

(From the Freeman's Journal.)

Mr. O'Connell applied to the Court to set aside the *fiat* obtained by the Plaintiff in this case, against the Defendant. The affidavit of the Plaintiff, upon which the *fiat* had been obtained, as read by Mr. O'Connell, in substance stated; that on the 21st of Aug. 1819, the Plaintiff came to Dublin, for the purpose of purchasing a Commission in the South American Service, from General D'Erveux. On his arrival in town, he waited upon Colonel Matthew Sutton, who styled himself Military Secretary to General D'Erveux's 11th Legion, and kept an office in Eastmore-street, for the sale of Commissions in that Legion. Having waited on the Defendant at his said office, he told him he wanted to purchase a Commission in Colonel Power's Regiment. Colonel Sutton asked him if he had any recommendations, upon which a Gentleman in the office, to whom the Plaintiff was known, introduced him to the Defendant. The Plaintiff then asked what was the price of a second Lieutenantcy in Colonel Power's Regiment. The Defendant replied, £60; and the Plaintiff immediately handed him that sum, upon which Colonel Sutton wrote down upon a slip of paper, with a pencil, the following memorandum:—" Lodge in Shaw's Bank to second account of General D'Erveux." He showed this to a person of the name of Russell, calling himself military tailor to the Irish Legion, who took it, with the money, saying, he knew what to do with it. The defendant then asked, when he was to get his Commission, and was told, the next day. On the following day again at the office, Col. Sutton handed him a printed paper, in the Spanish language, purporting to be a Commission, signed "John D'Erveux," and counterigned "Matthew Sutton." He swore that he expended £50 in equipment, &c. and at length embarked, on board the *Nicola*, for South America. He proceeded as far as Belfast, where he was put ashore, the vessel being found unworthy, to wait for the brig. While in Belfast, he received a letter from Dublin, informing him, that various accounts had been received from persons who had gone out upon the expedition, stating, that the Commissions granted by General D'Erveux had not been recognized. In consequence of this he returned to Dublin. He stated something about his meeting a person of the name of Macnamara, styling himself Commissions General, who said, he was going to Belfast, &c. He declared, that he believed that Sutton acted fraudulently in taking his money, for granting an Act of Parliament in force at the time. For the aforesaid reasons, he stated, that the said Sutton, or D'Erveux, or one of them, was indebted to deposit in the sum of £60; D'Erveux had left Dublin, and the Defendant, as he heard and believed, was about doing the same; and he therefore prayed that his Lordship would be pleased to issue his *fiat* to hold both, or at least the Defendant, to bail.

Mr. O'Connell said, that to this affidavit more objections applied than to any affidavit he had ever read in his life. It was the affidavit of a person who was the principal in an awfully criminal transaction. He came here and hunted out the Defendant for the purpose of procuring a Commission from him, with a perfect knowledge of its illegality. That was his first objection. His second objection was, that he did not state that Sutton converted the money to his own use. In a question of this kind, it was not sufficient if the statement were equivocal; but, thirdly, it was not equitable, for it was plain that Sutton did not keep the money, for the Plaintiff stated, that Sutton gave it to a third person, Russell, with a memorandum to lodge it in Shaw's Bank, to the account of General D'Erveux. Mr. O'Connell's fourth objection was, that such value as the Plaintiff stipulated for, he had not. (Here Mr. Hubbard handed the Commission up to the Bench, with an observation, that that was the value he had received.) Mr. O'Connell said, that the Plaintiff did not swear that Sutton represented it to him as of any value, or otherwise deceived him. The Counsel handed that up as of no value; the Plaintiff had not sworn so; he had sworn to no contract; all he had sworn was, that persons from Dublin wrote to him, that the Commissions were not recognized; he merely gave his belief, that they were not. In the next paragraph, he stated, that they, or one of them, was indebted to him.

Judge Moore said, he pressed him for a *fiat* against D'Erveux, who was not within the jurisdiction of that Court. But was not for the Court to say, on the rest of the affidavit, which was the real debtor?

Mr. O'Connell. He should have so described it, that no doubt could exist respecting his debt. There was no precedent of the contrary in the books.

