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Victor Bingham

Bingham Press Ltd

Published in Great Britain in 2019
by Bingham Press Ltd
45 Station Road, Henley-on Thames,
Oxfordshire RG9 1AT
01491 579797
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Printed by Studio Print Dorchester
www.studioprintdorchester.co.uk
located in Poundbury, Prince Charles' benign development.

Published by Bingham Press
www.binghampressttd.com
Cover design by Bingham Press Ltd



REPORT OF THE TRIAL
OF AN ACTION FOR LIBEL,
HAD BEFORE
BARON SIR WM. CUSACK SMITH, BARONET,
AT NISI PRIUS,
IN THE COURT OF EXCHEQUER,
IN THE SITTINGS AFTER MICHAELMAS TERM,
ON WEDNESDAY, THE 11TH OF DECEMBER, 1833,
WHEREIN
THE REV. J. P. LYONS,
Parish Priest of Kilmore, Barony of Erris, and County Mayo,
WAS PLAINTIFF,
AND
MAJOR BINGHAM, WILLIAM BINGHAM, ESQ.
AND PATRICK LAVELLE,
WERE DEFENDANTS,
*With the Evidence and Speeches of Counsel, and the Charge of
the learned Judge ;*
TAKEN DOWN
BY WALTER GLASCOCK, ESQ. A. M.

DUBLIN :
PRINTED BY GEORGE FOLDS, 1, ST. ANDREW-ST.
(OPPOSITE TRINITY-STREET.)
AND SOLD BY
THOMAS WEBB, 43, LOWER SACKVILLE-STREET.
1834.



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TRIAL
OF AN ACTION FOR LIBEL,
BEFORE
Baron Sir William Cusack Smith, Bart.,
WHEREIN
The Reverend Patrick Lyons,
P. P. OF KILMORE, ERRIS, IN THE COUNTY OF MAYO, WAS
PLAINTIFF ;
AND
Major Bingham, and William Bingham, Esq.,
and Patrick Lavelle, were
DEFENDANTS.

The following jury having been sworn,

1 WILLIAM WILLANS,	7 CHARLES MEARA,
2 JOHN ELLIOTT HYNDMAN,	8 JOHN MARTIN,
3 RICHARD O'GORMAN,	9 WILLIAM DIXON,
4 JOHN MALLET,	10 JAMES MEARA,
5 GEORGE HOWELL,	11 HENRY PIELE, and
6 CHAS. FOSTER DOWLING,	12 MARTIN KEENE, Esqrs.

Mr. Whiteside opened the pleadings—

This was an action on the case for a libel. The first count stated that the Plaintiff was a clergyman of the Roman Catholic Church, and Parish Priest of Kilmore in Erris, in the county of Mayo; and the Declaration stated that the Defendants had published a libel of him in these words—"To the most "Worshipful Father in God, Oliver O'Kelly, by Divine Grace "R. C. Archbishop of Tuam, &c. &c. &c. The humble and re- "spectful memorial, &c. &c.—That time immemorial our hitherto "peaceable, friendly, and benevolent Parish, nay, Barony at "large, enjoyed union, peace, love, and good will, ——"

Before Counsel had concluded the parts of the memorial he considered necessary to read at this stage of the case, he was interrupted by Mr. O'Connell, who said that he would have to read and to observe on the greater part of the libel, and therefore he must request Mr. Whiteside to read no more of it at present.

Mr. Whiteside said that the Defendant, Patrick Lavelle, had justified some passages in it; that the other two Defendants had pleaded the general issue, and that the damages had been laid at £4000.

Mr. O'Connell then rose and said—

MY LORD, AND GENTLEMEN OF THE JURY—I stopped the counsel in going through the libel, which is of considerable length; for, with respect to the points in which the Defendant, Lavelle has justified, I shall have occasion to remark fully on them in addressing the jury, and therefore did not wish to occupy your time with a repetition of it. This proposition will not be controverted, that if we had demurred to this plea of justification, the Court would have allowed the demurrer. Gentlemen, what I have now stated, relates to the law of the case. His Lordship will tell you that any inference of malice, is alone for your consideration. It is fit that I should tell you then, Gentlemen, who the parties are here before you. The Plaintiff is a Roman Catholic clergyman, the Parish Priest of Kilmore, in the barony of Erris, a very extensive district in the county of Mayo, and at one time a very lawless place—and now containing not less than 10,000 inhabitants, under the spiritual care of the Pastor, and requiring, under their circumstances, much of his temporal assistance, which he has always given them, in an unequalled degree for a man in his class. He was the pastor of this parish from the year 1825; and I will say, that never was a greater change effected any where than was in this parish by him since he was appointed to it. The Defendants here are three; the first is Major Bingham, having a very large property in the parish; the second is Mr. William Bingham, his son, but who never can be his heir at law; the third is one of those multifarious creatures, who are employed by landed proprietors, particularly on remote properties, known

by the denomination of DRIVERS ! one of those SCOURGES who have been compared to those who use the lash in the West Indies, to lacerate the backs of the slaves ; but in general they are more humane than are those *drivers* on a rack-rent estate in Ireland. Major Bingham and his son are Protestants, and Patrick Lavelle will, as some speeches quaintly end, “die an unworthy member of the Church of Rome.” Why this memorial, which professes to be a complaint by the Roman Catholic parishioners against their priest, should have been got up by the three Defendants, I cannot say : such conduct of the priest there complained of as faulty, must have been as indifferent to Mr. William Bingham as it could have been to the Major ; and as to Patrick Lavelle, it was equally immaterial to him what a priest or a parson did, he could set both at defiance ; and I say, as the complaint was to a superior of the Roman Catholic church, the Bingham could have no motives of a spiritual nature for making it : Patrick Lavelle might have such an excuse ; but as far as the Bingham are concerned, we must disembarass the case from any spiritual causes—as to them, they must have been of a *temporal* nature ; and I think I will show that they arose from temporal motives of a most malignant nature indeed.

When Mr. Lyons first came to this parish, Major Bingham and his son were magistrates, and they had a colleague, a clergyman of the Established Church. There were three Protestant magistrates then in the parish—there is not one of them there now, *hinc illa lacrima*. A stipendiary magistrate was sent down there by Government ; a complaint had been made against these Protestant magistrates—it must have been founded in justice ; for, since then, this Protestant clergyman, Major Bingham, and his natural son Mr. William Bingham, have been deprived of this commission of the peace ; and what the consequence of all this was, I am bound to tell you, and to explain the true cause of all that followed. When Mr. Lyons was first appointed to this parish, Major Bingham had several situations in it ; he was landed proprietor, and he collected the rents ; he was chief constable, and he collected the barony cess ; he was perpetual church

warden, and he collected the parish cess ; he was the tithe-jobber, and he collected the tithe. Why, *Caleb Quotem* himself had not more occupations than Major Bingham once had in the barony of Erris ; but they are all gone, and he is now merely, what he ought to be, the owner of his own landed property.

Mr. Jackson—And God knows how long he may be that !

Mr. O'Connell—He is no longer chief constable, churchwarden, tithe-jobber, or magistrate—all, all, are blotted out ; nine-tenths of his places are taken from him, and all this is attributed to my client—and most justly, I will say, attributed to my client. On his representation, Government sent down to inquire into all these things, and the local magistrates were removed, and a stipendiary magistrate appointed in their stead, and now the business of the public is done, and well done, by that stipendiary magistrate. This barony of Erris had been inflicted with a famine common in Ireland, and in 1831 and 1832 it prevailed much in this parish. The rents were paid here by their crop of corn, and the produce of the poor people's land was seized by such *creatures* as Pat. Lavelle !

Pat. Lavelle, (the Defendant)—You ought not to say any thing against me, Mr. O'Connell, or about driving ; for I often paid you the rent, and saw others driven for it for you—and I never drove for the Major's rent so hard as your drivers drove for yours.

Mr. O'Connell—What is that fellow making a noise about ? Oh ! it is this same Patrick Lavelle ; see what a creature that fellow is ; he actually thinks now he is not in your Lordship's court, but that he is in Major Bingham's court.

Mr. Bennett—Let the poor man alone, he is only saying that he often paid and was driven for your rent.

Mr. O'Connell—Oh, that is the standing joke, these four years, of every blackguard, whether in a good coat or a bad one.

Gentlemen—We will come back from this Patrick Lavelle to his master, and to the state of this parish in the year 1830. The parish was in such a state of famine that it became necessary for Mr. Lyons to leave the barony, and to go and wait on the Duke

of Northumberland, whose hand was always in his pocket to afford relief for those in adversity; there was then no public fund for the purpose, and the Plaintiff was obliged to go to England, and in Liverpool, Manchester, and other towns, he collected sufficient to relieve the immediate wants of Major Bingham's wretched and starving tenants.

Before the corn crop was ripe the potatoe crop had failed, and Mr. Lyons was obliged again to go over to England, and as there was no available fund to resort to here, he repaired to London, and was instrumental in obtaining those subscriptions which relieved the people in 1830 and 1831. [Exclamations of surprize from Defendants' counsel.]

Mr. O'Connell—I am interrupted here, but, gentlemen, I assert distinctly that the exertions of Mr. Lyons were mainly calculated to keep the tenantry of Major Bingham from starving, to preserve their very existence, you will naturally ask, did Major Bingham contribute? I will tell you, he did—nothing! The proprietor of the soil, he who is so anxious for the spiritual welfare of his tenants, contributed nothing to the support of their famishing bodies. You might, gentlemen, have seen in some of the reports of parliamentary debates in the newspapers, that Mr. Stanley had expressed his surprize that Major Bingham had not contributed any thing to this charitable fund. I am placing before you the cause of all this conduct—a quantity of potatoes were bought from the London subscription fund, and brought to Erris by Mr. Lyons. Who do you suppose were the most active to put themselves on the committee of distribution? why Major Bingham and this son of his—it was all for charity, but we have heard of charity which begins at home. I defy them to prove, that he contributed one farthing to this charity of which he chose to be distributor; on the contrary, it was found that of these very potatoes, Major Bingham had converted a quantity to his own use as seed potatoes. [Here the witnesses on both sides were ordered to leave the court, and not to be present during any of the trial, on pain of not being examined as witnesses.]

Mr. O'Connell—This I can prove by a letter in William Bingham's own handwriting, but in which he says "I gave them other potatoes instead, but sowed the English, as being better

seed;" why to be sure he did, it was not because they were worse he kept them, no, he sowed them, and in their place gave the people what he would not give to pigs. What was the consequence? that Major Bingham and his son William were struck off the committee of distribution; but is that all? need I give one instance more? We have a volume of facts to show why this malicious libel was brought against a gentleman, who has done more for the cause of humanity than any other person in his station and circumstances; and is he who has done his duty to his God and to his country, to be, therefore, the victim of that slander, which it was hoped would disqualify him from repeating his benevolent and charitable acts, which prevented destruction and starvation again visiting this barony of Erris. But to another fact—there was another crop to which the landlord looked for his rent, besides the crop of oats, a crop from ship-wrecks! There had been then no light-house on the Erris coast, and an Austrian vessel, from Trieste, had the misfortune to be wrecked there; some of the crew were drowned, others of them were unhappily saved from the waves, for they fell into the hands of the most brutal barbarians in broad cloth and in frize, who, on their reaching the shore, struck them down, and stripped them of their clothing; one man had reached the shore, it was said he was dead, or nearly so, but he held in the strong grasp of death, a rope—what did one of the vile barbarians do to get the rope which was worth, perhaps, six-pence? he took a hatchet and cut off the hand with the rope in it, that he might have the rope uninjured. What a hellish deed is there for you? Well—an auction was called, by these local magistrates, to sell this wreck; and the hull of the vessel, the masts, the spars, the iron, every thing, was knocked down for £25! This was a material fact, for it justifies what I said of the *Protestant Clergyman*, for it was on that occasion that he was struck off the list of the magistrates of the county.

Mr. Bennett—I protest, my Lord, I am altogether unprepared to defend my client (who is Lavelle) against these statements, if they be meant as charges; indeed I cannot see what they have to do with him at all.

Mr. O'Connell—Lavelle is the very man to whom this part of

the case more particularly applies, as he has put in a plea to justify the charge against my client, of spitting in a man's face.

Mr. Bennett.—But what has that to say to one man cutting off another man's hand?

Mr. O'Connell.—It has much. I will justify the act of his spitting in the face of one of those tenants, for I will show that Mr. Lyons, in the fervour of his disgust, did commit that act, and spat with disdain at the very barbarian who thus cut off that hand, when he met him among his flock on leaving the altar. One of the charges against Mr. Lyons is, that he denounced this wretch from the altar, and threatened him with hell for his crimes. But, I would ask, was it possible to find language strong enough to denounce barbarians so wicked?—and could he refrain from spitting at them in the phrenzy of disgust at the abominable and atrocious crime? But what is said in the memorial? “This is our father confessor, we will take care and never go to him again to confession, to be betrayed as we were on that occasion;” stating therein, that he was guilty of such a disgraceful breach of duty, but, at the same, allowing that they themselves had also been guilty of those odious atrocities.

Gentlemen of the Jury—I should state to you that Mr. Lyons, on this occasion of the shipwreck, to prevent in future, the shameful robbery of these shipwrecked individuals, denounced temporal punishment, and Divine vengeance upon them; and twice has this libel complained of this, though he would not be a man or a Christian Priest, if he had not denounced the vile conduct and trade of these disgusting wreckers. He has since, to be sure, succeeded in getting light-houses built on the coast; can you be surprised that this act of benevolence has displeased those who made a property out of the misfortunes of hapless mariners. Besides, having these useful works completed, he has also built two chapels in this parish; and there is no individual Clergyman of his means and station, who has distributed more books, or has more attended to the education of the people in his parish, than Mr. Lyons. I have now broken the case to you—it is the case of a meritorious Catholic Priest, totally given up to providing for

the wants of his flock, both spiritual and temporal, twice visiting England to obtain her charitable contributions for them. In this barony, I admit, that in this one particular instance, my opinion concerning the Poor Laws is erroneous, for there the proprietor takes all he can, and don't give one penny himself to the poor. But this libel appeared in the *Mayo Constitution*, and also in the *Christian Examiner*; the latter a paper which circulates very much through a large class of persons in England, constituting the religious public there,—persons, perhaps, of sectarian feelings, but of charitable dispositions. They all read this *Christian Examiner*, and there they found this libel, aye, and they will read in it, your verdict too. Find, then, a verdict—I call on you to find a verdict now of liberal damages, and thus prove that he who twice saved a district from starving, sought the aid of Englishmen not in vain, and then distributed their alms with fairness, and as the donors intended. Shew all this by your verdict, I entreat of you. Therefore, was it, that Mr. Lyons was bound to go first to the *Christian Examiner* in defence of his character. The Editor of that paper at once saw his error. Don't proceed against me, says he; you don't want money of me. No, replied the other, I want only my character. You shall have it, says the Editor; send your attorney to me, I will take him off your hands. I will put such an apology into my paper, as shall completely re-establish your injured character; and he did so, and the action was in consequence withdrawn. He also brought an action against the *Mayo Constitution*: they said, "why attack us, we had no bad feeling against you; this came to us in the way of business; we were paid for it as an advertisement." It don't appear as such, said Mr. Lyons. "We will prove to you," say they, "that we were paid £2 10s. for it. Pat. Lavelle and Mr. William Bingham brought it here; and Pat. Lavelle not being a literary character, he got the Reporter of the paper to settle a letter for him, which he dictated, and which, when it had been arranged by the Editor in better words, he afterwards signed "*Pat. Lav.*" The Editor said, that is not your name, on which he added "*elle.*" These, says the proprietors of the *Mayo Constitution*,

these are the facts, we will prove them to you. Well, then, says Mr. Lyons, I will forgive you; I will look to the real delinquents. A deal will, no doubt, be said of the omnipotence of the Catholic Clergy—of the overwhelming influence they have over every one of their flock. You will hear much said of their omnipotence; but, Gentlemen, you will allow that to weigh as a feather on your minds, when you hear that this reliever of the destitute, this promoter of harmony, was actually fired at by ruffian miscreants, who not only raised their voices against his conduct, but raised their hands against his life. And will you then think that such influence exists here, when you are told, that one hundred and twenty of the parishioners of Mr. Lyons' parish, were prevailed on to sign this memorial against their priest—a memorial that I won't insist on, was drawn up by the Bingham and Lavelle alone; for I will prove that the more technical part of it was actually drawn up by their attorney, as I may call him, for this purpose—a Mr. Owen Heneghan—a man sixteen years in Major Bingham's employment; and the Bingham employed him to draw up this memorial, and, more than that, they paid him for it more liberally than they ever paid him for any job before, for they paid him five shillings, and they ordered him a piece of a dead cow besides, for this his splendid composition. To this memorial Lavelle was despatched to get signatures; and I shall prove to you that a poor man's cow was kept one hundred and two days in pound, to force him to sign it. He had to pay £2 11s. fees to drivers for this one distress. I will prove, in short, all the exactions and contrivances used by the Bingham to have this memorial signed by his own tenantry.

I will now bring your attention to that part of the libel which Lavelle has been called on to justify, and then I will call on you to consider what damages you should give my client, when you will find that Lavelle has not justified one fiftieth part of this libel, and now I will proceed and read it to you:—"To Oliver O'Kelly, by divine grace, Roman Catholic Archbishop of Tuam,"—Major Bingham, I am sure, thought a deal of this divine

grace!—"Most humbly complaining, sheweth"—the very words in which a bill in Equity commences. If any of you have had the misfortune of ever being brought into a Court of Equity, you will recognize the language of this attorney's clerk; but hear more, "The Priest and the Minister, the Protestant and Catholic, sat together in the same house, and room, and enjoyed the passing jest or argument (either moral or *divine*) alike,"

There is language for you!—there is a description, and of what? a theological joke! Why, that is new in composition—it was reserved for the Bingham and Lavelle to discover such a new joke. Again, "We seem to dwindle apace of our former hospitality, good name, fame, credit, and reputation," the attorney's clerk breaks out again. And, again, here, "with threats of damnation more dire than those of doom's-day book."

[Thus Mr. O'Connell proceeded through the alleged libel, making observations, now and then, on different parts of the language, and shewing such parts of it as were justified by Lavelle; and observed that he would prove by a witness, that he, the witness, had signed it, but that he was told that it was an enrollment for a corps of yeomanry! and that every man who signed it was to get one shilling a day. He also shortly stated the fact of the Bishop having sent down his vicar-general to enquire into the facts of the memorial; and when this reverend gentleman was reading over the memorial, and calling on these people to come forward and prove each distinct charge, Lavelle told him he was reading the memorial incorrectly. I will read it again, says the clergyman. I see, cried Lavelle, we are to get no justice here; and off he went, carrying away with him about twenty of Major Bingham's *drivers*. He then continued—I understand they have brought up fifteen or sixteen of these drivers, all under the custody of Lavelle. I should be glad to see them in that witness box; their testimony will make a fair closing to the whole of this transaction.

