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REPORT  
OF THE  
*TRIAL*  
OF  
LORD HEADFORT, &c.



By Authority.

£.10,000 DAMAGES.

SUMMER ASSIZES.

TRIAL AT ENNIS, COUNTY OF CLARE,

ON 27TH JULY, 1804,

*Before the Hon. Baron Smith, and a Special Jury.*

A

*REPORT of the TRIAL*

ON AN ACTION FOR DAMAGES,

BROUGHT BY

THE REVEREND CHARLES MASSY

AGAINST THE MOST NOBLE

THE MARQUIS OF HEADFORT,

FOR

CRIMINAL CONVERSATION

WITH

PLANTIFF'S WIFE.

DAMAGES LAID AT £.40,000.

*Taken in Short-Hand by an eminent Barrister.*

“ Thoughts that breathe, and words

“ That burn.”———

GRAY.

DUBLIN :

PRINTED FOR M. N. MAHON, 109, GRAFTON-STREET,  
*and to be had of all the Booksellers.*

1804.

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## P R E F A C E.

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**T**HIS Trial, the report of which is now offered to the public, has excited very general expectation, and its publication has been deferred to the present period, in order to present it to the world, with an accuracy, and authenticity, seldom to be found in performances of this nature.

In reports of actions of this kind, on which general curiosity is strongly alive, little is attended to, beyond the detail of the evidence, and the rough outline of the speeches of Counsel; as the object of the reporter too frequently is, by the speediest gratification of the public expectation, to secure to himself the advantages resulting from his hasty and imperfect sketch. Trials of the utmost importance to the community, as the present one will be found to be, issue thus imperfectly from the press, and being considered as productions, merely ephemeral, are thrown aside after the first perusal, never to be resumed, and in truth, from the mode and nature of their composition, it is matter of little surprize,

surprize, that they should be thus consigned to an early oblivion. This report however, it is presumed, will be found to have very different claims on the public attention, an assertion which the reporter would not venture to make, if his exertions on the subject of it could aspire beyond the humble merit, that accuracy, industry, and fidelity may lay claim to. The assistance he has received from those gentlemen, who, on this trial have exerted and distinguished themselves, beyond even their former efforts, united with his own labours, has enabled him to present a most authenticated report to the public, and his merit is, to rescue, by the accuracy of this production, from the oblivion attendant on a huddled and confused sketch, that splendid exhibition of eloquence and talent, which the subject of this trial gave birth to, in all their varieties. Where all were distinguished, it would be invidious to state who excelled the most.—In truth without entering on a discussion, where reflexion would rather augment than diminish the difficulty of decision, it may be fairly asserted, that the merit of each advocate in this cause is to be collected from the relative situation to it, in which he found himself placed,

and



and from the liberty or restraint, which the case of his client might permit or impose. Let their respective exertions therefore be appreciated by this rule, and it will be found, that, each in his place was as distinguished, as his station in the cause, and the effect he sought to produce, or prevent, would allow. And that, if to each had been assigned different places and duties, the same excellence would have attended them in their change of position, and have crowned their exertions with the same unbounded applause.—

The vehement indignation of Mr. Hoare, the polished and artful statement of Mr. Quin, the luminous perspicuity and arrangement of Mr. Ponsonby, and that unbounded range of an excursive fancy, in Mr. Curran, which seizes in its progress, on whatever offers itself in literature or eloquence, to adorn and illuminate his subject, were to be found each in its place and order, and no doubt can exist that so long as the exertions of judgment, science, and eloquence are dear to the minds of men of taste and learning, this production, in its class, will be perused by them, with entertainment and delight.—But it may be allowed an higher aim.—The lawyer will not only derive information from its perusal, but it will excite, on similar occasions an

emulative

emulative exertion on his part, and above all, he will discover, in the charge of the truly learned Judge, what the law of the land is, in actions of this nature, clearly, compendiously, and accurately detailed, and in that language of elegant and unaffected simplicity, which, in the page of Blackstone, at once conveys instruction and delight to the mind of the student.

# ENNIS ASSIZES,

FRIDAY, JULY 27, 1804.

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## COUNSEL FOR PLAINTIFF.

*John Philpot Curran,  
Bartholomew Hoare,  
Henry Deane Grady,  
Thomas Casey,  
John White,*

*Amory Hawksworth,  
Wm O'Regan,  
Thomas Lloyd,  
Wm. M. Mahon, And  
George Bennett, Esqrs.*

Agent *Anthony Hogan, Esq.*

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## COUNSEL FOR DEFENDANT.

*George Ponsonby,  
Thomas Quin,  
Thomas Goold,*

*John Franks,  
Charles Burton,  
Richard Pennefather, Esqrs.*

Agent *James Sims, Esq.*

The Court sat at 10 o'clock, when the following Gentlemen of the county of Clare, were sworn as Special Jurors.

*Sir Edward O'Brien, Bart.*  
Foreman,  
*Sir Joseph Peacocke, Bart.*  
*Boyle Vandeleur,  
Thomas Browne,  
Henry Butler,  
Thomas Studdert,*

*Thady Macnamara,  
Edward O'Brien,  
William Butler,  
Bindon Scott,  
Anthony Colpoys, And  
William Arthur, Esqrs.*

MR. BENNETT, as Junior Counsel, opened the Declaration, and stated, that it had been laid for the sum of 40,000*l.* being the compensation sought for the damage alledged to have been sustained by the Plaintiff, in consequence of the Defendant *seducing and taking away the Plaintiff's wife.*

BARTHOLOMEW HOARE, Esq. *stated the Case  
for the Plaintiff.*

This case is novel in this county—it is the first action of the kind a Jury of this county has ever been impannelled to try—and as it is the first, so I hope in Heaven, it may be the last. Many idle reports have been circulated, and the subject of this trial has engaged much of public attention; but it is your duty, as I am sure it is your wish, to discharge your minds from every idle rumour, to stand indifferent between the parties, and relying upon the evidence, and collecting information from the witnesses on their oaths, who will be produced to you, to found your verdict upon facts well attested, and of which you only are the constitutional Judges.

The Plaintiff, the Reverend Charles Maffy, is the second son of a gentleman of high distinction in this county, who has been more than once called to the representation of your county, by a free and honourable election; and not only so descended, but is a person of liberal education, a member of one of the learned professions, in the prime of life, a man not only, of inoffensive manners, and of innocent life, but a man whose virtues correspond with his situation in society. and adorn the profession he has adopted. In the year 1796, Mr. Maffy became attached to Miss Rofslewin, Mr. Maffy being a second son, and not independent of the bounty of his father, possessed then, a living but of 300*l.* a year. Sir Hugh Maffy, his father, disapproved

approved a match, which had not fortune to *support the claim of beauty*, and had therefore proposed one with a young lady of a neighbouring county, which he conceived in point of fortune, and of connection, far more eligible, and on that occasion, had offered to settle on his son, the Plaintiff, 1100*l.* a year, in landed property, together with the young lady's fortune; but declining the hand of an amiable and accomplished lady, refusing an ample and independent establishment, with the additional enjoyment of parental bounty and approbation, and foregoing all these advantages, Mr. Maffy proved the sincerity and purity of his attachment, by a generous sacrifice of fortune, to affection, and named Miss Rosslewin, in March 1796, and the happiness of the young couple during eight succeeding years, not only seemed to be, but really was unmixed, and unabating, he loving with constant and manly ardour, she with chaste and equal affection, and during that interval, Heaven had blessed their union with a boy, the bond and cement of their present happiness, the pledge and promise of future multiplied felicities, then at this period, Mr. and Mrs. Maffy exhibited such an example of domestic contentment and satisfaction to their neighbours, their relatives, and their friends, as to convince them, that the sacrifices he made, were not too great, that her grateful and affectionate returns to a conduct so nobly liberal, and disinterestedly affectionate, were not too little; guilt and treachery had not yet made their way into the abode of peace

and innocence, all was quiet tranquil, and happy; till to the misfortune of this couple, and of this county, the Marquis of Headfort made his appearance at Limerick. Mr. Maffy happened to have had some years since, a living in the county of Meath, where Lady Bective, the mother of the Marquis of Headfort, was a principal parishoner, and from whom, during his residence in the parish, Mr. Maffy received much polite and hospitable attention—from this circumstance of his acquaintance with her, Mr. Maffy waited on her son, on his arrival at Limerick, invited him to his house, and strained his narrow means, to give the son of Lady Bective, every proof of his sense of her former attentions and politeness, but, whilst indulging the hospitable spirit of our country, little did Mr. Maffy think he was introducing into his house, the man, who could conceive the blackest and basest designs against his peace and honour, that this *stranger* so hospitably received, and affectionately cherished, was to pour poison into his peace, and make him a wretch; for no reasonable man could suppose that Lord Headfort, at his time, ever could disturb the peace of any family;—his age, (for he is above fifty) his figure, his face, made such a supposition not only improbable, but almost ridiculous, yet so it happened, that *this hoary veteran*, in whom, like Ætna, the snow above, did not quench the flames below, looked at Mrs. Maffy, and marked her for ruin. And nothing more beautiful could he behold, and  
nothing

nothing upon whom it was more unlikely, that such a venerable personage as his Lordship, could have made an improper impression. Lord Headfort spent four days at Summer-hill, on his first visit, and was introduced by Mr. Maffly to the gentlemen of the first rank and consideration in the county, the Bishop of Limerick, brother-in-law of Mr. Maffly, and every other gentleman and nobleman in the neighbourhood. I need not, in this most hospitable part of Ireland, mention to you the consequence. Lord Headfort was received, entertained, and cherished, by the friends and relatives of Mr. Maffly. Whilst Mr. Maffly was endeavouring by every polite and hospitable attention in his power, to render his temporary stay in this country not unpleasant to him, some anonymous letters first created in the breast of Plaintiff, *not suspicion, but conveyed* an intimation, that the Marquis of Headfort was too attentive to Mrs. Maffly. Too confident in the virtue of his wife, too generous to credit information so conveyed, and yet too prudent wholly to overlook or disregard it; Mr. Maffly prohibited his wife's visits to Limerick, and this was followed up, by intimating to Lord Headfort, that his Lordship's visits would be dispensed with at Summerhill, his (Mr. Maffly's) place of residence. Lord Headfort's visits were discontinued. His Lordship promised not to repeat them.

And yet though Mr. Maffly took these precautions, he still had the utmost confidence in the virtue of his wife, and not without apparent reason,

reason, for she still preserved the appearance of the most affectionate attachment to him, and acquiesced without a murmur, in what his prudence prescribed. Her correct manners, her strict attention to her religious duties, might have imposed upon a keener penetration than her husband's; she regularly attended divine service, regularly took the sacrament, and has been heard to reprove her brother, and brother-in-law, for want of attention to these duties, and in conversation, turning on the indiscretions of other women, was often heard to declare, that if affection for her husband, so well merited, or for her child, were not sufficient checks to keep her steady to her virtue, her sense of religious obligations would alone have that effect. The unaffected liveliness and simplicity of her manners, the decency of her deportment, her endearing attentions to him and her child, left not the shadow of suspicion on the mind of Mr. Maffy, that she could in any wise forget her sex, her situation, or her duty, much less that she could run into the coarse toils spread for her by Lord Headfort. It will shock and appall you, Gentlemen, to hear the time and occasion which Lord Headfort selected, for the final accomplishment of his designs upon the honour of this unfortunate woman, and the happiness of his host and his friend. The day was Sunday, the hour the time of Divine Service; yes, Gentlemen, on that day, and on that hour, set apart for the Service of our Creator, whilst the Reverend Rector, was *bending before the altar*  
of



*of his God*, invoking blessings not only on his flock there assembled, but on the heads of the unfeeling and profligate destroyers of his comfort and honour, on such a day, at such an hour, upon such an occasion, did the Noble Lord think proper to commit this honourable breach of hospitable faith, this high-minded violation of the little laws of your diminutive country, this contempt,—I would almost call it, this defiance of the Almighty himself, and will not you Gentlemen, the sworn arbitrators of this profanation, the guardians of our Laws and our Religion, the conscientious minister of divine and human justice, reward the Noble Delinquent accordingly? I know you will, and to you, and to your just estimate of such an act. I commit this noble act, and its most noble Actor.

I have to state what will be proved, that on Sunday and at this hour, Lord Headfort took off Mrs. Maffy from her husband's house at Summer-hill; they crossed the Shannon in a boat, got into a chaise in waiting for them on the road, and from thence posted to Pallas, 18 or 19 miles only from Summer-hill; there he and Mrs. Maffy, heedless of the misery and distraction of her unhappy husband, remained in the same room the whole of Sunday night—the noble Peer did not fly—no—he made short and easy stages—not fearful of pursuit, not as a criminal endeavouring to effect his escape, but as a conqueror parading slowly through the country,  
and

and quietly enjoying the glory and honour of his triumph. What was his triumph? The distraction of the friend he maddened with agony, the pollution of a till then spotless and innocent woman. From Pallas his Lordship pursued his route to Clonmell and there rested a night, from thence to Waterford, then to England, where I trust he will ever remain, because I am satisfied, that no advantage to be derived to the Country from the most ample fortune expended here, could countervail the mischiefs that must flow, from the application of enormous wealth to extravagant vices, and the example of such prodigal profligacy amongst us. I fear I detain you too long, yet it is necessary to detail the enormity of this *foul* transaction in *itself most foul*, and to you then I will leave it to mark, by the verdict you will give, your approbation or disapprobation of the conduct of this Nobleman; He was not young if young, the ardor and inexperience of youth might have been some extenuation of this enormity, but many years have elapsed since the venerable Peer could have insisted upon such a plea, the noble Lord is, I am instructed, between 50 and 60 years of age, and from the life he has led, and the pursuits he has been engaged in, we must conclude his constitution not to be that of a very green old age; at this advanced period of life the slightest check of principle must rein in and restrain the passions.