Judge Johnson.—There is no case in the books, in England, affording a precedent to bring the order of a Judge before the Court.

Mr. O'Connell.—Perhaps not, but "Tidd's Practice" speaks of requisites for such an affidavit. There may, very probably, be gross fraud here; and the Judge who granted the *fiat* acted from the best motives and feelings of human nature.

Judge Moore said, he was not perturbed in his opinion.

Mr. O'Connell said, that the preceding paragraph in the affidavit demonstrated that D'Erveux was the debtor; for it stated that Sutton handed it over with a memorandum to be entered to D'Erveux's account. The inference to be drawn from the series of facts detailed there, was, that D'Erveux was the debtor. There was no reason to introduce D'Erveux's name.

Judge Moore.—Certainly not. But the gentleman was very warm; he was repeatedly urging a detail of his sufferings, and wanted to obtain a *fiat* under which he might arrest D'Erveux, whether in England, on the high seas, or wherever he might be.

Mr. O'Connell said, he might have his action— but not be (Mr. O'C.) was wrong, he had no action. (Here Mr. O'C. cited two cases, one of which was from 1st Term Reports, 223, to show that where both are parties to an illegal transaction, neither had any right of action.) In short, (he continued,) the principle was so plain, that he would be ashamed to argue it; it was a maxim, both in English and in Latin, and if he could show the Court, on the Plaintiff's own statement, that at a trial, either he must be non-suited, or the Defendant must have a verdict, they would not hold him to bail. Even if he were a legal contract, yet he had sworn to no breach of it; but the Court could not know whether it was invalid or not. There was a decisive answer to every arrest of this kind—if there was a declaration, would it admit of a general demurrer?

Mr. Hubbard handed up the Act of Parliament. Mr. Lloyd rose to reply to Mr. O'Connell.— One of the objections, he said, urged to this affidavit was, that the Plaintiff did not swear to a positive debt. He swore it here, for he swore he gave his money to this man, and he detailed a number of facts, from which it was obvious he had received no consideration. He swore to a combination of facts, that left it beyond a doubt. It was true he swore another person claimed that money; but that was unnecessary, for if there were a hundred confederates, it did not disprove him to have his remedy against the person who had received his money. He swore Mr. Sutton was the person who got the money, and their Lordships were to say whether that was not sufficient ground to entitle him to be held to bail. There was no *fiat* against D'Erveux; and was the party then without remedy, in any way of recovering his rights? He had no contract with D'Erveux— his contract was with Sutton; and what was it to him if Sutton sent the money to General D'Erveux, or to General Leitch?

Judge Fletcher.—And giving a printed memorandum, and a Spanish Commission— Mr. Lloyd.—And it was great satisfaction for his client to be told—"You may go to South America, and have an opportunity of writing an interesting romance, which will make your fortune." Was this man never to have his rights discussed? For the objection amounted to that. It was quite a mockery to say, "You may have your action against D'Erveux; to serve him with process, you may go to South America, to Venezuela, or the Caraccas, to look for him, for I gave your money to General D'Erveux." All the Plaintiff wanted was to try his right. If the Defendant were not held to bail, he need never care, for it was obvious he merely wanted his discharge, and then he would defy any one to catch him. But he was not the principal, but the instrument of D'Erveux; that might be very true, and D'Erveux might be wrong—then he was his dupe. But was all that to be tried here? The words were as positive as they could be, that he gave the money to the Defendant; and the tailor, and the confederates.

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Mr. Hubbard on the same side. Their Lordships recollected the title of the two thiries, who stole the leg of mutton. One did not steal it, and the other had it not; and neither would give up the leg of mutton.