Having then pointed out the parts of the memorial justified by Lavelle, and the parts not, and stated other facts as to Major Bingham and others, he called on the jury to give his client the stamp of innocence by their verdict, which he might be able to carry

hereafter to England as a testimonial, that should he ever be again obliged to go there to seek aid, he would meet with the same kind charity, he has shewn that he could so well dispense, and would again be able to serve his country.]

The first witness examined was,

Patrick Malvogue Feeney—[This witness applied for his expenses, and said he was going to England when he was subpoenaed. He was examined by Mr. Fitzgibbon.]—Was employed in the *Mayo Constitution*, in the year 1831, as sub-editor and reporter to it; knows the parties; saw the Defendants, William Bingham and Lavelle, in the month of October, 1831, at the office of the *Mayo Constitution*; Mr. Bingham told witness that the Defendant, Lavelle, had a letter to get published in that paper, and said that Lavelle was an ignorant man, and begged witness to take it down, and Lavelle said, that what Mr. Bingham had said, was all true; witness took it down, and said he would write it out plainly to-morrow; Mr. Bingham said he would call again and have it read over; in the course of that day Mr. B. came back to witness alone; he said he wished to have the letter made as strong as possible, and that Mr. Lyons had treated the people of Erris very badly; that he had acted very tyrannically to them; Mr. B. gave witness some additional matter to be embodied in the letter; witness did so; Mr. B. and Lavelle both called the next day; witness had the letter written then, and read it to them; when witness came to the part which Mr. B. had desired him to embody, Lavelle objected to it, and said he could not swear to that; Mr. Boles also was present then; Mr. Bingham said, as this is Lavelle's production nothing should be inserted without his authority, and the part Lavelle objected to was accordingly left out; Mr. Bingham gave witness a paper he said was a complaint of Mr. Lyons' conduct; Lavelle was present; witness has not that paper—(looks at the publications in the *Mayo Constitution*)—Mr. Bingham paid £2 10s. for them; he said that was too much, for that Lavelle was a poor man; witness said they would occupy much space in the paper; Lavelle was present then, but it was Mr. Bingham who paid for their in-

sertion ; witness does not know where the originals are ; after the publication, witness met Mr. Bingham ; they had some passing conversation, something about an action against the paper ; the substance of what the witness then said to him was, that witness thought it would be a hardship that the paper should suffer for publishing what he gave ; witness don't know what he said in reply, but he treated the matter very cavalierly ; Major Bingham resides in Erris ; he is called " The King of Erris."

Mr. Bennett (cross-examined him)—So you only were going quite by accident to England, from the *Constitution* when you got the subpoena, you were going there for your *own constitution*, I suppose. You said something about a prosecution meditated against yourself.

Witness—No, against the paper ; I was only editor and reporter to it. *Mr. B.*—That is rather more than printer I should think ? Is not the composer of a libel worse than the mere printer of it ? I am a bad lawyer. Is there any prosecution now pending against this paper ? I am not aware that there is. But there was ? Yes. You have been the editor of two or three papers ? Yes. Why you are an elegant and experienced writer, what were these papers ? *The Mayo Telegraph* and the *Mayo Free Press*.

They are what are generally called, I believe, liberal papers—papers that are in the habit of abusing landlords and magistrates, rent, tithe, and tax payers, and this is called liberality now a days ; this is modern liberalism, is it not ? Yes, I believe so. Did Mr. Lyons ever write any thing for any of those papers ?

Mr. O'Connell—Mind, did he ever write so, that you *know* of ?

Witness—I think when I was editor of the *Mayo Free Press* I saw some articles that were his ; he was very intimate with the proprietors of that paper. *Mr. B.*—And also with the proprietor of the *Mayo Telegraph* ? Yes, I think I have seen him go into his house frequently. Sometimes landlords have been abused in these liberal papers ? They have. And the people are sometimes told to have nothing to say to the payment of tithes ? Yes. And this is all mere liberality—when was it that Lavelle, you say, went into your office ? It was about October, 1831. That is

more than two years ago ; why you have a wonderful accurate recollection of what passed when an action was pending over your paper ? That circumstance made me recollect it. You said you had a written paper, and the memorial was also written too ? Yes. And the two were handed to you ? One of them I wrote out by Mr. William Bingham's dictation. I presume you embellished it with some of your *own peculiar* stile ? I do not know that I added any thing, I only took notes, I don't suppose that I copied them exactly. Oh ! but surely you tickled up the stile ? I don't think that I added any thing. You must, if you did not, you copied the exact words ? I added connecting words. Where does Major Bingham reside ? About 40 miles from Castlebar. The paper you got, was signed by a great number of parties ? It was.

Mr. Jackson—I am for Major Bingham, but I wont occupy time, by cross-examining this witness, but being for a different Defendant from Mr. Bennett, reserve to myself all my rights over this and every other witness for or against Lavelle. *Witness.* (to a question from Mr. O'Connell) The paper I wrote was signed by Lavelle, he first wrote "*Lav.*" and then added "*elle.*"

Mr. O'Connell—The Mayo Constitution is admitted, will you admit these two papers also ?

Mr. Bennett—We have nothing to say to them.

Mr. O'Connell—Then, I must trouble you, Mr. Vernon.

[*Charles Vernon*, the officer from the stamp office, proved the *Ballina Impartial* and the *Sligo Journal*, containing these publications.

Alexander Boles examined by *Mr. Whiteside*—Witness is one of the proprietors of the *Mayo Constitution* now, was not so, when this memorial and letter were published, was in the office of the paper when he heard an action mentioned, and when it was stopped, in consequence of the author having been given up, recollects the transaction mentioned by the last witness, between him and Mr. William Bingham, who had also a conversation with witness ; the Monday before the publication, which was on Thursday, he said that he had a memorial to have published in the paper, got up by the parish against the clergyman, Mr. Lyons, it was a memorial to the Bishop ; that he also wanted to have a letter inserted, accompanying that memorial, from a man named

Lavelle, that Lavelle was not capable of writing himself for publication, and he wished to have his letter put in order for him for the purpose, witness begged of him to call the next day, he did so, and one passage in the letter was left out, at the instance of Lavelle, who came with him; £2 10s. was paid by Mr. Wm. Bingham for the insertion. He afterwards called for the MS. which witness delivered to him, he said there were a sufficient number of witnesses to prove the truth of it.

Mr. Jackson (cross-examined him)—Did you write your name, or put any mark on this MS. or any part of it? I did not. How long is it since you saw it? It is several months. What is there on it to enable you to state positively that it is the same MS.? One principal thing is, these signatures on the back of it, with a different shade of ink. Then, you know it from the signatures in columns, and the different shades of ink to some of them? I do, I have no doubt that it is the same document which had remained in my possession, until I gave it up to Mr. Edmond Nolan; I put it on the file in my office, after the document had been used. Was it under lock and key? No, it was not, but my office was, and was only accessible to Mr. Feeney; Mr. Nolan inquired of me about this MS. and I gave it up to him, by the direction of the proprietors; I don't know what their object was, but my view of it was, in order that Mr. Nolan should make such use of it as should protect the proprietors. Was it Feeney who first suggested that there ought to be a letter? No. Or did he volunteer to write it before he was asked? No. Do you know any of the signatures to it? I do not. Don't you know Lavelle's? I said I saw Lavelle write his name; I did not take any liberty of the kind by suggesting any thing to Feeney, who was the editor; I never considered or dreamed that the publication was libellous, if I had, I would not have received it.

Juror—Did you read the memorial? No.

Mr. O'Connell—Who was Nolan acting for? For Mr. Bourke, one of the proprietors, I supposed that he defended him in the action.

Feeney was again called up, and proved the document to be the same which was handed to him by Lavelle, and said he did not know how any alteration could have been made in the MS.

Mr. Bennett—Will you positively swear, Sir, that this is the identical paper, without any alterations, which you got from Lavelle? I believe it is, on my oath. Will you swear that it is the identical paper? I will swear that it is the identical paper which I got from Mr. William Bingham.

Owen Heneghan examined by *Mr. O'Connell*—Witness is a writing-clerk; writes in Erris; knows Major Bingham; has written for him; wrote a memorial against the parish priest for him, some drafts, and a fair copy; has written for Ignatius Kelly; there is no other particular clerk that witness knows of in the barony of Erris, but schoolmasters; the memorial was in witness's handwriting, and copied at the instance of Pat. Lavelle and Jas.

Cosgrave; the composition is all witness's; Pat. Lavelle and James Cosgrave told witness that they were sent to him, witness, to do it, by Major Bingham; witness saw Major Bingham after, and produced to him the draft, of which this memorial is a fair copy, and witness was paid five shillings for it by Major Bingham, and a piece of beef.

Mr. O'Connell—Was it not a piece of a dead cow? Myself dont know whether it was a cow or a bull; but I know that a piece of good beef is a great stranger in Erris. What piece was it? A piece of the ribs. When witness carried the draft to the Major, it was obliged to be changed, and he desired him to bring it again; witness made a few words in the latter part of it, which is not in this, which were desired by Lavelle and James Cosgrave to be put in; and on going with it to Major Bingham, he desired witness to make it *stronger* in the language, and then after, he gave witness a glass, and a good warrant he was to do so; knows Pat. Lavelle's handwriting; saw him often write; this is his handwriting; Major Bingham told witness, that if this memorial would not do, he would send one to the Primate of Ireland, and publish it in the newspapers in England, Ireland, and Scotland; he desired witness to bring it to Pat. Lavelle, and leave it with him for signatures; Lavelle is over the *drivers*; witness knows the different *handwritings* to it, and *most* of those, whose marks are to it, *don't write*; witness was brought to the Major on the 21st December, 1830; had the draft made the night before; he went the evening before the 24th of December, with the draft, when witness made it stronger.

Mr. Jackson cross-examined him—Did you sign it? Yes, I signed it myself. It is all a parcel of lies? I don't think it is—Oh, I mean I think it is—you took me short. You are not the boy that would sign a lie? Faith, then, if you were in my place, you would put your name to it too, if you were desired, or all you had would be taken and canted. Then you would tell a lie, if doing so would save you from being canted? I should, in that case. Who is your landlord? William Henry Carter is my landlord. You know Mr. Lyons? I know him since he was the parish priest, four or five years. You are very fond of him?—Sir? You are hard of hearing. *Witness*—Why, then, I am hard of hearing in one ear—I just have found that out, you would rather, I engage, have Mr. O'Connell than me? I don't care which. Who was by when the Major gave you the five shillings and the beef? No one, but his own man, Edward M'Andrews. Who brought you to town? The Rev. Mr. Lyons gave me the subpoena and one guinea; I have been living since up at the Yellow Lion. With the Erris people, I engage? There are eleven of us come to town by Mr. Lyons' direction; we are here since Saturday; we slept in different apartments. You have attended the Quarter Sessions frequently, I believe; what character have you there? there are few more respected than you? I don't

say I bear a bad character there. You have been accused of making free with some of Mr. Ignatius Kelly's property? Never; if I was, I would not be called on to go back to him. You have been examined as a witness at Mayo, and turned off the table as a person not to be believed on his oath? Never. [To different other questions he answered]—I don't write for Priest Lyons now; I did a small bit of a petition for a chapel there; Pat. Lavelle and Edward M. Andrew were the two by whom Major Bingham desired me to "make it stronger;" I copied it at Clogher; Clogher is about two miles from Bingham Castle; Pat. Lavelle sent Cosgrave, and William Barrett was present when I wrote the original; these three told me what to put into it; I was a piece of a night *writing*; I can't tell how long, we had no watch in company; I saw some of the townspeople sign it, all of them at the bottom here, thirty-two, and others, besides, inhabitants of *Binghamstown*; they are all Roman Catholics; Mr. Lyons is priest of Binghamstown; he says mass there, and all there commonly go to chapel, and others of them *latterly* go to church; the priest lives opposite the chapel; Major Bingham leased him the ground on which his house is.

Mr. O'Connell [resumed the examination, and he answered as follows]:—I lived on Major Bingham's land, thirteen or fourteen years; I was a tenant of his at Binghamstown, when this paper was signed; Pat Lavelle afterwards accompanied me to Major Bingham's; Barrett was one of the drivers, and Cosgrave his agent; the others were tenants of Binghamstown, and owed him rent; the agent and drivers were sent out for them, and they came in and signed.

Thomas Diskson (examined by *Mr. O'Connell*)—Witness can write; the paper produced is subscribed by witnesses hand writing; he signed it by desire of Major Bingham at his castle; he read part of it, and said he was going to send it to the bishop; witness went to the castle to buy an ass; the Major had many asses there; sometimes they had been distrained for rent, and he then buys them and sells them out again; witness was Major Bingham's tenant, and was afraid if he would not sign this paper, that the Major would persevere on him, and turn him out of his place.

Mr. Jackson cross-examined him—Did you know what you were signing? He read part of it to me. Was it true or false? Part of it was true, and part false. Pray which part of it was true, and which false? I did not believe the charges to be true; I signed it in dread of him, as he was persevering against some of the tenants, and I owed him rent at the time. He decreed you by ejectionment at the last Sessions for non-payment of rent? He did at Castlebar. (To other questions)—I know Owen Henaghan; he was not by at the time I signed; Austin O'Malley was by; he is not here now; he was a tenant of Major Bingham's, and Pat Lavelle, *Major* We call him by that name to dis-

tinguish him from Pat Lavelle, *French*. I would not put my name to a lie. Why did you put your name to this then? I did not know whether it was a lie or not. Did you not say that part of what Major Bingham read was false—what did you mean by telling me that, sir? I did not say that; I knew it was going to the bishop; that was all he read for me; I never read it myself.

Mr. O'Connell (resumed him.) An ejectment was brought against me for £3 14s. I appealed from it, and Major Bingham owed me more, but I did not succeed in the appeal.

Anthony Tigue examined by *Mr. O'Connell*—Major Bingham asked witness whether he had signed the memorial; witness told him it was time enough; he told witness he had a paper to send to the Archbishop of Tuam; witness read some of it; the first signature to it is Pat. Lavelle; he told witness that witness had a number of friends at his side of the country, and wanted witness to bring it down to get it signed by them; he had agreed with witness before, that he was to be a care-taker of his, at four acres of land, rent free, and ten pounds a year, in money; witness told the Major he would be with him back in a few days after he consulted his friends; he told witness that Mr. Lyons was a tyrant, and that he would not let him domineer over his tenants, and that he would publish him in the papers in England, Ireland, and Scotland; got spirits from him.

Mr. Geraghty cross-examined him—Who was present at all this? No one. I thought so; where was it? The conversation took place at Bingham Castle; there was no person present but a child of about six or seven years old. Quite a convenient witness; were you ever in the police? No. Or ever discharged? No; I live in Conlough, about two miles from Binghamstown. [To other questions]—I knew that the charges were not right; I never saw any one sign this paper, but did the other papers in the house of James Cosgrave; a good many were there signing it, or ordering their names to be signed to it; I did not tell any of them that they were signing a falsehood.

Carroll Daly examined by *Mr. FitzGibbon*—Witness was a tenant to Major Bingham; had a conversation with the Major about this paper; James Cosgrave, and Pat. Lavelle, and the Major were present; witness refused to sign it; owes no rent.

Mr. Fitzgibbon—Were you distrained for rent?

Mr. Jackson—Is this evidence? His name is not to this memorial at all.

Court—It might be applicable to the question of malice.

Mr. Jackson—I object to this evidence, and let them go on at their peril. No paper is shewn to the witness, to identify the paper which he says Major Bingham asked him to sign.

Mr. Fitzgibbon—Did the Major tell you what it was? The wrong charges he laid against Priest Lyons; he said he would

not have him in his parish at all, domineering over his tenants, when I refused; my cattle were at the pound at the same time, and he said the devil mend me, I would not gain indulgence as the others did; if I did, that my cattle would be enlarged, and to go my ways for a rogue and knave; I might get indulgence as well as the others did who had signed; my cattle were in pound one hundred and two days; I paid keepers fifty shillings, and my gale rent was but £1 15s. [Thomas Dickson, the pound keeper's receipt was produced by witness.] They took my cow and kept her in fifteen days, and then let her out, and then put her in for fifteen days more; and in two or three days more, they took my calf, and my ass, and put them in for fifteen days, and they never canted any of them, and I was obliged to pay the rent before they were returned the last days.

Mr. Litton cross-examined him—It seems that you preferred paying fifty-one shillings to paying thirty-five shillings—did you not owe this rent? I don't think I did. Why then pay it? I was compelled. Why not pay it at first, and not allow the distress of one hundred and two days? Because I had it earned. Is not Major Bingham able to pay any debt he justly owes? He is—but not willing.

Mr. Litton—Thank you, and you should thank Mr O'Connell for that hint. I don't think, however, my Lord, that this witness should be prompted thus.

Mr. O'Connell—I was only prophesying that he would say so.

Mr. Litton—It was audible prophesying and real prompting.

Witness—I had not money to go to law with Major Bingham for what he owed me. But you have money to pay pound keeper's fees to the amount of fifty-one shillings; where are you living now? In town, at the Yellow Lion. You spoke about this business to Mr. Lyons or his attorney? To be sure I talked to him about the pouncing; my cattle were three or four times in the pound. At the least? Aye, and at the most; that transaction with Major Bingham was the 14th of March 1832.

Rev. Sir Francis Lynch Blosse sworn—This witness was produced to prove, as one of the committee for managing the charity fund procured from England, the amount of this fund.

Mr. Jackson objected to his evidence. He could not see on what ground it was offered.

Mr. O'Connell—It will shew that Lyons accounted for all the money he received.

Mr. Jackson—There is no justification of that charge, so you are not entitled to prove its falsehood.

Mr. O'Connell—I mean to shew that Mr. Lyons has been actually £800 out of pocket on that occasion.

Mr. Jackson—Oh, very likely, no doubt, but I still object.

Mr. O'Connell—Whatever that document in the hand of the witness is, let us establish it.

Mr. Bennett—Whatever that document is, it is not in issue, and my client could not now be prepared to controvert it. How could we come and investigate that account? I don't care whether Mr. Lyons is out of pocket £800 or not, however I may doubt it; but there is no averment of any such thing, or no justification of it.

His Lordship having intimated his opinion, that this testimony could not regularly be given, Mr. O'Connell gave up pressing it.

