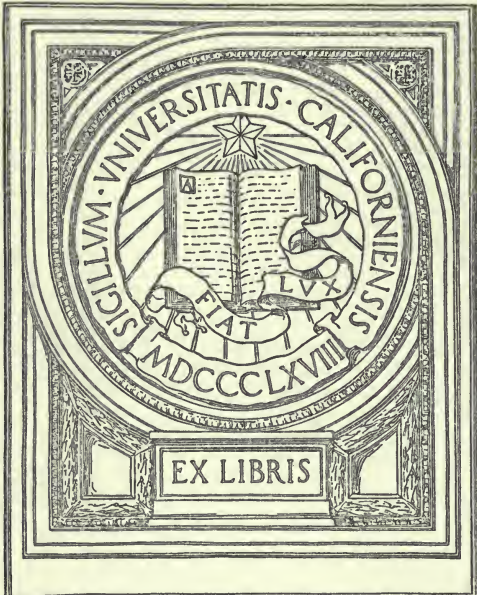
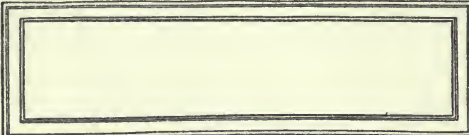


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OBSERVATIONS

ON

THE SALMON FISHERIES

OF

ULSTER;

URGING

THEIR CLAIMS TO LEGISLATIVE PROTECTION.

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BY

JOHN B. SHEIL, Esq. M.D.

OF BALLYSHANNON.

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LONDON :

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1842.

1876

THE SAHARAN BARRIERS

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## INTRODUCTION.

THE charter granted by King James the First, on the 9th day of April, in the year 1623, to Henry Lord Folliott, is an important document, so far as the right of fishery in Lough Erne, and the waters flowing into it, is concerned. This charter conveyed the right of the fishery; and is the foundation of Colonel Conolly's title, and that of the lessees under him, to the salmon and eel fisheries of Ballyshannon, as he has succeeded to the rights of Lord Folliott, not only in the fishery, but to the possession of large tracts of landed property, described in the same charter. James the First came to the throne in 1603, and died in 1625, and the charter was granted two years before his death. It was sent over to Ireland by King James, and signed with his own hand, and is amongst the records in Dublin.

As the breed of salmon in most of the Irish rivers has declined,—and as there is now a general open exertion used by various persons on the sea coast, and at the mouths of rivers, to capture the salmon, and intercept them by means of bag nets on their passage into the rivers,—it appears to me that the whole of the salmon fishery question, both as it regards original charters, and the right of exclusive fishery, as well as the question of the preservation of the breeding fish in the rivers, should be carefully considered; and then some new Act of Parliament be passed, applicable to the present state of various interests, and defining the boundaries of the river fisheries, as

well as determining the rules and regulations to govern fisheries on the sea coasts. If bag nets, or other engines, hitherto considered illegal, are henceforth to be used legally at the mouth of rivers to take the salmon, and if the *vested rights*, as they were hitherto considered, of the proprietors of river fisheries are to be done away with, let them have some compensation for their loss. It cannot be supposed they view with resignation the spoliation, as they consider it, of their property.

With respect to the Ballyshannon salmon fishery, I may state the fact, that my father, the late Dr. Sheil, made many substantial improvements in it; and under his judicious management the produce of it was increased, otherwise the enormous rent of 1,150*l.* yearly, and the great expenses attendant on it, would have proved a ruinous speculation to a less enterprising tenant. My father took every possible means of protecting the breed of salmon in the rivers flowing into the lake, and being much regarded in the county of Donegal, and esteemed by all the gentlemen in Fermanagh and Cavan, the salmon fishery, by their influence, was preserved in a great measure from poachers and depredation. The conduct of my father in politics in Ulster,—his patriotic principles, and efforts to promote concord and harmony amongst people of all persuasions, attached many to his interest, and procured for him the general good-will. The celebrated Sir Humphrey Davy, in his work *Salmonia*, describes the liberal reception at Ballyshannon of gentlemen anglers, his zeal to promote their amusement, and his hospitality and courteous manners, which rendered him, as the proprietor of the salmon fishery, deservedly popular. During his lifetime no person, with any pretension to the education or rank of a gentleman, ever attempted to injure the salmon fishery, far less to conduct a system of inroad and hostility; and the general regard of all classes accompanied him to the grave, and still attends his memory. An indescribable sympathy and kind feeling towards my father's orphan daughters (left dependent at his death on the property of the salmon fishery), pervaded all ranks in the county, and each



man, from the landlord down to the humble cotter, was disposed to look on any invasion of their little income, as robbery or spoliation deserving detestation. The Rev. Geo. N. Tredennick, the rector of Kilbarron, was the first to set this universal treaty at defiance. His proceedings, not long after my father's death, threatened to involve in ruin his orphans' property. Having brought over a Scottish fisherman, Mr. James Hector, to establish a bag-net fishery at the mouth of the river to take the salmon and sell them in Ballyshannon market; the population of the country, excited by what they deemed unlawful and unwarranted encroachments, assembled simultaneously, and under the influence of strong prejudice, unlawfully injured the nets of Mr. Hector. The Rev. Mr. Tredennick applied to the government to interfere, and crown prosecutions were instituted against a Roman Catholic priest and myself for a conspiracy. We were acquitted of the false charges, but I was found guilty of having written, and having published, my sentiments of Mr. Tredennick's proceedings in language too warm, and beyond what the letter of the law permitted. I was sentenced to a week's imprisonment, and bound in heavy penalties to keep the peace.

The learned judge, Baron Pennefather, who tried the fishery cases at Lifford, having stated that the laws allowed every person to fish for salmon in the high and deep sea, (without defining any boundary or reservation as to the fishery at the mouth of the river, and the right of fishing on the sea coasts and shores,) the opinion of the judge was seized on by Mr. Tredennick as a sanction for all his proceedings, and, accordingly, in the next summer he not only renewed his fishery with several bag nets, but obtained from the government a large force of police and water guards to protect Kildoney. The people finding that the law permitted the bag-net fishery, and that to interfere with it was a breach of the peace, refrained from any further opposition to it; so that the necessity of keeping up a large police at Kildoney every summer since, at great expense to the county, was totally uncalled for. Unfortunately, although the opposition from the people ceased, their indignation against

the individual remained unsubdued. Some of Mr. Tredennick's cattle were cruelly destroyed by night. The perpetrators were unknown, but a man of the name of Mac Cowley, several months afterwards (from motives hitherto unexplained) came forward, and swore that the outrage was perpetrated by some of the fishermen in the employment of the *Sheil family*. On his single unsupported testimony, several of the fishermen were arrested in the midst of the fishing season, brought in handcuffed to Lifford Gaol, and kept there for several weeks. Some of them were never arraigned, but discharged without trial; and the only one brought to trial was arraigned on a different charge, viz. of Ribbonism, and acquitted. The informer, Mac Cowley, is still retained in custody, and even at the last assizes was produced before the grand jury of the county of Donegal, to prosecute other people on a charge of murder, but his testimony was not believed. Endeavours are still made to make it appear that a large police force is required at Keldoney for the protection of Mr. Tredennick, and the county is obliged to pay the expense.

Having given this sketch of Mr. Tredennick's previous proceedings, I may now state the cause of the public investigation held in Ballyshannon on the 20th and 21st of July, 1841, a report of which I republish in this work, as it excited great interest at the time, and as the edition which I printed of five hundred copies has been long since bought up and exhausted. An attempt having been made to fish for salmon within the bar of Ballyshannon, by some of the Bandoran fishermen, and they having taken salmon with a net within the limits of the river fishery, were prosecuted under the Act of Parliament before the Petty Sessions bench at Ballyshannon, and convicted of the offence. Mr. Atkinson was one of the magistrates on that occasion. An appeal was made to the Quarter Sessions, but the barrister refused to go into the case, as no right of appeal existed. A memorial was sent for these men to government, *without their knowledge or consent*, but the government finding that the representations in the memorial were false, refused to interfere with the decision of the magistrates. Some

of these men were prosecutors before the bench on the 19th of June, and Mr. Atkinson was accused by the Rev. Mr. Tredennick, of having in their presence, in open court, used encouragement to the people to destroy the bag nets, and injure the property of persons fishing for salmon in the sea. The evidence now published will satisfy the reader that the conduct of Mr. Atkinson did not merit the impression which the Rev. Mr. Tredennick sought to convey of that gentleman to the government. Possessing an independent estate, and fulfilling all the duties of a resident landlord, and having been for more than twenty years on the grand jury of the county of Donegal, Mr. Atkinson had too much spirit to suffer the imputations against him to remain unrefuted. He demanded a public inquiry, and the result is before the public. In short, if this pamphlet and the evidence it contains exposes covetousness and design where integrity should exist, and good example be held forth, it will also serve to prove that a magistrate of honest principles is sustained by the public esteem against malevolence and calumny, and entitled to what he assuredly enjoys—the respect and confidence of the upright portion of mankind.

The letters which I have received from various respectable persons, who have read the first edition which I published of this Investigation, contain abundant proofs that the subject of the Ballyshannon fishery is interesting to a large class, *both influential and respectable*. The gentlemen anglers, too, of Great Britain, and such as have visited Ballyshannon in the summer season for their amusement, are sensible of the desire on the part of the present proprietors of the fishery to facilitate their enjoyment of angling.

The town of Ballyshannon in the summer months is the resort of many gentlemen of fortune, who take pleasure in angling for salmon, which, from the 1st of June to the 12th of August, the period allowed by law for angling, are to be had in abundance. One gentleman in the last season, with a single rod and unassisted, caught so many as eighty salmon from the beginning of June to the end of the season.



The water-keepers of the lessees are ordered to give no hindrance to gentlemen having the printed permission of Miss Sheil to angle for salmon or for trout, but all other persons are prohibited, and the river is strictly preserved. No gentleman is allowed to angle below the bridge, or near to the salmon boxes ; but there are many excellent salmon throws between the town and Belleck, a distance of three Irish miles, and there are paths along the river side, so that approach to the water along the line is easy of access. All the salmon taken by angling are to be carefully preserved, and not to be injured by gaffs, but delivered to the water-keepers, and sent to the fish house. There is a very good hotel in Ballyshannon, kept by Mr. Cockburn. The mail coach from Dublin arrives every day ; and there is no place in the three kingdoms where a person fond of angling can have more opportunities of amusement, at a moderate expense. It is the interest of the proprietors of the fishery, as well as their disposition, to cultivate the goodwill and good wishes of the gentlemen anglers who visit Ballyshannon, and also to maintain that station in the regard of the people which the late Dr. Sheil enjoyed, and which his family trust they have not forfeited.

The salmon and eel fisheries of the river Bann, from the high and deep sea to Lough Neagh, also those of Lough Foyle, from the high and deep sea to the town of Lifford, together with the whole of the ground and soil of the same, are the property of the Honourable the Irish Society of London, having been granted to them by charter of King James I., in the 11th year of his reign, (1613.) These are by far the most valuable of the fisheries in the province of Ulster. A direct attempt has been made of late years by the Rev. J. Molesworth Staples, the Rector of Moville, to interfere with the rights of the Irish Society over this part of their property, and they have been obliged to resort to a court of law for protection from these unjust aggressions. The reader will find in this pamphlet an account of the injury done to the Society's interests, and which, if suffered to remain unredressed, must prove detrimental to the salmon fisheries to an incalculable extent. The

conduct of the Irish Society in the county of Derry, and the benefits they have conferred on their tenantry, by their generous and disinterested management of the great estates committed to their care, are well known in Ulster; and I deem it my duty, as an advocate for the preservation of the salmon fisheries of this part of Ireland, to lay before the public the information which I have collected from authentic sources as to the aggressions on the Lough Foyle fisheries belonging to the Irish Society, and the conduct of the Marquis of Donegal, the Rev. J. Molesworth Staples, and others of the Donegal magistracy in reference thereto; and which, with other matters concerning the salmon fishery question, will, I hope, render this pamphlet not undeserving of attention.

J. B. S.

BALLYSHANNON, DONEGAL,  
*December, 1841.*



# OBSERVATIONS

ON THE

## SALMON FISHERIES OF ULSTER.

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*“Dublin Castle, 11th August, 1841.”*

“SIR,—In reply to your letter of the 8th instant, with regard to the inquiry into the charges preferred against Mr. Atkinson by the Rev. Mr. Tredennick, I am directed by the Lord Lieutenant to observe, that, as the court at which the inquiry was held was an open one, his Excellency can make no objection to the publication of the evidence.

“I am, Sir,

“Your obedient servant,

“*J. B. Sheil, Esq. M.D. Ballyshannon.*”

“MORPETH.”

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AT a Public Investigation held in the Town-Hall of Ballyshannon, on the 20th of July,

MR. DRUMMOND, *Stipendiary Magistrate, on the Bench,*

The following letters were read:—

*“Kildoney, Ballyshannon, 25th June, 1841.”*

“SIR,—Having attended the Petty Sessions at Ballyshannon, on Saturday the 19th instant, I consider it my duty to acquaint you, for the information of his Excellency the Lord Lieutenant, with some observations addressed by Mr. Atkinson, from the bench, to the people, calculated, in the strongest manner, to excite their minds to a repetition of the disgraceful acts of outrage committed in the neighbourhood, on former occasions. A case having been brought forward, connected with the coast fishery at Bundrowes, which the magistrates did not consider themselves warranted in entering on, Mr. Atkinson, from the bench, took the opportunity to say to the crowd present—‘Remember, boys, you may cut, hack away, and destroy all you please; only take care, don’t commit a breach of the peace, to bring you before us, the bench, as we cannot interfere.’ This he repeated three several times; and was understood as encouraging the persons carrying on the obstruction and opposition to the salmon fishing at sea, by the proprietors of river fisheries, to destroy the nets of the fishermen engaged, for the reason that injuries committed at sea do not come within the jurisdiction of the minor courts. I immediately required Mr. Hayden, sub-inspector of police, to take a note of the observations, and which he accordingly did.

“It is unnecessary for me to offer any remark, as his Excellency must be aware of the gross impropriety of such language coming from the bench, especially as Mr. Atkinson, last year, held out similar encouragement from the bench, to the perpetration of such illegal acts. While a magistrate is permitted, with impunity, to act in this way, in order to effect a private object, it is not surprising that a large police force is necessary to preserve the peace, and prevent outrages on private property.

“I have the honour to be, Sir,

“Your very obedient servant,

“*To Norman W. MacDonald, Esq.*”

“GEO. N. TREDNNICK.”

*“Cavan Garden, Ballyshannon, 1st July, 1841.*

“SIR,—I have to acknowledge the receipt of your letter of the 29th ult., in which you state you are directed by the Lord Lieutenant to transmit to me a letter from Mr. Tredennick to you, and to signify his Excellency’s request that I should furnish him with an explanation of the language attributed to me, on the occasion to which Mr. Tredennick alludes. Notwithstanding Mr. Tredennick’s situation as a clergyman, and as the rector of the parish I live in, I do not hesitate to say, that his letter is a *tissue of falsehood* from beginning to end; and I beg leave most respectfully to add, that, under my present feelings, as a magistrate of long standing, and a gentleman well known in this country, I must, with great reluctance, decline complying with his Excellency’s request of entering into a written explanation of the conduct imputed to me by Mr. Tredennick, but am ready to meet any inquiry the Lord Lieutenant may be pleased to appoint, only requesting that as the crime (for crime such conduct I allow would be,) is alleged to have been committed by me, in an open court, I shall have the benefit of a public investigation.

“I have the honour to remain, Sir,

“Your very obedient servant,

“THOMAS J. ATKINSON,

“*J. P. County Donegal.*”

“*To Norman W. MacDonald, Esq.,*  
“*Dublin Castle.*”

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*“Dublin Castle, 5th July, 1841.*

“SIR,—IN accordance with the spirit of your letter of the 1st inst., in reply to mine of the 29th, transmitting to you a letter from Mr. Tredennick, his Excellency will order an inquiry to be held, as to the accuracy of the charges made against you by that gentleman.

“I am, Sir, your obedient servant,

“N. W. MACDONALD.”

“*To Thomas J. Atkinson, Esq. J. P.*  
“*Cavan Garden, Ballyshannon.*”

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*“Glenties, Ardara, 20th July, 1841.*

“SIR,—I beg to inform you, that I have received directions from his Excellency the Lord-Lieutenant, to make an investigation as to the correctness of certain charges made against you by the Rev. Mr. Tredennick, in a letter from that gentleman to Mr. MacDonald, the Under Secretary, dated 25th June ult., and which has been already transmitted to you.

“The investigation is ordered to take place on the 20th instant, of which I now beg to give you notice.

“I have the honour to be, Sir,

“Your obedient servant,

“T. DRUMMOND.”

“*Thomas J. Atkinson, Esq.*”

CHARLES HAYDEN, *Esq. Sub-Inspector of Police, sworn—examined by the Rev. Mr. TREDENNICK.*—Did you attend the Petty Sessions on the 19th of June?—I did.

Do you recollect the nature of the case that was tried on that day?—I do perfectly; a complaint was preferred against certain men belonging to Mr. Cassidy for having raised the nets, with the intention of letting out the fish, and using violent language.

Did you collect this from what occurred on the bench?—From what occurred on the bench.

Was the case gone into by the bench on that day?—No.

