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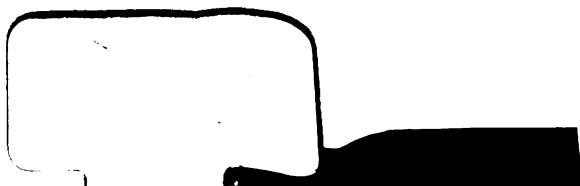
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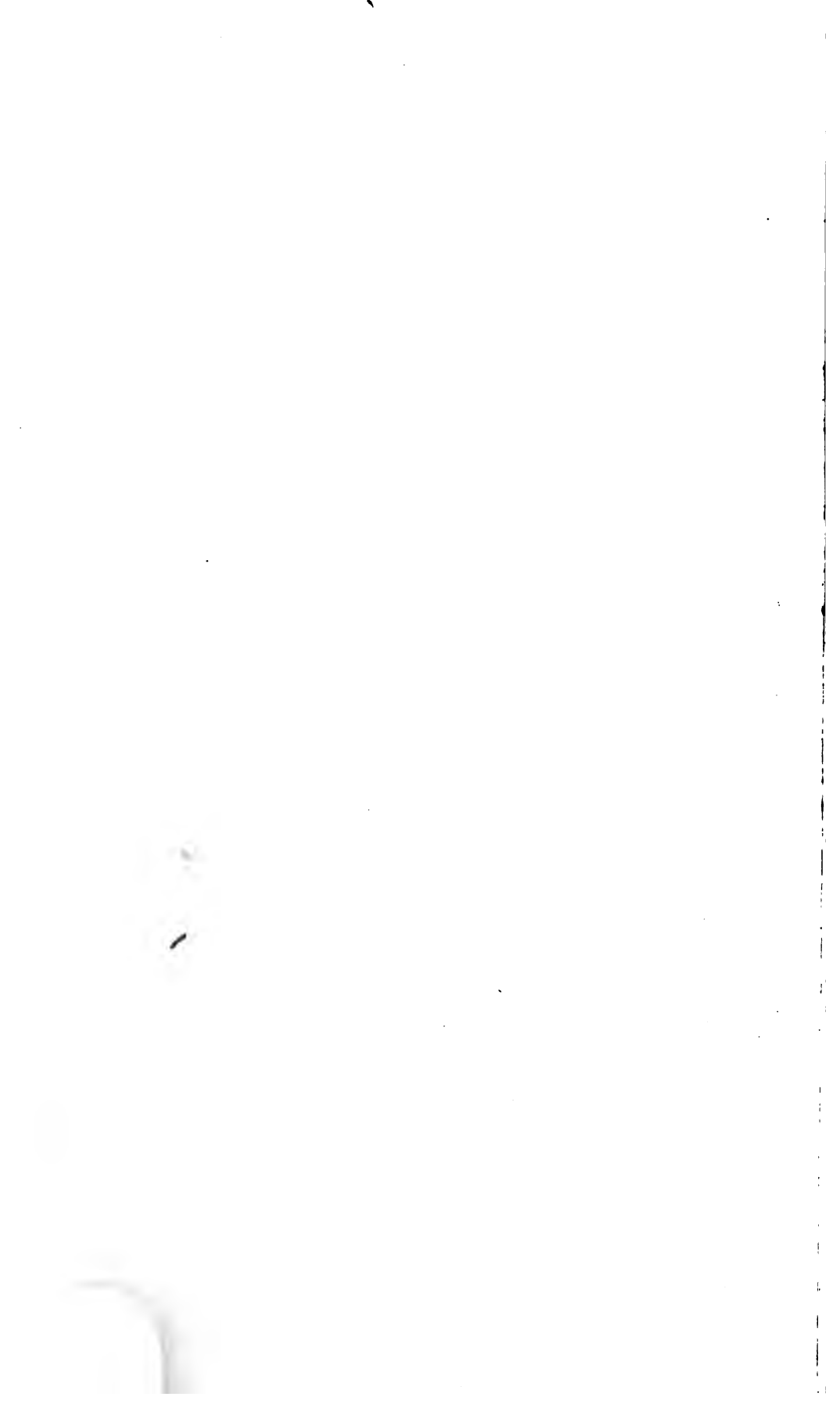
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CROWN

REPORT

OF THE

TRIAL OF JOHN WARREN,

FOR

TREASON-FELONY,

AT

THE COUNTY DUBLIN COMMISSION,

HELD AT THE

COURT-HOUSE, GREEN-STREET, DUBLIN,

COMMENCING THE 30TH OCTOBER, 1867.

REPORTED FOR THE CROWN

BY

WILLIAM G. CHAMNEY, Esq.,

BARRISTER-AT-LAW.



DUBLIN:

PRINTED BY ALEXANDER THOM, 87 & 88, ABBEY-STREET.

1867.

Judging Judges:

**THE RIGHT HONORABLE THE LORD CHIEF BARON PIGOT;
THE RIGHT HONORABLE MR. JUSTICE KEOGH.**

Sheriffs:

**HIGH SHERIFF—MALACHI STRONG HUSSEY, Esq., J.P.;
SUB-SHERIFF—WILLIAM ORMSBY, Esq.**

Counsel for the Crown:

**THE RIGHT HONORABLE ROBERT RICHARD WARREN, M.P., HER MAJESTY'S
ATTORNEY GENERAL;
MICHAEL HARRISON, Esq., HER MAJESTY'S SOLICITOR-GENERAL;
CHARLES ROBERT BARRY, Esq., M.P., SERGEANT-AT-LAW;
ROBERT LONGFIELD, Esq., Q.C., LAW ADVISER;
JAMES MURPHY, Esq., Q.C.;
EDWARD BETTAGH, Esq.**

Crown Solicitor:

MATTHEW ANDERSON, Esq.

Clerk of the Crown:

EDWARD GEALE, Esq.

Counsel for the Prisoner:*

**DENIS CAULFEILD HERON, Esq., Q.C.;
RICHARD DOWSE, Esq., Q.C.;
CONSTANTINE MOLLOY, Esq.**

Attorney for the Prisoner:

JOHN TALBOT SCALLAN, Esq.

* *Counsel and Attorney for the Prisoner withdrew during the progress of the case (see page 20).*

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COUNTY DUBLIN COMMISSION.—OCTOBER, 1867.

QUEEN *a.* JOHN WARREN.

Wednesday, 30th October.

The LORD CHIEF BARON and Mr. JUSTICE KEOGH took their seats on the Bench shortly after 10 o'clock, A.M., in the Court-house, Green-street.

PROSECUTION FOR TREASON-FELONY.

John Warren was placed at the bar.

Mr. Heron.—May it please your lordships, I appear here on behalf of the prisoners W. J. Nagle and John Warren only; and on their behalf my respectful application to the Court would be, that those prisoners be both now arraigned. The reason is that an application will be made on behalf of Nagle, who is an American citizen; of course you can see at once what that application will be. He is anxious that his trial should not be delayed beyond this Commission.

The Attorney-General.—I do not see how the purposes of justice, as regards Warren, can be affected one way or the other by calling on Nagle to plead now, and I must therefore decline to accede to the application.

Mr. Heron.—I don't do it for the purpose of pleading. My request is that Nagle may be now arraigned, in order that an application may be made to your lordships with reference to his trial during the present commission.

The Attorney-General.—It will be quite time enough to do that when he is called upon to plead.

Mr. Heron.—I really cannot see why this should be refused. Nagle would have been arraigned on Saturday, only I informed your lordships that a question would arise on the arraignment. I thought they were to be arraigned together.

The Attorney-General.—I never said that the two prisoners would be arraigned together. When the present prisoner, Warren, has pleaded, I must be allowed to take my own course as to whom I will arraign next.

The Chief Baron.—If you have any application to make on the part of any prisoner against whom a bill of indictment has been found, there is nothing to prevent your making it.

Mr. *Heron*.—My application on behalf of Nagle cannot be legally made until he has pleaded, and that is the reason I ask him to be arraigned. If he is arraigned now, he will plead "Not guilty," without any delay.

The *Chief Baron*.—Do you see any reason, Mr. Attorney-General, for not arraigning him now?

The *Attorney-General*.—I see no objection to it, my lord, except that it will delay the proceedings.

The *Chief Baron*.—It cannot affect the proceeding against Warren; for supposing we arraign Nagle now, of course we are not called upon to proceed with his trial.

The *Attorney-General*.—I am aware of that, my lord; but putting forward Nagle now would cause considerable delay to the present trial.

The *Chief Baron*.—If questions are likely to arise on the arraignment of Nagle that would involve delay, that would be a good reason for not arraigning him now; but if not, I see no reason why we should not accede to the application.

The *Attorney-General*.—My lord, I respectfully say we are not bound, on behalf of the Crown, to put forward any prisoner except the prisoner with whose trial we, acting for the Crown, think it desirable to proceed.

The *Chief Baron*.—I think you are not called upon to proceed with the trial of any prisoner, Mr. Attorney, except the prisoner whom you deem it desirable should be tried.

The *Attorney-General*.—Nor to put forward any prisoner, unless we think it desirable on behalf of the Crown to do so.

The *Chief Baron*.—I think there should be no objection to arraigning the other prisoner now.

The *Attorney-General*.—If your lordships rule that you have the right so to direct, of course I must submit, but on behalf of the Crown I respectfully object to your doing so.

The *Chief Baron*.—We will proceed with the arraignment of the prisoner now before us.

Mr. *Heron*.—Then, my lords, on behalf of that prisoner, I respectfully ask to see the indictment, in order that I may see the list of witnesses endorsed on the back of it, before he pleads.

The *Attorney-General*.—The prisoner has already got a copy of the indictment.

Mr. *Heron*.—But I want to see the original.

The *Attorney-General*.—I submit that all he is entitled to is a copy of the document.

Mr. *Heron*.—My lords, there is express authority in support of my application. I quote from 3rd Cox's Criminal Cases, page 517, which says that "a prisoner indicted for felony is not entitled to a copy of the names and addresses of the witnesses appearing on the back of the indictment, but he will be allowed to inspect the indictment for the purpose of seeing the names of such witnesses." That has always been the law in England.

The indictment was then handed to Mr. *Heron*.

Mr. *Heron*.—My lord, we put in a plea in abatement, which will be verified by the prisoner's affidavit.

The usual affidavit in support of the plea was then sworn by the prisoner.

Mr. *Heron* read the plea in abatement, as follows:—

“And the said John Warren, in his own proper person, cometh into Court here, and having heard the said indictment read saith, that it does not appear by any entry, statement, or endorsement upon the back of the said indictment, or upon any part thereof, that the witnesses whose names are endorsed upon the back of the said indictment by the Clerk of the Crown, pursuant to the statute in such case made and provided, were, or that any of the said witnesses was sworn or affirmed by the said Alexander Ferrier, foreman, or any other member of the said Grand Jury previous to this on his examination, or at all before the said Grand Jury, as appears by the record of the said indictment; and the said John Warren further saith, that the said Alexander Ferrier, foreman, has not, nor has any other member of the said Grand Jury stated and authenticated the same by his signature or initials upon the back of the said indictment, or upon any other part thereof, that any of the said witnesses upon whose testimony the said bill of indictment was found and returned a True Bill by the said jurors, was sworn or affirmed previous to such witness or witnesses having being examined, or giving his or their evidence before the said jurors; and the said John Warren further saith that it does not appear by the record of the said indictment, or otherwise, that the said bill of indictment was found and returned a true bill by the said jurors, upon the evidence of any witness or witnesses who were sworn or affirmed by said foreman, or any member of the said Grand Jury. And this he, the said John Warren, is ready to verify; whereupon he prays judgment, and that the said indictment may be quashed.”

Mr. *Heron*.—My lords, the point of this plea in abatement is founded on the Act 1st and 2nd Victoria, cap. 37, section 1.

The *Attorney-General* demurred as follows:—

“And thereupon the Right Honorable Robert R. Warren, Attorney-General for our said Lady the Queen, who now prosecutes here for Her Majesty, in this behalf saith, that the said plea, above pleaded by the said John Warren, and the matters therein contained, in manner and form, as the same are above pleaded and set forth, are not sufficient in law to prevent the said John Warren from being now compelled to answer the said indictment; and the said Robert R. Warren, for our Lady the Queen, prays judgment, and that the said John Warren may be compelled now to answer the said indictment.”

Mr. *Heron*.—We join in demurrer for the prisoner. This is our joinder in demurrer.

“And thereupon the said John Warren saith, that the said plea above pleaded by him, and the matters therein contained in manner and form as the same are above pleaded and set forth, are sufficient in law to prevent the said John Warren from being now compelled to answer the said indictment, and are sufficient in law to preclude our said Lady the Queen from prosecuting the said indictment against him the said John Warren, and the said John Warren is ready to verify and prove the same, as the said Court here shall direct and award.”

The *Attorney-General*.—I respectfully submit that demurrer must be allowed. The plea which the prisoner has put in to the

indictment avers that it does not appear upon the back of the indictment that certain witnesses were sworn, and that it does not appear that Mr. Alexander Ferrier, the foreman, or any other member of the Grand Jury, by his signature or initials upon the back of the bill authenticated the swearing of the witnesses by whom this bill was found. This plea is stated to be founded upon the Statute 1st and 2nd Victoria, cap. 37, section 1, by which Act of Parliament the former law under which witnesses were sworn in open Court was repealed, as was decided in the case of the *Queen v. O'Connell*, and in lieu of that mode of swearing witnesses, it provided that the foreman or other member of the Grand Jury should have the power of administering an oath, and it then proceeds to say: "The foreman or other member of the Grand Jury, who shall have administered such oath, shall upon the back of the bill state the names of the witnesses, and authenticate the same by his signature or initials." Now, the matter of fact, which is admitted by our demurrer, is that in the present case the foreman has not authenticated the swearing of the witnesses by his name or signature. We say that is not sufficient ground for a plea in abatement. In the case of the "*Queen v. O'Connell and others*," a similar plea was put in by one of the prisoners, Thomas Steele. [See 11th Clark and Fenelly's Reports, page 252.] I shall read to your lordships what Chief Justice Tyndal says, in his judgment given in the House of Lords on this question, in that case. He says:—

"As to the ninth question, the errors in fact assigned in the writs of error *eoram nobis*, by each of the defendants (except Thomas Steele) were the same, viz: that the bill of indictment was found and returned a true bill by the Grand Jury upon the evidence of divers witnesses, whose names are enumerated, and of no other persons; and that these witnesses previous to their examination before the Grand Jury, were not sworn in the Court of Queen's Bench, as required by the 56 Geo. III. c. 87, now lawfully bound by affirmation or declaration, to give true evidence before the said Grand Jury. In the case of the writ of error *eoram nobis*, brought by the defendant Thomas Steele, the error assigned was this— that the indictment was not found in the manner required by the Statute 1 and 2 Vic., c. 37, inasmuch as that, in stating on the back of the said bill of indictment the names of the witnesses who had been sworn, &c., neither the foreman nor any other member of the Grand Jury did authenticate by his signature or initials, as is required by the statute, that the said witnesses, or any of them, had been sworn, or made affirmation or declaration; nor that no other witnesses, save those named in the assignment of errors, were so sworn or affirmed or examined before them. My lords, with respect to the assignment of errors in fact, grounded on the non-compliance with the Statute 56 Geo. III. the answer appears to me to be, that the subsequent Statute 1 and 2 Vic., c. 37, operates as a virtual repeal of the former, as well in the Court of Queen's Bench as in other Courts of Criminal Jurisdiction in Ireland," &c.

Now, my lords, in this plea in abatement it is not alleged that in point of fact the witnesses were not sworn; the only fact put in issue by this plea is, the fact of the non-authentication by the foreman or other member of the Grand Jury of the swearing of the

witnesses; and that is the very point which has been solemnly decided in the case of the Queen *v.* O'Connell, to be insufficient ground for a plea in abatement. I submit, therefore, that this plea is bad, and that the demurrer must be allowed.

Mr. *Heron*.—I have only to say, my lords, that the Act of Parliament which has been read by me, and referred to by the Attorney-General, appears express upon the subject. Formerly the witnesses were sworn in open Court. It now must appear in some way that the witnesses were sworn before the Grand Jury, and that the Grand Jury found the bill of indictment upon sworn testimony, and I say that on the face of the record here that does not appear. Therefore, following the conciseness of the Attorney-General, I say the demurrer ought to be overruled.

Mr. *Dowse*.—I desire to add one word to what has been said by my learned friend. We have put this matter upon the record of the proceedings, and that will answer our purpose. I do not intend at present to address any observations to your lordships in support of our plea further than to say that I think this case is distinguishable from the case cited by the Attorney-General, and in particular, that the plea put in in this case was not the same as in the case of the Queen *v.* O'Connell.

The *Chief Baron*.—The case of the Queen *v.* O'Connell appears to us to be a direct authority upon the question; we shall, therefore, allow the demurrer.

Mr. *Heron*.—As I did not state fully my reasons would your lordships permit me to renew my application on behalf of the prisoner Nagle? I may tell the Attorney-General that the prisoner is an American citizen, born in the United States, and it is his intention to apply for a *venire de medietate linguæ*. The proper way to do so is, when the prisoner is called upon to plead; on pleading "Not guilty" he applies for the *venire de medietate linguæ*, which the Court then awards or not, as it sees fit. Mr. Dowse and I are only concerned for those two prisoners—Warren and Nagle. I put this partly on a ground personal to ourselves, for if the case be tried during term we shall be put to very serious inconvenience. I therefore humbly apply to your lordships, and would also respectfully appeal to the Attorney-General, that this preliminary may be disposed of. If your lordships see fit to grant the *venire*, of course it will take some time before the Sheriff can execute it, and thus the case might run into the term, and by having the prisoner arraigned now the *venire* might be issued at once—a matter which I think would be more convenient to the Court and to the Crown counsel, and certainly would be a great convenience to the counsel for the prisoners.

The *Attorney-General*.—I am under the impression the proper time to apply for the *venire de medietate linguæ* is when the jury is called to try the prisoner, not when he pleads.

Mr. *Heron*.—No. The proper time is when the prisoner has pleaded. I may refer the Attorney-General to the case—I am sure he knows it, but I may recall it to his recollection—of the Queen *v.* Maria Manning, reported in 1st Denison's Crown Cases. I am also prepared with other authorities which establish the

point, that the proper time is when the prisoner pleads not guilty.

Mr. Justice *Keogh*.—There was no jury *de medietate lingue* in the case of Mrs. Manning.

Mr. *Heron*.—No, my lord; it was decided in that case that the prisoner was not entitled to a mixed jury, because she was the wife of an Englishman; but it was decided that the proper time to make the application was when the prisoner pleads.

Mr. Justice *Keogh*.—That was the course adopted in the case of the Queen *v. M'Cafferty*, tried in Cork.

Mr. *Heron*.—Yes. In fact the prisoner lapses his time if on pleading he does not inform the Court that he is an alien and ask for a mixed jury.

The *Attorney-General*.—He lapses his time if he allows the jury to be called without making the application.

Mr. *Heron*.—No; he lapses his time if he does not make it when he pleads.

Mr. Justice *Keogh*.—In M'Cafferty's case the application for the venire was after the prisoner pleaded, but there was no application that the prisoner should be arraigned.

Mr. *Heron*.—I am doing it on the ground of convenience.

The *Attorney-General*.—I will endeavour to accommodate my learned friends as far as I can, and as soon as this case of Warren's is over, I will have Nagle next arraigned.

Mr. *Heron*.—Very well, that will do.

The *Chief Baron*.—Proceed now to arraign the prisoner.

The *Clerk of the Crown*.—John Warren, you stand indicted, that you, on the 1st day of March, 1867, and on divers other days as well before as after that day, feloniously and wickedly did compass, and intend to deprive and depose our Lady the Queen from the style, honour, and royal name of the imperial Crown of the United Kingdom of Great Britain and Ireland, and the said felonious compassing and intention feloniously and wickedly did express, utter, and declare by divers overt acts and deeds charged and stated in the indictment. And in a second count you are indicted that you feloniously and wickedly did compass and intend to levy war against the Queen within that part of the United Kingdom called Ireland, in order by force and constraint to compel her to change her measures and counsels, and the said felonious compassing and intention feloniously and wickedly did express, utter, and declare by divers overt acts and deeds the same as in the first count mentioned. Are you guilty or not?

Prisoner.—Not guilty.

Mr. *Heron*.—May it please your lordships, on behalf of the prisoner we beg to hand in the following suggestion:—

“And thereupon the said John Warren says, that he is a citizen of the United States of America, under the allegiance of the United States of America, and has been such citizen of the said United States of America from the First day of October, in the year of our Lord One Thousand Eight Hundred and Sixty-six, and still is a citizen of the said United States of America; and he says by reason of the premises he is an alien; and he prays the writ of our said Lady the Queen to

cause to come here twelve good and lawful men of said County by whom the truth of the matter may be better known, and who are of no affinity to the said John Warren, to recognize upon their oaths, and inquire whether the said John Warren be guilty of the felonies in the said indictment above specified, or either, or any of them, or not guilty, and so forth, whereof one half to be natives, and the other half to be of aliens; to wit; born in the said United States of America, under the allegiance of the said United States of America, to try the issue of said plea."

The *Attorney-General*.—I respectfully submit, my lords, that this suggestion ought not to be received.

Mr. *Heron*.—Why not?

The *Attorney-General*.—It is not a suggestion that the prisoner is an alien.

Mr. *Heron*.—But why not receive a suggestion which I on behalf of the prisoner tender to the Court?

The *Attorney-General*.—It does not follow that every document a prisoner chooses to put in is to be placed on the record. There is no authority for receiving such a suggestion.

Mr. *Heron*.—If the suggestion be an illegal one there is a course open to the *Attorney-General*, and he can so deal with it. If it be untrue in point of fact, there is also a course open to him. To every document of the kind put in on behalf of the prisoner, the Crown have only one of two courses to adopt—either to demur or take issue in fact, but I entirely dissent from the novel doctrine—never listened to except in this Court—that a pleading handed in by counsel on behalf of a prisoner is not to be received. Such a thing was never done in England in the whole course of the State trials.

The *Chief Baron*.—I understand this question arose also in the course of the proceedings in Cork.

The *Attorney-General*.—In that case—the *Queen v. M'Cafferty*—it was admitted by the Crown that the prisoner was an alien; but where the fact is not admitted by the Crown, there must be some evidence given before the suggestion can be received. I submit that this suggestion cannot be received till the prisoner gives some *prima facie* evidence of the allegation on which the suggestion is based.

Mr. Justice *Keogh*.—Mr. Heron, do you ask us to receive the suggestion without giving us any evidence that the prisoner is an alien?

Mr. *Heron*.—No, my lord; I ask you to receive the suggestion, and let the Crown either take issue or demur to it. If they take issue, then will be the time to give evidence.

The *Chief Baron*.—The ground on which you call upon us to receive the suggestion is contained in the 37th section of the Jury Act.

Mr. *Heron*.—I don't found my application on the 37th section, my lord.

The *Chief Baron*.—On what other ground do you make it?

Mr. *Heron*.—At present my application is that this suggestion be received. I found that application on the ordinary rules of

Courts of Justice, never departed from in England, that any pleading handed in by counsel on behalf of a prisoner, is received and dealt with according to law.

The *Chief Baron*.—But we have first to determine is this a pleading.

Mr. *Heron*.—It is a suggestion.

The *Chief Baron*.—Is it a pleading?

Mr. *Heron*.—It is, in this way: supposing it were untrue, the only way to deal with it would be, to take issue upon it, and then go into evidence, after which the Court could decide upon the matter. In the case to which Mr. Justice Keogh has just referred—the *Queen v. M'Cafferty*—no formal suggestion was handed in, the prisoner stated he was an alien and the Court thereupon directed the venire to issue. But the proper and regular course, as appears by the case of the *Queen v. Manning*, is this: that a suggestion is put in by the prisoner, and the Crown deals with that suggestion. In the case of *Manning* it was refused—which is the strongest point in my favour, for the course adopted was, not that of refusing to receive the suggestion; the suggestion was received and made part of the record, the Attorney-General took issue upon it and it was decided by the fifteen judges afterwards that the prisoner had no right to the venire, because she was the wife of a British subject. But it was never contended by the Attorney-General that the suggestion which the prisoner handed in ought not to be received.

The *Chief Baron*.—If the suggestion states what is entirely impertinent matter the Court ought not to receive it. The purpose of this suggestion is, to claim a *venire de medietate linguæ*—in other words, to claim a jury composed half of aliens. In order to show that that application is one that ought to be entertained it is necessary to show that the prisoner is an alien, and there is no allegation in this document that he is an alien. If he is not an alien, he is not entitled in point of law to the privilege he seeks; and if that is not stated to us in a document which is presented to us for the purpose of inducing us to determine that he is entitled to that privilege, I question whether we can deal with it as a document properly receivable by the Court.

Mr. *Heron*.—My lord, I propose to try legally in the only way I can, upon the record, whether a citizen of the United States of America is not entitled to a jury *de medietate linguæ* here in Ireland. The only way I can do that, in my humble judgment, is by placing that suggestion upon the record, in order that in case this Court refuses the application, there may be a power on behalf of the prisoner, to appeal from this Court to a superior tribunal. That cannot be done if the Court decline to receive the document—which is not an offensive document, which is prepared properly according to the rules of the Court, which may state what is contrary to law or what is according to law, but which at all events is in point of form a proper document, properly prepared. My lord, according to the ancient practice, as appears by the reports of the State Trials, no such question as this of not receiving such a document could arise, for the old practice was to

file it in the office, and an office copy was furnished to the parties and brought into Court for the trial, and there is no instance of any application having ever been made to have such a document taken off the files of the Court, unless it contained some improper or offensive matter. I, on behalf of my client, claim the privilege to have the case tried by a jury *de medietate linguæ*, and for that purpose I ask to have that document received, and I ask the Attorney-General to cite any case in the whole course of the State Trials in England, even in the worst times, where a document handed in by prisoner's counsel was not received.

Mr. *Dowse*.—My lords, I shall shortly state the view which we, on behalf of the prisoner, take of this suggestion which we have handed in. We respectfully say that we have stated on the face of that suggestion that the prisoner is an alien. We are willing now, for the purpose of argument, to concede that he is not entitled to the jury *de medietate linguæ* unless he is an alien. What that jury *de medietate linguæ* may be will be afterwards matter for consideration if the *venire* is granted. We admit that the prisoner is not entitled to it unless he is an alien. We say he is an alien, and that we have so stated upon this suggestion, although we have not used the word "alien" in the document. We want to raise this point: that a citizen of the United States of America cannot be a subject of the Queen of Great Britain. If the Crown now put in another suggestion stating additional facts we are ready to deal with it. We say the prisoner is a citizen of the United States, owing allegiance to the United States, and we say that is in substance the same thing as stating that he is an alien, only in more extended terms. We say he is a subject of the United States of America, and that in law that means an alien. This matter is not brought before the Court for the purpose of making mere technical points and afterwards abandoning them. We wish to have the question solemnly argued and adjudicated upon; and with that object we now apply to your lordships to receive the suggestion. The Crown can then deal with it as they deem right; they may take issue on it; they may demur to it; or they may plead matter which may require a demurrer from us. Our present application is to your lordships to receive the suggestion and place it on the files of the Court, so that the question which we seek to raise by it may be decided one way or the other.

The *Chief Baron*.—What you mean to contend is, that being a citizen of the United States makes him an alien?

Mr. *Dowse*.—Yes; that a man cannot be the subject of a republic and a monarchy at the same time.

The *Chief Baron*.—If that be the object of the suggestion, I fail to see any objection to that being stated on the face of the document. There is nothing to prevent your stating on the face of the document that he is an alien by reason of being a citizen of the United States of America.

Mr. *Dowse*.—Very well, my lord, we will do that.

The suggestion was then handed to counsel, who altered it as pointed out by his lordship.

Mr. *Heron*.—I will now read for your lordship the passage as altered:—

“And thereupon the said John Warren says that he is a citizen of the United States of America, under the allegiance of the United States of America, and has been a citizen of the said United States of America from the 1st day of October, 1866, and that he still is a citizen of the said United States of America, and he says by reason of the premises that he is an alien.”

The *Attorney-General*.—I think the document as it now stands is even more objectionable than before. I apprehend, notwithstanding my learned friend's reference to the State Trials, that he will find no case in which a suggestion was received by the Court, unless, in the first place, there was proof of the matters of fact stated in the suggestion; and, in the second place, the Court must be satisfied that it is a material suggestion. I admit that the suggestion would be material if it averred, as a matter of fact, that the prisoner was an alien; but it contains no such averment as a matter of fact. There is, instead of that, an argumentative averment, which, if we were dealing with it in another court, might be the subject of a demurrer—namely, that by being a citizen of the United States, he is in point of law an alien. In every case that I have read in which a prisoner applied for a jury *de medietate linguæ*, it was on the averment that he was born out of the jurisdiction; here there is no such averment.

The *Chief Baron*.—A man may be born out of the jurisdiction and still not be an alien.

The *Attorney-General*.—Quite so, my lord; but being born out of the jurisdiction is a necessary element to constitute a man an alien.

The *Chief Baron*.—Mr. Heron, have you any authority as to the form of raising a question of this kind on the record?

Mr. *Heron*.—No, my lord. I can only point to the invariable practice of the courts in England, to receive any pleading which the prisoner's counsel hands in.

Mr. Justice *Keogh*.—What is the practice as regards the granting of juries *de medietate linguæ*? There surely must be some settled practice on the point. Is there any instance in which a jury *de medietate linguæ* has been granted except on the suggestion that the prisoner was an alien?

The *Attorney-General*.—No, my lord.

Mr. Justice *Keogh*.—Is there any instance of a suggestion being entered, argumentatively averring that a prisoner was an alien?

The *Attorney-General*.—None, my lord.

Mr. *Dowse*.—It is very easy to say “none;” but how do you know that there is no such case?

The *Solicitor-General*.—I have never met with such a case. In every case I have seen, and in the form given in all the books, the statement is: “that the prisoner is an alien born, that is to say, that he was born in the county of —, of an alien father and an alien mother.” I respectfully contend that this suggestion is illegal.

Mr. *Heron*.—I decline to argue the legality of the suggestion till I know whether it is on the record or not.

The *Chief Baron*.—With respect to the matter of fact alleged in the suggestion, what do you say, Mr. Attorney? Supposing we were disposed to receive the suggestion, if we considered the facts alleged in it *bond fide*?

The *Attorney-General*.—We don't know how the fact is at all, my lord. Of course the prisoner is bound to give evidence as to the truth of the allegations contained in the suggestion.

Mr. *Heron*.—I cannot go into evidence till I know whether the document is received or not.

The *Chief Baron*.—This is matter to be determined by precedent, and we must follow what has been done in courts of justice before on similar occasions. We cannot award a *venire de medietate linguæ* upon the mere allegation in a document that the prisoner is an alien. We cannot treat the statement as made *bond fide*, unless there be some evidence of his being an alien, or at least a statement showing distinctly how he is an alien, to which statement evidence may be applied. If the claim be made in the form of a suggestion, we must be careful that it be so framed, that if it be met by a demurrer, there shall be no doubt as to what is to be treated as admitted on the record. It must be so worded as to be free from ambiguity. I would therefore suggest that you should add at the end of the sentence, "and he says by reason of the premises that he is an alien" the words, "and not otherwise."

Mr. *Heron*.—Very well, my lord. I will do so.

The *Chief Baron*.—If those words were not added, the prisoner might, if there was an appeal on demurrer, fall back on the suggestion of alienage.

Mr. *Heron*.—I have now altered the document in the way your lordship suggests:—"And he says that by reason of the premises, and not otherwise, that he is an alien."

Mr. Justice *Keogh*.—Does that make it unequivocal?

Mr. *Heron*.—I think so, my lord.

The *Attorney-General*.—I think it ought to state where he was born. Will you admit that the prisoner was born in this country and afterwards became a citizen of the United States of America?

Mr. *Heron*.—Wait till we hear what is to be done with the suggestion. Is the document to be received or not?

The *Chief Baron*.—It is absolutely necessary that the facts shall be stated clearly on this document, otherwise we must decline to receive it. If for instance it should appear on the evidence that the prisoner was born in this country, or that he was born in America of persons who were British subjects, we might require before receiving this suggestion to have the facts set forth exactly on the face of the document. You cannot evade, or rather you cannot avoid (I will not say evade) the real question. If you desire to have this question entered on the record, you cannot avoid presenting it in such a manner as to raise the question in the mode most fair to the Crown, and consistent with the facts of the case.

Mr. *Heron*.—My lord, everything alleged in court is to be proved, and ultimately found by the Court *secundum allegata et probata*. If anything has been suggested contrary to law, there is an easy remedy for that; if anything contrary to fact, there is an easy remedy for that, too. I have alleged my facts upon the face of the document, but till I know the issue which I have to prove I must decline to go into evidence.

The *Chief Baron*.—We cannot receive this document without evidence, acting on the authority of the Queen *v. M'Cafferty*.

Mr. *Heron*.—There was no suggestion entered in the case of the Queen *v. M'Cafferty*.

The *Attorney-General*.—Pardon me. I have the report of the case here, and it distinctly states that a suggestion was entered, evidence having previously been given on the question of alienage.

The *Chief Baron*.—We ought to be satisfied by evidence that the suggestion is *bond fide*, and founded on fact before we proceed.

Mr. *Dowse*.—Before we go into that, I understood your lordship to make a suggestion on another point, as to whether this document requires any further amendment.

Mr. Justice *Keogh*.—Yes.

Mr. *Dowse*.—I submit it does not, and that it is perfectly unequivocal. Your lordships will, please, bear in mind what the document states—

“And thereupon the said John Warren says that he is a citizen of the United States of America, under the allegiance of the United States of America, and has been a citizen of the said United States of America from the 1st day of October, 1866, and still is a citizen of the said United States of America, and he says that by reason of the premises, and not otherwise, he is an alien.”

I think, my lord, that is perfectly unequivocal.

Mr. Justice *Keogh*.—You want to raise the question that a British subject can adopt the American allegiance.

Mr. *Dowse*.—That is not the question exactly, my lord, though it may be involved in it.

Mr. Justice *Keogh*.—Surely that is the real question you wish to bring before the Court; if not, that document is equivocal.

Mr. *Dowse*.—It is not equivocal. The statute gives to aliens the privilege of having a jury *de medietate lingue*. I admit that we are in the habit of understanding by the word “alien,” a person born out of the jurisdiction. We wish to say that the prisoner is an alien by virtue of being a citizen of the United States.

The *Chief Baron*.—Have you any objection to state on the suggestion that the prisoner was born within the Queen's dominions? We must take care that there shall be nothing in the frame of the document that shall avoid that question.

Mr. *Dowse*.—Perhaps it would not be right to ask your lordship the question, but as we are in the way of amendment I wish to know would the suggestion be received when that statement has been added to it?

The *Chief Baron*.—We cannot give an anticipatory judgment.

Mr. *Dowse*.—No, my lord, but you might throw out some encouragement.

The *Chief Baron*.—Well, if that alteration be made, it appears to me that the document would then raise the real question. Of course I don't know what the Attorney-General may have to say on the subject.

The suggestion was further amended by the counsel for the prisoner.

Mr. *Heron*.—Now, my lords, I have made the further alteration as required by your lordships. The document now stands thus:—

“And thereupon the said John Warren says that he was born in Cork, in Ireland, and that he is a citizen of the United States of America, under the allegiance of the United States of America, and that he has been a citizen of the said United States of America from the 1st of October, 1866, and that he still is a citizen of the said United States of America, and he says that by reason of the premises, and not otherwise, that he is an alien.”

The *Attorney-General*.—Still the document is equivocal, for he might have been born of American parents in Cork.

Mr. *Dowse*.—Sure no American would come over here to have a child born in Cork.

Mr. *Heron*.—I shall now read to your lordships the letters of naturalization which the prisoner holds from the commonwealth of Massachusetts.

The *Attorney-General*.—Is that document verified in any way?

Mr. *Heron*.—It has on it a seal which at all events will be recognised; it is a document under the seal of the United States of America.

The *Chief Baron*.—Let us first decide whether we shall now receive the suggestion. Mr. Attorney-General, do you see any objection to our receiving it in the shape in which it now stands? Of course I do not ask you to give any consent to our receiving it.

The *Attorney-General*.—No, my lord; of course not.

The *Chief Baron*.—Do you apprehend that in the statement that he was born in Cork there is anything equivocal?

The *Attorney-General*.—Yes, my lord; because that is followed by an averment that he is a citizen of the United States, and under the allegiance of the United States. A man born in Cork of American parents, who went back afterwards to America, would be unquestionably an alien.

The *Chief Baron*.—Is it alleged that the prisoner was born of British subjects?

The *Attorney-General*.—No, my lord; the document merely says he was born in Cork, and that he was an American citizen from the 1st October, 1866.

Mr. *Heron*.—Well, my lords, I now tender this suggestion, and produce the letters of naturalization granted to the prisoner from the commonwealth of Massachusetts.

The *Attorney-General*.—I object to the suggestion being received until it is further amended.

Mr. *Heron*.—I decline to amend the document any more. Your lordships may now pronounce judgment upon the matter.

The *Attorney-General*.—I ask your lordships not to receive this document in its present shape, being ambiguous and immaterial.

Mr. Justice *Keogh*.—I think, Mr. Heron, you may very fairly meet the suggestion of the Court. To raise the material question you very properly inserted in the suggestion the statement that the prisoner was born in Cork. I take it that a person born in Cork, if born of American parents, would be an American citizen just as much as a child born in America of British parents would remain a British subject, though born, suppose, in New York. There can be no doubt about that. Then why should you hesitate to carry out your own view, and add the statement "born in Cork, and of British parents"?

Mr. *Heron*.—Very well, my lord; I will do that. I will add the statement "born in Cork, of Irish parents."

The *Solicitor-General*.—Before Mr. Heron makes what I suppose is his final amendment, I would ask your lordships' attention to one other point. Allegiance is always an important element in this question—the allegiance under which a person was born. The facts always resolve themselves into the question, under what allegiance was the prisoner born. I think that point ought to be stated in the suggestion.

The *Chief Baron*.—Add the statement—"born of British parents under the allegiance of Her Majesty." When that is done, Mr. Attorney, you will consider whether this is a document to which you can demur, or whether it is a document in which the proper course would be to refuse to make the order.

Mr. *Heron*.—My lords, I consider the averment that the prisoner was born in Cork of Irish parents is amply sufficient, and I will not make any other amendment.

The *Chief Baron*.—Then I should be disposed to rule that the document being ambiguous it should not be received.

Mr. *Heron*.—I respectfully ask what is ambiguous in the document? It is distinctly stated that he was born in Cork of Irish parents.

Mr. *Dowse*.—We will put in anything necessary to do away with ambiguity.

Mr. Justice *Keogh*.—What objection is there to saying—"born in Cork of Irish parents in Ireland, under the allegiance of the Queen"?

Mr. *Heron*.—I will say under the allegiance of the United Kingdom.

The *Attorney-General*.—No; under the allegiance of the Queen.

Mr. *Heron*.—[having again altered the document].—Very well; I have now made it "born in Cork of Irish parents in Ireland, then under the allegiance of King William the Fourth."

The *Solicitor-General*.—My learned friend puts in the word "then." What is the meaning of that?

Mr. *Heron*.—"Then" means, when born, that his Irish parents were then under the allegiance of the King.

The *Solicitor-General*.—In the way the sentence stands it might mean that Cork was under the allegiance of the King.