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Mr. O'Connell was as fond of merriment upon proper occasions as any man in the community, but he was never more disposed to be serious, on any case in his life, than he was at present. It was true, he was called to; but he was not answered. If there was in point of law any authority to meet his objection, his learned friends, who were gentlemen of ability and research, would have found it. But they had not been able to answer one particle of the law which he had laid down. This was called a scintillating transaction. If his client was guilty of swindling, he could be punished for it. But this was not the course to pursue; this was not the tribunal to apply to. They must resort to the other side of the hall. Instead of answering him (Mr. O'C.), the principle laid down by him was enforced by their insisting, that a crime had been committed. The judgment of the Court was not to be carried away by a jest, or by coarse flattery. The Court were bound by their solemn oaths to do justice to the parties, according to the known law of the land; and that was the known law of the land, that where a party was a *particeps criminis*, he would not be allowed to take steps towards obtaining legal redress. He defied the gentlemen on the other side to meet him upon that. He had cited two cases to prove it. Where did they find out a case to show, that where a party cannot have an action, he may begin by punishing the Defendant by imputing him— The Court might overrule those cases if they wished; but up to that hour they were unimpugned. Not a particle, in short, of the principle he laid down had been met. He begged pardon for having taken up so much time, but he felt the law to be plainly with him, and it was not to be tampered on in the plainest case. The question was, whether the Plaintiff had, upon his own statement, made out a good case of action.— Was there a lawyer in the hall, who could look at the affidavit, and say he had? Under those circumstances, he felt that his client was safe in their Lordships' hands, for the law of the land was plain in his favour.

Judge Johnson said, as he had the misfortune to differ from the rest of the Court, he should go on first. Were he to be guided by his private feelings, he would be for holding the Defendant to bail; for he could not avoid sharing the general impression, that an abominable fraud and conspiracy had been practised against the lives and properties of many young men in this country. But in a case of this kind, where every thing was set forth to the view of the Court, it was like trying the action itself. Suppose, then, that the Plaintiff had stated, that he had given his money *pro parte* to General D'Erveux, would any one say that the Defendant should be held to bail? The Foreign Enlistment Act made the party taking as well as the party giving a commission guilty of a misdemeanour. And what did the Plaintiff state? He went to the office, paid £60 for a commission, and got it; but having paid £60 was a trick, he did not go, and he was not to be made answerable. The question before the Court was not the right of action, but whether the Defendant was to be held to bail, in order to be answerable to the other in case he recovered in an action. And now let him (Judge Moore) see whether his case was so completely within the Act, as to make him guilty of a crime and destroy his right of action. If he had committed an act which was *malum per se*, that would have been fatal at once, because by no circumstances could it be explained away. But the act of the Plaintiff was not such an act; it was one that, a very few days before, was not interdicted by any law. But, besides, there was a clause in the Statute, in which it was said, that the party doing so and so was guilty, "unless with the consent of his Majesty's Privy Council." How could the Court know that the Plaintiff had that leave; it was a question to be decided by a trial before a Jury. The naked case was this: the Plaintiff brought £60, and paid it into the Defendant's hand, who handed it to a third person. He had completed his contract; this man never went to General D'Erveux. He (the learned Judge) did not mean to say that the Plaintiff might not have been guilty of a crime; but it appeared upon the face of the affidavit that he had given the Defendant £60, and whether the consideration was legal or not must depend upon circumstances, which would appear upon the trial. His Lordship then proceeded to distinguish the cases cited by Mr. O'Connell from the present; and concluded by saying, that he was of opinion that the *fiat* had been properly granted, and that this man should be held to bail upon the primary ground, that he got £60 from the Plaintiff, for which he gave no consideration.

Judge Fletcher was clearly of opinion, that this *fiat* ought not to be set aside. There would be no doubt on his mind, had not a member of the Court, who was entitled to the highest respect, and to whom he was indebted for much legal information, expressed a contrary opinion. When the point to be decided was merely whether or not the Judge had exercised a sound discretion, he