Which of the magistrates on the bench spoke on that occasion?—Mr. Atkinson.

Was the case dismissed?—It was.

Upon what grounds?—From not being within the jurisdiction of the Petty Sessions.

Do you recollect, before the case was dismissed, Mr. Atkinson referring to me, as to what was the decision of the judge at the assizes of Lifford, in a case which had been appealed to from the Quarter Sessions, and connected with the coast fishery, last year?—I remember the subject, and your reply.

Was it not that the judge had decided that he had no jurisdiction, as it was a case of mere civil action brought to recover compensation for alleged loss incurred at sea, but which should be tried before the Court of Admiralty, and that it had no reference whatever to trespass committed at sea, which would lead to a breach of the peace?—That was Mr. Tredennick's explanation.

After the case was dismissed by the bench, do you recollect Mr. Atkinson addressing the people?—I do.

Do you recollect the words used by him?—I do.

Were you required by me to take a note of these words at the moment?—I was called on officially so to do, at the very moment.

Did you do so at the moment?—I committed them to paper at the moment, and wrote two lines; I had no paper nor pencil, but was handed both by Mr. Tredennick.



Were these words repeated more than once?—They were.

How often?—In all, three times.

Did you make any observation to me, while in the act of committing them to paper?—I did.

What was that observation?—That I certainly should remember them, when called on by you to do so.

Did you report those words to the government?—I did not wish to do so.

Can you state what those words were?—I can.

State them.—These were the words, "*Remember, you may cut and slash away, and destroy all you please, but take care you do not commit a breach of the peace, to bring you before us;*" that is the entire I committed to writing.

Was there any variation in these words, in all the three times they were used?—There was.

Can you state the variation?—In one case the word "*hack*" was used in place of the word "*slash*."

Have you a doubt, in your mind, as to those words having been used on the occasion?—Not the smallest.

Has there not been a large police force employed, for some years past, in this neighbourhood?—Yes.

Has there not been great opposition to the persons engaged in fishing on the coast, and great excitement?—There has.

By whom was that opposition carried on?—I feel a reluctance in answering that question.

Do you recollect a case connected with the sea-coast fishery, brought forward last year at the assizes of Lifford?—I do.

Who was the professional man employed who brought forward this case at the assizes?—Two sons of Mr. Atkinson were engaged in that case.

Did you receive information of any threats being used by the party, which caused you to apply for an increased force of police to preserve the peace?—I did.

Did you receive it from a variety of quarters?—From many quarters.

Were not the words reported to you, as then used, identical

with the words used by Mr. Atkinson on the late occasion?—They were to the same effect; not absolutely identical.

Did you receive information of any person having been in company with the party using those expressions, at the moment they were used?—I received such information; a son of Mr. Atkinson was present; I received the information officially.

Who gave you the information?—Head Constable Macartney, and Sergeant Dobbins, and several other individuals.

In consequence of that information you thought proper to apply to government for an increased force?—From that and similar circumstances.

*Cross-examined by Mr. ATKINSON.*—You attend the Petty Sessions regularly?—Not regularly, but very generally.

What time did you come there on the 19th June?—About one o'clock.

Did any one come with you here?—I did not come with Mr. Tredennick, nor did I know that Mr. Tredennick was to be here that day.

Were you in the Petty Sessions room when Mr. Tredennick's case with Ward was brought on, for stopping him on the public road on the 17th instant, and illegally and forcibly taking from him two carts of stones, that he had for the county work?—[Question objected to by Mr. Tredennick.]

On your oath did you hear Mr. Tredennick make any remark on my conduct when sitting on that bench on that day?—None whatever in a censurable way.

You were present at the conclusion of Ward's trial?—I was present at the latter part of it.

What was the decision of the Bench?—It was dismissed.

It was after that you got the pencil?—It was.

Were you here when Mr. Tredennick said he was insulted, but had no redress?—I did not take particular notice.

In respect to the fishery case, who were the words addressed to?—The remarks were made from the Bench, but I know not the individual to whom they were addressed.

Did you hear the word "boys" used from the Bench?—It was.



Was the Bundrowes case reported to you?—No.

Was it reported to you officially?—It was not.

Who was the person that explained the law of the case to the fishermen — was it Mr. Tredennick? — I do not remember.

Did you hear me say that if any damage was done, it was a waste of time to come to the Petty Sessions, but to go to the Court of Admiralty; and that if any stones were thrown into the boats, or any breach of the peace or personal injury committed, that it would be noticed?—You did; but cannot say your words exactly.

On your oath, did I not tell those fishermen who complained on the 19th of June, that in case any damage was done to their property, on the high seas, that they had another court than the Petty Sessions, in which they could get redress?—You used words to that effect.

Did I not say that if a breach of the peace occurred, it would be attended to by the magistrates, and would be punished?—You mentioned that, or spoke to that effect.

Will you say it was not Munday who used the words “*hack*” and “*slash*?”—I did not hear him say so.

Did Owen Kerrigan say there can be more of that play?—I heard some angry expressions.

Not from Kerrigan?—He might have said that.

You took no note of that, and yet you took a note, you say, of my words?—I was called on officially so to do by Mr. Tredennick.

Did you hear the name of John Gilvarry on that day, or did he say you may cut away and hack away?—I did not.

Your mind was attending to what fell from the Bench?—It was, as I am bound to do so officially.

You did not compare notes with Mr. Tredennick?—No.

Did Mr. Davis make any remarks?—No.

Did Mr. Allingham?—No.

Are you aware of any private object or interest I could have in the case, that would have influenced my conduct?—I cannot answer that question.

Can you form any opinion of it?—I am not accusing Mr. Atkinson of having any private views whatever.

Are you aware of any interest or connexion I have in the fisheries of Bundrowes or Ballyshannon?—No.

You say you have attended the Petty Sessions regularly, and must have heard complaints against poachers brought forward.—Some such cases have occurred.

Have the Bench showed any neglect of punishing poachers?—You have showed every disposition to punish such offences.

How long have you been in Ballyshannon?—About three years.

Have you heard the state of society in this country before the coast fisheries commenced?—I was not here.

Have not outrages been committed since you came to this place?—All the disturbances occurred before I came, and I was sent here in consequence of these outrages.

All things then have been peaceable since?—*There is no more quiet or peaceable country.*

Were you not here when Mr. Tredennick's cattle were killed; and did you not assist Captain Hill in his inquiry into the matter?—Yes.

Did you not also know and attend the inquiry in William Black's case, for the killing of his heifer and receiving a threatening letter?—Yes.

Have you not heard of some accusation being brought against the Police themselves, and one for stabbing an ass?—Yes, I did all I could to discover it; the wound appeared to have been made with a bayonet; it was triangular.

Did not the case of the ass occur since you came to Ballyshannon; and were you not in charge of the police at the time?—Yes.

Were you not yourself prosecuted for an assault, and fined by the Bench in the sum of ten shillings?—(No answer.)

*John Gilvarry examined by Mr. TREDENNICK.*—Deponent has been in the habit of fishing at Bundoran; has been forcibly prevented from fishing; summoned the party on the

19th of June; got no redress; Mr. Atkinson said to "*slash away and tear away, and not to come to the Bench any more;*" never got justice here only the last time; the party told the police that the magistrates ordered them to prevent us; a cutter's boat went over on Saturday last to that part of the coast, and the party opposing deponent, said they would haul and tear away the nets in spite of the police, and that we never would get justice from the Bench in Ballyshannon from the interest which Mr. Cassidy had there; was not instructed by Mr. Tredennick as to the evidence he should give on this occasion; was desired by him to tell the truth.

*Cross-examined by Mr. ATKINSON.*—Is not the owner of the boat, but has a share in her; swears that he has a distinct recollection of the words used on that day, the 19th of June; does not recollect having said on that day, "Now, boys, we may cut away as much as we please, or as we like;" was sent to jail for having fished in Pool Rain, within the bar, but thinks he had a right to fish there, *because sea-wreck grows in Pool Rain*; never told Mr. Tredennick anything; does not know him more than any other man.

On your oath, sir, do you say that you would not know Mr. Tredennick, the clergyman of this parish, and who comes so often into town with fish to sell them?—Mr. Tredennick did not tell me what to say.

Did I not tell you that if any damage was done to your property, you would get redress?—Yes, at the Court of Admiralty.

Did you ever go to the Rector's shore to fish on a Sunday?—Yes.

Did you ever know Mr. Tredennick before this occasion?—No.

*William Daly examined by Mr. TREDENNICK.*—Deponent has been in the habit of fishing; was obstructed, and summoned the party on the 19th of June; got no satisfaction from the court; the case was dismissed; Mr. Atkinson told them to go home and to *cut and tear away*, and never to come here looking for law; these words were addressed to the men who were



in the court looking for law ; deponent saw the cutter's boat go over to that part of the coast on Saturday last, the 19th of July ; Cassidy's men said they would prevent us if there were even three boats with police ; Mr. Tredennick never told deponent what he was to say, but sent for him this day, and cautioned him as to his evidence, and to tell the truth.

*Cross-examined by Mr. ATKINSON.*—Dependent got no satisfaction at the Petty Sessions ; swears that Mr. Atkinson ordered them home, and to *cut and haul* away, and *to be going home, boys* ; the words were used after the case was over ; is sure that he heard Cassidy's men defending their case, and that the magistrates went into that case ; cannot say to whom the words were addressed ; did not hear Mr. Atkinson use the word “destroy ;” did not hear any person say, “Remember, boys,” on that day ; had a conversation with Mr. Tredennick some day last week in Kildoney, and he told us that the cutter's boat would go over to us ; did not hear any conversation between the police and his boat's crew ; cannot say where he was on Saturday last : has been in Lifford gaol ; a memorial was sent for him, but does not know by whom his name was signed to it ; *swears that he knew nothing about the memorial, and that he cannot write his name.*

*James Munday examined by Mr. TREDENNICK.*—Deponent is a fisherman, and summoned the persons preventing him on the 19th day of June ; received no redress ; was desired to go home, and *that we might slash away and tear away* ; is only sure of the word *tear away* ; a boat's crew of the Snipe cutter went over to Bundoran on Saturday last ; the persons preventing deponent said they were told by the magistrates to *skunk* deponent and his crew ; deponent asked Mr. Atkinson if he would get any satisfaction at the Petty Sessions Court ; he said not ; was never told by Mr. Tredennick what he would say this day.

*Cross-examined by Mr. ATKINSON.*—Being asked Mr. Atkinson's words, does not remember the word “slash” away, and did not hear the word “tear” away ; deponent, on his

oath, does not remember the words "Boys, you may cut away, and destroy all you please," to have been used by Mr. Atkinson on the day alluded to; was in the court, and must have heard them if they were used.

*Richard Bracken, police sergeant, examined by Mr. TREDENNICK.*—Deponent received orders to go to the Bundoran shore to preserve the peace at Bundrowes, and protect the fishery; went there on Saturday morning last; when he approached, he saw men in one of the boats in an excited state: thinks that a serious breach of the peace would have occurred had not the police been present; heard violent language and threats using; Cassidy's men wished to prevent the Bundoran men from fishing; deponent did not attend the Petty Sessions on the 19th of June.

*Cross examined by Mr. ATKINSON.*—Reported to Mr. Tredennick on that evening; Mr. Tredennick was at his own hall-door; did not report to Mr. Hayden; any man in the boat must have heard him speak and caution them.

You have been some time in this town; have you ever heard any language from the Bench calculated to induce a breach of the peace, or to encourage a violation of it; or did you ever hear me hold out such language either in a fishery case or any other?—*I never did.*

I believe you have been promoted lately in the Constabulary, by whom were you recommended?—By Mr. Hayden. [Mr. Hayden here said there was a recommendation from Mr. Tredennick for his promotion.]

Did you hear of any person having been wounded at Kildoney?—Yes, there was an attack on the police barrack there, and it was said a man was wounded, but I cannot tell who the man was.

Do you believe there would have been any occasion for police at Kildoney, or any disturbance there or in this country, but for the fishery of Mr. Tredennick?—There was a bad feeling on account of it.

On your oath, have you not heard that *a man was murdered,*



in consequence of the bad feeling created?—It was so as deponent heard; the people must have had a bad feeling towards Mr. Tredennick when they destroyed his cattle; the outrages on those cattle were committed in consequence of the fishery being carried on; some of the men who were taken up, on suspicion of having committed those outrages, were in the Misses Sheil's employment, who are tenants of the Ballyshannon fishery; recollects also that one head of cattle of Mr. Black's was killed shortly after these occurrences; deponent was stationed at Killibegs before he went to Kildoney, and was ordered to Kildoney from that place.

*Edward Allingham, Esq. J.P. examined by Mr. TREDENNICK.*—Deponent sat on the bench on Saturday, the 19th of June, as a magistrate; recollects the case of the Bundoran fisherman, as he issued the summons on that occasion; we dismissed the case, because a similar case had been brought before the barrister on a former occasion and was dismissed; did not express on the Bench, or subsequently, any intention of taking informations for a similar case: it was the last case brought on that Saturday, and deponent was about to leave the court; thinks it was the very last case brought forward, although it might not have been the last on the Petty Sessions book; the observations of Mr. Atkinson were that he did not conceive we had any jurisdiction in those cases; deponent was on the move, and was impatient to get away; was listening to all, but not being interested in the affair, and being tired and fatigued, deponent did not take the slightest notice of what was going on; does not know of any observation having been made, and heard nothing to attract his attention in particular; deponent paid no attention to any thing that was said, but must have heard, and yet was paying no attention to what was passing; had dismissed the case from his thoughts altogether; deponent dissented in the case from the other magistrates, by saying that he thought the magistrates could take notice of a trespass of one fisherman on another fisherman's nets; would not have given a summons otherwise; was not aware that the case dismissed

by the barrister was a similar case to that brought before the magistrates ; was not aware that parties had been processed on a similar case.

*Cross-examined by Mr. ATKINSON.*—Deponent is aware of Mr. Tredennick having been summoned on that day for intercepting carts with stones ; Mr. Davis told deponent the day before of this affair ; Mr. Tredennick himself told him of it on the morning of the Sessions ; after deponent came into court, a letter was handed to him by Mr. Tredennick, on the bench ; it was addressed to him individually for the purpose of laying it on the bench ; deponent read the letter and laid it down on the bench, and requested the magistrates to read it ; deponent supposes the letter to have been written by Mr. Tredennick for his defence ; the other magistrates did not read the letter, and refused to read it ; has the letter at present in his pocket ; did not read it, and would not assign any reason for not doing so ; does not recollect either Mr. Davis or Mr. Atkinson telling him their reasons for not reading it ; recollects now that Mr. Davis refused to read it as it was addressed to an individual, and not to the Bench ; the Rev. Mr. Tredennick came on the bench on that day, and had with him books and papers ; Mr. Atkinson said to him, “ that place was reserved for the magistrates ; ” Mr. Tredennick was first outside the bench ; swears that he had no private conversation with him on the bench, but, on Mr. Atkinson saying that the bench was for the magistrates, Mr. Tredennick left the bench, and said, “ You mean to insult me also ; ” the words were addressed, he thinks, to Mr. Atkinson ; does not recollect the words, “ I am insulted, and can have no redress ; ” Mr. Atkinson made no answer to Mr. Tredennick ; deponent told Mr. Davis that Mr. Tredennick conceived himself not *treated courteously* by being summoned ; deponent thinks that in the present times all men should be treated alike, and would have granted the summons himself against Mr. Tredennick ; thinks it was not courteous to order him off the bench ; recollects seeing him here on former occasions ; has never been consulted by him on law matters ; deponent says, although the case similar had been

dismissed by the judge and by the assistant-barrister, he (Mr. Allingham) would have gone into the case of the Bundoran fishers; does not recollect Mr. Atkinson addressing Mr. Tredennick about the Bundoran case; was not particularly attentive to what was going on; heard Mr. Tredennick say that he concurred in the magistrates' view of the case; heard Mr. Atkinson say, that the Bench could not interfere in cases of trespass in the sea, but if they came into personal collision that the magistrates would notice it; heard no more and went out of the room; did not hear Mr. Atkinson say anything that would tend to a breach of the peace; does not recollect Mr. Atkinson saying, "Remember, boys," &c. &c.; had he heard such words he would certainly have noticed them; thinks it was not the intention of Mr. Tredennick to intrude, but that his motives were an energetic anxiety about the cause that was going on that brought him there; Mr. Tredennick retired from the bench instantly, using the words before stated; swears that he thinks it was uncourteous of Mr. Atkinson to tell a clergyman to leave the bench; declines to answer the question whether Mr. Atkinson's manner in general was insulting to Mr. Tredennick, and also on that occasion; deponent says he would rather heal a breach than widen it.

*Re-examined by Mr. ATKINSON.*—Have you any recollection of a conversation which took place between Mr. Atkinson, Mr. Davis, and yourself, about the propriety of allowing persons to remain on the bench pending the examination of cases in which they are concerned?—Yes.

Do you recollect Mr. Davis and myself objecting to it?—I have a recollection of a conversation of that kind of preventing persons from being on the bench during the time their own trials were going on.

Do you recollect any other person, except Mr. Tredennick, ever attempting to come on the bench while his own case was under discussion?—I do not recollect any other instance.

Would you have allowed any person, as a right, to remain on the bench during the discussion of their own case?—No.



