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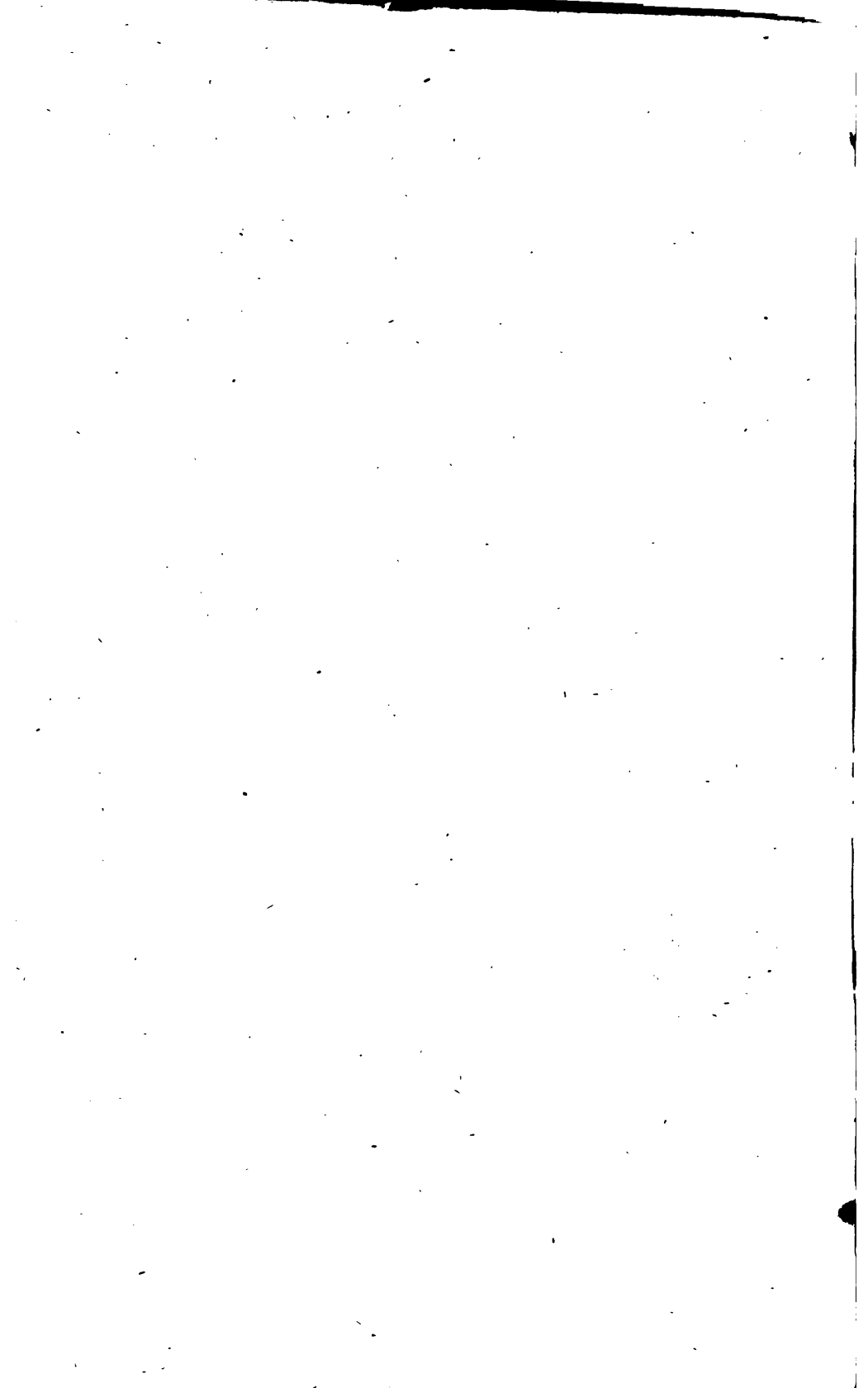
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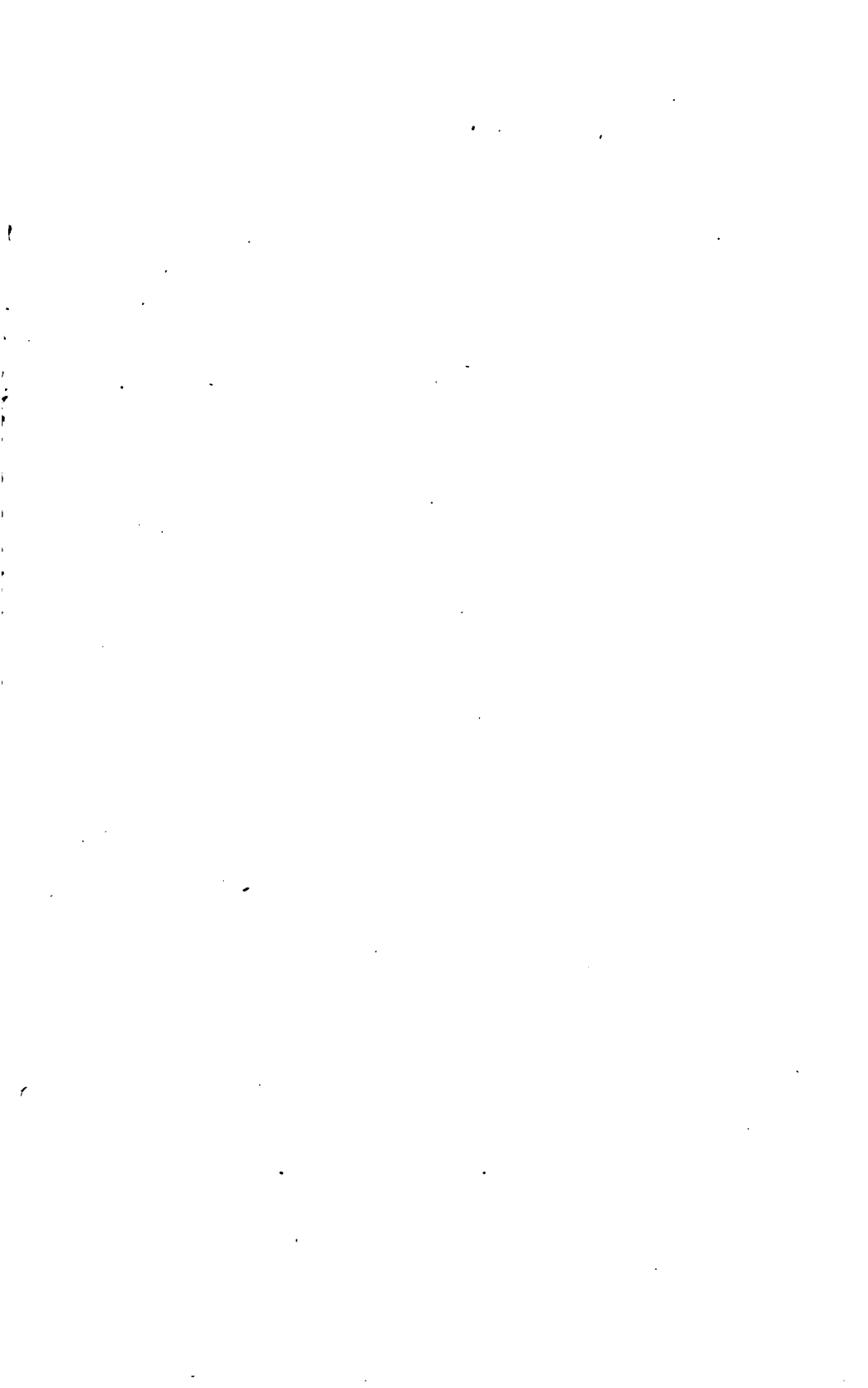
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**A REPORT,**

**&c. &c.**



*Forbes, James, Defendant*

# A REPORT

OF

## THE TRIAL

OF

JAMES FORBES, WILLIAM GRAHAM, GEORGE GRAHAM,  
MATHEW HANDWICH, HENRY HANDWICH,  
AND WILLIAM BROWNLOW,

FOR

## A CONSPIRACY

TO CREATE A RIOT, AND TO INSULT AND ASSAULT  
HIS EXCELLENCY THE LORD LIEUTENANT,  
IN THE THEATRE ROYAL,

AND ALSO

## FOR A RIOT.

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BY RICHARD WILSON GREENE, ESQ.

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DUBLIN:

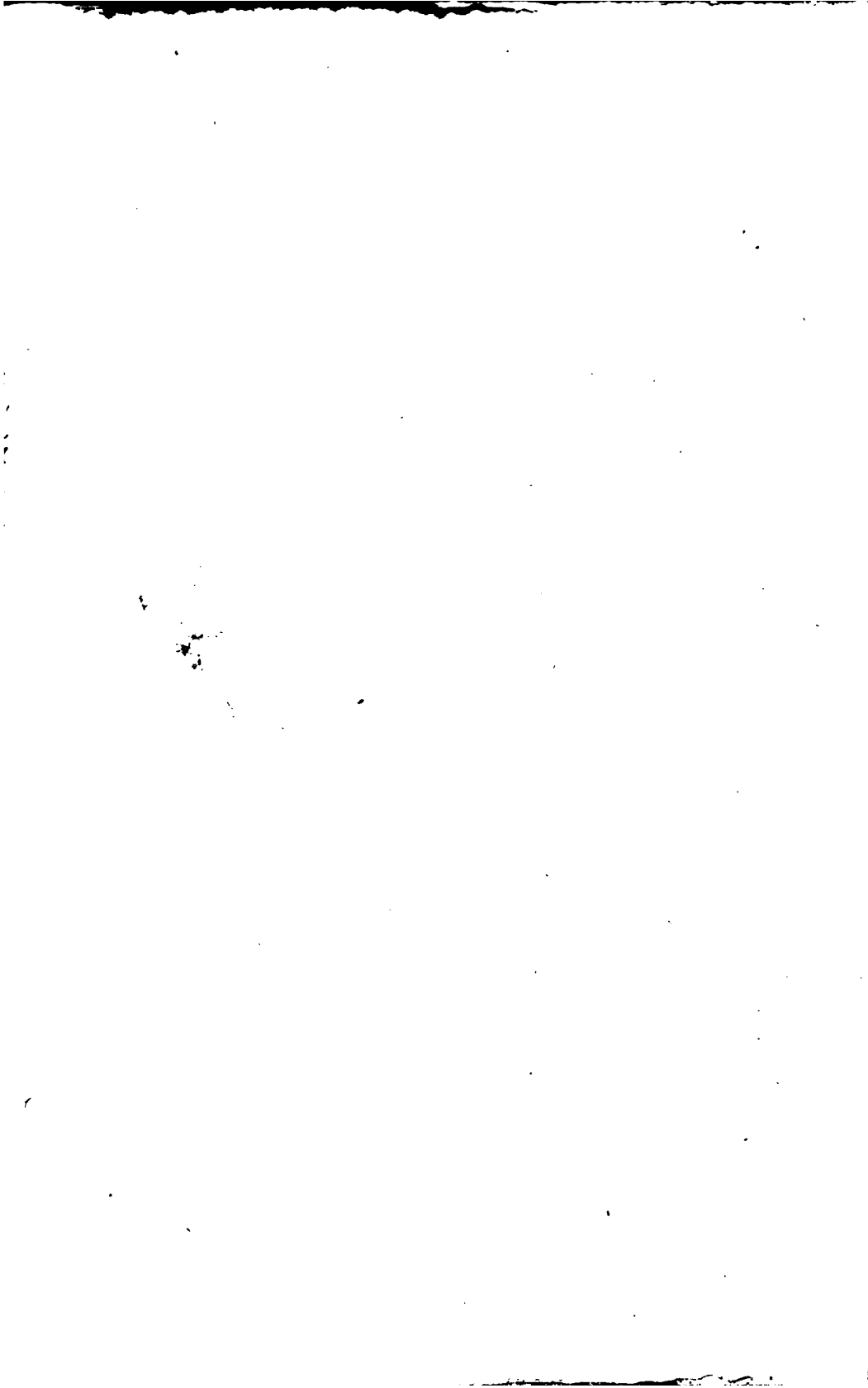
RICHARD MILLIKEN, GRAFTON-STREET,

BOOKSELLER TO HIS MAJESTY,  
HIS ROYAL HIGHNESS THE DUKE OF CLARENCE,  
HIS EXCELLENCY THE MOST NOBLE THE MARQUESS  
WELLESLEY,  
AND THE UNIVERSITY OF DUBLIN.

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1823.





# A REPORT,

&c. &c.

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The following are copies of the Informations filed:

*As of Hilary Term in the Third year of the Reign of our Sovereign Lord George the Fourth, of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, and soforth, and in the year of our Lord, 1823.*

**THE** Right Honourable William Conyngham Plunket, Attorney General of our Lord the now King, who for our said Lord the King in this behalf prosecutes in his proper person, comes here into the Court of our said Lord the King, before the King himself, on the 20th day of January in this Term, and for our said Lord the King, gives the Court here to understand and be informed, that on the fourteenth day of December, in the third year of the Reign of our Lord the now King, and long before, at Hawkins'-street in the County of the City of Dublin, there was a certain Theatre, called the Theatre Royal, and that on the said fourteenth day of De-

cember in the said third year of the Reign of our said Lord the King, at Hawkins'-street aforesaid in the County of the City of Dublin aforesaid, a certain Play was appointed to be presented and acted on that day, at and in the said Theatre, according to public notice thereof in that behalf given, and that the most Noble Richard Marquess Wellesley, Lord Lieutenant General and General Governor of Ireland, on the said fourteenth day of December in the said third year of the Reign of our said Lord the King, at Hawkins'-street aforesaid in the County of the City of Dublin aforesaid, intended to be present at the said presentation of the said Play in the said Theatre, according to public notice of such Intention in that behalf given; and the said Attorney General for our said Lord the King, farther gives the Court here to understand and be informed, that James Forbes late of Hawkins'-street aforesaid, in the county of the city of Dublin aforesaid Gentleman, George Graham late of Hawkins'-street aforesaid in the County of the City of Dublin aforesaid yeoman, William Graham late of Hawkins'-street aforesaid in the county of the city of Dublin aforesaid, yeoman, Henry Handwich late of Hawkins'-street aforesaid in the county of the city of Dublin aforesaid, yeoman, otherwise called Henry Handbridge, Matthew Handwich late of Hawkins'-street aforesaid in the county of the city of Dublin aforesaid, yeoman, otherwise called Matthew Handbridge, Robert Fletcher the younger late of Hawkins'-street aforesaid in the county of the city of Dublin aforesaid, yeoman, Thomas Kelly late of Hawkins'-street aforesaid in the county of the city of Dublin aforesaid, yeoman, William Brownlow late of Hawkins'-street aforesaid in the county of the city of Dublin aforesaid, gentleman, Richard M'Intosh late of Hawkins'-street aforesaid in the county of the city of Dublin aforesaid

said, gentleman, William Heron late of Hawkins'-street aforesaid in the county of the city of Dublin aforesaid, gentleman, and William M'Cullogh late of Hawkins'-street aforesaid in the county of the city of Dublin aforesaid, gentleman, and divers other persons to the said Attorney General unknown, well knowing the premises, but being wicked and ill disposed persons, on the said fourteenth day of December in the said Third year of the Reign of our said Lord the King, at Hawkins'-street aforesaid in the county of the city of Dublin aforesaid with force and arms wickedly and maliciously did meet, conspire, combine, confederate, and agree together, and to and with each other, unlawfully, riotously, and routously to assemble and gather themselves together in the said Theatre, and unlawfully, wickedly, riotously, and routously to make and raise, and to cause and procure to be made and raised, a great noise, tumult, riot, and disturbance in the said Theatre, while the said Lord Lieutenant should be so present therein, and wickedly, unlawfully riotously, and routously to hiss, groan, insult, and assault, and to cause and procure to be hissed, groaned, insulted, and assaulted, the said Lord Lieutenant in the said Theatre, while he should be present therein as aforesaid.

And the said Attorney General for our said Lord the King farther gives the Court here to understand and be informed, that the said James Forbes, George Graham, William Graham, Henry Handwich otherwise called Henry Handbridge, Matthew Handwich otherwise called Matthew Handbridge, Robert Fletcher the younger, Thomas Kelly, William Brownlow, Richard M'Intosh, William M'Cullogh, and William Heron, and the said other persons to the said Attorney General unknown, afterwards and before the presentation of the said Play, to wit on the said fourteenth day of December, in the

said third year of the Reign of our said Lord the King, at Hawkins'-street aforesaid in the county of the city of Dublin aforesaid, in pursuance of and according to the said conspiracy, combination, confederacy, and agreement, unlawfully and wickedly did make, write, print, and prepare, and did cause and procure to be made, written, printed, and prepared divers, to wit, three thousand papers, on some of which, to wit on one thousand thereof, were written and printed, the words "No Popery," and on others of which, to wit other one thousand thereof, were written and printed these words following, to wit, "The Protestants want Talbot, as the Papists have got all but !!! and Fleming, though he has the Mace, may find it hard to keep his Place," "Gabbett's Digest," and on others, to wit other one thousand thereof, were written and printed the words following, of and concerning the said Most Noble Richard Marquess Wellesley, then and now Lord Lieutenant General and General Governor of Ireland, that is to say "Ex-Governor of the Bantams shall change his Morning-ton-e," with intent and in order to publish, disperse, and scatter the papers, so having the said words so written and printed thereon respectively, in the said Theatre, to and amongst divers of the liege subjects of our Lord the King, who should be present therein during the said presentation of the said Play, and thereby to excite and cause to be made, a great noise, riot, rout, tumult, and disturbance therein.

And the said Attorney General for our said Lord the King doth farther give the Court here to understand and be informed, that the said James Forbes, George Graham, William Graham, Henry Handwich, otherwise called Henry Handbridge, Matthew Handwich, otherwise called

Matthew Handbridge, Robert Fletcher the younger, Thomas Kelly, William Brownlow, Richard M'Intosh, William M'Culloch, and William Heron, and the other persons aforesaid to the said Attorney General unknown, farther in pursuance of and according to the said conspiracy, combination, confederacy and agreement, afterwards and before the presentation of the said play, to wit, on the said 14th day of December, in the said third year of the reign of our said Lord the King, at Hawkins'-street aforesaid, in the county of the city of Dublin aforesaid, wickedly and maliciously did buy, purchase, and procure divers, to wit, one hundred tickets for admission into the said Theatre, with intent and in order that they and other ill-disposed persons should thereby gain admittance into the said Theatre, and should be present therein during the said presentation of the said play, and while the said Lord Lieutenant should be so present in the said Theatre, and should then and there make a great riot, noise, and disturbance therein.

And the said Attorney General for our said Lord the King doth farther give the Court here to understand and be informed, that the said James Forbes, George Graham, William Graham, Henry Handwich, otherwise called Henry Handbridge, Matthew Handwich, otherwise called Matthew Handbridge, Robert Fletcher the younger, Thomas Kelly, William Brownlow, Richard M'Intosh, William M'Culloch and William Heron, and the other persons aforesaid to the said Attorney General unknown, further in pursuance of and according to the said conspiracy, combination, confederacy, and agreement, afterwards, to wit, on the said 14th day of December, in the said third year of the Reign of our said Lord the now King, at Hawkins'-street aforesaid in the county of the city of Dublin aforesaid, wickedly and maliciously did assemble

themselves together in the said Theatre, and were present therein during the presentation of the said play, and that the said most Noble Marquess Wellesley now Lord Lieutenant as aforesaid, then and there was present at and during the presentation of the said play, and that the said James Forbes, George Graham, William Graham, Henry Handwich, otherwise called Henry Handbridge, Matthew Handwich, otherwise called Matthew Handbridge, Robert Fletcher the younger, Thomas Kelly, William Brownlow, Richard M'Intosh, William M'Culloch, and William Heron, further in pursuance of; and according to the said conspiracy, combination, confederacy, and agreement, then and there in the said Theatre, and while the said Lord Lieutenant was so present therein, wickedly and maliciously did publish, circulate, disperse, and scatter the said several papers, so having the said words so written and printed thereon respectively as aforesaid, to and amongst divers liege subjects of our said Lord the King then and there present, in order to excite the said liege subjects to make a great riot, noise, and disturbance therein, in contempt of our said Lord the King and his Laws, to the evil example of all others in like cases offending, and against the peace of our said Lord the King his Crown and dignity.

Second  
Count.

And the said Attorney General for our said Lord the King doth further give the Court here to understand and be informed, that on the said 14th day of December, in the said third year of the Reign of our said Lord the King at Hawkins'-street aforesaid, in the county of the city of Dublin aforesaid, there was a certain Theatre called the Theatre Royal, and that a certain play was then and there presented and acted in the said Theatre, and that the most noble Richard Marquess Wellesley, Lord Lieutenant General and General Governor of Ireland, then

and there was present in the said Theatre at the said presentation and acting of the said play, and that the said James Forbes, George Graham, William Graham, Henry Handwich, otherwise called Henry Handbridge, Matthew Handwich, otherwise called Mathew Handbridge, Robert Fletcher the younger, Thomas Kelly, William Brownlow, Richard M'Intosh, William M'Cullogh, and William Heron, and divers other wicked and ill-disposed persons to the said Attorney General unknown, then and there well knowing and seeing that the said Lord Lieutenant was so then and there present in the said Theatre, but being wicked and ill-disposed persons, then and there with force and arms, wickedly and maliciously did conspire, combine, confederate, and agree together and to and with each other, unlawfully, wickedly, riotously, and routously to make and raise, and procure to be made and raised, a great noise, riot, tumult, and disturbance in the said Theatre, while the said Lord Lieutenant should remain present therein, and then and there wickedly, unlawfully, riotously, and routously to hiss, groan, insult and assault, and to cause and procure to be hissed, groaned, insulted and assaulted, the said Lord Lieutenant, while he should remain so there present in the said Theatre.

And the said Attorney General for our said Lord the King doth farther give the Court here to understand and be informed, that the said James Forbes, George Graham, William Graham, Henry Handwich otherwise called Henry Handbridge, Matthew Handwich otherwise called Mathew Handbridge, Robert Fletcher the younger, Thomas Kelly, William Brownlow, Richard M'Intosh, William M'Cullogh, and William Heron, and the said other persons last mentioned to the said Attorney General unknown, in pursuance of, and according to the said conspiracy, combination, confederacy, and agreement



last mentioned, then and there wickedly and maliciously did publish, circulate, dispersè, and scatter to and amongst divers liege subjects of our said Lord the King, then and there present in the said Theatre, divers, to wit, three thousand papers, having written and printed on some, to wit on one thousand thereof, the words, “ No Popery ;” and on others, to wit, other one thousand thereof, these words following, that is to say, “ The Protestants want Talbot, as the Papists have got all but !!! and “ Fleming, though he has the Mace, may find it hard to keep his place.” “ Gabbet’s Digest ;” and on others, to wit, other one thousand of the said papers, these words following, of and concerning the said Most Noble Richard Marquess Wellesley, then and still Lord Lieutenant of Ireland as aforesaid, that is to say, “ Ex-Governor of the Bantams shall change his Morning—ton—e !!! in order thereby to excite the said liege subjects so then and there present, then and there to make a great riot, noise, tumult, and disturbance in the said Theatre, in contempt of our said Lord the King, and his laws, to the evil example of all others in like cases offending, and against the peace of our said Lord the King his Crown and Dignity.

**Third  
Count.**

And the said Attorney General for our said Lord the King doth farther give the Court here to understand and be informed, that on the said fourteenth day of December in the said third year of the Reign of our said Lord the King, at Hawkins'-street aforesaid, in the county of the city of Dublin aforesaid, there was a certain Theatre called the Theatre Royal, and that a certain Play was then and there presented and acted in the said Theatre, and that the Most Noble Richard Marquess Wellesley, Lord Lieutenant General and General Governor of Ireland, then and there was present in the said Theatre, at

the said presentation and acting of the said Play, and that the said James Forbes, George Graham, William Graham, Henry Handwich otherwise called Henry Handbridge, Matthew Handwich otherwise called Matthew Handbridge, Robert Fletcher the younger, Thomas Kelly, William Brownlow, Richard M'Intosh, William M'Culloch, and William Heron, and divers other persons to the said Attorney General unknown, then and there well knowing and seeing that the said Lord Lieutenant was so then and there present in the said Theatre, but being wicked and ill disposed persons, then and there with force and arms, wickedly and maliciously did conspire, combine, confederate and agree together, and to and with each other, and to and with divers other wicked and ill disposed persons to the said Attorney General unknown, unlawfully, wickedly, riotously and routously to make and raise, and to cause and procure to be made and raised, a great noise, tumult, riot and disturbance in the said Theatre, while the said Lord Lieutenant should remain so present therein, and then and there wickedly, unlawfully, riotously, and routously to hiss, groan, insult, and assault, and to cause and procure to be hissed, groaned, insulted and assaulted, the said Lord Lieutenant, while he should remain so there present in the said Theatre, in contempt of our said Lord the King and his laws, to the evil example of all others in like cases offending, and against the peace of our said Lord the King his Crown and Dignity.— Whereupon the said Attorney General of our said Lord the King, who for our said the King prosecutes in this behalf, prays the consideration of the Court here in the premises, and that process of law may be awarded against them the said James Forbes, George Graham, William Graham, Henry Handwich otherwise called Henry Handbridge, Matthew Handwich otherwise called Mat-

thew Handbridge, Robert Fletcher the younger, Thomas Kelly, William Brownlow, Richard M'Intosh, William M'Culloch, and William Heron, in this behalf, to make them answer to our said Lord the King, touching and concerning the premises.

WILLIAM C. PLUNKET.

*William Kemmis,  
Attorney for our said Lord the King.*

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*As of Hilary Term in the third year of the Reign of our Sovereign Lord George the Fourth, of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, and soforth, and in the year of our Lord 1823.*

The Right Hon. William Conyngnam Plunket, Attorney General of our Lord the now King, who for our said Lord the King in this behalf, prosecutes, in his proper person comes here into the Court of our said Lord the King before the King himself, on the 20th day of January in this Term, and for our said Lord the King, gives the Court here to understand and be informed, that on the 14th day of December in the third year of the Reign of our Lord the now King, at Hawkins'-street in the county of the city of Dublin, there was a certain Theatre called the Theatre Royal, and that a certain play was then and there presented and acted in the said Theatre, and that the Most Noble Richard Marquess Wellesley Lord Lieutenant General and General Governor of Ireland, then and there was present in the said Theatre at the said presentation and acting of the said play, and that James Forbes late of Hawkins'-street aforesaid in the county of

the city of Dublin aforesaid gentleman, George Graham late of Hawkins'-street aforesaid in the county of the city of Dublin aforesaid yeoman, William Graham late of Hawkins'-street in the county of the city of Dublin aforesaid yeoman, Henry Handwich late of Hawkins'-street aforesaid in the county of the city of Dublin aforesaid yeoman, otherwise called Henry Handbridge, Matthew Handwich late of Hawkins'-street aforesaid in the county of the city of Dublin aforesaid yeoman, otherwise called Matthew Handbridge, Robert Fletcher the younger, late of Hawkins'-street aforesaid in the county of the city of Dublin aforesaid yeoman, Thomas Kelly late of Hawkins'-street aforesaid in the county of the city of Dublin aforesaid yeoman, William Brownlow late of Hawkins'-street aforesaid in the county of the city of Dublin aforesaid gentleman, Richard M'Intosh late of Hawkins'-street aforesaid in the county of the city of Dublin aforesaid, William Heron late of Hawkins'-street aforesaid in the county of the city of Dublin gentleman, and William M'Culloch late of Hawkins'-street aforesaid in the county of the city of Dublin aforesaid gentleman, together with divers other persons to the said Attorney General unknown, being rioters, routers and disturbers of the peace of our said Lord the King, then and there with force and arms unlawfully riotously and routously did assemble and gather themselves together in the said Theatre to disturb the peace of our said Lord the King, and being so assembled and gathered together in the said Theatre, and then and there well knowing that the said Lord Lieutenant was so then and there present, with force and arms unlawfully riotously and routously did make a great noise, riot and disturbance in the said Theatre, the said Lord Lieutenant then and there being present in the said Theatre, and did then and there with force and arms publicly and openly in the presence and hearing of divers liege subjects of our said Lord the

King then and there present, hiss, hoot, groan, insult, and assault the said Lord Lieutenant so then and there present in the said Theatre, and did then and there with force and arms throw, sling, and cast at the said Lord Lieutenant, and with intent to strike and hit the said Lord Lieutenant so then and there present, divers pieces of wood and copper, and divers glass bottles, in contempt of our said Lord the King and his laws, to the evil example of all others in like cases offending, and against the peace of our said Lord the King his crown and dignity.

Second  
Count.

And the said Attorney General for our said Lord the King farther gives the Court here to understand and be informed, that afterwards, to wit on the day and year last aforesaid, at Hawkins'-street aforesaid in the county of the city of Dublin aforesaid, the said James Forbes, George Graham, William Graham Henry Handwich otherwise called Henry Handbridge, Matthew Handwich otherwise called Matthew Handbridge, Robert Fletcher the younger, Thomas Kelly, William Brownlow, Richard M'Intosh, William M'Cullogh, and William Heron, and divers other persons to the said Attorney General unknown, being such persons as aforesaid, with force and arms wickedly, unlawfully, riotously and routously did assemble and gather themselves together to disturb the peace of our said Lord the King, and being so assembled and gathered together, did then and there with force and arms unlawfully, riotously, and routously make a great noise, riot, and disturbance, and did then and there continue making such riot, noise, and disturbance for the space of one hour, to the great disturbance and terror of divers liege subjects of our said Lord the King then and there present, in contempt of our said Lord the King and his laws, to the evil example of all others in like cases offending, and against the peace of our said Lord the King his crown and dig-

nity. Whereupon the said Attorney General of our said Lord the King, who for our said Lord the King prosecutes in this behalf, prays the consideration of the Court here in the premises, and that process of law may be awarded against them the said James Forbes, George Graham, William Graham, Henry Handwich otherwise called Henry Handbridge, Matthew Handwich otherwise called Matthew Handbridge, Robert Fletcher the younger, Thomas Kelly, William Brownlow, Richard M'Intosh, William M'Cullogh, and William Heron in this behalf, to make them answer to our said Lord the King touching and concerning the premises.

WILLIAM CONYNGHAM PLUNKET.

*William Kemmis,*  
*Attorney for our Lord the King.*

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The following is a copy of the plea of James Forbes to each information :

And the said James Forbes appears here in Court in his proper person, and prays Oyer of the said information, and it is read to him, which being by him heard and fully understood, he complains to have been grievously vexed and molested, under colour of the premises, and this the less justly, because that he has heretofore, to wit at the General Sessions of Oyer and Terminer of our said Lord the King, holden in and for the said county of the city of Dublin, at the Session House for the said county of the city of Dublin, on Thursday the 2d day of January, instant, in the present year of our said Lord the King, been by the Grand Jury of the country, in and for the said county of the said city, in due form of law

acquitted and discharged of the premises in said information above specified and charged upon him, upon the prosecution of the said Right Hon. William Cunningham Plunket, the said Attorney General of and for our said Lord the King, and therefore that he the said James Forbes has no need, nor is he bound by the law of the land to answer said information or the matters therein contained ; for plea nevertheless the said James Forbes says, that he is not guilty of the said supposed offences in said information mentioned and thereby alleged to have been committed by him, and of this he puts himself on the country, and so forth.

LEWIS PERRIN.

William Graham filed a similar plea to each Information. The other traversers pleaded not guilty.

# KING'S BENCH.

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MONDAY, FEBRUARY 3, 1823.

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## JUDGES.

The LORD CHIEF JUSTICE, Mr. JUSTICE BURTON,  
Mr. JUSTICE JEBB, Mr. JUSTICE VANDELEUR.

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### *Counsel for the Crown.*

The ATTORNEY GENERAL, Sergeant TORRENS,  
The SOLICITOR GENERAL, Mr. TOWNSEND,  
Sergeant LEFROY, Mr. GREEN.

Agent, Mr. KEMMIS.

### *Counsel for the Traversers.*

For James Forbes,

Mr. JOHNSTONE, Mr. HAMILTON,  
Mr. BLACKBURN, Mr. PERRIN,  
Mr. SPEER, Mr. LAW.  
Mr. ROLLESTON,

Agent, Mr. CHAMBERS.

### *Counsel for Matthew Handwich and George Graham.*

Mr. DRISCOLL, Mr. SPEER,  
Mr. SCRIVEN, MR. HAMILTON.



*Counsel for Henry Handwich and George Graham.*

Mr. NORTH.

*Counsel for William Brownlow.*

Mr. SCRIVEN.

Agent, Mr. FEARON.

The Traversers James Forbes, Wm. Graham, George Graham, Henry Handwich, Matthew Handwich and William Brownlow having appeared,

The Attorney General, on the part of the Crown, desired to know if the Sheriff had returned his Pannel.

The Clerk of the Crown produced the pannel signed by the Sheriff.

The ATTORNEY GENERAL.—It is, I must say, most extraordinary conduct in the Sheriff to return a signed pannel.

The Court agreed that the pannel should not have been signed; whereupon the the Sheriff applied to have it given back, in order that his name might be taken off, which was allowed, and the pannel was then returned without his signature.

The Attorney General enquired, whether all the persons whose names were in the pannel had been summoned, to which the Sheriff replied in the affirmative.

Mr. Johnstone, counsel for the Traverser Forbes, applied to the Court, that the Sheriff should sign his pannel before the names should be called: alleging that it could not be considered as a pannel till signed, and that the Sheriff had no right to remove his signature.

The Court declared that it had been done by their order.

**Mr. ATTORNEY GENERAL.** On the part of the Crown, I object to the Sheriffs, now signing the pannel. The ordinary course I conceive is, that the Sheriff shall not sign the pannel till the Court shall be satisfied, that a sufficient number of Jurors have been summoned, to answer the purposes of justice. If not, the pannel ought to be enlarged; which cannot be done, after it has been signed. Until the names shall have been called, it is impossible to know whether the pannel contains a sufficient number.

**Mr. SCRIVEN.** It is the invariable practice for the Sheriff to return a signed pannel.

**Mr. BLACKBURNE.** The pannel cannot be acted upon in any manner until it is signed. And calling the persons named in it would be acting upon it as an authenticated document, which it is not, if unsigned.

**The CHIEF JUSTICE.** What you say may be applicable to the period when the right of challenge is to be exercised. We have judicial knowledge, that the pannel is returned, though not signed.

The names were then called.

Several of the gentlemen summoned not having answered to their names, the Attorney General applied, that they should be called on heavy fines: stating that he recollected an instance, in an important case, where the Court actually waited, till persons summoned as Jurors should be sent for.

The absent persons were then called on fines, first of

£20, and afterwards of £50; which latter, the Court thought sufficiently large for the present.

The ATTORNEY GENERAL. My Lords, it is most desirable, that this important case should come before the public with every chance of a fair trial. And many of the persons summoned having refused to attend, I have to move your Lordships that the pannel be enlarged.

The Court directed, that it should be done, expressing at the same time their surprize that in a case where six Traversers were to be tried, no greater number than sixty should have been summoned.

The Sheriff then returned the following names,

Samuel Wilkinson Tyndall,	James Jesson,
William Long, Jun.	Allen Ellison,
John Davis,	Edward Beauman,
James Stephens,	Richard Charles,
Francis Lodge,	William Needham.

Mr. DRISCOLL applied that the pannel be now signed, which was accordingly done.

Mr. DRISCOLL then stated, that it was the wish of the Traversers to be tried upon each of the Informations separately. The Informations were for distinct offences, and the Crown had no right, against the consent of the Traversers, to give them in charge on both together.

The Court said, that it appeared on the face of the Informations, which they had read, that the two Informations were conversant about the same transaction.

Mr. JOHNSON contended that if so, the Crown could only have a right of election, on which of them to proceed.

The Court called on the Counsel for the Traversers for an authority, to shew that it was not competent to the Crown to proceed on both together; and stated, that it was a common practice to try a prisoner on two Indictments at the same time.

Mr. NORTH. There is one objection to such a proceeding in this particular case, which may not exist in others. If there should be reason to apply for a new trial, that application can in the event of a conviction for a conspiracy, be made only by all the Traversers together: whereas in the case of a conviction for a riot, any one of the Traversers may apply.

The Court declared their opinion, that the Crown had a right to have the Traversers tried on both informations.

The original pannel was then called over.

William Snell Magee, put by on the part of the Crown.

Richard Palmer, put by on the part of the Crown.

Samuel Taylor, put by on the part of Crown.

George W. Boileau, put by on the part of the Crown.

W. H. Stanley, put by on the part of the Crown.

1. Francis Mills, sworn.

George Alker, called. On the Crown Solicitor desiring him to stand aside, Mr. Perrin, for the Traverser Forbes, objected that the challenge came too late, the officer having begun to administer the oath: after which, as was settled at the Derby Trials in 1816, the person must be sworn.

The Counsel for the Crown stated, that the rule as laid down, was so far qualified, that if by inadvertence or accident, a party were not aware that the oath had been begun to be administered, the right of challenge ought not to be precluded.

The Clerk of the Crown being referred to by the Court, stated that he thought the administering of the oath had not been proceeded in—whereupon the Court suffered the Crown to object to Mr. Alker.

2. James Wyon, sworn.

John Hendrick, put by on the part of the Crown.

3. Abraham Hargrave, sworn.

Thomas Wright, put by on the part of the Crown.

Frederick Alexander, put by on the part of the Crown.

M. Law, put by on the part of the Crown.

4. Edward Armstrong, sworn.

William Milling, put by on the part of the Crown.

Neal M'Kenny called.

Mr. Johnston, on the part of the Traverser Forbes, requested to ask this gentleman, whether he had expressed any opinion with respect to the matter at issue, and whether he had not stated his conviction, that there had been a conspiracy such as that charged.

The Chief Justice, (after conferring with the rest of the Court) declared it to be their opinion, that such a question could not be asked.\*

John Stanley, put by on the part of the Crown.

6. John Fry, sworn.

Robert Stubbs, put by on the part of the Crown.

Nathaniel Walker, put by on the part of the Crown.

7. John Baker, sworn.

John Jones, put by on the part of the Crown.

Elso Smith, put by on the part of the Crown.

Christopher Colburne, put by on the part of the Crown.

\* See *Rex, v. Edmonds*, 4. B. and A. 471.

8. Thomas Parker, sworn.

William Osborne, put by on the part of the Crown.

John Johnston, put by on the part of the Crown.

William Smith, put by on the part of the Crown.

9. John Caldwell, sworn.

Arthur Battersby, put by on the part of the Crown.

Thomas Hunt, put by on the part of the Crown.

Hall Chambers, put by on the part of the Crown.

Laurence Oldham, put by on the part of the Crown.

George Cutler, put by on the part of the Crown.

R. Dickenson, put by on the part of the Crown.

Ralph Shaw, put by on the part of the Crown.

10. Richard Dollard, sworn.

George Gonne, put by on the part of the Crown.

11. Richard Annesley, sworn.

William Geoghegan, put by on the part of the Crown.

12. Isaac Tyndall, sworn.

## JURY.

Francis Mills,	John Baker,
James Wyon,	Thomas Barker,
Abraham Hargrave,	John Caldwell,
Edward Armstrong,	Richard Dollard,
Neal M'Kenny,	Richard Annesley,
Thomas Fry,	Isaac Tyndall.

The Informations were opened by Mr. GREENE.

## MR. ATTORNEY GENERAL.

*My Lords, and Gentlemen of the Jury,*

It becomes now my duty to lay before you the case on behalf of the Crown, and to put you in possession of the grounds on which the present prosecution has been instituted, and of the evidence by which it is intended to be supported. It has often been my lot, in the eventful history of this country, to appear in the character of a public prosecutor, and still more frequently to be a witness of the course and conduct of public prosecutions. But certainly never in my life have I approached a Court of Justice with sensations of more deep anxiety, or with a more intense feeling of the importance of the subject to be decided on, than I feel at the present moment. It is a case, my Lords and Gentlemen, not touching the life of the parties; the offence as laid amounting only to a misdemeanor. It is undoubtedly however to them a case of no small importance; involving them, if the facts charged be proved, in very heavy penal consequences. But with respect to the public at large, it is a case of as deep and vital importance, as for the last fifty years has been brought under the consideration of a Court and of a Jury. It is a great satisfaction to me, and a great part of my object has been achieved in knowing, that this case is now ready

to be brought fully before an intelligent Court and Jury; and that whatever its merits may be, it is impossible they can be stifled or extinguished, but must be fairly brought under the consideration of the Court, the Jury, and the Public. The charge is one of no light or ordinary character. You are already, my Lords, probably apprized of it from public rumour; the nature of it has been more particularly stated by my learned Friend who has opened the Informations. It imports no less a crime, than having assaulted the person of the King's Representative in this country; of having committed a riot in his presence for the purpose of insulting him; and of having done so in pursuance of a deliberate conspiracy previously entered into for the purpose.

This is a charge which ought not lightly to be made; and one, Gentlemen, on which you ought not to act, unless fully and distinctly proved. But I should consider it as an insult to your character and understandings, to urge any argument to establish the enormity of the crime, if fully ascertained to have been committed:—I should blush for our country, were it necessary to state in a Court of Justice, that a deliberate insult to the King's representative, in a public Theatre, the result of a previous conspiracy, is no light or trivial or ordinary offence. In the mind of every man who has not banished the feelings of a Gentleman, and who is not lost to every public and private consideration, there can be but one sentiment—a deep sense of indignity at the outrage, and an entire conviction of the necessity of vindicating the national character and the dignity of the laws, by affixing punishment, if deserved.

But, my Lords, daring and unexampled as is the crime, I hesitate not to say, that the enormity of the act is lost in



the boldness and description of the motives. I fairly tell you, that I come not here on the part of Lord Wellesley, to ask for personal redress, or even to call for public justice so far as he is personally concerned; not even on the part of the Lord Lieutenant of Ireland, to seek atonement for the outrage committed against the King's representative: but on behalf of the country and its laws; on behalf of its hopes of peace and safety; to claim your aid, backed by all the authority of opinion, in putting down a desperate and insolent attempt to overawe the King's Government in Ireland; and to compel his representative, by the arm of personal violence, and by the demonstration of a force above the law, to change the measures of his Government. I call on you to put down a base conspiracy of a contemptible Gang, who have associated to put down the laws and to overbear the King's representative, because he has presumed to execute the King's commands. I think I know the feelings of the illustrious personage against whom this villainy has been directed; with respect to his own personal safety, much as it has been endangered, the attack was fitted only to rouse his gallant mettle; indignant as must have felt to be "hawked at" by such "mousing" owls as these; their base attempt excited no terror, it left no resentment. That there should have been in this land hearts capable of conceiving, and hands capable of executing, such an outrage against their countryman, must have excited sensations of regret and pain; but in this respect the national character has been redeemed, by the universal expression of indignation which has issued from the hearts of the Irish people. But beyond all this, much remains to be done; it is necessary to put down the daring pretensions of those who have associated themselves for the purpose of defying the King and the Law, and setting up an authority superior to them both. They and

all others who announce such projects, must be taught that their plans are vain and hopeless, as they are insolent.

This I freely avow as my object. I trust that no unworthy prejudices, that no angry feeling, that no sentiment other than that which belongs to the conscientious discharge of public duty, has been suffered to mingle itself in the course of public justice. I shall go away from this Court, humiliated and under the heavy sentence of self-reproach, if, after the evidence in this case shall have been disclosed, any honest or impartial man shall censure me for instituting this prosecution; or shall hesitate to think, that it would have been a mean abandonment of duty to have shrunk from it.

You are apprized, my Lords, that this is an Ex Officio Information filed by His Majesty's Attorney-General upon his own authority; you are also probably aware, that this Ex Officio Information has been filed, after Bills had been preferred against the same persons for the same offence, and had been ignored by a Grand Jury of the country. Before I proceed to trouble your Lordships with any observation upon the exact nature and on the legality of this proceeding, I wish to disembarass the case of a few topics which may attach to it. In the proceeding, which I have thought it my duty to institute, though I have been governed by my strong impression that public justice had not been effected, I do not involve in this conclusion any imputation on the Sheriff, who returned the Grand Jury; still less on the Grand Jury themselves, who have acted on their oaths in throwing out those Bills. For the purposes of the present trial, whatever opinions I may entertain on that subject, I have no right to advert to them. The Sheriff who returned that Grand Jury is not on his trial, and it would be gross injustice to arraign his conduct when he

cannot defend it. The Grand Jury are not on their trials, and it would be injustice equally gross to make a charge against them, where they can have no opportunity of vindicating themselves; a time may come, and an occasion may arise, in which these considerations may be proper and necessary; and most certainly I will not, in that event, be found wanting to the discharge of any duty, however painful, which may devolve on me. But in the mean time, and with reference to the present proceeding, I wish distinctly to be understood as disclaiming all imputations upon either; I am ready to suppose, for the purposes of this trial, that if the parties and the cause were the exact reverse of what they now are; that if it had been the pleasure of the Government to direct, that the Statue of King William should be dressed on the 4th of November, and a body of Roman Catholics feeling themselves insulted, had risen against the Law and the Magistracy, and had flung a bottle or other missile at the Lord Lieutenant's head, and these facts had been before the Grand Jury, they would have ignored the Bills; as, so help me God, I would, under the same circumstances, had I remained the King's Attorney General, have filed my Information Ex Officio, I claim only for myself equal credit for the purity of my motives, and the fair discharge of my sworn duty.

I am told that it has been alleged, that this proceeding on the part of the Attorney General, by an Ex Officio Information, is illegal. I do not know whether what has been said in this respect has been rightly reported; or whether it is meant, that the proceeding is in point of Law invalid, or that the resorting to it, though a legal right, is not a fair exercise of discretion. I am led naturally, without going out of the pleadings, to make a few observations upon this part of the subject; for although all the Tra-

versers have put in pleas amounting to Not Guilty, yet two of them have thought proper to put upon the record, what cannot properly belong to that plea—a sort of preamble or inducement, in which they state, that those Informations have been filed against them after a Grand Jury had ignored Bills for the same charge. My learned friends, who framed those defences, knew perfectly well, that on that allegation no issue could be joined, either of law or of fact. It amounts, therefore, to nothing else than a plea of Not Guilty. But I presume they thought it might be made use of, (though scarcely to your Lordships or the Jury whom I address,) to swell the cry, which amongst the vulgar of the public has been raised against the legality of this proceeding.

I think that on that subject I need occupy but little time in addressing the Court, before which I have now the honour to appear. What I am about to say is rather with a view to set right the public mind, and that it should be known that I have stated, in the presence of this enlightened Court, what is the law upon this subject. I assert then, that the ignoring of a Bill by a Grand Jury, is, according to the known and established principles of our law, no bar to any subsequent legal proceeding against the same individual for the same offence. It is competent to the Crown or the prosecutor to send up another Bill to the same or any other Grand Jury; and the same power belongs to that public authority in which is vested the right of filing an Information. A party who has been already tried, may protect himself against a subsequent prosecution for the same offence. He may do so by plea; it is a principle of our law that no man shall be twice tried for the same offence; if he has been already acquitted, there is a known legal form of pleading as old as the law itself, by which he can defend himself. But it is settled

by authorities coeval with the law itself, that the plea of *auterfois acquit* is not supported by evidence, that a Bill of Indictment for the same offence has been preferred to a Grand Jury and ignored. It must be an acquittal by a Petit Jury. Your Lordships would consider it a waste of time to refer to authorities, in support of such a position. It is laid down by Lord Hale, Lord Coke, and every writer on the subject of Crown Law. I shall not consume time by adverting to cases for recognition of known principles; the thing can only be doubted by those who are ignorant of our Laws and Constitution. That another Indictment could be sent up is clear; and I think I go a good way to shew its legality, by calling upon those who deny it, to shew me any form of pleading by which it can be resisted. There is no legal right belonging to any subject of this realm, which the law has not afforded him a mode of setting forth; and therefore if there be no form of pleading, (and if there were such, my learned friends, in whose hands the interests of the Traversers are so effectually secured, would have discovered it,) by which the throwing out of a Bill by a Grand Jury, may be set up as a bar to a subsequent Information, that is in itself a full proof of the legality of such a proceeding. They have indeed distinctly admitted it, by putting in pleas not denying the competence of the Attorney General to file, or of the Court to entertain, the present Information, but asserting their innocence of the charge imputed to them. In an ordinary case, not affecting the rights of the Crown, this Court is in the habit of granting criminal Informations; the right formerly exercised by the master in the Crown Office has been narrowed by statute, and is now subject to the discretion of the Court. Has it ever been heard of, that the Court of King's Bench would refuse an information, because a Grand Jury had ignored the Bill? So much trash has

been circulated, and the public mind so much abused upon this subject, that I hope your Lordships will excuse my calling your attention to it. So far from its being considered an objection, that a Grand Jury has ignored the Bill, it is often a reason why the Court of King's Bench grants an Information. I have often applied for liberty to file an Information, when I had the honor of practising in this Court; and the Court has asked me whether I had tried a Grand Jury; saying, that if they refused to find a Bill, they would then entertain the application. The Court of King's Bench in England in the last Term granted an Information in a case where Bills had been twice ignored by a Grand Jury, and because they had been ignored. So far therefore is that circumstance from being considered an objection to putting a party on his trial, that it is frequently insisted upon as a requisite condition. Thus it is where application is made to the Court of King's Bench. This is an Information filed by the sworn officer of the Crown, in whom the law has vested that privilege. Were I to come in as Attorney General, and apply for liberty to file an Information against these parties, what would be your Lordships' answer?—the same as was given by my Lord Mansfield to De Grey, and I think to Sir Fletcher Norton; namely, "We will not file an Information at your suit; the law has made you the sole judge of its propriety; if you think it proper, you have a right to file it; if not, why should we do so?" I am not now applying myself to the soundness of this exercise of discretion, but to the new fangled notion of the illegality of this Information. It is the privilege of the lowest subject in the realm, if by the error or impropriety of a Grand Jury he do not obtain justice, to apply to the Court of King's Bench for a criminal Information; but the King, it is said, is to be in a totally differ-

uation; and though for an offence indictable the  
 would grant an information because a Grand Jury  
 has ignored the Bill, the Sovereign himself shall not  
 have that redress which is open to the meanest of his sub-  
 jects. A proposition this too monstrous to bear debate. I  
 am asked for an authority; permit me to say, this is not  
 quite a fair requisition; where a circumstance is totally  
 immaterial, it is not to be expected that it should be the  
 subject of notice; and therefore we are not to be sur-  
 prised, if in the greater number of reported cases of In-  
 formations it should not appear, whether a Grand Jury  
 had previously thrown out Bills or not; such a fact would  
 be totally immaterial. It cannot be stated in a plea; it  
 could not be proved in evidence, and therefore it would  
 be too much to say that because it is not mentioned the  
 case has not existed.

It has been my principle to hold in utter contempt the  
 vile and scurrilous publications which have been circu-  
 lated through the city, in order to prejudge the matters  
 to be tried, and affect the characters of the persons em-  
 ployed as public functionaries. But I have by the ge-  
 nerosity of some of their authors, been furnished with a  
 case directly in point, in which, by accident, the fact of  
 Bills having been ignored by the Grand Jury before the  
 Information filed does distinctly appear.

I shall detail the facts as they appear in the Commons'  
 Journals. In the latter end of the reign of Queen Anne,  
 in the year 1713, on King William's birth day, the play  
 of Tamerlane was to be represented. King William, as  
 your Lordships are aware, was compared to Tamerlane,  
 and very deservedly so, if the possession of every virtue  
 that could enoble a monarch entitled him to the distinc-  
 tion. The name of Tamerlane had been connected with

his. A prologue to the play, written by Doctor Garth, was very generally repeated at the time. The Doctor it seems was more happy as a poet than as a courtier, and his reverence for King William led him to compliment that monarch in terms not sufficiently guarded to avoid giving offence to Queen Anne. The Government therefore thought it right that the prologue should not be repeated. When the play therefore came on for representation, the actor omitted to repeat it, and by so doing, gave great offence to the audience. They were full of respect for the memory of William, and did not wish that attention to Queen Anne should break in on the ancient practice. Mr. Dudley Moore, a zealous Protestant, who was in the house, leaped upon the stage, and repeated the prologue. This gave rise to something like a riot. The Government indicted Mr. Moore for the riot. The Bills were sent up to a Grand Jury, who returned a true Bill, and were then dismissed. In about half an hour after, the foreman came into Court, and made an affidavit that "Billa vera" was a mistake, and that they meant to return "ignoramus." The Court refused to receive his affidavit; but then came in the three and twenty, and swore positively to the same fact to which their foreman had deposed. The party was notwithstanding this, in my opinion very unwisely, put to plead to the indictment. But the Attorney General thinking it would be hard to compel him to plead when the Bill had been in fact ignored, moved to quash the indictment, which was done. Do I overstate the matter when I say, that things were then in the same situation as if the Bill had been ignored by the Grand Jury? And yet under these circumstances, the Attorney General thought himself at liberty to file an Ex Officio Information against the same person for the same offence. Sir Constantine Phipps, who was then Lord Chancellor, and one of the Lords Justices, was considered by many as a great Tory and Ja-



cobite, and as an enemy to the Protestant interest. History has done more justice to him in that respect than in the heat of party he received from his contemporaries. He interfered with the prosecution; he sent for the Lord Mayor, and lectured him as to the mode in which he was to conduct himself. He was even supposed to have interfered with the return of the Jury. The whole matter was brought before the House of Commons, who addressed the Throne to remove Sir Constantine Phipps for intermeddling in the trial. No fault was found with the Information though directly before them, but the trial was treated as legally depending, and a petition presented against the Chancellor for interfering with that trial. Do I not here shew a case in which an Ex Officio Information had been filed after a Bill had been thrown out, and where though the zeal of party generated an anxiety to lay hold of any thing that could warrant an imputation on the proceeding, as the Information filed was never questioned, but the Chancellor and Chief Governor petitioned against for interfering with the proceeding.

I shall not trouble your Lordships farther upon the legality of this proceeding. With respect to the soundness of the exercise of my discretion, under the circumstances, in resorting to the prerogative right, I shall reserve myself until I shall have laid before the Court and the Jury the facts which will be proved in the case. I have already said, that I will prove that an attempt has been made by a gang in this city for the purpose of controlling the law, and putting down the authority of the King's Lieutenant. It is unfortunately necessary to shew, that the individuals concerned in this outrage are persons belonging to a Society known by the name of the Orange Society. But it is particularly necessary, Gentlemen of the Jury, that you and the Court

and the public should understand, what was formerly uttered by me, and what I now repeat. I am desirous of expressly stating, that with the general nature of the Orange Societies, in relation to the laws, the interests, and happiness of the country, I have on this trial nothing to do. Upon this subject I have my opinions, which at a proper place and season I shall not shrink from avowing. But with the present investigation they have no concern. I do believe in my conscience, that the greater proportion of persons associated in that Society feel as strong and lofty a contempt for those concerned in this disgraceful attack as I do, and are as incapable of participating, authorizing, vindicating, or palliating it. Every public man must expect to be the subject of no very candid criticism. I wish distinctly to have it understood, that this is no after-thought of mine, for the purpose of qualifying expressions either inadvertently or too strongly used. Had I applied these expressions indiscriminately to the Orangemen of Ireland, I should have violated my duty, and stepped beyond that line of conducting this prosecution, which was distinctly agreed upon between me and the eminent and respectable persons by whom I have been advised. I am glad to take this opportunity once for all, of returning my thanks to my learned colleague, by whose high talents, enlightened information, and extensive knowledge, I have been assisted in every stage of this proceeding, and to whose cordial zeal and cooperation no terms can be too strong to render justice and express my gratitude.

My Lords, I am anxious to proceed to an immediate statement of the facts of this case, and to disperse that mass of scurrility and falsehood which for some weeks past has disgraced this city. I must however first trespass on your time with some preliminary observations.

It is impossible to lay this case truly before the public without briefly reverting to the political events in which the conspiracy originated.

The foundations of it were laid so long back as the period when his Majesty was pleased to honor this country with his presence.

It is not, my Lords, my intention to occupy your time by attempting a description of what took place on that occasion. From the minds of those who witnessed the transaction, the splendour and glory of that day never can be effaced. To those who have not, no powers of mine can give an adequate description. It falls to me to have the less pleasing task of remarking, that even then some indications were to be found, that his Majesty's gracious dispositions were not likely to be met with that degree of gratitude and respect to which they were entitled, and that even before he left the Irish shore the elements of mischief were at work. It was understood that the King, before he honored the Mansion House with his presence, had signified his desire that the Glorious Memory should not be given as a toast. I must entreat your excuse, my Lords, (it connects itself intimately with the matter of this trial) if I advert more particularly to this topic, and endeavour to disabuse the public mind upon the subject.

Perhaps, my Lords, there is not to be found in the annals of history a character more truly great than that of William the Third. Perhaps no person has ever appeared on the theatre of the world, who has conferred more essential or more lasting benefits on mankind; on these countries, certainly none. When I look at the abstract merits of his character, and contemplate him with

admiration and reverence.—Lord of a petty principality—destitute of all resources but those with which nature had endowed him—regarded with jealousy and envy by those whose battles he fought; thwarted in all his counsels; embarrassed in all his movements; deserted in his most critical enterprises—he continued to mould all those discordant materials, to govern all these warring interests, and merely by the force of his genius, the ascendancy of his integrity, and the unmoveable firmness and constancy of his nature, to combine them into an indissoluble alliance against the schemes of despotism and universal domination of the most powerful monarch in Europe; seconded by the ablest generals, at the head of the bravest and best disciplined armies in the world, and wielding, without check or control, the unlimited resources of his empire. He was not a consummate general; military men will point out his errors; in that respect fortune did not favour him, save by throwing the lustre of adversity over all his virtues. He sustained defeat after defeat, but always rose *adversa rerum immersabilis unda*. Looking merely at his shining qualities and achievements, I admire him as I do a Scipio, a Regulus, a Fabius; a model of tranquil courage, undeviating probity, and armed with a resoluteness and constancy in the cause of truth and freedom, which rendered him superior to the accidents that control the fate of ordinary men.

But this is not all—I feel, that to him, under God, I am, at this moment, indebted for the enjoyment of the rights which I possess as a subject of these free countries; to him I owe the blessings of civil and religious liberty, and I venerate his memory with a fervour of devotion suited to his illustrious qualities and to his godlike acts.

Did our gracious sovereign come here to trample on the memory of the most illustrious of his predecessors? No, my Lords: the high errand on which he landed on our shores was worthy of him, and bespoke a kindred mind to that of the immortal personage whose name and character he vindicated. He knew that the whole life of King William was a continued struggle against intolerance; that the policy of his reign was opposed, and his most favourite objects for the peace and happiness of his people were baffled, by the folly and bigotry of those who surrounded him; and that the career of his glorious life was obstructed, as the lustre of his glorious memory has been tarnished, by the absurd and intolerant dogmatism of those who were rescued by his exertions from that yoke which they sought, in opposition to his eager wishes, to impose on others. It was the unhappy but inevitable result of the circumstances in which the people of this unfortunate country were placed, that they had to meet that great man, not as subjects but as enemies. The peculiar good fortune of the British people was, that every feeling of religion corresponded with their innate love of freedom to alienate them from the the cause of the exiled monarch. His designs, his determinations against their civil and religious liberties, were notorious and unalterable. An inflexible bigot and despot, he was too intense in both characters to endure the appearance of a compromise with toleration or with freedom. Yet every man knows through what difficulties and dangers they had to struggle before the house of Brunswick was firmly seated on the throne. Even with the full tide of religion running in their favour, the principle of loyalty to an hereditary succession was so indigenious to British character, that it was not until after the lapse of nearly a century that the principles of Jacobitism were finally subdued.

But in unhappy Ireland the exiled king was the professor and patron of the religion to which they were enthusiastically devoted. He must be a preposterous critic who will impute as a crime to that unhappy people, that they did not rebel against their lawful king, because he was of their own religion, even if they had been so fully admitted to the blessings of the British constitution as to render them equally alive to the value of freedom. They seem therefore, by the nature of things, almost necessarily thrown into a state of resistance; nothing could have saved them from it but so strong a love of abstract freedom, as might subdue the principles of loyalty and the feelings of religion. No candid man can lay so heavily on poor human nature; nor fairly say, that he thinks worse of the Roman Catholic, for having on that day abided by his lawful Sovereign and his ancient faith. What was the result? They were conquered—conquered into freedom and happiness—a freedom and happiness to which the successful result of their ill fated struggles would have been destructive. There is no rational Roman Catholic in Ireland who does not feel this to be the fact. Even the name of the exiled family is now unknown; the Throne rests on the firm basis of the unanimous recognition of the entire people. The memory of their unfortunate struggles is lost in the conviction of the reality of those blessings, which have been derived from their results equally to the conqueror and to the conquered. What wise or good man can feel a pleasure in recalling to the minds of a people so circumstanced, the fact that they have been conquered? What but the spirit of folly and of mischief can take a satisfaction in interrupting them in the enjoyment of the blessings of their defeat, by taunting them with the recollection that they were defeated? Why is conquest desirable to any one but the Trooper? Because it opens the way to peace and har-

mony; but to those I have now to deal with, the fruits of the conquest are valueless, without the perpetuation of the triumph.

He is a mischievous man, who desires to remind the people of this country that they are a conquered people. He is a mischievous man, who, for the gratification of his own whim, desires to celebrate, in the midst that people, the anniversary of their conquest. Never was there a subject more loudly calling for and justifying the gracious and saving interposition of the Royal wisdom.

