, he said, he must carry back their attention to the melancholy period of 1798. It was at that sad crisis, that the defendant from an obscure individual, started into notice and consequence. It is in the hot-bed of public calamity, that such portentous and inauspicious products are accelerated without being matured. From being a town-major, a name scarcely legible in the list of public incumberances, he became at once invested with all the real powers of the most absolute authority. The life and the liberty of every man seemed to be given up to his disposal. With this gentleman's extraordinary elevation began

began the story of the sufferings and ruin of the plaintiff. It seems a man of the name of *M'Guire* was prosecuted for some offence against the state. *Mr. Hevey* the plaintiff by accident was in court; he was then a citizen of wealth and credit, a Brewer in the first line of that business. Unfortunately for him, he had therefore heretofore employed the witnesses for the prosecution, and found him a man of infamous character. Unfortunately for himself, he mentioned this circumstance in Court. The counsel for the prisoner insisted on his being sworn; he was so. The jury were convinced, that no credit was due to the witness for the crown; and the prisoner was accordingly acquitted. In a day or two after *Major Sirr* met the plaintiff in the street; asked how he dared to interfere in his business, and swore by God he would teach him how to meddle with "his people." Gentlemen, said *Mr. Curran*, there are two sorts of prophets, one that derives its source from real or fancied inspiration, and who are sometimes mistaken. But there is another class, who prophecy what they are determined to bring about themselves. Of this second, and by far the most authentic class, was the *Major*; for heaven you see has no monopoly of prediction. On the following evening, poor *Hevey* was dogged in the dark into some lonely alley; there he was seized he knew not by whom, nor by what authority—and became in a moment, to himself, to his family, and his friends, as if he had never been. He was carried away in equal ignorance of his crime, and of his destiny; whether to be tortured, or hanged, or transported. His crime he soon learned; it was the treason which he had committed against the majesty of *Major Sirr*. He was immediately conducted to a new place of imprisonment in the Castle-yard, called the provost. Of this mansion of misery, of which you have since heard so much, *Major Sandys* was, and I believe yet is, the keeper. A gentleman of whom I know how dangerous it is to speak; and of whom every prudent man will think, and talk with all due reverence. He seemed a twin-star of the defendant—equal in honour, in confidence; equal also, (for who could be superior?) in probity and humanity. To this gentleman was my client consigned, and in his custody he remained about seven weeks, unthought of by the world, as if he had never existed. The oblivion of the buried, is as profound as the oblivion of the dead; his family,

family may have mourned his absence, or his probable death ; but why should I mention so paltry a circumstance ? The fears, or the sorrows of the wretched, give no interruption to the general progress of things. The sun rose, and the sun set, just as it did before—the business of the government, the business of the castle, of the feast, or the torture, went on with their usual exactness and tranquillity. At last *Mr. Hevey* was discovered among the sweepings of the prison ; and was at last to be disposed of. He was at last honoured with the personal notice of *Major Sandys*.—“ *Hevey* (says the *Major*,) I have seen you ride I think a smart sort of mare ; you can’t use her here ; you had better give me an order for her.” The plaintiff, you may well suppose, by this time had a tolerable idea of his situation ; he thought he might have much to fear from a refusal, and something to hope from compliance ; at all events, he saw it would be a means of apprizing his family that he was not dead—he instantly gave the order required. The *Major* graciously accepted it, saying, your courtesy will not cost you much, you are to be sent down to-morrow to *Kilkenny* to be tried for your life ; you will most certainly be hanged ; and you can scarcely think that your journey to the other world will be performed on horseback. The humane, and honorable *Major* was equally a prophet with his compeer. The plaintiff on the next day took leave of his prison, as he supposed for the last time, and was sent under a guard to *Kilkenny*, then the head quarters of *Sir Charles Asgil*, there to be tried by court-martial for such crime, as might chance to be alleged against him. In any other country, the scene that took place on that occasion might excite no little horror, and astonishment ; but with us, these sensations are become extinguished by frequency of repetition. I am instructed, that a proclamation was sent forth, offering a reward to any man, who would come forward, and give any evidence against the traitor *Hevey*. An unhappy wretch, who had been shortly before condemned to die, and was then lying ready for execution, was allured by the proposal. His integrity was not firm enough to hesitate long, between the alternative proposed ; pardon, favour, and reward, with perjury on one side ; the rope and the gibbet on the other. His loyalty decided the question against his soul. He was examined, and *Hevey* was appointed by the sentence of a
mild,

mild, and no doubt, enlightened court-martial, to take the place of the witness, and succeed to the vacant halter. *Hevey*, you may suppose (*continued Mr. Curran*,) now thought his labours at an end; but he was mistaken: his hour was not yet come. You are probably Gentlemen, or you my Lord are accounting for his escape, by the fortunate recollection of some early circumstances, that might have smote upon the sensibility of *Sir Charles Asgil*, and made him believe, that he was in debt to Providence for the life of one innocent, though convicted victim. But it was not so; his escape was purely accidental. The proceedings upon his Trial, happened to meet the eye of *Lord Cornwallis*. The freaks of fortune are not always cruel; in the bitterness of her jocularity, you see she can adorn the miscreancy of the slave, in the trappings of power, and rank, and wealth. But her playfulness is not always inhuman; she will sometimes in her gambols, fling oil upon the wounds of the sufferer; she will sometimes save the captive from the dungeon and the grave, were it only, that she might afterwards reassign him to his destiny, by the reprisal of capricious cruelty upon fantastic commiseration. *Lord Cornwallis* read the transcripts of *Hevey's* condemnation; his heart recoiled from the detail of stupidity and barbarity. He dashed his pen across the odious record, and ordered that *Hevey* should be forthwith liberated. I cannot but highly honor him for his conduct in this instance; nor, when I recollect his peculiar situation at that disastrous period, can I much blame him for not having acted towards that court, with the same vigour and indignation, which he has since shewn with respect to those abominable jurisdictions. *Hevey* was now a man again—he shook the dust of his feet against his prison gate: his heart beat the response to the anticipated embrace of his family, and his friends, and he returned to Dublin. On his arrival here, one of the first persons he met was his old friend, *Major Sandys*. In the eye of poor *Hevey*, justice and humanity had shorn the *Major* of his beams—he no longer regarded him with respect or terror. He demanded his mare; observing, that though he might have travelled to heaven on foot, he thought it more comfortable to perform his earthly journeys on horseback. Ungrateful villain, said the *Major*; is this the gratitude you shew to his majesty and to me, for our clemency to you? You shan't get possession of the
beast,

beast, which you have forfeited by your treason, nor can I suppose, that a noble animal, that had been honoured with conveying the weight of duty and allegiance, could condescend to load her loyal loins with the vile burden of a convicted traitor: As to the *Major* (said *Mr. Curran*) I am not surprised that he spoke and acted as he did. He was no doubt astonished at the impudence, and novelty of calling the privileges of official plunder into question. Hardened by the numberless instances of that mode of unpunished acquisition, he had erected the frequency of impunity into a sort of warrant of spoil and rapine. One of these instances, I feel, I am now bringing to the memory of your Lordship. A learned and respected brother barrister, had a silver cup; the *Major* heard that for many years it had borne an inscription of "*Irin go brach*," which means "*Ireland for ever*." The *Major* considered this perseverance in guilt for such a length of years, as a forfeiture of the delinquent vessel. My poor friend was accordingly robbed of his cup. But, upon writing to the then *Attorney General*, that excellent officer felt the outrage, as it was his nature to feel every thing that was barbarous or base; and the *Major's* loyal side-board was condemned to the grief of restitution. And here, (said *Mr. Curran*) let me say in my own defence, that this is the only occasion, upon which I have ever mentioned this circumstance with the least appearance of lightness. I have often told the story in a way that it would not become me to tell it here. I have told it in the spirit of those feelings, which were excited at seeing, that one man could be sober and humane at a crisis, when so many thousands were drunk and barbarous. And probably my statement was not stinted by the recollection, that I held that person in peculiar respect and regard. But little does it signify, whether acts of moderation and humanity are blazoned by gratitude, by flattery or by friendship; they are recorded in the heart from which they sprung: and, in the hour of adverse vicissitude, if it should ever come, sweet is the odour of their memory, and precious is the balm of their consolation. But to return; *Hevey* brought an action for his mare. The *Major* not choosing to come into Court, and thereby suggest the probable success of a thousand actions, restored the property, and paid the costs of the suit, to the Attorney of *Mr. Hevey*. It may perhaps strike you, my

Lord

Lord, said *Mr. Curran*, as if I was stating, what was not relevant to the action. It is materially pertinent; I am stating a system of concerted vengeance and oppression. These two men acted in concert; they were Archer and Aimwell. You Master at Lichfield and I at Coventry. You plunderer in the jail, and I tyrant in the street. And in our respective situations, we will co-operate in the common cause of robbery, and vengeance. And I state this (said *Mr. Curran*) because I see *Major Sandys* in court. And because, I feel I can prove the fact, beyond the possibility of denial. If he does not dare to appear, so called upon, as I have called upon him, I prove it by his not daring to appear. If he does venture to come forward, I will prove it by his own oath, or if he ventures to deny a syllable, that I have stated, I will prove by irrefragable evidence of record that his denial is false, and perjured. Thus far, Gentlemen, (said *Mr. Curran*) we have traced the plaintiff through the strange vicissitudes of barbarous imprisonment, of atrocious condemnation, and of accidental deliverance. (Here *Mr. Curran* described the feelings of himself and his family, upon his restoration; his difficulties on his return; his struggle against the aspersions on his character; his renewed industry; his gradual success; the implacable malignity of *Sirr* and of *Sandys*; and the immediate cause of the present action. Three years (said *Mr. Curran*) had elapsed, since the deliverance of my client; the public atmosphere had cleared—the private destiny of *Hevey* seemed to have brightened, but the malice of his enemies had not been appeased. On the 8th of September last, *Mr. Hevey* was sitting in a public coffee-house, *Major Sirr* was there. *Mr. Hevey* was informed that the major had at that moment said, that he (*Hevey*) ought to have been hanged. The plaintiff was fired at the charge; he fixed his eye on *Sirr*, and asked, if he had dared to say so. *Sirr* declared that he had; and had said truly. *Hevey* answered that he was a slanderous scoundrel. At the instant *Sirr* rushed upon him, and assisted by three or four of his satellites, who had attended him in disguise, secured him and sent him to the castle guard, desiring that a receipt might be given for the villain. He was sent thither. The officer of the guard chanced to be an Englishman, but lately arrived in Ireland, he said to the bailiffs, if this was in England, I should think this gentleman entitled to bail; but I don't

don't know the laws of this country. However I think you had better loosen those irons on his wrists, or I think they may kill him.

Major Sirr, the defendant, soon arrived, went into his office, and returned with an order which he had written, and by virtue of which *Mr. Hevey* was conveyed to the custody of his old friend and gaoler, *Major Sandys*. Here he was flung into a room of about thirteen feet by twelve—it was called, the hospital of the provost.—It was occupied by six beds, in which were to lie fourteen or fifteen miserable wretches, some of them sinking under contagious diseases. On his first entrance, the light that was admitted by the opening of the door, disclosed to him a view of the sad fellow-sufferers, for whose loathsome society he was once more to exchange the cheerful haunts of men, the use of open air, and of his own limbs; and where he was condemned to expiate the disloyal hatred and contempt, which he had dared to shew to the overweening and felonious arrogance of slaves in office, and minions in authority; here he passed the first night, without bed or food. The next morning, his humane keeper, the *Major*, appeared. The plaintiff demanded, “why he was so imprisoned,” complained of hunger, and asked for the jail allowance. *Major Sandys* replied with a torrent of abuse, which he concluded by saying—“Your crime is your insolence to *Major Sirr*; however, he disdains to trample upon you—you may appease him by proper and contrite submission; but unless you do so, you shall rot where you are.—I tell you this, that if government do not protect us, by God we will not protect them. You will probably, (for I know your insolent and ungrateful hardness,) attempt to get out by an Habeas Corpus; but in that you will find yourself mistaken, as such a rascal deserves.” *Hevey* was insolent enough to issue an Habeas Corpus, and a return was made upon it—“that *Hevey* was in custody under a warrant from *General Craigh*, on a charge of treason.” That this return was a gross falsehood, fabricated by *Sirr*, I am instructed to assert.—Let him prove the truth of it, if he can. The Judge, before whom this return was brought, felt, that he had no authority to liberate the unhappy prisoner; and thus, by a most inhuman and audacious lie, my client was again remanded to the horrid mansion of pestilence and famine.

Mr.