Sampson Carter examined by *Mr. O'Connell*—Is a stipendiary magistrate of the police; was specially sent down to the Barony of Erris in January 1831; received a letter from Major Bingham as to the plaintiff. [Letter handed in by witness.] Don't know whether it is in Major Bingham's hand writing, but it was delivered to witness by his confidential man, Cosgrave, with an affidavit, on which witness was to examine him; never saw Major Bingham, witness having been ill while he was at Erris.

[Lavelle's letter in the newspaper was then put in. Defendant's counsel objected to its being read, stating that it was drawn up by Feeny; there was no evidence of any search having been made for the original letter; the newspaper is no publication of Lavelle's.]

Mr. O'Connell—I would not have produced the memorial had Major Bingham been present at the newspaper office; but I produced Feeney, who was employed by William Bingham and Lavelle to write this letter, and for the publication of which he was paid £2 10s.; they make those people thereby as their agent for the publication.

The Court was inclined to think the original letter to be a link in the transaction.

Mr. O'Connell said, it was for the Defendants to show that Feeney exceeded his authority.

There was then an objection by Defendants' counsel to examining Feeney again, which was argued for some time; but he was again called up and re-examined by order of the Court, by *Mr. Fitzgibbon*, to show he published the letter as left with him, and that both it and the memorial were included in the payment for publication. *Mr. Bennett* objecting to all as illegal evidence.

Mr. Jackson—Have you now closed your parole evidence? I object to your reading these documents against my client, Major Bingham.

Mr. O'Connell—I am entitled to read them against the other Defendants, and I offer them against the three.

Court—There might, perhaps, be presumptive evidence to go to the jury, that Major Bingham was connected with one or both these documents, Mr. William Bingham being the publisher of the letter appears less doubtful. [The *Mayo Constitution*, containing the documents, was handed in; Mr. O'Connell tendered the *Ballina Impartial* and *Sligo Journal* newspapers.]

Mr. Bennett opposed these two latter being entered or read; nothing had been proved about them but their publication by *Mr. Vernon*; after which the Court adjourned at half past five, till to-morrow at eleven o'clock.

The following is a copy of the memorial and letter.

To the Most Rev. Doctor O'Kelly.

My Lord—It is with considerable reluctance I fell myself called upon to address your Lordship, upon the misconduct of our parish priest, the Rev. J. P. Lyons; but I think it my duty on behalf of my parishioners, to lay some facts before your Lordship, which cannot fail to make a due impression upon you, relative to the unfortunate situation in which we are placed. In the month of January, 1831, I, in conjunction with the parishioners of Kilmore, Erris, addressed a memorial to the Right Rev. Doctors MacHale and Waldren, complaining of the exorbitant exactions of our parish priest, and stating the harsh and cruel treatment which we have experienced from him, and praying that they would afford us some redress. To this memorial we received no reply; and in the month of September following, at the request of the parishioners, I addressed a letter to the Bishops, requesting of them, in the name of the parishioners, to send some clergyman to hear our confessions, in consequence of which, the Rev. Mr. Flanagan, of Easky, was sent in to investigate our complaints, and he stated to us, after mass on Sunday, the 25th of September, that if the parishioners sent an ass load of petitions and memorials, they would obtain no satisfaction against Mr. Lyons from the Bishop. This showed us what we had to expect, and when the investigation before priest Flanagan did take place, we could obtain no redress. Priest Flanagan opposed the parishioners in every instance, and as it appeared to them, took an active part in favour of Mr. Lyons.

Since that time we have received no satisfaction of any sort from the bishops. It will appear to your Lordship, from the subjoined memorial, that the dues and exactions claimed by the Rev. Mr. Lyons are most exorbitant, and not collected by any other priest in this union—that my family and myself, and many others in the parish, are without the benefit of confession for the last year and a half, and priest Lyons has declared from the altar, that he “would let us die sooner than administer the rites of the Church to us.” Such is our present melancholy situation, and there is no prospect of our obtaining redress, because the moment any representation or complaint is sent forward against him, by the parishioners, he calls together a parcel of half-buckeens, connexions of his own, who wear caroline hats, although they have not a penny in their pockets, and those persons are always ready to scrape and sign any resolution that is got up in his favour.

From the first day that Mr. Lyons came into the parish, in the

year 1825, he has received half-a-guinea for every marriage for the use of the chapel, besides the usual fee—he has been frequently travelling through this country and England, getting subscriptions for the chapel, while his poor parishioners are neglected; he has charged seven shillings a year for forms in the chapel, and five shillings a year for seats at the altar to each individual, and all this money, which must amount to an enormous sum, is unaccounted for, and the parishioners do not know how he has expended a single penny of it. In the same way, he went last year and this year to England, to collect money to relieve the poor of Erris; he has boasted himself that the sum subscribed for this purpose was very great, and all the poor people ever received was thirty-six tons of oatmeal. What sums he has received, or how he disposed of the money, remains still to be accounted for. Whatever aid was granted by the Central Committee, was laid out by himself and his own Committee, in making roads through the villages of his friends, the buckeens, and he has still a large quantity of meal stored up in his dwelling house, which he disposes of as he thinks proper. He keeps his gates locked, and the poor people are not able to know what quantity of relief they receive, as it is thrown over the wall to them.

Such is the manner in which the Rev. Mr. Lyons has disposed of the charitable funds that were placed at his disposal. He stated, last year, that he would give two dinners every week to the poor of the parish, and accordingly they were twice supplied with a quantity of hot water on which a little bacon and cabbage was boiled. The fame of his extraordinary generosity soon spread abroad, and the poor swarmed in from every quarter, infecting the houses of the inhabitants with disease, upon which the charitable priest locked his gate and his meal-store, and set off for England, leaving the unfortunate people without any further relief during the summer.

I have now a few words to address to your Lordship respecting myself. I am acting as agent to Major Bingham, in Erris, and in the habit of collecting rent for him, but from the violent conduct of the Rev. Mr. Lyons I have been compelled to give up my house in Binghamstown, and leave my ground untilled, at a loss of nearly £50 to myself, and in consequence of Mr. Lyons declaring from the altar that he would lay Binghamstown waste, I have been compelled to give up the agency of that town, finding it impossible to collect the rents or do my duty honestly to my master. Major Bingham then employed a man, named James Cosgrave, to act in my place, but priest Lyons sent for him to his house, and “damned him,” if he would collect any rent for Major Bingham, as appears by the affidavit of Cosgrave, which can be produced. On the 28th of September last, a letter was sent to the Telegraph, as if written by a hatter named Clynes, but which was evidently written by Mr. Lyons—in this letter it was stated that I canted all his furniture and crop. This is a gross falsehood

—some oats and hay, belonging to him, were canted by James Cosgrave for rent; but the furniture, which was also under seizure, was carried away by the Rev. Mr. Lyons's boy and horse and cart, as can be proved by persons who saw the transaction.

I have now, my Lord, stated some of the grievances under which the parishioners of Kilmore labour, from the tyrannical conduct of the Rev. Mr. Lyons, and I trust that you will direct an investigation to take place, when I will be able to substantiate every charge that I have brought against him. Your Lordship will decide, whether it is creditable or becoming a priest to interfere between landlord and tenant—whether it is honest or just to receive large sums of money for the improvement of our house of worship, and render no account to the parishioners—whether it is right to collect large subscriptions from the charitable people of England for the relief of a starving peasantry, and then put them off with a few tons of meal, without accounting to the benevolent donors for the manner in which he has appropriated their contributions. We, one and all, distinctly state there will be neither peace nor good will among the parishioners so long as he is allowed to domineer over us. Remonstrances are totally disregarded. Mr. Lyons, when at home, spends his time in farming, and scribbling for an incendiary newspaper in this county, instead of attending to the spiritual wants of his flock; and the people of Erris, I can assure your Lordship, would feel for ever grateful, if you would send them a pious and exemplary pastor, and remove the Rev. Mr. Lyons, who has totally neglected our interests and the interests of the Church, since he came among us; and whose avocations as beggarman general of the West, farmer and grazier at Belmullet, and assistant editor of the Telegraph, in which he is in the habit of abusing the people who support him, leave him no time to devote to the spiritual duties of his station, and unfit him for the important duties of the ministry.

I am, my Lord, your Lordship's obedient servant,

PAT. LAVELLE.

To the Most Worshipful Father in God, Oliver O'Kelly, by Divine Grace, R. C. Archbishop of Tuam, &c. &c. &c.

The humble and respectful Memorial of the undersigned respectable inhabitants of the Parish of Kilmore, Barony of Erris, and County of Mayo.

Most humbly complaining, sheweth—That time immemorial our hitherto peaceable, friendly, and benevolent Parish—nay, Barony at large—enjoyed union, peace, love, and good will towards all, and more particularly towards our clergy of every persuasion—the Priest and the Minister—the Protestant and Catholic sat together in the same house and room, and enjoyed the passing jest or argument (either moral or divine) alike: and if one happened to foil the other in argument, it was done with a good grace, and

still all was harmony. But alas ! how changed this scene of late years ! in a few years all was joy and harmony over emancipated Ireland, but our parish alone, which in those years unfortunately feels the very reverse—and all this owing to the conduct of the Rev. J. P. Lyons, our Parish Priest, who is denominated by every person—but those who know him best, his parishioners, whom he rules with an iron rod—to be an enlightened clergyman ; as ever since his first entrance into the parish, our union as parishioners has ceased, and we seem to dwindle apace in our former hospitality, good name, fame, credit, and reputation ; in fact our religion is changed, and we are sorry to say not for the best : for religion is not put into the heart of the hardened sinner, by any fear but that of God alone, delivered in courteous modest sermons or lectures, and not such as the Rev. Mr. Lyons preaches, who enters the House of God on Sunday, more like a field officer, in exalted rank and pride, coming to parade, than a clergyman of the Church of Rome coming to mass, where his poor chaplain, like a subaltern officer, is obliged to deliver his commands—and like reading the dreadful articles of war, rehearses a sermon to them, with threats of damnation more dire than those of Doom's-day book—calling every person present sinners at the beginning, telling them that they will be all damned, secondly,—and calling them all devils incarnate, at the end, and such like discourse, until at length, the principal part of the parishioners, tired of such language, or afraid of going to hell at once, are frightened, get cold in their religion and devotions to God, hoping (as threatened) for no salvation.

Besides this, he with pen and tongue from his altar, and in the public papers defame us, our ancestors, and ways, and if the fame of Erris for hospitality to the stranger and indigent was not so anciently and modernly well known, his words would be believed. But pray who made gentlemen of him and his needy family ? Unfortunate defamed Erris. A big nothing—an unlicensed public-house, great words, a school and scholars. But this rhetorical oratory, thus delivered from his altar, is not sufficient—from the pulpit, he assumes the bar and politics—so that he assumes the politician, lawyer, magistrate, and constable at once, regardless of his clerical functions ; as, instead of practicing or reading a humane sermon on Sunday, his study is to prepare and form a column for the newspaper, odious to the fame and character of some magistrate, gentleman, or public character ; while curses heaped on curses from the principal part of his sermon on Sunday, matters unfit for the demeanour or character of a clergyman of any sect or persuasion, laying aside the Church of Rome. And besides the penance imposed, when he calls the unfortunate penitents in chapel, (some of whom, perchance, approach him on their knees,) who have hitherto been deemed honest, respectable, good Christians, and well-conducted ; his first mode of disrespect and disgrace is a fulsome spit into the mouth or face, or perhaps sorer, but not worse treatment than that which the Jews gave our

Saviour ; and if they dare reply, or fly—if he cannot overtake them in his passion, may fling the Breviary after them, if he meets nothing else in his way to fling—or the penny offered, as too trifling, and cut the poor donor therewith, to the great shame, disgrace, and injury of many, and confusion of the flock at large ; while some performing his severe enjoined penances, are, after the performance thereof, confined to their bed, not for weeks but for months, to the great loss and injury of their unfortunate starving families.

We have many good and respectable schoolmasters in the parish, who refused teaching free-schools heretofore, whom he denounces for no reason at all, and are forced to live idle, while others, brought in by Mr. Lyons himself, after trial of a long series of time, doing no service, were dismissed by himself, (for Erris, though secluded, has ever been an enlightened country.) Although our good teachers are walking about, doing nothing, our parish chapel, is by turns, employed as the work-house of the slator, cooper, sawyer, carpenter, and thresher, with his consent ; while our children are thus neglected—the only thing we feel most for. He got a railing made round the altar, and forms for the greater part of the rest of the chapel, and charges five shillings for every individual inside the railing yearly, and two shillings and sixpence for those on the forms ; and those unable or unwilling to pay this are disrespected : he ordered and tore down the pew allowed and erected by one respectable man, James Cosgrave, of Binghamstown, (whose family's character and his own is well known to every clergyman ever known to reside in Erris,) for the use of his little family and wife, (the daughter of a respectable Protestant,) to hear the word of God in, which was thrown out of the chapel, merely on account of becoming the agent of Major Bingham, on the complaint of a man named Collins, whose family or himself have not, for many years past, had the benefit of confession or sacrament, through premeditated malice, as aforesaid.

And further sheweth that many married women, respectable in name and character, for want of being able to pay such heavy dues as hereafter set forth or for some alleged family fault remain unchurched from two to more years past, and still, while those bearing illegitimates are churched through the favour of those for whom they bear such children. He trespasses on the world, but who dare trespass on him ; for the sheep, the lamb, or any other beast trespassing on any of his farms, must pay double trespass ; or a person going to do the penance enjoined by himself across any of his fields, which they were wont to cross, and was their way—shoe, stocking, and perhaps hatless as enjoined, are hindered and reproved, among whom one going a horse path-way, his mare was taken, impounded, and not released till his mare picked foal. Good God ! compare this with the benevolent conduct of him whom he would denominate tyrant, before the hall door of whose

castle, the barony at large might come on horseback, and leave their horses in his lawn or meadow, whilst warrants or summonses were granting, perhaps, the whole day long during their examinations, and who dare impound such cattle? Erris at large is defied to deny this? Or did this tyrant (denominated only so by him) allow any of Major Cormick's tenants' cattle just nearing his estate to be impounded by his herds? No; his words were—"If I keep a dog he must bark for me—my herds must keep them off." But what avails this to his enormous salary, and taxes on the poor, which in some instances excel some creature's yearly rent, and taxes to king and country, viz: his annual salary on man and wife three shillings and two pence, and for every child ten years old in that family (for they must go to confession at that age,) one shilling; together with twenty sheaves of oats or barley or one shilling and six pence in lieu thereof; and if one sheaf of the bart is deemed bad, the residue is kept, and the one and six pence charged with all; besides duty work to do his spring harvest, and other jobs, and offerings at Christmas and Easter, collected by collectors in each village, and those who don't pay are called out in the flock; and yet what is more ridiculous—the creatures who cannot afford to pay those dues and demands, are forced to work for his farmer and builder at one job or another; and others are paid by him for their labour by the charity given by England to support those unfortunate starving subjects or slaves rather; and accounted for, paid by his salary; for every baptism from 3s. 1d. to 3s. 4d., and this for twins as well as one; and a candle, which, if it should be a half-penny one, is kept, and a penny charged besides, although all christenings are performed in the chapel or house adjacent in open day, perhaps many at once, except for such persons as those for whom respect is due, or from whom some benefit derives.

Legacies for the dead five shillings, and one shilling for extreme unction as often as it happens, besides two shillings and six pence for blessed clay, and no corpse dare be interred without it, although the priest wont go to bless the grave, but sends this clay by some lay person; as if this consecrated ancient burying-ground and grave-yard, and the clay thereof, was not as blessed as clay sent in this way by those renounced denounced sinners—Marriages from one pound eleven shillings and six pence to three pounds each, as solvent or adequate to pay, and holds some in suspense after the match is concluded, to the great shame, risque, and danger of the young woman, for some months, until this and other dues aforesaid, not only due by the young couple, but their kin on either side, as far as known is fully paid to an extent unbounded and hitherto unheard of. He proclaimed to us on the Sunday before Christmas-day, that on that day, midnight or first mass would be given in both ends of the parish, instead of reading mass in the parish chapel in Binghamstown, in the centre of the parish. But what was done? After disappointing the flock, the

Rev. Mr. M'Dermott gave first mass up stairs in a private room, within a few paces of the chapel in Binghamstown, to please one individual, and never announced it to the inhabitants of the town, while some, who by chance heard of it, were forced to stand out in the street under the drifting snow, and numerous other matters too tedious for insertion.

In short, my Lord, the short and the long of our tale is, with due respect to your Lordship, as our only acknowledged ruling pastor—let us have rules, laws, and regulations: first—as to demeanour in our church by our officiating clergymen; and secondly, such behaviour towards us as we deserve, agreeable to the laws of our adjoining parishes, and such as our holy church allows—“one God, one church, and one baptism,” and why not one law in every parish? We and our ancestors are and had been Roman Catholics before the iron-ruling hand of this tyrant (whose ancestors had been otherwise,) knew aught about us. We therefore now humbly crave your Lordship's redress as a mediator between us and our nominal parish priest, the Rev. J. P. Lyons, and that you will deign to order our diocesans, who have refused to hear our petitions against the Rev. J. P. Lyons, to send us a sober, steady, humane, moderate clergyman, such as the Rev. Mr. Kelly, the Rev. Mr. M'Nulty, the Rev. Mr. Hopkins, or the Rev. Mr. Mallowney, sen., our adjoining parish priest, whose care will be his flock, and not his farms and stocks—a man of sense and humanity, and not a young man with a train of brothers, sisters, and other relative paupers at his heels, to be enriched by his avarice and oppression of the poor, and defaming us and our country afterwards, as our present parish priest does, when at home, (for he is often from home, and his duty is done by two coadjutors at a trifling salary, calling us thieves, robbers, &c. &c., matters to which we have not been accustomed; but who knows better than our Father Confessor what we are? But we will take care never to confess to him again, to be thus divulged and upbraided publicly for our crimes, so that the fact and truth is, if your Lordship does not order us an exchange of a clergyman, as our own Bishops, who are bribed by him, 'tis said, and will not, we must do without such duty in future, as after such conduct, the Rev. J. P. Lyons and Memorialists can never be properly united. Under such harassed and untoward circumstances, your humble and respectful Memorialists humbly crave such redress in the premises as the nature and circumstances of their case requires, and your Memorialists (as in duty bound,) will ever pray.

January, 3, 1831.

Here follow the signatures of One hundred and thirty-four individuals.

THURSDAY, 12TH DECEMBER.

SECOND DAY.

At the sitting of the Court, Mr. Bennett rose and addressed the Jury for the Defendant—P. Lavelle.

