

COUNTY OF KILKENNY.

At the Extraordinary Sessions of the Peace assembled on Thursday last, at the County Grand Jury Room, pursuant to summons, it was resolved, with but one dissentient voice, we understand, to address a Memorial, forthwith, to the Lord Lieutenant, praying his Excellency to place the baronies of Ivry, Knocktopher, Kells, and a certain portion of Shillelogher, under the provisions of the Insurrection Act. The Magistrates have come to this painful but wholly unavoidable decision, after the most patient and minute consideration, grounded on the strongest evidence of the present state of these disturbed baronies. The Meeting of Thursday was composed of the following Magistrates:—

Hon. P. Butler, Sir R. Langlois, Sir W. Coffey, Mr. Flood, Mrs. M. Roche, Col. Rochford, Mr. Neville, Mr. Per, Mr. Wm. Warring, Mr. Cox, Mr. Bookley, Rev. Mr. Morris, Rev. Mr. Dawson, Rev. Mr. Butler, Rev. Mr. Roberts, Mr. Hartford, Mr. Aylward, Mr. Doyle, Mr. Matthews, Mr. B. St. George, Mr. Barwis, Major Keating, R. M. Conolly, Mr. Power, Mr. N. Green, Sir G. Coghill, Mr. A. Shearman, Major Tooh, Mr. Wm. Blackney, Rev. Mr. Townsend.

We have stated, that one Magistrate dissented from the Resolution. Another had left the Meeting only a few minutes before the question was put and carried; but this gentleman implicitly concurs with the majority of his brother Magistrates. Of the above thirty highly respectable individuals, who were assembled on this occasion, only, therefore, stands opposed to the application of the Insurrection Act to the baronies in question.

The rumours of insurrectionary disturbance, adverted to in our last, have been fully confirmed, we regret to state, by authentic information since received. The barony of Knocktopher continues to be the scene of very daring and atrocious outrages. On Wednesday last an armed party attacked the house of Mr. Firth, near Knocktopher, at a very early hour of the evening. Mr. Firth had left home previously, and was informed of the outrage while at a friend's house in that neighbourhood, where he had gone to spend the evening. It appears, that the banditti consisted of eight men, three of whom entered the yard of Mr. Firth's house, and made a prisoner of one of his labourers there employed, the remaining five being stationed outside. One of the latter, apparently the principal of the gang, presented his gun at workman, and asked if his master was at home. On his answering in the affirmative, the fellow observed in an angry tone, "It is false, for he is only just after going the road!" Mr. Firth had, in fact, left his house at three o'clock, and the hour of attack, we believe, was not much later. The party then inquired if a soldier, who for some time had been kept for the protection of the house, was then within, and some of them having stood on the garden-wall, to ascertain whether he was near, they were perceived by a servant boy, who instantly ran into the house and barred the door. The soldier, who was then inside, accompanied by an elder brother of the boy, went up stairs and throwing open the lobby window, showed his arms, but retained his fire, in obedience to previous orders from his master, not to fire in any case, until absolutely necessary for the defence of the house. Some of the gang then advised, that three of their party should go round and enter by the drawing room, but on the suggestion of the labourer whom they still held in custody, that the first man who made such an attempt must certainly fall, this plan of assault was prudently abandoned, and the fellows retired, after administering an oath to their Prisoner as to whether Mr. Firth was at home. When they reached the road they drew up in military order, and being extremely well armed and provided with cross-belts, presented a martial uniformity of appearance. The ruffians subsequently proceeded to Castlemeades demesne, where they fired several shots. When Mr. Firth was apprised of the attack, he instantly went to Floodhill for assistance, accompanied by some friends, and there procured arms, and the aid of two policemen. The assailants had retreated, however, long before this party reached Mr. Firth's house.

An armed body of marauders entered a house in the village of Knocktopher, on Monday night, in search of arms. On the same night a party went to the house of Mr. Braithwaite, at Kilkenny, in the barony of Knocktopher, and three of them having entered, demanded his arms. He assured them that he had given up all his fire-arms some time before, and after much altercation, during which Mr. Braithwaite's life was repeatedly threatened, the party proposed an attack on Mr. Teanison's house, in that neighbourhood, recommending also, that, to facilitate their design, Mr. B. should be conducted there, and demand admission. The latter earnestly remonstrated against this proposition, on account of the present very precarious state of Mr. Teanison's health, and the project was happily relinquished. Several other houses in the immediate vicinity of Knocktopher, were visited on the night of Monday, and robbed of articles, and other property. The banditti also took away a considerable number of horses. Having failed of obtaining arms at the house of a farmer named Philip Wall, they ordered him to kneel and instantly prepare for death, unless he delivered them. The poor man, however, succeeded in convincing them, after taking

an oath, on their dictation, that he was not provided with this their favourite object of nocturnal plunder. We have heard of many outrages perpetrated on Thursday night, in the barony of Knocktopher, and marked by a spirit of peculiar boldness and atrocity.