Would you have allowed Anthony Ward to remain beside you there?—No.

The Rev. Mr. Tredennick here closed his case.

*Head Constable Macartney examined by Mr. ATKINSON.*

—Deponent gave information to Mr. Hayden of what he heard of threats; those threats were used in the Court-house of Lifford on the 17th of March last.

What were the threats used?—The threats were that “Kildoney was now outlawed; we may cut and tear what we please on the sea, and will dare the police interfering; we will let them know there is no use in placing them along the shore at Kildoney.”

Who made use of these words?—Thomas Lipsett.

Which of my sons were present when these words were made use of?—Counsellor Atkinson.

Where did this take place?—In the hall at Lifford.

You are aware my son was attending there in his professional capacity?—I saw him there.

How did you happen to see him, or where did he come from?—I cannot tell where he came from. Deponent stated that he met Mr. Atkinson’s son in the hall at Lifford, in company with Mr. Thomas Lipsett, who stopped and addressed deponent, and there made use of the language above referred to; he knew of no one being in company with them at that time; Mr. Atkinson’s son turned away, in company with Mr. Lipsett, and he smiled on going away; deponent committed what he heard there to paper immediately after it occurred; does not know of his own knowledge that Mr. Hayden reported those threats to government; he considers the additional police force at Kildoney was necessary.

How are they employed?—Patrolling about.

*Matthew Davis, Esq., J. P., examined by Mr. ATKINSON.*—

Deponent was on the bench on the 19th of June; recollects the Bundoran fishery case being called on; thinks it was Mr. Allingham who issued the summons; recollects the nature of



that trial; the case was dismissed; deponent is of opinion that the Bench had no jurisdiction in the case, as there was no assault; Mr. Allingham signed the Petty Sessions book, and did not express any dissent; heard Mr. Atkinson explaining the case to the fishermen; heard him referring them to Mr. Tredennick for the opinion of the Judge of Assize in a similar case, in corroboration of what he said; he advised the fishermen as to their conduct in future on the Bundoran case, and that, now they were aware of the law, he hoped it would prevent them from any breach of the peace in future; he repeated the words, that if any breach of the peace took place, ashore or on sea, that they might rest assured that the magistrates would punish them in the severest manner the magistrates had the power of doing—"Recollect, that if you destroy any property at sea, they must apply to the Admiralty Court, as the magistrates, in that case, had no power to interfere;" reminded Mr. Atkinson to tell the men, that if they fished within the known limits of any salmon fishery, that they would be fined a certain sum, or otherwise have to go to the county jail if they did not pay it; *I never heard Mr. Atkinson make use of the words alleged to have been spoken by him to the crowd, or any other magisterial expression at all calculated to cause a breach of the peace, or lead to it; if he had made use of any such expression, I must have heard him, as I was sitting close to him; I am positively certain he never made use of any such expression there;* one of the fishermen said, on leaving the court, "that they could now *cut* and *slash* away, as they could get no law;" Mr. Atkinson got up and said, that if they destroyed any private property, or committed a breach of the peace, they would be severely punished; deponent had a conversation with Mr. Allingham and Mr. Atkinson relative to the impropriety of allowing persons to go on the bench, particularly when their own case was going on; does not think that Mr. Atkinson intended to insult Mr. Tredennick when he ordered him off the bench, but that he considered it was indelicate of him to go there when he came there to answer the summons of a poor man; Mr. Tredennick went outside immediately; heard him

say then that it was an insult offered to him because he could not resent it. [Mr. Davis observed that he considered himself identified with Mr. Atkinson in the business of the day.]

*Cross-examined by Mr. TREDENNICK.*—There was a great deal of noise and confusion during the time that Mr. Atkinson was talking to the people, but not sufficient to prevent him from hearing what was said by Mr. Atkinson.

*Patrick Cassidy examined.*—Deponent remembers the 19th of June, and meeting Mr. Atkinson some days before, and telling him of occurrences that had taken place near deponent's property; he was in company with Mr. Robert Reynolds, who explained the business, and requested Mr. Atkinson to interfere for the protection of deponent's property, saying it would oblige Colonel Dickson if Mr. Atkinson would be of use to deponent, and Mr. Atkinson did say that the magistrates would not interfere, but that it must be tried before the Court of Admiralty, and alluded to a similar case that was to be brought forward at the next Petty Sessions; got a summons to attend here on the 19th of June; some of his boat's crew attended the summons, but deponent did not, and was not present on the 19th *at the trial*, but was afterwards in court; the charge brought against deponent's men was for wilfully and maliciously hauling up nets at sea, and allowing fish to escape.

*Cross-examined by Mr. TREDENNICK.*—Did not think it necessary to attend; deponent says that Mr. Tredennick met deponent at the door of the court-house, and asked him what brought him there that day; Mr. Atkinson told him that it was a waste of time to come here, as they must go before the Court of Admiralty; does not recollect having told this to Mr. Tredennick.

*Owen Kerrigan examined.*—Deponent attended here on the 19th of June; is in Mr. Cassidy's employment; recollects Mr. Atkinson having said to the fishermen in the court-house that day, that "he would not go into the case farther, that it should go before the Admiralty Board or Court;" he desired the men

on each side to take care not to commit any breach of the peace, or they should be punished; has not had any communication with Mr. Atkinson since that day, directly nor indirectly; did not hear the words, "*Remember, boys,*" &c., used by Mr. Atkinson; heard some of the Bundoran party say that they (themselves) might "cut away, and tear away," and these words fell from them, leaving the court, after the case was over; deponent said he would do his best to prevent them from killing salmon; does not recollect having said that other people might work at the same play; he might have said so, but he meant that he would prevent them from killing salmon on Mr. Cassidy's fishery ground; saw the cutter's boat come over on Saturday last to that part of the coast; it was her first visit; the Bundoran party was pretty near, and alongside them awhile; there were few days that a revenue cutter's boat might not have gone over within the last six weeks, notwithstanding the weather; fishing-boats on the coast went out occasionally to fish during that time.

*Cross-examined by Mr. TREDENNICK.*—Deponent has been in the habit of hauling the nets when the Bundoran party would come on Mr. Cassidy's fishery ground; did so last year; a contract or agreement was made in presence of Mr. Hayden as to the limits of the fishery, but the Bundoran men broke the agreement; Mr. Cassidy would not let them fish convenient to his river; cannot tell how often he has hauled their nets in the last seven years; does not recollect having told his boat's-crew what occurred on the subject; thinks Mr. Hayden had no right to prescribe limits to any man's property; Mr. Cassidy rents the fishery from Colonel Dickson; no police went out to Bundrowes last year.

*Daniel M'Caon examined by Mr. ATKINSON.*—Deponent was here on the 19th of June; recollects the fishery case being called on; it was dismissed; the magistrates said they had no power over it; did not hear of any language used by the magistrates that could encourage the people to a breach of the peace; did not hear the words, "*Remember, boys,*" &c. &c.; was close



to the party in the court-house, and near to the bench, on that occasion, and if Mr. Atkinson had used the words he must have heard them; his wife was also in court on that day, and has since been told by her of Mr. Atkinson having said to the fishermen, "If they violated the law they would be punished."

*Cross-examined by Mr. TREDENNICK.*—Deponent admits that he came to Mr. Tredennick on the bridge, and told him that Mr. Hayden had written against Mr. Atkinson; has not had any communication with Mr. Atkinson respecting the evidence he was to give this day.

*John M'Intire, of Roscott, farmer, examined by Mr. ATKINSON.*—Was at the Petty Sessions on the 19th of June; came there to make an affidavit; was here at the latter end of the trial; heard Mr. Atkinson say that he did not consider that the magistrates had any authority to go into the case; was near enough to hear any observations that were made from the Bench; did not hear the words, "*Remember, boys, you may cut and slash away,*" used by Mr. Atkinson; if the words were used *three times* it was impossible but deponent would have noticed it. (Not cross-examined.)

*John M'Nulty examined by Mr. ATKINSON.*—Deponent attended the 19th of June; came to make an affidavit about an applotment; recollects the Bundoran Fishery case; Mr. Atkinson was advising the fishermen not to violate the peace, and some of the Bundoran men said they would "*break and tear away* boats and nets;" the police were present, and shoved them out of the court, and, as they were retiring from the court, Mr. Atkinson called after them not to violate the law, or they should be punished; did *not* hear the words, "*Remember, boys,*" &c. used by Mr. Atkinson, or any other magistrate on the bench; Mr. Atkinson had no conversation with deponent on this subject; must have heard the *expressions if they were used.*

The investigation here closed at a late hour on the evening of the second day. The court was crowded to excess the



whole of the time, and many of the respectable inhabitants of Ballyshannon and its neighbourhood were present. At the close of the proceedings, Mr. Atkinson returned his thanks to Mr. Drummond, the stipendiary magistrate, for his gentlemanly conduct on the occasion.—The Rev. Mr. Tredennick made no observations.

Mr. Drummond said he would transmit his notes of the evidence (without any opinion from himself) to the government without delay.

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The following is a copy of the Memorial and Correspondence thereon, alluded to in the 18th page :—

*“ To His Excellency Lord Viscount Ebrington, Lord Lieutenant of Ireland.*

“ Memorialists humbly and respectfully beg leave to submit to your Excellency that they are poor fishermen, and that while in pursuit of their calling, to provide support for themselves and their families, in the month of July last, they proceeded to fish at a certain place which memorialists believe to be, and are credibly informed is, a very considerable distance outside the limits of the Ballyshannon River Salmon Fishery, which is held under a lease from Colonel Conolly. Memorialists were accordingly summoned by Thomas Lipsett, agent and manager of said fishery, to appear at Petty Sessions in Ballyshannon, to answer the complaint of said Thomas Lipsett, as alleged for fishing within the limits of said fishery. Memorialists accordingly attended, and offered to produce evidence that they were not within the limits thereof, which the magistrates declined receiving, and inflicted a fine of 5*l.* on each of your memorialists, or three weeks' imprisonment. Memorialists, believing that this decision was illegal and unjust, appealed to the next Quarter Sessions to be held in Donegal; the magistrates received the appeal, which, on being called on to be heard, the assistant-barrister declined entering upon it, as not conceiving it within his jurisdiction; also, for the reason that the Act, under which the conviction was made by the magistrates, did not admit of any appeal from the decision of the magistrates—although the magistrates at the time admitted the right of memorialists to appeal; thereby causing much expense and trouble to memorialists, who have now further to submit to your Excellency, that on Saturday, the 31st of October, on the application of said Mr. Lipsett, the magistrates at Petty Sessions in Ballyshannon, issued their warrant against memorialists to recover from each of us the sum of 5*l.*, and, in the want of property, they have agreed to issue their warrant against our persons: Memorialists beg, therefore, humbly to throw themselves on the protection of your Excellency, and to implore that your Excellency will order the warrants to be suspended until the case be investigated before a competent tribunal, which may decide whether memorialists were actually within the limits of the river fishery, which memorialists positively deny to have been the case; in proof of which memorialists can refer to the charter or grant of

said river fishery, by which the limits are prescribed as being far within the position where memorialists were fishing, and where they believed they had a perfect right to fish, and which they have competent witnesses to prove. Unless by the timely interposition of your Excellency, memorialists humbly submit, they and their families will be ruined; and memorialists, as in duty bound, will ever pray.

“ JAMES KERRIGAN, Bundoran.

“ WILLIAM DALY, ditto.

“ JOHN GILVARRY, ditto.”

“ *Bundoran, Nov. 4, 1840.*”

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*Attorney-General, Nov. 4, 1840.*

“ A claim of right, *bona fide* made, ousts the summary jurisdiction of the magistrates. I think this memorial ought to be referred to the magistrates, with a request that they will state what the charge against the party was—under what statute the conviction was made—what was the defence relied on—and if they intimated that an appeal lay, and under what statute—they should be requested also to furnish any observations which occur to them as material with reference to this memorial.

“ D. R. PIGOT.”

“ *6th November, 1840.*”

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“*Dublin Castle, 7th November, 1840.*”

“ GENTLEMEN,—In transmitting to you the enclosed memorial from certain fishermen of Bundoran, who were convicted of the fishery laws, the Lords Justices request that you will state, for their Excellencies’ information, what the charges against the party were—under what statute the conviction was had—what was the defence relied on—and if you intimated that an appeal lay, under what statute. Their Excellencies also request you will forward any observations which occur to you as material with reference to this memorial.

“ I have the honour to be, &c.

“ MORPETH.”

“ *To the Magistrates at Petty Sessions, Ballyshannon.*”

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“ *Ballyshannon Petty Sessions, 12th Nov. 1840.*”

“ MY LORD,—With reference to your Lordship’s letter of the 7th instant, enclosing the memorial of certain fishermen of Bundoran who were convicted before us, on the 15th of August last, of a breach of the fishery laws, we beg leave, for the information of their Excellencies the Lords Justices, to state, that the conviction was had under the Act of the 3d George III. chap. 35, sec. 2, on proof, on oath, that the memorialists were detected fishing with a boat and net within the limits of the Ballyshannon fishery. Enclosed are copies of the informations exhibited, and of the evidence given in support thereof. The memorialists brought *no proof forward* (save their own assertions,) that they were not fishing within the limits of said fishery.

Memorialists, on being convicted, claimed a right of appeal against the decision, which was granted, the magistrates then conceiving that the law enabled them to receive it; but at the following Quarter Sessions, held at Donegal, the assistant-barrister was of opinion that in this case no appeal could be admitted. There has been no warrant as yet issued against the persons of the memorialists; and we cannot avoid observing that the memorial does not appear to us to be the *immediate* act of the Bundoran fishermen, nor that they have ever seen it; but was got up and forwarded in this manner to government by some interested individual; the handwriting in the memorial and the names subscribed thereto, being the same; two of them, namely, James Kerrigan and John Gilvarry, do not write.

“ We have the honour to be, &c. &c,

“ MATTHEW DAVIS, J. P.

“ EDWARD ALLINGHAM, J. P.”

“ *To Lord Viscount Morpeth, Castle, Dublin.*”

“ P. S. Mr. T. J. Atkinson, one of the magistrates who presided at the investigation, is at present in Dublin.”

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“ *Dublin Castle, Nov. 19, 1840.*

“ SIR,—I have been favoured with your letter, and beg to state, in reply, that the memorial to which it refers stated two things—first, that the magistrates refused to receive evidence, which was tendered; secondly, that they informed the party he might appeal to the assistant-barrister; and it further stated, that he did so appeal, and that, upon the matter being brought before the barrister, he declared he had no jurisdiction. The Lords Justices, therefore, thought themselves bound to refer the memorial to the magistrates, with a view to ascertain what the facts were, and whether they had overstepped their jurisdiction; if they had done so, the government would have been warranted in apprising them that such was the fact; but it appears by the statement which they have sent in answer, that they have not exceeded their jurisdiction, and here, therefore, the interference of the government ends.

“ I have the honour to be,

“ Your very faithful and obedient servant,

“ *To Colonel Conolly, M.P.*”

“ MORPETH.”

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*Copy of an Affidavit forwarded to the Lord Lieutenant, through  
N. H. MacDonald, Esq. &c.*

“ *County of Donegal,*  
to wit. } Thomas Lipssett, of Ballyshannon, in the said county  
} of Donegal, farmer, maketh oath and saith, that  
} Counsellor Atkinson never was employed or retained  
professionally, for or by this deponent, at the Lent Lifford Assizes, 1841, or  
at any other time, or on any other occasion whatsoever; and deponent  
further saith, that the said Counsellor Atkinson had no intimation of any  
expressions made use of by this deponent to Charles Macartney, head-constable  
of police, in the Court House of Lifford, at said Assizes, respecting the  
police stationed at Kildoney, or respecting the Reverend Mr. Tredennick



fishing there, otherwise than by passing from one of the courts to the other when this deponent was in conversation with the said Charles Macartney; and that Counsellor Atkinson never had or held any communication, professionally or otherwise, with this deponent, at any time respecting the said fishery, or respecting the subject matter of that conversation, or any other matter having reference thereto.—Sworn before me this 14th day of August, 1841.

“THOMAS LIPSETT.”

“MATTHEW DAVIS, J. P.”

The following letter (which was not read at the investigation) has been handed to Dr. Sheil, with a request from the Rev. Mr. Tredennick to publish it:—

“*Letterkenny, 26th July, 1841.*”

“DEAR SIR,—In reply to your letter of the 23d instant, respecting my last visit to Ballyshannon, on the 24th ultimo, and a conversation I had with you and Mr. Hayden upon that day, relative to some expressions which were alleged to have been made use of by Mr. Atkinson, a magistrate, at the Petty Sessions of Ballyshannon; the circumstances connected with that conversation, as well as I now recollect, were as follows; viz.—Mr. Hayden had told me that at the Petty Sessions of Ballyshannon, a few days before, there was some matter before the court relative to fishing, when Mr. Atkinson, in open court, said—‘*Boys, cut and hack away,*’ or words to that effect, which I believe Mr. Hayden understood to be in reference to your nets. He (Mr. Hayden) also informed me that he had taken down the expressions on the spot, and asked me if I thought it was his duty to report it. I said, such language, coming from a magistrate ought to be reported, as it was most reprehensible, and asked him if you had reported it; he said he did not think you had, that he supposed you would not like to do so. A conversation something similar passed between us on our way to Kildoney; and on arriving at your gate, Mr. Hayden said if I would ride up, that we could leave our horses in your stable and walk on to the police-barrack, and that if you were at home he would introduce me to you. I consented to accompany him, and on meeting you we talked the matter over, and I said I thought it was Mr. Hayden’s duty to report the language which he alleged Mr. Atkinson had made use of, and which you stated that you also heard. After a little, as it was your property was in question, I said I thought that you ought to report it, and to refer to Mr. Hayden as having taken a note of the language made use of. You expressed your unwillingness, in consequence of your position in society, but afterwards yielded, I believe, owing to my remarks.

