





A  
REPORT,  
OF AN  
INTERESTING CASE,

WHEREIN

Mr. FRANCIS DOYLE,

OF CARRICK-ON-SUIR, MERCHANT AND CLOTH-MANUFACTURER,

WAS PLAINTIFF,

AND

SIR THOMAS JUDKIN FITZGERALD,

HIGH SHERIFF OF THE COUNTY OF TIPPERARY, IN THE YEAR 1798,

WAS DEFENDANT.

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*Tried and determined at Clonmel Spring Assizes, Monday,  
April 9, 1801,*

Before Lord Avonmore.

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# REPORT, &c.

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THIS important and interesting cause, a cause which engaged the attention, and excited the expectation of the public mind for these three years past, was tried at the Spring assizes for the county of Tipperary, held in Clonmel, on Monday the 9th of April, 1801, before Lord Avonmore, who presided as Judge, and an uncommonly crowded Court.

## NAMES OF THE JURY,

<i>E. Taylor, Foreman,</i>	<i>William Quin,</i>
<i>Stephen Hastings,</i>	<i>Richard Millet,</i>
<i>Purefoy Poe,</i>	<i>Southwell Moore,</i>
<i>Wills Crofts,</i>	<i>William Despard,</i>
<i>George Tuttle,</i>	<i>Richard White,</i>
<i>Denis Duane,</i>	<i>Thomas Going, Esqrs.</i>
Counsel for Plaintiff,	For Defendant,
<i>Mr. Fletcher,</i>	<i>Mr. Egan,</i>
<i>Mr. Burrowes,</i>	<i>Mr. O'Dwyer,</i>
<i>Mr. Driscoll,</i>	<i>Mr. Lloyd.</i>
<i>Mr. Bushe,</i>	<i>Mr. Pennefather,</i>
<i>Hon. Mr. Yelverton,</i>	<i>Mr. Going,</i>
<i>George Ivie, Esq. Agent.</i>	<i>B. Bradshaw, Esq. Agent.</i>

The Honourable Mr. Yelverton, as counsel for the plaintiff, opened the case: after which

Mr. Fletcher, on behalf of the Plaintiff also arose, and in an animated, energetic and argumentative speech, addressed the Jury nearly to the following purport:

Gentlemen of the Jury—The present case is one of the most extraordinary and aggravating, ever before introduced into a court of justice. It is an action of trespass, *vi et armis*, instituted by

my client, to recover damages for an assault, battery, and false imprisonment, committed by the defendant, at Carrick-on-Suir, in this county, against the plaintiff, on Friday, June the 22d, 1798.

The damages, my client has laid at five thousand pounds. The defendant has pleaded the general issue, and also a special justification under the acts of parliament; notwithstanding which, he has, for these three years past, under various pretences, evaded a trial.

*Mr. Francis Doyle*, my client, and plaintiff in this case, is a respectable inhabitant of the town of Carrick-on-Suir, and there follows a respectable trade, amassing a rapid fortune by the well directed exertions of his honest industry. He is a man not less distinguished in society for his punctuality, his steady principles and irreproachable character, than his unimpeached loyalty to his king, obedience to the laws and attachment to the constitution of his country.

The defendant, Colonel *Fitzgerald*, is a man of great hereditary property, and has been, from his infantine age, employed in the cultivation of his mind, and in the acquisition of science and literature; thus imbibing from the celebrated sages of Greece and Rome, those principles of knowledge, which so strongly inculcate the love of virtue, the abhorrence of despotism, and the dignity of human nature. After thus receiving all the advantages of a highly polished education, we find him engaged in the honourable profession of the law, the study of which, above all others, eminently qualifies men for the magisterial offices of the state, by rendering them intimately acquainted with the various obligations of social order. I knew Col. Fitzgerald at College, and when

when studying the law. I then thought him a man of a good disposition; but what was my subsequent astonishment and surprise, on hearing that by some unaccountable fatality, his soul became totally transformed, his blood corrupted, and the milk of human kindness curdled into gall.

In the year 1798, Col. Fitzgerald was high sheriff of this county, in which capacity it was peculiarly incumbent on him, rather to prevent than to promote every atrocious outrage of the nature here complained of. To you, Gentlemen of the Jury, who are all men of sensibility, honour and information, I appeal, whether he can plead ignorance in extenuation or excuse for the illegality of his proceedings, and inhumanity of his conduct, toward my unhappy client. On you, then, Gentlemen of the Jury, I call for damages.—I call upon you for damages.—Yes, Gentlemen, I again—I again call upon you for damages, as far as money can be deemed an equivalent atonement for my client's unparalleled sufferings.

On the 22d of June, 1798, the defendant Col. Fitzgerald, entered Carrick-on-Suir, at that time in the most perfect state of peace and tranquillity. He came, attended by a troop of foreigners and a corps of yeomanry. He was accompanied by a man of the name of Stephen Devany; a man, long before, notorious for his abandoned and infamous character, who was taken from the jail of Clonmel, and, as a ransom for his forfeited life, became one of those abominable pests of society, a common informer. Among his attendants, were some drummers too, the dreadful instruments of his torture. There he found the miserable plaintiff, who was a member

of Captain Jephson's yeomanry corps, and in that era of universal alarm, had always been uniformly attentive to the duties of a soldier. Him the defendant found in the act of accoutring himself, preparatory to the performance of such services as his officer may deem necessary for maintaining his sovereign's authority, and a due subordination to the laws. He was instantaneously attacked and assaulted by the sheriff, and charged on the unsupported information of the perjured Devany with being a rebel, and supplying the disaffected with pikes. Doyle, foolishly thinking innocence a sufficient protection against the fury of this barbarian, denied the charge. Fitzgerald declared he would flog. Doyle threw himself on his knees, implored, entreated, and besought him by every argument that conscious innocence could supply, to grant him that which has been hitherto deemed the unalienable right of every subject under our constitution—a *trial*.—The respectable gentlemen of the neighbouring country, whose duty necessitated them to accompany the chief magistrate of the county, in order to assist him with their abilities and advice, convinced of Doyle's innocence, from their personal acquaintance with him, and that intimate knowledge of his private character, which their local situation afforded them, joined him in his solicitations for a trial. Ineffectual was the interposition of the neighbouring magistrates, who, from similar motives, interceded for Doyle.—To no purpose they knew Doyle to be a loyal man—to no purpose did they urge Doyle's uniform propriety of conduct in life, and consequently the improbability of committing the crime laid to his charge—to no purpose did they represent the small degree of credit to be attached to Devany's evidence—



evidence—to no purpose did they urge their personal knowledge of that infamous informer's perjury. Deaf to all arguments, and equally inexorable to all entreaties, Fitzgerald ordered the fatal ladder to be erected, and after repeatedly striking the miserable victim, still prostrate on his knees, in the degrading posture of a petitioning suppliant, he dragged him to the ladder, had his hands tied, and got him flogged. After his mangled flesh was lacerated and torn off from between his shoulders, the unfeeling Fitzgerald ordered his breeches-strings to be untied, and as if stimulated by a brutal and sanguinary passion for flagellation, he caused the stripes to be inflicted on the writhing victim's bare posteriors, in a manner so dreadfully severe, so shocking to the feelings of humanity, as must affect the breast of every person, who deserves the appellation of *man*. Thus, with unrelenting severity, did he receive one hundred lashes! But why dwell upon so dreadfully disgusting a subject, or harrow up your sensibility by a further description. You shall take it from the mouths of the witnesses. I shall not pollute mine by a further recital. Scarce were fifty stripes inflicted, when the miserable sufferer fainted under the torture. His fleeting senses were recalled; but to what purpose? to inflict fifty more! Good God, Gentlemen of the Jury, can you believe it—on his being let down from the ladder, the *humane* colonel, after thus mangling his flesh, still adding insult and mockery to his suffering, tauntingly told him, he should undergo the same operation, and receive a similar number of lashes, next day!