Mr. *Heron* [having again altered the document].—I have now made it thus:—"his said parents and the said county being then"—at the time of his birth—"under the allegiance of King William the Fourth."

The *Solicitor-General*.—What is the meaning of that? Surely no one ever heard of a county being under the allegiance.

Mr. *Heron*.—I only put in the words in consequence of your own suggestion.

The *Solicitor-General*.—I never suggested that.

Mr. *Heron*.—Well, I will strike out those words. [Mr. Heron then struck out the words "and the said county," and handed the document to the Clerk of the Crown.]

The *Chief Baron*.—Mr. Attorney-General, I wish you now to consider and apprise us whether you think the course to be adopted (supposing the Court should be of opinion in your favour) should be a demurrer on your part, and a judgment on the demurrer, or on ours simply a refusal to award the *venire* upon your representation that we should do so?

The *Attorney-General*.—I think, my lord, our mode of reply would be, a suggestion on the part of the Crown that the prisoner is not entitled to the jury *de medietate linguæ*.

Mr. *Heron*.—I have made every amendment.

The *Attorney-General*.—I am sure you will make this also.

Mr. *Heron*.—I think there is no difference, and, therefore, I consent to that.

The *Chief Baron*.—One is only an inference from the other—that he was born of Irish parents, who were British subjects then, and born in allegiance to the monarchy.

Mr. *Heron*.—Born of Irish parents, was my phrase, then under the allegiance of King William the Fourth.

Mr. Justice *Keogh*.—What do you propose to do now?

Mr. *Heron*.—I have added the words "and that," to make it read properly.

The suggestion as finally altered and filed was as follows:—

"And, thereupon, the said John Warren says that he was born in Cork, in Ireland, of Irish parents, and under the allegiance of his late Majesty King William the Fourth, and that he is a citizen of the United States of America, under the allegiance of the United States of America, and has been such citizen of the United States of America from the 1st day of October, in the year of our Lord 1866, and still is a citizen of the said United States of America, and he says by reason of the premises, and not otherwise, that he is an alien; and he prays the writ of our said Lady the Queen to cause to come here twelve good and lawful men of said county, by whom the truth of the matter may be better known, and who are of no affinity to the said John Warren, to recognise upon their oaths, and inquire whether the said John Warren be guilty of the felonies in the said indictment above specified, or either or any of them, or not guilty and so forth, whereof one half to be of natives, and the other half to be of aliens, to wit, born in the said United States of America, under the allegiance of the said United States of America, to try the issue of said plea."

The *Attorney-General*.—I won't object to that. It may be entered. My lords, in answer to that suggestion, we say—

“That by reason of anything above said and suggested by the said John Warren, the said John Warren is not entitled to the writ of our Lady the Queen next above by him prayed, and that the same should not be granted to him the said John Warren.”

The *Chief Baron*.—We are both of opinion that in the first instance we need not call on the Crown to state their objections to this application.

Mr. *Heron*.—What I would say is this, my lords. It appears to me to have been in early times very much a matter of discretion with the Government, whether or not they would give certain people the privilege of having a jury *de medietate linguæ*, as it was called in old times, and as your lordship is aware, the king was in the habit of granting it by charter to the Lombards; he also granted to the Allemaines, and other companies of foreigners in England, the privilege in all cases, civil or criminal of having a jury *de medietate linguæ*. It appears to me at common law entirely within the discretion of the Government; and at this moment it is within the power of the *Attorney-General* to grant such a thing. It appears to me to be merely a matter of discretion at common law—a matter of favour from the Government of the country—to grant a jury *de medietate linguæ* to any person. In a civil case, where the parties were plaintiff and defendant and adverse, it could only be claimed by either one or the other by express charter from the Crown; but it is in the power of the King at common law, in a trial between him and a subject, to give the subject a jury *de medietate linguæ*. I say, therefore, it is entirely in the power of the *Attorney-General* for the time being to say whether he will grant a jury *de medietate linguæ*. I say next, that in the management of the trial it is very doubtful whether this Court has not the same power. At all events, my client instructs me—as a citizen of the United States of America—to claim the benefit of a trial by a jury composed half of Americans and half of British subjects. He respectfully presses his claim, through me, on the Court.

Mr. *Dowse*.—The matter comes before the Court for the first time, and no authority can be cited for it, and we are obliged to argue the case on general principles. As to what my learned friend said on the common law, there can be no doubt. With reference to the word alien, we say the meaning of that is a person who is not under the allegiance of the Crown at the time; and my client stands in this position—he stands here having renounced his allegiance to the sovereign of this kingdom—he says he owes no allegiance as a subject of the Crown of Great Britain and Ireland. There is a document in evidence which is *primâ facie* evidence of the fact of this man being what we call an alien—that is, his naturalization papers of the Commonwealth of Massachusetts, and by these papers he has announced his *bond fide* intention of becoming a citizen of the United States. By these papers he renounces fidelity to every foreign power, potentate, and sovereign, and especially to Queen Victoria, whose subject he had heretofore been. He is admitted by the Superior Court

of the Commonwealth of Massachusetts, which, I believe, has authority under the statute in that case made and provided—he is admitted a citizen of the State of Massachusetts, which is one of the States of the United States of America, having renounced allegiance to the Crown of Great Britain and Ireland. Having lived a sufficient number of years he obtained papers of naturalization. We say he is an alien, and that, though an alien, he is subject to the jurisdiction of this Court, which has power to try him, but not to try him except by a venire awarding him a jury *de medietate linguæ*, which we say is to be composed, half of subjects of Great Britain and Ireland, and half of American subjects.

The *Attorney-General*.—My learned friend Mr. Dowse says that if he gets a jury *de medietate linguæ*, he is entitled to have half of them Americans. That is not the law.

Mr. *Dowse*.—I say that does not arise. Give us the venire, and then we will argue that, but don't refuse us number two, when you say number one does not exist.

The *Chief Baron*.—My learned brother and I do not entertain the least doubt as to the course we ought to adopt in reference to this proceeding. It is essential to sustain the application; and assuming the Court has the power to grant it, the practice has been invariably to award a *jure de medietate*, as it is called, wherever an alien claims it. But assuming the authority of the Court, upon which I will not now cast the slightest doubt, it is perfectly plain the person who claims a jury *de medietate linguæ* must be an alien. It is *very* truly put by the counsel for the prisoner, that what the prisoner contends for in the present case is, that by reason of what appears—assuming the statement to be fact—what appears stated in the suggestion, he is an alien, and he is not now under the allegiance of the Queen. I cannot allow that proposition to be put forward without meeting it with a prompt and unhesitating denial. According to the law of England, a law which has been administered without any variation or doubt from the very earliest times, he who once is under the allegiance of the English sovereign remains so for ever. It would be really almost pedantry for me to cite authorities on that subject. They are familiar to every lawyer. I shall cite one English authority, and I shall then cite some American authorities of the greatest weight and highest reputation. In the first volume of Blackstone's Commentaries, pages 269 and 270, the law is thus stated:—

“Allegiance, both express and implied, is, however, distinguished by the law into two sorts or species, the one natural, the other local; the former being also perpetual, the latter temporary. Natural allegiance is such as is due from natural born subjects. This is a tie which cannot be severed or altered by any change of time, place, or circumstance, nor by anything but the united concurrence of the legislature. An Englishman who removes to France or to China, owes the same allegiance to the king of England there as at home, and twenty years hence as well as now. For it is a principle of universal law that the natural born subject of one prince cannot by any act of his own, no, not by swearing allegiance to another, put off or discharge his natural allegiance to the

former, for this natural allegiance was intrinsic and primitive, and antecedent to the other, and cannot be divested without the concurrent act of that prince to whom it was first due. Indeed the natural born subject of one prince, to whom he owes allegiance, may be entangled by subjecting himself absolutely to another, but it is his own act that brings him into these straits and difficulties of owing service to two masters; and it is unreasonable, that, by such voluntary act of his own, he should be able at pleasure to unloose those bonds by which he is connected to his natural prince."

Blackstone then proceeds to show that local allegiance, which by foreigners is due to the monarch, continues so long as the foreigners reside within the kingdom. The maxim of the law on this subject, referred to by Sir Michael Foster, page 184 of his Treatise, and referred to by a variety of other authorities, is *nemo potest exuere patriam*. I said I would only refer to one English authority; I have brought down, with a view to some possible matter which might have arisen, some American authorities, and I don't think it is unuseful to cite these authorities on the subject now before us. In Storey's "Conflict of Laws," page 23, section 21, referring to the general maxim or rule, that the laws of one state do not bind property or persons in another, he says—

"Upon this rule there is often engrafted an exception of some importance to be rightly understood. It is that although the laws of a nation have no direct binding force or effect, except upon persons within its own territories; yet that every nation has a right to bind its own subjects by its own laws in every other place. In one sense this exception may be admitted to be correct and well founded in the practice of nations; in another sense it is incorrect, or at least it requires qualification. Every nation has hitherto assumed it as clear that it possesses the right to regulate and govern its own native-born subjects everywhere, and consequently that its laws extend to and bind such subjects, at all times and in all places. This is commonly adduced as a consequence of what is called natural allegiance; that is, of allegiance to the government of the territory of a man's birth. Thus, Mr. Blackstone says, natural allegiance is such as is due from all men born within the king's dominions immediately upon their birth."

He then proceeds to quote the passage from Blackstone which I have cited. In Chancellor Kent's Commentaries, in the 2nd volume, page 42, the following is laid down as the English law. He is expounding the American law; and expounding the American law, founded as it is on the law of England, he says—

"It is the doctrine of the English law, that natural born subjects owe an allegiance which is intrinsic and perpetual, and which cannot be divested by any act of their own."

He then cites an English authority, in the case of McDonnell, who was tried for high treason in 1746, by Lord Chief Justice Lee, and who, he says—

"Though born in England, had been educated in France, and spent his riper years there. His counsel spoke against the doctrine of natural allegiance as slavish and repugnant to the principles of their Revolution. The Court, however, said that it had never been doubted that a subject born, taking a commission from a foreign prince and committing high

treason, was liable to be punished, as a subject, for that treason. They held that it was not in the power of any private subject to shake off his allegiance, and transfer it to a foreign prince; nor was it in the power of any foreign prince, by naturalizing or employing a subject of Great Britain, to dissolve the bond of allegiance between that subject and the Crown. Entering into foreign service without the consent of the sovereign, or refusing to leave such service when required by proclamation, is held to be a misdemeanour at common law."

Chancellor Kent then deals with the question, how far the doctrine of the English law prevails in America. He says:—

"It has been a question (here he leaves the English law, and proceeds to expound the other) frequently and gravely argued, both by theoretical writers and in frequent discussions, whether the English doctrine of perpetual allegiance applies in its full extent to this country."

That is, whether in America that doctrine is recognized. Its recognition there or repudiation could not in the slightest degree affect this country or its tribunals. Chancellor Kent then proceeds with an elaborate review of the authorities, and he closes thus, stating his view of the American law:—

"From this historical review of the principal discussions in the Federal courts on this interesting subject of American Jurisprudence, the better opinion would seem to be that—a citizen cannot renounce his allegiance to the United States without the permission of Government, to be declared by law; and that, as there is no existing legislative regulation on the case, the rule of the English common law remains unaltered."

I have thought it right to cite these two great American authorities—Mr. Justice Storey in his book on the Conflict of Laws; that is, on the laws of nations as they relate to each other—and Chancellor Kent expounding the law of America, and expounding it in the first instance by an exposition of the law of England, which is its foundation. We in our courts have been in the habit of treating, not merely with respect, but with reverence, these two great lights of the laws of America. We have cited them in our courts of justice; they have been quoted in our forensic discussions. The principles laid down by them, in interpreting in America the laws of England as they are adopted there, have been approved and adopted by some of the ablest judges that have sat on the British bench. Mr. Justice Storey was himself a great judge. So was Chancellor Kent; and some of the finest contributions that have ever been made to the science of jurisprudence, or to the law of England as a science, have been made by these two great men from whose works I have read these passages. I have thought it not unuseful since I had the opportunity of doing so, of stating that this was the law as laid down by the great authorities in America, because I think it is desirable that they who in America formed views—I will say no more now than that—with respect to what is passing, or what is expected to pass, within the dominions of the Crown of England, should be aware of the obligations imposed on them if they have ever been under the allegiance of the Crown of England; and how, according to the laws of England, they may be dealt with when they are found here. For

these reasons we are of opinion that the objection made by the Attorney-General is well founded, and that we ought not to comply with this application, and that the prisoner is not entitled to a jury *de medietate linguæ*.

The *Clerk of the Crown* then called over the names on the long panel.

Twenty jurors were challenged by the prisoner, and four jurors were directed by the Crown to stand aside.

The following jury was sworn:—

William Mercer, (foreman).	William Marrion.
Alfred Davis.	Robert Robinson.
George Cooke.	William Shaw.
Henry William Hepburne.	Robert Thacker.
William Henry Mellons.	Charles David Spinks.
Edward Nolan.	William Whyte.

The *Clerk of the Crown* then read the heads of the indictment, which charged the prisoner in the first count, that he did on the first day of March, 1867, and divers other days, feloniously compass to depose the Queen from the style, honour, and Royal name of the Imperial Crown of Great Britain and Ireland, and that said compassings he did express by divers overt acts, which were stated in the indictment. A second count in the indictment charged that the prisoner, on the 12th of April, 1867, and on various other days, did feloniously compass to levy war against our Lady the Queen in that part of the United Kingdom called Ireland, and in order to compel Her Majesty to change her measures and counsels, and which said compassing he did express by various overt acts.

The *Attorney-General* rose to state the case for the Crown.

The *Prisoner*.—My lords, as a citizen of the United States, I protest against being arraigned at this bar, and being tried as a British subject.

The *Chief Baron*.—We cannot hear any statement from you now.

The *Prisoner*.—Only a few words, my lord.

The *Chief Baron*.—We cannot hear you. You have pleaded; your counsel has been heard in your behalf, and the course of the Court is to proceed with the trial of that plea. We cannot hear anything more.

The *Prisoner*.—I instruct my counsel to withdraw from the case, and I place it in the hands of the United States Government; which Government has now become the principal.

Mr. *Heron*.—That being so, my lords, we have no alternative in the case.

The *Chief Baron*.—I do not know that.

Mr. *Heron*.—I should state to your lordship that this is not a hasty determination on the part of the prisoner.

The *Chief Baron*.—The plea of not guilty is before us, and that plea must be tried, whosoever appears.

Mr. *Heron*.—When he withdraws from his counsel the privilege of appearing, I apprehend your lordship can allow the prisoner to make a statement.

The *Chief Baron*.—He is at liberty to withdraw his plea if he thinks fit, but with the plea before us, the only thing we can do is to proceed with the case.

Mr. *Heron*.—The prisoner says he adheres to his determination; and that, my lord, leaves me no alternative.

The *Chief Baron*.—That is for you.

Mr. *Dowse*.—It leaves me no other alternative either. I intend to yield to the suggestion of my client. If he withdraws his case from me, I have no further right to appear, and I disappear accordingly.

The *Chief Baron*.—All I can do is to proceed with the case. Now, Mr. Attorney.

The *Attorney-General* again rose to address the jury.

Mr. *Heron*.—My lords, permit me to say, before I withdraw, that in my humble judgment the prisoner should be allowed to state his reasons for this course.

The *Chief Baron*.—We shall receive from you any statement on his behalf.

The *Attorney-General*.—Gentlemen of the jury—No one can regret more than I do the transaction which you have just witnessed.

Mr. *Adair*.—I beg your pardon for a moment.

The *Attorney-General*.—Are you counsel in this case?

Mr. *Adair*.—I am. I thought it only right to the prisoner to say, I was instructed, on the part of the United States Government, to appear in six cases to watch the proceedings and to report to them at my discretion. I told the American Consul, and his solicitor—

The *Attorney-General*.—I think this is a most unreasonable interruption.

The *Chief Baron*.—We shall not inquire into the manner in which you obtained your authority.

Mr. Justice *Keogh*.—Are you engaged for the prisoner at the bar; if you are not it is most irregular.

The *Attorney-General*.—For whom do you appear?

Mr. *Adair*.—I will answer every question put to me, but I am not to be spoken to in that way. I am instructed by the United States Government Consul to appear and watch the proceedings in the other cases. When counsel withdrew from this case, the Consul thought it right for me to appear for him, and the United States Government too, and to see this case, as far as I can, properly conducted. I want to know from your lordships how far it is my duty and privilege as counsel to attend and interfere, or not interfere. I don't want to volunteer. It is not my professional habit to act irregularly.

The *Chief Baron*.—If you are not acting as counsel for the prisoner we cannot allow you to interfere; if you appear for the prisoner we shall not inquire further, but we cannot recognise the counsel employed by persons who are unconnected with the proceedings itself.

The *Attorney-General*.—Gentlemen of the jury:—I regret these two transactions. I regret that any member of the

bar should interrupt the progress of the case, knowing that no gentleman has a right to address the court or the jury except he is retained on the part of the Crown or the prisoner; and I also regret deeply that the prisoner should have deliberately rejected the assistance of his eminent counsel—experienced in the law, learned and eloquent, and possessing every qualification for his defence. I had hoped when concluding my statement to be able to express the gratification it afforded me that the prisoner was defended in such a manner as that, if convicted, it would be because he was wholly indefensible. This, gentlemen, is not the fault of the counsel for the Crown. They are no party to the withdrawal of the prisoner's counsel. It is his own act, and upon himself the consequences must fall. I wish even now that he would change his mind, and avail himself of that assistance which may be of importance for the protection of his liberty.

The *Chief Baron*.—Perhaps it is my duty to state what the prisoner may be ignorant of, that so long as his plea of “not guilty” remains recorded, and so long as he does not plead guilty, the case must be proceeded with; the statement for the Crown must be heard, and the whole evidence for the Crown must be heard and submitted to the jury.

The *Prisoner*.—I am prepared for all that, my lord.

The *Attorney-General* resumed—Gentlemen, without preface, I propose to make a statement to you, as brief as I can, as clear as I can, and, above all things, as fair towards the prisoner at the bar as I can, of the case which it is proposed on the part of the Crown to bring before you. I shall state very shortly the nature of the crime charged against him, the circumstances under which he is charged with that crime, and an outline of the evidence which we shall submit to your consideration, in order to show that the prisoner was involved in that crime, and was personally a guilty party in the transaction. Gentlemen, the crime alleged against the prisoner is called “Treason-felony,” and it consists in compassing or imagining the deposition of the Queen from her royal state; or compassing, imagining, or intending to levy war against the Queen, and manifesting such guilty intentions by open external acts, when such compassings or intentions are manifested by one who owes allegiance to the Queen of the United Kingdom. The intention and design of a man are within his own heart, it is only by his open and external acts,—what are called in the Law Books his “overt acts,”—that his intention and design can be known. Accordingly, gentlemen, the evidence that will be produced as bearing on open external acts, will show that the prisoner has done these overt acts alleged against him, and your concern will be simply with the evidence brought before you on these overt acts. If you shall arrive at the conclusion that any one or more of the overt acts alleged in this indictment is or are truly and justly laid to the charge of the prisoner, then it necessarily follows, from the proof of the overt acts to your satisfaction, that the prisoner is guilty of the crime of Treason-felony.

Gentlemen, this indictment contains a great variety of overt acts. It will not be necessary to call attention to all these

overt acts, but I shall mention a few of them. In the first and second counts he is charged with conspiring with notorious Fenian leaders, for the purposes of the Fenian conspiracy. In the fifth count he is charged with attending Fenian meetings. The sixth count I shall allude to shortly, because it refers to transactions which will be related to you. It charges that the prisoner did embark on board a certain vessel in America, having on board guns and pistols, came to the west of Ireland, and sailed and cruised along the coast with the intention of effecting a landing, and of landing arms for the purpose of fighting against the Queen, and raising an insurrection in Ireland. The seventh count alleges that he sailed into a certain bay called "Sligo bay," for the same purpose of levying war against the Queen. The eighth count alleges that he joined a treasonable conspiracy in America called the "Fenian Brotherhood." The tenth count charges that he conspired to provide arms, to make war against the Queen; the fifteenth that he became a member of an association called the "Fenian Brotherhood," which had for its object the overthrow of the Queen's authority and the establishment of a republic, and made journeys and collected moneys, &c., for that purpose. The sixteenth count alleges a levying of war in the county of Dublin; and the twentieth alleges that in Sligo bay he administered an unlawful oath to Michael Gallagher, to keep secret certain acts and deeds of the Fenian Brotherhood.

There is first the charge of conspiracy. If you are satisfied upon the evidence that the prisoner was a Fenian conspirator, then that will be proof of an overt act sufficient to sustain the indictment, and to oblige you to find a verdict of guilty. The only overt act on which I shall now make an observation is that of making war in the county of Dublin, because there will be no evidence that the prisoner personally levied war in the county of Dublin; but that charge is introduced because evidence will be given that members of the same conspiracy did levy war in the county of Dublin; and then, according to a well-known principle of law, not confined to the United Kingdom, but recognized also in the United States, every man who joins in a criminal conspiracy is liable and responsible for and guilty of the acts of all his conspirators, which are done in furtherance of the purpose of the conspiracy. And if it shall appear to you, gentlemen, that the prisoner was a member of a conspiracy having for its object the establishment of a republic in Ireland, and that other members of the same conspiracy levied war against the Queen in the county of Dublin, the prisoner himself is guilty of that levy of war. And the object of introducing it into the indictment is to give you, as jurors of the county of Dublin, jurisdiction to try the offence; because, by a principle of our law, a man can be tried only in the venue or place where he has by himself, or by the agency of his co-conspirators, done the acts which are charged against him.

Gentlemen, I have spoken of this conspiracy as a Fenian conspiracy. Unfortunately, it is almost unnecessary to speak to you of the nature or the history of the Fenian movement; but it will be my duty to occupy some time upon that subject, because you

are not at liberty to act as jurors except upon the evidence which will be brought before you. You come into that box to try the prisoner as if you had never heard of that conspiracy, to try a man who at this moment must be presumed to be innocent of the crime charged. And, therefore, you must be satisfied upon the evidence of two things ; you must be satisfied of the existence and nature of the Fenian confederacy, and that, beyond a reasonable or substantial doubt, the man who is now presumed to be innocent is, notwithstanding that presumption, guilty of the crime imputed to him in the indictment.

The Fenian conspiracy was organized in Ireland and America for the purpose of establishing a republic in this country—for the purpose of deposing the Queen from the crown of this country, and of subverting the Government. It was established for the purpose of destroying the social system of the country, of confiscating property, and of plundering the present proprietors of their possessions. These objects were to be achieved by the conspirators by force of arms and insurrection ; because such objects as these could not be accomplished by any moral persuasion or influence. This conspiracy had leaders, civil and military. It had men holding ranks known as "A's," "B's," and "C's," "centres," "head centres," "delegates," and "organizers." Amongst the men who held these offices were enrolled a great number of discontented and disaffected men—men without property or possession—men for the greater part without education. In my experience of the Fenian conspiracy I have not yet heard, as being connected with it, the name of one man of property or possessions, or who had one material thing to lose by rebellion. It comprised men of the lowest orders in this country, and men of a somewhat superior class who came from another place to take the leading part in the insurrection.

This Fenian conspiracy existed in America before the breaking out of the civil war between the Northern and Southern States. When that struggle closed, the immense armies on both sides were to a large extent disbanded ; and the consequence was that great numbers of American soldiers and of officers in the American armies were thrown upon the world without employment or occupation, and the result was that these men, thus deprived of what had been their means of livelihood, became members of this conspiracy. They were men of courage from their antecedents and of ambition from their circumstances, and they threw themselves into the cause of the Fenian conspiracy with all their hearts, expecting, as a reward for their services, places in the new commonwealth, and a liberal share of the spoil which was to crown the efforts of the insurgents.

In the winter of 1866 and 1867, the plans of these conspirators were to a certain extent matured, and it was resolved to rise in open insurrection in this country. It was resolved first to rise in February last. That attempt proved abortive, and it was then resolved to rise again on the 5th of March last. And accordingly on that day the rising took place, and amongst other counties in the county of Dublin, as alleged in the indictment. That attempt at insurrection happily failed. The conspirators failed from their

own infirmity, and because of the power and vigilance of the Government, and in consequence of valuable information which was communicated to the Government by one who had served in the American army, who had been an active Fenian, but who, at the time of giving this information, was in the employment of the Government. The insurrection, fortunately for all parties, perhaps most so for the disloyal, had not even a momentary success. A few policemen and a few coastguards were made prisoners of war, in the name of the Irish Republic; a few houses were plundered and burned; there was a little bloodshed, but there was a great failure of this attempt at insurrection, which burst forth in so many parts of Ireland, and was contemplated in others.

Although that rebellion was most disastrous as regards the social and material prosperity of Ireland, it was in itself contemptible, almost as contemptible as another Irish rebellion, which the vanity of a foolish gentleman instituted in this country some years ago, and which he brought to an issue in a memorable battle amidst the derision of Europe! One would have thought, gentlemen, that the issue of the "rising" of the 5th of March would have been a lesson to the Fenians in this country and in America—that it would have taught them by experience the folly of these efforts. But, unfortunately, even the lessons of experience are sometimes thrown away on desperate men. Scarcely had the 5th March passed by—scarcely had the unfortunate men who went out for the purpose of rebellion found shelter from the pelting of the pitiless storm—some in their cabins, some in ships to convey them to distant lands, some in miserable gaols—when a new expedition of desperate men was organized for the purpose of aiding the Fenian conspiracy; and it is with the details of that extraordinary expedition, which, as the Lord Chief Baron said in charging the Grand Jury, shows that "truth is sometimes stranger than fiction," that you, gentlemen, will be chiefly occupied during the progress of this case. I shall proceed to state to you that transaction; but you must bear in mind that it is not the only charge against the prisoner. The charge against him is twofold. One is, that he is a conspirator, and a member of the Fenian conspiracy; and if, upon the evidence, you are satisfied of that, you are bound to find a verdict of guilty, irrespective of that extraordinary transaction which I am now about to disclose.

John Warren, the prisoner at the bar, was, as you have heard, born in the county of Cork. Some years ago—before 1866—he emigrated to America, and he there entered the military service of the United States. He rose to the rank of captain, and in 1862, for some cause or other, he was dismissed from the American service. About 1862 Captain Warren was a prominent member of the Fenian conspiracy in America, and he became the Head Centre for Massachusetts. The 5th of March had passed, and I suppose the news of what happened here on that date must have reached America before 12th April; but on 12th April, 1867, a party of 40 or 50 men, almost all of them officers or privates, or who had been so in the service of the American Government, dropped down in a steamer

from New York to Sandyhook, a distance of about 18 miles. At Sandyhook they found a vessel of 113 tons burden, which had been purchased for the purpose of the expedition, and in this brigantine they embarked and sailed for Ireland. The name of that ship was the *Jackmel*. She sailed without papers, and she had no colours when they started. Of course, gentlemen, the object was to avoid suspicion. Her object must have been some irregular project, or she never would have sailed without papers, because, as you know, the navigation of a ship is encountered with great difficulty if she is found sailing without papers, and papers, of course, could not be got from the American Government. They sailed without colours.

The men got orders to embark without luggage—rather an extraordinary thing for a party of forty or fifty men—most of them officers—to embark for a distant voyage without any luggage. I shall be able, gentlemen, before I close, to give you the names and military rank of almost every man who embarked on board that vessel; and I think their military rank is a circumstance impossible to be reconciled with a legitimate project. That forty or fifty men, generals, officers, and privates, should embark on board that ship, and sail from New York for Ireland without any luggage! Of the forty or fifty no fewer than thirty-one were arrested in Ireland by the Constabulary, as I shall by-and-by explain. Amongst the men who left New York on the 12th April, who embarked on board the *Jackmel*, and who were afterwards arrested, were a man named Buckley, who will be produced as a witness; a man named Nolan, who will be also produced; a man named Nagle, called “General Nagle,” and Captain Warren, or, as I understand, he was called in the Fenian service, “Colonel” Warren. The captain of the vessel was named Kavanagh, and the name of the commander of the expedition was Kerrigan. Neither of the two last-mentioned is in custody; but I understand it will be proved that Kerrigan filled the office of Brigadier-General in the American army, and was at one time a member of the American Congress. These men did not sail on this expedition without some cargo, though they had no luggage. They had a very large quantity of fire-arms of various kinds. The arms were packed in piano cases, in cases for sewing machines, and in wine casks, so as to conceal them effectually. These arms, thus packed in these cases, were for the purpose of concealment, consigned to some mercantile firm in the Island of Cuba; and during the voyage some of the large cases were opened, and the contents repacked in smaller cases, no doubt for the convenience of landing.

The *Jackmel*, as I have said, sailed without papers or colours. After one day's sailing towards the south, in the direction of the West Indies, her course was changed, and the ship was steered towards Ireland. When vessels occasionally came in sight, English colours were hoisted, as a further means of deception, and so the party proceeded on their voyage. Nothing remarkable occurred until Easter Sunday, the 21st April, nine days after they sailed. They resolved to celebrate this day as

a high festival; and accordingly they hoisted a green flag with the sun-burst to the mast-head; they fired a salute, and they changed the vessel's name to the "Erin's Hope." What a mockery to call that vessel "Erin's Hope," as if any good could be hoped for from such an expedition, organized in such a way, led and conducted in such a way, and having such an object as kindling the flame of insurrection in Ireland, to the destruction of the peace and prosperity of the country. Erin's Hope! On the same day Kavanagh, who was in charge of the vessel, produced Fenian commissions and distributed them amongst the officers on board, and informed the people in the vessel that his instructions were to sail to Sligo and land the men and arms there; and that if he failed from any cause to land the arms and men there, then he was to proceed to some other place where there were fewer difficulties to be encountered. This was on the 21st April.

The ship proceeds on her voyage; she sailed northward, towards Sligo, and arrived off Donegal; then she came back and arrived at Sligo Bay on the 20th May, and here, according to the sealed orders of Captain Kavanagh, the arms and men were to be landed. Of course it would be a perilous thing to attempt to land them without some communication from the shore, and for several days the *Jackmel* continued coasting along the shore, sometimes coming into the Bay of Sligo. Whilst there, several transactions of a curious character, important and interesting, as affording a means of testing the credibility of the witnesses, occurred during the six or seven days. The first thing we know to have occurred almost immediately after the vessel arrived off the coast of Sligo, was that the ship's boat was sent out, landing two men named Shea and Doherty, and of these men I know nothing further, for they have not been arrested. The next matter to which I call your attention was that the man named Buckley, who will be produced, accidentally, whilst the vessel was coasting up and down, discharged his revolver, when in the act of cleaning it, wounding a man named Smith, who is still in hospital, and also a man named Nolan. In consequence of these wounds, it was considered desirable not to keep them on board, and accordingly the boat was sent out with the wounded men, accompanied amongst others by a man named Nugent; and these three were after a short time arrested and taken into custody.

The next incident is a very singular transaction. On the coast of Donegal bay, which is situated just to the north of Sligo bay, is a pilot station, and Michael Gallagher, a pilot, was looking out for some occupation in his profession when he saw this brigantine, the *Jackmel*. Accordingly, he put out from the station and was hailed by those on board the ship. They called on him to come on board. He went on board and saw the man who had charge of the ship, and this man told him that the captain had gone ashore at Sligo, which was not the fact. They had some conversation, in the course of which the man in charge told him—"We are come from Spain; we have a cargo of fruit on board, and we are going to Glasgow." After a little conversation the man in charge directed Gallagher to go to the cabin. He did so, accompanied by the man in charge,

and in the cabin he found two officers. The two men in the cabin were Nagle and the prisoner Warren. Nagle immediately, in the presence of Warren, proceeded to examine the pilot, and put a variety of questions to him. He asked him about the Fenians, and whether he was himself a Fenian? Gallagher said he was not. "Why don't you become one?" said Nagle. "Oh," said Gallagher, "I have a wife and children, and I don't want to have anything to say to such things"—as sensible an answer, gentlemen, as could be given to one who was attempting to draw him into a miserable conspiracy of the kind. After this conversation Nagle produced a book, and called upon Gallagher to swear that he would not give any description of the ship when he went on shore. Gallagher refused, and made a variety of excuses. He said he had never taken an oath before on board ship; but, at all events, he manifested the greatest reluctance and unwillingness to take the oath. Nagle asked him first, and Warren afterwards intervened, and ordered the pilot to take the book in his hand. He still refused, when the man in charge produced a pistol and threatened to shoot him if he did not take the oath; and, thereupon, Gallagher, naturally enough, with a pistol to his breast, took the required oath that he would not describe the vessel when he went on shore. He was then allowed to return on deck. He had sent his own boat away, and in a short time after a small hooker came alongside, and out of it came a man, apparently a gentleman, who immediately went into the cabin. In a short time he came up on to the deck, the hooker still lying alongside the vessel, and ultimately he got into the hooker and proceeded ashore. Gallagher attempted to follow him, but he was forcibly dragged back. However, when the wounded men were sent ashore, Gallagher was sent with them, and when the party landed, he ran as fast as he could until he met two coastguards, who took him under their protection.

The importance of this evidence, gentlemen, will be evident; and, indeed, the circumstance of administering the oath is one of the overt acts charged. Another transaction with reference to the gentleman who came alongside the brigantine in a hooker, who was well known by many of the officers, and whose name was Colonel Burke, is, that after he had been some time in the cabin, he, with one of the officers of the expedition named Prendergast, who is not arrested, landed with two or three other men on the shore. Up to this time the brigantine had been waiting for an opportunity to land the arms at Sligo. On the day after Burke was in the cabin, the inferior officers on board the ship were assembled, and informed that they could not land the arms at Sligo, and that they were to put to sea. Manifestly Burke had told them that from the way matters stood on shore it would not be safe for their men to land or to put the arms ashore, and on 26th May the ship left the coast of Sligo. I cannot say whether she sailed along the western coast of Ireland or by the north coast, and by the Irish Channel. My own impression is that they came down, passing Dublin, by the Irish Channel. But however, that may be, gentlemen, on the 1st June the ship was off Dungarvan, on the Waterford coast. While she was there

councils were held on board, at which they discussed what was prudent to be done for the expedition under the circumstances. They had failed in Sligo, their provisions had become short, and they could not remain much longer at sea. These matters were the subjects of discussion amongst the American officers. They divided on the question, some were for landing and some against it; but at last the conclusion was come to, overruling the opinion of some, that the majority of the officers and men should be landed, and that the remainder should either go to America, or some place called the western isles.

That conclusion was arrived at on or before the 1st June; and on that day a fishing-boat belonging to a man named Whelan came alongside. Whelan, who speaks Irish, saw only four or five men on board, and the spokesman said, "We want to put two men on shore, and we will give you £2 for taking them." Whelan came alongside, and went on deck, and whilst he was there twenty-eight men rushed upon the deck of the brigantine, and into the fishing-boat. Whelan had nothing for it but to take them ashore. Accordingly, he began to proceed towards shore, and he asked them where they wanted to be landed, desiring to know whether he should go to Helvick Point—the nearest point of land. They asked, "Is there a Coastguard Station there?" I suppose their attention was roused by the appearance of the detached white houses of the Coastguard Station. He said there was, and they replied that would not do. "Will I land you at Dungarvan?" said he. "No," they said. "Where, then, will I land you?" said Whelan, or one of his men, and they pointed out a place on the shore where there was no regular landing-place. Accordingly, Whelan ran his boat into the place indicated. The boat, heavily laden, grounded in three and a half feet of water, and the men jumped out, and ran on shore, without taking off their shoes or stockings, or their trowsers, which were wet, and covered with sand and mud. Amongst the men who thus landed were Nagle and Warren, the prisoner, and Buckley, the witness, who will be produced to you, and who was the last man who came out of Whelan's boat on that occasion. A coastguard, vigilant in his duty, saw a boat coming ashore. He did not see the men as the boat was passing Helvick Point, but he saw them as they were jumping ashore. He gave information, and the Constabulary were on the alert to arrest these men.

Gentlemen, we shall not follow the course of all of them. They broke into small parties; and we will confine our attention to two—the prisoner Warren and Nagle. There is a man named Andrew Roche, who lives in a farm-house a short distance from where the boat landed. Warren and Nagle, with their trowsers wet, went up to the house of this man Roche, about eleven o'clock on the 1st June. He was at work in his garden, and they asked him how far it was from Youghal? He said about twelve miles. They asked for a conveyance, and he said he had a car and pony, and that he would take them if they paid him, and they agreed to pay him five shillings to take them to Youghal. These men were wet up to the middle. Warren and Nagle drove towards Youghal, and when they arrived at the bridge across the

Blackwater they met a constable named Norris, who had received information, and was on the alert. He observed that they were strangers and that their trowsers were wet. He asked them where they came from. Warren said, "We come from Dunganarvan." He asked where they belonged to, Warren said his name was John Donovan, and Nagle said his name was William Palmer. I do not wish to anticipate the witness; but it will be proved to you that they said, "We were on a fishing excursion; our vessel took fire, and we escaped, and got ashore in a fishing boat." Thereupon Norris said it was his duty to arrest them, and he did arrest them. They were searched, but they had no arms. When searched at the police barrack nothing was found on the prisoners, but on Nagle were found some documents which you will have before you: but, gentlemen, stating this case as I am, in the absence of counsel for the prisoner, I don't think I would be justified in reading those documents until his lordship shall have decided that the evidence is admissible against the prisoner.

This was the end of the *Jackmel* expedition. The twenty-six men who were on board the lugger were all arrested in different places within four and twenty hours. That, gentlemen, is the principal transaction you have to investigate. It will be sworn that that expedition was fitted out for Fenian purposes; and the question will be, whether you will have any difficulty in believing the statement that that was the object of the expedition. Gentlemen, you will ask yourselves, what does all this mean—what brought all these soldiers to this country—what brought all the arms on board? Were they brought for a legitimate purpose, or were they brought by men who had engaged to aid the Fenian conspiracy, and to assist traitors in this country to rise in insurrection against the Queen. What cause brought Warren there—what brought him on board that vessel—what brought him in the cabin of the vessel off Sligo, when he compelled Gallagher to take an oath? What was the purpose that induced Warren to give a false name when arrested, and to give a false story, because the story of the burned ship will be proved to be false? If they came for a legitimate purpose, they would state what it was. If they came from Spain with fruit, there would be no concealment of the transaction, no suspicious movements, no false names, no effort to avoid the observation of the coastguards. People resort to falsehood when they have a crime to conceal. If it was a Fenian expedition all is intelligible.

Gentlemen, the issue is a simple one. You will first have evidence of the fact of the Fenian conspiracy, and that the prisoner was a member of it. You will then have evidence that the *Jackmel* expedition was fitted out to promote the Fenian conspiracy. That is another case for a conviction, if you believe the evidence I have detailed. What the defence will be I cannot conceive. The most important consideration for you will be to weigh the evidence. Unless you believe the informer, and unless in addition to believing him, his statement is confirmed by some evidence of an unquestionable character, the prisoner will be entitled to an acquittal. Gallagher, the pilot, will be produced,

and he will corroborate Buckley ; but it is sufficient for me to say that the great consideration for you is, to see whether the evidence is worthy of credit. If you have a substantial doubt, acquit the prisoner ; but, gentlemen, you understand the meaning of a substantial doubt. It is not the possibility of a man being mistaken, or of a witness telling a falsehood ; but after applying all reasonable tests to the testimony given, the question is, on the whole are you satisfied that the evidence is true and that the prisoner is guilty ?