Mr. Curran proceeded to describe the feelings of *Mr. Hevey*, the despair of his friends—the ruin of his affairs—the insolence of *Sandys*—his offer to set him at large, on condition of making an abject submission to *Sirr*—the indignant rejection of *Hevey*—the supplication of his father and sister, rather to submit to an enemy, however base and odious, than perish in such a situation;—the repugnance of *Hevey*—the repetition of kind remonstrance, and the final submission of *Hevey* to their entreaties;—his signing a submission, dictated by *Sandys*, and his enlargement from confinement. Thus, said *Mr. Curran*, was he kicked from his jail into the common mass of his fellow-slaves, by yielding to the tender entreaties of the kindred that loved him, to sign, what was in fact, a release of his claim to the common rights of an human creature, by humbling himself to the brutal arrogance of a pampered slave. But he did suffer the dignity of his nature to be subdued by it's kindness;—he has been enlarged, and he has brought the present action. As to the facts that he had stated, *Mr. Curran* said, he would make a few observations:—it might be said for the defendant, that much of what was stated, may not appear in proof. To that, he said, he would not have so stated, if he had not seen *Major Sandys* in Court; he had therefore put the facts against him in a way, which he thought the most likely to rouse him to a defence of his own character, if he dared to be examined as a witness. He had he trusted, made him feel, that he had no way of escaping universal detestation, but by denying those charges, if they were false, and if they were not denied, being thus publicly asserted, his entire case was admitted—his original oppression in the provost was admitted—his robbery of the cup was admitted—his robbery of the mare was admitted—the lie so audaciously forged on the Habeas Corpus was admitted—the extortion of the infamous apology was admitted.—Again, said *Mr. Curran*, I challenge this worthy compeer of a worthy compeer, to make his election, between proving his guilt by his own corporal oath, or by the more credible modesty of his silence. And now, said *Mr. Curran*, I have given you a mere sketch of this extraordinary history. No country governed by any settled laws, or treated with common humanity, could furnish any occurrences of such unparalleled atrocity, and if the author of *Caleb Williams*, or of the

Simple Story, were to read the tale of this man's sufferings, it might I think humble the vanity of their talents, (if they are not too proud to be vain,) when they saw how much a more fruitful source of incident could be found in the infernal workings of the heart of a malignant slave, than in the richest copiousness of the most fertile and creative imagination. But it is the destiny of Ireland to be the scene of such horrors, and to be stung by such reptiles to madness and to death. And now, said *Mr. Curran*, I feel a sort of melancholy pleasure, in getting nearly rid of this odious and nauseous subject. It remains to me only to make a few observations as to the damages you ought to give, if you believe the case of the plaintiff to be, as I have stated. I told you before, that neither pride nor spirit belong to our situation, I should be sorry to inflame you into any apish affectation of the port or stature of freedom or independence. But my advice to you, is to give the full amount of the damages laid in the declaration; and I'll tell you why I give you that advice: I think no damages could be excessive, either as a compensation for the injury of the plaintiff, or as a punishment of the savage barbarity of the defendant, but my reasons for giving you this advice, lye much deeper than such considerations; they spring from a view of our present most forlorn, and disastrous situation. You are now in the hands of another country, that country has no means of knowing your real condition, except from the information that she may accidentally derive from transactions of a public nature. No printer would dare to publish the thousand instances of atrocity, which we have witnessed as hideous as the present, nor any one of them, unless he did it in some sort of confidence, that he could scarcely be made a public sacrifice by brutal force, for publishing, what was openly proved in a Court of Justice. *Mr. Curran*, here made some pointed observations on the state of a country, where the freedom of the press is extinguished, and where another nation, by whose indolent mercy, or whose instigated fury we may be spared, or sacrificed, can know nothing of the extent of our sufferings, or our delinquency, but by casual hearsay. I know, said he, that those philosophers have been abused, who think that men are born in a state of war. I confess I go further, and firmly think they cannot be reclaimed to a state of peace. When I see the conduct of man to man, I believe it.

it. When I see the list of offences in every criminal code in Europe—when I compare the enormity of their crimes, with the still greater enormity of their punishments, I retain no doubt upon the subject. But, if I could hesitate as to men in the same community, I have no doubt of the extinguishable malignity, that will for ever inflame nation against nation. Well was it said, that a “nation has no heart;” towards each other they are uniformly envious, vindictive, oppressive, and unjust. What did Spain feel for the murders or the robberies of the West?—Nothing. And yet, at that time, she prided herself as much as England ever did on the elevation of her sentiment, and the refinement of her morality. Yet what an odious spectacle did she exhibit? her bosom burning with all the fury of rapine and tyranny; her mouth full of the pious praises of the living God, and her hands red with the blood of his innocent and devoted creatures. When I advise you therefore to mark your feelings of the case before you, don’t think I mean, that you could make any general impression on the morality, or tenderness of the country, whose property we are become. I am not so foolish as to hope any such effect; practical justice and humanity are virtues that require laborious acts, and mortifying privations; expect not therefore to find them; appeal not to them. But there are principles and feelings substituted in their place, a stupid preference and admiration of self, an affectation of humanity, and a fondness for unmerited praise, these you may find, for they cost nothing; and upon them you may produce some effect. When outrages of this kind are held up to the world, as done under the sanction of their authority, they must become odious to mankind, unless they let fall some reprobation on the immediate instruments, and abettors of such deeds. An Irish Lord Lieutenant will shrink from the imputation of countenancing them. Great Britain will see, that it cannot be her interest to encourage an infernal spirit of subaltern barbarity, that reduces man to a condition lower than that of the beast of the field. They will be ashamed of employing such instruments, as the present defendant. When the government of Ireland lately gave up the celebrated *O’Brien* to the hands of the executioner, I have no little reason to believe that they suffered as they deserved on the occasion. I have no doubt, but that your verdict of this day, if you

act as you ought to do, will produce a similar effect. And, as to England, I cannot too often inculcate upon you, that she knows nothing of our situation. When the torture was the daily and ordinary system of the executive government, it was denied in London, with a profligacy of effrontery, equal to the barbarity with which it was exhibited in Dublin; and, if the facts that shall appear to-day, should be stated at the other side of the water, I make no doubt, but very near one hundred worthy persons would be ready to deny their existence upon their honour, or if necessary, upon their oaths.

I cannot also but observe to you, continued *Mr. Curran*, that the real state of one country is more forceably impressed on the attention of another, by a verdict on such a subject as this, than it could be by any general description. When you endeavour to convey an idea of a great number of barbarians, practising a great variety of cruelties upon an incalculable multitude of sufferers, nothing defined or specific finds its way to the heart, nor is any sentiment excited, save that of a general erratic unappropriated commiseration. If, for instance, you wished to convey to the mind of an English matron, the horrors of that direful period, when, in defiance of the remonstrance of the ever to be lamented Abercromby, our poor people were surrendered to the licentious brutality of the soldiery, by the authority of the state; you would vainly endeavour to give her a general picture of lust, and rapine, and murder, and conflagration. By endeavouring to comprehend every thing, you would convey nothing. When the father of poetry wishes to pourtray the movements of contending armies, and an embattled field, he exemplifies only, he does not describe; he does not venture to describe the perplexed and promiscuous conflicts of adverse hosts, but by the acts and fates of a few individuals he conveys a notion of the vicissitudes of the fight and the fortunes of the day. So should your story to her keep clear of generalities; instead of exhibiting the picture of an entire province, select a single object; and even if that single object do not release the imagination of your hearer from its task, by giving more than an outline, take a cottage; place the affrighted mother of her orphan daughters at the door, the paleness of death upon her face, and more than its agonies in her heart; her aching eye, her
anxious

anxious ear, struggle through the mists of closing day, to catch the approaches of desolation, and dishonour. The ruffian gang arrives, the feast of plunder begins, the cup of madness kindles in its circulation. The wandering glances of the ravisher become concentrated upon the shrinking and devoted victim.—You need not dilate, you need not expatiate; the unpolluted mother, to whom you tell the story of horror, beseeches you not to proceed; she presses her child to her heart, she drowns it in her tears, her fancy catches more than an angel's tongue could describe; at a single view she takes in the whole miserable succession of force, of profanation, of despair, of death. So it is in the question before us. If any man shall hear of this day's transaction, he cannot be so foolish as to suppose that we have been confined to a single character, like those now brought before you. No, Gentlemen; far from it; he will have too much common sense, not to know, that outrages like this are never solitary, that, where the public calamity generates imps like these, their number is, as the sands of the sea, and their fury, as insatiable as its waves. I am therefore anxious, that our *masters* should have one authenticated example of the treatment, which our unhappy country suffers under the sanction of their authority; it will put a strong question to their humanity, if they have any, to their prudence, if their pride will let them listen to it; or at least, to that anxiety for reputation, to that pretension to the imaginary virtues of mildness and mercy, to which even those countries the most divested of them, are so ready to assert their claim, and so credulously disposed to believe that claim allowed.

There are some considerations respecting yourselves, and the defendant, to which I should wish to say a word. You may perhaps think your persons unsafe, if you find a verdict against so considerable a person. I know his power, as well as you do—I know he might send you to the provost, as he has done the plaintiff, and forge a return on any writ you might issue for your deliverance—I know there is no spot in this devoted nation, (except that on which we now are,) where the story of oppression can be told or heard; but I think you can have no well founded apprehensions. There is a time, when cruelty and oppression become satiated and fatigued; in that satiety at least, you will find yourselves secure. But there is still a better security for you: the gratitude

rude of the worthy defendant—if any thing could add to his honours, and his credit, and his claims, it would be your verdict for the plaintiff; for in what instance have you ever seen any man so effectually accredited and recommended, as by the public execration? what a man for instance, might not *O'Brien* have been, if the envy of the gibbet had not arrested the career of his honours and preferments? In every point of view, therefore, I recommend to you to find, and to find liberally for the plaintiff. I have founded my advice upon the real circumstances of your situation; I have not endeavoured to stimulate you into any silly hectic of fancied liberty. I do not call upon you to expose yourselves by the affectation of vindicating the cause of freedom, and humanity; much less do I wish to exhibit ourselves to those, whose property we are, as indignant or contumacious, under their authority. Far from it, they are unquestionably the proprietors of us, they are intitled of right to drive us, and to work us; but we may be permitted modestly to suggest, that for their own sakes, and for their own interest, a line of moderation may be drawn. That there are excesses of infliction, that human nature cannot bear. With respect to her western Negroes, Great Britain has had the wisdom, and humanity to feel the justice of this observation, and in some degree to act upon it; and I have too an high opinion of that great, and philosophical nation, not to hope, that she might think us, not undeserving of equal mildness; provided it did not interfere with her just authority over us. It would, I should even think, be for her credit, that having the honour of so illustrious a rider, we should be kept in some sort of condition, somewhat bordering upon spirit, which cannot be maintained, if she suffers us to be utterly broken down, by the malicious wantonness of her grooms and jockeys. *Mr. Curran*, concluded by saying, that the cause was of no inconsiderable expectation, and that in whatever light the Jury regarded it; whether with respect to the two countries, or to Ireland singly, or to the parties concerned, or to their own sense of character and public duty, or to the natural consequences that must flow from the event, they ought to consider it with the most profound attention, before they agreed upon their verdict.

LEONARD

LEONARD M'NALLY, Esq.—Call *General Craig*, who being called three times, did not appear.

MR. M'NALLY—Call *Peter Craig*, Esq. The affidavit of the service of the Subpoena on that gentleman, was read in Court.

MR. M'NALLY—Call *James Molloy*, Esq.

JAMES MOLLOY, Esq. sworn—examined by MR. M'NALLY.

Q. Do you know *Major Sirr*?

A. I do.

Q. Do you know *Mr. John Hevey*?

A. Yes.

Q. Do you recollect being in the Commercial Buildings last September?

A. I do; there was some conversation between *Major Sirr* and *Mr. Hevey*, on the evening of the 8th of September—*Mr. Sirr* said to plaintiff, “You ought to be hanged.” On which *Mr. Hevey* said, “You lie, but you ought to be hanged.” I then saw *Mr. Sirr* come over from the place he was sitting at, and take hold of *Mr. Hevey* by the collar, and said, “I arrest you in the King’s name; I will commit you to prison.” This is as far as I can recollect; *Mr. Sirr* was not in my company. In the course of the conversation, *Mr. Sirr* said to *Hevey*, “I know you, your name is *Hevey*.”

Q. What did *Mr. Sirr* say to *Mr. Hevey*?

A. Why my Lord, there was different expressions made use of, which I do not recollect; when *Hevey* was told that *Major Sirr* said, “he ought to be hanged,” he turned about, and looked over at him, and *Mr. Hevey* has always rather a strong stern look, but then it must be worse, he replied to *Major Sirr*, “You lie; you said, ‘you ought to be hanged;’ “and I will make you prove it.”—*Sirr* then said, “You ought to be hanged, and I dare say you and your party think so,” or words to that purpose; and *Hevey* said, “I am no party;”—then said *Mr. Sirr*, “I arrest you in the King’s name;” and they came to the coffee-house door; and I turned about and left the passage open to them.—*Sirr* said to *Hevey*, “You ought to be hanged,”—and then *Hevey* said to *Sirr*, “You lie.”—*Sirr* said, “I arrest you this moment in the King’s name; and you must come with me.”—*Hevey* then said, “I will go out with you, where you please. *Hevey* and *Sirr* then went out of the coffee-room; and

and *Sirr* and *Hevey* walked arm in arm together through Dame-street.—That is all I know of the transaction.

CROSS-EXAMINED BY WILLIAM FLETCHER, ESQ.

Q. You were at the same table with *Mr. Hevey*, when this conversation took place?

A. Yes—I afterwards came to the table where *Mr. Sirr* sat.

Q. You are not very accurate in your recollection?

A. I recollect *Sirr* saying to *Hevey*, “You ought to be hanged.”

Q. Did not *Mr. Sirr* say to *Hevey*, “Have you a protection?”

A. I do not recollect; he told *Hevey* he would commit him to prison.

Q. Is not *Mr. Hevey* now in Newgate?

* A. I have heard so.

Q. He is rather unfortunate. Did not *Mr. Sirr* say to *Hevey*, have you a protection—answer to that?

A. No, he did not.

Q. Did not *Mr. Sirr* say to *Hevey*, you have been a Yeoman?

A. I do not recollect that.

Q. I ask you was *Mr. Hevey* a Yeoman?

A. I think he was in the Roebuck Cavalry.

Q. Was there any people you knew in the coffee-house, during this transaction?

A. There was.

Q. Who?

A. I cannot immediately call to my recollection.

Q. Did you see *Mr. Hall* in the commercial coffee-house?

A. He was there.

Q. Was *Mr. Hevey* a Yeoman?

A. I recollect seeing him in uniform; I believe he was a Yeoman.

Q. Have you not heard that *Mr. Hevey* was tried at Kilkenny?

A. I believe he was.

Mr. Curran—He was tried at Kilkenny, and was pardoned; and when *Mr. Sirr* saw him in September 1801, in the

* *Mr. Hevey* was at this time confined in Newgate, under sentence of the City Quarter Sessions, for a month's imprisonment, for having assaulted a *Mr. Labertouche*, with whom he had quarrelled about some words used by the latter in a tavern, respecting his transaction with *Major Sirr*.

the commercial coffee-house, and had the conversation stated, then said *Mr. Sirr*, "I arrest you in the King's Name."

Counsellor Green—Did you not observe remarks made about an orange handkerchief during the evening?

A. None.

Q. Did you not see one in the hands of the plaintiff?

A. No.

Q. Nor any jarring observations?

A. None.

MR. SAMUEL RAINEY, *sworn—examined by* COUNSELLOR
ORR.

Q. Do you know *Mr. Sirr*?

A. I do.

Q. Do you know *Mr. Hevey*?

A. I do: I never saw him to know him before September last. I went to the commercial coffee-house on the evening of the 8th of September last. After some conversation, *Mr. Sirr* said to *Mr. Hevey*, "I will let you know who I am." *Mr. Hevey* made answer and said, "I defy you." Some other words passed, *Mr. Sirr* said to *Mr. Hevey*, "You ought to be hanged,"—then *Mr. Hevey* answered, "By God you lie."—*Mr. Sirr* then said, "I will make you prove it."