My Lord and Gentlemen of the Jury—On the part of one of the defendants, and the most material person on this record—I mean Patrick Lavelle—it is my duty to lay before you some observations to defend him against this action, brought by Mr. Lyons. I shall do so with a double view, either of showing you that he is not entitled to any damages at all, or, should you be of opinion that there must be a verdict against him, that he is only entitled to the smallest damages it is in your power to give. Gentlemen, I have certainly a good deal of difficulty to encounter; I have to meet in argument, and contend in the examination of witnesses, with one of the ablest men I have ever met with in my professional experience—a man I have ever found greater difficulty in standing up against, than against all the rest of the professional men put together. He is the very cleverest man possible, to have engaged in a bad cause; and an excellent one in a good one. He has such a peculiar power of mind—such great strength of body, that there is really no withstanding him, or contending with him—by his physical strength he carries every thing before him—he puts down a person of weak nerves; and being so dexterous, he has an equal effect on those who have stronger powers; and, above all, his skilful and peculiar manner of forcing into the Jury-box, all kind of illegal evidence, against the wishes of his opponent, or his endeavours to prevent it, renders him an over match for any of his cotemporaries. If I was a young man, I should say of myself, compared to him, that I was, “*Infelix puer atque impar congressus Achilli.*” I cannot but admire ability in any man in his profession; it is really pleasing to see it in any human creature: it would, however, be delightful to see it always tending to promote good. Though I admired much of his speech, I wondered how he would venture to commence such a case, with such an extraordinary preamble, filled with praise of his own client. Now this is an action brought by Mr. Lyons against Major Bingham and others, for a libel written by them. But what do we find? Instead of going at once into the case, a deal of time is expended in stating that Mr. Lyons had built light-houses on the coast, and chapels in the country, and that he was wholly occupied in these good works, and in getting in charity money for his parishioners; and all this is made a boast of, merely to give you, Gentlemen, a favourable impression of Mr. O’Connell’s client. But what had it to say to the case? I cannot possibly imagine—and even if it had, I have

since enquired into those facts so boastingly set forth, and I find that the light-house built on the coast of Erris, was built by Government, on an island belonging to Major Bingham himself, and at the suggestion of quite a different person from Mr. Lyons; and that not only as to the chapel, but also the house in which this grateful priest resides, one was a gift from the Defendant, Major Bingham, and the other is held at a nominal rent from him; so that the praise bestowed yesterday on this wonderful good priest, reminds us of the praise we have read on a bridge of another good man—

“ Who of his great and wonderful bounty,
Built this bridge at the expense of the county.”

But Mr. O'Connell does more—after bestowing the most unbounded praise on his client, he would wish to swell the damages against Major Bingham, by stating the great distress that was in the country—that the people of England subscribed to relieve it, but that Major Bingham did not give one shilling to it. We may easily imagine very good reasons for Major Bingham not wishing to trust the catering of his alms to Father Lyons. But Mr. O'Connell has further stated, that a Protestant clergyman of his neighbourhood had been removed from the commission of the peace; and all this, too, is told merely to heap damages on Major Bingham. But, Gentlemen, I will lay before you the facts belonging to the case, and, with your assistance, I will clear away all these unnecessary and improper topics. I call upon you, therefore, to lay aside every thing which is extraneous to the enquiry before you—I call upon you to look at the real character of the publication—I implore of you to lay aside those prejudices which Mr. O'Connell would excite in your minds; and you will find that this is an action which should be discountenanced by you totally, and that you will feel that you should not have been troubled with this County of Mayo squabble, to the postponement of more important questions of property; you will see that it ought to have been settled in the county where the parties and witnesses are known, and that a City of Dublin Jury should never have been annoyed with it. In whatever point of view I look at the case, the afflicting picture of the state of the country which it exhibits, is quite disgusting. Here we have a landlord possessed of a large tract of country, with a Roman Catholic clergyman in it, who, by his own statement, is doing every thing but promoting the peace of his flock; on the contrary, he is completely disturbing it, for we have here one fact, proved beyond question, that one hundred and thirty-six of the parishioners of this Reverend Father, have signed a memorial complaining of conduct utterly unworthy of any clergyman. We find it is the Plaintiff's case, that one hundred and thirty-six of his own Roman Catholic parishioners could have been prevailed upon, by their landlord, to fabricate a false memorial and state-

ment against him. This Reverend Father tells you himself, that there were found one hundred and thirty-six parishioners of his own persuasion, in his own parish, who would put their hands to a falsehood from some fear of their landlord. If this be so, it surely speaks badly for the conscience of these parishioners, particularly as being forwarded against one of the parish priests of the Roman Catholic communion, whose influence over their flocks is so well known, and who ought to be so much looked up to by every one of his parishioners; but whatever the influence proceeds from, the allegation is, that one hundred and thirty-six of these parishioners had put their hands to a complaint against Mr. Lyons for mal-practices. Is there one amongst you, Gentlemen, who is not under the impression, and has it not been conveyed to you, that all this complaint was got up under the influence of Major Bingham, and merely to commit an act of vengeance upon Mr. Lyons? but I wish to shew you the difference between statement and facts, in order that you may come to a rational and honorable conclusion, between these parties. First, then, we come to the fact of the memorial; and as to the Defendant, Lavelle, I cannot deny that his hand writing is affixed to it; it has been proved by witnesses, but I say the signature to it, was the signature of a parishioner, put to a memorial, complaining of his parish priest, to the proper tribunal. As to the other paper, it is not produced; I cannot admit that its existence is satisfactorily proved; and it is a curious circumstance, that the memorial is kept with such scrupulous care, but that this letter should not have been produced at all. So far as the memorial goes, the manuscript is produced; and so far as the parties say they have the letter, they shew it in the newspapers; but I say, gentlemen, the letter itself is not produced. His Lordship, however, has said, that the evidence is for you to determine, whether it is the identical paper which had been inserted. The memorial, however, is here, and I beg you will always keep in your recollection that the letter is not forthcoming. Let us see what this memorial is: the person for whom I am concerned, lives in the parish to which the Plaintiff had been appointed. This poor client of mine happens not to have been born to a fortune; he is of humble rank—he is a kind of under agent in the country, necessary for collecting the rents; but he has been described by Mr. O'Connell, according to the language of modern liberalism, "*a multifarious scourge*"—a wretched creature made use of to oppress the poor of the country. If slander is complained of by Mr. Lyons, I am sure it is evident that in *that* he is more than a match for us, when he comes to instruct his counsel to state what my client is; but if that poor man had collected *other rent* than Major Bingham's, he would not have been so persecuted, or so represented before you this day. Pray, are the landlords in Ireland not to have their rent at all? Some persons think that this event is coming about. This principle is, in

modern times, called liberality. The newspaper doctors we had here, Bole and Feeney, have told us almost as much. But this poor Defendant is called a "multifarious scourge!" What did he do? But sign a petition to this priests' superior. Even on liberal notions would he have been subject to an action for that? But the learned counsel begins with this term of reproach, and tries thereby to influence the jury, forgetting that, with you, such an attempt must be vain. Now this Defendant has put on record here, a justification of part of this libel, and says thereby, if you shall consider it libellous, under the circumstances, I call on you, on my pleading, to say whether it be not true, and whether I do not fairly justify it. And who is proved to have written it? Owen Henaghan; it was he, if any one, who gave it its false character. Did not this witness wish you to believe that it was signed solely through the influence of Major Bingham; but what more did he say, "I went home and I deliberately contrived to induce upwards of one hundred of the parishioners to sign this document, which I knew at the time to be false; and thus I implicated them with myself in this fraud." That is his own account of what he had to do with the transaction. Now we come to another witness, *Dickson*, whose name also appears to the document, and who attempts to give some account of it. Observe, the case made on the other side was, that all the tenants of Major Bingham who could be influenced by him, by means of his taking proceedings against them for non-payment of their rent, *alone* were the persons who were induced to sign this memorial. But it turns out, that the one hundred and thirty-six persons who did sign it, were not all the tenants of Major Bingham, at the time; and although at the time Dickson refused to sign the memorial he was not proceeded against for his rent at all, or until long after this, and very lately; and as the Major so lately proceeded against him, it must be presumed that he could not be much in dread of any thing this witness could truly depose on the subject; and yet this fellow now has the hardihood to swear as you have heard him, and to tell you, that the paper was signed by him in Major Bingham's presence: but it will be proved to you, Gentlemen, that the place where he signed it was four miles from Binghamstown, so that we find that the first witness is the fabricator of the entire, and therefore should be considered incompetent; and the second comes to swear falsely as to the circumstances of his own signature, and this man I will convict of this and other deliberate falsehoods. There is another witness of the name of Tigue, and he comes to prove that Major Bingham wanted him to sign it, and offered to make him a care-taker, and give him three or four acres of ground. Now this fellow only comes forward to prove that he did *not* sign the memorial, and according to his own account, he had a great struggle of conscience whether he should or not; and he stated that he told the Major he would go home and consult his friends, but he never, he says, signed it.

Daly, the next witness, also refused to sign it; and who is he? According to his own account he had been distrained by Major Bingham for his rent. Oh, says he, I don't owe any rent; "*Nemo testes in propria causa*," says the law: but we shall see whether he owed the rent or not, for which he was distrained. Of all the rest of the memorialists, from 130 to 136 in number, not one of them, notwithstanding the document has been in the possession of the Roman Catholic clergyman for nearly two years, not one of them, I say, though all are his parishioners, have come forward for the purpose of condemning it, or stating it was a fabrication, and only two out of the whole 136 have come here to say, that it was not put forward by them as a cause of complaint. It is a document which every one knows that any parishioner has a right to prefer, if it is a *bona fide* complaint; and there are only two names to it; those of Henaghan and Dickson, one, according to his own account, is found signing it with disgrace to himself; and the other saying he did it under the influence of his landlord and this man now comes forward to give this evidence to revenge himself on that landlord for having lately evicted him. But Mr. O'Connell has laughed at the rough manner in which the memorial is dressed up. Now I consider it exceedingly expressive. You cannot expect much from a country clerk; but it is in tolerable good style, and there is a great deal of feeling in it. It states, that "from time immemorial, their hitherto peaceable, friendly, and benevolent parish, nay, the barony at large, enjoyed union, peace, love, and good-will towards all, and more particularly towards our clergy of every persuasion; the priest and the minister, the Protestant and the Catholic, sat together, and all was harmony."

This may be rough, but the sentiment is good, and I should not be ashamed to be the author of it myself. Again, he says, "Alas! how changed the scene of late years. In a few years, all was joy and harmony over emancipated Ireland, but our parish alone, which, in those years, unfortunately feels the very reverse, and all this owing to the conduct of the Rev. J. P. Lyons, our parish priest." Here is what Henaghan drew up as a picture of the parish, he who, by his own account, fabricated a falsehood, and all this he would make out to be the statement of the landlord! but take it either way, whether it is the statement of the landlord or of the parishioners—what a miserable picture is it of a parish and its priest! Beyond all question there was a great hostility between two persons, who should have joined heart and hand to promote harmony; but here the priest accuses the landlord of tyranny; his counsel did so in his presence here, he called his driver "a scourge." I should be glad to know what Mr. Lyons had to say to this; I should think it extremely wrong of a clergyman of my creed, were he to espouse the quarrels of the tenantry with the landlord; their moral and religious duties should be his only care, and he should not go out of these duties, and no doubt,

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as long as he should think it right to interfere in temporal matters between landlord and tenant, there can never be any hope of seeing peace or regularity in a country; a tenant will often complain even of the kindest landlord, and if the clergyman interferes, he can't be on terms, as he should be, with both parties. This memorial unquestionably accuses Mr. Lyons of acts unbecoming a clergyman of any persuasion; it charges him with extorting excessive dues from his parishioners, with making an improper use of the Roman Catholic Chapels, with permitting artisans to work in them, and housing cattle in them, it charges him also with admitting some persons to rites from an improper partiality, and of withholding them from others out of vengeance, and with cursing and damning people, for receiving rent for Major Bingham; and further, it charges him with this, that when a person went up to him, when he was administering the rites of his religion in the chapel, he commits the impropriety of spitting publicly into the face of this unfortunate person; and what would the other side have you believe? That all this is a fabrication; but for what purpose? There must be a Roman Catholic Clergyman in the parish, and what a miserable and disgusting picture, at all events, is thus presented to us of this parish. But, as I said to you, the priest had this document for two years, and no one, I am sure, will say, that *he* could have been under any difficulty in procuring evidence favourable to himself. You have heard the amount of what they have said. Mr. O'Connell, when he was stating respecting the spitting in the face, certainly admitted that the circumstance had occurred, but said, "that it was only done on one occasion, and from disgust at some previous conduct of the individual he spat upon;" and he then brought forward a doleful story of a man who cut off the hand of a dying or dead man, for the sake of a rope, he held in his deadly grasp. Now pray let me ask, who told him this story? The jury are aware of this charge, and where is there a syllable of proof of this heart-rending statement of counsel, where is there any proof of this melancholy story of the dead hand, where, I say, has one word of it been read to you or examined into, or shown you in any proof, however slight? Now, if I should tell you any thing which I shall not prove, I call on you not to attend to it, and I will add, that Mr. O'Connell had no right to make statements which he did not afterwards attempt to prove. But though there has been no proof whatever of this part of the subject, let us for a moment take it as a fact, without at all admitting it; here then is a poor creature, guilty of the combined crimes of robbing and murdering, he goes into the temple of God, to the priest, he was just going on his knees, to make confession, and seek for atonement as a penitent, when the priest spits in his face; that is Mr. O'Connell's account of the matter.

Mr. O'Connell—Certainly not.

Mr. Bennett—Then I mistook him most grossly—did he not say it was in chapel?

Court—I thought counsel had impliedly admitted that the fact took place once, but that if it did, it was under circumstances of plunder, calculated to excite indignation to a degree, which was considered might excuse such conduct.

Mr. O'Connell—I conveyed myself exactly as your lordship, it appears, understood me.

Juror—Mr. Bennett was right so far, for it was stated that the man was on his knees, but not that he was at confession.

Mr. Bennett—Be that as it may, counsel has, however, committed his client, by his admission, for I will prove to you that Mr. Lyons did this disgusting act *more than once*, and that too, to a person on his knees, and let Mr. O'Connell, if he can, prove that the shameful act was perpetrated against a person, charged with cutting off a man's hand; if I prove this to your satisfaction, Gentlemen, shall I not be sure of your verdict? But Mr. O'Connell says that he found this stated on the record, and then says, "Oh! this is all a professional trick, no one knows better how to practise such tricks than our opponents, they have put in bad pleas, but we cannot demur to them, and why? because a demurrer would admit the facts, and then Mr. Bennett and Mr. Jackson would read them against us;" but who, I ask, told him that any one, at this side of this cause, was such a professional trickster? I say, a barrister who would act so, intentionally, would be a fabricator of false evidence, and a disgrace to his profession; but if such a man could be found, doing such a thing in this hall, the learned judge would stop him, and would say, "he had no right to take any such advantage," but, however, the fact is, when counsel found that we were likely to produce witnesses to overwhelm his case; he then says, "oh! he is not afraid," and he looks then twice as big as ever he did. No doubt he will watch and torment the witnesses with cross-examination; [I hope I shall never be under his cross-examination] he will, probably, try to frighten our witnesses, but he may bully us, he shall not frighten us. I fear his talent, I own, he is a person, we all acknowledge, of great physical powers, but I am not afraid of bringing forward all our witnesses, even before him—he shall not break down the evidence of men, who have the manliness to come forward, and with truth swear such facts against their parish priest as you shall hear; they may be tormented for so doing, counsel may try to coax them, he may exercise his talent in any manner he pleases on them, but, gentlemen, you shall see them in that box, and I know you will believe them; you will see their statement, on the face of it, is worthy of credit, is manly and fair—and when you will see all this, there will, I think, be an end of Mr. Lyons and his case. But I will shew you more, I will prove that this priest denounced and cursed every one who would collect rents for Major Bingham, and if all these things are proved, what

ought to become of his action—will you not send these parties back to the County of Mayo to settle their disputes among themselves, and tell them that they must not expect to have a respectable Dublin jury troubled with them. The defendant, Lavelle himself, is not permitted by this man to receive the rites of his church, and why? because he is the multifarious scourge of a relentless landlord, who would not give one penny to his tenants when starving, or even potatoes which could be eaten by his pigs, while this benificent priest went to England to beg alms for them, to be sure, we could not investigate his accounts on this alms-getting mission, but according to the story he told you, it would appear that he had got so wonderfully rich in 1830, that he was actually enabled to distribute £800 of his own money on this charity, and which he will probably say is still due to him. So, here we have a poor parish priest, of a poor tenantry, driven and starved by their landlord, unable, of course, to pay one shilling to their priest, and yet we have him saying he advanced £800 of his own money for charity for them, wishing to make it appear that he accounted with some charitable committee in this country, who, however, knew nothing of the extent of his collections for this charity in England. All this story about the advancing of the £800 is, no doubt, mere statement, but on the face of it, is one word of it credible? No, gentlemen, it cannot be believed by any one of you, and when it will be further shewn to you that this charitable clergyman has determined to lay the landlord's town of Binghamstown waste, what will you think of him and his conduct in this parish? What! a Roman Catholic clergyman acting thus in his parish, where 136 of his parishioners complain against him, and two of them only come forward to repudiate it; what then, I say, must be your opinion of his case, you can have no doubt, that a complaint had been made to the Roman Catholic Bishop by his parish, and it is said, that there has been some enquiry upon it, but is there any evidence of any proper investigation into all the circumstances of it, and suppose such had taken place, and that this priest had been cleared upon such investigation, was this action for damages also necessary, to leave his character without stain? but I maintain, there was no such investigation, and surely any man, against whom there has been such charges, ought first to have desired a full and not a mock investigation, and that before the proper tribunal, where alone it could have been properly inquired into, but no such investigation would, it seems, have satisfied the plaintiff, such a fair and proper inquiry would not have given him an opportunity of hearing his counsel, in statements and speeches, impeaching and inveighing against the conduct of the landlords in Ireland; such a dainty opportunity was not to be lost—but, gentlemen, you must see that the complaint contained in this memorial has been prepared by these parishioners against their priest, under circumstances which must induce you to believe, at least, that they considered they had good

ground for making it. The complaint in that memorial has been the subject matter of this action; it has not been proved to have been false, you have every reason to believe it was true, but, in any point of view, I feel that you will, one and all, be of opinion that it is an action which should, at all events, never have been brought into these courts, and I know you will treat it accordingly.