Gentlemen, this case is one of great importance ; its importance cannot be exaggerated. If the prisoner be not guilty of the crime laid to his charge, it is of importance to him and to the administration of the law of this country that he should be acquitted. He has the benefit of presumed innocence as he stands at the bar ; he cannot be divested of that presumed innocence without evidence to satisfy you that he is not innocent. But, on the other hand, gentlemen, it is of the greatest importance that the prisoner should be convicted if he be guilty of the crime laid to his charge ; no man can dispute that proposition. For the ignorant peasant, tempted and seduced into treason, we can feel sympathy ; but I can feel no sympathy with the man who comes from another country—who deserts his adopted home to be a firebrand in our country—to excite the people, to their own destruction, to misery and ruin. It is of deep importance to the welfare of Ireland that strangers should be deterred from such wanton and wicked aggressions on her peace and her prosperity. Gentlemen, if the prisoner is not guilty, acquit him. The more grievous the crime charged, the more important it is that he should be acquitted if he be innocent. But if he be guilty, let nothing prevent you—let no considerations whatever prevent you—from doing your duty to your country by convicting him of this great crime.

No man surveys the United States with more admiration than I do. When I look at her unbounded resources, and the indomitable energy of her people ; when I think of the gigantic struggle through which she has just passed, I see for America a future of greatness—exceeding, perhaps, that of Rome, perhaps that of Britain. Let the citizens of America, whether native citizens or adopted citizens, lend their energies and efforts to achieve that greatness ; we envy them not ; but in the name of humanity, let them not come to our country to augment her evils, to increase the divisions between her people, and lead them to their ruin. Let America and her sons rejoice in her great power, but let them not seek to disturb the peace of other kingdoms.

“ *Illâ se jactet in aula*

Æolus et clauso ventorum carcere regnat.”

Gentlemen, I conclude. I know that you would give to any case your diligent, your patient, and your conscientious attention. To this case you will give especial care and attention, because the prisoner is undefended by counsel. Once more, gentlemen, I repeat, acquit him in the name of justice if you have a reasonable doubt of his guilt ; but if you have none, then your verdict, as a matter of course, will be a verdict of guilty !

Thursday, October 31, 1867.

The Court sat at 10 o'clock, A.M., this day, and resumed the trial of John Warren.

The jury having answered to their names, the following evidence was given on behalf of the prosecution.

DANIEL BUCKLEY,

Examined by the *Solicitor-General*.

Buckley, where were you born?—In Ireland, sir.

What age are you?—About 25, as far as I know.

Where in Ireland were you born?—I believe in Munster.

Shortly after your birth were you taken to America? or did your parents emigrate to America shortly after your birth?—I suppose so; I have no distinct recollection of the country.

But do you remember when a child being in America?—Yes, when I was not very old, at least.

What part of America did you live in?—New York.

Did you enlist in any of the military services when you were there?—During the last war I did, sir.

Was it the Northern or Confederate army?—The Northern.

And about how long ago is that?—In 1861, I think.

How long did you serve in the regiment you first enlisted in?—I served somewhat about two years in that regiment.

And did you then remove to another?—Yes.

Did you serve through the whole of the American war?—I served from the first battle.

Until when?—Until its close.

And when did you leave the service—what month, do you remember?—In August, 1865.

Did you become a member of the Fenian organization at any time when you were in America, since leaving the army?—I connected myself for a time with the Fenian organization.

Did you take any pledge when you joined it?—Yes.

And what was the pledge that you took?—Simply I pledged my word and honour.

To do what?—Not to divulge the objects for which the organization was founded.

The *Chief Baron*.—You said you pledged your word and honour not to divulge what?—The objects for which the organization was founded.

The *Solicitor-General*.—What were those objects as communicated to you?—For revolutionary purposes.

In connexion with any country, was it?

The *Chief Baron*.—Let him state what the objects were?

The *Solicitor-General*.—What were the objects—what revolutionary purpose?—To revolutionize Ireland, sir.

In what way?—By giving Ireland a republic.

The *Chief Baron*.—Making Ireland a republic?—Yes.

The *Solicitor-General*.—Did you pay any subscription when you so joined?—I did, sir.

For how long, and what amount?—I paid ten cents a week for somewhat less than a year—not more than a year.

Was it in New York you took that pledge and joined that society?—Yes, sir.

Did you join any expedition last year in connexion with that society?—Last year, yes.

And what was that expedition?—I did not know the objects of the expedition. I went merely to the state of Maine.

Was it with other members of the society?—Yes.

The *Chief Baron*.—You went to the state of Maine, with whom?—With others connected with the Fenian Brotherhood.

The *Solicitor-General*.—Did you yourself do anything in Maine, or the members who were with you?—No, sir.

You came back again?—Came back again soon.

In February of this year were you introduced to any person in New York in connexion with Fenianism?—Yes.

To whom were you so introduced?—To Colonel James Kelly.

By whom were you introduced?—By a man named Costelloe.

Who was Colonel James Kelly?—He was at that time the head of the military department of the Fenian Brotherhood.

In what place?—New York, sir.

Did Kelly communicate to you the plan of any proposed expedition?—He communicated to me an expedition.

What did he tell you of it?—He said there was such a thing setting on foot; he did not tell me when it was to start.

The *Chief Baron*.—What did he say about setting on foot?—An expedition.

He did not tell when it was to start?—No.

Did he tell you where it was to go?—No.

The *Solicitor-General*.—Did he tell you it was a Fenian expedition?—Yes.

Did you agree to join it?—Yes.

And did you meet Kelly frequently in connexion with that proposed expedition?—Yes; some three or four times afterwards.

Where in New York did you see him?—19, Chatham-street.

Was that the head quarters of the organization in New York at that time?—Yes, sir.

Now, was anything done in regard to that expedition, any pledge or oath?—Yes, sir; there was an oath.

Was it administered to you?—Yes.

By whom?—By John Hogan and James Kelly.

The *Chief Baron*.—That is Colonel Kelly?—Yes.

The *Solicitor-General*.—What was that oath?—That I would not divulge the secrets of the expedition.

Did you after that go to any place in consequence of having received an intimation in regard to that expedition in New York?—Yes.

What place?—East Broadway. I do not know the number of the house.

And from whom did you receive the information to go there ?
—Through Colonel Kelly from John Hogan.

The *Chief Baron*.—Hogan conveyed it to you from Kelly?—
Yes.

At what place did you say ? Did you say you don't know the
particular place ?—In East Broadway, New York.

You don't know the exact place, therefore ?—No, sir.

The *Solicitor-General*.—To do what ? What were you to do
there ?—To meet others.

Do you mean in connexion with the expedition ?—Yes.

Upon what day, do you remember ? What was the day you
were so told to attend ?—The 12th day of April.

In the present year ?—Yes.

Was anything more told you as to what would happen when
you met there ?—No, sir.

Were you told what you were to do when you went there ?—I
was told to follow the others.

To any particular place, was it ?—To the foot of Canal-street
in New York.

And were you told what was to be done there ?—No, sir.

Or where you were to go ?—I had no intimation at that time.

Did you go to the place ?—Yes.

The *Chief Baron*.—What place did you go to ?—The foot of
Canal-street.

The *Solicitor-General*.—And did you meet any parties there ?
—I did, sir.

About how many ?—Only those whom I had already met, with
whom I had parted in Broadway, going in ones, twos, and threes
—going so as not to excite suspicion.

The *Chief Baron*.—Coming in ones, twos, and threes ?—Yes.

The *Solicitor-General*.—But had you in fact attended at East
Broadway before you went down to this place in Canal-street ?—Yes.

Had you met any persons at East Broadway ?—How many
persons had I met ?

Had you met persons at Broadway ?—Yes.

About how many ?—Over forty, I should say.

Was anything communicated to you at East Broadway before
you went down to Canal-street as to what you were to do at
Canal-street ?—Nothing whatever, except to follow the others.

Had you any baggage with you ?—None, sir.

Or any of the parties that you saw ?—Some had baggage.

The *Chief Baron*.—Some of the party you met ?—Yes.

About how many had baggage ?—Some two or three that I
had seen, sir.

The *Solicitor-General*.—What do you call baggage, which you
say two or three had ?—Valises.

Does this Canal-street that you speak of open on the river ?—
Yes, sir.

And what did you and the others of the party do when you
got to the foot of Canal-street ?—Went on board a steamer.

Was that steamer waiting for you ? Was it there ready for
you ?—No, sir ; we were waiting for it, as I understood.

And it came up?—Yes.

And did you all go together?—I should think we all went together on board that steamer.

And did the steamer leave the quay then?—Yes.

And where did she go to?—She went to the outer bay of New York.

About how far is the distance from the quay to what you call the outer bay of New York?—Some fifteen or twenty miles.

And is that the roadstead of New York you went to?—It is the outer anchorage.

How long did you remain at that outer anchorage?—From some time in the afternoon of the 12th of April to the afternoon of the 13th of April.

And during that time did you all remain on board the steamer?—Yes.

What did you do on the afternoon of the 13th. What occurred then?—The vessel not making her appearance, we cast loose from a buoy to which the steamer was anchored, with the intention of returning.

The *Chief Baron*.—What cast loose?—The steamer.

The *Solicitor-General*.—What vessel did you refer to?—I did not know at that time what kind of vessel it was.

But had a vessel been spoken of?—Yes.

By whom?—By James Kelly and John Hogan the vessel had been spoken of.

What had they said about it?—They did not tell me of what size it was, whether it was brig or ship.

What did they say about this vessel or a vessel?—This vessel was to convey arms.

The *Chief Baron*.—They said so?—Yes.

The *Solicitor-General*.—You say the vessel not appearing, you cast loose from the buoy. What happened then?—We cast loose with the intention of going back to New York.

Well, what happened then?—Meeting a vessel, two-masted, on the way we steamed close to her, and jumped aboard of her.

What was the name of that vessel?—The Jackmel packet.

Did the whole party that had come down to the steamer get on board that Jackmel packet?—Yes, sir.

About how far had you proceeded from the moorings that you had cast loose from before you met that Jackmel packet?—Some two miles or three.

Had she a crew on board independent of your forty men, or the number you speak of?—Yes.

And a captain?—Yes.

And did she sail on your going on board?—No, sir; not immediately.

And about how long did she remain?—Some two, or three, or four hours afterwards.

Now, you say, that was a brig or two-masted vessel?—Yes.

Do you know about what tonnage that vessel was?—Yes.

Of what tonnage was that vessel?—115 tons registered, as I understood.

The *Chief Baron*.—How do you know that?—I heard Captain John F. Kavanagh state that.

The *Solicitor-General*.—And was she well found in sails and appliances for a vessel of her class?—Not very well.

About how many of a crew had she?—She had four sailors.

A cook?—A cook and a boy.

The *Chief Baron*.—Besides the captain?—And two officers.

The *Solicitor-General*.—A captain and two officers—a mate and another?—Yes.

The *Chief Baron*.—Two officers besides the captain?—Yes.

Was one of the officers a mate?—One of them was a mate.

The *Solicitor-General*.—What track did you take when you set sail from the roadstead of New York?—I learned from Captain John F. Kavanagh that we took the track usually pursued by West Indiamen.

Did Kavanagh tell you why that track was taken?—Yes.

Why?—If pursued, he supposed they would pursue him in the European track, and consequently he would avoid being captured.

And in consequence he took the West India track?—Yes.

Now, had you any colours flying when you sailed?—I don't recollect seeing any when we sailed.

Were any colours hoisted occasionally during your voyage?—Yes; the English colours were hoisted on different occasions.

Was that when you met vessels?—When we desired hailing any vessel.

The *Chief Baron*.—What did you hail the vessels for?—Sometimes we did not know where we were—what particular part of the ocean we were in.

The *Solicitor-General*.—Can you tell how long the West India track was pursued?—Until the afternoon of the next day.

The afternoon of the 14th?—Yes.

And was the course changed then?—Yes.

The *Chief Baron*.—What time in the second day?—In the afternoon. The course was then changed more to the south of the general European track.

The general European track?—The track pursued by European vessels.

The *Solicitor-General*.—Was that track continued?—Yes, generally.

You stated Kavanagh was the captain. Was there any person in command of the expedition?—I don't speak of the sailors or the ship itself?—There was.

And what was his name?—General James E. Kerrigan.

Do you know whether James E. Kerrigan had been a general in the United States army?—No, sir.

And what had he been?—He had been a colonel for a time in the army.

Had you known him before you sailed, or was the first acquaintance you made of him on board?—I knew him before sailing.

Was it as an officer you knew him, or how?—I knew him as a Congress man of the United States.

Had he been a Congress man of the United States?—Yes, sir.

Had you known him in connexion with this expedition until you got on board?—No, sir.

Had he been in the Northern army?—Yes, sir.

Had you obtained any commission in this expedition, either in New York or on board?—I received a commission in both places.

In New York, from whom?—From Colonel Kelly, or through Colonel Kelly.

And on board, from whom?—General James E. Kerrigan.

Have you these commissions, or what did you do with them?—I threw one of them away before coming ashore, and the other I did not bring with me.

That is the New York one, I suppose?—Yes.

The one you got on board you threw away before landing in Ireland?—Yes, sir.

What was the rank you were appointed to by these commissions in the expedition?—Captain.

Now, you have stated that Kerrigan was the general?—Yes.

Were there any other officers of high rank in the expedition? There were some colonels.

I want you to tell me carefully the names of those you recollect, according to their rank. Who were the colonels?—Colonel Nagle, Colonel Warren.

Is that the prisoner at the bar?—That is the prisoner.

Well, any other colonels?—Colonel Phelan, Colonel Prendergast, or Pindergast, I don't know which of the two; Colonel Tressilian, Colonel Deven, Colonel Doherty.

Are these the names of all the colonels you recollect?—That is all.

Were there any captains as well as yourself?—Yes.

Will you tell me the names of as many of the captains as you recollect?—Captain Costelloe, Captain Greene, Captain Buckley, *alias* Murray, Captain Fitzsimons, Captain Kane, Captain Leonard. I do not recollect any more captains.

Were there any lieutenants?—Yes.

Tell me the names of any lieutenants?—Fitzgibbon, Roche, and William C. Nugent; I do not recollect any more.

Were there any privates or any ordinary men?—There were understood to be none; they were all expected to have commissions. All captains?—Yes.

Tell me did you know any of the others, or any of the crew?—James Lawless, one of the crew, Cade (his right name is Murray), L. Doyle, Daniel Lee, Thomas Fruen, Patrick Nugent, James Coffey, or Nolan; I cannot recollect any more names.

There were others but you do not recollect the names?—There were others.

Can you tell what day was it you got the commission after you sailed—about how long after you had sailed?—Not more than an hour after getting on board the vessel.

The *Chief Baron*.—After getting on board the brig?—Yes, the brig.

The *Solicitor-General*.—When the commission was so given to

you shortly after getting on board the brig, did you see commissions given by Kerrigan to any other of the parties?—I did, sir.

Was it to all the others of the party, or to a great number?—To a great number of them.

Did you see the prisoner Colonel Warren getting his commission?—No, sir, I did not.

The *Chief Baron*.—Did you see commissions given to any of the colonels?—No, sir.

The *Solicitor-General*.—Did you to the captains?—Yes, sir.

Was that commission you spoke of—your commission—signed by Kerrigan?—No, sir.

Who was it signed by?—Colonel J. E. Kelly.

And do you remember what its contents were, as well as you recollect?

The *Chief Baron*.—Signed by whom?—Colonel J. E. Kelly, and also by Captain Hogan.

The *Solicitor-General*.—Can you state what the contents of it were as well as you recollect?—"To all whom it may concern, greeting. We, by these presents, do appoint (by name and rank) in the army of the Fenian Brotherhood." I do not recollect any more.

Then in your commission your name was in, and your rank?—Yes.

Was it in print or ink?—In print.

On parchment or paper?—On paper.

The *Chief Baron*.—These commissions were signed by Colonel James Kelly?—Yes.

The *Solicitor-General*.—Now did anything particular happen after you sailed? Do you remember Easter Sunday?—I do.

Did anything happen worth mentioning before that?—I would say not.

And if anything did happen worth mentioning you would remember it. Nothing happened till Easter Sunday. Will you state what did happen on Easter Sunday?—The green flag with a sunburst was hoisted some time before noon. I do not know the hour exactly. At its hoisting there was a salute of different arms fired, after which the orders delivered to John F. Kavanagh in New York, commanding him to land the arms in Ireland, were read.

Read by whom?—By John F. Kavanagh.

By Kavanagh himself?—Yes.

And did he read any signature to that order?—Yes.

What signature?—The signature of Captain Powell, the chief of the Navy; also the signature of Colonel James Kelly; it read so.

Did it say where in Ireland they were to be landed?—If possible, at Sligo. Or if not found practicable they were to be landed somewhere on the coast of Ireland.

Was anything done about the name of the vessel that day?—Yes.

What?—She was newly christened.

By whom, and in what name?—She was christened the "Erin's Hope," by John F. Kavanagh.

Were the officers, the colonels, and others present when that order was read, and when the christening took place?—Yes, sir.

Were they collected for that purpose?—Yes.

On the quarter-deck, I suppose?—On the quarter-deck.

Was Warren there?—Yes.

The *Chief Baron*.—Warren, you say, was there at both these transactions, at the reading of the sailing orders, and the change of the name?—Yes.

The *Solicitor-General*.—Had you arms on board?—Yes.

Of what kind and what number?—Of different kinds.

When you say different kinds, can you say what different kinds?—We had some Spencer repeating rifles, seven shooters.

What other kinds of arms?—We had some Enfield rifles, some Austrian rifles; we had some Sharp breech-loading rifles; we had some Burnside breech-loading rifles also; these are the larger arms.

What small arms had you?—We had some revolvers.

How were the arms kept?—They were packed in boxes—large size boxes.

What was on the box did you observe?—They were Spanish names. I do not recollect what they represented.

Were they labelled as arms?—Oh no; they were not labelled at all.

What size boxes were they packed in?—They were packed in boxes within one another.

Where in the vessel were the boxes kept?—Between decks.

Was the vessel nearly laden to her full complement with arms? You said she was 150 tons register; was she deep in the water, or what?—She was reasonably deep in the water.

Had she any cargo on board but arms to your knowledge?—She had no other cargo than arms.

Had you ammunition as well as the arms, or was it all the description of arms you spoke of?—We had some ammunition.

Do you mean cartridges, or what?—No, we had fixed ammunition.

What do you call fixed ammunition?—Already put up.

Made in cartridges?—Yes.

Was it in boxes?—No, it was scattered; it was not carefully packed; it was in a box having no lid that I saw.

About what quantity was there of ammunition in this box that you speak of?—It was supposed to be over a million and a half of rounds of ammunition.

Do you know, as a matter of fact, about how many stand of arms were on board, or can you give us any more description about that vessel?—I should judge there was some 5,000 stand of arms on board, not less.

Were there any pieces of artillery on board?—There were some representing such.

How many?—Three pieces.

Were they fired at all?—Yes.

When?—On the occasion of hoisting the flag once.

What size were they?—They threw some three pounds shot or shell.

The *Chief Baron*.—Do you know the difference between a gun of that kind for a ship and a gun for use on land?—Yes.

Was this a ship gun?—No, sir.

What sort of carriages had they?—They had none.

The *Solicitor-General*.—Were the arms opened at all, I mean the cases in which they were during the voyages, the larger cases?—Yes, sir.

What was done with the arms when the cases were opened?—They were so placed as to be ready to distribute.

How were they placed, were they re-packed in any way?—They were placed so that they could be taken up in ones, twos, or threes, but still left in the boxes.

The *Chief Baron*.—They were not taken out of the boxes?—Yes, sir, they were.

I thought you said they were left in the boxes?—They were re-arranged in the boxes.

In the same boxes?—Yes, sir.

The *Solicitor-General*.—Was it stated for what purpose the arms were to be landed in Ireland?—Yes, sir.

For what purpose?—To arm a revolutionary party.

Who stated that?—James Kelly, John Hogan, and a good many others in connexion with the movement whose names I do not know.

Where was that stated?—In New York.

Was the James Kelly who made that statement the same person as you have described as “Colonel” Kelly?—Yes.

The *Chief Baron*.—Who else, besides Kelly, made the statement?—John Hogan.

And others whose names you don’t remember?—Yes, my lord.

The *Solicitor-General*.—Had you known Warren, the prisoner, before you met him on board the brig?—I do not recollect ever seeing him.

Was there any discussion on board about the arms—as to the landing of them?—None about the arms.

Was there any discussion as to the purpose for which they were to be used when landed?—Yes.

Had you a conversation with anyone about it, and if so mention his name?—It was a general conversation indulged in by all.

What was the conversation?—That those arms were to be given into the hands of men who, according to the representations made in New York, were to be at Sligo.

To do what with the arms?—To receive those arms.

But for what purpose?—For the purpose of revolutionizing.

The *Chief Baron*.—Was the purpose stated, and if so what was it?—For revolutionizing the province of Connaught.

The *Solicitor-General*.—Before I take you farther, I wish to ask you had you sailing orders when you left New York?—Sailing orders, sir?

Yes. Had you sailing orders on board the ship, the ordinary clearance certificates or papers?—No, sir, we had not.

Was anything said about that?—Yes.

By whom?—By Prendergast.

Was that the Colonel Prendergast whom you already spoke of?—Yes.

What did he say?—He was dissatisfied at sailing in a vessel that had no clearance papers.

The *Chief Baron*.—Did Prendergast state that? Did he say he was dissatisfied?—Yes, sir.

The *Solicitor-General*.—To whom did he say that?—To Colonel James E. Kerrigan, and the other colonels.

Was Prendergast the only one who expressed dissatisfaction?—No, sir. It was very near creating a mutiny in the expedition.

Was that dispute afterwards adjusted?—Yes, sir; Prendergast had his commission taken from him on that account.

By whom?—By General Kerrigan, but it was afterwards returned to him.

About how long was it kept from him?—Some two or three weeks I think.

About what time did you sight land on the Irish side?—Some time in May—between the 18th and 20th of May as near as I can recollect.

What point of the Irish coast did you first sight land at?—I do not know what point.

Was any one taken on board when you approached the land?—Yes, sir.

What was he?—A pilot.

Do you happen to know his name?—I do, sir; it was Gallagher.

Did he come out to the vessel or did you pick him up?—He came out: he seemed to be following us from early morning. He followed the ship from early morning until some time before twelve o'clock, when we took him up.

How far from the shore was the ship then?—Some two miles: not farther.

You were quite in sight of land, I suppose?—Oh, yes.

Besides the pilot, Gallagher, did any other person come on board?—Within the Bay of Sligo a person did come on board.

The *Chief Baron*.—Was it in the Bay of Sligo Gallagher came on board?—I should think not. I have no information otherwise of it, but I think it was in the Bay of Donegal he came on board.

But in the Bay of Sligo another person did come on board?—Yes.

The *Solicitor-General*.—Who received that other person when he came on board?—Captain John A. Kavanagh.

Where did that person go when he came on board?—He went on the quarter-deck for a few seconds with Kavanagh, and then went down to the cabin.

Who went down to the cabin with him?—I saw no one but Kavanagh go down with him: but the Colonels were already in the cabin before him.

Was Kerrigan in the cabin?—He was.

The officers of inferior rank—were they in the cabin?—No, sir.

Were you there?—No, sir.

Do you happen to know what that person's name was who so

came on board, and went down into the cabin with Kavanagh?—I heard his name was Burke.

The *Chief Baron*.—From whom did you hear that?—From a man named Costello.

The *Solicitor-General*.—Was that “Captain” Costello?—Yes, sir.

How long did that person remain on board?—Not longer than an hour I should think.

About what hour of the day or evening do you remember did Burke come on board?—After dusk at night.

The *Chief Baron*.—Was that the night of the day on which the pilot came on board?—I think it was.

The *Solicitor-General*.—You say he remained on board about an hour?—Yes.

Did he go on shore?—Yes.

Did any of the party go with him?—Yes; three colonels.

Do you know their names?—Colonel Devan, Colonel Phelan, and Colonel Prendergast.

About how far was the vessel from land when that party went on shore?—The vessel was very close to the land.

She was inside the Bay?—Yes.

Had any of the party landed before this time that Burke, with Prendergast and the other two colonels, went on shore?—Yes; two of them.

On what day?—On the same day.

Who were they?—Colonel Doherty and a man named Shea.

The *Chief Baron*.—Where did they go?—They went to Sligo very early in the evening.

Was that the same day the pilot came on board?—Yes.

The *Solicitor-General*.—How long after those two men that you speak of, who left early in the evening, had landed, did Burke come on board?—About an hour and a half.

Was Gallagher, the pilot, taken down to the cabin at any time during that day?—Immediately on coming on board the vessel he was.

By whom?—By John A. Kavanagh.

Did you hear anything said to Gallagher?—I did.

By whom?—By Kavanagh.

The *Chief Baron*.—Did you go down with him?—No, sir.

The *Solicitor-General*.—How far were you off when you heard this?—A little over three feet.

Where was it said?—Between decks.

What was it you heard?—I had better first state how I heard it. There was a door communicating with the cabin from that part of the vessel in which I was, and at this door I was standing when this man, Gallagher, went into the cabin with Kavanagh.

The *Chief Baron*.—Was the cabin between decks?—Part of the cabin was raised higher than the deck.

Was the door at which you were standing on a level with the cabin floor?—Yes.

The *Solicitor-General*.—Were any of the officers in the cabin at that time, and if so, tell me who?—The colonels were in the cabin.

Was the prisoner there ?—Yes.

Was Nagle there ?—Yes.

The *Chief Baron*.—Did you see the prisoner there ?—He could not help but be there ; he was nowhere else in the ship.

But did you see them there ?—I heard them conversing there ; I did not see them there.

The *Solicitor-General*.—What did you hear said to the pilot ? I heard only part of the conversation between the pilot and Kavanagh.

State what that was ?—It was in excuse for not taking a Fenian oath.

An excuse by whom ?—By Gallagher, the pilot.

What was the excuse ?—That he was too old : that was all I could gather. I afterwards heard the pilot take the oath.

The *Chief Baron*.—Was he still in the cabin when he took the oath ?—Yes ; it was administered to him by Colonel Nagle.

The *Solicitor-General*.—Can you state what the oath was that you heard the pilot take ?—That he would not divulge what the cargo consisted of.

Did the pilot afterwards come on deck ?—Shortly after.

Did you hear anything else said, either in the cabin or out of it ?—No.

Did the two men, Doherty and Shea, who went on shore, come back on board ?—No, sir.

They did not return ?—No, sir.

Did Colonel Prendergast and the others who went on shore with the man whom you call Burke return ?—No, sir.

Do you remember anything happening about discharging a pistol at any time ?—I do, sir ; it went off accidentally.

When was it ?—It happened on the same day the Fenian agent, Burke, came on board.

In whose hand was the pistol that so went off ?—In mine.

What were you doing with it ?—I was cleaning it.

Where were you at the time ?—In the ship's hold.

How did it go off ?—It went off accidentally.

Was it loaded ?—It was.

Was any one hurt ?—Yes, two men were hurt ; one was a man named Coffey, otherwise Nolan, the other man's name was John Connor.

Were the men much hurt ?—One of them was very badly hurt.

Which of the two was that ?—John Connor.

Has Connor any other name ?—I don't know him by any other name.

Whereabouts was he wounded ?—In the ankle.

Where was Nolan hit ?—Somewhere in the fleshy part of the leg near the knee.

Were those men afterwards put on shore ?—Yes.

Did any of the party go with them ?—Yes, a man named Nugent went with them.

Was he the same Nugent you already spoke of when giving the list of names ?—No, sir ; this was Patrick Nugent.

Didn't you mention Patrick Nugent as one of the men of inferior rank?—No, sir; I mentioned Colonel Nugent—a different person.

The *Chief Baron*.—What was Patrick Nugent?—I don't know that he had any rank.

The *Solicitor-General*.—Did any one else go ashore with the wounded men?—The pilot, Gallagher, left in the same boat with the three men.

During the night?—Yes.

During this time that you were in Sligo Bay were you close to the shore at any time?—Very close; at one time I could almost throw a stone from the ship to land.

About how far from the shore were you when the boat left the ship to take the wounded men on shore?—I could not say the exact distance.

It was night I suppose?—It was.

Did anything occur next day?—A council was held.

Where was it held—was it on deck?—No; in the cabin.

Were you present?—I was.

The *Chief Baron*.—Was this still while you were in Sligo Bay?—I don't know exactly whether it was the bay. I don't know how large the bay is.

The *Solicitor-General*.—Were you in sight of land at the time?—Yes.

Were all the officers present at the council, according to your recollection?—Yes.

Was the vessel under sail or stationary at the time?—She was under sail, sir.

Was anything communicated—and if so, by whom—to that council?—Yes; by General Kerrigan.

What was communicated?—The information derived from the agent, Burke.

What did he tell you?—He told us that it was impossible, or rather that it would be foolish, to attack the town of Sligo.

Anything more?—That the Fenian Brotherhood was quiet, but firm; that they had been put down lately.

Anything further?—I should state, with reference to the statement that it was useless to attack the town of Sligo, that that had been determined on previous to the agent coming on board.

What had you determined on before the agent came on board?—To attack the town of Sligo.

Was it at a council that was determined?—Yes.

Was Warren the prisoner present at that?—Yes.

You say that General Kerrigan told you you could not take the town of Sligo?—Yes, that Burke had told him so.

Was anything said as to what you had to do?—Nothing more than that the agent had ordered Captain Kavanagh to sail for Cork.

Was the prisoner Warren present at that council?—Yes.

Did the vessel set sail then?—She did, sir.

The *Chief Baron*.—When was the council held at which it

was determined to attack the town of Sligo?—It was held before the agent had come on board.

When—how long before?—I could not tell the exact time.

Was it on the same day?—It was held in the absence of any information.

I know. But how long was it before the Fenian agent came on board? Was it the same day, the day before, or a week before?—No; it was on the same day.

Where were you at that time?—I should think in Sligo Bay somewhere.

The *Solicitor-General*.—Was the pilot on board at that time?—I do not know whether he was or not; I could not say for certain.

The *Chief Baron*.—What part of the vessel was that council held in?—In the cabin.

Who were at it?—All the officers were at it, sir.

Anyone else?—None, sir.

The *Solicitor-General*.—You put to sea, you say, in consequence of the determination of the council on the information given by Burke. Do you remember on what day afterwards you came in sight of land again?—I do not remember.

Do you know what part of the coast you first sighted?—I was told we remained all day becalmed not far from a place called Baltimore, in the county of Cork.

Was there a council held on that day?—No, sir; but there was before arriving.

Were you present at that council yourself?—Yes.

Who besides you were present?—All, except the crew and General Kerrigan and Colonel Warren.

Where were Kerrigan and Warren—why were they not at it?—They did not acquiesce in the summoning of any such conference.

Was the result of that council afterwards communicated to Warren?—It was, sir.

What was determined at that council?—To put the ship in the direction of the Western Islands—I think the Azores. I do not know exactly what is referred to as the Western Islands; to put the ship in that direction so as to reprovision her, and then to return to New York.

Do you happen to know what amount of provisions you had on board at the time that council was held?—Yes.

Were the provisions short, or were they abundant?—They were short.

The *Chief Baron*.—How do you know that?—By the second officer's communicating the fact to the council after an investigation made by him.

You mean the mate?—Yes.

Was the captain present?—You mean Captain Kavanagh? He was not; he had nothing to do with it.

The *Solicitor-General*.—Were there any notes of the proceedings of the council taken at the time in your presence?—There were.

By whom?—Colonel Nagle was one of those who took them.

Did you see Colonel Nagle taking notes?—I did.

The *Chief Baron*.—Were notes taken by anyone else?—Yes, by Captain Costello.

Did anyone else take them?—I did myself.

The *Solicitor-General*.—What did you do with the notes you took?—I threw them all away.

Before you came on shore?—Yes.

Was there any division at that council, or was it unanimous—was a vote taken?—Yes.

What question was put?—That as the object for which the expedition had been taken up was a failure, it would be better to return to New York, and to lay before the Irish there the experience they had gained rather than run the risk of landing in Ireland in their straitened condition.

Did they say what was to be done in the United States when they went there?—Yes; they were to lay before the Irish the experience they had gained during their connection with the expedition. To this Captain Kavanagh agreed.

The *Chief Baron*.—I thought you said he was not present?—He agreed to abide by the decision of the council.

The *Solicitor-General*.—Do you mean that that was the resolution which was come to by the council?—Yes.

And was that resolution communicated to Kavanagh?—It was, sir. I was the individual who communicated it to him.

Where did you communicate it to him?—On the fore-castle. No; I beg to correct that statement. I should have said the after part of the vessel, not the fore-castle.

The *Solicitor-General*.—Was Kavanagh satisfied with that resolution—was he willing to abide by it?—Yes, sir, he was at first. After the vote was taken it was decided by twenty-two for to ten against, that they should return to the United States.

Was that vote of the Council taken in the cabin before Kavanagh was informed of the result?—Not in the cabin; it was taken on the quarter-deck.

Was he present?—He had nothing to do with it.

But was he present?—He was present on board the ship.

The *Chief Baron*.—I thought you said the council took place in the cabin?—This council; I beg your lordship's pardon, I did not.

The *Solicitor-General*.—The council at which it was determined to give up the expedition and go back to America, and lay the experience they had gained before the Irish people; did it take place on deck?—It took place on the after part of the vessel.

That is, what you call the quarter-deck?—Yes.

Was that the vote you communicated to Kavanagh?—Yes.

Was that resolution carried out or was it changed?—It was changed.

How?—Immediately on my presenting Kavanagh with the document exonerating him from blame or connection with that council which had been gotten up for the purpose of changing the orders received by him in New York, he turned round and asked if they would not land anywhere he could land. It was then agreed that they would land anywhere he chose.

The *Chief Baron*.—Was anybody else with Kavanagh when he said that?—Yes, sir, all were present on the quarter-deck.

Were all present when you communicated to him the result, and when he made that proposition which they agreed to?—Yes.

The *Solicitor-General*.—I understood you to say that Nagle and Warren did not attend that council which came to the resolution you have mentioned?—Yes.

But that the result was afterwards communicated to them?—Yes.

Was that at the same time?—Yes; at the same time.

Where was it communicated to them?—Nagle remained in the cabin, and it was communicated to him there. Colonel Warren came up, and he was informed of it on deck.

You say the colonels were present at that council?—All the party were present except General Kerrigan and Colonel Warren.

Where were they at the time the council was proceeding?—They were in the cabin.

Where were they at the time the communication was made to Kavanagh?—Kerrigan was in the cabin; Warren was on deck, and so were all the others.

And was the first intimation Warren got of the decision the council had arrived at, what you communicated in his hearing to Kavanagh?—No, sir; I had communicated with him previous to the council sitting.

Communicated what?—That such a thing would take place.

When you first communicated to Warren as to what would be likely to occur at the council, did Warren agree or dissent?—He dissented.

When you subsequently communicated to Kavanagh in his presence the result of the council, did he still dissent or agree?—He assented after the council was held, and when the decision was presented to him for his signature.

Was the decision drawn up in writing?—Yes, and Warren signed it.

The *Chief Baron*.—Then he assented to what the council had determined?—Yes.

The *Solicitor-General*.—You said something about the prisoner's signing a document?—Yes; the resolution come to at the council. I presented it to him myself for his signature.

Did he sign it?—Yes, sir.

What became of it?—It is in the possession of Captain John F. Kavanagh, of New York.

The *Chief Baron*.—Was it before you communicated the result to Kavanagh you presented the document for signature to Warren?—I communicated it at the same time to Kavanagh that I did to Warren, both being present at the time.

And in Kavanagh's presence you asked Warren to sign it?—Yes, and he did so.

Was it before or after you had obtained the signature of Warren that Kavanagh proposed you should give up the resolution?—Afterwards.

Did you, in fact, land upon the Irish coast afterwards?—Yes.

What part did Warren take, or did he take any part, about that proposal of Kavanagh?—He was very well satisfied with it, sir.

To rescind the resolution he had previously signed?—Yes.

The *Solicitor-General*.—Did you, in point of fact, land in Ireland?—Yes.

How long after Kavanagh induced you to change the resolution did you see land?—Two or three days after.

Did you cruise about?—We did not do a great deal of sailing because there was one day calm, or the greater part of it was calm.

Do you know on what part of the coast you did land?—At the time I did not, sir.

Can you tell me how you landed?—We landed in a fishing boat.

The *Chief Baron*.—Do you now know on what part of the coast you landed?—Yes, sir, very nigh to Dungarvan.

Do you know what day of the month it was?—Yes, the 1st of June.

The *Solicitor-General*.—Can you tell me about what hour of the day it was you landed?—Some time in the forenoon, sir.

How many men landed with you?—Some thirty odd people.

Was it all in the same fishing smack?—All in the same fishing smack, sir.

About how many of a crew were there in the smack when she came alongside?—I could not tell how many.

Did you see more than one man?—Oh yes, sir, there were several men.

How far from the shore was it you got on board the smack?—Some three or four miles.

Did the smack land at any harbour; did she beach herself, or how did you get on shore?—She beached herself.

Were there houses near where you landed?—Yes, there were houses right opposite to where we landed.

How did you get out?—We jumped out into the water.

About how deep was the water?—It was over me when I got out, I being the last man. I was the last that got out.

When the other men got out how deep was it?—With some of them it was beyond their hips.

Do you know how you came to be last, or was it accidental?—It was accidental.

What did you do when you landed?—I simply walked along the road.

Was Warren with you when you were walking, or did he go any other way?—No sir, he was not with me.

Did you observe did he go away with any one?—I did not see him after landing.

With whom did you go?—With a man named Costello.

Were there any other persons, whose names you can tell me, of your party?—The only other man with me was James Lawless.

What happened to you after you landed?—About two hours after being on shore I was arrested.

By whom?—By a policeman. There were two magistrates present at the time.

Do you mean present on the road?—Yes, they were in a vehicle, a car.

Turn round and tell me if you see either of these gentlemen?—I recognise one of them, Mr. Redmond; the other gentleman was Mr. Fitzgerald, I think.

What did the magistrates do; were you taken into custody?—I was immediately handcuffed and taken to a place called Kiely's Cross barracks I think.

And eventually where were you brought?—To Mountjoy prison.

Before that were you taken anywhere?—Yes, to Dungarvan.

Was the Costello who was the captain in the expedition the same Costello you mentioned at the beginning as having introduced you to James E. Kelly?—No, sir; a different person.

[The Solicitor-General here requested that five other prisoners who were in custody should be placed at the bar, for the purpose of being identified. The prisoners, Patrick Nugent, James Coffey alias Nolan, Colonel Nagle, Captain Costello, and Lieutenant FitzGibbon, were accordingly placed at the bar.]

Do you see those five men?—I do, sir.

Do you know them?—I do, sir.

Name them. [A wand was then handed to witness, with which he pointed out each individual.]—This is Colonel Nagle, Captain Costello, Lieutenant FitzGibbon, Patrick Nugent, James Coffey alias Nolan; the first man here (indicating the prisoner on trial) is Colonel Warren.

The *Chief Baron*.—Is that Patrick Nugent the same person who came on shore with the wounded people?—Yes, sir.

The *Solicitor-General*.—As to the other persons who landed, have you since seen them all in prison?—Not all of them.

How many of them did you see?—All but five.

The *Solicitor-General*.—I have no further questions to ask this witness.