Q. Did *Sirr* tell *Hevey* what he arrested him for?

A. Not that I heard—they went out together. I returned to the coffee-house.

CROSS-EXAMINED by WILLIAM PLUNKETT, Esq.

Q. Do you know was *Mr. Sirr* a Magistrate for the County of Dublin?

A. I was told he was, and believe so.

Q. He was a good deal employed in taking up persons who were active in the Rebellion?

A. I was told so.

Q. Had you not heard that *Mr. Hevey* was arrested?

A. Yes.

Q. That he *Mr. Hevey* was active during the period of the Rebellion?

A. I have heard he was put on his trial.

Q. Did you not hear he was what was called an active citizen before the Rebellion?

D

A. I heard

A. I heard he was active.

Q. What do you mean by the word active?

A. (*Counsellor Curran*). Why to be sure, he means an active young man—is it not so?

A. (*Witness*). Yes.

Q. Do you believe he was found guilty?

A. I cannot tell whether or not.

Mr. Barrington. The whole proceedings of the Court Martial, was set aside by *Lord Cornwallis*, who reversed the sentence of the Court.

Mr. PATRICK MAGUIRE, sworn—examined by COUNSELLOR WALLACE.

Q. Do you know *Mr. Sirr*?

A. I do.

Q. Do you know *Mr. Hevey*?

A. Yes.

Q. Do you recollect the month of September last?

A. I do.

Q. Have you heard of any thing which then happened to plaintiff?

A. Yes; he was taken into custody by *Mr. Sirr*, and committed to the provost.

Q. Had you any difficulty in getting to see him?

A. Yes; by much, as I could not see him.

Q. Did you do any thing in consequence?

A. I did; I went by the order of *Major Sandys*, to see *Mr. Hevey* in the provost. He said he was in custody of *Major Sandys*, under a warrant from *Mr. Sirr*.

Q. What did you then do?

A. I returned to *Major Sandys*, and said to him, I wondered he would detain *Mr. Hevey*, on so trifling a matter—and *Sandys* replied, it was not a trifle to insult *Sirr* who was in the trust of government, and *Mr. Hevey* would be humbled, or else he should stay where he was; that he should make a public apology, ere he would be enlarged; and if you call on *Sirr*, and tell him this is done, and if *Mr. Sirr* is satisfied, I will then discharge him on your interference.

Q. Did you call on *Sirr*?

A. I waited on him on the 9th of September, and he replied, he did not wish to hold him longer, but to shew you it was not *Hevey* that should be detained, he said, if I would find

find out the fellow who told *Hevey* what I said, he would punish him. I then said, if you write now to *Mr. Sandys*, he will discharge *Hevey*, and I required a letter, and he replied, you will tell *Mr. Sandys*, by the same token, the last conversation I had with *Major Sandys*, in the castle-yard, was on *Hevey's* business, he will be discharged.

Q. Did you then call on *Sandys*?

A. I did.

Q. What did he then say?

A. He told me the token was right, and that if *Hevey* signed the apology he left him, he would discharge him, and desired I would go into the room, and cause him to sign said paper.

Q. Did you then go?

A. I did.

Q. What sort of a place did you see *Mr. Hevey* in?

A. I saw him in the provost prison.

Q. Describe the prison, or where you have seen *Mr. Hevey*.

A. I cannot describe it properly.

Q. You must describe it?

A. I saw *Mr. Hevey* in a small room, (to the best of my recollection) where the first object I saw was a man, sitting in a situation that delicacy prevents me from repeating, with a yellow shirt, and seemingly quite exhausted. Five or six beds; in one of the beds was a man sitting up in it, his person filthy and a long beard, with a soldier's old coat laid over his shoulders. I saw a third man walking about reading, I suppose it was a prayer-book, and he reading the office of the dead.

Lord Kilwarden. Did you see the book?

A. No, my Lord.

Q. Then how can you swear it was a prayer-book?

A. My Lord, I thought it was from the horrid appearance of the place; I was so alarmed, and the stench was so offensive from the room, that I refused to go farther than the door, lest I should get some disorder, for the beds seemed to be full of people in sickness. I spoke to *Mr. Hevey* about his dreadful situation, and requested him to sign the apology that *Major Sirr* required, or to do any thing to get out of such a place; which *Hevey* refused. I then went to *Sirr* in the castle-yard, and begged of him to liberate *Mr. Hevey*.

I told *Mr. Sirr* I would pay *Mr. Hevey's* expences. After some conversation, he said, he had arrested *Mr. Hevey* in vindication of his own honour, and said he would leave it to *Mr. Sandys* to get *Mr. Hevey* discharged. *Mr. Sirr* gave me no note to *Mr. Sandys*, to get *Mr. Hevey* discharged; who I then told, that the friends of *Mr. Hevey* must get him liberated, by applying to the law for redress. I then went to *Mr. Sandys*, this was the next day after *Mr. Hevey* was arrested. I saw *Mr. Sandys*, I told him what *Mr. Sirr* had said, and *Mr. Sandys* said, I must excuse him—I am, said he, in an awkward situation; as *Mr. Hevey* is confined under a General Officer's warrant, and that it must be an order from *Mr. Abbot* only, that could now do it.—However, if proper authority is left with me, I will discharge him forthwith; and he advised me to go into *Mr. Hevey's* room, to get him to sign an apology; and then said he, I will discharge him, but except he signs that paper, he said he could not—he said he would not discharge *Mr. Hevey*, unless he signed that apology. I then went to *Mr. Hevey* again, and intreated him to sign the apology; at first he refused, but at last he said, he would sign it; and he having signed it, we parted. *Mr. Sandys* told me, that if *Hevey* signed the apology, he would have him discharged that day.

Q. When was *Mr. Hevey* liberated?

A. On the 11th of September, about twelve o'clock at noon.

CROSS-EXAMINED by JONAS GREEN, ESQ.

Q. Was you present at the conversation between plaintiff and defendant in the commercial coffee-room?

A. I was not.

Q. You say that *Mr. Hevey* objected at first to sign the apology?

A. Yes—but he afterwards signed an apology to *Major Sirr*.

Q. You called at the prison to see *Mr. Hevey*?

A. I did.

Q. Did you see *Mr. Sirr* there?

A. I never saw *Mr. Sirr* there.

Q. Are you a relation to *Mr. Hevey*?

A. No: but I have been in habits of intimacy with him a considerable time back.

Q. You

Q You have been in company with him?

A. Yes.

Q He was a Yeoman?

A. Yes: I saw him in uniform.

Q When did he cease to be a Yeoman?

A. Some time about the year 1799; I do not know the time precisely.

Q Did you ever hear of any act done by him, before that period?

A. I had been out of the kingdom, and returned 1st of June 1798. I was not a Yeoman.

Q Have not you heard, that *Mr Hevey* was brought to trial at Kilkenny?

A. I have heard it, and do believe it to be the case.

Q Did you hear that *Mr. Hevey* was sentenced to transportation out of the kingdom for seven years?

A. Yes: but to what part of the world I never heard.

Q Did you never hear that *Hevey* had been confined in the Royal Exchange?

A. I was not present, if he was confined in the Royal Exchange.

Q Did you not hear he was taken up as a suspected Yeoman?

A. I never heard that to my knowledge—I am positive I never heard it.

Q Have you heard why the sentence of transportation was not put in execution?

A. I cannot answer that question.

Lord Kilwarden—You cannot ask the witness as to the motive that induced *Lord Cornwallis* to liberate that man; it has been stated he was liberated by *Lord Cornwallis*, of course, *Hevey* has been forgiven. The witness cannot know the motive that produced his Lordship's clemency.

Q Did *Hevey* make an apology to *Mr. Sirr*?

A. No—here is an apology drawn up by *Major Sandys*, which *Mr. Hevey* would not sign.

Whereas I, on the night of the 8th of September last instant, in the coffee-room of the Commercial Buildings, made use of improper expressions to *Mr. Sirr*—I am very sorry for it, and beg your's (*Mr. Sirr's*) pardon, and assure you, I had, nor have not, any wish to insult any Officer of

of this Government ; to whose clemency I owe my release from a sentence of a Court-martial, by reversing the sentence inflicted on me, by that Court-martial, &c.

11th September 1801.

Mr. Fletcher. There was an apology made by plaintiff.

A. There was one signed by *Hevey*, here it is.

Mr. Green. So far as it is the act of the Party, it may be read ; here is the paper, signed by *Hevey* himself.

Sir, I replied hastily to an officer of Government some nights ago, for which I am since confined ; I am sorry by so doing, it has gave offence to government.

11th September, 1801.

I am Sir,

To

Yours, &c. &c.

Major Sandys.

JOHN HEVEY.

Mr. Curran. Here was not any thing like an authority to discharge him.

Lord Kilwarden. At present I think *Mr. Sandys* acted merely as Agent of *Mr. Sirr*—he was committed to his custody by *Mr. Sirr*.

Mr. Barrington. There was no charge of High Treason against *Mr. Hevey* in September last.

Council for Defendant. We have the evidence of the former witness he did say, that *Mr. Sirr* said, he did not want any apology at all ; and when he heard that *Mr. Hevey* said he would appeal to the law ; then said *Mr. Sirr* to the witness I will go to *Mr. Abbot* and get the man released.

Court. Do you rest the case here on the part of the plaintiff.

Council for Plaintiff. Yes, my Lord.

William Fletcher Esq. My Lord and Gentlemen of the Jury, In this case I am of Council for *Major Sirr*, the defendant in this action. Gentlemen of the Jury, I would have been the last man, that would have been called upon as Council for the defendant, had he been that man as has been represented to you. This action is brought to recover the enormous sum of £5000 ; that sum my eloquent and ingenious friend *Mr. Curran* has told you is so trivial, that you ought to find the verdict to the full amount of the damages laid in the declaration ; he has in this statement mentioned many things that are totally irrevelent to the present case. He has lamented that the damages were not laid at
£10,000.

£10,000. He has attributed the conduct of my client to the plaintiff, as if malice was prevailing in his mind, against the plaintiff; such an assertion is not capable of being given in a proof on an action for an assault; but malice had no share in the transaction; we cannot give in evidence the intentions of a man; no; to harbour a malicious intention would degrade the dignity of human nature. He was incapable of feeling resentment against the plaintiff. The defendant did know, that there had been the sentence of transportation awarded by a court-martial, held at Kilkenny, against a man of the name of *Hevey*; but as to any knowledge the defendant had of him, he was ignorant as he is of a man in South America. *Mr. Sirr* was informed, in the coffee-room of the Commercial Buildings, that such a man sitting there, was of the name of *Hevey*; and recollecting there was a man of that name tried at Kilkenny; he did, after some little conversation, ask him was he not once in the Provost Marshalsea, and had he not been tried and found guilty at Kilkenny; and asked him to shew his protection; and to account why he was found at large; *Hevey* refused to give defendant any satisfactory answer; and then *Mr. Sirr* told him, if he did not, he must arrest him till he found out the truth; and for this conduct of the defendant, the plaintiff now applies to you, Gentlemen of the Jury, to be recompensed in damages to the amount of £5000. I shall not, Gentlemen, attempt to display that profusion of eloquence, you have heard from my ingenious and learned friend; but I will state the facts that will appear in evidence, on behalf of the defendant, my client in this case; and you will consider, what injury the defendant has sustained; before you on your oaths would find a verdict to the amount of the enormous sum of £5000. You will consider the evidences which have, and those that will be, produced to you. There have been many circumstances mentioned in the statement of plaintiff's case, by his ingenious advocate, that are incapable of being given in evidence. You may therefore venture to put out of your minds three-fourths of the statement, there being as I have already mentioned, many circumstances stated, that could not be sent up to you for your investigation and consideration. We shall produce evidence to prove facts of a public nature—as

to common-fame, it is no foundation to state to Gentlemen of your understandings, any facts grounded on reports of common-fame—I must observe to you Gentlemen, that my learned friend has stated to you, that the Liberty of this Country, was in danger of being destroyed; as if Liberty was only to be found within these walls;—but I trust this representation is not the case, for Liberty exists in every part of Ireland, as well as within these walls, and the Liberty of the Press is preserved inviolable, and I doubt not but you may read, in some of the News-papers that may be published in a few day's, that there was on such a day, a Trial wherein *Mr. Hevey* was plaintiff, and *Mr. Sirr* defendant, on an action for an assault, and false imprisonment, when *Mr. Curran* displayed his usual great abilities, on behalf of his client, with amazing eloquence and energy, and the witnesses were produced, to prove the facts stated by the learned Council, when it appeared, the Jury did not give credit to their testimony, for they found a verdict in favour of the defendant; peradventure such a paragraph may appear in the Public News-papers; for I have no doubt, but that you will find your verdict in favour of my client; and against the plaintiff in this action. I shall not, Gentlemen of the Jury, state any thing on the part of my client, *Mr. Sirr*, that will not be proved in evidence; it appears that the defendant accidentally went into the coffee-house of the Commercial Buildings, with some other Gentlemen, they sat down and took coffee, and there happened to be sitting in the same coffee-room, the plaintiff in this action, and some person having said, you live sir a good deal in the country where persons live who were accused of being active in the late Rebellion; to which *Mr. Sirr* replied, I am not in the least afraid of any of them. It was then pointed out, that there was a man in the room of the name of *Hevey*, who had been charged and tried on an accusation of that nature, and had been sentenced to transportation; to which *Mr. Sirr*, in a low voice made answer, “he deserved to be hanged,” and then some busy intermeddling officious person, went to *Hevey* and told him what *Mr. Sirr* in a low voice had said; and then the conversation took place which will be given in Evidence—I demand to see your protection; you know me—yes said plaintiff, I know you are *Major Sirr*; but would give him no answer, as to
 shewing