In the history of Royal lives there seldom has occurred an instance affording a more gratifying subject for the historian to dwell on, than the Royal visit to Ireland. The statement of splendid victories, the development of profound schemes of policy, the application of able counsels and of powerful resources, the defence of the liberties of the world—all these are the subjects of historic detail, and may be the fair subjects of political controversy. But here, by the mere impulse of his own feelings, the heartiness of his nature, a moment was created in which, without calling on any of the common places of Royalty, without the aid of force, or fear, or flattery; without arms, or power, or patronage; by the mere indulgence of his kind and generous nature, he gained to himself the most exalted privileges which a human being can exercise—that of bestowing happiness on, and sharing it with, millions of his fellow-creatures. The promptness with which this moment was seized—the gracious and condescending manner by which it was improved—the thousand and ten thousand blessings which are to be derived from it—all these may be subjects of just applause and of sober criticism. But here the true value of the act is its simplicity. To enter into the hearts and become master of the enthusiastic affections of an

entire people, merely by shewing himself the Friend and Father of them all, was a felicity to him and them unparalleled in the eventful history of this nation; it was worthy of a successor of the great monarch, whose talents and virtues he emulated, and whose memory he rescued from the disgraceful orgies by which it had been tarnished. Equal in the motive and the feeling—happier in this, that the hard fortune of William the Third compelled him to visit this country as a conqueror; but it was reserved for the peculiar felicity of George the Fourth, that He was the first British King who ever placed a friendly footstep upon the Irish soil.

I have already had occasion to remark, that the intimation of his Majesty's pleasure on the subject of public concord was not perfectly agreeable to a certain portion of his subjects. Some little clouds were seen flitting along the horizon, which indicated the probability of a future storm. How far the Government of the country were enabled to act on the personal recommendation and parting injunctions of the King—what were the difficulties the Irish Government had to encounter—what were the means they used to surmount them, these are matters which do not belong to the present subject. I pass to the period of Lord Wellesley's arrival in this country. He found a great portion of the South of Ireland in a state of licentiousness, surpassing the worst excesses of former unhappy times. He had to deal with dangerous and secret conspiracies in other parts of the country. In what manner the Lord Lieutenant applied the powerful energies of his great mind to meet these complicated difficulties does not fall within the compass or limit of this trial. It would ill suit with my notions of what is due to the Marquess Wellesley, and of his temper and character, to offer up the



suspicious praises which an Irish Attorney General is supposed bound to tender to the Lord Lieutenant. I am too sensible the well-formed taste of this illustrious person, not to be convinced that he would reject with disdain the vulgar incense of official adulation, if I could stoop to offer it.—No, my Lords, it would be an unsuited return for the kindness, the confidence, I will presume to say, the friendship, with which he has honored me ; I know too well his lofty feelings and noble nature, “*cui male si palpere, recalcitrat undique tutus* ;”—but I will not be deterred by the apprehension of a suspicion which I disdain, and to which I trust the character of my life renders me superior, from expressing my sentiments of that exalted personage, when he has become the object of vulgar scurrility, and when an open and desperate attack is made upon his person and his Government. I will not be deterred from saying, that had our Gracious Sovereign surveyed the extent of his dominions in search of one fitted to execute the magnificent purposes of benevolence to his people, with which his royal breast was filled, he could not have found a person whom the gifts of nature, improved by every noble art, and mellowed by a long and arduous experience in the most difficult exigencies of this great empire, so eminently qualified for the task : or one whose heart so entirely and cordially vibrated in unison with the gracious and paternal interest, which was felt for the welfare of his native land. That noble Peer entered on the Government of this country under this Royal instruction ; he had to explore a very difficult and dangerous and untried path, but he had the parting admonition and the renewed injunctions of his Sovereign for his Pole star. He entered on that Government, carefully distinguishing his opinions and duties as a Politician and a Legislator, from those which necessarily involved the system of Government of the country committed to him.—

Never abandoning, but carefully distinguishing, his individual opinion from his official duties, he applied himself strictly and exclusively to effectuate the orders of the King, by the equal administration of the existing laws, and by the promotion of peace, happiness, and concord among all the various classes of his subjects. I defy the malignity of criticism to point out a false move in the government of that noble person; one instance in which he departed from the spirit of that mission of conciliation, which was confided to him; an act or an expression calculated to excite offence or disapprobation in the mind of any honest man or lover of his country, be his sect or his party what it may. Pursuing his clear and undeviating course; raised above all party, the laws for his guide, and the public happiness for his object, his fame is independent of the praise of his friends, and above the malice of his enemies; it is our business, my Lords, to guard his person and his government against their secret machinations and their open violence.

The discontinuance of the public insults to which I have already alluded, and which had been so highly disapproved of by the King, necessarily had a place in the system of the Lord Lieutenant. The offensive toast which had been renewed in the presence of the late Lord Lieutenant was withheld in the presence of Lord Wellesley. I grieve to say that a spirit of mutiny and dissatisfaction on this subject was giddily and rashly encouraged by many who knew and ought to have revered the King's commands.—The Lord Lieutenant, however highly he disapproved the giving the toast on public occasions, did not think it became him to take any further step, having taken care that the King's authority should not, in his presence, be insulted by it. Another subject, or rather another part of the same subject, called his attention.

The statue of King William, you all know, has been, for some years back, bedaubed with ridiculous painting and tawdry orange colours—a ludicrous specimen of bad taste, with which, however, his Excellency did not feel himself called on to intermeddle. But beyond this, a set of low persons, whose names were not avowed, had been for some years back in the habit of mounting the statue in the night of the 3d of November, and of the 11th of July, and putting on it a fantastic drapery of orange scarfs, in themselves ridiculous, if they had not been meant as a mark of triumph over a certain portion of their fellow subjects. This being done by a party of sworn Orangemen, and for the avowed purpose of insult, had been resented by the Roman Catholics whom it was intended to insult; and on the 12th of July last a serious riot had occurred, the insulted party conceiving that they had as good a right to undress, as the other had to dress, the statue of King William. In the course of this affray lives had been endangered, the peaceable inhabitants of College Green seriously alarmed, the tranquillity of the metropolis disturbed, and evil passions of the most furious kind engendered in the minds of the parties. It is obvious that one of these three courses was to be pursued. Either the dressers of the statue were to be protected by public force and the constituted authorities; or they were to be forbidden and prevented; or the parties were to be left to fight it out, till outrage, riot, and bloodshed arrived at such a height that the civil power must act against both. I have never heard it distinctly stated, or that it was distinctly stated by any person, that either the first or the last of these courses ought to have been proved; either that the public authorities should have been called to assist the nightly party in making the toilet of King William, and to apprehend any person who should presume to interrupt them; or that the streets of

the capital should be disgraced by the continuance of these senseless brawls. The first question on which his Excellency had to satisfy his mind was, whether the continuance of the practice of dressing the statue might, under such circumstances, be legally prevented.

He was advised that it clearly might; that these murrers had no right to lay their hands on this public ornament, whether for the purpose of decoration or dedecoration. Gentlemen, I remember, that on one occasion, a set of ruffians mounted this statue, and daubed it over with lampblack. Neither they nor any other persons had a right to meddle with the public ornaments, either to adorn or disgrace them. But independently of this, his Excellency was advised that this being proposed to be done, not in discharge of any acknowledged duty, or in the prosecution of any known business, or in the exercise of any right of property or franchise, either by grant or usage, and being found by experience to have a tendency to produce and to have actually produced a breach of the peace, and it being proved on oath that it had done so, and that its continuance excited well grounded apprehensions for the safety of their persons in the minds of the King's subjects residing in the neighbourhood, several of whom, persons of known respectability, and Protestants too, had made affidavit to that effect, his Excellency was advised, that he would be well warranted in using the civil force to prevent the dressing of the statue.

I am ashamed to think that it should be necessary to say, in a Court of Justice, that they were Protestants. I say this, because there are persons weak enough to imagine that the oath of a Catholic is not to be attended to on this

subject, and because it has been untruly stated, that these were affidavits of Catholics of the lower order. I owe an apology to the good sense and feeling of the Court and the Jury, for stating what their religion was; it is a disgrace to our country that such topics should be adverted to. Gentlemen, I have been public prosecutor in this country, at a period when the passions of men were most alive; and never in the course of my official experience, have I given any other advice to the Solicitor for the Crown, than to select honest and fair men, without reference to their religious opinions, and I have never felt myself disappointed in the result; and therefore you will not suppose that the circumstance of these persons being Protestants, was necessary to prop their credit in my estimation.

I am glad to have this opportunity of stating, that being called on in the discharge of my sworn duty for my opinion, I gave it as I have stated, and I challenge any man who respects his character as a constitutional lawyer to correct its soundness. It is no light matter to charge the Executive Government with acting contrary to law against any portion of the people; it begets in their minds the notion that, in resisting the civil authorities they are resisting not law but power—such a course is calculated to bring the government of the country into contempt; and when the acts so spoken of have been done in pursuance of the King's instructions, it is a violation of the personal respect which is due to him, independently of its tendency, to weaken the authority of his government in this country.

His Excellency was, independently of any respect which his kindness might dispose him to attach to the opinion of his law adviser, perfectly satisfied of the illegality of the

practice in question ; and I am authorised to take this public opportunity of stating, that having communicated on the subject with the King's Government in England, he was sanctioned by their unanimous opinion in using the civil power for the prevention of these illegal practices. I am further authorised to state, that since his Excellency adopted the measures which are so publicly known for the carrying that opinion into effect, his conduct has received the unanimous approbation of the entire British Cabinet, and has, above all, been crowned by the highest reward which a subject can receive for the faithful discharge of his duty, the personal approbation of his Sovereign, whose commands he executed, and whose government he sustained.

Before his Excellency resorted to any public means for the suppression of this practice, he tried every expedient by persuasion and remonstrance, to obviate the necessity of public interference. It is but justice to say, that many, very many of the principal persons who were supposed to have an influence over the Orange associations did exert their authority for the purpose ; but whatever were their exertions, they were unavailing ; they found they could not govern the party whom they had associated themselves. So must it ever be, when rank and station and education condescend to combine in a secret bond with the vulgar and the ignorant. They must not expect to govern them ; so long as they run in the same course of party and opinion, they may be suffered to lead ; but in vain will they endeavour to alter the direction or moderate the violence. When the evil spirit is unchained and let loose, the spell that raised it will be unavailing to allay it—for the purposes of a greater excitement they may be powerful and dangerous ; for those of repression and restraint altogether impotent. The lower classes of these

persons declared they would disobey the Lord Mayor's Proclamation, and resist the Magistrates.—Furious and absurd speeches were made at public meetings, filled with vulgar invectives against the constituted authorities; and preparations were made for resistance to the law. The dressing of the Statue on the night of the third and day of the fourth of November was prevented; but on subsequent nights, particularly on the night of the sixth of November, several of the party assembled for the purpose, and were not dispersed without considerable disturbance and difficulty. On this occasion the Traverser Henry Handwich was particularly active; he headed a party who arrayed themselves against the Magistracy for the purpose of dressing the Statue. He was, it seems, the regular Mantua Maker to King William. He collected subscriptions on the night between the fifth and sixth of November; he mounted on the Statue, and nailed upon it the tawdry ornaments with which he was furnished. With some difficulty he and his party were suppressed; they were dispersed before morning. Two or three similar attempts were afterwards made, but the firmness of the Magistrates was sufficient to put them down.

In this situation of affairs, the Lord Lieutenant availed himself of the first opportunity which the various claims of public care allowed him, to announce his intention of honoring the Theatre Royal with his presence; a Play was accordingly announced, and notice given.

I shall now state the facts of this case, which will be so clearly proved, and placed so far beyond all doubt, that no gentleman whom I have the honor of seeing in that Jury Box, can leave it with a doubt upon his mind as to the real nature of the transaction. Certain persons

met together, and conceived that this would be a good opportunity of marking their public indignation against the Marquess Wellesley, for presuming to enforce the King's Command in forbidding the dressing of the Statue. One of those persons, gentlemen, (melancholy, if this be so, is the situation of the Lord Lieutenant) holds high situations under the King's Government, a place in the Post Office, and another in the Customs, producing nearly £800 a year. I allude to a man named William Heron. This person, and another of the name of M'Culloch, who holds a situation in the Meath hospital; a man named Atkinson, holding a situation in the Custom House, and others, on the night of Wednesday or the morning of the Thursday before the Play, consulted as to the best means of dealing with the subject. The result they came to was, that this would be a proper opportunity for acting in the Theatre in such a manner, as to evince the unpopularity of the Lord Lieutenant and his Government, and make it necessary for him to leave the house, and eventually to leave the country. It was determined that a subscription should be raised to purchase tickets. Well knowing that the true expression of the public sentiment would be strong in favour of his Excellency, they resolved, in order to thwart it, to collect a party and pack the Theatre. They thought the persons who were associated would of themselves be sufficient for the pit and the middle gallery; but that for the inferior orders, seats must be purchased. Accordingly a subscription of £2 was collected by Heron, and sent by him to Atkinson. This was to be communicated to an Orange Lodge, assembled at the house of one Daly in Werburgh-street, in what is called the Purple Order of the Lodge. That, gentlemen, is not conferred upon any person until he has been for a certain time a Member of the General Institution. This subscription



was given to the parties present at the Lodge, and an additional subscription was raised by them. Two of those Lodges were concerned. The Traverser, James Forbes, is a Member of the Lodge 1660. He is Deputy Master of that Lodge. William Graham is Secretary of the same. Henry Handwich and Matthew Handwich are members of the Lodge 780, of which Henry is Deputy Master; and William Brownlow is a Member of 1612. Although it is necessarily my duty to shew who and what these persons are, I do not meddle with the general character of Orange Lodges in Ireland, the merits of which are for another place. I am well satisfied that the great body of Orangemen feel as much abhorrence at this crime as any individual can do. With this subscription a number of pit tickets were purchased on Saturday morning from the bok keeper at the Play House. This was for the purpose of filling the upper gallery. It was thought that the members who were able to purchase tickets for themselves would be sufficient for the pit and middle gallery. One pit ticket was to be given to every three. Forbes was present when this subscription was raised. On the Saturday morning, Forbes, M'Culloch, and Atkinson went together to the Theatre, and purchased the tickets. They regularly proceeded to fashion the conspiracy in all its parts. It was determined that an inferior Orange Lodge, to which Handwich belonged, and which met at Mrs. Daly's in Ship-street, should be ready to go to the Theatre to execute the plan. Application was made in the morning to Matthew Handwich at his work, and he was desired to communicate with his brother Henry. Accordingly, about four o'clock in the evening of Saturday the parties met—Forbes, Atkinson, the Handwiches, and others. They were first supplied with drink. They came armed with sticks.

Handwich had been asked, if he could furnish sixty men. He said he could. He had not quite so many at first, but the number was completed in the passage to the Theatre. They were dispatched from the place of meeting in parties of three, each with a pit Ticket. The number was at first sixty, but afterwards increased to near an hundred. They were armed with bludgeons. The residue of the whiskey they had been drinking they put into a bottle and carried to the Theatre. The last words of Handwich, on leaving the place of meeting, were "Boys be wicked." It was settled that the duty of Lodge 1612 should be, to go to the pit door, and beset it before it was open, and to rush in in a body, and occupy that part of the pit next to his Excellency's box. Their directions were, that as soon as "God save the King" was played, the "Boyne Water" should be called for, and if it were refused, that the play should be stopped, and that a system of hissing, groaning, and violence should commence. One of the party had a large rattle in his hand, for the purpose of riot. I should tell you, that at the meeting held of the Purple Order, on Friday evening, and at which Forbes was present, the plan was fully announced of compelling the Lord Lieutenant to leave the Theatre, and if possible, the country. One of the party even offered to lay a wager, that before March he would be out of the country. Finding that these conspirators entertained such serious views,—that their object was to make such a demonstration of hostility as to compel his Excellency to quit the country, and that this was to be effected by resistance, by riot, and even by personal violence, one of the parties engaged took the alarm. He was shocked at the extent to which their fury might go. At one time he had formed the resolution of going to the Lord Lieutenant, and apprising him of the truth, and the danger to which he was exposed. He

went to the Park; a sentinel at the gate of the Viceregal Lodge asked him his business; his mind was in that situation, in which a trivial circumstance makes an alteration—he hesitated, and returned, and the disclosure was not made.

Gentlemen, the party (1612) which had been arranged for the purpose, rushed into the pit, and occupied that part of it which was nearest the viceregal box; the upper gallery party, to the number of 60, went there with the pit tickets. They had fixed upon a watch-word, "Look Out:" they seated themselves on the left hand side of the gallery, where the violence was carried on during the night. Forbes placed them at their posts in the upper gallery, armed with bludgeons; the Police occupied the opposite side of the house, and like faithful watchmen fell asleep on their posts; no interruption was given to the merriment or to the mischief of the party. To shew the deliberation of their plans I should mention, that previously to the play, handbills were struck off, containing expressions insulting to the Lord Lieutenant; such as "Down with the Popish Government," &c. and other expressions insignificant and contemptible, except as evincing deliberation and concert. These handbills were brought to the Theatre, and disposed of by the members of the conspiracy; several were thrown by M'Culloch, from the lattices over the Lord Lieutenant's box, and others from various parts of the house. It will be proved, that from the opening of the Theatre, the grossest system of insulting and offensive expressions was commenced; groans were raised for "The Popish Lord Lieutenant,"—and cries of "No Popish Government." There were also groans for the House of Wellesley. They did not confine themselves to the Noble Lord at the head of the Government—they extended to the Duke of Wellington, and

the other branches of his illustrious family. Not satisfied with that, these advocates of religion gave "A clap for the Calf's Head,"—an allusion to a monstrous outrage committed in or near Ardee, by some ruffians who profaned a Roman Catholic place of worship by placing such a thing upon the altar. They applauded also Sheriff Thorpe, with the Calf's Head.—There was "a groan for the bloody Popish Lord Lieutenant."—I cannot remember all the terms of outrage which were used. Some persons, not connected with the gang, cried out "Shame, shame"—of these some were severely beaten—and one man had a narrow escape by getting down from the upper into the middle gallery; several were alarmed and left the house. When the Lord Lieutenant came in, there was a general expression of approbation from the audience, which for some time bore down the hisses of the conspirators. But when an opportunity arose, a violent hissing and groaning were set up. These things went on till God Save the King was played; at that period, a bottle was thrown from the upper gallery, which hit the stage curtain. The fact will be proved by a variety of witnesses, who will leave no doubt upon it in your minds. It was flung from the gallery by Henry Handwich. He will appear to have been a leader of the party. You will have the testimony of several distinct and independent witnesses, who can have no other object than to tell the truth. Several persons saw the bottle in its progress. Amongst the idle reports which have been circulated as to this transaction, it has been said, that this came from the carpenters' gallery—and from the pit—but, gentlemen, we shall put the fact beyond all controversy. As to the precise point where it hit the curtain, there is a diversity of opinion: but that it hit somewhere nearer to the Lord Lieutenant than to the centre, all the accounts concur. Some of the witnesses say it struck within four feet of the side next the

Lord Lieutenant, and within four feet of the stage. Another says, that it was the breadth of a festoon. But all concur in this, that it was thrown, and that their impression was that it was directed against the Lord Lieutenant. It was thrown from the same side on which his Excellency sat. You will ask why did they get to that side. The right hand side had been early occupied by other persons; and the conspirators, feeling it necessary to be in a body, were obliged to go to the left. The precise situation in which Handwich was placed when he threw the bottle, will be proved to you. He threw it under him, or by a side motion, and not over him. Any person who will attend to the position in which he was, as well as to that of the Lord Lieutenant, will easily account for the aberration of the instrument. All the witnesses agree in stating it to be their impression that the bottle was directed against his Excellency. Besides the general proof to shew that the bottle came from the upper gallery, there are three witnesses who distinctly saw Henry Handwich throw it. One whose arrival we hourly expect, had his attention excited by some expression of Handwich, and immediately marked him. He swears positively to his having thrown the bottle. George Graham was one of the principal rioters. He had a large rattle which he used at first for the purpose of making a noise; and when it had performed its services in that department, he converted it into an instrument of personal attack. He broke it into two pieces, and it will be distinctly proved, that he came forward, and took deliberate aim at the Lord Lieutenant's head; so good an aim, that it struck the cushion of the next box, and with such force, that it cut the cushion and rebounded on the stage. If it had taken effect, in all probability it would have put an end to his life. When I state that a bottle was thrown at the King's Representative, and that implements of violence were flung at his

person, such is the state of the public mind, that it is listened to as if it were a mere bagatelle, a *jeu d'esprit*, a trifle of which the Lord Lieutenant need not take any notice, and which is below the attention of the Government and the Law Officers. Why, Gentlemen of the Jury, are we awake? Can we be insensible to the effect of such occurrences upon the honor and safety of the country? Can we reflect without indignation, that such an outrage should be committed in a civilized country against the person of his Majesty's Representative, because he had the presumption, in opposition to a desperate gang, to execute the parting injunctions of the King, in a manner not calculated to give offence or excite animosity? The sentiments of the audience were roused; some rushed up to the gallery. Graham first flung the heavy part of the rattle, and then the light. It will be produced to you. Forbes, as I have already stated, was a party to the entire system of the party, and was present at the sending the men from Daly's to the gallery with bludgeons. He stationed them in the upper gallery at their post. After the bottle and rattle had been thrown, he was observed in the lattices or pigeon holes, immediately adjoining the left side of the upper gallery, in which he had previously stationed the party; he was separated from them only by the spikes, dividing those two parts of the house. He was seen actively encouraging the rioters; he held in his hand a whistle, with which he sounded the alarm, and gave a signal which was answered through the whole house. He was asked by a Magistrate, why he used the whistle, to which he replied, "for fun." He was then arrested, but liberated on promise to give bail. It will be proved that he went from the Theatre to a tavern in Essex-street, kept by a person of the name of Flanagan. He and William Graham, one of the distributors of the bills, and who was active in the riot, William Brownlow, the Atkinsons,

and others, went in a party to this public house. They communicated together as persons well acquainted with each other, and talked about what had passed at the Theatre. Some one said to Brownlow, "Why did not you go to your place in the gallery?" He said, he was as well where he was in the pit; and afterwards boasted of the share he had had in the business, saying, that others had not done so much. A conversation ensued as to the occurrences at the Theatre. Forbes referred to the part he had taken. This conversation was overheard by two gentlemen, Mr. Farley, an attorney, and a Mr. Troy, who will be produced to you. Forbes spoke as a person conscious that he had committed a crime. He said he had only one life to lose, but that he was ready to sacrifice that for the accomplishment of his one object. He was ready he said, to go to Botany Bay, but that if he did, he would establish an Orange Lodge there. Nay, he said he would be willing to go to Hell, but that one great drawback to his happiness there would be, that he was sure to meet a Papist in it.

This is a specimen only of his sentiments; but, what is more material for our present purposes, he expressed his regret that the bottle had missed its aim, but he trusted and hoped that the next time their plan would be better laid, and the attempt be more effectual. Here Gentlemen, is a person engaged in planning the whole attack; who collected bludgeons and ruffians to execute it, who directs violence against the Lord Lieutenant, and who, after his Excellency's life was endangered, expressed his regret, not that they went beyond their instructions, but that they had not executed them in their full extent. Am I now to justify myself in your opinion, and in that of the public, for the exercise of my discretion in this Ex Officio Information, by which I have been enabled for the first time to bring these

facts before the public? I ask any man who has a principle of candour or honesty in his composition, whether he is not bound to acquit me, and whether I should not have basely betrayed the King whom I serve, and the office with which he has honoured me, if I suffered public justice to be stifled and obstructed? When these transactions were brought under the consideration of the Government, the Law Officers were consulted by the magistrates. We bestowed the most patient attention and laborious investigation on the case; for five or six days we were occupied at this business; every day some new light was thrown upon it, until it at length assumed an aspect so formidable, as to lead us to the apprehension that his Excellency's life had been directly aimed at. When we learned that Forbes had avowed his approbation of the act; when after the conspiracy had shewn itself in its most desperate effects, he expressed his regret at its failure, and his determination to make another attempt more effectual—we felt, when called upon for our advice upon his application to be discharged, that we could not justify it to our conscience and our sworn duty, or to the respect due to the high personage and illustrious character who had been offered at, if we had suffered him to go at large till we knew the whole of the transaction. There was at that time evidence, not only sufficient to warrant a Grand Jury for finding a bill for conspiracy to murder, but even for a Petty Jury to found a verdict for conviction. It was one thing to consider the proper species of committal, and another in what way we should ultimately proceed. When that point came to be finally decided on, and we had reason to believe that the whole of the evidence was before us, our determination was not to proceed on the capital charge. It was infinitely better we should be censured for the tameness of our proceeding, than that we should be arraigned for its rigour: we felt that before we sent up an Indictment con-



taining a capital charge, we should be clearly satisfied, that the primary object of the conspiracy was to take away the life of the Lord Lieutenant, and that if any doubt rested on the case, it would be better to be blamed for the timidity and forbearance of the prosecution than exposed to the heavy charge of exerting a rigour beyond the law; we were glad to shew in the instance of the most illustrious personage of the realm a strict observance of the law. What satisfied my mind against sending up a Bill of Indictment on a capital charge was this, that the object of driving the Lord Lieutenant by violence from the Theatre, and from the country, though it involved the imminent hazard of the life of the Lord Lieutenant, was distinct from the notion of a conspiracy to murder him. When it clearly appeared that the object was to put down the Lord Lieutenant's Government, and force him from the country, although this plot involved in it an outrage on his person, I did not think that in a capital case a Jury could be called upon to say that murder was the aim of the conspiracy. Under these circumstances, therefore, we thought it right to send up the Indictments for the misdemeanors, which the Grand Jury have thrown out.

The nature of these Informations has already been laid before you. There are two distinct Informations; one is for a riot and the other for a conspiracy to riot. The Counts vary; but in each there is alleged, first, a conspiracy to riot, and then a conspiracy to hoot, groan, hiss, and assault the Lord Lieutenant. In point of law, either or any part of these charges, if proved, will justify a verdict. I have no doubt of being able to prove the whole. I have stated this case without exaggeration against the Traversers at the bar. I have no feelings in the discharge of my duty, except the desire faithfully to acquit myself of

what I owe to my country and to my Sovereign. I may have expressed myself with warmth, I hope not with intemperance. But after I have disabused your minds of the ten thousand falsehoods, which have been circulated on this subject, I feel it would be trifling with public justice to say, that this was the act of a few misguided ruffians, growing out of any sudden impulse. It is a proceeding originating with a gang' within the limits of this city, associated for the purpose of putting down the King's Government, of driving the Lord Lieutenant from this country, and of shewing that he has not the power, against their wishes and their authority, to discharge the duties belonging to his exalted station.

*Evidence for the Crown.*

**RICHARD LOWTHER, examined by THE SOLICITOR  
GENERAL.**

**Q.** Do you hold any office in the Theatre Royal?

**A.** I am box-keeper.

**Q.** Do you remember the night when the Lord Lieutenant went to the theatre?

**A.** I do.

**Q.** Had he announced his intention of going any time before?

**A.** I believe three or four days before.

**Q.** Had it been announced to the public?

**A.** I believe it had on the Thursday preceding.

**Q.** Do you remember any persons applying for tickets?

**A.** Yes, I remember a great many applying.

**Q.** Do you remember any persons of the name of Forbes and Graham applying?

**A.** I do.

**Q.** Do you remember any body else of their party, or were they alone?

A. There was a great crowd about me at the time, but I don't know particularly who came.

Q. Did they buy tickets?

A. They did.

Q. Do you remember how many tickets they bought?

A. As well as I recollect—(this mode of answering was objected to by the traversers' counsel.)

Q. How many at least did each of these persons buy?

A. I believe six each.

Q. How many persons bought six each?

A. I cannot say, the place was so crowded.

Q. Do you remember whether Forbes got any tickets?

A. He did.

Q. Do you remember Graham's buying any?

A. He did.

Q. When Forbes and Graham bought the tickets, were they separate or together?

A. Each of them bought tickets; I remember that distinctly, but I cannot say whether they were together or separate.

Q. How near was it to the time that Graham bought the tickets, that Forbes bought them?

A. Nearly about the same time.

Q. Were they in your office at the same time?

A. To the best of my recollection, nearly at the same time.

Q. Did any third person come nearly at that time?

A. Yes.

Q. Did that third person buy any tickets?

A. He did.

Q. Was he a person whom you remember?

A. Yes.

Q. Did that third person purchase any tickets, and at what time?

A. Nearly at the same time.

- Q. What sort of tickets did they purchase ?
- A. These persons bought pit tickets.
- Q. Do you mean the three ?
- A. Yes.
- Q. Can you say how many tickets at the least the third person bought ?
- A. To the best of my recollection, each of these three persons bought six.
- Q. Then your recollection is, that each of these persons bought six tickets ?
- A. Yes.
- Q. Did you see any of these persons again that day, or in the evening, in your office ?
- A. I think I did, but cannot be positive; the place was full.
- Q. How many persons does a pit ticket admit into the upper gallery ?
- A. Three.
- Q. Do you know any of those three persons ?
- A. I do. (Identifies Forbes and Graham.)
- Q. Is the third person there ?
- A. No he is not.

Cross-examined by MR. JOHNSON.

- Q. Is it not usual when a crowd is expected at the Theatre, for people to purchase tickets, in order that they may not be delayed by paying at the door ?
- A. It is quite usual.
- Q. There were crowds about you in your office, principally engaged in purchasing tickets ?
- A. Taking places and purchasing tickets.
- Q. I believe you know enough of the Theatre to say, whether it is not usual for members of a family to buy tickets for the purpose of admitting each individual ?
- A. It is Sir, very usual

**Q.** Then it is not an unusual thing for one person to buy several tickets?

**A.** Not by any means.

**Q.** And I believe I may say that it is not unusual for one person to purchase tickets to the amount of half a dozen?

**A.** It is not Sir, I have often sold more.

**Q.** Can you take on you positively to say, that each of the individuals purchased at least six tickets—or is it only from recollection, that that is about the number?

**A.** From recollection—there was a great crowd, and I cannot be positive.

**Q.** Then you cannot say positively that the number was not less?

**A.** Not positively.

**Q.** Do you recollect Graham having at the time, got an order for his sister?

**A.** I remember giving him a docket for places, for his sister as he said.

**Q.** (By the Court). What Graham?

**A.** William Graham.

**Q.** Did he get more than a single ticket?

**A.** I don't remember that he bought any box tickets at the time.

**Q.** Did he buy more than one pit ticket?

**A.** He did positively; how much beyond I cannot say, but not less than six.

**Q.** Were you in the body of the house that night?

**A.** I was Sir, in all parts of the house.

By MR. TORRENS.

**Q.** Are the Court and Jury to understand that Graham purchased any tickets besides those he purchased for his family?

**A.** Yes.

Q. And you are certain that the number he purchased was not less than six ?

A. I am Sir.

GEORGE ATKINSON examined by the ATTORNEY  
GENERAL.

Q. Do you hold any public situation ?

A. No Sir, I do not.

Q. What is your Brother's name ?

A. John.

Q. Does he hold any situation ?

A. He does.

Q. What situation ?

A. In the Custom House, clerk of the deliveries.

Q. Do you recollect the night of the disturbance at the Theatre ?

A. I do, Sir.

Q. Were you there ?

A. I was, Sir.

Q. Do you know of any plan having been formed for a disturbancc at the Theatre ?

A. I do, Sir.

Q. By whom ?

A. It was planned in the Lodge to which I belong.

Q. What Lodge do you belong to ?

A. No. 1612.

Q. What Lodge does Forbes belong to ?

A. No. 1660, I believe.

Q. What Lodge does William Graham belong to ?

A. To No. 1660.

Q. What Lodge does George Graham belong to ?

A. I don't know what Lodge he belongs to.

Q. Do you know whether he belongs to any Lodge ?

A. I cannot say positively.

Q. What Lodge does Henry Handwich belong to?

A. 780.

Q. What Lodge does Matthew Handwich belong to?

A. I do not know.

Q. What Lodge does William Brownlow belong to?

A. No. 1612.

Q. Do you know any thing particular with regard to George Graham from which you can say whether he belongs to any Lodge or not?

A. He assembled with us in Ship-street.

Q. When was it you assembled in Ship-street?

A. On the evening of the night the riot took place at the Theatre.

Q. Do you mean the Saturday evening?

A. Yes.

Q. Had you any assembly before the Saturday evening?

A. We had.

Q. Where?

A. In Werburgh-street.

Q. When?

A. On the Friday evening before.

Q. At whose house there?

A. At Peter Daly's house.

Q. Were you assembled there as a Lodge?

A. We were.

Q. What Lodges were assembled there on Friday evening?

A. No. 1612 met there that evening.

Q. Did you meet as an Orange Lodge, or a Purple Lodge?

A. We met as a Purple Lodge.

Q. Explain what you mean by a Purple Lodge?

A. It is an Order higher than the Orange,—the next higher Order.

Q. Is there any time necessary to get admission to that Order?

A. There is.

Q. How long?

A. The time specified is Eight months.

Q. How many persons were there assembled at that meeting?

A. About twenty people.

Q. Members of the Lodge?

A. Yes, and some visitors.

Q. Were any of the Traversers there?

A. Forbes was there.

Q. Does he hold any situation in it?

A. No, he does not belong to it.

Q. Be so good as to state what passed there on that Friday evening?

A. Robert Fletcher is the master of it, and he stood up and proposed that we should enter into a subscription to defray the expenses of some men whom we were to send to the Theatre, as they could not afford to pay for themselves.

Q. For what purpose were these men to go to the Theatre?

A. The purpose he mentioned was, that they should hiss and groan his Excellency, and also the Lord Mayor.

Q. What was the object of hissing and groaning his Excellency?

A. They did not like him, I think.

Q. Were they to effect any purpose?

A. They were to try if possible to make him leave the Theatre.

Q. Did any of the persons mention what was to be the object of his leaving the Theatre?

A. It was understood—(this mode of answering objected to.)



Q. What do you mean by understood ?

A. It was understood amongst us all, what was the purpose we were to send the men for. (Mr. Johnson objected, that the witness should state what was said.)

Q. Had you grounds for knowing the objects, and what were they ?

A. I heard from persons there, that there had been a prior meeting.

Mr. Hamilton objected, that though the acts of one conspirator may be given in evidence against another who is proved to be embarked in the same design, so far as relates to the objects of the conspiracy, yet a narration of a preceding fact by one is not admissible against another.

Mr. Justice BURTON. Forbes was present ; it is therefore evidence against him.

Q. What was said as to the former meeting ?

A. I was not at it, but on Friday evening they mentioned it.

Q. What did they say ?

A. They said there had been a former meeting at the Shakespeare tavern.

Q. What did they say had passed there ?

A. I cannot recollect exactly.

Q. The substance ?

A. They said it had been there mentioned, that if they could get his Excellency to leave the Theatre, it would stamp on the minds of the ministry on the other side of water the idea of his being unpopular in this country.

Q. You said there was a conversation as to a subscription to send persons to the Theatre—to what part of the house ?

A. To the upper gallery.

Q. Why to the upper gallery ?

A. Because it was conceived that the members of 1612, as appointed, would be a sufficient number themselves for the pit.

Q. What do you mean by as appointed—was any thing appointed in the lodge 1612 ?

A. Yes.

Q. When ?

A. The same evening.

Q. By the same party ?

A. Yes.

Q. What was it ?

A. The master appointed, that the members should be as early as possible at the pit door, and get in and occupy places as near as possible to his Excellency's box, which was on the left hand side.

Q. For what purpose were they to get near him ?

A. For the same purpose as the men were sent to the upper gallery.

Q. Did the members of the lodge assemble and get into the pit ?

A. I believe they did—(objected to).

Q. Did you see them ?

A. No.

Q. Did you hear any of them say any thing about it ?

A. Yes ; Brownlow said he was there.

Q. Did he say any thing further ?

A. He said that numbers were there, but not all in the one spot appointed.

Q. Then part of the arrangement was, that the members of 1612 should go to the pit door, and get to the places nearest to the Lord Lieutenant's box, and the other part was that the subscription should be applied to buy tickets to send men to the upper gallery ?

A. Yes.

Q. Was it determined what description of persons should be sent to the upper gallery?

A. Those members of the lower lodges, who could not afford to buy tickets for themselves.

Q. Was either of the Handwiches present on Friday night?

A. No, Sir.

Q. Was any money produced that night?

A. There was money produced and subscribed.

Q. What money?

A. A subscription was raised amongst them all.

Q. Was any money sent there by any other person?

A. Yes, £2 was brought by John Atkinson.

Q. Was that to be applied to the same purpose?

A. Yes.

Q. Who got the money?

A. John Atkinson. It was all handed to him.

Q. How to be applied?

A. To the purchase of tickets.

Q. For the Pit?

A. No Sir, for the Upper Gallery.

Q. Had you any conversation with Forbes in the course of the next day?

A. Not the next day.

Q. That night?

A. I had.

Q. Did you go to purchase tickets?

A. No.

Q. Your Brother did?

A. Yes.

Q. You have mentioned the description of persons to be sent to the Upper Gallery—did you or they take any steps to get these persons to attend?

A. Yes.

**Q.** What steps?

**A.** I went with John Atkinson to the place where Handwich works.

**Q.** Whom did you see?

**A.** One of the Handwiches.

**Q.** Which of them?

**A.** Matthew.

**Q.** Did you communicate any thing to him as to the purpose for which he was wanted?

**A.** I did not.

**Q.** Did your Brother in your presence?

**A.** Yes.

**Q.** Mention what?

**A.** He told him to send Henry Handwich to Ship-street that evening, and desire him to bring as many as he could with him.

**Q.** Of whom?

**A.** Of the poorer classes of Orangemen who could not afford to pay for themselves.

**Q.** Where in Ship-street?

**A.** To a public house, the sign of the Black Bull.

**Q.** Do the lower order of Orangemen meet there?

**A.** They do.

**Q.** What did Matthew Handwich say?

**A.** I cannot recollect.

**Q.** Did he assent, or not?

**A.** He assented.

**Q.** Did you afterwards on that day, see any of those men in Ship-street?

**A.** About four or five o'clock that evening I did.

**Q.** Who went with you, or whom did you meet?

**A.** Forbes, M'Culloch, John Atkinson, Henry Handwich, George Graham.

**Q.** Any one else?

**A.** There were several others, but I cannot recollect who.

Q. What passed there ?

A. There was one pit ticket given to every three.

Q. For what purpose ?

A. To go to the upper gallery.

Q. About how many persons went from Ship-street to the upper gallery with the tickets ?

A. I cannot say the number exactly.

Q. How many pit tickets were given ?

A. I think there were from about 20 to 30, from the number in Handwich's hands.

Q. About how many of the lower order assembled at Ship-street ?

A. They were coming and going.

Q. Were there thirty ?

A. Thereabouts.

Q. Did the whole number go from Ship-street to the gallery ?

A. All that were at Ship-street went.

Q. Were you in the house yourself ?

A. Yes.

Q. Were there more of the party there than went from Ship-street ?

A. I cannot say, there were full as many.

Q. Had they any kind of weapons ?

A. They had sticks.

Q. Did any conversation pass as to what they were to do at the Theatre ?

A. It was stated, that after God save the King, they should insist on the musicians playing the Boyne Water.

Q. What further ?

A. That if they would not play it, they were to let nothing go on for the remainder of the evening till it was played.

Q. Was there any direction or agreement as to what

was to be done, or how they were to force the Boyne Water to be played?

A. By making as much noise as they could.

Q. You have mentioned there was a conversation as to their object—did it produce any impression on your mind?

(Mr. Blackburne objected to this question.)

Q. Did you in consequence of that conversation do any thing?

A. I certainly did.

Q. What did you do?

A. I was afraid that the heat of passion would carry them too far, and to acts of violence.

(Objected that this was not evidence, and the objection was allowed.)

Q. What did you do?

A. I went to inform his Excellency of the intention.

Q. When?

A. On Saturday morning.

The Attorney General submitted that the witness having taken this step after the conversation deposed to, it was competent to him to ask the witness his inducement for so doing.

Court.—At present we do not conceive it is evidence. What was passing in his mind may perhaps be asked on the other side.

Q. Did you give information to the Lord Lieutenant?

A. I did not.

Q. How came it that you did not?

A. The Sentinel stopped me as I was going up to the Lodge.

Q. Did you upon that give up your intention?

A. I stopped there some time.

Q. Had you any opportunity of making a communication?

A. I had not.

Q. Did you give up your intention?

A. I did.

Q. (By a Juror)—Did you press the Sentinel to admit you?

A. No.

Q. Were any arrangements made at the meeting, to enable the parties to know each other at the Theatre?

A. There were.

Q. What were they?

A. Two or three words were mentioned by which they were to know each other.

Q. What words?

A. "Look out."

Q. Were these as watch words?

A. Yes, Sir.

Q. Had they any thing to drink?

A. They had.

Q. What?

A. Spirits and porter.

Q. Did they drink all the spirits?

A. No, they left some.

Q. What did they do with that?

A. They brought it with them to the upper gallery.

Q. In what?

A. In a viol bottle.

Q. What sort of bottle do you mean?

A. A bottle made for a quart bottle.

Q. Did Henry Handwich say any thing as he was going away?

A. He did.

Q. What was his expression?

A. He said, as they were going off, "Boys, be wicked."

**Q.** Did you see that party afterwards, or any of them, at the upper gallery ?

**A.** I did, Sir.

**Q.** Where ?

**A.** They were stationed at the right hand side of the gallery.

**Q.** Do you mean the same side as that of the Lord Lieutenant's box, or the other side ?

**A.** The opposite side.

**Q.** Did they continue there ?

**A.** We left them, on their going in first.

**Q.** Whom do you mean by " We ? "

**A.** Forbes, M'Culloch, my brother, and myself.

**Q.** How long had you been in the gallery before you left them ?

**A.** I suppose about twenty minutes.

**Q.** You continued in the Theatre the rest of the evening ?

**A.** I did.

**Q.** Did the party remain at the right side of the gallery ?

**A.** I do not know.

**Q.** Did you see them in the same part of the gallery afterwards ?

**A.** I saw them towards the centre.

**Q.** Did you see Forbes in the house that night ?

**A.** I did, Sir.

**Q.** In what part of it ?

**A.** In the upper tier of boxes.

**Q.** Had he any thing in his hand ?

**A.** He had.

**Q.** What ?

**A.** He had a small whistle in his hand.

**Q.** Did he make use of it ?

**A.** He whistled with it.



Q. Where was he—was he near or far from the upper gallery ?

A. Near.

Q. How near ?

A. Within about half a yard of it.

Q. Could he communicate with the persons in the upper gallery ?

A. He could.

Q. Did he so communicate ?

A. He was speaking to some of them through the railing.

Q. Did you see any riot in the Theatre ?

A. I saw a riot.

Q. Was it before or after, or during it, that you saw Forbes ?

A. After the first part of the riot—(objected that the witness had no right to use the term riot, but ought to state the facts.)

Q. Did you see any thing ?

A. I saw small hand bills giving about.

Q. Were they printed ?

A. They were.

Q. Were they in different parts of the house ?

A. They were.

Q. Had you seen any of them before ?

A. Yes ; at Ship-street house.

Q. Would you know the kind, (shewing one)—were they same as this ?

A. Yes.

(This was “ Ex-Governor of the Bantams shall change his Morning—ton—e.”)

Q. Did you see them going through the house ?

A. Yes.

Q. Did you see any one dispersing them ?

A. Yes, Mr. M<sup>c</sup>Culloch.

- Q. From what part of the house ?
- A. The part immediately over his Excellency's box.
- Q. Do you know where they fell ?
- A. One fell on the cushion opposite his Excellency.
- Q. Do you know any thing of the printing of these hand bills, or by whom they were prepared ?
- A. I saw the MSS. of them with M'Culloch.
- Q. Who took them to be printed ?
- A. I was told—(objected to).
- Q. Look at that hand bill (" No Popery")—did you see such as that ?
- A. I did.
- Q. Did you see a person named Kelly in the house that night ?
- A. I did not.
- Q. Did you see him after the play, any where in Dublin ?
- A. Yes, at a tavern in Essex-street.
- Q. Kept by whom ?
- A. By a Mrs. Flanagan.
- Q. Mention any other circumstance you saw at the Theatre, besides the hand bills ?
- A. I saw Forbes throw some of the hand bills on the stage.
- Q. Did you hear noise of any kind ?
- A. I did hear whistling.
- Q. Did you hear any shouts, or any remarkable expressions ?
- A. I did.
- Q. Mention the substance of them ?
- A. One said " a groan for Popish Wellesley"—some one else said " bald pated Wellesley, you may go home out of that."
- Q. Was the performance interrupted ?
- A. Several times,

Q. Was it before or after this, that you saw Forbes communicating with the gallery?

A. After.

Q. Do you know of a bottle having been thrown?

A. No, Sir.

Q. You saw Kelly at the tavern in Essex-street?

A. Yes.

Q. Did you see the traversers, or any of them there?

A. I saw Forbes.

Q. Mention any other whom you recollect, of the same party?

A. William Graham was there; and Kelly for a short time; and several others. There were two persons of the name of Smith.

Q. Was George Graham there?

A. No.

Q. Matthew Handwich?

A. No.

Q. Henry Handwich?

A. No.

Q. William Brownlow?

A. He was.

Q. Was there a good deal of conversation?

A. There was.

Q. Did Forbes say any thing as to what had passed at the Theatre?

A. He did.

Q. Mention what?

A. He made use of the expression "Devil mend him," when we were speaking of the bottle having been thrown.

Q. What did he say as to the bottle being thrown?

A. I cannot recollect his words.

Q. What was the substance?

A. He said he did not care for being transported, pro-

vided he could raise an Orange Lodge wherever he was transported to.

Q. Did he say any thing as to what had occurred at the Theatre?

A. I cannot call to mind.

Q. Did he say any thing more as to himself? State the conversation.

A. There was no particular conversation—it was a running conversation amongst them all.

Q. What was it?

A. We were speaking about Handwich's having been taken up; and also as to which of us would be bail for Handwich.

Q. Did Forbes speak of himself or of his own conduct?

A. He asked some of them who said they were in the pit, why they were not more active.

Q. Of whom did he ask that?

A. Of Brownlow.

Q. Any body else?

A. I don't recollect.

Q. What did Brownlow say?

A. He said that in the pit he did as much as if he had been in any other part of the house.

Q. Did you hear Brownlow at any other time talk of what he had done in the house that night?

A. Not that I recollect.

Q. Was there any conversation, when the subject of bailing Handwich was started, as to what he had been charged with?

A. They said he was charged with throwing the bottle.

Q. Did they say any thing as to the bottle?

A. They expressed themselves in terms, that they were in fact sorry—

Mr. Hamilton objected to evidence of this conversation,

as against Handwich, as he was not present, but it was ruled to be admissible as against Forbes.

Q. Sorry for what?

A. That the bottle did not take effect.

Q. Brownlow and Forbes were then present?

A. Yes, and several others.

Q. Was M<sup>c</sup>Culloch?

A. Yes.

Q. Was William Heron?

A. No.

Q. Was Kelly?

A. Not at that time.

Q. Did Forbes say any thing as to his intention in that respect?

A. I cannot recollect any thing particular.

Q. Do you know how the printing of the handbills was paid for?

A. I do not know.

Q. Do you know the Traversers?

A. Yes. (The witness identified them all.)

Cross-Examined by Mr. BLACKBURNE,  
on behalf of James Forbes.

Q. What situation does your brother John hold?

A. He is a Clerk in the Custom House.

Q. Do you fill any office under Government?

A. I do not.

Q. When did you give this information to the Government?

A. I never gave any information.

Q. Not to any body?

A. Yes, I might to my brother.

Q. He knew it as well as you did?

A. I dare say he did.

Q. Then you told him, though he knew?

A. Not particularly.

- Q. What ?
- A. We conversed of it.
- Q. When did the Government know you could tell ?
- A. They never knew.
- Q. Were you ever examined before, on oath or otherwise ?
- A. No.
- Q. This is the first day you made any public disclosure of it ?
- A. Yes.
- Q. What was your inducement to come forward ?
- A. I was compelled.
- Q. Did you make any compact for keeping your brother in his place ?
- A. No.
- Q. Have you had any communication with any person on that subject ?
- A. It was impossible for me to make any agreement with him to keep him in his place.
- Q. What did you say on the subject ?
- A. We determined to tell the whole truth.
- Q. Is he here ?
- A. He ought to be here.
- Q. Does your father hold any public situation ?
- A. He is chief clerk in the 4th Office of Police.
- Q. I think you went to the Park on Saturday morning, the day after you heard that a noise was to be made ?
- A. Yes.
- Q. The sentinel turned you away ?
- A. Yes.
- Q. But you went to the Theatre, notwithstanding ?
- A. Yes.
- Q. Do you write ?
- A. Yes.

Q. Did it not occur to you that there was some other mode of communication, than personally ?

A. It might, but I did not take any other mode.

Q. You stopped when the sentinel did not allow you to pass ?

A. When I was not let in, that put an entire end to it.

Q. Would not your Father have been a good person to tell ? Did that occur to you ?

A. No.

Q. Or a Magistrate ?

A. No, that never occurred to me.

Q. Were you offended with the sentinel ?

A. Certainly not.

Q. It was sufficient to deter you from a farther attempt ?

A. It was.

Q. You thought the whole thing wrong ?

A. I was cautioned that it was wrong and unsafe.

Q. Why then did you go to the Theatre that night ?

A. I can give no other reason for it, than that I did it.

Q. At what hour of the day did you go to the Park ?

A. About twelve o'clock.

Q. You returned, I suppose, in time to go to a Police Office ?

A. I dare say I did ;—it never occurred to me to do so.

Q. Had you ever any conversation with your Father, as to your evidence here to day ?

A. Not any particular conversation.

Q. Was it proposed at any meeting, that any deadly weapon should be brought to the Theatre ?

A. No. I mean no fire arms.

Q. The bottle was brought by mere accident ?

A. Just so.

Q. You called it a viol ?

A. I did, but it was a bottle that held nearly a quart.

Q. You said the object of the party was to create a great noise in the Theatre?

A. Yes.

Q. When the final instructions were given, were they not merely to call for a particular tune after God save the King?

A. That was what I heard last.

Q. Did you ever hear directions given to any of the party to assault or insult any body?

A. I never heard any directions to that effect.

Q. Although you heard these rumours, you went to the upper gallery, and were active in stationing the men?

A. I was.

Q. You induced them to go?

A. I did not induce them.

Q. Did you not give them money? Were you not there?

A. I was.

Q. Were you not assisting in giving them their instructions? Were you not with your brother?

A. Yes.

Q. Did you suggest the impropriety of the thing to your brother, or endeavour to prevent him or any other person from going?

A. Not that I recollect.

Q. Let us go back to the night of Friday—was that a meeting of the Lodge to which you belonged?

A. It was.

Q. At what time in the evening, did what you describe take place? Was it before or after the meeting of the Lodge, or at the meeting?—I mean the proposition of Fletcher?

A. The Lodge had closed first.

Q. Was not the proposition made after supper?

A. I think it was.



- Q.** Had Forbes been at supper ?
- A.** He had.
- Q.** You had all been drinking ?
- A.** We had.
- Q.** How did it happen, that Forbes was there ?
- A.** It is quite usual for the Members of different Lodges to visit at each other's Lodge.
- Q.** Was he a visiter ?
- A.** He was.
- Q.** Had he been at the Lodge before it was closed ?
- A.** I am not quite sure.
- Q.** He was there after supper ?
- A.** He was.
- Q.** What was the amount of the collection in Werburgh-street ?
- A.** There were two.
- Q.** I mean after supper ?
- A.** About a pound.
- Q.** Who collected this ?
- A.** It was collected round the table.
- Q.** In what ?
- A.** I do not recollect.
- Q.** Recollect particularly, what Fletcher said on the proposition being made ? Did he mention the name of the Lord Lieutenant, or confine what he said to the Lord Mayor ?
- A.** I recollect perfectly well, that he did make use of the Lord Lieutenant's name.
- Q.** At what time, and who were present ?
- A.** All that supped.
- Q.** Was Forbes present ?
- A.** He was.
- Q.** Are you positive of that ?
- A.** Yes.

**Q.** Was there not a good deal of conversation about the Lord Mayor?

**A.** Yes.

**Q.** The principal part?

**A.** Yes.

**Q.** Where did you first see Forbes with the whistle?

**A.** In Ship-street.

**Q.** Had any of the rest whistles—had you one?

**A.** I had.

**Q.** At what time of Saturday did you buy the whistle—was it after you had been at the Park?

**A.** I did not buy it at all, several were handed about in Ship-street house.

**Q.** Was it not your brother that handed them about?

**A.** I cannot recollect.

**Q.** Was it not he that bought them?

**A.** I cannot recollect.

**Q.** Are you sure he did not distribute them?

**A.** I am not, because I do not recollect who did.

**Q.** At what hour of the night did you go to Flanagan's?

**A.** After the play was over.

**Q.** Several supped in the public room there?

**A.** Yes.

**Q.** Forbes had been taken out of the Theatre during the representation?

**A.** He had.

**Q.** Before the farce?

**A.** Yes.

**Q.** Had he not come from a Watch-house to the tavern in Essex-street?

**A.** I cannot say.

**Q.** Were you or he there first?

**A.** I.

**Q.** Had not Forbes the appearance of having drunk a good deal?

**A.** He was very warm.

Q. Was he not tipsy ?

A. A little.

Q. Did he not drink a great deal there ?

A. Yes.

Q. You have heard he had been at the Watch-house ?

A. Yes.

Q. Did he not drink before he went to the Theatre ?

A. He did.

Q. Do you recollect his giving any toasts after supper ?

A. Yes.

Q. Recollect some of them ?

A. I cannot give them in their order. He gave the Health of the King, the Glorious Memory, Protestant Ascendancy, and some other loyal toasts.

Q. How long did you remain there ?

A. As well as I can recollect, till one, or half-past one.

Q. Were there strangers in the room ?

A. There were.

Q. Did you ever offer to Forbes, or to any one on his behalf, to come forward as a witness for him ?

A. He subpoenaed me as a witness for the trial at Green-street.

Q. Did you ever say you could give evidence in Forbes's favour ?

A. I really don't recollect.

Q. Did you tell any one what you could say about him ?

A. I sent a person to ask him to excuse me from coming forward as a witness for him.

Q. Did you say to him you would give material evidence for him if it did not injure your brother ?

A. Never.

Q. Or to any one on his behalf ?

A. Never.

Q. Did you ever before you went to the Theatre hear

of throwing a bottle, or was any intention announced to that effect?

A. No.

Q. Or any sort of missile or weapon?

A. I did not.

Q. Did you hear Forbes give directions to any body to throw any missile or weapon?

A. I did not.

Q. Did you not understand by "boys be wicked" that it was an encouragement to make a noise if the Boyne Water was not played?

A. The expression would not lead me to believe that.

Q. What did you understand by the expression at the time?

A. I had been cautioned that the affair would turn out to be one of an unsafe nature, and not to run too far with them, or mix too much with them, and therefore I formed the idea.

Q. Were you not aware from the beginning what was intended? did any body know better than you?

A. There was a meeting at the Shakespeare Tavern which I was not at.

Q. But you were at the subsequent meeting in Ship-street?

A. I was.

Q. You heard what took place between your brother and Handwich?

A. I did.

Q. At what time on Saturday were you at Handwich's?

A. In the morning, as I can recollect.

Q. Was it before you went to the Park?

A. I cannot recollect accurately, it is so long since.

Q. Was not Forbes nearly drunk when he used the words you have mentioned?

A. He was a little tipsey.

**Q.** Repeat positively the words you heard him say ?

**A.** He made use of several expressions.

**Q.** Repeat what he said ?

**A.** He said he did not care if even he was transported, so as he could form an Orange Lodge.

**Q.** Any thing else ?

**A.** Yes—as to Handwich's being put into the watch-house for throwing the bottle.

**Q.** That was in order that he should be bailed ?

**A.** Yes, Sir.

**Q.** Have you any employment now ?

**A.** Not at present.

**Q.** What were you ?

**A.** About two years ago I had a situation in the Custom House, but it was reduced.

Re-Examined by the ATTORNEY GENERAL.

**Q.** Were you ever sent for by any person to make a communication upon this subject ?

**A.** I was.

**Q.** Did you in consequence make any communication to him ?

**A.** I did.

**Q.** Was there any promise or threat held out to you ?

**A.** No.

Cross-Examined by Mr. DRISCOLL on behalf of Matthew Handwich and George Graham.

**Q.** Matthew Handwich was not at Werburgh-street on Sunday night ?

**A.** No.

**Q.** Nor George Graham ?

**A.** No, not at our Lodge.

**Q.** Were they at all ?

**A.** I did not see them.

**Q.** Did you see George Graham from the beginning to the end at Ship-street, do any mischievous act ?

**A.** I did not.

**Q.** Did you see Matthew Handwich do any thing ?

**A.** I did not.

**Q.** Did you from the beginning to the end of the riot see Henry Handwich do any thing mischievous ?

**A.** No.

**Cross-Examined by Mr. SCRIVEN, for W. Brownlow.**

**Q.** Wm. Brownlow was at Flanagan's ?

**A.** Yes.

**Q.** Was it not a room where several different tables are laid for different persons ?

**A.** It is.

**Q.** A tap-room ?

**A.** Yes.

**Q.** Did not William Brownlow sit at a table by himself ?

**A.** He did, Sir.

**Q.** Did he join in drinking with the others ?

**A.** He did not.

**Q.** Were there any others there besides those whom you have mentioned ?

**A.** Several others.

**Q.** Were there any others you knew ?

**A.** There were.

**Q.** Do you know a person of the name of Smith ?

**A.** I do.

**Q.** Was he there ?

**A.** The two Smiths were there.

**Q.** Did Wm. Brownlow say or do any thing that night at Flanagan's ?

**A.** He came over to the table at which we were sitting and spoke to us.

**Q.** At what time?

**A.** We had been about half an hour there when he came.

**Q.** During that time did he not sit by himself?

**A.** Yes.

**Q.** Do you know a Mr. Farley?

**A.** I do not.

**Q.** Have you heard of him?

**A.** Yes.

**Q.** Did you not hear that he intended to give evidence against yourself?

**A.** Never.

**Q.** Did Brownlow use any expression after he had come to the table?

**A.** He did.

**Q.** What?

**A.** He was asked what part of the house he was in, he said he was in the pit.

**Q.** Did not the Smiths sit at the same table with you?

**A.** They did not.

**Q.** Near you?

**A.** They did.

**Q.** Then they also probably heard what passed?

**A.** I cannot answer to that.

**Q.** When did you give information to any person relative to those matters?

**A.** I really don't recollect.

**Q.** How long after the Saturday night?

**A.** A long time after.

**Q.** Was it since the last Commission?

**A.** It was.

**Q.** How long after?

**A.** I cannot say; some days.

**Q.** Brownlow was not at the prior meetings of the Lodges?

**A.** Certainly not.

**Q.** (By the Chief Justice). You did not see Brownlow until you saw him in Essex-street ?

**A.** No, my Lord.

Cross-Examined by Mr. NORTH, on the part of  
William Graham.

**Q.** Was Wm. Graham at the Lodge in Werburgh-st. on the night of Friday ?

**A.** No.

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## SECOND DAY.

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**JOHN ATKINSON Examined by the SOLICITOR GENERAL.**

**Q.** Do you remember the night the Lord Lieutenant went to the Theatre Royal ?

**A.** I do, Sir.

**Q.** Was his Excellency's intention known to you any time before ?

**A.** It was, Sir.

**Q.** Do you remember meeting any persons before his going to the Theatre, when his going there was the subject of conversation ?

**A.** Yes Sir, I do.



**Q.** Had you more than one meeting at which his intention was the subject of conversation ?

**A.** I heard it mentioned more than once.

**Q.** Had you more than one meeting ?

**A.** We had.

**Q.** About what time did the first of these meetings take place ?

**A.** A few days previous ; I cannot immediately mention the day.

**Q.** Do you remember being at the Shakespeare Tavern, supping any night previous to his Excellency's going to the Theatre ?

**A.** Yes Sir, I was.

**Q.** What night was that ?

**A.** Two or three nights previous.

**Q.** You cannot say whether it was two or three ?

**A.** No, I forget.

**Q.** Who was present at that meeting ?

**A.** I was in it a good part of the night.

**Q.** Who else ?

**A.** Mr. Stoker, Mr. Bentley, and Mr. Heron.

**Q.** What did the conversation turn upon ?

**Mr. BLACKBURNE.**—None of the Traversers are connected with this.

**The CHIEF JUSTICE.**—I think you are not at present entitled to ask that question.

**SOLICITOR GENERAL.**—The last witness said there had been a previous meeting at the Shakespeare Tavern, at which he was not present, and he said that money had been brought to the Purple Lodge from the meeting at the Shakespeare Tavern.

Mr. DRISCOLL.—They are connected in a very imperfect way. The last witness said he had heard of a previous meeting at the Shakespeare Tavern, at which Forbes was not present. Until the conspiracy is established by inference or proof, nothing that takes place in the absence of the Traversers can be evidence against them.

Mr. JOHNSTON.—It would be carrying the rules of evidence farther than they have ever been carried, to rule, that if one man come to another and tell him that there had been a meeting at a particular place, that therefore what took place at that meeting is evidence.

Mr. NORTH.—I take the rule to be one of good sense, that where you shew a number of persons to be engaged in the pursuit of a common object, their acts are evidence against each other, or a declaration of their sentiments; but it never can extend to this, that a statement made by one, that a fact took place, can be evidence of that fact. But this case goes farther; it is said not only that declarations are evidence of the fact of the meeting, but that every thing that took place at that meeting is evidence. See what that comes to; if because the meeting was mentioned in the presence of Forbes, every thing at that meeting is evidence, it follows, that if the Counsel for the Crown should prove that it was said at the Shakespeare Tavern, that there had been a previous meeting at some other tavern, every thing that passed at that previous meeting would be evidence, and so in infinitum. In the case of Hardy and Tooke, it was only said that acts and declarations in pursuance of the common object are evidence.