The *Chief Baron*.—I wish to ask the witness some questions, but perhaps it will be better to postpone doing so until some of the other evidence has been given.

The *Solicitor-General*.—Very well, my lord.

The *Chief Baron*.—Prisoner, do you wish to put any questions to the witness?

Prisoner.—I do not recognise the jurisdiction of this Court at all.

The *Chief Baron*.—Do you suggest to me any question to ask for you?

Prisoner.—No, sir.

MICHAEL GALLAGHER

Examined by Sergeant Barry.

You live in Towney, in the county of Donegal?—Yes.

What are you?—A pilot.

Have you been long a pilot?—I have been a pilot for twenty-five years.

Where were you in May last?—I was at home.

Do you recollect one night in May last seeing a brigantine?—
I do.

Where did you see her?—I seen her coming to Sligo Bay.

What o'clock was it when you saw her?—I suppose it was about six o'clock.

Was it in the morning or the evening?—It was in the evening.

Where were you at the time you saw her?—I was on my look-out.

On shore?—On shore.

What did you do when you saw her?—Well, I went home.

Did you go on board her?—Not on that evening.

Up to what hour did you see her?—Up to about six o'clock.

Not later?—No.

When did you see her again?—I saw her next morning, about eight o'clock in the morning.

What day of the week was that, do you recollect?—It was on a Friday.

Where was she at that time?—She was reaching out from Sligo Bay, coming across to our land, with the wind to the eastward.

What do you call your land?—The Donegal side—the Northern land.

Was she near the shore at that time?—I suppose she was about half a mile across the bay.

The *Chief Baron*.—How far from the shore was she?—When we first saw her, she was within four miles off the Connaught coast, as we call it; she had to tack for our land with the wind to the eastward, and the time we boarded her she was about six miles off our land.

Sergeant *Barry*.—When you saw her the last time, did you board her?—Yes.

In a boat, was it?—Yes, in a small fishing-boat, less than two tons.

The *Chief Baron*.—Where were you when you saw her the second time?—We saw her when we were on the look-out.

Were you on the land?—On land.

But on the look-out?—On the look-out.

What time was that?—As near as I can guess, it was about twelve o'clock in the afternoon.

Sergeant *Barry*.—Who went with you on board her?—I had six men along with me—five men and a boy.

Who were they?—James Browne, John Byrne, Patrick M'Gehan, Patrick Gallagher, Patrick Byrne, and John Haughey.

The *Chief Baron*.—Was that all?—Yes, that's six.

Sergeant *Barry*.—You say this was about twelve o'clock, when you boarded her?—It was as near as I can go to it.

Where was the vessel when you boarded her?—She was about seven miles from our land; she was then between Ennisduff and Innismurry Island, in Donegal Bay.

When you came alongside of her, what happened?—When I came alongside between the two masts, I went on board the yes-

sel, and walked to the quarter-deck. The man in charge was on the quarter-deck, and I asked him where he was from, and where he was bound for. He told me he was from Spain, and bound for Glasgow, with a light cargo of fruit. He told me he landed his captain on Thursday evening, for provisions for the ship, in Sligo Bay. He asked me was I pilot; I told him I was. He asked me what I would charge for going across the Bay with him to get his captain on Friday evening at six o'clock. I told him two guineas. He agreed for the two guineas, and he gave me charge of the vessel.

Did you then take charge of the vessel?—Yes; I went as the pilot of her then. After that, when we had settled everything about the pilotage, he went down into the cabin, and called myself down. I didn't know whether he was the captain or mate.

The *Chief Baron*.—But he called you down?—He called me down.

Into the cabin?—Yes.

Sergeant *Barry*.—What occurred then?—When I went down, there were some men in the cabin; they asked me if I was a Fenian.

How many men were in the cabin?—I am on my oath, and I can't say how many men there were there; there were more than these two men.

Turn round now, and see if you see anyone here who was present on that occasion?—Yes; this man (pointing to the prisoner) was.

Did you know his name, then?—No.

Did you afterwards know his name when you were in the vessel?—No.

But that man was there?—He was, in the cabin.

You spoke of two men, what were they doing?—They were in the cabin when I went down.

Would you know the other of the two men?—I would.

What occurred, then, between you and the two men in the cabin?—He asked me was I a Fenian, and I told him I wasn't.

Who asked you that?—It was not that man (the prisoner); it was the other man. He asked me if there were any Fenians in our county; I said I didn't think there were any Fenians in the county Donegal. The man in charge then said, "Swear him." I told him for God's sake not to swear me, as it didn't answer me, and as I was a man of age, and had a large family.

What occurred then?—Stating what family I had, I told them that I had my mother, wife, and seven of a weak family, and not to make me swear. The man in charge came aback of me then, with a loaded pistol—I took notice of him, when I was going down to the cabin, to take it off some place in the cabin. He told me to take the book, or, if I wouldn't, he would soon let me know how to take it, and let me see what he would do. I had to take the book, and swear; whatever words he said I had to say after him.

Who was it said the words to you?—It is not this man (the

prisoner); it is that man there (pointing to another prisoner, named Nagle, who had been brought into the dock).

The other man in the dock?—Yes; it was he handed me the book.

The *Chief Baron*.—That man was identified as Nagle?

Sergeant *Barry*.—Yes, my lord.

The *Chief Baron*.—Was he the person that said if you didn't swear he would let you see what he would do?—No, it was the man in charge of the ship said that.

What did Nagle say?—He only handed me the book, and whatever he mentioned I had to repeat after him.

You had to say whatever he said?—Yes; I got afraid.

Sergeant *Barry*.—Do you remember what he said to you, or the substance of the words?—I do—some of it. I had to say—"Not to tell anyone on shore that I saw them in the cabin; or if I would take notice of anything in the ship or of them, not to report it on shore."

The *Chief Baron*.—Was it that you were not to report it if you took notice of anything that was on board the ship, or anything they were doing?—They said if I saw them do anything, or if I saw them in the cabin of the vessel.

Sergeant *Barry*.—Do you remember anything more they said?—Yes; "Not to give a description of the ship, or to say what size she was."

Do you remember anything more?—I do.

Did they say anything more to you in the cabin at that time—do you remember anything more of the oath?

The *Chief Baron*.—Anything else you were not to tell?—I don't remember.

Sergeant *Barry*.—Did you take the oath, and did you kiss the book?—I had to do it.

Did anything more occur in the cabin at that time?—I don't think there did, only one thing—when I said the family was weak, and if I went in the vessel they might die, one of the two men gave me money—I don't know whether it was five shillings he gave me.

Did you then go on deck?—I then went on deck.

The *Chief Baron*.—What do you mean by saying—"If you were going in the vessel?"—I didn't know but that they would take me away.

Sergeant *Barry*.—When you went on deck did you take charge of the vessel?—When I went on deck I had to take charge of the vessel and the hatches—

You were saying something about the hatches?—They were closed down, and nothing was to be seen except six or seven men working about the deck.

When you took charge of the vessel, in what direction did you sail her?—My own men—

The *Chief Baron*.—Were there any more in the cabin than the person in charge of the vessel, the prisoner at the bar, and the man that was brought into the dock?—I can't say; I was "in terror," and don't know.

Sergeant *Barry*.—In what direction did you sail the vessel?—My own crew stood off; they saw nothing there; they didn't see anything on board, or didn't take notice of what the parties did in the cabin.

Where were they?—They were on deck, and went into the galley house, poor fellows, to warm themselves.

Did they leave after you came on deck?—When I came on deck, they stood off for home, with nothing in the boat with them. It was a Friday, and the steward gave them meat; but they wouldn't eat it. He then threw a lump of pork into the boat to them; that was all they had with them.

In what direction did you sail the vessel?—I got the vessel on small canvas, so that I could put her in. I reached in towards Mullaghmore coastguard station as near as I could, when I thought I couldn't give fair evidence if I was taken up.

How near to the land did you go there?—Within half a mile of the shore.

That station is in Donegal Bay?—Yes.

Where did you stand to then?—I stood her out when I didn't see the coastguard come out from that station. I reached towards St. John's Point station on the northern shore.

The *Chief Baron*.—Was that from the Sligo or the Donegal side?—From the Sligo side.

You say you were within half a mile of the Donegal shore?—Of Mullaghmore station.

Then you stood out again from the Donegal side?—From the northern side.

Where did you first steer to?—To Mullaghmore station.

That is on the northern side?—Yes.

Where did you go then?—I reached her across for St. John's Point station.

Sergeant *Barry*.—Is Mullaghmore the southern point of Donegal Bay?—It is.

And St. John's is the northern point of it?—Yes, the northern point.

Are they both on the Donegal side?—They are in Donegal Bay, but Mullaghmore is in the south of it.

On what coast is Mullaghmore?—On the Sligo coast.

And on what coast is St. John's?—The northern point.

In what county is it?—In the county Donegal.

How near did you go to St. John's?—Within half a mile, and when I saw they didn't come out—

Who didn't come?—Seeing that the coastguard of St. John's Point station didn't come out, I let the vessel drop down until the Killybegs coastguard would see her. Killybegs station is a little to the west of St. John's Point, and I let her drop down, thinking the coastguard would come out.

Killybegs, I believe, is further in in the bay than St. John's?—It is further to the northward.

How close did you go there to the shore?—Not within two miles.

Where did you go after that?—When I didn't see any of them

coming out, I asked the man in charge was it near the time to take the vessel to where the captain was to come. He told me it was; it was then drawing near six o'clock in the evening. We then set canvas on the ship, and laid her across.

The *Chief Baron*.—To where?—To Streea coastguard station.

That is south of Sligo again?—It is south to Sligo; it is between Sligo and Mullaghmore Station.

Sergeant *Barry*.—That is inside of Innismurry Island, I believe?—It is.

Did you come close to Streea?—We did, close enough to land. There was no sign of any captain coming, and then we got sails aback on the vessel, and she was heaved to there until ten o'clock. About ten o'clock I was standing on the quarter-deck. I saw a hooker running down as if she came down from Killybegs, and she came under the stern of the ship. A man out of the smack hailed to the man in charge of the vessel. I didn't understand what was the language.

What occurred then?—The man in charge ordered the men to get the boat on deck into the water.

The ship's boat?—The ship's boat. The ship's boat then went to the hooker.

What did it do?—It took the man in the hooker on board the vessel; he then went down into the cabin, and he was in the cabin about half-an-hour.

Was anything said about who this man was?—Not at this time. He came on deck again, and walked over to go into the boat. I asked the man in charge was that the captain, and he said, "Watch your own business, watch the vessel." I said, "I am long enough watching the vessel, and I will stop no longer." I then went forward to the rail of the ship and jumped into the boat.

What boat?—The ship's boat.

Had the strange gentleman that came on board, got into the boat at the time?—He had. The man in charge ordered me up out of the boat again, and said that he had two wounded men to land on shore and send to hospital the next morning. That was the coming morning. Then I was dragged out of the boat on deck. I refused to come out of the boat when I was ordered, and I was dragged out.

Had you heard previously of any mention of two men being wounded?—I had, I forgot stating that. When I was about two hours on board the vessel, he told me these two wounded men had a fight on the morning before I went on board, and that one of them drew a pistol out, and that the two got wounded by the pistol-shot.

After you were taken out of the boat, as you described, did the boat leave with the man on board?—It left the gentleman on board the hooker, and came back to the ship again.

Did you hear any name given to that man on board?—No, I did not.

You remained on board the vessel until when?—I remained on board until one o'clock in the morning.

What occurred then?—About one o'clock he told me to reach the vessel close to the shore, in order to land these wounded men and send them to hospital. I did so. I put the vessel in until I got but four fathoms of water, opposite the Streedra coastguard station.

How close to the shore was that?—It was within a quarter of a mile of the shore.

When you got so close what occurred?—We got the sails back on the vessel, and the wounded men were sent down into the boat.

How many?—Two, and three more who were not wounded, that was five, and we pulled for the shore.

What occurred then?—When I was pulling the after oar, we pulled until we got into a beach of sand; when the boat struck on the sand I was carried out of the boat, and I stopped on the sand until one man was carried up on the bank.

The *Chief Baron*.—How were you carried?—By one of the men that was in the boat. I then stopped on shore until one of the wounded men was up with me as far as the beach. I walked away then and left them there. I had to go fifty miles to my home, and I thought it was time for me to make for home. When I was going up a piece from the shore I met two of the Streedra coastguard.

Sergeant *Barry*.—Would you know either of the wounded men, or any of those who came on shore with you if you saw them?—I think I would.

Turn round and see if you know any of them?—That man (pointing to Nugent) was on shore with me.

Do you know what his name is?—No.

Was he one of the wounded men?—No, he was not.

Do you see any of the wounded men?—Yes, that is one of the wounded men (pointing to another of the prisoners, named Coffey *alias* Nolan).

The *Chief Baron* (addressing the prisoner).—Do you wish to ask the witness any questions?

The *Prisoner*.—No, my lord, I will only call your attention, for the sake of law and justice, to his direct statement that he made on the 27th May, when he swore he received no money, though he now swears he received five or six shillings. He also swore then that he was on the look-out on shore; he now swears that he was in a small boat. For the sake of law and justice, I wish you would analyse his evidence.

Witness.—I would like to say a word, I reported that I didn't get my pilotage which I agreed on, the two guineas.

The *Chief Baron*.—Prisoner, if there be anything else you wish to ask him, when we return you can mention it to me, and I will have it asked.

The *Prisoner*.—In his first informations, which are the only genuine ones—the others are improved editions under the supervision of Mr. Anderson—he swore that the man in charge did not tell him what cargo was on board, that he saw eight or nine men on board, and that he told two coastguardmen whom he met that that was all he knew to be in the vessel. Yet he now swears that

the man in charge told him that she had a light cargo of fruit, and he swears a great deal more than he did in his informations.

Witness.—I proved to nothing on board at that time; I only proved to the ship's crew.

The *Prisoner.*—If your lordship would analyze his three informations, and compare them with his evidence here to-day, you will find it is a tissue of perjury from first to last.

The Court here adjourned for a short time. On resuming,

The *Chief Baron* asked the prisoner if he wished the entire of the witness's informations to be read, or only a portion of them.

The *Prisoner.*—I only suggest, for the sake of law and order, that your lordship should analyze his informations, and compare them with his evidence here to-day.

The *Chief Baron.*—If you don't desire that the entire should be read, I will only read such portions as are, in my opinion, material. (To the witness).—You were sworn to an information made by you on the 27th May, and to two more on the 15th June?—Yes.

And you were sworn to another made on the 12th October. In the information you swore on the 27th May, do you recollect stating this. After stating that on Friday, the 24th instant, you observed a vessel in Teelin Bay, and that you boarded her to know if she wanted a pilot; and after telling what passed between you and the man in charge, you proceed to say, "He told me the vessel was from Spain, bound to Glasgow; but he did not tell me what cargo. I saw about eight or nine men on board, all I believe sailors. I was landed about half-past one o'clock, A.M., on Saturday morning, the 25th instant, at Milk Harbour, on the Connaught shore; the two wounded men were also landed at the same time. I received no money for my services, as the man in charge told me he had no money when the captain did not come. A short distance from where I landed, about two miles, I met two coastguard men, who made inquiry about the vessel. I told them all I knew; they said they had been watching her, and proceeded on towards the shore. I know nothing further concerning said vessel." Do you remember having sworn that?—I did. I could not give fair evidence on board the vessel.

It was in your informations you stated that you did know nothing more about the vessel except what you stated to the coastguard—did you tell the coastguard men all you knew about it?—Yes.

Is that true what you swore there?—It is. I told them that the man in charge of the vessel said he came from Spain, and was bound for Glasgow—that was what he told me.

Did you tell the magistrate all you swore here to day?—No. I was sworn in the vessel, and I could not give fair evidence there.

And that is the reason you didn't tell him what you told here?—It was.

—What is the reason you state in your informations that "I know nothing further concerning said vessel?"—I knew nothing of law. I never stood on the bench before, and I have a large family.

It isn't what you told the coastguard men, but what you swore

in your informations I am now referring to—you swore two things in your informations: first, that you told the coastguard men all you knew, and next that you knew nothing concerning the vessel except that which you stated in your informations. These informations do not contain any of the matters that you stated here occurred in the cabin of the vessel—can you state how that occurred?—I only reported to the ship's crew what the man in charge reported to be on board the vessel.

You were not asked what you reported to the ship's crew, but what you reported, as you term it, to the magistrate—you told them you stated all you knew, and that you knew nothing more concerning the vessel than what you had told the magistrate?—I told the coastguard—

What did you swear to the magistrate—did you swear this to him: "A short distance from where I landed, about two miles, I met two coastguard men, who made inquiry about the vessel; I told them all I knew; they said they had been watching her, and proceeded on towards the shore. I know nothing further concerning the vessel"—did you tell them all you knew?—No, I didn't.

Did you know more about the vessel than you swore?—I don't know.

Did you tell the magistrate all you knew?—I told him I saw about eight or nine men on board, and that I got a report from the man on board that she had a light cargo of fruit.

Did you tell the magistrate what occurred in the cabin?—No; because I swore I would not do so.

The *Prisoner*.—All he says in his informations is, that he didn't know what the cargo was, and he didn't ask what it was.

The *Chief Baron*.—He didn't say anything about the cargo.

The *Prisoner*.—This very moment, my lord, not five minutes ago, he said he told the magistrate that she was laden with fruit. Yet in his informations he says "the man in charge told me that the vessel was from Spain, bound to Glasgow; but he did not tell me the cargo." He says now she was laden with a cargo of fruit.

The *Chief Baron*.—You are very right. (To the witness).—Did you report to the magistrate that the vessel was laden with fruit?—Yes, I did.

This is what the magistrate took down, and what you are stated to have sworn, that you told him that the man in charge told you the vessel was from Spain, bound to Glasgow, but that he did not tell the cargo?—I stated that she came from Spain, and was bound to Glasgow, and that she was laden with a cargo of fruit.

Did you tell that to the magistrate?—Yes.

On the 15th June you swore another information; do you remember that?—There were only two reports before the report I made in Dublin.

And one of these was made on the 15th June?—Yes.

You made informations twice on the 15th June, one after you saw the men that were wounded; do you remember that?—I don't know.

After you went to Sligo gaol, do you remember?—Yes.

You made an information both before and after you went there, and you stated in one of these informations that you were on shore about seven o'clock in the morning on the look-out when you saw the vessel; that your own boat was then aground; that you took Pat Meehan's boat with six men beside yourself; further down you stated you didn't ask the name of the vessel nor did you hear it. "I didn't ask the captain's name, nor did I hear it; I did not hear or ask the name of any man on board." That was your information of the 15th June.

The Attorney-General.—Your lordship is passing over two or three lines at the foot of the third paragraph.

The Chief Baron.—The discrepancy is in the information of the 27th May, and it may have occurred from the magistrate not taking down all the witness said. In the information of the 15th June, you state, "I asked him where he was from; he said from Spain, and bound to Glasgow with fruit"?—Yes, that's where it is.

In your informations of the 12th of October, you state, "I remember a Friday near the end of May last; I saw on that day a brigantine coming from Sligo Bay; I had noticed her on the previous day; on the Friday I was in a row boat, looking out as a pilot, when I saw her"——

Witness.—That's in the wrong place there; I saw her on Thursday, and I boarded her on Friday. I was on shore at the time.

The Chief Baron.—After stating that you agreed to pilot the vessel for two guineas, you proceed to say:—"The brigantine seemed to be about 180 tons burden; I cannot say about what length she was; she was about 20 or 25 feet beam. I asked the name, but the man in charge would not tell me. I could not get the name of the captain."

The Prisoner.—In his statement of the 15th June, my lord, he swears positively, "I did not ask her name, nor did I hear it; I did not hear or ask the captain's name, who was said to be on shore, nor did I hear it. I did not hear or ask the name of any man on board"—so that in almost every line he contradicts himself.

The Chief Baron.—You state in your information of the 15th June, "I did not ask her name, nor did I hear it; I did not ask the captain's name, who was said to be on shore, nor did I hear it;" while in your informations of the 12th October, you say, "I asked her name, but the man in charge would not tell me"—how do you reconcile these two statements?—I told the magistrate that I did not see the name of the vessel, and that even if I did I would not be able to read it, as I was no scholar; and that I had to leave the vessel without the name of her, or of the captain, and without my pilotage.

You are asked how you reconcile these two statements—on the 15th June, you swore that you did not ask the name of the vessel, nor did you hear it, and that you did not ask the captain's name, nor did you hear it; while on the 12th October, you swore that you asked her name, but the man in charge would not give it?—In my report to the magistrate, I said that I could not see her name; and that if I did I could not read it; and that I could not get the name of the captain, as he was on shore.

How is it that you say in one instance that you did ask for the vessel's name, and in the other that you did not ask it?—It may be put down wrong.

You stated that it was in the evening you saw the vessel?—Yes; the evening before.

Were you then on shore?—I was.

When you saw her the second time, where were you—were you on shore also?—Yes, on shore.

How is it that in your information of the 12th October, you swore, "On the Friday I was in a row-boat, looking out as a pilot when I saw her"?—That is wrong, I never reported that. I reported that I was on the look-out for the vessel on Thursday; that on Friday morning I saw her coming out from Sligo Bay, that I pulled out with six men, and went on board of her.

Is it not the fact that you were in a row-boat when you saw her?—I was on shore.

And not in a row-boat?—We pulled out in a row-boat.

What do you mean by saying that you went to two places on the Donegal shore for the purpose of seeing whether any of the coastguard-men would come out?—The reason is that when I saw these men swear me in the vessel, I knew I could not give fair evidence or report, and I could not get out of the vessel. I thought the coastguard-men would come out and take me on shore.

That they would come for the purpose of taking the vessel?—For the purpose of taking me away.

The *Prisoner*.—I would call your lordship's attention to his first information, where he says that he met two coastguard-men to whom he told all he knew.

The *Chief Baron*.—Did you intend to tell the coastguard in case they came out, why you wished to leave the vessel?—I knew that if they came out they would know if there was anything wrong with the vessel.

Did you expect the coastguard-men to come out and take you from the vessel?—I thought it was strange that they did not go out in a boat, as it was their business to do.

Was it to get yourself safe from it you wished them to come out?—It was.

Would you not tell them what happened, if they came out?—Perhaps I would not tell them as I had sworn a solemn oath in the cabin.

You stated in a part of your evidence that "I got the vessel on small canvas; I reached her in towards Mullaghmore station of coastguard as near as I could, when I thought I could not give fair evidence if I was taken up," what do you mean by that?—When I was sworn not to report the vessel, I thought I would reach her close to the shore, and that the coastguard-men would come on board, and would know what was the vessel.

Did you intend to give them fair evidence, or report as you call it, in case they did come on board?—No.

What do you mean by saying that you could not give fair evidence?—I didn't say that.

That is what you did say—what do you mean by it?—I thought that if the coastguard-men came out they would take myself out of the vessel.

What do you mean by saying you could not give fair evidence?—Because I was sworn not to report or tell anything I had seen.

Had you expected the vessel to come, previously to your boarding her?—No.

Had you heard nothing about her?—Nothing since I was born. There is not a pilot on shore that can pilot a vessel along that coast with me; I have saved life and property there for the last twenty-five years.

The *Prisoner*.—There is one point, my lord, I would especially call your attention to, and that is, that when leaving this imaginary vessel he says he met two coastguard-men to whom he says he told all he knew, yet he swears now that he never told them a word about the vessel, or what was done on board.

Witness.—I beg your pardon. I told them what I was, and they said, "I suppose you were on board the schooner that was sailing about?" I told them that I was. I thought it was their duty to go and see after it.

The *Prisoner*.—I say that the man who is guilty of being a suborner of perjury, as has been done here, should be in the dock where I now am.

The *Chief Baron* (to witness).—Where have you been since your informations were taken?—Is it the first report?

The second?—I was taken to jail, away from my family.

When was that?—I was only three weeks at home when I was taken to Lifford jail, and afterwards to Dublin.

Was that before the informations you made in October?—No; after it.

Where were you in October—how long were you in jail?—Six or seven weeks.

How long were you there after you swore your first information in May?—About three weeks.

Were you in jail when you made your second information?—No. Three days after I was in Sligo jail identifying the men I was arrested.

From that time to this you were in jail, were you?—No.

How long were you there?—I am not sure.

The *Prisoner*.—He was in Kilmainham with me for five or six weeks. He was brought there afterwards to identify me.

The *Chief Baron*.—How long were you in jail—were you in jail when you made your last information, on the 12th October?—I was.

How long after that did you leave the jail?—Four or five days after. I made my report before I got out of it.

How long is it since you left jail?—That's the thing I can't say.

Is it a week ago?—I was in jail when I came to see them.

When did you leave it?—I am out of jail, as near as I can go, nine or ten weeks.

How long were you in jail?—Six or seven weeks.

The *Prisoner*.—He was brought to Kilmainham, my lord, and put in the same yard with me, where he heard my name called several times, and knew I was the party. He afterwards was taken away and brought back again to identify me.

The *Chief Baron*.—Were you in jail with the prisoner?—I was.

The *Prisoner*.—And in the same yard?—I was.

The *Chief Baron*.—Were you taken away from jail before you swore your last information?—Yes.

How long after you were taken from jail did you swear it?—Two months.

Were you told you would gain anything by making that information?—No.

Were you told you would be let out if you made that information?—No.

The *Prisoner*.—The presumption is that, if there were twenty men on board this imaginary vessel, they would get two out of that large crowd to come here; but it is better they put up a man without brains. They have not a foot to stand on I submit to the whole world.

The *Chief Baron*.—Have you anything else you wish to ask this witness?

The *Prisoner*.—No; I don't admit the jurisdiction of this court, and it was only for the sake of law and justice that I asked your lordship to analyze his evidence. I beg to return your lordship my most sincere thanks for doing so.

The *Chief Baron*.—You are under no obligations in the world to me. I have only to do justice between you and the Crown.

JAMES NOLAN

Examined by Mr. *Longfield*, Q.C.

The *Witness*, on coming on the table, said—I decline to give evidence.

Mr. *Longfield*.—On what ground? What is the reason?—I got my liberty some time ago to leave the country, and I have been brought back again, not of my will; I was taken prisoner in Liverpool, and brought back.

Do you think it would injure you to give evidence?—I think it would.

Swear first, and then you can decline to give evidence when I ask you any question that you don't wish to answer.

The witness was then sworn.

The *Prisoner*.—I protest against this man being compelled to swear, and to give evidence.

The *Chief Baron*.—The law requires that he shall be sworn, but it is my duty to tell you (to witness) that you are not bound to answer any question that may criminate yourself—that is, that may expose you to a prosecution.

Witness.—I decline, sir, coming on the table at all.

The *Chief Baron*.—You are bound to come on the table, and

you are bound to be sworn, but you are at liberty to withhold any answer which would give the grounds of a prosecution.

Mr. *Longfield*.—What is your name?—Daniel Coffey.

Have you gone by any other name?—James Nolan.

Are you a native Irishman?—Yes.

Did you go to America some years ago?—I did, sir.

The *Chief Baron*.—You are not bound to give any answer that may criminate yourself. You are bound to state everything that is not calculated to criminate you. You are not bound to state anything that may.

Mr. *Longfield*.—I assure your Lordship that I don't wish to get him to answer any question that might criminate himself.

The *Chief Baron*.—I am quite certain of that, Mr. Longfield; I know you would be the last man to do it.

Mr. *Longfield*.—I have not asked any question that could do so, but I am now about to ask a question of a different character. (To witness).—Did you at any time when in America become a Fenian?—I decline to answer.

Did you at any time in this year become a seaman, or go on board in any capacity, a vessel called the "Jackmel"?—I decline to answer, sir.

Did you suffer from any wound lately?—I decline to answer, sir.

Mr. *Longfield*.—Does your Lordship think I cannot go any further?

The *Chief Baron*.—Certainly.

Mr. *Longfield*.—I am bound to admit that if he claims protection I cannot go any further.

The *Chief Baron*.—These three questions show that the examination cannot be proceeded with.

JOHN HAUGHEY

Examined by Mr. *Murphy*, Q.C.

Where do you live?—Donegal.

What are you?—A labouring boy.

Do you know Michael Gallagher, the pilot?—I do.

Do you recollect on a Friday in May last going into a row-boat with him?—Yes.

What other men were in the row-boat with you?—Pat. M'Gehen, Pat. Gallagher, John Byrne, James Brown, and Patrick Byrne.

Where did you get into the row-boat?—At the quay of Towney.

Is that in the county Donegal?—Yes.

Where did you row out to?—Mullockmore.

Did you go to any vessel there?—Yes.

Who went on board the vessel first?—Michael Gallagher, the pilot.

Did you go on board?—I did, sir.

How many of the other men went on board with you?—Three men.

About what hour in the day was it that you went on board ?
—About twelve o'clock.

How long did you stay on board the vessel ?—About an hour and a half.

Where did you stay the time you were on board the vessel ?—
At the rail.

Did you go below at all ?—No, sir.

The *Chief Baron*.—Did you go anywhere to warm yourselves ?
—I did, sir, to the galley-house.

Mr. *Murphy*.—Did you see while you were on board where
Michael Gallagher went ?—He went to the cabin.

Did you see who took him there ?—No.

Did you see was there any person with him when he went
down ?—I was the third man that went aboard.

Was it immediately that you got on board you saw Gallagher
going down to the cabin ?—He was down when I went on board.

The *Prisoner*.—This witness was in court during the exami-
nation of Gallagher, and heard every word he said.

The *Chief Baron*.—That should not have been. The usual
course is to have the witnesses out of court.

Mr. *Murphy*.—There is no rule on the subject, my lord.

The *Chief Baron*.—No rule, but it is the usual course.

Mr. *Murphy*.—Unless your lordship makes an order—

The *Chief Baron*.—I make no order ; but I know, both as pro-
secutor and judge, that it is the practice.

Mr. *Murphy* (to witness).—How long after you went on board
did you see him coming out of the cabin ?—He did not come up
until I was just leaving.

How many men did you see on the deck of the vessel ?—I did
not see past seven men.

Did you see who was in command of the vessel ?—No.

Did you know the name of the vessel, or learn it whilst you
were on board ?—No.

Did you see or know what the vessel had on board—what
cargo ?—No.

About what place did you land when you came ashore from
the vessel—did you come to the same point you left ?—I did.

Did you leave Gallagher on board ?—Yes.

When did you next see Gallagher after that ?—Two days after
that.

The *Chief Baron* (to prisoner).—Is there anything you wish
to suggest, or to ask this witness ?—No, my lord.

DANIEL JONES

Examined by Mr. *Beytagh*.

Where do you live ?—Mount Edward, county Sligo.

Do you know the strand of Streedra ?—I live convenient to it.

Do you take sea-weed there ?—Yes.

Do you remember the morning of the 25th May last ?—I do, sir.

Did you go down to the strand of Streedra that day ?—I did.

When you got to the strand did you see anyone ?—As I was

going along for sea manure, two wounded men were lying on the sand. I asked them what brought them there, and they said they came in at twelve o'clock that night.

The *Chief Baron*.—I do not think the conversation between these men is evidence here.

Mr. *Beytagh*.—In consequence of what they said to you, what did you do?—They asked me to go for a horse and cart.

Did you go?—I went to a man convenient, Michael Broom.

Did you get a horse and car from him?—I did.

Were the men lying down?—They could not move at all.

When you came back were they there still?—Yes.

Where were they wounded?—One of them was wounded in the knee, and the other in the ankle.

What did you do with the wounded men when you came back?—The coastguards came down and put them on the car.

Where were they taken to?—To Mr. Jones.

Did you go with the cart and men to Mr. Jones?—No.

You left them in the hands of the coastguards?—Yes.

The *Chief Baron*.—Do you know the name of the coastguards?—The name of one of them is Burke.

The *Chief Baron* (to prisoner).—Do you suggest anything to ask this witness?—Ask him, my lord, how far Milk Harbour is from Streedra.

The *Chief Baron* (to witness).—How far is it from Streedra to Milk Harbour?—About a mile, sir.

How far is it from Milk Harbour to the place where the men were on the strand?—A mile, sir.

Anything more (to prisoner)?—No, my lord.

JOSEPH CLARKE

Examined by the *Attorney-General*.

I believe you are a coastguard man?—Yes.

At Streedra?—Yes.

Do you remember May last?—Yes.

Do you remember meeting Gallagher, the pilot?—Yes.

The *Chief Baron*.—What date?—The 25th May.

The *Attorney-General*.—What hour of the day?—About 2.15 A.M.

The *Prisoner*.—My lord, this witness was also in the gallery during the examination of Gallagher.

The *Chief Baron* (to witness).—Were you?—Yes.

That does not make him inadmissible.

The *Attorney-General*.—Had you any conversation with Gallagher?—Yes.

After you saw him did you meet anybody else?—Yes.

Did you know the man you met?—He gave me no name at the time; he was a stranger to me.

Had you some conversation with him?—Yes.

The *Chief Baron*.—Do you now know who he was?—Yes.

The *Attorney-General*.—I don't ask you what he said, but did you take him into custody?—Yes.

Where did you take him to?—The coastguard watch-house near Streeda.

When you were in the station were any persons brought in there?—Yes; two wounded men.

Where were they wounded?—One through the thigh, and the other in the ankle.

Would you know either of these wounded men?—I won't be too positive.

Would you know the man you took into custody?—I think I would.

Do you see the man you took into custody?—That is he there. (The witness pointed to a man in the dock.)

The *Prisoner*.—Were you in the court when Gallagher identified these men?—I don't know; but I would know that man.

The *Chief Baron*.—Was that the man you took into custody?—Yes.

The *Chief Baron*.—Who is that man?

The *Attorney-General*.—Patrick Nugent, my lord. (To witness.) Do you see either of the wounded men in court?—I think that one there, but I won't swear positively to him. They were lying down in the station while I was there.

The *Chief Baron*.—That is Coffey, I think.

The *Attorney-General*.—Yes, my lord. (To witness.) Did you observe any ship cruising off the coast that morning?—I saw a small speck at daylight out in the offing, and we could not make out what she was.

Did you see a vessel cruising there the day before?—Yes.

On the 24th?—Yes.

What kind of vessel was she?—A brigantine.

Did you remark anything about her rigging?—She had a double topsail yard rigging.

Was she near shore when you saw her on the 24th?—At four o'clock in the morning she was about two miles off Streeda station.

The *Chief Baron*—(to prisoner).—Do you suggest anything to ask this man.

The *Prisoner*.—What did Gallagher say to him, or what did he say to Gallagher.

The *Chief Baron*.—I think you are entitled to have that asked.

The *Attorney-General*.—Had you any conversation with Gallagher?—I had.

What direction was he coming in?—From Streeda shore.

Was he walking or running?—Walking.

What did you say to him when you met him?—I asked him who he was. He said he was a pilot. I asked him where he came from. He replied that he was landed from a brigantine. I asked him was she the topsail-yard brigantine. He said she was. I asked him what she was. He said she was a Spanish vessel from Spain, bound to Glasgow. I asked him what cargo, and he said he did not know. He told me he was out fishing, and he boarded her. He was asked to take her into Killybegs, and when

north of Killybegs he got orders from the man on board not to enter that harbour. He then stood over towards Streedra shore.

That is what Gallagher said?—Yes; and he said that one who was the captain or mate, or whoever was in charge, said they would land the pilot, and proceed to Glasgow themselves.

Did he say anything more to you?—No, he did not.

He said nothing about wounded men?—No.

Nothing about the captain?—No.

And nothing about remuneration?—No.

There is nothing else in the information.

The *Chief Baron*.—He did not tell you anything about what happened to him in the vessel?—No; that is all he told me.

The *Chief Baron* (to the prisoner).—Is there anything else you would suggest?

The *Prisoner*.—That is all, my lord.

BERNARD BURKE

Examined by the *Solicitor-General*.

Are you one of the coastguard at Streedra?—Yes.

Do you remember the 25th of May last?—Yes.

Were you on duty on that morning on the shore?—I was.

What day of the week was it?—Saturday morning.

About what o'clock did you observe anything from the shore?
—Between five and six.

And what did you observe?—I observed a horse and cart going down to the shore, and on arriving there I met another man, a civilian, and two wounded men on the sand banks.

Did you go down after the horse and cart?—Yes.

The *Chief Baron*.—What way was it going?—In the direction of where the wounded men were found.

You said you found there were two wounded men on the sand?
—No, I did not say that.

Upon arriving at the shore you got another man, a civilian, and two wounded men lying on the sand banks?—Yes.

You followed a horse and cart going to the shore?—Yes. It was going to the shore, and I found the wounded men in the direction in which it was going.

The *Solicitor-General*.—Do you know the name of the man who had charge of the cart?—He is named Michael Byrne.

And do you know the name of the civilian who was on the shore?—He was of the name of Jones.

When you came up, were the wounded men talking? I do not ask you what they were saying, but were they talking to the civilians?—Yes.

Had you any conversation with these men? I do not ask you what it was, but had you?—Previous to going?

No, but when you were there?—Yes; I asked the man a question.

The *Chief Baron*.—One of the wounded men?—Yes.

The *Solicitor-General*.—Did you observe any marks on the

beach?—There was a considerable lot of foot-tracks upon the banks between the water and where the men lay.

Did you observe how the men were wounded, or where?—I made an inquiry, and one man told me he was shot.

Did you observe any bandages on him?—Yes; one was bandaged round the thigh, and the other man round the ankle.

What did you do with these men, and the horse and cart?—I asked these men where they came from, and I got them conveyed to the watch-house.

The *Chief Baron*.—The wounded men?—Yes.

The *Solicitor-General*.—Do you observe either of these men in Court?—Yes. (The witness here identified the prisoner Coffey.)

Had you before that morning observed any vessel out in the offing?—Yes.

What build was she?—I saw a brigantine on Friday evening stand over towards our shore.

Stand over in what direction?—Towards the Donegal shore.

What was her build?—To the best of my opinion she was an American built vessel.

Had she her sails set?—She had.

The *Chief Baron*.—Do you know the build of an American vessel?—Yes, I have a knowledge of the build.

What did you say about the sails?—She had the sails set, and a double topsail-yard forward; she was under easy sail.

Were her motion and trim, and her sail altogether, such as would be adopted by a vessel that was waiting in the place between these two coasts?—Yes.

The *Solicitor-General*.—How long during that day did you so observe her?—I saw her on Friday morning about nine o'clock; she was over then on the Donegal shore.

About how far from where you were?—Well, about fourteen or fifteen miles.

That is over at St. John's point?—Yes.

Is Killybegs a little to the north of that?—Yes.

And what is the position of Mullaghmore in that bay? That is the south-easterly point?—Yes.

And all between that is the bay?—Yes.

And you saw across it?—You have a good view across it.

You say she was at St. John's point in the morning?—In that direction.

Just describe what you observed during the day?—On that morning I saw her over there. I did not see any more of the vessel until that afternoon. She then stood over close under our shore.

Did she come close to your shore?—Yes.

The *Chief Baron*.—About what time was that?—Between four and five in the evening.

The *Solicitor-General*.—Were you on duty at that time?—I was.

How near did she come?—I should think she came within about two miles of Streedan point, and she took them from that and

stood away in the direction of the Donegal shore again. That night, between nine and ten, she stood over on our shore again.

And was that the last you observed of the vessel?—Yes; that is the last I observed of her.

The *Chief Baron* (to the prisoner).—Can you suggest anything to ask him?—No.

PATRICK BROWNE

Examined by Sergeant *Barry*.

Where do you live?—At Ballinagoulmore, near Helvick.