“I am a stranger to all parties, and I do candidly say that if you had not reported it, Mr. Hayden should, or I would have reported him for neglect of duty; but my opinion is, that Mr. Hayden is a gentleman who knows his duty, and will discharge it without favour or affection. Had I been told that you had made use of the same expressions, (as a magistrate,) with regard to Mr. Atkinson’s property, I would have given the same opinion; you are both alike strangers to me, and it cannot, therefore, be said that I was a prejudiced person.”

“I am, dear Sir, very truly yours,

“LOUIS ANDERSON, County Inspector.”

“*To the Rev. George Tredennick, Kildoney.*”



*Decision of the Lord-Lieutenant.—Letter of Colonel Conolly, M.P.*

“ Dublin, August 16, 1841.

“ MY DEAR SIR,—Mr. Atkinson and I were admitted to an audience with the Lord-Lieutenant immediately on his coming into town this morning ; and, though he had come to hold a council, he was ready to attend to us, when we went into the case for a few minutes, but long enough for him to state that the matter had been referred to the Lord Chancellor. Having gone to the council, and returned to his room, he brought the Chancellor with him ; and on our entering, began by stating, that he had great pleasure in informing us that the Chancellor was of opinion that there was no charge whatever against Mr. Atkinson—in which the Chancellor confirmed his Excellency’s declaration—and I took occasion to say, when the Lord-Lieutenant and the Chancellor had finished, that if there was a person who could reprobate more strongly than they did such language as was imputed, it was Mr. Atkinson himself. Mr. Atkinson then tendered his report to their Lordships ; and they declared there was no necessity for going any more into the matter,—that they were perfectly satisfied. His Excellency, having read, very politely, the affidavit relative to Mr. Thomas Lipsett’s expressions, I then took occasion to say the satisfaction the bench of magistrates would receive on hearing his Excellency’s declaration, and we retired.

“ I am sure you rejoice in this thorough investigation, and clearing up of the case, and the handsome manner in which both the Lord-Lieutenant and the Chancellor have communicated to Mr. Atkinson himself the result.

“ Believe me, my dear Sir,

“ Truly yours,

“ ED. CONOLLY.”

“ *Matthew Davis, Esq. J.P.*”

“ Be so good as to communicate this matter to Mr. Allingham.”

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With respect to the evidence given by Mr. Hayden at the investigation—it deserves attention ; that on reference to the record book of the Petty Sessions, it appears that Mr. Hayden, sub-inspector of police, came here on the 10th of January, 1838, on which day he lodged informations against William Bell, for obstructions in his duty. Mr. Tredennick’s cattle were killed on the 28th of July following ; and in the next month, August, William Black’s cow was killed. At the Spring Assizes of 1839, both these persons received compensation from the county. Mr. Hayden assisted Mr. Haly, S.M. in an inquiry, on the subject of Mr. Tredennick’s cattle, in the police-barracks ; the latter case was investigated in open court, at which Mr. Hayden attended. Mr. Hayden has sworn before

Mr. Drummond that *all the outrages* took place before he came to this country ; and that every thing since has been quiet and peaceable. In his informations, sworn before Captain Hill, S.M. on the first of June, 1839, he swears that the *crib-iron*, the instrument with which Mr. Tredennick's cattle were killed, was given to him (Mr. Hayden) on the morning of the outrage, 29th July, 1838, and was never since out of his possession, *or that of Head Constable Macartney*. He swears, in his investigation before Mr. Drummond, that *there is no more quiet or peaceable country* ; and yet, on the report of some idle conversation, picked up by Head-Constable Macartney, he thought proper to apply to government for an increased force of police. The letter of Mr. Anderson, County-Inspector, (published above at the request of Mr. Tredennick,) does not mend the matter, as regards the cool deliberate attempt of Mr. Tredennick and Mr. Hayden to prejudice Mr. Atkinson in the opinion of the government, and to fix on him the imputation of having addressed from the bench inflammatory language to the people ; —language which a variety of impartial witnesses positively swear was never made use of, and could not have been used without their hearing it, as they were present in the Petty Sessions Court, and remembered all that occurred. If any thing could add to the triumphant acquittal of Mr. Atkinson, it is that his Excellency the Lord-Lieutenant condescended, with his own lips, to assure him of the opinion held by his Excellency of the absence of all foundation, in truth, for the charges made against him. Let me ask, then, what becomes of Mr. Tredennick and Mr. Hayden's partnership in the business, in bringing Mr. Atkinson before the government, without any intimation to him of their design, or ever submitting to his inspection the letter sent by Mr. Tredennick to Mr. MacDonald, the Under-Secretary, and which Mr. Atkinson declares to be *a tissue of falsehood*? What is the letter of Mr. Anderson now published for, but with a view, if possible, to soften down matters, and to throw the blame on somebody else ; as if the public could be induced to view this case as one of *necessity* imposed on Mr. Tredennick to report it? Why did he not mention his

interview with Mr. Anderson *before Mr. Drummond?* Mr. Tredennick told Dr. Sheil that Mr. Anderson's letter (which is published at Mr. Tredennick's desire,) *has been submitted to the Lord-Lieutenant;* and it seems from his Excellency's determination, that it did not alter his judgment. Does Colonel MacGregor, the Inspector-General of Police, approve of Mr. Hayden's conduct? Assuredly the continuance of Mr. Hayden, as Sub-Inspector in attendance on the magistrates of Ballyshannon Petty Sessions, after this *exposé*, would be a censure on them! A stipendiary magistrate, Mr. Savage, has been sent to Ballyshannon this week; and there could be no gentleman better qualified, by his respectable character and reputation, to allay feuds and restore peace, if any disturbance or excitement prevailed, or if there was any necessity for others than the resident magistrates of the country to decide in Petty Sessions cases; but it is notorious that there is no district in the kingdom more peaceable than the Petty Sessions district of Ballyshannon. The grand jury of the County Donegal have come forward to express their opinion of the total absence of all occasion for the large police force employed in the county, and which is a very heavy tax on the landholders. They say, that if Mr. Tredennick requires police, he ought to pay out of his fishery for their maintenance! How far the testimony of the Bundoran fishermen goes to sustain the case, the reader may judge for himself; but these fishermen swear that *they knew nothing* of a memorial sent for them to government; and it will be for the reader to say who it was sent the memorial. Whoever wrote it took a liberty with the government in imposing such an unfounded charge against the Ballyshannon Bench of magistrates; yet, even this fabricated document was laid before the Attorney-General, and his time occupied in giving an opinion on the misstatements it contained.

In publishing this pamphlet, Dr. Sheil is anxious to submit to the tribunal of public opinion the questions it involves. The Rector of Kilbarron has an ample support from glebe lands, and no difficulty about tithe, and should confine himself to the



sacred duty of his ministry; and as he does not keep a curate, there is enough to employ his time, without attending to Petty Sessions, or speculations on the sea-coast salmon fishery. He should leave such occupations to other persons, such as are described in the following lines, with which I conclude these remarks:—

“But he, more modest, took an humbler range  
Of life, and in an honest vocation,  
Pursued on the high seas his watery journey,  
And merely practised as a Sea-Attorney.”

*From Lord Byron's Poems.*

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### PUBLIC MEETING.

IN pursuance of a requisition, a meeting took place of the inhabitants of Ballyshannon and its neighbourhood on Monday, the 30th of August, 1841, to address Thomas John Atkinson, Esq. J.P., congratulatory on the result of the recent investigation into his magisterial conduct. From an early hour, notwithstanding the inclemency of the weather, vast numbers were thronging into the town; and long before the hour named, the Town Hall became densely filled, and crowds were assembled outside who could not gain admission. At two o'clock, the appointed hour, ALEXANDER SANDERSON, Esq., was called to the chair, and said, that he considered it an honour to be called to preside over so respectable a meeting, composing, as it did, the merchants of Ballyshannon, and the gentry and landowners of the neighbourhood—persons of different politics and persuasions. He considered that the object of the meeting was praiseworthy; and he hoped that the conduct and behaviour of all present would prove that a respect for the law, and a wish to show their respect and confidence in the local magistracy, was the cause of their assembling here this day. The conduct of Mr. Atkinson as a magistrate had been attacked. His conduct had been investigated, and the result had been a complete and triumphant acquittal of his character. (Great cheering.)



The object of this meeting was to offer to Mr. Atkinson their congratulations on this pleasing event, and to assure him of the gratification of the inhabitants of this town and country in his triumph. Mr. Atkinson was a gentleman well known in the country; his father had resided in it; and, during a long life, had maintained the station of a landed proprietor and grand-juror of the County Donegal with popularity. Mr. Atkinson himself had followed the example of his father; and, as a resident country gentleman, possessed the good-will and good wishes of every man. As an independent and upright magistrate, he had presided on the Petty Sessions bench in this district, and had conducted himself always with firmness, impartiality, and talent. (Cheers.) There could be but one opinion of the value and utility of such a character in this country; and the numbers assembled here this day proved that the feeling was general amongst all classes. He (Mr. Sanderson) participated in the general regard for Mr. Atkinson, and lamented that any thing had occurred to give him even a momentary cause of annoyance; at the same time, he conceived that the meeting would best consult their own dignity by not descending into any vituperation or personalities towards any individual on this occasion. The triumph of Mr. Atkinson was complete; and no person rejoiced more in it than he (Mr. Sanderson) did. (Loud applause.)

ROBERT JOHNSTON, Esq. of Laputa, then rose and said:— I come forward this day with feelings of pleasure and unaffected gratification, to propose, for the adoption of the meeting, an Address to Mr. Atkinson, to congratulate him on his triumphant acquittal of all the charges brought against him. When I consider the respectability of the numbers, and the unanimity of the persons present here this day, of different religious persuasions, and different political feeling, all combined in one object, of testifying their respect and confidence in Mr. Atkinson, I should almost imagine that, if he himself were here, however deeply he might feel indignant at the unfounded charges made against him, he would, nevertheless, be disposed to consider it rather a fortunate than an untoward event, in so

far as it has called forth this enthusiastic, this sincere, and, indeed, cordial testimony of esteem and regard for him, from all classes of society in this country. (Loud cheering.) Sir, it is not our object in meeting here this day, to occupy ourselves with any scrutiny of the motives, or to investigate the conduct, of Mr. Atkinson's accusers. It is not my intention to make any remarks that might increase the public excitement on that subject; nor am I going to propose the adoption of any language in the Address that might revive antipathy to any individual. Much as we may lament the occurrence of any inconsiderate act of any who presumed to impugn the conduct of an upright magistrate, we do not seek on this occasion to embitter feelings which have been called forth by unprovoked and ungenerous hostility. The object of this meeting is not vituperation, but congratulation. (Cheers.) We are assembled to express our gratification in the victory which Mr. Atkinson has gained, and to mark our approbation of his conduct. If any indirect censure is conveyed, let it be applied by him whom the cap fits, if such there be; and in his conscience let the truth or justice of the censure be reflected on. The importance and respectability of the Petty Sessions Court, and the character of the magistrates, should be protected from unjust aspersions, by every gentleman of education or influence. (Hear, hear!) If any magistrate should act, on the bench, from private objects, it would be a mischievous abuse of his authority; and surely, to attribute a private object to a magistrate, and to drag his name and conduct before the public, on unfounded charges, calls for the public expression of the voice of the community in protection of that magistrate from slander and calumny. (Cheers.) The Petty Sessions Court of this district has always been conducted with satisfaction to the country at large. The magistrates who preside here, individually and collectively, possess the confidence, and have merited the good-will, of the people. There has not been one law here for the rich, and another for the poor; and any attempt to introduce private influence into the decisions from the Bench has been indignantly resisted. (Hear, hear!) If I might offer my

own opinion, from personal observation, I may say, that I have never seen a more impartial magistrate than Mr. Atkinson, or one who labours more to decide every case with integrity and independent feeling, and without any bias to any party coming for justice before him. (Cheers.) Sir, the number present here this day attest their sympathy with the opinion which the Lord-Lieutenant of Ireland and the Lord Chancellor have expressed, of the freedom of Mr. Atkinson from the slightest imputation; and he has come out of this investigation with a character as pure as the justice of his cause was manifest. (Hear, hear!) This is a proud reflection to him, and also to yourselves, possessing, as he does, your sincere and cordial sympathy; and that such is the feeling of every honest man in this county in this business is indisputable. (Loud cheers.) I have the honour to propose the following Address to be presented to Thomas J. Atkinson.

Dr. SHEIL, having read to the meeting the letter of Colonel Conolly, published in page 32, continued:—Sir, this letter, in addition to the opinion of the Lord-Lieutenant and the Lord Chancellor, contains also Colonel Conolly's own sentiments of esteem for Mr. Atkinson as a magistrate; and, Sir, I believe I may say, with truth, in the presence of the people of this country collected here this day, that this opinion of Mr. Atkinson is universal. (Cheers.) I differ from Mr. Atkinson in politics; but I never heard it said nor insinuated that Mr. Atkinson carried his political feeling to the bench; and I believe that every Roman Catholic in this country respects him as a magistrate, and considers his presence on the bench an advantage to the country. (Cheers.) Sir, the same feeling of confidence is reposed by the public in the other magistrates; and therefore it is that I think it a duty to the public to move the resolution which I am about to submit to the meeting. (Hear, hear!) I say, without fear of contradiction, that this country never was more peaceable nor tranquil than it is at present; and that, to keep up a large police force in the County Donegal, is to inflict a tax on the public without necessity. As to the magistrates, I conceive that the resident magistrates



are fully capable of meeting any exigency that may arise. We all know that there is nothing at present to call for additional magisterial talent. (Hear, hear!) Sir, after the able speech of Mr. Johnston, who has anticipated observations I should have felt inclined to make, I shall not longer trespass on the time of the meeting, by saying more than that I cordially concur in this tribute of respect to Mr. Atkinson, and that I hope his enemies, if such there be, will, after this day, reflect on the expediency of leaving this country, and of retiring from a neighbourhood in which they can only expect to meet henceforth with silent scorn and contempt. (Loud cheers.)

After the proceedings of the meeting had terminated, the crowd quietly dispersed, after giving three hearty cheers for Mr. Atkinson.

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#### ADDRESS TO THOMAS JOHN ATKINSON, ESQ.

AT a densely-crowded, and highly-respectable meeting of the inhabitants of Ballyshannon and its neighbourhood, convened by public requisition, for the purpose of addressing Thomas John Atkinson, Esq. J.P., on the result of the recent investigation into his magisterial conduct, and held in the Town Hall, on Monday, the 30th of August, 1841, the following resolutions were unanimously adopted:—

Moved by ANDREW MACINTIRE, Esq., and seconded by Mr. JOHN KELLY—

“ That Alexander Sanderson, Esq., be requested to take the chair, and George Allingham, Esq., to act as Secretary.”

Moved by ROBERT REYNOLDS, Esq., and seconded by JOHN GREEN, Esq.—

“ That, in consequence of the recent investigation, held in this town, upon the conduct of Thomas John Atkinson, Esq., as a magistrate, and his triumphant refutation of the charges preferred against him, we deem it our duty to present him with a congratulatory Address on the occasion.”

Moved by ROBERT JOHNSTON, Esq., and seconded by JOHN MONTGOMERY, Esq.—

“That the following be adopted as the Address of the meeting. (See Address, p. 41.)”

Moved by JOHN B. SHELL, Esq. M.D., and seconded by ROBERT ALLINGHAM, Esq.—

“That we take this public opportunity of expressing our perfect conviction of the zeal, integrity, and capacity, of the Local Magistracy, and our opinion that they are fully adequate to conduct the judicial business of the Petty Sessions of this district.”

Moved by Dr. STEPHENS, and seconded by Captain COULSON—

“That the Chairman and Secretary, together with the movers and seconders of the respective resolutions, be requested to wait upon Mr. Atkinson with the Address.”

Moved by PETER KELLY, Esq., and seconded by THOMAS DUNCAN, Esq.—

“That the Resolutions adopted by this meeting, together with the Address, and Mr. Atkinson’s Reply, be published in the columns of the Ballyshannon Herald.”

Moved by JOHN SCOTT, Esq., and seconded by JOHN ALLINGHAM, Esq.—

“That Alexander Sanderson, Esq., do leave the chair, and John Montgomery, Esq., be called thereto.”

ALEXANDER SANDERSON, *Chairman.*

Moved by ANDREW GREEN, Esq., and seconded by JOHN STEPHENS, Esq.—

“That the thanks of this meeting are due, and be hereby given, to Alexander Sanderson, Esq., for his dignified and very proper conduct in the chair.”