(From the Leinster Journal of March 30.) The Magistrates, at their meeting on Thursday, we understand, resolved to memorial the Lord Lieutenant to proclaim the baronies of Kells, Knocktopher, and Ivry, the town and liberties of Callan, and that part of the barony of Shillelogher, south of the King's River, as requiring the application of the Insurrection Act. They were three hours in deliberation, but, unlike the Magistrates of other Counties, who have suffered their proceedings at Special Sessions to be reported, the transactions on Thursday were involved in all the mysticism of Star Chamber secrecy. We have not room for a single observation, except that the parish of Callan was never so orderly in the memory of man as for the last few months, that no outrage has been committed in any part of Shillelogher for a series of years, that the unpleasant occurrences in the other baronies have been accounted for without involving a single inhabitant of the County of Kilkenny; and that our County calendar is the lightest ever presented at a Spring Assizes of this County, if we except two charges of murder, both of which were perpetrated long before Captain Rock was heard of even in Kilkenny—a fact which places our Magistracy in this dilemma, that they have either totally neglected their duty, or that not even the offences of ordinary times have been committed in the County during the last six months, and consequently that it is not in the state contemplated by Parliament, when it enacted the tremendous curfew law which deprives the People of usual liberty, of trial by Jury, and taxes them heavily to give vigour to this unconstitutional system.

COUNTY OF CORK. (From the Intelligence of March 30.) We are concerned to state from authority, that on Tuesday last, so early as five o'clock in the evening, an armed body of men attacked the steward of John Lynch, Esq. of Mount-north, scarcely half-a-mile from the village of Ballycogh, in this County, and after beating him most severely, deprived him of a gun, left with him by his master for the protection of the place.

We also lament to learn, from most unquestionable authority, that four houses in the neighbourhood of Ballybouna, and within a short distance of Buntarran, were consumed on Wednesday night last, set on fire, no doubt, by the banditti who infest that quarter of the County. Two of these were the property of a tenant of John H. Barry, Esq. of B. Linconere, and but for the timely arrival of Major Carter's Police, who reached the spot in a quarter of an hour after the fire commenced, the cattle in one of the houses would have been burned. Another belonged to James Hill, Esq. and was situated on the lands of Banethigun; six cows, also this Gentleman's property, were killed at the same time by the banditti. The fourth house burnt belonged to Mr. Sherlock, of Ballybouna. It is to be hoped the perpetrators of such wanton outrages will be brought to speedy punishment.

While, however, it is our painful duty to announce these atrocious evidences of the state of some parts of this County, the following highly respectable and gratifying communication, will in some degree counterbalance the effects they most naturally excite:—

To the Editor of the Cork Morning Intelligence. Sir—As a Magistrate residing in the Parish of Drumriff, Barony of Dalallow, and County of Cork, I wish to express my approbation of the present tranquil state of its inhabitants, and my opinion that they are very likely to continue so. I observe them every day most industriously employed in their agricultural pursuits—as much so as I ever saw them at this season of the year. They have voluntarily surrendered to me, from this Parish, since my return from Cork after the Commission, the following arms, &c. viz.—18 guns, 6 swords, 7 pistols, 8 bayonets, 27 pikes or spears, 4 scythes, one quart bottle of gunpowder, and one Whiteley's horn. My best thanks are due to the Rev. Mr. Quinlan and the Rev. Mr. Egan, the Roman Catholic Clergy of said Parish, for the exertions they have made to restore peace and tranquillity in their Parish, and also for the assistance they have afforded me in collecting in the arms, &c.

I am, Sir, Your obedient Servant, THOMAS WALLIS.

Millstreet, March 28. At a private and numerous Meeting of the City and County Magistrates, at the request of Sergeant Lloyd, yesterday morning, he laid before them, we understand, a Letter from his Excellency the Lord Lieutenant, in observation upon a communication forwarded to him from this City—that fees had been required and taken for passes, under the Insurrection Act, by some Magistrates, and stating, that such a practice could not have the sanction of Government, and was inconsistent with the intention of the Legislature. The Magistrates in general disclaimed having done so in any case, it was resolved in compliance with his Excellency's letter and recommendation, that every possible facility should be given to all travellers and persons who should be entitled therewith, without any charge whatsoever.