Mr. HAMILTON.—The evidence in Hardy's trial was the production of a letter, written by a conspirator, stat-

ing what had passed at a meeting of a corresponding society, namely, that a song had been sung. The relevancy of the song arose from this, that among the plans resorted to to inflame the public, songs were used. A distinction was taken, between an act or declaration in furtherance of the conspiracy, and a narration of a particular fact.

The CHIEF JUSTICE.—The Court are unanimously of opinion, that the evidence should be admitted, and the objection overruled. There is evidence here to go to the Jury, that the persons assembled in Werburgh-street, were engaged in the same object as those at the Shakespeare Tavern; and that alone, if the Jury should believe there was a community of object, would make what passed at the one evidence against those present at the other; and communications of what passed would be equally evidence against them. Independently of that, there is the evidence of George Atkinson, that the thing communicated as having passed at the Shakespeare Tavern, was subsequently acted on by the persons in Werburgh-street. There is evidence to go to the Jury that these two meetings are several parts of one conspiracy. The only foundation for the opposite argument is that all the conspirators are not proved to have been at both meetings.

Q. Was any thing concerted to be done on the Lord Lieutenant's going to the Theatre?

A. Yes Sir; it was mentioned that they ought to send some people there on the night of his going to the Theatre.

Q. For what purpose, as mentioned?

A. I cannot be very particular, in satisfying you as far as you wish; but the subject, as far as I remember—(it was objected that the witness should state facts. The Chief Jus-

tice apprized the witness that he was to state, not his own impression, but the words, that is, the substance of what was said.)

**Q.** Mention the substance of what was said as to sending the men ?

**A.** It was mentioned by one or two, to raise a fund to buy tickets to send them.

**Q.** For what purpose was it said they were to be sent ?

**A.** It was on account of his Excellency's going there, I suppose.

**The CHIEF JUSTICE.** You are not to state your supposition, but the substance of what was said.

**A.** It was for the purpose of rendering the Lord Lieutenant unpopular. Words to that effect were mentioned.

**Q.** Was any thing mentioned as to what would be the consequence of his unpopularity ?

**A.** Yes, that it might cause his removal.

**Q.** Do you mean that the object was, to send persons to the Theatre to make the Lord Lieutenant unpopular, in order thereby to effect his removal ?

**A.** Yes.

**Q.** What immediate consequence at the Theatre was mentioned ?

**A.** It was mentioned that it might cause him to leave the Theatre.

**Q.** Am I right in saying that the ultimate object was to make him leave the country ?

**A.** Perfectly so.

**Q.** Did you receive any money from any of the persons engaged in this plan ?

**A.** I did.

**Q.** For what purpose ?

**A.** It was not mentioned at the time I received it.

**Q.** Was it arranged at the Shakespeare, that tickets should be bought ?

**A.** Yes.

**Q.** Did you get the money from any of the persons at that meeting ?

**A.** It was directed in a blank paper to me. It was mentioned the night before that it should be sent to me.

**Q.** Would you know the hand writing of the cover ?

**A.** I could not be positive.

**Q.** From any thing that passed subsequently, do you know who sent you that money ?

**A.** I know the person who said he would send it.

**Q.** Who ?

**A.** Mr. Heron.

**Q.** Who is Mr. Heron ?

**A.** He is a gentleman holding a public employment, as I understand.

**Q.** Do you know what ?

**A.** I hear he is in the Post Office.

**Q.** Is he in any other situation ?

**A.** I hear he is in the Excise.

**Q.** Where were the persons who were to be treated, to be sent ?

**A.** To the upper gallery.

(Mr. Driscoll objected to this mode of asking the question : and the Court said that the witness ought in strictness to be asked, what was agreed upon.)

**Q.** Was any thing agreed on as to where those persons were to be sent ?

**A.** Yes, to the upper gallery.

**Q.** Why to the upper gallery, and not to any other part ?

**A.** It was not considered necessary to send them elsewhere.

**THE CHIEF JUSTICE.** The question should be prefaced by, "what was said?"

**MR. JOHNSTON.** We object to this mode of examination, because we know the kind of witnesses we have to deal with.

**ATTORNEY GENERAL.** Observations on the witnesses are totally unjustifiable.

**THE CHIEF JUSTICE (to Mr. JOHNSTON.)** Your saying in the presence of the Jury, that you know the kind of witnesses you have to deal with, was an observation that ought not to have been made. When you are addressing the Jury, you shall have full liberty to make observations, but not during the direct examination of the witnesses.

**Q.** When I ask you the question, recollect it refers to what was said at the meeting. Was any reason there assigned, or talked of, why these men should be sent to the upper gallery, and not to the pit or boxes?

**A.** There was a reason assigned, that there would be plenty to go to the rest of the house, who could treat themselves.

**Q.** Do you remember seeing any of those persons again on a subsequent occasion?

**A.** I did, Sir.

**Q.** On what occasion?

**A.** I saw them on the evening of the morning we left the Shakespeare.

**Q.** You staid late at the Shakespeare?

**A.** Yes.

**Q.** Where did you see any of them?

**A.** In Werburgh-street, Sir.

**Q.** At what house in Werburgh-street?

**A.** At Daly's.

**Q.** Whom did you see at that time?

**A.** Mr. Stoker and Mr. Heron.

**Q.** Did you there see any of the Traversers now in Court?

**A.** Handwich was there.

**Q.** Which of them ?

**A.** I believe his name is Henry.

**Q.** Do you know his person ?

**A.** Oh, yes, Sir.

**Q.** Do you see him in Court ?

**A.** I do Sir, (pointing him out.)

**Q.** Who else were there ?

**A.** Mr. Fletcher was there.

**Q.** Any other ?

**A.** Mr. Stoker's brother.

**Q.** Were there many ?

**A.** I don't think there were many more—I don't recollect any more.

**Q.** Was there any conversation there as to the Theatre ?

**A.** There was.

**Q.** What was the nature of it ?

**A.** There was a good deal said by Mr. Stoker and Mr. Heron, as to the mode in which these individuals were to go to the upper gallery, and conduct themselves.

**Q.** Was any thing said as to where they were to be got ?

**A.** Handwich was asked to get some people to go.

**Q.** Did he say whether he would or not ?

**A.** He said he would, Sir.

**Q.** Did they arrange any thing, relative to how they were to conduct themselves at the Theatre ?

**A.** They mentioned that after God Save the King was played, they should call for the Boyne Water.

**Q.** What were they to do, upon that ?

**A.** They were to endeavour to get it played.

**Q.** If it was not played, what were they to do ?

**A.** To endeavour to prevent the performance from going on.

**Q.** Was any thing mentioned that night, relative to the Lord Lieutenant ?

**A.** It was mentioned there, that he might probably be compelled to withdraw from the Theatre.

**Q.** Do you remember having afterwards called any where, for the purpose of seeing Handwich ?

**A.** I do, Sir.

**Q.** Where ?

**A.** In Dorset-street, at Mr. Coulburne's, the Carpenter.

**Q.** Was that before the night of the play ?

**A.** Yes, the same morning we were at the Shakespeare.

**Q.** Was that before or after the meeting in Werburgh-street ?

**A.** Before.

**Q.** Did you see Henry Handwich there ?

**A.** No Sir, I did not.

**Q.** Did you see either of the Handwicks ?

**A.** I saw his brother.

**Q.** Did you say any thing to him ?

**A.** Merely that I wanted to see his brother.

**Q.** Is he here ?

**A.** No, Sir.

**Q.** Did you see Henry Handwich afterwards ?

**A.** Yes, that evening.

**Q.** Where ?

**A.** In Werburgh-street.

**Q.** Did you ask him any question as to this plan ?

**A.** I don't recollect. He received most of his instructions from Mr. Stoker and Mr. Heron.

**Q.** Did you ask him any question ?

**A.** I do not remember.

**Q.** What instructions did he get ?

**A.** Those I have already mentioned, as to the way the men he was to bring were to conduct themselves at the Theatre.



Q. Was any thing said as to the number ?

A. I don't remember.

Q. Can you say about what number he said he could bring ?

A. He mentioned that there could be sixty or seventy brought.

Q. Were there tickets purchased ?

A. There were.

Q. Was there any meeting the next evening ?

A. I saw some of them the next evening.

Q. (By a Juror.) Was that Thursday or Friday evening ?

A. Friday evening.

Q. What day of the week were you at Werburgh-st. ?

A. Twice, on Thursday and Friday evening.

Q. (By the Chief Justice). What hour was the meeting at the Shakespeare tavern ?

A. To the best of my knowledge, half past twelve at night; and we staid until past three.

Q. Where did you meet on Friday evening ?

A. At Daly's in Werburgh-street.

Q. How were you engaged at Daly's ?

A. The business that brought me there was to meet my Lodge.

Q. Whom did you see there at the Lodge ?

A. Mr. Heron for one, Mr. Stoker for another, M'Cullogh, Fletcher, and Forbes.

Q. Any others ?

A. Several others.

Q. Did Forbes belong to that Lodge ?

A. No.

Q. Did he come as a visiter ?

A. As a visiter, Sir.

Q. Did any thing pass there on the subject of the Theatre ?

A. There did.

Q. What ?

A. There was some money, subscribed for the purpose of purchasing tickets.

Q. From what quarter was the money subscribed ?

A. I believe all the individuals in the room subscribed.

Q. How much was subscribed there ?

A. One pound.

Q. Did you get other funds from any other quarter ?

A. There had been a pound handed to me that evening before, out of the Lodge.

Q. Who handed it to you ?

A. I am not sure whether it was Mr. Stoker or Mr. Heron ; it was one or other.

Q. How much had you in all ?

A. Four pounds.

Q. What was done with it ?

A. I handed the most part of it over for the purpose of purchasing tickets.

Q. Were the tickets purchased ?

A. There were tickets purchased.

Q. By whom ?

A. M'Culloch and Forbes went in for the purpose of purchasing ; I did not go in with them.

Q. Did they lay out the whole money in purchasing tickets ?

A. No, they gave me back some trifling change.

Q. Did you agree about any further meeting at that time ?

A. Yes, a meeting was mentioned to be held in Ship-street at the house of Mrs. Daly.

Q. At what time to be held ?

A. At five o'clock, to the best of my recollection.

Q. On Saturday ?

A. Yes.

Q. What was the object of that meeting ?

A. We were to meet there previous to our going to the Theatre.

Q. Did any Lodge meet at Mrs. Daly's ?

A. Yes, I have visited Lodges there once or twice.

Q. What description of Lodge met there—upper or lower ?

A. Rather lower.

Q. What were you to do previous to going to the Theatre ?

A. There was not much done ; some refreshment was got for the men.

Q. Do you mean drink ?

A. Yes.

Q. What Lodge did Henry Handwich belong to ?

A. I have heard, but I cannot be positive.

Q. Do you know of what are called Black Lodges ?

A, I have heard of them.

Q. What are Black Lodges ?

A. They are composed of various descriptions.

Q. Are they higher or lower ?

A. The Black order is considered higher.

Q. In what respect, as to the persons belonging to it ?

A. It is considered a step higher.

Q. A step in what ?

A. Rather a kind of promotion.

Q. Do you mean as to station in life ?

A. No, by no means.

Q: Do you mean in rank, or in sentiments ?

A. Not belonging to them, I cannot say unless by hearsay.

Q. What was done with the tickets ?

A. They were distributed that night.

Q. Did you see many of the persons to whom they were given ?

A. Several, as they came into the room where we were.

- Q. How many might you have seen?
- A. Not a great number.
- Q. Did you observe whether they had any thing with them?
- A. Some of them had sticks.
- Q. Of any particular description?
- A. Some with big heads on them.
- Q. Did you see any of the Traversers that night?
- A. I did.
- Q. Where?
- A. In the Theatre.
- Q. Did you see them before?
- A. No.
- Q. Was there any sign, counter sign, or watchword agreed on?
- A. Not that I remember.
- Q. Did you go to the Theatre?
- A. I did.
- Q. What part of the house were you in?
- A. I went first of all to the upper gallery, and then I went to the boxes.
- Q. Did you see any of Handwich's men that were sent with the tickets?
- A. Yes, at first.
- Q. Did you see any of them?
- A. No: Forbes, M'Culloch, my brother, and I, went off together to the boxes and upper boxes.
- Q. Had Forbes any thing to make a noise with?
- A. He had—a small whistle.
- Q. Were there more whistles than one?
- A. There were.
- Q. Do you know where they got them?
- A. At Daly's in Ship-street.
- Q. Were they supplied there?
- A. Yes.

Q. Who supplied them—did you supply them?

A. I did.

Q. You had got the stock-purse?

A. I had.

Q. Did you see a rattle with any body?

A. There was a rattle there, but I can't say who had it.

Q. (By the Court.) Where was that?

A. In Ship-street.

Q. Did you see a bottle?

A. Yes: there was a bottle.

Q. What kind of one?

A. A black bottle, what is given for a quart bottle.

Q. What became of it?

A. It was brought to the Theatre with spirits, I cannot say by whom.

Q. Did you hear any conversation about a bottle being thrown?

A. I heard it, but I was in the lobbies at the time.

Q. Who spoke to you of it?

Mr. Driscoll objected to this question, the witness having stated that he was not then in the Theatre.

The CHIEF JUSTICE.—Our opinion is, that nothing said by any person, even belonging to the confederacy, as to this fact is evidence against the Traversers, unless it was said by one of them.

Q. Did you hear from any person in the presence of any of the Traversers, any thing as to a bottle having been thrown?

A. It was mentioned in Essex-street.

Q. At whose house?

A. At Flanagan's.

- Q. Were you there that night after the play ?  
 A. I was.  
 Q. Were there any of the Traversers there ?  
 A. Yes.  
 Q. Who ?  
 A. William Graham, Forbes and Brownlow.  
 Q. Any other of the Traversers ?  
 A. No.  
 Q. Were there any other persons ?  
 A. There were.  
 Q. Was your brother there ?  
 A. Yes.  
 Q. Did you hear any conversation there as to throwing the bottle ?  
 A. Yes, it was mentioned.  
 Q. What was mentioned ?  
 A. I cannot recollect any leading conversation ; it was merely mentioned.  
 Q. Have you any recollection of what was said ?  
 A. It was mentioned as having been done.  
 Q. Do you remember any person making a remark on it, or any opinion expressed about it ?  
 A. I do not ; I cannot bring any thing to my mind on that.

Mr. DRISCOLL.—The witnesses will be only cross-examined on the part of those Traversers who are affected by their testimony.

Mr. ATTORNEY GENERAL. On the part of the Crown there is not the slightest objection to all the Traversers cross-examining, and all their Counsel addressing the Jury.

## Cross Examined by Mr. ROLLESTON.

Q. Have you any situation under the government ?

A. I have.

Q. Of what value ?

A. £90 a year.

Q. Have you any other means of support ?

A. None.

Q. Has not your Father also a place under government ?

A. He has.

Q. Has he any other means of support ?

A. His profession of an attorney.

Q. Has he taken out his licence this year ?

A. I cannot say.

Q. Has your Brother, who was examined yesterday, any place ?

A. No.

Q. Does he expect one ?

A. I cannot say.

Q. You would not like to lose your place ?

A. I would not.

Q. Do you not hold it at the will of the government ?

A. I cannot immediately answer that question.

Q. Don't you think they could turn you out immediately, if they liked ?

A. I cannot say.

Q. Do you not think that a good deal depends upon your swearing to day, as to whether you or your Father shall hold your situations ?

A. I cannot say.

Q. What is the reflection in your own pure mind ?

A. It was not under any such impression that I came here at all.

**Q.** That is not an answer to my question ; what do you think ?

**A.** It is impossible for me to say how far government would go.

**Q.** Do you not think your place will be more secure if you convict these men ?

**A.** I cannot really give you an answer to that, it is a thing I never thought of.

**Q.** Upon your oath ?

**A.** No indeed.

**Q.** Had you any place before your present one ?

**A.** I had.

**Q.** Were you turned out of that ?

**A.** No.

**Q.** Did you lose it ?

**A.** Yes, when the place was abolished.

**Q.** You got no compensation ?

**A.** No.

**Q.** You are come here to swear a riot and conspiracy against others ?

**A.** I am come here to give my testimony.

**Q.** Are you not come here for the purpose I have stated ?

**A.** For no other purpose than to give my testimony. How far that will go, is not for me to say.

**Q.** You, being a servant of the government, would be the last man to enter into a conspiracy ?

**A.** Not knowingly or willingly.

**Q.** Would you assist conspirators or rioters ?

**A.** Not willingly.

**Q.** Have you always kept company with Forbes ?

**A.** I have often been in his company.

**Q.** Did you not dine with him last Sunday ?

**A.** No, Sir.

**Q.** Lately ?

**A.** Not for a long time.



Q. Did you dine with M'Culloch?

A. I supped with him.

Q. With any of the persons now charged?

A. Yes.

Q. Did you drink with any of them?

A. I did, that evening.

Q. When?

A. Sunday evening.

Q. Have you not been in the most intimate habits of friendship with Forbes for some time past?

A. I have.

Q. I suppose you would never have associated with him, if you did not think him a loyal man?

A. So I always considered him, and do.

Q. Do you believe there exists a man more attached to the King and Government, than Mr. Forbes?

A. Indeed I do not.

Q. You would find him guilty of that?

A. I would, if it was a crime.

Q. It seems it sometimes is—what situation did you hold in the Lodge?

A. Deputy master.

Q. Has your brother any rank in the Lodge?

A. He is Secretary, Sir.

Q. You or he must have had considerable influence in the Lodge?

A. I cannot say that we have.

Q. Had you not such influence as officers generally have?—I am not speaking of what influence you have now.

A. I cannot say I had.

Q. Why were you elected, if you had no influence?

A. I cannot say.

Q. I suppose they did not know you. You mentioned a meeting at the Shakespeare—were you quite sober?

A. I was not too sober.

- Q. Were you sober at the beginning of the Lodge ?  
 A. There was no Lodge opened.
- Q. It was past 12 o'clock when you met ?  
 A. No.
- Q. Did you not say so ?  
 A. No. I said it was that hour when the conversation commenced.
- Q. How long had you been there after you had the conversation ?  
 A. An hour and a half.
- Q. The longer you staid the more sober you grew—were you not drunk ?  
 A. No.
- Q. But you were not sober ?  
 A. No.
- Q. Then this high treason began about making the Lord Lieutenant unpopular ?  
 A. Yes.
- Q. I suppose, as you held an office under the Lord Lieutenant, you said you would not agree ?  
 A. I did not.
- Q. Then you encouraged it ?  
 A. I was an acting person, but not in the formation of it.
- Q. Were you not active ?  
 A. I suppose if I was acting, I was active.
- Q. Upon your oath, did you take any step to prevent it ?  
 A. No, Sir ; I did not.
- Q. Was it not your duty, as an officer of his Majesty, to stop it, if it was improper ?  
 A. I suppose it was.
- Q. Why did you not do your duty ?  
 A. I acknowledge my error.
- Q. And your sins are ever before you. Did you not think the matter innocent ?—that's your best apology.

A. I did not see the dangerous tendency of it at the time.

Q. Don't you think others might have the same impression on their minds as you had on yours?

A. Certainly.

Q. Might not Forbes have the same impression?

A. Certainly so.

Q. You saw them the next evening at Daly's?

A. Yes.

Q. Do you remember what you said yourself then?

A. No, Sir, I cannot; most of it was instructions from Mr. Heron and Mr. Stoker.

Q. Who communicated the instructions to those men—was it not you?

A. I cannot say it was.

Q. Can you say it was not?

A. I forget.

Q. Did you not communicate them to the young man Forbes?

A. On my oath I forget.

Q. Who went for Handwich?

A. I did.

Q. Did you tell Handwich the instructions you had received from Stoker and Heron?

A. I did.

Q. Was there a lodge held there on that Thursday night?

A. Not that I remember. I don't think there was.

Q. You say you had a conversation about making the Lord Lieutenant unpopular?

A. We had.

Q. Do you remember what you said yourself?

A. I joined in the general conversation.

Q. Did you not lead the conversation?

A. No.

**Q.** Were you not the Master?

**A.** There was no Lodge.

**Q.** Did you not begin?

**A.** No.

**Q.** Was there a commission sent to you by Heron and Stoker?

**A.** They were there themselves.

**Q.** Did you not agree to all that was said, though you were under obligations to the Government?

**A.** Yes, every word of it.

**Q.** Did you not think you were doing an innocent thing?

**A.** I did not look into the full tendency of the thing.

**Q.** Did you tell the others that it was improper?

**A.** No, Sir; I did not.

**Q.** You did not caution them?

**A.** No, Sir.

**Q.** Might not Forbes and the others conceive it innocent at that time?

**A.** I am convinced they did. I am sure they looked on it in the same light that I did.

**Q.** There was a renewal of the conversation on Friday night?

**A.** There was.

**Q.** Was not Forbes sent for as a visiter?

**A.** Not to my knowledge.

**Q.** At what time did he come?

**A.** I cannot immediately say.

**Q.** Were you not met a considerable time before he came?

**A.** I believe we were; I cannot be confident.

**Q.** Was not the Lodge closed before he came?

**A.** I cannot say, I did not take notice when he came in.

**Q.** Did you see Forbes before supper at all?

**A.** I do not remember that I did.

- Q. Is not the Lodge always closed before supper ?  
 A. Always.  
 Q. After Forbes came in, what did you say ?  
 A. I forget.  
 Q. Did you dissuade any man from going to the Theatre ?  
 A. No Sir.  
 Q. Did you not concur with them in going ?  
 A. I did Sir.  
 Q. Did you advise them it would be improper ?  
 A. No Sir.  
 Q. Did you advise them not to enter into a subscription ?  
 A. No.  
 Q. Who was the greatest conspirator there, if there was a conspiracy ?  
 A. I do not know.  
 Q. You were treasurer ?  
 A. Yes.  
 Q. Did you pay over all you received ?  
 A. No—there was only £4. I disbursed £3 for tickets and some for the men.  
 Q. Who sent the men to buy the tickets ?  
 A. They went of themselves.  
 Q. Did you not keep some of the money ?  
 A. I don't think I did ; I cannot immediately say.  
 Q. Will you swear you did not ?  
 A. I cannot say whether there is any thing remaining in my hands.  
 Q. Did you not send to buy the tickets ?  
 A. I gave the money.  
 Q. Did you not give directions to buy them ?  
 A. No, they were as capable of directing themselves.  
 Q. What did you say when you gave them the money ?  
 A. They knew very well what to do with it.

Q. Did you not stand outside at the Theatre door whilst the tickets were purchased ?

A. I did.

Q. Who got the tickets when they were bought ?

A. Those that bought them kept some, and I got the rest.

Q. What did you do with those that you bought ?

A. I handed them over, according to the instructions that I had received, to Matthew Handwich.

Q. You did not tell him not to give them to the others ?

A. No.

Q. Now who was the greatest conspirator ?

A. I cannot say.

Q. Is there any information filed against you ?

A. I believe not.

Q. But there is an information against all whom you directed and advised ?

A. I understand there is an information against those persons, but I cannot say I was the sole director.

Q. Who bought the whistles ?

A. I bought some of them.

Q. Who subscribed for them ?

A. I paid for them with the money I had.

Q. How much did you pay ?

A. I forget.

Q. How many whistles did you buy ?

A. Forbes and I purchased six or seven.

Q. What was done with them ?

A. They were given at Mrs. Daly's in Ship-street to the men.

Q. In your presence ?

A. Yes.

Q. Did you not advise, not to disturb the Lord Lieutenant ?

A. No, but I advised them not to bring sticks.

Q. Did you not desire them to use their whistles?

A. They received them for that purpose.

Q. Had you a whistle yourself?

A. No.

Q. Not during the night?

A. No.

Q. Had you nothing particular about you?

A. No more than I have now.

Q. What were you doing at the Theatre?

A. I joined in some part of the proceedings.

Q. Had you a rattle?

A. I had not.

Q. Can you whistle with your finger?

A. No, I cannot.

Q. What part did you take?

A. I joined in some part of the noise when they were crying out for the Boyne Water.

Q. How did you join?

A. By clapping my hands.

Q. You are attached to the memory of King William?

A. I am.

Q. But not quite so much as Forbes?

A. I cannot say.

Q. You disturbed the Lord Lieutenant?

A. No, I did not take much part; I was rather timorous.

Q. The recollection of your place came over you, and you began to be timorous?

A. Something of that.

Q. But you got all the other men embarked as far as you could?

A. I suppose they joined in it.

Q. And you then left them in the scrape?

A. No, Sir; we were in different parts of the house.

- Q. When did you leave the house ?  
 A. I don't think I left the house until all was over.
- Q. Were play and farce ended ?  
 A. I believe so.
- Q. You went to Essex-street that night ?  
 A. I did.
- Q. Was not Forbes very angry at being arrested ?  
 A. He was.
- Q. Flushed and agitated ?  
 A. He was.
- Q. Did you drink together ?  
 A. Yes.
- Q. Were you sober ?  
 A. Pretty sober.
- Q. Were you drunk ?  
 A. No, Sir.
- Q. Did not Forbes, notwithstanding his arrest, and the agitation of his mind, give some toasts ?  
 A. He did.
- Q. What ?  
 A. He gave the Glorious Memory.
- Q. Was not the first toast the King ?  
 A. I believe so.
- Q. With three times three ?  
 A. Yes.
- Q. Did he not drink that toast with all his heart and soul ?  
 A. I am convinced of it.
- Q. Did he not follow that toast with the Duke of York and the Army ?  
 A. I really forget ; he might have done so.
- Q. Did he or not, upon your oath ?  
 A. On my oath I forget.
- Q. Did he not give the Glorious Memory with three times three ?  
 A. He did.



Q. Do you believe any man ever drank that toast with greater fervency ?

A. I am convinced no man ever did.

Q. Did he not give the Glorious Constitution in Church and State ?

A. He gave the Protestant Ascendancy in Church and State.

Q. How long did you stay there ?

A. It must have been a long time.

Q. Did not Forbes say, that " no true Orangeman could be so wicked as to throw that bottle ?"

A. I think he did ; I think he said something to that effect.

Cross-Examined by Mr. SCRIVEN, on the part of  
William Brownlow.

Q. How long have you been an Orangeman ?

A. Since the year 1818.

Q. I suppose you are well acquainted with their principles and declarations ?

A. I am, Sir.

Q. Is it not their fundamental principle to support, to the utmost of their power, his Majesty and his Government ?

A. Not in those exact words.

Q. To that effect ?

A. Yes.

Q. And to support the Constitution and the laws of the country ?

A. Yes.

Q. And the succession to the Throne in his Majesty's Illustrious Family, being Protestants ?

A. Yes.

Q. To defend his person and property ?

A. Yes.

**Q.** To maintain the peace of the country, and be always ready to assist the civil and military powers in the just and lawful discharge of their duty ?

**A.** Yes Sir.

**Q.** To support the honor of King William and his glorious memory ?

**A.** Yes, or to that effect.

**Q.** And to support the true religion by him established in this realm ?

**A.** Yes.

**Q.** Are not these the avowed principles of the Members of that Society ?

**A.** They are.

**Q.** Do you not take an oath ?

**A.** We do.

**Q.** Is it not to bear true and faithful allegiance to the King ?

**A.** Yes.

**Q.** Did you take that oath ?

**A.** I did.

**Q.** Did not every one of these persons now accused do the same ?

**A.** I suppose they did, some of them I know did.

**Q.** What place did you hold in the Revenue ?

**A.** Three or four offices.

**Q.** Did you take the oath of allegiance on being admitted to any of them ?

**A.** I did, on entering upon the last.

**Q.** Did you hear any agreement as to a watch-word before you went to the Theatre ?

**A.** I did not take notice of any.

**Q.** Were you not as active as any body ?

**A.** I was active.

**Q.** And as attentive to what was said and done ?

**A.** I was.

**Q.** And you heard nothing about a watch-word ?

**A.** I did not.

**Q.** Did you hear of your Brother's scruples, and his going to the Park ?

**A.** Not a word until a few days ago.

**Q.** Of course you gave no advice to him on the subject ?

**A.** I did not.

**Q.** Did he ever communicate to you any scruples he had ?

**A.** Not at the time.

**Q.** Had you any conversation as to the tendency of what was going forward ?

**A.** We were speaking on the subject.

**Q.** As you thought there was nothing mischievous in it, perhaps he was of the same opinion ?

**A.** I said I did not look into the evil tendency of it at the time.

**Q.** I suppose you did not think it had any evil tendency ?

**A.** I did not.

**Q.** Was not your Brother of the same way of thinking ?

**A.** I had no reason to suppose the contrary.

**Q.** Do you know the paper called the *Warder* ?

**A.** I do.

**Q.** Have you read it ?

**A.** Yes.

**Q.** Are you in the habit of reading it ?

**A.** Sometimes, but I do not take it.

**Q.** (Shewing a paragraph) have you ever seen that before ?

**A.** I have. (This paragraph was not read in evidence.)

**Cross examined by Mr. SPEER, for Henry Handwick.**

**Q.** Were you in the upper gallery ?

**A.** Yes, for a short time.

Q. Did you see Henry Handwich there ?

A. I did Sir.

Q. In what part of the gallery did he sit ?

A. I believe rather in the centre, but I am not sure whether in the centre or one side.

Q. Did you see any offensive weapon with him ?

A. I saw nothing at all with him but a stick.

Q. Are you sure you saw even a stick with him ?

A. I will not swear positively.

Q. Did you see him do any thing offensive the whole night, to his Excellency, or any one else ?

A. Nothing.

Cross-examined by Mr. NORTH, for Wm. Graham.

Q. Was it any part of your agreement to assault or offer personal violence to the Lord Lieutenant ?

A. None at all, Sir.

Q. Did you not advise the persons in Ship-street not to bring sticks ?

A. I did.

Q. Did you not give that advice in order to prevent any violence taking place ?

A. I had no idea of any violence being offered to his Excellency, but I was afraid of a row in the upper gallery.

Q. Was not your advice taken by some of the party ?

A. I cannot say.

Q. Will you swear that it was the intention of any person at that meeting to offer personal violence to his Excellency, or any one else ?

A. I would almost swear the contrary.

Q. (By a Juror.) You said that a bottle was taken to the Theatre ?

A. It was taken out of the house we met in.

Q. (By a Juror.) Are you certain it was taken to the Theatre?

A. I could not swear that.

John Lambert, examined by Sergeant LEFROY.

Q. Were you at the Theatre the night the Lord Lieutenant was there?

A. I was.

Q. In what part of the house were you?

A. In the pit.

Q. Were you there before his Excellency came?

A. I was.

Q. Did you observe any thing particular take place before he came?

A. Yes, I saw little placards or hand bills.

Q. Did you see any of them distinctly?

A. Not distinctly. I got a few of them.

Q. Were they written or printed?

A. Printed.

Q. What did you see take place in the pit as to those bills?

A. I saw a person handing them about.

Q. Would you know him again?

A. I think I would.

Q. Do you see him in court?

A. I do. (The witness identified Wm. Graham, after requesting him to take off his spectacles.)

Q. Did you see that man distributing the printed hand bills?

A. I did, Sir.

Q. Did you see him engaged in any other way?

A. Yes, in hissing and groaning.

Q. On what occasion did he hiss and groan?

A. At the coming in, I think, of the Lord Lieutenant.

- Q. Did he repeat that during the night?
- A. Yes, as long as I observed him.
- Q. How long did you observe him?
- A. During the two or three first acts of the play.
- Q. Did you observe him communicate with any persons in the pit?
- A. There were a number of persons about him.
- Q. Were they employed in the same way?
- A. They were.
- Q. Did he communicate with those persons?
- A. Yes.
- Q. And they with him?
- A. Yes.
- Q. Did you observe any thing particular in the conduct of those persons?
- A. Nothing but hissing and groaning.
- Q. Did you hear any other noises in the house?
- A. I did.
- Q. Of what nature?
- A. Hissing, groaning and clapping.
- Q. Any other?
- A. Yes, I heard words.
- Q. What?
- A. I heard the words "look out boys;" but I cannot say from which of the galleries.
- Q. Can you say they came from either?
- A. I think I could.
- Q. Did you hear them more than once?
- A. I did, I think.
- Q. Who was hissed and groaned?
- A. I heard the Lord Lieutenant hissed and groaned.
- Q. Mention any of the particular words or expressions you heard?
- A. I really cannot call to mind, there was such a number.

- Q. Mention any of them ?
- A. I heard a groan for Wellesley, and to that effect.
- Q. Besides the hissing and groaning, and "look out boys," did you hear any other kind of noise ?
- A. I did.
- Q. What ?
- A. Relating to the Lord Mayor.
- Q. Any thing besides words ?
- A. I heard whistling.
- Q. Where did that appear to come from ?
- A. I think from the gallery.
- Q. Did you take any particular notice of the hand-bills ?
- A. I had just a view of one of them.

Cross-Examined by Mr. NORTH, on the part of William Graham.

- Q. Where do you live ?
- A. In Chamber-street.
- Q. What is your business ?
- A. I am a clothier.
- Q. Are you an Orangeman ?
- A. No ; I have not the honour to belong to that profession.
- Q. Are you a Protestant ?
- A. No, Sir.
- Q. At what time did you go to the Theatre ?
- A. At about half-past six, I think.
- Q. Had you been long there before the Lord Lieutenant came ?
- A. About half an hour.
- Q. Where in the pit did you sit ?
- A. In the centre, the 5th, or 6th seat, I cannot remember very accurately, on account of the crowd.
- Q. Was Graham before or behind you ?
- A. On one side.
- Q. Do you mean on the same bench ?

- A. No ; I think he was nearer the stage.
- Q. Did you see bills drop from the lattices ?
- A. I afterwards did.
- Q. When they dropped into the pit, did not the people pick them up ?
- A. I suppose they did.
- Q. Did you not see the people pick them up ?
- A. I did not.
- Q. Do you swear that no hand-bills were picked up ?
- A. They might be, but I did not see any.
- Q. Did you take up one yourself ?
- A. No.
- Q. Did you read one ?
- A. No.
- Q. Had you no curiosity ?
- A. Yes.
- Q. Why did you not get one ?
- A. Each person was eager to get one.
- Q. Graham was more fortunate than you ?
- A. He had brought them in.
- Q. On your oath, did you see Graham distribute a single bill till they fell from the lattices ?
- A. I did, Sir.
- Q. What sort of bill ?
- A. There were four or five lines in it.
- Q. What were they ?
- A. I cannot tell.
- Q. Were there two or three ?
- A. I cannot say.
- Q. Were there more than two ?
- A. Yes.
- Q. Were there more than three ?
- A. There were.
- Q. On your oath can you swear to three ?
- A. I could.



- Q. Any more ?
- A. I think I could.
- Q. Do you know what was in any of these hand-bills ?
- A. I do not.
- Q. Might they not be play-bills ?
- A. I merely got a glimpse of them.
- Q. Did you ever see William Graham before that night ?
- A. Never, to know him.
- Q. You had no acquaintance with him ?
- A. None.
- Q. Did you hear any body say he was an Orangeman ?
- A. No.
- Q. When did you find that he was an Orangeman ?
- A. I did not know.
- Q. Did you never know ?
- A. Never.
- Q. Do you know now that he is ?
- A. I do not know.
- Q. Do you believe it ?
- A. I should suppose he is.
- Q. When the Lord Lieutenant came in, you clapped and cheered him ?
- A. Yes.
- Q. Did not William Graham join in the cheer ?
- A. He did not.
- Q. You swear that ?
- A. I do.
- Q. Did you observe the Lord Mayor come in ?
- A. Yes.
- Q. How soon after the Lord Lieutenant ?
- A. I think he came in before.
- Q. Can you swear that it was not the Lord Mayor that was hissed and groaned ?
- A. I think both.

Q. Was it by the hiss that you judged ?

A. I heard the names mentioned.

Q. Will you swear that when you saw Graham hissing, he was not hissing the Lord Mayor ?

A. At the time the Lord Mayor came in, he hissed and groaned him.

Q. How long did you observe Graham in the house ? during the first act ?

A. Yes.

Q. The second ?

A. Yes.

Q. The third ?

A. Yes; I did not miss him.

Q. When did you last see him ?

A. In the third act, perhaps.

Q. Did you in the fourth ?

A. I cannot say.

Q. Was he not there, when you were going away ?

A. I did not mind.

Q. When did you disclose this information ?

A. Not until I was sent for.

Q. Who sent for you ?

A. I do not know—I got a note from Major Sirr, to go to the police office.

Q. Who communicated with you ?

A. I think I know the channel it went through, I was telling my tailor.

Q. What is his name ?

A. Lane.

Q. Is he in attendance ?

A. Not that I know of.

Q. You told him the same thing as you told here to day ?

A. I did.

- Q. You told him whom you had seen in the pit?
- A. No, for I did not know at the time who it was.
- Q. How did you find out?
- A. I gave a description of him in the Police Office. He had a seal skin cap. I think he had his spectacles on.
- Q. Did you never see any man but Graham wear a seal skin cap?
- A. Yes.
- Q. Had he that cap on, when the curtain drew up?
- A. I do not know.
- Q. What coloured coat did he wear?
- A. I think a blue one.
- Q. Did you mention the blue coat?
- A. I should suppose I did, to Major Sirr, and Mr. Farrell.
- Q. Did you know any of the persons sitting about Graham?
- A. No.
- Q. Could you describe them?
- A. I think not, for I did not take so much notice of them.
- Q. Do you know one Espy?
- A. No.
- Q. Do you know Mr. Ryan?
- A. No.
- Q. You did not see them?
- A. Not to know them.
- Q. For what purpose did you go to the Theatre?
- A. For amusement, as usual.
- Q. Was the Lord Lieutenant's going any inducement?
- A. No, except that I expected the house to be well attended.
- Q. You had heard hissing and groaning before that night?
- A. Yes.

**Q.** Did you ever hear Garryowen or Patrick's Day called for?

**A.** Yes.

**Q.** (By a Juror.) You said that Graham distributed bills before any fell from the lattices—might they not have fallen?

**A.** I saw them in his hand.

**Q.** Are you certain that they had not fallen?

**A.** I think they did not—I think I must have observed them.

**Q.** (By the Chief Justice.) How soon after the night of the play was it that you described him in the Police Office?

**A.** The Monday week after.

John ROONEY, Examined by Sergeant TORRENS.

**Q.** What business are you?

**A.** I am a Brewer.

**Q.** Do you recollect being at the Theatre on the night of the 14th of December, the night the Lord Lieutenant was there?

**A.** Yes.

**Q.** What part of the house did you go to?

**A.** To the middle gallery.

**Q.** In what part of the middle gallery were you?

**A.** In the front row, within two of the boxes.

**Q.** Had you an opportunity from your place to see distinctly the upper gallery?

**A.** I had.

**Q.** Were you in the Theatre before his Excellency came in?

**A.** I was.

**Q.** What did you first observe in the upper gallery?

**A.** I observed a groupe of persons rushing in shouting, which called my attention to them.

Q. Do you recollect any expressions used by those persons ?

A. No.

Q. Did you observe any thing with them ?

A. I observed a watchman's creak or rattle.

Q. With those persons ?

A. Yes.

Q. Did you see any person make use of it ?

A. Yes.

Q. What did you see him doing with it ?

A. He was making a great noise with it.

Q. Had you an opportunity of observing any persons in the middle gallery near yourself ?

A. There was a knot behind me.

Q. Did you observe any thing particular about the persons composing that knot ?

A. Some of them had sticks under their coats.

Q. What kind of sticks ?

A. Short sticks, white and heavy, with a head.

Q. Do you mean the sticks you observed with these persons were of the same kind ?

A. Yes, and I saw one or two of the same description in the upper gallery.

Q. After these persons came in, did any thing particular occur as to noise or shouts ?

A. They were groaning.

Q. For whom ?

A. For the Lord Mayor.

Q. For any one else ?

A. Do you mean during the night, or at first ?

Q. At first.

A. I cannot say: during the night I heard several.

Q. What were they ?

A. "A groan for the House of Wellesley."

Q. Where did that proceed from ?

A. I believe from the upper gallery.

- Q. Did you hear any claps given for any one?
- A. I did.
- Q. What claps?
- A. A clap for Sheriff Thorpe, and a clap for the Calf's Head.
- Q. Did you see any bills or papers distributed?
- A. I saw some papers. They were thrown from the right hand side of the house. There were two thrown on that side, and one exactly over the Lord Lieutenant.
- Q. When the Lord Lieutenant came in, what occurred?
- A. There was a general clap, and a partial groan.
- Q. From whence did the groan come?
- A. From the upper gallery and from the knot behind me.
- Q. Did you observe where any of these papers fell?
- A. Chiefly into the pit; one fell into the Lord Lieutenant's box; Sir Stewart Bruce handed it to him.
- Q. Did you interfere when this was going on?
- A. No, not till the groan for the House of Wellesley.
- Q. What did you do then?
- A. I stood up and cried "Shame."
- Q. Was any observation then made?
- A. Some person cried out to knock me down.
- Q. From where?
- A. From some few rows behind me.
- Q. Did you observe whether any thing was thrown on the stage, and on what part of the stage?
- A. I observed something flash across my eyes, and strike the drop scene about two or three feet from the stage. I did not know at that time what it was.
- Q. At what side of the house did it appear that it struck the stage?
- A. Two or three feet from the left side, where the Lord Lieutenant was.
- Q. What effect had it on the curtain?
- A. It made a sort of dinge in the curtain, and raised up that corner of it, and rolled forward to the lights.

Q. Do you know from what part of the house it proceeded?

A. I do not.

Q. Did you see what it was when it came to the lights?

A. I thought it was a bottle, before the musician took it up.

Q. You saw him take it up?

A. Yes.

Q. What did it then appear to be?

A. A bottle.

Q. When you say it flashed across you, am I to understand it came from behind you?

A. It seemed to pass between me and the light.

Q. (By the Court. What do you mean by flashing across, do you mean passing you?)

A. No, I saw something pass over the light of the stage.

Q. When you saw it, it was at a distance?

A. Yes.)

Q. You saw the musician take it up?

A. Yes.

Q. Did you see any thing else thrown?

A. I saw a piece of wood or timber, as I think. It hopped off the Lord Lieutenant's box on the stage.

Q. Did you see the direction in which the bottle was thrown?

A. No further than I have described.

Q. Was it in the direction of the Lord Lieutenant's box or not?

A. It hit the scene on that side of the house.

Q. How far from the stage door?

A. Three or four feet.

Q. From the direction in which the bottle was thrown, can you say to what it was directed?

(The Court—He has already said he cannot.)

**Q.** The stick hit the Lord Lieutenant's box and hopped on the stage?

**A.** Yes.

**Cross-examined by MR. DRISCOLL on the part of Matthew Handwich.**

**Q.** You saw short white sticks under their coats?

**A.** Yes, on one or two behind me.

**Q.** You mean one or two rows?

**A.** No, with one or two persons.

**Q.** How far behind you?

**A.** Immediately, the next row.

**Q.** Did you not say you saw an object glance across your eye?

**A.** No, the first sight I saw of it was when passing over the light.

**Q.** Did you not swear that the object glanced across your eye?

**A.** I suppose I did, I was looking to the Lord Lieutenant's side.

**Q.** Was that true?

**A.** I was.

**Q.** Have you not said literally that the first notice you took of it was, when it passed across the light?

**A.** I was looking at the Lord Lieutenant, and I observed something pass between me and the Lord Lieutenant.

**Q.** How did you see the sticks when they were under their coats?

**A.** Mr. Johnston came up and Alderman Darley; and they were pulling out those sticks before they came up.

**Q.** Did you not swear that a parcel of people came rushing into the gallery, and that a knot came into the Middle Gallery?

**A.** No.



Q. The rush was into the Upper Gallery ?

A. Yes.

Q. Shouting ?

A. Yes.

Q. Did you then see the white sticks ?

A. No.

Q. How do you know they had them ?

A. I saw them during the night.

Q. What is your business ?

A. The brewing business.

Q. Don't you know that tradesmen in particular trades, have turned out for an increase of wages ?

A. I have heard so.

Q. And that those who would not join in these combinations have been beaten in the streets ?

A. Yes.

Q. And that peaceable persons have been obliged to carry sticks, as they went home from their work ?

A. Sometimes.

Cross Examined by Mr. PERRIN, on the part of James Forbes.

Q. How often have you been examined ?

A. Once.

Q. Were you before the Grand Jury ?

A. No Sir.

Q. You sat within two of the boxes ?

A. Yes, I had a full view of the Lord Lieutenant's box.

Q. You had been there a considerable time before his Excellency came ?

A. I believe I was the third or fourth that got in ; there was a rush to get tickets.

Q. There generally is a rush in all parts of the house on crowded nights ?

A. Yes.

Q. You saw a great rushing and shouting ?

A. Yes, the shouts called my attention.

Q. Have you been often at the Theatre ?

A. No.

Q. It is not uncommon to see people rush in shouting ?

A. No.

Q. Was there not a good deal of groaning for the Lord Mayor, before his Excellency came in ?

A. Yes, and a great deal of clapping too.

Q. When his Excellency came in was he not very generally well received ?

A. Yes, there was a general cheer, and a partial groan from two or three parts of the house.

Q. The groaning for the Lord Mayor continued during the night ?

A. Yes.

Q. Was it not particularly violent at the end of the play ?

A. It was.

Q. Did his Excellency make use of any gesture expressing his approbation of the Lord Mayor ?

A. He came forward to the front of the box, put his hand to his breast, and bowed to the Lord Mayor.

Q. And then the persons who had groaned the Lord Mayor, cried out " a groan for Wellesley ? "

A. Yes, and one person called him a bald pated old rascal.

Q. You observed something pass across the lights ? Were the lights up or not at the time ?

A. They were up.

Q. Was it before or after they were trimmed ? Is it not usual between the play and farce, to lower the lights ?

A. Yes.

Q. Was it before or after that?

A. I cannot recollect. The reason I know the lights were up was, that I saw the musician take the thing from over the lights.

Q. Can you say whether the lights were up or not?

A. They were up.

Q. Can you say the musician raised the bottle before or after the lights had been down?

A. I cannot say. He took it up, immediately stopped the music, and then held up the bottle.

Q. Whatever passed across, struck the drop scene. How far from the centre?

A. Half way between the leader of the band and the Lord Lieutenant's box, as I should suppose.

Q. Do you mean nearer the left hand side of the house, than where the leader sat?

A. Oh yes.

Q. How much nearer?

A. Two or three feet.

Q. Did he get off his seat to raise it?

A. He did, I believe; he stretched over the lights.

Q. (By the Chief Justice.) You have said, that at the end of the play, the groaning was most violent, and that when his Excellency came forward and bowed, there was a groan for the house of Wellesley; and that one person called him a bald pated old rascal. Am I to understand from that, that before that time, there was or was not groaning for the house of Wellesley? Was that the first time you heard any groan for the house of Wellesley?

A. It was, my Lord.

CHARLES O'FLAHERTY examined by Mr. TOWNSEND.

Q. Were you in the Theatre, the night the Lord Lieutenant was there?

A. I was.

- Q. In what part of the house did you sit !
- A. In the lattices, opposite to his Excellency.
- Q. Who went with you ?
- A. I went with Mr. Burnside.
- Q. Did you hear any great noise ?
- A. I did.
- Q. What part of the house did it chiefly come from ?
- A. From the left hand side of the upper gallery.
- Q. That is the same side as the Lord Lieutenant sat at, I believe ?
- A. Yes.
- Q. Did you take much notice of the persons that made the noise ?
- A. I could not distinguish their features.
- Q. Did you observe any thing particular with them ?
- A. Large sticks.
- Q. Did you hear any words used by them ?
- A. I did—groans and shouts.
- Q. Any particular expressions ?
- A. I am not certain. I heard “ look out, look out” or words similar.
- Q. For what purpose did those words seem to be used ?
- A. They appeared as a signal ; I conceived them so.
- Q. Did you hear them used more than once ?
- A. Yes.
- Q. Did you observe any effect produced ?
- A. I did not.
- Q. You heard hisses and groans ?
- A. I did.
- Q. Were they introduced by any words ?
- A. There was a hiss for the Marquis Wellesley, and groaning for the Lord Mayor. There were various claps and groans.
- Q. Did you see any thing thrown ?
- A. I saw a bottle strike the curtain.

- Q. When did you first see it ?
- A. As it struck the curtain.
- Q. What became of it afterwards ?
- A. Mr. Barton held it up. I don't know what became of it.
- Q. Describe in what place it struck the curtain—How far above the stage ?
- A. I think about three or four feet.
- Q. How far from the centre ?
- A. About two-thirds I think, inclining to the side his Excellency sat at.
- Q. How did it get to Mr. Barton ?
- A. It rolled from the curtain.
- Q. What sort of a bottle was it ?
- A. A common quart bottle.
- Q. What tune were they playing at the time ?
- A. God save the King.
- Q. Did you see any hand bills ?
- A. I did.
- Q. Did you get any ?
- A. I did.
- Q. Were they written or printed ?
- A. Printed.
- Q. Where did they come from ?
- A. The first I saw came from the left hand corner of the upper gallery. They were showered down from that to the middle gallery.
- Q. From whence did they come afterwards ?
- A. From immediately over me; one came on my head.
- Q. Did you see others come from any other place ?
- A. Some were showered from the lattices. (Identifies the papers.)
- Q. When the bottle was taken up by the musician, did it produce any sensation in the house ?

A. There was a general expression of indignation, and cries of shame, shame!

Q. Did you see any thing else thrown?

A. No.

Q. Could you from what you saw of the bottle, say at what object it was thrown?

A. I could not form any opinion.

Cross-examined by Mr. SCRIVEN.

Q. The last witness said the bottle hit the curtain: you say the drop scene; which was it?

A. The drop curtain.

Q. Is there not a heavy weight to that scene?

A. There is, I believe, to all drop scenes.

Q. Is there not a heavy stick or beam running along it to make it come down well?

A. I believe there is.

Q. Is it possible that the corner of it could be knocked up by a bottle hitting it?

A. Much would depend upon the force.

Q. Could such a bottle as you have here heard of raise the corner?

A. I doubt if it could raise the curtain, though it might indent it.

Q. Could it raise the corner?

A. I think not.

Q. (By Mr. Townsend.) Might not the corner be loose?

A. Yes.

Q. Did you see the Lord Lieutenant get off his seat, come forward, and bow to the Lord Mayor?

A. I saw him bow frequently to him.

Q. Did you see him join in cheering for the Lord Mayor, when the groans were most violent?

A. I have no recollection.

**The CHIEF JUSTICE.**—Have you ever had a closer view of the drop-scene than from the front of the house?

**A.** Never.

**Mr. JUSTICE JEBB.**—During what time of the performance was it that the bottle was thrown?

**A.** When the orchestra were playing; between the play and farce.

**Giles O'BRIEN Examined by Mr. GREENE.**

**Q.** Do you recollect having been at the Theatre, on the night the Lord Lieutenant was there?

**A.** Yes.

**Q.** In what part of the house were you?

**A.** In the upper gallery.

**Q.** In what part of the upper gallery?

**A.** About midway between the lattices, at the left side.

**Q.** How near were you to the lattices?

**A.** I don't know exactly how near.

**Q.** Did you observe any thing particular in any part of the upper gallery, that attracted your attention?

**A.** I did.

**Q.** Mention what it was?

**A.** There were some persons there with sticks, striking them against the gallery, and hissing the Lord Mayor and Lord Lieutenant.

**Q.** (By the Chief Justice.)—At what period of the night was this?

**A.** Between the play and farce.

**Q.** Did you hear them call out any thing?

**A.** I heard them call out for the "Protestant Boys," and the "Boyne Water."

**Q.** Any thing else?

**A.** I heard them call the Lord Mayor a bloody Papist.

**Q.** Do you recollect any thing further, any thing about the Lord Lieutenant?

**A.** I believe they called him a bloody Papist; I am sure they did.

Q. Did you hear any sort of signal ?

A. I did.

Q. What was it ?

A. I heard them call out, " Look out, look out," and an answer returned " We are here."

Q. You say you observed several persons with sticks— what sort of sticks were they ?

A. They were short sticks about half a yard long.

Q. Did they appear to be of a similar description ?

A. I did not take particular notice.

Q. Did you observe any one person in particular striking with a stick ?

A. I did.

Q. Should you know that person again ? look round and try if you can see him in Court ?

A. He is not here.

Q. Did you see any thing thrown, or any person throwing any thing ?

A. I saw no person actually throwing.

Q. Did you see any thing thrown ?

A. I saw something passing down by the side of the lattices.

Q. Did you see it fall ?

A. I did not see it fall.

Q. From what part of the house did it appear to come ?

A. From the upper gallery.

Q. Could you discern it at that time ?

A. I could not.

Q. Did you see it afterwards ?

A. No.

Q. At what time was it, that you saw this thing pass ?

A. I don't recollect exactly at what time it was.

Q. Do you recollect at what part of the performance ?

A. I believe between the play and farce.

Q. Do you remember, whether the music was playing at the time ?

A. It was.



John EASTHAM Examined by the ATTORNEY GENERAL.

Q. Were you in the Theatre the night the Lord Lieutenant was there ?

A. I was.

Q. In what part of the house ?

A. In the upper gallery.

Q. In what part of the upper gallery ?

A. On the right hand side, facing the stage.

Q. You mean the side opposite the Lord Lieutenant ?

A. Yes.

Q. Did you observe any persons in the upper gallery acting in any particular manner ?

A. I saw a person beating with a stick on the front of the upper gallery.

Q. What did he do ?

A. He was calling out, " No Popish Lieutenant," " No Popish Government."

Q. Was he making much noise ?

A. He was.

Q. What sort of a person was he ?

A. He was a tall man apparently, but he was sitting down.

Q. Would you know him ?

A. Yes. (Identifies Matthew Handwich).

Q. What did you understand his name to be ?

A. Matthew Handwich.

Q. Was there any other kind of noise made ?

A. Not by him.

Q. By the party ?

A. Yes, they groaned the Lord Lieutenant repeatedly.

Q. At what period of the night ?

A. Immediately as he came.

Q. Did Matthew Handwich join ?

A. Yes, he seemed to be most conspicuous.

- Q. About how many persons were engaged ?
- A. To the best of my opinion, there must have been one hundred in the upper gallery.
- Q. Do you mean of one party ?
- A. Yes.
- Q. Did they appear to have any particular weapons ?
- A. Yes.
- Q. What weapons ?
- A. Large sticks with knobs at the end of them.
- Q. Of what length were they ?
- A. About half as long as my arm, some as big as my fist.
- Q. Were you alarmed by the appearance these people made ?
- A. I was, very much.
- Q. Did you do any thing ?
- A. No, I expressed a wish to retire.
- Q. How did you mean to get out ?
- A. I had no means of getting out, and I proposed to get down into the Middle Gallery.
- Q. Was any actual violence offered to any person ?
- A. I heard a person behind me beaten.
- Q. By this party ?
- A. I don't know by whom. They were fighting behind me.
- Q. Do you recollect any words used ?
- A. "No Popish Lord Lieutenant," "No Popish Government."
- Q. Did you hear any words pass amongst themselves ?
- A. The words "Look out" were used repeatedly. They seemed to be a signal.
- Q. Would you know any one of the persons besides Matthew Handwich ?
- A. Yes, another.

**Q** Is he now in Court?

**A.** No Sir.

Cross examined by Mr. HAMILTON.

**Q.** Had you been in the Theatre before the Lord Lieutenant?

**A.** Yes.

**Q.** You were on the right side of the gallery?

**A.** Yes.

**Q.** In what row?

**A.** The second.

**Q.** You were there early?

**A.** Yes.

**Q.** I suppose you made an effort to get as forward as you could?

**A.** I did.

**Q.** Was there any noise before his Excellency arrived?

**A.** Yes.

**Q.** Groaning and clapping?

**A.** Yes.

**Q.** Approbation and disapprobation?

**A.** Yes.

**Q.** When the Lord Lieutenant came in, he was generally cheered?

**A.** Yes.

**Q.** Was it not during that cheering that you observed the hitting with sticks?

**A.** No.

**Q.** The hitting of the sticks made a great noise?

**A.** Yes.

**Q.** You joined in cheering the Lord Lieutenant?

**A.** I did.

**Q.** And on other occasions in expressing approbation?

**A.** No.

Q. Did you clap for the Lord Mayor ?

A. No.

Q. Did you not clap or hiss the whole night, except for the Lord Lieutenant ?

A. I did not.

Q. (By a Juror)—You said that people were beaten behind you : at what time of the performance ?

A. Near the ending of the play.

Christopher Moran, examined by the SOLICITOR  
GENERAL.

Q. Do you remember the night the Lord Lieutenant went to the Theatre ?

A. I do.

Q. Were you there ?

A. I was.

Q. In what part of the house ?

A. In the Upper Gallery.

Q. Did you see any thing that night that attracted your attention in the Upper Gallery ?

A. I did.

Q. Mention what it was ?

A. I saw a number of people with sticks.

Q. Did you see or hear them do any thing ?

A. I heard them hiss and groan the Lord Lieutenant.

Q. At what side of the Gallery were they ?

A. The left hand side.

Q. Did you observe any persons in particular ?

A. I did.

Q. Look round, and try if you see any of them here ?

A. I saw those two (identifies the two Handwiches).

Q. Did you see or hear them do or say any thing ?

A. I did.

Q. What ?

A. I saw Matthew Handwich with a stick, beating on

the front of the rails, and striving to interrupt the performance.

Q. Did you see them do any thing else ?

A. I heard Matthew Handwich propose to groan the Lord Lieutenant, and he had a stick, and kept beating on the front of the rails.

Q. Did you hear them cry out any thing ?

A. I did.

Q. What ?

A. " A groan for Popish Wellesley," and " No Popish Government."

Q. Do you remember which of them cried out ?

A. Matthew Handwich.

Q. Did you see any weapons with them ?

A. Nothing but sticks. I saw one person with a rattle ringing it.

Q. Do you think you would know him ?

A. I don't think I would.

Q. Did you see any persons make use of the sticks ?

A. None, but beating and making a noise with them.

Q. Were there any persons with them ?

A. Yes.

Q. Were any persons beaten that night ?

A. There were.

Q. By what party ?

A. I saw Henry Handwich, who joined in the riot behind me near the door. One man had been knocked down, and there were fists and sticks over him, waiting till he rose again. They were first at the right hand, but in the course of the night they fought over to the left hand. I observed a fight in the left hand corner, but could not tell who the persons were.

## Cross Examined by Mr. DRIBCOLL.

Q. What is your situation in life?

A. I am a Painter.

Q. Did you see a bottle thrown?

A. No.

Q. You were attentive to the persons that were making a noise?

A. I was. There were more than two, but I can only swear to two.

Q. Were you in the gallery before these men?

A. We were in the street together; I had to buy tickets, but the others appeared to have tickets; I had to wait.

Q. Could you say whether they had tickets?

A. I could not.

Q. How soon after you got in did you perceive the Handwiches troublesome, and shouting?

A. I could not swear as to the particular time; I saw them several times.

Q. You went up with them?

A. Soon after them.

Q. You did not see the bottle thrown?

A. Not till it was held up by a person in the Orchestra.

Q. How many persons were there between you and Handwich?

A. Eight or nine. I was in the centre, and they were midway between me and the left hand.

Q. You could not swear there was any thing in Henry Handwich's hands?

A. No.

Q. How many feet were between you and the left hand wall?

A. I cannot say.

Q. Is not the ceiling of the gallery very low?

A. Very.

Q. And the gallery itself very far removed from the stage? Is not the light of the gallery very dusky?

A. It is.

Q. From the lattices, or the boxes, would you think it possible that the face or figure of a man in the upper gallery could be pointed out?

A. I don't think it could from the boxes; from the lattices I think it could.

Q. Are there not lights near the lattices?

A. I am not sure.

Q. Is this the first time you have been examined?

A. No. I was examined at the Police Office by Mr. Gabbett, and I was examined before the Grand Jury.

Q. How long were you under examination before the Grand Jury?

A. Two or three minutes. They asked me whether I saw the stick thrown? I said not. They asked me if I saw the bottle thrown? I said not. I was going to tell them more, but they told me that would do, and shewed me the way to the door.

Cross-examined by Mr. SPEER.

Q. Are you in the habit of going to the upper gallery?

A. Not very often.

Q. The house is generally crowded when the Lord Lieutenant goes?

A. Yes.

Q. Was it a full house?

A. It was.

Q. It is nothing unusual for a boxing match to take place in the upper gallery? I believe there is scarcely a night passes without it?

A. I don't know.

Q. Had you never seen one there before?

A. I had.

Q. Do you think the persons Henry Handwich was engaged with did not know him ?

A. I don't know whether they did or not.

Q. You said he had no stick in his hand ?

A. I could not swear.

Q. It is a common thing to make a noise in the upper gallery with a stick ?

A. I don't think I ever saw a stick there before; I could not swear.

Q. This was between the play and farce ?

A. Yes, about the time of the glee.

MICHAEL FARRELL examined by Serjeant LEFROY.

Q. Were you at the Theatre the night the Lord Lieutenant was there ?

A. I was.

Q. Look round the Court, and see if you observe any man whom you saw that night ?

A. I do Sir (identifies Henry Handwich).

Q. What part of the house were you in ?

A. The upper gallery.

Q. How near were you to him ?

A. He was sometimes nearer, sometimes farther from me.

Q. When he was nearest to you, how near was he ?

A. There was only one between us, but there was room for two.

Q. Did you observe his conduct ?

A. I did not particularly notice it in the early part of the night.

Q. Did you at any time ?

A. I did.

Q. What was it ?

A. After the last act of the Comedy, there was a noise,



and in the course of that noise, I saw Handwich take a bottle in his right hand and throw it from him.