JOHN MONTGOMERY, *Chairman.*

GEORGE ALLINGHAM, *Secretary.*

Mr. Atkinson, having appointed Wednesday, the 1st of September, for receiving the deputation selected by the meeting, they accordingly, accompanied by John R. Dickson, Esq. of Woodville, waited upon him on that day, at Cockburn’s Hotel, and presented him with the following

## ADDRESS.

*“ To Thomas John Atkinson, Esq.*

“ SIR,—We, the inhabitants of Ballyshannon and its neighbourhood, assembled at a meeting convened by public requisition, deeply sensible of the advantages we derive from the constant attendance of so upright, intelligent, and impartial a magistrate at our Petty Sessions Court, as also of the benefits conferred upon the community by the residence amongst us of so useful and benevolent a country gentleman, feel that we would be wanting, not only in the gratitude which we owe you in your private capacity, but in your important position as a justice of the peace for this county, were we to allow the slightest impeachment of your conduct to pass unnoticed.

“ Triumphant though the refutation was with which you met the charges brought against you as a magistrate upon the recent investigation held in this town—unfounded though these charges were proved to have been—yet we cannot but express our sympathy for the temporary uneasiness which such an imputation must have caused; while we *deplore that there could be found any to advance so groundless and unwarrantable an accusation.*

“ Sir, your character, whether in public or private life, stands too high in the estimation of your countrymen to admit of even a momentary impression being made to your prejudice. We, therefore, without distinction of politics or religion, come forward to tender you our warmest congratulations upon the flattering opinion which his Excellency the Lord-Lieutenant, and the Lord Chancellor, have been pleased to express on the result of the inquiry to which we have referred; as, also, to offer our fervent prayer that you may be long blessed with life and health, to continue in that course of public and private utility, no less honourable to yourself than beneficial to the inhabitants of the country in which you reside.

“ Signed by order, and on behalf of, the meeting,

“ ALEXANDER SANDERSON, *Chairman.*”

To the foregoing Address Mr. Atkinson then made the following reply:—

*“ To the Inhabitants of the Town and Neighbourhood of Ballyshannon, assembled in the Town Hall, on Monday, Aug. 30, 1841.*

“ GENTLEMEN,—I am quite unable to express, as I would wish to do, the deep sense of gratitude I owe you for your very kind and flattering address. I beg you will accept my most sincere and cordial thanks for the high honour you have conferred upon me.

“ I am fully aware how much your kindness has overrated any thing I could have done in the discharge of my duty as a magistrate. It has ever been my anxious wish to discharge those duties fairly, impartially, and firmly; and to have now the honourable testimony of the approval of so numerous and respectable a meeting of those persons by whom I am so long and so well known, is indeed a source of no little pride and gratification to me, and a full remuneration for any trouble I have had as a magistrate. To this is added the pleasing recollection that it has been my good fortune to have had the assistance of those high-minded, honourable,



and intelligent magistrates, Captain Ferguson, the Rev. Mr. Pakenham, and Mr. Davis, between whom and myself I am proud to say there never has been a difference of opinion on any subject connected with our official duties.

“That I have been enabled to refute the foul calumny attempted to be brought against me and my two sons—for it was not sufficient for my slanderers to confine the accusations to myself—I am in a great measure indebted to the kind and honourable support of you, my friends, who during the late investigation cheered and supported me by your presence. Any anxiety or uneasiness occasioned me by those false allegations has been far overpaid by the distinguished honour you have this day done me, in thus unanimously, without distinction of creed or politics, coming forward to express your kind opinion on my conduct, and which, as long as life is spared me, I shall remember with pride and gratitude.

“I beg here also to acknowledge, with sincere thanks, the enthusiasm exhibited by my more humble neighbours in their demonstrations of kind feeling and regard towards me, and to congratulate them and you that one part of the evidence of my accusers is happily verified; namely, that *there is no more peaceable or quiet country.*

“That this friendly feeling between all classes of this neighbourhood may long continue, and that you may all enjoy health, happiness, and prosperity, is the sincere wish of, gentlemen,

“Your very obliged and faithful servant,

“THOMAS J. ATKINSON.”

“*Cavan Garden House, Sept. 1, 1841.*”

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For the subsequent proceedings in this business, and the letter of Norman MacDonald, Esq., the Under-Secretary, to the Rev. George Tredennick, see the Appendix.

I shall now proceed to give an account of the Lough Foyle Salmon Fisheries, and the endeavours made to infringe on the rights of the Honourable the Irish Society.

## LOUGH FOYLE FISHERIES.

The Report of a late Visit to Ireland by a Deputation from the Irish Society of London has brought to light some very curious facts to show the encouragement given in high quarters to illegal fishing in the Lough Foyle Fisheries, in the counties of Donegal and Londonderry; a practice which, even viewed independently of the unjust infringement on the Society's right to those fisheries, manifestly tends to the demoralization of the lower classes, who in these immediate districts have but re-

cently been weaned from the practice of smuggling, once so flourishing among them, and would require but the continuance of encouragement in any systematic infraction of the laws, to return to dissipation, idleness, and misery. The persons from whom this encouragement principally proceeds were the Marquess of Donegal and the Rev. J. Molesworth Staples. The former, whose office of Lord-Lieutenant of the County of Donegal places him at the head of the magistracy who are entrusted with the preservation of the public peace, has, in virtue of a claim without the slightest foundation, openly countenanced, and, by the circulation of a hand-bill, publicly instigated his tenantry to support these encroachments. Subsequently his Lordship actually sent an order to the chief of the constabulary to protect the men in their illegal fishings, and it was given out by his agents that the poachers were entitled to defend their property by arms; in consequence of which one of their vessels was seen cruising about with armed men on board. Mr. Staples, the other abettor of these aggressions on the Lough Foyle Fisheries, was in 1836 defendant in an action to try the right of the fishery in question; the issue of which was decided against him. The case was subsequently ordered for a second trial, in consequence of some irregularity in the first; and on this occasion Mr. Staples made a written submission, formally ceding the right which he had claimed. Under these circumstances it is evident that Mr. Staples was bound, if not in honour as a gentleman, at least in duty as a magistrate, to exert his influence in order to see this document carried out; but, apparently, the reverend gentleman viewed the case in a contrary light, for illegal fishings were subsequently carried on with the assistance of the son of Mr. Staples and of his servants. On the frequent repetition of the grievance, it was sought to enforce the provisions of the act passed for the protection of fisheries; but unfortunately, the case was tried before a bench of magistrates of whom Mr. Staples was the chairman, and the magistrates refused to convict, on the plea that the case involved a right of property. During the proceedings the following rather awkward remark was made by one of the

poachers, “*You know, your reverence, we did it all under your orders.*” Such conduct on the part of a magistrate, according to the opinion of Mr. Litton, M.P., the counsel consulted on the subject by the Irish Society, would amply justify his removal from the commission of the peace; and to this effect, an appeal was drawn up and presented to Lord Ebrington. And yet, with all these facts fully stated, those parties were not removed from the places they occupy. But it may be accounted for, when it is considered that the Rev. Mr. Staples is brother-in-law to Richard Ponsonby, Bishop of Derry, who is brother to Lord Ponsonby, of Constantinople, and Frederick Ponsonby, who put up for Carlow. Lord Donegal is the father of Lord Belfast, who held an appointment in the household.

The following is an extract from the Report submitted by their Deputation to the Honourable the Irish Society of London.

#### ON FISHERIES.

“While in Derry the Vice-Admiral Stewart explained to us the difficulties with which the water-keepers and conservators of Lough Foyle Fisheries had to contend, during the season which ended on the 1st of September, owing to the poachers having been encouraged by the Marquess of Donegal, to whom the whole of the Barony of Ennishowen belongs, and who actually sent an order to the chief of the constabulary to protect the men in their illegal fishing. He stated also that it had been given out by some of the agents of the Marquess that the poachers were entitled to protect their property by arms, and that a vessel belonging to them had been cruising about with armed men on board. He detailed the mode of fishing adopted by the illegal *fishermen by the use of bag or still nets*. We visited the Movice establishment, and the ice-houses belonging to the lessees. We also visited the various fishing grounds where the poachers carry on their illegal practices. We heard with extreme regret that these poachers acted under the avowed instructions of the Marquess of Donegal, who is the Lord-Lieutenant of the County of Donegal, and, as such, at the head of the magistracy who are entrusted with the preservation of the public peace. *Owing to the conduct of the poachers the barony is burdened with an extra establishment of police.*”

“The continuance of these depredations, and the encouragement and support the parties concerned in them appear to receive from the local authorities, is a matter of deep regret to your deputation. Poaching, like smuggling, can only tend to encourage vice and crime, and to lead to the demoralization of the lower classes. Smuggling may be considered as at an end in this neighbourhood, though once so flourishing; and it is an universal feeling that all are gainers by the change. The pursuit of the



labour of peaceful industry in these immediate districts, once mainly devoted to the production and exportation of illicit spirits, has been productive of the greatest moral and social benefits; but it only requires a little more encouragement to be permitted to the illegal fishing of these waters to return a large portion of the tenantry to dissipation, idleness, and misery.

“The Society have maintained their right to these fisheries in no niggardly spirit, and solely with a view to their preservation, and for the benefit of the plantation and neighbourhood. They have always looked with anxiety to the legal preservation of these fisheries; because, on the one hand, without such protection it must soon cease to exist; and on the other, the large sums of money spent by the lessees in the country in employing the poor, and procuring and packing, and other branches of the fisheries, appear to the Society a most desirable investment of English capital, expended in a manner most advantageous to the comfort and employment of large masses of people. They would urge these considerations upon the magistrates and gentry of these districts; and if this general reasoning fails to convince, they would ask them to imagine the consequences that would follow the successful resistance of the Society’s rights, and the admission of claims such as those set up by Mr. Staples or Lord Donegal. *It is well known that a large portion of the income of this Society, and therefore of its means of usefulness, is derived from the fisheries of the Foyle and the Bann.* Unless the civilities shown your Deputation in Ireland are mere idle compliments, all the country feels that this income is wisely and benevolently expended for the benefit of the province. Surely, then, the Irish Society has a right to claim from the magistracy of this district, and from the country which it is their most anxious wish to improve and protect, that moral influence which every man possesses in the support of their rights, so valuable and so important. Suppose it were otherwise, and that the fisheries passed into the hands of individuals, it might be conceived that, in the hands of one or two proprietors, the salmon would be rigidly enough protected, caught, and packed for market; the profit would, however, naturally go into the pockets of the parties, and be safely kept there, without reference to schools, hospitals, churches, and meeting-houses; *but in this case the admission of the rights of one would be to admit the rights of all, and the noble fisheries of the Foyle and the Bann would soon become the sacrifice of an universal, an ill-judging, and a ruinous covetousness, and not expended, as it now is, in improving and administering to the wants of the community at large.*

“Your Deputation have thus felt it right to bring under the notice of the Society, and through them to the public, the general views which occur to them on this subject; but the duty which they owe to the body of which they form a part compels them also to lay before them the particular facts which have led to this train of reasoning and remonstrance. It is well known throughout Ireland, but particularly to the North, that the various and protracted law proceedings on the subject of the fisheries ended in 1836 in the complete establishment of the right of the Society *to the exclusive fishery of the Foyle and the Bann.* In these law proceedings every defence that the ingenuity of counsel could suggest was set up, and amongst others, the pretended claim of Lord Donegal. Mr. Staples, the principal defendant, finally signed a submission, of which the following is a copy, under circumstances that will hereafter appear:—

“ SUBMISSION OF MR. STAPLES.

“ SIR GEORGE DUCKET, BART., Plaintiff; REV. J. MOLESWORTH STAPLES, Defendant.

“ I do hereby consent, undertake, and promise to abstain from all further interference with, or to give any further disturbance, hindrance, or obstruction to, the rights of the Irish Society, or of the plaintiff in this action, as claiming under them, to the exclusive *fishing in and over Lough Foyle*, and all the waters thereof, as claimed in this action; and for the purpose of putting an end to all further litigation or contest of the said rights, I hereby further consent that a verdict shall be had for the plaintiff, and a judgment entered forthwith thereon, hereby fully admitting and acknowledging the said exclusive right and title of the Society, and of the plaintiff, as claiming under the said Society, to the fisheries aforesaid.

“ Dated this 12th day of March, 1836.

“ JOHN MOLESWORTH STAPLES.’

“ *To Sir George Ducket, Bart., and Alex. Henderson.*’

“ After this submission, your Deputation cannot but think that Mr. Staples was particularly called upon, as a gentleman and a clergyman, to endeavour to carry it out; but they regret to find that there is the strongest evidence that this was not the case. Illegal fishings took place from the glebe land; the parties engaged were assisted by the son of Mr. Staples and his servants, and every countenance and encouragement was given. Under these circumstances the lessees of the Society sought to enforce the provisions of the Act of Geo. III. chap. 35, passed for the express protection of fisheries; and the law officers of the Crown gave it as their opinion that the magistrates were bound to convict upon it. But at the sessions at Merville, in 1838, where the proceedings took place, the Rev. Mr. Staples sat as chairman of the magistrates, and one of the poachers directly addressed him with the words, ‘*You know, your reverence, we did it all under your orders.*’ To complete the affair, the magistrates refused to convict, and their decision was to the following effect:—‘*The magistrates are of opinion that they have not any jurisdiction in this case, as it involves a right of property.*’ ”

In this state of things the Society thought it right to consult Mr. Litton upon the statement of facts which had been transmitted to the Irish Government, and the correspondence which had passed thereon. The following is the learned counsel’s opinion, and which give facts somewhat more in detail:—

“ *Copy of Mr. Litton’s Opinion on the Aggressions on the Lough Foyle Fisheries.*

“ If numbers of the lower classes shall be set forward to resist and oppose the law, and if they shall at the same time be secretly protected, though they are not openly assisted, by gentlemen of influence in the country, such a state of things it is precisely with which it is almost impossible for any

individual or company possessing property effectually to contend. Civil actions against paupers, though they may be uniformly successful, are of no avail; the costs of the successful action falls upon the party who succeeds; for the defeated party has no means to pay. Successful prosecutions are of little more avail, for imprisonment to persons of the very lower classes, whose avocations are not generally of an important nature, can easily be compensated for by those who encourage illegal conduct for their own purposes. Therefore, as I have said, success either in a civil or criminal proceeding of this nature affords no redress; nor do I see how the government of the country can interfere in such matter, save in one way, and that would be by removing from the bench of the magistracy any magistrate who shall be found to aid, abet, or protect illegal proceedings. Over a magistrate who so acts, the government and the Lord Chancellor have undoubted control; and, in my opinion, it is the case of all others in which the government should so interfere. Indiscretion in a magistrate should, in my opinion, when corrupt motive cannot be imputed, scarcely ever be dealt with as sufficient ground for removal from the commission of the peace; but a deliberate encouragement to a breach of the law by a magistrate is, in my opinion, the greatest offence of which a magistrate can be guilty. Now, in my opinion, upon the case submitted to me, there is the strongest evidence that Mr. Staples has been the encourager of a clear breach of the law, and that he has lent his influence to protect the wrongs of which he has been the originator. The evidence of these two propositions I think is clear.

“Mr. Staples is defendant in an action to try the right of the fishery in question, the merits of which case is decided, and a verdict is found against him; the case is ordered for a second trial, upon the ground of the admission of some evidence which the court above thought should not have been admitted upon the first trial; the case is about again to be tried, when Mr. Staples submits; and in writing, formally and deliberately cedes the right he had claimed. If Lord Donegal's claim (if a claim it can be called) existed at the time of the last trial, such claim would have founded a case of justification for Mr. Staples in the action, if justification could have been founded upon such a claim. But supposing the claim of Lord Donegal, bearing his signature, dated July 2, 1836 (as below), to have been justified, it warrants no taking of fish, or fishing. It is a claim (if such ever had or has subsistence) which cannot, if even yielded to its full extent, warrant the taking of fish from the river; and all that it could warrant would be a bill in equity, or an action at law, at the suit of Lord Donegal, to recover the value of the fish he claims.

“To set it up as a justification for the conduct at present pursued, I consider to be the adoption of a mere pretext, and I think of so flimsy a nature as not to warrant the slightest doubt, or the raising of the slightest question as to the rights of the Society.

“Under these circumstances Mr. Staples, according to the statement, permits his son, his man M'Candless, and other men under his command, to renew all the trespasses with deliberation and obstinacy: that he is the individual who sets on those who commit the trespass cannot, if the facts be truly stated, be doubted. The fact, that among the individuals engaged are his son and servant; and his inability to deny the statement made by one of them on trial,—viz. that he, the accused, had acted by Mr. Staples's direction, all establish this fact. Mr. Staples, in addition, sits as a magistrate; takes a part in deciding what is, in fact and in substance, his own case; and on these grounds I am of opinion that an application will be successfully made to the government or the Lord Chancellor to have Mr.



Staples removed from the magistracy. The facts stated in this case should be made the subject of distinct affidavit; and, from what I have known of the removal of other gentlemen from the commission of the peace, upon grounds which do not appear to me to have been in any respect so strong as those which exist in the present case, I think the Chancellor and government will think it right to accede to the application.

“ EDWARD LITTON.”

“ *London, January 31, 1840.*”

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“ *Copy of a Letter of Lord Donegal.*

“ *Ormeau, July 2, 1836.*

“ I authorize Mr. Lithgow to receive for my use four of the finest salmon each week during the season, from the salmon fishery at Culmore.

“ These four fish being in lieu of my right to twenty-four salmon weekly, during the season. This compromise on my part depends upon the salmon sent being the very finest taken.