shewing how he became at large ; and when *Mr. Sirr* brought him to his Office, in the Castle-yard, he again asked him, to shew his protection ; and then plaintiff in a swaggering blustering manner said ; “ as to my protection go ask your “ betters for it.” Now if *Mr. Hevey* had thought proper of telling *Mr. Sirr*, true it is, I was tried at Kilkenny, and was found guilty, and was sentenced to transportation, but I have been by *Lord Cornwallis*, set at Liberty ;—if *Mr. Hevey* had mentioned those words to *Mr. Sirr*, you never would have heard of this action. See Gentlemen the evidence, that has been given on the part of the plaintiff, in support of this action ; the first witness was *Mr. Molloy*—the second was *Mr. Rainey*—and the third witness was *Mr. Maguire*. Here the learned Council on the part of the defendant, with great accuracy and perspicuity, recapitulated the testimony that those three Gentlemen had given, on their direct and cross examination ; which the reader will see set out in *hie verba* in the foregoing part of this Report ; therefore deemed unnecessary to repeat it. It does appear, that in the course of the conversation, *Mr. Sirr* did ask *Hevey* to shew his protection ; if any he had, which *Hevey* refused to do, and the said witnesses said, that *Mr. Sirr* did say to *Hevey*, “ you deserve to be hanged,” and *Hevey* answered “ you lie, you are a liar.” This is not the case of an ordinary person ; here was a man that had been accused of High Treason, to the defendant’s own knowledge, he had been tried for that offence, and had been convicted ; and he afterwards appeared at large ; and defendant seeing him at large, asked him to shew his certificate of a pardon ; or said he, I must detain you till I investigate, whether you ever received a pardon or not, and on *Hevey* still refusing to give the defendant any satisfactory answer, he did hold him in custody, as one of his Majesty’s subjects, he had a right to do ; if such man had been charged with High Treason, and refused to give an account how he came to be at large. A private individual may seize a person charged with High Treason, and bring him before a Magistrate ; it has appeared in evidence, that it was a matter of public notoriety, that the defendant was a Magistrate, and had been very active in the apprehension of a great number of persons charged with High Treason, at the time of the late Rebellion ; and this country owes much of its present tran-

quillity, to the very great exertions and laudable efforts of the defendant, to crush that Rebellion, *Mr. Sirr* appears not to be negligent of his duty, he knew that a man of the name of *Hevey* had been in 1798, accused of High Treason, and seeing a man of that name pointed out to him in the commercial coffee-house, asked *Mr. Hevey* was you not in the Provost Prison, and was you not tried and convicted of High Treason; shew me by what authority, you are at large; how easy was it, for *Mr. Hevey* to say, I am that person; and since the Trial was had, *Lord Cornwallis* has given me a free pardon. Gentlemen of the Jury, you will judge of this case, merely upon the evidences adduced to you, and not from any statement of the Council, on one side or on the other; I am sure, you must have it in your recollection, the mild and lenient Government of this country, under the administration of the *Marquis Cornwallis*; he did think proper in mercy to reverse the sentence of several Courts-martial, where persons charged with High Treason were found guilty; he liberated from death many persons, and surely a man so liberated, could easily have said, "I have been pardoned through the clemency of the *Marquis Cornwallis*," and therefore the sentence of the Court-martial was not carried into execution; and thus *Mr. Hevey* would have been cleared from any stigma whatsoever.—It will appear most clearly in evidence, that the arresting of *Hevey* by *Mr. Sirr*, in the commercial coffee-house was not through wantonness, or maliciousness—*Mr. Hevey* has been since enlarged, and that also appears to be the fact. The plaintiff has not attempted by a single sintillo of evidence to say, he was arrested wantonly or maliciously. You are to presume, that the Government of this country acted wisely, and mercifully in pardoning many persons who had been found guilty by Court's-martial, of High Treason—you have no evidence, on which you can infer, that *Mr. Sirr* arrested *Mr. Hevey* out of malice; or for the gratification of any purpose of his own. The learned Judge who now tries the cause, will correct me, in point of law, in any matter in which I may mistake;—but, I hold the law to be, that a Magistrate does not do his duty, as such, who, if told a man charged with High Treason, and convicted, is seen at large, does not enquire why he appears at large. Gentlemen of the Jury, it is a matter of notoriety,

notoriety that *Mr. Sirr* was an active Magistrate during the time of the late Rebellion; and by his exertions in apprehending rebels, he did essentially contribute to save this commercial country, from scenes of blood. You cannot presume that *Mr. Sirr* knew the fact, that *Lord Cornwallis* had pardoned *Hevey*; and yet knowing that fact he apprehended *Hevey* out of malice. You are not intitled to make such a presumption; for the law will not permit you so to do—this man did stand his trial on a charge of High Treason; and the Court-martial found him guilty; that was a fact, known to defendant—he was afterwards pardoned, that was a fact that was then not known to defendant—and therefore he asked *Hevey* had he a protection, and if he had, to produce it. At the time of the Rebellion, the trial by Court's-martial, of persons accused of Treason, was expedient and it was judged so, by the Legislature; to suppress the Rebellion, there was at that time particular duties entrusted to particular persons; and in the exercise of a particular duty, several matters came under the discretion of the person in discharge of that duty; and the law will presume a Magistrate acts uprightly, unless the contrary is proved. Persons employed in the exercise of a particular duty, may from proper, fair and laudable motives enquire of a man whom he knew was convicted by a Court martial, why he appears at large; the man could easily have said, I have received a pardon from *Lord Cornwallis*. Would you not give a man credit for making such an enquiry? A man may have been charged with Treason in 1798, he may have been tried; the evidences may have been mistaken in the man, he may by mistake, be found guilty; but when the proceedings of a Court-martial were laid before the *Lord Lieutenant*, he may set aside the sentence, and liberate the man; as not being a man active in the Rebellion; although charged with being so; for a person is presumed innocent, until the contrary appears.

Gentlemen of the Jury, let me ask you, what evidence has there been laid before you, sufficient for you on your oaths to find, that *Mr. Sirr* acted from malicious motives towards the prisoner?—it is, for the searcher of all hearts alone, to investigate the motives of human actions.—In the present case, however, it appears to be developed by the man himself, you have evidence under his own hand, that

he had been charged with the crime of High Treason, and was found guilty; and received afterwards his pardon through the clemency of the late Lord Lieutenant. It does not appear, that *Mr. Sirr* had any malice towards him; he met him accidentally in the coffee-room; he took him to his office in the castle-yard, and asked him his name and residence; and then said, as you were tried and convicted, shew me your protection, if you have one; but *Hevey* instead of producing the certificate to *Mr. Sirr*, or directing him where he could see it, bid him ask his betters for it. As to the plaintiff having a favourite mare, taken from him by any person, no evidence of it has been given; and therefore I do not know what foundation there was, to introduce any thing about her in this case. Let me ask you, on what ground is my client to be deprived of the common benefit in this case? are you to suppose there was malice in *Mr. Sirr's* mind against the plaintiff. By the general law of the land, you cannot impute malice unless proved; and the evidence is totally silent, as to the charge of malice.—On what ground then, are you to find a verdict for the enormous damages of £5000?—By the general rule of evidence, every man shall be deemed innocent, until the contrary appears; my client therefore shall have the benefit of the law, which every other man has. As to what has been given in evidence, respecting *Mr. Sandy's* conduct to *Hevey*, my client is not called upon to answer for the conduct of *Mr. Sandys*; *Mr. Sirr* is only accountable for his own conduct; I am not vindicating *Mr. Sandys*, the plaintiff is at liberty to bring an action against *Mr. Sandys*, if he thinks proper. It appears that *Mr. Sandys* is the keeper of the prison, called the provost, a prison appropriated for the safe custody of persons charged with the crime of High Treason. In the period of 1798, *Mr. Hevey* was charged with the crime of High Treason, and he was brought to the Royal Exchange in custody, and from thence taken to the provost—he was brought to trial, convicted and afterwards pardoned. I see no ground on which the learned Gentleman who preceded, bestowed the phillipic on the Government of this country—we have the same liberty remaining among us, we ever had. In the year 1798, this country was infected with a hoard of vipers, who were guilty of rebellious practices, against the liberty and welfare of their own country. The liberty of this country, and the peace of this country is now restored. The liberty of the press is

as much revered and esteemed now as in any age whatsoever; you will no doubt see in the news-paper, for the press is not silent, a paragraph, stating, that this day a case was tried, of *Hevey* versus *Sirr*; in which case *Mr. Curran* appeared of council for the plaintiff, and in the most eloquent speech we ever remember to have heard, made some strictures on the Government of this country, in very strong terms, and represented that the defendant ought to be assessed in very heavy damages; we have only to lament that the Jury was not of that learned councils opinion, for they found a verdict against his client.

In truth, Gentlemen of the Jury, you are to decide this case upon the evidences: *Mr. Maguire* has told you what passed in the prison of the provost; but it was the other two witnesses, who gave evidence of the arrest of *Mr. Hevey* in the Commercial Buildings. As to *Mr. Hevey* being put into the room where persons were lying ill with infectious disorders, and where it appeared a man was lying so ill, that he saw a person reading prayers by him, as the witness believed—if *Mr. Hevey* was put into such a room, that is to be imputed to *Mr. Sandys*, and not to *Mr. Sirr*; for my client had nothing to do with it. *Mr. Sirr* was not the keeper of that prison; there is no charge that *Mr. Sirr* put the plaintiff into that room; for the actions of *Mr. Sandys*, my client is not answerable. *Mr. Maguire* did tell you he had long been intimate with plaintiff, and then *Mr. Hevey* did sign the apology to *Mr. Sirr*, which has been read in evidence. If any thing was done improperly to *Mr. Hevey* when in the provost, why does not *Mr. Hevey* prosecute *Mr. Sandys* for it? why did he not bring his action against *Mr. Sandys*, and not make that a charge, to increase the damages as against *Mr. Sirr*!—As to what passed in the Commercial Buildings, I must observe that *Mr. Sirr* was well known to be a public Magistrate; he it was, who was insulted in the execution of his office by *Mr. Hevey*—that is an indictable offence of common law. *Mr. Hevey* has now thought fit to bring an action of damages against my client, because *Hevey* who had been found guilty, by a Court Martial, appeared at large, without assigning any reason, when asked by the defendant, why the sentence of the Court Martial had not been put in execution against the plaintiff.—The plaintiff after abusing the defendant in the manner the witness has told you, now calls
on

on you, Gentlemen of the Jury, to give him a verdict of £5000 damages. You are not prepared to say what evidence appeared before the Court Martial on the trial; but you are prepared to say, that the Lord Lieutenant was invested with the power of reversing the sentence of the Court Martial, and pardoning the prisoner of any crime committed by him. We do know that Courts Martial were invested with power to try persons accused of High Treason—the Courts Martial were invested with that power, by the Government of this country, and by the act of the Legislature passed in 1798; such was then the unhappy turbulence of the times, as rendered it necessary, in order to crush the rebellion. *Hevey* was found guilty by a Court Martial, he was afterwards pardoned; and he is now to be considered as innocent. We must, however presume, the sentence passed by the Court Martial was right, according to the evidences which then appeared before that Court, although it was not signed by the Lord Lieutenant, who did not think proper to carry the sentence into effect. But let me ask you, Gentlemen of the Jury, is *Mr. Hevey* now to be considered as an injured man, to fasten this impression on your minds, that he had not committed any offence. It has been said by my learned friend, you will judge what degree of criminality attached upon *Mr. Sirr*, for committing the assault and false imprisonment laid in the declaration. But Gentlemen of the Jury, you will be told by the noble and learned Judge, who presides on this trial, what the law in this case is, and as to the facts, you will judge from the evidences, whether you on your oaths can be justified, in finding a verdict against *Mr. Sirr*. The notoriety of *Mr. Sirr's* exertions to crush the late rebellion, has been noticed, with more than trumpet tongues; it is notorious he did exert himself to find out and apprehend those who in the time of the rebellion, met for the worst of purposes. Do you think that *Mr. Hevey* has deserved credit for his conduct, and therefore merits that you should give him the excessive damages of £5000? It is because the sentence of the Court Martial has not been carried into execution against him, that therefore you are to give him the enormous damages of £5000?—The act of amnesty did protect persons of his description, for it must now be taken for granted, that he had been once a traitor, and a double traitor, because he as a Yeoman, at the very
instant

instant he was charged with the crime of High Treason. It must ever be remembered with gratitude, that it was by the exertions of the Yeomanry of Ireland, the late rebellion has been crushed. If your Lordship thinks, that in point of Law, there ought to be any verdict against the defendant, then, Gentlemen of the Jury, you will judge whether the damages ought to be to any amount; or only nominal, as 6d. damages. We will go into evidence, on the part of the defendant, and it is with confidence, I commit my client's case to your consideration.

William Plunkett, Esq.—Call *John Goulding*.—We call him to shew, that the plaintiff *Hevey* was a Yeoman, and that he being then in the year 1798 a Yeoman, was charged notwithstanding, with being active in the rebellion, and was liable to be apprehended, and tried on that charge.

Lord Kilwarden—If Mr. *Sirr* had a reasonable ground to suspect a man guilty of treason, he ought in point of Law, to carry the man before a Magistrate.—Did Mr. *Sirr* do so—is that the ground of your defence?

Council for Plaintiff—We do not admit that Mr. *Hevey* had been a Yeoman.

MR. HALL, sworn.

Q. Do you know Mr. *Sirr*?

A. I do.

Q. Do you know Mr. *Hevey*?

A. Yes; the first time I saw him was on the night of the 8th of September last, at the commercial coffee-house. I was there, at the beginning of this business.

Q. What passed?

A. I was in the coffee-room, and Mr. *Sirr* came in and he sat down, and talked on different subjects; but particularly about a house he had lately taken at the foot of the mountains; and I told him I was surprised he would take a place there, as the boys might pay him a visit.—He replied, "He was not afraid of rebels in any place; and there is one of them," looking over at Mr. *Hevey*, who was at another table; Mr. *Sirr* spoke in so low a voice, as scarcely to be heard, Mr. *Hevey* then came up, and said to Mr. *Sirr*, "you ought to be hanged;" meaning the Major—Major *Sirr* then said, "were you not confined in the provost?"—*Hevey* said,

said, "many better man than either you or I was so; and I say, you ought to be hanged."—Major *Sirr* then repeated that *Hevey* ought to be hanged—then *Hevey* said to Mr. *Sirr*, assign your reason, I defy you; I think you ought to be hanged."—The Major then said, "I dare say you and your party think so; and *Hevey* said then to Mr. *Sirr*," "You are a liar, I am of no party"—and Major *Sirr* asked where he lived, and *Hevey* then said, he lived in Thomas-court.