Mr. Bennett having concluded, counsel for the other parties differed on the mode of proceeding next to be adopted, Mr. O'Connell insisting that if there was to be an address for the other two defendants, now was the time for it, Mr. Jackson and Mr. Litton maintaining that the evidence as to Lavelle's case should first be completed.

The Court considered the former was the usual mode of proceeding, and more conformable with principle, and decided against Mr. Jackson, who accordingly commenced the case of the Messrs. Bingham.

Mr. Jackson—Gentlemen of the jury, I say it with great sincerity, that I always bow with satisfaction to every decision of his Lordship; and though in this instance I feel that my clients may in some degree be prejudiced by the order which has been just pronounced; yet I am convinced that the decision has been made with a view to the furtherance of the ends of justice, and that we shall have a full, fair, and impartial trial in this case. I shall therefore, without further preface, submit to you a few observations on the part of my clients, Major Bingham and Mr. William Bingham, in order to convince you, that they ought not to be visited with damages in this action at the instance of the Rev. John Patrick Lyons; and in doing so, I shall apply myself chiefly to the case of Major Bingham. You, Gentlemen, must be already apprized, that the several defendants here, stand on quite different grounds. First, as to their pleadings—The two Defendants for whom I am concerned, have not put on the record any plea of justification; their plea is only that they are not guilty of any libel on the Reverend Plaintiff; they deny that they are publishers of the matter which is here alleged to be a libel; and they insist, that even if the publication thereof be established against them, yet, that it does not partake of the character of a libel. I am not entitled, for my clients, to take the ground, that the publication contains matter which is true; that defence is open to my friend, Mr. Bennett, for his client Lavelle, and he has told you that he will avail himself of it, and will bring forward evidence to satisfy you that the several statements in the publication are true. But, Gentlemen of the Jury, not only do the two Defendants, who are my clients, stand on different grounds from the defendant Lavelle, in point of pleading, but you will observe that their cases differ from each other. My observations are addressed to you, subject to the correction of his Lordship; and I hope he will have the kindness to set me right in case I should be mistaken in any legal proposition which I may have

occasion to submit to you; and that he will prevent me from unintentionally misleading you upon any matter of fact appearing upon the evidence, of which his Lordship has taken an accurate note. I say unintentionally, because, I assure you, it is not my intention to do so. Gentlemen, I feel fully warranted in saying, that as against Major Bingham there is no *direct* evidence whatever to bring home to him the fact of causing this publication in the *Mayo Constitution*, I feel fully warranted in that proposition; but as I believe it is the intention of the very able counsel whom you have already heard for the Plaintiff, again to address you for his client, I think it necessary.—

Mr. O'Connell—I do not intend to do so.

Mr. Jackson—I am sure I am very glad to hear that. But as, no doubt, whatever counsel shall address you for the Plaintiff, will endeavour to establish publication against Major Bingham, it becomes my duty to examine the evidence on that subject in detail, for be assured, Gentlemen, of the Jury, they have no small object in making Major Bingham amenable in this action. He is the only Defendant here of any property. One of them is a man obviously in very humble life; and there have been some observations thrown out by way of disparaging one of my clients. It has been said that Mr. William Bingham can never be the *hero at law* of Major Bingham; but I will go farther and tell you, that he is not a subject for any substantial damages, so that the managers of this action have abundant motives prompting them to endeavour to hook in Major Bingham; they have the motive of cupidity, and the further motive of gratifying their hostile feelings against him. For, Gentlemen, it will be found that Major Bingham is much "more sinned against than sinning;" and the fact is indisputable, that the Rev. Plaintiff entertains a malignant hostility against him. Have you not already had sufficient proof of this? You heard the language of the learned gentleman who stated the Plaintiff's case—you must have observed his efforts to represent Major Bingham, wherever he spoke of him, as a very demon incarnate. Acting, no doubt, upon his instructions, he exhausted every term of abuse which our language affords, with reference to my client; whilst on the other hand, he described the Rev. John Patrick Lyons as a perfect angel of light. And why did the learned counsel do this? Was it to lead your minds to find a verdict according to the evidence? No; but to prejudice you against Major Bingham, and to induce you to draw this inference, that where two persons were so contrasted, and so opposed to each other in the country, a libel being published against the one, it most probably originated with the other. But, my Lord, I would respectfully submit, in point of law as to this publication, that if it were a *bona fide* memorial, got up by the Roman Catholic parishioners of Kilmore, complaining of their parish priest to the competent authority, namely, their bishop, it must be considered a privileged communication.

If, for example, an officer be complained of to the Horse Guards, however it may reflect upon his character, there is authority to shew that such complaint should be deemed a privileged communication.

Court—No doubt you are right, provided it be done *bond fide*; but whether it be *bond fide* or not, may be partly evidenced from the language of the document itself.

Mr. Jackson—I quite concur in your Lordship's observation.

Mr. O'Connell—A Roman Catholic might have a right to make such a privileged communication, but what has a Protestant to say to it?

Mr. Jackson—I am now considering the document itself, and I ask who were the Protestants that signed this memorial? I hear a muttering near me, that there were some; I assert there was not one Protestant amongst the whole one hundred and thirty-six whose names are subscribed to it. They are all Roman Catholics who make this complaint against their paragon of a parish priest, as he is described by Mr. O'Connell. I don't say that such a privileged communication ought to be published in the newspapers. No; being so published it is no longer privileged. Members of Parliament, who frequently assume ample liberty for their tongues, and who enjoy an almost unbounded privilege within the walls of their respective chambers, cannot, with impunity, publish such speeches afterwards. So that taking this memorial *per se*, as a privileged document, I freely admit there is no privilege for publishing it in the newspaper. I would follow this with another observation in point of law, and it is this, I conceive that if the tenantry of a Protestant landlord have just cause of complaint against their parish priest, such tenantry may fairly seek the advice of their landlord, and that he would be justified in upholding the cause of his oppressed tenantry, and in assisting them to obtain justice from their bishop, and this though they should be of a different religious persuasion from himself.

Now, Gentlemen, permit me to make an observation to you on another topic, and that is, as to the venue which has been chosen in this case. Why, think you, has it been laid in Dublin? Why should it not have been laid in Mayo, where the characters of the parties are all known? Is the character of Major Bingham, or of Mr. Lyons, better known in Dublin than they are there? No, Gentlemen, the fact is not so. But the Rev. Plaintiff calculated on bringing his action where he might be lauded to the skies by his counsel, and where the praise would not be known to be wholly undeserved. That could not be attempted in the County of Mayo. "No," said the Reverend concoctor of this action, "we will go to Dublin, where the people know nothing of our pretty doings in Mayo—where our counsel may be primed and loaded to the muzzle with panegyrics on our exemplary conduct and benevolent character. We will, moreover,

insinuate that it is a party case ; and, perhaps, we may get such men as Mr. O'Gorman, or the Mr. Meara's on the jury, and no doubt they will find for us against such a monster, as we will represent Major Bingham to be. But, above all, we shall have Mr. O'Connell for our counsel in Dublin ; he does not come the Connaught circuit ; and, no doubt, he will bestow all manner of praise upon his friend, the Rev. John Patrick Lyons. And thus with O'Connell for counsel, and O'Gorman in the jury, we cannot fail of a verdict

Gentlemen, what a hopeful speculation is this. The Plaintiff knows little of you if he entertains such an expectation. I do not mean to flatter you when I say, that I would not desire to see a better jury empannelled than that which I have the honor to address ; and I rejoice that, *in this case*, we have a jury composed of gentlemen of different religious persuasions, convinced, as I am, that they will find their verdict according to the evidence—agreeably to the solemn oath which they have taken—regardless who are the parties, on the one side, or upon the other. Gentlemen, you are called upon by the Plaintiff in this case, as I have already said, to infer that Major Bingham has been the publisher of this alleged libel, without a particle of direct evidence to affect him, but from a variety of extraneous topics which have no proper connection with this case. The Rev. Plaintiff has drawn largely upon his imagination, for materials to instruct his counsel. Amongst other things you were told that Major Bingham had been a magistrate of the County of Mayo, and that his son had also been a magistrate, and that Mr. Lyons had made such representations to the Government against them, that they had been dismissed from the magistracy ; and said the counsel, "*hinc ille Lachrymæ !*" Gentlemen of the Jury, I meet that statement with a flat denial. Those who so instructed counsel, have put forward what they must have known to be an absolute falsehood. I state it boldly, Gentlemen of the Jury. Did you hear a particle of proof in support of that scandalous allegation ? Not one tittle ; and why ?—because the fact was otherwise. It was a vile and slanderous invention, and that, I regret to be obliged to say, to the knowledge of the Plaintiff himself.

Major Bingham is a gentleman of extensive landed property ; he is of an ancient and noble family ; he had been in the commission of the peace for three adjoining counties, Mayo, Sligo, and Galway ; and if he had been turned out of the commission for Mayo, by the Government, for misconduct, as is alleged, I ask you, would he still have been continued by that Government in the commission of the peace for the counties of Sligo and Galway ? He has, I admit, ceased to be a magistrate of the county of Mayo ; and why ? Is it because he has been dismissed by Government on the complaint of Priest Lyons ? No, the fact is, that the Marquis of Sligo, who is Lord Lieutenant of the county of Mayo, with whom rests the appointment of the magis-

tracy, considered Major Bingham being too far advanced in life to undertake the active duties of the office. His Lordship was desirous to have in the commission young and active men, who would undertake regularly to attend the petit sessions of the county. This Major Bingham was unable to do, from age as well as infirmity. On the death of the late king, all such commissions expired, and the Lord Lieutenant of the county retained on his list, for renewed commissions, such persons only as he could reckon upon for constant and punctual attendance at the sessions. Such was at least the ostensible ground for the omission of Major Bingham's name from the magistracy of Mayo. I am bound to believe it to be the real ground, and if it were so, it must be acknowledged to have been adequate and satisfactory. It has been said that it arose from electioneering or political differences. I, for one, cannot believe it. Until the contrary appear, we are bound to give the noble lord credit for purity of motive in the discharge of the important trust confided to him. But, Gentlemen, one thing is certain, that my client is to this very hour a justice of the peace for the counties of Sligo and Galway; and that the statement put forward by the Plaintiff, through his counsel, is utterly false, and the inference sought to be deducted from it is equally unfounded—that Major Bingham caused the alleged libel to be published in the *Mayo Constitution*, to avenge himself of the Reverend Plaintiff, by whose successful complaint to the Government his name had been erased from the list of the magistracy. But, Gentlemen, the learned counsel went on and said, that Major Bingham was a perfect *Caleb Quotem*, he filled so many offices and discharged so many functions when Father Lyons came to the parish; and that the priest had shorn him of all his honours, his employments, and his perquisites in the county of Mayo; and the counsel was instructed to boast, that nothing was now left him but his estate. Gentlemen, I entertain no doubt of the good intentions of his Reverence towards my client; I dare say he exerts his good offices to the uttermost, and the evidence in this case will prove that it will not be the fault of Priest Lyons if Major Bingham shall not also be defrauded of his estate. If such be not the intention of the Reverend Plaintiff, why are the wretched peasantry excited to acts of hostility against their landlord? Why are the altar and the pulpit desecrated by political discussions? Will it be believed, that this man, filling the station of a minister of religion, has had the audacity to denounce Major Bingham and his family in the parish chapel! Will it be credited, that in the house of worship, erected on my client's estate, in the midst of his tenantry, built on ground which was given by him for the purpose, gratuitously; by him, of whom this grateful priest instructed his counsel to say, that "he would not give a potatoe to one of his tenants if it could be eaten by one of his pigs."—Will it be credited, I say, that Father Lyons has dared to use such language in such a place, with regard to the

resident proprietor of the soil, as this—"There is a family in this parish, who, if they do not desist from annoying me, I will make Binghamstown a desert, and cause grass to grow in its streets." Is this the return my client receives for his mistaken liberality? I have told you that he gave the ground on which this chapel was erected; he also gave £100 towards the building; the house likewise in which this truly exemplary priest resides at this moment, is erected upon another piece of ground, containing nine acres, which my client also gave to the Plaintiff, in perpetuity, at a rent nearly nominal! To what vile purposes has this Reverend clergyman devoted that house of worship, which, by him at least, should be held sacred. He, however, thinks it a proper arena for abusing all those whom he deems are deserving of his ill-will or malice, and from the altar he dares to publish such denunciations of Major Bingham and his family as those already stated. "He," forsooth, "will hunt the family of Bingham from the country, make their town a desert, and cause grass to grow in its streets." When such is his conduct to the landlord, who can wonder at his brutal and tyrannical treatment of the wretched tenantry who have the misfortune to excite his displeasure. Just conceive a man upon his knees, about to perform some of his religious duties before the congregation in the chapel, and this minister of religion thinks it decent and proper to rush upon this person, to seize him by the hair of the head, and to spit into the mouth or face of one of his flock, under such circumstances; and this is done, not to one individual, but to several on different occasions. I heard yesterday something said in extenuation of this brutality. It was alleged that it was not done when the poor man was on his knees, and that some gross misconduct had been committed by the individual which made the blood of this meek divine to boil up, that his indignation could only get vent by means of this spit. Something was said of the priest having been informed of this man having cut off the hand from some dead body for the sake of getting the rope which was grasped in it. But I ask you, Gentlemen, was there one word of all that affecting, blood-stirring story proved to you, and why was it not? Simply because it could not have been proved. It was one of those ingenious inventions of which we have had many other specimens—

Mr. O'Connell—I object to this statement of Mr. Jackson; we could not, as to his client, prove any thing, as he did not justify—

Mr. Jackson—I am prepared to meet this objection. The Plaintiff might have made the proof as against Lavelle; for Lavelle has stated, as a justification, this record. True it is, I did say that Priest Lyons spit in the mouths and faces of some of his people on their knees in chapel, because the fact is as I have said. This plea is on the file since March last, and the Plaintiff has had abundant time to prepare his proofs, if he had any excuse or

explanation to offer for such indecent and tyrannical conduct. But no such attempt has been made.

Court—It strikes me as if you, by pursuing this course, were extending to yourself this plea of justification, which is, in fact, Lavelle's, and not yours.

Mr. O'Connell—And Mr. Jackson is not counsel for Lavelle, but for persons who are merely denying that they are publishers, therefore Mr. Jackson cannot take advantage of Lavelle's pleading.

Mr. Jackson—I think I am plainly entitled to do so.

Court—It was considered by both sides that I was not wrong in stopping the evidence offered yesterday as to the Plaintiff's accounting for the charity money, although the Plaintiff's character is in some degree put in issue; but supposing the Plaintiff to be at liberty in this action to give evidence of antecedent good character. At farthest, such evidence is to be confined to general character, and is not to extend to evidence of particular facts, when there is no justification applicable to them on the record.

Mr. Jackson—This particular statement in the publication is justified by Lavelle; the other statement, as to the misappropriation of the charity funds, has not been justified, that makes the whole difference. I admit that my clients are precluded from proving the truth of these charges; their counsel, however, must be permitted to remark on every topic discussed by the Plaintiff's counsel in his opening statement, and to observe on the whole conduct of the Plaintiff in the cause and throughout the trial. He is only precluded from proving the truth of that which he did not justify.

Mr. O'Connell—I submit, and shall not further persist in my objection.

Mr. Jackson—Gentlemen, before I was interrupted, I was observing that the Plaintiff was warned by the Defendant, Lavelle's pleading that such a fact would be proved, and he had it open to him to prove, if he could, that it was not true, or to offer any explanation or qualification of the fact, if in his power.

Mr. O'Connell—I thought it better that I should waive the objection, and go into evidence on the subject in reply.

Mr. Jackson—But I must disabuse counsel, and tell him that he cannot hereafter go into any evidence on this subject, for he was apprized that this fact would be proved against his client, and he was therefore called on fully to prove his case, if he at all went into it.

Mr. O'Connell—With that you have nothing to do.

Mr. Jackson—Have I not? Where Mr. O'Connell has embarked us all in the same ship. Every Defendant has an interest in having the rules of evidence, and the due course of proceeding observed. Gentlemen of the jury, you have understood me, I am sure, notwithstanding these interruptions. I ask, is not what I have been describing gross and abominable misconduct on the

part of a man clothed with the clerical character? Have not his flock a right to complain to his superior against him? and can their memorial be denominated a libel, if it be drawn up and presented, *bond fide*, with a view to redress? and has not a landlord a right to help his tenants in forwarding their memorial, and obtaining such redress. But another irrelevant topic has been introduced most unwarrantably, in order to prejudice your minds against my client. It is said that Major Bingham did not contribute one shilling to the necessities of the poor on his estate, during the season of distress. It is not at all improbable that Major Bingham had very substantial reasons for not entrusting any of his alms to the hands of Mr. Lyons; but he was able, and was also willing to give, and he did give his tenantry the most effectual and valuable assistance during the time of scarcity. He did not give money, but he gave them potatoes, meal, corn, clothing, medicine, in short, he administered to all their wants; I admit, however, without the intervention of Father Lyons, so that what has been said of him on this point is quite a gratuitous aspersion. But, gentlemen, why was so foul and unwarrantable a slander uttered against him? Why was he said to be such a monster, that he would not give to one of his starving tenants a potato which would be eaten by a pig! I will tell you, gentlemen—

Mr. O'Connell—Let Mr. Jackson prove that Major Bingham subscribed one shilling to the subscription at the time of the famine, and I will give up the entire case.