Q. There was a noise in the house—What noise?

A. Hooting, calling out names, and groaning. There was a groan for the Marquis Wellesley, and others that I did not trouble my head about.

Q. How near was Handwich to you?

A. Not farther than that gentleman; and he sat before me on my left.

Q. You saw him fling a bottle?

A. I did.

Q. In what way?

A. In a half round way, under his shoulder.

Q. Not over his head?

A. No.

Q. Could you tell to what it was directed?

A. From the manner it was thrown I should judge it would go to the left hand side of the house.

Q. Where did it alight?

A. I could not see.

Q. Did you see the Handwiches?

A. Yes, I saw them standing, leaning over. If they had sat they would have been on the third row.

Q. What did you see next of the bottle?

A. I saw it held up by one of the musicians.

Q. Were there any other persons with Henry Handwich?

A. Yes.

Q. Did they appear to be in communication?

A. I heard them speaking together.

Q. Did you observe any thing particular with them?

A. They had white sticks, with lumps at the end of them.

Q. Did you see Handwich in communication with these persons?

A. I did.

Q. Did you observe their conduct particularly ?

A. I perceived it was very riotous. They were calling out names. There was a hoot for Wellesley, and " No Eastern tyrants."

Q. Did you see Handwich do any thing but throw the bottle ?

A. I did not observe more than that ; they were all riotous.

Q. How soon was Handwich arrested ?

A. Just as the curtain drew up for the after piece.

Q. How soon after the bottle was thrown ?

A. It might be ten minutes or a quarter of an hour.

Q. Had he moved from his place in the mean time ?

A. No ; not till he was taken away.

Q. Did you lose sight of him during the interval ?

A. Never.

Q. How happened it that you did not lose sight of him ?

A. Because after I had seen him do the act, I was determined never to lose sight of him till he was in custody.

Q. Did you point him out ?

A. I accompanied him to the police office, and into the police office, till I was put out.

Q. How soon did you give information ?

A. I was put out of the office at half past 11, and determined to go the next morning.

Q. And did you ?

A. The next day.

Q. Had you any acquaintance with Handwich ?

A. Never.

Q. Are you an Irishman ?

A. I was born in this country, but I have been in London from between two and three years of age.

## Cross examined by Mr. BLACKBURNÉ.

Q. Do you feel any particular interest in the event of this prosecution?

A. Not the least.

Q. You had made two attempts to have your evidence taken, before you gave information?

A. One on Saturday night, and next on Sunday.

Q. How many informations have you made on this subject?

A. I made one at the police office. I went afterwards to the castle. A person came to me and seemed anxious to identify me. I was afraid, and went to Major Sirr.

Q. How often? more than once?

A. Once.

Q. Have you been active in procuring information for this prosecution?

A. Not at all.

Q. Did you ever report to any body that you had evidence to support this prosecution besides your own?

A. No not to my knowledge.

Q. Do you know a person of the name of Lane, a tailor?

A. I do not.

Q. Did you on the Saturday night make any declarations as to the guilt of any of these persons in the Upper Gallery?

A. Not any.

Q. Were you examined before the Grand Jury?

A. I was Sir.

Q. Do you recollect on what day of the month?

A. On the 1st of January.

Q. Was that the first or second day of the commission?

A. I think it was the first.

Q. Did you tell any one what evidence you had given to the Grand Jury ?

A. Yes, and some of the questions that were put to me.

Q. To whom did you report it ?

A. To three or four.

Q. Who were they ?

A. I mentioned it to a gentleman of the name of Smith, to a Mr. Gamble, and to a Mr. Connor.

Q. Did you, on the day you were examined before the Grand Jury, report the questions asked you ? And to whom ?

A. I cannot correctly say, I rather think I did.

Q. To whom ?

A. I mentioned it to Mr. Gordon.

Q. Did he take it down in writing ?

A. I believe he did.

Q. Was not that on the day you were examined ?

A. I believe it was.

Q. Did he tell you his object ?

A. He did not.

Q. Did you see what was so taken down afterwards in the public papers ? Don't you believe it was published in London on the 4th of January ?

A. I believe so.

Q. Then he must have transmitted it to London on the first—did he take down accurately what you told him ?

A. I think he did.

Q. You found the report in *The Courier* correspond with his report ?

A. I think it did.

Q. How far from the centre of the gallery were you at the time the bottle was flung ?

A. About half way between the centre and the side of the gallery ; about a quarter from the side.

- Q. That was on the same side as the Lord Lieutenant?  
 A. It was.
- Q. Handwich was still more to the left?  
 A. He was.
- Q. Was not Handwich at the very extremity of the seat of the upper gallery?  
 A. No; he was to my left, and there was no one beyond him; but he was not in the corner.
- Q. Was he at the extremity of the seat?  
 A. No.
- Q. Then there was a vacant space?  
 A. There was.
- Q. How much?  
 A. Some feet.
- Q. How many?  
 A. Five or six, I suppose.
- Q. And you swear that Handwich could see the person of the Lord Lieutenant from that place?  
 A. No; I did not swear that.
- Q. Have you been in the Theatre since?  
 A. Yes.
- Q. Have you been in the place where Handwich was?  
 A. Within an inch or two of it.
- Q. What do you mean?  
 A. It might be an inch or two difference—not more.
- Q. Could you see where the Lord Lieutenant sat from where Handwich stood?  
 A. I could.
- Q. Did you not measure it?  
 A. No; nor did I go for that purpose.
- Q. For what purpose did you go?  
 A. To shew the place where he stood.
- Q. You did not measure it?  
 A. No.
- Q. Did others?  
 A. Yes.

Q. Who?

A. Mr. Carmichael and Mr. Farrell; they measured the distance from the stage.

Q. Handwich did not raise his arm?

A. No.

Q. Was he sitting or standing?

A. Standing up. There were people about him, but not close together. There was no one behind him.

Q. Were there not many places from which he could better have thrown the bottle at the Lord Lieutenant than that?

A. I cannot say but if he had gone more to the centre, there would be.

Q. Would not the opposite side of the house have been better?

A. He must have thrown it in a different way, if he had done that.

Q. Is not the best view of the stage box from the opposite extremity of the gallery?

A. I think so, certainly.

Q. Then he took the worst place?

A. I should suppose so. If he had gone more to the left, it would have been worse.

Q. (Reads) "After Mr. Farrell had stated to the Grand Jury what he had seen of the riot, and the manner in which Handwich had flung the bottle with an extended arm, inclined towards the horizon—" Is that what you meant by an extended arm?

A. Yes.

Q. You would not call raising your arm extending it?

A. No.

Q. Were there people near him on the right?

A. Yes; but not very near.

Q. The other side of the gallery was crowded?

A. Yes.

Q. Did you tell the Grand Jury, (reads) "that Handwich was at the extremity of a seat near the end of the gallery?"

A. I don't exactly understand you.

Q. Did you not know that Mr. Gordon belonged to the press?

A. Yes.

Q. Did you know he would publish what you told him?

A. I did.

Q. Did you complain of this report?

A. No.

Q. Did you think the report favourable or otherwise to the Grand Jury?

A. I did not give it a thought. I think I asked him whether it was to go to *The Correspondent*, and he said not. I asked no more about it.

Q. When you gave this information to Mr. Gordon, had the Grand Jury disposed of the bills of indictment?

A. No.

Q. Don't you know that the *Correspondent* is published six times a week?

A. No.

Q. How did you know Mr. Gordon?

A. I had seen seen him in London, and I have seen him since.

Q. How did you meet?

A. He called on me, and asked me some questions; I told him I did not recollect; but he begged of me to tell him what I did recollect, and I did.

Q. You knew he was the reporter of a newspaper?

A. Yes, and that he was the editor.

Q. When did you see the bottle first?

A. Not till I saw it in the man's hand.

Q. Did you see Alderman Darley in the gallery?

A. I did not know it was he, till I heard him called so.

- Q. You did not speak to Alderman Darley there?
- A. I did not.
- Q. Alderman Darley arrested him?
- A. Two police officers came up first and took him.
- Q. Do you know the dip of the upper gallery where the ceiling comes down?
- A. Yes.
- Q. Have you been often there?
- A. I think three or four times since I came to Dublin.
- Q. Were you near that dip?
- A. I could lay my hand on it.
- Q. You could see Handwich?
- A. I was looking at him.
- Q. There is not much light there?
- A. No, it is rather dark.
- Q. Could you read a play bill?
- A. I had not one then, but I have read one there.

Cross-examined by Mr. SCRIVEN.

- Q. When you came out, after Henry Handwich was taken, you went to the police office?
- A. I did.
- Q. You went up stairs?
- A. I did.
- Q. In College-street?
- A. The same.
- Q. Did you go into the Magistrate's room?
- A. Yes.
- Q. Were there any magistrates there?
- A. No, I was told not.
- Q. Did you see any officer?
- A. Yes.
- Q. Did you tell him what you said to-day?
- A. I told him I knew more that he was aware of.



**Q.** He turned you out ?

**A.** Yes.

**Q.** Did he ask you your name ?

**A.** No, the magistrates not being there, I thought it most prudent not to say a word.

**Q.** When you came out of the Police Office did you say you had been sworn ?

**A.** I never uttered such a thing.

**Q.** Did you say you had sworn against the bloody Orange thieves ?

**A.** Never.

**Q.** Did you say so on Sunday morning ?

**A.** I did not.

**Q.** Were you sworn on Sunday ?

**A.** I was.

**Q.** At what time of the day ?

**A.** Between eleven and twelve I suppose.

**Q.** Did you say, after coming out of the Police Office on Sunday, that you had sworn against the Orangemen ? or did you say any thing of swearing against any body ?

**A.** Not a sentence.

**Q.** Did you say any thing of what had passed before the magistrates ?

**A.** I did not.

**Q.** Did you say you would be glad to be revenged of the Orangemen ?

**A.** Never.

**Q.** Or of any person ?

**A.** Never.

**Q.** Did you say any thing in the crowd, after you came down ?

**A.** I did not.

**Q.** Did you walk through the crowd without saying any thing ?

**A.** I did not see much crowd.

- Q. Did you see any men ?  
 A. Only two that I took notice of.  
 Q. Did you go near them ?  
 A. Not as near as I am to you.  
 Q. Were you near enough for them to hear ?  
 A. I dare say they might, if I said any thing.  
 Q. You did not say a word when you came out of the office ?  
 A. Nothing derogatory to Orangemen.  
 Q. Did you say any thing ?  
 A. No.  
 Q. Where did you go to ?  
 A. To Mr. Hill's on the North-strand.  
 Q. Where did you live then ?  
 A. At the corner of Dame-lane.  
 Q. Did you go there soon after you were examined ?  
 A. Yes.  
 Q. Did you say you were glad your oath was taken ?  
 A. No, I walked along with Mr. H.  
 Q. Where did you meet him ?  
 A. He went with me to the magistrate's.  
 Q. Was he with you in the room ?  
 A. Yes.  
 Q. Did he come down with you ?  
 A. Yes.  
 Q. Did you say nothing to him ?  
 A. I said I thought it a duty I owed to the public.  
 Q. Perhaps you said you were glad ?  
 A. I did not.  
 Q. Would it have been any harm if you had ?  
 A. Perhaps not.  
 Q. Did you tell Mr. Hill any thing as to the Orange-men ?  
 A. No, I did not.

Q. Did you speak under your breath what you did say?

A. I did not.

Q. Then whatever you said to Mr. Hill might have been heard by persons who were near?

A. We made no secret; if any thing was said, they might have heard it.

Cross-Examined by Mr. DRISCOLL.

Q. Have you ever preached to any religious congregation?

A. No.

Cross-Examined by Mr. NORTH.

Q. You were examined before the Grand Jury?

A. Yes.

Q. You gave an account of it to Mr. Gordon?

A. A part of it; I could not recollect it all.

Q. As far as you did, that account was according to truth?

A. Yes, as I conceived. I told him I could not recollect accurately, but as near as I could.

Q. I suppose you told the truth to the Grand Jury?

A. I did.

Q. I suppose you represented nothing to Mr. Gordon but what was true?

A. I would not be very particular to him.

Q. Do you mean you would say any thing false to him?

A. No, but I was not so particular as before the Grand Jury.

Q. Your recollection was fresher then?

A. No, I told nothing but the truth, and remember it now as well as then.

Q. Did you state to the Grand Jury, or to Mr. Gordon, that Handwich was at the extremity of the left hand side?

A. I cannot say what I told Mr. Gordon.

Q. Did you say "out stretched" arm or "extended" arm?

A. I think extended.

Q. Did you enter into conversation with Mr. Gordon on the subject of your examination before the Grand Jury?

A. Not more than I have told you.

Q. Did he not ask you what you had seen?

A. I told him.

Q. Were there not people on the right hand of Handwich?

A. Yes, but not close.

Q. Sitting or standing?

A. Standing.

Q. You were standing also?

A. I was, the persons below Handwich were sitting.

Q. Were you not just under the dip?

A. I dare say I was.

Q. When you stood behind the dip of the upper gallery would not your forehead strike the dip?

A. No, Sir.

Q. Is it six feet from the floor to the dip?

A. I don't know.

Q. Five?

A. I cannot say.

Q. If you were behind the dip, and stood up, would it be possible not to hit your forehead against it?

A. I might not.

Q. If a person behind, were to stretch his arm, must he not have struck the dip?

A. No, not the way the bottle was thrown.

Q. Must he not have hit the seat or the persons behind him or before him?

A. There were none behind him.

Q. Were there any before him?

A. Yes, but they were sitting.

Q. Must he not have hit the heads of those ?

A. If he had thrown it that way.

Q. Would it not have gone into the lattice, if it was thrown as you have described ?

A. No Sir.

Re-examined.

Q. You said that no one was behind Handwich when he threw the bottle ; was it more or less crowded at the left or right ?

A. It was more crowded at the centre.

Q. Was the place from which he threw it more or less in the general observation of the house than the right of the gallery ?

A. Less.

Q. Would he have been more or less amongst his own party at the left ?

A. I think there were more of his own party where he stood.

PHILIP RYAN Examined by SERJEANT TORRENS.

Q. Do you recollect the night of the Lord Lieutenant being at the Theatre ?

A. Yes.

Q. Do you know a person of the name of George Graham ?

A. I know a man who is so called.

Q. Point him out ?

A. There (identifies him).

Q. Do you recollect having seen him at the Theatre on that night ?

A. I do.

Q. Where was he sitting ?

A. On the front seat of the upper gallery.

Q. What made you first take notice of him ?

A. From the noise he made many times with a rattle in his hand.

Q. At what particular time of the performance did he make the most noise ?

A. A great many times during the play.

Q. Was it repeated after the play ?

A. Yes, at the conclusion of the play. I did not hear the noise of the rattle after.

Q. Did you see him do any thing with that rattle ?

A. I did, Sir.

Q. What ?

A. While it remained good in his hand, he was creaking it about : he struck it against the gallery ; and when it became useless, he broke it, and struck it against the gallery.

Q. Did you see him do any thing after with either piece of wood ?

A. I saw him raise his hand about the singing of the glee, when the Lord Lieutenant was groaned and hissed. He stood up and looked into the middle gallery, and threw it.

Q. Did you see where it struck ?

A. It appeared to me to strike the edge of the seat next the box where his Excellency was sitting.

Q. What part of the house were you in ?

A. In the middle gallery.

Q. He was in the front of the upper gallery ?

A. Yes.

Q. While the glee was singing, what groans or noises did you hear ?

A. The exact words, as I recollect, were " No Popish Government." " A groan for the Marquis Wellesley."

Q. You heard these noises many times ?

A. Yes.

Q. Do you recollect any other expressions ?

A. I do. I recollect seeing some of the party he belonged to, drinking from a bottle, filling out, and drinking "The Glorious, Pious, and Immortal Memory," "The Boyne Water," "Protestant Ascendancy," and "This night the gallery is our own!"

Q. Do you recollect seeing any weapons with them ?

A. I saw some more backward with large white sticks.

Q. Were you examined before as to this matter ?

A. Yes, before the Grand Jury in Green-street.

Q. Was your evidence the same then as to day ?

A. Yes, in substance.

Cross-examined by Mr. HAMILTON.

Q. Where were you in the Middle Gallery ?

A. On the fourth or fifth seat, as well as I recollect.

Q. When did you give this information ?

A. On the morning following.

Q. Did you speak with equal certainty on that occasion as to the identity of the person ?

A. Yes, in distinct terms. I recognised the man at the watch house, and swore against him.

Q. Did you at first identify him otherwise than by description ?

A. By the description of his person.

Q. Did you describe his dress ?

A. Very likely I did.

Q. (By the CHIEF JUSTICE.) Was this description before you saw him at the watch house, or after ?

A. Before I saw him, my Lord. I gave it to a man who appeared to be a constable, and he told me that that man was in the watch house.

Q. How did you describe his dress at the watch house ?

A. I asked had he a prisoner, who was low sized, and of a sallow complexion, with a dark mixture coat ? He said " that man is in the watch house."

Q. How did you describe the coat ?

A. I said it was a dark mixture coat, I cannot exactly say whether it was dark mixture or blue.

Q. In what line of life are you ?

A. In the Excise department.

Q. In what office ?

A. My situation is in the county of Galway, not in Dublin.

Q. What is your situation ?

A. An officer of Excise.

Q. What officer ?

A. An officer of the preventive Excise.

Q. Is there any salary allowed to that office ?

A. Some have a weekly allowance, but at present I have none.

Q. Have you been looking for promotion in the Excise ?

A. I came up from the country about some rewards that were due to me.

Q. From whom did you expect to get them ?

A. From the Board of Excise.

Q. Did you get them ?

A. I got part of what was due to me.

Q. Not all ?

A. No, there is a balance which I have an expectation of getting.

Q. Why did you not get all ?

A. There is an order in the Board against persons in my situation effecting seizures without a legal officer acting with them. I acted on some occasions without a legal officer. The Board have a certain sum under their discretion.



Q. Are you sure ?

A. Yes, if I may believe the evidence of my senses.

Q. Did you hear any other cries ?

A. At that scene in the play where the table is laid, some one called out to Liston to drink the Glorious Memory.

Cross Examined by Mr. SCRIVEN.

Q. You heard several scurrilous and offensive expressions ?

A. Yes.

Q. And amongst the rest " a clap for Lord O'Neil, Sheriff Thorpe and Alderman Darley." You live in Ballinakill ?

A. Yes.

Q. Were you in town that night ?

A. I was.

Q. When were you put into custody ?

A. About a fortnight ago.

Q. You are generally a peaceable well conducted man ?

A. Yes.

Q. Was it for that you were put into prison ?

A. No, not for that ; it was for an alleged breach of the peace, for breaking open a pound ; some persons who were with me went in and took the cattle out.

Q. You indicted a man concerning that distress ?

A. No, I was indicted.

Q. Were there not cross indictments ?

A. Not on the pound business.

Q. On any other ?

A. Yes, I indicted a man for an assault and rescue.

Q. Were you not found guilty and the man acquitted ?

A. They found me guilty on that pound business.

Q. Was not the man acquitted ?

A. He was.

Q. That was where you were well known ?

A. Pretty well known.

Q. Were you not sentenced to three months imprisonment ?

A. I was.

Q. And you volunteer here ?

A. I did not volunteer, I was served with a subpoena.

Q. Why were you served with a subpoena ?

A. I cannot conceive, unless it was from my having reported to a gentleman, shortly after, what I saw.

Q. Do you know Mr. Kemmis ?

A. Yes, the Barrister.

Q. Was it to him you communicated ?

A. No.

Q. Was it Mr. Carmichael ?

A. I don't know him.

Q. You contrived it so, however, that Mr. Kemmis should know of it ?

A. No such thing.

Q. When did you tell it ?

A. Two or three days after I dined near Mountjoy-square, and said it to two or three gentlemen, and unless one of them mentioned it, I know not how it was otherwise known.

Q. You are now under sentence of imprisonment ?

A. Yes.

Q. One fortnight is gone ?

A. Yes.

Q. You have some expectation of having it shortened ?

A. I had a notion of memorialing. I thought it a very severe sentence ; the cattle were my own. The tenant took them away, and I got them back.

Q. You were found guilty a fortnight ago ?

A. Yes.

## Cross-examined by MR. SPEER.

Q. Did you ever see Henry Handwich before?

A. Not before I saw him in the gallery.

Q. Nor from that time till now?

A. Yes, this morning I saw him here.

Q. On your oath, was he or was he not pointed out to you since you came?

A. No, I knew him when I saw him.

Q. I did not ask that question. Did any one point him out as the person accused of throwing the bottle?

A. No, I knew him this morning when I saw him.

Q. What part of the upper gallery was he in?

A. On the left hand side.

Q. What row?

A. I should take it to be the second. I think the people he leaned over were those on the second bench. He might have been between the second and third benches.

Q. How long was he in your eye?

A. When he delivered what was in his hand, I looked at him again.

Q. Were you here when Mr. Farrell was examined?

A. For a short time. I came in at the close.

The CHIEF JUSTICE.—Were you in Court when Mr. Farrell was identifying Handwich?

A. No, my Lord.

Q. Where were you?

A. Up there, near the crier.

Q. When you saw him below did you recollect him?

A. I did.

Q. Had you any body to assist you?

A. Nobody.

## Cross-examined by Mr. NORTH.

Q. Shew the spot you were in?

A. Up near where that gentleman, the barrister, is.

Q. You were in the front of the middle gallery?

A. No, I was about the centre.

Q. What row?

A. I cannot exactly say, it might have been about the fifth.

Q. Where was Henry Handwich?

A. About the third row of the upper gallery.

Q. He leaned over the people in the front?

A. He appeared to be stooping forward.

Q. There was the front railing of the upper gallery between you?

A. Yes.

Q. And the people?

A. Yes.

Q. Was not he near the third row?

A. Yes.

Q. You must have been turning round from the stage to look through the railing?

A. I turned round when I heard "Boys mind your fire."

Q. Did that expression attract much attention in the middle gallery?

A. So much, that two gentlemen, who were sitting near me with ladies, retired.

Q. Did you turn round to the left or the right, and point out Handwich?

A. I never said a word of it.

Q. Nor made the least observation to any body?

A. Not at the time.

Q. Did you go to the police office that night?

A. No.

Q. Did you go to Ballinakill without giving information?

A. I did not give information.

Q. Not till you were in pound. You gave up the notion of memorialing ?

A. Yes.

Q. You thought it the best way to get out of pound by putting Handwich in ?

A. I do not want to put him in.

Q. Were you not influenced in coming here, by the expectation of being released ?

A. As I hope for salvation, I had not the least expectation of that sort ; and did not expect to be called on, till the subpoena was served on me.

Q. Where have you been sitting ?

A. At that side.

Q. Were you not at this side ?

A. Yes at first, but I was taken round.

Q. Could you hear or see what was going on ?

A. No.

Q. Had you any conversation with any person near the crier ?

A. I don't know but I might.

Q. How long were you there ?

A. About a quarter of an hour, but nothing was doing.

Q. Where did you go when this trial began ?

A. I went to breakfast.

Q. Do you know Mr. Henry Arabin ?

A. I have seen a Barrister in Abbeyleix, whose name I have heard is such.

Q. He presided at the sessions for the Barrister ?

A. Yes.

Q. He pronounced sentence on you ?

A. Yes, I think a very severe one.

### THIRD DAY.

James Tiernan examined by Mr. TOWNSEND.

Q. Were you in the Theatre Royal the night the Lord Lieutenant was there ?

A. I was.

Q. Where did you sit ?

A. In the upper gallery, on the second seat.

Q. Did you observe who sat immediately before you ?

A. Yes, from his conduct.

Q. Look about you and try if you see that person in Court ?

A. There (identifies George Graham).

Q. What did you note of his conduct ?

A. He was ringing the rattle.

Q. In what part of the gallery did you sit ? You know the partition : at which side of the centre ?

A. I think it was more to the left.

Q. Nearer the centre or the partition ?

A. A little more to the left than the centre.

Q. Was there any thing particular occurred during the evening ?

A. Yes, a great deal of noise.

Q. In what part of the house chiefly ?

A. To the left ; they were groaning and hissing at one side, and clapping at the other.

Q. Was all this in the upper gallery ?

A. There was groaning and hissing in almost every part.

Q. What do you mean by left and right ? in what part was the noise chiefly ?

A. There was most noise in the upper gallery.

Q. What expressions were used to the left ?

A. The Lord Mayor was groaned. His Excellency was groaned, and there was a clap for the "Calf's Head."

Q. Did you see any thing thrown ?

A. Yes.

Q. What first ?

A. A bottle.

Q. Did you see any person throw the bottle ?

A. No Sir, I did not.

Q. How did you see it ?

A. To the best of my opinion it came over my head ; it came from behind ; I saw it strike the curtain.

- Q. Did you see any thing else thrown ?
- A. Yes.
- Q. What ?
- A. The head of a rattle.
- Q. What do you call the head ?
- A. The part that turns round.
- Q. When was it separated from the handle ?
- A. The time the farce was going on.
- Q. Who threw it ?
- A. George Graham ; he had it.
- Q. Did you see where it struck ?
- A. It dropped at the foot of his Excellency's box.
- Q. Did any thing particular happen, when the bottle was thrown ?
- A. I saw Mr. Barton taking it up.
- Q. But in the gallery ?
- A. Nothing happened at that time.
- Q. Or at any time ?
- A. Yes.
- Q. What was it ?
- A. I got a desperate blow on the shoulder. When the bottle was thrown, I cried shame, and then I was struck from behind ; I got up and then I got another blow here which is still black.
- Q. What were the blows given with ?
- A. With a bludgeon, made I believe for the express purpose of that night.
- Q. Did you see these sticks ?
- A. Yes, they were square sticks with four corners as sharp as a lance. They were new sticks.
- Q. Were they of the same shape throughout ?
- A. No, there was a handle.
- Q. Did you see the person who threw the rattle, taken ?
- A. I did.
- Q. Did you ever lose sight of him from the time he threw the rattle till he was taken ?
- A. No.

Q. Were you assisting to take him ?

A. Yes.

Q. Did you see any papers ?

A. Yes, I did, Sir.

Cross-examined by Mr. DRISCOLL.

Q. What is your situation in life ?

A. A Chandler.

Q. You were a little to the left of the centre ?

A. Yes.

Q. You saw the bottle fly over your head ?

A. I think so. I saw it light on the stage. I saw it go over the pit very quickly.

Q. Are you sure that it came from behind you ?

A. I think so.

Q. Did you see the man that hit you ?

A. No.

Q. There was a great crowd ?

A. An immense crowd and confusion.

Q. The sticks, you say, had four corners ?

A. They were lumps of sticks made of deal.

Q. You were in a great crowd ?

A. The greatest crowd was in that part of the gallery.

Q. Did you see any one brandish a bludgeon ?

A. I did not.

Q. What part of the stick was as sharp as a lance ?

A. It had four corners.

Q. Like a sash frame ?

A. Something like that.

Q. It is very hard to make a piece of wood as sharp as a lance ?

A. I will not swear it was quite as sharp as a lance.

Q. When did you first give information ?

A. On St. Stephen's day, the 26th of December.



Q. Why not before ?

A. I was afraid.

Q. Afraid of what ?

A. Of the party in the gallery.

Q. Did you not assist to take him ? were you not then afraid ?

A. I might not be known there; the reason I came forward was, because it was taken up in such a manner by the country at large; then I took a little courage.

Q. Were you afraid before of being pelted in the streets or whipped ?

A. I was.

Q. But when the country took it up, you thought you would be safe ?

A. Yes.

Q. Because the country at large would have protected you in the streets of Dublin ?

A. Yes.

Q. Did not the country at large take it up before the 26th of December ?

A. Yes.

Q. Why didn't you unbottle this evidence before ?

A. I think I came forward time enough.

Q. Were you examined before the Grand Jury ?

A. I was.

Q. Before whom did you first swear informations ?

A. Before Major Sirr.

Q. Were you sent for ?

A. I was.

Q. I thought you said you came forward yourself ?

A. I came forward on Christmas eve, and I got a letter on Christmas morning from Major Sirr.

Q. Whom did you speak to ?

A. To Mr. Gillogley, a Peace Officer.

Q. Was it not obliquely over your head that the bottle came ?

A. I cannot say it came directly over head, but I saw it strike the curtain just above the stage.

## Cross-examined by Mr. SCRIVEN.

- Q. You were in the upper-gallery ?
- A. I was.
- Q. In what row ?
- A. The second.
- Q. How near the extremity ? nearer to the centre or the left ?
- A. I think it was nearer to the left.
- Q. How many yards from the left ?
- A. I cannot positively say.
- Q. Did you look about ?
- A. Often.
- Q. Was there a great crowd ?
- A. An immense crowd.
- Q. All about ?
- A. Yes ; I never saw the upper gallery more crowded ; I never saw it so crowded.
- Q. Was it crowded the whole way to the back ?
- A. Indeed it was.
- Q. Did it not appear as if packed ?
- A. A great many could not get seats.
- Q. Then it is not very likely there were many empty seats ?
- A. I could see no empty seats. I was bothered with the noise.
- Q. Perhaps some of the noise came from you ?
- A. Yes.
- Q. Did you hiss ?
- A. No, I clapped.
- Q. You cheered the Lord Mayor ?
- A. Yes.
- Q. The Lord Lieutenant ?
- A. Yes.

**Q.** Whom did you hiss?

**A.** Nobody.

**Q.** Did you hiss when the Boyne Water was called for?

**A.** No, I did not hiss at all.

**Q.** Did you hiss or groan when the Protestant Boys was called for?

**A.** No.

**Q.** Did you give a smother'd sigh?

**A.** Yes.

**Q.** When Lord O'Neil was clapped, what did you do?

**A.** I would not clap.

**Q.** Why not?

**A.** Because I hear he is Grand Master of the Orange Lodges.

**Q.** He did you a great deal of mischief?

**A.** No he never did me any harm or good.

**Q.** Did you hear, about the time the bottle was thrown, any particular expressions used?

**A.** Many.

**Q.** What?

**A.** Calling for the Protestant Boys—Popish Lord Mayor—and Popish Lord Lieutenant.

**Q.** Did you hear Sheriff Thorpe hissed?

**A.** No, but often clapped. Only at one side of the house.

**Q.** (By a Juryman.) When you saw the bottle thrown, did you hear any one cry, "Boys mind your fire?"

**A.** No.

**Q.** Did you hear any watch word?

**A.** No.

**Q.** If there had been any, do you think you must have heard it?

**A.** I think I would, for I was in the middle of them.

**THOMAS STAUNTON CAHILL, examined by the SOLICITOR  
GENERAL.**

**Q.** Do you remember being at the Theatre the night the Lord Lieutenant was there?

**A.** I do, Sir.

**Q.** In what part of the house?

**A.** In the middle gallery.

**Q.** Do you remember seeing any thing pass through the air on that night?

**A.** I do, Sir.

**Q.** Do you know what it was?

**A.** I do, Sir.

**Q.** What was it?

**A.** A bottle.

**Q.** Did it appear to you to come from your gallery, or the one above?

**A.** I saw it in its progress over the pit, and it appeared to me to come from behind, and from a high part of the house.

**Q.** Could you form an idea from what part of the house?

**A.** From the course it took, the impression on my mind was, that it came from the left hand side of the upper gallery.

**Cross-examined by Mr. DRISCOLL.**

**Q.** You are in College?

**A.** As a medical student.

**Q.** Was what you saw moving quickly or slowly?

**A.** Very quickly.

**Q.** What drew your attention to it? the time must have been very short?

**A.** Very short. When all the house were cheering, I heard a voice call out "Ah Wellesley," in a disrespect-

ful manner. I looked up and saw a man with a bottle in his hand, drinking porter, or something, and helping others. Seeing me look up, he, or some person in his vicinity, handed down a card, desiring me to take it up and read it. I did so, and read on it, "No Popery." After reading this, and lifting up my head again, I perceived the bottle in its progress.

Q. Was it the man who threw down the card that desired you to read it?

A. I cannot say it was he; but it was done in his neighbourhood.

Q. When did you first give information?

A. I believe on Friday last. I was not sworn.

Q. To whom did you tell it?

A. To the Right Honourable Gentleman there, the Attorney General.

Q. Why did you conceal it so long?

A. I was not asked about it; and as I could not say who threw it, I did not think that so much as I knew would be of service; but I happened to be in company with a gentleman at dinner, who said it would be of use, and then I thought it my duty, as an honest man, to come forward, and if it could be of use, to tell it.

**Cross-examined by Mr. PERRIN.**

Q. You saw some person drinking porter or some dark liquor?

A. Yes, I saw the bottle to his mouth.

Q. Porter or some dark liquor?

A. I saw it to his mouth.

Q. (By a Juryman. You said you saw him drink porter or something like it?

A. I did not know what it was; I could not say it was porter.)

Q. Did I ask you whether it was some dark liquor ?

A. Yes.

Q. Did you say yes ?

A. As far as drinking out of the bottle : I could not say what colour it was.

Q. Did you say yes ?

A. I think I did say yes to your question.

Q. You stooped and took up a card ?

A. Yes.

Q. On what side did you sit ?

A. On the second seat next the front.

Q. On what side ?

A. About the middle, but a little to the left.

Q. Was any part of the performance proceeding at this time ?

A. I do not recollect ; my attention was taken away ; I do not think the performance was proceeding.

Q. Were the lights up or down ?

A. They were immediately in the act of raising the foot lights, when I saw the bottle descending.

Q. On raising your head you observed the bottle pass across the pit ?

A. Yes.

Q. I think you said about the middle of the pit ?

A. About that, when my eye caught the bottle.

Q. Did you see it about the centre ?

A. To the best of my recollection it was pretty much about the centre.

Q. Do you know what I mean by the centre ? I mean midway between the different sides of the house ?

A. Oh ! no Sir—I mean midway between the gallery and the stage. It could not be midway between the boxes, because it was much to the left.

Q. Was it near the left boxes ?

A. Pretty near ; much nearer to the boxes on the left than the middle.

**Q.** Where did it strike the curtain ?

**A.** Some person stood up when it struck the curtain, and intercepted my view ; when I saw it again, it had rebounded and rolled down, and was taken up by the musician:

**Q.** Could you say whether the bottle was taking a perpendicular or a horizontal direction ?

**A.** Neither, it was with a degree of obliquity, and descending rapidly.

**Q.** Did it turn, or was it going direct ?

**A.** To the best of my recollection it went direct, it did not seem to me to be turning.

**Q.** Was it five seconds in your view ?

**A.** It was a very short period.

**Q.** Will you swear it was five seconds ?

**A.** I will, for I saw it in the man's hands. I cannot say it was five seconds in its course.

**Q.** The lights were raised immediately ?

**A.** They were about raising them as well as I recollect.

**JOHN CROSBIE GRAVES, Esq. Examined by the ATTORNEY GENERAL.**

**Q.** You are a magistrate ?

**A.** Yes.

**Q.** Were you in the Theatre the night the Lord Lieutenant was there ?

**A.** Yes.

**Q.** Do you recollect at any time that night having seen any of the Traversers ?

**A.** I saw Mr. Forbes.

**Q.** Were you in the Theatre when the bottle was thrown ?

**A.** I was, when the bottle was held up. I did not see it till then.

**Q.** You were in the back of the boxes ?

**A.** Yes, the box next the Lord Lieutenant.

**Q.** Was it after that, you saw Forbes ?

**A.** Yes.

**Q.** Where were you when you saw him ?

**A.** When I first saw him I was in the third tier of lattices at the side of the house opposite the Lord Lieutenant.

**Q.** When did you go there ?

**A.** On seeing the bottle held up, there was a very general cry of "Shame shame." It was the first thing that induced me to think it called for the intervention of a magistrate, and I intended to go to the gallery : but wishing first to take a view of the house, I went to the opposite side of the boxes above to look at the gallery and take a general view of it.

**Q.** Where did you see Forbes ?

**A.** He was immediately close to the spikes in the upper pigeon holes on the Lord Lieutenant's side of the house.

**Q.** That was immediately adjoining the left of the upper gallery ?

**A.** Yes.

**Q.** Did any thing particular call your attention to Forbes ?

**A.** On looking at the left of the gallery, and the pigeon holes at that side, I saw a great deal of confusion and tumult, and the people standing up at the left side of the gallery. The same thing appeared to extend to the pigeon holes at that side. There were at least three persons standing close to the spikes, and so conducting themselves—

(This mode of answering was objected to by Mr. JOHNSTON.)

**Q.** What were they doing ?

**A.** The three persons in the pigeon holes close to the spikes, one of whom was Forbes, were standing up, and all of them using whistles—with their hands up to their



months, and using something that appeared to be whistles. They caught my attention, and I crossed the house.

Q. This was after the bottle was thrown ?

A. Yes. I got into the lattices immediately under them, and looked up, and then I saw Forbes only in the act of using a whistle.

Q. Was there any thing between that part of the pigeon holes and the left of the gallery to prevent a communication ?

A. Nothing at all.

Q. Did you do any thing on seeing Forbes use the whistle ?

A. I asked him why he did that.

Q. What was his answer ?

A. His answer was, " For fun."

Q. Was this before or after the cries of " Shame, shame?"

A. Considerably after, so as to admit my going up and crossing the house. It was at least three minutes.

Q. Were you able exactly to see whether there was a communication by words or otherwise, between the upper pigeon holes and the upper gallery ?

A. These three persons had their faces directed towards the gallery, but I saw no direct communication.

Q. On getting this answer from Forbes, did you do any thing ?

A. I remonstrated with him, and he persevered. I left the boxes to seize him. Mr. Tudor was with me, and he proceeded for the same purpose. He was before me, and laid hold of Forbes before I did. I think I got to the back of the box as he got to the front.

Q. Did you assist ?

A. Yes. He immediately gave himself up to Mr. Tudor, recognizing him as a magistrate. Mr. Tudor said, Mr. Graves is a magistrate, and Forbes said, I will go with you where you please.

**Q.** Had Forbes any thing in his hand ?

**A.** I observed his hand closed. I said he must open his hand ; he did it with some reluctance, and I took this, (producing a whistle) from his hand.

**Q.** What did you do with him ?

**A.** We took him to the watch house.

**Q.** Had you any conversation with him ?

**A.** Forbes said, I assure you Mr. Graves, I am as loyal and as much attached to the King as any man : I said, I don't question that, but you took a very awkward mode of shewing it, by disturbing the house, and insulting the King's representative.

**Q.** Had you any further conversation ?

**A.** No.

**Q.** Did you commit Forbes.

**A.** We took him to the watch house. It was asked there, will you not take bail ? I was giving him in charge, when some Gentlemen who were with him pressed for bail. I said yes, bail might be taken, but not till the play was over. He then pressed for bail and said, if you will take bail, I will give you my honor I will not return to the Theatre. Two other persons pledged themselves, and I then complied, and said, he might be discharged, on bail being perfected.

**Q.** Did you see him after that night ?

**A.** No. I left him at the watch house.

**Q.** Had Handwich been then arrested ?

**A.** No.

**Q.** Do you know of any person's having offered to go bail for Handwich that night ?

**A.** No.

**Q.** Did you return to the house after the play ?

**A.** Yes.

## Cross-examined by Mr. JOHNSTON.

Q. You were unacquainted with Mr. Forbes, and he with you ?

A. Yes.

Q. Therefore he did not know you were a Magistrate when he said " for fun ?"

A. I should think not.

Q. There was a strong party of Police stationed in various parts of the house ?

A. The orders were to have fifty in the play house.

Q. Were they not selected for the purpose, vigilant active men ?

A. The Magistrates left that to an officer in whom they could place great confidence; we directed the numbers, and confided to him the selection. There were a number of officers, patrol and cavalry, and the direction was that they should go in their own cloths, not to appear to carry force into the house.

Q. The instant Mr. Forbes recognized Mr. Tudor, he said he would surrender to him ?

A. Immediately.

Q. And did so ?

A. He came without the least struggle or resistance.

Q. He attended at the Police Office, according to his bail ?

A. So I understand. I was not present.

Q. And you have no reason to suppose he broke his word by returning to the Theatre ?

A. Not the least.

Q. You went to see the gallery; did you ever see it more crowded ?

A. I cannot say my view of it was exactly that. It appeared to me as if the people were in the passage in much confusion, and as if some people were leaving it. There seemed not to be a close press at that side.

**Q.** You left the house with Forbes?

**A.** Yes; and returned.

**Q.** At what time was the rattle supposed to have been thrown?

**A.** I should suppose, while I was out of the house.

**Q.** At any time before you left the house, had you heard of the rattle being thrown?

**A.** I had not, nor situated where I was could I hear a rattle.

**Q.** You were in the box adjoining his Excellency's?

**A.** I sat at the back of that box.

**Q.** In the part of the house you were in, you did not hear the rattle, or hear of its being thrown?

**A.** The noise of the rattle did not strike my ear particularly. There was a great deal of noise and confusion.

**Q.** Were there informations taken at your office against Forbes?

**A.** There were.

**Q.** Were there any witnesses examined?

**A.** There were persons that spoke to facts involving Forbes.

**Q.** Were there any depositions taken?

**A.** Yes, there were. Farley's and others; those of waiters and others at the house in Essex-street.

**Q.** The depositions taken down at the office had reference to the transactions at Flanagan's only?

**A.** Yes.

**Q.** None were taken in the presence of Forbes?

**A.** No. I speak of those in the first instance.

George Harris examined by SERJEANT TORRENS.

**Q.** So you recollect being at the Theatre the night his Excellency was there in December last?

**A.** I do, Sir.

**Q.** In what part of the house ?

**A.** In the lower gallery.

**Q.** Do you recollect any disturbance in the gallery on that night ?

**A.** I do, Sir.

**Q.** In which gallery particularly ?

**A.** Mostly, in fact altogether, in the upper gallery.

**Q.** Did you see any person take part in that disturbance ?

**A.** I noticed a person in the front seat of the upper gallery with a rattle, who had been particularly noisy from the commencement.

**Q.** Would you know that person again ?

**A.** Certainly (identifies George Graham).

**Q.** What kind of noise ?

**A.** Sometimes by turning it in his hands, sometimes by beating it against the front of the gallery, where he sat. Towards the end of the play I saw him break the rattle in two pieces. After the play was done, I believe after the glee, I saw a piece of wood, which I judged to be one of the pieces, nearly strike the person of his Excellency.

**Q.** What did you do upon that ?

**A.** I turned round on my seat to observe the actions of this Graham.

**Q.** Did you observe any thing particular done by him ?

**A.** I immediately saw him throw another piece of wood similar to what was thrown before, and in the same direction.

**Q.** Did you observe what direction that second piece took ?

**A.** Not further than where it passed me ; it appeared to be going in the same direction as the other. I did not see where it fell.

**Q.** Were you examined before the Grand Jury ?

**A.** I was. One of the Grand Jury disputed very much my testimony.

## Cross examined by Mr. HAMILTON.

Q. Were you much offended by the Grand Jury's discrediting your testimony ?

A. Not particularly.

Q. They were two similar pieces of wood ?

A. Yes, as far as I could recollect.

Q. One was like the other ?

A. I judged it so.

Q. You heard him make a noise with the rattle, how ?

A. By turning it sometimes and sometimes by striking it against the gallery.

Q. Is it the same kind as a watchman's ?

A. The same kind, I think not so large as what the London watchmen use.

Q. Of what sort ?

A. As far as I can judge, the two sides compose what is called the head ; my attention was taken up by examining the person of the individual, that I might know him again.

Q. You felt no anxiety to know what became of the piece of wood ?

A. I felt greater anxiety to know the person.

Q. Did you swear informations ?

A. Yes, on the following morning.

Q. Were you on military duty that night ?

A. No, I was there as a spectator, merely for amusement.

Q. Had you leave of absence ?

A. No, I had leave for a certain time, but not till that hour ; only till nine.

Q. You staid out longer than you had permission ?

A. I certainly did.

Q. That is in a military sense an offence ?

A. It certainly is.

Q. Of what rank were you then ?

A. I was then Serjeant.

Q. How long had you been Serjeant ?

A. Nearly six years.

Q. What are you now ?

A. I am now Serjeant Major.

Q. That night you were induced to violate your duty ?

A. In that respect.

Q. Are you not now Serjeant Major ?

A. Yes.

Q. Have you been stationed in any particular place ?  
where were you quartered ?

A. During the whole summer my duty was to escort the Lord Lieutenant to and from town, till the regiment went to Kildare ; then I came to town unwell.

Q. Where were you since the night of the play ?

A. When I was with my regiment I was in the county of Kildare.

Q. Where in Dublin ?

A. At any house I chose to pay for my board in.

Q. Have you paid for your dinner every day ?

A. I don't know that I have, but I suppose I shall.

Q. Have you not got your dinner for nothing every day since the play ?

A. No.

Q. Any day ?

A. I cannot say any particular day.

Q. Have you dined at the Park ?

A. Never in my life.

Q. Have you supped there ?

A. Yes.

Q. You took a glass and drank the King's health ?

A. Yes. I could not do a more worthy thing.

Q. Did you drink the "Glorious Memory" ?

A. I have done that before, but not since that night.

Q. Did you drink it the night you supped at the Park ?

A. No.

Q. (By a Juror.) Did you see the bottle thrown ?

A. No. I saw it held up by a person in the orchestra.

CHARLES SKINNER examined by Mr. TOWNSEND.

Q. Do you remember the night the Lord Lieutenant went to the Theatre ?

A. Yes.

Q. Were you there that night ?

A. I was.

Q. Where were you ?

A. At the early part of the evening I was on the pit door, assisting the check takers.

Q. Where were you after the play ?

A. Then I went on the stage.

Q. Did you see a rattle thrown ?

A. No.

Q. Did you make search for any thing of the kind ?

A. I saw it lying on the stage, and took it up.

Q. Where did you find it ?

A. Nine or ten feet from the Lord Lieutenant's box (identifies it).

Q. When did you find it ?

A. I believe it was in the last act of the farce.

Q. Was there any thing else of the same kind on the stage ?

A. I think not.

Cross-examined by Mr. BLACKBURNE.

Q. At what time was it ?

A. About twenty minutes past ten.

Q. (By a Juror. Was it in that state when you found it ?

A. Yes.)



GEORGE FARLEY examined by the ATTORNEY GENERAL.

Q. Of what profession are you ?

A. At the profession of an Attorney.

Q. Do you recollect the night of Saturday the 14th of December ?

A. I do Sir.

Q. Do you recollect having been in company with any one, after the play was over ?

A. I cannot say when the play was over, but I was in company with a gentleman between ten and eleven that night.

Q. Who ?

A. James Troy.

Q. What is he ?

A. A merchant in Bridge-street.

Q. Did you and he go any where together—To any house ?

A. Yes, to a tavern in Essex-street.

Q. Had you been out on any business or amusement during the evening ?

A. I had been with Mr. Troy that night, and he and I left his house on the Quay, to see two ladies and a gentleman to Essex-bridge to get a carriage.

Q. Did you go any where after that ?

A. We agreed to get a tumbler of punch together, the night being cold; we went over Essex Bridge, and resolving to go into the first tavern we met with, turned into the tavern at the corner of Crampton-court kept by Mrs. Flanagan.

Q. Your going in there was accidental ?

A. Yes.

Q. You had no other object than the one you mention ?

A. None whatever.

**Q.** When you went in were there many there ?

**A.** A good many.

**Q.** What time was this ?

**A.** Between ten and eleven.

**Q.** Did the same persons continue there ?

**A.** A good many went out, and some remained. We had been sitting but a very short time, when a number of persons came in, in a body. They rushed in ; the room was very small and the passage narrow ; they crowded the passage completely. The boxes were small.

**Q.** Were you able to collect from their conversation where they had been ?

**A.** When they came in, I remember their getting into a box opposite that in which we were sitting ; such as could not get into the box surrounded it, and leaned over ; and for some minutes they held a conversation among themselves, with their heads down ; they remained in that position for some time, communicating with each other on some private subject, one word of which I did not hear.

**Q.** How long did they continue in that situation ?

**A.** Not more than a few minutes.

**Q.** About how many were there ?

**A.** I dare say eight or ten, or from that to twelve ; as many as could get into the box did ; I don't think it would hold more than six with convenience ; there were others outside.

**Q.** Do you mean that the entire party that came in a body were eight or ten, or the persons in and about the box ?

**A.** The persons in and about the box ; some of those that came in, went to the upper part of the room.

**Q.** What took place afterwards ?

**A.** After they had finished what they were saying, they dispersed ; some went to the other part of the room ; some went up stairs, and perhaps some went into the street.

took place in the lower part of the room? got into a box, and called for what they two gentlemen were sitting in the box with Mr. me, when they came in; four of the persons in the box.

Q. How was that box situated as to you?

A. As near as that desk—I don't suppose there was more than four feet passage.

Q. Was it directly opposite?

A. Directly opposite.

Q. Would you know the persons of any of those who came in?

A. I knew Graham, and the two Atkinson's; there was another whom I did not know at that time.

Q. Did you hear his name since?

A. Yes.

Q. Do you know their persons?

A. Yes. (Identifies Forbes, W. Graham, and Brownlow.) Forbes, Graham, and Brownlow, sat in the box.

Q. You did not then know Forbes's name?

A. No.

Q. You have no doubt of his person?

A. No.

(The CHIEF JUSTICE—Did you know the other persons' names before?)

A. Yes, my Lord. Atkinson, Graham, and Brownlow.)

Q. Were you examined before the Grand Jury?

A. Indeed I was.

Q. Did you give evidence before them as to Forbes? (This question was objected to, and not allowed by the Court.)

Q. Did you know any other person in the room besides those you mention?

(Witness—I must correct myself as to Brownlow: he was not in the box, but sat on a table near that box.)

Q. Did all the party come in together, or in succession ?

A. Those that came first all got into a box and seemed to come in a body. They seemed to be all known to each other ; they conversed and spoke of the Theatre.

Q. Did you hear any questions or observations from any to the other ?

A. I did.

Q. State what they were, and by and to whom ?

A. A gentleman that sat in the box immediately behind me, was in such a position, that while he spoke I looked round, and heard him address Brownlow, who sat on the table; he accused him of not being at his post in the gallery according to appointment.

Q. Did Brownlow make any answer ?

A. He said he was as well where he was, or had been.

Q. Did he mention where he had been ?

A. The other said—" You are a pretty fellow to keep your appointment ; you must go to the pit ; nothing would do you but the pit."

Q. What did Brownlow say ?

A. He shook his head, and said nothing at all. There was this expression made use of—he said, that for the purpose he was as well where he was, or some such thing. There was a great deal of conversation more which I don't recollect.

Q. Do you recollect who the person was that addressed Brownlow ?

A. I think the gentleman's name is M'Intosh. The four persons that sat in the box retired to get supper at the far end of the room. There was a great deal of conversation about the Theatre when they were at supper. The throwing of the bottle was spoken of, and the throwing of the stick. I think I saw another person sitting outside on a chair, there being no room in the box. (The witness was here cautioned not to repeat any indecent expressions made use of.)

**Q.** State the conversation?

**A.** I heard the bottle and stick mentioned ; there was a kind of regret that it did not take effect. I heard one of them say, that the throwing of the bottle or stick was a damned or bloody miss. It was repeated more than once.

**Q.** Do you mean by some of the party?

**A.** Yes.

**Q.** Did that allude to the bottle or stick?

**A.** Both were spoken of; and therefore it might relate to both.

**Q.** Was that the conversation you allude to, when you said there was a kind of regret expressed?

**A.** It was.

**Q.** Can you say whether it was any one of the Traversers who said this?

**A.** I cannot identify the particular person.

**Q.** But it was at the table?

**A.** Yes; and by one of the four that went from that box.

**Q.** The four were the two Atkinsons, Forbes, and Graham?

**A.** Yes.

**Q.** Was any thing said by any of them in dissent or disapprobation?

**A.** Not that I could hear.

**Q.** This expression was used more than once?

**A.** Yes.

**Q.** Did you hear Forbes in particular make use of any expression?

**A.** After -supper they came back to the box they had been in, and called for punch, and commenced giving toasts.

**Q.** Did Forbes, when they came back, talk as to what had passed at the Theatre?

**A.** I don't recollect that he talked of what passed at the

Theatre ; but he proposed the “Glorious and Immortal Memory” shortly after he came back. That was drunk by all standing, except Mr. Troy and me. (I should mention that before this, the two persons who had been sitting with Mr. Troy and me, had left the room.) I saw them all of one party, and did not wish to join them.

Q. What then passed ?

A. I think Forbes also gave the “Duke of York and the army.”

Q. What conversation then took place ?

A. Forbes was very violent in his manner and expressions. The other three were very peaceably conducted ; Forbes seemed to take the lead in every thing that took place in that box.

Q. Endeavour to recollect the expressions you considered violent ?

A. He thumped the table in a most violent manner, after having said something (something that had happened) ; “Let them transport me as soon as they can, that is all they can do ; I don’t care a damn, provided Papists and Popish Governments are put down.”

Q. You said there was an allusion to something that had passed ?

A. Yes, to something that had not passed in that house.

Q. Can you recollect any other expressions ?

A. He said he did not care if he was sent to Botany Bay, or to Hell, if one object he had in view was accomplished. But he said the worst of it was wherever he went he was sure of meeting a Papist.

Q. Did he state any thing with respect to this object ?

A. Not any thing particular, he did not state the precise object.

Q. Do you recollect the substance of any other expressions, which enables you to say what the precise object was ?

A. He said, “here is confusion to bloody John Smith

Fleming, the Popish Lord Mayor, and bloody Marquis Wellesley, and all Popish Governments.”

Q. Was this before or after the expression as to the one object?

A. I cannot say.

Q. Mr. Troy was with you all this time?

A. He was.

Q. There was a great deal of conversation that you did not hear?

A. Yes, Forbes said so much that it would take the finest memory in the world to recollect all he said.

Q. When they came back to the box, was any thing more said about the bottle or the rattle?

A. I heard some expressions in the box about being better prepared another time, and at some future visit.

Q. You heard that in the box where you were sitting?

A. Yes.

Q. Do you think they could be heard in the box opposite?

A. I dare say they could be heard by any person in the room who was attentive to what was going forward.

Q. The opposite box was very close?

A. Yes, the passage is not more than four feet.

Q. Did you during the whole course of that night, either before or after these expressions, hear any expressions of regret at the attempt having been made?

A. No, not the least.

Cross-examined by Mr. BLACKBURNE.

Q. How long were you at Flanagan's?

A. I dare say until at least 12 o'clock, from between 10 and 11 until a little after 12.

Q. You went to take one tumbler of punch?

A. Not one only; perhaps more if necessary.

Q. You met no friend there?

A. I did, Mr. Troy, he went in with me.

**Q.** Did you meet any friends there ?

**A.** I spoke to a gentleman going out.

**Q.** Who ?

**A.** A Mr. Percival.

**Q.** Did he remain till twelve o'clock ?

**A.** No.

**Q.** When did he go away ?

**A.** He was at the upper end of the room with some gentlemen. He went out, and Mr. Troy and I remained.

**Q.** You did not find the remaining company much to your taste ?

**A.** I had no objection to the gentlemen.

**Q.** Nor their toasts ?

**A.** No, except as to some.

**Q.** Was it not because you found their conversation and toasts such, that you remained ?

**A.** No.

**Q.** Would you have waited at all events ?

**A.** I would not have waited so long, but for the inattention of the waiters.

**Q.** You could not get any one to attend you, and therefore you remained ?

**A.** Yes.

**Q.** Your remaining was merely accidental ?

**A.** No, Mr. Troy pressed me to take another tumbler, and I did.

**Q.** Did you leave the other company after you ?

**A.** Yes ; there were three persons opposite the fire, Mr. Pouden and two strangers, Mr. Brownlow and others.

**Q.** You left all these behind you ?

**A.** I did.

**Q.** You don't know at what hour you left ?

**A.** It was 12 o'clock at all events ; the door was just shut by the waiter.



- Q. Was it before or after the door was shut ?
- A. It was after.
- Q. You remained unusually long ?
- A. I don't think it unusual.
- Q. How long was it before you were able to get the second tumbler of punch ?
- A. I cannot tell ; we had two tumblers each while we were sitting there.
- Q. How long were you detained by the accidental absence of the waiter ?
- A. I cannot say ; we called several times.
- Q. What hour in the evening was it that the inattention commenced ? was it near 12 or not ?
- A. All the time ; he was inattentive to others as well as to us.
- Q. The party, you say, were in three different parts of the Tavern ?
- A. No, in two different parts.
- Q. Where were they, when they communicated secretly ?
- A. In the box opposite me.
- Q. And returned to it ?
- A. Yes.
- Q. Did any of the party call for punch before supper ?
- A. They had something in the box, I dare say it was liquor.
- Q. Can you recollect ?
- A. I cannot recollect. I took no particular notice.
- Q. What time elapsed between their drinking in that box and going to supper ?
- A. I think a very short interval. These expressions occurred in a distinct part of the room.
- Q. You don't know the face of the person that made the observation, as to the bottle and the stick ?
- A. No.

- Q. Two of the four were the Atkinsons ?  
 A. Yes.
- Q. Did you hear the word "rattle" mentioned ?  
 A. No, only stick.
- Q. Are you sure that one of them could not have replied that no true Orangeman would do such a thing ?  
 A. I certainly did not hear it. It might have been said, but I heard nothing like it.
- Q. Forbes was very violent ?  
 A. Yes.
- Q. Was he not tipsey ?  
 A. I don't think he was. He gave out the toasts very correctly.
- Q. Did he appear intoxicated ?  
 A. Not what you call intoxicated—a man intoxicated is not able to walk.
- Q. Would not his violence lead any man to suppose he was tipsey ?  
 A. I don't think he was incapable of knowing what he was saying or doing.
- Q. Did he become incapable as he went on ?  
 A. Not whilst I was there.
- Q. Did he continue drinking ?  
 A. Yes, whilst I was there.
- Q. There was very little connection in what he said ?  
 A. He was very unguarded, I must acknowledge. I was astonished he would let out his mind before strangers.
- Q. You were seen by him ?  
 A. Certainly.
- Q. He said something about Botany Bay ?  
 A. He did.
- Q. He did not say what his object was ?  
 A. I did not hear him define the object.

## Cross-examined by Mr. SCRIVEN.

Q. You were in this place before they rushed in?

A. I was.

Q. Had not William Brownlow been there before they came?

A. I really cannot recollect that.

Q. You took no notice of any thing 'till these persons came in?

A. No.

Q. After they had come in, was not Brownlow sitting on a table by himself?

A. He was.

Q. Was M'Intosh near him?

A. He was not. He was in a box immediately behind me, that was at least three boxes from where Brownlow sat; but the boxes were opposite, so that they could communicate.

Q. Do you swear positively that they did communicate? M'Intosh and he?

A. I do.

Q. There were others you did not know, going to another table?

A. There were three persons, Mr. Pouden, and two others, who sat opposite where Brownlow sat.

Q. They had just as good an opportunity of seeing and hearing as you had?

A. I rather think they were not in that box when the conversation took place between M'Intosh and Brownlow. I think they came into the room after that conversation.

Q. Did Pouden come in after?

A. I think he and the two others came together.

Q. Are you sure they were not in the room when the rush came in?

A. I won't say that.

Q. Had they not as good an opportunity of seeing Brownlow as you had ?

A. Yes, if they paid attention.

Q. You were on the watch ?

A. No, but I was so situated that I could see and hear.

Q. You heard something of a damned or bloody miss ?

A. Yes.

Q. They were then three or four boxes from you ?

A. Yes.

Q. The same side of the room ?

A. Yes.

Q. Was there no person in the boxes between you ?

A. Two persons were behind me ; one of them was Mr. M'Cullough, and the other Mr. M'Intosh.

Q. Were there no persons between you and the box, at the upper end, but those ?

A. I cannot be positive of that.

Q. Your back was to them ?

A. Yes, but I was near the edge of the seat, and I looked out occasionally.

Q. Will you say that the words were not " it was a damned or a bloody *trick* ?"

A. No—*miss*, decidedly.

Q. Did the person who uttered it, keep up his voice as high at the end as the beginning ?

A. I will swear that " *trick*" was not said, and " *miss*" was.

Q. If the words " no true Orangeman would throw that bottle" were used, would it not be more likely, that the expression would be " *trick*" than " *miss*" ?

A. I do not understand what you mean.

Q. Did Brownlow join in the cheering, or sit still ?

A. He raised his glass and drank the toast. He certainly remained quiet on the table. He seemed to be quiet all the time.

Q. When he was asked why he had not been at his post, he said he was as well where he was?

A. Yes.

Q. He said very little more?

A. He was very silent. He said it was as well for the purpose, or some such words.

Q. Did he say any thing about the purpose?

A. He did.

Q. Did he mention the word "purpose"?

A. He did. He muttered several things to M'Intosh.

Q. M'Intosh was at the opposite side?

A. Yes.

Q. Yet he muttered to him?

A. In an under tone.

Q. You cannot swear whether Mr. Pouden and the other gentlemen were there?

A. I cannot.

Q. Did they go away?

A. No; they remained when we went away.

Q. You did not see when they came in?

A. I do not know the exact time.

Q. Are you positive they were not there when you came in?

A. I won't be positive.

**JAMES TROY examined by the SOLICITOR GENERAL.**

Q. Do you remember the night the Lord Lieutenant went to the Theatre?

A. I do.

Q. Were you in company with Mr. Farley that night?

A. Yes.

Q. Had he been at your house?

A. He had.

Q. Did you go out together?

A. Yes.

- Q. For what purpose ?
- A. To escort some ladies who had dined at my house.
- Q. Where did you go to ?
- A. Along the Quay until we came near Essex-bridge.
- Q. Did you part with the ladies there ?
- A. One was rather infirm, and I prevailed upon her to take a coach.
- Q. You then parted with the ladies ?
- A. Yes.
- Q. Where did Farley and you go ?
- A. Across the bridge.
- Q. Where do you live ?
- A. On Arran-quay. I have a house of business in Lower Bridge-street:
- Q. Did you go into any house with Farley ?
- A. Yes.
- Q. What house ?
- A. A tavern in Essex-street.
- Q. What tavern ?
- A. A tavern kept by one Flanagan.
- Q. What did you go in for ?
- A. The night was cold, and I proposed to take a tumbler of punch.
- Q. About what hour did you go in ?
- A. I believe between ten and eleven.
- Q. What part of the house did you go into ?
- A. The box room.
- Q. Were any persons there when you went in ?
- A. Several.
- Q. Did they remain ?
- A. A great part left the house very soon after.
- Q. Did you observe others come in after that ?
- A. I did.
- Q. What sort of persons were they ?
- A. A number of genteel well dressed men came in rather in a hurried manner.