Q. Did any thing else pass relative to any trial?

A. Not at that time.

Q. Did you see any thing else pass.

A. Mr. *Sirr* said to *Hevey*, shew me how you got out of the Provost—Mr. *Sirr* then took *Hevey* down, the Castle-yard—they walked down street arm in arm; I followed them to the Castle-yard. *Hevey* refused to give Mr. *Sirr* any account, but said, he would go with Mr. *Sirr* where he pleased.

Q. Was he handcuffed.

A. No, I followed them to Mr. *Sirr*'s Office in the lower Castle-yard—Mr. *Sirr* there sat down in a chair, and asked *Hevey*, is your name *John Hevey*; Mr. *Hevey* said it was; Mr. *Sirr* then asked him where do you live, Mr. *Hevey* answered in Thomas-court; Mr. *Sirr* then asked him, was you ever tried at Kilkenny—Mr. *Hevey* answered, he was; then said Mr. *Sirr*, shew me how you came to be at large, or will commit you to the Provost. Mr. *Hevey* then said to Mr. *Sirr*, go ask your betters. Mr. *Hevey* would not answer Mr. *Sirr* any questions whatsoever; Mr. *Hevey* was then taken to the Provost; Mr. *Sirr* said to Mr. *Hevey*, I suppose you could give me some answer. Mr. *Sirr* frequently asked Mr. *Hevey* to give him some account, Mr. *Hevey* bid Mr. *Sirr* to ask his betters, and then said, he would answer no question whatsoever. I then went and addressed Mr. *Hevey*, and begged him to satisfy Major *Sirr*, and if he had not his protection about him, that I would go with pleasure to get it for him; or would call on any friend to come to him, so as to get him out of his situation; he refused my interference; Major *Sirr* then went over to his desk and took out some paper, and *Hevey* was sent by a guard of soldiers to the Provost—Mr. *Hevey* was not handcuffed; Mr. *Sirr* remained behind with me.

CROSS-EXAMINED BY MR. CURRAN.

Q You was talking in the commercial coffee-house with Mr. *Sirr* about his country house?

A. Yes.

Q I suppose it is a very fine house, no doubt.

A. Why I cannot say, I have never seen the inside.

Q You won't be long so Mr. *Hall*, you'll soon receive a card of invitation—what profession are you.

A. I am an Attorney.

Q. Are you not in the office of Mr. *Heppenstal*.

A. I am.

Q Are you not a clerk to Mr. *Heppenstal*.

A. I am, but I have some private property.

Q. I see you are a gentleman of good sense—had Mr. *Sirr* an idea at first of arresting Mr. *Hevey*.

A. I suppose he had no idea of taking Mr. *Hevey* into custody; he would not descend to take Mr. *Hevey* into custody; for he did not know *Hevey* or he would not have asked him his name; if he had known *Hevey* he might have taken him at the time he stood up to him—Mr. *Sirr* said he did not know he was the man, this forms a reasonable belief, that he had no intention of arresting him for Mr. *Sirr* did not appear to have known Mr. *Hevey* when he first saw him in the coffee-room.

Q. Your evidence is, that you believe Mr. *Sirr* did not know Mr. *Hevey*, and therefore you believe that Mr. *Sirr* did not intend to take Mr. *Hevey* into custody.

A. Yes, he knew the man when he said his name was *Hevey*; and because he said, he had been tried at Kilkenny.

Q. Do you believe he gave any authority, and why he committed Mr. *Hevey* to the Provost.

A. Mr. *Sirr* did write some paper and delivered it to the guard, who went with Mr. *Hevey* to the Provost.

Q. Do you believe it was under the authority of Mr. *Sirr*, that Mr. *Hevey* was committed.

A. Most undoubtedly.

Q. Was there an application to General *Craigh* made for a warrant.

A. There was no time for such application by the Major until the committal—I do not believe Mr. *Hevey* was sent to the Prison under the authority of General *Craigh*; I do believe

believe *Mr. Hevey* was sent to prison, without the knowledge of *General Craigh* at that time.

Q. Do you believe he was committed to the provost by *Mr. Sirr*?

A. I do.

Q. Do you believe that *Mr. Hevey* had been living in the City of Dublin for some time; and carried on the business of a Brewer?

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

Q. Did you see the sentence of the Court Martial at Kilkenny?

A. I saw a copy of the sentence of the Court Martial, but not the original.

Q. Do you believe *Mr. Hevey* was set at liberty by the Lord Lieutenant.

A. I do believe it.

Q. What is your reason for believing it?

A. I saw *Mr. Hevey* at his liberty.

Q. Was *Hevey* discharged by the Lord Lieutenant?

A. It was so mentioned in the copy I saw; *Hevey* not being active in the rebellion.

Q. What was the Court Martial's opinion of *Hevey's* criminality?

A. I cannot answer that.

Q. Do you make a defence for *Mr. Sirr*?

A. I am sure I do not.

Q. Was *Mr. Hevey* enlarged on giving security?

A. I should suppose so; I cannot form a belief about it.

Q. Do you believe he was serious in the apology he made to *Mr. Sirr*?

A. I heard in court this day, that *Mr. Sirr* had refused to accept of any apology.

Q. Do you know *Mr. Sandys*?

A. Yes.

Q. Do you believe he is in court?

A. I believe so.

Q. Upon the whole of this transaction, had *Hevey* a resentment to *Mr. Sirr*?

A. From the contents of the apology I should suppose not.

Lord Kilwarden.—This Gentleman says, that *Mr. Hevey* was set at liberty, and that *Mr. Sirr* refused to accept the apology.

Q. Was

Q. Was the certificate sent to *Mr. Sandys*, to discharge *Mr. Hevey*?

A. I suppose it was lodged with *Mr. Sandys* or he could have no power to discharge him.

Q. *Mr. Sirr* must have known it?

A. I believe he must have heard it.

Q. What brought you to *Mr. Sirr's* office?

A. I went merely out of curiosity.

Q. You believe that *Mr. Hevey* has been discharged regularly.

A. *Mr. Sirr* must have believed it as well as me.

Q. Do you believe that *Mr. Sirr* knew at the time of the arrest, that *Mr. Hevey* had been regularly discharged?

A. I believe he might not then have known it?

Q. Do you believe that was the case?

A. Yes.

Q. Did you see the original order by the *Lord Lieutenant*, to discharge *Mr. Hevey*?

A. I saw a copy of it.

Q. When was *Mr. Hevey* tried at Kilkenny?

A. In 1798.

Q. How long did he remain in prison?

A. I do not know how long.

Q. Did not the *Lord Lieutenant* go into the country, and there release many prisoners?

A. He surely did.

Q. Had prisoners discharged any protections given them?

A. Almost all the rebels who were discharged, had protections; I suppose so.

Case rest on the part of the defendant.

Mr. Plunkett.—*Mr. Hevey* had been brought up before

Mr. Justice Chamberlaine, and the return was, that he had been arrested by the authority of *General Craigh*.

WILLIAM PLUNKET, Esq.

MY LORD, AND GENTLEMEN OF THE JURY,

In this case I am Council for *Major Sirr*. This is an action brought by plaintiff, for arresting him in the coffee-house of the Commercial Buildings.—I was in hopes it would not have been necessary for me to address you; had it not been that my learned friend, *Mr. Barrington*, mentioned

his intention of addressing you on the part of his client; it therefore becomes my duty to offer a few words to you on the part of *Major Sirr*. My Lord, and Gentlemen of the Jury, this is an action brought by *Mr. Hevey* the plaintiff, for an Assault and false Imprisonment, and the plaintiff has laid his damages at the enormous sum of £5000, and the plaintiff requires you upon your oaths to find a verdict to that amount, as a compensation for the injury he alledges to have sustained. Let me ask why is this excessive damages demanded? It is in order to shew to the inhabitants of our Sister Kingdom that we were absolute slaves; I do believe we enjoy the blessings of Liberty here, as much as in our Sister Kingdom, notwithstanding what has been said by my learned friend. I differ from my learned friend, who advised you to find a verdict for £5000, for if you should find your verdict against my client, you will no doubt find a verdict with very small damages. I know you will be addressed by my learned friend who follows me, but if he confines himself to the naked question in this case, his argument cannot take up much time; he has been lately in the habit of addressing himself to the citizens of Dublin, and he is anxious that the real sentiments of his mind shall be known to them.

Gentlemen of the Jury, one ground on which you have been called upon, to give a verdict of such large damages to the plaintiff is, that said *Hevey* was imprisoned through the malice of the defendant; let us examine whether in truth there was any malicious motive which induced the transaction, which has given rise to this action for damages. *Mr. Hevey* as has been stated to you, has been held by his fellow-citizens in the most respectable light, and that he was happy in enjoying the good esteem and society of the principal traders in this metropolis. Gentlemen, it has appeared in evidence, that in 1798 *Mr. Hevey* was a Yeoman. He appeared then as one of those gallant Volunteers, who in the hour of peril and danger boldly stepped forward to crush the Rebellion; it was to the efforts of the Volunteers we now enjoy our tranquillity; we relied on the protection of the Yeomanry of Ireland for its defence—upon the faith of the loyalty of the Yeomanry we placed the greatest confidence. *Mr. Hevey* was in 1798 a Yeoman, he appeared in the uniform of those Illustrious Bands; he must as such, have taken the oaths of Allegiance,

ance, and other oaths as a Yeoman, to do the duty his station required. The loyalty of the Yeomanry of Ireland obtained the approbation of Government. The loyalty of *Mr. Hevey* was however doubted, notwithstanding he did appear as a Yeoman, in uniform. There was a charge exhibited against him, of being active in the Rebellion, although he had taken the oath of Allegiance, and that he was a Rebel; he was thereupon apprehended on the charge of High Treason, and he was brought up a prisoner to the Royal Exchange, from thence he was committed a prisoner to the Provost, and thence sent to Kilkenny, where he was tried and found guilty, by a Court-martial; and received sentence to be transported for seven years, which sentence *Lord Cornwallis* was pleased to revoke. But Gentlemen of the Jury, he was found guilty by the Court martial, and you can have now not any doubt of the fact; you have no foundation now to say he was then innocent, for the Court-martial found him guilty of High Treason; he had broken the oath of Allegiance, which as a Yeoman he had taken. The lenity of Government did extend to him, and the sentence of transportation against him was reversed, and he was enlarged, having given security for his keeping the peace. Now Gentlemen of the Jury, it was under these circumstances he was enlarged; and he appeared at large; but whether he got a licence to empower him to be at large, does not appear in evidence. *Mr. Sirr* was a Magistrate to whose meritorious services, this nation is highly indebted for its preservation; he was a gentleman by whose exertions many persons accused of High Treason, were apprehended. *Mr. Sirr* had no personal knowledge of the plaintiff before the night of the 8th of September, and he had no previous malice against him; there was not an atom of malice on the part of *Mr. Sirr*. On the night of the 8th of September *Mr. Sirr* was sitting in the Commercial coffee-room with some gentlemen, and a person came into the coffee-room whom *Mr. Sirr* was told was of the name of *Hevey*, *Mr. Sirr* recollected there was a man of that name, who had in 1798 been tried at Kilkenny, and had been sentenced to transportation, he therefore conceived it proper to enquire, why he appeared at large; and after some little conversation, *Mr. Sirr* asked *Mr. Hevey* to shew him his protection; *Mr. Hevey* in a blustering swaggering manner, thought proper

per to refuse to give him any satisfactory answer; then said *Mr. Sirr*, if you do not give me a satisfactory answer as to that point, I must arrest you till the truth is enquired into. If you have a protection tell me where I can see it; *Mr. Hevey* did tell *Mr. Sirr* at his office, he might go and ask his betters for it. There was a person of the name of *Maguire* (but not the *Mr. Maguire* who was produced as a witness on this Table) who had been tried on a charge of High Treason, when a witness who appeared on the part of the prosecution, was as alledged by *Mr. Hevey* a person of infamous character; and *Hevey* gave evidence of it; and that *Maguire* it appears was acquitted. But let me ask, is that transaction any ground for you Gentlemen of the Jury, to believe that there was any malice in the mind of *Mr. Sirr* against the plaintiff? but I shall not detain you on this part of the case. Gentlemen it is evident that there could not exist any malice in the mind of *Mr. Sirr*, previous to the 8th of September; now let us examine into the transactions which took place between plaintiff and defendant on that day. *Mr. Sirr* and a Gentleman with him, was sitting in the Commercial coffee-room, and the Gentleman said to *Mr. Sirr*, your residence in the Country is amongst many of those who had been Rebels in 1798 live, and *Mr. Sirr* admitted it, but added these words, "he was not afraid of any of them;" *Mr. Hevey* happened accidentally to come into the coffee-room, and the gentleman said to *Mr. Sirr*, there said he, is one of them; a person who happened to sit near the table where *Mr. Sirr* was sitting, heard the conversation, and these words spoken, "*he ought to be hanged;*" although these words were spoken in a low voice, yet they were overheard, and some officious person told *Hevey* these words were said; on which *Hevey* turned round, and went up to *Mr. Sirr* and asked him, did he say these words; and then said, you, meaning *Mr. Sirr*, ought to be hanged, you are a liar; these words of *Mr. Hevey* were heard by every person present, as the witness this day has told you. There has been evidence laid before you of the Assault and abusive words given by *Mr. Hevey* to *Mr. Sirr*, and spoke in a ferocious manner, in a public coffee-room, where many persons heard the altercation between these two persons. *Mr. Sirr* asked *Mr. Hevey* to shew him his protection, which *Mr. Hevey* refused to do, and then *Mr. Sirr* said, he must detain

detain him, till he shewed him, why he was seen at large; having been at Kilkenny, sentenced to transportation for seven years;—Mr. *Hevey* did, instead of shewing his protection, say to Mr. *Sirr*, “*You ought to be hanged—you are a liar.*” It has appeared in evidence, that Mr. *Hevey* was tried for High Treason, and was convicted, and was afterwards discharged by the *Lord Lieutenant*: Mr. *Sirr* had a right to ask Mr. *Hevey* why he was seen at large, and he refusing to give Mr. *Sirr* any satisfactory answer, Mr. *Sirr* did bring him to his office, in the lower Castle-yard, in order to enquire into the fact, whether Mr. *Hevey* had, or had not, any protection granted to him; or had been pardoned, after being by the Court Martial sentenced to transportation for seven years. When Mr. *Sirr* did bring him to his office, he asked him his name and residence, and whether he had, or had not, been tried at Kilkenny; he told Mr. *Sirr* that his name was *Hevey*, and his residence in Thomas-court, and acknowledged he had been tried at Kilkenny; but in answer to Mr. *Sirr*, about Mr. *Hevey* shewing him his protection, he said, “*Go ask your Betters.*” On which, Mr. *Sirr* said, I must commit you to Gaol, until that matter is enquired into.