Mr. Jackson—Have I not admitted that he did not subscribe in money, and is it not plain why he did not? but though he did not subscribe to Mr. Lyons's collection, he gave his assistance to the people in a much more valuable and effectual manner. What fine stage effect is now attempted by the learned counsels nugatory offer. His object is to divert your attention from the real question in the case. I early apprized the court and jury, that I did not come here with witnesses—that I conceive I am entitled to your verdict, on the plea of the general issue; that I stand here, upon the total insufficiency of the Plaintiff's case, and yet, the Plaintiff's counsel, who knows perfectly well that my client would not have been at liberty to offer evidence as to his subscriptions, that nothing of the kind is put in issue on this record, and that we could not, by possibility, bring witnesses now from Mayo to prove such matters, most *liberally* offers to let the case abide that issue. But, gentlemen, it is in order to poison your minds against Major Bingham, and, if possible, to get you to find against him, without evidence, that numerous topics have been brought into the present case, to which Mr. O'Connell did not, and was well aware, he could not, apply any proof. And now, gentlemen, let us examine the proofs which have been offered on the part of the Plaintiff; and, first, let me ask, what is the evidence of publication here, as against Major Bingham? Look to your notes, and

tell me, have you any evidence on them, that Major Bingham was the publisher? By whom was it proved? Was there one word said by any witness to bring home the publication to him? The first Witness, Feeney, proved nothing against him—he did not name or allude to him. Did the second witness (Mr. Vernon) prove it? No, he was only called, as it would appear, for ornament! to produce newspapers from the stamp-office, which were not and could not be read. Did the third witness (Bole) advance the case a step against my client? No—he said that he had never even seen Major Bingham; therefore, gentlemen, on the testimony of the three first witnesses produced by the Plaintiff, I call on you to show me one iota of evidence to prove that Major Bingham was the publisher of the alleged Libel in the *Mayo Constitution*; but, I confess, we have yet to come to another witness, who, if believed, would, by his testimony, supply a link in the chain of evidence which might tend to prove it, but if he be not believed, I defy the Plaintiff's counsel, in any way, to eke out a case against Major Bingham. You anticipate that I allude to the celebrated OWEN HENAGHAN! Can you credit that infamous witness, branded, as he was, in your presence, out of his own lips? A fit tool, indeed, to be resorted to, in the desperation of the Plaintiff's case, to fix upon my client a guilty participation in the publication of this memorial, for the purpose of putting damages into the pocket of the Rev. Mr. Lyons. I already apprized you, that nothing would be gained by this action, unless the Major could be included in your verdict. If this trial took place where it properly ought, in the County of Mayo, that wretch would not be listened to in a court of justice. We shall produce to you a witness of the first respectability, Mr. Ellis, the late chairman of the Quarter Sessions of that County, who will tell you, upon oath, that from his knowledge of the general character of this Owen Henaghan, he is not worthy of credit as a witness in a Court of Justice. But, gentlemen, does the character of Henaghan rest merely on the testimony of a fallible witness, however respectable? Pray observe the story which this fellow did not blush to detail of himself and his conduct relative to this memorial in your presence. Who is the concoctor of this very document? Why this same Owen Henaghan. Are the contents of it true? No, he says it is a tissue of falsehood from the beginning to the end. At first he had stated that it was all true, but I admit, that seeing the effect of his answer, he corrected himself in the next breath, and said that it was all false. But it is either true, or it is false; if it be true, does not the Rev. Plaintiff come here with an extremely modest demand, asking you for only £4000 as compensation for the loss which this document has inflicted on his immaculate character? But if it be false, who put it together? who signed his name to it? who stands second on the list? who procured signatures to it? Why, this very Owen Henaghan. Gentlemen, I have the honor to know some of you. I think I may venture to

calculate that you are not wholly devoid of common understanding; perhaps I might venture to say, that all of you possess a few grains of common sense; but this I will say, that, in my opinion, unless you have been selected as a jury of dolts, the very refuse of some asylum for idiots, you could not be expected to act upon the testimony of this witness.

Court—If the jury were such as you have described, they would be a very suitable assistance to a “dotard judge.”

Mr. Jackson—Gentlemen, I shall not trust myself to give utterance, in the presence of his Lordship, to the sentiments of sincere respect which I entertain for him; and, with regard to the jury, I am sure I cannot have been understood to have spoken of them in the language which I have just used, otherwise than ironically. But to return to the witness Henaghan. This fellow says that he compiled this collection of gross and abominable falsehoods, as he would now have you to believe it, against his clergyman without any cause. And what was the consideration which induced him to do so? Why, he says himself, that he did it for the sake of five shillings, and a piece of a rib of beef.

Court—A few pounds, but not pounds sterling.

Mr. Jackson—Gentlemen, I put it to you, if you believe his statement of himself, that he was capable of preferring falsely and deliberately, charges of so heinous a nature against his parish priest. Is he not capable of any species of falsehood? Is he not, in a word, the very fittest instrument to be now employed by that priest, to fasten this publication falsely upon my client, Major Bingham? I ask you, Gentlemen, will you credit such a fellow? If he be not believed, I repeat it, there is no evidence at all of publication against Major Bingham; and there is a total failure of that link which is essential to connect him with the document which appeared in the *Mayo Constitution*. I have admitted already that if Owen Henaghan be credited, there would be evidence from which a jury might infer that the memorial mentioned by other witnesses, in connection with his name, had been inserted in the *Mayo Constitution*, with the assent, if not by the procuration of Major Bingham. Now let us see what has been proved by Dickson, Tighe, and Daly.

Court—Let me ask you, Mr. Jackson, supposing there was no evidence connecting Major Bingham with the publication in the *Mayo Constitution*, but that there was evidence connecting him with the publication of the memorial otherwise; and supposing that the jury should think the memorial not a *bond fide* complaint, how would you then view the case?

Mr. Jackson—That comes to the very point to which I was going to address myself, and to call the attention of your Lordship and the jury. I say, then, here is the precise point for which Owen Henaghan's testimony is essentially necessary; for without his evidence, what is there to identify the document spoken of by the other witnesses, with the publication which

forms the subject matter of this action? Nothing is proved of the contents of that document.

[His Lordship having been called out of court, during his Lordships absence one of the jurors (Mr. O'Gorman,) called on Mr. Jackson to state why he thought fit, in the beginning of his address, to particularise his name in some observations he was making on the conduct of the Plaintiff in this cause, and said that he felt hurt at his having been so particularised. Mr. Jackson assured the gentleman, that he must have mistaken his meaning altogether, if he supposed that he (Mr. Jackson,) meant to say any thing disrespectful towards him, or hurtful to his feelings. On the return of his Lordship Mr. Jackson said]

In your absence, my Lord, it was stated by one of the jurors, that some observations which I had made in the beginning of my address, in which I had mentioned the name of him and others of the jury, had hurt his feelings. I think it therefore right, in the same presence in which the observations were made, to declare that it was the farthest thing from my intention, to say any thing that could give, in the slightest degree, any pain to the feelings of that gentleman, or any other of his respectable fellow jurors in that box. I do conscientiously believe him to be as fit and proper a juror as any other individual, to try this or any other case.

Court—I know to what part of your address you allude, and it certainly did not convey to my mind any such idea. I feel convinced that you did not intend to do any thing so unwarrantable, or, indeed, I may add, so imprudent, as to wound the feelings of any of the jury. I can say that in my experience, I never knew a person who would be less likely to act so than yourself.

Mr. O'Gorman—I only wanted to know the object of Mr. Jackson in naming me and two other jurymen. I am now perfectly satisfied.

Mr. O'Connell—The whole bar concur in what has been said by your Lordship relative to Mr. Jackson.

Mr. Jackson—I was observing upon the evidence of Owen Henaghan. If he be believed, Major Bingham may be considered as involved in the publication of the document complained of in this action. If he be not, there is no evidence to connect him with it. And before I have done with this witness, let me observe, that if Major Bingham had been disposed to put forward this memorial for any sinister purpose, or with a view to its publication, he never would have committed himself to such a wretch as that. Could he not have done it himself—could he not have employed some of his own family or dependants to prepare it in his own house, and secretly. But I fatigue you, Gentlemen, by dwelling unnecessarily upon such incredible evidence. And now I beg you to look to your notes. As to the testimony of Thomas Dickson, what has he said affecting Major Bingham with this alleged libel. He was asked whether he had signed

this memorial, and he said he signed a *paper* by the desire of Major Bingham. But is Dickson a man on whose testimony you would be disposed to found your verdict. Recollect that he had been evicted by Major Bingham at the last October Sessions, for non-payment of rent. Are not the circumstances suspicious—has he not some revenge to gratify against Major Bingham: but is he not also one of Mr. Lyons's congregation and under his influence; and does he not feel that he is doing him an acceptable service in giving evidence against Major Bingham. Again, is it likely if Major Bingham had so committed himself to Dickson, and was conscious that he was in his power, that he would have ejected him so lately as last November, this action then pending? And we cannot disguise from ourselves, that the priests are a very powerful and influential set of men, particularly amongst persons of Dickson's class; and sorry am I to say that too many of them lose sight of their legitimate character, and duties, and assume political functions, stirring up strife and discord. Mr. O'Connell has said they are not quite omnipotent. This is true; I rejoice to know that there is a power which can controul even them. But this observation of the learned counsel was made the vehicle of another irrelevant and groundless statement, which the Rev. Plaintiff had instructed his counsel to put forward in this case. You were told he was fired at. Gentlemen of the jury, I firmly believe that the Plaintiff never was fired at, at all. I am credibly informed that nothing could be more ludicrous than the whole story about this alleged firing at Father Lyons. The persons who were charged with doing so, were prosecuted by his Reverence; but that indictment was necessarily tried in the County of Mayo, where he and his witnesses were known. And what was the result? Why the accused were acquitted without even a cross-examination of the witnesses brought forward by the Plaintiff to prove the charge. One of these witnesses said that he saw the wadding of the gun, and some of the gunpowder on the floor of the priests room immediately after the shot was fired!! Now I tell you that after such absurd and impudent perjury, the case was scouted out of court, and that without the production of a witness for the defence; and yet this idle story is served up here again. Surely the Plaintiff expects that any thing will go down with a *Dublin* jury! Who was the next witness?—*Anthony Tighe*. He was also asked whether he had signed the paper. He said he was asked by Major Bingham to sign the paper—(what paper?)—but that he had answered that he would take time to consider of it. I do not think the testimony of this man free from suspicion; but supposing it to be true, what does it amount to? If the paper spoken of by the witness, be the memorial complained of, and if Major Bingham believed it to be true, had he not a right to co-operate with his tenantry, to get rid of so ill-conducted and oppressive a priest; nay, would he not be bound to stand by his

poor tenantry under such circumstances? He would not be justified in publishing it I admit, but where, I ask, is the evidence that he did publish it in the newspaper, or give it unnecessary publicity in any manner whatsoever? I say none, if you throw the testimony of Owen Henaghan over board, as I respectfully submit you ought to do. I said the testimony of Tigue was not free from suspicion. Did he not come forward also, under the influence of irritated feelings, against Major Bingham—had there not been a contract to employ him, which was broken off?

Court—The evidence is, that Major Bingham offered to employ him, but he did not return, and it was thus broke off.

Mr. Jackson—At all events I am correct in saying that the contract was not carried into execution; recollect also, we asked him who was present at the interview with Major Bingham, deposed to by him? Tigue conveniently says, there was no one by at the interview but a child of six or seven years old. It is observable as to each of those witnesses, that they take especial care that it shall not be in our power to contradict them by the production of any persons who were present on the occasions to which their evidence refers. Daly is the only remaining witness; now, supposing his testimony is believed, it only amounts to proof of considerable harshness of conduct by Major Bingham towards him. Gentlemen, I need not remind you, that you are not trying whether Major Bingham be a landlord of a harsh character, but whether he be guilty of publishing a particular libel; and if Daly's statement be true, under what feelings does he come forward here to give his evidence—has he no inducements to assist in making out a case for his priest against Major Bingham? This, Gentlemen, is the whole of the evidence that has been produced for the Plaintiff, and I ask you, is it such as to enable you, with safety and satisfaction, to find a verdict for the Plaintiff against Major Bingham. I feel, Gentlemen, that I should not be warranted in trespassing on your time, by a separate discussion of the case as regards Mr. William Bingham; it is quite unnecessary that I should do so, for as regards the pleadings, he stands on the same grounds with the Defendant, Major Bingham; but as regards the evidence bearing upon the question of publication, his case appears to be precisely the same as that of the Defendant, Lavelle; so far, therefore, as he is embarked in the same bottom with that Defendant, I feel that I cannot do better for him than to request that you will give him the benefit of the able speech which has been addressed to you by my learned friend Mr. Bennett, as counsel for Lavelle. So far as William Bingham's case is identified with that of Major Bingham, the observations which I have already submitted to you, will be fully applicable. Gentlemen, I am sensible that I have unavoidably occupied no small portion of your time, and I am grateful for the attention with which you have heard me. I fearlessly submit this case to your determination. Has the Plaintiff entitled himself to a verdict against any of the

Defendants? Does he come into court as a meritorious suitor in such an action as this? Can you conscientiously act upon such testimony as he has brought forward? What must you think of the Plaintiff, whose case is mainly supported by such a witness as Owen Henaghan? But if you could find a verdict for such a Plaintiff, even for nominal damages against any of the Defendants, how can you feel justified in including Major Bingham in that verdict?

DEFENDANT'S EVIDENCE.

William Barrett examined by *Mr. Geraghty*—Witness lives in Erris; has been in the employment of Major Bingham for twenty years; drives for rent for him; knows the plaintiff; is one of his congregation; is a Roman Catholic; has been in the habit of attending the Plaintiff's chapel for two years and a half; was sexton to that chapel for two years and a half, about four years ago; witness has a wife; they used to attend chapel; has not gone to chapel as sexton for four years; attended mass, but not for the last four months; did attend there up to the last four months; was in the habit of going there on Sundays; Mr. Lyons is in the habit of preaching often there.

Mr. Geraghty—In the course of his preaching did he make any allusion, and what, to Major Bingham the Defendant?

Witness—He did; I heard him say that there was a certain family in the parish was annoying him, and that if they did not stop, he would lay waste the streets of Binghamstown; heard him say it at the altar; heard it several times from him; he was finishing the service, and it was then that he spoke these words; it was on a Sunday; heard him several days as well as Sundays, speaking words like these, while the congregation remained in the chapel; some Sundays the chapel is full, on others it is not half full; cannot remember whether it was full or no, then.

Mr. Geraghty—Pray does your wife attend chapel? *Witness*—That is, the last wife I had. You have a wife now, have you not? I have. Do you live with her? To be sure I do—she does. Do you know one Reilly? I know a deal of people of the name of Reilly. Do you know one Corrigan? I do; I remember seeing him in the chapel; I recollect Mr. Lyons and he had some difference in the chapel; I saw Mr. Lyons knocking him down and catching him by the nose, and spitting in his face, and turning him out of the chapel. How long ago? I think it is better than three years ago; I don't remember what day of the week; it was I believe—I can't answer that question. Do you know William Reilly? I do; I saw him at the chapel; it was myself that was sent for him, and brought him to the chapel, and Mr. Lyons put him on his knees, and he acted in the same way towards him that he did to Corrigan; he spit in his face and turned him out of the chapel; that was from three to four years ago; Priest Lyons sent me for him; I brought him to the railing,

and Mr. Lyons set him on his knees to ask *his* and God's pardon, and he spit in his face and turned him out. Did you see any improper use at any time made of this chapel to your recollection ? For a year Mr. Lyons was building a house there, and he had timber stored there and slating in the chapel ; I never saw cows in that chapel of Binghamstown, but in one which was four miles off ; I was at his place there superintending it, and it was into that chapel that we used to put the cows and sheep at night ; I was in the habit of going to confession, but not since we memorialled the bishop ; I would not be received, or a good many more who memorialled the bishop ; any of us that signed it, and did not make submission he would not give confession to, or any one belonging to them ; this, I know, because I tried him, and others beside tried him in the country ; there is some of us, indeed, who did not get our wives churched by him for three or four years ; I have known some of them who applied to get their wives churched.

Court—What is the date of the time that this witness is speaking of.

Mr. Geraghty—The 3d of January, 1831.

Court—That would give us not quite three years.

Mr. Geraghty—Name some of those persons ?

Witness—There was Pat. Lavelle French's wife, and young Tom Dickson's wife.

Court—But it would seem that the refusal was the consequence of signing the memorial.

Mr. Bennett—There was an interval of some months between signing the memorial and the publication of it.

Mr. O'Connell—The memorial is of its date, it makes no difference,

Mr. Geraghty—Where is Corrigan now ?

Witness—He left the country, and went to Tyrawley ; I don't know where he lives now.

Mr. O'Connell cross-examined him—Have you been the entire of twenty years in the employment of Major Bingham ? I have. I don't ask you whether you did it ; but were you ever charged with robbing the altar ? I never heard I was charged with it ; but I heard Mr. Lyons said that I did, what I did not do ; that I got his dues, and that I took them by wrong means. Was it that charge made you quit the country ? No ; for it was after that I heard of it ; it was not mentioned while I remained there.

Mr. Bennett—I object to this ; he is giving now the declaration of the Plaintiff

Mr. O'Connell—My question was, whether any one had charged him. What you heard, was it said ? Yes ; what I heard Mr. Lyons gave out to the congregation, and it was at Westport that I heard he said that I took money out of the altar ; I was about three months then at Westport. Did not Mr. Lyons cen-

sure you publicly for having cursed Major Bingham? By virtue of my oath he did not; I was away a year and a half when that was said. It was Mr. Lyons turned you out of your office? To be sure it was, when he had a man to put in my place; I was in the militia four years. What made you leave it? I was disembodied. Did you go to any prayers for the last four months? I did, to church. Did you ever, before the last four months, go to church? I did. For how long? Thirty years ago, when I was in the Monaghan militia, we all used to go to church at that time; we all were obliged to do so. *Mr. O' C.*—That could not have been the case; if it was, it was very improper. What place of worship did you lately go to? To the church of England in Binghamstown—To the church of England! When did you go there first? It is not a year itself; I believe it was in April last. Was that before you were tried for the libel? No, after. You were tried and convicted? I was. Did Mr. Lyons apply to the Court, and interfere that you should be more punished or less? I can't say. Did he not apply to have the sentence less? That is more than I know of. Where were you tried? At the sessions at Westport. It was that made a Protestant of you? It was to church I went immediately after; it was; and I intend to go there while I live. You got a month's imprisonment? I did. And did not Mr. Lyons interfere for you, sir? I did not hear it if he did. Was not Mr. Lyons put on the table as a witness? I don't know, I was in the dock with sixteen or seventeen more; I was but poorly that day; I don't know whether he was or not; I know he was at the trial, but I can't say whether he was sworn as a witness or not; I was married by Parson Dawson; I can't tell how long ago; it was in January, I believe; my wife was a Catholic. And you made a Protestant of her?

Mr. Bennett—Now, is this a proper topic for cross-examination?

Mr. O'Connell—I have a right to examine him to these points particularly on a cross-examination; it is wrong of Mr. Bennett continually to interrupt me in it.

Mr. Bennett—It is really not right of you to say of me, that I continually interrupt you; you know I don't do so, nor could do so, though often you give me fair occasion to do so; and your saying this of me will not prevent me doing my duty, I assure you.

Mr. O'Connell—It is unprofessional to interrupt a cross-examination.

Court—We cannot say that counsel has not a right to interrupt, if the cross-examination be improper.

Mr. O'Connell—Here I was in the most important part of the cross-examination. The witness comes here affecting to be a Catholic, and saying that he had been prevented from going to confession: if I can shew he is as sincere a Protestant as any

gentleman in court, have I not a right to do so? and I was on that topic when I was interrupted.