What must the principles, nay the Roman fortitude of that man be? What the feelings of his

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his relatives and family? what the sympathy of his fellow-yeomen who were arrayed on the occasion, and drawn up to be tame spectators of this ignominious sight?—what?—were they rebels?—they must be men of more than human patience, submissively to bear with such a dreadful spectacle, as that of having their neighbour, friend and fellow-soldier, thus contumeliously punished before them, and that with arms in their hands.

On what evidence, Gentlemen of the Jury, was this done? on the unsupported evidence of a perjured informer; one of those wretched tools of tyranny; one of those execrable instruments of despotism, resorted to in the unhappy reign of Tiberius. Well did the cobbler know, that he may here vent his rage and malice with impunity.

But what actuated the defendant, Colonel Fitzgerald, to these acts of wanton and unprovoked cruelty?—Loyalty it could not be, Could a person whom we have seen disregarding all law, and mocking all religion, be esteemed loyal? Could the person whom we have seen provoking the well-affected to acts of insurrection, by his arbitrary and illegal treatment of innocent men, be deemed loyal? It could not be. It is impossible to know, as far as I have been able to investigate his actions, what to ascribe his conduct to. You, Gentlemen of the Jury, must cogently feel what will induce you to grant him a verdict.

The defendant is a lawyer, and consequently conversant in all the intricate subtleties of the law, notwithstanding which, he rests not his defence on the fair justice of his cause, but puts his total reliance on the two indemnity acts. The more particular interpretation of those acts you, Gentlemen of the Jury, will hear from the noble  
 Lord,

Lord, who presides on the Bench: I shall only observe, Gentlemen, that the first states, that disturbances existed in the country; that many persons have illegally acted in order to suppress them. To all who have so acted, it grants an indemnity with this condition, however, that they have so acted on reasonable grounds. Under this act the defendant cannot screen himself. The reasonable grounds fail him. Where was the urgency of inflicting instantaneous punishment? especially in the town of Carrick, a town which, as shall be satisfactorily proved in the evidence to be immediately adduced, was then in a state of the most profound tranquillity and peace. Why was not Doyle detained, if the defendant thought there were the least grounds of suspicion against him? or why did he not hold some court of inquiry, composed of the officers or magistrates then present, on Doyle, before the infliction of torture.

The second act limits the time of bringing actions of this kind; this part does not bear against my client's case, for the present action has been brought within the time prescribed. This act next enacts, that to render a verdict for the plaintiff of any avail, in case the defendant set up state-necessity for his defence, the Jury must find that the defendant acted maliciously. Now, Gentlemen of the Jury, his Lordship will tell you from the Bench, that the malice here meant, is not personal malice towards the individual, but what in law is called legal malice. It is that species of malice, which the Sheriff's conduct in Carrick on that day sufficiently evinced, whereby it is evident, that the operating principle by which he was actuated towards the inhabitants of that town, was an evil disposition towards mankind.

It is not, it cannot be an individual malice to any particular man, but it is the same malice with that which, in law, constitutes murder. To justify you, Gentlemen of the Jury, in refusing to certify, you must be thoroughly convinced that it was necessity, imperious in its nature, and admitting of no delay, which compelled him to the illegal commission of those atrocious enormities against the peaceable inhabitants of that town.

But supposing for a moment his motives were pure. Consider, Gentlemen, the means employed by the defendant. Good God! what could justify a High Sheriff, one of the first officers of the land, in the commission of the most wanton acts of indiscriminate and unprovoked aggression and outrage, ever perpetrated; in branding with the promiscuous appellations of traitors and rebels; in violently assaulting all with his sword; in forcibly pulling off their hats from their heads; in compelling them to kneel down before him, at the same time, in a mandatory tone, and with a terrific countenance—“*how dare the rebels stand with their hats on in the presence of majesty.*” But what, above all, could instigate him to the infliction of torture, a species of punishment, now thank God, banished from every civilized state in Europe, and scarcely known among the rude and uncultivated subjects of northern despots. Torture has been always prohibited, even during the darkest ages of superstition and ignorance, by our constitution; and on taking a retrospective view of this present period, what will posterity say, when they find that torture has been resorted to, at the close of the eighteenth century, recognized under the British government, and inflicted in the reign of George  
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the Third, a beneficent prince, who has extended his empire over the hearts of his people, and secured their obedience, not by terrific measures, but by the more conciliatory means of affection and regard.

Need I call your attention to the opinion, delivered in the Imperial Parliament by the Attorney General of England, a kingdom now constituting a part of the same empire with our own, on a motion for inserting a clause in the Martial Law Act, then passing there, in order to prohibit the use of torture. He opposed the clause, "be-  
" cause," says he, " it cannot but be known to  
" every one, that neither martial law, nor any  
" other law, either human or divine, can justify  
" its application, or authorize its infliction."

It was well-observed by that great philosopher and martyr, who, though living under the frowns of tyranny and despotism, soared nobly superior to the prejudices of his countrymen and the superstitions of an ignorant age, that " truth can  
" never be ascertained by the torture;" for tho' the guilty culprit may be induced to acknowledge his offence, in order to obtain a temporary respite from that punishment due to the enormity of his crimes, the innocent man, under the agonizing pressure of unmerited torture, will readily own the commission of imaginary guilt, for hastening his dissolution, and ridding him of his material part, in order to expedite his arrival at that desirable point, whence he may wing his way to the regions of eternal bliss.

I shall conclude, Gentlemen, by observing, that the divine spirit of our happy constitution remunerated a poor tenant in a neighbouring county, for the oppressive conduct of his landlord

towards him, with damages amounting to £1500, and that with the approbation of the noble Lord, who now presides here as Judge. Gracious God! Gentlemen, if a bare imprisonment could warrant such damages, what can be esteemed a sufficient recompense for the undeserved sufferings of my unhappy client? Who can appreciate, with equivalent damages, the writhing agonies of his tortured body, and the consequent injury done to his health? Add to these irreparable wrongs, the anguish of his mind for the ignominy of his treatment, and the impeachment of his hitherto irreproachable character. With you alone, Gentlemen of the Jury, it remains to wipe away this foul imputation, this infamous stain from off the land, by not withholding from a miserable victim, on whose lacerated limbs the defendant's eyes were feasted with more than savage complacency and satisfaction, those pecuniary damages to which he is confessedly entitled. On this extraordinary occasion, Gentlemen, your conduct and determination, as Jurors, will be minutely canvassed. Look around this crowded court; here you see the eyes of the county fixed on you, while the province, the kingdom at large, nay the whole empire are in anxious expectation of the decision of this important trial. You see then the necessity of shewing your abhorrence of such acts of wanton cruelty against outraged humanity. Let the damages laid, be to the full extent, I conjure you, as your verdict this day will highly tend to the establishment or extinction of the liberties of your fellow-subjects, and the constitutional rights of your country.