**Q.** Did you observe them do any thing ?

**A.** There was a box nearly opposite where we sat, vacant ; they occupied it.

**Q.** Any thing else ?

**A.** Four of them got into the box, and several got round and were conversing together.

**Q.** After they had conversed, did they remove ?

**A.** Yes, they separated, and went to different parts of the room.

**Q.** Describe the kind of room, was it large or small ?

**A.** Rather narrow.

**Q.** Did any remain in the box ?

**A.** Yes.

**Q.** Did you know the persons ? were you acquainted with them ?

**A.** I was not.

**Q.** Did those who were left continue there or remove ?

**A.** They retired to a lower part of the box room, to sup with others.

**Q.** Did you hear any conversation that led you to know from what quarter they had come ?

**A.** Oh, yes Sir.

**Q.** From where ?

**A.** From the Theatre.

**Q.** Did you hear any thing said about any thing that had happened at the Theatre ?

**A.** I did, Sir.

**Q.** Mention what you recollect ?

**A.** Shortly after these Gentlemen came (several came in scattered) one or other of them was challenged by one, where were they, why were they not at their post ?

**Q.** Was that before they retired to supper ?

**A.** I am not certain.

**Q.** Did you hear them say any thing about where the post was ?

**A.** The expression used by one was, " Where were you, why were you not at your post in the gallery ?"

Q. Did you hear any answer ?

A. I did ; he said he was in the pit, and that would answer as well.

Q. Did you know the gentleman who made the answer ?

A. No.

Q. Or the person who put the question ?

A. No.

Q. Did you see the person that answered ?

A. I saw one young gentleman who was interrogated and gave a similar answer.

Q. Would you know his person ? look round and try if you see him ?

A. That fair haired gentleman (identifies Brownlow).

Q. What became of the party after supper ?

A. They returned to the box opposite me.

Q. What did they do there ?

A. They got some punch.

Q. Did they drink any toasts ?

A. Several.

Q. Were you acquainted with any of these gentlemen ?

A. No, Sir.

Q. You saw their persons ?

A. Yes.

Q. Could you recollect any of them ?

A. I could.

Q. See if you see any of them ?

A. This gentleman to the left (identifies Forbes).

Q. Did you hear any thing said about what passed at the Theatre ?

A. There was mention of the missile that was thrown, of the bottle and the stick.

Q. Was there any observation on it ?

A. The expression was used, "Oh! blast it how it missed," or something to that effect ; I cannot say the exact words.

Q. Did you hear any other expressions on the subject ?

A. One of the gentlemen said, he was now committed



or in for it, and did not care, provided the Papists were down, or something to that effect.

Q. Did any other remarkable expression strike you?

A. There was a great deal of ribaldry and insulting expressions, reflections on Popery, and so forth.

Q. What particular expressions?

A. Toasts were drank, "Extermination to the Pope and Popery, and Popish Governments."

Q. Any other?

A. "Confusion to the Popish Lord Mayor John Smith Fleming, and bloody Marquis Wellesley."

Q. Did you hear any expressions not in the shape of toasts?

A. I cannot now call to mind.

Q. Did you hear any expressions from the Gentleman here whom you pointed to?

A. He said "let them transport me, send me to Newgate, or send me to Hell; but I would suffer it to obtain one object. The worst of it is, wherever I go, I will meet a Papist."

Q. Any other words?

A. He gave several toasts, the Duke of York, &c. and concluded with the King.

Q. But any other expressions, not toasts?

A. I cannot specify any.

Q. You said one of them used the expression, "blast it how it missed;" did any of them say any more on that subject?

A. There was an expression immediately after that, "We shall be better prepared another time."

Q. Do you remember who said that?

A. I do not.

Cross-examined by Mr. ROLLESTON.

Q. Are you in the habit of drinking the Glorious Memory? did you ever drink it?

A. I cannot say.

Q. Do you intend ever to drink it ?

A. I have formed no intention on the subject. I have no objection to drink it in the proper acceptation of it.

Q. What do you mean by the proper acceptation of it ?

A. I would drink it, as drinking the health of a brave good man.

Q. Did you drink it that night ?

A. No Sir.

Q. When you heard it drunk by others, were you not very highly gratified ?

A. I cannot say I was or was not.

Q. Hearing that toast kept you there some time ?

A. No.

Q. Did you take notes ?

A. No, certainly not.

Q. There were three or four in the box, where these toasts were given ?

A. There were.

Q. Don't you think those Gentlemen had a better opportunity of hearing what passed than you had ?

A. By no means.

Q. Explain that to the Jury ?

A. The expressions made use of in the box were not in a low tone ; they were sufficiently loud for me to hear.

Q. Were they not the persons holding the conversation ?

A. They were.

Q. You were a listener only ?

A. Merely so.

Q. If any one swore on his oath that it was said, that the person who threw the bottle or stick was no true Orangeman, would he be perjured ?

(It was objected by the Attorney General, that the part of the former evidence here alluded to, was not correctly stated, on which the judges referred to their notes.)

The CHIEF JUSTICE (to Mr. Rolleston)—In the first place, if you think it right to persevere in referring to the former evidence, you must state the exact terms. But, secondly, another difficulty is, whether the question in itself is a proper one. My opinion, sanctioned by those of my brother judges, is, that it is not competent to draw from the witness conclusions as to the credit of the other witness which it is for the Jury alone to draw. In some capital cases, the rule is not strictly enforced, from an indulgence allowed to Counsel; but where Counsel has the privilege of addressing the Jury, it is improper to ask the opinion of one witness as to another.

Q. You say you saw Forbes?

A. Yes.

Q. Did he appear flushed with liquor?

A. I rather think he had taken liquor; he was very warm.

Q. Do you think it likely, if he had committed high treason, by blowing a whistle, he would have come into a public tavern, and stated it in the presence of strangers?

A. I would not consider blowing a whistle high treason.

Q. If you had committed any offence, would you go into a tavern and tell it?

A. I should be very imprudent if I did.

Q. But these men rushed into the room; did they not see you and your company?

A. Very possibly.

Q. Is it not impossible but they must have seen you?

A. After being in some time they must.

Q. You were total strangers to each other?

A. Yes.

Q. And these foolish fellows told the whole business at the Theatre, without reserve, to a total stranger?

A. They expressed themselves very freely and very unguardedly.

Q. Do you think they would have done so if they thought they had committed any crime ?

A. I really cannot say.

Q. Was not Forbes intoxicated, on your oath ?

A. He was not drunk. I think he had taken liquor.

Q. He must be either drunk or mad, when he said he would go hell ?

A. I think he was mad ; he was very intemperate.

Q. He had no objection to go to hell, but that some of the Papists would be there before him ?

A. He did not express any fear of that.

Q. He was sure of that. Did he talk of his object ?

A. There was such an expression.

Q. Don't you believe his object was to support the Protestant government ?

A. I really cannot say what he meant at the time.

Q. Don't you think it was his earnest wish ?

A. Indeed I am satisfied it is.

Q. Were you not confirmed in that opinion by his giving the King and Constitution with three times three ?

A. He gave that toast. I cannot say with three times three.

Q. Did not that confirm you in your opinion ?

A. I should suppose so.

Q. He gave the Duke of York and the Army ?

A. Yes.

Q. Did you like him the better for that ?

A. I did not dislike him ; they are toasts that I myself frequently drink.

Q. You do not frequently drink the Glorious Memory ?

A. I seldom sit in company where that toast would be proposed.

The CHIEF JUSTICE.—Mr. Rolleston, the Court wish to know whether it is your intention to persevere in this

line of examination ? We think it right to say, that it has been hitherto permitted, only because it was not objected to. We are not to consider merely the merits of this trial before us, but to administer the law of evidence, as to which we are trustees, for the due administration of justice.

Q. Were not the expressions (almost all of them) that Forbes made use of, against Popery and in favour of Protestantism ?

The CHIEF JUSTICE.—Mr. Rolleston, you may ask that question, if you please ; but you cannot forget, that that is almost decisively proved.

The ATTORNEY GENERAL.—We have felt it our duty not to interpose any thing in the way of the most ample scope to counsel in the discharge of their duty to their clients.

Mr. WEBSTER examined by the ATTORNEY GENERAL.

Q. You were in the Theatre the night the Lord Lieutenant was there ?

A. Yes.

Q. You were in the box with the Lord Lieutenant ?

A. Yes. I was the Aid de Camp in waiting.

Q. Do you recollect a stick having been thrown ?

A. During the interval between the play and farce, a hard substance (a piece of wood, or the end of a bottle of soda water, I cannot say particularly what) struck the front part of the box next that in which his Excellency was sitting, and fell between Lady Anne Gregory and Mrs. Goulbourn.

Q. What became of it ?

A. It rebounded from the front part of the box, and passed his Excellency's person.

Q. Did it pass near his Excellency?

A. In front of his Excellency's head.

Q. Did you look at the cushion where it hit?

A. Indignant at this, I stood up, and the people in the pit also rose up, and I said, "Gentlemen, look at this," leaning over Lady Anne Gregory, and pointing to the rent in the cushion; they stood up, and cried "Shame, shame." I conceive it struck exactly mid way between the ladies.

Cross-examined by Mr. PERRIN.

Q. You pointed it out to the people in the pit underneath, and they cried "Shame, shame?"

A. Yes.

Cross-examined by Mr. SCRIVEN.

Q. The piece of wood did not hit his Excellency's box?

A. Within seven or eight inches of it; it then passed on to the stage. I did not see it after.

Q. It could not have hit the box?

A. I saw it go upwards.

Q. (By a Juror)—Did the rent appear to have been made by a hard substance?

A. I should conceive so, certainly; it was about the size of a shilling.

Here the Case closed on the part of the Crown.

MR. DRISCELL.

*Gentlemen of the Jury,*

I am of Counsel for two of the Traversers, Mathew Handwich and George Graham; Handwich is a Journeyman Carpenter, and Graham a Journeyman Shoemaker. Believe me, Gentlemen, I am perfectly sincere when I assure you, that often as, in the course of my professional life, I have had the honor of addressing Juries, I never rose under such overwhelming emotions as I feel at this moment. I shall carefully avoid uttering one syllable that can have a tendency to excite an angry feeling on any subject whatever; but relying, as I do most implicitly, on your integrity, on the soundness of your judgment, and on the conscientious sense which I am sure you entertain, of the awful obligation you have undertaken, to do justice between the King and his Subjects, I freely confess that I think it almost morally impossible that your minds should be so wholly free from prejudice as to enable you to form a just conclusion upon the subject of this investigation. On the very day after the transaction which has been so often alluded to, the whole city was filled with alarm, and every man believed that a regular plan for assassinating the Lord Lieutenant had been formed and attempted. The person who has now the honor of addressing you was so convinced of it, that he joined with a class of his fellow-citizens in expressing his delight at the providential escape of that illustrious personage from the sanguinary attack that was levelled against him. But I am happy to perceive, and I think, if his character has been properly painted, the noble person so often mentioned during this trial will himself feel pleasure in the discovery, that such a stain has been wiped away from the country that gave him birth.

Gentlemen, every department of the city, all classes of citizens, began immediately to pour in addresses to the same effect. The persons concerned in this transaction

were designated as assassins, who had attempted the life of the Viceroy. Every epithet of opprobrium that indignation and feeling could suggest, was heaped on them and their adherents, from one corner of the island to the other. To this hour, the press teems with addresses of this kind, pointing out, almost directly, the persons now on trial, as the authors of this foul and odious attempt. Can it be expected, considering the infirmity of man, that you can come into that box with minds so wholly disengaged from the operation of these addresses, as to leave your judgments free from every prejudice against those whose case is under consideration ?

The first intreaty, therefore, that I shall make (and I hope you will consider me as addressing myself to human frailty, and not as in the least doubting of your integrity) is, if possible, to banish those impetuous feelings from your minds, and to keep your judgments so cool and dispassionate as to enable you to administer justice. If any thing was wanting to inflame the feelings, arising from the various reports which have been in circulation, to kindle your indignation and to excite your abhorrence against these Prisoners, it would be the powerful and animated address of the Attorney General, who has properly called himself the Officer of the Public. It was sufficient to transport any mind, however firmly seated, from its centre. I never read, I never heard of such a powerful address, on any public occasion. He was right, Gentlemen, in saying that this is the most important trial which has taken place for half a century, in this country ; because it will decide whether there could be a subject in Ireland base enough to go into that Theatre to shed the blood of one of the most illustrious and benevolent public characters that the British Empire contains. A design so base and abominable could proceed only from a degree of hardened iniquity, a soul callous to every sentiment of humanity, and dead to



every social feeling. You are told, and truly told, of the public services he has rendered to the empire ; you have been reminded of his arrival in Ireland when a great portion of its inhabitants were in open rebellion against the law of the land ; of his interposition to quell those disturbances, and his exertions to stop the ravages of famine in the country. It is true : no man is capable of denying it ; my clients do not deny it. But, Gentlemen, the recital of those eminent services has this fatal effect ; it tends to prepare your minds for a too ready admission of the offence. From that prejudice I must beg you to disengage yourselves. If we are to be convicted, let us be convicted by twelve of our countrymen, exercising their powers of discrimination and reason ; but let us not be borne down by an impetuosity of feeling, displacing the judgment, and disturbing the understanding.

Gentlemen, I cannot be expected to go into a minute detail of the evidence for the Crown ; but I cannot pass by the testimony of the second and third witnesses. And I beg of you never to forget, that John Atkinson did positively swear, that it was no part of this alleged conspiracy to offend, insult, or assault the Lord Lieutenant ; he swore that that was no part of the scheme. If an admission wrung from a reluctant and treacherous witness can have any effect, there stand my clients completely acquitted of any previous design to offend, insult, or assault that illustrious personage. I shall not be surprised, if in the course of my observations, I shall mistake some parts of the evidence, but it is not my intention to discolour or misrepresent. There is in the testimony of almost every witness who means to give unfair evidence, something or other that discloses the foulness of his heart. As to George Atkinson, who according to his own account entered deeply into the conspiracy, recollect the account he gave of himself. After describing what he called a settled plan to make the

Lord Lieutenant unpopular, he tells you that on Thursday or Friday he began to feel some scruples. His amiable heart did not understand the tendency of it before; but he then began to feel himself touched by humanity. He saw the illustrious personage ready to be made a victim, and in a moment of affected repentance he went to the Phoenix Park, and asked for permission to enter the Lodge. He was stopped by the sentinel, and he walked away; but where do you find him afterwards? at the Tavern in Ship-street, at Daly's, mustering forces, acting as one of their leaders, conducting them to the Theatre, and posting them in the gallery for the accomplishment of the very object of the conspiracy. With this observation I shall dispatch that fellow.

Then what does John Atkinson tell you? he enjoyed a place under Government, and so had his father. Ungratefully, treacherously, and odiously, he forms a conspiracy to annoy and insult the Viceroy, to cause him to quit the Theatre, and make him so unpopular, as to impress the Ministers in England to his disadvantage, and make him quit the country. And this too, though he closes his evidence with an oath, that it was no part of the agreement to insult, offend, or affront the Lord Lieutenant. How he could propose to banish him from the Theatre, or make him unpopular, or impress the ministry of England to his disadvantage, without offending, insulting, or assaulting him, I will leave to you, Gentlemen, to conjecture. It is physically impossible, for any reasonable or honorable mind to reconcile these contradictions. Gentlemen, I leave their credit to you.

I am not afraid to admit that George Atkinson brings one of my clients to the tavern in Ship-street. George Graham is a boy about eighteen years of age. He swears he saw him there, but he does not venture to state that he saw any rattle or instrument in his hand at that time.

What does he say about Matthew Handwich? He goes to his master's work-shop, and desires him to bring Henry Handwich and a number of men to go to the play-house. When pressed to say what Matthew Handwich replied, he said "nothing, but he assented." Are these wretched men to be consigned to a heavy punishment, because two such witnesses introduce them thus for a moment in their testimony?

When I consider the functions you have to exercise, when I contemplate the majesty of the trial by jury, that blessing of the British constitution, which is at least to be fought for, ere it be consigned to desecration—that tribunal which ought to be the protection of the life, the fame, and fortune of the subject, I am satisfied you will never lend yourselves to visit with punishment two men on the testimony of such reprobates as the Atkinsons. It has been stated by some of the witnesses, and relied on as an overt act of conspiracy, that a bottle was thrown by Henry Handwich, and aimed at his Excellency the Lord Lieutenant. I confess that with the glimmering recollection which I have of the doctrine of vision, I am incapable of understanding the exact truth of the evidence given on that subject. It has been stated by one, that he saw the bottle passing through the air; the first expression was, that it had glanced across his eye. He afterwards expressed it, as striking his observation, as passing over the foot-lights, and that it raised the corner of the drop-curtain. Now, if what two others of the witnesses have said be true, that Henry Handwich availed himself of an open space between the dip of the gallery and those who were seated before him, so as, with a lateral swing of his arm, to dash it with such force, I do not understand how a body moving with such velocity could be marked in its progress over the lights. Gentlemen, you will have an opportunity of examining a plan of the Theatre. I recollect that some of the witnesses

said, (I think it was Mr. Farrell) that when Henry Handwich flung the bottle, there was room for another person near him, but that there was nobody next him, and that there was a vacant space between him and the end of the seat. Another said, that all round Henry Handwich, and in every part of the gallery, the crowd was so great as he had never seen before. What could induce Mr. Farrell to free Handwich from a crowd, but in order, first to make it probable, that he had a distinct view of him, and next, to account for what was otherwise physically impossible, that he could throw the bottle without cutting the heads of those before him ?

That in this respect he told a falsehood has been proved, even by the witnesses for the Crown, and will appear from others who will be presently produced. You will see a plan of the Theatre, the place where Handwich was standing, and the distance between that and the side of the gallery, and you will then have delineated to you the side boxes or lattices, and the situation of the Lord Lieutenant. If you move your eyes from the place where he was standing in the direction of the Lord Lieutenant's box, you will at once perceive that a line connecting them must make the segment of a circle of a large diameter, so as to render it hopeless to aim any substance from one towards the other. But we will go farther : whatever vociferation there might have been in the Theatre, whatever groaning or hissing there might have been, we will prove that, during the whole of that night, a respectable person sat next to Henry Handwich, and that in the whole course of the night he had no bottle or instrument of mischief in his hand. We shall produce witnesses not biassed on one side or the other, who will contradict directly the strange assertions of Mr. Farrell and the Rev. Doctor from Ballinakill.

What then remains in the whole body of the evidence, to

affect the Traversers? I really was surprised when Doctor Mac Namara, a respectable looking man, was giving his testimony. He said he was alarmed by the cry of "Boys look to your fire," upon which he looked up, he says, and saw Henry Handwich, not as Farrell has stated, standing up, but, in order to enable him to throw the bottle, bending over those before him, to avoid striking them. Farrell removes every body from him, in order to account for his not being interrupted; and the Doctor gives him another facility, by making him bend over those before him.

Gentlemen, I do not like the habit of casting imputation on the human character: I do not like to say that any man has committed perjury. I wish not to use any harsh expressions against the morality of any man. But I have a sacred duty to perform, which must precede every other consideration. I hope I shall never do it improperly. What came out on the cross examination of that man? He swore against a person in the country; there were cross informations against him; what is the result? The Doctor is convicted and the other acquitted. I was in the country, says he, where I was known; I went into a Court of Justice and took an oath; the opposite party swore the reverse; I was discredited, and he was believed. Thus it is that he introduces himself as a witness for this prosecution. But that is not all: so unfortunate has that gentleman been in his own country, that a most respectable witness is ready to disparage him in the usual way, and to swear that he is not deserving of credit on his oath in a court of Justice. Gentlemen, there is another circumstance which ought to form an ingredient in the exercise of your judgment, with respect to this man's testimony. I beg to disclaim the most distant insinuation, that any expectations have been held out to this witness, by any gentleman concerned for the prosecu-

tion ; but when great occasions in which persons of high consideration are concerned, offer themselves, men are apt to speculate upon some temporal advantage, by offering their services. This man admits, that for a crime and breach of the peace, he was sentenced to a confinement of three months, of which only a fortnight has expired. He avowed that he had a notion of sending in a memorial to the Chief Governor to abridge the term of his imprisonment. Do you think it improbable, from his own admission, that a mind thus prepared, would stop or flinch from offering its services, under the expectation, however vain, that the time of his imprisonment may be abridged ? I will leave that, Gentlemen, to your experience of human nature. It may be said, that it is quite impossible if he came with such a view, or gave false testimony, the sagacity of the gentlemen on the other side should not discover it. I admit their talents, their sharpness and their sagacity ; but they cannot be offended, if I say they are as frail as others, and that the most enlightened Judge has often been deceived by false evidence. It is no disparagement to them ; they will not arrogate to themselves infallibility. Sorry I am that they have been imposed upon ; for that they have been imposed upon you will be convinced.

It is impossible to deny, that a considerable uproar and ferment was excited in the Theatre on the night in question, or that the audience were for some time disturbed. But Gentlemen, there is a kind of habitual privilege given to persons who occupy a certain department of the Theatre, of hissing and groaning, of approving and disapproving, and running down, as it is called, what is the object of their dislike. I deny not that it was a scene of confusion, that excited some alarm ; but as to the life of the Lord Lieutenant being attempted, we have a most respectable witness to produce, who sat in the next box to

the Lord Lieutenant; a lady very far advanced in years, who has passed the entire of her life in the lap of luxury and tenderness; she will tell you that as to this missile, or any other, she never felt the least alarm; nor did she conceive there was any other noise than is usual in the upper gallery, and which no one has ever thought of making the subject of a prosecution. If she felt no alarm, I should be glad to know, how the young, the healthy and the vigorous, can come in here and say, that the whole audience were alarmed by the upper gallery on that occasion? Suppose the most honest and truth-telling person in the world to have been there that night, when a cry was raised that an attack was made on the Lord Lieutenant, he could not be collected enough in such a scene of confusion to distinguish persons. The witnesses have been mistaken. How could any man who has a heart, or the feelings of humanity, be expected to be any thing but impatient and indignant, when such an alarm was given? You send him up to the upper gallery, and expect him to identify among crowded objects, one individual, where there was such little light. It is impossible his mind could be so collected, as that he could identify any one man. Therefore, when some of the witnesses identified Graham and Handwich, and said they could not be mistaken, I am willing to suppose they told moral truth; they thought, and only thought so; but there is a vast difference between moral truth and logical truth. It is not necessary to impeach the morality of every or any witness, who pointed out Handwich or Graham, but I cannot help impeaching their accuracy; because in a scene of such confusion, it is impossible that any man could be certain or accurate. But as to the two main witnesses against Henry Handwich, consider what they have said, and weigh it in the scales of probability. Farrell, a working jeweller, came to Ireland four years

ago; he is at the Theatre in the middle gallery; he hears a shout, turns round, and thence he undertook to swear positively to a man he had never seen before. He was struck with the magnitude of his figure; he saw him almost insulated from the rest, with a lateral swing of his arm, discharge a bottle in the direction of the Lord Lieutenant's box. Do you think it probable? You know the situation of the Theatre, the kind of light there is in the gallery, the remotest part of the house from every luminous object. I leave to you, gentlemen, the improbability of such testimony. He was so inflated with loyalty, so indignant at this dangerous attempt, that he kept his eye on the person every moment. What object could he have for telling you that falsehood, that he stood aloof from every person, and that he kept his eye upon him? Merely to obtain credit to his testimony. The Doctor never saw him before; but he heard an exclamation, "Mind your fire." The Doctor then starts up, and fixes his eye on Henry Handwich in the gallery. He never saw him before this night; he does not say he dwelt on him.

The morning before yesterday, Henry Handwich being here, the Doctor, who was above, looked down and recognized him as the person that threw the bottle. I told you before how his character will be disposed of, and I now tell you, that Mr. Farrell and his character will be similarly dispatched. You will have evidence that will make it impossible for you (unless you be overwhelmed by your feelings, and your judgments be disturbed from their basis) to give the least credence to either Michael Farrell or Doctor M'Namara.

I have told you, gentlemen, that I would not go into a minute detail of all this evidence. There are able gentlemen concerned for the other Traversers. I have availed myself of some evidence beneficial to their clients, because I felt that if I had not noticed it, I should have omit-



ted an advantage to my clients. It has been said by some of the witnesses, that George Graham had in his hand a watchman's rattle; and part of an instrument of that kind was produced, and is stated to have hit the cushion of the box next to that of the Lord Lieutenant. One of the witnesses swore, that he saw this unfortunate person with a rattle, and that he broke it. One man said, he threw only one stick, others two. Now, gentlemen, I will tell you the evidence we intend to give on the part of that boy. It was not a watchman's rattle he had in his hand. It was an instrument called a clapper, used by farmers to frighten birds. He cried out to the gallery not to insult the Lord Lieutenant. He went in, as sworn by John Atkinson, without any design to insult, and in the rattling of it in the course of the uproar, the instrument broke. You will find, that instead of flinging any part of it at the Lord Lieutenant, or in the direction of pit, gallery or boxes, some other person snatched up one end of it, and that he never flung a missile of any kind. Whoever snatched it up flung it, and it is all visited on this unfortunate young man.

No Gentleman of the profession to which I belong can vouch for the truth of the testimony with which he is furnished: but if you believe what we shall lay before you, you must acquit these two men. I have only again to intreat that you would exert yourselves to spiritualize your minds—to cast away any indignant sentiments you may entertain, and disembarass your judgment from any bias. I feel convinced that you will get your minds into such a state of composure; and that in the honest exercise of your understandings and the coolness of your judgments my clients have nothing to apprehend.

MR. NORTH.\*

*Gentlemen of the Jury,*

I rise to address you on behalf of Henry Handwich and William Graham. When these men appeared to these Informations, on the first day of the Term, I confess I was most anxious to obtain a postponement of their trial. I was apprehensive, that in the unexampled ferment of the public mind, it would have been impossible to procure for them a fair and impartial hearing. What corner is there of the land—What shore so lonely and remote—What glen or valley so silent and sequestered, that has not been disturbed by the din of this extraordinary proceeding? The innumerable addresses pouring in day after day, and hour after hour, from almost every county, from every Corporation—the Church—the University—the Capital collectively in an Aggregate Meeting, distributively in Parish Meetings, taking guilt for granted, anticipating conviction, and imploring punishment upon these yet untried individuals. While the answers of the Lord Lieutenant to those addresses, by their rioli, ever-varying, and let me add, most agitating eloquence, kept alive and fanned the popular flame until it had become a consuming fire. At one period I am convinced all hope of a fair investigation would have been utterly vain, and these men must have come before the tribunals of Justice, like victims bound and bleeding at the foot of the altar, and ready for immolation. Thank God, however, that dreadful interval is past. The first gleam of safety and deliverance broke from the darkest quarter of the Heavens, and,

\* It may be right to state, that a previous report of this Speech, in one of the Newspapers, was copied from the Notes of the Reporter, which were furnished by him to Mr. North, and of which that Gentleman requested permission to avail himself, for the purpose of correcting several gross errors and misstatements, which had appeared in other daily publications.

through the merciful interposition of Providence, was at length afforded by the extravagance and exaggeration of our enemies. The most violent were startled into reflection—the most intemperate were stunned into sobriety, by the monstrous and incredible charge of assassination and murder: yet the sea still rolls and heaves though the storm has subsided—and I am well warranted even now in demanding from you, on the ground of the public agitation alone, a more than ordinary vigilance and attention. But there is yet another circumstance which characterises this case, and entitles me to call for the most scrutinizing jealousy—and, Gentlemen, it is this; that there exists in this case an inauspicious and unnatural alliance between the natural favourites of the people, and the official servants of the Crown—an alliance at all times most dangerous to the rights and privileges of the subject. Never are they in such imminent hazard, as when the resentment of the Court and the rage of the people—the “*vultus instantis tyranni*” and the “*civium ardor prava jubentium*” unite in one common object, and concur in the same design. When those two antagonist forces, popularity and power, conspire in the same direction, their strength is irresistible; the floodgates of oppression are thrown wide open, and our liberties and laws are borne down by an overwhelming torrent. I am fully convinced—I do most sincerely, and from my heart, believe, it was no consciousness of the support to be derived from this alliance—but a sense of duty, which, however, I must consider a mistaken one—that induced the Attorney General to adopt this strange and hitherto unheard-of proceeding. It is, I believe, as yet unknown in the annals of our jurisprudence, that the self-same charge which has been dismissed by the verdict of a Grand Jury, should be brought forward again by an Attorney General, upon an appeal to his own private judgment.

Gentlemen of the Jury—this is new—and I expected therefore when this case was opened, that some precedent, some authority, some dictum at least, would have been cited in support of it. For see to what it leads—if this course of proceeding is to be sanctioned, the authority of a Grand Jury is annihilated, and the Institution itself becomes a mere formal nullity. They are entrusted with just power enough to forward the objects of the Crown by finding Bills according to its wishes; but if they presume to ignore them, their judgment is set aside as a matter of course by the Attorney General, who files his *Ex Officio Information*. Preferring Bills to a Grand Jury under circumstances like these, seems to me a circuitous and unnecessary proceeding. It would surely be better and more seemly that the affront thus given to them should be dispensed with, and that the Attorney General should file his *Information* at once.

But it is said, an authority is to be found for this singular mode of proceeding, which has been hunted out of the Commons Journals of Ireland. The Attorney General mentioned this case, by a piece of admirable forensic address, to evade the force of it; because, as far as it is any authority at all, it is decidedly against him. Bills it appears had been sent up to the Grand Jury, and returned by mistake endorsed as true. The Foreman, and afterwards the other Members of the Jury, made affidavits that they had intended to ignore the bills. On the motion of the Attorney-General the *Indictments* were then quashed; and he filed an *Ex-officio Information*. But what was the consequence?—The matter attracted the immediate attention of the House of Commons. They entered warmly into the subject, appointed a committee to search for precedents, and having inquired from the Members of the House who belonged to the legal profession, whether any existed, were by them informed that such a proceeding

was without example. An Ex-officio Information, even in those circumstances under which it is ordinarily filed, is, to say the least of it, a severe exercise of the prerogative; but an Information of this nature, after Bills had been ignored by a Grand Jury, is without example; at least I have not been able to discover one, and my search has been laborious, since the institution of Grand Juries itself has been transmitted to us from our Saxon ancestors. What says Sir Mathew Hale, that great model of Christian piety, political integrity, and legal wisdom?—"In all criminal cases the safest mode of proceeding, and the most consonant to the statutes of Magna Charta, is by presentment or indictment of twelve sworn men." What says Mr. Fox, who brought to the study of the Constitution the knowledge of a statesman as well as of a lawyer:—"There are," he observes, "two great main-springs in the Constitution, which if preserved in unimpaired vigour, the other parts may be occasionally repaired; but if these be suffered to decay, the whole system will fall into confusion; and these two main-springs," says he, "are the Representation of the People in the Commons House of Parliament, and the Juridical Power of the People, through the medium of the Grand and Petty Jury." I have dwelt upon this topic, because I feel its importance. They are not obviously violent or arbitrary measures that we have reason to apprehend, so much as those silent encroachments upon the Constitution, which are the more dangerous, because they are the less glaringly perceptible. A precedent of this kind, my Lords, is always fruitful, and the progeny is ever more mischievous than the parent. It is against such attempts that we are warned by a celebrated writer, who has become a classic in our language:—"One precedent," says he, "creates another. They soon accumulate, and constitute law. What yesterday was fact, to-day is doctrine. Examples are supposed to

justify the most dangerous measures, and when they do not suit exactly, the defect is supplied by analogy." Therefore, although it would be, in me, an indecorous presumption, before their Lordships have intimated an opinion, to pronounce this proceeding absolutely illegal; yet here, in the presence of this high Court, before that learned Bar, and in the face of the whole Country, I do arraign it, as discountenanced by all great authority, as without the warrant of any sound precedent, as alien to the mild spirit of the British Law, and practically and essentially unconstitutional.

Gentlemen, having made these observations on the nature of the proceeding, let me now examine the charge contained in the Informations, and the evidence adduced in support of it. The offence charged is a conspiracy to insult and assault the Lord Lieutenant in the public Theatre. I shall not examine the Information as a special pleader. I do not condescend to legal subtleties. I say that is the charge bona-fide and substantially; and the Attorney General is of a character far too sincere and manly to pretend that there is any other.—I say it in his hearing, and without fear of contradiction, that the benches of the pit might have been torn up, the pannels of the boxes broken in, and every lustre in the house demolished, before he would have filed an *Ex Officio* Information, if the Lord Lieutenant had not been in the Theatre. There are circumstances in this case ridiculous enough; but the great absurdity does not attach to it, of our being assembled here, day after day, in the middle of Term, before the whole Court, upon a solemn trial at bar, to ascertain whether or not there has been a riot in the upper-gallery. No, gentlemen; this is emphatically a *State-trial*—for State purposes—and the question which is now before you, and before the country—the issue which you have to try, is whether these men conspired together

personally to insult or assault his Excellency the Lord Lieutenant. The first circumstance which the Attorney General has brought forward, (for I must take the liberty of following him through a part of his statement) as giving colour to the accusation, is, that the defendants belong to the society of Orangemen. They do so—it is the fact—they do not disguise it—they glory in it—it is their boast that they are Orangemen. Gentlemen, I do not stand here to give my applause to that Institution. Perhaps my private opinion may be that it is not calculated to accomplish the ends it was originally instituted to attain. Perhaps it may be my private opinion that it is not likely to advance public prosperity, or to promote national security, happiness, or peace. But what of that? I have the misfortune on this subject to differ from some of the greatest, wisest, and most experienced men in the country. But whether they or I be right in this respect is not the question. The question is this—Whatever men of this description have been charged with, whether illiberality of sentiment, mistaken opinions—a wrong political bias—have they ever been accused of disloyalty? Has that ever been one of the crimes imputed to them? Have they ever been reproached with want of loyalty to their King, or disloyal disrespect for the King's representative? Why, Gentlemen, the loyalty of these men is the bond which unites them. It is an inborn, inbred quality of their nature—growing with their growth, and strengthening with their strength—part of their bone and their flesh. Theirs is not the loyalty which is assumed for a purpose; which comes in and goes out with an occasion—which compounds for factious insolence to-day, by cringing adulation to-morrow. It is a steady, permanent, un-failing principle of action. More than a principle—it is a passion. Their enemies say it is a prejudice.—Perhaps it

is all three, and has the strength of all three united. I do not hesitate, therefore, to say, that a charge of disloyalty, or of any thing approaching to disloyalty, made against such men, is *primâ facie*, and upon the first opening of it, glaringly improbable. But the Attorney General has adverted to certain circumstances in the history of this country, which he presumes may take off in your estimation this first apparent improbability. For this purpose he has called your attention to that state measure of his Majesty's Government, as he has now instructed us it was—but it is a fact, of which the public, or at least I may say myself, had not been previously apprised—I mean the interruption to the dressing of the statue of King William. Upon that subject, Gentlemen, I may venture to give my opinion, because I am not restrained, as the Attorney General is, by the reserve which belongs to a high official situation. I say, therefore, it is my sincere opinion, that that idle ceremony ought to be discontinued. I have felt all my life, that every thing in the slightest degree offensive to my Roman Catholic fellow-subjects ought to be studiously and anxiously avoided. There does not live a man more desirous than myself that they should be admitted to the fullest privileges of the British Constitution, and maintained in the secure enjoyment of every advantage, honor, and distinction, which may be the acquisition of industry, the prize of talents, or the reward of virtue. These are the sentiments which I have always avowed, in private and in public, in petitions to the Legislature, in requisitions to the magistrates to assemble meetings for the purpose of petitioning, and in canvassing for a seat in the House of Commons amongst electors, exclusively Protestant. Gentlemen, notwithstanding these impressions, and notwithstanding my opinions on the particular subject itself of undressing the statue, and which opinions I had expressed somewhat



strongly, and, perhaps, imprudently, I will frankly own to you, that when the thing itself occurred I was taken by surprise. Never shall I forget the emotions which I felt, when on the 4th of November, I walked down to College-green and beheld the scene which was there exhibited. When I saw the Statue of that illustrious Monarch, which, though I had not been so much accustomed to reverence it, was so dear to my fathers and my kinsmen, stripped, for the first time, of its accustomed honours, deprived of those annual decorations which had been the old man's pleasure, and the poor man's pride, surrounded by armed horsemen with drawn swords, hemming in, and closing on the captive hero; it seemed to me, for a moment, as if a successful invasion had been effected on our shores, as if military occupation had been taken of the capital, and some Scythian barbarian, from the Tanais or the Volga, was heading his licentious troop, triumphing in the heart of the city, and with his flickering sabre, menacing and insulting the venerable monument of our Laws, our Liberties, and our Religion.

Gentlemen of the Jury,—when such were my feelings, thinking as I do, and with the political sentiments which I entertain, and having my views upon the great subject of Catholic claims, what, I leave you to suppose, were the feelings of men who thought differently from me, who believed that Protestant rights and Protestant privileges, and all that is meant by Protestant ascendancy, were main props and pillars of the British Constitution, and that without them there was no security for Protestant property or peace? What, I ask you, were likely to be their feelings? The Attorney-General has done justice to them; he has portrayed the character, and sketched the history of King William. I shall not attempt to follow him there; I shall not enter into any such vain and foolish emulation; I might as well think to shoot arrows at the

sun, Gentlemen, you have heard that fine description. The Attorney-General has laid his offering on the altar of King William,—an offering of his own workmanship,—fresh from the mint of his transcendent genius, and glowing with all those divine attributes and godlike qualities which the powers of a sublime eloquence enabled him to stamp upon it. But let him not, therefore, sneer at the poorer offering of humbler men to the same object of their worship; his gift was one every way worthy of him, suited to his extraordinary talents, his refined taste, and superior education: but we are taught to believe, that the rude wonder of the Shepherds was as acceptable as the gold, frankincense, and myrrh of the Eastern Kings. The Attorney General has taunted these poor men with their want of taste; the sashes and scarfs with which they decorated the Statue were tawdry and vulgar it seems, and the mantua-maker of King William, as he termed him, did not adjust his millinery, as well as he might. But, Gentlemen, this is not a point of taste, it is a matter of feeling: the soldier, in the field of battle clings with as much devotion and fidelity to his tattered colours, as if they displayed the painting of Rubens, or the designs of Raphael. I, therefore, claim for these men, what the Attorney General has demanded for himself; I claim for them the right to express in their own homely dialect, and after their own vulgar and tasteless manner, if you will have it so, their respect for the memory of King William, and their gratitude for the benefits which he has conferred upon them, and on their country. But such sentiments or such expression of them you may tell me are not justified by philosophy and reason,—and if you will argue the point with me like metaphysicians or professors, perhaps I shall be compelled to admit that they are not; but be it that they are not reason,—I tell you they are nature. There is a principle

implanted in the human breast for the highest and the noblest purposes, that by attractions which we cannot always explain, but which we never can resist, draws us together into bands and companies of kindred feeling; sometimes it is the recollection that we are sprung from the same endeared and consecrated soil—sometimes the spirit-stirring thought that we have drawn our loyal swords in defence of the same Sovereign and the same Law, or perhaps the touching remembrance that we have bowed together before the altar of a common faith; whatever they may be, they are the links that join heart to heart—the fine chords that bind man to man—that are as sensitive as they are strong, and never yet were broken with impunity. If the Attorney General had consulted the illustrious person at the head of his Majesty's Government in this country, he would have told him, that even the feeble pliant Hindoo, who bows his neck beneath the yoke of every conqueror, Christian and Mahometan, Tartar and European, will not permit one darling rite, one ancient usage, one cherished prejudice to be touched, revolted, or disturbed. Not Tamerlane nor Zingis, not Clive nor Wellealey in the plenitude of their power, ever dared to assail him in the sanctuary of his feelings—and shall Irishmen endure in tame and uncomplaining submission, what would not be borne by the feeble and enslaved Hindoo?

I am so far from wishing to conceal, then, that the discontinuance of the annual commemoration of King William's birth-day, gave dissatisfaction to a certain class of his Majesty's subjects, that I freely admit it; I admit also that to this class the defendants belonged. Let us now enquire how far, and to what extent, their displeasure carried them. Apply yourselves with diligence to this enquiry, for it is the issue you are to try. When the Lord Mayor published his proclamation to prohibit the decora-

tion of the Statue, a considerable degree of irritation was produced. It was not confined to the defendants, it was felt by their fellow-citizens of a higher order, and expressed in resolutions of the Common Council, and I believe some of the Guilds. In this state of the public mind, and while men were under the influence of these feelings, the Lord Lieutenant, who had now been nearly a year at the head of the Government, announces his intention of publicly visiting the Theatre for the first time. Pause—Gentlemen, and ask yourselves for what purpose a Lord Lieutenant visits the Theatre. Let no man deceive you into a notion that he goes there for the sole object of witnessing the spectacle. There is another and principal purpose to which this is collateral and subordinate—the purpose, namely, of receiving the applauses of the people, and publicly manifesting the popularity of his administration. If he should be fortunate enough to receive these testimonies of public approbation, the fact is immediately signified to the Government in England. It appears in the official papers, and is understood to bestow lustre, if it does not confer strength, on the Ministers of the Crown. Now, Gentlemen, it so happens, that I feel, or that Graham feels, or that Handwich feels, that the Lord Lieutenant does not deserve this popularity which he thus publicly looks for. We are unwilling that our sentiments should be misunderstood, as they would be, if the Lord Lieutenant were received with universal and unanimous applause. I protest I have yet to learn that there is any thing criminal in going to the Theatre, to oppose the tide of that popularity which I think unmerited, or in refusing to join in those plaudits by which it is evinced. And yet has any other offence been proved against these men? We were told, and the Nation actually believed it, that an attempt had been made to assassinate the Lord Lieutenant. But what are the facts disclosed

by the witnesses?—That a number of persons of the purest and most untainted loyalty, meeting in their Orange Lodges, agree together to assemble on the night of the Lord Lieutenant's going to the Theatre—in the upper-gallery—why be it so; but what to do there?—to perpetrate what? deadly treason?—Why, after “God save the King” had been played, to call for the “Boyne Water,” to let the Lord Lieutenant know, what perhaps had been concealed from him by his confidential advisers, that there were men of too humble a rank to approach his person, and attend his levees, yeomen, and artificers, who still loved the old, favourite, and once national air of the “Boyne Water,” who felt their blood warmed, and their hearts cheered by its notes, and kindling within them the spirit of their conquering ancestors. Gentlemen, they assembled for that purpose, and for that purpose only.—I beg pardon—there might have been another. I will not say it was no part of their intention to show signs of disapprobation on the appearance of the Lord Mayor. But I have yet to learn, that that worshipful person comes within the statutes of treason, or that in the dignity of Lord Mayor there is any thing “*ex vi termini*,” to speak with the Grammarians, or “*Ex Officio*,” to speak with the Attorney General, which gives him the protection of prerogative. I never heard that he could touch for the king's evil, or that royal virtue emanated from the white wand and gold chain. The Lord Mayor is, I dare say, a very excellent man, and a very worthy magistrate, and, like his predecessor in the Commons' Journals, he may yet be knighted for his political merits; but it is no misprision of treason to hiss him in the Theatre.—To call for the “Boyne Water” then, and possibly to hiss the Lord Mayor, these men assembled. But take this with you, that when they made these determinations, it was no

part of the agreement; nay, it was expressly guarded against by the agreement, that any personal violence should be offered, or any personal insult or offence given to the Lord Lieutenant. We have that upon the evidence of George Atkinson. We have further, that when they were collected in Ship-street, one of them seeing his companions with sticks, advised that they should be left behind, lest by any accident they might lead to mischief. Nor would the witness swear that this advice was not taken by many. Others indeed thought that they were sufficiently masters of themselves, not to be exposed to this danger, and others again, no doubt, believed them requisite to their safety. It was amusing enough to hear the terms in which these sticks were described. One witness told us, very significantly, they were short sticks, and another disclosed the prodigious fact that they had knobs at the end of them—but that any improper use was made of them, of this there was no evidence at all. Any one who knows the powers of the Attorney General, must be perfectly aware, that it is with him a matter of the greatest facility to represent the plainest and simplest facts, in such a manner, as to make them appear strange, startling and extraordinary. Never have I seen him exert this wonderful talent to the same degree, as on the present occasion. I know not whether you have yet recovered from the emotions which his speech excited. But the moment that George Atkinson was examined, no man, with the slightest experience in Courts of Justice, but must have perceived that the fabric which he had so artfully built up in the statement, was crumbling and dilapidating before the evidence. Admitting every word spoken by George Atkinson to be true, is there any other conspiracy proved, than a conspiracy to call for the “Boyne Water” after “God save the

King," and to shew the Lord Lieutenant by the expression of their feelings, that with them at least he was unpopular. But they had a further object, it is said,—to drive the Lord Lieutenant from the Theatre, and eventually from the country. Here is one of the ingenious, but cruel artifices I complain of. See the turn that is given to the evidence; it was said, proposed, agreed, that they should go together to the Theatre, and call for the "Boyne Water;" "he will then see," says some one "that he is not liked, and perhaps "in disgust, for he "is a sensitive man, he may leave the Theatre;" "and "perhaps" says another, yet more sanguine, "perhaps "with the blessing of God, he may leave the country "too." Something of that sort was probably said. But will you believe that it was part of the original design, one of the direct objects then in contemplation, to drive the Lord Lieutenant that night from the Theatre, and afterwards from the country? Drive him from the Theatre! How? Where were the means? Exquisite absurdity! What were the arms they had collected for this great undertaking? What were the weapons, swords, guns, pistols, pikes, to be used for his expulsion? I think I see these dreadful conspirators in close divan seated round a table in full council: "We'll have him off, that's poz,—but brother what will you arm yourself with? I'll arm myself with a whistle, I'll whistle him off," "Ah," says the musician, "there's nothing like the Boyne Water." If there was a tailor amongst them, an assassinating tailor, he, to be sure, would "his quietus make with a bare bodkin." The majority, however, are for a bottle and rattle, and with these "armamentaria belli," they repair to the scene of action, the upper gallery. And now observe how they conduct their operations. In the first place, it would be prudent one would think, if one meant to assassinate another, to get as near to him as pos-

sible; but our wise conspirators take another view of the case, and the Lord Lieutenant being close to the stage, they file off to the upper gallery. Again, the Lord Lieutenant sitting on the left hand of the house, and the object, as asserted, being to launch some missile from their infernal machine which should reach his person, they take their station in the extreme left of the gallery, where they could not possibly see his figure, and whence, from the construction of the house, the most dexterous hand could send nothing that would strike him; nay, what is more extraordinary, if you believe George Atkinson, they occupied at first the right hand seats, where they had a full view of his Excellency, and might take a just aim,—yet this advantage they immediately resign, and of their own accord, quit that position and move off to the left. All this is surprising—and leaves to the charge not a shadow of probability. Were ever such means employed for such ends? Or did ever men possessing the use of their natural faculties, having such designs, take such measures to effect them? But on whose evidence does this whole representation rest, even such as it is? Upon the testimony of two brothers, so help me—the greatest villains I ever saw produced in a Court of Justice. The old friends, as they described themselves, the sworn associates and companions, the ancient allies of my clients, they steal into their confidence—they get possession of their secrets and their hearts—join with them in all their plans—concur in every thing—go hand in hand with them to the accomplishment of their common purposes, and then they turn round—the Judases—the Arch-traitors—they turn round upon their long endeared friends, and sworn brother Orangemen, and betray them to their bitterest enemies. Is it part of an Orangeman's oath not to reveal the secrets of his Lodge? I know not whe-



ther it be so or not, but it is a matter of no consequence; the violation of an oath could add nothing to their guilt; the bond of an oath is as nothing compared with the bond of an association like theirs; linked together by the same political feelings—by the bands of ancient friendship—by the ties of convivial fellowship and social intercourse—by all that men hold most dear and respected,—they come forward to depose against their old associates, to blast their fair fame and reputation, and expose them to the full weight of that dire persecution with which the Government of the country has determined to bear them down. What was their temptation? Is it lucre? That seems hardly a sufficient motive for such complicated iniquity; yet I cannot perceive any other. There was no hate, no jealousy to gratify, no deadly revenge to be satiated. When this trial is over let them receive their reward. It is quite right and proper. They have well deserved it. Verily, verily, they should have their reward; but I trust it will be in hard cash. I hope they will not be remunerated with a place in any department,—Customs, Excise, Police, any department, however inferior or subordinate; if they should, they will pollute it; they will carry into it infection, contagion, and corruption; they will dissolve the ties that hold man to man, and spread through the community an epidemic treason.

If there were no other evidence than that of these men, would you convict any human being upon it? Would you take a single limb from the spider that crawls upon the wall, upon the testimony of men like these? The grave Solicitor General, however, may tell me bye and bye, that they may yet regard one solitary virtue, though they have ceased to reverence the rest, and may tell truth, though they have broken confidence. Gentlemen, one falsehood George Atkinson has unquestionably told you.

I am not a living man, this moment, if every word he swore, as to his going to the Park was not a wilful fabrication. What!—he tells you, that resolved to confederate with these men, for purposes which he would represent as of the blackest nature, and concurring with them up to the very day of their execution, he is at length struck with remorse, that he yields to it, but instead of giving notice of the plot at the Police Offices, or in any of the hundred ways that were open to him, he takes the extraordinary course of walking out forthwith to the Vice-Regal Lodge, to intimate the fact personally to the Lord Lieutenant. At the gate he is stopped by the sentinel, who asks him what business he had there, and upon this interruption, without one further effort to obtain admission, without the slightest importunity, without a word of remonstrance or expostulation, or the least hint of the nature or importance of his business, he turns round upon his heel, and goes straight back to Dublin—repairs to Ship-street, where his associates were assembled—becomes the most active amongst them—furnishes the whistles—stations the party in the upper gallery, and takes the most conspicuous part in all the proceedings of the night—and after all, when the worst had happened, repairs to Flanagan's, sits down to supper with the rest, and joins in the toasts and conversation. Do you believe him, Gentlemen? Do you, sir? Or you, or you? No, no man can believe that he went that morning to the Park. Why, Gentlemen, see what they might have done. The Crown Lawyers might have produced the sentinel. They could ascertain who was sentinel that day, and procure his attendance here with as much ease as I could take a tent of ink from that ink-stand. Why is not the sentinel forth coming? Be he what he may, Englishman Irishman or Scotchman, Roman Catholic, Protestant or Presbyterian, I am not a

living man, as I said before, if he would not give the lie to George Atkinson, and therefore it is that he is not produced, and that he cannot be produced.—No intelligent man, whatever may be his wishes or opinions, can believe this part of George Atkinson's evidence, and discrediting him in that main fact, you are bound to disbelieve him in every other. Great latitude is given to a Jury, but it does not extend to this, that they may believe a Witness to have sworn deliberately false in one part of his evidence, and yet found a verdict upon the remainder. If you disbelieve him in this part of his narrative, I tell you, in the hearing of those learned Judges, who will hereafter direct you, in point of law, that you must expunge the evidence of George Atkinson from your notes.—We have had enough of him. I shall not long detain you with his brother. They were indeed “*par nobile fratrum*.”—I wonder why the father was not produced. He was waiting here at the door, to see that his sons did their duty—to see whether they would flinch—whether they would dare to look Forbes and Graham in the face—whether their tongues would not cleave to the roof of their mouths, while they were fabricating this story against their old friends and companions. They maintained their resolution—though it cost them a pang. Did you observe the first of them?—Did you see the terrors of his conscience working within him—issuing from his pores, and steaming from his forehead—a natural embarrassment of utterance, aggravated and increased by his guilty confusion; and his shame and terror giving obscurity to his expressions, so that he reminded me of Dr. Johnson's remark upon the language which Shakespeare has put into the mouth of Caliban, that “it is clouded by the gloominess of his temper and the malignity of his purposes.”—Every answer he gave was at the first unintelligible. He was always obliged to explain—and when the most obvi-

ous questions were put to him, as "Why he did not endeavour to dissuade his companions?"—"Why he did not remonstrate with the sentinel?"—He had no other reply than it did not occur. "It did not occur!"—"Non mi ricordo" was nothing to him—and if his "did not occur" had the singularity of an Italian phrase, to give it currency, it would spread like the other, and be the ready reproach for every shuffling, stammering and guilty witness. It is not easy to distinguish between the evidence of the two brothers—yet, perhaps, there are shades in their guilt. I think, of the two, George is the worst. John, to be sure, was as willing to betray his companions; but he did not resort to the miserable hypocrisy of affecting a compunction, which he never felt. When he had stated all for which he was produced, he reserved a kind of "locus penitentiae"—made a compromise with his conscience, and tried to lay up a store of merit by telling a little truth. On his cross-examination, he admitted the important fact, that Mr. Forbes had said, "he could be no true Orangeman who threw the bottle." The Attorney General attempted to destroy the effect of this admission, by calling on the Judges to refer to their notes for the words used, and by observing that they went no further than his belief, and were elicited by a leading question. Be it so. Who doubts that Mr. Forbes used the expression? If he had not, would John Atkinson have dared to admit it?—I am glad he gave it the little tack of his belief. It cannot impair the value of the evidence; it adds to it, because it shows that it was wrung from an unwilling and reluctant witness.

In observing so much at length, Gentlemen, on the general features of the evidence, I have lost sight a little, perhaps of the particular case of my own individual clients. With respect to William Graham, there is hardly a tittle of evidence. Mr. Lowther states, that he

bought six pit tickets; but I think you will find this to be a mistake. This young man is a printer, of excellent character, and most respectable connexions. He went to the Theatre on that night, fortunately for himself, in company with a person who will prove that he purchased only one pit ticket. Before the play began, a number of those placards, which if treated as they deserved, would have been overlooked, were dropped from the lattices into the pit. All those who were near where they fell, endeavoured to procure them, from the same curiosity which you or I might have to see the "Racing Calendar," or "Pic. Nic. Dinner," or any other of the pasquinades which have lately been sold in the streets. Graham was fortunate enough to get possession of a few, and handed them to his neighbours—and this is his offence. Mr. Lambert has stated, that when the Lord Lieutenant appeared, he groaned him: but I am instructed that the very reverse is the truth—that he enthusiastically cheered him. He did not indeed applaud the Lord Mayor; that I'll not promise for him.—But to show you how far men will go, when under the influence of certain prejudices, Lambert stated, that Graham continued seated in the pit during the first, second, third, and fourth acts: you will find, by and bye, that he left his seat immediately after the second act, and did not return to it again during the night. As to what took place in the upper gallery, he is no otherwise connected with it, than by being present at Mrs. Flanagan's, in Essex-street, and the guilt of that transaction, I confess I have yet to learn.

Dismissing William Graham, therefore, I come to Henry Handwich. He, to be sure, is made a prominent figure in the piece—the assassination part has been attributed to him, and the public ear yet vibrates with the charge, that he flung a bottle at the Lord Lieutenant from the upper gallery of the Theatre. The great im-

probability of the fact I have already endeavoured to show, from the general plan and construction of the house, and from the relative situation of all the parties. To descend a little more into detail. By the evidence of all the witnesses, it appears that Handwich was in the third row of the gallery. I don't know, Gentlemen, whether any of you have been there. If you have, you must have found in that third row a number of wooden pillars, or supports, bearing up what is called the dip of the gallery, and which I suppose to be the general cornice of the house. This dip, or cornice, is no more than five feet from the floor; and under this, from the third row, in a crowded gallery, "cribbed, cabined and confined," it is alleged that Handwich flung the bottle, which was exhibited on the stage. Who are the persons who attest this extraordinary statement?—The first is Mr. Michael Farrell, the jeweller, from Dame-court. Unfortunately we know of Mr. Michael Farrell no more than he has been pleased to communicate himself. When an infant, he tells us, he was taken to London, and did not return to this city till about four years ago. O, I do wish that the venue in this case had been laid in Covent Garden. We should then, I shrewdly suspect, have had no difficulty in dealing with Mr. Michael Farrell. I'll venture to say, his "ore rotundo," his broad O, and his long E, are as familiar in the Strand as any London cry. If these poor fellows were rich enough for such a prosecution as this—if their last shilling had not been drained from them, we might have got some information in London relative to Mr. Farrell; at present, all we know is, that having gone there in his earliest years, and spent there the greatest part of his life, he leaves, for what reason he has not informed us, that great mart of wealth and commerce, where no man ever took root and wished to be transplanted thence, and sets up for a working jeweller in

Dame-court. A more pragmatical gentleman I never beheld. He seemed disposed to lecture us all, with such rhetorical flourishes, and such a volume of voice, that I actually trembled for the windows. He put me in mind of the famous Mr. Birkbeck, who went some time since to the banks of the Mississippi, and I have no doubt we shall, very shortly, have his letters from Dame-court, with remarks on the capabilities of Dublin, the facilities of emigration to Ireland, and notices of the manners and customs of its savage inhabitants. His evidence is, that Henry Handwich was the last person upon the left, and that behind him there was a large empty space—an empty space! Do you believe that on your oaths? Was there as much free space as there is now next to me? Have you a doubt that the upper gallery was not packed as close as close could be; that the people were not wedged together, with their elbows pinned to their sides? What was Tiernan's evidence—Tiernan, a plain, ready, unsophisticated, natural Irishman, free and frank—he spoke fast, and he spoke out—he wrote a running hand, that had nothing stiff or cramped in it, and he told you, what it is easy to believe—"We were packed as close as we could be, there was not room to budge—never was such a crush, both to the sides and to the back." Which will you believe—the natural Irishman, or the Anglo-Hibernian? There is not to be found a more odious production of perverted nature, than an Irish seedling grafted upon an English stock—it makes the worst and sourest crab—it is a mixture that combines all that is bad in each—with the dogged pertinacity, which is the worst part of the English character, it wants the honest sincerity that redeems it.—Yes! Tiernan may be trusted. If I were to cross a lonely heath at night, Tiernan should be my man.—I'd not ask Farrell to go along with me.

But we have another Witness it seems, the far-famed

Doctor M'Namara, fresh from the pound of Ballinakill. Gentlemen, you saw the peaceable Doctor, you marked his comportment and demeanor. Up I came, says the Doctor, from Ballinakill, went to the middle gallery, and took my seat in the centre. There I was disporting myself, when suddenly I heard a cry of "boys, mind your fire." Oh, how fortunate it is, that a man never comes to fabricate a story, that he does not, by a sure infatuation, insert some little circumstance that serves to betray him. If the Doctor had said he heard the words "look out," he would have been corroborated; but now he is contradicted by every witness. This cry, he says, attracted his attention—he looked up, and saw Handwich in the third row. The Doctor, in the middle gallery, sees Handwich in the third row of the upper one, though between them there were two benches, covered with people, and the boarded parapet in front of the upper gallery besides!!—Through all these obstacles, he sees him in that dark corner of the gallery where he represents him to be placed—sees him fling the bottle, and is now able, at this distance of time, to identify his person. The bottle itself he saw in what he learnedly calls its *transit*. A word or two on that same transit. I hold it physically impossible, that a bottle could have taken the course described by Farrell and M'Namara, from the upper gallery to the stage, without being observed by four or five hundred spectators. Just think what the Theatre is—a wide, illuminated area, whose bounding surfaces are studded with eyes as numerous as those of Argus. Not a square inch in that field of view which was not painted on the retina of some one eye or other in that vast assembly; consider, too, the time,—the interval between the play and farce,—when the attention of the audience was not fixed upon the stage, when people were all looking about them, recognizing and greeting their friends and



acquaintances. Was there no one to mark this bottle but Farrell, M'Namara, and the young Medical Student? What, not one giggling girl in the boxes, glancing round for admiration! not an opera glass pointed! no fortunate observer of the transit, but the Astronomer from Ballin-skill! Is all this credible? But this is not all, Voonders upon Voonders, as the Dutchman said, when he got to London; the greatest miracle is to come. Down comes the bottle, thundering from the upper gallery to the stage, and falls unbroken! If they had candidly produced it, I am instructed, it would appear to be one of those starred sandy bottles that fly in pieces on the slightest collision. I don't know, Gentlemen, whether you are aware that glass is one of the most elastic substances with which we are acquainted, far more elastic than ivory, which, you know, is used for billiard balls, on account of its great elasticity; this is the property which makes glass ring, and it would be much more familiar to us, if it were not counteracted by the great fragility of the material. If the bottle, therefore, did not break, it must have rebounded to the centre, if not to the back of the pit, supposing it to have been thrown from the upper gallery, but it rolls gently along the stage, and is taken up from behind the foot-lights. You all remember the prodigious efforts made by Counsel for the prosecution, to establish from the evidence, that the bottle fell towards the left of the stage, and near the Lord Lieutenant's box; but the fact and the intended inference are at an end, when it is recollected that Mr. Barton, from the centre of the orchestra, is the person who takes up the bottle, and who does so without rising from his seat. Who, after this, will presume to tell us, that it was intended for one side more than the other? The truth seems to be, it was designed for the stage, and in all probability came from the pit or from the lattices, after receiving a very slight, and perhaps,

an accidental impulse. Ah, Gentlemen, we have not been fairly dealt with,—indeed we have not;—why is not the bottle forth coming? Why is not Mr. Barton produced? You know the insinuation, that this bottle was taken from Ship-street, and was the same which contained the whiskey: surely you might judge of its contents if it were now produced, and we should not be left to criticisms on the testimony of Mr. Cahill; you would then be able to perceive whether it had been filled with porter or with spirits. These are facts perhaps of small moment, but the case for the prosecution is sought to be made out by circumstantial evidence, and the Counsel for the Crown were bound to have furnished you with all imaginable means of arriving at a just conclusion.