The Gentlemen of the populous neighbourhood of Ballycogh, in this County, have formed an

armed association, as the better mode of putting the Insurrection Act in force. The following are nominated officers:—Wm. Wrayon B-ebey, Esq. M. P. Captain; John Longfield, Esq. First Lieutenant; Jos. D. Freeman, Esq. Second Lieutenant.

COUNTY OF LIMERICK. (From the Limerick News.)

MARCH 28.—For the last fortnight, we have been filled with hope and expectation, that the peasantry of this County would abandon their evil pursuits, and assume habits of peace and industry; but we have been disappointed; and to us it is, indeed, a painful disappointment. It would appear as if they were determined to exasperate the Government to adopt measures of extermination. The terrible and appalling examples which the law is constrained to make every day are disregarded, and produce no salutary consequences. If they shall persevere in their ferocious and incorrigible conduct, and at length provoke the censure of the country, to resort to a "vigour beyond the law," for the preservation of the lives and property of the well-disposed, they will be beaten down by an agonizing affliction—and the humanity may sigh at its deplorable necessity, yet the extinction of that wild and wanton spirit, which terror and cruelty have hitherto made invincible, is demanded for the peace and welfare of the country. The industrious and well affected most unobtrusively suffer until the idle and disorderly are crushed. Peace must be restored before plans of improvement are commenced. While the people have arms, no good can be accomplished. Crime cannot cease until they shall have been completely deprived of the weapons of destruction; so long as they shall retain arms, distrust and disgust will obtain in the County; and confidence and conciliation will be destroyed between the Gentry and Peasantry. It is quite manifest, that the arms will not be surrendered up to the Magistrate; and, therefore, some plan ought to be devised to induce the peasantry to send them to the Clergy—in whom they have confidence. We have heard, that, if a proclamation were issued, offering pardon and protection to those who should deliver up arms to the Catholic Clergy, without the intervention of a Magistrate, it would produce a simultaneous surrender from the people. The experiment is a simple one, and ought to be made without delay. There can be no doubt but Government will do every thing that is calculated to attain so desirable an object, for producing the peace and securing the tranquillity of the County.

Execution.—Michael Madigan, John Lynch, and Patrick Lacey, left the New County Gaol at eight o'clock yesterday morning, and were conveyed on a cart, under an escort of the 31 dragoons, attended by Sheriff Cuthbert, to the village of Cappa. They were all young men, and each had a prayer-book, which they read. At the place of execution a vast concourse of country people were collected. Madigan acknowledged his crime and the justice of his sentence; he was asked if he had anything to do with the murder of Mr. Going, but he neither admitted nor denied having been concerned in it. Lynch and Lewis protested their innocence; but the latter admitted that he was at the robbery of George Sparling, and other robberies in that neighbourhood. They requested the clergyman who attended them to address the people who approached the gallows, and they were exhorted to give up all fire-arms in their possession, as they would be always under the temptation of the devil, and have neither luck nor grace so long as they held any; the address was loudly delivered in Irish, and seemed to make a very sensible impression upon the multitude assembled. May God inspire them with grace to comply with the pious call which was made upon them! After hanging the usual time, the bodies of the miserable men were cut down, and put into the hole at the rear of the County Gaol.

In Limerick, fifteen men have been left for execution, all of whom have, by this time, expiated their offences by an ignominious death. The Special Commission under the Insurrection Act has recommenced its sittings in Limerick, and some convictions have already taken place. In Kerry three persons have been capitally convicted; and we regret to say, that some disturbances have recently taken place. A man has been murdered near Listowel. The Special Sessions under the Insurrection Act have again commenced in that county, and several persons have been convicted and sentenced. In Cork the Commission has also recommenced, but the convictions are comparatively fewer. In Mayo there were two hundred prisoners in goal, fifty-six of whom were discharged without prosecution. Seven men were capitally convicted at these Assizes for Ribbonism, to four of whom mercy, it is hoped, will be extended. The Assizes have begun in Galway, and Judge J. B. congratulated the County on its peaceable demeanour. There are, in truth, few, if any, cases of a public nature in the Calendar. In Clare, we are sorry to state that some outrages have taken place. A meeting of the Magistrates is convened for Monday next.

Saturday, Do. Courceny O'Grady, Esq. lodged in the County Jail, Patrick Brown, for assaulting a policeman. Same day, Capt. Middleton, lodged Patrick Walsh, and John McMahon, in Jail—they were taken up from Stowahill, and are to be tried under the Insurrection Act.

DESTRUCTION OF FARMING STOCK BY FIRE.

(From the Bury Gazette.) Parties of disorderly men having been collected in the Parishes of Broom and Ditchingham, near Bungay, in the county of Suffolk, and threats having been uttered against the proprietors and employers of thrashing machines in the neighbourhood, the Ludlow troop of Yeomanry received orders early on Friday, to be in readiness to aid the civil power; in consequence of which precaution, no attempts at violence were made.