*Stephen*

*Stephen Russell, Esq. sworn and examined by  
Plaintiff's Counsel.*

Q. Do you know F. Doyle, the plaintiff, and Col. Fitzgerald, the defendant?

A. Yes, I do.

Q. Did you see them on the 22d June, 1798, in Carrick-on-Suir?

A. I did.

Q. In what capacity did you go to Carrick on that day?

A. I went there as a yeoman, under the command of Mr. Parsons, a Lieutenant in Captain Hutchinson's yeomanry corps.

Q. Who commanded the detachment sent to Carrick that day?

A. Col. Fitzgerald seemed to have the command of it.

Q. Did you see a man of the name of Devany, with the detachment going to Carrick that morning?

A. Yes, I did.

Q. What was this man's general character?

A. A most infamous one.

Q. Did Col. Fitzgerald give any particular orders respecting Doyle on that day?

A. He gave directions to have him tied to a ladder erected there.

Q. Did the Colonel use any violence in bringing Doyle to the ladder?

A. Col. Fitzgerald endeavoured to force Doyle forward.

Q. Why did Doyle struggle thus?

A. In order, perhaps, to gain time for collecting fortitude.

Q. When

Q. When Doyle came to the ladder, what did he then do?

A. He threw himself on his knees, begging of the Colonel not to flog him.

Q. What reply did the Colonel make to Doyle's entreaties?

A. He replied, that Doyle was a chicken-hearted fellow, and would be soon compelled to declare what he knew, or had to say.

Q. What was next done with Doyle?

A. He was tied up to the ladder, and received fifty lashes on his bare back.

Q. What was Mr. Fitzgerald doing, during the infliction of the torture?

A. Walking up and down, sometimes three or four yards from the ladder, but mostly at the ladder.

Q. Did the Colonel say any thing on hearing Doyle moan?

A. He said, he only wanted Doyle to declare the truth.

Q. Did Doyle faint while under the torture, or did his back bleed?

A. Doyle's back was bleeding, he fainted, and some person, whose name I recollect not, called for some water for him.

Q. Was Doyle flogged again, after he recovered from fainting?

A. He was.

Q. What was Colonel Fitzgerald doing in the mean time?

A. He conversed with some Gentlemen who seemed much affected.

Q. Can you call to mind any of the conversation that then passed?

A. Yes; a Mr. Wall in particular, told the Colonel



Colonel the informer was a man of the most infamous character.

Q. What was next done to Doyle?

A. His breeches-strings were now cut, and Mr. Fitzgerald said, *double or quit*.

Q. Where was the Colonel during this flogging, and what did he say to Doyle?

A. Quite close to the ladder, repeatedly desiring Doyle to tell the truth.

Q. Where were the second fifty lashes inflicted?

A. On the bare breech.

Q. Were these parts cut?

A. Severely cut.

Q. Did the plaintiff Doyle address Mr. Fitzgerald during this second flogging?

A. Yes, several times, but I was so affected, I cannot recollect the particulars.

Q. Did Fitzgerald say any thing to Doyle, when taken from the ladder?

A. Yes, he told Doyle he should receive the same number again next day.

Q. Did you see or hear of any disturbance in Carrick on that day?

A. I saw not the least symptom of disturbance while I was there.

*Cross-examined by Defendant's Counsel.*

Q. About what time did you reach Carrick that morning?

A. About eight of the clock in the morning.

Q. Did you hear of any informations received by Mr. Fitzgerald or Parsons, relative to the alarming state of Carrick then?

A. I did not hear of any such.

[On being asked by defendant's counsel as to his belief of any such informations being given, Mr. O'Driscol, of counsel for the plaintiff, objected to his giving in evidence, his belief thereon, as in the case of *Wright versus Fitzgerald*, which was an action of a similar nature with the present, Lord Yelverton, assisted by Mr. Justice Chamberlain, would not permit the defendant to give in evidence a written information, on which he acted.]

Q. Did you hear or believe that any of Captain Jephson's corps acknowledged themselves United Irishmen after the flogging?

A. I heard and believe they did, in a few days after.

Q. Was not your brother's house, about twenty-six or twenty-seven miles from Carrick, robbed of arms?

A. It was, but the arms were returned in three or four months after.

Q. Do you believe Colonel Fitzgerald and Doyle were acquainted before this time?

A. I believe they were perfect strangers to each other.

Q. Do you believe the defendant acted thus from pure motives?

A. Yes, from the purest and most loyal motives.

*Rev. James Smyth sworn and examined by Plaintiff's Counsel.*

Q. How did you and Colonel Fitzgerald become acquainted?

A. I got myself introduced to him, in order to intercede with him for the priest of my parish.

Q. Had

Q. Had you any conversation with him respecting Devany?

A. Yes, I told him Devany was a man of a very infamous character:

Q. What were your reasons for believing and thinking so?

A. Because I was present at Waterford Spring Assizes, 1798, when Lord Yelverton turned Devany off the table, and ordered him to be confined for perjury.

Q. Did any other Gentleman apprize Colonel Fitzgerald of Devany's bad character?

A. Yes; Charles William Wall, of Coolnamuck, Esq; also apprized him of it.

[It being objected, that this was not admissible evidence, Lord Avonmore declared it as his opinion, that it was; as he took it for granted that Devany's informations would be produced, the examination proceeded.]

Q. Were you present when Doyle was flogged?

A. I was at the beginning, but was so shocked that I afterwards went away.

Q. Did Doyle beg of the Colonel to grant him a trial?

A. Though on his knees, imploring for a trial from the Colonel, adding, that if found guilty, he would willingly forfeit his life; yet Doyle got no trial of any sort whatsoever, but was tied up in a few minutes after.

Q. Was Captain Jephson then expected?

A. He was every moment expected, as several messengers went for him.

Q. Who flogged Francis Doyle?

A. Two drummers, who attended on the sheriff, Colonel Fitzgerald.

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Q. How

Q. How were the lashes laid on?

A. They were severely and dreadfully inflicted.

Q. Do you know Doyle this long time?

A. I know him for several years past.

Q. What is Doyle's general character?

A. He has always borne the character of an honest, industrious, and loyal man.

*Cross-examined by Defendant's Counsel.*

Q. Don't you believe that the county Tipperary was in an alarming state, at that time?

A. In a dreadful state, indeed.

Q. Do you believe that any regular system was then organized for assisting the Ross rebels in their co-operation with those of Wexford?