Gentlemen, I shall close this long examination of the evidence, by shortly adverting to the meeting in Essex-street; I am bound to do so, because William Graham is proved to have been there; it is otherwise a duty which more properly belongs to the gentlemen who will follow me. I confess this part of the case provoked my indignation at the first opening of it; it ought never to have been brought into a Court of Justice. A gentleman is arrested in the public Theatre because he has a whistle in his hand, forced to leave the performance, for the pleasure of seeing which he had paid;—though he surrenders himself to the magistrate without resistance, he is dragged to a Police Office, there, at an unseasonable hour, obliged to find bail; his pride hurt, his mind irritated, his passions warmed, and inflamed by such unmerited treatment, he goes with his friends to a public tavern, and there gives vent to his feelings, relieves his swelling heart with a natural burst of indignation, and indulges in a momentary ebullition of anger and resentment, and they are the idle and foolish expressions which are uttered at such a moment, and by a man flushed

with wine, that the Government, to their eternal shame, have stooped to gather up from eaves-droppers and spies, and to publish in a Court of Justice. Oh, Gentlemen of the Jury, I wish it had not been done—it is of evil example. And what are these criminal words? Their substance and amount is this (I think I interpret his language fairly): “I am an Orangeman, I have ever been faithful to the cause, and I ever shall; true, I have been taken from the Theatre, and obliged to give bail; I suppose I shall be indicted too:—Loyalty my boys is out of fashion,—new times are come round,—the poor Orangeman must go to the wall,—nothing is too bad for us now; they will send me I suppose to Botany-bay,—and let them send me; I shall be as true an Orangeman there as in Ireland; I shall establish a Lodge there, and drink the ‘Glorious Memory’ at the other side of the globe.” This was said, not quite, perhaps, in the style of the Attorney General,—not in finished periods, or with studied elegance, but I’ll answer for it, it was said in no dishonest style;—and I’ll tell you, Gentlemen, who will answer along with me, Mr. Graves, the police magistrate, who took the word of Mr. Forbes, that he would not again return to the Theatre, and the pledge, let me remind you, was not forfeited—the plighted word was kept. I cannot help expressing my regret once more, that the Counsel for the Crown should have deemed it requisite for any state purpose, or for any purpose at all, to follow men into the confidence and liberty of a convivial meeting, there to catch at their expressions, and from the heat and license of a tavern, to seek the means of crimination. If Mr. Forbes used the expressions attributed to him, where did he use them? Where they might be heard by every dropper-in, by every casual visiter and stranger, where they were heard by Mr. Farley and Mr. Troy. Does this exhibit consciousness of guilt? There

is a maxim of our law which is the shield and protection of every man who lives under that law, "mens rea facit reum." It is the guilty mind that makes the guilty man. Under our happy constitution, and admirable system of law, no man can be guilty whose conscience does not accuse him; and when you are inquiring whether an accused person be guilty of the crime imputed, the first question you will ask yourselves, is, whether he has evinced a consciousness of criminality. What Mr. Forbes said and did was said and done before the world; it had no marks of fear or coward conscience about it. It is not such men that a wise Government would treat with asperity and harshness; it would understand and appreciate their value; it would be,

"To their faults a little blind,

"And to their virtues very kind."

It would feel, that towards them, forbearance was sound policy, and gentleness was true wisdom. Mr. Forbes is not my client, but there is that in the openness and manliness of his character, which recommends him to the care of every honorable advocate.

And now, Gentlemen, having closed my observations on the evidence, and given you the means, I hope, to take the sting out of this charge, allow me to inquire into the nature of the offence imputed, if offence it should be. Gentlemen, I have been accustomed all my life long, to believe it to be a privilege possessed by the people of Great Britain and Ireland, to give free expression in places of public and general resort to a popular and political feeling. We are not indeed to speak or to act to the terror of his Majesty's subjects, but short of that, I have always deemed it to be the privilege of every Englishman or Irishman, to give expression in places of public resort, such as a Theatre, to his public and political sentiments; if I am to lose this privilege, I will not part

with it without a struggle. The Attorney General has set up for a theatrical reformer; I think he will find it a troublesome task, but I trust he will not expose himself to the same censure with the parliamentary reformers, who have been so often reproached with not furnishing a specific and detailed plan of their projected improvements. If our ancient privilege is to be curtailed, at least, I hope he will point out the exact limits within which we are to enjoy it,—whether it be conceded to the boxes, although refused to the gallery,—and whether, though suspended during the play, it may not revive in the entertainment,—or whether it be only when the Lord Lieutenant is at the Theatre, that the silence of *La Trappe* is to prevail there. But I trust it is not the presence of the Lord Lieutenant, no—nor of the King himself, deeply as I reverence him, that shall ever frown a British audience into Eastern sycophancy or silence. The privilege I contend for is not a new one; it has been recognized in all periods of our history. I do not know what the Attorney General would say to the trunk-maker, described by Addison, who used to signify his approbation at the Theatre by beating the benches with an oaken plank, and the critical correctness of whose strokes was the joy of the actors and the delight of the house. The Spectator is not as much read now as it used to be, and as it ought to be; but, Gentlemen, if you have not read that inimitable paper do so by all means when you go home. According to the new “*Ex Officio*” law, however, the poor trunk-maker would have been made the subject of a state prosecution; he would have been tried at bar. I can suppose Bishop Hurd, who possessed a charming talent for writing dialogues, imagining a conversation between Lord Somers and Addison, after the appearance of that paper: we may conceive Addison dropping in at the breakfast-table of Lord Somers, where the paper is ly-

ing: "Well, my Lord, how were you amused with my last night's lucubrations?" "I was, indeed, charmed and delighted, Addison,—but are you aware that your trunk-maker has violated the law of the land, and that the Attorney General may file an "Ex Officio" Information against him?" And then imagine Addison, smiling, with that inimitable grace, which we may suppose to have belonged to him, and replying, "Yes, my Lord, the Attorney General may file his Ex Officio Information, but there is a fund of good sense and natural equity in a British Jury which will ever make the trunk-maker too strong for the Attorney General." It is somewhat in this manner, perhaps, that Hurd would have treated the subject.

As I have fallen into the vein of story-telling, Gentlemen, you will allow me to relate another, which belongs to the same times, and of which they have reminded me:—There was a great man in those days, Lord Bolingbroke.—Lord Wellesley resembles him in some of the noblest parts of his character—his high spirit—his inimitable style—his rich and flowing eloquence. In the other and defective parts of Bolingbroke's character I believe there is no resemblance. He came into power during the four last years of Queen Anne's reign, that period to which the Attorney General is so fond of adverting, when a plan was formed for defeating the succession in the House of Hanover, and bringing back the Pretender. He and Harley, who were suspected of entertaining these designs, (at that time only surmised) became justly unpopular with the nation. It was in this crisis of public feeling, that Addison wrote his celebrated tragedy of Cato, almost every line of which was intended as a reflection upon Bolingbroke and his administration. Bolingbroke was aware of this, and determined to be present at the performance; with admirable address, he took a

conspicuous box, and seated himself in the full view of the whole house. As the play proceeded, the pit grew clamorous in their applause, pointing the application of every stinging antithesis or swelling sentiment, to the unpopular minister.—Was Bolingbroke offended?—No; he returned the angry gaze of the people with a countenance beaming with smiles, seemed to go along with the general current, was loudest in his applause, and when the representation was over, sent for Booth, who had performed the part of Cato, to his box, and, in the presence of the whole audience, presented him with a purse of sixty guineas, for having defended the cause of liberty so well against a perpetual dictator. There was an example, Gentlemen—it might be disrespectful to say for whom. But there are instances nearer home. I am not old enough to remember the brilliant times of the Duke of Rutland, but I have heard of them. Chivalrous and gallant, generous and gay, he had the faults of a man of pleasure and dissipation, and accordingly he never went into the Theatre that he was not assailed with some coarse and offensive allusion to the supposed scandals of his private life. We all know the story of Peg Plunket and Manners. But yet I have never heard that the Duke of Rutland instituted a prosecution. We are told indeed, that on some of those occasions he had the grace to blush, but it is added, that he always had the good humour to smile. The privilege, I insist on, has not only been conceded by Ministers and Lord Lieutenants, it has been allowed by Kings.—Even in the most arbitrary period of our history, we find the British Sovereigns freely presenting themselves to their people, and admitting the right to censure or applaud them. Even the Tudors, in that critical interval, when the prerogative stood highest, after the ancient Aristocracy was dissolved, and before the Commons had emerged to wealth and importance, never disputed

this well established privilege. Elizabeth herself, in the full maturity of her greatness, when she had trampled on the necks of all her competitors, broken the power of Spain and scattered the Invincible Armada, even she did not dispute it. When, in a fatal hour of pride and irritation, she had consigned the gallant Essex, the favorite of the nation, to his untimely destiny; as she rode through the streets of her capital, to assemble her Parliament, a murmur of disapprobation rose around her loud and strong; all-unused to such sounds, and spoiled, as she might well be supposed to be, by the prosperity of forty years, she did not dare to complain—yet she possessed a Court of Star-Chamber—she had a Privy Council that assumed a criminal jurisdiction—she had an Attorney General ready at her slightest beck, to file his Ex Officio Information. But she resorted to none of these. She was too magnanimous a princess—she had too much of an English heart.—No, she retired to her chamber, wrung her hands in agony, smote her breast, and recognized within, the justice of the people's censure.

I shall not tarnish the lustre of examples like these, or diminish their effect, by reminding you of the well known interruption given to the performances of Covent Garden Theatre, which continued for sixty-six nights, and has been called the O. P. war. *There* indeed, Gentlemen, was a riot—something different from the “Boyne Water;” and yet, when the subject came into a Court of Justice, an English Jury—I don't say whether properly or improperly, right or wrong—but an English Jury found a verdict for the audience against the manager; and when the Chief Justice, Sir James Mansfield, asked the foreman his reasons for the verdict, he informed him that the Jury did not think it consistent with the rights of Englishmen to punish a British subject for distributing placards, or wearing the letters O. P. in his hat. Gentlemen,



I am not holding this example up for your imitation. Do not suppose me capable of so gross and palpable an artifice. You will find your verdict according to the evidence, and the Law as it applies to it. But I do mention it for the purpose of showing you what the notions and the feelings of the British people are upon the rights and privileges of a British audience; and we may affect what prudery or delicacy we please upon these subjects, I tell you it is that sturdy English feeling, that sound sense, and *crassa* Minerva, not to be duped by any sophistry, legal, political or religious, which has made England the nation she is.—This is the true source of her splendor, the real foundation of her greatness.

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Sic fortis Etruria crevit  
Scilicet et rerum facta est pulcherrima Roma.

May you ever partake of that feeling! May you ever guard and cherish it! May you ever look with jealousy on any attempt on the part of your rulers to take from you the right of pronouncing on the merits of their government, and of determining without appeal, whether they are popular or unpopular. Preserve it as you would the apple of your eye, or the life-blood of your heart!—It is better—it is of more value than all your other privileges together. Without it they are paralyzed and lifeless. This is the soul and spirit which gives strength and animation to them all.

Only one topic more, Gentlemen. The Attorney General would fain represent to you, that your verdict may forward the great cause of national conciliation. Oh, Gentlemen of the Jury, consider well before you suffer your minds to be entranced and your judgments led along by so captivating an argument as this. I have heard of various nostrums and specifics for the cure of all Irish

diseases. There is not a Right Hon. Secretary, or a Right Rev. Bishop, who comes here from England, that does not bring with him some infallible receipt of this description—some cordial or another—some Dr. Solomon's Balm of Gilead; that is to take the vertigo from our heads and the acid from our stomachs, and to restore us to political sanity and vigour. It was only the other day, that the philanthropist Mr. Owen—indeed, I believe he is still in the kingdom, and a most excellent and benevolent man he is—proposed to set every thing to rights by cutting up the country into small square pieces, and raising our population from seven millions to seven and twenty. Then all was to be harmony and conciliation. But of all the extravagant projects I have yet heard of, surely the most desperate and hopeless seems to be this of conciliating us all by an Ex Officio Information.—Every man, to be sure, has a natural attachment to his own profession. I would have given something to have been present at the grand consultation when this expedient was agreed on. “What shall we do,” says the President of the Council, “to allay the differences of this unhappy people?”—“Call out the artillery,” says the Commander of the Forces, “erect barriers on the bridges.”—“Put them down with the Police,” say Mr. Graves and Mr. Tudor.—“Shuffle them well together,” says the Lord Mayor.—“No,” says the Attorney General, “believe me, there is nothing like an Ex Officio Information.”

“The currier wiser than all put together.”—

But I will not sport any longer with the subject—it is too grave, it is too serious, it is too affecting. Conciliation! Conciliation!—magical, mysterious word! How

often misapplied and misunderstood ! Like the happiness described by the poet :

That still so near us, yet beyond us lies,  
 O'erlook'd, seen double, by the fool and wise.  
 Plant of celestial seed, if dropp'd below,  
 Say in what mortal soil, thou deign'st to glow.

Alas, Gentlemen of the Jury, it is not within the precincts of a Court of Justice we shall find it to flourish.— Prosecutions and convictions, the halter and the prison-bar, are but coarse instruments of conciliation. It is with this as with the other virtues of the same family—friendship and affection, reciprocal esteem and mutual forbearance. It possesses that attribute, which Shakespeare has ascribed to the quality of mercy—“ It is not strained”— It will not be commanded. A king may place his throne upon the sands, and tell the stormy wave to roll back at his bidding; but whether it be the swelling tide of popular emotion, or the bursting billows of the tempestuous sea, they will equally teach him the littleness of all mortal power, and the impassable limits which Nature has prescribed to the authority of man. Do not for a moment suppose that I mean any bold and disrespectful allusion to the parting injunctions of his Majesty. I remember too well.— Who amongst us does not remember—that great and ever-memorable day, when the King made his triumphal entry into this city, when the hearts of this mighty population beat together in loyal unison, as if it had been the heart of one individual man, and the monarch was received among his people like a father into the bosom of his family.

As a fair morning of the blessed spring,  
 After a tedious, stormy night ;  
 Such was the glorious entry of our King !  
 Enriching moisture dropp'd on every thing.  
 Plenty he sow'd below, and cast around him light.

To what enchanting prospects did we then surrender our delighted imaginations! Why have these blissful hopes been thus severely disappointed? Is it not because the great absurdity has been attempted of conciliating men by force—of producing, by constraint and violence, that which is the natural offspring of persuasion? Hence what we have seen,—hence unfounded committals upon capital charges—refusal of bail and main-prize—the solemn verdicts of Grand Juries slighted, scorned, and set at defiance—hence *Ex Officio Informations*. Do not be persuaded, therefore, Gentlemen of the Jury, that any verdict which you can pronounce will advance the cause of conciliation,—believe it not; you can find no conciliatory verdict; but you may find a righteous one. The Lord Lieutenant has been deceived and abused; your verdict may undeceive and disabuse him; his noble mind has been practised upon; he has been taught to believe that he is surrounded by conspirators and traitors; that weapons are raised against his life; he has been induced to bare his manly breast, and to desire “the Assassin, if not yet disarmed, to strike now.” Tell him by your verdict, Gentlemen, that he has no conspirators to fear; that he has no assassins to dread; that there is no dagger aimed at his life, but the “air drawn dagger” of his own imagination. Such a verdict as this may not be conciliatory, but in my heart I believe it will be just; it will be one that to the latest hour of your lives will receive the approbation of your own consciences; it is one already anticipated by every thinking, and reflecting man in the community; and at no distant period it will be hailed by the whole country.

## FOURTH DAY.

Mr. JOHNSON:

*My Lords, and Gentlemen of the Jury,*

I am Counsel for the Traverser James Forbes. Before I observe upon the facts of this case, permit me to follow the course pursued by the Attorney General, and briefly advert to the nature of the present proceeding. It is, as has been truly stated, an Ex Officio Information, filed by the Law Officer of the Crown, after Bills of Indictment for the same offence have been ignored by the constitutional tribunal of the country, (who are now admitted at this bar to have conscientiously discharged their duty,) after a minute, a patient, and a careful investigation; and after an examination of all the witnesses, amounting to upwards of thirty, who were sent before them in support of the Indictments. Highly important as the case must be to the parties concerned, it is in this point of view still more important with reference to the constitution of the country, and the liberties, the lives, and the properties of the subjects of these realms. I do not hesitate to say, that this is an unprecedented, an unconstitutional, and an illegal proceeding. When I say unprecedented, I do not forget the solitary instance, by which, with the help of analogy, it is sought to be supported. The case in the Commons' Journals bear some resemblance to this. I am sorry to say that it does. If your Lordships will look into the origin and history of a proceeding of this description, I think you will find, from the most eminent constitutional writers on the subject, that it was introduced into our Law, as a festinum remedium, for high misdemeanors against the State, which would not bear the delay attending the interposition of a Grand Jury; and that where an opportunity has existed of taking their sense upon the matter, they have been almost uniformly

resorted to, as was at first done on the present occasion. This is the first instance of a direct appeal from the decision of a Grand Jury to the single Law Officer of the Crown. Shortly after the Revolution, the authority of the Attorney General to file an Ex Officio Information was seriously questioned. In Mr. Prynne's case\* it was the subject of much discussion. The argument of Sir Francis Winnington against its legality, is given at considerable length: and in consequence of the difficulty of the thing, the case was at first adjourned. It was an original Information for a riot, and not by way of appeal from the decision of a Grand Jury. Sir Bartholomew Showers' argument in support of the Information was afterwards reported by himself.† I think it highly probable that the Court have looked into that argument, which contains all the learning antecedent to that time on the subject of Informations, and refers to almost all the precedents then to be found in books or records. Your Lordships will find that the right to file such an Information, is rested by him wholly and exclusively upon authorities, and not supported upon principle. It was upon the multitude of instances in which the thing had been done, and upon that alone, that the Court pronounced their Judgment. When I say that alone, I mean that there was no other topic referred to, upon which they could act. Lord Hale says, that the better and safer way is to proceed by indictment or presentment of twelve sworn men; and in 4th Blackstone's Commentaries, 308, it is laid down, that the proper objects of Ex Officio Informations are such enormous misdemeanors as peculiarly tend to disturb or endanger the King's Government, or molest or affront him in the regular discharge of his Royal Functions. For offences so high and dangerous (says this emi-

\* 5 Mod. 459.

† 1 Show. 106.

nent writer) in the punishment or prevention of which a moment's delay would be fatal, the law has given to the Crown the power of an immediate prosecution, without waiting for any previous application to any other tribunal.

I have with anxiety, care, and attention looked into as many books as I could find on the subject, and I have not been able to discover any principle or ground upon which the legality of Informations has been sustained, save those adverted to by these great authorities, namely, practice, the precedents, and the necessity in some cases of a *festinum remedium*. It has been urged as an argument, that this High Court entertains applications for Criminal Informations, where bills have been ignored by a Grand Jury: by analogy to which it is contended that the law officer of the Crown, an individual, is armed with equal authority, and has similar and co-extensive rights. But, my Lords, the High Court superintends and controls every inferior jurisdiction. In Trinity Term, 15th Geo. II. "it was delivered as law by Keeling, and agreed *per curiam*, that if an Information be exhibited by the Attorney General, or the Master of the Crown Office, the Court may quash it upon motion, because it is *Ex Officio*.\* Thus we see that this High Court has authority even over the Attorney General himself, and his *Ex-officio* Information. It might quash, and, had an application for that purpose been made, perhaps would have quashed, these very Informations. What analogy then is there between the jurisdiction of this High Court, hearing both parties by their Counsel, and furnished with every ground to lead them to a proper exercise of their discretion, and the right of an individual, *ex parte*, to file an *Ex Officio* Information, which your Lordships might

\* 1 Show. 110,

the next day order to be taken off the files of your Court? It is alleged, however, that this proceeding is not without a precedent. I need not repeat the facts of the case relied upon, which have been truly stated by the Attorney General. The offence was, that Dudley Moore insisted on reading a prologue. The actors had refused to repeat it, upon which Mr. Moore did so, and probably with more effect. It was certainly an interruption of the regular performance. Now let us read the commencement of the Report of the Committee. "Your Committee also enquired into the proceedings which have been had against Dudley Moore, Esq. and several other gentlemen, on account of a late pretended riot, on the 4th of November, 1712." They then state the circumstances attending the filing of the information: "and Mr. Tisdall and Mr. Caldwell being asked, whether they ever knew, after a bill of indictment had been quashed, an information filed for the same matter, answered they never did." This is the proceeding alleged as a precedent.

I apprehend that this is as high an authority upon the subject as any that can exist, and that your Lordships in conformity with it, will take the law to be, that there never was an appeal from a Grand Jury to the Law Officer of the Crown. Another topic suggested by the Attorney General is, that as there is no particular plea by which this might have been put forward, it therefore follows that the law allows no such defence. Perhaps, however, the Attorney General may have gone too far in assuming that a bill of indictment ignored for the same matter, would not constitute a good plea to an Information. It is begging the question to say, that such a plea would not lie. I admit there is no precedent of it, because there is no precedent of such an Information. I also acknowledge that it has not been pleaded here, because we well knew,



we should have the benefit of it in evidence, and determined to lay before one Jury of the city of Dublin, the finding of another. The unimpeached finding of that Jury is every thing but conclusive in our favor; and I feel no doubt that the Gentlemen whom I now have the honor to address, will give it every degree of respect to which it is entitled. It is a record between the same parties, and a record of acquittal. I say that emphatically—because the term has been quarrelled with. It is an acquittal, not of the offence, but of that indictment, for ever. There can be no ulterior proceeding on that indictment consistently with the principles of the Constitution. What proves that it is so is, that after the ignoring of a bill, an action is maintainable for a malicious prosecution, which does not lie until the criminal proceeding is at an end; a *Nolle Prosequi* would not authorise such an action, because in that case the indictment may be resumed; but an *Ignoramus* will, because upon that the indictment is for ever at an end. I therefore use the term “acquitted,” not only in its ordinary and vernacular, but in its strictest, legal, and technical signification.

I shall not trouble your Lordships farther upon this part of the case. I shall next briefly advert to the facts, and the charge under which Mr. Forbes is now upon trial. Gentlemen of the Jury, the question of fact upon which you are to determine, and to which your attention will, in all probability, be almost exclusively directed, is, whether a conspiracy has been proved for the purpose of insulting and assaulting his Excellency the Lord Lieutenant. The offence must be proved as laid in the Information. It must be shewn, that the individuals engaged conspired for that purpose; and that the persons on trial knew that such was the intention. For even if some of the conspirators had such views, that can be no ground for a conviction against my client, Mr. Forbes, unless those

views were communicated to and known by him. That knowledge can alone constitute his guilt. It is unnecessary, I believe, to quote any authority for such a position, but if any were necessary, the case of the King v. Pollman,\* is decisive on the subject. It was there held, that unless the defendant be cognizant of the object of the confederacy charged, he is entitled to an acquittal.

You have heard of the character which has been given of Mr. Forbes. I hope it may be otherwise known to you. That very character would alone acquit him. He is a man distinguished for loyalty, and holds in as deep abhorrence as any man, any insult or offence against the illustrious personage, the representative of the Monarch whom he adores. Such is the man who has been accused of this conspiracy; who has been committed by the officers of police upon a capital charge—detained in custody as a felon, whilst the public were daily pronouncing sentence upon him—whilst addresses upon addresses poured in to the Lord Lieutenant, assuming the existence of the crime, and almost denouncing him as the perpetrator. Nor is this all.—The crime, it seems, is to be handed down to posterity. In the annals of the city, annexed to the almanack for the year, and published by authority, we read the following passage: “His Excellency the Marquis Wellesley visited the Theatre Royal, Hawkins'-street, when a great bottle, and a heavy piece of wood were flung at him by assassins from the upper gallery, providentially without effect.”

Such, Gentlemen, is the description of the act, under charge of which Mr. Forbes has been detained in the goal of Newgate, and has suffered anticipated punishment—a punishment I will say, beyond the power of this Court to inflict even in case of his conviction this day. Gentlemen,

\* 2 Campb. 429.

I do not measure punishment in such a case, by the duration of time. One hour's imprisonment under a charge so atrocious, is worse than a year's confinement for a mere misdemeanor. Mr. Forbes has been in custody under the imputation of a felony of the worst and most flagitious description. And for this, Gentlemen, he is totally without redress. The Press teems even now with publications asserting the guilt, and scarcely concealing the name. Beyond the Commission he could not be detained: but up to that very day was the capital charge persevered in; and then, and not till then, was it abandoned. The sentence of condemnation was pronounced upon him by his own order. A Bill of Indictment was sent up for a misdemeanor to one of the highest constitutional authorities—a Grand Jury—who, after two days patient investigation and the examination of every witness, unanimously, I believe, ignored that Bill. Having suffered so much, Mr. Forbes was then humanely discharged without being obliged to wait till the delivery of the gaol by proclamation. Before he made application for that purpose, the intention of filing these Ex Officio Informations was announced to the public. Not having been present when that intention was avowed, I can only speak from the reports of the Attorney General's language in the public papers. In these reports I am confident he has been grossly misrepresented; it is impossible that the Attorney General could have imputed actual guilt to the prisoners. It could have been no part of his meaning. To state his intention of instituting an ulterior proceeding was perfectly fair; but Mr. Forbes has had from the public papers, the full benefit of anticipated condemnation from the lips of his Majesty's Attorney General. The persons accused, are stated to have been stigmatised by the name of a gang of ruffians. I am sure that the Attorney General would not thus anticipate your verdict, or pronounce upon untried men the sentence of condemna-

tion. I am confident there has been a gross misstatement of what occurred, and that he never did more than intimate, for a legitimate purpose, his intention to bring these gentlemen to trial.

Allow me now more particularly to direct your attention to the facts of this case. The evidence relied upon in support of the charge, goes to an actual, and not an inferential conspiracy, that is, one collected merely from the concurrence of several parties in the same illegal act. As against Mr. Forbes, I think I should not go too far in saying, that there is not a tittle of evidence, that does not resolve itself into the testimony of the two brothers, the Atkinson's. Their own evidence, together with what you shall presently hear, will exhibit those persons in such a point of view, that it will be utterly impossible for a Jury to give the slightest credit to any thing they say, unless corroborated by other witnesses. They began by telling you their situation in life. Their father is in a Police Office, and one of the brothers in the Revenue Department. He had formerly an appointment, which was abolished. Thus they derived their whole support from the Government. The account they give of themselves is, that they were the treacherous servants of that Government. They come forward to state, that they joined in a conspiracy to insult and assault the Lord Lieutenant. Are persons of that description witnesses, upon whose testimony you can find a verdict against a gentleman of high character, of unimpeached integrity, and of devoted loyalty? a verdict which would convict him of an offence, at variance with all the principles which he is acknowledged to profess. The scene laid by Atkinson begins at the Shakespeare Tavern. These conspirators must have been prophets; for you will find from the evidence of Mr. Lowther, that the intention of his Excellency to visit the Theatre, was not announced to the public until Thursday; and yet this al-

leged conspiracy was organized the day before. The meeting at the Shakespeare took place on Wednesday night. What occurred there rests on the testimony of John Atkinson. But is Mr. Forbes chargeable with what passed there in his absence? he was neither there, nor at the subsequent meeting at Daly's in Werburgh-street. It is not until the day after that he is introduced by Atkinson. You recollect his manner of giving evidence. The questions were put to him so as to admit of an answer from his own conception and judgment: he uniformly answers that it was so intended or so agreed. But he could not state a word of actual conversation. Allow me now to call your attention to a most extraordinary statement, which it is totally impossible to believe. And if you find a Witness deliberately false and grossly perjured in one particular, you will, I doubt not, be informed by the Court, that you are to pay no regard to his testimony as to any. George Atkinson swears that he went to the Park for the purpose of communicating to the Lord Lieutenant the objects of the conspiracy. Nothing had then passed with reference to Forbes, or to any but his own brother: he went then to his Excellency without communicating with his brother. He was stopped by the sentinel; he returned and never communicated the thing to a magistrate or to his father or brother. Is that credible or is it possible? Is it not at variance with every principle of the human mind, whether vicious or otherwise? There is another circumstance with respect to which one of those brothers must of necessity be perjured. One of them has given you to understand that Forbes, regretting that the bottle had missed its aim, made use of the words "Devil mend him" — Expressions evidently in approbation of what had been done, and of regret at its failure. The other has distinctly told you that Forbes declared his most decided

disapprobation of that act if it occurred. It is perfectly clear that one of them must be perjured in this particular. John Atkinson admitted, that Forbes said, "No true Orangeman could have thrown the bottle, if it was thrown." Supposing, therefore, for a moment, the evidence on the direct examination is sufficient to charge this gentleman; I contend, upon the cross examination, the Court would be bound to tell you, that you ought to acquit him. The witnesses have said, that it was no part of the agreement to insult or assault his Excellency the Lord Lieutenant; and one has gone so far as to say, that there was no agreement to offend any body. If you believe that they are correct in this respect, you cannot but acquit the Traversers. If you do not believe it, you will be equally bound to acquit; because you must in that case take for granted, that these men have told you a deliberate falsehood upon their oaths.

The next witness who in any degree affects my client is Mr. Graves. He was not the Gentleman who actually arrested Mr. Forbes. Why the Gentleman who did arrest him has not been produced, I cannot say; but this I must observe, that Mr. Tudor, who knew his person and made the arrest, ought to have been produced, instead of Mr. Graves, who was unacquainted with him and his character, and with whom Mr. Forbes was so little acquainted, that he gave an answer to his question very improper to be used to a Magistrate. To Mr. Graves' question as to why he was whistling, he replied "for fun." It would naturally be felt, at first view, as a liberty for one man to enquire of another why he whistled—a practice which, from time immemorial, has prevailed in every Theatre. I do not go so far as to say that a man may interrupt the performance, or disturb the company; but certainly the mere using a whistle, is not punishable as an offence.

I shall not trouble you upon the circumstances relative to the bottle and the piece of wood. That is a part of the case with which my client is wholly unconnected. I shall, however, just notice one circumstance, which should have put an end to this prosecution. I cannot conceive why that bottle should not have been produced. It is well known, that porter is to be purchased at almost every part of the Theatre. If that bottle contained porter, as one of the witnesses supposed it did, that would have put an end to the idea of its having been thrown by any of the traversers. The bottle appeared yesterday in the hands of a Policeman, but only at a respectful distance. We have had a variety of conjectures as to whence this bottle came. The Gentleman who held up the bottle to the audience, has also been withheld. He could have told whence it probably proceeded, better than all the witnesses put together. He could have told you in what position it was found, and whether it might not have come up with the stage lights, or have been thrown from the pit. Every thing is to be presumed against persons who withhold information. To every thing Mr. Webster has said, I am confident you will give implicit credit. If we had had only such witnesses, this trial would not have lasted long. I beg to call you attention to the manner in which Atkinson has disposed of the conspirators. He says they were to have been placed in the pit, about the box of his Excellency. Now, no sensation was created in the House by any thing, till Mr. Barton held up the bottle to the audience. And what did Mr. Webster say? He says, that when the missile was thrown, there was an unanimous exclamation of "shame, shame," in the pit, next his Excellency's box. Was that an expression of approbation? Is it possible, that those men, who at the moment cried out "shame" at the occurrence, should have been themselves the authors of it? A circumstance of that sort

from a witness in such a situation, ought at once to put an end to the notion of a conspiracy.

There is certainly also an Information for a riot. Upon that allow me to say a little. It is not every noise, or every expression of approbation or disapprobation at a Theatre, that will constitute a riot. In my apprehension, by immemorial usage the English and the Irish public have expressed, and are entitled to express at a Theatre, their censure or their approval of what is under their observation. Nor has the privilege been confined to the actors or performance; it has been extended to public men and measures; and the practice, permit me to remark, has been sanctioned by the high authority of his Excellency himself. You have from one of the witnesses the true source of the hissing and growling, if any. This part of the evidence could not have escaped your attention and observation, and must have satisfied your minds that that part of Atkinson's testimony was true, which stated, that there was no agreement to insult or assault the Lord Lieutenant. Several persons, citizens of Dublin, who disapproved of the conduct of the Lord Mayor in more than one particular, hissed and growled him; and you are told by one witness, that before any expression of disrespect to his Excellency reached his ears, his Excellency had come forward in his box, and cheered and saluted the Lord Mayor in the face of the public. Until that period, there was neither hiss nor groan, within his hearing, addressed to the Lord Lieutenant. It would be a strange doctrine to hold, that expressions of approbation alone are to be allowed. If his Excellency did make a public display of his feelings, he has misled the rest of the audience into a similar declaration of theirs. To shew what in England a jury did not consider to be a riot, I shall advert to a case already mentioned, *Clifford v. Brandon*, 2 *Campbell*, 362. It



there appeared, that the performance in the Theatre was inaudible; that the spectators sometimes stood on the benches, and at other times sat down with their backs to the performers. Whilst the play was representing, "God save the King," and "Rule Britannia" were sung by persons in different parts of the Theatre. Horns were blown, bells were rung, and rattles sprung; placards were exhibited, exhorting the audience to resist the oppression of the managers. And a number of men wore in their hats the letters O. P. or N. P. B. meaning "Old Prices," and "No Private Boxes." The Court told the Jury that there was evidence of a riot; but they exercised their own judgments, and found that there was none, by giving a verdict for the plaintiff.

Has any one here proved any injury done? And if the Gentleman with the "O. P." in his hat got damages, and that verdict was never disturbed, or attempted to be set aside, is it not a record to this day, shewing the rights of an audience at a public Theatre? Is it shewn here that any individual left the house in alarm? One individual got two blows, but could not say from whom; he said he saw a particular act done, on which he fixed his eye upon one person, and cried "shame;" and that whilst he had his eye upon this man he received two strokes. No witness has shewn the slightest disturbance or annoyance to the audience. That there were noises, groans and hisses, is highly probable. Such scenes occur at every crowded performance. But this is the first case, since Mr. Dudley Moore's, of an Information for a riot in a Theatre. Fortunately we have witnesses who were present at the tavern scene in Essex-street, and who will shew you it has been grossly misrepresented. From that misrepresentation I am convinced it has arisen, that Mr. Forbes has been included in the present proceeding. When he was taken to the police office on the night of the play, he was dis-

charged on promising bail ; and it was not until a week after that he was again arrested. We cannot say at what time or from what quarter the Information was given on which the warrant was grounded ; but we are led to suppose it was from the two listeners, who have described this occurrence in Essex-street, in a way, as I am instructed, at utter variance with the truth of the transaction. The account we shall give of it differs not only from theirs, but also from the representation of the Atkinsons. There are many other circumstances in this case into which, as they are unconnected with my client, I do not conceive myself at liberty to enter. He was no party to the meeting at the Shakespeare Tavern, and at the first meeting at which he is introduced it is distinctly sworn, that there was no agreement or direction either to offend or insult the Lord Lieutenant. If you believe that, Gentlemen, I am sure you will, without hesitation, find a verdict of not guilty.

Mr. SCRIVEN then rose, and was proceeding to address the Jury on behalf of William Brownlow, when the Chief Justice, after conferring with the rest of the Court, interrupted him, and requested of the Attorney General to say whether it was his intention to press the prosecution against Brownlow. His Lordship adverted to the evidence which affected him, and which the Court conceived to be so slight as to warrant them in calling upon the Counsel for the Crown to say, whether they would proceed against him. The Attorney General stated, that after the observation which had fallen from the Court, he should not conceive himself justifiable in pressing the case against Brownlow.

Mr. SCRIVEN. If the case of my client is to go to the Jury, I should wish to say a few words on his behalf. The best way, perhaps, would be to send up an issue now with respect to him. But if he is not to be now acquitted, his

case must go to the Jury with the rest, and it would be but right that I should have an opportunity of addressing them on his behalf.

**ATTORNEY GENERAL.** On the part of the Crown, we are anxious that every Traverser should have an opportunity of making a distinct defence. Two of them have been heard through Mr. Driscoll; two others through Mr. North; and the fifth by Mr. Johnston; the only remaining one is Brownlow, and I thought I had been discharging my duty in a manner most conducive to public justice, and the intention of the Court, and not calculated to injure Mr. Scriven's client, by not pressing the case as against him. I should have thought it my duty to abstain from any cross-examination respecting him. If his Counsel however insist on persevering, he has of course a right to do so.

**MR. SCRIVEN.** It is quite impossible, after that declaration, that I should say any thing farther. I must rely on the candour of the Attorney General, that with respect to Brownlow there will be no further proceeding. It was my intention to have touched upon some topics not hitherto adverted to, but of course I shall not now press them.

*Evidence for the Defence.*

**FREDERICK TRENCH, Esq. examined by Mr.  
BLACKBURN,**

**Q.** Mr. Trench, where do you live?

**A.** At Haywood near Ballinakill, in the Queen's County.

**Q.** How near to Ballinakill?

**A.** Not a mile from it.

Q. Do you know a person called Doctor Bernard M'Namara?

A. I have heard of him. I don't know him much, I know him by character.

Q. Do you know his general character?

A. Yes, at least as far as my judgment goes.

Q. I believe you are a Magistrate of the Queen's County?

A. I am.

Q. How long have you known Dr. M'Namara's general character?

A. About ten years I think.

Q. Have you known him for that time?

A. Not much personally.

Q. From your knowledge of his general character, do you believe him worthy of credit upon his oath in a Court of Justice?

ATTORNEY GENERAL—My Lords, I conceive the question should be, whether the witness knows the general character of M'Namara, with respect to his title to credit in a Court of Justice? and whether from that character he does or does not consider him so entitled.

CHIEF JUSTICE—I do not conceive that that is the proper form.

SOLICITOR GENERAL—The question should be, whether his general character is such, not in the witness's own opinion, but in the opinion of the world, as to entitle him to credit.

CHIEF JUSTICE—I consider Mr. Blackburne to have put the question to him in that way. The witness must speak to his general character, but not merely, as is supposed by Mr. Attorney General, his character for veracity.

Mr. BLACKBURNE—In 1 Philips 291, the form of the question is thus pointed out, "The regular mode of examining into general character, is to enquire of the wit-

“ nesses whether they have the means of knowing the former witness’s general character, and whether from such knowledge they would believe him on his oath.”

CHIEF JUSTICE—Such has always been my impression.

Q. From your knowledge of the general character of Dr. M’Namara, would you believe him on his oath in a Court of Justice?

A. In some degree from being a Magistrate in the county—

Q. I am not asking as to your means of knowledge, but from your general knowledge of his character, would you believe him on his oath?

A. On my oath I would not.

#### Cross-examined by the ATTORNEY GENERAL.

Q. Have you been in any particular habits of acquaintance with this person?

A. No, I cannot say I have; as from my knowledge of him, I have always avoided it; except when he was before me as a Justice of Peace, to take examinations by and against him.

Q. You took informations from him?

A. Yes, and frequently against him.

Q. Have you no dislike to him?

A. From my knowledge of his character, I have the dislike to him, which an honest man would have against one not of that description—nothing else.

Q. Did he cause you any injury?

A. None.

Q. You have taken his informations?

A. Yes, and others against him, on other facts.

Q. I suppose you have found him troublesome and litigious?

A. I believe him to be fully of that character.

**Q.** Do you feel some little warmth in this case, more than would belong to a common question?

**A.** Certainly not.

**Q.** Is it not your impression, that Doctor M'Namara is a very quarrelsome and troublesome person?

**A.** I was asked, whether he is credible upon his oath in a Court of Justice—I am clearly of opinion that he is not.

**Q.** Upon your oath, do you mean to say, that in a matter in which he is perfectly uninterested, and on which he had no object to accomplish, or passion to gratify, you would abstractedly disbelieve him?

**A.** On my oath, I should rather be inclined to disbelieve him on any question—to disbelieve him absolutely.

**Q.** Am I to understand, that because he came to swear any thing you would therefore believe the contrary?

**A.** I would not say that; I don't think I am bound to answer that.

**Q.** I ask you again, would you, because he swore a fact to be one way, therefore believe it to be the contrary?

**A.** I should strongly hesitate, if I did not absolutely decline to believe him.

**Q.** Did you use the word absolutely?

**A.** I would disbelieve him absolutely.

**Q.** If he swore, without any apparent motive to falsehood, that he was in the Theatre, your impression of his aptitude to tell a lie is so strong, that you would not believe him?

**A.** I don't say that. But if I had to form a judgment, I should rather doubt his evidence. It might depend in some measure on his having an interest.

**Q.** Supposing him imperfectly indifferent, would you believe a fact if he swore it?

**A.** I could not take upon me to say that I would disbelieve every thing which he might say or swear. But I do not believe him to be of that character, that what he asserts would deserve the assent of a jury.

Q. If he came to swear that the Lord Lieutenant was in the Theatre on the night of the 14th of December, you would not believe it?

A. I will not go that length.

Q. Suppose he were to say that he had been at the play, would you be disposed to believe that?

A. I might, or I might not.

A. Then, perhaps, a Jury might do the same?

A. The question asked me was, whether from his general character his oath was to be credited in a Court of Justice, and I declared then, as I do now, that his oath is not to be credited.

Q. Have you known any charge of perjury to have been made against him in a Court of Justice?

A. No. I do not know of any charge being brought forward, but there are now some preparations for one.

Q. Then something of your impression has grown out of a late proceeding before Mr. Arabin?

A. That in addition to his general character.

Q. Confine yourself to your own knowledge. Has not this man, in a variety of instances, appeared before you as a magistrate, in the character of a prosecutor?

A. He has.

Q. Has he not sworn many informations to your knowledge?

A. Yes; he has sworn some, I cannot say many.

Q. He has been often examined as a witness?

A. He has.

Q. Don't you believe he is a warm man who has many enemies?

A. I believe he is a warm man; but whether he has enemies or no I don't know. I rather believe that he has.

Q. Do you not believe that many persons in the country would be extremely desirous of convicting him of having sworn falsely, if they could?

A. I believe there may be many people of whom he has

sworn falsely, who would be glad to convict him. I would be glad to convict him myself.

Q. Do you believe there are many persons in the country desirous to convict him of perjury?

A. I do not know whether he has enemies.

Q. You would convict him?

A. Yes; because I think he deserves it.

Q. Would not others?

A. I believe they would.

Q. Have not many people been affected by his swearing?

A. Yes.

Q. Would not they be desirous of convicting him?

A. I suppose they would.

Q. Were you on the Bench at the time of the trial about the pound at Ballinakill?

A. I was.

Q. I believe Dr. M<sup>c</sup>Namara was indicted for breaking the pound and rescuing cattle?

A. Yes.

Q. Has not Dr. M<sup>c</sup>Namara some property in that county?

A. I do not know, he has some claim of property.

Q. Is he not in possession?

A. He is, but whether rightfully or no I cannot say.

Q. I ask you again, is he not in possession of some landed property?

A. He is in possession, I believe, of a leasehold interest.

Q. On your oath, are there not some tenants residing on that property?

A. Yes, but whether they allow to hold under him or not I cannot say.

Q. Really, Sir, if your evidence were to be confined to answering the questions it would be better—I ask you whether there are tenants residing on the lands?

A. There are.



Q. On your oath, was not the question that was tried before the Magistrates, relative to cattle that had been seized on that property?

A. It was.

Q. Was it not with reference to an alleged rescue of those cattle that he was prosecuted and indicted?

A. It was for an illegal breaking of the pound.

Q. Did you not say it was for breaking the pound and a rescue? Was he not tried for a rescue?

A. I believe it was.

Q. Was it not for rescuing the cattle out of the pound, and not merely breaking open the pound?

A. For breaking open the pound, and driving them out.

Q. Were not those cattle on the lands held under a leasehold interest?

A. They were on that land, I believe, and were driven before any rent was due.

Q. Dr. M'Namara drove them before any rent was due: that perhaps was an oppressive act?

A. I thought it so.

Q. Don't you think he not only took these cattle before the rent was due, but actually lodged them in the pound?

A. I believe so.

Q. And don't you believe that when he had lodged them in the pound, he actually took them out again?

A. I believe he opened the pound and drove them out, although a detainer was lodged for these very cattle.

Q. What is a detainer?

A. A claim of other persons upon the cattle.

Q. What others?

A. Other creditors.

Q. Besides the owner? What is the form of lodging a detainer?

A. By a notice given to the pound-keeper.

Q. By whom?

A. By the creditor.

Q. Of whom ?

A. I believe it was of the tenant, for head rent due.

Q. Am I to understand then, that the cattle belonged to the tenants, and were taken by Dr. M'Namara and lodged in the pound ; and that there was a notice served on the pound-keeper of a claim for rent ?

A. Yes, by the person probably to whom M'Namara ought to pay rent.

Q. Was this pound on M'Namara's land ?

A. Not at all.

Q. Then M'Namara's pound breach was this—the taking out of the pound the cattle of tenants which he himself had put there, before any rent was due—Did you sentence him to three months imprisonment, and a fine of £20. for that act ?

A. There was a great deal of other matter.

Q. Did you not convict him of a rescue ?

A. I dont know whether there was a conviction.

Q. Was he not in gaol ?

A. To be sure, but there were a great deal of other matters.

Q. What else was he tried for ? Do you believe he was sentenced to three months imprisonment ?

A. There were a great many other cases tried at the same time. I have it not on my memory just now.

Q. Do you not believe he was sentenced to a fine of £20. and imprisonment for three months ?

A. That was the sentence.

Q. You have already said that that transaction contributed with the other general circumstances to your opinion that Dr. M'Namara is not entitled to credit on his oath ?

A. I have.

## John Pouden examined by Mr. PERRIN.

- Q. Do you know Mr. James Forbes ?
- A. I do.
- Q. How long have you been acquainted with him ?
- A. Two or three years.
- Q. Do you recollect the evening the Lord Lieutenant went to the Theatre ?
- A. Yes.
- Q. Were you at the Theatre ?
- A. No.
- Q. Do you recollect having seen Mr. Forbes that evening ?
- A. I do.
- Q. Where ?
- A. At a Tavern in Essex-street, kept by Mrs. Flanagan.
- Q. Were you there before he came in ?
- A. Yes.
- Q. Were you alone or in company ?
- A. There were two with me.
- Q. Who ?
- A. James Smith and William Smith.
- Q. About what time in the evening did Forbes come in ?
- A. Between ten and eleven ; it might be later ; I recollect his coming in.
- Q. What persons came in with him ?
- A. When I saw him first he was coming in by himself ; there were numbers in the room whom I knew and who knew Forbes.
- Q. Did Forbes sup there that evening ?
- A. He did.
- Q. How many supped in company with him ?
- A. I could not say the number.
- Q. Do you know the box in which they sat ?
- A. I do.

Q. How near to it did you sit?

A. About eight feet from it, I think.

Q. Was your box on the same side with his or not?

A. On the opposite side.

Q. Did you observe two gentlemen there named Farley and Troy?

A. I did.

Q. In what position was Forbes's box with respect to theirs?

A. Opposite.

Q. Was their box near yours?

A. Next to that I sat in.

Q. Could you hear the conversation in Forbes's box?

A. I heard a great deal of it.

Q. How was your attention drawn to it?

A. I knew the parties, and heard them talk very loud. Forbes seemed very much agitated, talking of the business of the Theatre, and I was anxious to hear what had occurred.

Q. Did you hear Forbes giving any toasts?

A. He did.

Q. Did he give many?

A. He drank the King, and many others.

Q. Did he speak in a loud voice?

A. Very loud.

Q. Did you hear him, in the course of the evening, use the expression "Devil mend him?"

A. To the best of my oath I do not recollect any such expression.

Q. Did he apply that or any such expression, to his Excellency the Lord Lieutenant?

A. None that I heard.

Q. Did he express any regret, in your presence, that

any missile had not taken effect against the Lord Lieutenant ?

A. I did not see him all the time, but I heard him say, that no true Orangeman would throw the bottle.

Q. (By a Juror) Did he say " would" or " could?"

A. I think, " would."

Q. Did he say, that the next time they would take better aim ?

A. I did not hear it. He was speaking very loud, and I think if he made use of those words I should have heard them.

Q. If they were loud enough to have been heard in Farley's and Troy's box, could they have escaped your observation ?

A. I think I was as near as they. I was engaged in conversation with Mr. Smith : and I heard nothing of it. I do not think it possible that he could say it without my hearing.

Q. About what time did you leave the tavern ?

A. Between twelve and one. I don't know whether it was one. I went out with them.

Q. Do you mean, in company with them ?

A. Not in their company, but at the same time. They were not opposite to me all the time. They were in the lower part of the room, at supper.

Q. What do you call the lower part ?

A. The end farthest from the door.

Q. (By the Court.) Did the conversation take place in the box in which they supped ?

A. They spped lower down.

Q. (By a Juror.) Were Farley and Troy in their box, at the time when you heard the expression, " No true Orangeman would throw the bottle?"

A. O certainly.

## Cross-examined by the SOLICITOR GENERAL.

Q. When you spoke of the box, you meant the box in which they were before supper?

A. Yes.

Q. And not of the box in which they supped?

A. No.

Q. Many of the expressions used might have escaped you?

A. Certainly.

Q. Whether you heard any particular expression or not, would depend upon your being or not being engaged in conversation with Smith at the time?

A. A good deal.

Q. Were you on the same side with Forbes?

A. No, opposite to him.

Q. Eight feet down?

A. Yes.

Q. That must have been several boxes down?

A. Not several. I sat next to the box of Mr. Farley and Mr. Troy.

Q. They were more nearly opposite the party, than you were?

A. Yes, more so.

Q. You were not as attentive at the supper as at other times, to what was said?

A. No.

Mr. BLACKBURNE. We propose to call Mr. Arabin to prove of what offence Doctor M'Namara was convicted. I know that we have not a right to call him, not having the record of the conviction; but if allowed by the Counsel for the Crown, we wish to do so, or we shall call Mr. Arabin and have him sworn, which will entitle the Crown to cross-examine him.

ATTORNEY GENERAL. Mr. Blackburne knows, whe-

ther any thing this Gentleman has to say, is legal evidence. If not, I see no use in producing him.

Mr. BLACKBURNS declined to call Mr. Arabin.

Benjamin Smith examined by Mr. ROLLESTON.

Q. In what situation are you ?

A. A Clerk in Finlay's Bank.

Q. Were you at Mrs. Flanagan's in Essex-street on the night of the 14th of December last ?

A. Yes.

Q. Do you know the Traverser, Mr. Forbes ?

A. Yes.

Q. At what time of the evening did you go ?

A. About eleven.

Q. Who was with you ?

A. My brother.

Q. Who else ?

A. No other.

Q. At what hour did you see Forbes come in ?

A. About eleven, or a little after.

Q. Were any persons there before you ?

A. Yes.

Q. Did any one join you ?

A. Yes.

Q. Who ?

A. Mr. Pounden.

Q. Did any one come in with Forbes ?

A. Yes, Mr. Graham, and Mr. M'Culloch.

Q. How near did you sit to the box in which Forbes sat ?

A. As near as from this to that place, (two or three yards).

Q. Could you hear distinctly any thing that was said by Forbes ?

A. I am perfectly sure I could.

Q. Did you hear him say these words, " Devil mend him ?"

A. No.

Q. Did you hear him say any thing about the Lord Lieutenant ?

A. I did.

Q. Did you hear him say, " Devil mend him," as applied to the Lord Lieutenant ?

A. Certainly not.

Q. Did you hear him say any thing as to any missile having been thrown at the Lord Lieutenant ?

A. He said, " the man that threw the bottle might be a Protestant, for we have many bad ones amongst us—but he was no Orangeman."

Cross-examined by Serjeant LEFROY.

Q. You saw Forbes, Graham, and M'Culloch together ?

A. Yes, William Graham. They came in nearly together.

Q. Who else ?

A. I cannot recollect any one else.

Q. Was there any one else ?

A. No. I do not recollect. The two Atkinsons were there that night, but I cannot say whether they came in with the others.

Q. Were they with Forbes at all ?

A. Yes.

Q. Who else ?

A. These are all I recollect. I think there was some other person who supped with them ; they had punch before supper, and some one joined them at supper.

Q. Was it whilst they were drinking, or whilst they were at supper, that you heard the conversation ?

A. While they were drinking the punch.



**Q.** Was it immediately upon coming in ?

**A.** Immediately upon Forbes' coming in. He seemed irritably disposed : he seemed flushed, as if he had drunk too much, and seemed to have an angry disposition when he first came in ; he commenced by saying, that it was a pretty thing to be brought into a police office : that he might thank the Lord Mayor for it ; and that John Smith Fleming should know his father better than to do that.

**Q.** The conversation then began ?

**A.** When the punch was brought, he gave toasts.

**Q.** Was there any conversation about the Theatre ?

**A.** Yes.

**Q.** Any thing about a bottle, or a rattle, or sticks ?

**A.** I don't recollect about the rattle.

**Q.** Was there a conversation about something thrown ?

**A.** I do not recollect their speaking any thing about the rattle.

**Q.** Were you in the Theatre that night ?

**A.** I was.

**Q.** In what part of the house ?

**A.** The pit.

**Q.** With whom did you go ?

**A.** By myself.

**Q.** At what time did you leave the house ?

**A.** After the entire performance.

**Q.** You did not quit it till all was over ?

**A.** No.

**Q.** Are you quite sure ?

**A.** I am.

**Q.** Were you near William Graham in the pit ?

**A.** No.

**Q.** How far from him ?

**A.** I could only see him when I first went, which was after the play. I met him in the pit passage, but did not see him in the interior of the house at all.

Q. What is the number of your Lodge?

A. 1612.

Q. Is that Graham's Lodge?

A. No.

Q. Is it Atkinson's?

A. Yes.

Q. When had you attended a Lodge last before the 14th?

A. I have not been at a Lodge I suppose these six months.

Q. When next before that night, had you met any of the members of it?

A. I might have met them in the street, but I cannot recollect exactly meeting any particular person.

Q. Had you supped in company with any of the members of it two or three nights before?

A. No.

Q. Were you at Daly's in Werburgh-street during that week?

A. I don't doubt but I was.

Q. Have you any doubt about it?

A. I have a doubt about it, I cannot exactly say.

Q. You will not say that you have not a doubt about it?

A. No.

Q. You think you might have been?

A. I do.

Q. At what time of the day were you at Daly's? was it morning or evening?

A. It must have been in the evening.

Q. Do not the members of the Lodge sup together, after the business of the Lodge is over?

A. Never, except after a particular Lodge, which they call a Purple Lodge.

Q. Is that the only night?

A. The only night. It occurs, perhaps, only two or three times a year.

**Q.** Is there any particular night of the week for a Purple Lodge?

**A.** In the Lodge I belong to, there is no particular night.

**Q.** Have you supped at Daly's?

**A.** No.

**Q.** Whom might you have seen there?

**A.** I cannot recollect. I was constantly in the habit of going there at night.

**Q.** Whom did you meet the last time you were there before the night of the Theatre?

**A.** I cannot positively say.

**Q.** What do you think?

**A.** I am doubtful of it. I was very frequently there.

**Q.** Did you see Graham there?

**A.** I cannot positively recollect any particular person.

**Q.** Were you alone?

**A.** I cannot recollect.

**Q.** Did you see any body?

**A.** I cannot recollect.

**Q.** Did you hear any thing of a subscription to send men to the gallery?

**A.** I heard it rumoured (objected to, and ruled not to be evidence).

**Q.** Did you hear it from any of the members of the Lodge (objected to, and overruled).

**A.** Do you know any thing of this subscription?

**A.** No.

**Q.** Had you any conversation with Forbes about it?

**A.** No.

**Q.** With M<sup>c</sup>Cullogh?

**A.** No; I do not know any person with whom I had a conversation about it.

**Q.** Had you with Atkinson?

(This question was objected to, but allowed to be asked

on the ground that Atkinson had been proved to be a party in the same conspiracy with the Traversers.)

Q. Did you hear any thing about the subscription from Forbes, M'Culloch, or Atkinson, or in their presence ?

A. No.

Q. Or from Graham ?

A. No.

Q. Nor of any intention to go to the Theatre that night ?

A. I heard several say they had an intention of going to the Theatre. I heard that in the course of the day.

Q. I am asking about the persons I have named ; did you hear it from any of them ?

A. No.

Q. You knew nothing of their intention of going ?

A. No.

Q. Positively ?

A. Positively.

Q. Were you a stranger to their intention of going ?

A. I was.

Q. Were you a stranger to their intention of purchasing tickets ?

A. I was.

Q. Or sending others to the gallery ? (objected that this question could not be put, because the witness might not have been quite a stranger to the circumstance, and yet not have heard it from any of the parties concerned, in which case alone it could be evidence. The Court, after conferring, decided that the question could not be put).

Q. Do you know any thing of the placards or hand-bills ?

A. No. I never heard or knew of them till I happened to get one accidentally at the Theatre.

Q. You got one ?

A. Yes, from some gentleman at the entrance going into the Theatre.

Q. Was that before his Excellency came?

A. No. I did not go till after eight o'clock. I did not get into the interior at all until near nine.

Q. What Placard did you get?

A. One that had something about "change his Morning-tone."

Q. What did you understand by that? did it mean the Lord Mayor?

A. I don't know what it meant.

Q. Can you form no belief what it meant?

A. No.

Q. You think it might mean the Lord Mayor as well as the Lord Lieutenant?

A. It might, for aught I know.

Q. When you first received it, did you not apply it in your own mind to any particular person?

A. I don't recollect the words.

Q. To whom did you apply it in your own mind? was it to the Lord Mayor?

A. No. Perhaps if I saw one I could say.

Q. Read that? (shewing one).

A. (Reads) "Ex Governor of the Bantams shall change his Morning-ton-e."

Q. To whom did you apply that in your mind when you received the Placard?

A. I could not make it out at first. But on enquiring from somebody, I heard it was meant for the Lord Lieutenant.

Q. Have you any doubt about it?

A. Not now, from what I hear.

Q. You say, Forbes on hearing that the bottle was thrown, said, that the man who threw it might have been a Protestant, but no Orangeman?

A. His words were, "whoever threw that bottle he was certain was no Protestant, or if he was" says he.

“ I am sure he was no Orangeman ; we have bad Protestants among us.”

Q. Did he say there might have been a man among them that threw it ?

A. He meant there might be a Protestant that did it.

Q. Did they continue in the same box ?

A. Yes.

Q. (By the Court.) What do you mean by the same box ?

A. They all supped together.

Q. They first had punch ?

A. Yes.

Q. And then supped ?

A. Yes.

Q. In the same box ?

A. Yes.

Q. Where were you ?

A. At the opposite side of the room.

Q. Were you nearer to the door or farther from it ?

A. Nearer to the door.

Q. How nearly opposite to the box where they supped in were you ?

A. They were in a direction opposite to me.

Q. Did you see Mr. Troy or Mr. Farley in the room that night ?

A. Not till they were going out.

Q. What box did they sit in ?

A. The box immediately opposite to where the parties supped.

Q. And you sat in the next box to Farley and Troy ?

A. Yes, on the same side.

Q. But not so directly opposite to the party ?

A. No.

Q. The party at supper spoke pretty loud ?

A. Yes.

**Q.** Were they joined during the night by any more than sat down at first ?

**A.** No, I don't recollect.

**Q.** Were they long before they went to supper ?

**A.** I suppose an hour after they went in.

**Q.** How long were they at supper ?

**A.** About half an hour perhaps.

**Q.** Did you see them at supper ?

**A.** I did.

**Q.** Did you remain after supper ?

**A.** Yes.

**Q.** Did they remain after the supper was taken away ?

**A.** I saw the cloth on the table, and I afterwards saw it without a cloth.

**Q.** Were Farley and Troy opposite to that table ?

**A.** There were two Gentlemen opposite, I heard the name of one of them was Troy:

**Q.** Was it whilst they were at supper, or whilst they were drinking, or afterwards, that the expression about no true Orangeman was used ?

**A.** It was shortly after he came in.

**Q.** Was it in the same place where they supped ?

**A.** Yes.

**Q.** Are you sure of that ?

**A.** Yes.

**Q.** (By a Juror.) Did they sit in any box but one, the whole night ?

**A.** Forbes and Graham remained in the same box the entire night.

**Q.** (By a Juror.) Might they have removed from it without your seeing them ?

**A.** No, I was there prior to their coming in and after they left it.

**CHARLES BROAD examined by Mr. PERRIN**

**Q. What is your profession ?**

**A. Prompter to the Theatre.**

**Q. Did you make any plan of the Theatre ?**

**A. I did.**

**Q. At whose desire ?**

**A. At that of the Crown Solicitor.**

**Q. Do you know the person of Michael Farrell, who was examined here as a witness ?**

**A. I do, Sir.**

**Q. Do you recollect his going in company with any person on behalf of the Crown Solicitor, when you were about taking the survey ?**

**A. I do.**

**Q. Did Farrell point out to you in his presence in what part of the upper gallery Henry Handwich sat at the time when, as he stated, he threw the bottle ?**

**A. He described the situation as near the centre between the two Pilasters on the left hand side of the centre of the Theatre as possible.**

**Q. How many pilasters are there in the upper gallery ?**

**A. Four, and two half pilasters, one at each side at the extremity of the gallery.**

**Q. Are these pilasters at equal distances ?**

**A. I think nearly.**

**Q. Do you know the distance between the half pilaster dividing the upper boxes from the gallery and the pilaster next to it ?**

**A. I do not exactly, I should suppose about fourteen feet.**

**Q. It must be one fifth of the whole space ?**

**A. Nearly.**

**Q. (Shewing a plan) Is that a correct plan ?**

**A. I think it is. It was from this that that part of the**



Theatre was built. This is however a plan shewing the seats in the first tier of boxes, and therefore cannot convey an exact representation of the gallery.