But

But if a sickly appetite cannot be controuled and must be fed with perpetual supplies of dearly purchased variety, Let the wealth he commands and abuses, procure it, without breaking in upon the peace and honor of respectable families.—The noble Lord proceeded to the completion of his diabolical project, not with the rash precipitancy of youth, but with the most cool and deliberate consideration. The Cornish plunderer intent on spoil, callous to every touch of humanity, shrouded in darkness, holds out false lights to the tempest-tost vessel, and lures her and her pilot to that shore upon which she must be lost for ever, the rock unseen, the ruffian invisible, and nothing apparent but the treacherous signal of security and repose; so this prop of the throne, this pillar of the state, this stay of religion, the ornament of the peerage, this common protector of the people's privileges and of the crown's prerogatives, descends from these high grounds of character to muffle himself in the gloom of his own base and dark designs, to play before the eyes of the deluded wife and the deceived husband, the falsest lights of love to the one, and of friendly and hospitable regards to the other, until she is at length dashed upon that hard bosom, where her honour and happiness are wrecked and lost for ever; the agonized husband beholds the ruin with those sensations of misery and of horror which you can better feel than I describe; her upon whom he had embarked all his hopes and all his happiness

In this life, the treasure of all his earthly felicities, the rich fund of all his hoarded joys sunk before his eyes into an abyss of infamy, or if any fragment escape, escaping to solace, to gratify, to enrich her vile destroyer. Such, Gentlemen, is the act upon which you are to pass your judgment, such is the injury upon which you are to set a price, and I lament that the moderation of the pleader has circumscribed within such narrow limits, the discretion you are to exercise upon the damages; you cannot exceed the damages laid in the declaration, I lament, and so I hope do you, that you cannot, for the damages laid do not exceed one year's income of the noble Lord's estates. The life of the adulterer is in some degree in the power of the injured husband; if the husband kill the adulterer caught in the fact, the killing is not murder: what according to the noble Lord's own estimate, would be the value of the noble Lord's life? In mine, and perhaps in your estimation, the value of the noble Lord's life would not be very high, but take it according to his own and it is invaluable; the ransom of his life ought to be the measure of your damages. What can he plead? Is it that he too has a wife and children, is it that as a double adulterer he comes into a Court of Justice, and interposes the innocence of his injured family between his crime and your justice? Are his titles and honours as they are vulgarly called, to dazzle your eyes and blind you to the demerits of his conduct?

No,

No, no—what are titles conferred by Kings, if the souls of those who wear them be not ennobled by the King of Kings, these badges of distinction, these splendid emblems of shining merit, these rewards conferred by grateful sovereigns, on eminent attainments in science, or achievements in man, may be well allowed to adorn wisdom and virtue, but cannot make the fool wise, the coward brave, or the knave honest.

There are two grounds of defence, upon which I hear the noble Lord means to submit his case to the Jury. The connivance of the husband—the notorious general misconduct of the wife—both, if I am rightly instructed, unfounded in fact, and not to be supported by any credible testimony. Witnesses to these, or to any facts, may be procured, but the Jury is to determine on their credit. But who is the man who will have the hardihood to come forward, and tell you that Mr. Massy, or any gentleman of his family, rank, character, education and profession, could stoop to a conduct so uniformly mean, so scandalously dishonourable, and if such a witness can be found, who is the Juror will believe him: can any gentleman believe, that a *gentleman* could be wilfully instrumental to his own disgrace, the promoter of his own dishonour, a pander to the prostitution of an adored wife, the stigmatizer of his idolized offspring? Such a tale (let the relater be who he may) is in itself utterly improbable. The proud mind of

my Client cannot condescend to contradict it; but let the tenor of his whole life, his character yet unassured and unblemished, his generous sacrifices to this very woman, before her honour became his honour, and her character the object of his protection, his exemplary conduct as an husband, a father, a pastor of our church, a member of society, give the lie to a story which cannot be told by any man of honour, or be believed by any man of sense. It is not impossible however, Gentlemen, that the Marquis of Headfort may attempt to cover his retreat from the pursuit of justice, by some contrivance of this kind, nor is it quite impossible, however improbable, that he may find some plausible instrument, hard of forehead, and flip-pant of tongue, ready from the motives which generally actuate such instruments, to devote himself to the perilous service. If such a witness should appear before you, I will give you a clue to his character, I will describe to you what he is not, and I will tell you what he is, and I much mistake, if by these marks and tokens you can fail to know him if he shall appear. He is not like those whom I have the honour to address, a gentleman who has a character to stake upon the testimony he will give. He is not a gentleman whose intercourse with the world, has fashioned him to courtesy, without wearing out and defacing, those sharp and prominent features of old fashioned probity, undeceiving truth, and unbending pride, which characterize  
the

the Irish gentleman. But I will tell you what he is. (Here I must drop the pen, and suppress this part of the statement, least any of my readers might apply to any living person what was said by the learned advocate, and the rather, as no such thing as he apprehended and wished to guard against, appeared on the trial). Let me now touch the second ground, of what I understand is to be the noble Lord's defence, the general misconduct of Mrs. Maffly before her elopement with him. It well becomes the Marquis of Headfort to cover with additional disgraces the unfortunate victim of his delusions; is it that in the struggle between his avarice and his vanity, the former has conquered, or is it so ordered by the wise and all just dispensations of Providence, that the best boons successful vice bestows upon subdued chastity, are private contempt, and public infamy? But though the noble Marquis may not hesitate to sink still lower and lower, the degraded object of his guilty passion, yet there are other considerations which might hold back from such an attempt, a man not inaccessible to the feelings of humanity: Mr. Maffly has a son still living, why should this innocent be more involved than he already is, in his mother's dishonour? Why should this half orphaned child, robbed of one parent by the noble Marquis, become by the deliberate act of his and his family's enemy, a sad remembrancer to the other, of a father's doubt, and a mother's dishonour? Is this additional pang to be

be inflicted on the lacerated bosom, is this new wound to be opened in a bleeding and exhausted heart? Why will the noble Marquis endeavour to infuse this horrid suspicion into Mr. Maffy's mind, that the offspring of his marriage bed is spurious, that though the father of a living son, he is perhaps childless, his affections lavished upon, his name born by, his fortune destined for, perhaps, an impostor. This attempt the noble Marquis will make, I am told, to mitigate the injury, and diminish the damages. If such an attempt be made, you, Gentlemen, will appreciate such an attempt, according to its real worth, and true value. This attempt can only be supported by such a witness as I have already described to you, and from whom, your honourable hearts will recoil with scorn and abhorrence:—We are prepared to shew you, by the testimony of most respectable personages, that the fame of this now unhappy woman, had never been sullied by the slightest imputation, until her connection with the Marquis of Headfort. I feel, Gentlemen, I have been honoured with your attention too long, I shall detain it but a very little longer. In this action the Plaintiff is entitled, either to the largest or the smallest damages; if connivance be proved to your satisfaction, a single shilling would be too much, if not, I know not what measure of damages, under all the circumstances of the case would be too large.—It will be proved to you how he received the first news  
of



of her flight. The first intimation was like the stroke of death. His portion for several weeks after, agony and distraction. Happy would it have been for him, if death had followed the shock, or madness relieved him from misery. It now rests with you, to compensate the sufferings of this deeply injured individual; it is with you to determine, whether the penalty you inflict on lawless lust, shall operate as a protection to legitimate happiness, whether your ample verdict, shall not, like a shield, cover domestic peace; and social order, from brutal insult, and dishonest violation. If “the *compunctious visitings*” of conscience, and duty, cannot dissuade the black adulterer from his designs upon the quiet of others, let the example you make, drive him from your doors, and deter him from the spoil of your dearest and most invaluable possessions, your happiness and your honour. And may that God, under whose eye and in whose presence we act, when his hand shall hold the balance of divine Justice, and when those transgressions from which the errors and infirmities of our nature exempt no human creature, shall be put into one scale, may the weighty and exemplary verdict of this day accompany your merits into the other, and make it preponderate.

*The first Witness called was for Plaintiff.*

THE REV. DOCTOR PARKER.

*Examined by MR. CURRAN.*

Q. Do you know the Rev. Charles Maffy?

A. I do since his birth, I baptized him?

Q. Is he married or single?

A. He is married, I celebrated the marriage according to the rights of the Protestant Church between him and Mary Anne Rofslewin, on the 22d day of March in the year 1796, as appears from the Registry, a copy of the entry in which I now hold in my hand.

*Cross-Examined by MR. PONSONBY.*

Q. How young did the lady appear at the time of her marriage?

A. About 18 years of age.

Q. Was she not very beautiful and of a gay lively temper?

A. She was, and lived much in the country, but I never knew an happier couple, the times I saw Plaintiff and his wife together they appeared to me to be a very loving couple; I never saw Mrs. Maffy till she was married, but have often seen her since.

JOHN STACKPOOLE, ESQ. *Examined by*

H. D. GRADY, ESQ.

Q. Do you know the Rev. Charles Maffy and Mary Anne his wife?

A. I know

*A.* I know them very well, I am uncle to Mr. Maffy and also uncle to his wife, he is the younger son of Sir Hugh Dillon Maffy of Donafs in this county, and in holy orders.

*Q.* What establishment has he in the church?

*A.* He has two livings, one in this county, the other in the county of Meath.

*Q.* Are you acquainted with the circumstances of Mr. Maffy's father, and of his disposition to his family, and do you recollect any and what occasion when that disposition was manifested?

*A.* The father having a very considerable landed property in his power, was enabled to settle liberally on his son, and I recollect, that when a treaty of marriage between the Rev. Charles Maffy and a young lady of the County of Tipperary was on foot at the wish of the father, he was then willing to settle on him £.840 a year in lands, £.2400 in money in addition to the young lady's fortune to purchase land with, and I know that a settlement to that amount was prepared, as I was consulted at the time; (witness then referred to a paper in his possession, specifying the terms of the intended settlement.)

*Q.* Was not Mrs. Maffy very young at the time of her marriage, of considerable personal attractions heightened by a refined education and accomplished manners, and were not her connections numerous and respectable?

*A.* Her education was the best the country could afford, her manners were amiable, I

thought so, and so did every one who knew her, she was young and beautiful, her family were respectable, and she was the youngest of of a number of sisters.

*Q.* Was there not a good estate in the family and what was the fortune of Miss Rofslewin?

*A.* The family estate was a good one, but on account of the numerous family dependent on it, Mrs. Maffy's fortune was very small, not exceeding £200.

*Q.* What were the respective ages of Mr. and Mrs. Maffey at the time of the marriage, and in what state of affection have you known them to have lived?

*A.* Mr. Maffy's age might have been about 23 or 24 years, hers about 18, and from the constant opportunities I had of seeing them, and of witnessing their manner towards each other, I never saw two people fonder of each other, not in appearance but in reality.

*Q.* Was there any settlement made by Sir Hugh Maffy on the marriage with Miss Rofslewin?

*A.* Sir Hugh made no settlement on the marriage, as it was not had with his knowledge or approbation, which I knew from different conversations with Sir Hugh Maffy, and also with Mrs. Maffy, who is my niece, it was a love match.

*Q.* Are you well acquainted with Mr. Charles Maffy, and what has his deportment been, what are his manners and education?

*A.* I have

*A.* I have been in long intimacy with Mr. Charles Maffy, and I think no man can be more amiable in his manners, he is as well educated as possible both in England and Ireland, and I never knew the harmony of his family interrupted in the smallest degree, till the present occasion.

*Q.* Do you recollect any particular impression made on you of the great affection which subsisted between Mr. and Mrs. Maffy?

*A.* I do, I was at Mr. Maffy's house on one occasion on his return from England, and they appeared as if they had been newly married, and this appearance of attachment continued for some days that I was in the house.

*Q.* Have they had issue of the marriage?

*A.* Yes, one very fine boy about 6 years old, and the father has as much affection for him as any man on earth can have for a son, and the affections of the mother were equally the same.

*Q.* What is Mr. Maffy's ordinary conduct?

*A.* His conduct is religious, correct and pious, more disposed to domestic life than to the follies of the world.

*Q.* Mr. Maffy has but one brother who is elder than him, is he married or unmarried, and has he issue?

*A.* Mr. Maffy has but one brother, Sir Hugh Maffy, who is elder than him, and is married and has no male issue, he has but one child and that child a daughter, Mr. Charles Maffy's son is the only male child in the family.

Q. What may be the amount of Sir Hugh Maffly's estate?

A. About 5000*l.* a year.

Q. What may the estate of the Marquis of Headfort be in this county, and what's his age?

A. In this county it is supposed he has in right of his wife, something about 5000*l.* a year, but he has other large estates, and he appears to be between fifty and sixty years of age.

*Cross Examined by MR. QUIN.*

Q. What is the amount of Plaintiff's income annually?

A. Near 1000*l.* a year.

Q. The settlement on the first treaty of marriage included part of that income?

A. Yes—one living of 200*l.* a year.

Q. How long has he had this 1000*l.* a year?

A. I believe he has the county Meath living about three or four years.

Q. This was a love match?

A. Yes.

Q. That instance of affection you mentioned was on Mr. Maffly's return from England, how long was he then absent?

A. It was on his return from England; he was absent three or four weeks.

Q. How did Defendant get his estate in this county?

A. By marriage—and it was settled on his marriage.

Q. Plaintiff's eldest brother is married—does his wife live with him?

A. No

*A.* No—for the last month she has been in England.

*Q.* Has Mrs. Hugh Maffy been used to live with her husband ?

*A.* She was at Donafs this time twelve months.

*Q.* Do they live separate or not ?

*A.* They are now separate.

*Q.* Have you ever dined with Mr. Hugh Maffy ?

*A.* Yes.

*Q.* Was Plaintiff there ?

*A.* Yes.

*Q.* Was any lady there ?

*A.* Yes.

*Q.* Young and handsome ?

*A.* Yes, very handsome—about 22 or 23 years old.

*Q.* Don't you believe that lady was the mistress of Hugh Maffy ?

*A.* Yes.

*Q.* What is her name ?

*A.* She is called Mrs. Harvey.

*Q.* Has Hugh Maffy any children by her ?

*A.* Yes.

*Q.* What country woman is she ?

*A.* She is an English woman.

*Q.* Who brought her to this country ?

*A.* I believe Mr. Maffy travelled with her. I should be glad to travel with such a woman.

*Q.* Do you believe Mr. Charles Maffy knew at the time the situation of this woman ?

*A.* Yes.

*Q.* Was

Q. Was any of Plaintiff's family there?

A. His little son went with me there.

Q. How long did this lady live with Mr. Hugh Maffy?

A. I cannot say. I heard she lived in Dublin with him before.

*Examined again by Mr. GRADY.*

Q. When you were at Donafs, was any lawyer or agent there?

A. Yes.

Q. COURT.—Was it since this action was brought, you saw Plaintiff there?

A. Yes. Mr. Comyn was there, Mr. Charles Maffy's agent, and we all went there to advise about this action.

Q. When did you go there?

A. At about 11 o'clock in the morning.

Q. Were you occupied the entire day?

A. Yes. We had not time to walk out.

Q. Did Plaintiff approve of his brother's connexion with that woman?

A. I know he did not. I know he remonstrated violently with him at various times about it, and intreated their mutual friends to do so too.