Mr. Bennett.—I objected fairly to the questions, as to when he and his wife became Protestants; but I am really afraid to object to Mr. O'Connell's questions, he interrupts so wickedly; but he shall not prevent me going on in this case. goodhumouredly, and I hope he will do so too.

Mr. O'Connell.—Was your wife a Catholic until you married her? I suppose she was. Did you make a Protestant of her? She made one of herself. On your marrying her? Yes. And she has gone to church ever since? Along with me ever since, until I left home. When were you there? Paddy Lavelle sent me back. For what? I stopped in town here for 15 days, waiting for the trial, and it was put off till Wednesday. Who was by when Parson Dawson married you? My own son, and his wife. Were you called in church? I was, three Sundays. Were you ever a wreck-guard for Major Bingham? I don't understand that. A guard to watch the *racks*? I was, a long time ago, before the water guards. Were you so, when the German vessel was wrecked in Poulacoppel? I was. For whom were you guarding? For Major Bingham. Were you ever accused of stealing any tea—do you remember about a chest of tea? A chest of tea! I remember there was a cargo of tea. Do you forget the charge of stealing it? I do, there was nothing like it. But was it not said? I don't know who said it, for I never heard of it. Did Major Bingham ever turn you off? He never did, for stealing any thing. But did he not turn you off for any time? I was turned out of his employment after having been a year in Priest Lyons' employment. How long before the signing of this memorial was it, that you were taken back into Major Bingham's employment? I can't say. Was it a week? I don't know whether it was before or after it, I was in all with him, a year and a half or two years. You never were charged with pocketing any of the Major's rent? I don't understand that word. Were you never charged with pocketing for your own use any of the rent you collected for the Major? I never was. When were you taken back? I think it was in the same year I was taken back, but I can't say whether it was before or after the memorial was signed. But it was in that year? I believe it was after. Do you remember a threatening notice being put up in Mr. Lyons' chapel? I don't understand that word. You are bound to answer me, Yes or No. I don't know what a *threatening* notice is at all, I know what a notice to quit is. And you know what threatening is, but not what a threatening notice is? I know there was a notice on the chapel, and that Fleming went to copy it; that is his handwriting; I know the name of Thomas Dickson, jun.; Paddy Lavelle *Major*, is alive; I don't know whether Paddy Corrigan is; both were alive when I was in the country, so was Reilly; Reilly is a tenant to Mr. Carter; I

cannot positively say whether the spitting at him occurred on a Sunday, but I think it was. Was it or was it not, Sir? I think it was; I know Captain Ireland, he is the only magistrate of the district; Mr. William Bingham is not now a magistrate, nor is Major Bingham. Were you bound over before Captain Ireland on any charge? I was bound over to keep the peace; it was part of my sentence on my imprisonment; three sons of mine were also bound over; they had nothing to do with the libel; I was not bound over about any threatening notice. What day of the week was it on which you heard Mr. Lyons say, that he would lay waste the streets of Binghamstown? It was of a Sunday, several Sundays. In what week—what year was it? I can't say what week or year it happened in. Was it within the last three years, or this year, or within the last five years? I can't tell which of the years it was in, but I often heard him say it; I made no remark what time of the year it was in. Was it winter, summer, autumn, spring? It was several times in the chapel. Can you tell how often—was it 100 times—1000 times—a million of times? I did not hear it 1000 times. Did you 100 times? No. Or 60 times. I kept no almanack how often I heard it. Did you hear it 40 times? No. How often then? I heard it twice or thrice, or things of that sort. Do you write your name? No, Henaghan or Fleming put my name to the memorial. Were you—then in Major Bingham's employment? Upon my word I cannot answer that question; Patt Lavelle was there signing; he was a tenant of Major Bingham; Owen Henaghan was there and Thomas Esmond, and Wm. Moran, and John M'Donough, and Pat Flanagan, and Wm. Kelly, and Brien M'Loghlin. I don't know whether he was a tenant then.

(Mr. O'Connell examined this witness, as to several others whose names were signed to the memorial, and said he made out all, but 24, to be tenants to Major Bingham; he said there are but 24 who are not tenants, and out of them he alleged several were forgeries he then said.) Can you tell any one who was by at the sermon preached the day of the spitting? There were the two M'Donnells by. Are they here? No. Are they respectable persons? They are. What was the sermon about? I cannot tell; I never told any one I could prove the words about laying the streets of Binghamstown waste; I never was asked; I know Mr. Robinson; I was in his office, his clerks were there, they did, I believe, take down my evidence, at least I suppose they did, but no one asked me about these words; they took down my evidence about the dues; it was some day this week; I can't recollect whether they asked me about laying waste the streets of Binghamstown; but I recollect they did about the dues; I don't know whether it was Monday or Tuesday last; I am sure it was not to day; I am not sure whether it was yesterday or the day before; I believe they asked me about the spitting in the face; I cannot swear positively whether they did or no. Had you

counsel or attorney at your trial at the sessions? I had, I know I had. How many of them? I believe I had Counsellor Courtenay and Counsellor Bourke; I can't recollect who was the attorney. Perhaps you did not pay either? Pat Lavelle paid them; he is the head driver to Major Bingham; he also paid for my support there; I can't say whether he charged it to Major Bingham; I answered Mr. Robinson about the dues; I might have told him about the streets of Binghamstown.

Mr. Bennett—When did you go to Mr. Lyons to ask for confession? I did not go to Mr. Lyons, but to one of his coadjutors.

Mr. O'Connell—Did you ask him for a ticket to go to a neighbouring priest? No, but he said he would not give me a ticket without the leave of Mr. Lyons.

[*Mr. O'Connell* objected to this evidence, *Mr. Bennett* insisted on it, and it was finally admitted.]

Mr. O'Connell—What was the name of this priest? Mr. Miles. It was this time twelve months that we went to Mr. Miles, and he told me he could not do it without the leave of Mr. Lyons. Do you remember the jubilee? I do. What religion were you of then? A Roman Catholic. Did you believe it to be the true religion up to April? I did, and when Mr. Lyons refused me confession, I made a vow never to have any thing to say to it. Do you still believe it to be true? It is hard for one to believe it true, when I see so many persecuted in the parish by its clergyman. Do you believe it now to be true or false? I told you before I made a vow that I would not go to chapel when I saw such persecution. Do you believe the Catholic religion a true religion? I believe it still to be a good religion, but when I saw the clergymen of our parish, behaving as they did, I never would have any thing to say to it if I lived 100 years.

Mr. Bennett (again took him up)—Twelve of us were convicted at Westport, and bound over to keep the peace; I saw Mr. Flannery, he was sent into the country, to shew justice between the priest and the parishioners—I heard himself say so; heard him say when he was there, that if we sent in an ass load of petitions, we would get no satisfaction; I was never tried for taking money from the altar, or for any thing else in my life.

Mr. O'Connell—Did not Mr. Flannery say, "now is your time to come forward, and if you don't, you won't be believed another time?" I don't know whether he did or no. Had you not a weeks notice? I don't say but we had. Did he not press you to come forward to prove against your priest? He did. And said then if you don't come forward and prove now, you will never be believed hereafter? That was not what he said, but he said, that if we sent an ass load of petitions into the bishop, they would not be minded against Father Lyons; there was a great noise and confusion in the chapel then, and P. Lavelle spoke, and then we all went out of it. (To questions from the jury.) I did not mind distinctly what he said; I left the militia at the first disembodying

of it a great while ago; I was in no other regiment but the Mo-haghan. We had sent a memorial to the bishop. Mr. Flannery was the only one I saw standing at the altar that day, that I know of; I was idle after leaving Major Bingham's employment for four or five months.

Mr. O'Connell—Did you ever go on your knees outside Major Bingham's window, to curse him? I went down on them to call God to witness, whether what I was accused of before him was not a lie. A servant girl had told Major Bingham some lie about me, that I had cursed him; I went on my knees, and could swear I was wronged. (To one of the jury.) There is a dispensary now in Erris—one Bourns has it.

William Henry Ellis, Barrister at Law (examined by *Mr. Bennett*)—Was appointed Barrister of Mayo; knew Owen Hennaghan. *Mr. B.*—Do you conceive him to be a person—; do you know his character? It is five years since I have been acting officially in Mayo, and twelve or fourteen years ago I knew something of his character.

Mr. O'Connell—The only legal question can be asked is, do you know his general character?

Witness—There are many years that he was out of my sight.

Mr. Bennett—Can you say you are acquainted with his character? I was, at the time I was chairman of the county, up to the time I left it. Do you think him worthy of credit on his oath? I certainly did not.

Mr. O'Connell—Don't you think that Major Bingham and the other Defendants knew his character better than you did? Certainly I have looked at the memorial, and don't know it to be his handwriting; I think he has come into my court to prove something for Major Bingham. Could you tell who you heard his character from? Mr. Ignatius Kelly was his original employer; he was his writing clerk; I first heard his name—certainly within the last twenty-five years; he was Mr. Kelly's clerk; I should not be surprised to hear that he was afterwards in Major Bingham's employment.

It was now a little after six o'clock; and the court adjourned to to-morrow.

FRIDAY 18TH DECEMBER.

THIRD DAY.

The first witness for the Defendant this day was *James Donohue* (examined by *Mr. Litton*.) *Witness* lives in Binghamstown; knows the Plaintiff; is the son-in-law of the Defendant.

Mr. O'Connell—Hem !

(*Mr. Litton* deprecated the interruption.)

Mr. O'Connell—I was only making a *setto voce* remark, and I object to your question as illegal.

Mr. Litton—Do you know where Mr. Lyons's house is? *Witness*—I do, it is opposite the chapel at Binghamstown, at the other side of the road. *Witness* remembers to have seen the chapel used to put slates in, and to have seen the slates used for Mr. Lyons's house, and the timber there likewise, and people threshing in it, and others sawing in it; lived in the parish before Mr. Lyons came to it; since he came, there has been an increase of fees payable by the people to the priest, and some charges which are new altogether, and which did not exist before; there is an addition advanced to the dues of each house-keeper, also on baptisms and marriage money, and on clay—money, for consecrated clay, used at the time the deceased is brought to his burying-place; a *bart* of corn, that is twenty sheaves is given, or one shilling and eight pence in lieu, if the corn is not given; the people were compelled to give it; the most of them were not willing to give it, but it was demanded and received; there was an additional advance on the baptisms; two and six pence Irish was paid before Mr. Lyons came, and he now charges three shillings and two pence, English. The marriage money was formerly a guinea; after he came, he made it three half guineas, and three pounds to some.

Mr. Litton—For a man and wife, householders, how much?

Witness—It had been two shillings; he changed it to three shillings and two pence; the yearly *salary* for a child of ten years going to confession, ten pence each; and for all of them going in a family, I can't recollect what had been charged before, but it is now five or six shillings; for extreme unction, one shilling; for anointing I don't see there was any charge for legacies for the deceased not claimed, there used to be a charge of six shillings, and I believe it is the same now; there were seats near the altar; the charge was for them five shillings, and outside, for any couple, two shillings and six pence; and those who did not pay it, were not compelled to do so; but those who got a seat, paid for those who got no seat; this charge was never made before.

Court—Were there any seats there before?

Witness—I said there were none.

Mr. Litton—As to the "blessed clay," is there any change since? Not that I recollect; there was two shillings and six pence for it, and the same is the charge now; but Mr. Lyons's predecessor used to go in person and officiate at the burials, and bless the clay, while Mr. Lyons charges for the blessed clay, but don't stir towards the burying place at all. Did you apply to Mr. Lyons to administer any of the rites of the Roman Catholic

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church? I did, and was refused; I applied to him and to his coadjutors, and they all refused.

Court—What rites do you mean?

Witness—To give me confession, and to give churching to the women after being brought to bed. That rite was refused to my wife, and I was obliged to bring her to Ballina, to the Bishop of Killala, thirty-three miles, as far as I can judge, in order to receive those rites.

Mr. Litton—What was the reason of this refusal? I don't know, unless it was that I was married to Lavelle's the Defendant's daughter; I can think of no other reason. Who applied to Mr. Lyons to administer those rites to you and your wife? I did myself; Bishop Waldron ordered Mr. Murray to do it; Bishop M'Hale would not do it, and the other ordered a young clergyman to church my wife in his own house, and the ceremony was performed there. Do you know a man named P. Corrigan? I do. Do you know any thing remarkable occurring as to him? I do: on Sunday, after the sermon, it was pretty near the altar, Mr. Lyons had called him within the rails, and made him kneel down, and then he took him by the face and nose and spit in his face, and turned him out of the chapel, and the chapel full of people: I saw him do the same to one William Reilly, and kick him out; he was ordered to the rails, and he kicked him out, and Reilly ran away; that was also on a Sunday; he called him in, you see, and desired him to go on his knees, and ask his and God's pardon, and the congregation's pardon, and then he spit in his face, and *clouted* him outside the rails; on Christmas-day there was a collection, and one man gave a penny, and Mr. Lyons took the penny and flung it at him, and struck him with it over the eye; this was at the Station; it is a large parish; it had been two parishes before, till Priest Lyons came; Patrick Padden was the name of the man that was struck with the penny. Did you hear Mr. Lyons saying any thing, by way of threat, against any one in the parish? I did; he said that there was a family in the parish that he would never stop annoying until he made the streets of Binghamstown giving grass; he likewise cursed any one that would collect rent for, or pay rents to, Major Bingham. Did you hear that more than once? I did, about six or seven times from him, at the latter end of his sermon, after mass; the chapel at the time was full; I heard him say that he would not administer the rites of the church to any one who would not come in and ask his pardon for signing the memorial against him.

Mr. O'Connell—I object to this; there is, first, no such charge in the memorial; besides, it relates to what passed after the memorial had been sent in.

Mr. Litton—I concur if it be so. When were these rites refused, were they so at any time before the memorial was signed? I saw him refusing the rites of the church before the memorial ever was signed. Why did he say he refused these rites to Lavelle? On account of a schoolmaster who was brought into

the parish, one Fleming, that, I understand, was his reason, for Lavelle had been a great favourite of his, and there were no two more gracious until this dispute occurred about Fleming; I suppose bringing him in was contrary to his will; saw Thomas Dickson who was examined here, signing the memorial at James Cosgrave's House, in Binghamstown, (the memorial was shewn to the witness) I don't know that it was that, I am a bad scholar gentlemen, you will excuse me.

Mr. O'Connell (cross examined him)—Oh! you are a very good scholar, you have your lesson very well, look at that name? *Witness*—I read very badly, but I see Tom Dickson's name here. There, put your finger on it.—(Putting his finger on the name) That is the name, and this is the paper I saw him sign. It happens to be another, Tom Dickson, and we will shew that, in proper time; whose handwriting is the body of this memorial? I don't know, I have seen Owen Henaghan write, but I don't know whether this is in his handwriting, I am one of the drivers, and Pat Lavelle is the head driver. How many drivers are there on this estate. (The witness enumerated seven, and mentioned their names) I got no fees but my house for nothing, and six acres of land; I can't say whether the clerks fees were included in all the priest's dues, but the whole of the 3s. 2d., was for the priest himself, there was 3s. 1d., and 1d. for a candle, for churching my wife, some of the neighbours bring a candle for themselves, my wife had brought a candle—and 30s. were charged for marriages.

Mr. O'Connell—Bah!

Mr. Litton—Do let the witness go on.

Mr. O'Connell—Was there any agreement that part of the marriage fee should be applied to the building of the Chapel? *Witness*—It was said in my presence, that half a guinea was to go to build the Chapel, half a guinea to the Bishop, and the third half guinea to Mr. Lyons. Did you know any one else but yourself pay this 3s. 2d.? I did, Con O'Donnell, a brother-in-law of mine. Any one else, not a relation; can you name any one who paid this charge for confession? I can, Con O'Donnell, Michael, and Paddy Goggan, them two in my own neighbourhood, and Archibold Donlevie. And there were 3s. for certain seats inside the rails, and 2s. 6d. for outside seats. For how many years did they pay? For one year—the first year they left it to himself, the second year they thought it too much. Now was it not the Chapel Committee that did all this? I cannot say, but I saw Mr. Lyons receive the money. Who was the treasurer? There was many a treasurer to it, James M'Donagh was one. Upon your oath was not the seat money handed to Daniel Vickars, the Treasurer of the Chapel Committee? I know no more who Daniel Vickars is, than the man in the moon. I must persevere in sifting this witness, in consequence of some evidence which I have to bring forward on this subject.—Now, is that man M'Donogh, whom you say was Treasurer, living now? No Sir,

he is not. On your oath, is it not the duty of a Priest, not to church any woman who has not gone to her Easter Devotions? I allow it is, but myself and my wife had not the use of the Chapel, and I paid him, and he is there, and he cannot deny it—and he kept me from the year 1829, from the use of the Chapel.

Witness—I allow he was entitled to send her to the bishop, but no such reason was given us, for though my wife came and offered his dues, he kept her out from the year 1829, and sent her to church. And do you swear that the priest did not say that he had tickets for those to whom he would not give rites, to enable them to get them from another? I acknowledge that he gave that out, but he never performed it. Tell me any one who did not get a ticket? I got a ticket myself from his clerk, but it was not signed, and I applied to himself, and he refused to sign it; many persons were by, could prove it, there was Richard Barrett and many others. Oh, I forgive you the rest, but you heard an announcement of his to celebrate rites for all? He did, but it was on condition that each man should come in and ask his pardon. It was not, you swear, without conditions? On my oath I don't think he did it without conditions; it could not be easy for him to do so without my hearing him, he might in my absence. Did not Mr. Flannery give notice that he would on the next Sunday attend, and investigate the complaints of the parishioners? He did. And he came on the ensuing Sunday? He did. And then offered to hear every one who would come forward and substantiate their complaints? He did. And don't you believe, that he went about from house to house to see whether any one could substantiate any complaint? He did, he came to my place and preached a fine sermon to us not to fall out with our *clergy*. Did he not press them to come forward and prove their complaints? He did, and when they did come forward, he told them that if they sent an ass load of petitions to the bishop he would not hear them; and Reilly said that was a bold word of him, and Lavelle said, well, boys, you may as well come away, as we will get no justice here; they did not agree on the investigation. Did Father Flannery refuse to go on with it? Paddy Lavelle said he would begin at the commencement of the memorial, and then go on and see that all was right; but Mr. Flannery began to cross question, and he asked whether Priest Lyons was a drunkard; Paddy Lavelle said, there was no such thing in the memorial, any thing that was in it could not mean that; there is, says Father Flannery, and here it is in the memorial; said Paddy Lavelle, I deny that it is, and then Paddy Reilly said that it was a daring thing. *Mr. O' C.*—We heard all that before. *Witness*—Well, then, most of the people walked out and left him there.

Court—Is there any charge of drunkenness against Mr. Lyons in the memorial.