“ ‘ DONEGAL.’ ”

“ *To A. Buist, Esq.*

“ *Manager of the Fisheries.*”

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“ Mr. Staples is at present in France; but the same practices still continue from and upon his lands under the protection of his son. In the case of Lord Donegal, referred to in Mr. Litton’s opinion, his Lordship, it will be seen, seeks to set up a right of open fishing, but it must be remembered that this is at the Society’s expense. His Lordship has undisputed right of fishing at Strabraggy and Buncrana in Lough Swilly, but we never heard of his granting free fishing to the poor at any of these places; and it is a matter of regret to us that we do not find his Lordship’s name as a contributor to either school, charity or dispensary; the rents and profits being all paid into the hands of trustees for the benefit of those who have claims on his estates. In the Barony of Innishowen (where the claim is made) he is only known to the people as receiving the name of his title from their county; *whilst the fishing of this part of the coast has been let by the Society from their first letting of the fisheries in 1609.* With this state of things, your Deputation were greatly surprised at finding a hand-bill distributed throughout these districts, and of which a copy, signed and dated by Lord Donegal himself, was placed in their hands. This bill is as follows:—

“ ‘ NOTICE.

“ I do request that the tenantry on my estate will support my fishermen on the Foyle against the encroachments attempted to be made by persons claiming a right to my fishery; and I cannot think it possible (as I have heard) that any accommodation can have been given to persons opposed to me and to my rights.

“ ‘ DONEGAL.’ ”

“ *Dated this 10th day of August, 1840.*”

“ We believe that this appeal to the lower orders failed of its effect; and that his Lordship, as Lord-Lieutenant of the county, has since been so ill advised as actually to direct the police to interfere in behalf and on the part of the poachers, as will appear by the following note:—

“ ‘ July 25, 1840.

“ ‘ SIR,—You will much oblige me by protecting my fishermen in doing their duty in removing the nets of the Society, and protecting my rights.

“ ‘ Your obedient humble Servant,

“ ‘ DONEGAL.’

“ ‘ To the Chief of Police.’

“ These circumstances led to the appeal to the Lord-Lieutenant. With one other fact of which we are informed, we shall close this most unpleasant part of our duty. At a place called Shroove, there is a small gang of poachers under the charge of a servant of Sir Arthur Chichester, and they now state that the net is the property of Sir Arthur. This is a claim of the newest kind, for the property was sold by the trustees of Lord Donegal about ten years ago; and in the particulars of sale there is no mention whatever made of any right of fishing.

“ While in Dublin, we had an interview with the Under-Secretary, Mr. Norman MacDonald, at the Castle, on the subject of the aggressions of the poachers on the Lough Foyle Fisheries as previously adverted to; first, as to the non-enforcement of the conviction against M'Candless, the Rev. Mr. Staples' servant; secondly, as to the conduct of Mr. Staples and others of the magistracy at Moville; thirdly, as to the conduct of the Lord-Lieutenant of Donegal, in writing a letter to the chief of the constabulary in that county, with directions to employ the police force for the protection of the poachers; full particulars of which had been furnished to the government from time to time by the Society. After considerable discussion had taken place, he assured us that an inquiry should be made into the several subject matters of complaint which the government regretted should ever have occurred.”

In looking over the Reports of Committees of the House of Commons on Salmon Fisheries, it will be seen from the evidence of the late George Little, Esq., “ the salmon from the rivers Bann, Foyle, and Moy, would be worth at least from 5,000*l.* to 6,000*l.* per annum, and in some years from 8,000*l.* to 9,000*l.* The sale of salmon caught in them in 1835, amounted in Liverpool to 9,000*l.*; in Manchester to 5,000*l.*; in London, pickled, to 400*l.*; in Glasgow to 550*l.*; in Dublin to 300*l.*; in Bristol to 400*l.*; and in the neighbourhood of the rivers to 1,800*l.*; in all to 17,450*l.* The annual produce of the Foyle, for the nine years prior to 1836, was 53,603 salmon,

weighing 140 tons 14 cwt. 0 qr. 14 lb., which, counting according to the mode there practised, 120 lbs. to the cwt., give 337,694½ lbs., and at a shilling a pound, the sum of 16,884*l.* 4*s.* 6*d.*, and the quantity of salmon shipped by him and his partner from their Bann, Bush, Foyle, Ballema, Ballyshannon and Port Rush Fisheries, from 1808 to 1823, including the shipments for the last year to London, Bristol, and other places, was 2,134 tons 14 cwt. 3 qrs. 11 lbs., which, at a shilling per lb., will be found to have made the enormous sum of 239,141*l.* 3*s.*" \*

"We cannot" (says a writer in an article on Fisheries in the *Dublin Review* for 1841) "collect any authentic data with respect to the produce of other fisheries; but when such is the produce of these small ones, which can bear no comparison with the Salmon fisheries of the Shannon, Kenmare, and Blackwater, we may conclude that the value of all the fisheries from which the public are excluded, is not under 500,000*l.* a-year; yet of such extraordinary improvements are the fisheries capable, that Mr. Little stated before the Committee of 1824, that, if proper protection were afforded to the breeding fish, the spawn and fry, the fisheries might be increased so much, *that we would hardly find a market for the fish in this kingdom.*"

For a long series of years, endeavours have been made by the proprietors of fisheries to protect their property from poachers, and various Acts of Parliament have been enacted with that object. It has long been a matter admitted by all persons acquainted with the natural history of the salmon, that these fish frequent particular rivers for the purpose of depositing their spawn, and of breeding in them; and that in any river where the parent fish are destroyed, or the stock injured by poachers, that in such rivers the breed of salmon declines, and that the fish disappear from such rivers; whereas in rivers where the salmon are carefully preserved, the stock increases rapidly, and the annual produce is augmented. It has been

\* See Fishery Reports for 1824, 1825 and 1836.



stated that salmon fish deposit their spawn in the sea as well as in the rivers, and this has been advanced on the authority of Mr. Hector, an Aberdeen fisherman, already mentioned in this work; and if I recollect aright, Mr. Warburton, M. P. argued in the House of Commons, that it was not material to legislate for the preservation of the salmon river-fisheries, as there was always an ample stock in the sea, at the mouths of rivers, to maintain the river-fisheries as well as the fisheries on the coast. Nevertheless, it would appear that our ancestors thought differently; as they placed on the statute-book several Acts of Parliament for the protection of the fish, which deserve serious consideration before they are repealed, in order to satisfy the views of persons who seek to make the salmon fisheries common to every one. I shall mention some of these Acts of Parliament which particularly relate to the preservation of the salmon fisheries, and the repeal of which would seriously injure the interests of the proprietors.

By the Act passed in the 10th year of King Charles I. it was enacted, "Forasmuch as great hurt and daily inconveniences have and do ensue unto all the king's subjects of this realm, by the greedy appetites and insatiable desire which sundry of them occupying fisheries have used, by taking and killing the young spawn of salmon, as also setting of *stop nets*, *still nets*, or *standing nets*, fixed upon posts or otherwise, in the rivers where the salmon should pass up from the sea; be it therefore enacted, that no manner of person or persons shall use or set, or take any salmon with such stop nets, still nets, or standing nets; and if any person or persons offend in any of the points before rehearsed, contrary to the tenor, form, and purport of any part of the same, then every such person or persons so offending shall lose and forfeit for every time of his or their such offence, the sum of *forty shillings* and the fish, and also the unlawful nets."

This Act of Parliament I consider of great importance; and one which, if carried into effect in the present day, would go far to remove the practice of taking the salmon by bag nets and standing nets, as attempted at the mouth of the Bally-

shannon river. The Act of the 2d year of George I., and also the 8th year of George I., enacts penalties against the killing of the spawning fish in certain months of the year, and declares that by such practices the salmon fishery in this kingdom is most extremely decayed. The 12th George I. c. 7, enacts, "that no person or persons whatsoever, except such as have an estate of freehold in his or their own, or their wives' right, of the clear yearly value of forty pounds per annum, or a personal estate of the value of one thousand pounds at the least, over and above all debts by him owing; and except such person or persons as is, are, or shall be entitled to any fishery or fisheries within this kingdom, or their farmer or farmers, and such person or persons as are, or shall be, lawfully employed in the same, shall *make, have* or *keep* any goff, net or nets, or any engine to take or kill salmon, even though no proof can be made that he or they did apply them to such use. Penalty forty shillings, and forfeiture of the engines also."

By the Act 31st year of George II., it is enacted that none shall fish with any net, fishing-rod, or other instrument, between the 12th day of August and the 1st day of February; penalty five pounds, on conviction of such offence; or any proprietor or farmer of a salmon-fishery, who shall at any time between the 12th day of August and 1st day of January in any year, be accessory to the killing or taking of salmon in any river, shall, on conviction, forfeit forty shillings for every salmon so taken. Certain rivers are excepted by this Act.

The 3d George III. c. 35, recites the Act of George II., and enacts that no person except the farmer or proprietor shall fish in the river Earn, or salmon-fishery of Ballyshannon, between the 12th day of August and the 1st day of May; and if any person shall offend therein, every such offender shall, for every such offence, forfeit the sum of five pounds, over and above the boats and nets; and also declares that the limits and bounds of all and every salmon fishery in this kingdom is, and are hereby deemed and understood to be, such as they have been severally and respectively held, possessed, and enjoyed

by the several and respective proprietors, and the several and respective farmers deriving under them, for *thirty-one years past*. Permission is given by this Act to fish in Lough Foyle until the 1st day of September in every year.

The 23d and 24th of George III. states, "Whereas several weirs have been, and may be erected contrary to law, for the purpose of catching fish, be it enacted by the authority aforesaid, that any person who shall conceive himself to be injured by the erection of or continuance of such weir, may serve a notice on the proprietor, or any of the proprietors of the said weir, or, in his or their absence, on his or their known agent or agents, desiring him or them to abate such weir; and that if in one month after such notice shall be served, such weir shall not be abated, that in every such case every such proprietor shall forfeit the sum of twenty shillings for every day that the said weir shall be continued after such notice: provided always that no such suit shall be entertained, whereon there shall appear to have been any title for the erection of the said weir." By the 26th of George III. c. 50, it is enacted that "*nothing* herein contained shall be construed to extend to the prostrating of any weir or weirs of which the proprietor or proprietors have had an uninterrupted possession for a space of thirty-one years, or who hold said weir or weirs by a patent or charter grant. No person is empowered to appoint water-keepers who has not a freehold estate of fifty pounds per annum value."

By the 33d of George III. it is enacted, that "from and after the passing of this Act, it shall not be lawful for any person to take, kill, or destroy any salmon, salmon peale, or salmon fry, in the sea, at the mouth of rivers, or within one mile of the mouth of any river, during such seasons, or times, as the taking of salmon in such river is by law now of force forbidden, every person so offending to forfeit five pounds: also that it shall not be lawful for any person or persons to fish with a rod or otherwise in any several fishery, without the license of the proprietor or farmer thereof." By the 26th of George III. it is enacted that every person found angling without the consent of the owner



of such fishery, is liable to a penalty of not less than five, nor more than forty shillings for each and every time such angler or anglers shall be found so fishing without the consent of the owner; to be recovered by complaint on oath before any one justice of the peace.

These are abstracts from the Laws for the protection of salmon fisheries; and in proof of their necessity, I may quote from the evidence of Mr. Little, who says, "one great defect in protecting the fisheries, is the unwillingness of the magistrates to put the law into execution. They are unwilling to correct and fine the poachers. There is a magistrate near the Bann, who commands a troop of yeomanry, and he has been encouraging his men to kill the salmon. Last year we prosecuted some of them, and got them convicted, but they appealed to the Quarter Sessions; and he procured bail for them, and came himself to the Quarter Sessions to defend them: but, notwithstanding his opposition, we ultimately convicted them at the Quarter Sessions. The opposition in the country to the protection of the fishery is so great, that we are frequently obliged to get the military to go with us to enforce the law. Some magistrates will not give themselves any trouble, as they say the salmon are sent out of the country, and they get no benefit from them. We have stake nets in Ireland at some places where they have allowed us to set them; and we have attempted to put stake nets in other places, where they have been cut down. We have had our water-keepers very frequently shot at, and we have had one actually killed in that district. *I myself have been shot at.*"\*

The expenses of protecting the Bann, Foyle, and Moy, amount to 1,500*l.* or 1,600*l.* yearly; 400 men are employed as water-keepers, and 220 as fishermen. The present protection is quite insufficient. The constabulary, or some other local force, is necessary in carrying the laws into execution, as it sometimes happens that bands of fifty or sixty poachers come down on the water-keepers and attack them; and smaller bands

\* See Report of 1824, page 128.

frequently come down. The poachers look upon any of their neighbours turning water-keepers as traitors, and persecute not only them, but their families. In some excellent spawning rivers, the lessees cannot prevail on a single individual to act as water-keeper, and thus the salmon are left the undisputed and undeserved prey of the marauders, whose motto is a *stick out of the wood*, or a *fish out of the water, is neither sin nor crime*.\*

It is argued by the opponents of the charters and vested rights of patentee proprietors, that *salmon* are not royal fish, nor to be classed as such, as Sir John Davies would intimate; and that all modern English writers agree in limiting the king's right to *whales and sturgeons*, and that the king (according to Chitty) has no general property in fish; and that there are certain glances and intimations in the case of the piscary of the Bann, in Sir John Davies' report, as if the fishery in these kinds of royal rivers were not acquirable but by special charter, and that they are acquirable by prescription or usage as royal fish may be. It is also asserted by the opponents of charters that Blackstone states, in his Commentaries, that a *free fishery*, or exclusive right of fishing in a public river, is also a royal franchise, and is considered as such, in all countries where the feudal policy has prevailed: though the making such grants, and by that means appropriating what seems to be unnatural, to restrain the use of running water, was prohibited for the future by King John's Great Charter; and the rivers that were fenced in his time were directed to be laid open, as well as the forests to be disforested. This opening was extended by the second and third Charters of Henry III. to those also that were fenced under Richard I., so that a franchise of *free fishery* ought now to be as old at least as the reign of Henry II.; and that in the case of the Duke of Devonshire against Hodnet, the Irish judges declared that the Crown could not create an exclusive right of fishery in a navigable river, or other arm of the sea, since the Magna Charta. It is said that, with the exception of Limerick,

\* See Report of Fisheries for 1824.

no fishery in the kingdom can show a prescriptive title, or prior to the first year of Richard I. ; and that all the royal grants by Elizabeth, James I. and Charles, are mere waste paper, and protections of monopoly. But Sir John Davies, whose high attainments as a lawyer, and character as a man, have been universally acknowledged, in his Report of the Royal Fishery of the Bann, says : “ That in this river, about two leagues from the sea, where the stream is navigable, there is a rich fishery of salmon, which was parcel of the ancient inheritance of the Crown, as appears by several pipe rolls and surveys, where it is found in charge as a several fishery, but now it is parted (granted) *by the king to the city of London in fee farm.* The profits of this fishery have been taken and shared among the Irish lords for the space of two hundred years past, who have made incursions and intrusions on the possession of the Crown in Ulster, and have possessed by the strong hand the territories adjoining the river Bann, till the first year of the reign of our lord the king who now is.”\*

The learned judge, Baron Pennefather, in his charge to the jury, at the fishery trial in Lifford, in 1835, against the Rev. Mr. Staples, said, “ The question is, what passed by this patent, (of the Crown to the Irish Society,) and to what extent the grant was made. It appears by an inquisition taken in the 45th year of the reign of Queen Elizabeth, that the legal right in these fisheries was found to exist in the Crown ; and this right then existing is the foundation of the plaintiff’s claim here. In thus calling your attention to this right of the Crown, I am not called upon to discuss any of the topics introduced, as to whether the Crown, since Magna Charta, had the power to create a several fishery in a navigable river ; because I think this inquisition of Elizabeth must now be taken as evidence, that whatever it finds as then belonging to the Crown, was properly found to be in the Crown. The Charter grants ‘ all the water, stream, or rivulet, of the Bann, from the high

\* From a work entitled *Discovery of the True Cause why Ireland was never subdued until the Beginning of the Reign of James.* By Sir John Davies.



sea unto the pool, called Lough Neagh,' &c. ; it then grants 'the whole water, bay, river, stream, or rivulet, of Lough Foyle, within the limits aforesaid, and the whole ground and soil thereof, and also the whole piscary fishings, and taking of fishes, as well salmon and eels as all other kind of fishes whatsoever of, in, or within the water, bay, creek, and river of Lough Foyle, as well with nets of what kind soever, or otherwise howsoever, from the high sea to the town of Lifford, and to the utmost flux and reflux of the river of Lough Foyle aforesaid, and in, through, and within the whole course of the water, within the limits aforesaid, being in the county of the city of Derry, otherwise Londonderry, and in the counties of Coleraine, Tyrone, and Donegal, otherwise Londonderry aforesaid, or in any or some of them within the said province of Ulster.' It is contended, on behalf of the plaintiff, that this grant comprises the whole water from the high or the deep sea, which is entirely outside of the entrance of Lough Foyle, up to the town of Lifford. On the defendant's part, it is contended that the grant must be restricted to the limits of the county of Londonderry, and that nothing outside of these limits passed by this grant, and that the meaning of the words, 'within the limits aforesaid,' bear out this view of the case. I think that this is not the true construction of the grant, coupling it, as I do, with the inquisition. It appears, from the grant itself, to extend to the town of Lifford, clearly beyond the limits of the county of Londonderry. Therefore, if the grant is to extend to Lifford, in Donegal, on the one side, there is nothing in the words, 'within the limits aforesaid,' to restrict it within the county of Londonderry, on the other side ; and it seems to me that the words *deep sea* must mean beyond the *faucis* of Lough Foyle ; and if so, I am bound to give to the words *ab alto mare* that construction which is given to them by the highest authorities on the subject, and indeed the same construction which has been given to them by the illiterate witnesses produced by the defendant himself, one of whom asked or said, in a tone of some surprise, *Did any one ever hear Lough Foyle called the deep sea?* It appears, therefore, on

the whole of this, that I am bound to give that construction to the Charter.