Q. Do you know of any coolness between them, in consequence of such remonstrance?

A. I know there was.

Q. COURT.—Why did you take the child there?

A. Because he was a pleasing affectionate child, and I did not like to leave him alone with three or four servants.

*Rev.*



*Rev. Mr. HADLOCK called, but not examined.*

*PATRICK DUNN examined by Mr. WHITE.*

Q. How old are you?

A. Seventeen years.

Q. Do you know the consequence of taking a false oath?

A. Yes. No chance here or next world.

Q. Do you know Defendant?

A. Yes.

Q. Where did you see him last?

A. At Donafs, the time he took Mrs. Maffy away.

Q. When was it?

A. After Christmas.

Q. What day?

A. A Sunday, at one o'clock.

Q. Where was your master?

A. At church.

Q. Where was your mistress?

A. Up stairs at the window—I saw him coming up.

Q. What did your mistress do?

A. She came to him to the drawing-room.

Q. What did she say to you?

A. She desired me to go to her room and wait there for her.

Q. Did you do so?

A. Yes—and she came up again, and asked me if I could take a bundle. I said I could, and I got another boy about 11 years of age to go with

with me with a dressing box. I saw Lord Headfort in the drawing-room, with the wood of a pistol appearing in his bosom.

Q. Did he go away?

A. Yes—and Mrs. Maffy with him—his hand under her arm.

Q. How long was he in the house?

A. About an hour—I saw him hand her into the boat.

Q. Where did she go to?

A. Went over the river towards Mr. Bruce's; she desired Lord Headfort to give the boy a shilling, and Mrs. Maffy desired me send the maid after her.

Q. Did you go for the maid?

A. Yes; but she would not open the room door.

Q. Did you go with the maid?

A. Yes. There was a carriage at the other side just ready—a pair of hackney horses—saw Lord Headfort hand in Mrs. Maffy—he put in the maid and two bundles, and went in himself, and desired the driver go off to Limerick. Heard Mrs. Maffy desire the maid to make haste.

Q. Did you see any of them since?

A. No.

*Cross Examined by Mr. GOULD.*

Q. How long have you lived with Plaintiff?

A. Twelve months.

Q. Did you alarm Mr. Maffy when Mrs. Maffy went away?

A. No.

A. No.

Q. Was Mr. Maffy always at home before this time?

A. No. He used to be out shooting—sometimes at Mr. Captain Maffy's.

Q. Used he come home early?

A. Sometimes at three or four o'clock.

Q. Was he never later?

A. He used sometimes dine there.

Q. Do you remember the day Mrs. Maffy came from the Bishop's?

A. I do.

Q. In whose carriage?

A. In her own.

Q. Did you never hear her servants talk of her?

A. Never.

Q. Do you remember any particular day your master went to Donaf's?

A. No.

Q. Did he ever come home hearty?

A. Never.

JANE APJOHN Examined by Mr. CASEY.

Q. Where did you live about January last?

A. At Pallas.

Q. Were you servant at the inn then?

A. Yes. I was house-maid.

Q. Were you there when Lord Headfort and Mrs. Maffy went there?

A. Yes.

Q. Did they sleep there?

E

A. Yes.

A. Yes.

Q. In separate beds?

A. No. In same bed.

Q. Had it next morning the appearance as if two slept in it?

A. Yes.

[PLAINTIFF HERE CLOSED.]

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MR. QUIN.

*My Lords and Gentlemen of the Jury,*

It is the particular duty of my situation to lay before you the circumstances of the defendant's case; submitting it on his behalf to your investigation and decision, with a perfect confidence of your discharging the important duty devolved upon you, with all that justice and fidelity which may be expected from the goodness of your understandings and the integrity of your hearts.

Cases of this sort impose painful tasks upon the counsel for the respective parties. They will not bear much ceremony, no polite forbearance, no punctilious restraint can reasonably be expected; of this you have had tolerable evidence already. The husband who brings his action *as such*, to recover compensation for an injury offered to the most sacred relation in society, does thereby put his character and conduct *as a husband*, directly at issue, and if he expects to succeed, must shew that he fulfilled

filled and discharged the duties springing from that relation, because it is the violation of it, which constitutes at once the injury and the claim. We cannot differ as to the principle and foundation of this action; it arises out of the necessary, politic provisions of society. It is bottomed in the finest and purest affections of the human heart. What man is there, possessed of rationality and feeling, what husband who deserves the name, that can resist to sympathize with, and is not impatient to redress the sufferings of a person, deprived without default of his, of that most inestimable of human treasures, an amiable and virtuous wife? Here we agree—but in proportion as such feelings impel us to remunerate *such* an injury, and vindicate the wrongs of *such* a sufferer; so do we turn with disgust and reprobation, from an attempt to pervert the sacred nature of this remedy from its just and honest purpose, from the assistance of the pure, genuine, and legitimate objects of its care, to lavish its redress upon *factitious* injury, and make that Jury who should be the instruments of its salutary efficacy, subservient to the schemes of hypocrisy and imposition. If the husband, who by his deportment is entitled to the name, meets such an injury, and sustains such a loss, compensate him (if he can be compensated), to the utmost limit which the case may bear. You at the same time requite the most poignant abuse which man can suffer, and give a wholesome lesson to society,

but if all who call themselves husbands, shall appeal successfully to this tribunal, and under *pretence* of injury, shall clamour for *money*, to assuage their feelings, by supplying their wants; You, in defiance of reason and of feeling, confound all claimants, you confer what should remunerate the injured, on him who has received no injury, and equalize those persons, who should stand in your estimation, as separate as innocence and guilt. You sanction, nay, encourage an adulterous traffic, the matrimonial bond will become assailed by the most licentious, dissolute, and fordid motives, lust, avarice and indigence, will institute treaties on the subject: husbands will take their wives to market, and instead of restraining, you will promote the vice. The case of the Defendant is not, because it cannot, be a case of justification. The fact stands admitted, and however it may be accounted for, it cannot be morally defended under any circumstances. The advocates of the Defendant would not outrage moral decency, or affront the feelings and understanding of a Jury. But the *principle* of the action should be exactly understood—the Defendant is not here upon his trial for the commission of an offence against society—you are not placed there on this occasion, as moral censors of the actions of men—public duties should not be confounded—the Defendant is not the subject of criminal prosecution—but the Plaintiff seeks compensation for a specific injury, and must shew he has sustained it.

it—he says he has lost, by means of the Defendant, the comforts and enjoyments of conjugal domestic life. The law upon the subject is simple and well settled—If the husband in the emphatical language of the law, *connives* at his own dishonour, (which I would not be understood to say, he has done in the present case) it goes to the foundation of the action, and he is not entitled to a verdict. That must of course be collected from the circumstances—neglect and inattention may be so gross, as to amount to satisfactory evidence of connivance, or may disclose such demerits on the Plaintiff's part, as should mitigate the damages to nothing. The case before you is of the latter class, and as such we put it to you. Let me advert to the circumstances under which the Plaintiff married Miss Rossewin. She was extremely young—it was what is called, a match of love—that is, at their time of life, it was passion upon both sides, and nothing *else*—their attachments, founded as they were, were fleeting, and when they fled, nothing remained to bind them—their means were stinted, and they possessed but small resources, to support the expences of fashionable life—the fatiated lover, became the careless husband, and, engaged in his own indolent pursuits, he left his wife to chuse her own. She was young, volatile and giddy, beautiful and vain, of an uncommon levity (the witness called it *gaiety*) of disposition, and addicted to the love of dress, beyond even the ordinary passion of her sex—

his

his manly advantages, and liberal education, enabled him, and the prudential duties of his station enjoined him, to observe and guide her; least uncontrolled by the presence, and unassisted by the instruction of a husband, unrestrained by marital admonition, unattended, unadvised, unchecked, and unproved by him, who was the natural guardian of her morals, and his own honour, indulged in profusion, to which his income was inadequate, she engaged in a career of dissipation, and plunged into that vicious vortex, which hurried her to the depth of her own infamy, and his disgrace.—Her life was passed and occupied—the Plaintiff suffered it to pass amidst those scenes of fashionable enjoyment, wherein women, unfortified by principle, and unaided by advice, become exposed to the most dangerous impressions, her improving beauty solicited, and provoked the admiration of our sex, and her situation encouraged their approaches—devoted to his own amusements, her natural protector wandered from her, and left “her fair side all unguarded,” she received and permitted with undisguised delight, assiduities too observable to pass unnoticed, or escape the effect of public observation; her dress became magnificent and costly. She passed months at the houses of single gentlemen, unaccompanied or unattended, save occasionally by the Plaintiff; and at Galway in particular, where she went on an excursion, the attentions  
of



of a military man of rank, became so remarkable, and her encouragement so glaring, that her own connections found it necessary to snatch her from the spot, as from impending infamy, and hurried her to Limerick.

Thus it will appear that this unfortunate young lady, who has been poetically represented by the Plaintiff's counsel as a paragon of domestic fidelity and female purity, until the spoiler came; and whose *piety* has composed *one* topic of the panegyric, had never beheld the Defendant or he her, until the breath of public remark had tainted, if not blasted her reputation. Such as I have described her, so did the defendant find her; engaged in public fashionable life, immersed in pleasures and practised in those arts which too often render a lovely married woman more *seducer* than *seduced*. He met her first at the races of Limerick, then at the races of Mallow, unattended by the Plaintiff at either place, the attentions of a man of such superior rank were too flattering to be declined, they passed under public observation at all places of public and private fashionable resort, the eyes of all companies were fixed upon them, and her reception of them being too obvious to pass unmarked, became the subject of general conversation—She avowed to her relations her attachment to the defendant, and her determination to go off with him. Are you to presume that all this took place, unknown to her husband? Was *he*, though on the spot, alone  
deceived

deceived?—It is said the Defendant's propensity to gallantry is notorious—was *that* unknown to the Plaintiff?—It would be monstrous under such circumstances to presume him ignorant; but he *should* have known her conduct because it was his duty to observe and govern it. That such was her demeanour will appear in proof.—We have heard and read of various husbands—the tender, the careless, the mysterious, the suspicious; but the Plaintiff adds a new one to the drama, and gives the *unsuspecting* or the *sightless* husband.—Here was no breach of friendship—no confidence abused—the intercourse went on in public, and it was not until after a familiar acquaintance with the wife, well known to the plaintiff, that he and the defendant became known to each other. While these proceedings were in progress to their consummation, the Plaintiff, who had resigned Mrs. Massy to her own good guidance, passed his time at the house of his brother, enjoying the highly moral intercourse of him and Mrs. Harvey. What! Gentlemen of the Jury, the man who claims 40,000*l.* against another for a breach of the most sacred moral relations in society—himself of a sacred and highly moral function, associates with the mistress of his brother, sanctions by his presence, the expulsion of an amiable and deserving woman, cast into exile from that mansion which she could adorn, and witnesses her rights supplanted and her place usurped by the dominion of a concubine; and if *these* be the Plaintiff's claims to your regard,

indulge

indulge him to the extent of his demand; but before you do so, you will expect that he shall shew himself entitled from his own deportment, for your verdict will be the result of reason and of justice, and not (as has been said) of *vengeance*. What will you be disposed to feel, when you shall hear that she dined repeatedly at the house of the defendant, alone, unaccompanied and uncoun tenanced by any other female, and surrounded by his officers. To what can you ascribe such an unblushing breach of delicacy? What inference do you draw from that? Why, that her principles were sapped before, and that it is as idle as unjust to charge the Defendant with her ruin! What will you think when I inform you, that after, in consequence of such misconduct, her relations shut their doors against her, the husband opened his. She returned from Limerick to Summer-hill, the Plaintiff's house, accompanied by the Defendant, and no other person, in the Defendant's carriage, and was received by her unsuspecting husband.—What did he do? Did he express a natural indignation? Did he remonstrate—did he reprove? No, Gentlemen of the Jury? He retired to *Dians Temple*, at Doonass, and the key of the cellar being left behind, nothing remained to impede the indulgencies of *love* and *wine*—from thence till he went off, the Defendant passed whole days at Summer-hill uninterrupted by the Plaintiff. Allow me to ask, where was Mr. Massy, and how was he occupied while his wife was so conducting her-

self? Was he engaged away in the service of his king and country? Was he laudably employed in the industrious task of furnishing the comforts and elegancies of life for the partner of his heart, and the dear pledges of their love? No—the man possessing a jewel of inestimable worth, who wished in truth to guard its value and preserve its lustre, would wear it next his heart; but the Plaintiff threw this gaudy worthless *trinket*, here and there to be picked up by every casual finder, or let it hang so loosely from his person as to invite, and ready as it were to bless the silly hand, which, tempted by its glitter, might feel disposed to rid him of the contemptible embarrassment, and snip it from his side.—It *has* been lost, and you are called upon to estimate the injury, and to reprove the loss.—You will reflect how far it was worth the keeping—you will consider what pains he took to guard it—you will appreciate the value of the article and then determine upon what grounds and to what extent, the Plaintiff merits the interposition of a jury.

COLONEL PEPPER *Examined on the part of  
Defendant.*

Q. Have you ever seen Mrs. Maffy?

A. I have.

Q. Do you know Lord Headfort?

A. I do.

Q. When did you first see Mrs. Maffy?

Q. Sometime

*A.* Sometime in September or October last, at or before the races of Limerick.

*Q.* When did the acquaintance between Mr. Maffy the Plaintiff, and the Marquis of Headfort commence?

*A.* I do not know.

*Q.* Have you often met Mrs. Maffy in company, and where?

*A.* I have often met her in different companies on different days in October, November and December, often at the Marquis's, and elsewhere.

*Q.* When she dined at the Marquis's were ladies always there?

*A.* I do not recollect positively whether ladies were always there, but to the best of my recollection she has dined there without other ladies.

*Q.* Did Mr. Charles Maffy always dine in the company of his wife on these occasions?

*A.* Not always.

*Q.* Where were these dinners given that you speak of?

*A.* These dinners were at Lord Limerick's house, in which Lord Headfort resided.

*Q.* Have you known that Mrs. Maffy remained there after dinner?

*A.* I have.

*Q.* Was Mrs. Maffy very expensively dressed and in presence of her husband?

*A.* I have seen her exceedingly well dressed, she appeared very fond of dress, exceedingly so.

Q. Do you know that these circumstances became the object of public conversation?

A. I do.

Q. Do you recollect meeting the Plaintiff in company with his wife at Lord Headfort's table?

A. Yes.

Q. Did the Marquis pay any particular attention to Mrs. Maffy, and in the presence of the Plaintiff?

A. He did, and she seemed highly flattered by them, his attentions were so marked that they drew the observation of the gentlemen at the table.