Now, Gentlemen of the Jury, this is the case of the plaintiff, who now brings this action, seeking for redress, for the injury he has received, and he brings his action of damages. to the enormous amount of £5000; who, if he had told Mr. *Sirr*, when asked by him, had he a protection, and have then said, I have been pardoned by *Lord Cornwallis*; there would have been an end of the business. It has been said, that Mr. *Hevey* was committed to the provost prison, and that he was loaded with manacles; there has not been an atom of evidence given, that any kind of manacles whatsoever, was put on Mr. *Hevey*.

Gentlemen of the Jury, as to what happened to Mr. *Hevey*, after he was put into the provost, in the custody of Mr. *Sandys*, certainly Mr. *Sirr* has nothing to say to; for the conduct of Mr. *Sandys*, is not to be visited upon my client. The next day Mr. *Sandys* told Mr. *Hevey*, if he would make an apology to Mr. *Sirr*, he would endeavour to get him discharged.—Mr. *Hevey* refused to make any apology; and said, he would appeal to the Law; he was thereupon brought before Mr. *Justice Chamberlaine*, who was
pleased

pleased to remand him to prison; as it appeared he was in custody, under a charge from *General Craigh*; after this Mr. *Hevey* said, he would sign an apology; but Mr. *Sirr* said, I do not want any apology, but as Mr. *Hevey* appeals to the Law, I will go to Mr. *Abbot*, and endeavour to get the man discharged; and it appears that he has been since, that is, the 11th of September, at 12 o'clock discharged. I do conceive the law to be, that Mr. *Sirr* was bound by his duty, to enquire of a man whom he saw at large, after he had been sentenced to transportation, why the sentence was not carried into execution; and to detain him a reasonable time, until that fact was enquired into.—I do say he must, however, have a reasonable ground of suspicion for detaining him; in this case it is admitted that Mr. *Sirr* did know, that a man of the name of *Hevey*, had been tried at *Kilkenny*, and had been found guilty, and received sentence of transportation; and afterwards being pointed out to him, seeing him at large, he did enquire of him, why the sentence was not carried into execution; and though it was very easy for Mr. *Hevey* to have told Mr. *Sirr*, that he had received a pardon, he refused to give any satisfactory answer to Mr. *Sirr*. By the terms of the amnesty act, Mr. *Hevey* was called upon to produce his discharge, and shew that he was discharged by due course of law; he might have said, I have a certificate of it—if Mr. *Hevey* had said that to Mr. *Sirr*, he would have been immediately discharged. In this case, Mr. *Sirr* had a reasonable ground for suspicion of Mr. *Hevey*, that is not denied;—but as soon as Mr. *Sirr* had about the 11th of September, discovered that Mr. *Hevey* had received a pardon from *Lord Cornwallis*, when *Lord Lieutenant*, Mr. *Sirr* immediately went to Mr. *Abbot*, and obtained from him a discharge of this man from the provost. This therefore is a good defence, on the part of my client, under the direction of the court, in point of law, to induce you, Gentlemen of the Jury, to find your verdict in favour of my client; but should you, Gentlemen, find a verdict for the plaintiff, the next point that comes under consideration is, whether you would only find nominal, or perhaps 6d. damages. But it is for you, Gentlemen, to ascertain the quantum of damages; it is for you to take into your estimation, the circumstances of the parties; it has appeared to you in evidence, that Mr. *Hevey*, although he

was

was found by the Court Martial guilty, he was since pardoned; through the lenity and humanity of Government. As to *Mr. Hevey's* present situation, he is now a prisoner in Newgate. You are now upon your oaths to say, what injury this man hath sustained; and to say whether or no, you will give him any more than nominal damages.

Now, Gentlemen of the Jury, it is for you to consider what has been the conduct of *Mr. Sirr*, that he should be the Gentleman, who should have vindictive damages awarded against him; for what hath this Gentleman done, he has merely acted in discharge of his duty, in the manner the witnesses has told you—he hath for some years taken a most active part in apprehending traitors, and in suppressing the late Rebellion; and prevented thereby, the then threatened invasion of this country. His conduct has been in the highest degree praise worthy; and until the transaction happened, which hath been the subject of this present action, no imputation whatsoever, could ever be attached to him for any part of his conduct, either public or private. You cannot therefore Gentlemen, but consider the conduct of *Mr. Sirr*, but as acting in the honest exercise of his duty. Give me leave to refer to your consideration, the periods of 1798 and 1799, when the exertions of *Mr. Sirr*, contributed very essentially to the suppression of the Rebellion;—I shall only add, are those public services to have no weight in your mind; that you, by your verdict, would not protect him from the vindictive claim of the plaintiff, who has brought this action, and laid his damages, at the great sum of £5000. But I have no doubt, your verdict will be such, as will meet the justice of this case.

JONAH BARRINGTON, Esq.

MY LORD, AND GENTLEMEN OF THE JURY,

In this case, I am Council on behalf of the plaintiff, *Mr. Hevey*—I feel it an indispensable duty to speak to this case, as I conceive it to be one of the greatest importance, not only to the plaintiff, but to the crown and to the country. The plaintiff has brought his action to recover damages against the defendant, for a violation of the Law, and an assault upon the constitution. He has brought his case before you with confidence, and calls steadily for justice; not merely to

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vindicate his own character, or to avenge his own wrongs; not with the view of mercenary damages, or a malicious triumph; but he calls for justice against the public officer, who has abused the public trust in his person; and in his person has endeavoured to convert the legal authority of the crown, into a despotic instrument for the subject. My learned friend, *Mr. Plunkett*, has declared sincerely, his reluctance to speak to evidence; I am convinced it proceeded from an honest consciousness of a bad cause; which blunts his ingenuity, and flattens his talents, when he is called forth as the reluctant advocate of tyranny or of oppression. You have heard him unlike himself, speaking a language foreign from his sentiments. My learned and ingenious friend, feels that his eloquence and ingenuity, could be better applied, and more effectively exercised. The language and sentiments he was necessarily obliged to use, he conceived would be no recommendation to the patriot feelings of that learned and spirited seminary, which it is his laudable ambition and wish to represent. And I am sure, when that Gentleman came to examine into the defendant's case, he would have given up his brief with pleasure.—I have no such motive to decline speaking to evidence, on the part of the plaintiff, and therefore I exercise my duty with pleasure, as his advocate; and however impossible it is in me, to display such splendid talents, as my friend *Mr. Curran*, whose exertions every man must admire. Yet when the topic to be discussed, is the liberty of the subject, he must be a slavish advocate indeed, whose energy does not arise, in proportion to the importance of the discussion; and calls out whatever talents God and Nature gave him.

In this case, it is only necessary to state the material facts proved, in order to convince an honest Jury of their bounden duty.—These facts alone will teach you to form a just judgment, whether Ireland is to participate in the liberty of that country to which she is now united; or to plunge back again into the chains and trammels of petty and despotic tyranny—that is the real question. If you, Gentlemen of the Jury, by your verdict, stamp a justification on the conduct of *Major Sirr*, Ireland is in bondage; but if your verdict marks that conduct as unjustifiable and illegal, Ireland will

will regain some traces of the British Constitution; and the personal liberty of the subject may be secured and protected.

I know I now speak before an honest Jury, and a wise Judge—the eyes of Ireland are fixed on the event of this trial—not as to *Hevey* or as to *Sirr*, but as to freedom or as to slavery. For it is fully and unequivocally proved, that *Mr. Hevey* a subject in the King's Peace, against whom no public charge remained—and to whom no public crime was then imputed—and against whom no warrant existed—or any pretence of legal detention, was dragged from a public room in the noon day as a common felon, and plunged into an infectious dungeon, to enforce a private apology, to a private subject, for a private insult, contrary to the spirit of the Constitution, the law of the land, and the liberty of the Country.

Gentlemen of the Jury, could even the gliding shadow of distant Liberty, light one moment on a country, where such an act should be held justifiable. It is not a common assault, committed by an ordinary person, on an ordinary occasion, in the common occurrences of error or of violence; when the damage is measured by the private injury, and the wrongs of the individual are not identified with the general liberty of the Country. It is not the case of a false imprisonment of a person in the lower orders of life, by a person of the same description, where the hours of detention, measure the proportion of the injury; but it is a public and unwarrantable imprisonment of a respectable Brewer of the City of Dublin, by *Major Sirr*, to gratify the feelings of private passion, under the colour of public duty. The *Major* is a Gentleman, whom you all know, to whose merit as a public officer, I as freely subscribe, as any person who hears me. I admit he was active, indefatigable, and effective, in preserving the peace of this City, at the time this Country was in danger; but the Rebellion that did in 1798, agitate this kingdom is now past, and this Country is now in a state of tranquillity, and was fully so in 1801, when the defendant committed the offence before you. Defendant's Council have dwelt on the past services of the defendant, but Gentlemen, it is a principle foreign and unknown to our Constitution, that any person, on any authority, should claim a privilege to commit acts of injury and oppression, on his fellow-citizens, with impunity for past services; and for which he

was so amply rewarded. It is unknown to the moderns—it was unknown to the ancients. The last of the Horatii, though he had saved his country, was condemned for the death of his sister;—Manlius was flung from the Tarpean Rock, though he defeated the designs of the Gauls, and saved the Capitol of Rome. Yet why should we have recurrence to the pages of Ancient History; we have a modern and recent example, and with which the *Major* is better acquainted, than the story of Horatii—I mean *Jemmy O'Brien*! he also defeated the machinations of the Gauls, was the saviour of his Country, and preserved our Capitol, yet *Jemmy* received the reward of past services, for he was hanged in this City for murder. His past services could not protect him from the law—he died, and the law triumphed!! It is a weak and insolent defence to say, that the defendant's services should warrant his offences—it is absurd to argue, that because *Major Sirr* knew and supported the law in 1798, he should be warranted in overturning his own fabrick, and be at liberty to break through both law and constitution in 1801. Because he defended the constitution in time of war, is he to destroy it in time of peace; and because a rebellion once existed, is a tyranny to be erected on its ruins. This argument of defendant's Council, admits my client's case, because if defendant's Council had a better argument, they would certainly have used it. But they had none, the law failed them, justice failed them, and they were obliged to have recourse to finesse, and endeavour to lead away the minds of the Jury from the fact in issue, and impose upon their loyalty, when they could not mislead their reason; defendant's Council as another argument, have had recourse to another finesse, equally weak, but more unwarrantable than the former; namely, that the plaintiff, *Mr. Hevey*, had been a rebel in 1798, and convicted, and sentenced to transportation; and that therefore a personal injury to him, by so meritorious a person as defendant, should weigh little with the Jury.—Monstrous assertion!—Even if *Mr. Hevey* had been guilty, which I deny, such a doctrine is most vicious. God forbid that when a subject receives a pardon, and is restored to the bosom of his country, he should remain an outlawed slave in the midst of a free people; on the contrary, *Mr. Hevey* was as much under the protection of the law, as *Major Sirr*, and both delicacy, and honour, and public policy, should rather have united in making a pardoned man forget that he had

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offended, than in making that pardoned offence, a pretence for his oppression. Such a pretence is an insult to the throne, which pardoned, a charge against the lenity of the King, and a crime against the liberty of the subject; and of all the means which human ingenuity could devise, the most effectual means of *perpetuating* disaffection. If such a doctrine was permitted, pardon would only operate as prolonged punishment, and repeated injury excite to future disobedience; the letter of the law, and the spirit of the constitution, reprobate so wicked, so weak, and so mischievous a doctrine. But I deny the fact of *Mr. Hevey's* guilt: in times when it was enough to be suspected, to warrant punishment, *Mr. Hevey* had enemies; he belonged to the persecuted cast, and was charged of course, with High Treason; the minds of all men were inflamed—rebellion raged—blood was familiar—animosity was implacable, and *Mr. Hevey* was sent to Kilkenny, to be tried by Court-martial, for High Treason; a reward was offered for any person who would give evidence against him; no creditable witness could be found—no High Treason could be proved, yet he was sentenced to seven years transportation, on the *charge or suspicion of* High Treason; though he must have suffered death if guilty. The proceedings of the Court-martial were laid before *Lord Cornwallis*, he considered them, and under his *Sign Manual*, gave the lie direct, to the minutes of that Court-martial; ordering *Mr. Hevey* to be discharged, in as much as it appeared, that he was not active in the Rebellion; and let down the sentence easy, by directing *Mr. Hevey* to give security, which he immediately did. *Mr. Hevey* was discharged; he betook himself to his industry as a Brewer, a man of wealth, and never had any species of offence laid to his charge, till the defendant treated him like a common felon in the Commercial coffee-room; and by such treatment, trampled on the justice and humanity of the absent Viceroy. Where then lies the guilt of *Mr. Hevey*?—where then lies the justification of *Major Sirr*?—is it in the refuted minutes of the Kilkenny Court-martial—or is it in counteracting the royal lenity, or Viceroyal justice?—No; the whole transaction is to be found in private passion, and personal animosity, working on an irritated mind, to commit a most unwarrantable injury. Another part of the defence now made on the part of the defendant, is, that he did not shew his protection,

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when demanded by *Major Sirr*—this defence is as weak as as the rest. *Mr. Hevey* had been three years resident in Dublin, as a Brewer in public business, from the time of his pardon—known all over the City as a man of repute and punctuality, he was insulted—he was injured—he was inflamed—he was conscious of his own rectitude and safety—he had been pardoned, and he was not bound to answer *Major Sirr* any question whatsoever. *Major Sirr* had no authority to arrest him; he had full authority to resist, and if *Major Sirr* had fallen in the contest, where would have been the guilt of *Hevey*. Every false imprisonment is an assault; this was a false imprisonment—every man may resist an unwarrantable assault—and every man arrests another at his own peril. But it was said that *Major Sirr* had a reasonable ground of suspicion of *Mr. Hevey*, and therefore detained him, till he could find the manner in which *Hevey* had been permitted to go at large, but that was not enough; even then, *Mr. Sirr* had no authority to commit him to prison, without first bringing him before some magistrate, and making a charge against him. A man who receives the benefit of his Majesty's clemency, under the hand of the *Lord Lieutenant*, is as free as if he had never been found guilty; *Mr. Hevey* it is true, was tried by a Court-martial, but the *Lord Lieutenant* contradicted and reversed their sentence, and he gave a certificate of it, which no doubt is lodged in the proper office, to which office most particularly *Major Sirr* had an official access, and must be considered as well acquainted with every pardon of that description, from the very nature of his occupation in Dublin and in the Castle; therefore that was obviously a false pretence, the certificate of pardon is never lodged with the person pardoned, it remains in the office; it is never lodged in the man's hands. *Mr. Hevey* never saw his certificate of pardon, and therefore had it not to produce; for the certificate was never deposited with him, and defendant's Council endeavour to confound a certificate of pardon with a protection—a protection is always in the hands of the person protected, and the pardon in the office. *Mr. Hevey* never sought or got a protection, it was not necessary, nor would he have accepted one; because a protection is granted on a confession of guilt, which *Mr. Hevey* never made, nor never will. But the pardon

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was granted on a ground of innocence; and *Mr. Hevey* desired *Mr. Sirr*, when asked by him for his certificate, to ask his betters for it—no doubt it was an abrupt answer; but *Mr. Hevey* was not bound to answer any question; and *Major Sirr's* ferocity would not have induced *Mr. Hevey* to tell him as a favour—and is an abrupt answer to a Town-major, a sufficient authority for three days imprisonment in a dungeon, part of it in irons.