“ The defendant has gone into evidence, and I have stated the result of the special pleas. I think the evidence insufficient that he had a right of fishing, exclusive of the world. Such a right can only be acquired by a subject by a grant from the Crown, of which no evidence has been given; or by prescription of so old a date that the grant can be assumed. One finds not a tittle of evidence in favour of this claim of Mr. Staples. So far as right goes, I think that the plaintiffs have made out their case. It appears to me, that the right to the soil of Lough Foyle was in the Crown, from the deep sea to Lifford, in point of law, and was granted by the Crown to the Society. See whether the defendant’s evidence in any way contradicts it. You will see that no one before Mr. Staples’s time sold fish for traffic; and then you will judge whether that is inconsistent with, or meets the plaintiff’s possession.”

The jury, after a short consultation, found a general verdict for the plaintiff, with 6*l.* damages and costs; thus establishing the exclusive right of fishery in the Lough Foyle and the river Bann, together with the ground and soil of the same, to be in the Honourable the Irish Society.

It appears, from what I have stated in these pages, that the proprietors of salmon fisheries in Ulster possess, in point of law, good title to protection from the legislature against the inroads of trespassers on their property. It is a melancholy reflection that clergymen should be the most active persons in stirring up, in Ulster, a disposition to dispute the claims of the owners of salmon fisheries to what they are entitled to in every sense of justice or equity.

The immense importance of the fishery property of the Irish Society alone, in the fisheries of the Bann, the Lough Foyle, the Mourne, the Finwater, the Dergwater, and the rivers Roe, Faughan, and other tributary streams, which comprise upwards of two hundred miles of fishing ground, may be gathered from the fact, that the fisheries in the river Spey, in Scotland, though

not one-twentieth of the extent of the Society's fisheries, are leased for 8,725*l.* per annum; and this is to be accounted for by the extreme vigilance exercised by the men appointed to watch the breeding rivers in the close season.

It appears that the present government has taken up the question of the salmon fisheries; and, to an application which I made lately to Lord Eliot, the Chief Secretary for Ireland, I have received a very polite reply, acquainting me that the government has it in contemplation to introduce a *new Fishery Bill*, and that the great importance of the subject is admitted by them. Indeed, when it is considered that the County of Donegal has been, for the last four years, burdened with an augmentation of police, stipendiary magistrates, and water-guards, solely on account of the pretended necessity of putting down disturbances created by fishery or poaching disputes, it is time for the government to bring this subject before Parliament. Can any one defend the conduct of a government that would patiently allow magistrates to remain in the commission of the peace who are either illegally fishing themselves, or allowing their servants to do so; and then, as magistrates, sitting in judgment, and deciding on what are, in fact, their own cases? I have been informed that, although one of the lessees of the Foyle fisheries applied last year to the magistrates (the Rev. J. M. Staples, Mr. Carey, and Mr. Hugh Lyle,) sitting in Petty Sessions at Moville, for summonses against the poachers, they even refused to give him summonses to bring up the offenders before them; and the poachers continued to take the fish with impunity, and that to the large amount of 1,000*l.* sterling, or more, during the season.

It has been argued by some of the persons engaged in these bag-net fisheries, that they merely fish for salmon at the mouth of the river, and in the salt water, or where the river meets the sea, *to establish a right of the subject*; and yet, in the case of the Ballyshannon river, the Rev. Mr. Tredennick carried his fishery to such an extent, that he made a trade, and traffic, and profit of it, and he has publicly and boldly declared that he will continue to do so, notwithstanding the general odium and dis-



quiet which such proceedings have generated. It will be for the government to teach this reverend gentleman that he cannot be allowed to trespass upon long-established rights with impunity. No person, in the memory of the oldest man living, ever fished for salmon at Kildoney, or set up nets there, to obstruct the course of the salmon from the sea into the river Earne, until Mr. Tredennick attempted it; and no matter what his rank or station in society may be, the vested property of his fellow-subjects ought not by him to be infringed upon.

If it be the determination of the present government to do away with all patents and charters, which for one moment I cannot believe, it is surely no more than reasonable and just that the present proprietors of the salmon fishery at Ballyshannon, and of other fisheries similarly situated, *should have compensation for their loss*. This is a principle which, I presume, no one can in equity contend against. At present, not being aware of the nature of the *new Fishery Bill* which the government is about to propose, I cannot offer any suggestions; but, assuredly, the different proprietors of fisheries in Ireland should meet, and appoint a deputation from their body to attend in London when the Bill is brought forward, and communicate to their friends, in both Houses of Parliament, the views they may entertain on the proposed measure, and watch its progress. The Marquess of Donegal and the Rev. J. M. Staples are at present reported to be the leaders of the opposition to the Honourable the Irish Society, as regards their fisheries. If I am rightly informed, his Lordship is extremely ill-advised in the vexatious line of conduct which he has adopted, without having the shadow of the shade of a title upon which to ground his proceedings, as will be seen by referring to the opinion of that eminent counsel, Mr. Litton, (see p. 47.) If he chooses to set up any claim to this part of the property, indefeasibly vested in the Honourable the Irish Society, it is his bounden duty to go into a court of law and submit his alleged title to the same solemn, deliberate, legal investigation which the Society's title was subjected to in the years 1835 and 1836, when, upon a full investigation of their title to the exclusive right to

the fisheries of Lough Foyle, together with the ground and soil of the same, judgment was recorded in their favour, in her Majesty's Court of Queen's Bench, Dublin. It is equally clear that the Rev. Mr. Staples and the other magistrates are bound to convict the poachers according to the 3d George III. cap. 35, and uphold the title so clearly proved. I sincerely hope that the contemplated Fishery Bill will prevent interested magistrates sitting in judgment upon their own cases, and make them liable to severe punishment if they shall be found publishing statements and issuing orders among the ignorant and easily excited peasantry, the tendency of which may be to incite the Irish people to break the laws of their country, and put in jeopardy the lives and property of the peaceable and well-disposed part of the community.

The Society were put to great trouble and expense in their trials with the Rev. Mr. Staples, and every impediment was thrown in their way; for even when called on, by notice, to admit as evidence compared copies of the Charter, and the other documentary parts of the title, the defendant refused to do so, and the Society was compelled, at an immense expense, to bring over the originals, in the custody of the Secretary of the Society in London, John Ebenezer Davies, Esq., who proved, at the trial, the original Charter of King Charles II. to the Irish Society in 1662, having the same grant of the fisheries as the Charter of James I. This witness also produced several original books and records of the Irish Society; among others, the Court Book of the Society from 1714 to 1725, which contained the accounts of Mr. Tomkins, who was manager of the fisheries of Lough Foyle at that time, and read extracts to show that the fishings of Lough Foyle, including Culmore, Ennishowen, and the Gribben, were, at that period, in the possession of the Society, and under the management of their general agent. Mr. Davies has accompanied the annual Deputations of the Honourable the Irish Society in their visits to the estates, for several years past, and is well acquainted with every matter interesting to the well-being and prosperity, not only of the fisheries, but the whole of the Society's landed

and other properties, and which form the entire of the County of Londonderry. His zeal for the peace and happiness of Ireland are well known to me; and I should, indeed, consider him a person from whom the present government might expect a well-formed opinion of the likelihood of such a Bill as they are about to introduce into Parliament being one likely to allay irritation, or to meet the difficulties of the question. A gentleman, who has, for a series of years, acted as Secretary to the Irish Society, must have had opportunities of general information about Ireland, and Ulster in particular, and is a person whose opinion would be invaluable on the subject. For my own part, I do not presume to say that I am competent to give any assistance in the difficult task of legislating for salmon fisheries. I am interested for the protection of the Ballyshannon fishery, as my sisters are dependent on that property. I have no personal advantage in it, and receive nothing from it. The Rev. Mr. Tredennick's threats, and a notice which he served on the printer of my published notes of the trial between Mr. Atkinson and himself, some months ago, stating that he would bring an action at law against me, I have held in utter contempt. I have no personal ill-will to him. I have set down nothing in malice or untruth herein concerning him; and, with a perfect indifference to his resentment or vituperation of me, I may leave him to the verdict of his *country* and of his *conscience*. Upon the whole of this case, I respectfully submit to the Government, to the members of the House of Lords, and of the House of Commons, that the vested rights of the proprietors of salmon fisheries in Ireland should be defended from unjust invasion, and the salmon fisheries, not only in Ulster, but throughout the empire, receive full legislative protection.

J. B. S.

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## APPENDIX.

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THE following letter from a talented and independent magistrate, and grand juror of the county, relative to the late "*Delicate Investigation*," has been received by Dr. Sheil:—

"*Holy Hill, Strabane, Sept. 6, 1841.*

"Sir,—I send you ten shillings, for as many impressions of a piece acted by her Majesty's servants, in the town-hall of Ballyshannon, on the 20th and 21st July last, by order of his Excellency the Lord-Lieutenant; the denouement of which—that is, 'the thorough investigation and clearing up of the case'—is considered matter of rejoicing, though I cannot imagine how any one, but those receiving money at the door, could rejoice at such an exhibition.

"A gentleman universally esteemed—a magistrate of twenty years standing—is put upon his trial, caused to hold up his hand for two days at the bar—*quo crimine? quibus indiciis? quo teste? nil horum, verbosa et grandis epistola venit—a Kildoney*—and the highest law authority within the realm, after the lapse of twenty-six days, pronounces that there was no charge against the magistrate.

"We are told that little wisdom is employed in the sublunary government of the world; and if we want a proof, this pamphlet, which should be in every body's hand, affords a strong one. Passing over the public trial of a magistrate (and such a trial!) without a charge against him—passing over the decision communicated at a morning visit of a member of Parliament, by word of mouth only—is there not other matter in this pamphlet calculated to cause uneasy feelings? Does it not show us—our people schooled into outrage and contempt of law? Does it not inform us that our country is afflicted with naval blockade and military occupation? and are not intolerable contributions the consequence of such a state of things? Providence, perhaps, may put an end to these evils; but, if we aid ourselves, Providence will sooner come to our assistance.

"I had, on its first formation, a partial opinion of the late Ministry. I soon ceased to have a good opinion of them. What their successors may be, time will tell; but your pamphlet, amongst many other damning records of contempt for the public and their opinion, leads me to think that the friends of impartial justice in Ireland, have little cause to lament the downfall of Lord Melbourne's administration.

"Yours very truly,

"JAMES SINCLAIR."

"*To J. B. Sheil, Esq. M.D. Ballyshannon.*"

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The *Dublin Evening Packet*, in noticing the investigation, thus writes:—

"At a recent meeting of the inhabitants of Ballyshannon, for the purpose of congratulating Thomas J. Atkinson, Esq., of Cavan Garden, upon the result of an investigation of false charges preferred against him, in his capacity of a magistrate, one of the speakers, Dr. Sheil, a 'Liberal,' said—

"I say, without fear of contradiction, that this country never was more peaceable or tranquil than it is at present, and that to keep up a large police force in the County of Donegal is to inflict a tax on the public without necessity."

“ By way of compliment to Mr. Atkinson, and of hint to his calumniators, Dr. Sheil said—

“ ‘ Sir, after the able speech of Mr. Johnston, who anticipated the observations I should have felt inclined to make, I shall no longer trespass upon the time of the meeting by saying more, than that I cordially concur in this tribute of respect to Mr. Atkinson; and that I hope his enemies (if such there be) will, after this day, reflect on the expediency of leaving the country, and of retiring from a neighbourhood in which they can only expect to meet henceforth with silent scorn and contempt.’ (Loud cheers.)

“ This is like playing up the ‘ Rogues’ March.’ The Doctor is quite right: if neighbours cannot agree they should separate, and there is no room for debating the question who should move. It is extremely gratifying to find that the magistrates of Donegal, of all shades of politics, live upon terms of friendship, and interchange kindnesses. The time, we hope, is fast coming, when this will be the case in all parts of Ireland.”

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“ *To the Editor of the Ballyshannon Herald.*

“ Sir,—I have refrained from noticing a certain calumnious publication, which has been recently advertised in the *Herald*, purporting to give the evidence adduced at a late investigation, together with comments thereon by the author, of a most foul and malignant nature; either of which I consider as wholly unworthy of attention; nor should I now advert to it, were it not that a document was introduced which was represented as conveying the decision of the Lord-Lieutenant on the result of that investigation—which document was also published in your paper of Friday last. I lost no time, in consequence, in addressing a letter to Lord Morpeth, requesting he would call the attention of his Excellency to the subject, in order that he might be pleased *officially* to communicate the result of his decision. I beg you will insert the reply, together with a copy of my letter to Lord Morpeth. I am not disposed to deprive Mr. Atkinson of the *full benefit* of the decision of the Chancellor, to whom his Excellency felt it his duty to submit the case, so far as it can be considered favourable to him; while, at the same time, I have a right to avail myself of that portion of the reply which exonerates Mr. Hayden and myself from the base imputation which is brought against us. There is no doubt, that if, in the opinion of the Chancellor, the allegation was considered ‘groundless and wholly unsupported,’ such an imputation would have existed; but it appears his decision was influenced by the contradictory nature of the evidence, and, as a matter of course, Mr. Atkinson was entitled *to the benefit of this doubt*. The fact of Mr. Savage having been ordered to Ballyshannon, as a Resident Magistrate, is sufficiently indicative that, in the mind of his Excellency at least, a false or fabricated charge had not been made. It is not my object now to prove whether there existed grounds sufficient for making the allegation, in the first instance, as I am perfectly satisfied to leave the whole matter in the position in which the official document received from the Under-Secretary places it. It is not by perverting motives, or by basely maligning the character of others, that a cause can be supported, as it only tends the rather to betray the weakness of a cause, when recourse is had to the agency of those who employ such contemptible means. I do not hesitate to express the deep regret I have felt at having consented to become the medium of making the communication which led to the late unpleasant investigation; however I may have felt myself to have been personally aggrieved, circumstanced as I am from the position in which I am placed as a clergyman. I frankly acknowledge my error; and I admit I should have adhered to my original intention of not interfering in what was undoubtedly the duty of the Sub-Inspector; but having yielded, and having made an assertion, I could not afterwards shrink from the consequences: in fact, I never anticipated being individually called on to support that allegation, at the investigation before Mr. Drummond. I, however, came to the determina-

tion of adducing such proofs as were merely necessary to bear me out in the assertion I had made, from my anxiety to avoid the appearance of vindictive feelings. I do not, for a moment, infer that the persons who swore that they did not hear the expressions complained of as having been used, or that they were not made use of on the occasion, were not convinced of the truth of what they stated; as I am sure all gave their evidence according to the best of their belief—there is another tribunal than that of either private or public opinion which will decide that point; nor did I bring forward all the persons whose names were given in by me for that purpose, as the evidence of Mr. Hayden was, in itself, sufficient to exonerate me from having made a groundless charge. With respect to the motive by which the author of the calumnious pamphlet alluded to has been actuated, when the public are aware it has originated in revenge, because a proposition made by him to Mr. Hector, and subsequently to myself, was rejected, in which he solicited permission to engage in fishing at Kildoney, for his own benefit,—this proposition was repeated in a series of letters written by him, and which any person who considers it worth their while may have an opportunity of reading; and in which, notwithstanding his present antipathy to the employment of a police force, he begged and entreated should not be dispensed with, as he hoped himself to reap the benefit of their protection. The author of this pamphlet has referred to a prosecution instituted against himself on a *former occasion* for having, as he states, made use of ‘language a little too strong,’ and for which he was found guilty, and sentenced to the nominal penalty of three days’ incarceration, besides being obliged to find large securities, and enter into heavy recognizances for the future. He has, however, forgotten to state, that it was at *my* instance, and in consequence of *my* having presented a memorial in his favour, that Judge Torrens declared he passed the mitigated sentence. He may, however, ere long, have another opportunity of testing the clemency of the judge, when he will, perhaps, find it more difficult to prevail on his sureties to renew their recognizances in his behalf. The advocacy of the author of this scandalous production alluded to, it appears, was easily purchased, as, in a letter to me, he desired to know *how much* I would give towards the publication of the evidence, and such comments as he might introduce, pledging himself, at the same time, that they should “*be so impartial, that even I myself would approve of them;*” stating that Mr. Atkinson had given thirty shillings towards it, and the proprietors of the River Fishery thirty shillings more; and because I declined contributing, and coming up to his price, he produces this very *impartial* commentary.

“I have also to request you will publish the accompanying letter from Mr. Anderson, County Inspector of Constabulary, which explains the cause of my being concerned in the late proceedings.