Q. Who chiefly composed the company?

A. It was generally composed of the officers of Lord Headfort's regiment.

*Cross-Examined by MR. CURRAN.*

Q. You are a young man, Colonel?

A. Yes, I am young.

Q. Pray Colonel how long since the Marquis left College?

A. I can't tell.

Q. You and the Marquis were in College together, were you not?

A. No.

Q. Pray how stands his account with the calendar?

A. I have taken no calendar of his age, but he is pretty far advanced.

Q. Are

Q. Are not there now a few white memorandums on his forehead, a few grey hairs, Colonel, was he not grey before he was good?

A. He is grey.

Q. You have heard him talk of action, passions and so-forth, on the general topic of gallantry?

A. Sometimes.

Q. Could you give a rough guess at the number of Saints on his calendar, or how many Bessys or Pollys he may have drank bumpers to? (on witness hesitating,) I see Colonel it's very well, I respect a soldier's taciturnity on subjects of this sort.—(no answer.)

Q. Some of those ladies were married, some unmarried, Colonel?

A. Yes, some were and some were not.

Q. Was it not mortifying to his vanity to talk of his being so unfortunately seduced? (no answer,) Is he not vain of these gallantries of his?

A. I cannot say I perceived it.

Q. Has he not boasted of them?

A. I never heard him that I recollect.

Q. The Marquis is very rich, has a very large fortune?

A. He has Sir.

Q. The Marquis is married, and has a wife a very amiable woman?

A. He has.

Q. How many children has he?

A. He has two grown up and two young ones, he has a son not yet gone to College.

Q. Did

*Q.* Did not other ladies dine at Lord Headfort's when Mrs. Maffy dined there?

*A.* I have seen other ladies also dine there on these occasions, and also at the Bishop's house.

*Q.* How nearly connected is the Bishop's wife to Mrs. Maffy?

*A.* She is her sister.

*Q.* The Bishop's is next door to Lord Limerick's in which Lord Headfort resided?

*A.* It is.

*Q.* Is it not natural from the ill state of the Bishop's health that her sister should have attended her?

*A.* It was in my opinion perfectly natural.

*Q.* Do you conceive that a woman living next door to a man of 50 would be equally criminal in visiting him, as she would a man of 25?

*A.* I do not think there is much difference.

*Q.* Were there not many ladies of distinction present at these dinners?

*A.* There were.

*Q.* Give me leave, Colonel, to ask what do you call marked attentions, for instance, if a gentleman should ask a lady, madam, permit me to pour a little melted butter on your greens, if he should ask her to take a glass of wine with him, would you call those marked attentions?

*A.* No.

*Q.* Pray Colonel be so good to shew the manner in which it should be done?

*A.* The



*A.* The attentions were such as to make her smile.

*Q.* Do you not believe that Mrs. Maffy is now living with the Marquis in England, publicly?

*A.* I believe she is.

*Q.* Do you not believe that he bore her off in his own carriage publicly, without disguise?

*A.* Yes, I have heard it, and I believe it.

*By the COURT.*—You say Lord Headfort payed Mrs. Maffy marked attentions; were they such as a husband should have disapproved?

*A.* They were.

*Mr. CURRAN.*—There was no touch of the person?

*A.* None I saw.

*By a JUROR.*—Was the Plaintiff ever present when those marked attentions were paid by the Defendant, to Mrs. Maffy?

*A.* He was.

JAMES CHARLTON, *Examined by Mr. BURTON.*

*Q.* You are a captain in the Meath regiment, and Lord Headfort is colonel of it, are you acquainted with the Defendant, and where did he live in Limerick?

*A.* I am acquainted with the Marquis, who had lived at Lord Limerick's house, while in Limerick.

*Q.* Do you know Mrs. Maffy?

*A.* I do.

*Q.* Have

Q. Have you ever dined in her company?

A. I did, in December last meet her at Lord Headfort's, when there was no other lady there.

*Cross Examined by Mr. HAWKESWORTH.*

Q. Did you not also meet there other ladies of the first rank and character in Limerick?

A. I did.

Q. Did not the Marquis give balls, both public and private?

A. He gave several private parties, and one public ball.

Q. Was not the Bishop of Limerick in a dangerous state of health at that time?

A. He was, and I have no doubt but that Mrs. Maffy's reason for going to Limerick at that time, was in consequence of the Bishop's illness.

Q. Have you met the Bishop's lady at Defendant's house?

A. I have.

Q. Was not there an intimacy between the Bishop's family and the Marquis?

A. I do not know if there was any great intimacy between them.

Q. Was Plaintiff at Lord Headfort's the day Mrs. Maffy dined there, unaccompanied by any other lady?

A. He was not.

*Mr.*

*Mr. BURTON again.*

Q. Did you ever dine there in company with one lady only, at any other time?

A. No.

By a JUROR.—Did Mr. Maffy dine there, the day she dined there, without any female being there but herself?

A. No, he did not.

GEORGE EVANS BRUCE, *Esq.* Examined by  
*Mr. GOOLD.*

Q. Are you acquainted with Mr. and Mrs. Maffy?

A. I am.

Q. How long?

A. Very long with Mr. Maffy—since marriage only, with Mrs. Maffy.

Q. How long have you known Lord Headfort?

A. Six or seven years.

Q. Did Lord Headfort know Plaintiff before he came to Limerick?

A. No.

Q. Had you any opportunities of knowing Mrs Maffy and Lord Headfort?

A. Many.

Q. Did Lord Headfort pay attentions to Mrs. Maffy in presence of Mr. Maffy?

A. He did.

Q. Were they the same as he paid other ladies?

A. No. They were marked attentions.

Q. When did Lord Headfort see Mrs. Maffy?

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A. First

*A.* First time I ever saw them together was before the races of Limerick, at dinner at the Bishop's.

*Q.* Were you last summer at the races of Mallow?

*A.* I was.

*Q.* Was Lord Headfort there?

*A.* He was. I saw him with Mrs. Maffy at the Assembly.

*Q.* Did Mr. Maffy go with her?

*A.* He did. He left her there the first period, and went away.

*Q.* Did Mrs. Maffy go to the public rooms while at Mallow?

*A.* I met her there.

*Q.* Did you observe Mrs. Maffy expensively dressed?

*A.* About six weeks before her elopement, she wore very expensive trinkets, particularly a large necklace and ear-rings—I think a topaz.

*Q.* Did her husband observe them?

*A.* He must.

*Q.* Did Mr. Maffy observe those attentions?

*A.* He was present when I saw what I considered attention.

*Q.* Did you take any step to inform Mr. Maffy of those attentions?

*A.* In consequence of what Mrs. Maffy told me, I informed her sister, and the Bishop and his brother, of her intention to elope.

*Q.* After this information, was Lord Headfort allowed to visit Mrs. Maffy?

*A.* He

A. He was.

Q. Did the Bishop do any thing in consequence of your information?

A. He wrote a letter, addressed to Mr. Maffy, which I delivered to him.

Q. Did Lord Headfort see her after that, and where?

A. Yes. He did at Summer Hill, at her husband's house.

Q. Do you remember her returning from Limerick with him in his carriage to Summer Hill tête-a-tête?

I. I do. When I saw them, they were tête-a-tête.

Q. Was this before or after delivery of the letter?

A. Before.

Q. Did Mr. Maffy see Lord Headfort after being in the carriage?

A. Often saw him—after, at Summer Hill.

Q. Did you see Lord Headfort at Donafs?

A. Often.

Q. How long before elopement was it, that you saw them in the carriage?

A. About three weeks.

Q. How long did Lord Headfort after the carriage scene, dine at Donafs?

A. I dined with him there two days after.

Q. Who were of the party?

A. Lord Headfort, Mr. Hugh Maffy, Mrs. Harvey, and myself—and Mr. Charles Maffy at one time.

Q. How

Q. How long ago since you first dined in company with Mrs. Harvey, and Mr. Charles Maffy.

A. Some months ago—before the elopement.

Q. Do you remember any day Mrs. Maffy was left alone at Summer Hill?

A. Yes. The day previous to the elopement I dined at Donas, I walked with Mr. Charles Maffy from his own house to Donas—Lord Headfort was not there.

Q. Have you ever seen Plaintiff's child in company with Mrs. Harvey?

A. I have.

Q. Did Mr. Charles Maffy know it?

A. I don't know.

Q. Are you related to Mrs. Maffy?

A. I am.

Q. Did she seem to you a woman of levity?

A. Always gay in her manner, and dressed remarkably well.

Q. Did you ever see any body else shew Mrs. Maffy any marked attention?

A. I have by more than one, besides Lord Headfort.

Q. Were those attentions a topic of public conversation?

A. In one instance I know they were.

Q. Was this before she knew Lord Headfort?

A. It was before.

Q. Do you know of any letter from Sir H. Maffy to Mr. Charles Maffy, previous to Lord Headfort's acquaintance with him?

A. I do.

*A.* I do. From conversations I had with Mr. Charles Maffy.

*Cross Examined by Mr. CURRAN.*

*Q.* You are an intimate friend of Lord Headfort's?

*A.* Of late very intimate, since he came to Limerick; but before that, I knew him during the rebellion at Waterford.

*Q.* How long before the elopement did you know of its likelihood to take place?

*A.* About two months.

*Q.* How long before, in consequence of what Lord Headfort told you?

*A.* He never spoke to me on the subject.

*Q.* Did you know it would take place the day it did?

*A.* I did not.

*Q.* Did you know of any preparation for it—carriages, horses, &c.?

*A.* I did not—but Lord Headfort did call on me that Sunday as he used to do, with a carriage.

*Q.* Were any horses put up in your stable that day?

*A.* There were two.

*Q.* Was not Mrs. Maffy always neat in her dress?

*A.* Always remarkably so.

*Q.* What time of day was it you saw her in the carriage alone with Lord Headfort?

*A.* In

*A.* In the middle of the day, near Dean Crossbie's.

*Q.* Was it extraordinary to see a lady with a man of 50?

*A.* No.

*Q.* Was not Mr. Maffy highly inflamed when he heard of it?

*A.* I am sure he was.

*Q.* Don't you believe he prevented her from going to Limerick after that?

*A.* I do not. She was in Limerick after that, how often, I do not recollect.

*Q.* Don't you believe Mr. Maffy was excessively attached to this unhappy woman?

*A.* I always thought so?

*Q.* Don't you believe his harsh reprimand of her proceeded from extreme fondness for her?

*A.* I always thought he loved her very much.

*Q.* Was it not his fondness for her, made him oppose his father, and sacrifice his prospects from him.

*A.* I believe it was.

*Q.* Did Sir Hugh Dillon Maffy offer to settle 1100*l.* a year on him, if he married a lady of his choosing?

*A.* Sir Hugh could do so, and was disposed to do every thing for his children.

*Q.* Did Plaintiff forbid Lord Headfort his house?

*A.* I heard he did from one gentleman, who said he only heard it, and I believe he did.

*Q.* You



Q. You doubt the truth of it, because you saw Lord Headfort at the house?

A. Yes.

Q. Did you know the contents of the bishop's letter?

A. No—I did not.

Q. Is not Limerick a calumniating place, and deals more in poetry than history?

A. Never knew a small town that was not, and Limerick is as much so in proportion as any other.

Q. Would not a reflecting man disbelieve reports of calumny?

A. I think he would, if no reason to the contrary.

Q. Do you believe on your oath as a man of honour, and in the presence of your country and your God, that Plaintiff connived at the conduct of his wife?

A. I believe not—I am sure he was incapable of it—his fault was more of the head than the heart.

Q. Do you believe a letter from Mrs. Maffy to Mr. Maffy was sent with privity of Lord Headfort?

A. It was enclosed under cover to me by Lord Headfort, and I sent it to Plaintiff's brother to give Plaintiff.

Q. Was not Plaintiff fond of his child?

A. Extraordinary fond of it.

Q. Don't you believe he carried his child through

through fondness to his brother's, to prevent his remaining with servants?

*A.* Yes.

*Q.* Are not the manners of Mrs. Harvey those of a gentlewoman, and could she corrupt a child of that age?

*A.* They certainly are the manners of a gentlewoman.

[DEFENCE CLOSED HERE.]

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Mr. G. PONSONBY.—It is my duty, Gentlemen of the Jury, as Counsel for the Defendant, to trouble you with a few observations on the whole of the evidence that has been laid before you.—You will please to observe, that this action is brought to recover compensation, in money, for the injury sustained by the Plaintiff—that injury only, is the foundation of this action, and therefore, what you have heard of Juries giving damages by way of *example*, in order to deter others from the commission of a like offence—of setting themselves up as censors, is

\* The letter alluded to in the evidence of Mr. Bruce from the Bishop of Limerick to the Plaintiff, and delivered by Mr. Bruce, was only delivered on the Friday before the elopement, which took place on the Sunday following.—It was couched in general terms, and merely requested that the Plaintiff Mr. Maffy would call on him (the Bishop) as soon as possible on particular business.—This he could not comply with, until the Sunday on which, during his absence, the elopement took place.—It is to be observed also, that many circumstances stated by Defendant's Counsel were not even attempted to be proved.

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perfectly irrelevant to the case before you.—It is the usual practice of counsel to have recourse to this artifice, because they know well, should they succeed in imposing such a principle on a Jury, there is no redress for the Defendant if the damages should be *excessive*. In other cases, such excess may be rectified, but in this, never can; and, therefore, from the consequence of inflamed passions, there is no relief to be had, and this should be a peculiar reason with a Jury to reflect most maturely in apportioning damages, because, should they happen to be mistaken, their mistakes can never be rectified.—In this action the law is plain and simple. The Plaintiff in it complains that the Defendant deprived him of the comfort and society of his wife, and the business for a Jury is on their oaths to enquire, what comfort has been lost, or injuries sustained by the Plaintiff, and whether such have been brought on by his own misconduct. This must be the rule to regulate the Jury.—The degrees of defence to the action are various. A Defendant may shew, the Plaintiff is not entitled to any damages, because if any injury has been sustained, it was occasioned by his default, in conniving at his own disgrace. If such a defence should be proved, the Plaintiff must fail altogether; but that is not the defence meant to be set up here. There are other degrees of defence: the husband is not only in fact, but is considered by the law, the guardian and protector of his wife; but if instead of so protecting her, he puts her in a

situation to provoke temptation, he is not entitled to such damages as he might otherwise have been. The defence I am instructed to insist upon goes not to the right of the action, but is irresistible in mitigation of the damages.—I do not accuse Plaintiff of connivance at the misconduct of his wife, but I do insist, it must be inferred from the evidence, that he is not entitled to damages so great as his Counsel would seem to require.