A. I heard of such, but I did not believe there was any foundation for it.

Q. Did you never hear that General Fox gave such an information?

A. I never did.

Q. Did you hear that several of Captain Jephson's yeomen corps were United Irishmen?

A. I believe that in his corps there were some United Irishmen, according to the original acceptation of that Society; but I do not believe they were rebels: by which I mean United Irishmen, deeply implicated in the rebellion.

Q. What is your belief as to the loyalty of Doyle's family?

A. There is not, nor cannot be a more respectable or loyal family.

Q. Were any of Doyle's brothers implicated in the rebellion?

A. None of his brothers were in the least concerned in the rebellion.

Q. Did

Q. Did not magistrates from your town apply for military aid to government ?

A. I heard they did.

Q. Do you not believe that Quin acknowledged himself a rebel ?

A. I believe he did.

Q. Was not Quin a yeoman in Captain Jephson's corps ?

A. He was.

Q. Pray, Sir, what is your motive for being so interested in Doyle's cause, as to come forward with your testimony thus in his favour ?

A. Had I not believed Doyle a loyal and injured man, I should not thus interest myself in his behalf, or support him with my testimony.

Q. What are your reasons for supposing Doyle a loyal man ?

A. My reasons for believing Doyle a loyal man, are founded on the company he kept, as he was always a young man of a serious cast, always associating with the grave and respectable inhabitants of the town, and never consorting with the thoughtless, giddy or profligate of his own age.

*Joseph Anthony, Esq. sworn and examined by  
Plaintiff's Counsel.*

Q. Have you seen Doyle on the 22d June, 1798, in Carrick ?

A. I saw him on his knees, begging for a trial from Colonel Fitzgerald, who was unmoved by his entreaties.

Q. Did Colonel Fitzgerald take any notice of what Doyle then said ?

A. He made no reply whatsoever to Doyle.

Q. Did you speak to Colonel Fitzgerald in behalf of Doyle then?

A. I requested of Colonel Fitzgerald, in the most pressing manner, to postpone the flogging for a quarter of an hour, or ten minutes.

Q. What reply did Colonel Fitzgerald make to your request?

A. He asked, why I requested that delay; I answered, because Captain Jephson was instantly expected to town, as a messenger just returned, who said he left the Captain on the road, very near the town.

Q. What did the Colonel say then?

A. He said Captain Jephson had no right to interfere in his business.

Q. In what posture was Doyle during this conversation?

A. His coat was off, and his shirt was open.

Q. Were you on duty in Carrick on that day?

A. I was as an officer, and in the uniform of my corps.

Q. Were you long before in Carrick? Do you know Doyle's character?

A. I was a month before in Carrick; have been often enough there to have a perfect knowledge of the inhabitants, and know Doyle to have always conducted himself as an honest, industrious and loyal man.

Q. Did any other Gentleman intercede for Doyle?

A. Yes; Charles William Wall, Esq; also applied in his behalf, but to no purpose, as the Colonel made no reply to him, only desired the Drummers do their duty.

Q. Did Colonel Fitzgerald shew you a list of those informed against?

A. He did shew me a list, and gave it to me in order to read it.

*Cross-*

*Cross-examined by Defendant's Counsel.*

Q. Do you recollect to have seen Doyle's name in the list?

A. I believe the name of Doyle was in the list.

Q. Was there any symptom of disturbance in Carrick then?

A. I saw no appearance or symptom of disturbance in or about Carrick at that time, except the route occasioned by the Sheriff's proceedings.

Q. Do you know a man of the name of Brazil in that neighbourhood?

A. Yes, and I believe him to be a great rebel.

Q. What is your opinion of Devany's character?

A. That he was of a most infamous character?

*Charles William Wall, Esq. sworn and examined by Plaintiff's Counsel.*

Q. You know Colonel Fitzgerald, I presume?

A. I do; I am married to a relation of his.

Q. Did you see Colonel Fitzgerald on the day of Doyle's flogging?

A. I did; I met Colonel Fitzgerald before Doyle's flogging, and hearing that it was on Devany's evidence he was to be punished, I informed the Colonel that Devany was a man of the most infamous character; and in Devany's presence, I told Colonel Fitzgerald, that being on the Grand Jury of the county Waterford, I saw Devany turned off to the dock from the table for perjury, by Lord Avonmore's directions.

Q. What

Q. What reply did the Sheriff make to this?

A. Nothing; but Devany answering, said to me, "you lie, and the Lord of Tyrone knows better than you."

Q. Had you any further conversation with the Colonel respecting Doyle?

A. I told him Doyle was an honest, quiet and loyal man; and then I withdrew, on seeing Doyle prepared for punishment.

*Cross-examined by Defendant's counsel.*

Q. Have you not heard that many of Captain Jephson's corps were United Irishmen?

A. I have heard there were some United Irishmen in his corps.

Q. Which was it before or after the flogging they gave themselves up?

A. I heard it was after the flogging they were found out.

Q. Were you not obliged to remove out of that country?

A. I did, in some time after.

Q. For what reason?

A. On account of the dreadful state in which the country then was.

Q. Did you know a man of the name of Brazil, in that neighbourhood?

A. I did; he was turned out of the corps to which I belonged.

Q. Did he not attack a Gentleman's house in your vicinity?

A. He, with some others, attacked the house of Mr. Mansfield, in my neighbourhood.

Q. When was this attack on Mr. Mansfield's house?

A. It was in September, 1799.

Q. Did



Q. Did not you dread an attack on your own house ?

A. I did for some time after.

Q. Don't you believe, and did not you hear this prosecution is supported by subscription ?

A. I never heard it was.

*John Power, Esq M. D. sworn and examined by  
Plaintiff's Counsel.*

Q. Were you not called in to attend Doyle after the flogging ?

A. I was.

Q. How soon after the flogging did you attend on him ?

A. About three or four hours afterwards.

Q. In what state did you find him ?

A. He was severely mangled and bruised.

Q. How long did you attend him then ?

A. About twenty days.

Q. How long was it 'till Doyle recovered of the wounds ?

A. In about twenty-one days.

Q. Has this flogging affected Doyle's general health ?

A. I believe it has.

Q. What are your reasons for believing so ?

A. Because since that time he has been subject to bilious complaints, of which I have not known him to complain before, and which I attribute to the outrage committed against him.

Q. Was not Doyle's wife also indisposed at that time ?

A. She was.

*Cross-examined by Defendant's Counsel.*

Q. Pray, Sir, are you not by profession a Doctor in Physic?

A. I am.

Q. Will you take it upon you to swear that Doyle might not have been affected with this bilious complaint without the flogging?

A. I will not.

Here evidence on behalf of the plaintiff closed.