We hear little of the destruction of machinery; but we regret to find, that the firing of stacks and farm-buildings has not yet been effectually checked. On Thursday night, a tremendous conflagration, willfully occasioned, broke out in the premises of Mr. F. Groom, of Suppe, near Saxmundham. It began in a heap of barley-straw, and communicated to a barn partly filled with grain, a stack of clover, and another of wheat containing forty or fifty combs, a stable, a new and complete grazing premises, and other out-buildings. About twelve o'clock, the devouring element threatened the destruction of the entire premises, and threw the whole village into the greatest terror. Fortunately the wind shifted; and, at length, by the prompt exertions of the householders who had assembled, the flames were subdued without further mischief. Information, we understand, has been received, through which, it is expected, the perpetrators of this fire will be brought to justice. At Stowham Aspal, men are appointed to watch every night (two men are at farm); and at Mr. Cracknell's, whose premises are threatened, five men sit up. At this farm, yesterday evening, a man was discovered who had secreted himself under some straw; but, owing to the darkness of the night, he got away. Some time after he returned, and secreted himself between a wagon and a tumbrel, when a gun and a pistol were fired at him, but without effect, and he succeeded a second time in effecting his escape. On Sunday evening two fires were seen from that parish.

A poor man, coming through Bungay, about nine o'clock, on Wednesday night, with his child, was surrounded by a set of the rabble, by which that town is infested, who abused him, throwing stones at him and his horse, which he was compelled to take away to save that and himself from the outrage, which terminated in their maliciously breaking the machine by which he obtained his support.

A detachment of the 7th heavy Dragoons, on Thursday marched into Hingham and Attleborough, to remain there till the lawless disposition manifested by recent assemblages of the peasantry in the destruction of the thrashing machines, has subsided.

(From the Maitland Journal.) We lament to state that a diabolical spirit, inimical to that which has been manifested in other parts, in the destruction of farming stock by fire, has shown itself in this county. About eight o'clock in the evening of Tuesday last, a straw stack, containing sixty loads, standing in the yard of Mr. Baker, of Denton Court, near Gravesend, was discovered to be on fire. In a few minutes, the flames became truly awful; but the wind fortunately blowing from the buildings and the other stacks, and the prompt arrival of several engines from Gravesend, Northfleet, and Rochester, the fire was confined to the stack in which it originated, and which was totally consumed. From all the information that can be obtained, there is too much reason to apprehend that it was the act of an incendiary, and that the object in view was the destruction of a thrashing machine which was in an adjoining barn. The man who first discovered the fire, perceived in the stack a light about the size of a lantern, and in a moment the whole side of the stack was in a blaze. In a few minutes after, Mr. Brecheley, who resides at Denton Court, in passing through the yard was run against by a man who dropped a light and made off; Mr. B. instantly extinguished it, and on going to the spot the following morning he found a tobacco-pipe but little used, broken in pieces. On Saturday night, another stack consisting of stubble, standing about half a mile from the above, and belonging to Mr. Jarvis Noakes, of Shore, was discovered to be on fire and was totally destroyed. This appears to have been set on fire more to occasion alarm than any thing else, as a large stack of wheat stood a short distance off, and might have been as easily fired.

We cannot speak too highly of the alacrity with which the several engines arrived at both places; and the great exertions used by the neighbouring inhabitants to quell the flames and preserve the remaining property. This part of the county is at present in a state of alarm, every exertion is making to find out the incendiaries, and liberal rewards are offered for their apprehension, which, we trust, will lead to detection. A shocking accident happened at the former fire to one of the firemen belonging to the Kent Office Engine from Rochester, who, in jumping off the engine before it had stopped, was run over, the wheel passing over his head and chest. Medical assistance was immediately procured, but he lingered in great agony till the following day, when he expired.

We have heard from a source of intelligence on which we can rely, that his Majesty is not to be in our Scotland with his presence this summer. Glasgow Courier.

RAMSEY'S WATERFORD CHRONICLE.

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IMPORTANT MERCANTILE TRIAL.

FOLEY against FOGARTY. Counsel Assizes—Wednesday, March 27. BEFORE THE LORD CHIEF JUSTICE.

This important and interesting case, which had excited much anxious expectation in the City of Waterford, especially amongst commercial men, was called on this day at the sitting of the Court. The venue was laid here, in consequence of an application on the part of the Plaintiff, supported by an affidavit by his Agent, that in Waterford, which had been the scene of the transactions that formed the subject of the Trial, an impartial Jury could not be had.