If a woman has long lived with her husband in affection, and discharging, as became her, the duties of her situation, and is seduced, the Jury ought to compensate him most amply.—If a long supposed friendship is perverted to the seduction of such a wife, the seducer ought to be punished—the Jury ought to be liberal in compensation. It would be well if society were so perfect, that there could be no danger of such an offence. The truth is—men are more in fault than women.—Women are in all countries regulated by the conduct of men, and if men will talk with levity—if they will talk lightly of women who have been guilty—if those who are guilty are received into society, it is but natural their own wives should be induced to act the same part those guilty women have acted. It is the husband's own conduct with regard to other women—his conduct in society in general—in deportment, in conversation, that can entitle him to damages in an action of this sort.—It is painful to an advocate to speak of a man in the same society  
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with himself with severity; but it is often his duty to do so. What has been the conduct of this Plaintiff's family?—To be sure it has been endeavoured to prove, that the lady was very religious—that she remonstrated at the conduct of her brother-in-law—that she was fond of Sunday devotion; but was there not in such devotion as much affectation as there was religion? There was in the Plaintiff's brother so much of immorality, that even the Plaintiff was prevailed upon to remonstrate with him. What time more fit for such remonstrance than his dinner visits! No doubt the way of life of his brother was extremely disagreeable to the Plaintiff, and, therefore, he frequently visited him for the purpose of effecting a reform in his religious principles and habits. But, admitting the fact to be so, if the Plaintiff's wife saw the frequency of those visits, she might reasonably enough consider it strange in him to visit a house whose legitimate owner was expelled, in order to make way for a woman—a kept mistress of her husband, and, therefore, the Plaintiff's wife might consider it venial in herself to indulge a little in the same guilt. Will you then say, Gentlemen of the Jury, that the Plaintiff has not been at least indiscreet to a very great degree; and that connubial honour and domestic peace, were not so highly valued by him, as his counsel would fain persuade you they were.

You will consider, Gentlemen, whether, as a minister of religion, he should not have forborne

to associate with a relative who had thus set at defiance every moral and social duty, and by the severity of his censure, prove he could not pardon such an offence. But, instead of that, has he not sanctioned, by his conduct, the acts of another man, and now complains of the very same when done by the Marquis of Headfort.

It has been said, that the Defendant was a man of very notorious gallantry, regardless of the ties which bind society, and trampling under foot those bonds that secure the happiness and comfort of families. How often he has sinned in this respect I know not ; but I would venture to say, this is the *first* action of this sort that ever was brought against him. But even admitting the fact to be as charged against the Defendant, was it not notice to the husband to regard, with a more watchful eye, the connection he saw increasing between his wife and Lord Headfort—Why did he allow any intimacy at all to subsist under such circumstances? Why allow his wife to dine with him? Why allow her to visit him, when his actions were so pointed? Was it not the height of indiscretion in Plaintiff to allow his wife to continue this intimacy—an intimacy that could not proceed from any friendship between the Plaintiff and Defendant, for none such subsisted. To what account then was he to place those attentions to his wife? Was it not to Defendant's regards for *her*, and not for Plaintiff? The history of the world unfortunately affords many instances of the violation of friendships the  
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most sacred and of their perversion to purposes the most abominable.—But here no previous friendship existed. Suffice it occurred to awaken the attention of Plaintiff, when those unusual tenderneſſes were ſhewn by the Defendant to his wife.

It has been ſaid, to be ſure, that his confidence in her honour and principles were even ſo great as not to allow him to ſuſpect her—Why—It reminds me of one of the plays of Congreve, where a lady laments the violence of her paſſion to her confidante. The confidante ſays—“ ah, you will never yield—your honour—your integrity will ſupport you.” The lady replies—“ ah, me, what is *integrity* to *opportunity* ;” and therefore, if the huſband allows a partiality for his wife to continue without interruption, he contributes to his own miſfortune—moſt particularly, if the ſuitor be a man of the character and conduct this Defendant has been ſaid to be, what can it be but the groſſeſt folly in the huſband not to diſcountenance his advances altogether. If any thing detrimental to him follows from ſuch neglect, who has he to blame but himſelf. Is he equally entitled to damages with the huſband, who would, inſtead of winking at the imprudencies of his wife, have removed her altogether from the neighbourhood of her gallant, or at leaſt have forbidden her a longer continuance of his acquaintance? To talk, therefore, of the kindneſs of this huſband, of his unwillingneſs to open his eyes to the conduct of his wife, is but  
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idle declamation—he has no body to blame but himself.

There are other considerations, Gentlemen of the Jury, of great moment necessary for your deliberation—I mean the actual loss the husband has sustained independent of what is called the loss of honour. Was not her conduct such as ought to make every prudent husband watchful? Was she not the subject of public animadversion; and if he has not discharged his duty, ought he to get the compensation of a husband the most virtuous?

He comes for compensation for the loss he has sustained in the society of his wife; but if she would make the same mistake with any other person, this Defendant ought not to be punished beyond the proportion of his offence. There is no man so rude or dull, as not to understand, that if the approaches of a stranger be well received by a married woman, the husband cannot lose much by the loss of her society. The Plaintiff here lays his damages at 40,000*l.*—a sum never heard of, even in the days of Lord Kenyon—a judge remarkable for the severity of his principles. The truth is, Gentlemen of the Jury, no woman capable of conduct such as Plaintiff's wife has been guilty of, could be worth 40,000*l.* So strange was her conduct, and so negligent was her husband, that one would think it would be almost reasonable to expect he should have told the Defendant that he valued his wife at 40,000*l.* One begins to think,  
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it was not fair in the Plaintiff to allow the address of my Lord Headfort to his wife, without giving him some notice that he valued her so high. Had he done so, are you sure, Gentlemen, that the Defendant would not have withdrawn his affiduities; and this is the only want of candour I impute to the Plaintiff. Admitting that Defendant's object, was the reputation of gallantry, and that Plaintiff knew that was the fact, and encouraged it, and wished to make the Defendant pay for it, he ought at least to have told the Defendant he expected 40,000*l.* for his indulgence of him. What! Gentlemen of the Jury, 40,000*l.*! for the seduction of a woman only four months known to the Defendant, previously too successfully assailed by others, and Plaintiff the claimant for such a sum, who has been himself guilty of great moral delinquency. I am no advocate for gallantry of this kind, but I would ask you, has there been in this case a long train of seduction—a long friendship violated, or a confiding husband betrayed. If such be the case, punish the Defendant—punish him amply. But on the contrary, if that be not the fact, and the evidence laid before you, shews it was not the fact—if Plaintiff's own conduct has contributed to his own misfortune, you are not to reward him for it. What is it to the Plaintiff that Lord Headfort is a married man—is his injury the greater?—You have nothing to do with the marriage of the Defendant—it can make no difference in point

of loss whether he was so or not. His being separate from his wife is a reason—a strong reason, why the Plaintiff should not allow his wife to associate with him. The Plaintiff's counsel have talked of vindictive damages—it is an expression unintelligible to me; they have said he should be made an example for all other adulterers. But your duty is to give damages proportionate to the injuries sustained, and the conduct of the parties, otherwise, you may as well give damages, because others have committed the same offence as to prevent the repetition of it. If one man had assaulted another so grievously as to put out his eyes, it seems to me it would be equally right in you to give vindictive damages to prevent the repetition of it, as it would be to do so in the present case. But the fact is, each case must rest on its own merits. You will ask yourselves these questions: did the Plaintiff see his wife dressed in ornaments beyond her means, and which he never supplied? Had he such warning as ought to have been sufficient to put him on his guard? If he had discharged his duty, could he have occasion for bringing this action? The evidence laid before you has given an answer to these questions, and ought to be the rule by which your verdict should be regulated. The liberty happily allowed to women in these countries, will often subject the best of husbands to deception; but it is better allow it, than to have recourse to the horrible and abominable coercions practiced in  
other

other countries. Here women are their own mistresses, and men are not their masters. If husbands acting under the generous feelings that are encouraged in these countries, are deceived, and if foul advantages are taken of them, it is hard to consider any compensation too great for the injury they sustain; but if the husband not only neglects, but almost invites addresses to his wife, he shall not be compensated. What is the law in other cases—is not the neglect, or want of vigilance of ones property, considered by the law as not entitled to redress? Is not an estate often lost, because the claim has not been made in a reasonable time; and why should it be otherwise in an action like this? Was the Plaintiff's conduct prudent and discreet? It has been said he ordered separate beds for himself and his wife—that he had forbid her for three weeks to visit Limerick; and yet, strange to tell, the Defendant during that time was received at his house. But suppose the Defendant was not received there—supposing the worst that can be said for my client—could not the Plaintiff have denied him admittance—could not he have removed for a time to the country with his wife? The conduct of the Plaintiff and his relations was far different. No indignation was expressed among them at the Defendant's conduct. He dined often after at Plaintiff's brother's house. Could the rigid injunction of Plaintiff on his wife, not to visit Limerick or receive the Defendant, be considered serious? Was he not induced

to think, when he was received at Plaintiff's house after such an injunction, that the whole proceeding was a mockery. The witness said it was the fault of the head, and not of the heart of the Plaintiff, that occasioned this neglect of his wife—admitted. It was still weakness in the extreme, not to discountenance the Defendant altogether. If a man is told in words his advances are not welcome, and yet the manner and actions contradict these words; which is to be believed? The Defendant knew that Plaintiff lived in habits of intimacy with his brother, frequented that brother's house, dined with him, when he well knew, that the wife of that brother was banished from her home, and in her place was substituted the mistress of the brother, who sat at the head of his table, and discharged all the other duties of the legitimate wife. The Plaintiff left his wife alone, spent days, and dined in company with Mrs. *Harvey*. The Plaintiff's being a clergyman, has nothing to do with this action. He is no more entitled to damages for that reason than any other man—It makes it only the more incumbent on him to attend to the morals and conduct of his wife. I do not justify the Defendant—I do not accuse the Plaintiff of connivance; but I do insist, that his own conduct—his own way of life, has occasioned whatever misfortune he has suffered. That this unhappy woman has yielded to the addresses of four months, cannot be disputed. What was the occasion of it? Was it the prof-

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pect of marriage—was it love?—No! *twenty-five* does not love *fifty*. Her husband was but *twenty-eight*—she could not leave

“That fair and fertile plain, to batten on that moor.”

Love might be a strong excuse for such conduct, because it is often too strong for law, virtue, or morality—It becomes entitled therefore to human commiseration. But how is it possible to conceive, that a woman of *twenty-five* could; after an acquaintance of four months, be induced by a violence of love, to throw herself into the arms of a man of *fifty*. If this husband's conduct was virtuous and vigilant—if his wife's conduct was moral and domestic—and if, notwithstanding, she was seduced from him—if the Plaintiff was every thing that was right, and the Defendant every thing that was abominable, why then, give damages. But do not say, that because Defendant is rich—because he is a man of intrigue—because he is a man of gallantry, you will therefore give vindictive damages. If the breath of slander had never reached this lady, previous to her acquaintance with the Defendant, punish the Defendant for his seduction; but, on the contrary, if the Defendant has been deceived by the husband, and seduced by the wife, as men of sense, consider whether he ought therefore to be punished by vindictive damages.

## MR. CURRAN SPOKE TO EVIDENCE.

Never so clearly as in the present instance, have I observed that safeguard of justice, which Providence has placed in the nature of man. Such is the imperious dominion with which truth and reason wave their sceptre over the human intellect, that no sollicitation, however artful, no talent, however commanding, can reduce it from its allegiance. In proportion to the humility of our submission to its rule, do we rise into some faint emulation of that ineffable and presiding divinity, whose characteristic attribute it is—to be coerced and bound by the inexorable laws of its own nature, so as to be *all-wise* and *all-just* from necessity, rather than election. You have seen it in the learned advocate who has preceded me, most peculiarly and strikingly illustrated—you have seen *even* his great talents, perhaps the first in any country, languishing under a cause too weak to *carry* him, and too heavy to be *carried* by him. He was forced to dismiss his natural candour and sincerity, and, having no merits in his case, to substitute the dignity of his own manner, the resources of his own ingenuity, over the overwhelming difficulties with which he was surrounded. Wretched client! unhappy advocate! What a combination do you form! But such is the condition of guilt—its commission mean and tremulous—its defence artificial and insincere—its prosecution candid and simple—its condemnation

nation dignified and austere. Such has been the Defendant's guilt—such his defence—such shall be my address, and such, I trust, your verdict. The learned counsel has told you, that this unfortunate woman is not to be estimated at Forty Thousand Pounds—fatal and unquestionable is the truth of this assertion. Alas! Gentlemen, she is no longer worth any thing—faded, fallen, degraded, and disgraced, she is worth less than nothing! But it is for the honour, the hope, the expectation, the tenderness, and the comforts that have been blasted by the Defendant, and have fled for ever, that you are to remunerate the Plaintiff, by the punishment of the Defendant. It is not her present value which you are to weigh—but it is her value at that time, when she sat basking in a husband's love, with the blessing of Heaven on her head, and its purity in her heart. When she sat amongst her family, and administered the morality of the parental board—estimate that past value—compare it with its present deplorable diminution—and it may lead you to form some judgment of the severity of the injury, and the extent of the compensation.

The learned counsel has told you, you ought to be cautious, because your verdict cannot be set aside for excess. The assertion is just, but has he treated you fairly by its application? His cause would not allow him to be fair—for, why is the rule adopted in this single action? Because, this being peculiarly an injury to the most susceptible

fufceptible of all human feelings—it leaves the injury of the husband to be afcertained by the fenfibility of the jury, and does not presume to meafure the juftice of their determination, by the cold and chilly exercife of its own difcretion. In any other aétion, it is eafy to calculate. If a tradesman's arm is cut off, you can meafure the lofs which he has fufained—but the wound of feeling, and the agony of the heart, cannot be judged by any ftandard with which I am acquainted. And you are unfairly dealt with, when you are called on to appreciate the prefent fuffering of the husband by the prefent guilt, delinquency, and degradation of his wife. As well might you, if called on, to give compenfation to a man for the murder of his deareft friend—find the meafure of his injury, by weighing the afhes of the dead. But it is not, Gentlemen of the Jury, by weighing the afhes of the dead, that you would eftimate the lofs of the furvivor.