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Colonel *Fitzgerald*, the defendant, stated his own case; and in a long, bold speech, addressed the Jury nearly as follows:

It is with great satisfaction I present myself before you, this day, in order to vindicate my honour and reputation: and, happy for me, Gentlemen of the Jury, that you know what I have atchieved and undergone, both abroad and at home, for my king and country. To you, Gentlemen, it is well known, that when first I was invested with the dignified office of High Sheriff of the county of Tipperary, the whole resembled a great volcano; a hidden subtile flame pervaded through every part, ready to burst forth on some unexpected event, and bury all in one indiscriminate heap of ruin and devastation. To you, Gentlemen of the Jury, it is well known, that your tenants, dependants, and your very servants, were all embodied and organized in one general confederacy for massacreing you all. No private family was safe. Your domestics were all  
sworn

sworn rebels. In this time of universal apprehension and alarm, I came forward; I interposed my powers (a general laugh.) Yes, Gentlemen, I acknowledge I exceeded my powers, but for what? To protect your properties, and save you all from the hands of assassination and massacre. At the very gallows, I often offered pardon to criminals sentenced by the Judges of the land. (Here again the court was discomposed by a general laugh) Yes, I suspended executions, on condition that they would become approvers, give useful informations, and deliver up their pikes; yet so infatuated were the unfortunate people, that they would not discover: and why? because they knew, that though themselves suffered, their families would be supported. What did one man, more than sixty years of age, at the place of execution, say? Why he said, I die innocent, for I do not die for an action reputed a criminal offence among us.

I well knew, Gentlemen Jurors, that I had no power to stay executions or grant pardons, however, I did so, as supreme magistrate and governor of the county, and standing in the king's place.

Thus, Gentlemen, you all know, that every method hitherto adopted for procuring informations, proved ineffectual. Free quarters had been tried—burning houses had been tried—all to no purpose. They were productive of no informations. The magistrates of the county, alarmed at this dreadful state of affairs, were convened at Cashel, on the 27th March, 1798. Here a Secret Committee was sworn in, and three thousand pounds subscribed. By this mode, however, no informations could be procured.

I then adopted other measures more efficacious and decisive in their operation. Were there any  
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discoveries

discoveries made? Yes. Were any informations received? Yes. Was the rebellion detected? Yes. Did rebels acknowledge? Yes. Was their system disorganised? Yes, Gentlemen. Where? Every where. By whom? By *me*. This time three years ago, I came into this court, I stated what I had done; and for my conduct, and the propriety of the measures I adopted, received the thanks of the Judges of the Court, of the county at large, and of the government of the country.

On the conviction of Roger O'Connor, I found this county was to rise. I went to Dublin, and I informed Government of the matter. A man of the name of Brien O'Leary, resided at Nenagh, in this county: he was then the chief rebel of the place, though at that time I thought him an honest man, and as such, I must acknowledge, I gave him a pass on the recommendation of a neighbouring Gentleman, a Mr. Kingsley, to go to Dublin. But what use did he make of this pass? Why, upon his arrival in Dublin, he waited on Lord Edward Fitzgerald, and had repeated interviews with him, respecting the organization and subsequent arrangements of his district. On the 12th of May, 1798, I convened a meeting of the Magistrates at Nenagh; and having information that they were busily employed in organizing and getting ready their pikes and arms about that district, I came to Nenagh again, and on the 16th I got some flogged. Then I got more informations, which confirmed all in the opinion of a general rising.

The baronies of both Lower and Upper Ormond having been thus organized, I sent notices to the several chapels, that I would attend to receive their  
 submission

submission and their pikes, and grant them pardon upon informing against and delivering up their leaders. So I myself went to their chapels; I informed them of my being in full possession of their rebellious practices, and earnestly exhorted them from the very altar to come in, bring in their arms, give in the names of their seducers, their serjeants, and such officers of their districts as they knew. Thus many came in, confessed their crimes, and gave up their leaders and arms, both at Knocksheegownah, Nenagh, and elsewhere, in the parishes and public places where I preached; and you all know, Gentlemen, that I was poisoned at Nenagh; (here the Colonel was for some time interrupted by an involuntary burst of laughter through the whole court, which as soon as it was somewhat composed, the Colonel resuming his oration said) Yes, Gentlemen, I say I was poisoned in Nenagh, but God in his infinite mercy preserved me.

For obtaining informations, detecting rebellion, and enforcing discovery, I acknowledge, Gentlemen, that I adopted decisive measures and illegal means. Yes, I still avow it, but I have got the sanction of Government for them. I have the protection of Parliament, which passed the Indemnity Acts in my favour. Such acts are perfectly agreeable to our constitution, as may be seen by a perusal of Littleton, Coke, and other lawyers and statesmen's works. Such acts of amnesty passed often in England. Has not an act of amnesty passed in the 12th of Charles the Second? One passed even in 1658. Was there not one here in the reign of King William? and every body knows that an indemnity act passed in the year 1715, and a similar one in 1745.

Need

Need I mention Lord Carhampton? You all know he would not be alive to-day, but for an indemnity bill passed in his favour; and must I alone be denied that protection, who by my spirited conduct have prevented the rebellion from spreading.

You all know the general signal for rising throughout the whole kingdom was, the burning of the mail-coaches. A fire was to have been lighted on Oxmantown-hill. General Egan was to have risen at Nenagh. General Morris was to have opposed the army of Sir James Duff. General Fox was to have attacked Captain Milward, to have his right wing extended to Carrick, his left to Roscrea, and to have seized upon Cashel. But in the mean time the plan was totally disorganized by General Fox's being apprehended. He was immediately brought to Clonmel. I informed Mr. Jacob here, who is a magistrate of your county, of what I had discovered respecting General Fox, and his rebellious measures. My worthy friend Jacob (than whom there exists not a more honourable, gallant, and loyal man) went to General Fox, then in confinement, and begged of him to acknowledge what he knew respecting the rebellion. General Fox not only persisted in declaring his total ignorance of the rebel organization, but so far persuaded Mr. Jacob of his innocence, that Jacob interceded for him with me, as for an injured man. Fox was then sick.

On the 23d of May, the mail-coaches were stopped and burned. The judges were prevented from arriving, and every rebel was up and appeared with his arms and uniform. In this emergency, I waited on General St. John, addressed him on the state of affairs, and suggested to him  
the

the propriety of adopting vigorous measures. I then brought out General Fox, and flogged him. On General Fox's receiving one hundred and eleven lashes, he who heretofore so strongly persisted in the avowal of his innocence, declared that he was a rebel general: that he was in company with Lord Edward Fitzgerald, who shewed him a map of the county of Tipperary, parcelled out into subdivisonal sections, and that a general was sent down to command the whole.

General Fox also informed against Colonel Devereux of Callan, and Colonel Quin of Carrick-on-Suir; same time declaring, that the Carrick Yeomen were all rebels. General Fox said, that the rising in this county was to be on the 29th of May; and that Colonel Devereux was to meet Colonel Quin and Colonel O'Brien at Clonmel, for the final adjustment of that business; and that the rebels were sixty thousand strong. All this General Fox declared before Colonel Deering, of the Romney Fencibles. I sent for Captain Jephson, and before him and Colonel Burton of the Clare Militia, had General Fox again examined, who confessed the whole of their plan, and the part that Captain Jephson's corps of Carrick Yeomen were to act; that they amounted to 112 men, and that half that number were sworn rebels, who were to be under the command of Colonel Quin. General Fox also informed against other rebel officers and generals at the same time. Fox left Dublin on the 22d of May, and on his way down he dropt a general officer at Naas, another officer at Carlow, and came here himself.