was true, he was called to; but he was not answered. If there was in point of law any authority to meet his objection, his learned friends, who were gentlemen of ability and research, would have found it. But they had not been able to answer one particle of the law which he had laid down. This was called a scintillating transaction. If his client was guilty of swindling, he could be punished for it. But this was not the course to pursue; this was not the tribunal to apply to. They must resort to the other side of the hall. Instead of answering him (Mr. O'C.), the principle laid down by him was enforced by their insisting, that a crime had been committed. The judgment of the Court was not to be carried away by a jest, or by coarse flattery. The Court were bound by their solemn oaths to do justice to the parties, according to the known law of the land; and that was the known law of the land, that where a party was a *particeps criminis*, he would not be allowed to take steps towards obtaining legal redress. He defied the gentlemen on the other side to meet him upon that. He had cited two cases to prove it. Where did they find out a case to show, that where a party cannot have an action, he may begin by punishing the Defendant by imputing him— The Court might overrule those cases if they wished; but up to that hour they were unimpugned. Not a particle, in short, of the principle he laid down had been met. He begged pardon for having taken up so much time, but he felt the law to be plainly with him, and it was not to be tampered on in the plainest case. The question was, whether the Plaintiff had, upon his own statement, made out a good case of action.— Was there a lawyer in the hall, who could look at the affidavit, and say he had? Under those circumstances, he felt that his client was safe in their Lordships' hands, for the law of the land was plain in his favour.

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Kamsay's Waterford Chronicle.

WANTED, A MESSMAN, FOR THE 18th REGIMENT.
Application to be made to the Mess Committee, at the Barracks, Waterford, Feb. 8, 1820.

LANDS OF KILRONAN, COUNTY OF WATERFORD, TO BE LET, IN THE WHOLE, OR IN DIVISIONS, As may be agreed upon.
THE FARM OF KILRONAN, in the Barony of Malherod, and County of Waterford, containing about Three Hundred and Twenty-four Acres, or thereabouts, according to the Most accurate Survey, to be seen in the hands of Mr. PALMER, Master of the Charter School of Kilkenny.

TO BE LET, FROM THE 25th MARCH NEXT.
PART OF THE LANDS OF FETHLEGG, called ROSE-YILL, containing about 12 Acres plantation measure. The Ground is the very best description, and a long Lease would be given to a good Tenant, inclined to build. Application to PIERCE G. BARROW, Esq. Carrickbarrow, Kilkenny.

By the Lords Justices and Council of Ireland, A PROCLAMATION.
WHEREAS it hath been represented to His Majesty, that the Fever which lately prevailed in Cadix and in the Southern Provinces of Spain had ceased—

It is therefore hereby ordered, that the Proclamation of the Lord Lieutenant and Council, of the 14th day of September last, directing that all Ships and Vessels coming from, or having touched at any Port between Gibraltar and Cape St. Vincent, should, on their arrival at any of the Ports of Ireland, be subject to the restraint of Quarantine, according to the Rules and Regulations as are prescribed by the Proclamation of the Lord Lieutenant and Council of the 16th of September, 1800, for the performance of Quarantine by Ships or Vessels coming from, or from the Mediterranean, or from the West Indies, on the Atlantic Ocean, be, and the same is hereby revoked.

FOR ST. JOHN'S, NEW BRUNSWICK.
THE fine, new, fast-sailing BRITISH JOHNSON & CO. R. R. of East William, Down Letter, Master, British Life Line, now lying at the Quay, and will positively sail on the 18th of March next, Wind and Weather permitting. She has most excellent Accommodations for Passengers, having been built for the North American Trade. For Freight, or Passage, apply to W. HUNT & CO. Waterford, February 17, 1820.

By the Lords Justices and Council of Ireland, A PROCLAMATION.
WHEREAS by an Act of Parliament passed in the fifty-fourth year of his present Majesty, entitled, "An Act to provide for the better execution of the Law in Ireland, by appointing Superintending Magistrates and additional Constables in Counties, in certain cases," it is amongst other things enacted, that it shall be lawful for the Lord Lieutenant, or other Chief Governor or Governors of Ireland for the time being, by the advice of the Privy Council of Ireland, to declare by Proclamation, that any County, County of a City, or County of a Town, in Ireland, or any Barony or Baronies, or Half Barony or Half Baronies, in any County at large, to be therein specified, is or are in a State of Disturbance, and requires or require an extraordinary Establishment of Police.

And whereas it hath sufficiently appeared to us, that the Baronies of KILRONAN and GLENWOMERS, in the County of GALLOWAY, are in a State of Disturbance, and require an extraordinary Establishment of Police:

Now we, the Lords Justices, by and with the advice of the Privy Council of Ireland, by virtue of the said Act, & of the powers thereby vested in us, do by this our Proclamation declare, that the said Baronies of KILRONAN and GLENWOMERS, in the County of GALLOWAY, in this part of the United Kingdom called Ireland, are in a State of Disturbance, and require an extraordinary Establishment of Police.