Do you know Patrick Whelan?—I do.

He does not speak English?—No.

Do you remember, on the 1st of June last, being in his boat?—I do.

Were you fishing?—Yes.

The *Chief Baron*.—You were in his boat?—Yes.

Did you ever speak to him in English?—I did.

Does he speak English?—He could not tell a story, but he would say a word or two.

You can speak Irish?—I can.

Sergeant *Barry*.—How many were in the boat?—Seven altogether.

The *Chief Baron*.—What kind of boat was she?—She is a boat of about five or six tons.

Was she half-decked?—No, sir; an open yawl.

Sergeant *Barry*.—Do you recollect seeing a vessel coming alongside you?—Yes, sir.

What hour of the day was that? About what hour?—It was about—we had no watch with us. We used to be puzzled about the hour of the day. It was about six o'clock when we left our own harbour, and we had two reefs going out to the nets about three miles from Helvick.

The *Chief Baron*.—Was it before the middle of the day?—It was past the morning, and it was in the day.

Sergeant *Barry*.—What kind was the vessel?—She was a brig, sir, with white sails.

The *Chief Baron*.—Was she a brig or a brigantine?—A brig, I think; but I do not know the difference.

How big was she?—I heard the men say of her that she was up to three hundred and a half tons.

Sergeant *Barry*.—When she came alongside, what happened?—We had twenty nets, altogether about forty fathoms long, and when she came up to us some men who were engaged on board of her asked us had we no fish. We told him no, we had no fish, for the day was very rough.

What happened then?—Whelan told us that he himself would not go with the boat to the vessel for fear the boat would be broken. The man on board asked us what we would charge for landing two men. Patrick Whelan then told Collins to go up to the sheets and say he would land them for £2; Collins was one of

our men. The man on board told us to drop the nets and come alongside, and that he should give us the £2; so we dropped the nets. We had four of them drawn into the boat when he was speaking to us. We dropped the nets there and left them in the sea after us, and went to the vessel; we went alongside. His own boat was level with the sea, a long yawl he had, and he told us to come alongside. We came round the stern, and there was no name on the vessel, and we ran alongside her, and he pulled up his own boat out of the way. He threw down a cable, and one of the men from the vessel jumped down and fastened it. The cable was not made fast until one of the men from the brig jumped down and made it fast to the beam. There was a great rolling in the bay while he was there, and we had to bear against the side of the vessel for fear she should lie down upon the small boat, and I had the helm against my breast, keeping the boat out from the side of the vessel, for fear she would get under the side of the vessel. She was covered up above the water-line, and Whelan was trying to keep her off with a pole. "Run up," says Whelan to me, "and tell him to send down the two men, or else we will go away." I went up then on board, and told him to send down the two men, that we would be going away, and they told me it was time enough.

The *Chief Baron*.—You were holding on to the vessel when he said that?—I had a hold of her on the left-hand side.

Sergeant *Barry*.—What were you standing on?—I was on the deck of the brig.

When you got on the deck did you see any men?—Four men altogether. I saw the man who spoke to me first there. I came down. Whelan said "Are they coming down?" "I do not know," says I. I remained a little time in the boat, and upwards of thirty of these men came down and jumped into the boat. "We are all lost now," says Whelan. "We are," says I, "but how can we help it?" The boat took a lurch into lee water, because they came down on one side of the boat. "Get the bucket," says Whelan to me, "and bale out the water as fast as you can." Whelan then told them to come to one side of the boat, and he told them to manage themselves in the boat as well as they could, for fear the boat would be turned. "What will I do now?" says Whelan. "Get them into the coastguard station," says I, "as fast as you can, and leave them there." So we did. We came in towards the coastguard station, and they asked Daniel Collins what this house was, and he told them this was the coastguard station, and they would not go out there.

The *Chief Baron*.—Who asked what house it was?—Some of the men.

What did they say to that?—They said they would not go there.

Sergeant *Barry*.—What then?—Whelan then told Collins to ask them would they go up to the town of Dungarvan. Collins asked them, and they said they would not. "Well," says Collins, "there is a patch of strand there, and we might as well beach you there." "That is the place," says one of the men, "let us go out there."

What part was that?—About a quarter of a mile from our own port, between Ballinagoul port and Cunnigar house.

Did you pass near the coastguard station going to that port?—We did, sir.

Did the men say or do anything then?

The *Chief Baron*.—They did not go to Ballinagoul port?—No; we landed in three and a half feet water outside Ballinagoul port.

About how far from the port?—About a quarter of a mile.

And how far from the coastguard station?—It was upwards of a mile.

As you were going along, did you pass the coastguard station?

—Yes.

When passing it, did the men say or do anything?—No, sir.

How were they in the boat?—They were sitting down.

In what water did you beach the boat?—In about three and a-half feet of water.

When the boat was beached, what became of the men?—They jumped out, and went off on the strand. Some of them took off their trowsers; but one man stripped into his skin. Some of them only took off their trowsers. One took off his trowsers and drawers, and turned up his shirt.

Did they go away then?—They did, sir.

And you went back again?—Yes; we went out and took up our nets.

The *Chief Baron*.—Were you paid the £2?—Yes.

Who got the money?—I got it from a man in the boat.

How much did you get?—£3; and I gave it to Whelan; and they gave 10s. to Whelan on the strand.

Sergeant *Barry*.—Was the £3 given before you left the vessel, and when they were in the boat?—Just when they were balancing the boat.

The *Chief Baron* (to the prisoner).—Is there anything you would like to ask?

The *Prisoner*.—No.

Sergeant *Barry*.—Do you know any of the men?—No, sir.

The *Chief Baron*.—Describe the way they were sitting when passing the coastguard station?—They were sitting as I am sitting.

Would their bodies be seen above the gunwale?—Oh, they would be seen. Their heads were up; some of their heads were up.

Did they alter their positions from the time they got into the boat?—They were sitting all the time.

DANIEL COLLINS

Examined by Mr. Longfield, Q.C.

Do you remember the 1st of June last being in Whelan's boat?—I do.

Who were in it with you when you went to draw the nets?—Patrick Browne, Whelan, myself, and Dan Collins.

Did you go alongside the brig to take some men off that day?—We did, sir. We dropped our nets first. We had four of them out before the vessel came alongside us.

Did a number of men go on board you?—They did.

Did you take them on shore?—We did.

About how many men altogether did you see going into the boat?—Well, I did not count; but a boy counted them. There was about thirty.

When they got on board were you in danger of being swamped?—We were in danger from their coming on board. They came down plump together, and brought the water into the boat. We hoisted our sail, and fetched them home.

Did you run in towards Dungarvan harbour?—We came into our own beach, and when we were coming in they saw a white house; they asked me what house that was, and I told them the coastguard house.

Was that inside Helvick?—Yes.

And then they told you they would not go ashore there?—Yes; and I asked them would I take them up to Dungarvan town; they told me not; I then said there was no place only to beach the boat on the strand, and they told me that was the right place.

When passing Helvick Head, were they sitting or standing in the boat?—They were sitting on the nets.

Were they in the bottom of the boat?—There was ballast in the boat, and they could not sit lower than they were sitting.

Did you beach her there?—We beached the boat in three and a half feet of water.

Did they all get out of the boat then?—They did.

Look round and tell us can you remember the face of anyone in the boat?—No, I do not, only the last one.

Look round and see if you see him?—I do. (The witness here identified the witness Buckley.)

Have you any doubt that that is the man?—No, I am sure he is the man.

They all scattered then?—They all went ashore.

The *Chief Baron* (to the prisoner).—Can you suggest any question to ask this witness?

Prisoner.—No, sir. I will only remark that it is peculiar that the only person the man can identify is the so called informer.

GEORGE JONES

Examined by Mr. *Murphy*, Q.C.

On the 1st of June last were you stationed as a coastguard at Helvick?—Yes.

Do you know the man Patrick Whelan?—I do.

Do you know a fishing-boat belonging to him?—Yes.

On that day did you see his boat passing Helvick station?—Yes.

At what hour?—Between eleven and twelve o'clock.

When passing the station could you say who were in her?—Only the fishermen.

Did you see where she put into the coast?—Yes.

About how far from the Helvick station?—About three miles.

Did you lose sight of her from the time she passed the station until she put into the coast?—No, sir.

When she put in did you see any persons get out of her?—Yes, between thirty and forty men.

Did you see what they did after landing?—Yes; they were putting on something like their shoes, and brushing themselves up.

Where did they go to then?—Up to the cliffs, to a place called Breen.

Did they go all together?—No; they started in threes and fours. There is a sort of way over there.

Did you keep them in view?—Yes, sir.

They soon got out of your view?—Yes; they soon got out of our view altogether.

The *Chief Baron*.—Was any one else with you?—Yes; there were three men besides me.

Are you able to say whether these men were sitting in the boat?—Yes; because they could not be seen. If they were standing up their heads would be above the gunwale.

Were the fishermen standing up?—They were working the boat.

What kind of boat was this?—She was between a six and seven ton boat—a small class hooker.

Had you ever been in her?—No, sir; but alongside of her often.

Are there seats in her?—There are four thwarts about a foot from the gunwale.

If they were sitting that way each could be seen outside the gunwale by you, or might they have escaped your observation?—If the men who were in the boat were sitting down in the bottom of the boat they could not be seen.

If they were sitting upon the seats could they be seen?—Yes.

The *Chief Baron* (to the prisoner).—Do you wish to ask the witness any question?

Prisoner.—No.

ANDREW ROCHE

Examined by Mr. *Beytagh*.

You are a farmer?—Very little.

You have some land?—Yes.

Do you live at a place called Ring?—Yes.

In the county Waterford?—Yes.

How far is that from a place called Helvick?—About two or three miles.

Is there a place called Ring Church there?—Yes.

Do you remember a day in June last when certain people came to your place?—I do not know any day in the month.

Was it a day in June?—Yes.

Were you working in your farm or garden?—Yes, sir.

Did a couple of men come to you?—Yes, sir.

Just look round and see do you see either of the men.—I do. (The witness here identified the prisoner on trial).

Was there another man with him when they came to you?—Yes. (The witness here identified the prisoner Nagle).

The *Prisoner*.—Allow me to state how this man identified me. He was brought to the prison door and told, "There's Warren. Is that the man?" "Yes, sir." "That will do." That was done by the Crown Solicitor.

The *Chief Baron*.—Did that happen?—Yes.

Mr. *Beytagh*.—What happened?—I was brought to the prisoner and he was brought out.

The *Chief Baron*.—Were you asked was that the man?—No, sir.

Mr. *Beytagh*.—Did you know him when you saw him?—I did not remember.

The *Chief Baron*.—When you saw him at the prison door did you know him?—(This question was not answered.)

Mr. *Beytagh*.—When you saw him in the prison did you know him as the man you saw at Ring?—I did not know him at that time.

And when you saw him again did you recollect him as the man you saw?—He shook hands with me.

Where?—In the gaol.

The *Prisoner*.—In explanation of that I may say it was but a joke, to show how perfectly indifferent I was.

The *Chief Baron*.—Did you know he was the man until you shook hands with him?—No; he went away—I did not look at him.

Do you know him now?—I do.

Do you see the other man there (Nagle)?—I do.

Are these the two men who came to you?—Yes.

Where did you see the other man afterwards?—In the prison.

Did you know him the way you knew the other?—Yes.

Did you know him when you first saw him?—I did.

How did you know the one and not the other?—Because he came out, and then went quick in again.

Were they both brought separately to you?—Yes.

When they came to you at Ring what did they say to you?—How many miles is it to Youghal? I said about twelve miles.

Did they say anything about a car?—They did. He said could I get a car to go there. I said I had a pony myself, and said I would hire it.

Did they ask the price?—Yes.

What did you say?—Five shillings.

Did they agree to give you that?—Yes, sir.

Did you tackle your pony to a car?—No, but to a cart.

Did you at any time observe the state of their dress?—Yes; it was quite wet.

How high up was the dress wet?—About the middle or so.

As you were going along did you say anything to them about where they were?—No, sir.

Did they say anything about being at sea?—They said they were fishing and the ship took fire, and then a vessel going to England picked them up.

How did they get out from their boat did they say?—By a fisherman's boat.

How did they get out of the boat?—She came into the harbour and struck the strand.

And they jumped out?—Yes.

The *Chief Baron*.—Do not ask him the questions in that way.

Mr. *Beytagh*.—What did they say about how they got out of the fisherman's boat—that they jumped out into the water?—Yes.

The *Chief Baron*.—I must beg of you not to lead him in that way.

Mr. *Beytagh*.—How far did you go with them on the cart?—To Youghal.

Did you come to the bridge?—Yes.

Did you go on the bridge?—Yes.

Did anything happen there?—Yes.

What happened?—They were taken.

Who took them?—A policeman.

Were you taken?—Yes.

Do you know the name of the constable who took you?—No.

Mr. *Beytagh*.—I wish to ask your lordship did you take down that the reason he did not know Warren was that he was taken away suddenly.

The *Chief Baron* (to witness).—Whether you recollected this man in the gaol or not, are you able to swear that the two men who came to you and went upon your cart were the two men who were taken by the constable on the bridge?—Yes.

Was any part of their dress wet when they asked for the cart, and were they the same men who came to you with part of their dress wet, and asked for the cart?—Yes.

The *Prisoner*.—He swore on the table he did not know me in Kilmainham. He swore deliberately he did not know me when he saw me in Kilmainham after being brought to the cell door and told we were the men.

The *Chief Baron*.—What he now says is, whether he knew you or not, two men came to him in the field with their clothes wet, and he brought them to Youghal, and they were taken by the police, and they were the same two men.

The *Prisoner*.—If you analyze his evidence as you did that of Gallagher you will find it is made up to order, and supervised by the Crown Solicitor also.

POLICE-SERGEANT JAMES NORRIS

Examined by the *Attorney-General*.

Do you remember the 1st of June last?—I do.

Where were you stationed on that day?—In the town of Youghal, county Cork.

Were you on the Youghal bridge that day?—I was.

Did you meet any vehicle coming over the bridge?—I did.

That is the bridge over the Blackwater?—Yes; about a mile from the town of Youghal.

In which direction was that vehicle going?—It was going in the direction of Cork, apparently from Waterford.

How many were in the cart?—There were two men, and a man driving.

Do you see in court either of the two men?—(The witness here looked round the court and said that the two men in the dock were in the cart, and the third man was driving).

Did you see the man who was driving the cart?—I did. I heard his name. (The witness here pointed to the previous witness, and said—That is the man, Andy Roche, who was driving the cart.)

Did you do anything when you met the cart?—Yes, I stopped it.

Did you observe anything about the clothes of the men in the cart?—Yes; I observed that they were wet and sprinkled with sand.

Did you say anything to them?—I did.

What did you say?—I asked them how far they had come; the man holding the paper (the prisoner, Warren,) said they came from Dungarvan.

Did you ask him any other question?—I asked him where he belonged to, and he said to Cork.

Did you ask him anything more?—I asked him his name, and he replied that it was John Donovan.

Did you ask the second man what his name was?—Yes, and he said William Palmer.

Did you ask the man who gave his name as William Palmer any other question?—Yes; I asked him whether he also belonged to Cork, and he said, yes.

Did you then make any other observation?—I did. I made some observation about the appearance of their clothes.

Do you recollect exactly what they said?—I cannot recollect.

When you made that observation was anything said either by Palmer or Donovan?—Yes. One of them, I cannot say who positively, said they were out on a fishing excursion, and that their vessel took fire, and they were taken off by a vessel or boat, and they had to land in a fishing boat.

Did he say anything more?—No, except when I asked a question.

Were they both present?—They were. I asked whether the vessel was a brig or a schooner and Donovan said, “No, a brigantine.”

The *Chief Baron*.—Did you mention what vessel you were enquiring about—whether the vessel they were fishing in or the one in which they came up?—I don't know, my lord, whether they understood clearly, but I intended to ask them what description of vessel took them off.

The *Attorney-General*.—After that conversation what then occurred?—I then said that I was a constable of police.

The *Chief Baron*.—Were you in regimentals?—I was not in regimentals. I said I had an intimation of a party having landed at Dungarvan on that morning under suspicious circumstances, and that I should take them into custody, and that they should go with me to the police-barrack; and they said “very well.”

The *Attorney-General*.—What did you do then?—I then arrested them and proceeded to search them.

Did you arrest Roche the driver?—I did not.

What did you do with him?—He came with them to the police-barrack; I searched them on the bridge to ascertain whether they had any arms about them.

I believe they had none?—They had none.

Did you make any further search when you arrived at the police-barrack?—I did; I searched the prisoner who gave his name as Donovan, at the police-barrack. I found on him a shirt collar, a small scarf and scarf-pin, and three or four half crowns.

Nothing else?—Nothing else that I remember.

Did you then search the man in the dock who gave his name as Palmer?—Yes.

What did you find on him?—I found articles of dress—some shirt collars.

Have you got the shirt collar?—I gave it up to my officer.

Prisoner.—On the part of the prisoner Nagle, I protest against his case being brought forward on my trial for the purpose of influencing the jury against me.

The *Chief Baron*.—The case against you is that you were a confederate in one common conspiracy in which Nagle was a party, and the law is that when the existence of the conspiracy is once established, the acts of one conspirator can be given in evidence against another. That is the state of the law, and that law also prevails in America.

The *Attorney-General*.—What else did you find on Nagle besides articles of dress?—I found a pocket-book containing a sovereign, a bunch of small keys, and articles that he had for dressing—a hair-comb and hair-brush—and papers with pencilling on them.

(Paper handed to witness).—Was that one of the papers you found?—That is one of them.

Is it in the same state in which you found it?—Yes, except the initials on it, and these marks I put on it, and the writing in ink, which was put on by my officer in my presence.

The original was all in pencil?—Yes.

And it is now in the same state in which it was then?—It is.

(Another paper was handed to witness, who said that he also found it on him, and that it was in the same state as when he found it, except as to the writing in ink. The pencil writing was the same as before. Another paper was then handed to witness, who said that he also found this paper on the man who gave his name as Palmer.)

Is that in the very same state as regards the pencilling?—Yes.

Did you find anything else?—Nothing else.

Where did you leave the prisoners then?—At the police-barrack.

The *Attorney-General* then said he had no further questions to ask the witness.

The *Chief Baron* then addressing the prisoner, said:—The acts of one conspirator, if they are acts in furtherance of a common

design, not otherwise, are evidence against all the conspirators, and if you wish to ask the witness any questions, you can do so.

Prisoner.—I have no question to ask, my lord, but that is a very novel idea.

The Chief Baron.—It is a long established law, and prevails in America as it does in England and Ireland.

The Court then adjourned to next (Friday) morning.

Friday, November 1, 1867,

The Court sat at ten o'clock, A.M., this day, when the examination of witnesses for the prosecution was resumed.

The Prisoner said—My lord, before you hear any more evidence, I would suggest some discrepancies between the direct evidence of Buckley and his informations, which were given in Mountjoy Prison.

The Chief Baron.—I will recall Buckley for the purpose of examining him. I intend asking him some questions which appear to me to be proper for me to ask him, on your behalf, as you are not defended by counsel. I intend doing that at a subsequent period of the trial, and if you would, in the meantime, point out what you wish to have asked, it would perhaps be more convenient to do so then.

The Prisoner.—That will answer better, my lord.

The Chief Baron.—Take a note of what you desire to have asked on his examination.

BERNARD BURKE

Recalled, and examined by the *Chief Baron.*

You are one of the coastguard of Streedra?—Yes, my lord.

Were you long stationed there?—Two years.

Did you know Gallagher, the pilot, before the occasion of his having been engaged in this vessel?—No.

Did you know whether or not he was a pilot?—I did not know him at all.

JOSEPH CLARKE

Recalled, and examined by the *Chief Baron.*

You are one of the Streedra coastguard?—Yes, my lord.

How long were you at that station?—Three years and a half.

Did you know anything of Gallagher before this occurrence?—No.

Did you know of his having been a pilot before that?—No.

The Prisoner.—My lord, I wish to know something of his character—whether he was ever charged with stealing on ship-board.

The Chief Baron.—I will ask Gallagher himself that. (To

the witness.)—How long have you known Gallagher?—I knew him for several years.

What has he been at before?—He was at sea.

What was he doing at sea?—Fishing.

Anything else?—No.

Did you know him to have acted as a pilot before this occurrence?—Yes, he was a pilot.

Has he "pilot" marked on the sails of his vessel?—He has.

Can you read or write?—No.

Is he known there as a pilot?—He is; he is a pilot.

I am going to ask you another question; you can answer it, or not, as you think fit. Were you ever a Fenian?—No.

JAMES PATRIN

Examined by the *Attorney-General*.

You are a head-constable, I believe?—Yes.

Where are you stationed?—At Killybegs.

That is in the north of Donegal, I believe?—Yes.

Do you know Michael Gallagher?—I do.

What is he?—A pilot and fisherman—a pilot.

Is he known by any name as a pilot?—He is known as the Teelin pilot.

The *Chief Baron*.—What is that? Is that the name of his place, or a place?—That is the name of the place he lives in.

The *Attorney-General*.—You know he acted as a pilot?—Repeatedly I saw him act as a pilot.

SUB-CONSTABLE THOMAS IRWIN

Examined by the *Solicitor-General*.

Are you a sub-constable?—Yes.

Where are you stationed?—At Dungarvan.

Do you remember the 1st of June last?—I do.

Did you arrest any men on that day?—I did.

Look round, and see if you see any of the persons you arrested.—I don't.

Did you see Buckley examined here yesterday?—I did.

Was he one of the men you arrested?—He was.

Where did you arrest them?—I arrested them on the road leading from Dungarvan to Youghal. There are several roads, but this is the most easterly road, and the most convenient to the bay.

Where did you arrest them?—At a place called Ballywilliam Cross.

At what o'clock in the day did you arrest them?—I think it was about half-past three o'clock in the day, as near as I can go.

Did you arrest any other persons with him at the time?—Yes; I arrested a man who gave his name as James Lawless.

The *Chief Baron*.—Was he with Buckley?—He was with Buckley.

The *Solicitor-General*.—Did you arrest any other persons at

the time?—Yes; I arrested another man who gave his name as Augustine E. Costelloe.

The *Chief Baron*.—Was he also with Buckley?—Yes, my lord.

The *Solicitor-General*.—Would you look round now, and see if you see either of the other men now?—I see Buckley.

Did you see Costelloe yesterday in court?—I did not. [The prisoner Costelloe was here placed at the bar.]

Look round now, and see if you see any one you know?—That is the man who gave his name as Augustus E. Costelloe.

Who was the magistrate you brought these men before—were there any magistrates with you at the time of their arrest?—Yes, two magistrates were with us.

Who were they, or what are their names?—Mr. Redmond, the Resident Magistrate, and Mr. Henry A. Fitzgerald, of Seaview.

Did you see Mr. Redmond here?—I did.

Were the men you arrested on the road or off the road, or where did you find them?—Buckley, Costelloe, and Lawless were on the road.

What did you do with them when you arrested them?

The *Chief Baron*.—In what way were they going when you arrested them?—They were going in the direction of Youghal, my lord. We took them up on a car and drove up to Keily's Cross police barrack, and gave them in charge to the police, who had a number of others in custody at the time.

The *Prisoner*, in reply to the Chief Baron, said he did not intend to ask the witness any questions.

MICHAEL GALLAGHER

Recalled, and examined by the *Chief Baron*.

I wish to ask you a question which you need not answer—you are not bound to answer it—if you don't like. Were you ever a Fenian?—No, I never was.

Had you anything to do with the rebellious proceedings that occurred in this country this year?—No.

The *Chief Baron* (to the prisoner).—Do you desire that any questions should be put to the witness. You said something of his character. That cannot be asked of another, but it can be asked of himself. You are entitled to ask him of his own character, but you cannot ask him of another man's character.

The *Prisoner*.—I would wish to ask him if he was ever charged with stealing a pair of boots on shipboard.

The *Chief Baron*.—Were you ever charged with stealing a pair of boots on shipboard?—Never in my life, or anything else in my life, since I was born.

The *Prisoner*.—His denying that question so pointedly, I need not ask him any other question.

JOHN JOSEPH CORYDON

Examined by the *Attorney-General*.

I believe you were an officer in the Federal army?—I was.

The *Chief Baron*.—In the Northern States?—Yes, my lord.

The *Attorney-General*.—What rank had you in that army?—Lieutenant.

Did you ever become a member of the Fenian Confederacy in America?—I did.

At what time?—In the summer of 1862.

Did you take an oath?—I did.

What was the nature of that oath?—To establish an Irish Republic in Ireland.

The *Chief Baron*.—Where did you take the oath?—In America. In what year was that?—In '62.

The *Attorney-General*.—In the State of Virginia, I believe?—Yes.

Were you acquainted with the organization of the ranks in that confederacy?—I was.

What were the different ranks?—There was no distinction in America, but in Ireland there was a distinction of ranks.

The *Chief Baron*.—No distinction of ranks, you say, in America?—No.

The *Attorney-General*.—Were there any offices in the confederation held by Fenians?—Yes.

What were the offices—mention some of them?—The leading man in America was John O'Mahony.

What ranks did they hold?—Captains and colonels.

Were there centres?—Yes.

What else was there?—Sub-centres and state centres.

Anything else?—Well, I couldn't say. There were centres, and state centres, and delegates. State centre was the highest position held in the state.

How long did you remain in the Federal army?—Until 1865.

Was that at the time the American armies were disbanded?—Yes.

Where were you at that time—what part of America were you in?—New York.

During the time you were in New York, did you attend any Fenian meetings?—Several.

Where in New York did you attend these meetings?—At headquarters, and at 814, Broadway.

The *Chief Baron*.—Where were the headquarters?—At one time in Chatham-street, at another time in Duane-street, and latterly in Union-square.

The *Attorney General*.—At the time they were in Duane-street, who were the principal members of the Fenian confederacy?—John O'Mahony was the leading man in America, and James Stephens in Ireland.

Did you meet O'Mahony at Duane-street?—Yes.

Do you remember the month of August, 1865?—I do.

Did O'Mahony send you anywhere in that month?—He sent me to Ireland.

The *Chief Baron*.—Were you sent by O'Mahony?—I was.

The *Attorney-General*.—To whom did O'Mahony send you?—To James Stephens.

Did you go to Ireland?—I did.

To Dublin?—Yes.

Did you attend any Fenian meetings in Dublin when you arrived here?—I did.

Tell me the names of some of the persons you met at the Fenian meetings in Dublin?—I met James Stephens, Brophy, Kickham, and Luby, and several more there.

Did you meet a Fenian of the name of Colonel Kelly in Dublin?—Frequently.

What was his Christian name?—Thomas.

Did you get any orders in Dublin from Colonel Thomas Kelly?—I did.

What were these orders?—On the 19th November I received orders, I would say despatches, from him to O'Mahony, in New York.

To take to New York?—Yes.

Did you take these despatches to New York to O'Mahony?—I did.

Were you then sent back to Ireland from New York?—I was. The *Chief Baron*.—By whom?—By O'Mahony.

The *Attorney-General*.—Where was Stephens when you left Ireland?—He was in gaol.

Did you hear anything at Fenian meetings about Stephens after you returned to America?—I did.

What did you hear?—I heard he was out of gaol.

The *Chief Baron*.—You heard it at a Fenian meeting, you say?—Yes, my lord.

The *Attorney-General*.—What were you sent back to Ireland for, and who sent you back?—O'Mahony sent me back with despatches.

For whom were these despatches?—For Stephens, or Colonel Kelly if I could not see Stephens.

To whom did you deliver these despatches?—To Colonel Kelly.

Did you then get any despatches from Colonel Kelly?—I did; the night after I arrived I received despatches from Colonel Kelly to proceed back to New York.

The *Chief Baron*.—And you went off again to America?—Yes, my lord.

With the despatches?—Yes, my lord.

The *Attorney-General*.—I believe you returned afterwards to Ireland before September, 1866?—I did.

Were you employed by the Government in September, 1866?—I was.

To give information with regard to the Fenian conspiracy?—Yes.

Where were you in September, 1866?—Liverpool.

Did you attend any Fenian meetings in Liverpool?—Several.

How long did you remain in Liverpool?—Until February, 1867.

What time of the month was it?—Sometime about the 17th, I think.

Did you get any orders from the Fenian leaders in Liverpool as to your movements in February, 1867?—Yes.

What were these orders?—We were to come from England to Ireland to be ready for a fight.

The *Chief Baron*.—From whom did you receive these orders ?
—From the acting leader then in Liverpool, whose name was Beecher, the deputy of Colonel Kelly.

The orders were to come to Ireland?—Yes, and to remain there until we would receive other orders.

The *Attorney-General*.—And did you come to Ireland?—I did.

The *Chief Baron*.—When was that?—About the middle of February, 1867.

The *Attorney-General*.—Under whose orders were you placed in Ireland?—Myself, and all the other Americans were lodging in different parts of Dublin.

Under whose orders were you placed?—Colonel Kelly, M'Cafferty, and others, and all the leading men.

Was M'Cafferty in Dublin then?—He was not at that time; and he was arrested a few days after I came.

That was about the 24th February, I believe?—I am not sure.

Did you get orders after you came to Ireland, from any persons here?—A week before the rising.

From whom did you get the orders?—From Godfrey Massey and Edward Duffy.

What were the orders you got from them?—They ordered me to go to Millstreet, in the County of Cork, and see the Centre of that town.

What was his name?—Kearney; and he would see that I would get to Kerry to Colonel O'Connor.

And when you saw him what was to be done?—I was to tell him of the rising that would take place on the 5th March.

What was to be done when the rising would take place?—My instructions were to take part with O'Connor in the rising.

What plan was to be adopted?—A concentration of the forces, to tear up the rails, and break banks.

Where was it arranged that this rising should take place?—In London.

Where in Ireland was it to take place?—In three provinces—Leinster, Connaught, and Munster.

You said that Colonel Thomas Kelly was to have command?—He was the leading man.

Did you know another Colonel Kelly in America?—I did; Colonel James Kelly.

The *Chief Baron*.—What rank was he?—Lieutenant-Colonel.

Was he Lieutenant-Colonel in the army?—Yes, in the Irish brigade.

Did you know him yourself, personally?—I did, my lord.

The *Attorney-General*.—Did he hold any rank in the Fenian conspiracy?—He did. He was colonel; he was a member of the Examining Board; he was president of the Examining Board.

What do you mean by the Examining Board?—Five or six military men examining young fellows to see if they were competent to come over here.

Do you know the prisoner?—I do.

How long have you known him?—Since 1861.

What is his name?—John Warren.

Where did you first meet him?—In New York.

What was he when you first met him?—He was recruiting for his company as captain.

The *Chief Baron*.—In the American army?—Yes, my lord.

The *Attorney-General*.—Was he a captain?—He afterwards was.

Did he continue a captain in the American army?—Yes; for about a year and a half, or perhaps a little better.

At the end of the year and a half what happened?—He was discharged the service.

The *Chief Baron*.—Discharged?—Yes, my lord.

What time was that?—About September.

The *Attorney-General*.—'62 or '63?—1862.

Did you know the prisoner to be a Fenian?—Yes, I did.

The *Chief Baron*.—When first?—In 1862.

The *Attorney-General*.—When he was in the American army?—Yes.

The *Prisoner*.—I protest, my lord, against the introduction of matter connected with my conduct in the American army.

The *Chief Baron*.—I cannot, in point of law, reject the evidence of the circumstances under which you were at the time, or about the time you were alleged to be a member of the Fenian confederacy.

The *Prisoner*.—I wish you would then ask him what was my character as a soldier and a gentleman in the American army.

The *Attorney-General*.—What was the prisoner's conduct as a soldier and a gentleman in the American army?—Very good.

Had he any Fenian employment in the American army?—No.

After he left the army did he acquire any position in the Fenian organization?—Yes.

What was that position?—That of State Centre in the State of Massachusetts.

In what year did he hold that office?—In 1863.

Did you see him in New York in 1865?—I did.

Where did you meet him in New York that year?—In Chatham-street, or rather at the corner of Chatham-street, on the steps of a hotel.

Did you meet him in Duane-street?—Yes.

What party of Fenians did he belong to?—At first he belonged to the Stephens and O'Mahony party, and until deprived of the State Centreship of Massachusetts.

Did he continue to belong to the Stephens and O'Mahony party after that?—No.

What party did he join then?—The Roberts party.

The *Chief Baron*.—Were there two parties in the Fenian organization?—Yes, my lord; there was a split.

The *Attorney-General*.—Was he engaged in any position or employment when he was in New York?—No.

Was he connected with any newspaper?—Some time before the war broke out—about 1859—he was; he, in company with—

The *Chief Baron*.—You first knew him in 1862?—Yes, I heard he was writing for this paper.

The *Attorney-General*.—Did you hear it from himself?—Yes; I used to get this paper.

The *Chief Baron*.—He wrote, you say—for what paper?—For the *Irish Messenger*.

Was that a Fenian paper?—No, it was not.

The *Attorney-General*.—Was he in any position when he was Head Centre for the State of Massachusetts?—I was told he kept a grocer's shop, but I am not sure of it.

Had you any conversation with him on Fenianism?—Oh, yes.

Did you know a newspaper called the *Daily News* in New York?—Yes.

Do you know had he anything to do with that paper?—He was a reporter for it for some time.

The *Chief Baron*.—When was that?—In 1855, I think.

He was a reporter for it for some time?—Yes.

(To the Prisoner.)—Would you suggest anything I should ask this witness?—No. There is one discrepancy between his evidence and his informations. He swore in his direct evidence that I was State Centre for Massachusetts in 1863, whereas in his informations he said 1865.

Witness.—I beg your pardon.

The *Prisoner*.—I suppose it was written in mistake, like Gallagher's informations.

Witness.—There were two State Centres since 1863 when he was State Centre.

The *Attorney-General*.—The witness says in his informations, that the Prisoner was a prominent member of the Fenian organization in the American Army. He also says, in 1865 I met him in Duane-street, he was then Head Centre. (To the witness.)—How long was he State Centre for Massachusetts?—There were two State Centres since he was State Centre—Daniel Donovan who was over here in Ireland, and the other who is now acting as State Centre in Massachusetts, a man named Doody.

Mr. Justice *Keogh*.—He says it was in 1865 in his informations.

The *Attorney-General*.—And he says it was 1863 in his evidence.

The *Prisoner*.—I call your lordship's attention to his original informations.

The *Attorney-General*.—The prisoner is quite right, my lord.

The *Chief Baron* (to the witness.)—What do you say now?—Twice he was turned out of the position of State Centre; the man that got it then was Daniel Donovan; he occupied it in 1864, and when his year of office was up the next man was Doody, who is now occupying the position of State Centre of Massachusetts.

The *Attorney-General*.—That is since 1864?—Yes.

The *Chief Baron*.—When was Doody appointed?—In 1865.

The *Attorney-General*.—Is he State Centre now?—Yes, he is continued.

The *Chief Baron*.—Do you recollect that when you swore your

informations, you said 1865?—That is a mistake. I said I met him in New York in 1865.

What do you say is a mistake?—I think it is the date of when it was taken.

Was it that you mistook the date, or that it was taken down in error?

The *Prisoner*.—Of course it is all a mistake of the transcriber; the witness made no mistake at all. He knew from some source, my lord, that I was going to ask him the question.

The *Chief Baron*.—He was then the Head Centre for Massachusetts?—Yes, my lord.

When did you meet him in Duane-street?—In 1865.

Was he then occupying the position of Head Centre?—No; for he was then connected with the Roberts party.

You were right then in saying that you met him in 1865?—Yes; he was then writing for the *Daily News*.

You say that he was then a Head Centre for Massachusetts—that could hardly have been a mistake of the person who took it down, as it referred to the time you met him in New York?—He was not the Head Centre in 1865—Doody was; there were two parties, the Roberts and O'Mahony parties.

The *Chief Baron* (to the prisoner).—Do you suggest any other questions to be asked of the witness?

The *Prisoner*.—I will ask him a few questions as to my recruiting in New York. Are you sure I recruited in New York?—Yes; you recruited some in New York, and some in Charleston.

Where in New York did I recruit?—In David's Island.

Where did I recruit—had I a tent, or room, or office there?—Yes; you had a recruiting tent in City Hall Park, New York.

Was I associated with any one?—Yes; a great many officers of the regiment—Captains Condon, Welsh, O'Neill, and almost all the officers of the regiment, except those whom it was necessary to keep in David's Island.

Don't you know that I was a resident of Boston, and that I arrived from it at New York on the 14th August, 1861, with 101 men whom I had recruited at Boston? I never recruited in New York, nor did I ever attend a Fenian meeting there in my life.—He was a captain in my regiment, my lord, and he did not recruit in New York.

I arrived from Boston, where I resided, at New York, with a company of 101 men, which I recruited in Boston, on the 14th August, 1861. I never recruited in New York; and I will make it a point to write to the governors of these States, to show that I never recruited men either in the City or the State of New York.

The *Chief Baron*.—That is of no use to you at present. (To the witness.)—Did he recruit in the places mentioned by you?—He did, my lord; there were three companies recruited by him in Boston; but as a good many of them deserted on their way to New York, he had to get his companies recruited in New York.

What you say, then, is this? Is it that he brought some of them from Boston, and recruited others in New York?—Yes, my lord.

The *Prisoner*.—Permit me, my lord, to introduce a witness on this question.

The *Chief Baron*.—By-and-bye you can do that, as soon as the Crown closes their case. I cannot receive any witnesses from you until the case for the Crown is closed; then you will have every opportunity of doing so. Be good enough to have your witnesses in attendance, so as not to have any delay.

The *Prisoner*.—My witness, my lord, is Mr. Nagle, a member of the same brigade. He is a prisoner, but if he is produced he can prove that I neither recruited in New York, nor had I a tent there.

The *Chief Baron*.—He is one of the parties against whom an indictment was found, and, as a rule, the law prevents a party in such circumstances from being examined. I am afraid you can't examine him.

The *Prisoner*.—I simply raise the question for the sake of security. As I said yesterday, I ignore the jurisdiction of this court—I don't recognise it.

The *Chief Baron*.—That is no matter. What you said yesterday will not prevent me hearing any suggestion you have to offer.

The *Prisoner*.—I know that, my lord.

ACTING-SERGEANT FRANCIS SHERIDAN

Examined by the *Attorney-General*.

You are an acting-sergeant of police?—I am.

You remember the 5th of March last?—Yes.

Where were you then on duty?—I was on duty at Milltown, in the suburbs of Dublin. I was sergeant then.

How many constables had you with you?—There were three.

Where did you patrol that night?—We patrolled down Milltown road and through Milltown village, in the county of Dublin.

Did you meet any body of men on that night?—Yes; about twelve o'clock one thousand men came armed with rifles, fixed bayonets, pikes, and revolvers.

Were they marching when you met them?—They marched four deep in military array.

Had they anything with them?—They had a van in front, and an outpost in charge of it.

Was there any person apparently acting as commander?—Yes; there was.

What was his name?—Lennon.

Did you hear him give any orders to that party?—Yes; he gave orders for the men to stop, and they made prisoners of us, and disarmed us.

Were you in uniform at the time?—The men and myself were in uniform, and on duty.

Had you arms?—Yes, we had swords and revolvers.

Did you do anything with these arms?—They disarmed us by the orders of the man in command.

Where were you placed when you were disarmed?—In the centre of the party with rifles and pikes.

They had rifles and pikes?—Yes, sir.