I sent orders to Carrick to have Colonel Quin taken up, and forwarded me to Clonmel, where I got him flogged, but refusing to confess, I delivered

livered him to Colonel Burton, in order to be put to death.

Colonel O'Brien went to the fair of Ballingary on the 28th of May, in order to organize for the intended rising, and to ascertain how far the expedition against Clonmel was likely to succeed. Colonel O'Brien, however, was taken up in Fethard on his way hither, and requesting time to shave himself, he cut his throat. His reasons for so doing (as afterwards found by a note among other papers in his pocket-book) were, that he could not bear the tortures of a flogging, and therefore he made away with himself, lest he may be forced to betray his honour or his accomplices.

Having thus obtained ample informations of the whole system of rebellion, and got possession of the rebel generals and commanders, whom I delivered up to General St. John, I went to Killenaule, where I met fifteen hundred rebels, who all acknowledged their guilt, and gave up their arms. Here I was also informed by one Mara, that Wells, who is plaintiff in another action of a similar nature with the present against me, and who only awaits the issue of this, was an officer among the rebels. He is a yeoman of Captain Jephson's corps, and was to have possessed himself of Carrick.

On thus discovering the organization of his Yeomen, and the alarming state of Carrick, so convinced was Captain Jephson of the necessity of having a military guard for the protection of that town, that he applied to General St. John for some of the Hompesch regiment, some flank companies, and some artillery: which on entering the town, found it illuminated,\* as they all had candles lighting in their windows: all this may  
be

\* Capt. Jephson ordered the candles to be lighted in the windows.



be seen in General St. John's orderly book, which must be allowed to be good evidence in my behalf. Neither was it from my own head I went to Carrick; for I was directed by General St. John, upon his receiving the informations of Devany, forwarded to him from Thurles by Captain Cheshire. I even refused to comply, unless the informer was sent along with me, in order to identify the rebels there, and unless I was invested with full powers on the occasion; and I can prove by the evidence of Cosgrave here, that Devany gave me full information, on which I repeatedly refused to act, until he persisted in his knowledge of those persons who swore him in as an United Irishman. When I arrived at Carrick, as I had informations against Wells, I ordered him to the ladder, and flogged him. While I was there, Captain Jephson arrived, came up to me in the centre of the town, and told me, that sooner than I should proceed in this manner, he would put himself at the head of his corps, and fire upon me. I drew out my men, I *desfed* him, and I flogged two more afterwards. I did it in order to prevent the rebels of Carrick from attacking the rear of the military at Ross.

I flogged them, I avow it, though they were all innocent then. Yes, I did flog them; but what was the consequence? Twenty-six of the Carrick Yeomen then acknowledged to Captain Jephson, that they were United Irishmen, and six more confessed next morning. Then it was that Captain Jephson applied for the men. Then it was that Colonel Leggett was ordered down to Carrick, in order to take up Captains Cury. Foran, and Carrigan; one of whom, on being brought up, said, you must flog me first, as I have  
a wife

a wife and children at home, who would inevitably starve, if I informed, until I was forced to it by the applications of the torture.

So convinced were General St. John and Captain Jephson of the necessity of applying the torture, that they requested of me to continue it, and flog other rebels, as they now adopted a new oath, which was, not to make any discoveries with respect to their accomplices, until forced thereto by the torture and flogging. At Coolnamuck, near Carrick, there was a great meeting of the rebel officers convened at one Wall's. Here General M'Cabe, Commander in Chief of the Munster forces, Colonel Devereux from Callan, and Colonel Quin of Carrick, with seven or eight of the Carrick Yeomen, assisted for the purpose of settling the plan of attack against Clonmel, and such other means as may tend to promote the interest and ends of the United Irishmen, but all their schemes I frustrated by my timely and decisive measures.

Among you, Gentlemen, who compose that Jury, do I not see some who were to be boiled in their own coppers? do I not see others who were to be roasted alive? and were not all of you to be murdered by your own very favourite servants, had not my timely exertions totally counteracted their system and frustrated their schemes of organization and massacre.

Yet, Gentlemen of the Jury, you all see that this dreadful spirit of proscription and assassination has not as yet subsided; as is evident to you all, Gentlemen, from the recent murder of Mr. Price, a gentleman of the most amiable manners, humane disposition, and benevolent heart, who was assassinated on his own ground, and in the noon-day!

You

You see then, Gentlemen of the Jury, the necessity of that timely severity employed by me for putting down rebellion and preserving you. Were it not for my vigorous endeavours, not one among you would have a head on his shoulders before now. And must the immaculate Quin be allowed to enjoy himself in peace and tranquillity in Carrick, and I thus persecuted? Must Colonel Devereux be permitted to taste the sweets of security and happiness in Callan, while I am thus forced to stand here as an object of proscription, supported by the public contribution of protected rebels.

It may be asked, Gentlemen of the Jury, by what authority I have presumed to act thus. Standing in my sovereign's place, I considered myself invested with his power. In the King's absence I hold the authority by virtue of my office as High Sheriff, and as such am empowered by my commission to command the troops. Nay, should his majesty be present in person, I as chief magistrate of the county, would command on his right.

In the time of terror and trepidation, when I took upon me the administration of your county, all was sunk into distrust, apathy, and dismay. But by my strong measures, treason was soon discovered, traitors hunted down, and the rebellion quelled. Are you not all, Gentlemen, witnesses to my manly exertions for the preservation of your lives and properties?

Have I not routed the rebels in every direction, from the Shannon to the Suir? And have I not thereby cut off all communication between the Munster and Leinster rebels. As the strength of the rebellion was now founded on the murder of

all informers, I was under the necessity of concealing their names.

You all know, Gentlemen of the Jury, that according to the preconcerted plan of the union, the rebels stopped the mail-coaches near Lucan, at Santry, and Kilcullen, on the 23d, and broke or burnt them, and that there was a general rising in the counties of Carlow, Kildare, Dublin, Westmeath, Wexford, and Wicklow.

[Here Colonel Fitzgerald entered into a minute detail of the various operations of the King's forces with the rebels, with their skirmishes and battles; as also the battle of Ross, on the 6th of June, and of Vinegar-Hill on the 20th of the same month; with the massacres of Scullabogue, and on the bridge of Wexford, the former on the 5th, and the latter on the 20th of June, &c. &c. &c. (*when Lord Avonmore rising from the bench, said, "I declare to God, my patience has been exhausted; as for an hour and a half's attendance here, I have not heard five minutes argument to the point. But he is just like a puppet-shew man, with his magic lanthorn playing off his various tricks, and crying out, "Here you shall see Jack-o-the lanthorn, then Will-o-the Wisp—here the battle of Ross—there the battle of Vinegar-Hill, and the Devil and Doctor Faustus!"* with such unmeaning trash) the Colonel then resuming his speech, said in a low voice: That the country would be in a bad state, if there was nothing to be adduced but legal evidence; then proceeding in a loud tone of voice as before, he said]

I am next, Gentlemen, to shew you, *quo animo*, or whether I had a malicious intent on my departure for Carrick. You all know, Gentlemen, from my puerile age, I have been always a stout, spirited,

spirited, magnanimous, and merciful youth. By General St. John's orderly-book (which you must allow to be admissible evidence) you may see the state of Carrick, whither I went by order of General St. John, with the informer Devany.