Given at the Council Chamber in Dublin, the 26th day of January, 1820.

WATERFORD:
Printed and Published by BENJAMIN PERRIN, Chronicle-Office, Quay.
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accompanying by M. Letter, Secretary to the Military Commission. On the 24th, the Great Council of Schaffhausen held an extraordinary meeting. After having heard a report of what had been done by the Little Council, as also M. Siegrist's account after his return from Zurich, they approved of all that had been done by the Government.

On the 25th, M. Meyer, of Schaffhausen, Federal Representative, arrived at Schaffhausen.

The reclamation for a federal intervention appeared to have produced an excellent effect. The laws passed by constitutional and legal authority must be obeyed. Inquiry is now making into the demands set up by the Communes, and it is also intended to redress any abuses which may have crept into the administration.—*Moniteur.*

GERMANY.
BERLIN, JAN. 25.—The new fundamental and organic law which His Majesty has ordered to be published, respecting the public debt, is extremely important. It places the debt definitely at the sum of 180,000,000 rix dollars; and declares, that this debt shall be regarded by His Majesty, as well as by all his successors to the Throne, and for ever, as a charge of the State, and of all the Members of the State. This sacred debt, the liquidation of which will be successively effected, after the manner that the statute appoints, cannot be further augmented upon any pretext whatsoever. A debt beyond this there can be no ground for. All the property of the State, particularly the domains, the forests, and secularized possessions throughout the entire monarchy, with the exception of what is set apart for the maintenance of the King and Royal Family, (two and a-half millions of rix dollars,) are pledged as a security for this debt.

It, heretofore, the necessity of the public affairs should require the raising of a new loan, such loan can only be contracted for with the concurrence and consent of the Assembly of the States-General of the Monarchy; and this loan can in no event be joined to the public debt. A particular mode will be adopted, and special funds allocated, for the repayment of such loan.

On the 17th, the King addressed a Cabinet Order to the State Ministry, relative to the expenses and the debt of the State, in which His Majesty strongly enjoined the observance of economy, which has had a good effect, not only on the Exchange, but with the Public.

AUGSBURG, JAN. 10.—In order to set right some error which have crept into the French Journals, it is necessary to state the following particulars:—

M. de Weiller, Director of the Lyceum and the Gymnasium at Munich, liberal institutions frequented by Catholic and Protestant pupils, pronounced two discourses at the close of the opening of the Course of Study—*On the Religious Problem of our Times*; and the other, *On the Spirit of Christianity*. There was no question entertained in those discourses of any dogma exclusively maintained by either confession of faith. The author spoke only of those which form the base of the Christian Religion in general, although his adversaries accused him of having professed doctrines contrary to the dogmas of the Catholic Religion. The two discourses made a very lively impression upon all religious minds—the author being a man of unexceptionable life, virtuous in all relations, esteemed by all classes of society, and a most worthy Ecclesiastic of the Catholic Church.

LONDON.
FRIDAY, FEB. 11.
We are persuaded, we cannot communicate to our readers any news more gratifying at the present moment than that of the general improvement of the commercial interests of this Country. It is one auspicious feature of the commencement of the reign of George IV. We understand, that the re-action which has taken place is not confined to any particular port; but that it prevails, more or less, throughout the kingdom. Within the last fortnight, there has been an amazing increase in the trade of Liverpool. There have been four valuable arrivals from the East Indies; from the West Indies, four vessels heavily laden; from the Brazils, 8; from British America, 21; from the United States, 20; from Lisbon and the Mediterranean, 10; from Ireland, and coasters, 25; exclusively of sloops, &c. connected with the inland navigation of the Country. Numerous other arrivals are daily expected. Considerable orders, also, have been received, we understand, for articles of British manufacture. We may confidently anticipate, therefore, such an amendment in trade, as will be one of our best securities against the efforts of the disaffected.—*Courier.*

We have received, this morning, New York Papers to the 15th ult. Congress does not seem to have been occupied with any business of general interest. In one of the latest sittings of the House of Representatives, it was resolved, on the motion of Mr. Cannon, that the Committee on Military Affairs be instructed to inquire into the expediency of reducing, or entirely stopping, the expenditures on military fortifications. The United States have not yet recovered from the depression which they have experienced in their commercial and manufacturing interests.— When we read the following extract from an article in the *New York Gazette*, of Jan. 15, we thought, at the moment, we had taken up the *Morning Chronicle* by mistake.