The Lord Chief Justice having taken his seat in the Civil Court at about half-past ten o'clock, the following highly respectable Jury was sworn:— Thomas Gilling, Peter Smithwick, Fergal O'Leary, John Smithwick, Richard Pennefather, James Power, Matthew Monahan, James Robinson, William Sargent, and James Morrison, William Sargent, and Richard Chadwick, Peter Smithwick, Esqrs.

Mr. Ramsey opened the pleadings. He stated it to be an action of assumpsit, brought by Mr. Thomas Foley, of Harbour Grace, in the Island of Newfoundland, Merchant, against Mr. Richard Fogarty, of the City of Waterford, Merchant, for money lent and advanced by the Plaintiff to the Defendant, &c. The Declaration also contained the common money counts—the damages were laid at £5000—and the Defendant had pleaded the general issue.

Mr. Diswell then rose to state the Plaintiff's case, which he did to the following effect:— A Gentleman of the Jury—the demand of my client in this case is for a sum of £2911, and some odd shillings, due to him as the balance of an account stated and settled between him and the Defendant in this action, which balance is authenticated by the signature of the Defendant himself. Gentlemen of the Jury—I do think, to the best of my judgment, that you will have very little trouble in the exercise of your functions in this case; for, from the nature of the subject at issue, I apprehend that it will all depend on his Lordship's decision upon the question of law. I shall now proceed to state to you the facts of the case; but I have thought it necessary to suggest to you that it is strictly a question of law. Gentlemen, the Plaintiff in this case had not been in Ireland, previous to the year 1820, for about thirty years. He is a native of the County of Waterford—and I have a fact to state to you respecting him, which I am happy to say redounds to his honour, and that is, that although he received no education, and was not taught either to read or write, the disadvantages arising from these circumstances have been compensated for by a kind Providence in another manner, by blessing the endeavours of his honest and industrious life—so that it is highly to his credit to say, that notwithstanding the defects of his education, the honour and respectability of his dealings have gained him the acquaintance of every man with whom he has ever done business, except in the present instance, and he has been enabled, by the exertion of his industry, to accumulate wealth to an extent greater than he had occasion for. The Defendant, I understand, is a merchant in Waterford, who has hitherto maintained a very unblemished reputation; but with respect to this case he has supported that reputation, it is not for me to say—your conclusion will tell. About twenty years ago, a Mr. Thomas Meagher, a most respectable merchant, then carrying on business in Newfoundland, recommended to the Plaintiff to employ the Defendant as his broker in this country—and within that time an intercourse subsisted between them in this way:—The Plaintiff remitted him frequently English Bills from Harbour Grace, always drawn on the most respectable houses, which the Defendant negotiated, and in return shipped several cargoes of goods, purchased with the produce of these bills, and consigned to his principal, Mr. Foley; and upon these transactions, of course, the Defendant always charged his commission, as he certainly had a right to do. These dealings went on until the year 1820, when, as I have already stated, returned to his native country.—Being in Waterford, and understanding that the balance of account due to him by the Defendant, amounted to about £2000, he became anxious to try out this sum upon the Defendant. With this view, he applied to a respectable agent in Waterford—a noble Lord in that neighbourhood, who talked of as a fit person to deposit it with—impudently proposed to be made use of to his title in the hands of the Plaintiff, and Mr. Meagher, the friend of the Plaintiff, agreed to advance £2000 of his own money, to unite with Foley in the transaction, if the title was approved of. Some difficulties were raised in the arrangement of the matter, and Mr. Foley, not understanding the law, and perhaps dissatisfied with what he conceived to be the tardiness of his agent, applied to