[Then the defendant began to read some letters addressed to him by General St. John, when Lord Avonmore prevented him, conceiving them not to be admissible evidence.]

You see, Gentlemen, I had General St. John's approbation and directions for going to Carrick; and though the Gentlemen of that town were white-washed by that Gentleman there (alluding, as is supposed, to the Rev. Mr. Smyth) yet you see the immediate good effects that followed from my flogging there. Discovery followed from it, and the rebels there were thus timely prevented from co-operating with those of Waterford, who were then ready to rise, but were kept down by the timely arrival of the Roscommon Militia from Ross to that city. Since I undertook the office of Sheriff of your county, have I not done every thing for the general welfare of all? have not the lives of loyal subjects been saved through my means? I have taken up thirty-six cart-loads of pike-heads, and twenty-two thousand stand of arms: and during my whole administration of that important office, I have done nothing through private pique, peevishness, or self-interest. No, I have done nothing on the whole but what was honourable, tender hearted, and humane,

It has been said, Gentlemen of the Jury; that I have kept back my trial these two years past; the reverse is the case. I applied in this court a year ago to bring it forward before Judge Kelly. I would have then benefited by General St. John's

testimony, of which I cannot avail myself now, Then frivolous causes were heard, and mine rejected. I have been since ordered on foreign service to Minorca and other parts, whither I am immediately to return, on the issue of this trial, a trial by which I have been five thousand pounds out of pocket already.

I shall only add, Gentlemen of the Jury, that I have cut off all communication between the Munster and Leinster rebels, and prevented the rising which took place at Cashell and Carrick-a-Chlear, from becoming General. To your consideration, Gentlemen, I submit the propriety of my conduct; well knowing, that in the determination of my cause, you will never, I am sure, punish me for my loyalty.

*Peter Hynes sworn, and examined by Defendant's Counsel.*

Q. Are you keeper of Clonmel Gaol?

A. I am, Sir.

Q. Do you know where was Devany sent from your Gaol?

A. He was sent from this to Geneva, and as I afterwards heard by general reputation (which Lord Avonmore admitted to be evidence of the fact) he was sent from New Geneva to Chatham; but I cannot say whether as a recruit or a convict.

[Here Lord Avonmore declared that before they could give Devany's declaration in evidence, they must shew, that they used due diligence for ascertaining what was become of him; but as that was not then done, his Lordship could not admit Devany's informations, to be read.

*Captain*

*Captain Cheshire sworn, and examined by Defendant's Counsel.*

Q. Do you recollect a prisoner of the name of Devany being in custody with your men, when quartered in Thurles?

A. I do

Q. Did he communicate any informations to you?

A. He did, he swore to examinations before me.

Q. Pray Sir, are you a magistrate?

A. I am not.

Q. What did you do with these informations?

A. I transmitted them to Colonel Deering, and by his directions sent them afterwards to Colonel Fitzgerald.

[Here Captain Cheshire was shewn a paper, which he identified, as the informations he enclosed to the Colonel, and which the defendant's counsel offered to read in evidence, but they were objected to, as not being on oath, having been sworn before a person, who was not empowered to administer an oath. Lord Avonmore thought the letters and informations given by any one to Colonel Fitzgerald admissible evidence, to shew the intent with which he acted. How else could the Jury judge whether he acted from malice or otherwise? The informations were now read, and stated, that the name of Doyle, and several others whose names were mentioned therein, were rebels.

*John*

*John Cosgrave sworn, and examined by Defendant's Counsel.*

Q. Are you not a police officer ?

A. I am.

Q. Was the man whom the Sheriff flogged at Carrick, on 22d June 1798, the Doyle whom Devany swore against ?

A. I believe he was, as Devany pointed him out.

*Cross-examined by Plaintiff's Counsel.*

Q. Pray, Sir, is there no other man of the name of Doyle at Carrick, who was implicated in the rebellion ?

A. Yes, Sir, there was the Plaintiff's first cousin, whose name is Richard Doyle.

Q. Would you know that man ? is he in court ?

A. I would know him. He is now in court.

Q. Take the rod, and point him out.

[Here the witness took the rod, and pointed to James Doyle, a brother to the plaintiff Francis Doyle, who was not at all implicated in the rebellion.]

Q. Pray, Sir, do you know the plaintiff's character ?

A. I know him to have always been an honest, industrious, and loyal man.

Q. May not Devany have mistaken Francis Doyle, the Plaintiff, for his cousin Richard Doyle, who was implicated in the rebellion ?

A. He may.

Q. Pray, Sir, what was Devany's general character.

A. He



A. He was well known in the country, to be a man of the most infamous character.

Q. Were you present at the flogging?

A. I was, and counted the strokes by Colonel Fitzgerald's directions.

*Lieutenant Ducket sworn, and examined by Defendant's Counsel.*

Q. Pray, Sir, where were you on 22d June 1798?

A. I went to Carrick-on-Suir with some of the Germans, by General St. John's orders.

Q. Were there any appearances of rebellion in Carrick, on that day?

A. I saw no appearance of rebellion there.

Q. In what state was the country then?

A. It was in a very bad state.

*Cross-examined by Plaintiff's Counsel.*

Q. Did you see the Plaintiff Doyle on that day?

A. I saw him on his knees.

Q. Did you hear that Doyle was a man of a very good character for honesty and loyalty?

A. I heard and believe Doyle always had a good character for loyalty; I heard it given him that day.

Q. Pray, Sir, could not Colonel Fitzgerald give Doyle a trial that day?

A. He could, if he pleased.

*Colonel O'Connor sworn, and examined by Defendant's Counsel.*

Q. You are Colonel of the Nottingham Fencibles.

A. I am.

Q. Were

Q. Were you in any command on the 22d of June 1798?

A. I was second in command under General St. John.

Q. Where is General St. John now?

A. He is gone to the East Indies.

Q. In what state was the country then?

A. It was in a bad state, we apprehended an attack on Clonmel and other towns.

Q. Did Captain Jephson make any application for the military aid at that time?

A. He did, in three days after the flogging.

Q. What were the orders given the military on that occasion?

A. The orders given the party were, to stop at this side of Carrick, and to keep close together.

[Here witness proved that a letter which was produced and shewn him, was in the hand-writing of General St. John. Witness was also shewn a letter signed William Bagwell, which he proved to be the hand-writing of William Bagwell, a Brigade-major. It bore date June the sixth 1798, was directed to the Defendant, and among other expressions stated to Mr. Fitzgerald that, "If he found good to arise from flogging, he may go on with it, but not to let it reach his ears."]

*Laurence Hickey Jephson, Esq. Captain of the Carrick Corps of Yeoman Infantry, sworn and examined by Plaintiff's Counsel, in order to rebut the Case made for the Defendant.*

Q. Pray, Sir, do you recollect your having a conver-

a conversation with General St. John about Mr. Fitzgerald's conduct in Carrick ?