Where did the party move who had you placed in the centre?—They proceeded across Milltown Bridge, through Dundrum, and Windy Harbour.

Where did you proceed from Dundrum?—We went to a place called Old Connaught. We went first from Dundrum, and then to Stepside.

Is Stepside in the county of Dublin?—It is, sir.

The *Chief Baron*.—Old Connaught is in the county of Dublin?—It is in the county of Dublin, my lord.

The *Solicitor-General*.—Did you hear Lennon give any order to the men who were in the party?—Yes, he ordered them to proceed to the front of Stepside police-station, and then they made an attack on the station.

He ordered the riflemen to come forward?—Yes, in front of the Constabulary police barrack.

Was this when you had reached Stepside?—Yes, sir.

What did you observe done then?—A number fired into the front of the barrack, and demanded of the Constabulary in the barrack to surrender in the name of the Irish Republic.

Did the men surrender?—The party outside broke the windows and put straw in through them to burn the police out, when they would not surrender in the first instance.

Did the Constabulary come out?—The insurgents got a sledge and broke in the door.

What occurred when the door was broken?—The Constabulary were brought out from the barrack, and made prisoners along with us.

How many?—I believe four men or five—I think four men and a sergeant.

What was done then?—I saw the party made prisoners of. The party who made prisoners of the Constabulary, put on the Constabulary accoutrements.

What do you mean by accoutrements?—Knapsacks and belts.

Did the party move on then?—They took the rifles out of the barrack and moved on in the direction of Bray.

Were the constabulary who were taken out of the barrack taken away with you?—Yes, sir.

Did they go into Bray?—They stopped at a place called Old Connaught, this side of Bray. They then sent a party to the town of Bray to know whether they could proceed there, and word came back that they could not proceed, as the military were coming on the train from Dublin; it was so conjectured among themselves; we heard them say so. They then returned to Glencullen Constabulary police station. The riflemen were ordered in front of the station. They demanded the Constabulary in charge of the station to surrender in the name of the Irish Republic. The Constabulary refused, and then the party outside fired into the barrack.

Who fired in?—A number of the insurgents outside.

What did the Constabulary who were inside do?—They fired out upon them.

Was anyone hit or wounded?—Yes; there was one man shot convenient to me; one of the insurgents was wounded from the barrack.

What was done when the man was wounded?—We were ordered forward to be exposed to the fire; we were put in front of the fire from the barrack. Some of the insurgents were behind us.

The *Chief Baron*.—Were there not any of them between you and the barrack?—No, my lord.

Were you put between them—between the wall and the police-station?—Yes, my lord.

The *Solicitor-General*.—What was done with the man who was wounded?—He was ordered by the man in command to be taken to the van that had ammunition in it.

What became of the men in the barrack in the end?—The sergeant who was along with us was compelled to go over to the window and speak to the constable in charge of the station.

The *Chief Baron*.—Was that the Milltown man?—No; the Stepside constable, my lord.

He was compelled to go over where?—To the barrack window, and to speak to the constable in charge inside.

To say what?—That if he would surrender the arms and ammunition in the barrack, he would give the prisoners he had outside in exchange for the arms and ammunition.

The *Solicitor-General*.—Did they do that?—They did. They gave the arms and ammunition and other accoutrements belonging to the constabulary from the barrack.

And were you released then?—We were, sir.

The *Chief Baron*.—Prisoner, can you suggest any question to ask this witness?

Prisoner.—No, my lord. I don't know any of these movements he talks of. I never minded them, my lord.

The *Chief Baron*.—Mr. Attorney-General, have you any further parol evidence?

The *Attorney-General*.—No, my lord, we close as regards parol evidence; but we wish to put in some documents.

The *Chief Baron*.—It will be better to postpone doing that until I have put some questions to the witness Buckley.

The *Attorney-General*.—Very well, my lord.

DANIEL J. BUCKLEY

Recalled, and further examined.

The *Chief Baron*.—Now, prisoner, if there is any question you wish to suggest that I should ask the witness, or if you wish to ask him any question yourself, you can do so. Perhaps it is better for you to wait until I have put the questions which occur to me to ask him, but you may do so now if you prefer it.

The *Prisoner*.—I presume that the same discrepancies in his evidence have occurred to your lordship's mind as have occurred to me; and I would sooner wait till your lordship has done.

The *Chief Baron*.—I will ask the witness some questions as to

points which occur to me as desirable to inquire into, and you can afterwards put any questions to him that you think right. (To witness).—Have the goodness to state again the oath which you took on becoming a Fenian?—Not to divulge the secrets connected with the organization, as well as not to divulge anything connected with the expedition.

Was that the form of the oath?—That was the form of it.

Do you remember what you swore in your informations—I believe you swore one information on the 12th September, and another on the 10th October—did you swear any others besides those?—I believe those are the only informations.

The *Attorney-General*.—He made only two, my lord; but the original information was resworn by him in the presence of the several prisoners.

The *Chief Baron*.—In your information of the 12th September you mention that the oath administered to you was, that you should obey those who would be placed over you, and that you would not divulge the secrets of the expedition?—That did not belong to the oath.

What did not belong to the oath?—That I would obey those placed over me; that did not belong to the oath taken by me.

Then that was not part of the oath?—No, sir.

Where was it you met the parties who accompanied you on the expedition?—Canal-street. I went to Broadway first, and afterwards to Canal-street.

What did you mean by saying in your information that you had to go down to Grant-street?—That was to take the steamer there.

But you did not embark from Grant-street?—We took the steamer at Canal-street.

Is that near Canal-street?—The wharf is there.

Is Grant-street near Canal-street?—I never said Grant-street. I made no reference at all to Grant-street; it was Canal-street, not Grant-street.

In your information you state that Grant-street was the place?—That is a mistake.

Prisoner.—I am very well acquainted with New York, and it contains no such street as Grant-street.

Witness.—I did not say Grant-street, I said Canal-street.

The *Chief Baron*.—I observe in your information you do not mention anything about Colonel Phelan, Colonel Devan, Colonel O'Doherty, nor about James Lawless?—No, my lord.

How did you happen not to recollect those persons?—Not being well acquainted with them, and having to recollect some forty odd names.

You said in your evidence here that three colonels went on shore before the wounded men left the ship?—Yes.

And you said that two of the colonels went on shore with Burke?—Yes.

Then there were five colonels in all went on shore?—No, only four.

How did it happen you did not recollect the names of those

persons when making your information?—In giving that information I did not recollect those names.

Did anything occur to make you recollect them afterwards?—Yes, sir.

What occurred?—Simply getting some paper and writing down those names to recollect them.

Did you receive any information as to who they were before you wrote down their names on the paper?—None, sir.

Was it after you made your information that you recollected those names?—Yes, sir.

Was your memory refreshed in any way?—Yes, sir; I felt a great deal excited on the occasion of giving that information.

How was your memory refreshed?—By having more time to look over them.

Had those men been arrested at the time you gave your first information?—Yes, sir.

Did you know they were arrested?—I did.

Did you know who they were?—Yes, sir.

Did you learn their names?—Oh, I knew their names long before that time.

What I ask you is, did you learn the names of those persons who were arrested before you gave your information?—I had known them before that, sir.

Attend to the question. Did you know who were arrested at the time you gave your first information?—I did, sir.

Did you know them by name—who they were?—I did, sir.

And, if you did, how did it happen that among those who were arrested and named to you there should have been a number of persons whose names you forgot?—They were not all arrested.

The Attorney-General.—The party were not all arrested, my lord; Doherty, Shea, Devan, and Phelan were never arrested.

Prisoner.—My lord, the witness was in the same prison with us, and exercised in the same yard up to the 12th of October, when he gave his information.

The Chief Baron.—I am speaking now of the persons whom he did not name in his information, but whom he named yesterday.

Prisoner.—Quite so, my lord. I intended to call your lordship's attention to it as a remarkable coincidence.

The Chief Baron (to witness).—There is another point: you stated in your evidence yesterday that the arms which were on board were packed in large sized boxes; that there was a Spanish name upon them; and that they were placed between decks; you also stated that there was ammunition in one of those boxes which was opened, containing about a million and a half of cartridges, as you understood, and you then stated, after describing the artillery, that the cases in which the arms were, were opened during the voyage?—Yes.

And that the arms were so placed as to be ready to distribute?—Yes.

And you were asked how they were so placed, and you said they were put in twos and threes, and that they were rearranged in the boxes—in the same boxes?—Yes.

That was your evidence yesterday. I shall now read what you stated in your information:—"We had a quantity of arms on board; I could not say what quantity; they were packed in cases as pianos and sewing machines; they included a quantity of carbines and rifles." In your statement here you said they were revolvers. You then proceed to say:—"These boxes were consigned to a firm in Cuba. Many of those cases were opened during the voyage, and the arms packed in smaller boxes." In your evidence yesterday, you said they were opened, and the arms laid in twos and threes in the same large boxes. In your information you say they were opened and the arms packed in smaller boxes; how do you reconcile those two statements?—My lord, I stated in my evidence yesterday that the arms were placed in two boxes, one outside the other, for more safe keeping; on repacking and rearranging they were only left in the inner box.

Prisoner.—The witness also said in his first information that he did not know the quantity of arms on board; in his evidence yesterday he swears to 5,000 at least.

The Chief Baron.—How do you reconcile that?—In making reference to the quantity yesterday, I merely intended to be understood as stating far short of the number of arms actually on board. It is true I did not know the exact quantity.

That is to say, you yesterday merely intended to indicate that there was at least that quantity, but you could not tell how much?—Yes.

Why did you not make any mention of the ammunition in your information?—I did not recollect it at the time.

You say you had opportunities of seeing between decks?—Yes.

How was the ammunition placed between decks—was anything placed under it?—Yes, there were some boxes under it.

Were there any over it?—None over it. There were arm boxes under it.

Was it placed in the part of the ship in which you slept?—No, it was some twenty or twenty-five feet from me.

But you passed through it occasionally?—I passed it often.

How did you happen to forget it when making your information?—The question was not asked of me. There are other things in connexion with the expedition that I have not given any evidence of, because I was not asked.

What are those things; do you recollect them now?—Yes, I do, sir.

What are they?—The building of a raft was one.

What about that?—This raft was intended with two other boats to hold the people in case the ship was pursued. These were to be launched and the ship blown up or set fire to.

Do you recollect anything else?—No, sir.

You mentioned yesterday that you heard what passed in the cabin between the officers and Gallagher, the pilot?—I only heard part of what passed.

Why did you say nothing of that in your information?—I never thought of that, sir.

Explain how it occurred. You were describing in your information what occurred with reference to Gallagher; you stated that while in Sligo Bay you took a pilot on board, who remained with you two or three days. At this time you were giving information for the purpose of sustaining a charge against those people; didn't you think it was material in order to sustain that charge, especially against Warren, against whom particularly you were examined—didn't you think it material to show that Warren was present at the time that oath was administered by force to Gallagher?

The Attorney-General.—His information was not made in the first instance against Warren.

The Chief Baron.—It is headed "The Queen v. Warren and Nagle," and the caption states "The information of Daniel Buckley, who being duly sworn, &c., &c., in the presence and hearing of the prisoner, John Warren." I am reading from the printed copy of the information furnished to me.

The Attorney-General.—This information was originally made on the 12th September; it was resworn on the 10th October, in the presence of the prisoner.

The Chief Baron.—The one I am reading from is dated the 12th of September.

The Attorney-General.—The prisoners were not present on the 12th of September.

Mr. Justice Keogh [referring to the original information of 12th September].—I find that there is no caption to the original information such as appears in the copy furnished to us.

The Chief Baron.—Then the copy furnished to us is inaccurate in that respect. (To witness.)—In your information of the 12th of September you stated the names of various officers in the expedition. Now, what I ask you is this: When those persons were named by you as persons whom you charged with being in that vessel engaged in illegal acts, how did it happen that you should not have recollected a matter so material when you were swearing against them at all—how was it you forgot a matter so material as the transaction that occurred between them and Gallagher? My lord, the information given in the first place by me in October—

The Chief Baron.—No; in September?—Yes, my lord; that information was incomplete; there were many things I did not recollect, and that I could only recollect afterwards when they were brought to my mind.

And this was one of the matters you did not recollect?—Yes.

What I ask you is—can you account or explain how it should have escaped your memory?—When I was only a few days there I desired the Solicitor to come and take my evidence; previous to that I had not allowed my mind to rest on the matter so much as to recollect that.

You then sent for the Solicitor to give information?—Yes.

To give information against the persons that were on board?—Yes.

How did it happen when you were thinking of what informa-

tion you could give to the Crown against those persons, you should have forgotten a thing so material?—The same thing happened yesterday; I forgot names yesterday whom I had mentioned in my informations previously.

I am not now speaking of names, I am speaking of a transaction. Were you reminded of that in any way?—No, sir; I was not.

Did you learn the substance of Gallagher's information at all?—No, sir.

At any time?—No, sir.

Did you ever see his information?—No, sir.

Did you ever learn what he stated?—No, sir.

You heard of his having given information?—I did not, till some two weeks ago.

Did you hear two weeks ago what he told?—No; I was told nothing further than that he had made an information.

Did you ever read his information?—No, sir.

Was it ever read to you?—No, sir.

In your information you state nothing of the council which you mentioned yesterday as having been held before their arrival at Sligo, and at which it was determined to attack the town of Sligo?—That I neither recollected, my lord.

You did not recollect that?—No, sir.

Tell me now what it was was determined, or rather what was considered, with reference to going to the Western Islands?—To re-provision the ship there. The captain stated we had 120 gallons of water on board, and that that quantity was sufficient to carry us to the Western Islands.

Were they to go to the Western Islands on their way to the United States, or were they to go to the Western Islands, and then come back to Ireland?—They were to go to the United States.

What were they to do there?—To lay before the Irish the experience gained in connexion with the expedition.

I think you said that Warren agreed to that at first?—No sir.

I understood you to say he at first dissented, but afterwards agreed?—Yes.

And that afterwards he concurred in rescinding the resolution?—Yes.

How did that come about—how did it happen that that was adopted by Warren, who at first dissented—how did it happen that he was induced to forego that determination?—I represented to him the frivolous nature of the entire expedition, and the foolishness of landing in Ireland under the circumstances.

Yes, I know; and you say those representations induced him to acquiesce in the prudence of going back to America?—Yes.

Why did he afterwards change, and decide upon landing?—I don't know, sir.

Did they take any time to discuss the matter before landing was resolved on?—There was no discussion at all; there were only three dissenting voices.

That is, dissenting to the proposed landing?—Yes.

Who made the suggestion?—Kavanagh.

I think you said he made it suddenly—that he turned round suddenly and asked the men would they follow him if he landed?—Yes, it was done very suddenly.

Were all the men assembled at the time?—The majority were, except two or three of the crew.

Where did this take place—in what part of the ship?—On the quarterdeck.

Was the suggestion discussed before they determined on adopting it?—There was not a word of discussion.

Did they adopt it at once?—Yes, sir.

The *Chief Baron*.—Now, prisoner, is there anything you can suggest to me to ask him.

The *Prisoner*.—There is one thing I think you have omitted, my lord. He stated in his information “I think I am a native of Ireland.” In his evidence yesterday he swore “I am a native of Ireland, of the province of Munster.”

The *Chief Baron*.—That is so. (To witness)—were you in doubt whether you were a native of Ireland when you swore your information?—I really was, sir.

Prisoner.—I wish to refer to another point; I believe your lordship was about to refer to it, but it escaped your memory afterwards; the witness swears in his information—“In Sligo Bay we took a pilot on board; and he remained with us two or three days.” Gallagher swears he was there only a few hours.

The *Chief Baron*.—You are perfectly correct. I did not observe it, I confess. (To witness).—How do you account for that?—I thought at first that he remained on board two or three days, but I was not sure, and I was not willing to allow my affidavit to remain as in the first case, fixing it at three days; I was not willing to substantiate it, and, after considering and looking over the matter, I prefer saying what I can substantiate.

What is that?—That he was one day on board.

You say now, he was one day on board?—Yes.

Why did you say three days in your information?—I allowed a doubt: I said two or three days.

The *Chief Baron* (to prisoner).—Is there anything else you can suggest to ask the witness?

Prisoner.—Yes, my lord; I have now to suggest the most important point of the whole. Yesterday he swore he was twenty-five years of age. I hold in my hand a certificate of his naturalisation, by which he was admitted a citizen of the United States on the 10th of October, 1855, so that, if his swearing be correct, he was then thirteen years of age.

The *Chief Baron*.—What age is he stated to be in the certificate?

Prisoner.—He must be twenty-one years of age at least, my lord, when admitted a citizen.

The *Chief Baron*.—If he were twenty-one years of age in 1865, that would make him now about the age that he stated yesterday.

Prisoner.—He was twenty-one years of age in 1855, my lord; the date of the certificate is 1855.

The *Chief Baron* (referring to certificate)—Yes; you are right. I thought it was 1865.

Prisoner.—He must have been twenty-one when he got that certificate, so that he must be at least thirty-three years of age now. It must have been perjury for him yesterday to swear he was twenty-five.

The *Chief Baron* (to witness).—How do you explain that?

Witness.—I beg your honour's pardon, I said I did not know my exact age, but that I thought I was at least twenty-five.

Prisoner.—His evidence was direct, my lord—"I am twenty-five years of age."

The *Chief Baron.*—Is there anything else you wish to ask him?

Prisoner.—There is nothing else, my lord.

The *Attorney-General.*—There are some documents which I propose to give in evidence.

The *Chief Baron.*—I have some doubt as to their admissibility in evidence against the prisoner.

The *Attorney-General.*—Under these circumstances I will not give them in evidence.

The case for the Crown then closed.

The *Chief Baron*, addressing the prisoner, said:—You are now at liberty to state whatever is proper for your defence, and to offer any evidence in support of it that you are prepared with.

Prisoner.—My lord, I simply intended to have produced Nagle to prove that I never, as Corydon stated I did, when he first became acquainted with me, recruited in the State of New York, or had any tent in the park of that city. He also swore that I was State Centre for Massachusetts in 1865. Now he conveniently forgets it. I do not press the point, it is a matter of veracity. I want to show up the man.

The *Chief Baron.*—These are matters which I think are of very little consequence to you.

The *Prisoner.*—I withdraw my request, as I believe no respectable jury in Ireland would believe a word he says.

The *Attorney-General.*—I have no objection; the prisoner can produce any witness he likes.

The *Chief Baron.*—It is quite immaterial to him. Do you desire to make any statement?

The *Prisoner.*—I had intended at the commencement of the trial realizing the position I am placed in by the absence of counsel, to have analysed the evidence of Gallagher as being the only person whose evidence could be depended upon. You have done that, my lord, far more ably than I could presume to do. It is only necessary for me to say to the gentlemen of the jury, that while ignoring the jurisdiction of the Court to arraign or try me as a subject of Her Britannic Majesty, I feel confidence in you, my lord, and in the bench, that you will see justice done to the law, of which you are the honourable representative.

The *Chief Baron*.—Well, if there be any part of the evidence that you rely on, or wish to remark on, I shall be very glad to learn what it is.

Prisoner.—In the first place there is no corroborative evidence. Gallagher's evidence is a tissue of perjury from the commencement to the end, and he is the only man on whom you can depend. The so-called informer has broken down here to-day. I think the Attorney-General is bound, in honour, to withdraw two statements which he made in his opening address to the jury. He said he would produce evidence to show that I landed at Helvick Head. He has not presumed to do that, and there has been no identification for that purpose. He also said he would produce a witness named Nolan. That he has not done. There is no corroborative evidence to show that I had any connexion with the organization in Ireland or in America. I expect you will, in your analysis of the evidence, submit that forcibly and strongly to the jury; while, at the same time, with profound respect, I do not recognise the jurisdiction of the Court.

The *Chief Baron*.—With respect to your statement that there is no evidence of your identity as having landed at Helvick Head, there is evidence in the testimony of Roche, the farmer, and of the constable, wholly irrespective of any identification of features; for you are proved to be the person who came to him, at Ring, with your clothes wet, and were taken by him to Youghal. That is some evidence as to who you were; and that you, the prisoner at the bar, are the person who came from the vessel. With respect to Nolan, the Attorney-General said he would produce him, and did produce him; but Nolan was entitled to withhold his evidence on the ground mentioned. And I mean to tell the jury that they are not to regard the fact of Nolan declining to give evidence as at all a circumstance against you.

Prisoner.—Roche stated that his house was two miles from Helvick Head, and there is no information to connect me with the strand and the vessel.

The *Chief Baron*.—There is the evidence of the coastguard.

Prisoner.—He does not identify me.

The *Chief Baron*.—He saw a number of persons go from the vessel up the road by the cliff, in the direction of the church of Ring, and that, irrespective of the testimony of Roche as to features, is some evidence to go to the jury that you were one of the persons who landed.

Prisoner.—He makes no reference to my landing. He says that one of the parties that came to his house hired his car. The strand is two miles from his house. There is no evidence of identity.

The *Chief Baron*.—That will be for the jury.

The *Solicitor-General* then replied on the part of the Crown. He said:—Gentlemen of the jury, with your permission, at the close of this case, I will make a few remarks, without addressing myself to the entire evidence, but chiefly in reference to the observations the prisoner has made in connexion with the ques-

tions put to the witnesses at his request by my Lord Chief Baron. The Attorney-General, in opening this case, expressed the regret which he felt that the prisoner had declined to avail himself of the assistance of the learned counsel who had been retained for his defence, lest that defence might be thereby prejudiced; his counsel withdrew in consequence of the express instructions they received, having no option left to them, when the prisoner so requested. The Attorney-General felt that perhaps the prisoner's case would suffer from having that assistance withdrawn. The duty of counsel is to weigh well the evidence, to protect and shield his client, and if practicable to explain away what may appear prejudicial to him. We all know of what advantage it is to a prisoner to have the services of able and experienced counsel to conduct his defence, and therefore the Attorney-General felt regret that the learned gentlemen retained for the prisoner should have been obliged to withdraw; but now, gentlemen, that the case has closed, I say advisedly, the prisoner has not received much injury from the course he has thought proper to adopt; nay, I think he stands almost in a better position than that which he otherwise would have occupied, because whilst he has placed himself in the position of a *quasi* undefended prisoner, he has with great ability taken advantage of all the weak points in the case; and his comments upon any discrepancies in the evidence of the witnesses which have been elicited by the able judge who has presided at this trial, could not be surpassed by counsel. And what does it all come to? With regard to Gallagher's evidence, the prisoner knows that if that witness is believed by you he is a convicted man. And can there be a doubt raised as to the truth of that testimony? There may be some slight discrepancies in the informations which he has made; there may be, perhaps, a few additions, in the last information, to the evidence given by Gallagher in the first information made by him in May; but I ask you, as reasonable men, has the prisoner been able, upon the broad cardinal features of the case, to break down the evidence of either Gallagher or Buckley?

Gentlemen, I may tell you that you can convict upon the evidence of Buckley alone; but judges are in the habit of telling juries not to convict upon the uncorroborated evidence of an accomplice. But you have material corroboration of that evidence. First, in regard to the vessel itself, the fact of that vessel being in Sligo Bay on the 23rd and 24th of May is deposed to by Gallagher, and Gallagher is corroborated by his assistant and by the coastguard men. Buckley further swears, and Gallagher corroborates him, that three men, two of whom were wounded, were landed from the vessel at Stredagh on the 25th May, and two of those men are produced and identified in court as having been the men found on Stredagh shore upon that 25th of May. Then we have it proved by three or four witnesses, whose evidence cannot be impeached, that a large body of men landed near Dungarvan from this brigantine on the 1st of June, and Buckley's account of that landing is corroborated in every particular by two of Whelan's

crew, who assisted in taking them to shore. The prisoner has suggested that he was not identified as being one of the thirty men who went ashore near Helvick Head on that 1st of June; but has it not been clearly proved by Roche that upon that morning the prisoner, accompanied by Nagle, came to his house and hired a horse and cart to convey himself and his companion Nagle to Youghal, a distance of some eleven miles; and Constable Norris is produced, who tells you how upon that day he arrested Warren and Nagle, driving upon Roche's cart, near to the town of Youghal, and that he noticed that their clothes were wet and covered with sand. How materially does this evidence corroborate Buckley's account of the landing at Helvick beach; and if this testimony be believed, we have the prisoner Warren brought almost to the very landing-place, and traced from Roche's house only two miles distant to the town of Youghal, where he is arrested on the afternoon of the day of landing; and thus, almost without referring to Gallagher's evidence at all, the testimony of Buckley in its essential features is amply corroborated, and Warren's complicity in this expedition is fully established.

No man in this court can forget the graphic description given of this expedition by Buckley—an expedition steeped in crime, and yet almost romantic, but for its criminal character. The band, I was going to say of marauders, but of lawless men, collecting in Canal-street in New York, and proceeding on board a steam tug, which brought them to a brigantine in the river, where the party gets on board; their sailing on the 12th of April, the firing of the salute; their unfurling of the "sun-burst;" their voyage across the Atlantic; and their reaching the Irish coast on the 24th of May, when Gallagher the pilot is taken on board. If Gallagher's evidence is true, if it be not pure invention and fabrication, that he was taken down into the cabin of the ship, and that Nagle in the presence of Warren administered to him an illegal oath, John Warren is convicted of the offence with which he stands charged. It is said that Gallagher does not say in his informations, as he stated here yesterday, that he took that oath under terror that his life would be taken away if he refused, under threat of death, and perhaps the apprehension of being instantly shot; (and I need not remind you that we have but too recent experience of the use of the revolver in the hands of these desperadoes in this country); Gallagher is not bound by the oath which he was forced to take on board the vessel under the threat of death; yet any facts that he withheld in his first information, were no doubt withheld in the belief that he was bound by that illegal oath. That is a very reasonable explanation for the silence of Gallagher upon the occasion of his making his first information. Accordingly, when making that information on the 27th of May—two days after he came on shore—when brought before Mr. Labatt, none of the prisoners having been arrested at the time, in that information he does not disclose the secrets which he had sworn solemnly not to divulge when

he came on shore. Gallagher admits that. Nor does he say anything of it on the 15th June; but when he comes to make his final information on the 12th of October, in the presence of the prisoners, he then discloses all about the oath.

Prisoner.—Will you allow me to suggest a few words—a discrepancy also—Buckley swears all the “colonels” were in the cabin, and Gallagher conveniently swears that there were only Nagle and myself?

The Solicitor-General.—I do not recollect Buckley swearing that all the “colonels” were there, but he swears that Warren and Nagle were in the cabin, as he heard their voices.

Prisoner.—He swore all the “colonels” were there.

The Solicitor-General.—The prisoner will press me to say more than I had intended by these interruptions. He has had all the informations in his custody, and he is suggesting these small discrepancies. He proposed to call Nagle to contradict what Corydon swore as to his having seen him recruiting in New York; but he never offered to produce Nagle to contradict Buckley or Gallagher, who swore that Nagle was in the cabin, and there administered this illegal oath in the presence of the prisoner.

The Chief Baron.—Buckley merely says that all the “colonels” went down to the cabin together.

The Solicitor-General.—My distinct recollection is, that Buckley merely stated that he heard the voices of these two men, Warren and Nagle, in the cabin, but he did not swear that he saw a single person there.

The Chief Baron.—He said the colonels were in the cabin at the time Gallagher was there.

The Solicitor-General.—That is quite possible. Gallagher says he saw the two prisoners, Warren and Nagle, in the cabin, and if Gallagher is speaking truth, Buckley is corroborated in a most cardinal and important fact. He is sworn not to disclose the secrets of this nefarious expedition. And although he keeps that oath for the time, yet afterwards, when brought up in the presence of the prisoners, he discloses all. And you will find that his last information, sworn in Warren’s presence on the 12th of October, contains all the evidence he has given upon the present trial.

Gallagher further tells you how he got into the boat, thinking to return to the shore with the person who came on board on the evening of the 24th May, and that he was dragged out and told to remain where he was. He tells you that he was informed that two men had been wounded that day on board, Nolan and another person named Connor; and that as these men were useless as members of the crew, it was proposed to land them during the night when he could land along with them. He lands accordingly along with the wounded men, and a man named Nugent, who was one of the expedition. A coastguard describes his meeting Gallagher on the morning of the 25th May near the place, and says he was running at the time. Gallagher had some dis-

tance to go, and it is only natural he should be making all haste. Now one of the discrepancies relied upon between his first information and his evidence here is, that he omits in the information to mention anything about the cargo of fruit; but he stated here yesterday, when I examined him, that he was told on board that the vessel was going with a cargo of fruit to Glasgow, and in the information he made on the 17th June, before Mr. Coulson, he states this very thing. The man has given you an explanation as to how he omitted it on the first occasion, as he was deterred by the illegal oath that had been administered to him, and by the terror he was in at the time. He was naturally afraid that if he disclosed what had taken place, an account might be taken of him, perhaps in a way that he would not desire, when he reached his home in Donegal. That is a satisfactory explanation why you do not find this stated in the first information. Except you believe Gallagher a deliberately perjured witness, coming up here to tell you a tissue of fiction which has no foundation in fact, you must convict the prisoner. Did you see the man's demeanor, his appearance, and his manner of giving his evidence? Did you hear the indignant denial of the man when he was asked had he ever committed a theft while on board ship, or any other place? Why has the prisoner not produced evidence to contradict Gallagher? He has had an experienced attorney, and ample funds at his command, he has had the means and opportunity to break down the evidence of Gallagher if he could. He has failed to do so; and I now ask you to believe Gallagher. And if Gallagher is believed, then Buckley is corroborated.

Has the prisoner given any explanation of how he happened to be in the cart on the bridge at Youghal, on that day of the landing at Dungarvan, on the 1st of June? He is a man not devoid of intelligence, or of education, and he was at liberty to account for his presence, under such strange circumstances, in this country. What brought him to Ireland on the 1st of June? He was arrested on the very day the other men from on board that ship were taken. He is a man who has been connected with the press, and must have hundreds of correspondents at the other side of the Atlantic. What difficulty could he then have in showing how he came to Ireland, and for what purpose—if it was not a wicked one? There is ample corroboration of the informer on all the cardinal points of the case, convincing corroboration on all the collateral circumstances—the brig cruising up and down Dungarvan Bay, the arrest of Warren and Nagle on the bridge at Youghal, their getting into the cart with their clothes wet, two miles from the very point where the men had landed on the coast. The prisoner does not attempt to give you a suggestion or explanation of how he landed on the coast that day. Is this ship imaginary, was she not cruising about under the eyes of the coastguards at Donegal? Were these thirty men who got on board the lugger imaginary? The coast-guard man, Jones, told you that he saw about thirty men get out of the lugger, and within a very few hours afterwards the

prisoner is arrested, and he is recognised in prison as being the person who, with another, applied to a farmer, residing within two miles of the place of the landing, to be conveyed to Youghal. Gentlemen, it would be only wearying you if I were to press the case further. Even if Gallagher's evidence was out of the case, there is ample corroboration of the evidence of Buckley to fasten guilt on the prisoner.

The Chief Baron.—What is that ?

The Solicitor-General.—The fact of his arrest is corroboration of Buckley—the fact of his being arrested within a few hours after this landing of the thirty men, within a short distance of where it took place. That in itself brings complicity so home to the prisoner, that if it were unexplained a jury must according to all legal principles convict the prisoner. Then, gentlemen, I may remind you that the prisoner does what many criminals do, he resorts to the device of a false name ; his name is Warren, and yet when arrested he says his name is John Donovan, and that he comes from Cork. If the circumstances under which he comes to this country were innocent, they are entirely unsuspected and unexplained by the prisoner. I again ask you to believe Gallagher. If his statement were false it would not bear the sifting of cross-examination. In this case I think every person will agree with me that the prisoner has conducted his defence as judiciously, as carefully, and as cautiously as if he had had the services of the very ablest counsel at the bar of England, Ireland, or America ; and has he succeeded in satisfying your minds that Gallagher is a perjured man ? There is no substantial difference in what that witness told on the 15th June, and on the 10th and 12th October ; and of course if Gallagher is believed there is an end of the case. I must apologise to you for having occupied your time so long, but I felt it necessary, constrained by a sense of duty, to make these observations. I sit down confidently resting the case in your hands.

After a brief adjournment the Court again sat.

Prisoner.—There are two or three points in the Solicitor-General's address to the jury that I would like to comment upon.

The Chief Baron.—Would you wait for a moment until Crown Counsel comes in ?

On the Crown Counsel returning to court,

The Solicitor-General said—My lord, we have looked over the indictment, and we think there is evidence in support of all the overt acts, but we have struck out several, and left in only those upon which we rely.

The Chief Baron.—You should reduce the number as far as you can ; it is important to do so in order to simplify the case for the jury.

The Solicitor-General.—In that case they might be reduced to four—1st, 6th, 16th, and 20th. These are the four cardinal ones.

The Chief Baron.—Which is the one in reference to the illegal oath ?

The Solicitor-General.—That is the last one. The administering of an unlawful oath to one Michael Gallagher.

The *Chief Baron*.—Which is that which applies to the venue ?

The *Solicitor-General*.—The 16th is the venue point.

The *Chief Baron*.—The 17th seems to involve one and the same matter.

The *Prisoner*.—In reference to some statements of Mr. Harrison, unintentional mistakes no doubt, I wish to correct him. He says that I was arrested at 12 o'clock, whereas Constable Morris says I was arrested at 3 o'clock at Youghal.

The *Chief Baron*.—I think what he meant was to show that you were found on the cart at that hour.

The *Prisoner*.—He further refers to my not putting evidence forward to contradict that of Gallagher; but I did not do so, not recognising the jurisdiction of the Court. I submit most respectfully that there is no evidence produced to establish or prove that the vessel in Sligo Bay and the vessel at Dungarvan is one and the same vessel, nor is there any evidence to prove what was the character of the vessel, or what the cargo was, except Buckley and Gallagher, who say the cargo was fruit.

The *Solicitor-General*.—He should have had the man in charge of the vessel here to prove what the cargo was. If I had to speak again, I could say a great deal more than what I did.

The *Chief Baron* then charged the jury. He said—Gentlemen of the jury, without preface, which I think unnecessary, I shall proceed to state to you the questions you have to try, to point out the way in which the evidence bears on those questions; and in doing that it may be necessary, especially as the prisoner is undefended, to present to you, somewhat in detail, the nature and particulars of the evidence, and to comment somewhat upon it, especially the testimony of the two principal witnesses—on which, if the prisoner had counsel, he would have commented. Gentlemen, the prosecution is founded upon an Act of Parliament passed in the year 1848, and I will read for you the provision of that Act upon which the prosecution rests. "If any person within the United Kingdom or without," &c. The charge against the prisoner at the bar is founded on this portion of the section—"if any person shall compass, imagine, intend, devise, or declare, or intend to deprive or depose our Most Gracious Lady the Queen from her royal style and name of the imperial crown of the United Kingdom, and shall express, utter, or declare, such compassing, imagining, or intention by any overt act or deed," the offence shall be treated as treason felony, &c. The charge against the prisoner is, that he did compass, imagine, and so forth, to depose the Queen from the royal style and name of the Imperial Crown of the United Kingdom, and that he declared and showed that compassing by the various overt acts or deeds, or some of them, which are stated in this indictment. The Act of Parliament requires, not only that the party shall compass or devise what is charged, but that he shall manifest the compassing and devising by an overt act. It is necessary for the Crown to specify the overt acts upon which they rely; and it is for the jury to determine whether these overt acts, or any of them, have been com-

mitted, and whether they show the intention charged in the indictment. You have heard the word compassing used; it is an old term of the law; it means, in plain terms, intention or design. That at which the statute is levelled is the intention or design to depose the Queen from her authority, the intention being manifested by the overt act or deed. The proof of the overt act is absolutely indispensable, for without it the prisoner could not be convicted. You know that the secret intentions of mankind can only be ascertained by their words and acts; and while the statute protects the sovereign on the throne, protects her for the benefit of the whole community which she governs, and in which she is to maintain order by enforcing obedience to the laws, both the law of treason and this statute require, that for the protection of the subject, the crime shall not be treated as proved until it has been shown to be manifested by an act or deed of the party. Several overt acts—which mean nothing less than open acts of the party—are stated in this indictment.

I shall read for you some of these overt acts, without incumbering you with all, and if any one of them is established by evidence, your own common sense will suggest to you, that the intention charged was manifested, that the compassing charged was intended by the prisoner at the bar. It is said in the first overt act:—"That he did compass, conspire, consult, and agree "with James Stephens, O'Mahony, Roberts, and others, to raise, "make, and levy insurrection and rebellion against the Queen." The second charges him with combining with Stephens, O'Mahony, Roberts, and others, "to subvert and destroy the constitution "of these realms, as by law established," &c. If the prisoner conspired to levy war, insurrection, and rebellion against the Queen—if he conspired to destroy the constitution of these realms, which is that of a monarchy—that must of necessity be the result of a design to depose her from her authority. Another of these overt acts charges, "that he in America embarked "on board a certain vessel, and placed a large quantity of guns and "pistols on board that vessel, and came to the coast of Ireland with "these guns and pistols, with intent to effect a landing," the object of effecting that landing being, "to join with other evil-"disposed persons to fight against the troops and overthrow the "power of the Queen in Ireland." The indictment includes the names of Warren, Nagle, Costelloe, Fitzsimons, and others; but the Crown is entitled to put any one of these prisoners on trial, and they have proceeded against the prisoner at the bar. The indictment sets forth a number of particulars, a number of transactions which took place previous to the prisoner's coming to this country. Another of these overt acts states, that in America these persons did embark on board a certain ship, and place arms therein—a thousand guns and a thousand pistols—the number is quite immaterial—and did sail into Sligo Bay, with the intent and object of landing, in order to fight against and overthrow the power and authority of Her Majesty in Ireland. Another of these overt acts states the same thing in a different way—that these persons came into that part of Her

Majesty's dominions called Ireland, with the intent and object of raising insurrection and rebellion in Ireland, and levying war against Her Majesty; and that the prisoners with others took these arms and proceeded on board ship for the purpose of effecting the purposes of the Fenian organization, namely, for the purpose of establishing a republic in Ireland. Any one of these acts will be evidence sustaining the overt acts charged in the indictment, clearly establishing the design of an insurrection, the object of which would be to depose the Queen from her authority. Another of these overt acts says, "that they became members of an unlawful association called the Fenian Brotherhood, having for its object," &c. Anybody who entered into such a confederacy, you will have no doubt—the object of the confederacy being to overthrow the authority of the Queen—intended and devised the purpose which it is the object of the confederacy to effect. Another of these overt acts alleges, (what I shall hereafter have to explain to you), that the prisoner at the bar did, on the 5th and 6th of March, 1867 (the day is immaterial, but there can be no doubt of the day), at Tallaght, in the county of Dublin, and divers other places in the county of Dublin, and with arms, and guns, and pistols, fight against the constables and troops of Her Majesty the Queen, and levy war against our said Lady the Queen. There can be no doubt that to fight against the troops of the Queen, or the constables in arms under her authority, is evidence of a design to depose Her Majesty from her royal style and dignity.