another agent to undertake the management of the business. Before it could be brought to a conclusion, however, Mr. Foley left Ireland, without leaving any particular directions respecting it.—The night before he left Ireland, he pressed to get an account current from the Defendant, which was then made out for him, and which showed a balance due to him of £2911 18s. 5d. I am now, Sir, very near that point of the case which will rest with your Lordship to determine.— Strange to say, Gentlemen, in this account was enclosed a receipt from Newports bank for £2004 odd. Gentlemen, Mr. Foley knew no more about the nature of this receipt than a child; he had no confidence in the bank, and understood nothing of banking transactions. He showed this receipt to a friend, and on hearing what it was, he exclaimed—"I have nothing to do with the bank—I look to Mr. Fogarty as my security." On the morning following, he went to Mr. Fogarty, to ask him what it meant—and inquired of his book-keeper why this paper had been sent to him?— Mr. Fogarty's clerk, Lindsay, replied—"Oh! it is not intended by any means to connect you with the bank; it is merely to show you what was the amount of the bills that you last sent." Mr. Foley did not wish to have any connection with the bank; he knew nothing about banks; and, being obliged to sail, he left the receipt behind him, undisturbed, and not transferred in any way whatsoever, crying out that he would have nothing to do with the bank. He desired Mr. Meagher to invest the money in landed security, and left this country the same day, the 12th of April, 1820. On the 6th or 7th of June following, Newports bank failed. Your Lordship sees now what the question is which is now to be submitted to your Lordship's decision. When the bank failed, Fogarty claimed this sum, and also, by the bye, the interest due thereon. Gentlemen, let me call your attention to the wording of this receipt, which you will perceive to be very curious and, I think, highly material. [Here Mr. Diswell read over the bank receipt, which was dated the 29th January, 1820, and was for £2004 10s. 2d. promising to be accountable at 65 days after date.] Most certainly, Gentlemen, in the ordinary way of taking such receipts, it is very unusual to introduce such a condition as this promise to be accountable in 65 days. However, Gentlemen, it is quite evident, that the Defendant, in taking this receipt in his own name, had in view to obtain an interest on the sum for which he did not think himself accountable to the Plaintiff—and I have no doubt that you will think this circumstance sufficient to show, that the question lies entirely between Fogarty and the Bank. Not a title of evidence can be adduced to show that Mr. Foley had any other authority than the Defendant to lodge his money there; he was incapable of even understanding the nature of this receipt when it was handed to him; and yet they endeavoured to fasten the loss upon this innocent and unlearned gentleman, and to throw the burden of it upon his shoulders; and those of Mr. Fogarty. When this money was lodged, was it entered to the credit of Mr. Foley in the Bank? No, Gentlemen, I defy them to say that it was; and you will find that the name of the Plaintiff is no where visible in the books of the Bank. Mr. Foley had no transactions with the Bank; he placed his money in the hands of Mr. Fogarty; and you will see, Gentlemen, that this honest, unsuspecting man, thinking his money secure in his hands, drew a bill on him for the sum of £2911 18s. 5d. on the 29th of August following. This bill, however, the Defendant, though then claiming for this sum on the Estate of the Bank, refused to pay, and never has paid. Mr. Fogarty, it is said, had considerable dealings with the Bank; and I think your Lordship will find, that he not only dealt with the Bank on his own account, but that there was an agreement between him and the Bank, that he should be allowed interest upon this sum belonging to the Plaintiff, provided he left it for a certain time in the making. It is evident, therefore, that he was merely making use of Mr. Foley's money in this way for his own advantage; and I confidently anticipate that your Lordship will be of opinion, that the loss ought not to be fastened on this innocent and unlearned gentleman.— You will see, my Lord, when you read this Bank receipt, that his situation was this—that the Defendant had ample power to draw from the Bank, at any time before its failure, every shilling of the money—but that the Plaintiff could not touch one penny of it; the receipt had never been even indorsed to him, and he had no power at any time to draw a single shilling of it, even to this hour. Thus circumstanced, my client is reluctantly obliged to come before this Court and Jury—and the only question in the case will be, to select the person on whom the loss should be visited. If you find, Gentlemen, that this money was deposited to the Bank by Mr. Foley's authority or directions, you will in that case exonerate the Defendant; but if, on the contrary,

you shall see that from the first to the last he disclaimed all confidence in Banks—that he disavowed any connection with them—that he lodged this money in the hands of Mr. Fogarty, and of him only, for the single purpose of being invested in landed security—if you find all this, Sir, I am confident that you will never visit the loss upon this honest, innocent, uneducated, and unsuspecting gentleman.

Mr. James Morris sworn, and examined by Mr. Dickson.—Knows the Defendant, Richard Fogarty; has seen him write, and is acquainted with his handwriting. His name, signed in two different places to the account now presented to witness, under the respective dates of March 29 and April 11, 1820, is in both the hand-writing of the Defendant. The balance struck at first was £2911 18s. 5d. as due to Plaintiff. [Here the Judge desired to be furnished with an exact copy of this document, observing, that it would in all probability be absolutely necessary, as it was likely that the case would ultimately go before the Courts above.] Witness knows the Plaintiff, Thomas Foley, and remembers that he was in Waterford in April, 1820, and that he sailed from Waterford on the 12th of April, 1820. Knows that the Plaintiff is indebted to a resident of Harbour Grace, in the Island of Newfoundland, as witness has heard him say, upwards of his own knowledge, and that these were dealings between him and the Defendant, but cannot say of his own knowledge, that these dealings were always understood to be on account of the Defendant, as correspondent of Mr. Fogarty's; as Mr. Fogarty's name was on the account, and Mr. Fogarty is a merchant in Waterford, himself. Mr. Fogarty was a merchant in Waterford, and was correspondent of the Defendant's. Cause of correspondence with the Defendant, as witness was then Plaintiff and Defendant, as witness was then a correspondent of Mr. Foley at that time.