When the dismal situation of our Country is considered—when commerce is suspended, trade overdone, mechanics ruined, manufactories deserted, mechanics out of employ, property depreciated, and money in the shape of specie scarce—how is it possible that banks can be productive to stockholders? particularly such a bank as the United States, with a nominal and ponderous capital of thirty-five millions?—

The following are the only articles of intelligence which contain any particulars:—

NEW YORK, JAN. 12.—A letter to a gentleman in this city, dated off the Balize, December 7, states.—"The United States' revenue cutter *Louisiana*, Captain Loomis, has seized the British ship *Francis* and *Eliza*, of London, with two clearances, one from Margarita, and the last from Falmouth, Jamaica. The latter subjected her to seizure under the Navigation Act of 1819, which prohibits all trade with British West India Colonies, in English bottoms, or even touching at or clearing out for them. She is a fine ship, of 350 tons, and carries 10 guns. There is no doubt she will be condemned. She is one of the ships that left England with troops for the Patriots of South America."

JANUARY 15.—The *Thomas*, from Savannah, arrived here this evening; she sailed 13th inst. and brings accounts of a most destructive fire having taken place on the 11th and 12th, by which two-thirds of the houses and stores in Savannah had been destroyed. The damage could not be estimated, but it is supposed it would amount to some millions of dollars. A quantity of cotton had been consumed.

A Philadelphia Paper of the 13th Jan. contains the following letter:—

St. Thomas, Dec. 11, 1819.—I have only time to inform you, that a vessel arrived yesterday from a Royalist port on the Main, and brings the important intelligence of Bolivar being at the head of 15,000 men, well disciplined, and marching rapidly for Caracas. Morillo has only about 4000 to oppose him. There can be little doubt but this campaign will put an end to the war that quarter. In fact, we consider that the independence of Venezuela is established."

The *New York Commercial Gazette*, of the 15th inst. contains a letter of thanks, written by Joseph Bonaparte, who resides in the United States under the title of the Count de Surville, for the assistance rendered by the inhabitants of Bordentown, in saving his furniture, paintings, statues, &c. at the time his mansion was consumed by fire. After praising the individual exertions made, and the personal risk encountered, the Ex-Monarch thus continues:—"All the furniture, statues, pictures, money, plate, gold, jewels, linen, books, &c.—in short, every thing that was not consumed, has been most scrupulously delivered into the hands of the people of my house. In the night of the fire, and during the next day, there were brought to me by labouring men, drawers in which I have found the proper quantity of pieces of money, and medals of gold and valuable jewels, which might have been taken with impunity. This event has proved to me how much the inhabitants of Bordentown appreciate the interest I have always felt for them; and shows that men in general are good, when they have not been perverted in their youth by a bad education, when they maintain their dignity as men, and feel that true greatness is in the soul, and depends upon ourselves. I cannot omit to repeat, what I have said so often, that the Americans are, without contradiction, the happiest People I have known; still more happy, if they understand well their happiness." Various documents have been laid before Congress, on the subject of the expedition employed to explore the source of the Yellowstone river, which is described as a part of the system of measures for the security of the North-western frontier of the United States, and for the protection of their fur trade. This expedition has employed a considerable number of troops, and its objects will not be completed in less than three years. In Congress, on the 11th of January, a report from the Secretary of War was brought up, in compliance with a Resolution of the Senate passed on the 20th of January, 1819, on the expediency of providing by law for clothing the army from articles manufactured in the United States. Letters from Ypatropo, of the 8th October, had been received at Baltimore.

The Paris Journals of Tuesday day arrived this morning. On the preceding day three were public sittings of the Chamber of Deputies, when