I believe it is unnecessary for me to say anything of the other overt acts. You perceive that in result they amount to this: in the first place, that the prisoner entered into a conspiracy or agreement with certain persons, no matter how few or how many, to levy an insurrection against the Queen. If you come to the conclusion that he was a member of the Fenian conspiracy, and that the object of the Fenian conspiracy was to establish a republic, you can entertain no doubt that he designed to overthrow the authority of the Queen in Ireland. If he came with that vessel for the purpose of landing arms, I presume you can have no doubt that his object was that which is imputed to him in the overt act which relates to that transaction. With regard to the levying of war in the county of Dublin, the policeman has told you about those transactions. He has told you what occurred there, in the assaults on three constabulary barracks. These are evidence of the levying of war; and it is for you to consider how far the prisoner at the bar, with the instructions I shall give you on points of law, is affected by them. In this prosecution it is necessary for the Crown to establish some one overt act within the county of Dublin. An overt act having been established in the county of Dublin, it is open to the Crown to establish what would constitute overt acts showing a conspiracy in any other place; and though Sligo is not in the county of Dublin, and Waterford is not in the county of Dublin, yet, if the party came to Sligo, and brought arms for the purpose of effecting their treasonable purposes there, conspiring *there* to accomplish those purposes, it will estab-

lish a case against the prisoner, provided he is also fixed with the overt act done in the county of Dublin.

Gentlemen, there is not a single particle of evidence to show that the prisoner at the bar was within the county of the city of Dublin, or that he had any actual personal participation in what occurred at Milltown, Stepside, or Glencullen. But if you come to the conclusion that these were the acts of his co-conspirators in the Fenian confederacy, and if you come to the conclusion that the acts of levying war did take place within the county of Dublin, and were done by members of that confederacy of which he was a member, in furtherance of its objects, then, by a recent decision of the highest court of criminal jurisprudence in this country, I have to tell you in point of law, that the prisoner would be answerable for that act, if he was then a member of the confederacy, and that the acts done by others who were co-conspirators were his acts, and made him responsible in law for them, as if he were there bodily present doing the act himself.

Now, gentlemen, as regards the evidence: I think I may sufficiently rely on your recollection of it as to the general result, and as to the main and substantial questions you have to determine. Did the expedition take place; did the prisoner at the bar form part of the expedition; was he one of those who accompanied it; and was he a member of the Fenian confederacy; and did members of the confederacy, being co-conspirators in it with him, levy war in the county of Dublin, in March, 1866? The case with respect to the Jackmel expedition rests,—fortified by the testimony of Gallagher, with some other evidence in support of his,—upon the evidence of Buckley, and the general facts attested as to the vessel arriving off the coast of Waterford and landing a number of persons on the first of June. In the first place, the Crown must rely on the transactions in the county of Dublin, and it is essential that the prisoner should be connected with them. They must rely on these two propositions. First, that the prisoner, at the time when the acts of levying war took place, was a member of the Fenian confederacy; and, secondly, that members of that confederacy, while he was a member of it, in pursuance of its object and in furtherance of its design, did the acts of levying war, with respect to which evidence has been given. First, with respect to the Jackmel expedition, the evidence, in a very great degree, rests on the testimony of Buckley—that testimony being part fortified by the testimony of Gallagher, if you believe it. Buckley comes forward as an accomplice; and the law declares that, in strictness, a verdict founded on the testimony of an accomplice would be a legal verdict. But it has been the uniform practice for a long time past, and the general practice for a long time anterior, for Judges to advise juries, and juries have been in the habit of acting upon that advice, not to convict on the testimony of an accomplice or of any number of accomplices, unless that testimony be corroborated in some material part of the testimony itself; and that it is essential that it should be so corroborated in some part of the story which connects the prisoner with the crime. When an accomplice has received corroboration, the jury

are not still bound to believe him ; but if his story be corroborated, they are at liberty to act upon his testimony, and juries are to apply their own sense in determining, whether the corroboration he receives is such as to satisfy their minds that he is telling a true story. Buckley's whole evidence is of that character ; the whole of his evidence is that of an accomplice. He is not—and it seldom happens that an accomplice is—he is not corroborated in the whole of his evidence ; if that were so, the other evidence would prove the facts without him ; but it is only necessary to make his evidence such that a jury would be warranted in acting upon it, that in a material part, going to fix the prisoner with the crime, it has been corroborated, so that you may be satisfied of the truth of the whole. The whole of it may not be corroborated, but it must be corroborated so far as to induce the jury to give credit to the witness.

The testimony of Corydon stands even still more strongly in the same predicament ; for he was not only an accomplice, but an informer and spy, giving evidence from time to time of these criminal proceedings ; so that he comes forward with the stain of not only betraying his accomplices, but with the further stain of remaining with them, and receiving their pay, and, at the same time, the pay of the Government for giving evidence against them. That is an odious character. Some will think that there ought to be an objection to the employment of such characters ; but you will, I am sure, agree in this observation ; that when deeds of darkness are to be brought to light, when the safety of the State is imperilled, when conspiracy is hatched, and the object of that conspiracy is to overthrow the constitution as it exists, and involve the whole community in confusion and calamity, in the destruction of the monarchy, in the dissolution of society into its original elements, when there is imminent danger of such terrible results to all we hold dear in life, it becomes a matter of necessity that resort shall be had to persons, for detection and information, from whose real character all honourable men would recoil. Unless the testimony of accomplices, and, in some peculiar cases, the evidence of informers be taken, it may be impossible to discover deeds of danger and atrocity, which it is the duty of all governments, if they can, to discover, and of which it is their duty, if possible, to bring the perpetrators to justice. In these cases, if it be necessary to employ such instruments, it is a great calamity ; but in many instances the employment of them may be only the means of preventing far greater calamities. I make these observations in reference to Corydon. No jury would act on testimony such as his unless corroborated in some material part of his story.

Having made these observations as to the nature of the evidence of the witnesses, and the law to be applied to it, I shall proceed now to that evidence. Supposing you believe Buckley, and his testimony is corroborated, if you believe him in so far as relates to the charge, that the prisoner became a member of the confederacy, the object of which was to depose the Queen, or establish a republic (which necessarily must involve the depo-

sition of the Queen), and, so far as relates to those acts, which disclose the object of the Jackmel expedition, there can be no question that on Buckley's testimony a case is established against the prisoner. He carries back the prisoner to the year 1865. That, you perceive, very considerably overreaches the transaction of March, 1867, which comprises what was done in the county of the city of Dublin.

Prisoner.—My lord, you say Buckley. That is a mistake. He swears he never saw me until he saw me on board the vessel.

The *Chief Baron.*—You are quite right; it is Corydon I should have named. Buckley gives evidence of the Jackmel expedition. He describes himself as having been a member of this confederacy so long ago as 1865, when he left the American army. Corydon it is that states all the transactions affecting the prisoner individually prior to that; but Buckley states that he was himself a member of this confederacy from the year 1865; that the confederacy existed in 1865; and that overreaches the transactions of March, 1867. It was proposed to Buckley to join in a Fenian expedition, the mischievous objects of which were not disclosed to him, to which he agreed. He gives you evidence of a number of persons having assembled in a street in New York, that he was one of them, that he went on board a steamer, that they proceeded to where it was expected a vessel would be found, that ultimately they reached the vessel, and went on board, and after going in a direction to avoid pursuit, they ultimately proceeded to the coast of Ireland; and he then describes Warren as being in that expedition. He describes to you Warren as being on board, and holding a certain rank—the rank of colonel, and participating in all the designs that were disclosed in the progress of the voyage. He was present when the vessel was re-christened by the name of “Erin's Hope,” when the commissions were taken out and distributed, and when the object of the expedition was disclosed, namely, to land arms in Ireland—of course, in furtherance of the object for which the expedition was formed. All that, if you believe the testimony of Buckley, proves that Warren was a member of the Fenian conspiracy, and that he engaged in that expedition in conjunction with the others. The testimony of Buckley is supported by the testimony of Gallagher to this extent, that the vessel which Buckley describes was found by Gallagher, just as described by Buckley, in Sligo bay, and that he was engaged as a pilot. He says not only that Warren was on board, but that Warren and Nagle, another of the persons included in this indictment, endeavoured to induce him to take the Fenian oath; and that ultimately they forced him to take an oath not to divulge what he saw on board the vessel. If that transaction took place in the presence of Warren and Nagle, that is undoubtedly evidence which you are quite at liberty to consider a corroboration of Buckley in a material part of his evidence, because it brings home to Warren a connection with the crime charged, the fact of his being on board the vessel, and forcing Gallagher to conceal the purpose of the voyage.

Now as to the testimony of Buckley and Gallagher. Each is

impeached by matters, irrespective of the character of Buckley as an accomplice, and founded on statements which they suppressed on former occasions when examined before the magistrates. These it will be my duty to bring before you by-and-by; but at present I am dealing with the extent of the corroboration received by Buckley in that transaction deposed to by Gallagher. In some of the other circumstances detailed by Buckley, he is also fortified by the testimony of Gallagher. These, however, are not portions of the alleged crime, although they are connected with what occurred on that expedition. It appears that two persons were wounded,—it does not matter how they were wounded. Buckley says they were wounded by the accidental discharge of a weapon he was cleaning; Gallagher says he was told they were wounded in a contest between the two men. The fact of their being wounded is proved by the testimony of Gallagher, and the evidence of the persons who found the wounded men on the shore, and who afterwards arrested both them and Nugent. Nugent is proved to have gone in company with these men and Gallagher; that is proved by Buckley, by Gallagher, and by those persons by whom they were subsequently arrested on shore. But, gentlemen, irrespective of details, there is one leading feature in this case which I am bound to present to you, as affording inherent corroboration of the story told by Buckley. Before I refer to it, I wish to bring your attention to another piece of evidence which connects the prisoner at the bar with the sailing of the vessel, and that is, the transaction of the landing of a large number of men on the coast of Waterford, and the subsequent arrest of the prisoner at the bar. This portion of the case does not require that I should go into any detail of the evidence. It appears that a vessel, corresponding in character with the vessel proved by Gallagher and the coast-guard to have been at Streedra, and corresponding with the vessel that was seen in Sligo bay, was near the coast of Waterford on the 1st of June; it appears that the persons in that vessel hailed a fisherman while engaged in his ordinary occupations. They first asked whether he would take two men on shore, offering him £2, not disclosing the design that any more were to be landed.

You are to consider the circumstances of that proposition being made, and the suppression of the intention that so many men were to be landed, in this light, that if they had communicated the fact to the fisherman he might have refused to take them. However he says about thirty went on the vessel—on this fishing vessel—and were landed; and it appears, on the testimony of the boatman and a member of the coastguard, that these persons went up the hill in twos and threes towards the church of Ring. Was the prisoner at the bar one of the persons who so landed? Buckley swears he was. Buckley himself swears that he landed, and Buckley was subsequently arrested. It is proved that at the time when the boatman says thirty men landed, having plunged into the water and walking up to their middle, it is proved that about that time two men applied to a farmer named Roche, to be conveyed to Youghal. He took these two men on his car; they were wet up to the middle, and he took them on to Youghal,

where they were arrested on the bridge. These two men were Warren and Nagle; and if you believe the evidence of Norris, each of them gave a false name. If there was an infirmity in the identification of the features by Roche in the gaol, you are not to withhold credence from him, but rather to attribute it to the way in which these persons were presented to him. As to his veracity there can be no mistake. But of this there can be no doubt, that two persons who had been on board this vessel came to him, that he took them on his car, and afterwards, when accosted by the police, they gave false names, and that the prisoner at the bar was one of those men. But Roche goes further and says, that when the parties were brought to him he would not have at first recognised them—the opportunity was so brief—but he says he was induced to recognise them by the prisoner shaking hands with him. The prisoner said, on this trial, that he did that as a joke; but Roche, on reflection, swears that the prisoner at the bar is one of the persons whom he brought on the car to Youghal; and, gentlemen, if you come to the conclusion that the prisoner at the bar was brought to Youghal, and in company with Nagle, that is evidence undoubtedly worthy of your consideration as regards the testimony of Buckley; because it brings these two persons in close proximity to the place where a large number of men unquestionably landed, according to the testimony of the police.

Now, gentlemen, do you come to the conclusion that the vessel that was sighted at Sligo Bay was the same vessel from which the men were landed at or near Dungarvan? There is no evidence except the testimony of Buckley that arms were on board this vessel; there is no other evidence except that of Gallagher in reference to Fenianism on board the vessel. I do not now speak of the evidence given by Buckley. If you believe the evidence, at Sligo Bay she was, in Sligo Bay she remained, in the Bay of Sligo she was piloted, in the Bay of Sligo she discharged the pilot, after some communication with the person called the agent: a transaction which may have been innocent, irrespective of the testimony of Bradley; but with this large number of persons on board—far beyond what was necessary for navigating the vessel—with this large number of persons on board, she leaves Sligo, she goes to the south-east coast from the north-west, and there thirty persons are landed, leaving others on board. Here you have to consider what these thirty persons stated of themselves, and how far you consider these statements inconsistent with the circumstances I have mentioned. I am now dealing with the fact of this vessel being at Sligo, and afterwards at Waterford, and I am suggesting to you whether in the movements of the vessel, and in what occurred on the coast of Waterford, there is that which would lead you to believe the statements these men made. They stated that a vessel in which they were fishing took fire, and that they were taken up by the vessel which they had left. Is that a matter which you would consider so improbable as not to warrant implicit credit?

Prisoner.—That statement only referred to the two individuals arrested in Youghal, Nagle and Warren.

The *Chief Baron*.—Then you have to account for so large a number of persons being at Sligo, afterwards at Streedra, and afterwards at Dungarvan, in a vessel charged with a cargo of fruit, the circumstance of the vessel discharging so large a number of men, the whole story of Buckley, and the other circumstances which I have suggested, and which appear to me to be fitting for your consideration, with the view to the corroboration of Buckley's story.

Before adverting further to the evidence of Buckley, let me deal with the testimony of Gallagher; because if you believe the testimony of Gallagher, it very strongly tends to confirm one important part of the testimony of Buckley, namely, that in which he refers to the transactions that occurred in the cabin; and tends to corroborate it further by the reference to Fenianism that was made to Gallagher when he went down to the cabin and was in communication with Warren. If you believe the testimony of Gallagher, he is no accomplice. There is nothing in the evidence of Buckley or in the evidence of Gallagher to *prove* Gallagher an accomplice. But there is evidence on which it is for you to consider whether he was in fact an accomplice. There were unquestionably suppressions by Gallagher in his former testimony which go very considerably to shake the confidence that would otherwise be attached to his evidence, provided you think it material; and if Gallagher did voluntarily, and in order to shelter the parties who are charged, or who were on board that vessel, forbear to give information when he was first examined, and, still more, if he voluntarily withheld that information, that would be some evidence from which it might be inferred that he participated in their designs. But upon his story there is no *confession* of his being an accomplice. And it is only with respect to that part of the evidence that I think any question would arise. It is of some importance, with a view to his credit, to consider what his occupation is; and it is established, I think, that he is, and has been for a considerable time, following the occupation of a fisherman and pilot; therefore, it is natural that he should be on the lookout for employment, and that he should be taken on board as a person to be employed; that he went on board is proved not alone by his evidence, but by other evidence. You have to deal, no doubt, with the credibility of that witness; but before you discredit him you should be very careful of the ground upon which you come to such a conclusion.

I will now bring to your attention the portions of Gallagher's evidence upon which the impeachment rests. Gallagher was first examined on the 27th of May; and he said, that on Friday, the 24th, he observed a brig in the bay, and boarded her about twelve o'clock, to ascertain whether she required a pilot, and having been told that a pilot was required, he was engaged. He said he was told that the captain had left, and had gone on shore to get provisions, and that he was expected back at six o'clock in the evening. He then says that the man in charge told him that the vessel was a Spanish vessel from Spain bound to Glasgow, but that he did not tell him the cargo. That was on the 27th of

May, the day but one after the transaction occurred. Well, upon an information which he swore in the month of June following, the 15th of June, he undoubtedly does say, that he asked the person in charge where he was from. He said he was from Spain, and bound to Glasgow with fruit. That is a positive statement, made upon the 27th of June, and it is in direct contradiction to what he had said on the 27th of May, namely, that the person told him he was from Spain and bound to Glasgow, and did *not* tell him the cargo. Well, the telling of the cargo, especially if it was stated it was fruit, was certainly not a very material circumstance; but at the same time the prisoner has a right to have your attention called to the contradiction. He said he received no money from them for his services, as the man in charge said they had no money until the captain came back. It turns out that he received 5s. or 6s. when he said that his family was poor; but he meant probably, not that he got nothing at all, but that he was not paid his stipulated pilotage for his services. I therefore suggest that that alone is not a reasonable ground for discrediting him. But then comes this portion of the information of the 27th of May, which I think is material. "A short distance from where I landed, about two miles, I met two coastguards who made inquiry about the vessel." The coastguard-men were examined, and told you what he stated, and they told you he did not make any statement whatever in reference to the transactions, the details of which he deposed to here; so that in his conversation with the coastguard men, and in answer to their interrogatories, he withheld that portion of the information which is now material. He then says—"I told them all I knew." Now, if he had merely withheld the information from these coastguard men, it would be hardly possible to discredit his evidence on that ground alone; but upon the 27th of May he pledges his oath to this—"I told them all I knew. They said they had been watching her, and they proceeded on towards the shore." That is a positive statement, and it certainly is not true. He did not tell them all he knew.

Then comes this further statement, which must have been a subject of interrogation by the magistrate. He had been apprized that the coastguard had been watching, and he must have recollected what passed in the cabin; and he states, upon his oath, upon that occasion—"I know nothing further concerning the said vessel." Does that mean that he knows nothing more of what occurred upon the vessel, or that he does not know anything more concerning the vessel or her destination? Does that mean that he intended to withhold the information from the magistrates? Unfortunately, upon his evidence, the latter is what he says, for he tells you the reason why he said he told all he knew. He said the reason he said he did not know anything further concerning this vessel was, that he had given this engagement on oath that he would not disclose it; and that, in consequence of the oath he had thus taken, and which he desired not to violate, he took an oath which was a false one—saying that he had told all he knew about the ship. When he was examined

this morning, he said that some of the statements contained in his information were taken down wrong. But I do not think he applies that to either of the two statements I have referred to. In one information he says it was seven o'clock in the morning he saw the vessel, and in another he says it was seven o'clock in the evening. He says in the information sworn on the 15th of June—"I did not ask her name, nor did I hear it. I did not ask the captain's name, who was said to be on shore." In his informations subsequently, made in October, he said—"I asked the name of the captain, but the man in charge would not tell me, and I could not get the name of the captain." So it would appear he inquired into both of these things, although in his information in June he stated what I say. Gentlemen, the important part that I have suggested to you is of course momentous with a view to the prisoner's interest in this inquiry. That statement in May, upon Gallagher's oath, is inconsistent with the statement he subsequently made; but there is this, further, which it is always important to consider with a view to evidence of this kind, that although he might have been mistaken on the 27th of May, and had been examined again on the 15th of June, and was for some time in custody, yet it was not until the 12th of October, which was about the time that Buckley's information was ultimately sworn, that he, for the first time, gave a detail of that transaction which occurred in the cabin. Nothing of that was said upon the first or second information. In the last (the third) information, he gave a larger account of what occurred, for he says, that about two o'clock he was taken down to the cabin by the man in charge, and saw two persons, the prisoner and Nagle. He could not say whether there was anyone else in the cabin. Nagle then asked him would he like to be a Fenian. In the statement to you he said what he was asked was would he be a Fenian. "I told him not, and he asked me were there any Fenians in the county," &c. "The man in charge of the vessel then told him to swear me not to give any description of the vessel when I would get on shore. I would not, and the man in charge took a pistol, and told me to take the book. I then took the book, and swore not to give any information about anything I would see in the vessel."

In his evidence yesterday, he said, "anything I would see done about the vessel." That appears thus on the third information for the first time; and where the witness for the Crown has the full opportunity of telling the entire of his story in the first instance, and does not tell the entire, and then adds to it afterwards upon the very point upon which his evidence is all important for the Crown, it is undoubtedly a matter open to grave suspicion, and it will be for the jury to so judge of his evidence by the ordinary rules of life, common sense and common honesty; whether or not they treat the omission to make this declaration in the first instance as sufficient to induce them not to give credit to it when made upon the second occasion. But notwithstanding all that, there is always to be considered by the jury the manner in which the witness gives his evidence, the circumstances under which

he becomes connected with the transaction to which he deposes, and the circumstances under which the evidence is originally given. When this man was sworn, as described, he must have known perfectly well that the persons who swore him had something to do with the Fenian conspiracy, to which they asked him did he belong. He does not say himself he was afraid of making the disclosure when he was examined, but he does say he was affected by the oath he had taken. He was originally employed, as I have already suggested to you, in his ordinary avocations. He went with a number of persons and was employed as a part of his ordinary occupation, and the nature of that occupation is proved by the members of the coastguard examined before you. He himself swears positively that he is not and never was a Fenian, or connected with the rebellious proceedings of last year. You have had an opportunity of seeing how he gave his evidence; and although you are called upon to scan it narrowly, with a view to those circumstances alleged to affect its credit, to which I have just called your attention, yet you have ultimately, upon your oath, to say, do you or do you not believe him. Do you believe him an accomplice because he did not tell all in his first information? Having regard to the fact of his occupation, and the way in which he was employed, do you think there is reason to attach impeachment on him against his positive oath that he had nothing to do with Fenianism? If you do not believe he had anything to do with it, there is nothing whatever to indicate that he is a witness whose credit is not to be regarded like any other witness not requiring corroboration if you believe him, and lending corroboration, if you believe him, to the story of Buckley.

With respect to Buckley himself, you will see how the case stands as to his statement. In Buckley's original evidence he omitted several persons whose names he supplies in his evidence upon the table. He appears to have been originally sworn upon the 12th of September, and re-sworn upon the 12th of October. At the time his first information was sworn, I may say that no considerable number of these parties was arrested. He omits some persons holding the rank of colonel, whose names he supplies in the evidence given before you; he omitted the names of Phelan, Doran, and O'Doherty, who were colonels; he omitted the name of James Lawless as one of the parties. He says that he forgot them, and that he was in some excitement at the time he swore his first information. It is difficult to conceive how he could have been excited upon the 15th of June; he must have been arrested some time before that; and he says himself that it was some days after he was arrested that he was in communication with the Crown-Solicitor for the purpose of giving the information he was able to afford. He had therefore time for consideration. Nevertheless, while I bring that to your notice on behalf of the prisoner, it is proper to suggest to you, that in that information of the 15th of June, he totally omits the name of James Lawless, and who that Lawless was. Why, he was the man who landed with himself, Buckley, who I believe was arrested with

him, and consequently, must have been perfectly known to the Crown as a participator with the man who was giving the information, from which information he appears also to have withheld the statement about Phelan, Doran, and O'Doherty. If he forgot Lawless, who was really his known associate, that is certainly a matter very favourable, tending to sustain the truth of his own statement, that he omitted the others because he forgot them too.

The *Solicitor-General*.—He says in his information, “I do not just now recollect the names of any others.”

The *Chief Baron*.—Yes, and in his evidence given upon the table I think he omits the names of one or two persons whom he mentioned in his informations; for in his information he stated there were four colonels, and seven captains, and four lieutenants, and eleven persons who were not lieutenants; in his evidence upon the table he makes seven colonels instead of four, and five captains in place of seven, and three lieutenants instead of four, and six persons who held no rank instead of eleven. When, therefore, he was examined before you he omits the names of several whom he names in his informations; and you will say whether the account he gives you (and apply to it your own good sense), whether such forgetfulness is or is not natural. You have to deal with men of all kinds, some of them of deficient, some of tenacious memory; and it is for you to say whether this witness satisfactorily explains to you why he omitted at one time names which he supplied at another.

The next matter of impeachment is of somewhat more importance. Gallagher, for the first time, in his last information, sworn on the 10th of October, and Buckley, for the first time, in his evidence before you, gave evidence as to what passed in the cabin. Buckley in his information does not say a word of what passed in the cabin. He now says he heard what passed in the cabin. He knew that what passed there was the administering of an oath. He says he only heard so much of what passed as indicated that they were asking some one to take an oath. He says there was a door between the cabin and the part of the vessel where he was, and at that time the colonels were in the cabin. Gallagher only speaks of two. He says they could not be anywhere else in the ship. “I only heard part of the conversation. It was an excuse of Gallagher for not taking the Fenian oath.” Gallagher was asked, according to his own statement, not to take the Fenian oath, but to swear that he would not divulge anything he saw on the vessel; but Gallagher says they asked him was he a Fenian, and, therefore, there was a talk about Fenianism. Buckley then says, “He said he was too old, and that was all I could hear.” Gallagher said, not that he was too old, but that he was advanced in life, and had children, a mother, and a wife. What then occurred was certainly a material fact to be disclosed; and he was asked by me why it was that he made no statement of that at the time? He said he did not speak about it, and did not think about it, and was not asked. Again, in disclosing all the transactions connected with that vessel, in disclosing the designs of the conspiracy, and the purposes for which

the vessel was to be applied, it was a most important matter to have stated that there was a determination formed by the members of the expedition to take the town of Sligo, and that that determination had been abandoned, and that *that* was the reason why they went towards Cork, and abandoned the attack on Sligo in consequence of the Fenians having been quieted by the failure of their former attempts. That was a material circumstance; and you will say whether it was likely he could have forgotten it, whether in making that detailed statement of the voyage, how they left America; how they changed their course to avoid detection; the putting on shore the wounded men; the coming on board of the pilot; the putting ashore of the pilot; the coming on board of the person who had communication with the officers; the sending ashore of the colonels, and of two more men upon another occasion; the transactions near Dungarvan, which were stated with considerable detail;—whether, when he says he did not recollect, when he gave his information, the circumstances of the determination to take Sligo—he could reasonably have forgotten it. Another important matter is this:—He says that the arms were packed in boxes—large-sized boxes. He says there were some sewing-machine boxes and some piano-cases; and then he says—“The cases in which the arms were were opened during the voyage; they were so placed as to be ready to be distributed.” He was asked how were they placed, and he says, “they were put in twos and threes; they were re-arranged in the same boxes.” In his informations he swore that they had a quantity of arms,—he could not tell what quantity; that they were packed in cases as pianos and sewing-machines, and included a quantity of carbines and revolvers; that the boxes were consigned to a firm in Cuba; and that many of those cases were opened during the voyage, and the arms packed *in smaller boxes*. What he says now is, that the boxes were one within another, and that they were placed in the way he describes them, ranged in twos or threes, *in the inner boxes*. Whether that is a sufficiently satisfactory account, you will consider. He omitted to make, or did not make, in either of his information, any statement as to ammunition having been on board, but he has given, in his evidence on this trial, an account of a very large quantity of ammunition, and placed in a most extraordinary manner, in open boxes, between the decks, where he had constant opportunities of seeing it. Now, gentlemen, these are the circumstances inherent in the testimony of this witness itself, independent of the fact of his being an accomplice, on which you are called on to decide. He has been examined before you. You have had the great advantage of hearing the witness himself. If you believe the testimony of Gallagher; if you do not consider him to be an accomplice, he sustains part of the story of Buckley; and it being so sustained, the question you then have to determine is, whether, notwithstanding all that has been suggested with respect to Buckley, you really, upon your consciences and oaths, believe that he is telling the truth. If you so believe him, as far as relates to the Jackmel expedition it is plainly and clearly established. If you entertain any doubt with respect to his evi-

dence, having regard to all the other parts of the case, of course you are bound to give the prisoner the benefit of it. With respect to the other portions of the case, there is very little indeed to be observed.

His *Lordship* here addressing the counsel for the Crown, said it was important for him to know in what manner they contended that the case should be left to the jury as regarded the alleged overt act in the county of Dublin.

The *Attorney-General*.—We think that the fact of Warren having been proved to have joined the confederation after the date of the overt act in question, is quite sufficient to sustain the indictment according to Watson's case. But, irrespective of this view of the case, we submit that there is evidence to go to the jury that the prisoner was connected with the conspiracy before the 5th of March.

The *Chief Baron*.—It was laid down in Watson's case, in conformity with other authorities, that the acts of conspirators, done before another conspirator joins the conspiracy, are evidence against him, to show the nature and object of the conspiracy, which he adopts by joining it. But there is no case, that I am aware of, in which previous acts have been, *ex post facto*, treated as the prisoner's acts for the purpose of fixing him with it as an overt act, indicating crime *in him*, of which he was innocent when it occurred. I am not prepared so to hold; but I am prepared, in conformity with the decision in Meany's case, to direct the jury, that overt acts, done in the county of Dublin, if done by the prisoner's co-conspirators in furtherance of the objects of the conspiracy, were in law overt acts of the prisoner, if, at the time when they were done, he was a co-conspirator, although he not only was not himself present, but was not within the county of Dublin, when those overt acts were done.

The *Attorney-General*.—I am content that the jury should be so directed, having regard to the circumstances of this case.

The *Chief Baron* (to the Jury).—Gentlemen, there are two ways in which, in point of law, this question might, possibly, be left to you, one of which appears to me to be clear, according to a recent decision of the Court of Criminal Appeal, while the other must be subject to controversy. On that subject I won't trouble you with any of those views of the law which influence me at present in leaving the question as I shall leave it to you. But I shall tell you what the law is, and you will be perfectly able to understand it, for it may be stated in a few simple sentences. The law has declared, by a very recent decision of the highest court of criminal jurisprudence in this country, that if a man be a member of an unlawful confederacy, what is done by those who are co-conspirators with him *at the time when he is such member*, although done in a distant place, and without his personal intervention, is his act as well as theirs. If you should find that the prisoner was a participator in the Jackmel expedition, and that that expedition was of the character which has been described, that would establish that at *that time* he was a member of the Fenian confederation. But that would not be enough to

support this indictment; because all the acts in which he was at that time engaged and of which evidence has been given, occurred outside the county of Dublin, which is the district within your jurisdiction and that of the Court which is now trying this case. In order, therefore, to establish this indictment, it must be proved, that in addition to any other overt act, there was an overt act in the county of Dublin for which he is responsible. If members of the Fenian confederation, in prosecution of the common design, attacked the three police barracks, and in so doing levied war against the Queen, those were overt acts of all the persons who were then members of the confederation, wheresoever they were at that time. And if he was, *at the time when those acts were done*, a member of the Fenian confederation, the acts done there were acts of his, and he was guilty of the levying of war at Stepside, Glencullen, and Milltown, just as much as if he were bodily present with the parties who acted there. Now the evidence of his being a confederate at that time, which was the 5th of March, depends upon the testimony of Corydon; because no other portion of the evidence shows that Warren was a conspirator until the commencement of the Jackmel expedition, and that was on the 12th of April. On the 12th of April, according to the evidence of Buckley, he became one of the party, and proceeded to the Jackmel packet; and therefore at that time there is of course evidence, if you believe Buckley, that he was a member of the confederation. But that was subsequent to the attack made upon those various police barracks, upon the 5th or 6th of March. Corydon, however, deposes, that Warren was a member of the Fenian confederacy long anterior to that time. If Corydon be believed, he establishes that the prisoner was a member of the confederacy prior to that time; the other evidence proves that he was a confederate after that time; and consequently there is evidence that he was a confederate at the time when the acts were done in the county of Dublin. But upon Corydon's evidence you cannot act unless it is corroborated; for Corydon stands, as I have told you, in the double capacity of an accomplice, and of an informer or spy. Is there then evidence to satisfy you that Corydon's story, with respect to the prisoner, is corroborated in a material part of it? The material and substantial part of Corydon's testimony is, that he was a member of the Fenian confederacy. He was at that time in America. On the 12th of April, a period of time very recent after the 5th of March, you find him—if you believe on Buckley's evidence that he was a participator in the Jackmel expedition—not only a member, but an active member of that confederacy; not only was he an active member of that confederacy, but he held high rank in it. He held the rank of colonel. And finding him in the confederation in April, you will say whether or not that so satisfies you of the truth of Corydon's story, that it connects him, as a member, with the confederation, so as to lead you to believe that Corydon rightly and truly extends his participation in it to a period antecedent to the 5th of March. Corydon spoke of him as having been a confederate long antecedent to that date; I forget exactly how long before, but I think it was 1865.

Gentlemen, that is the way in which the case stands. If you believe Corydon's evidence, it is perfectly clear that the prisoner was a confederate at the time to which it refers. Corydon's evidence you cannot act on unless you think it is corroborated, unless you think the corroboration of it is such as to satisfy you of its truth. And that corroboration of the story of his having been a member antecedently, is only supplied by the fact of his having been found a member subsequently, namely, at a period so near to the 5th of March as the 12th of April, holding then the rank of colonel. Will you come to the conclusion, that his being so on the 12th of April is a corroboration of the statement, that he was so for two years, or for upwards of a year before? In connexion with the fact that he held high rank, you are to consider whether he is likely to have attained that rank unless he was for a substantial period belonging to the confederation. He was a person that was then selected as one of the trusted leaders of this expedition, if you believe the testimony of Buckley. You will consider whether he would have been so selected as one of its trusted leaders, unless he was prior to that time a member of the confederacy. If you are satisfied that he was a member prior to that time, that is evidence that I feel bound to leave to you, as evidence to corroborate the testimony of Corydon; and you will then consider whether you believe the evidence of Corydon. You are entitled to take into account the way in which he gave his evidence. Gentlemen, the case stands against the prisoner thus:—first, with respect to the Jackmel expedition, it depends on the testimony of an accomplice, Buckley, who must be corroborated; that corroboration is afforded by the testimony of Gallagher, if you believe it, subject to the observation on Gallagher's testimony which I have offered to you. The further corroborating testimony connecting the prisoner with the expedition is only that as to his landing, and there he is brought into connexion with the vessel, if you believe the identification of the persons by whom his arrest, and his transit from Ring to Waterford, are proved.

You will see, then, that the questions before you lie within a very narrow compass. You are to determine whether he compassed, that is, intended to depose the Queen; whether he manifested that intention by overt acts; whether he manifested it by the act of becoming a member of this confederation—did he? Whether he manifested it by the act of being engaged in the Jackmel expedition—did he? Was there such an expedition, and was it such as has been described? Two overt acts, one done within the county of Dublin, and the other without that county, would support the indictment; for overt acts done outside the county of Dublin may connect him with the confederacy, so as to make him answerable for the acts of his confederates within that county; and one overt act within the county of Dublin would support the indictment. Was he a member of the Fenian confederation when the transactions in the county of Dublin occurred? Were these a levying of war? Were they done by members of a confederacy of which he was a member? Do you believe the testimony of Corydon, deposing to his being a member of the confederacy before the 12th of April? Do you

consider the corroboration arising from the prisoner's having on the 11th or 12th of April held the high rank that he is proved to have done, at that time, in the confederacy, sufficient to show that he was a member of it for a substantial antecedent period? Does that, in your judgments, so corroborate Corydon's testimony as to satisfy you that the prisoner was a member of the confederacy on the 5th of March? Gentlemen, upon the whole, you will have to consider whether or not you are satisfied beyond any reasonable doubt of the prisoner's guilt. The law of the land, in that mercy which is part of its justice, declares that before any man can be convicted there must be affirmative proof, to the satisfaction of the jury, removing that presumption of innocence which, up to the giving of the verdict, stands around him like armour. That is only another way of saying that the jury are called on, not as a matter of mercy or of favour, but as a matter of right and law, to acquit the prisoner, if they have any reasonable doubt of his guilt. But in determining whether or not there be a reasonable doubt, which, of course, must be considered with reference to all the evidence and to every part of it, a jury are not called on to acquit on a fancy of the possibility of innocence. A possibility of mistake may, perhaps, be considered as existing in almost every inquiry that is human. What a jury are called on to do is, to apply to the matter before them that sound sense which each of them would himself apply in dealing with the ordinary concerns of life in which he had an interest. The law defines in no other way the manner in which a jury are to determine whether a reasonable doubt exists. The law does not otherwise define it, but leaves it to the jury to apply that judgment which they will apply in the ordinary concerns of life in which they have themselves an interest; and, acting upon these lights, to deal between the prisoner and the Crown. If you entertain a reasonable doubt, you are bound to acquit him; but if you do not entertain a reasonable doubt, you are bound by the most sacred of all obligations, the obligation of the oath taken by you as jurors; you owe it to yourselves, to your country, and to your God, to give a true verdict according to the evidence.

Prisoner.—My lord, will you permit me one word? I respectfully beg to submit with reference to the rank you have referred to, that there is no corroborating evidence; it is simply referred to by Buckley. I would also impress upon the jury that I was not identified by Gallagher till the 12th of October, after his being five or six weeks in one gaol with me, exercising in the same yard, and hearing my name called every day, and knowing that I was suspected of belonging to that expedition. I would respectfully submit that there is no evidence as to the cargo of that vessel; no evidence to prove that that landing at Dungarvan, —admitting a landing for the sake of argument,—was for any illegal purpose, but only the admission made by Buckley, of a lot of hungry men running away from the vessel.

The Chief Baron.—Most of these matters I have presented to the jury. Gentlemen, you cannot believe Buckley unless his evidence is corroborated; but if you believe Buckley about the

whole story of the Jackmel expedition, then, and then only, the fact of his rank is proved. With respect to the other matters, I have already observed upon them. You will take into account what the prisoner has said as to his own case.

Prisoner.—You have not referred to the identification of me by Gallagher.

The Chief Baron.—Oh yes; I have said that there was evidence of identification by Gallagher. There is no question about the identification by Gallagher. You are G. Roche, I think.

Prisoner.—Gallagher, my lord? You did not refer to it at all.

The Solicitor-General.—The prisoner was eventually examined by the magistrates, and identified by Gallagher on the 12th of October.

The *Attorney-General* referred to that information of 12th October, in which Gallagher said the prisoner John Warren is one of the persons named in it.

Prisoner.—That information was not given until after his being five or six weeks in the same gaol with me.

The Solicitor-General.—The evidence was this—Gallagher made his first information before Mr. Labatt, in Sligo; then he made an information on the 15th of June in Sligo before Mr. Coulson. Some short time after that it appears that he was committed to Kilmainham or Mountjoy prison—some three or four weeks afterwards. Then on the 12th of October he made the information before Mr. Barton, in which he identified Warren.

The Chief Baron.—He named Warren and Nagle.

Prisoner.—My name was never mentioned until the 12th of October. What I want to impress on you is, that he never identified me until after he had been five or six weeks in prison with me in the one yard.

The Chief Baron.—There was an information on the 12th September.

The Solicitor-General.—Not by Gallagher, but by Buckley.

Prisoner.—He was never brought before me until the 12th of October.

The Solicitor-General.—That answers what you say yourself. It was at Sligo he made his information, and not in the presence of the prisoner at all.

Prisoner.—It appears that this is an important question by the manner in which it is evaded.

The Solicitor-General.—There is no evasion.

Prisoner.—There is a direct evasion.

The Chief Baron (to the Jury).—No doubt Gallagher was examined on the 27th of May, and then he made no statement in detail at all. Gallagher was examined on the 15th of June, and then he made no statement of a portion of the details that are important, as I pointed out to you; he made no statement at all of that portion of the case that occurred in the cabin and that implicates Warren. Gallagher never made any statement implicating Warren until the 12th October.

Prisoner.—Yes; he never was brought to identify me.

The Chief Baron.—The information of the 12th of Octo-

ber is in these terms:—"In the presence and hearing of Patrick Nugent, John Warren, and William Nagle, who stand charged with treason-felony, and with being members of a treasonable conspiracy."

Prisoner.—I don't refer to that information at all, but to the circumstances of his having been five or six weeks in gaol with me, and of his being then brought to identify me on the 12th of October.

The *Chief Baron.*—The information of the 12th of October states that "he, the said prisoner Warren, was present all the time, and told me to take the book."

Prisoner.—He was put into a yard with me, and then brought to identify me.

The *Solicitor-General.*—We must object to these matters.