The learned counfel has referred you to other cafes, and other countries, for instances of moderate verdicts. I can refer you to fome authentic instances of juft ones. In the next county, 15,000*l.* againft a fubaltern officer. In Travers and M'Carthy, 5000*l.* againft a fervant. In Tighe againft Jones, 10,000*l.* againft a man not worth a fhilling. What then ought to be the rule, where rank and power, and wealth, and ftation, have combined to render the example of his crime more dangerous—to make his guilt

more



more odious—to make the injury to the Plaintiff more grievous, because more conspicuous? I affect no levelling familiarity, when I speak of persons in the higher ranks of society—distinctions of orders are necessary, and I always feel disposed to treat them with respect—but when it is my duty to speak of the crimes by which they are degraded, I am not so fastidious as to shrink from their contact, when to touch them is essential to their dissection. In this action, the condition, the conduct, and circumstances of the party, are justly and peculiarly the objects of your consideration. Who are the parties? The Plaintiff, young, amiable, of family and education. Of the generous disinterestedness of his heart, you can form an opinion, even from the evidence of the Defendant, that he declined an alliance, which would have added to his fortune and consideration, and which he rejected for an unportioned union with his present wife. She too at that time young, beautiful and accomplished; and feeling her affection for her husband encrease, in proportion as she remembered the ardour of his love, and the sincerity of his sacrifice. Look now to the Defendant!—I blush to name him!—I blush to name a rank which he has tarnished—and a patent that he has worse than cancelled. High in the army—high in the state—the hereditary counsellor of the king—of wealth incalculable—and to this last, I advert with an indignant and contemptuous satisfaction, because, as the only instrument of his guilt and  
 shame,

shame, it will be the means of his punishment, and the source of compensation for his guilt.

But let me call your attention distinctly to the questions you have to consider. The first is the fact of guilt. Is this noble Lord guilty? His counsel knew too well how they would have mortified his vanity, had they given the smallest reason to doubt the splendor of his achievement. Against any such humiliating suspicion, he had taken the most studious precaution by the publicity of the exploit. And here, in this court, and before you, and in the face of the country, has he the unparalleled effrontery of disdaining to resort even to a *confession of innocence*—his guilt established, your next question is, the damages you should give. You have been told, that the amount of the damages should depend on circumstances. You will consider these circumstances, whether of aggravation or mitigation. His learned counsel contend, that the Plaintiff has been the author of his own suffering, and ought to receive no compensation for the ill consequences of his own conduct. In what part of the evidence do you find any foundation for that assertion? He indulged her, it seems, in dress—generous and attached, he probably indulged her in that point beyond his means; and the Defendant now impudently calls on you, to find an excuse for the adulterer, in the fondness and liberality of the husband; but you have been told, that the husband connived. Odious and impudent aggra-  
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vation of injury—to add calumny to insult, and outrage to dishonour. From whom, but a man hacknied in the paths of shame and vice—from whom, but from a man having no compunctions in his own breast to restrain him, could you expect such brutal disregard for the feelings of others—from whom but the cold-blooded veteran seducer—from what, but from the exhausted mind—the habitual community with shame—from what, but the habitual contempt of virtue and of man, could you have expected the arrogance—the barbarity—and folly of so foul—because so false an imputation? He should have reflected—and have blushed, before he suffered so vile a topic of defence to have passed his lips. But, ere you condemn, let him have the benefit of the excuse, if the excuse be true. You must have observed how his counsel fluttered and vibrated—between what they called connivance and injudicious confidence; and how, in affecting to distinguish, they have confounded them both together.—If the Plaintiff has connived, I freely say to you, do not reward the wretch who has prostituted his wife, and surrendered his own honour—do not compensate the pander of his own shame, and the willing instrument of his own infamy. But as there is no sum so low, to which such a defence, if true, ought not to reduce your verdict, so neither is any so high, to which such a charge ought not to inflame it, if such a charge be false. Where is the single fact in this case on which

the remotest suspicion of connivance can be hung?—Odiously has the Defendant endeavoured to make the softest and most amiable feelings of the heart, the pretext of his slanderous imputations. An ancient and respectable Prelate, the husband of his wife's sister, chained down to the bed of sickness, perhaps to the bed of death. In that distressing situation, my client suffered that wife to be the bearer of consolation to the bosom of her sister—he had not the heart to refuse her—and the softness of his nature is now charged on him as a crime. He is now insolently told, that he connived at his dishonour, and that he ought to have foreseen, that the mansion of sickness and of sorrow, would have been made the scene of assignation and of guilt. On this charge of connivance, I will not farther weary you, or exhaust myself—I will add nothing more, than that it is as false as it is impudent—that in the evidence, it has not a colour of support; and that by your verdict, you should mark it with reprobation. The other subject, namely, that he was indiscreet in his confidence, does, I think, call for some discussion—for I trust, you see, that I affect not any address to your passions, by which you may be led away from the subject—I presume merely to separate the parts of this affecting case, and to lay them item by item before you, with the coldness of detail, and not with any colouring or display of fiction or of fancy—honourable to himself was his unsuspecting confidence, but fatal

fatal must we admit it to have been, when we look to the abuse committed upon it; but where was the guilt of this indiscretion? He did admit this noble Lord to pass his threshold as his guest. Now the charge which this noble Lord builds on this indiscretion is—"thou fool—thou hast confidence in my honour—and that was a guilty indiscretion—thou simpleton, thou thoughtest that an admitted and a cherished guest, would have respected the laws of honour and hospitality, and thy indiscretion was guilt.—Thou thoughtest that he would have shrunk from the meanness and barbarity of requiting kindness with treachery, and thy indiscretion was guilt."

Gentlemen, what horrid alternative in the treatment of wives would such reasoning recommend? Are they to be immured by worse than Eastern barbarity? Are their principles to be depraved,—their passions sublimated, every finer motive of action extinguished by the inevitable consequences of thus treating them like slaves? Or is a liberal and generous confidence in them to be the passport of the adulterer, and the justification of his crimes?

Honourably but fatally for his own repose, he was neither jealous, suspicious, nor cruel.—He treated the Defendant with the confidence of a friend—and his wife with the tenderness of a husband.—He did leave to the Noble Marquis the physical possibility of committing against him the greatest crime which can be perpetrated against a being of an amiable heart and refined

education.—In the middle of the day, at the moment of divine worship, when the miserable husband was on his knees, directing the prayers and thanksgiving of his congregation to their God—that moment did the remorseless adulterer chuse to carry off the deluded victim from her husband—from her child—from her character—from her happiness,—as if, not content to leave his crime confined to its miserable aggravations, unless he also gave it a cast and colour of factitious sacrilege and impiety. Oh! how happy had it been when he arrived at the bank of the river with the ill-fated fugitive, ere yet he had committed her to that boat, of which like the fabled barque of Styx, the exile was eternal; how happy at that moment, so teeming with misery and with shame, if you, my Lord, had met him and could have accosted him in the character of that good genius which had abandoned him. How impressively might you have pleaded the cause of *the* father of the child, of the mother, and even of the worthless Defendant himself. You would have said, “is this the requital that you are about to make for respect and kindness, and confidence in your honour? Can you deliberately expose this young man in the bloom of life, with all his hopes yet before him.—Can you expose him, a wretched outcast from society, to the scorn of a merciless world? Can you set him adrift upon the tempestuous ocean of his own passions, at this early season when they are most headstrong; and can you cut him out from the moorings

moorings of those domestic obligations by whose cable he might ride at safety from their turbulence? Think of, if you can conceive it, what a powerful influence arises from the sense of home, from the sacred religion of the heart in quelling the passions, in reclaiming the wanderings, in correcting the disorders of the human heart; do not cruelly take from him the protection of these attachments. But if you have no pity for the father, have mercy at least upon his innocent and helpless child, do not condemn him to an education scandalous or neglected,—do not strike him into that most dreadful of all human conditions, the orphanage that springs not from the grave, that falls not from the hand of providence, or the stroke of death; but comes before its time anticipated and inflicted by the remorseless cruelty of parental guilt. For the poor victim herself—not yet immolated,—while yet balancing upon the pivot of her destiny, your heart could not be cold, nor your tongue be wordless. You would have said to him, pause, my lord, while there is yet a moment for reflection. What are your motives, what your views, what your prospects from what you are about to do? You are a married man, the husband of the most amiable and respectable of women, you cannot look to the chance of marrying this wretched fugitive; between you and such an event there are too sepulchres to pass. What are your inducements? Is it love, think you? No,—do not give that name to any attraction you  
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can find in the faded refuse of a violated bed. Love is a noble and generous passion, it can be founded only on a pure and ardent friendship on an exalted respect, on an implied confidence in its object. Search your heart, examine your judgment, do you find the semblance of any one of these sentiments to bind you to her? What could degrade a mind to which nature or education had given port or stature or character, into a friendship for her? Could you repose upon her faith? Look in her face, my Lord, she is at this moment giving you the violation of the most sacred of human obligations as the pledge of her fidelity.—She is giving you the most irrefragable proof that as she is deserting her husband for you, so she would without a scruple abandon you for another. Do you anticipate any pleasure you might feel in the possible event of your becoming the parents of a common child? She is at this moment proving to you that she is as dead to the sense of parental as of conjugal obligation, and that she would abandon your offspring to-morrow, with the same facility with which she now deserts her own. Look then at your conduct, as it is, as the world must behold it, blackened by every aggravation that can make it either odious or contemptible, and unrelieved by a single circumstance of mitigation that could palliate its guilt, or retrieve it from abhorrence.

Mean, however, and degraded as this woman must be, she will still (if you take her with you) have



have strong and heavy claims upon you.—The force of such claims does certainly depend upon circumstances; before therefore, you expose her fate to the dreadful risque of your caprice or ingratitude, in mercy to her, weigh well the confidence she can place in your future justice and honour: at that future time, much nearer than you think, by what topics can her cause be pleaded to a fated appetite, to an heart that repels her, to a just judgment in which she never could have been valued or respected? Here is not the case of an unmarried woman, with whom a pure and generous friendship may insensibly have ripened into a more serious attachment, until at last her heart became too deeply pledged to be reassumed: if so circumstanced, without any husband to betray, or child to desert, or motive to restrain, except what related solely to herself, her anxiety for your happiness made her overlook every other consideration, and commit her history to your honor; in such a case, (the strongest and the highest that man's imagination can suppose); in which you at least could see nothing but the most noble and disinterested sacrifice; in which you could find nothing but what claimed from you the most kind and exalted sentiment of tenderness, and devotion, and respect; and in which the most fastidious rigor would find so much more subject for sympathy than blame:—Let me ask you, could you, even in that case, answer for your own justice and gratitude? I do not allude to the long and pitiful catalogues

catalogues of paltry adventures, in which it seems your time has been employed.—The coarse and vulgar succession of casual connexions, joyless, loveless and unendeared: but do you not find upon your memory some trace of an engagement of the character I have sketched?—Has not your sense of what you would owe in such a case, and to such a woman, been at least once put to the test of experiment? Has it not once at least happened, that such a woman, with all the resolution of strong faith, flung her youth, her hope, her beauty, her talent, upon your bosom, weighed you against the world, which she found but a feather in the scale, and took you as an equivalent? How did you then acquit yourself? Did you prove yourself worthy of the sacred trust reposed in you? Did your spirit so associate with hers, as to leave her no room to regret the splendid and disinterested sacrifice she had made? Did her soul find a pillow in the tenderness of yours, and a support in its firmness? Did you preserve her high in her own consciousness, proud in your admiration and friendship, and happy in your affection? You might have so acted, and the man that was worthy of her, would have perished rather than not so act, as to make her delighted with having confided so sacred a trust to his honour—did you so act? Did she feel that, however precious to your heart, she was still more exalted and honoured in your reverence and respect? Or did she find you coarse and paltry, fluttering and unpurposed

posed, unfeeling, and ungrateful? You found her a fair and blushing flower, its beauty and its fragrance bathed in the dews of heaven. Did you so tenderly transplant it, as to preserve that beauty and fragrance unimpaired? Or did you so rudely cut it, as to interrupt its nutriment, to waste its sweetness, to blast its beauty, to bow down its faded and sickly head? And did you at last fling it like "a loathsome weed away?" If then to such a woman, so clothed with every title that could ennoble and exalt, and endear her to the heart of man, you could be cruelly and capriciously deficient, how can a wretched fugitive like this, in every point her contrast, hope to find you just? Send her then away. Send her back to her home, to her child, to her husband, to herself. Alas, there was none to hold such language to this noble Defendant; he did not hold it to himself." But he paraded his despicable prize in his own carriage, with his own retinue, his own servants—this veteran Paris, hawked his enamoured Helen, from this western quarter of the island, to a sea port in the eastern, crowned with the acclamations of a senseless and grinning rabble, glorying and delighted, no doubt, in the leering and scoffing admiration of grooms and ostlers, and waiters, as he passed.

In this odious contempt of every personal feeling, of public opinion, of common humanity, did he parade this woman to the sea port, whence he transported his precious cargo, to a

country where her example may be less mischievous than in her own; where I agree with my learned colleague, in heartily wishing he may remain with her for ever. We are too poor, too simple, too unadvanced a country, for the example of such achievements. When the relaxation of morals, is the natural growth and consequence of the great progress of arts and wealth, it is accompanied by a refinement, that makes it less gross and shocking: but for such palliations we are at least a century too young. I advise you, therefore, most earnestly to rebuke this budding mischief, by letting the wholesome vigour and chastisement of a liberal verdict, speak what you think of its enormity. In every point of view in which I can look at the subject, I see you are called upon to give a verdict, of bold, and just, and indignant, and exemplary compensation. The injury of the Plaintiff demands it from your justice. The delinquency of the Defendant provokes it by its enormity. The rank on which he has relied for impunity, calls upon you to tell him, that crime does not ascend to the rank of the perpetrator, but the perpetrator sinks from his rank, and descends to the level of his delinquency. The style and mode of his defence, is a gross aggravation of his conduct, and a gross insult upon you. Look upon the different subjects of his defence, as you ought, and let him profit by them as he deserves; vainly presumptuous upon his rank, he wishes to overawe you by the despicable consideration.