Cross-examined by Mr. Pennefather.—Witness's brother was married to a daughter of Patrick Meagher, who was a resident of Harbour Grace, in the Island of Newfoundland, and is now the wife of Witness's brother, and is now the correspondent of Mr. Foley, but has not done any business for him lately. The year that Plaintiff came home to Ireland, witness purchased for him, but charged him no commission thereon. The first intimation which witness received, that Mr. Foley intended to employ him as his broker, was at the house of a friend in Waterford, where they met. Plaintiff came to Waterford some time in January, 1820, and called on witness on the 12th of April following. Plaintiff is illiterate; witness has been in the habit of corresponding with him through a third person, who writes for Plaintiff; knows that that person is, and knows his hand-writing. Believes the letter now shown to witness is in the hand-writing of that person. [Four other letters were then successively handed to Mr. Morris, who gave a similar answer with respect to each. They were then handed to the Registrar of the Court.] Witness's brother, the son-in-law of Mr. Foley, resides in St. John's, in Newfoundland; knows his hand-writing; the letter now shown to witness, with the mark of Mr. Foley subscribed, and the name of P. Morris, witness's brother, subscribed, [This letter was also handed to the Registrar.] Knows Mr. Joseph Fanning, Plaintiff's attorney; the letter now shown is his hand-writing. [Hailed in as the proceeding.]

Mr. Diswell here said, that he conceived he had now made out a prima facie case to go to the Jury, that a balance of £2911 18s. 5d. was due to the Plaintiff by Defendant, and that he would close here for the present.

Mr. Pennefather then rose on behalf of the Defendant, and spoke to the following effect:— My Lord, and Gentlemen of the Jury.—In this case I am Counsel for the Defendant, a case which is certainly of very considerable importance, both with respect to the magnitude of the sum at issue between the parties, and the points of law which are involved in it. However, Gentlemen, I think it will turn out, in the progress of the trial, that the question to be decided is not so much as my learned friend has told you, a question of law, as a question of fact, and one which properly falls within the province of a Jury to decide. According to the case stated on the other side by Mr. Diswell, the question would appear to be one merely between a principal and his factor, in which the Defendant is sued for a balance remaining in his hands—that is the case made on the other side. And supposing, that this view of the case rests only on his statement, which for the present, I am not disposed to controvert. Assuming, then, for the sake of argument, that the case was really as stated by Mr. Diswell, that my client did lodge a certain sum in the banking-house of Newports & Co., which retained there till the failure of that house; and thence this question of law would arise—whether he was the principal, or the factor, the person