The *Chief Baron.*—The first time he made any statement implicating Warren was on the 12th of October; and I pointed out to the jury that that was after several persons were arrested, and that the whole of the evidence of Gallagher is to be taken with reference to the time at which he made his last disclosure, which necessarily affects his credit. But it is for the jury to say to what extent, if at all, it affects his credit.

Prisoner.—My lord, it is a question of identification. This man was brought to Kilmainham prison, and put into the same yard with me. He is not brought to identify me, but is discharged after five or six weeks; he is brought back after five or six weeks more, and is then brought to identify me.

The *Chief Baron.*—All that is for the jury; that he was in gaol, and that after he had been liberated from gaol the information of the 12th of October, which first implicated you, was sworn is true. All that is before the jury, and all that the jury are bound to consider on your behalf.

The *Prisoner.*—That is what I want to impress on the jury; and the question is, could he identify me when he was brought first?

The *Chief Baron.*—Both of them had been previously in confinement. You heard the evidence as to the identification, gentlemen, and you will consider how far it goes to affect the testimony of the witness.

A *Juror.*—The date of the first information is 26th May.

The *Chief Baron.*—Yes; and the second was made on the 15th June, and that deposition was in Sligo.

The jury retired at twenty minutes after four o'clock, and returned to court at five minutes to five o'clock.

The *Clerk of the Crown.*—How say you, gentlemen, have you agreed to a verdict?

Foreman.—Yes.

The *Clerk of the Crown.*—You say John Warren is *Guilty* on both counts.

Foreman.—Yes.

The *Chief Baron.*—Remove the prisoner for the present.

The Court adjourned to Monday morning.

Saturday, November 16, 1867.

SENTENCE ON THE PRISONERS.

The Court sat at eleven o'clock to-day, when

The Clerk of the Crown directed that John Warren, William Halpin, and Augustine E. Costello be placed at the bar.

The prisoners having been placed at the bar, and answered to their names,

The *Clerk of the Crown* said—John Warren, William Halpin, and Augustine E. Costello, you and each of you have been indicted, tried, and found guilty of treason-felony, for compassing to depose our Lady the Queen; have you anything to say why the sentence of the Court should not be pronounced on you?

The prisoner *Warren*.—My lord, I claim the privilege established by precedent; I have had no opportunity of making any remarks on my case, and I would now wish to say a few words.

The *Chief Baron*.—State what you have to say. We are ready to hear you.

The *Prisoner*.—I desire, in the first place, my lord, to explain, while ignoring the jurisdiction of this Court to sentence me, and while assuming my original position—I wish to make a few remarks with reference to my reasons for interfering in this case at all. I know I can see beyond my present position the importance of this case, and I was desirous to instruct the jury, either directly or indirectly, of the importance of their decision, while never for a moment deviating from the position which I assumed. I submit, my lord, that I effectually did that, and they incautiously and foolishly for themselves and for the country of which they claim to be subjects, have raised an issue which has to be settled by a higher tribunal than this Court.

The *Chief Baron*.—That is a subject upon which we cannot allow you to address us. We cannot suffer the place in which you stand to be made the arena, for appeals to those who may sympathize with you in opinion either here or elsewhere. We cannot allow you to refer to any ulterior consideration beyond that which belongs to the business in which we are now engaged, and that is, the pronouncing of sentence upon you. As to that, you are at liberty to state anything you may have to say against that being done.

The *Prisoner*.—I have said, my lord, all I intend to say on that subject. I will now refer to the nature of the evidence upon which I have been convicted; I consider that is a duty which I owe to myself, and I deem it a privilege which your lordship will allow me.

The *Chief Baron*.—It is right for me to tell you that this is not the time or stage of these proceedings in which you are entitled to comment in detail on the evidence, with the view to show that the verdict should not be what it has been. We are not at liberty to act on a discussion of the propriety of the verdict, unless you can point out something in point of law which shows infirmity in that verdict.

The *Prisoner*.—I propose, my lord, to show that the verdict is contrary to the evidence.

The *Chief Baron*.—I must again tell you that you are not at liberty to do that.

The *Prisoner*.—I propose to state briefly, in answer to the question put to me, why the sentence of the Court should not be pronounced on me. Do I understand your lordship to refuse me that privilege positively, and to stop and interrupt me by every means?

The *Chief Baron*.—Certainly not to stop and interrupt you by every means, nor to refuse you anything to which you are entitled. But you are not entitled to impeach the verdict by a discussion at large of the evidence. We are bound by that verdict just as much as you are; that is the law.

The *Prisoner*.—Have I not, my lord, the privilege of commenting on the evidence?

The *Chief Baron*.—You are not at liberty to comment at large upon the evidence for the purpose of showing that the verdict was wrong. What in strictness you are entitled to do is, to show any matter of law which may affect the propriety of pronouncing of sentence upon you, assuming the verdict to stand.

The *Prisoner*.—I have, therefore, to state that if you are determined, my lord, to take from me the privilege established by precedent in this court—

The *Chief Baron*.—There is no such privilege.

The *Prisoner*.—Has it not been accorded to every political prisoner sentenced in this court for the last three or four years?

The *Chief Baron*.—They have been allowed to address the Court. We will allow you to address us, and hear all you have to say, within the limits of what the law permits, in these, the last words which you can speak to us. The law does not allow us to permit, at this stage, the verdict of the jury to be impeached by detailed comments upon the evidence—the time for those comments was before the jury gave their verdict; but after the verdict has been pronounced, it binds us, as it binds you. I am now speaking as to a matter of fact. Anything in point of law that attaches infirmity to the verdict we will hear; and you are entitled to comment on all that, in point of law, tends to show why sentence should not be pronounced upon you.

The *Prisoner*.—What position do I stand in now, my lord? I have been indicted with a number of others for taking part in the Dungarvan landing, some of these have been tried, the case against others is virtually abandoned. I have been tried and convicted. Then what position do I stand in, my lord? Am I convicted on the evidence of Corydon, who swears that I belonged to the Fenian confederacy in 1863? Does that prove that I belonged to it in 1867? Am I guilty of the overt act of the 5th March, on which I stand convicted and await your sentence now?

The *Chief Baron*.—You heard the law laid down by me to the jury, which I was bound to lay down according to established authority, that if they believed you belonged, on the 5th March, to the Fenian confederacy, having for its object the

deposition of the Queen, you were guilty of the acts done on the 5th March, whether you were present at them or not; for you were answerable for all the acts done by your co-conspirators in that confederacy in furtherance of its designs. That is the law laid down, and that law we were bound to administer.

The *Prisoner*.—You instructed the jury at the same time, my lord, that the circumstance of my holding the position of a colonel, and belonging to the Fenian organization in '63, was sufficient corroboration of the evidence that I belonged to it in '67, and that is the point of your instructions on which I was found guilty.

The *Chief Baron*.—You are under some misapprehension. I stated to the jury that your holding the rank of colonel was evidence for their consideration, in considering whether you had belonged to the confederacy at a period anterior to the 12th April. I told them that they were at liberty to consider whether or not you would have been appointed to that rank if you had joined it then for the first time. I did not tell them that that *proved* the truth of the testimony of the accomplices, but that it was a matter on which they were at liberty to consider that testimony.

The *Prisoner*.—It is precisely the same thing, but expressed in different phraseology. Am I to understand, my lord, that I have not the privilege of addressing the Court as to why sentence should not be pronounced against me?

The *Chief Baron*.—You are not so at liberty to consider. You are at liberty to address the Court, but you are not at liberty to comment at large on the evidence, and to prove that the verdict was wrong.

The *Prisoner*.—Have I not the privilege of commenting on the evidence, my lord?

The *Chief Baron*.—I have answered that already.

The *Prisoner*.—What can I speak on, my lord? To what can I speak, if not to something connected with my case? I am not here to refer to a church matter, or any political question.

The *Chief Baron*.—I have told you what we are bound to rule.

The *Prisoner*.—I will state, my lord, that as an American citizen, I do protest against the whole jurisdiction of this Court from the commencement, in arraigning me, in trying me here forcibly, and in convicting me on the evidence of a man whom your lordship termed to be of the most odious character. You instructed the jury pointedly and strongly on one occasion—but your subsequent instructions modified that instruction—that no respectable jury could act on his evidence, and that it was a calamity for any government to have to use him. You instructed the jury to that effect, my lord, and the jury afterwards found me guilty on his uncorroborated evidence. I do not want to say anything disrespectful to the Bench or to the jury, but I want to refer to the nature of the evidence, and to see why I stand here as a felon to-day. It is a privilege which has been accorded to everyone who stood in the same position previously as I now stand in. I will, my lord, further refer to matters in connexion with this case, which, I submit, are extraordinary. There is one

part of it especially, that which is called the cabin oath, to which so much importance has been attached. Let the jury look at me, and say if they believe that I am such a scoundrel or such an idiot as to take into the cabin a man like Gallagher, an ignorant man, and place a pistol to his head to compel him to take the oath, and then allow him to go on shore. I ask you, my lord, not to believe that I am such a scoundrel or such an idiot. I ask you to believe that no Christian man would be guilty of such an act of idiocy, and I ask you not to place any reliance on Gallagher's oath. I say, my lord, I never saw Gallagher until I saw him in Kilmainham. You see the nature of, and the manner in which the evidence against me was got up. It appeared to be by the interposition of the Godhead, that each of these men was allowed to tell lie after lie; for though they were well trained, and received their lessons under able and experienced masters, they contradicted themselves word by word. These are what are called respectable men, forsooth, and their respectability is guaranteed by their evidence; but they have, I submit, perjured themselves. Gallagher, my lord, swore at first but one information, and that information, I submit, was the truth; it bore the impress of truth on it. He then swore a second information, and that second one was false. I say, my lord, that it is contrary to law to convict a prisoner on the evidence of a person who swore he was a perjurer; and, my lord, I may tell you that I have seen hundreds of times in America, cases where the judge sentenced the witness who perjured himself on the stand, and sent him at once to prison. What is the fact, my lord? Gallagher was imprisoned in Kilmainham with me; he was taken to the same exercising yard with me; he was brought there first on the 1st July; he was exercising in the same yard with me; he knew my name well; he heard it called several times; he knew the acts for which I was imprisoned, and he was taken away on the 1st August. During all the time while he was in Kilmainham he never once identified me. He is brought back to Kilmainham on the 12th October, and out of forty or fifty men he identifies only three. You will see, my lord, the impress of lies on the face of his testimony; for if he came on board the vessel in the ordinary capacity of pilot, he would do his duties as pilot, and when he had done them he would leave the vessel and get his pay. That is what would ordinarily happen in the case of a pilot, but not so in the case of the respectable Gallagher, for he swears that he was not only asked to pilot the vessel, but that he was taken down into the cabin, let into all the secrets, and made to swear he would not tell them when he went on shore. I submit, my lord, that what he swore in his first information had the impress of truth on it, and that all the subsequent informations were false, and that he perjured himself in them. I submit, that from the commencement to the end of this case, there is not the least shadow of evidence to show that there was any hostile intention to land on the coast of Ireland, and that the evidence as to the identity of the vessel would not stand for a single moment in a court where evidence and law would be respected, and where the evidence of perjurers

and informers would not be tolerated. On the supposition that this phantom, this flying Dutchman—which would be the better name to give her—existed, in what way does your lordship connect my name with it? The evidence is that the vessel seen in Sligo bay, and the vessel seen off Dungarvan harbour, are one and the same. My lord, I fail to see that they are one and the same. In the first information sworn by Gallagher, there is nothing said about the dimensions or the tonnage of the vessel; but in his second information they are made to correspond with some scribbled figures found on Nagle, and she is set out as being 81 feet and 115 tons burthen. The coastguard swore that she had double topsail yards, and that she looked like an American built vessel; while Brown, the Dungarvan fisherman, swore that she looked like a brigantine with white sails, and about 350 tons burthen. What evidence, then, is there, my lord, I ask, that the vessel seen in Sligo bay, and the vessel seen in Dungarvan harbour, are one and the same vessel? Not a particle of evidence, I submit. I submit also that there is not a particle of corroborative evidence to prove that the vessel seen off the coast of Donegal, and the vessel seen in Dungarvan harbour, with which you connect my name, are one and the same vessel, except the evidence of Buckley, who committed himself as a perjurer the very first question he was asked with reference to his age, on that stand. As to the so-called landing at Dungarvan, I submit, my lord, that you have no proof whatever that I shipped from an American brigantine in a hooker, or that I landed from the hooker at Dungarvan, or any other proof to connect my name with that matter, except the evidence of the informer and perjurer, Buckley. Your evidence is that a number of men were seen to land at Helvick Head, from a fishing boat, which, it is plain from the evidence, took them off a vessel that was out at sea; and that two persons afterwards presented themselves on the road, who were not disguised in any way, that they hired a cart, and drove them on towards Youghal. I submit, my lord, that the verdict of the jury is contrary to the evidence, and that there is not a particle of evidence corroborative of Buckley's, to show that I was one of the men that were landed at Helvick Head, or at Dungarvan. Though you deprived me of liberty, though you indicted, arraigned and convicted me as a British subject, while protesting against it, and ignoring your jurisdiction to try me at all, I submit, my lord, I have proved that the case against me was fabricated and based on perjury. I stand here now, my lord, a convicted felon, the victim of a slavish, cowardly, perjured, false band of informers.

The Chief Baron.—We can't allow you to indulge in observations of that kind; you must confine yourself to the question as to why the sentence of the Court should not be pronounced on you.

The Prisoner.—Corydon swore in his informations, my lord, that he knew me to be a state centre of the Fenian organization, in Massachusetts in the year '65, and after that he swore on the stand—he heard probably from a certain source that I would comment on his evidence, and he altered it to '63. In his informations he swore that he met me at several Fenian meetings in

the year '65, but he never attempted to repeat that on his direct evidence on the stand. He says that I was a captain in the year '61. That, my lord, I submit I will disprove also, but first allow me to refer your lordships to the peculiar position in which your law places me. I am an American citizen, and as such I owe allegiance to that government, and to none other. I am a soldier in the United States army, my leaning was always for the army; I have fought for America; I belong at present to her national militia, and in case of war to-morrow between these two countries, England and America, my position is in the army. What would be the consequence? Looked at in the light of the present trial, if your general took me in battle, what position would I be placed in? I am found guilty of high treason, and should be shot; and if taken on the high seas I could be strung up on the yardarm. The American Government has given me an engagement, a contract, that, if there was anything wrong in the course she followed by adopting me as a citizen, it was to be settled between the United States and the British Government; and instead of settling this matter with me, if there are complaints against or injuries caused by the Government of the United States, it should be settled with that Government, and not victimize me. The haste you showed in the matter, when it was evident that the United States Government were determined to settle the matter, and the haste you showed in bringing me to trial here, proves what the object of the Crown was. But although the spirit which will never bend, will never be broken, I am almost blind, so as to be scarce able to see your lordship from where I stand, from the effects of the confinement to which not a human being but a wild beast should not be subjected; and when your lordship will pass sentence on me, and remove me from the bastille in which I am at present to some other place, it is the greatest favour you can confer on me. Your law, I believe, my lord, claims even the sons of Irishmen, born in other states; but, strange to say, you don't seem disposed to interfere in that matter just now; you even claim the grandsons of Irishmen, for you claim as British subjects Andrew Johnson, our President, Secretary Seward, and Governor Fenton, of New York; and by your law General Washington, General Warren and Benjamin Franklin, lived and died British subjects, and you could hang the whole of them, if convicted of high treason. My lord, though a very humble instrument when standing before you at this moment, my case, believe me, assumes a most remarkable and important size, and the present cases would form a great and momentous epoch in the history of these times. There is one point, my lord, to which I want to refer—I mean the manner in which my Government has acted.

The Chief Baron.—I can't allow you to engage in a discussion on that matter; we have nothing to do with the conduct of that Government; we have only to administer the law of this country.

The Prisoner.—I will only call your attention to one point. I wrote to the President of the United States, and I received a communication from Secretary Seward.

The Chief Baron.—I cannot allow you to make any statement

with regard to any communication with the Government of the United States. I can't allow you to make any reference to anything done by any Government. We have nothing to do with the conduct of any Government; we have only to administer the law which we are sworn to administer here.

The *Prisoner*.—I was only going to state why the high officials of your Government —

The *Chief Baron*.—I cannot allow you to enter into comments on the conduct of any official of any Government. We have nothing to do with the conduct of officials even of our own Government. We are here to dispense justice according to law, and whatever officials of our Government, or of the American Government, may have done, cannot have the slightest effect on our judgment. It can neither affect us favourably or unfavourably as regards the prisoner; and it can neither affect us favourably or unfavourably as regards the Crown. We stand indifferent as to both. We have only to administer, for either, or against either, according as it applies, the law of the land.

The *Prisoner*.—My lord, I ask no favour in the matter. I am ready for a full measure of sentence. I was going to state, my lord, that while neither your Government nor the Government of the United States had kept the promises which were made —

The *Chief Baron*.—We cannot allow you to state what was promised by either our Government or the Government of the United States. I have told you already that we have nothing to do with the conduct of either Government.

The *Prisoner*.—I will only call your attention to the correspondence that passed between your Government and the Government of the United States.

The *Chief Baron*.—That I cannot allow you to do; with it we have nothing to do here.

The *Prisoner*.—Then I must conclude, my lord. It is generally very hard to prevent me from saying what I have to say, and I am not aware that anyone has succeeded in doing so up to the present, but your lordship has completely flanked me. My lord, I protest against the entire jurisdiction of this Court. I have confidence in my Government that they will see justice done to me, and that they will establish my right. The proposition of placing me in the position of the United States must stand or fall with the constitution of the United States. If England is allowed to abuse me as she has done, and if America does not resent England's conduct towards me, if the only allegiance I ever acknowledged is not to be vindicated, then thirteen millions of the sons of Ireland who have lived in happiness in the United States up to this, will have become the slaves of England.

The *Chief Baron*.—I can't allow you to use your present position for an appeal to the sympathies of any persons or party in America.

The *Prisoner*.—What can I refer to, will your lordship tell me? You will not allow me to refer to Irish men, perhaps you will allow me to refer to and speak of Irish women.

The *Chief Baron*.—My business is to tell you what you can't

refer to. You can't refer to what may be the conduct or the acts of any Government, or the acts of any people, whether in the United States or in this country ; with them we have nothing to do.

The *Prisoner*.—I must state, in conclusion, repeating that I ignore the whole jurisdiction of this Court either to indict, arraign, or convict me, and that the sentence which you will pronounce on me will be received under protest by me. I now, my lord, return your lordship my sincere thanks for your forbearance with me so far, while, at the same time, admitting that you have taken from me a privilege established by precedent, and that has been accorded to every political prisoner tried in this court for years past. Give me now, my lord, the full measure of sentence. I promise you I will live longer than the British Constitution.

(The prisoners William Halpin and Augustine E. Costelloe then severally addressed the Court.)

The *Chief Baron* then proceeded to pass sentence. He said—John Warren, William Halpin, and Augustine Costello, you have each of you been convicted of treason-felony. That crime consists of the design to depose the sovereign of this realm from her royal authority. The indictment charged each of you several acts as overt acts manifesting that design ; and sufficient proof has been given in reference to these overt acts to warrant your conviction. The jury in each case having been directed by the Court to consider it, with a view to ascertain whether there was any ground for a reasonable doubt, in each case came to the conclusion, without such doubt, of finding a verdict of guilty. In your addresses to the Court, you have endeavoured, each to comment upon the evidence on which the verdict was found against him ; and we have felt it our duty to stop you in a re-discussion, upon the present occasion, of matters which belonged to a former stage of the proceedings, when the jury had to consider that evidence. You, John Warren and William Halpin, were not defended by counsel ; but you certainly, each of you, in the efforts which you made with reference to your defence, brought out most of the points for the consideration of the jury that were material for that defence. I, during the progress of the trials, endeavoured, as it was my duty to do, holding the scales of justice evenly between you and the Crown, but dealing with men who were undefended by counsel, to lay before the jury all the matters which, as it appeared to me, I possibly could, in fairness to both parties, urge on your behalf. My learned colleague did the same in the case of the prisoner who was defended by counsel, and who has justly and fairly acknowledged that he had done so. With all the consideration that could be given to the case of each of you, in the course of a prolonged investigation, and with all the efforts that could be made to lay before the jury every fact that could be applied in your favour, each of your juries came to the conclusion of finding a verdict of guilty against you. And though, during your addresses, you have made several comments

on the evidence, I do not believe there was one of them that was not presented by myself, or by my learned colleague, to the jury by whom you were respectively tried. We have now but one duty to perform. We must act on the verdicts of those juries; and I have the concurrence of my learned colleague for saying, that we see no reason to cast the slightest shade of doubt on the propriety of those verdicts, arising from anything that appeared upon the evidence on which they were found. You have each of you addressed us some observations as to your positions as American citizens. At a former period of these trials, I had to remark on the state of the law upon that subject,—both in this country and in America. I felt it my duty to bring the attention of two of you, and of the counsel engaged for the third, to what I shall now briefly state again, namely,—that, according to the law of this country, he who is born under the allegiance to the British Crown, cannot, by any act of his own, or by any act of any foreign country or government, be absolved from that allegiance. But I have also to observe, that some of the greatest legal authorities in America have laid down the same law as affecting, not England only, but America also. It may be a calamity to persons circumstanced as you were, that in accepting the privileges accorded by the government of another state, you have done that which creates a conflict between two duties. You may have acquired all the privileges of American citizens. With these privileges no Court in this country does or can interfere. Of whatever privileges you received there, we cannot deprive you, if we would;—and, for my part, I would not, if I could,—except so far as they conflict with the duties you owe to the sovereign of this realm. But while you may enjoy those privileges in America, yet, when you come to this country, where your allegiance binds you by bonds from which you cannot be freed,—here, in this country, you must be amenable to the laws which here prevail. And in America, and in the tribunals there, an American citizen, according to the authority of one of the greatest judges that ever graced the bench in that country, would be similarly dealt with under similar circumstances.

The crime of which you have been found guilty would once have been treason in England. It has been mitigated to felony. But by an enactment of the law, which pervades every part of Her Majesty's dominions, and under the doom of which you must come when you pass within the precincts of the dominions of the British crown,—by that law it is treason-felony, punishable by penal servitude, to compass the design of deposing the Queen, and to evidence that design by an overt act of the party accused. That is the crime of which you have been found guilty. With respect to you, John Warren and William Halpin, you stand under circumstances varying somewhat in details, but almost identical in substance and in character. On the 5th of March last, it is now established and proved in evidence in these trials,—indeed it is a matter of public notoriety,—that an insurrectionary movement took place, which amounted to an actual levying of war against the Sovereign of this realm. You, William Halpin, came to this country,

having been previously in America, and having there served in the American army,—you came to this country for the purpose of aiding in the organization of that insurrection. You were assisted by others in that project, both in America, before you came here, and here, after you arrived. You, John Warren, came to this country, on an expedition to organize a similar insurrection, after the former one had failed, against the Queen's authority. In principle and character, the cases against both of you were the same.

I have already, in addressing the grand jury, expressed what has been frequently expressed from this Bench, and in other places, astonishment that such a project as this should be entertained by sane men. It is amazing to think that men of your period of life,—men of mature age and with full capacity for reflection, with all the experience of war and its results, for each of you appears to have been engaged in that remarkable conflict—one of the most remarkable of modern times—between the Northern and Southern States of America,—in which millions were engaged, in which the party resisting the existing authority had numerous armies, accomplished generals, and all the materiel of modern warfare, and were yet worsted in the conflict;—it is astonishing, I say, that notwithstanding all this, you could have entertained such a project as to organize an insurrectionary movement here for the purpose of shaking off the authority of the British Crown. I will not now dwell upon the reasons which would show the utter fatuity of such a project, besides those derived from the total absence of all means of warfare, the nearness of this country to England, the presence of the most powerful navy in the world, and of a large and disciplined army within a few hours' distance, furnished with all the appliances of modern warfare. It would be absolutely impossible, if you succeeded for the hour, to maintain your success for a day. But astonishing as such a project was, it pales before the scheme of the *Jackmel* expedition;—with a vessel of 115 or 120 tons burden, freighted with forty men, and with, no doubt, a considerable number of arms—one wooden vessel only,—proceeding to make an inroad upon the coast of Sligo in Ireland! Yet it was as much an invasion,—it was as much what is termed by the Americans, (who I believe first used the word), a filibustering expedition as if it were ten times as powerful; for the design and object were the same. And this was not only after the failure of the insurrectionary design and movement of the 5th of March last, but it was after a variety of trials in this country in which a number of persons were convicted and sentenced to severe penalties; trials which also preceded the transaction of March last.

The law, for the violation of which this prosecution was instituted, is a law primarily applied for the protection of the Sovereign and the maintenance of her authority, but it is also applied for the protection of the entire community over which the Sovereign reigns, against the terrible calamities that would result from an insurrectionary movement of that character. It is not only the conflict that may take place, in which one party must be worsted,

and in which success would be hopeless ; but it is the amount of confusion and disorder which, even if it be suppressed instantaneously, must follow from the attempt, and the sense of insecurity that would ensue—these would in themselves constitute great calamities, far greater than mere public alarm. All the affairs of the country become disarranged; capital—that most sensitive of all sensitive things—shrinks from dangers of that kind, and the whole community feels the mischief. On that subject I will not, however, enlarge;—I have done so before, and my brethren of the Bench have likewise done so. I speak of it now for the purpose of showing, that both of you, John Warren and William Halpin, have been engaged in precisely the same projects; the one to organize the insurrection of March last, and the other to organize a subsequent insurrection; that you both are guilty of not only the same offence in point of law, but of similar acts; and being guilty of similar acts, you must abide by the same doom. We have looked anxiously into the proceedings that took place both here and elsewhere with respect to former charges of a similar character, with the view, on the one hand, of awarding punishment adequate to the crime, and on the other, of not inflicting punishment beyond the necessity of the occasion. We are of opinion,—and I believe I speak the opinion of all our colleagues that have dealt with other cases of this kind,—that what might by some be termed leniency would not be mercy; it would be cruelty,—cruelty to those for whose protection the law is designed, and cruelty to those who may not have yet joined in projects of this character, and who might be tempted by too great leniency and by too light punishments to follow your examples.

In conformity with former sentences pronounced in this court for similar offences, the sentence we feel we are now bound to award against you will withdraw you for a prolonged period from all that you hold dear in the world. Truly did your brother prisoner say, it will be the immuring you in a living tomb. It is impossible for anyone who has witnessed these trials not to feel regret, not for the punishment which is to be inflicted, since it is the necessary consequence of the crime, but that you should have merited that punishment by such acts as those that have been proved against you. We lament to see the amount of intelligence which you certainly exhibited, so misapplied. We, however, can only deal out the punishment which the law imposes. It is our stern and imperative duty not to falter or waver in the administration of the law; and acting under the influence of the obligations which that duty imposes upon us, we feel we cannot pronounce upon each of you, John Warren and William Halpin, a sentence less severe than that you be kept in penal servitude for a period of fifteen years.

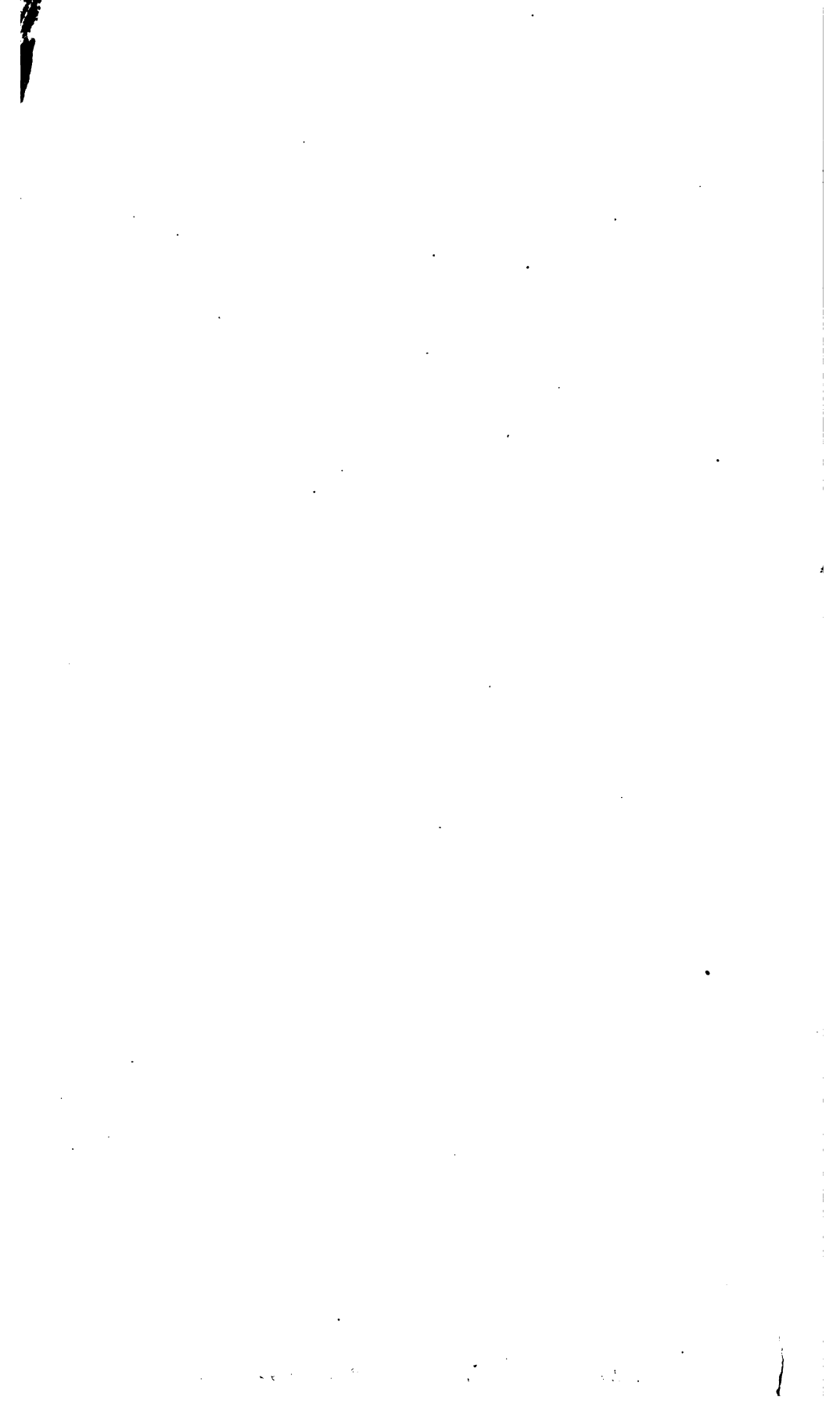
The Prisoner *Halpin*.—It may be fifteen years more, my lord, if you like. I will take fifteen years more for Ireland any day.

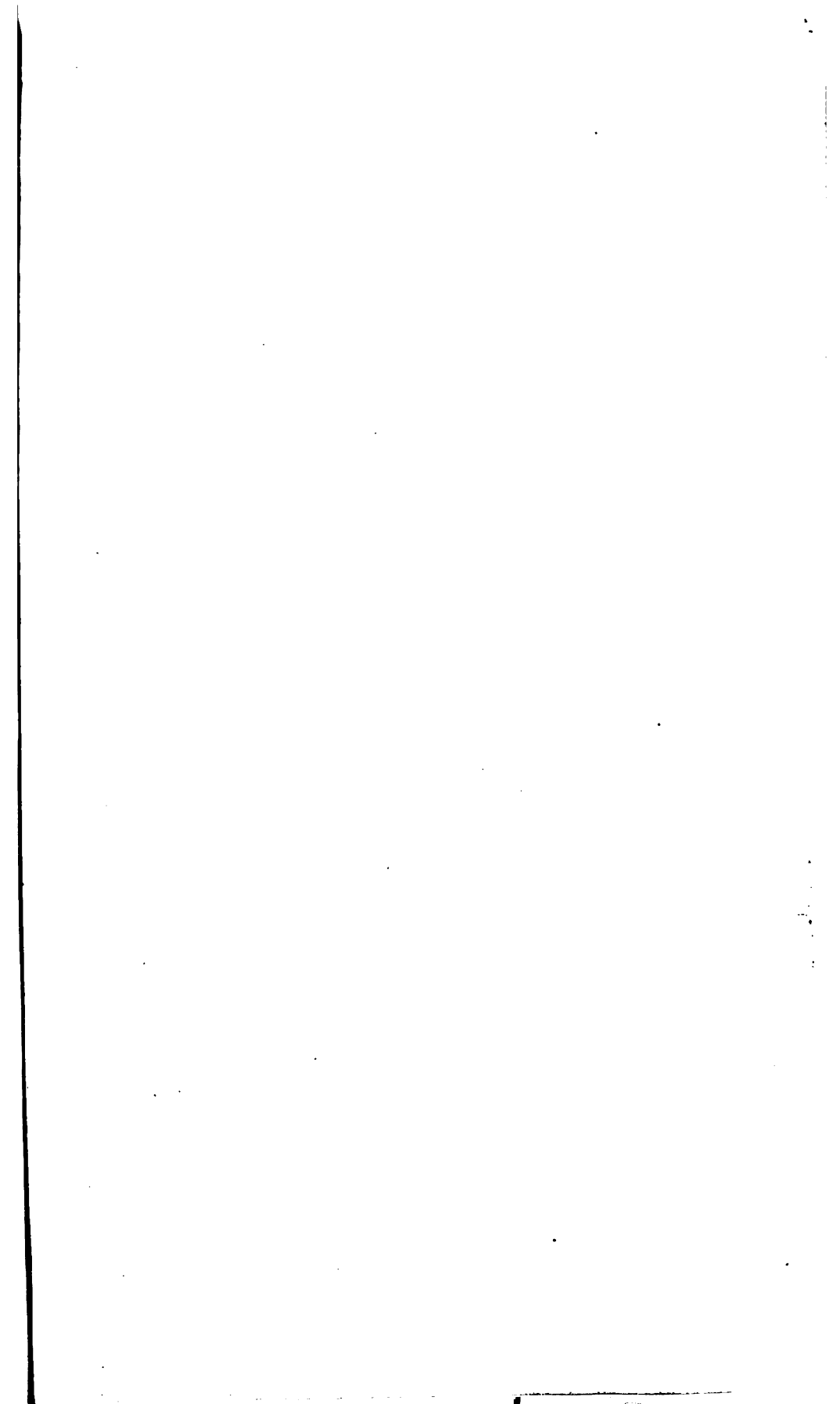
The *Chief Baron*.—Augustine Costelloe, we have looked with great anxiety into your case, to find anything which would distinguish it from that of the others whom we have now sentenced. They were leaders in each of the proceedings. One

assumed the rank of general, the other assumed the rank of colonel. They came here with the intention of acting as leaders. You were in a subordinate capacity. You are a very young man, apparently of an excitable temper,—and by that I do not mean in the least to disparage you. We have looked into papers found upon you, or traced to you, which we have had an opportunity of seeing,—which, fortunately for you, give considerable insight into your character—into the nature of your mind, the course of your thoughts and affections, and a certain amount of cultivation which your letters and other compositions certainly exhibit. There are indications in those writings which lead us to believe, that, however you may be impressed now with the views to which you have given utterance, further reflection will lead you to a better consideration of your position, and of the projects in which you have been engaged. We have, therefore, thought, that we were at liberty, in your case, to pronounce a sentence of somewhat less severity. Still it must be a severe one; and it will too well correspond with your own description of your anticipated doom. The sentence of the Court is that you be kept in penal servitude for a period of twelve years.

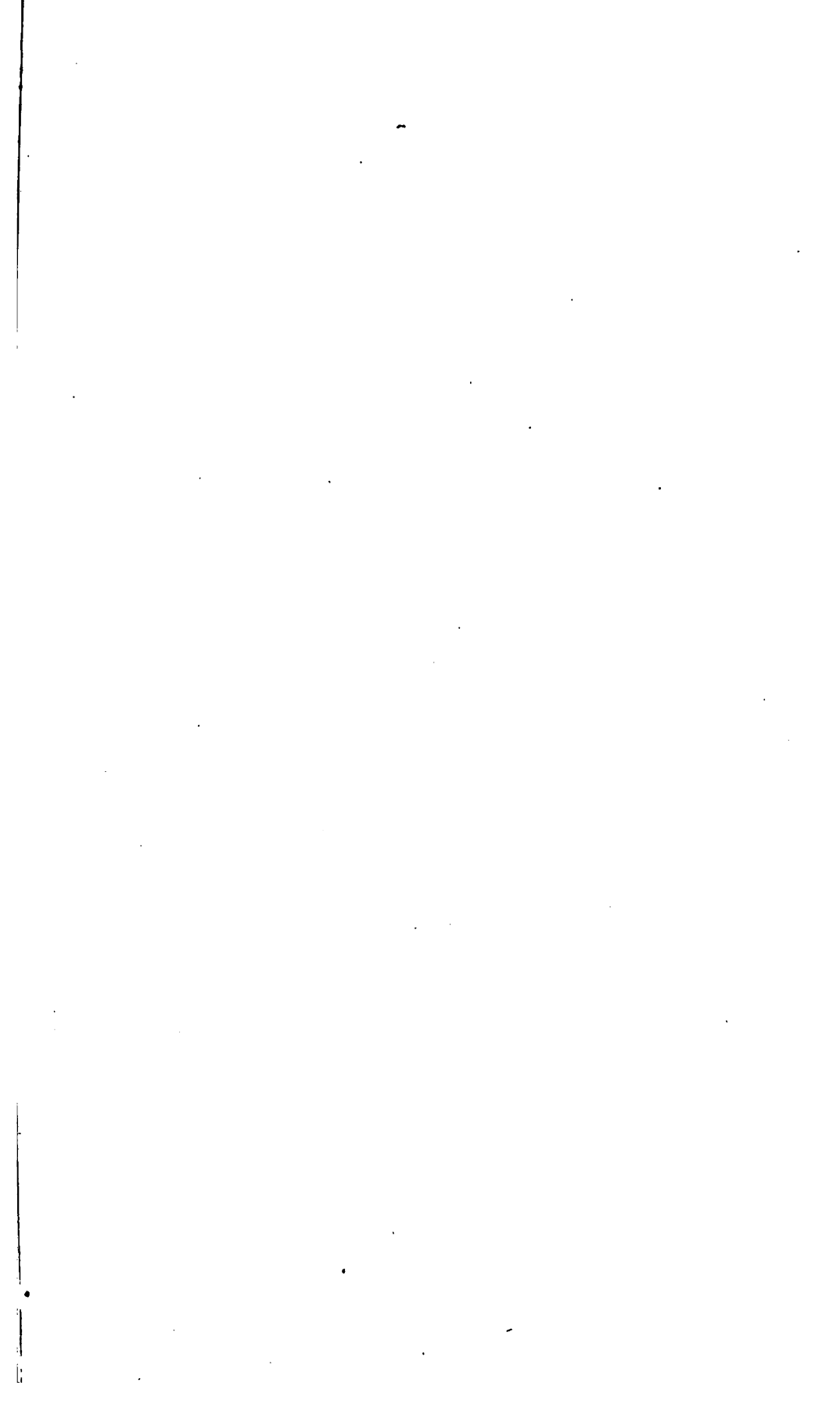
The Prisoner *Warren*.—I would respectfully say, my lord, that I would not take a lease of this kingdom for thirty-seven and a half cents.

The prisoners were then removed.





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