“I trust you will excuse the length at which I am compelled to trespass on your columns.

“I remain, Sir, yours, &c.

“GEO. N. TREDENNICK.”

“*Kildoney Glebe, 7th Sept. 1841.*”

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“*Kildoney, 3d Sept. 1841.*”

“MY LORD,—A considerable time having elapsed since the investigation held here, by order of his Excellency the Lord-Lieutenant, before Mr. Drummond, R.M., for the purpose of inquiring into certain allegations made by me respecting Mr. Atkinson, J. P., upon the testimony of Mr. Hayden, Sub-Inspector of Police, and others; and as no *direct communication* has hitherto been made, conveying the decision or sentiments of his Excellency on the minutes of evidence furnished by Mr. Drummond, I trust your Lordship will excuse my requesting



you to call the attention of his Excellency to the subject. I am induced to make his request, in consequence of a pamphlet having been recently published by a Dr. Sheil, containing a garbled statement of the evidence adduced, in which he charges me, in conjunction with Mr. Hayden, with having conspired to injure the character of Mr. Atkinson, and implies that the testimony given by Mr. Hayden was false. This foul imputation he advances upon the authority of a letter, alleged to have been received from Colonel Conolly, which purports to give the decision, with a declaration of his Excellency, as conveyed to Colonel Conolly and Mr. Atkinson at a personal interview. I do not, my Lord, presume to offer any opinion as to what the actual decision of his Excellency may be; but as my character and veracity have been thus publicly impeached, I request, nay, I entreat his Excellency will be pleased to communicate the result of his own decision, whatever it may be. I beg herewith to forward a copy of the pamphlet, at pages 4 and 25 in which this foul calumny is implied—and at page 24 the letter of Colonel Conolly will be found; the motives of the author of this pamphlet are known to his Excellency. Your Lordship will, I feel assured, pardon my urgency, under existing circumstances.

“ I have the honour to be,

“ Your Lordship’s very obedient servant,

“ GEO. N. TREDENNICK.”

“ *To the Right Hon. Lord Viscount Morpeth.*”

(A. 11160.)

“ *Dublin Castle, 6th Sept. 1841.*

“ SIR,—I have to acknowledge the receipt of your letter of the 3d instant, referring to the investigation of certain allegations made by you, regarding the conduct of Mr. Atkinson, J. P.; and I am to inform you, that the Lord-Lieutenant felt it his duty to submit the whole case to the Chancellor for his final decision—that decision was in favour of Mr. Atkinson, *so far as to give him the benefit of the doubt*, raised by the contradictory nature of the evidence. No imputation whatever is intended to be cast upon the evidence or conduct of Sub-Inspector Hayden or yourself.

“ I have the honour to be, Sir,

“ Your obedient servant,

“ N. H. MACDONALD.”

“ *To the Rev. G. N. Tredennick.*”

Extract from the *Ballyshannon Herald* of September 17th, 1841 :—

“ *To the Editor of the Ballyshannon Herald.*

“ SIR,—In your last publication, you gave us a lengthened epistle from Mr. Tredennick, on the subject of the late investigation held in Ballyshannon, to which is subjoined a correspondence between that Reverend gentleman and the late two secretaries of Earl Fortescue. Although my name is frequently made use of in those letters, I would have passed them by unnoticed, were it not that I feel called on, in justice to Dr. Sheil, whose report of the evidence taken at the inquiry is stigmatized as a false and calumnious publication, to state that having myself taken copious and accurate notes, and having compared them with the manuscript copy of the Doctor’s report, I even assert, that it was perfectly correct, and agreed with mine almost to the letter. The printed copy is not quite as full as I could have wished; much of the evidence of Head Constable Macartney and Constable Brachen is withheld, Dr. Sheil not thinking it of any consequence,

but which I consider very material. The former was the person on whose report of his conversation with Mr. Thomas Lipsett, my son's name was so maliciously introduced; and the latter's testimony clearly disclosed who the person was, who really exercised the control over the sea and land forces assembled at Kildoney, and by whose orders it was that the sloop-of-war's boat's crew armed with loaded muskets was sent to Bundrowes under the command of a newly-promoted constable (without the knowledge of the Sub-Inspector of the district,) to protect the Bundoran men, while fishing on the ground which Mr. Cassidy had heretofore enjoyed the peaceable possession of. With respect to the foul calumny said to be contained in page 25 of Dr. Sheil's pamphlet, any person wishing to satisfy himself as to the fact, may easily do so by looking at the Record Book of the Ballyshannon Petty Sessions.

"Being refused a copy of the Report of the Investigation forwarded by Mr. Drummond, the stipendiary magistrate, to the government, I cannot pretend to say under what impression Lord Fortescue acted, when he thought proper to lay the case before the Lord Chancellor; but that he did so, I think, was fortunate for me, as his Lordship had not been long enough in office to have been made acquainted with MY PRIVATE OBJECTS or the MOTIVES of Dr. Sheil.

"If Messrs. Tredennick and Hayden can quiet their consciences with the sedative contained in Mr. MacDonald's *official*, I think, I may rest at ease, under the honourable and unanimous acquittal of a jury of my countrymen and neighbours, most of whom attended during the entire of the inquiry, taking unprecedented interest in the proceedings, and who were not beholden to any 'garbled statement of evidence,' given by Dr. Sheil or any other reporter, (if such was the case).

"In the meantime, I hope we may all profit by the very useful hint given us by our worthy and pious Rector, and prepare ourselves for that tribunal, where neither *private nor public opinion* will be regarded, nor any evidence required. The allusion made to the letter of Colonel Conolly is unworthy of notice.

"I have, Sir, extended my letter to much greater length than I intended when I commenced, and have to apologize for taking up so much of your valuable columns—it being my first attempt in this way, I hope you will excuse me. I promise you it shall be my last on the present subject.

"I remain, your obedient servant,

"THOMAS J. ATKINSON."

"Cavan Garden, 14th Sept. 1841."

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"To the Editor of the Ballyshannon Herald.

"Ballyshannon, Sept. 15th, 1841.

"SIR,—The Rev. Mr. Tredennick, in the *Herald* of last week, has made unaccountable imputations against me, calculated to injure me as a professional man, and to damage me in public opinion, and has assigned motives for my publication of the late *investigation* which I totally disclaim. *He also holds out a threat of bringing the matter before a Court of Law*, and says, I may yet have to ask the clemency of the judge! If he brings the case before any Court of Law, I will have an opportunity of redress for the injury his last publication has done me; and for the present, I consider it the most prudent course to remain silent, and not to publish a variety of materials, which exist, for my defence against the general impression sought to be created by Mr. Tredennick, to my prejudice. I could answer his attack, and disprove all his assertions; and as to the evidence given before Mr. Drummond, and published in the pamphlet, the people of Ballyshannon were present at the investigation, and can judge for themselves whether the publication is not a fair and impartial report of the evidence, as it was delivered on the 20th and 21st of July, in the Town Hall in Ballyshannon.

"I remain, Sir, your obedient servant,

"JOHN B. SHEIL, M.D."

*Extracts from Letters Patent of Lords, &c., granted by James the First, in the Seventeenth year of his Reign, to Henry Lord Folliott, Baron of Ballyshannon, relating to the Salmon Fishery of Ballyshannon, now held in Fee by Colonel Conolly, M.P.*

“ Ac etiam totum erecum, baiam, sive flumen de Bealashanny, alias Ballyshannon, videlicet, *ab alto mare* usque ad rupem sive occasum aquæ communiter vocatum, *The Salmon Leap*, alias *The Fall of Asheroe*, prope castrum de Bealashanny, ac *etiam* omnia stagna, gurgites, insulas, et rupes, in vel prope prædictam baiam vel flumen prædictum, ac solum et fundum et aquam prædicti creci, Baiæ, stagni, sive fluvii. Ac omnem terram aquâ coopertam ibidem, ac etiam totam piscatoriam, et libertatem piscandi AD CAPIENDOS SALMONES ET OMNIA ALIA GENERA PISCUM quorumcunque in vel extra prædictam baiam et flumen prædictum, cum omnibus aliis libertatibus piscandi et privilegiis, advantagiis, et emolumentis quibuscunque prædictis premissis qualitercunque spectandis sive pertinentibus in fluvio Earne et aliis fluviis ad Lough Earne pertinentibus dictis comitatibus Donegal et Fermanagh, vel eorum aliquis. Ac etiam totum et integrum fluvium et aquam de Earne prædictam ab alto mare usque ad Lough Earne, et fundum et solum eorundum in comitatibus Donegal, Fermanagh, vel eorum alteruter.

The above extracts from the original charter sufficiently show the *vested rights* of the proprietors of the Ballyshannon Fishery.

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Extract from the *Ballyshannon Herald* of October 1, 1841:—

“ *To the Editor of the Ballyshannon Herald.*

“ SIR,—A half sheet of your paper was sent to me, some time ago, containing an account of proceedings in Ballyshannon on the 30th of August and the beginning of September, and certain letters connected with the administration of justice in Ireland at that time. Until this day I did not observe some under-scorings, and a note in that paper, which a friend pointed out to me as intended to draw attention to a letter from Mr. N. MacDonald, the Under-Secretary.

“ It seems the circulator of this paper is impressed with the idea, that a letter from the head quarters of Government is at all times sufficient to remove doubts and difficulties; but the despatch of Mr. MacDonald leaves matters as much as ever in doubt. The Secretary communicates nothing officially from the Castle, and perhaps it is as well so. A decision, in accordance with that of the country, was not necessary; and had the Lord-Lieutenant been advised to decide otherwise, he would have been as wisely counselled, as if he had been brought to offer opposition to your headlong waterfall.

“ When the tendency of expressions is to be decided on, Lord Fortescue esteems the *vox populi* too much to set up his opinion, formed from such a trial as that before Mr. Drummond, against the declared conviction of the inhabitants of a country, present at the trial, acquainted with the accused and with the witnesses, and knowing, better than the judge who tried the cause, what has, or has not, a tendency to disturb the neighbourhood in which they live. And let me borrow from one of England’s greatest lawyers, pleading before one of her most celebrated judges, a few farther observations.—‘ My Lord, if the independent gentlemen of England are better qualified to decide from cause of knowledge, it is no offence to the Court to say, that they are full as likely to decide with impartial justice, as



judges appointed by the Crown. Your Lordships have but a life interest in the public property, but they have an inheritance in it for their children.'

"But the Chancellor, we are expressly told by Colonel Conolly, decided in this case, not from the consideration of evidence collected at the trial, but from the absence of a charge affecting the accused. 'There is no charge whatever,' said his Lordship, 'against Mr. Atkinson;' and what else could be said by a man of legal mind? Take the words in Mr. Tredennick's letter, distinguished by inverted commas, and let any one who ever served as a Grand Juror, declare are they such as would induce him to put a fellow-subject on his trial for having uttered them? Coupled with other words given before, or coming after them, they might be mischievous—they might be harmless—standing by themselves they are merely nonsense; and if men are to be tried for talking nonsense, we want a great addition to our judicial corps.

"The Chancellor is told, that Mr. Atkinson made use of the following expressions, 'Remember, boys, you may cut, hack away, and destroy what you please, only take care, don't commit a breach of the peace to bring you before us, the bench, as we cannot interfere;' and his Lordship says, 'there is no charge whatever against Mr. Atkinson.' he does not decide from evidence delivered before Mr. Drummond on the trial, for, if he had, he would have talked of guilt or innocence; but he contents himself with saying, '*there is no charge whatever.*'

"Why, then, was Mr. Atkinson subjected to the temporary uneasiness which the imputation against him must have caused? I hope that question will be asked by the assembled magistrates of Donegal on the 2d November. Reputation is a personal right of the subject, as much as liberty; it is not to be trifled with by persons in authority; it is their duty to protect the rights of all; and the subject should remind them of that duty. I honour the inhabitants of Ballyshannon and its neighbourhood for the promptitude with which they have come forward, upon this occasion, to stand by an individual; I honour them for their declared conviction, 'that the local magistrates, who conduct the judicial business of their district, are endowed with zeal, integrity, and capacity, and are therefore fully equal to discharge the duty required of them.' And I hope effectual steps may be taken to make known this conviction to the Government, that justice may be administered among you, in a satisfactory manner, which cannot be entirely by stipendiaries. 'No man,' says a great constitutional lawyer, 'in the least acquainted with the history of nations, or of his own country, can refuse to acknowledge that if the administration of criminal justice were left in the hands of the Crown, or its deputies, no greater freedom could possibly exist than government might choose to tolerate, from the convenience or policy of the day.'

"Having thus observed upon the paper sent, and the matters therein referred to, I beg to say, that if God permits my attendance at Letterhenny on the 2d November, I shall bring before our meeting a motion on the subject of Mr. Atkinson's trial, and the duty of the Constabulary as set forth in the letter of Mr. Anderson, and the testimony of Mr. Hayden, with reference to reporting words which are used by magistrates in their judicial capacity.

"Your faithful servant,

"JAMES SINCLAIR."

"Holly Hill, near Strabane, Sept. 28th, 1841."

## DISINTERMENT IN BALLYSHANNON CHURCHYARD.

*Republished Report of Ballyshannon Petty Sessions, on Saturday, 15th August, 1840, extracted from the Dublin Monitor Newspaper, of the 22d August, 1840.*

DOCTOR SHEIL, of Ballyshannon, addressed the Bench, and stated that he had to call the attention of their worships to a circumstance which had given great pain to the feelings of the public, and which he considered it his duty, as an inhabitant of the town, to endeavour to put a stop to—namely, the disinterments that were taking place in the churchyard, by the carts and horses of the Rector of the parish, the Rev. George Tredennick, and scattered over that gentleman's grounds, in Coolcolly, near to the town. The coffins of the dead, too, had been left exposed to the public gaze, to the great horror of surviving relatives and friends. As the Rector was now present in court, he called on him to explain or to justify these proceedings, and to state his authority for what had been done; and he called on the magistrates to interfere, and, if they had the power, to prevent the further disinterment of the remains of the dead, to do so for the sake of the reputation of the town, which was disgraced by having such dismal spectacles exhibited in it.

The Rev. Mr. TREDENNICK said that he was not aware of any bones or skulls having been removed. He had orders to have all the rubbish removed; and it was not fair to single him out, as other persons had removed earth from the churchyard in their carts. If any remains had been taken away, it was from the foundation of the new church. There had not been any of the remains of the inhabitants' relatives disturbed; and if any had been moved, they were strangers. He said he had as tender feelings as any man, and he denied the assertion of Dr. Sheil, that either the bones or skulls had been carried away in his carts.

Dr. SHEIL said he could prove the fact, by twenty witnesses, if necessary; and, as to the state in which the coffins were left, their worships could, if they pleased, satisfy themselves, by their own eyes, of the truth of his statement.

THOMAS JOHN ATKINSON, Esq., J.P., (one of the magistrates on the bench,) said that this was a most painful subject; but, unfortunately, there could be no doubt of the fact, that bones and skulls had been removed. It had been stated to him, that the remains of military men and of officers had been interred in this quarter of the churchyard. They were strangers, it is true, and had no relations in this place; but their memory was not the less deserving of respect and protection. He thought that Dr. Sheil had acted right in bringing this subject forward; and, although the bench had not any power by law to act in the matter, still he must express *his strong disapprobation of the proceedings*. The bones and remains, when moved out of the foundations, should have been allowed to remain in the precincts of the churchyard, and not to have been carried away. With respect to what the Rector had stated, of other persons having also carried away clay from the burial-place, it was not singular that they should do so, when the example was set by the Rector himself. The burial-ground of Mr. Atkinson's own family had not been disturbed, but he took this opportunity to declare, that he would use every means in his power to seek redress by the law, if any one presumed to disturb their remains.

EDWARD ALLINGHAM, Esq., J.P., (another of the magistrates,) said that he did not approve of Dr. Sheil's having brought the subject forward. He (Mr. Allingham) had relatives buried in that churchyard, and he did not consider that this case was one that should have been taken up in this way.

Mr. ATKINSON again repeated, that, notwithstanding Mr. Allingham's opinion, he thought the subject deserving their attention. If the remains of Mr. Allingham's relatives were treated with indignity, assuredly that gentleman would not suffer it. Mr. Atkinson made some *very strong observations on the case*.

MATTHEW DAVIS, Esq., J.P., said that if any injury was done to monuments, the magistrates might interfere. He (Mr. Davis) entirely disapproved of any disturbance, unnecessarily, of the remains of the dead.

[Some person here said that the Archbishop of Armagh had raised the bones and earth from graves, to be carried away in rebuilding the cathedral of Armagh.]

Dr. SHEIL said, that if the Archbishop had done so, it was not likely that he had converted them to the purpose of *manuring* his lands, as had been done in the present instance. What had now fallen from the bench of magistrates would, probably, have the effect of putting a stop to future disinterments.

Nothing further having been said on the subject, the conversation, which had excited great interest in a very crowded court, was here dropped. There has not been any removal of bones or remains from the churchyard of Ballyshannon since.

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Copy of a Testimonial submitted by Dr. Sheil to the Board of Health in Ballyshannon, in August 1832, from Sir Astley Cooper:—

“ I have great pleasure in stating that Dr. John B. Sheil is highly informed in his profession, and an extremely able and intelligent man.

“ ASTLEY COOPER.”

“ London, November 20, 1829.”

THE END.







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