Gentlemen of the Jury, it is the Boast, it is the happiness of the British Constitution, that no man shall be wantonly deprived of his Liberty—it is a great offence in a private individual, but in a Publick officer it is a high Crime and Misdemeanor, it is an abuse of a delegated authority without just cause, punishable by heavy fines and penalties. Is it now to be said, that *Mr. Sirr* acted under the orders of *General Craigh*? there has been no evidence given of such orders; and the strongest presumption of the contrary must be entertained, what orders could warrant any man in 1801, to say to another who was in the King's Peace, and under the Law's Protection; I knew you was a Rebel in the year 1798, you have been since Pardoned, but you deserve to be hanged. What orders could warrant the defendant to arrest a peaceable citizen, in a public coffee-room—what orders could warrant *Major Sirr* to drag the plaintiff, like a felon through the publick streets to his office in the Castle, and pretending ignorance of his name and occupation, the *Major* asked him his name, asked him his residence, as if they were his crimes; although it is in evidence that the *Major* knew his name, and addressed him by it in the Commercial coffee house, but pretended to forget it on the way, and then declared he would commit him to his old Lodgings in the Provost. If the defendant knew his name and residence, he must have well knew he had been discharged; if he did not know his name, what pretence had he for arresting him? In either case, he committed false imprisonment, with aggravating circumstances of the most unwarrantable (though certainly not unparalled) description. That dark and deep Inquisition, (the Provost prison,) the very existence of which would banish every principle of National Liberty, and every pretence of Personal Security from the people of Ireland, if it was suffered to remain longer the Prison and the Tomb of its inhabitants. I say that miserable dungeon has perhaps known many such scenes as this; from which the wretched

wretched sufferers have been only released, by the will of that Almighty power, whose omnipotence it will yet be the lot of the defendant to experience. *Major Sandys* appears to have been a considerable actor in this transaction; if the defendant has any defence, *Major Sandys* must know, and surely will not divulge it unwillingly. He can if possible clear up the aspersions laid so heavily on his friend; *Major Sandys* is now attending this Court, and can tell every thing—why does not the defendant produce him, to give evidence; he may be a most material and decisive evidence on the part of the defendant, if any one fact or word, of the plaintiff's case is capable of being disproved—*Major Sandys* hears me, he stands by me, yet is silent—I call on him in the name of justice—I call upon him in the name of friendship for his friend *Major Sirr*, to come forward and give evidence—no; a sentence of my client's case cannot be contradicted, and *Major Sandys* is silent; he was a witness to the whole transaction after *Mr. Hevey's* committal. If then he will not come forward for his friend, every fact stands admitted—but his reluctance is easily accounted for also in another way—if *Major Sandys* was produced, he would not state any thing untruly; and therefore must admit upon oath the whole of my client's case.—He could prove the injury that my client has sustained—he could prove the miseries he underwent in the dungeon he was plunged in—he could prove the irons which bound his limbs—and the cold flags which received his wearied body as a couch—he could prove the scanty meal of freezing water and of musty bread, which the charity of the prison first denied, and then allowed him *as a feast*—he could prove what number of infectious maladies ventilated the dungeon to which my client was confined. But these would be proofs for my client, and *Major Sandys* is silent. Permit me my Lord, and Gentlemen of the Jury, to lay before you another circumstance, not solely of a private nature, but which calls for the most serious consideration; a circumstance proving beyond question, the most unconstitutional suppression of truth, the most daring and desperate assault upon the constitution, that ever came before a Court of Justice. The Habeas Corpus Act forms the proud Citadel of British Liberty; it is that act which ensures personal security, and draws one of the first distinctions between an absolute and a limited monarchy.

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Without that act, every prison might become a grave, and every officer a tyrant—by that act every person who is confined may apply for his liberation to a Judge; and if he does not appear legally confined, he is instantly set at liberty. The dreadful circumstances of the British Empire at and previous to the Rebellion, formed plausible grounds for the Legislature partially to suspend the effect of that noble Statute; and by several acts of Parliament, it was in fact, actually suspended, under certain restrictions; amongst these upon a writ of Habeas Corpus issuing, the prison keeper was enabled to return, that the prisoner was confined under a warrant of a military officer, for a State offence; and the Judge was bound to admit it. But surely if the dreadful necessity of the times, warranted a partial and temporary suspension of that statute, and gave a confidential trust and authority into military hands, to supercede civil authority and established law, it must be an offence of the highest nature to abuse that authority and trust; and convert that partial and temporary suspension into a private and a revengeful purpose, it is a high crime and misdemeanour, punishable by law more severely than I wish to mention—yet that crime was committed. On *Mr. Hevey's* arrest, a writ of Habeas Corpus issued, to bring him before a Judge, in order to be liberated—before a Judge whose benevolent mind, and constitutional principles, were measured by the number of his decisions—and at whose tomb the Law and the Constitution are struggling which shall be seen the deepest mourner—*Mr. Justice Chamberlaine*. But that learned Judge was defrauded of his function; a return was made to that writ of Habeas Corpus, that *Mr. Hevey* was confined under a warrant of *General Craigh, for High Treason*. A false return—a return *not the truth*; he was *not* confined under such warrant—no such warrant appears to have issued—no such offence appears to have been committed—such return was an abuse of authority—it was a fraud upon the learned Judge—it was an unconstitutional extension of an unconstitutional power—it was a great crime, and merited a great punishment. The arrest was illegal—the return was illegal—and that false return having been effectual, proves beyond contradiction, that in the person of my client, not only the individual but the general liberty of the Irish people was implicated and involved.

General Craigh has been subpoenaed here, by my client, to prove the falsity of that return; he has been called and

called, but he has not appeared; he must have proved that the whole was a fabrication, the warrant has not been attempted to be produced in evidence; and although the negative is incapable of *viva voce*, proof without the personal attendance of *General Craigh*, and the *General* not appearing to do justice, you Gentlemen, are warranted in determining the whole to be a total falshood, and that no such warrant issued. Highly aggravated too, by the only person who could give decisive evidence as to that fact being at the plaintiff's back, and restrained for giving such evidence. If such a warrant had issued, it would have been the defendant's justification; but he has not justified, nor proved it, or accounted why he did not; nor has he produced *Major Sandys* who made that return, though he is sitting by, and therefore the defendant unequivocally admits, that there was not a charge to warrant *Mr. Hevey's* confinement. But why should I dwell on negative descriptions however strong or decisive; there is positive proof to establish these facts, for the witness who has told you that *Mr. Hevey* was detained in prison, says it was because he would not make an apology to *Mr. Sirr* as an individual, for a personal offence to him in the Commercial coffee-room. No man in this land is suffered by the law to gratify private malice, or to convert his own private injury, into the instruments of individual oppression.

Lord Kilwarden. Does it appear who made the return.

Mr. Barrington. My Lord, *Major Sandys* made it, who appears through the whole to have been the confidential, and acting instrument of *Major Sirr*; the witness said he saw a copy of it, but not the original. But it appears that *Mr. Sandys* was the Provost Martial, and the friend of *Mr. Sirr*, and made the return, or had it made; the witness said he saw the plaintiff in custody, in the Provost—he said that prison was appropriated for the custody of persons charged with High Treason; that he had a conversation with *Major Sandys* then, who required an apology from *Mr. Hevey* to *Mr. Sirr*, as the ransom of his liberation. On *Mr. Hevey's* arrest by *Major Sirr*, he was brought through the public streets to the Castle; *Mr. Sirr* asked plaintiff his name, as if he was ignorant of that name, though he had called him by it in the Commercial Buildings; and he made out his committal to the prison of the Provost, where *Major Sandys* presided with despotic authority. Could he have brought any charge of
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High Treason against him, such charge would have been stated in the committal. *It was proved*, that *Mr. Sandys* in person, suggested to plaintiff to make an apology to *Mr. Sirr*, and that he would be liberated. That circumstance proved the offence beyond controverting—if *Mr. Hevey* was confined for High Treason or any publick offence; by what law, or by what authority, could *Major Sandys* liberate him on an apology to *Major Sirr*; is *Major Sirr* the Crown, is *Major Sirr* the Constitution, or is *Major Sirr* the law; does he unite in his person, the Legislative and Executive powers—if he does not, by what new revolution is a private apology to him, a sufficient authority to discharge a publick offender? If then *Mr. Hevey* was confined for High Treason, *Mr. Sandys* should forfeit his life by law, for suffering him at large without authority; if on the other hand, *Mr. Hevey* was not confined for any publick offence, *Major Sirr* shall forfeit his property for confining him—thus speaks the law; it protects you, Gentlemen of the Jury, do you protect it. Gentlemen of the Jury, the damages laid in the Declaration, even if you find the full amount of them, are inadequate; you will consider, the *hardships* inflicted on the plaintiff, when in the Provost prison; till the story of my client became public, I could not have believed it possible, that after all pretence of insurrection had ceased—after having been *told* that Ireland would have British Liberty, when she became united to Britain—I could not have believed it possible, that there could have existed in the midst of what is called, a Free City, a deep, dark, loathsome, and infectious dungeon; boasting all the qualities of Bastiles and Inquisitions—kept by an individual, into which his Majesty's peaceable subjects could be plunged without crime; and in which they could be detained, by false, and fabricated returns of the King's writs, under pretence of State offences. I could not have believed it possible *Mr. Hevey* could have been so confined, unless the fact had been proved before you on oath, beyond a doubt—yet the fact is so; and whatever my client has suffered, he has the gratifying consolation of reflecting, that his disclosure of this transaction, will inform his Majesty's Government of the dangerous abuse of their authority, which I have no doubt they not only never knew, or countenanced, but certainly will punish; and have now a glorious opportunity of shewing this Nation, that no pretence of past

services can warrant a stab to the Liberty of the Country. My client may by this day's disclosure, give a weapon to the law, to defend the Constitution; and his fetters may secure the Liberty of the Subject. But as to damages, recur to the circumstances of his confinement—the gates of no common prison closed upon him—a loathsome, close, and narrow dungeon, was his lodging; disease and misery, were the inhabitants of the room in which he was immured—the first object which struck the witness, was a wretch in the midst of the room urged by disorder and confinement, to the most disgusting act of a human creature, every sense alike affected. Another he saw half dressed in a ragged shirt, discoloured by the disease of its owner. A third, with a small book reading, as he conceived, the last services to a dead, or dying captive. He looked no more, but hastily withdrew, nor could even the voice of friendship tempt him to enter further, into a place, where contagion and misery, seemed the ruling powers. Yet this was the prison chosen for my client, because he would not apologize to a subject. There were many publick prisons in Dublin, where a person of his description would be suitably accommodated; where cleanliness and humanity, are strictly attended to; to these he was not taken, or before any publick officer whatsoever. The keepers of these prisons would not have detained him without some legal committal, for some certain crime; and this fully accounts for the *place* to which his person was consigned—secret and despotick. Will you by your verdict say, that *Mr. Hevey* sustained there, no injury from such treatment. When *Mr. Sirr* thought proper without just cause, or legal authority, to seize *Mr. Hevey* by the collar, in the public coffee-room of the Commercial Buildings, and drag him to his office, or rather his inquisition in the Castle-yard, he asked for his *protection*, *Mr. Hevey* had no *protection*—but he had a better safeguard—he had a pardon; *protections* were only granted, where a culprit had *confessed* his crimes; but pardons were granted, where *improper convictions or sentences* had passed; and when innocence, and not guilt, afterwards appeared. A *protection* was granted on a prior acknowledgment of guilt; a *pardon* is founded on a subsequent proof of innocence. There rested the distinction; my client had no protection,
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for he was not guilty, but he had a pardon; for *Lord Cornwallis* had declared the impropriety of his conviction. If *Mr. Sirr* thought he had a right to enquire why my client appeared at large, he should have taken *Mr. Hevey* before a Magistrate of this Metropolis, and have had the matter of fact, properly and legally investigated. Do you Gentlemen of the Jury, know so little of the world as not to perceive, that many persons who were in 1798 charged with rebellious practices, are not now useful members of society, under the protection of the law, and the safeguard of the Constitution. By what new code of jurisprudence then, would *Major Sirr* be authorised, in defiance of both, to invade the Liberty of the Subject, and despise the King's pardon; is his authority created, to keep alive the dying embers of disaffection, to make men believe they are not protected by the law, and thereby excite to new and ruinous projects for redress, and emancipation; and to excite the contradictory phenomenon of a petty tyranny, existing within a Free Constitution, and a *Peace-officer* taking the most effectual steps to disturb the growing tranquillity of the Country. *Major Sirr*, and *Major Sandys* appear correspondent and connected in this transaction; my client handed from one to the other, they appear equally to understand each others meanings, and to forward each others objects—the one had seized, the other had detained my client, neither of them had authority for doing so, but both of them had necessity for some justification; they worried their imagination to find one; *Mr. Hevey* had been convicted, but that did not justify them, for *Lord Cornwallis* proved his innocence. *Mr. Hevey* was of a once prescribed sect, but that prescription was at an end, and no justification could be found there; even fancy was in vain applied to, to find his crime and their justification; but even fancy failed them; and at length his crime was ascribed to be, that he had retorted insult, by insult, and had presumed to say, that *Major Sirr* had told a falsehood, and this was conceived to be a *capital offence*; because if it was not an offence against the State, the *provost* prison was not adapted to his confinement; and *Major Sandys* had no right to detain him, the two *Majors*, like *Castor* and *Pollox*, felt the pleasures of mutual support, and the necessity of mutual assistance, and when one of *Demi-gods* was offended, both the *Demi-gods* punished. My client for
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three long days and nights felt the omnipotence of their power, and the punishment of his presumption; they both were culpable—both acted. Is that a reason he is not to be compensated in damages by either; to say so, would be a new species of effrontery to impose upon a just Jury, and dishonour the name of justice. There is a circumstance mentioned by one of the witnesses, which merits observation, and shews the dreadful dungeon into which my client was cast for this offence to *Major Sirr*; damages should be given, proportioned to the injury the complaint deserves, but how will you proportion the damages, when you recollect that this witness said he went to *Mr. Hevey's* room in the Provost prison, and there saw a man read out of a small book, which he took to be a book of Prayer, and as he believed upon his oath, the office of Religion for the dead, or dying man. Infection and disease had opportunely made a vacancy for my client to lie down on the same bed which was then yielding up its morbid inhabitant to the grave. In such a dismal dungeon was my unfortunate client confined without legal authority, for the space of three days, in order to force from his reluctant lips—not a confession of guilt; not an impeachment of accomplices; not a discovery of insurrections, or developement of High Treasons. No; it was only to wring from his lips, an humble *personal* apology to *Mr. Sirr!!!* And under pretence of that apology to lay some ground for a future justification; the plaintiff refused to sign any apology; but by the entreaties of his friends, the consideration of his trade, his children, his health, probably his existence. An apology was extorted, without having committed an offence; and that apology dictated by *Major Sandys*, for his friend *Major Sirr*, to gratify the offended honour of the latter, is probably the first instance in any Country remote from slavery, where so outrageous and wanton an oppression could be fathered even for a moment on a government, whose name and authority was traduced by the transaction. That apology so signed by him, has been read in Court this day; you have heard it Gentlemen of the Jury,—was the refusal to sign such an apology, a justification for such an outrage; let me ask you as guardian of public Freedom, is the Liberty of the Subject, is the Liberty of the Citizens of Dublin, to be thus trampled upon with impunity!!! What man's person, or property,