Q. Does it represent the position of the pilasters ?

A. Nearly, I cannot say positively.

Q. Farrell you say pointed out the situation of Handwich as between the two pilasters at the left hand ?

A. Yes, nearest the centre.

Q. There must have been a space between one pilaster and another, and half another space between that and the extremity ?

A. Yes.

Q. That is to say a fifth and half a fifth of the whole space ?

A. Yes.

Q. What is the height of the parapet from the upper gallery to the floor ?

A. I cannot tell positively ?

Q. Have you stood in the upper gallery ?

A. I have.

Q. How high does the parapet come up ?

A. I cannot say exactly.

Q. Is it one foot high ?

A. Certainly more.

Q. Is it two ?

A. I shall not swear to two feet, but I will to one.

Q. Did you ever stand immediately behind it ?

A. I did.

Q. How high did it reach ?

A. About that (pointing near the hip.)

Q. Have you reckoned how many seats there are in the lower gallery to the front of the pilasters in the upper gallery ?

A. There are five seats directly before the front of the parapet. The pilasters retreat two seats behind the front.

Q. Does the fifth seat from the front to the middle gallery lie immediately under the parapet? Suppose a plumb line let down from the parapet to the upper gallery, where would it fall in the middle gallery?

A. Directly in front of the sixth seat.

The Dowager LADY ROSSMORE examined by Mr.

DRISCOLL.

Q. Was your Ladyship at the Theatre on the 14th of December, the night the Lord Lieutenant was there?

A. I was.

Q. In what box?

A. The box next the Lord Lieutenant's, on the second row.

Q. Did you hear a noise?

A. A good deal.

Q. Did your Ladyship feel any alarm at the noise?

A. Not the least.

Q. Where exactly did you sit?

A. On the second row and the second place from the Lord Lieutenant.

Q. Did you perceive a bottle that evening?

A. I did not, my sight is imperfect.

Q. Did your Ladyship see any stick flung at the box?

A. I could scarcely say I did.

Q. You were not alarmed at it?

A. Not the least.

Q. Did you see what created the noise?

A. The noise was very trifling, and I cannot say I saw any thing.

Q. (By the CHIEF JUSTICE.) Does your Ladyship mean the noise of the stick?

A. Yes.

Q. Did you ever before hear so much noise at the Theatre as on that night ?

A. I have often heard a great deal. There is always a great deal when there is a crowded house.

Q. Are you able to say whether you ever before heard so great a noise ?

A. I cannot answer that.

Q. Did your Ladyship enter the Theatre before or after the Lord Lieutenant ?

A. Before.

Q. How was his Excellency first received ?

A. With the greatest applause.

Cross-examined by Sergeant TORRENA.

Q. Your Ladyship sat in the box next to the Lord Lieutenant ?

A. Yes.

Q. In the second row ?

A. Yes.

Q. Who sat in the front row ?

A. Lady Anne Gregory next to the Lord Lieutenant, Mrs. Goulburn in the middle, and Miss Gregory nearest to me.

Q. Had they as good an opportunity of seeing and hearing as your Ladyship ?

A. Much better.

Q. You saw something flit past ?

A. I can scarcely say I saw it, the thing that attracted my attention was, that Mrs. Goulburn started.

Q. Had something passed her, which had the effect of alarming her, and making her start ?

A. Yes.

Q. His Excellency's box was to your left ?

A. Yes.

- Q. What passed you went on to his box ?  
 A. No, it fell on the box where we were.  
 Q. Did you see it fall on the box ?  
 A. I could scarcely say I did : it was evident to me that something had passed Mrs. Goulburn.  
 Q. At what time of the of the entertainment was this ?  
 A. I have not the least recollection.  
 Q. Was it about the time of the glee ?  
 A. I do not recollect.  
 Q. Was Mrs. Goulburn very much alarmed ?  
 A. Very much.  
 Q. What effect had it on Lady Anne Gregory ?  
 A. As far as I could see, not the least.  
 Q. Did you see Captain Webster ?  
 A. I did not.  
 Q. Are you acquainted with him.  
 A. I am, but I did not see him.  
 Q. Did you not see somebody go out for wine and water for Lady Anne Gregory ?  
 A. I did not see any such thing.  
 Q. Did not some person go out for the purpose of getting wine and water for her ?  
 A. I don't think that Lady Anne Gregory seemed at all alarmed, and I have no recollection of any glass having been brought in.

JAMES HENRY BROCAS, examined by Mr. SPEER.

- Q. Were you at the Theatre the night the Lord Lieutenant was there ?  
 A. I was.  
 Q. Where ?  
 A. In the upper gallery.

Q. Do you know Henry Handwich, one of the traversers ?

A. Yes. I know his person.

Q. Had you known him; before that night ?

A. Never.

Q. Where in the upper gallery did he sit, as near as you can describe ?

A. He sat at the left hand side of the upper gallery, about five paces from the end of the gallery.

Q. Do you mean yards ?

A. Yes, five or six yards.

Q. Were you near him that evening ?

A. Yes, very near him.

Q. What row did he sit in ?

A. To the best of my recollection; the second row from the first.

Q. Did you remain late in the gallery ?

A. I remained till the whole of the performance was concluded.

Q. Did you see any thing in the hands of Henry Handwich ?

A. Yes.

Q. What ?

A. I saw a very large stick.

Q. Any thing else ?

A. No Sir, nothing else.

Q. Did you see a bottle with him ?

A. No bottle.

Q. What distance were you from him ?

A. Not more than seven paces, I think; I am inclined to think nearer.

Q. Do you mean yards ?

A. I mean a single step—about a yard.

Q. Were you behind him or in what direction ?

A. I sat on the third bench from the front.

**Q.** Were you so near him that if he stood up and threw any thing you could see him?

**A.** Unquestionably.

**Q.** Did he throw any bottle that night?

**A.** To the best of my belief it was impossible. I consider it was impossible he could without being observed by me.

**Q.** Was the gallery very crowded?

**A.** There was a very considerable crowd in the gallery.

**Q.** Not many vacant places?

**A.** I should think none. I was excessively squeezed.

**Cross-examined by the ATTORNEY GENERAL.**

**Q.** At what time did you go to the gallery that night?

**A.** I should think a quarter before seven I went to the door: there was a considerable crowd at the door; I was unwilling to mix with them, I walked about till the door was open and many got in, and then I got in with a good deal to do.

**Q.** You made your way however down to the third row?

**A.** Yes, Sir.

**Q.** I think you describe yourself as having been seven or eight paces from Henry Handwich?

**A.** About seven; certainly not more.

**Q.** About how many from the centre to the extremity of the gallery?

**A.** I should think it must be about twelve paces—perhaps more.

**Q.** You were a good deal nearer the centre than Henry Handwich?

**A.** Yes.

**Q.** Had you been previously acquainted with him?

**A.** No, I did not know his name.

**Q.** What was your object in going to the Theatre?

**A.** To gratify my curiosity.

Q. Was it to gratify your curiosity by looking at Henry Handwich or at the play?

A. I could have no object in looking at him.

Q. At what period of the play did he first attract your attention, and from what circumstance?

A. Particularly his setting up a cry for God Save the King.

Q. And this circumstance induced you to fix your attention on him almost exclusively?

A. Yes.

Q. You knew nothing of him before?

A. I did not.

Q. What was the play?

A. She Stoops to Conquer.

Q. That must have been a matter of doubt to you—did you see Mr. Liston?

A. I got a glimpse of him.

Q. Although your eyes were incessantly fixed on Handwich? In one of the lucid intervals you got a glimpse of Liston?

A. Yes, at nearly the end of the play.

Q. Did you condescend to notice the Lord Lieutenant?

A. I saw him very imperfectly indeed. I made attempts, but there was such a crowd before me, I could not see.

Q. And therefore, because you could see nothing else you looked at Henry Handwich?

A. Yes, he was a very principal performer.

Q. What other performances did he give you besides God Save the King?

A. By his calling out he raised a great cry in all parts of the house. The actors were brought to sing God Save the King.

Q. Did every person stand up?

A. Yes.

**Q.** Were you looking at Henry Handwich ?

**A.** God save the King was sung by the whole company ; a great many joined in the chorus in the gallery.

**Q.** Then so far as " God save the King " there were a great many performers as well as Henry Handwich. Was Henry Handwich prominent in the song or in the chorus ?

**A.** He commenced the cry of God save the King ; he roared most vociferously.

**Q.** Was there nothing else in the upper gallery all that night directed your attention to him, except the cry of God save the King ?

**A.** A great many other things occurred.

**Q.** Mention any thing in particular ?

**A.** There were an immense number of things.

**Q.** Any thing particular ?

**A.** There was a good deal of singing going on.

**Q.** Did you hear shouts or cries of any particular kind ?

**A.** I heard Handwich crying out the Glorious and Immortal Memory.

**Q.** Any thing else ?

**A.** I heard him call for the Boyne Water.

**Q.** What else ?

**A.** I heard cries incessantly of " Down with the Ribbonmen "—I mean very frequently.

**Q.** Have you not on your mind the other cries to which I allude ?

**A.** Many cried " Down with the Papists."

**Q.** What else ?

**A.** They abused the Pope a good deal.

**Q.** What did they say as to him ?

**A.** Some one had a bottle and glass, I heard them rattling. He was drinking, and to the best of my recollection he gave this toast,— " The Pope, Bad luck to him, and all



that wish him well." This produced a very general laugh, and I joined in the laugh.

Q. Did you hear any thing said as to the Marquis Wellesley?

A. I did; I heard somebody call out Popish Wellesley, and I rather think that it was intended for the Lord Lieutenant.

Q. Why did you not mention that a little sooner?

A. It did not occur to me; I remember they cried out "a Clap for Lord Combermere."

Q. Did you hear any thing about "no Popish government?"

A. I do not think I did.

Q. Did you hear any thing like a groan for the Popish Government?

A. No, but I think I heard a groan for the Lord Lieutenant.

Q. Did you see a bottle thrown from the gallery that night by any body?

A. On my oath I did not. On my oath I do not believe there was.

Q. Did you see a lump of stick thrown?

A. Yes.

Q. By whom?

A. By either a man or boy.

Q. Did you say any thing to any person before you came to give evidence about throwing the bottle?

A. I suppose I spoke to fifty persons about it.

Q. Were you in the gallery when Handwich was arrested?

A. Yes, I was by his side when he was arrested by Alderman Darley.

Q. Did you say any thing then as to the throwing the bottle? did you tell Alderman Darley "you are arresting an innocent man, for there was no bottle thrown?"

A. No.

Q. Did you hear of the bottle being thrown?

A. I am convinced no bottle was thrown.

Q. If you kept your eyes upon Henry Handwich, how can you be sure no bottle was thrown from the gallery?

A. If it was thrown, it must have been seen by an hundred.

Q. Do you know that there are other persons who have sworn that it was actually thrown?

A. He must have been an extraordinary fellow that could throw it without being observed.

Q. Did you hear of the bottle being thrown when Alderman Darley came up?

A. Certainly not. I heard several cry out "that's one of them."

Q. But nothing about the bottle?

A. No.

Q. Had Mr. Barton lifted up the bottle and shewn it to the House?

A. I believe the bottle was held up, but I thought you meant to ask whether Handwich had been charged with throwing it.

Q. Had the bottle been shewn to the House before Alderman Darley came?

A. There was a buzz in the gallery about the bottle. It was asked what bottle; and they said "Barton is holding up a bottle." Then there was a cry from the gallery from many about me. They cried out "Bad luck to you, Barton, that's another Calf's Head Plot. No Orangeman ever threw the bottle."

Q. Are you an Orangeman?

A. No; and probably never shall.

Q. Did you suppose they thought that Mr. Barton had manufactured the bottle?

A. They thought it a contrivance.

Q. Do you believe it was a contrivance ?

A. I rather think not. I cannot tell what he is capable of doing.

Q. When Alderman Darley came into the gallery, did you not believe that it was in order to take up the person charged with throwing the bottle ?

A. No; he was not charged with throwing the bottle when he was seized. Handwich was pointed out, and they said " there's one of them."

Q. Did you say to any person, that that was the villain who threw the bottle ?

A. Never, to any body, by my oath.

Q. Do you know a person named M'Cann ?

A. I know him well.

Q. Did you see him that night ?

A. Yes.

Q. Where ?

A. I met him in the street near the Police Office.

Q. Had you any conversation with him as to the bottle ?

A. Not as to the bottle. I had a conversation with him, but not as to the bottle.

Q. On your oath did you say any thing to him as to Handwich ?

A. I said the principal disturber was in the Police Office, and that if he would come in I would point him out.

Q. Was what you told him true ?

A. Unquestionably. He was the most noisy and troublesome man I ever laid my eyes on.

Q. You were in the the gallery the whole evening, when Mr. Barton shewed the bottle, and Alderman Darley came into the gallery ?

A. Yes.

Q. And you went towards the police office ?

A. Yes.

Q. Had you heard before you left M<sup>c</sup>Cann that Handwich was charged with throwing the bottle?

A. I did not hear of it until next morning.

Q. You say you were seven paces from Handwich?

A. I think so.

Q. Was the gallery very crowded?

A. Less crowded on the left hand side than on the right.

Q. You did not make that distinction on your direct examination?

A. No.

Q. On your oath did Handwich continue in the same spot all the night?

A. He never left his place. I will swear that positively. He never stirred half a yard.

Q. Did you leave your place?

A. I was forced by the pressure a little out of my place.

Q. Where were you originally?

A. Nearer the centre than Handwich.

Q. What row did you first sit in?

A. The third from the first.

Q. How did you get down when you were so late in?

A. I was not late; when the first rush got in, I followed: the great crowd was on the right hand side to see the Lord Lieutenant I suppose.

Q. Would it not be necessary for a party to go to the left to get room?

A. It seemed there was no party.

Q. If there had been a party of 60 or 70 wishing to keep together, would they not be obliged to go the left?

A. They might have occupied a great portion of the centre and left.

Q. Do you know a person named Gunning?

A. I do.

- Q. Had you any conversation with him ?
- A. Yes, I know him well.
- Q. What of him ?
- A. I believe he is a friend of M'Cann's, and M'Cann is a friend of the Lord Mayor.
- Q. Did you lodge Informations against him for that ?
- A. No, I gave it up.
- Q. Then you intended it ?
- A. Never.
- Q. Did you not say you had given it up ?
- A. Yes, but you forced it upon me.
- Q. Sir, I am forcing nothing upon you. Were you sworn when you said so ?
- A. It escaped from me by accident.
- Q. Then you did not mean what you said—Have you ever spoken to Gunning of what passed at the Theatre ?
- A. I did, Sir.
- Q. Did you speak to him about the bottle ?
- A. I cannot exactly say as to that, for I have spoken to so many. I remember meeting Mr. Gunning at the canal bridge the Sunday after, when three or four were present. The conversation was as to the Lord Lieutenant and the Theatre. Mr. Gunning seemed in a great agitation and thought it a terrible thing, and said he thought Lord Wellesley drew his sword and looked angrily at the gallery.
- Q. You saw the stick thrown ?
- A. Yes, Sir.
- Q. Where was Henry Handwich then ?
- A. In the same place I first saw him in.
- Q. During the time of his passing did you keep your eye on Henry Handwich ?
- A. I could not possibly.
- Q. Did you tell Gunning that you could almost prove the throwing of the bottle ?
- A. I never said any such thing.

Q. Did you say to M'Cann, "there's the man that threw the bottle?"

A. On my oath I never did.

Q. Did you go into the watch-house that night, and ask M'Cann to do so?

A. I did.

Q. Did you tell him you would shew him the man that threw the bottle?

A. No.

Q. Did you point out Henry Handwich?

A. I did.

Q. Did you then say he had thrown the bottle?

A. Certainly not.

Q. (By a Juror.) Did you hear any body in the gallery, cry out "Boys mind your fire?"

A. No.

Q. Did you hear any one cry out, "Look out?"

A. Yes, several times.

Q. Did you see a party move about and change place?

A. I saw some change their places.

Q. Did you see any hand-bills?

A. Yes, from the upper lattices.

Q. Did you see any sticks with the parties?

A. A good many, five or six certainly.

Q. Under their coats?

A. No, openly displayed.

Q. What made you quit your place, and go to Handwich?

A. To assist Alderman Darley, in case he wanted me.

Q. Did you know his object?

A. I knew his object was to take some one into custody.

Q. Before Alderman Darley came up, had you a notion that he was coming about the bottle?

A. No, I thought he came about the rattle that was thrown. Mr. Johnstone called out, to give up the villains

that had insulted the representative of his Majesty. This caused an uproar. The police rushed in, and there was a general scramble.

Q. Did you expect that the police would not do their duty ?

A. They were certainly not sufficiently on the alert.

Q. Did you think they would not apprehend Handwich ?

A. I believe they did every thing in their power for that.

Q. Did you see from what quarter the rattle proceeded ?

A. Yes, I observed it particularly; it was just in a line over Handwich's head—behind him.

Q. More to the left ?

A. Yes, nearer to the end of the gallery.

Q. When Alderman Dasley came up, did you not think it was to apprehend the person who threw the stick ?

A. I could not tell whom.

Q. After the rattle was thrown, did you think it was to apprehend Handwich ?

A. No, because he did not expect it himself.

Q. If not, and you went to assist Mr. Darley, why did you place yourself next to Henry Handwich ?

A. That was really the effect of accident. I was really anxious to see who would be taken.

Q. (By the CHIEF JUSTICE.) Had you approached Handwich, before Alderman Darley came up ?

A. No, my Lord. When Alderman Darley came in, I went up to Handwich.

Q. Had Alderman Darley arrived at him before you ?

A. No. There appeared an alarm in the gallery, and many left their places, when the Police were announced.

Q. You had not gone to Handwich, when Alderman Darley came up, but you went along with him ?

A. I went in the same direction.

Q. You determined to go where he went ?

A. Yes, precisely.

BENJAMIN RIKEY, Esq. examined by Mr. SCRIVEN.

Q. Are you Clerk of the Crown, at the Commission?

A. I execute that office.

Q. Have you the bills of indictment sent up to the Grand Jury last Commission, against Forbes and others?

A. Yes, these are they (producing them).

ATTORNEY GENERAL. I make no objection to the proving of these bills of Indictment : but I object to their being given in evidence.

Mr. SCRIVEN. We offer this evidence to show that the Bills have been sent up, and ignored.

COURT. Mr. Scriven, have you any authority to shew that such evidence is admissible?

Mr. SCRIVEN. My Lords, these are records between the same parties as the present, and upon the same subject matter. I do not say they are conclusive evidence of any thing: but they are evidence, to shew that Indictments for the same charges as are now under trial, have been sent up to a competent jurisdiction, who have not given them credence. The case is somewhat similar to that of an ejectionment, where a judgment of non pros between the same parties may be received in evidence.

Mr. FERRIN. These documents are evidence of the opinion of twelve men, impannelled to investigate the subject: and though not amounting to an acquittal so as to be pleadable in bar, are yet persuasive evidence to go to a Jury, Parker v. Langley, Gilb. Rep. K. B. 178,

COURT. We are of opinion that this evidence cannot be received.

Case for the defence closed.

The ATTORNEY GENERAL. My Lords, we wish, if it would suit the convenience of the Court, that the Solicitor General should not be called upon immediately



also have to consider the propriety  
ing case.

that  
car

We have every disposition to  
. Attorney; and it is with great  
we feel ourselves bound to refuse your  
But such is the quantity of public business  
disposed of, that the delay of a single day may be  
very prejudicial to the suitors of the Court, It may in  
particular be productive of great inconvenience, in cases  
where new Trials have been applied for, and in which it  
may be necessary to proceed to trial at the ensuing Assizes.

The SOLICITOR GENERAL, in reply.—My Lords and  
Gentlemen of the Jury, I could have wished that it had  
been indulged until the morning, to make some arrange-  
ment of the voluminous evidence in this case. I yield,  
however, to the suggestion, that the public time ought not  
to be consumed for that purpose. Gentlemen of the Jury,  
I congratulate you, and the public, that this long and very  
anxious trial at length approaches to a conclusion—a more  
interesting one has seldom occurred in this country. The  
subject of it affects the administration of the Government of  
this Country, the wishes of his Majesty, and the opinion  
of the King's entire Cabinet. For I must premise to you,  
that the act, which was the ultimate cause of it, did not rest  
upon the single judgment of the Marquis of Wellesley, but  
that in the line of conduct which he adopted, he had the  
concurrence of the King, and of the entire British Cabinet.  
This I think it right to declare in the outset, because much  
obloquy has been cast upon the illustrious nobleman who  
presides over the government of this country—he has been  
accused, vilified, traduced, and ridiculed. Every thing  
that could mortify or wound his feelings, has been resorted  
to in the progress of this unfortunate affair. An outrage

has taken place in this metropolis, which has not only disgraced the scene where it was committed, but the entire country to which the perpetrators belong. It is right that it should be investigated. It is right, it is just, it is necessary, that the innocent should not suffer under an imputation from which they ought to be free, and that the guilty should be brought to punishment—that the nature and extent of the crime should be exactly ascertained, and the just and appropriate measure of retribution dealt out to the offenders. With these views, and this conviction, the law officers of the Crown, (for in this proceeding I am not only associated but identified with my learned friend,) have endeavoured to discharge their duty to the public. Whether they have discharged that duty well or not, it is not for me to say; but I will venture to pronounce that they have discharged it honestly. They hope to be justified in the public opinion, when alone the public opinion is valuable—when party spirit has subsided—when reason and deliberation have resumed the seat now occupied by passion and by prejudice, and men can see whereon to decide, and to found a just conclusion.

[ Gentlemen of the Jury, this proceeding has been arraigned. That it should have been so amongst the public, or in those pamphlets and hand-bills which have been circulated so industriously in the streets, I am not surprised. But I confess I am surprised to find it arraigned in this high Court, and by those men who have ventured to arraign it. I am surprised that it should be condemned in the hearing of this learned Bench, as unconstitutional and illegal. There is no proceeding better known to our law than a Criminal Information. A portion of the time of this Court is set apart in every Term, for hearing Informations. It is one of the ordinary modes of dispensing justice. And when my learned friends assert, that there is any difference in principle

between an Information by the Attorney General and any other Information, they speak rashly or unadvisedly, or at least what they do not think. Mr. Johnston, in all his efforts to find an authority against such an Information, has happened to adduce those on which I meant to rely. My Lord Hale, indeed, says, that the safest way is to proceed by Indictment; but in telling you that, he is far from saying that it is the only legal way. He himself entertained Criminal Informations. He sat in judgment upon them, and pronounced sentence upon them. He therefore could not have said in justice, that an Indictment was the only legal mode of proceeding. The next authority cited is Prynne's case. In that case the whole Court, with Holt at their head, declared, that Informations were at the common law. And though Mr. Johnston has said that the Court, after deliberation, was induced to come to that decision by the learned argument of Sir Bartholomew Shower, the fact is not so. Sir Bartholomew gives you the argument he had intended to deliver, had not the Court thought the case too clear to call on him. He then refers to the authority of Sir William Blackstone. But what says he? "That this power was originally reserved to the Crown in the great plan of the British Constitution:" and again he adds, "that it is as old as the common law itself." And rightly was it reserved. For one of the merits of the British Constitution is, that every one of its institutions has a corrective provided for it. The errors or mistakes of a Grand Jury are remedied through the medium of this Court, by its power of granting a Criminal Information. This power, it is true, does not extend to a case where the life of a subject is at stake, but only to minor offences, which are the subjects of discretionary punishments. It is allowed in those cases alone where the passions of men are apt to influence their judgments. In the prosecution of a murder or a robbery, a Grand Jury can have no private wish; all must join in a common pursuit of the offender. But in lesser offences, pre-

cautions must be adopted against the influence of passion, of prejudice, or of party feeling, on the mind of a Grand Jury.

There were two officers known to the law, through whose intervention a Criminal Information was obtained. One of these was for the subject, the other for the King. The former was called the Master of the crown office, the latter was the Attorney General. The proceeding which is now arraigned as an arbitrary prerogative measure, confined solely to the Crown, the King in fact only enjoys in common with the lowest of his subjects. There is not an individual in the land, not the commonest beggar in the street, who may not have a Criminal Information, if he comes forward with a fitting case. Things remained in the way I have mentioned, Informations at the suit of private individuals filed by the Master of the crown office at his discretion, and in matters of state by the Attorney General at his discretion, when the statute of the 4th of William and Mary was passed, which enacts that the Master of the crown office should not issue an Information without an express order made in open court for the purpose. In that way it is that this Court has acquired the right to grant Informations. Until that time, the Master of the crown office could file an Information Ex Officio, and his authority in that respect was restricted by the act. But Informations in cases where the Attorney General thought proper to proceed, were left as they stood at common law, and so they remain to this day. The same discretion continues ever since the statute, which existed before, and he is accountable only for an improper and unjust exercise of it. With that discretion this Court will never interfere. It will not grant an Information at the instance of the Attorney General. If he applied, it would say, "If you think in your discretion that it is a fit case, the law invests you with the power to

“file your Information; the law gives us no authority to “interfere with you.” If then he is not to file an Information either by the permission of the Court, or by the exercise of his own discretion, there would be an end to that species of prosecution altogether. In my mind, it is most extraordinary to adduce against the legality of this proceeding, the very circumstance which in itself would induce the Court to grant an Information. What would be the exercise of a sound discretion on the part of the Court cannot be any thing else on the part of the Attorney General. If, then, it be an inducement to the Court to grant an Information, that a Grand Jury has refused to entertain a bill of indictment, the same reason cannot make it a breach of sound discretion on the part of the Attorney General, to file an Information, if the ordinary proceeding by indictment should be frustrated by a Grand Jury. But what makes it more absurd is, that if by accident, or otherwise, the Attorney General had not been concerned, and I, as Solicitor General, who have no power to file an Information, were to come into Court to apply for liberty to file one, in this very case the argument I should use would be this, and it would be an irresistible one, that I had tried the Grand Jury; that they had shut the door of justice in my face; and that therefore I was obliged to apply to the Court to open it. It would come to this then, that the Attorney General cannot have a Criminal Information, though the Solicitor General in the same case, and under the same circumstances, may.—Is that reason, or is it common sense? Yet it is urged that because the Attorney General has, in kindness to persons labouring under this charge, given them an opportunity of a more early trial, by sending up a bill of indictment, he shall, because a Grand Jury have chosen to say they would not entertain the bill, lose his right, and become incapable of exercising the duty of prosecuting crime in the only other mode in which the law of the land enables him,

It is not my wish to advert at all, if it can be possibly avoided, to what took place before the Grand Jury. For I think that if ever there was a case in which the propriety of resorting to another Tribunal clearly and distinctly appeared, it is this very individual case. I am called upon reluctantly to make that observation. Why and how? Because the Gentlemen on the other side have relied upon the conduct of that Grand Jury, as affording distinct evidence, not in law, (for they have not gone so far as that,) but as a strong argument to throw up to a Grand Jury Box in favour of their Clients. The opportunity of making this observation has been afforded by the cross-examination of one of the witnesses, who, on being asked by the Traverser's counsel, whether he had been examined before by the Grand Jury, said he had. "They asked me," said he, "two questions, Whether I had seen the bottle or the rattle thrown? I said no, and wanted to tell them what I knew, but they put me out of the room." I ask is the ignoring of a Bill under such circumstances to be brought forward as almost a defence for these persons? No, Gentlemen, but the object of it was to induce you to follow that example. I trust, however, and am satisfied in my conscience, that the Jury which I address know their duty, and will perform it. I do not care though every man on that Jury should be an Orangeman; nay, I should almost wish it, if the obligation of an Orangeman has been rightly described; if it has been truly stated that part of that obligation is to aid the administration of justice, and not to obstruct it; to carry into execution the laws of the land, not to oppose them. In what way can they be more effectually opposed than by those who are to enforce them being led away by party feeling, and by prejudice? Let the Orangeman discharge his duty not only to his country but to his association. Let him observe not only the oath under which he acts this day,

but that which he took on admission to his lodge, if it be such as has been stated, and I shall be satisfied.

Gentlemen of the Jury, this prosecution is carried on for the purpose of bringing to justice the persons accused of being the authors of that outrage at the Theatre of which you have heard so much. The charge does not affect their lives. It subjects them to such discretionary punishment by imprisonment as this Court shall think proper to inflict. Whilst on the subject of punishment, let me mention one advantage which the Traversers derive from this mode of proceeding. A day is always appointed for pronouncing judgment; the Court has time to weigh well the circumstances of the case, and gives the defendants an opportunity of being heard by their counsel in mitigation of punishment. A proceeding by Information, therefore, is certainly more favourable in that respect than the ordinary course. The Information states, that certain persons entered into a conspiracy to do certain acts charged in the Information, one of which is to excite a riot at the Theatre, another to commit a riot, and another to insult and assault the person of the Lord Lieutenant. There is a second Information perfectly distinct, but it is right to call your Lordship's attention to the particular Counts in the first. It charges a conspiracy to create a riot: that is one distinct offence; another object is stated to be to excite a riot: that is also a distinct offence; and another is to hiss, groan, insult, and assault the Lord Lieutenant; these are all quite distinct. You may put into one Count as many different objects of the conspiracy as you please; and if any one be proved, there may be a conviction for that. In the case of the King against Hunt, 2 Campbell 583, it was held that the defendant may be found guilty upon a Count in an Information charging him with having composed, printed, and published a Libel, if he be proved

to have published without having composed it. Lord Ellenborough stated there, that if an Indictment charges that the defendant did, and caused to be done, a particular act, it is enough to prove either, and that it is invariably enough to prove so much of the Indictment as shews that the defendant has committed a substantive crime therein specified. And the same doctrine was laid down in the King and Williams, 2 Campbell, 646. In like manner Hawkins, Book 2, Chap. 26, Sec. 75, states, that the defendant may be found guilty as far as the evidence goes, for that such offences are not of the nature of entire contracts.

It will be for the Jury, under your Lordship's directions, to say under which of these Counts, whether all or any of them, the case is brought by the evidence. The question is whether any of the offences charged in any of the Counts have been proved satisfactorily. The evidence of the two first witnesses furnishes a direct proof of the existence of the conspiracy; but independantly of that it is well settled that a conspiracy need not be expressly proved. It may be inferred from the acts of the parties, and if from them a clear preconcert can be collected, there is quite enough on which to find a conspiracy. Here, however, there is more than that. We have been able to lay before you clear, distinct, and satisfactory evidence of the actual existence of the conspiracy. I allude to the testimony of the two Atkinsons. I have heard these witnesses abused in terms the strongest I have ever heard applied to witnesses in a court of justice. But the learned counsel who has used these strong epithets has been able to adduce but this single ground against them, that they themselves were engaged in the conspiracy, and that having been so, they disclosed it. Now, Gentlemen of the Jury, it must occur to you all, that if evidence of this kind



is to be rejected, a conspiracy, or indeed any other secret crime, can hardly ever be proved. No secret guilt can ever be established if the witnesses to it, be not allowed to come forward; and if those witnesses must necessarily be persons who had engaged in it, the rejection of such evidence must afford impunity to crime. But what is the material guilt imputed to those Atkinsons? The very Gentleman who urges that they are of such a stamp as that they ought not to be received, or listened to, has, in the very same breath told you, that the conspiracy in which they were engaged was perfectly innocent. If the Atkinsons thought that such was its nature, and that it did not involve any great violation of law or morality, nay even that it was meritorious in the estimation of the society to which they belonged, it can be no just ground of imputation against them that they had first entered into it and afterwards disclosed it. But great stress has been laid on George Atkinson's having proceeded to the Park to give information to the Lord Lieutenant, and when stopped by the sentinel, having returned and joined the party which he was at first disposed to leave. Why, Gentlemen, all that is perfectly natural and perfectly true. He was in that state of mind in which he saw nothing absolutely certain. If he had met with the Lord Lieutenant he would probably have made the disclosure, but being stopped, a slight circumstance was sufficient to change his intention. He had got so far with great doubt and reluctance; and when he hesitated and began to consider that possibly things might not terminate so seriously as he at first apprehended, he was induced to join the rest of his companions in the execution of the original design.

Let us now see what that original design was. It is important that you should be apprised what it is that constitutes the magnitude of the offence on the present oc-

occasion. Were it but an outrage on the person of the Lord Lieutenant, all must have felt indignant to the highest degree. But how must that indignation be roused by considering the consequences of the act if it had taken effect? Still the great, the material and important object of the conspiracy was, to oppose his Majesty's Government; to rule and controul the King in the exercise of his prerogative; and to drive from this country the Lord Lieutenant whom he had thought proper to send here. Such a conspiracy strikes at the very root of the government of the country, which cannot go on if men are to be permitted to concert these measures for its obstruction, and to say to the King "You shall not exercise the privilege of sending hither whom you please—We, the Lodge in Werburgh-street, will controul you." Having come to this determination, let us see what means they adopted to effectuate it: They contrived, not that persons of rank and condition should attend—persons whose reason they could influence, or whose passions they could controul—but individuals of the lowest order, whose excesses could not be checked, and who were to be put in motion in a body to effectuate the scheme. This was hatched at the Shakespeare Tavern; communicated at Daly's, and carried into effect by subscription. Tickets were purchased to bring in seventy persons from one of the lowest Lodges; persons in that situation of life that they were incapable of paying for themselves. What preparations did they make? they caused hand-bills to be printed to excite a tumult and riot, and to induce every person at the Theatre to join in it who had not previously been privy to their designs. They distributed them industriously through the house. These hand-bills contained epithets the most insulting to the Lord Lieutenant, imputing to him that, which, in the eyes of an Orange-Association, was the highest of crimes, an attachment to popery and the establishment of a Popish

Government. All this was calculated to work on the minds of the lower orders of men. What further? The individuals whom they brought to the scene of action were provided with large sticks and bludgeons; and before they were sent to the Theatre they were refreshed, as it is called, with spirits, and to prevent their ardour from abating, and their zeal from cooling, some portion of the spirits was carried with them to the Theatre. They went to the Upper Gallery, it being considered that the more respectable would be sufficient for the Pit and Boxes. Such was the description of persons by whom the Lord Lieutenant was to be assailed. Let it not be imagined, that the Lord Mayor was the object of the intended visit to the Theatre; they could not drive him from his office, which would of itself soon expire; there was no antipathy to him, except from his having executed the orders of the Marquis of Wellesley. No, Gentleman, it was the Marquis of Wellesley who was the object of attack. We are told, however, that there was no intention of assaulting the person of his Excellency; but if their object was to force him to leave the Theatre, and that in such a way as to lead to his ultimate recall from the country, how, I ask you, was it to be achieved? Was it by mere hissing and groaning? Was it necessary to bring large clubs in order to hiss and groan? Did any man of them imagine that he could be driven away by such means? no, it was to be achieved by violence. See what took place in the House, and what followed: the Pit was providentially almost full when the party arrived; the right side of the Gallery was filled by persons anxious to get a view of the Lord Lieutenant, and therefore the most advantageous position was thus pre-occupied, and they were obliged to go to the left side; they could otherwise not have acted in a body. You were told the left-hand side was not nearly so crowded as the right. Very naturally, not, and therefore these men

were necessarily driven to that side. What occurred after they got there? You have heard of the gross and abusive epithets bestowed on the Marquis of Wellesley. What further? That somehow, from some place, a bottle was thrown on the stage. Gentlemen, from whence do you imagine that bottle could have come? Was it from the Pit? If so, every body must have seen it. No man has been hardy enough to say that it came from the Pit. From the side Boxes? No, the direction negatives that. Then it must have come from one of the Galleries. From which of them? Was it from the Middle Gallery? If so, the persons round must have seen something of it; it is manifest that if it had been thrown from thence it must have been seen not only by persons there but by others looking down from the Upper Gallery. Is any individual produced to show that it came from the Middle Gallery, or from any other quarter than from the Upper Gallery? No, Gentlemen, the whole tendency of the whole examination on the part of the Traversers was only to cause a doubt as to the hand that threw it. I do not care whether it was Henry Handwich that threw it or not. If it came from any of the Party that is quite sufficient. But what is the evidence? Mr. Farrell, a most respectable man, swears he saw Henry Handwich throw that bottle, that he never lost sight of him from that moment until he was taken, or not more than five minutes; he kept his eye fixed upon him; he followed him to the Police Office, and gave information next day. Can you suppose that that man wilfully perjured himself without any assignable motive? You heard the observations made against him yesterday by the learned counsel. They amounted to this—"If I knew more about him, I dare say I could say something against him." But you must disbelieve him because he has lived in England. Gentlemen, he has resided four years in this Metropolis, and no person has been found to cast an

imputation on his character. But is he the only person who states that the bottle came from that quarter? I do not care whether Handwich threw it or not. You have the evidence of a Gentleman about whom a great deal has been said, Dr. M'Namara; I know a respectable old gentleman has stated that he is not worthy of credit upon his oath; but when interrogated, it appeared that this Gentleman had taken various informations against him, and was also in the habit of taking and acting upon the informations of the very man whose testimony he alleges is not to be received. What further? What was another ground of objection? that he had been lately convicted before the Assistant Barrister of rescuing out of a Pound the cattle of tenants which he had himself distrained. For this offence he was indicted before the old gentleman himself, and convicted of breaking the pound, and turning out of it the cattle which he, and no one else, had a right to detain. The Magistrates however gave a specimen of their legal opinions by sentencing him to three months' imprisonment and a fine of 20*l*.; and this is to be made one ground for saying that this man is not to receive credit on his oath. Gentlemen, you will not rashly discredit any man—he may discredit himself—he may tell an impossible, an inconsistent story—but the best men may err in minute circumstances, or may be placed in situations in which they may take up impressions different from others; but if they are in the main correct, those minute variations of circumstance, time, and place, will only serve to convince a rational mind that theirs is no made-up story.

Let me now mention this, which is most important as to the evidence of Dr. M'Namara. He agreed perfectly in every particular with Farrell. These persons were totally independent of each other, and had never seen nor met each other; the vilest man in the community, if he agrees

in his account with another person not connected with him, is entitled to belief from any rational man. But what more? You have the same evidence from another man, not perhaps a very accurate person, I mean Tiernan. He indulges in a little mirth on his oath, which I do not like; but in the leading facts of the case he distinctly agrees with the rest. He says, that the bottle came from the left hand side of the Upper Gallery, and went down to the stage. He was asked whether the Gallery was not crowded? he said "yes." But where did the bottle come from? "from behind me, I did not see the person, but it "went on to the stage." And because it was a crowded house, it was argued that during no part of the evening was it possible for Henry Handwich to perform an act which it is positively sworn he did. Do you forget that the party were moving about? you must forget, if you think the thing impossible. At one time there was a crowd, at another there was a space. You will therefore manifestly see that the thing was not only possible, but that there was frequently space enough left for Henry Handwich to fling the bottle. The last witness, Brocas, said, to be sure, "I got near Henry Handwich, I was seven "paces from him at first, and Henry Handwich was "quite stationary. I was originally 21 feet from him and "then somehow or other I found myself quite close to "him." Do you believe that story? He endeavoured to account for it by stating that he moved forward to Handwich; this was to reconcile it to the fact of Handwich being stationary. Still further as to the bottle. There is the testimony of a witness not attempted to be impeached, Mr. Cahill, the young Medical Student. He does not say who threw it, but he states, that it came from the left hand side of the Upper Gallery, and that it moved from thence to the stage. Can you suspect that the young gentleman fabricated the story? He distinctly swore it. There was

an attempt to disconcert him, by an answer as to the liquor in the bottle. He never meant to say it was porter, he only intended to describe the bottle; he said he supposed it was porter. I ask you to turn to your notes and see whether there is any other impeachment against him than his having given that answer. If what he swore to be true, what Mr. Brocas said must be false. His evidence is, that the bottle could not have been thrown; he kept his eye, he says, on Henry Handwich the whole night; nay, he goes the length of saying, that the bottle could not have been thrown at all from the Upper Gallery. If Henry Handwich could be placed by design in one situation more than another, where he could least see him, it would be the place where he has placed him, one row farther back than himself, at the distance of 21 feet. I ask you, is there not here cogent and convincing evidence that the bottle was thrown by some of the party? and if so, can you doubt against what object it was directed? Farrell tells you that its movement was towards his Excellency's box, and that it seemed as if so intended. That was the impression on his mind. The object was to drive the Lord Lieutenant from the Theatre: and can you hesitate as to the intention in throwing the bottle? Was it against the actors? No, the drop-curtain was down, and there was no actor on the stage. Was it against the Orchestra? most clearly not; they were playing "God save the King;" a tune which could not have offended men of such distinguished loyalty. It could not be against the Pit where their own friends were. The Lord Mayor was not visible; there was therefore but one object against whom it could have been directed. But if any doubt could remain as to the destination of the bottle, that of the rattle would put an end to it. Was not one intended for the same person as the other? There was a common purpose to be achieved

in a particular way. Handwich and Graham were together, one with the bottle, the other with the rattle; the same feeling actuated both: the same object was to be attained, and by the same means. The rattle strikes the very Box next His Excellency's, and cuts the cushion. Conceive the consequences it must have been followed by, if it had taken effect as intended; it must have destroyed the life of any person whom it took in its way. Can you doubt, as honest men, that that rattle was directed against the Lord Lieutenant? and if it clearly was, do you not believe the bottle had the same destination? At what time was it thrown? not during the play when the Lord Lieutenant sat in the back of his Box, and was invisible; the play was permitted to pass on, and it was not until his Excellency stood forward, whilst God save the King was played, and when his person was presented as a mark to their fury, that they assailed him. Why select that time? It was during God save the King. Reconcile this to their loyalty. Why avail themselves of that opportunity to discharge their missiles?

FIFTH DAY.

THE SOLICITOR GENERAL.—Upon reference to the case mainly relied upon by counsel for the Traversers, in support of the illegality of the proceeding, I find it has not been correctly stated to the Court—I mean Mr. Moore's case in the Commons' Journals. Your Lordships will see how differently the case bears from what has been alleged, and how completely in all its parts it sustains the interpretation which the Attorney General has put upon it. There was an indictment preferred against Mr. Dudley Moore, in Michaelmas Term, for a riot. The Grand Jury, on the last day of the Term, returned "billa vera," and Mr. Moore appeared to, and traversed the indictment, and



gave security to appear and prosecute his traverse the next Term, whereupon the Grand Jury was discharged. Here we find an indictment was found and pleaded to. Presently afterwards, when the Attorney General was gone, the Foreman of the Grand Jury came into Court, with an affidavit, that he had by mistake indorsed on the bill, 'billa vera,' when he ought to have indorsed it 'ignoramus.' The Court said they could not recognize him as Foreman of the Grand Jury, it having been discharged. The entire 28 Grand Jurors then came into Court to certify the mistake. The Court directed them to make an affidavit, and said they would consider of it.

Moore was then bound over to appear the first day of Hilary Term. It does not appear that any effectual proceeding was taken to alter the finding of the Grand Jury. On the contrary, it appears that it stood: for on the 27th January, the 5th day of the Term, the Attorney General moved that the trial should be fixed for the Thursday following, which was granted, and the Traversers were directed to prepare for trial.

The traversers, who were anxious to be tried, made no objection to the indictment. They pleaded to it, and it was suffered to stand. A day was fixed for the trial, and every thing was ready: but the very day before the trial was to take place, on the Attorney General's motion, the order for the trial was vacated, though objected to by the traverser's counsel. That was in fact withdrawing notice of trial. Still the indictment was untouched. The next day, a rule was entered by the Attorney General, without motion, to quash the indictment.

Now here is an indictment on which a trial might have been had, where all parties were prepared, and where there was no excuse for not going to trial. On a side bar rule

the indictment was quashed, and what happened? The thing was suffered to remain over the heads of the Traversers till the fifth day of Easter Term, when an Ex-Officio Information was filed by the Attorney General against Mr. Moore for the same matter. How infinitely stronger was that case than this! Here there was an effort to procure a trial through the medium of a Grand Jury. That attempt failed, because the Grand Jury would not find the bill; the Attorney General therefore was driven to the necessity of resorting to an Information.

But there the indictment had been found, issue formed, and every thing prepared for trial. Yet that indictment was quashed at the instance of the Attorney General against the Traverser's wish, and an Information Ex-Officio filed. Upon this, Mr. Tisdall and Mr. Caldwell were consulted by the House. They are represented by the counsel for the defendants as men of the first eminence at the bar, but they turn out to be, the one the deputy clerk of the crown, and the other a clerk in the King's Bench office. It cannot be supposed that these gentlemen were consulted upon the law of the case. The inquiry from them merely was, whether they knew any instance of an indictment found by a Grand Jury quashed by the Attorney General, and an Information filed? and they answered "no." Such is the reference to the first law authorities, relied upon as showing that this proceeding is unconstitutional. Suppose they had not known such an instance, yet that case is very different from the present—and see how it was dealt with afterwards. The enemies of Sir Constantine Phipps were very anxious to lay hold of any thing which reflected discredit upon his conduct, but no objection is made to the Ex-Officio Information. It was not treated as illegal or unconstitutional; and Phipps was censured, not for directing the Attorney General to adopt the course he did, but for interfering with the Jury which was to try that Information. The com-

plaint against him was, that when a trial was about to take place according to the forms of law, on that very Information, he had not suffered it to proceed in the regular course. Yet this is adduced on the other side, as a conclusive certificate and authority of the House of Commons, that the filing of an Information after a bill *ignored*, is unconstitutional and illegal. It proves directly the reverse. It shows that even under circumstances of great hardship, the Attorney General had authority to file an Ex-Officio Information; an authority yielded to by the House of Commons, enraged as they were against Sir Constantine Phipps. If the indictment when quashed be considered as if it had been ignored, as intended by the Grand Jury, then it is a precedent for this very proceeding. Here is a much stronger case for the propriety of such a proceeding. Here has been an attempt on the part of the Grand Jury to arrest the progress of justice, and if their decision is to be final, the case never could be brought before a Petty Jury, which, I assert, is the constitutional tribunal. There can be no doubt that the Attorney General might have filed his Information in the first instance, as quite of course. Why should it be otherwise now? What is the complaint against him? Not that he has filed an Information, but that he has tried a Grand Jury. Upon the whole, therefore, no lawyer can entertain the slightest doubt that this proceeding is not only strictly legal, but perfectly constitutional. Let me now return to the evidence.

Gentlemen of the Jury, we were able to produce Mr. Rooney, who saw the bottle strike the drop-scene—Charles O'Flaherty, who also saw it strike the curtain—and Giles O'Brien, who stated that he saw something passing by the side of the lattices—Mr. Farrell, against whom nothing was objected but that he lived in England, and who actually saw it thrown—and Doctor M'Namara, who swears to

the man who threw it. Some of you, Gentlemen, enquired of the other witnesses whether they had heard a certain expression to which Dr. M'Namara deposed. That expressions of that kind should have come from some quarter, there is every reason to believe. Whether from the quarter he says or not is another question. The credit of a man is not to be impeached by his having heard, during a scene of tumult and confusion, expressions which may have escaped the attention of others. If the witnesses are to be condemned for having heard expressions which others did not hear, no testimony can be credited. If such a rule is to be acted on, what becomes of the evidence on the other side? That extraordinary witness, Mr. Brocas, heard a cry which no one else heard or gave any account of. You recollect the words, "down with the Ribbonmen." Is there a single witness, from the middle to the upper gallery, but himself, who heard any such exclamation? I do not say, Gentlemen, that for that reason I would discredit him —no, if that were the only imputation upon him, I should be disposed to believe him. He must be a very extraordinary man who could hear, or having heard, could recollect, every wild tumultuous expression which took place on that night. We have next the evidence of Tiernan, who was sitting on the second row in the upper gallery, and who states that the bottle came from behind him, and went to the stage. Did he dream this, or is he committing perjury? You will consider whether you will lightly discredit any man on such grounds as the ingenuity of counsel will suggest. I shall not attempt to impeach their credit through the medium of vituperation only; I shall state grounds for any impeachment which I make, and leave you to judge of its justice. I will not call the witnesses scoundrels or rascals. I will not tell Mr. Brocas that he has perjured himself; he seems a wild vapouring kind of man, and perhaps has somewhat of a poetical imagination; but this is no imputa-

tion upon his veracity. I will not call him a villain, even if he has made a mistake. What further? There is the testimony of the young medical student—you have all seen him. They could get nothing against him, but that he said that they had been drinking porter out of the bottle. I was sorry to observe that the Jury seemed gulled by the artifice of the defendants' counsel, in dwelling upon this expression. The young gentleman explained his answer immediately afterwards by saying, that from the kind of bottle he imagined it to be porter. Great consequence was attached to it by the gentlemen on the other side. He swore that he saw the bottle pass over his head, and that from the direction in which it was going, it must have come from the left hand side of the upper gallery, where the party were stationed.

So much for direct testimony. What further? When Alderman Darley came up to arrest the man that threw the bottle, what did Mr. Brocas do to his friend? He had been twenty-one feet away from him at first, but afterwards contrived to get very close to him in order to assist Alderman Darley to arrest any person. Did he tell Alderman Darley that he was mistaken—that he (Brocas) had seen Henry Handwich the whole night? No—he says, I went originally to see the Lord Lieutenant, but afterwards I saw Henry Handwich making a noise, and this being more congenial with my habits and dispositions, I afterwards kept my eye upon him the whole night. But did he tell Alderman Darley that he was mistaken? No—on the contrary, he came forward to assist him in arresting his friend. Thus he was ready, if you believe him, to assist in arresting an innocent man.—How could he have anticipated that it was Handwich the Alderman came to arrest? I ask you on your oaths, can you believe that any man within twenty, thirty, or forty

yards of Henry Handwich could be ignorant that he was arrested for throwing a bottle? Yet this man swears he never knew or heard a word of it till the next morning. Is not this a fair ground for an impeachment of a witness? I do not say that he has perjured himself—he seems a bewildered flighty kind of person. He says that though he kept his eye constantly on Henry Handwich, yet he saw the stick thrown. He saw a bench at the distance of 20 feet, and yet he swears that he looked so constantly on Henry Handwich, that it was impossible he could have thrown the bottle without his perceiving it. Nay, he goes so far as to say, that the bottle could not have been thrown from the upper gallery at all; that is to say, though he kept his eyes fixed continually on Henry Handwich, yet he could see every other person in the upper gallery, so as to ascertain that no one there threw the bottle. Is this all? I bring you now to the scene at Flannagan's, where you find this party, or many of them, assembled. The subject of the bottle is introduced; all the witnesses agree in that. The conversation turns upon the subject of Henry Handwich's having been taken up for throwing that bottle. The witnesses, Pouden and Smith, who were present at the conversation, were produced on the other side. But did they venture to put the question, whether Forbes made any declaration, that Henry Handwich had not thrown the bottle, or that it had not been thrown by the party?—not a word. What is it they make Forbes declare? One alleges that he said no true Orangeman would have thrown that bottle. Now, Gentlemen, if the bottle had been innocently thrown for the mere purpose of amusement or entertainment, why should not a true Orangeman do that, as any other trick? Smith says the expression was, that a Protestant might throw it, as there were many bad amongst them, but that no true Orangeman would. That expression shows two things: First, that the bottle was thrown, and secondly, that

it was thrown with an evil intent; for why otherwise say that a Protestant might be bad enough to do it, but that no Orangeman would? was he not vindicating Orangemen from some heavy imputation? Why not deny the fact, instead of defending any particular persons? You are to decide on your oaths: I ask you as honest men, if the assembly at Flanagan's had been of opinion that the bottle was not thrown, would they not have denied it, or expressed their surprise at Handwich's apprehension? or if it had been innocent, would they have vindicated the character of the Orangemen from the charge of having participated in it?

I shall now advert to the scene at Flanagan's for another purpose: to establish the connection of the Traversers with the throwing of the bottle, and that it was not so innocent as the Gentlemen on the other side would have you imagine. For this purpose we have the testimony of three witnesses, George Atkinson, Farley, and Troy, all direct and express as to the facts which I am about to mention. In addition to this, we have the negative testimony of the witnesses on the other side. George Atkinson states, that when the subject of the bottle was under discussion, there was regret expressed by somebody, he does not know whom, that it had not taken effect. Mr. Farley went in by accident, and quite ignorant that any thing had occurred at the Theatre. He also says that one of them expressed his mortification that the blow had failed, and that he heard some such expression as that "It was a damned miss," or "a bloody miss." The same words have been deposed to by Mr. Troy, whose demeanour and appearance you have observed on the table. I appeal to you whether you ever saw a witness more entitled to credit. Contrast him with Mr. Brocas. Just compare the two together, and I need say no more in favour of Mr. Troy. He has distinctly sworn that he heard the words "It was a damned nuss:" Now, Gentlemen of the Jury, let me ask you how can such

expressions, and other expressions admitted by the witnesses on the other side, and the entire demeanour of Mr. Forbes, be compatible with his saying, that no true Orangeman could have thrown the bottle? You find him described as a person enraged and inflamed with passion, and still further inflamed by drink. One defence attempted for him was, that he was quite drunk. Under these circumstances you find him, raging and saying what lengths he would go to put down a Popish Government, that he would sacrifice his life, that he would go to Botany Bay, or even to hell to effectuate one purpose. Yet this man is described as having expressed his abhorrence at an act when done by another, which he announced his intention of doing himself. It is said to be impossible that the expression could have come from Forbes, and that it was not consistent with his situation, as described by the witnesses. It is, however, positively sworn, that some of the party complained and regretted that it had not taken effect. What further? Some one added, after the observations about the miss of the bottle—"We shall be better prepared another time."—Prepared for what? Was it for noise or tumult, hissing or groaning? What better preparations could they have for these? They had bludgeons, rattles, cat-calls, and they used their lungs in hissing and groaning. They could not improve in this respect. For what then could they be better prepared? To make up for the damned miss. If this was said deliberately by one person to another, would not any man say, that a foul crime had been meditated against the Lord Lieutenant? and feel the propriety of a capital indictment? Recollect that at the time of the committal, the nature of the Conspiracy was not exactly known; it was only to be collected from the acts of the parties, and the declaration of Forbes. The Atkinsons had not made their disclosure; the Counsel on the other side



felt that, and said he was drunk and inflamed. A witness was asked whether he was not drunk? He answered, not drunk, but highly inflamed. It is urged that these expressions of Forbes were uttered in a moment of irritation, and conveyed sentiments, which, in his cooler moments, he would have abhorred. It may be so. But let it be remembered, that if the impetuosity of his temper hurries him into expressions which his cooler judgment condemns, the same impetuosity of temper might hurry him into acts which his heart would abhor. Are we to hold this language to the Lord Lieutenant? "Mr. Forbes is a man of an impetuous and ungovernable temper, inflamed occasionally by intemperance; but has no malignity of heart. It is true that in a moment of excitation he might dash your brains out, but then he would be very sorry for it the next morning." This is a sort of defence not to be listened to in a Court of Justice. It is complained, that this man, who sends 70 fellows to the upper gallery, for the purpose of driving the Lord Lieutenant from the Theatre and the Country—fellows whom he could not restrain, and for whose conduct he was responsible; in whose guilt, if they had committed murder, he would have been a participator; who, upon finding that a bottle was thrown, which might have been fatal, not only testifies no abhorrence of the deed, but actually regrets that it did not succeed—that such a man could have a stigma cast upon his character, by having imputed to him that which his words naturally imported. Is such language to be listened to? If he had regarded his character, he would not have associated with such instruments; he would have put a restraint upon his tongue; he would not have uttered expressions tending to encourage others to do that which it is stated he himself would abhor. If such men were led to look on Mr. Forbes as a patriot and a hero, ready to devote himself to the service of his country by the sacrifice of

the Lord Lieutenant, they might resolve to outstrip him in the race of patriotism, and might actually effect what he only talked of doing. Such is the danger of these rash speeches considered merely as such. But it is alleged, that even supposing the words used, it has not been proved that they came from Mr. Forbes. But they were uttered by one of the party, and no objection was made to them. Pouden and Smith are produced, who were equally near at hand, and equally capable of hearing as our witnesses. You will observe the address of the Gentlemen on the other side, upon this occasion. They would have you to believe that Pouden and Smith were really contradicting the witnesses for the Crown. One of our witnesses says he heard Forbes use the words "Devil mend him." Mr. Pouden is asked, Did you hear these expressions as applied to the Lord Lieutenant? "No, but a great many words were uttered "which I did not hear." But they do not ask him whether he heard the expression, "a damned miss." They do not venture to put that question, although they allege the witness to have been present the whole time. They also ask, whether he did not hear it said, that no true Orangeman would throw the bottle. The fact is, they knew they could not safely examine as to the "damned miss," and therefore prudently declined asking anything about it. But was there not another important question? as to the words, "We shall be better prepared another time." Was the evidence of these words contradicted? No. The question put ingeniously was, did you hear Forbes say he would take better aim another time? Gentlemen, that was not what was proved by our witnesses. Forbes himself never took any aim. "Better prepared" was the expression. Forbes himself did not take aim, but he had seventy men at his command, and could procure it to be done. He could direct the blow, though his was not the hand to inflict it. Look at the testi-

mony of Mr. Farley and Mr. Troy, both concurring, and fortified even by Pounten and Smith, supposing them not to stand in such an unexceptionable light as they do. The expressions were doubtless used: and that Forbes used them may be inferred from his warmth. It is said that these gentlemen were Eve's droppers, and that the Crown has, to its eternal shame, had recourse to them. Two respectable gentlemen go into a tavern accidentally; they hear what was going forward; the Government learn that they were present, and call upon them to come forward and give an account of the transaction; and for this they are branded with the name of Eve's droppers, and their credit impeached. They are not concerned on either side; they do not belong to either party—I ask you, if you ever saw a man less disposed to inflame his evidence than Mr. Troy? He is a commercial man in this city; would he be guilty of wilful and corrupt perjury? Are witnesses to be stigmatized because they come forward to support prosecutions, at the instance of the Government? We call upon those persons, of whose loyalty we have heard so much, who boast of their zeal for the support of the Laws and the Constitution; we call upon them not to cast such imputations upon men coming forward from the purest motives, to protect the King's Representative from unjust and lawless aggression. But what were Mr. Smith and Mr. Pounten? Were not they Eve's droppers too? Listen to how they agree in their story. Pounten swears that Forbes came in alone. Smith says he came in with Mr. Callagh and Graham. Pounten says the party supped in a different box from that which they first occupied.—Smith swears they never stirred from the same spot.—Pounten says that Forbes returned after supper, and gave toasts. Smith says he called for supper on coming in, and gave toasts then. Pounten states the conversation to have occurred at one table: Smith at another. Smith

is manifestly not swearing truth, though perhaps only from inaccuracy. He was asked whether he saw the supper—he said he saw the cloth at first on the table, and that afterwards it was taken away; and he swore positively that they never stirred from that place. But what is become of his brother? Where is William? He was at hand; but he saw his brother get off so badly, that he made his escape. He disappeared. You might have observed at one time great confusion in the ranks of the enemy. One of my learned friends got up to make a speech, to fill the chasm. Gentlemen, these are not Witnesses to bring forward to contradict our case—Witnesses much more at variance with each other than with ours. And what does Smith say as to this conspiracy? He was asked if he had ever heard of the intention of the Lodge to go to the Theatre? He said no, he never had. “Are you not a member of the Lodge? Yes, of 1612; but I have not been at a Lodge these six months; though I was constantly in the habit of going every night to Daly’s, where the Lodge met, yet I never entered it. Did you see Forbes at Daly’s? Yes, I saw him on Friday evening, but I never heard of any intention to go to the Theatre, and I did not know any thing about it, till I found myself seated in the pit, when I was surprised to see my brethren of the Lodge. Upon going in, I got from some one a little square piece of paper, which had something about “Mornington.” I thought it alluded to the Lord Mayor; but some one told me it was the Lord Lieutenant.” I will make no observation on such testimony. We have, however, from one of their witnesses (Brocas) a very important fact. Henry Handwich, he says, though not the person that threw the bottle, was the most troublesome and riotous man in the whole house. This too on his direct examination. Another fact which he proves is, that there was a bottle, and that another man drank out of it. What became of

that bottle? Have the Counsel on the other side explained? Could they not produce the person who had it, to prove that he had brought it home? The throwing the rattle, and the destination of it, are also distinctly proved by this Brocas. No man on earth can entertain a doubt that that was flung at the Lord Lieutenant. The prompter was then produced to shew the impossibility of throwing a bottle from the place where Handwich was proved to have been. He was not however asked that question. Counsel said from looking at the plan of the house that the thing was quite possible, and they did not ask the question. He was only asked on what bench in the middle gallery a plumb line from the upper gallery would fall. Having mentioned a place about three benches behind that on which Doctor M'Namara sat, they asked no further questions of him. They have produced no Witness to shew from what part of the house these missiles were thrown, You cannot therefore upon such a mass of evidence, not only uncontradicted, but supported by the Travellers' Witnesses, entertain a doubt that they were flung at the Lord Lieutenant from the upper gallery. Supposing even that any doubt existed as to the bottle, you have clear and distinct evidence that George Graham, one of the Conspirators, threw the rattle at the Lord Lieutenant. If two persons act in concert for a common purpose, and there be clear evidence explanatory of the act of one, it furnishes a satisfactory explanation of an act by another; and so the evidence as to the destination of the rattle, is strong to shew that the bottle was intended to go in the same direction.

Perhaps, Gentlemen, you may have an idea, that a man cannot be assaulted without being struck; the Law is not so; the flinging of any thing at a man, though it do not hit him, amounts to an assault.