deration. He next resorts to a cruel aspersions upon the character of the unhappy Plaintiff, whom he had already wounded, beyond the possibility of reparation; he has ventured to charge him with connivance: as to that, I will only say, Gentlemen of the Jury, do not give this vain boaster, a pretext for saying, that if the husband connived in the offence, the Jury also connived in the reparation. But he has pressed another curious topic upon you: After the Plaintiff had cause to suspect his designs, and the likelihood of their being fatally successful, he did not then act precisely as he ought. Gracious God, what an argument, for him to dare to advance! It is saying this to him: "I abused your confidence, your hospitality; I laid a base plan, for the seduction of the wife of your bosom; I succeeded at last, so as to throw in upon you that most dreadful of all suspicions to a man fondly attached, proud of his wife's honour, and tremblingly alive to his own; that you were possibly a dupe to the confidence in the wife, as much as in the guest; in this so pitiable distress, which I myself had studiously and deliberately contrived for you, between hope and fear, and doubt and love, and jealousy and shame, one moment shrinking from the cruelty of your suspicion; the next fired with indignation, at the facility and credulity of your acquittal; in this labyrinth of doubt, in this phrenzy of suffering, you were not collected and composed; you did not act as you might

have done, if I had not worked you to madness; and upon that very madness which I have inflicted upon you, upon the very completion of my guilt, and of your misery, I will build my defence. You will not act critically right, and therefore are unworthy of compensation." Gentlemen, can you be dead to the remorseless atrocity of such a defence! And shall not your honest verdict, mark it as it deserves? But let me go a little further; let me ask you, for I confess I have no distinct idea, of what should be the conduct of an husband so placed, and who is to act critically right? Shall he lock her up, or turn her out? Or enlarge or abridge her liberty of acting as she pleases? Oh, dreadful Areopagus of the tea table! How formidable thy inquests, how tremendous thy condemnations! In the first case he is brutal and barbarous, an odious eastern despot. In the next; what! turn an innocent woman out of his house, without evidence or proof, but merely because he is vile and mean enough, to suspect the wife of his bosom, and the mother of his child! Between these extremes, what intermediate degree is he to adopt. I put this question to you, do you at this moment, uninfluenced by any passion, as you now are, but cool and collected, and uninterested as you must be, do you see clearly this proper and exact line, which the Plaintiff should have pursued? I much question if you do. But if you did or could, must you not say, that he was the last man from whom you should expect  
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the coolness to discover, or the steadiness to pursue it? And yet this is the outrageous and insolent defence, that is put forward to you. My miserable client, when his brain was on fire, and every fiend of hell, was let loose upon his heart, he should then, it seems, have placed himself before his mirror, he should have taught the stream of agony, to flow decorously down his forehead. He should have composed his features to harmony, he should have writhed with grace, and groaned in melody. But look farther to this noble Defendant, and his honourable defence; the wretched woman is to be successively the victim of seduction, and of slander. She it seems received marked attentions—here, I confess, I felt myself not a little at a loss. The witnesses could not describe, what these marked attentions were, or are. They consisted, not if you believe the witness that swore to them, in any personal approach or contact whatsoever—nor in any unwarrantable topics of discourse. Of what materials then were they composed? Why, it seems, a Gentleman had the insolence at table, to propose to her a glass of wine, and she, oh most abandoned lady! instead of flying like an angry parrot, at his head, and besmirching and bescratching him for his insolence, tamely and basely replies, ‘port, sir, if you please.’ But Gentlemen, why do I advert to this folly, this nonsense? Not surely to vindicate from censure, the most innocent, and the most delightful intercourse of social kindness,

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of harmless and chearful courtesy—"where virtue is, these are most virtuous." But I am soliciting your attention, and your feeling, to the mean and odious aggravation—to the unblushing and remorseless barbarity, of falsely aspersing the wretched woman he had undone. One good he has done, he has disclosed to you the point in which he can feel; for, how imperious must that avarice be, which could resort to so vile an expedient of frugality? Yes, I will say, that with the common feelings of a man, he would have rather suffered his 30,000 a year, to go as compensation to the Plaintiff, than saved a shilling of it by so vile an expedient of economy. He would rather have starved with her in a jail, he would rather have sunk with her into the ocean, than have so vilified her,—than have so degraded himself. But it seems, Gentlemen, and indeed you have been told, that long as the course of his gallantries has been, and he has grown grey in the service, it is the first time he has been called upon for damages—to how many might it have been fortunate, if he had not that impunity to boast? Your verdict will, I trust, put an end to that encouragement to guilt, that is built upon impunity—the devil it seems, has saved the noble Marquis harmless in the past; but your verdict will tell him the term of that indemnity is expired, that his old friend and banker, has no more effects in his hands, and that if he draws any more upon him, he must pay his own bills himself.

You



You will do much good by doing so, you may not enlighten his conscience, nor touch his heart, but his frugality will understand the hint. It will adopt the prudence of age, and deter him from pursuits, in which, though he may be insensible of shame, he will not be regardless of expence. You will do more, you will not only punish him in his tender point, but you will weaken him in his strong one, his money. We have heard much of this noble Lord's wealth, and much of his exploits, but not much of his accomplishments or his wit, I know not that his verses have soared even to the poet's corner. I have heard it said, that an ass laden with gold, could find his way through the gate of the strongest city. But, Gentlemen, lighten the load upon his back, and you will completely curtail the mischievous faculty of a grave animal, whose momentum lies not in his agility, but his weight, not in the quantity of motion, but the quantity of his matter. There is another ground, on which you are called upon to give most liberal damages, and that has been laid by the unfeeling vanity of the Defendant. This business has been marked by the most elaborate publicity. It is very clear that he has been allured by the glory of the chase, and not the value of the game. The poor object of his pursuit, could be of no value to him, or he could not have so wantonly and cruelly, and unnecessarily abused her. He might easily have kept this unhappy intercourse, an unsuspected secret.

secret. Even if he wished for her elopement, he might easily have so contrived it, that the place of her retreat would be profoundly undiscoverable ; yet, though even the expence, a point so tender to his delicate sensibility, of concealing, could not be a one fortieth of the cost of publishing her, his vanity decided him in favour of glory and publicity. By that election he has in fact put forward the Irish nation, and its character, so often, and so variously calumniated, upon its trial before the tribunal of the empire ; and your verdict will this day decide, whether an Irish Jury, can feel with justice, and spirit, upon a subject that involves conjugal affection and comfort, domestic honour and repose—the certainty of issue—the weight of public opinion—the gilded and presumptuous criminality of overweening rank and station. I doubt not, but he is at this moment reclined on a silken sofa, anticipating that submissive and modest verdict, by which you will lean gently on his errors ; and expecting, from your patriotism, no doubt, that you will think again, and again, before you condemn any great portion of the immense revenue of a great absentee, to be detained in the nation that produced it, instead of being transmitted, as it ought, to be expended in the splendour of another country. He is now probably waiting for the arrival of the report of this day, which I understand, a famous note-taker has been sent hither to collect. (Let not the Gentleman be disturbed) Gentlemen, let me assure

assure you, it is more, much more the trial of you, than of the noble Marquis, of which this imported recorder, is at this moment collecting the materials. His noble employer is now expecting a report to the following effect: "Such a day came on to be tried at Ennis, by a Special Jury, the cause of Charles Maffly, against the most noble, the Marquis of Headfort." It appeared, that the Plaintiff's wife, was young, beautiful, and captivating. The Plaintiff himself, a person, fond of this beautiful creature, to distraction, and both doating on their child; but the noble Marquis approached her, the plume of glory nodded on his head. Not the goddess Minerva, but the goddess Venus had lighted upon his casque, "the fire that nevertires—such as many a lady gay had been dazzled with before." At the first advance she trembled, at the second she struck to the redoubted son of Mars, and pupil of Venus. The jury saw it was not his fault; (it was an Irish Jury) they felt compassion for the tenderness of the mother's heart; and for the warmth of the lover's passion. The Jury saw on the one side, a young, entertaining gallant, on the other, a beauteous creature, of charms irresistible. They recollected, that Jupiter had been always successful in his amours, although Vulcan had not always escaped some awkward accidents. The Jury was composed of fathers, brothers, husbands—but they had not the vulgar jealousy, that views little things of that sort with rigour, and wishing to assimilate

their country in every respect to England, now that they are united to it, they, like English Gentlemen, returned to their box, with a verdict of sixpence damages and sixpence costs." Let this be sent to England. I promise you, your odious secret will not be kept better than that of the wretched Mrs. Maffy. There is not a bawdy chronicle in London, in which the epitaph, which you would have written on yourselves, will not be published, and our enemies will delight in the spectacle of our precocious depravity, in seeing that we can be rotten before we are ripe. I do not suppose it, I do not, cannot, will not, believe it: I will not harrow up myself with the anticipated apprehension.

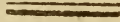
There is another consideration Gentlemen, which I think most imperiously, demands even a vindictive award of exemplary damages, and that is the breach of hospitality. To us peculiarly does it belong to avenge the violation of its altar. The hospitality of other countries is a matter of necessity or convention, in savage nations of the first, in polished of the latter, *but the hospitality of an Irishman* is not the running account of posted and ledgered courtesies, as in other countries;—it springs like all his qualities, his faults, his virtues—directly from his heart. The heart of an Irishman is by nature bold, and he confides; it is tender, and he loves; it is generous, and he gives; it is social, and he is hospitable. This sacrilegious intruder has prophaned the religion of that sacred altar so elevated in our worship, so precious

precious to our devotion; and it is our privilege to avenge the crime. You must either pull down the altar, and abolish the worship, or you must preserve its sanctity undebased. There is no alternative between the universal exclusion of all mankind from your threshold, and the most rigorous punishment of him who is admitted and betrays. This defendant has been so trusted, has so betrayed, and you ought to make him a most signal example.

Gentlemen, I am the more disposed to feel the strongest indignation and abhorrence at this odious conduct of the Defendant, when I consider the deplorable condition to which he has reduced the Plaintiff, and perhaps the still more deplorable one that he has in prospect before him. What a progress has he to travel through, before he can attain the peace and tranquillity which he has lost? How like the wounds of the body are those of the mind! How burning the fever! How painful the suppuration, how slow, how hesitating, how relapsing the process to convalescence? Through what a variety of suffering, what new scenes and changes, must my unhappy client pass, ere he can re-attain, should he ever re-attain that health of soul of which he has been despoiled, by the cold and deliberate machinations of this practised and gilded seducer? if, instead of drawing upon his incalculable wealth for a scanty retribution, you were to stop the progress of his despicable achievements by reducing him to actual poverty, you could not

even so, punish him beyond the scope of his offence, nor reprove the Plaintiff beyond the measure of his suffering. Let me remind you, that in this action, the law not only impowers you, but that its policy commands you to consider the public example, as well as the individual injury, when you adjust the amount of your verdict. I confess I am most anxious that you should acquit yourselves worthily upon this important occasion. I am addressing you as fathers, husbands, brothers. I am anxious that a feeling of those high relations should enter into, and give dignity to your verdict. But I confess it, I feel a ten fold solicitude when I remember that I am addressing you as my countrymen, as Irish men, whose characters as Jurors, as Gentlemen, must find either honour or degradation in the result of your decision. Small as must be the distributive share of that national estimation, that can belong to so unimportant an individual as myself, yet do I own I am tremblingly solicitous for its fate. Perhaps it appears of more value to me, because it is embarked on the same bottom with yours; perhaps the community of peril, of common safety, or common wreck gives a consequence to my share of the risque, which I could not be vain enough to give it, if it were not raised to it by that mutuality. But why stoop to think at all of myself, when I know that you, Gentlemen of that Jury, when I know that our county itself are my clients on this day, and must abide the alternative of honour, or of infamy

famy as you shall decide. But I will not despond, I will not dare to despond. I have every trust, and hope, and confidence in you. And to that hope I will add my most fervent prayer to the God of all truth and justice, so to raise and enlighten, and fortify your minds, that you may so decide, as to preserve to yourselves while you live, the most delightful of all recollections, that of acting justly, and to transmit to your children the most precious of all inheritances, the memory of your virtue.



*The Evidence having been spoken to on both sides,*  
*BARON SMITH addressed the Jury as follows:*

*Gentlemen of the Jury,*

After the long and serious demands, which this trial has already made on your attention, (rendered the less irksome, by the brilliant displays of eloquence which we have witnessed), I am sorry it has fallen to my lot to trespass farther on your patience; nor shall I do so in any greater degree than is prescribed to me by the duties of my situation; considering the importance of the question which you are to decide; and the large amount of the Damages which the Plaintiff claims.

I shall set out by informing you, to the best of my knowledge, of the legal doctrines, which are applicable to actions of the description of this which is on trial; and shall then proceed to sum  
 up

up the evidence which has been given; without feeling it necessary to interrupt the recapitulation by any general remarks. In short, I shall leave to you to apply to the facts of the case (of which you are the proper judges) those preliminary statements of the law, which I shall have made.

In the first place I feel myself not only warranted, but bound to apprise you of a principle, which I find laid down in books of high authority, and of modern law. The principle is—that this sort of action partakes of the nature of penal prosecution, and that large and exemplary damages are usually awarded. The rigour of the above doctrine (it must however be observed) is regulated and restrained by a variety of qualifications; and appears to be so diluted and softened that it amounts at last to little more than this, that where the Plaintiff's right of action is indisputable, and the injury which he hath sustained is manifestly great;—and where (as must always be the case) it is impossible to calculate with exact precision, the amount, in pounds, shillings, and pence, of the value of those comforts of which he has been deprived. There, Juries should not be parsimonious in the damages which they award; but, on the contrary, should be liberal, to a degree bordering on prodigality and profusion, for the benefit of public example, and the protection of public morals. This part of the question may perhaps be illustrated by a familiar usage, in the case of assaults. An assault is at  
once



once a civil injury, for which the sufferer has a right to be retributed in damages ; and it is an offence, for which the aggressor is liable to punishment. If he be convicted on an indictment for the misdemeanour, the practice is, for the Crown Judge to ascertain whether the prosecutor intends to bring an action. If not, a punishment is inflicted commensurate to the crime. Otherwise, a lenient and inadequate sentence is pronounced. In this latter case, the verdict of a Record Jury is in some measure substituted for the judgment of a Criminal Court. To apply this, adultery is a crime, not indeed of temporal cognizance, but punishable by the spiritual law, which is part of the law of the land. But proceedings of such a nature in the spiritual courts, having become so unusual as to be nearly obsolete, perhaps we may, by a fair analogy, consider the transaction as indirectly subject to the animadversion of the Jury which tries the civil action.

We must not, however, carry this principle too far. We must not forget, first, that ours is a mere civil tribunal ; or secondly, that adultery is no crime of temporal cognizance. If it were, that would not be law which we know is law. The law is, that if the Jury be convinced from the conduct of the Plaintiff, that he was consenting to the infamy of his wife,—they are bound in such circumstances, to find a verdict for the Defendant. Now this could never be the case, if their province were to punish adultery as a crime ;  
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since it is plain that the guilt of the Defendant would not be diminished, by the Plaintiff's having been accessory to his offence. Thus the position to which I have adverted, can only admit of the interpretation which I have given it; viz. that where it is (as in every such action it must be) difficult to make the value of the Plaintiff's loss a subject of pecuniary calculation, there it shall be competent to the Jury to take the advancement of public morality into their consideration. But they must make it a matter of collateral and subordinate consideration.— They must recollect that they are not sitting on the crown side; but that their main, or rather that their only province, is to decide on a violation of the private rights of parties.

The civil injury for which the Plaintiff is entitled to compensation, is the wound given to his feelings and happiness as a husband; and therefore the damages should be proportioned to its poignancy and extent. Accordingly these are susceptible of aggravation, or mitigation, on various grounds; which are all in fact merely detailed applications of the principle which I have mentioned last; namely, that the degree of the injury sustained, is the proper standard for measuring the amount of the compensation.