A. I do : I complained to General St. John of Colonel Fitzgerald's behaviour in Carrick, at which General St. John was very angry, and declared that Fitzgerald was a man not to be trusted, and that he himself would never trust him again.

Q. Do you know Doyle ?

A. I do, and know him to be a remarkable loyal man.

Q. Did you know Devany's character then ?

A. Yes, he was a man of the most infamous character.

Q. What were your reasons for writing for troops ?

A. I wrote for troops for two reasons ; first, because I thought, that from Colonel Fitzgerald's conduct no loyal Yeoman would bear arms. This I thought from the despair manifested by the inhabitants of the country, on hearing of the flogging. Secondly, I was afraid that not only the Yeomen would not bear arms, but that the cruelty exercised in inflicting the torture, would infuse the spirit of disloyalty into the most loyal, and consequently encourage the disaffected rebels.

Q. What is your opinion of the Sheriff's conduct then ?

A. I am clearly of opinion, that such a conduct was calculated to promote rebellion ; for had it not been for my being possessed of superior information, the oath of allegiance I had taken, the property I had in the country, and my being Captain of a Yeomanry Corps, I would, on seeing such wanton cruelty, have joined the rebels.

*Cross-examined by Defendant's Counsel.*

Q. Do you not believe that Colonel Fitzgerald acted from pure motives.

A. I am of opinion he did not act from pure motives, but rather with a view to private emolument.

Q. What are your reasons for suspecting the purity of his motives?

A. I should have no reasons for suspecting the purity of his motives, had he not accepted a regiment from government; but by his present situation, I consider his conduct to have been influenced by a desire of rendering himself conspicuous, and thereby obtaining a reward from Government.

Here the evidence on both sides closed.



LORD AVONMORE, with those comprehensive, clear and discriminating powers, for which his Lordship is so eminently distinguished, summed up the evidence on both sides, in his charge to the Jury, of which the following is an abstract:

This, Gentlemen, is an action brought to recover damages from the defendant, Colonel Fitzgerald, for an act admitted to be against Law. The defendant himself has repeatedly told us so, and, lest we may not believe him, he has quoted Coke and Littleton to convince us. If, therefore, the acts of indemnity which have been cited to you had not passed, no damages, that you could  
give,

give, would be too great. These statutes recite the existence of a rebellion in the country, and the illegal acts exercised by several magistrates and officers for its suppression: under these acts, if you believe that the defendant was forced, through imperious necessity, to commit this abominable outrage against the plaintiff, a man of acknowledged loyalty, you are certainly bound to find for him.

The defendant has told you, that he has acted from information: but what are these informations? They are the informations of a vile, perjured and infamous informer, and these too, not upon oath.

The justification of his conduct he has also rested upon the two letters he has received from General St. John and a Major Bagwell; but, Gentlemen, let us look at the letter of the 6th of June, long before the perpetration of the wanton outrage here complained of. What does that letter authorize him to do? It advises him to bring all suspected people to a court-martial, and directs him to enforce confessions according to law: but should it appear to him that other methods not warranted by law, should be deemed necessary—to adopt them—and act in such a manner, at least, as it may not reach his ears.

You all see, Gentlemen, that the plaintiff is a man of acknowledged loyalty. The Gentlemen of the country, nay, the witnesses for the defendant, have borne ample testimony to his loyalty. Yet, Gentlemen, can it be credited, that the defendant refused them a respite of even ten minutes. For you it is, Gentlemen, to determine whether his conduct has arisen from impe-

rious necessity, and was more likely to promote the cause of loyalty, than to fill the mind of every one with disgust, and inspire the well-disposed with sentiments of abhorrence and disaffection.

Much, Gentlemen, has been here spoken respecting loyalty; and, lest the clamours of pretended loyalty should drown all considerations of justice, it is incumbent on me to inform you what loyalty is, and in what true loyalty consists. Loyalty is another term for legality; and he who acts with legality, acts in strict conformity to the laws. That man therefore is to be esteemed the most loyal, who is a steady and faithful adherent to his lawful prince, and a strenuous supporter of the established constitution, by paying due obedience to the laws of his country, respecting social order, and preserving every member of the state in his just rights and possessions.

Another ground of defence has been set up, that the town of Carrick-on-Suir had then been in a disturbed state; but, Gentlemen, the evidence of both plaintiff and defendant negative that idea, as from the joint testimony of their witnesses it manifestly appears, that there was no manner of disturbance in that industrious town; nay, that all were in the most profound state of composure and tranquillity, until wantonly disturbed by the outrageous conduct of the defendant.

It has been said, that there was no kind of personal acquaintance between the plaintiff and defendant, and that consequently no personal malignity could exist between them; but I consider it my duty to tell you, that personal malice is not  
 necessary

necessary to be proved, but a depraved and general indisposition towards mankind. To find for the defendant, you must not only believe that there was no malignity in his general conduct, but that the commission of the outrage complained of, was absolutely necessary to put down rebellion. Not that it was so in the defendant's opinion, but that its probable consequences may be such; for you cannot suppose that the Legislature meant to indemnify a man for perpetrating wanton and unnecessary cruelties or acts, which in the mind of every rational person were alone calculated rather to excite and promote, than to suppress insurrection and rebellion.

True it is, Gentlemen, one of the witnesses on behalf of the plaintiff, said that he believed Colonel Fitzgerald acted from pure motives. If you attach a full belief to the testimony of that witness, and are of opinion that the act was likely to suppress rebellion, you must find for the defendant. It is my duty to inform you, Gentlemen, that your verdict, in that case, will saddle the plaintiff with double costs. Should you not think so, but entertain an opinion that the defendant's motives were malicious, or that the act was not such as a prudent man would employ for suppressing rebellion and preserving the public peace, it is your duty to find for the plaintiff. It is exclusively your province to determine the amount of the damages. However (here his Lordship took up the act and perused it) to render a verdict for the plaintiff of any avail, you must find that the defendant acted maliciously, and not with an intent of suppressing the rebellion or saving the state, according to the words of this act, (throws it on the cushion) which places an insuperable

perable bar between injury and redress, and sets all equity and justice at defiance.

The Jury retired, and after half an hour's consultation, gave a verdict in favour of the defendant.

In consequence of this verdict, the defendant entered judgment, and issued an execution against the plaintiff for double costs, to the amount of £424:2:8. *which added to his other costs and to upwards of £700*

THE END.

S. B.

In some time after the Jury had retired, one of them was sent out to know from Lord Avonmore if it were possible they could find a Verdict for the



Sir Thomas Fitzgerald, Bart.

Plaintiff.

Francis Doyle,

Defendant.

Received from the Defendant, Francis Doyle, Four Hundred  
and Twenty-Four Pounds Two Shillings and Eight Pence Ster-  
ling, being the Sum marked at the Foot of the Fieri Facias,

directed to the Sheriff of the County of Tipperary, in this Cause. Dated this Second Day of No-  
vember, 1801.

SAMUEL WALLER,

Sub-Sheriff,  
County of Tipperary.

£424:2:8. Sterling.

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