The Lord Lieutenant was, therefore, in point of Law assaulted. If you find, therefore, that two persons actually did commit that assault, and that in such a manner as to furnish clear evidence of a preconcerted design, you cannot hesitate as to the existence of a conspiracy to assault; acts are much stronger than words; it is clear that there is full evidence of a conspiracy formed previously to going to the Theatre: but there is also a Count for a conspiracy in the Theatre. If, therefore, the design was there originally, and for the first time, formed, it will be sufficient to sustain that Count. Some of you may be alarmed at the use of the word "Conspiracy," and may suppose that a charge of that sort is capital. That depends upon the nature of the conspiracy: a man may conspire with others to hiss at the Theatre; or turn an individual into ridicule; you may think that not a deep offence, but, Gentlemen, it may deeply wound the feelings of that individual. It is urged that the Law recognizes a right to go to a Theatre, and make noises there. A case has been cited as an authority to that effect, that is to say, cited, not for the decision of the Court on a point of Law, but to show that the Jury thought proper to fly in the face of the Court. I deny the proposition that any man can go, in consequence of a previous concert, with others to a Theatre for the purpose of making noise and disturbance, or hissing, hooting, or groaning any person. It is an offence in point of Law, and which the Law will punish. Even actors upon the stage, though subject to the hisses or applause of an audience, are not to be victims to any preconcerted design to wound their feelings or injure their reputation. In the case referred to, Clifford and Brandon, 2. Campbell, 358, the question was upon a riot, and there Lord Chief Justice Mansfield distinctly stated, that if any body of men were to go to the Theatre with the settled intention of hissing an actor, or even

damning a piece, there can be no doubt that such a deliberate and preconcerted scheme would amount to a conspiracy, and that the persons concerned in it might be brought to punishment: and his Lordship declared, that he was clearly of opinion, that the facts then proved, though no injury had been done to the house or to the person of any individual, constituted a riot. Gentlemen, you will take the Law from their Lordships, who, I doubt not, will tell you that any such preconcerted scheme is illegal.

Another topic of defence relied on, is, that Mr. Forbes is a man of great loyalty, and strongly attached to the King; and it is asked, "can you convict a loyal man of any offence?" This is not to be listened to in a Court of Justice. I admire this loyalty of which so much is said: a loyalty that displays itself by flying in the face of the Sovereign, a loyalty that disturbs and thwarts his Government, and which insults his person in that of his representative.

It is also said, by way of defence, that the Traversers are Orangemen: that the principles of the Orange Institution are, attachment to the King, the support of his government, the protection of innocence, and assisting the magistrates in the due execution of the laws. They have, it is said, sworn to all these things, and therefore they could not possibly be guilty of the outrages imputed to them: that is to say, that though they be proved to have committed them, their oath is to rescue them from punishment, and be their vindication. If I had come forward, and stated as matter of aggravation, that these men, in addition to their ordinary obligations to the State, their allegiance to their King, and the duties which bind man to man, had taken an oath to observe them, would

you not have considered that they ought to be visited with exemplary punishment for violating all those obligations together? And what has been the cause, or the supposed cause, of all this outrage? The undressing of the Statue of King William. For that the Lord Lieutenant is to be driven from the Country. With whose sanction was it done? His Majesty's, and that of all the Cabinet Ministers. And when it is considered, that among them are to be found the names of Eldon, Liverpool, and Peel, can it for a moment be imagined, that that act was dictated by a settled purpose to put down the Protestant interest of this Country? can the great pillars of the Constitution be suspected of harbouring such designs? As my sentiments upon the great question which divides this kingdom are known to coincide with those of the Traversers, though divested of that acrimony of feeling which leads to violence of action, I may ask, is it wise, is it prudent, to disgust and detach from the cause such men as I have named? Or if those exalted personages should be disposed to say, "if you wish your Roman Catholic Fellow-Subjects to be satisfied with the substantial benefits which they enjoy, leave them in the undisturbed possession of them; if there be other privileges to which you think they cannot properly be admitted, render them at least as comfortable as possible in the enjoyment of those that they have," is it for this petty Club in Werburgh-street to dispute their authority? and ought it, instead of deferring it those high characters, attempt to outrage society by violence and tumult?

And upon whom has that violence been committed? I shall not presume to draw the character of the Lord Lieutenant. It is a task which I leave to abler hands; but there are



some plain and simple truths, which I am in gratitude to him, and in duty to this country, bound to state. I have had frequent communications with that illustrious personage, when he was deprived of the valuable assistance of my learned friend, and of our excellent Chief Secretary. When this country exhibited a scene of unparalleled atrocity, in the South, and when a dark and horrible conspiracy was spreading over the Northern and inland districts, on that occasion he submitted to a labour, which the lowest clerk in any of the public offices would think himself oppressed with, to enable him to discharge the important duties of his office, and to contribute to the peace and happiness of this country. This he did at the expense not of comfort only, but of health. But he is accused of wishing to put down the Protestants of this country. Nothing was ever more untrue. If you would judge of his principles of action, look to his acts—look to the men on whom he has conferred benefits—look to those whom he has appointed to office—look to him in the dispensation of mercy—and say if you can discover in him any of those principles which have been so unwarrantably imputed to him. For my own part, I can say, that he did me the honor to appoint me to the office I now hold, with a perfect knowledge, that, on the great subject which divides the country, my opinions were different from his. Yet he never withheld from me his confidence, or his kindness on that account: nor was the question ever once, in the course of a year that I have been in office, mentioned. If, therefore, any man asserts that the principle of the Marquis of Wellesley's Government is to put down one sect to exalt another, the assertion is without foundation. A more perfect and even-handed impartiality, as far as I have been able to observe, never was displayed.

Gentlemen, I shall now leave this case, after merely calling your attention again to one clear and conclusive piece of evidence of a conspiracy; I mean the hand-bills printed and distributed through the house. That must have been preconcerted. How distributed and from what quarter? Forbes drops them down from the Lattices, another on the Stage, and another from over the Lord Lieutenant's Box. William Graham brings them in bundles into the Pit. Was that accidental? I shall now have done. I have endeavoured to go through the evidence as well as I could. You will supply any omission, and correct any errors of which I may have been guilty. I do not care what your feelings are out of Court. I see here twelve men who have taken a solemn oath before God, to weigh the evidence as they hope for mercy hereafter. That is your oath, I call upon you to fulfil it. I call upon you to entitle yourselves to that mercy which you hope. Do not suppose I mean to doubt your performance of it. I mention this, because that too many persons think lightly of this solemn obligation. You have made an agreement with your God—violate it if you dare—Weigh the evidence, and, as you hope for mercy, find your Verdict.

THE CHIEF JUSTICE.

*Gentlemen of the Jury,*

It is in general the office of the Court to call the attention of the Jury to the nature of their duty, and the questions which they have to try. But in this case, perhaps inevitably, several topics not connected with the issue before you, have been addressed to you; in consequence of which it becomes our primary duty to point out the question which you have not to try, and to exclude from your con-

It connected with the matters upon  
to determine.

to which I shall allude, is the alleged  
Ex-Officio Information. Gentlemen, the  
legality, or illegality, cannot be decided,  
as discussed, upon the issue which you are  
to try. The legality or illegality of this pro-  
ceeding have been brought before the Court by a  
motion and you have been told by one of the Counsel  
for the Traversers, that it might have been determined upon  
a motion to the Court to quash the information. Had either  
of these courses been pursued, we should have been able to  
decide the question according to the best of our judgments.  
But neither has been adopted, and a plea of Not Guilty has  
been put in to these Informations, under which neither the  
Court nor the Jury can pronounce upon the question raised  
as to their legality.—Gentlemen of the Jury, you are there-  
fore bound, as in every other issue which you may be im-  
pannelled to try, to presume the proceeding to be legal;  
and we are bound to tell you, that from every thing which  
has appeared before us, and after all the discussion, how-  
ever irrelevant, which the subject has received, this Ex-  
Officio Information is, in our opinion, a perfectly legal  
proceeding.

The next topic, Gentlemen, which I wish to exclude  
from your consideration, is the influence attributed to the  
act of the Commission Grand Jury, in ignoring Bills of  
Indictment, charging the present Traversers with the same  
offence as is contained in these Informations. That act of  
the Grand Jury is not in evidence before you. It being in  
our opinion not connected with the issue, we deemed it our  
duty to reject it when offered in evidence. But for the pur-  
pose of considering what influence it ought to have, it must  
be assumed as a fact, that the Grand Jury did ignore the  
Bills. It was not only admitted, but distinctly stated, by  
the Attorney General; and by the Counsel for the Traver-  
sers it has not only been assumed, but claimed as a fact

material for their arguments. And therefore for all the purposes of my present address to you, it must be considered as indisputable, although upon the issue between the Crown and the Traversers we did not think ourselves at liberty to admit it as Evidence. In one point of view, and in one alone, ought it to have the slightest influence upon your minds. It ought to call upon you to proceed with great caution, in a case upon which other men have already come to a certain conclusion. To say that it should govern, conclude, or influence you farther than that, would be a monstrous proposition. That Grand Jury acted upon their Oaths; you are now to act upon your's. It is to be presumed, that they have acted according to the best of their judgments, and the dictates of their consciences. You are to be guided, not by their judgments, or their consciences, but by your own. If any further influence were to be attached to that act of the Grand Jury, it would lead to consequences of an alarming nature; amongst the rest, this may be fairly intimated as a result—that in every case in which one Grand Jury ignores a bill, another ought not to find it, and that whenever a Grand Jury had found a bill, and where the Prisoner or Traverser is unable to make a defence, a petty Jury would be bound to give a verdict of conviction, upon the principle of deference to the Grand Jury's decision—In fact, the ignoring of the Bill is either a bar to the present prosecution, which cannot be seriously stated; or it amounts at most to a call upon the present Jury to proceed cautiously in a case, in which twelve men, at least, have already decided that there is nothing to be enquired into.

Another topic has been addressed to you of the same nature. An appeal has been made to you, upon the importance of this trial, in a political point of view. If it be true, as has been said, that the political interests and destinies of the Country are involved in the event of this prosecution—if the consequences of it be really of so important a nature, let that circumstance call upon you for a patient, cautious, calm, dispassionate, and honest investigation—whatever may

be your opinions upon the political interests of the Country, do not sanction by your decision that most alarming of all precedents, that most fatal symptom of bad times, a political or a factious verdict. Gentlemen, were political considerations to find their way into that Jury-box, the consequences would be most deplorable. One of the wisest and most valuable contrivances of the British Constitution, which provides for the distinctness of its several functions, would be deranged—if the Executive were to interfere with the Legislative, or if the Legislative were to interfere with the Executive—or if either were to interfere with the administration of Justice, or the administration of Justice with either; there would be an end of the Constitution of these Countries. Under the free Government which we enjoy, every man has political rights and functions of one kind or other, and is at full liberty to act upon his political opinions. For the exercise of such rights, many opportunities are afforded. Every subject may petition the Throne and the Legislature. Many have the occasional right of exercising the elective franchise, or aspiring to the honour of representing their Country in Parliament. Every man is in the daily and habitual enjoyment of the free utterance and publication of his opinions. But, Gentlemen, when a subject of this land enters into a Court of Justice, in the character in which you now appear, he leaves his political rights and opinions at the threshold of the Court, for the purpose of assuming the duties of a Juror.

And what are those duties? They may be described and comprehended in a very few words. They are simply these—to do justice in the particular case, which the Jury is sworn to try. Indeed the very use of the word “Sworn,” implies a rebuke to him who could address to a Jury, any thing upon this subject, founded merely upon moral or political considerations, or who for a moment could forget, that in this Christian country, the highest duty due from man to man, is enforced and sanctioned by the most solemn appeal which man can make to God. In this Court, when

you discharge the office of Jurors, you invoke Almighty God; and in the simple and emphatic language of the Law, call upon him so *to help you*, that is, so to deal with you in this world and the next, as you shall do justice in the particular case which you are impannelled to try. What then, Gentlemen of the Jury, is in the present case, the nature of that oath? Are you sworn, as you have been called upon to do, to decide on the affairs of the empire? to pronounce upon the question of Roman Catholic emancipation, or of Protestant ascendancy?—upon the merits of one Lord Lieutenant or another? the character of the Orange Association, or any other association? or to consider whether conciliation or discord is likely to be the consequence of the present proceeding? Certainly not—you are sworn, and, I call it to your recollection, in the beautiful simplicity in which the Law describes your duty, *a true verdict to give according to the evidence*.

Having now pointed your attention to the topics, which, although perhaps justifiably and inevitably addressed to you, it is necessary to exclude from your consideration—it becomes my next duty to apprise you of the nature of the question to be tried. That question is simply this—whether the Traversers at the Bar, or any of them, and which, are guilty of the charges, or any of them, contained in these Informations. The first Information is for a Conspiracy, and consists of three Counts. The first Count states that the Lord Lieutenant intended to go to the Theatre Royal on the 14th of December; and that the Traversers and others, before the Play, conspired to go there and make a riot.

2dly, It states a conspiracy to hiss, groan, insult, and assault the Lord Lieutenant, and to cause him to be hissed, groaned, insulted, and assaulted.

3dly, It states, that in pursuance of that conspiracy they prepared handbills and placards, the purport of which is

set out in the Information, and that they caused these to be dispersed through the Theatre, for the purpose of exciting thereby a great riot and disturbance.

4thly, That in furtherance of that intention, they bought play tickets to enable evil disposed persons to be present at the Theatre.

5thly, That on the night of the representation, they assembled themselves at the Theatre, in pursuance of the Conspiracy, and there distributed these handbills and placards.

The second Count states, that on the night of the play, and whilst the Lord Lieutenant was at the Theatre, the Traversers conspired to make a riot, and hiss, groan, insult, and assault him; and to cause him to be hissed, groaned, insulted, and assaulted; and that in pursuance of such Conspiracy they circulated handbills, &c. This Count differs from the first, in alleging a Conspiracy at the Theatre itself, which, in point of law, is just as much a Conspiracy, as if meditated for a week before.

The third Count states generally a Conspiracy to make a riot and to hiss, groan, assault, and insult the Lord Lieutenant, and to cause him to be hissed, groaned, insulted, and assaulted, without setting out any overt act.

The second Information is for an actual riot, not for a conspiracy to commit one. It contains two Counts, the first of which alleges that the Traversers did make a riot, and hissed, hooted, groaned, insulted, and assaulted the Lord Lieutenant, and threw at him pieces of wood, copper, and glass bottles; and the second charges only a riot, without any of these outrages against the person of the Lord Lieutenant.

All these, taken together, constitute as grave and heavy a charge, as a misdemeanour well can amount to. The

course which the Trial has taken, and especially that which has been adopted in argument by the Counsel for the Traversers, makes it necessary for me to inform you, that there is no Count in either of these Informations, stating merely a conspiracy to assault or insult the Lord Lieutenant, that is to say, which states this as the sole object of the Conspiracy. It is stated only as one amongst others; nor does any Count charge Henry Handwich, or any other individual with throwing a bottle, or a stick, or any thing else at the Lord Lieutenant; an observation which it would be unnecessary to make, but for the quantity of discussion which that circumstance has produced. I have therefore now to tell you, with respect to the first Count in the Information, for a Conspiracy, which must first go to you, that if you believe that any two of the Traversers, or any one of them, with any other person unknown, so as to make two in the whole, did conspire, either to go to the Theatre, and make a riot, or to hiss, groan, or insult, or assault the Lord Lieutenant, or to cause him to be hissed, groaned, insulted, or assaulted, or in pursuance of that intention prepared the printed handbills, mentioned in the Information, and caused them to be dispersed through the Theatre, thereby to excite a great riot or disturbance, or in pursuance of the same intention, bought play tickets to enable evil-disposed persons to be present; or assembled at the Theatre, in pursuance of such conspiracy—if you believe that any one of these charges has been substantiated in evidence against the Traversers, or any of them, although you should believe others of those charges not to be so substantiated, you will be bound to find such of the Traversers guilty upon that Count. Upon the second Count of the first Information, if you shall believe that the Traversers, or any two of them, or any one, with any other person, conspired at the Theatre to make a riot, or to hiss, groan, insult, or assault the Lord Lieutenant, and in pursuance of that intention, circulated the placards and handbills, stated in the Informations, I give you the same direction, as upon the first Count. And upon the third Count,



which charges no overt act, if you shall believe that the Traversers, or any two of them, or any one of them, with any other person, joined in a conspiracy, to make a riot, and hiss, groan, assault, or insult the Lord Lieutenant, I give you a similar direction.

Upon the first Count of the second Information, I have to tell you, that if you believe that any three of the Traversers, or any one of them, with any two other persons, or any two of them, with any other third person, did commit an actual riot in the Theatre, and either did hiss, or groan, or hoot, or insult, or assault the Lord Lieutenant, or throw at him, wood, copper, or glass-bottles, you are to find such person guilty; and on the second Count, which contains a charge of a riot in the Theatre, without stating any attack upon the Lord Lieutenant, if you believe, that any of the persons now on trial to the number of three, or two of them with another, or one of them with two others, committed such a riot, you must find him or them also guilty; of course, such of them as you do not consider to fall within those classes, you are bound to acquit.

In order that you should discover, whether any of the Traversers do or do not fall within this description, it will be necessary for the Court to define the legal characters of the offences imputed by the Informations. For that purpose, I shall state from the highest authority, what in point of law constitutes a riot. It is a tumultuous disturbance of the peace, by three persons or more, assembling together, of their own authority, with an intent mutually to assist one another, against any who shall oppose them in the execution of some enterprize of a private nature, and afterwards actually executing the same in a violent and turbulent manner, to the terror of the people, whether the act intended were of itself lawful or unlawful. It is the effectuating it by force, and in an unlawful manner, that makes a riot. In every riot there must be circumstances either of actual force or violence, or at least, of an apparent tendency thereto, such as are

naturally apt to strike a terror into the people, as the shew of armour, threatening speeches, or turbulent gestures; for every such offence must be said to be done to the terror of the people; but it is not necessary, in order to constitute this crime, that personal violence should be committed. The reading of this last paragraph, and the recollection of some mistakes which seemed to prevail on the subject, suggest to me the necessity of stating to you the concurrence of this Bench, in the description of an assault, and the legal character of that offence, as given by the Solicitor General.

To strike at a man, or aim a blow or missile at him, is as much an assault as if the blow or missile actually took effect. But to return to the subject of riot; whenever three or more persons use force or violence, in the execution of any design where the law does not admit or allow the use of such force, all persons concerned therein, are rioters. And the law is, that if one person encourages, promotes, or takes a part in a riot, by signs, by gestures, or by wearing any badge or ensign of the rioters, he is himself a rioter. If he in any way encourages the rioters, he is guilty.

The nature of a conspiracy is now to be described. It is defined to be, where two or more persons confederate together for the effecting of an illegal purpose, or to effect a legal purpose by the use of unlawful means, even although such purpose should never be effected. The merely confederating constitutes the crime, though the object be not effected. Such is the legal character of the crimes charged in these Informations, in the opinion of the Court; and I have now to state the unanimous opinion of my brethren upon the result of the evidence, that if the evidence given be true, upon which we do not pronounce any judgment, and on which you exclusively are to decide and determine, that evidence is in point of law abundantly sufficient to support both these Informations. Gentlemen, whether that evidence be true or not--whether the Witnesses deserve credit or not, is a matter upon which we shall intimate no opinion. We

shall leave it to you, as the proper tribunal, to decide upon it. In stating the character of the crime, and the effect of the evidence, if believed, we perform our duty. It remains with you to perform yours.

Before I proceed to sum up the evidence, it will be necessary for me to examine a doctrine asserted by the Traversers' Counsel in opposition to what I have announced, as the opinion of the Court upon the law of the case. It has been insisted, that in a public Theatre, any man has a right to disturb and terrify the audience by expressing his censure or approbation, of public and political characters; that such right has been constantly exercised and enjoyed in the Theatres of both Countries; and that such a disturbance of the peace, under such circumstances, loses its illegal character, and becomes excusable. Gentlemen of the Jury, there is no such right. It is a position, in our opinion, not founded in point of law. If it were allowed to go abroad uncontradicted, it would be productive of the most dangerous consequences to society. The rights of an audience at a Theatre are perfectly well defined. They may cry down a play or other performance which they dislike, or they may hiss or hoot the actors who depend on their approbation, or their caprice. Even that privilege, however, is confined within its limits. They must not break the peace, or act in such a manner as has a tendency to excite terror or disturbance. Their censure or approbation, although it may be noisy, must not be riotous. That censure or approbation must be the expression of the feelings of the moment. For if it be premeditated by a number of persons confederated before hand to cry down even a performance, or an actor, it becomes criminal. Such are the limits of the privileges of an audience, even as to actors and authors. But if their censorial power were to be extended to public or political characters, it would turn the Theatre into a den of factious rioters, instead of a place of cultivated amusement, or as some conceive, of moral improvement. What public man in any department would himself go, or would

take his family to a Theatre, if he were to incur the risk of being hissed or insulted by a rabble, instigated by ruffians, exasperated perhaps against him by the discharge of some public duty? We are therefore anxious to disabuse you as to this topic, which has perhaps not unjustifiably been used by the Counsel for the Traversers, but which we are bound to discountenance; and to tell you that no length of time during which licentiousness may have remained unpunished, can be sufficient to sanction so mischievous a pretension, or protect it from the reprobation of a Court of Justice. There is no distinction between a Theatre and any other public assembly. There is no difference between the rights of an audience in a Theatre, and the persons now assembled in this Court, except in the greater degree of respect which is due to a Court of Justice, or between such an audience and a congregation in a Church, except in the veneration which is due to a place of worship. No person in any public assembly, has a right to break or endanger the public peace.

Gentlemen, I shall now bring your attention to the evidence in this case, abstaining as I have already told you, from making a single observation upon the credit due to the Witnesses, which is a consideration exclusively for your understanding and consciences; I must however apprise you, that there are two kinds of evidence, the one direct, and the other circumstantial. With respect to the charge of riot, the evidence in this case is all direct. The persons who prove it, swear that they actually witnessed the facts to which they have deposed. The evidence as to the conspiracy is partly direct and partly circumstantial. The evidence of a conspiracy must, from the nature of the thing, be in most cases circumstantial; indeed must always be so, except in those cases, where by accident, the conspirators have been overheard, or where an accomplice in the guilt, comes forward to betray his associates—the latter is the present case, so far as the evidence of conspiracy is direct. I allude to the testimony of two accomplices, George and

John Atkinson—they come forward to impeach their associates and to give evidence against them in a Court of Justice. Upon every principle of evidence and of the duty of a Juror, such testimony is to be regarded with great suspicion, and reviewed with great caution. That circumstantial evidence may however be added to the direct testimony of these accomplices, I presume you will not find it difficult to comprehend. If you have been in the habit of attending upon Juries in criminal cases, you cannot be at a loss to understand the nature of circumstantial evidence, and of the corroborations which it may afford to the evidence of accomplices. I am warranted in saying, that it is frequently considered more unerring and satisfactory than direct proof, which may be the result of misrepresentation and perjury. If a man be murdered, but no one sees by whom, or how, there can be no direct evidence of the fact: but if another person who has been known to have borne an ancient grudge against the deceased, and has been heard to make sanguinary and vindictive declarations against him, be found near the bleeding corpse with a deadly instrument covered with blood; this, though not direct evidence of his guilt, would yet, if unexplained, form a mass of circumstantial evidence, which it would be next to impossible for the human mind to resist. Again, in the more common case of robbery, it most frequently occurs that there is no direct proof of the commission of the crime. But if the stolen goods be found instantly after the robbery in the immediate neighbourhood of the place where the crime was committed, upon a person who can give no satisfactory account of them, it furnishes evidence most powerful and satisfactory of his having committed the offence. As a short description of circumstantial evidence, it may be stated to be, a state of facts which though not establishing guilt directly, is inconsistent with any thing but the existence of that guilt. You will consider the circumstantial evidence in this case, whether it be of that description, if considered merely by itself: and for that purpose you will weigh first its credit, and next whether it leads necessarily to a conclusion of the

guilt of the persons accused. You will next have to consider whether supposing it in itself to be short of that degree of weight, it yet may not be sufficient to assist the testimony of the Atkinsons, should you be disposed to doubt what they have sworn.

I shall first state the evidence in the abstract, and assist you in comparing the particular parts of it which relate to the individuals upon trial, and shall then read you my notes, as well for the purpose of refreshing your recollection, as that if any mistake may have occurred it may be corrected.

When I shall have done so, I propose to leave to you four questions. I shall desire you to tell me by a fair and honest verdict, First, do you believe that there was any riot in the Theatre on the night of Saturday, the 14th day of December last? Secondly, if so, do you believe that any, and which of the Traversers were guilty of it, as described in any and which of the charges in the Counts for a riot? Thirdly, if they were, do you believe that it arose from a sudden or momentary impulse, or that it was the result of a previous conspiracy? And, Fourthly, if there was such a conspiracy, do you believe that the Traversers, or any of them, were engaged in that conspiracy as described in any, and which of the charges in the Counts for a conspiracy? Once for all I shall apprise you that it will be your duty if you believe these men, or any of them, guilty, to find them so—if innocent, to acquit them—and if you should entertain any rational or conscientious doubt as to the guilt of any of them, to give to that person the benefit of such doubt by a verdict of acquittal. You will take care, however, that the doubt upon which you may feel yourselves warranted in acting, be not only a rational, but an honest doubt—Not such as an ingenious man may fabricate as a pretext for a bad verdict; but such as a sound unsophisticated understanding and a pure conscience will justify, both acting under the safeguard of a solemn oath.

In performance of my undertaking to sum up the evidence, first in the abstract and then in detail, I shall begin

by adverting to the direct evidence of conspiracy, as stated by the two Atkinsons—of which it is the more necessary to give a summary, because inevitably in the course of a trial like this, the evidence, as it was given, was, in point of order and dates, deranged and perplexed, and would not be easily understood from the mere reading of my notes. If the Atkinsons have sworn truly (of which you exclusively are to judge,) it appears, that on Wednesday, the 11th of December, John Atkinson supped with several persons, not now on trial, at the Shakspear Tavern. That a plan was then proposed to have the Lord Lieutenant insulted at the Theatre, on the following Saturday, in order to cause it to be believed by the Ministry in England, that he was unpopular in Ireland, and thus to procure his removal from this Country. That to effectuate this purpose, it was agreed, that a subscription should be raised to purchase tickets for the poorer classes of Orangemen. That on the following day, Thursday, John Atkinson received some money, in a blank cover, which had been promised to him on the night before. That on the same Thursday, he went to a carpenter's shop, where Henry Handwich worked, and left a message that he wished to see him. That on that evening, he went to Daly's in Werburgh-street, and there met Henry Handwich and others. That the same subject was discussed there, and a plan laid for effectuating their intention; and that Henry Handwich undertook to collect sixty or seventy to whom tickets for the Theatre were to be given. That on the following evening, Friday the 13th, John Atkinson went with his brother George to the same house in Werburgh-street, where an Orange Lodge was assembled, of which John Atkinson was Deputy Master, and George the Secretary. That the same subject was there canvassed, a subscription made, and a meeting appointed for the following evening, at the Black-Bull, in Ship-street, a house frequented by the lower order of Orangemen. That on the following morning, Saturday, John Atkinson went to the Theatre with two others, and stood at the door whilst the others went in and purchased

the tickets. That that evening he met the party in Ship-street, collected by Henry Handwich. That the party was furnished with sticks. That they were supplied with drink, and that whistles bought for the purpose, and placards ready printed, were distributed amongst them. That they then went to the Theatre, and that upon going out, Henry Handwich said "boys be wicked." That at the Theatre, there was a riot, in which different persons took different parts. That some of the party were there apprehended. That others of them met after the play, at a Tavern in Essex-street, kept by a Mrs. Flanagan, and there conversed on the subject of the riot at the Theatre, in such a manner as demonstrates, if the evidence is believed, that those who joined in that conversation had been actually engaged in the riot, and in a previous confederacy to make such a riot. That is the exact substance of what the Atkinsons have stated, and it inculpates the Traversers, in the several parts of the transaction in different degrees, to which I shall now call your attention.

As to the Shakspeare Tavern, there is no evidence that any of the Traversers were then present. The proceedings at that meeting are, in point of law, evidence against them only on the principle of their having been adopted and acted upon at the subsequent meetings, at which some of the Traversers attended. The next transaction in point of order, is, the calling at the carpenter's shop, as to which George Atkinson states, that Matthew Handwich received from John Atkinson, a message to his Brother, to collect the lower Orangemen, and that he assented. If this stood alone, it would be very weak evidence as against Matthew Handwich, and the more weak because it is contradicted by John Atkinson, who says that the man who received the message was another brother of Henry, not now on trial. Were there nothing else therefore, I should be bound to tell you, that upon that feeble and contradicted evidence, the charge against Matthew Handwich could not



be considered satisfactorily supported. But we shall just now see how far Matthew Handwich is involved in the subsequent parts of the transaction. The next period is the meeting at Werburgh-Street, on Wednesday. That was the first night that John Atkinson was there; he does not speak of any of the Traversers having been present, except Henry Handwich, who is the man for whom he had left the message the day before at the carpenter's shop. The next is the meeting on Friday evening, in Werburgh-Street; none of the Traversers except Forbes is represented by either of the Atkinsons as having been there present. The next fact is the buying of the tickets, at the Theatre. As to this George Atkinson gave no evidence. John Atkinson imputes the purchase of the tickets to another person not now upon trial. The next transaction is that at Ship-street just before the opening of the theatre: George Atkinson states, that George Graham, Forbes, and Henry Handwich, were there: John Atkinson says, that Forbes was there, but has not mentioned the names of the others. As to the Theatre, which is the next stage of the transaction, John Atkinson, in his direct examination did not mention the name of any of the Traversers, as having been there, except Forbes. On his cross examination, however, he said he saw Henry Handwich in the Upper Gallery. George Atkinson goes further. He saw George Graham, Forbes, and Henry Handwich at the Theatre. The last transaction is the meeting at Flanagan's, at which George Atkinson describes Forbes, William Graham, and Brownlow as present. John Atkinson mentions them also; but they differ in their account of what Forbes said and did on that occasion. They differ also, as to the share that Brownlow took: but, as to him I shall make no observations, because I look upon him, after what passed yesterday, to be fully acquitted.

Such, Gentlemen, is a summary of the narrative of these two witnesses. It is not necessary, I am sure, to

state, that if you believe what they say, they have in the fullest manner, proved the whole of the crimes imputed by these informations against the several persons mentioned in their evidence. But whether you believe them or not, is the first question for your consideration; and here I shall make a few observations on the nature of the testimony of accomplices. Every accomplice is in law a competent witness; the Judge is bound to receive him, but whether he is credible is for the Jury alone. In determining that question, various circumstances must be taken into consideration. In the first place the man who thus comes forward proves himself to be in a certain degree destitute of moral sense by admitting himself to have been a participator in guilt. In estimating the credit of a man, we are naturally led to inquire what is his moral character, and if you find that exceptionable, it will make you cautious in relying upon his evidence. But in following this principle to its practical results, it will be necessary to recollect the nature of the crime in which the Witness admits his participation. A man guilty of an atrocious offence, whose hands have been stained with blood, or whose heart has been polluted by treason, is a competent witness; but unless satisfactorily corroborated, a Jury will seldom act upon his testimony. However if the crime be of a less dark complexion, the inference to be deduced from his admission of being concerned in it, will be proportionably weakened. In this case you will remember the nature of the offence of which the Witnesses admit themselves guilty, and consider to what extent their participation in such a crime will entitle you to hold them unworthy of credit; especially when that crime in the progress of the defence has been represented to you as not merely venial and excusable, but as actually meritorious. An offence committed under the influence of party spirit or the delirium of political feelings, is very different from enormous crimes, indicating great moral depravity.

There is, however, another source of discredit in every case of an accomplice, which a Jury is bound to take into

consideration. I mean the interested motives which may induce such men to come forward—sometimes perhaps to escape punishment—to save their lives—to shield themselves from prosecutions—or to entitle themselves to rewards. In all these cases a Jury should act with such jealousy, as almost to reject their evidence, unless satisfactorily corroborated by other and more unimpeachable witnesses. In this case the Atkinsons have been cross-examined as to their motives, and although this is not a case in which the lives of any of the parties are at stake, or in which the witnesses could have had any danger of that sort to apprehend; yet according to my recollection, one, if not both of them, distinctly admitted that he was influenced by the hopes of retaining situations which some of their family hold in public offices; a circumstance well deserving the attention of the Jury. Another topic has been glanced at, in order to show, that the Atkinsons are unworthy of credit, which the Court feels itself bound to advert to—it was stated hypothetically, that if it be part of the Oath or obligation of an Orangeman to keep inviolate the secrets of his brethren, these witnesses ought to be considered as stigmatized for violating that oath. No such oath or obligation has been proved to exist. I trust it could not have been proved, for if such an engagement forms part of the Orangeman's oath, it would be impossible to administer the justice of the Country in any case such as the present, in which one Orangeman is concerned as a party, and another is a witness. Nothing of the kind has been proved; and we are to hope and presume that it does not exist.—But if unfortunately it had been proved to exist, it would have been the bounden duty of the Judges who are sworn to administer the laws, to state to you, that the crime of the witnesses would consist in the observance of such an oath, and not in the violation of it; and that if two inconsistent obligations should come into collision in any man's mind, the one voluntary, secret and unlawful, (for unlawful such an oath unquestionably would be;) and the other public, and sanctioned by the laws of

his Country, as an oath in a court of Justice is, it would be the duty of that man, upon every principle of law, of morality, and of religion, to observe the oath he had taken in court, and trample upon the criminal obligation by which he had bound himself elsewhere.

Upon this subject of the credit which may be given to accomplices, it is right that I should make another observation. There never (it must be admitted) existed any man so bad or depraved, but that he might possibly speak the truth : and therefore, when a witness gives evidence in a court of Justice, it is not the true question whether he is or is not a credible person, for that is only part of the means of forming a judgment upon the real question— which is, whether what he states be true; because it is possible that an incredible man may disclose the truth. The way to discover whether he has done so or not, is to try whether his statement be substantiated by other evidence, either of the facts to which he has deposed, or of such a state of facts as is inconsistent with any thing but the truth of what he has sworn. By that test, I therefore call upon you to examine the credit due to these two accomplices in this case, and consider, whether, to the satisfaction of a sound unperverted understanding, conscientiously deliberating upon the subject, their testimony be corroborated by the other witnesses who have been examined.

The corroboration relied upon by the Crown in this case is two-fold. First, the proof by Witnesses alleged to be credible, that in point of fact a riot was committed in the Theatre by the very persons whom the Atkinsons have described as engaged in it: this would go to establish the charge of riot; and secondly, the inference drawn from the character and nature of the riot, that it was impossible it could have arisen from a sudden or momentary impulse, or have been the result of any thing but a previous conspiracy; and in support of that latter view, a fact is relied upon, which is certainly worthy of careful consideration. I mean

that printed placards, containing sentiments in unison with the language held by the Rioters, were dispersed through the Theatre by some of the Traversers. This circumstance, it is alleged, furnishes indubitable evidence of premeditation and design. Whether it does or does not will be for you to determine; and in considering it you will remember that no account has been given to you by the Traversers of the use intended to be made of these placards; or of the origin, printing, or composing of them; or of any honest purpose for which they were prepared.

In order to see how far the evidence of the Atkinsons is corroborated, I shall take the Traversers at the bar one by one, and read the statement of each man's case as distinct from the other.

The first whom I shall select is James Forbes. There is a fact of corroboration as to him, if you think it bears upon his case, (on which you have a right to decide,) very worthy of your attention. Mr. Lowther, the Box-keeper, swore, that on the morning of Saturday, Forbes, together with two others, one actually along with him, and the other near, bought a quantity of pit tickets, and that the number each purchased was at least six. You will therefore find that so much of Atkinson's story as relates to the procuring tickets for the poorer order of Orangemen is supported by the evidence of Mr. Lowther, if you believe that the tickets purchased by Forbes and his companions were purchased for that purpose; in considering which you will recollect that Forbes has not gone into evidence to shew for what purpose he required those tickets, which certainly were not for his own use, as he sat in the boxes.

The next Witness against Forbes, who corroborates Atkinson, (I do not mean generally, but in particular parts of the case) is Mr. Graves, who says that Forbes was most active in the riot; that he stood in the upper lattices, where they are connected by a grate with the upper gallery;

a part of the house, you will recollect, from whence it is proved, that some of the placards were thrown; that he was, with two others, apparently using whistles; that immediately afterwards he saw him in the act of whistling, and that on Mr. Graves asking him why he did so, he said, for fun; that he took him into custody, that he observed his hand shut, that upon his requesting him to open it, he did so reluctantly, and that a small whistle was found in it. If you believe this, the testimony of the Atkinsons is in an important and material point corroborated. Be the Atkinsons who they may, be they ever so infamous in character, the fact of Forbes's using a whistle at that time and place, you cannot doubt, unless you discredit Mr. Graves.

The next Witness, who as to Forbes corroborates the statement of the Atkinsons, is Mr. G. Farley, who deposes to the scene at Flanagan's in Essex-street. If he has described truly the occurrence at the Tavern, he has sworn to a state of facts, and declarations and speeches, some by Forbes, and others made in his presence, utterly inconsistent with the innocence of Forbes, either as to the riot or the conspiracy, and which are in exact conformity with the evidence of the Atkinsons, as to the nature of the conspiracy, and as to the intentions of the parties concerned in it. James Troy is another Witness, who affects Forbes in the same way. Both these men concur in the kind of evidence which I have been representing, which identifies Forbes with the guilt of the conspiracy and the riot, even of the very worst part of it. But, Gentlemen of the Jury, on the other hand you will have to consider that Mr. Poulson and Mr. Smith have been produced on the part of the Travellers, to give an account of the transaction at the Tavern. To a certain degree they have supported the evidence of Farley and Troy, and to a certain degree they have contradicted it. I must leave it to your sagacity and fair investigation, to discover to what extent their evidence supports or overthrows that of the Atkinsons, and what influence it ought to have upon your minds.

The next party, with respect to whom, I shall call your attention for the purpose of trying the credit of the Atkinsons, by the test of corroboration, is Henry Handwich. The first Witness in corroboration as to him, is Christopher Moran, who saw him (if you believe him) rioting in the gallery. The next is Michael Farrell, who saw him throw a bottle, and heard him use expressions offensive to the Lord Lieutenant. This fact of throwing a bottle, is not charged against him in any of the Counts of the Informations—but if true, it is a strong fact against him in support of the charge of riot. As to the fact, it has been alleged—first, that no bottle was at all thrown—secondly, that even if a bottle were thrown, Henry Handwich did not throw it. Upon both assertions, you will exercise your judgments; but from one difficulty your minds must be now relieved—I mean the allegation that it was impossible to throw a bottle from that part of the upper gallery—in support of which, the Prompter was produced with a map of the Theatre—if his evidence excites any doubt, you find it removed by a Witness, whom Henry Handwich himself produced, I mean Mr. Brocas, who swore that he saw a stick or rattle thrown exactly from behind the place where Henry Handwich stood; which is the same place from which it is alleged to have been impossible to throw a bottle. We have it proved, (if you believe Captain Webster's evidence,) that that rattle hit the cushion of the box next to that of the Lord Lieutenant. If no bottle were thrown, therefore, it is not because the thing was impossible. The next Witness, who swore to Henry Handwich's participation, was Doctor M'Namara; he says he saw him throw the bottle, after an expression of "boys mind your fire." This expression is not proved by any other Witness—on the contrary, every one of them denies having heard the words. That circumstance, together with what has been sworn by Mr. Trench, must have a strong effect upon your minds, as to the degree of credit to be given to Doctor M'Namara. Independently of what Mr. Trench has sworn, and of the particular expression to which I have alluded, I believe you

were very much struck (as I confess I was) with the circumstance, that a man situated in the middle gallery, should be so positive as to the person of a man in the upper gallery, whom he had never before or afterwards seen, as to be able at the end of two months to recognize him this day in the Court. All this makes his evidence open to a good deal of observation. Mr. Trench does not consider him worthy of credit on his oath. If that opinion were formed from the result of the trial at the Sessions, it would seem to rest on very slight foundation. That transaction, as far as we have at present the means of understanding it, seems a very strange kind of proceeding. We are not however at liberty, in our present imperfect view, and ignorant as we are of the facts of it, to pronounce upon it. Mr. Trench has however given more legal and satisfactory evidence by swearing to the general character of the Witness; should you discredit him, the effect will be to withdraw him from the number of those who support the testimony of the Atkinsons, but will not necessarily impeach the credit of those other Witnesses, or render them unworthy of your consideration. For it may be true, that Henry Handwich threw that bottle, and yet that Doctor M'Namara did not see him throw it. Let us suppose, therefore, his evidence rejected and condemned by you, yet still, Moran and Farrell prove the fact of Handwich participating in the riot, provided you believe their evidence. But is there nothing further in the case against Henry Handwich? I am now to call your attention to the testimony of Mr. Brocas; not of an enemy but a friend, his own Witness, the man to whose credit he appeals, and whose oath he calls upon you to believe. As to this man however you are not bound to believe him because he is a Witness in the defence; you may disbelieve him, though produced by the prisoner; but if you do believe him the result of his testimony is this—he has acquitted Henry Handwich of the charge of throwing the bottle, a charge not contained in either of the Informations, but he has affixed upon him every other charge which is contained

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in them. In the way in which I took the evidence of Brocas it really did appear to me, to furnish more distinct and precise proof, not only of Henry Handwich's participation in the riot, but of the nature and extent of that riot and of the previous conspiracy, than all the Witnesses for the Crown put together had afforded.

It appeared to me, that he gave the most distinct and precise evidence of an actual riot, that must have been the result of a previous conspiracy. If you recollect, he stated, that the Lord Lieutenant was repeatedly insulted. He mentioned the words sworn to by the Atkinsons. He says there was a riot, in the course of which he saw a rattle, or part of a rattle, thrown at the Lord Lieutenant, as, (if you connect Captain Webster's evidence with his) must be inferred: a riot, in which placards were used, and in which the same watch word deposed to by Atkinson, was repeated. In short, if I were to take up the Counts of these Informations, one by one, I should find something in the testimony of Brocas to support every Count in each of the Informations—and if he had not been produced as a Witness for the Traversers, I should have supposed that it was from his lips and instructions that the Crown pleader had framed the Informations. If upon this man's evidence, you believe, that there was such a riot, in which Henry Handwich participated, you will be bound to find him guilty upon the evidence of his own Witness. But if you believe him, you must suppose something further, and you will be bound to find every one guilty, whom you shall believe to have joined in the riot, either by encouragement or otherwise, in any part of the Theatre. If from Brocas's evidence you shall be satisfied, that there was a riot of such a description, as is inconsistent with any other supposition, than that of a previous conspiracy, then his evidence applies in corroboration of the Atkinsons' as to that charge. I have already alluded to those parts of it, the throwing down placards, and the use of the words "look out," which Atkinson swore were preconcerted.

The next party to whom your attention is to be directed, with reference to the question how far the Atkinsons are corroborated, is Mathew Handwich—as to him, you will find that the only corroboration which they receive, is from Eastham, who says, he saw him actually engaged in the riot; and from Moran, who states, he was active, and that he cried out “a groan for Wellesley,” and “down with the Popish Government.” If you believe this person, you must find Mathew Handwich guilty of the riot. As to his greater or smaller share in it, that is not for you; it will be a matter for the future consideration of the Court, if he should be convicted. There is no other evidence against him, and should you have a conscientious doubt about him, you are bound to acquit him.

The next Traverser whose case is in this view to be noticed, is William Graham. The first fact against him, as to which Atkinson is corroborated, is an important one. It appears by the testimony of Mr. Lowther, who knew Graham, that he purchased at least six pit tickets in the Theatre. John Atkinson, in describing his going to the Theatre to buy tickets, drops the name of Graham. He does not mention him, whether from forgetfulness, or indulgence, or favour to him, we cannot say; he omits his name and does not criminate him. But Lowther swears that he got six pit tickets at the least: he adds to that, that though he bought six pit tickets, he took places in the boxes for his family. We find him in the same circumstances as Forbes, buying more tickets than he wanted for himself; in this respect the evidence of Atkinson as to the fact of buying tickets is corroborated. John Lambert also swore, that William Graham hissed and groaned the Lord Lieutenant, and that he had in his hands printed handbills, which he brought in with him to the Theatre. One more corroboration remains, and that is, the testimony of Farley and Troy, as to what passed at the Tavern in Essex-street. Graham was then present. You will consider, as I have already said to you when speaking of Forbes, whether their

credit is taken away by Smith or Pounden ; but if you believe them, they swear to facts against Forbes and William Graham, utterly incompatible with the innocence of either, and fully confirmatory of the evidence of the Atkinsons.

The next person is George Graham. The testimony of the Atkinsons against him is corroborated by four witnesses. One of them, Philip Ryan, saw him active in the riot, and saw him throw a piece of the rattle after breaking it. James Tiernau saw him also actively engaged, and throwing the head of the rattle. He never lost sight of him till he was in custody. Serjeant Major Harris saw him active in the riot, and saw him throw the rattle. The fourth is that same Brocas, who though he does not reach Graham individually, as the person who threw the rattle, yet stated directly that it was thrown.

The only other party is Brownlow. The prosecution is given up against him, there being no evidence against him, except what relates to the Tavern in Essex-street. It would appear very plainly, that if he had been originally engaged in this conspiracy, he declined, from compunction or timidity, to go on with it ; he was rebuked at the Tavern for withdrawing himself from the confederacy, and seems to have made no very satisfactory defence against the charge.

It appears to us, therefore, that there is very little evidence against him. The Attorney-General, however, has taken a course very satisfactory to us, by giving up the prosecution against him.

I have now stated the corroborations of the Atkinson's by nine distinct witnesses, as to the several Traversers in different degrees. Independently of these nine, you will find six other witnesses, who, without implicating any particular individual, or pointing out any of the prisoners,

corroborated the Atkinsons as to the nature and extent of the riot. There are John Rooney, Charles O'Flaherty, Giles O'Brien, Philip Staunton Cahill, Captain Webster, and Mr. Brocas. All these depose to the fact of the riot, and the nature of it.

Of the six witnesses whom I have last enumerated, though none identify any of the Traversers, yet three swore to the throwing the bottle—Rooney, O'Flaherty, and the medical student Mr. Cahill; and the other three swore to the throwing of the rattle, O'Brien, Captain Webster, and Brocas. The Atkinsons therefore appear to be corroborated as to the Traversers by nine witnesses—by six as to throwing of the stick, and by five as to throwing the bottle; in all by fifteen persons, and all this independently of the transaction at Flanagan's, deposed to by Farley and Troy.

Gentlemen of the Jury, this is the whole of the evidence on the part of the Crown, in an abstract form. The witnesses on the part of the Crown have been in part contradicted by some called on the part of the Traversers, whose testimony I shall presently read, and have already alluded to—you will judge to what extent the contradiction extends, and to what weight it is entitled; and whether it be sufficient to excite a reasonable doubt, as to the guilt of any of the Traversers:—You will recollect that the Traversers were charged with this offence, immediately after the riot occurred; and of course might easily have produced persons either to prove that they were not at the Theatre, or that their demeanour there was peaceable. The former was not attempted, and the only witness produced for the latter purpose was Mr. Brocas, upon whose testimony I have already observed. The testimony of Dowager Lady Rossmore does not apply to either of these objects, but at first seemed calculated to induce a belief, that no riot whatever had taken place—however, it is quite plain, that

no such inference can be drawn from her Ladyship's evidence, or indeed any inference very material in the present case—although it appears, very creditably to her courage, that she was not in the least alarmed by what she witnessed. But although she did not observe occurrences in her own box, to which Captain Webster gave evidence, particularly the apprehensions and illness of Lady Anne Gregory, yet, such difference of recollection between those respectable persons cannot properly be considered as a contradiction of the one by the other, or any thing but what, in such a scene, is not surprising, that one did not see and hear every thing that was heard by the other—a circumstance the more to be expected, when the age of Lady Rossmore is recollected, as her sight and hearing are, as she states, in a certain degree impaired.

Some of the Traversers have also gone into evidence of character. Such evidence is admissible, but the effect of it is this, and no more—that if there be a rational doubt, that doubt ought to be much influenced in favour of a Traverser, by his good character, inasmuch as it is improbable that such a person should be guilty of what is imputed. But in a case free from doubt, such evidence is of little or no value. A man proved to be guilty is not to be acquitted, because he has heretofore borne a good character. The nature of the character is also material. If a man be charged with murder, evidence of his being a humane man will be important; so will character for honesty on a charge of robbery,—or for a peaceable disposition in the case of a charge of riot. You will judge how far in this respect the evidence of character relied upon here applies. I cannot omit one observation; the character here given, is a character for loyalty. Loyalty, well understood, implies an attachment to the Laws, the Sovereign, and the Constitution. A loyal man, therefore, thus considered, will not

be likely to insult the King's Representative, or violate the Laws.

But if the principle of loyalty be in any instance perverted into a particular direction, or if a man has taken any partial view of what ought to be the conduct and feelings of a loyal man, perhaps you will not think that evidence of a character for loyalty, when you advert to the nature of the defence in this case, in the course of which the crime was almost justified as a loyal act, is to have as much influence as in an ordinary case it might be entitled to. (His Lordship then minutely read from his notes the whole evidence from beginning to end.)

MR. JUSEICE JEBB.

*Gentlemen of the Jury,*

Had there been any difference of opinion in the Court, upon the law of the case, it would have been the duty of every member of it to declare his opinion upon the subject; or if any of the Judges conceived, that in the summing up of the evidence, or the observations made upon it by my Lord Chief Justice, any inaccuracy had existed, we should have been likewise bound to notice it; but when a perfect unanimity prevails in these respects, and where we all concur in thinking, that no error has been committed in the recapitulation of the evidence, or in the observations with which it has been accompanied; that no position has been advanced, which is not supported in point of law, and no topic has been omitted, which ought to have been adverted to, it would be an unwarrantable consumption of the public time, and not conducive to the attainment of justice, were I to detain you by a charge. If I dissented in any respect from my Lord, with respect to the law as applicable to the present case, I should be guilty of an unpardonable dereliction of duty, if I did not express my opinion on the sub-

ject. If I thought that the observations which have been addressed to you were not sustained by the evidence, that in the comments which have been made upon it, more stress had been laid upon any part of it than it deserved, or that any portion of it had not received the due attention to which it was entitled, I should, without regard to what has been already addressed to you, and still more to any personal considerations, discharge the duty which would have devolved upon me. But concurring, as I fully do, in what the Chief Justice has declared to be the law, and agreeing with him in the view which he has taken of the evidence, and of the topics which have been irrelevantly introduced on the present trial, I feel it unnecessary to add any thing to what has fallen from him. In his recommendation to you to discard from your consideration the topics to which I have alluded, I perfectly coincide: as also in his masterly and luminous arrangement of the evidence in the early part of his charge, and the accuracy with which it was finally detailed. I have, by a careful comparison with my own notes, satisfied myself of its correctness.

I do not think, however, that I ought to content myself upon the present occasion, with merely expressing my concurrence with the head of the Court. I owe it to myself, as well as to the public, to say, that that concurrence has not been the result of any hasty or inadvertent impression. I have considered the subject in all its bearings, with the anxiety which should govern a judge in every case, and particularly one of such great public importance as the present. In coming to the conclusion of unanimity with my brethren I have not bowed to any superiority of understanding: I have first consulted my own, and applied it coolly, calmly, and indifferently to the subject. So much with respect to the law. As to the evidence, and the law bearing upon it, I have devoted the whole of the leisure hours, after the adjournment of the Court, to a careful examination of the

evidence of each day ; and the result of my labour has been, my perfect concurrence with my Lord, in the law as stated by him. I conceive, therefore, that I best discharge my duty, by expressing my opinion to be in conformity with his, that if you believe the evidence, the informations have been both supported.

MR. JUSTICE BURTON.

I think it only necessary to state, that I fully concur in all the legal propositions laid down by my Lord, and in every observation which he has made upon the evidence ; and that no additional remarks seem to me to be necessary.

MR. JUSTICE VANDELEUR.

I have only to express my entire concurrence in every proposition which, in point of law, has been laid down by the Chief Justice. With respect to the observations upon the evidence, they have been so clear, so luminous, and so satisfactory to my mind, that I should think myself unjustifiable, were I to do away the effect of that light which they have thrown upon the trial.

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The Jury having retired, and remained a considerable time in consultation, the Court desired that they should be asked whether they were likely to agree ? To which they answered in the affirmative. An interval of some time, however, having elapsed, the Court directed the Jury to be called, who on being asked, whether they were likely to agree soon, answered that they were not ; whereupon the Court adjourned until nine o'clock ; intimating, that if the Jury should agree in the interim, the Judges would assemble, upon being apprised of that fact.



The Court having met again accordingly, the Jury were again called out, and being asked whether they had agreed, answered that they had not, and were not likely to agree. The Court asked Mr. Greene on the part of the Crown, and Mr. Hamilton on part of the Traversers, (the only Counsel in Court,) whether they had any proposition to make: they severally said, they had nothing to offer. The Court then adjourned until the next morning.

## SIXTH DAY.

The Judges having taken their seats, the Jury were called out.

Mr. JUSTICE JEBB. Gentlemen of the Jury, have you agreed?

The FOREMAN. We have not, my Lord.

Mr. JUSTICE JEBB. The Court wish to know, if you have any difficulty in point of law, on which you desire to be informed.

One of the Jury answered no.

Mr. JUSTICE JEBB. Gentlemen, are you agreed as to any of the Traversers?

The FOREMAN. Only as to Brownlow.

(The Jury retired.)

The Attorney General, shortly after the Jury had retired, said, that as there was no probability of their agreeing, he, on the part of the Crown, would not stand in the way of any discretion which the Court might think fit to exercise.

**Mr. JUSTICE JEBB.** Until the period prescribed by law, it is not in the power of the Court to discharge the Jury; but if the Counsel on each side make no objection, they may be discharged now.

The Attorney General desired that the Traversers should understand that they were to stand out on bail, as it was his intention to bring the case again forward.

The Jury were then called, and being asked whether they had agreed; answered that they had not, except as to Brownlow: a verdict of not guilty was then taken as to him, and the Jury were thereupon discharged, by mutual consent.

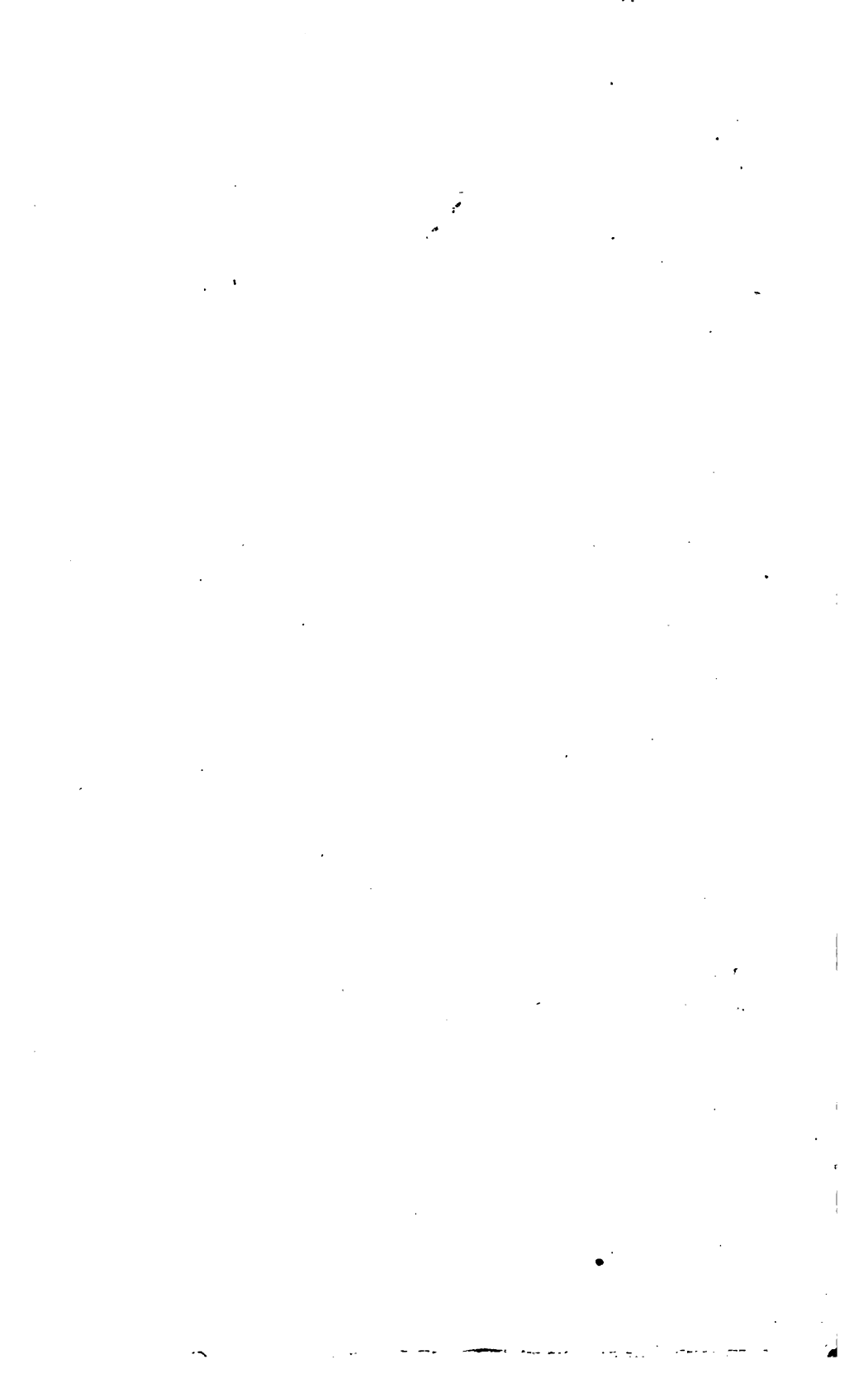
The Attorney General afterwards intimated to the Court, that the Traversers should still be held under their recognizances, to abide the result of another trial, in case he should, upon consideration, be advised to submit the case to a second investigation.

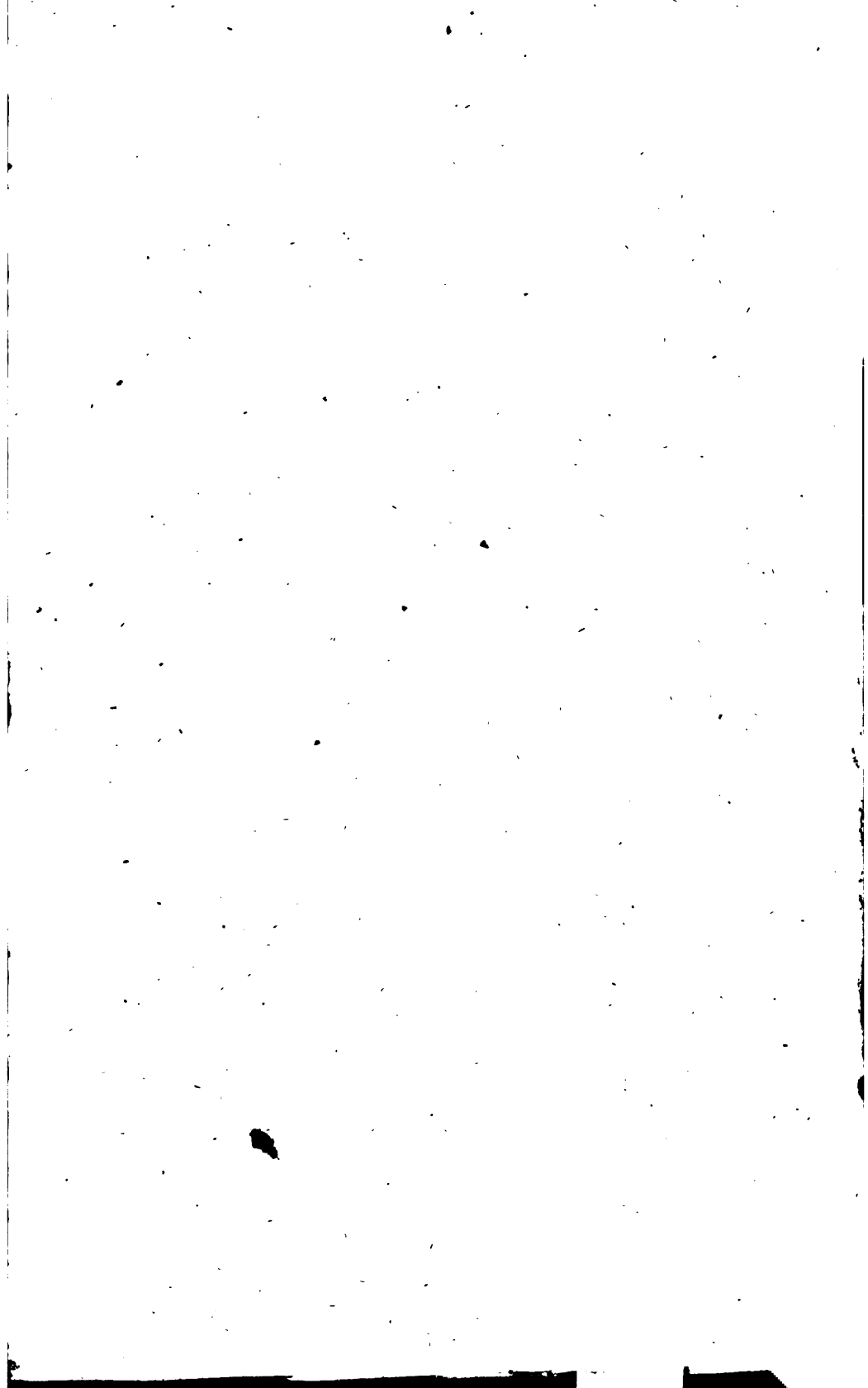


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**R. MILLIKEN,**  
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