The first ground which I shall notice—as one, upon which the Jury may compute, and justify, the quantum of damages which they award, is the rank and situation of the Plaintiff.

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Nor does this rule trench on the impartial character of our law; or hold out different measures of justice to the rich and to the poor. It merely provides that the severer the injury is, the greater shall be the retribution. Virtue is far from being peculiar to the higher ranks; but there is, perhaps, a delicacy of sentiment, and punctilio of honour engendered by the refined habits which belong to opulence and distinction, and which sharpen the sting of such an injury as this. Besides, the more exalted is the sphere, the more are those who move in it exposed to observation; and consequently the more must such be injured by an aggression, which subjects the sufferer to scorn.

The fortune of the Defendant supplies another consideration, by which, in estimating damages, a Jury might be guided. Not that they ought to more than compensate a Plaintiff, merely because the Defendant happened to be rich. This would be to violate the maxim which we have laid down—that the damages awarded should bear a proportion to the injury sustained. But a Jury in the case of an indigent Defendant, may be disposed to give a Plaintiff less than the value of what he has lost, rather than, by awarding adequate compensation, doom him who is to make it, to imprisonment for life. Where the aggressor is in affluent circumstances, they will be relieved from such humane difficulties, and may find damages commensurate to the injury which has been sustained.

It is also the duty of a Jury to enquire whether the criminal intercourse has, or has not been the consequence of a preceding seduction of the wife. As evidence of this, they should examine her previous character and conduct; and may found their estimate of damages on such investigation. They may also take into account the connection which subsisted between the parties, and ascertain how far it involved those rights of hospitality or friendship, which might justify the Plaintiff in being less circumspect and suspicious; and reposing the greater confidence in the person who betrayed it. To the same head I would refer the age of the Defendant; and the circumstance of his being married. It would be injurious to morals to discourage that greater reliance, which it is natural to place on an aged, and married, than on a younger, and a single man. The duties and attachments which may be supposed to belong to the married state—and the bodily infirmities, the extinguished passions, and confirmed and settled morality which should belong to age, are so many securities for the honour of a husband, and justify the confidence which they inspire. If, however, these securities should appear in proof to have been lessened, by the gallantries of a Defendant, by his reputation in this respect, and by the footing on which he lived with his own wife; a Jury would be bound to throw these latter considerations into the opposite scale.

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The injured husband's obligation by settlement or otherwise to provide for the issue of that marriage, whose rights have been encroached on, is also a fit object of enquiry for the Jury. Neither, indeed, can I conceive a more malignant source of agony to a feeling heart,—a greater exasperation of the pain of that wound, to whose poignancy the compensation should be proportioned, than must arise from the perplexing doubt in a supposed father's mind, whether the child who shares his caresses, who is to inherit his possessions, for whom he is bound to provide—to whose advancement he has devoted his industry and his talents, has any natural and just claim to this parental care; whether it be a pledge of his wife's past affection for himself; or the offspring and memorial of her infidelity and his own disgrace.

If the complainant has had criminal connexions with other women, his damages shall be curtailed on this account. Both because these connexions negative the existence of a high degree of matrimonial comfort; and because such dissipation and neglect is calculated to set an ill example to the woman: it tends to sap her morals, to estrange her affections, and facilitate her seduction. Therefore, though he have not been actually unfaithful, yet by associating with women of forfeited or sullied honour,—he may diminish his claim to damages, if this association has fallen under the eye of his wife, and has

arisen not from peculiarity of circumstance, but from laxity of principle.

Again, in ascertaining the damages, to which such a Plaintiff is entitled, his having treated his wife with tenderness or harshness, their having lived on terms of harmony or discord, (let the fault have lain where it may) are proper subjects of attention from a Jury; for the gist of this action is the husband's loss of the comfort and society of his wife; and this comfort must be in proportion to their mutual cordiality and attachment.

Indeed where this affection appears by the evidence to have amounted to that engrossing, and subjugating sentiment called love, the keenness of the wound is infinitely augmented, and the amount of the compensation should be proportionally increased.

We have already seen that where a husband connives at the infidelity of his wife, the effect shall be, not only to diminish his compensation, but to destroy his right of action altogether, and disentitle him to any verdict whatsoever; and this on one or both of the following grounds; *first*, that *volenti non fit injuria*; *secondly*, that a profligate accomplice in his wife's dishonour, forfeits his right to the protection of the Court.

But there may be a levity in the husband's behaviour, and a culpable inattention to the conduct of his wife, which not amounting to a  
consent

consent to her infamy, shall not, indeed, disentitle him to a verdict, but which having probably contributed to her seduction, shall mitigate the damages which are awarded to him.

It has been urged in the present case, that if any such negligence existed, it arose (to adopt the language of one of the witnesses) “not from the fault of the heart, but of the head.”—This excuse is founded in misapprehension. If the inattention arose from the fault of the heart, it would amount to connivance; and destroy the Plaintiff’s right of action altogether. When the neglect arises only from an error of the head, it leaves him a right of action; but is evidence admissible in mitigation of damages.

Otherwise a snare would be laid for the Defendant; who, judging of the Plaintiff’s motive by his conduct, might suppose that he intended to connive; and was an accommodating husband, not from inadvertence, but from design.

At the same time, towards entitling a Plaintiff to recover largely, we must not require that he should have been a Spanish or an Oriental husband. We must recollect the freedom which our customs allow to females; and not lay down a rule so rigorous as this, that the rights of every married man may be invaded, whose conduct is not a system of suspicion and controul; exposing the jealous spy to public derision; and degrading the woman who is the object of this distrust; offending her pride, and alienating her affections.

It should suffice that he does not negligently overlook behaviour, which ought to excite the vigilance of a man duly attentive to his wife's honour. The law invests every husband with certain privileges, and authorities; and if he will not use them for his own protection, he must forfeit a part of his claim to damages, as the reasonable consequence of his default. It is the vigilant, not the indolent, whom the law strenuously assists.

There are but two observations more, which I have to make. First, that if, in measuring the damages, public morals and example should be at all taken into the question, we must remember that Plaintiffs as well as Defendants, are subject to the infirmities and depravities of our imperfect nature. We must therefore take care how, by awarding damages to an enormous amount, we hold out a temptation to the unprincipled husband, dissembling his own connivance, to wink however at his wife's dishonour, when he finds that her infamy will bring so high a price.

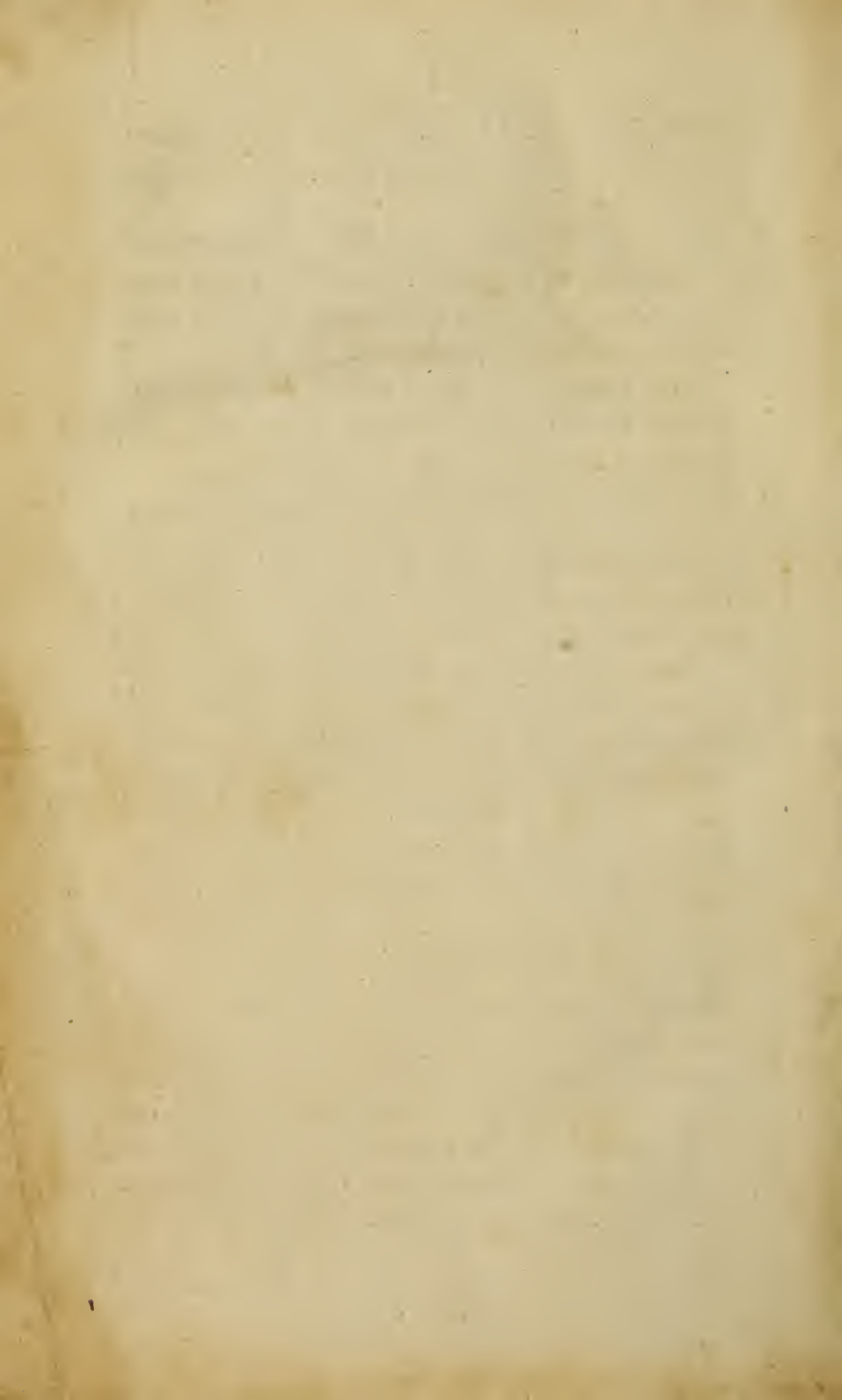
The second, and last remark which I have to trouble you with, is this; that you will be the more scrupulous in measuring the compensation which you award,—because, if you grant too much, it is improbable that your error can ever be corrected; it being the established practice, if it be not the undoubted law, that in actions of this nature, however high the damages

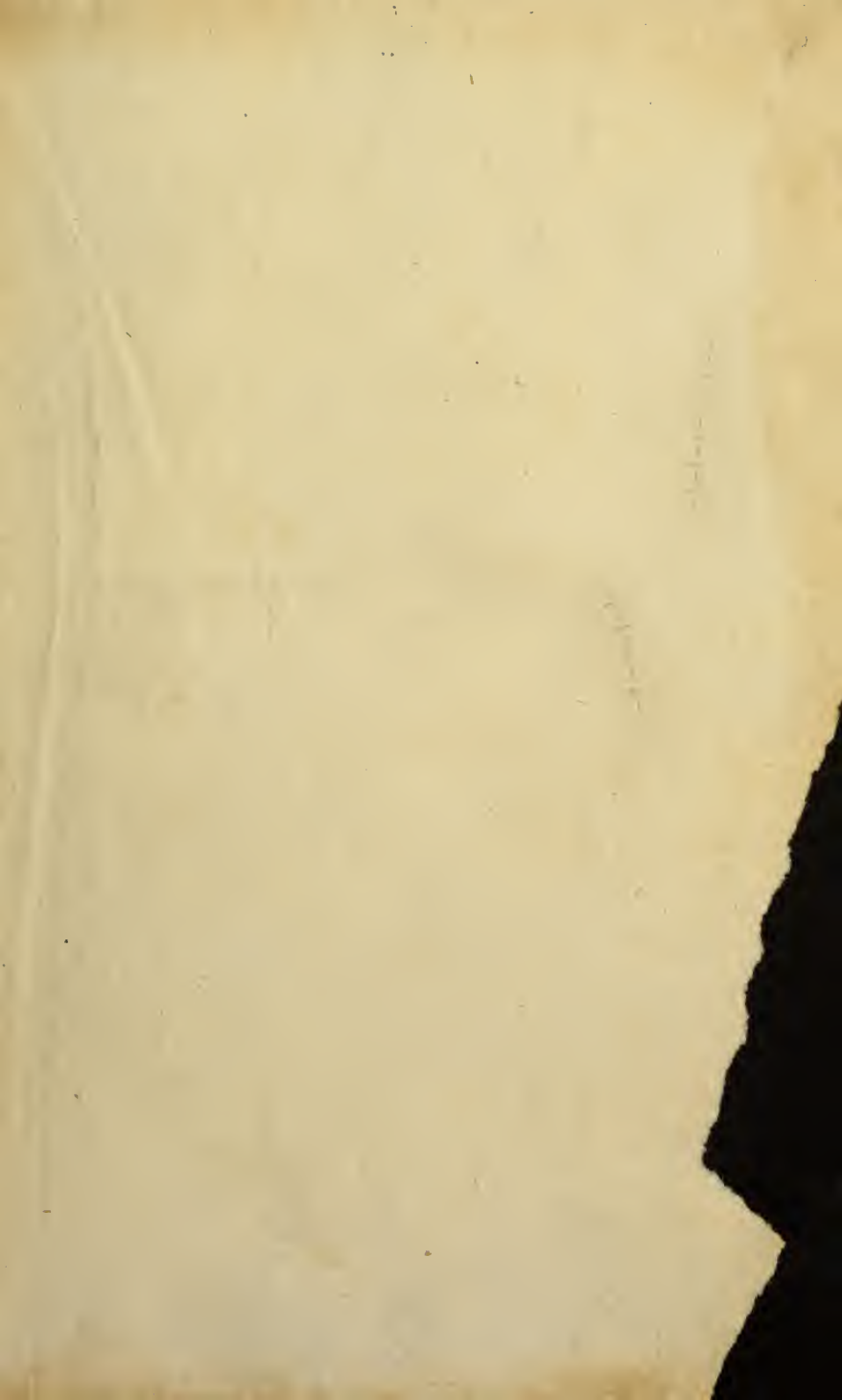


ges which are found, may be, the verdict cannot be set aside on the mere ground of their being excessive.

Baron *Smith* then proceeded to recapitulate the evidence, as it appeared upon his notes; and having done so, closed his charge, without any farther observations on the law.

Trial lasted 12 hours, verdict for Plaintiff 10,000*l.* at 12 o'clock at night, with costs.





John