bound to sustain the loss resulting from that misfortune. As the case has been stated at the other side, you have it thus:—that Mr. Fogarty, as the factor or correspondent of Mr. Foley, became possessed of a sum of money, which, at a certain time, amounted to a balance of £3000, and which Mr. Fogarty lodged in Newports' Bank, at a time when that banking-house was in full credit. To that I will add, that at the same time, Mr. Fogarty, who is himself an extensive merchant, carrying on business on his own account, likewise deposited in the same Bank a sum of his own for extending that which was the property of Mr. Foley. The result would then be, gentlemen, that, at the time of the unexpected stoppage of that respectable Establishment, so to that moment enjoying the fullest credit, there was deposited in the Bank, by Mr. Fogarty, a sum of about £3000 belonging to Mr. Foley, and about £4000 of his own exclusive property—and the question of law arising out of this state of things would be, whether in such a case, the factor, acting bona fide as such, acting prudently, judiciously, and to the best of his judgment in the management of his principal's property, should be liable to stand to the loss arising from that failure, and that too when he had risked a large portion of his own property? That, gentlemen, would be the question of law, supposing the case to turn out as it has been stated by my learned friend—that is, as a mere question between principal and factor. My learned friend, has loudly insisted, that Mr. Foley had no concern with the Bank—that he had nothing whatever to do with the transactions between Mr. Fogarty and the Bank—and that it is merely folly to suppose that he had any kind of knowledge of the nature of those transactions.— You will see that, gentlemen, that there is no foundation for these assertions; but, however, supposing even that Mr. Foley were altogether unacquainted with the nature of the transactions with the Bank, the question of law resulting from the statement is, as I have already said, whether Mr. Fogarty, having managed the property of Mr. Foley judiciously, prudently, and in good faith, as his factor, is now obliged to make good to his principal the loss resulting from the unexpected failure of the Bank. I think, however, gentlemen of the Jury, you will find the case to turn out extremely different indeed from what has been stated on the other side; that, so far from this property having been deposited in the Bank without the knowledge of Mr. Foley, it was done by his express directions and full authority; and that Mr. Fogarty would have been actually answerable to the Plaintiff, if he had taken upon himself to apply the money in any other way than that in which he did. Gentlemen, you have been told, and truly, that Mr. Fogarty had been for many years the correspondent and factor of Mr. Foley. That they had had considerable dealings, there is no manner of doubt; and that Mr. Fogarty, throughout those dealings, had conducted himself towards the Plaintiff as an upright man, most necessarily to be inferred from the very statement of my learned friend, who tells you that his client had become so wealthy during the period of his connection with Mr. Fogarty, that he actually did not know what to do with the superabundance of money that he possessed! Gentlemen, I congratulate him that it was so—I rejoice to think that he became so rich as to consider money as mere dust—oh, gentlemen, you will not fail to reflect, that much of this wealth must have been owing to the careful management of this respectable Defendant, who had exerted himself so effectually to forward the interest of this illustrious man. The Plaintiff, therefore, it is evident, has no reason to complain of the manner in which his business was done by Mr. Fogarty; so far from his having had any reason to complain on this score, I shall be able to establish to your satisfaction, from the letters even of the Plaintiff himself, that he considered himself under the greatest obligations to him which the management of property can enable one man to confer upon another. Mr. Foley, Gentlemen, came over to Waterford from Newfoundland in the month of January, 1820; his daughter had been married to a Mr. Morris, a Waterford man, and of Waterford connections, and who had a brother residing in Waterford. Mr. Foley, on coming amongst the connections of his son-in-law, and out of a natural respect and affection for that son-in-law, transferred the management of his affairs in Waterford to Mr. Morris, his son-in-law's brother, the gentleman whom you have seen on the table, and from whose evidence you find, that he thereupon became the factor and correspondent of Mr. Foley, and that the connection in that capacity between Foley and his old friend Fogarty immediately ceased. Mr. Foley then arrived in this County the 26th of January, 1820—but my learned friend is under a grievous mistake in saying, that, on his arrival in Waterford, there was a balance due to him, in the hands of Mr. Fogarty, of about £3000; the fact is, that the balance then due to Mr. Foley, on the morning account between him and the Defendant, did not exceed between them and four hundred pounds,

and that the balance struck at first was £2911 18s. 5d. as due to Plaintiff. [Here the Judge desired to be furnished with an exact copy of this document, observing, that it would in all probability be absolutely necessary, as it was likely that the case would ultimately go before the Courts above.] Witness knows the Plaintiff, Thomas Foley, and remembers that he was in Waterford in April, 1820, and that he sailed from Waterford on the 12th of April, 1820. Knows that the Plaintiff is indebted to a resident of Harbour Grace, in the Island of Newfoundland, as witness has heard him say, upwards of his own knowledge, and that these were dealings between him and the Defendant, but cannot say of his own knowledge, that these dealings were always understood to be on account of the Defendant, as correspondent of Mr. Fogarty's; as Mr. Fogarty's name was on the account, and Mr. Fogarty is a merchant in Waterford, himself. Mr. Fogarty was a merchant in Waterford, and was correspondent of the Defendant's. Cause of correspondence with the Defendant, as witness was then Plaintiff and Defendant, as witness was then a correspondent of Mr. Foley at that time.

Witness's brother was married to a daughter of Patrick Meagher, who was a resident of Harbour Grace, in the Island of Newfoundland, and is now the wife of Witness's brother, and is now the correspondent of Mr. Foley, but has not done any business for him lately. The year that Plaintiff came home to Ireland, witness purchased for him, but charged him no commission thereon. The first intimation which witness received, that Mr. Foley intended to employ him as his broker, was at the house of a friend in Waterford, where they met. Plaintiff came to Waterford some time in January, 1820, and called on witness on the 12th of April following. Plaintiff is illiterate; witness has been in the habit of corresponding with him through a third person, who writes for Plaintiff; knows that that person is, and knows his hand-writing. Believes the letter now shown to witness is in the hand-writing of that person. [Four other letters were then successively handed to Mr. Morris, who gave a similar answer with respect to each. They were then handed to the Registrar of the Court.] Witness's brother, the son-in-law of Mr. Foley, resides in St. John's, in Newfoundland; knows his hand-writing; the letter now shown to witness, with the mark of Mr. Foley subscribed, and the name of P. Morris, witness's brother, subscribed, [This letter was also handed to the Registrar.] Knows Mr. Joseph Fanning, Plaintiff's attorney; the letter now shown is his hand-writing. [Hailed in as the proceeding.]

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