property, or character, or life is one moment secure, if such transactions are not punished by most ample and exemplary damages.

My learned friend, *Mr. Fletcher*, has thought proper to say, that *Mr. Sirr* had authority to do, as he has done where he had a reasonable cause of suspicion.—*In certain cases*, where a Magistrate has a just ground of suspicion, and that fact or well grounded suspicion of it, verified upon oath, and in some cases without oath, he may cause that man to be apprehended and brought before himself, as a Magistrate of the place, where the man is taken; but, in this case, *Mr. Sirr* took upon himself, not being a Magistrate of the City of Dublin, to bring *Mr. Hevey* to his (*Mr. Sirr's*) own private office; and there, on writing down his name and place of residence, as if these were capital offences, without any other apparent cause whatsoever, without any person coming forward, or called upon to come forward and accuse him, without any admission or confession to warrant it, *Major Sirr* wrote a committal, committed my client to a military guard, and plunged him into a loathsome, scandalous, and infectious dungeon; not to abide the sentence of the law, but to exemplify a breach of it by his oppressor. *Mr. Sirr* had not any authority to confine any man, but under some legal warrant; and if he seized my client in such a manner, and confined him on suspicion some days, yet he did *it at his own peril*, and must abide the consequences; otherwise any Magistrate or public officer under pretence of suspicion, might indulge the cruellest tyranny with impunity. I will suppose for argument sake, my client was charged with even so great an offence as murder, or even High Treason; that he had taken his trial for the same, and that he was acquitted and discharged by due course of Law, or had been convicted and pardoned by the King, upon a satisfaction that the verdict was unjust and illegal, had the defendant a right afterwards to take up that same man, knowing these facts, (and it is clear *Major Sirr* from his situation and office, and the plaintiff's residence in Dublin, as a trader for three years, must have known his situation;) and to tell him, true you were on your trial, but I am not satisfied how you are at large, and therefore I will put you in prison, till you make me a written apology, for presuming to meet me in a public coffee-house; that is the true

true statement of this case. Gentlemen of the Jury, if you regard liberty, or value security. you must mark, strongly mark that transaction.

I am far from supposing that the Government of the Country had any share in the specific acts, of those who may be employed under them, in the discharge of particular duties, much less, any knowledge of this transaction. But I am clear that the Government though not responsible by law for individual offences, committed without their knowledge, are by principles of common justice bound, to check every excessive exercise of delegated authority, and I have no doubt they will do so. My learned friend, *Mr. Fletcher*, has also said, that the plaintiff insulted the defendant, who is a Magistrate, in *the execution* of his office.

Lord Kilwarden.—There has not been a tittle of evidence given to shew, that *Mr. Sirr* is a Magistrate.

Mr. Barrington.—It lay upon the defendant to prove, first that he was a Magistrate; and next, that he was acting in the execution of his office; and thirdly, that he was insulted;—but the contrary of all these three parts has been proved. First, it has appeared, that he was not a Magistrate of the City; next, it has appeared that he was not acting in the execution of his office; and thirdly, it has appeared that he himself, and not the plaintiff, gave the first insult—so that every ground of justification, on these three heads, appears false and fallacious. But even suppose he was a Magistrate of the City, and was insulted in the execution of his office, no Magistrate could by law, commit him to a Bastile or an Inquisition, without bail or main-prize. A magistrate would be bound to commit him to a public prison, on a legal committal, and bail him when required—'tis the unquestionable right of British or Irish subjects, to be committed with justice, confined with humanity, and bailed according to law. Here my client was committed without reason—confined with severity—and detained without bail—every principle and practice of the law was broken in his person—and every principle of discreet policy and constitutional protection, violated by his imprisonment.

My learned friend, *Mr. Fletcher*, has thought proper to state with a great deal of talent and ingenuity, many facts not proved in the case; and he has humourously told you, that
probably

probably a paragraph will appear in the News-paper, that on such a day, a remarkable trial was had in the Court of King's Bench, wherein *Mr. Hevey* was plaintiff, and *Major Sirr*, a most meritorious Gentleman was defendant, when the Council for the plaintiff, made a most eloquent statement, the Jury without hesitation, found a verdict for the defendant, and fully justified the *Major* for his active and useful services.—But I am rather of a different opinion from that of the learned Council, for I rather think it may appear in the news-papers of to-morrow, that on this trial, the Jury on hearing decisive evidence of a most wanton and illegal imprisonment by defendant; and a plain and true statement of facts, by plaintiff's Council, notwithstanding the great exertion of defendant's Council, who most candidly used every art of sophistry in reasoning, and equivocation in fact, to mislead the Jury and puzzle themselves; the Jury considering, that the life, character, and property of every man was involved in the question, instantly brought in their verdict for the plaintiff, with £5000 damages, being the full amount of the damages laid in the plaintiff's declaration; and thereby evinced the detestation of an honest and respectable Jury, to every outrage against society, and a determination to prevent such conduct in public officers in future.—This I think is the more likely paragraph of the two, and is certainly most essential to the safety and honour of the Gentlemen of the Jury. I doubt not that you will take all these impressive facts into your consideration, as guardians of the society and peace of your country; and that you will have a pride in finding such a verdict, as will shew the world, that we live yet in a Land of Liberty and Freedom.

LORD KILWARDEN charged the Jury to the following effect.—Commenting on the prejudices incident to the infirm state of the human mind, his lordship said it was a weakness so universal and so interwoven in the nature of man, that judges can no more boast of being entirely exempt from them than other men. It was however their peculiar duty to guard against any impressions by which justice might eventually be perverted and the subject injured. It was equally incumbent on juries to exert the utmost vigilance and care of which they are capable, to keep their judgments free from

any bias to which they might be susceptible from the zeal or abilities of counsel, whose duty it was to take advantage of any casual occurrence, which they might conceive lead to establish the cause of their respective clients. Much eloquent declamation had been expended by gentlemen on both sides, on tyranny, on the coercion of the government, on the decadence of our freedom, on the wisdom of the constitution, and the liberty of the people. To these the merits of *Major Sirr* as a public officer, and the supposed delinquency of the Plaintiff on a former occasion, had been superadded. It was however the duty of the jury to discharge every idea of this nature from their consideration, and confine themselves to that narrow point within which the case will certainly be found to rest, when deprived of all those extraneous circumstances in which it had been involved. The case is a very simple one between two private individuals, *John Hevey* and *Charles Henry Sirr*; as such alone were they to consider it; and try what reparation should be made to the plaintiff for the injury he alledges to have sustained, if they shall believe from the course of the evidence before them that he had sustained any.

The first object of their consideration, must be to examine into the facts respecting the conduct of *Major Sirr* to the Plaintiff, at the commercial coffee-house, and fairly discriminate between the caption of the Plaintiff, and the act of confining him in the provost. It was used in argument by counsel, that any man has authority to apprehend a suspected felon, and make him account for himself. That principle cannot be controverted; but it stands only with this reservation, that the person doing so must act at his own peril, and abide all legal consequences if he cannot substantiate his charge. However, although an indifferent man, that is one not invested with magisterial authority, might apprehend a suspected felon, yet he has no authority to convey him to prison without a magistrate's committal; therefore *Major Sirr* not being a magistrate for the city of Dublin, stands certainly reprehensible in law for the particular fact of false imprisonment, as far as the evidence goes. The next question for the consideration of the Jury his lordship said, must arise from the intention and motives by which *Major Sirr* was actuated in his conduct to the Plaintiff. If any evidence occurred to support one part of *Mr. Curran's* statement, which

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was, that the Defendant was instigated by a malicious and vindictive spirit, in consequence of the depositions which the Plaintiff made to discredit the oath of *M'Cann* on the trial of *Maguire*; his lordship asserted that as to the quantum of damages, he would no more hesitate at £5000 at which they were laid, than he should at five-pence; but as no attempt even had been made to support that allegation by any species of evidence, the Jury must avoid taking the principle imputed to *Major Sirr* into consideration, and examine into motives as well as facts, by a fair deduction from testimony alone. It appeared to his lordship that *Major Sirr* was merely actuated by a sudden impulse of passion in seizing on *Hevey*, in consequence of the abusive language received from him; nor did he perceive any violent aggression on the part of *Sirr* to provoke such language. Whatever opinion he might have entertained of the conduct or loyalty of the Plaintiff, it was evidently not his purpose at that time, publicly to upbraid him with it, by a conversation held in a confidential manner, and in a low voice with the witness *Hall*. His lordship did not offer this observation in vindication of the general conduct of the Defendant,—but merely to exculpate him as he conceived he merited, from the charge of malice or revenge of which no evidence had been adduced. At the same time it was to be regretted that *Major Sirr* who was certainly a very active instrument in tranquillizing the country, while in a state of alarming perturbation, should not have had sufficient discretion and command of mind during the exercise of a temporary authority, which nothing but necessity alone could warrant, to exert that authority with mildness, even with reluctance under the influence of public duty, and for the public good alone, without any regard to personal feelings or irritated passions.

The occasions which under Providence, seldom occur to compel governments to transcend the fixed boundaries of the subject's freedom, under our happy constitution, are still of that momentous and awful description, as to call for acts of military coercion; and to these seasonable acts have we been indebted for the restoration of those very laws which in times of tranquillity, are so forcible and energetic in prohibiting the wanton intrusion of military power. It is in fact to the principle which so many have been pleased to call tyranny,

that we are indebted for the preservation of that liberty which in necessary instances must have been violated, in order to perpetuate its effects, and render the happiness of a people permanent. Every man invested with a temporary authority beyond the laws, should therefore be made acquainted with the necessity which prompted it, and regulate his conduct by a firm undeviating regard to that duty which necessity imposes, from considerations of the public safety alone; so that if *Major Sirr* instigated as he believed, by a momentary irritation, had stretched his authority in making the caption and committing the Plaintiff; soon as his emotions had subsided, he should have ran with impetuosity to liberate him. But instead of that he temporized, and as appeared to his lordship, trifled with the Plaintiff in the message he sent him, respecting an order to *Major Sandys* for his release, with the latter's answer about his detention on a general officer's warrant, which warrant, *Sirr*, his lordship conceived must have had cognisance of, before he sent *Hevey* an ambiguous or fallacious message.

It was strongly urged by the Defendant's counsel, that *Hevey* carried about him the stigma and suspicion annexed to the character of a condemned criminal, in consequence of the sentence of a court-martial, before whom he was tried in Kilkenny; and that under these circumstances the conduct of the Defendant towards him could be vindicated and supported. To such argument *Lord Cornwallis's* pardon is a direct and unquestionable reply. That pardon had effectually wiped out the stain of the Plaintiff's former delinquency, notwithstanding the weighty recognisances under which he stood for the preservation of the peace; nor should his former errors have been visited on him in any point of coercion, or even imputation, until he was guilty of some act by which those recognisances might have become forfeited.

The next and only question for the consideration of the Jury which his lordship urged, regarded the principle of liberal or nominal damages. If with his lordship the Jury could perceive no trait of malice or revenge in the conduct of *Sirr*, it was merely their duty to appreciate damages for the Plaintiff, according to the inconvenience he was subject to, or the injury he had actually sustained. If on the other
hand

hand they found reason to believe, that the Plaintiff in resisting those interrogatories which *Major Sirr* had put to him, immediately after conveying him to the provost, respecting a protection or some authority for being at large; had a view to provoke confinement, in order to lay a foundation for these proceedings; it should then be their duty to give none but damages merely nominal. These were the observations which occurred as necessary for his lordship to deliver, which he recommended to the Jury to weigh and compare, with perhaps many more cogent ones of their own; at the same time not forgetting to discharge their minds from every species of intemperate feeling or indignation, which different relations and comments on the same occurrence, might possibly have contributed to excite in them.

The Jury retired, and shortly returned with a verdict for the Plaintiff, £150 damages, with costs.

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