Mr. Bennett—None.

Mr. O'Connell—It only says that they want a sober priest.

Witness—I say that Mr. Flannery said that there was a charge of drunkenness against Mr. Lyons in it, and he asked was he not a sober man; we said we never saw him drunk, and no wonder, he was sober, but what we meant was, we wanted a sober priest who would not kick and abuse us, and spit in our faces.

Mr. O'Connell—Did not Mr. Flannery ask as to his divulging the confessions? He did, and Lavelle denied that it was not in it, he denied that. Answer me, Sir, give me a yes or no—did Lavelle deny that there was a charge in the memorial against Mr. Lyons of disclosing the confessions? I don't understand "disclosing" them, but of divulging them he did; but he said Mr. Lyons published them to be knaves and robbers in the parish of Kilmore, and who knew better than our father confessor; we will take care not to confess to him again; we said there was no such charge in the memorial, but he said there was in it as I mentioned to your lordship; he said he mentioned in the memorial as I explained it, that Mr. Lyons had published us as knaves and robbers, &c.; he certainly said that *that* was in the memorial; Mr. Flannery read a part of the memorial, and on that Lavelle told him that he had not read one third of it, and I believe myself that he did not read one fourth of it. Was it not explained in English and in Irish by Mr. Lyons, from one end of it to the other? No, Sir, not that day. In English? No, Sir, not that day. Is Wm. Reilly here? He is not. Tell us what was it occurred as to him? He was called inside the rails particularly. And Pat. Corrigan was also inside? I did not say so; I think he was not within them; I don't know whether he was or not; I am not certain; Pat. Corrigan is not here; it was on Christmas day in the year 1828 or 1829, when he flung the penny at the man, as he was a poor man, and hit him on the brow; I know James Cosgrave; I believe he can write. Did you ever swear that he could not write? I never did swear it, for it is my opinion that he could write; he was agent to Major Bingham, or driver; I never did or could swear it. Was there anything said that day about a shipwreck? There was, Mr. Lyons spoke about shipwrecks, and about the cutting off of a man's hand. And spoke of those who plundered the sailors, and wore their jackets in his chapel, and against the wickedness of plundering the wreck? He did certainly, and denounced Divine vengeance against those concerned in it, and against the man who had cut off the sailor's hand, and alleged that was done by Corrigan; Corrigan had been a jobber from Tyrawley, and he appealed to the whole parish whether he was not a fair, honest dealer; and he was going on this way when Mr. Lyons spit in his face and turned him out of the chapel; I never heard it alleged against him by any one but Mr. Lyons. Did not Corrigan interrupt Mr. Lyons as he was going out, and say, that "he defied God and the devil on the subject?" On my oath, I did not hear him; Mr. Lyons was half an hour in the chapel after Corrigan went out; he spit in

his face while he was on his knees ; if he said any thing of the kind I can't recollect it ; my God Almighty, Mr. O'Connell, could you recollect every one that dined at your table ere last night, let alone expecting me to tell you what happened a year ago, so particularly. But you saw the transaction ; was Corrigan, at the time, inside the rails ? Why, then, by virtue of my oath, I don't know whether he was or not ; I was *purty* near the rails ; I can't recollect how far from them ; about three or four yards when I saw Mr. Lyons spit at him ; the man was a tall man. You never heard Barrett swear that he was inside the rails ? I never did ; I never heard the man express the words that he would defy God and the devil, in his life, and I know him long ; I heard what he said that day, at the time, and he did not say that certainly. Did Mr. Lyons take him by the nose ? I think he did. I don't know whether it was by the nose or the face, but it was by one or the other. Did you ever get part of that wreck ? I did, sir. Who gave it to you ? Mr. Davis and Mr. Dickson, who canted it ; I never was accused of plundering it ; I went two or three times down to it when it came in ; I never was accused of taking iron or canvass belonging to it ; Pat. Padden is alive ; he is at home ; I am not bound to keep the peace to any one but Mr. Lyons. Since you know so minutely about his taking Corrigan by the face, I suppose you can tell whether he was on his knees or not ? I think not ; I am partly sure he was not ; I cannot certify to the truth one way or other. Was he on his knees or not, sir ? Indeed I cannot swear to it ; I will not swear to it ; I don't know whether or no ; I know young Dickson well ; he is in town here. Did you ever hear of a threatening notice having been put on the chapel ? I heard of it, but I never saw it. Or spoke to Dickson about it ? Never. Pray, do you write yourself ? I could, my name, and no more. Mr. Lyons has a school in the parish, now a national school ? I could hear so. Did he not pay out of his pocket for a school until this national school was established ? He did not. Did you hear that Fleming was the school-master ? Yes. You have seen Fleming drunk ? I have. Often ? Not often. Did you not hear Mr. Lyons warn the people from employing a man of the description of Fleming ? I did ; and he would not allow any of the parishioners to employ him ; but that was after the parish had agreed with Fleming ; I can't say whether Mr. Lyons had turned him off, for I did not hear it. I come now to another subject ; before Mr. Lyons came to the parish, it had been two parishes ? Yes, now it is one parish. And two curates ? It is not long ago since a third came to him. At the time of the memorial had he not two curates ? He had for a short time ; it was late when Father Duffy came into the parish ; I know Edward Nally ; he lives in Binghamstown ; I don't know that he is a son-in-law of Major Bingham's ; he is married to one Mary Mitchell, I think ; I never heard that she was half sister to William Bingham. Now I will

come back again with you to the dues, and beg you will tell me whether or not the dues were settled by a meeting of the parishioners? I know they were not. Tell me positively whether Mr. Flannery did not, on the investigation, offer to hear every evidence that should be given on the charge of divulging the confessions? He wanted to get into that, and Lavelle said he mentioned nothing in the memorial about divulging the confessions; but he said, we are accused of being robbers and——. Ah! sir, you told me all that before; did he not call on him to sustain that part of the charge? He did; but Lavelle denied there was any such charge. I have done with you, sir.

Mr. Bennett (resumed him)—The last answer you gave when you were asked whether Mr. Flannery asked about divulging the confession was—

Mr. O'Connell—I beg pardon. You know, Sir, that there were two men tried for firing at Mr. Lyons? There were, and they were acquitted on his own evidence. Did he not say at the trial that he believed they were not guilty? Never. I was in Court and at the trial; and if Mr. Lyons told the Counsel so—Did he not say it? No—for on his own evidence, that he brought forward for the prosecution, the men were acquitted. P. Lavelle was one of the witnesses? I did not hear. Did you ever endeavour to get a witness against the Barretts? I never did—they were nothing to me. I was the first that Mr. Lyons wanted to put up for shooting at him; and the Stipendiary Magistrate would not believe the charge against me. There was a reward of £100 offered by Government, to discover who fired at him.

Mr. Bennett—Did not Mr. Lyons employ Counsel on that occasion? I don't know, but I could hear he did. What did Mr. Flannery say? First, he asked Patrick Lavelle how he could prove that Priest Lyons was a drunkard?—he said that he had nothing of the kind in that memorial; but that they begged the Bishop would send them a sober Priest, who would not kick, spit at, or abuse them. And as to divulging confessions what was said? He said he had not put such a case in the memorial—but said he had mentioned in it that Priest Lyons accused his flock of being robbers, and that he could know that well; and then Mr. Flannery said, as I mentioned about the ass load of petitions. And as to spitting at Corrigan in the Chapel, was Corrigan inside or outside the rails at the time? I really cannot tell which. How high are they? They are about three or four feet high—they were nearly up to my hip; there was a crowd in the Chapel at the time, and all on their knees. Now about the number of drivers. How many miles long is Major Bingham's estate? That is unaccountable to me; I could never give you an account of it, it is so long. Is it twenty miles? Indeed it is, sixty or eighty miles—a wild mountainy place; and often they wanted more drivers in it; the drivers were often attacked and rescued in

it. Who was the Priest before Mr. Lyons? Mr. Conway was, Mr. Lyons came in. I don't know when he came in, but he has three times as much as Mr. Conway had out of it, to the best of my belief.

Mr. O'Connell—You say the rails were up to your hip; is not the space inside raised higher than it is outside? It is, close to the Altar only, but not near the rails.

Mr. Bennett—Was Corrigan ever charged before that with cutting off that man's hand? Never.

Mr. O'Connell—That is quite a general *alibi* for him.

Mr. Bennett—I wish we could get an *alibi* for you. If he believed the charge he ought to have brought the man to justice.

Witness (to a question from the Jury)—I was on my knees, as was the others about me, when the Priest spit at Corrigan.

Juror—Did it produce any sensation? They were surprised.

Juror—Did they express any surprise? They positively were displeased, for they all consented that Corrigan was a very honest man, and Mr. Lyons was displeased at their saying that of him.

Mr. O'Connell—I think it was after the sermon? I can't say when it was. What did Corrigan say? He said nothing; but when he called him a thief and a robber he appealed to those near, whether he was so or not; and I think it was after the sermon. And you were kneeling down at the sermon—it was after mass you know? It is a general rule after mass to stand up, and then after the sermon to kneel down, and say a prayer. Oh! indeed, you are as clever a fellow as ever I saw in that box. Did he say that prayer? When that commenced they all rose up; we were all on our knees when the Priest first spoke about him.

Mr. Bennett (who had in vain endeavoured to interrupt Mr. O'Connell during this second cross-examination)—I must presume you have not heard me, Mr. O'Connell, or you would have attended to me when making an objection. You have already cross-examined this witness at great length; and when I resumed him he said nothing to any question to enable you to attack him now again.

Mr. O'Connell but one question—You were all then on your knees? All that were about the altar were. And it was, then, Mr. Lyons spoke against the wreckers? Against Corrigan only then—he called him a thief and a robber; and Corrigan then appealed to the congregation; and on that Mr. Lyons made a *glawm* at him, and spit in his face. (To questions from the Jurors.) Generally we were all on our knees when he spit; I think this man was on his knees; at first we were not; the floor of the altar, near the railing and the outside, I think is on a level.

Juror—No one but the Priest stands at the altar? *Sir!* I think Corrigan was not inside the altar, but I won't swear plump to it; but then it is my opinion that he was not; it is the habit

to address a sermon to the people; Mr. Lyons was a good warrant to do so; the people are then standing up; I never saw an instance of any portion of them kneeling when he was preaching on this occasion; there was no difference from any other time.

Court (to Mr. O'Gorman, one of the Jurors)—You have been assuming that the witness said, that a portion of the people were on their knees during the sermon? *Juror*—I have, my Lord.

Witness—Sir—I did not say so, Sir.

Juror—It was during the sermon that he charged Corrigan? No, Sir, but after it. Was it a continuation of the sermon? Sir—what, Sir—what is that. Was the speaking of the wreck after the sermon, while the people were on their knees? When he charged Corrigan with being a thief or a robber all I could see were on their knees; to the best of my belief he did not believe Corrigan to be the man who cut off the man's hand. *Juror*—He preached very often against these wreckers? I did not hear him that day, except that he charged Corrigan, and I conceive, that only the flock followed Corrigan out he would have continued it longer.

Mr. O'Connell—Corrigan's face was to you? We were both looking in; I was as if here, and Corregan there (explains their position)—so that his back was not to me. What did the Priest preach on that day? A sermon about some of the Saints.

Juror—Did you not use words that the Priest spoke of cutting off a man's hand, and that he alleged that against Corrigan? I did, Sir. [Here the witness repeated what he said before on this subject.]

Mr. O'Connell—Did the Priest kick Corrigan? He did. Was he in his vestments? He was not.

Juror—He must have dragged him through the Chapel? He put him to no trouble on that, for he shortened the road as fast as he could.

William Hughes examined by *Mr. W. Burke*—Witness lives at Binghamstown; knows the Plaintiff; was at chapel there; was present when, as far as witness could understand, it was about some wreck that Mr. Lyon's was preaching; he called Corrigan a thief and a rogue, on this Corrigan applied to the flock, and asked them could any one say there he was either, and with that Mr. Lyons ran at him, and caught him by the hair of the head, and spit in his face; I can't tell any more, for I did not think there would be any of this work about it; this happened of a Sunday; witness knows William Reilly; was present when he did the same thing to him, of another Sunday; is living in the parish of Kilmore about thirteen years all to three months, and went to live at Ballina, and then came back; knew the priest who was there before Mr. Lyons; can't tell the charges he used to make, but that family money was 2s. 2d. for baptism it was 2s. 8d. of the old coin, and a guinea for marriage, and when the chapel of Binghamstown was begun, they began to rise it to three half-guineas,

half-a-guinea for building the chapel, that was raised by Mr. Jordan, who was the former priest, before Mr. Lyons; Mr. Lyons charges for baptism 3s. 1d. and 3s. family money; he charges more than the former priest; there is oats also given to Mr. Lyons, and those who don't give them he charges 18d. a Bart. In the chapel of Binghamstown, when Mr. Lyons was building his own house, he kept sawyers in it, and persons dressing the slates there. There is another chapel where Mr. Lyons has a farm in the parish. Witness bought half a score of sheep from Mr. Lyons once, from his father, and got the sheep within in the chapel, and there was a heap of dung at the chapel door.

Mr. O'Connell cross-examined him—You have been in England? Yes. And are a driver of Major Bingham's? I am about six months. You were on the run? What is the nature of that? Don't you understand it, on your oath? I *was* on the run, I'll tell you the truth. After you got away from the soldiers? I never did so, it was all settled, I never was in gaol.

Mr. Bennett—We should know what the offence was with which this witness was charged.

Mr. O'Connell—You shall have it—what was it? A girl went away with me, and they indicted me for taking her away. Were you ever in gaol? I was put in by Mr. Bingham for executing a decree, and acquitted by the barrister, but never was tried by barrister or judge for any other offence. But you were charged with killing a woman named Barrett? How could I be charged with killing her, for she is alive yet; how could I kill her, when she is alive; I was sent to gaol for executing a decree. You know a brother-in-law of yours called Crump? I do not, for I have ne'er a one of the name. Do you know any one of the name? I knew Richard and John Crump. Was either of them killed? I was not in the country when Crump was killed, I was at Ballina when the man died, or rather when there was no account of him. About this spitting at William Reilly—what Sunday was it? I can't tell. What year was it? I can't tell. Did you not tell all this to the attorney? I did, but I did not tell him the year; I think it was 1831 or 1832. Can you give me within three years of the time? It was before the petition was sent to the bishop I can't say how long before. A month? I am sure it was. What time of the year? I can't tell; I never thought it would come to this. What part of the chapel was he in when he took that fancy, of spitting at Corrigan? At the altar, near the rails; Corrigan was outside the rails, and he came out to meet him where he was standing; I was about the length of the court from him; I don't know whether James Donoghue was there that day; some of us were standing, all that were about the rails, for we had no place to sit; Mr. Lyons spoke about Magan, he was one of them; I did not hear him mention any other name. How much did you get out of this wreck? What I had to say to the wreck was a little iron and leather, and I gave it to Mr. Lyons; he was

abusing those who robbed the wreck ; he then named Corrigan, and then Corrigan appealed to the parishioners.—Don't tell me about that any more. Well, don't ask me and I won't. It was then during the sermon ? It was. And all were standing ? Some of them were standing ; those outside the railing were standing, and Corrigan appeared to me to be standing ; he was a tall man, and I am sure he was not inside the railing ; he kept a *hault* of him, and took him to the door ; the priest after came back to the altar, and he kept on with some more, and the rest of the flock remained standing ; Corrigan had took the third part of the chapel after him ; I did not hear Corrigan say he defied God and the devil. Did Mr. Lyons say on his returning, that he was sorry he had been in a passion ? I can't say whether he did or not, I did not hear him, but he finished the rest of his sermon. He had his preaching dress on him ? I am not sure what he had on, but he had the scarf down on his shoulder ; I cannot write or read. Mr. Lyons, however, talked something of a person having cut off a man's hand ? He said nothing of that, if he did, I did not hear it. You were in England ; both of us, I see, speak with the same English accent ; you say he said nothing about the cutting off a hand ? On my oath I did not hear him, if I did, don't you think I would tell you ; at this distance I could not say whether he did or no ; a person at the time must have been more occupied at seeing him spit in a man's face. If he said that, it would have been a remarkable thing too ? Perhaps it would.

John Hart examined by *Mr. Litton*—Witness lives at Erris, in Binghamstown ; knows Mr. Lyons ; saw the Chapel, at Binghamstown ; it was used by Mr. Lyons for the dressing of slates, and there was timber built up in it ; the slates were afterwards used for Mr. Lyons's house ; there is another Chapel up the country ; I saw cattle belonging to Mr. Lyons in it ; horses sheep and cows ; they belonged to Mr. Lyons's family, himself, his father, or his brother ; knows that he charged £1 12s. for marriages ; 3s. 2d. for yearly sallary ; 2s. used to be paid for that before, and £1 2s. 9d. for marriages before ; as to clay money for consecrated clay I never could hear any thing charged for it, before Mr. Lyons came ; but since he has charged 2s. 6d for it ; as to baptisms before his time 2s. 6d. was charged ; he charges 3s. 1d. since he came ; was present at an insult he put on one Corrigan in the chapel ; he spit in his face, and threw him outside the doors of the chapel ; was also present at an insult he gave to another parishioner, one Reilly ; he done the same thing to him ; he spit in his face and threw him out in like manner ; knows of some of the parishioners applying for the rites of the church, and refused. Witness himself was refused when he wanted to confess to him ; recollects threats used by Mr. Lyons ; he said that there was a certain family in the parish that had been annoying him, and that he never would stop annoying them, until he made the streets of Newtown Bingham give grass ; the entire of his flock were then present.

Mr. O'Connell cross-examined—There has not been one single attempt at a date in any of those dialogues. Were you with the attorney? I was. You were examined by him about that and about the spitting in the two faces? I was. And he examined all the rest of you in the same way? I suppose he did. Did Barrett or you go into him first? I don't know. What day was it? I don't know; it was Monday I believe; but I am not certain of it; it was Tuesday I think. Will you swear that the dues were not settled by a public meeting of the parishioners when Mr. Lyons first came into the parish? I don't know whether there was a meeting or no; I never heard there was, to my knowledge. When did you see their cattle in the Chapel? Three years last harvest. That was in the year 1890; where was Lyons at the time? He was in that country, and had been so for some time. Whose men were the Thrashers? I don't know, but I know that he owned the corn; I saw the straw and the grain, but not the Thrashers. When pray? I saw the straw in the Chapel; it is three years ago. What time of the year? In winter. Which of these men did he spit at first? Corrigan; I don't know then whether it was Reilly or McAndrews; it was after Corrigan that he spit on Reilly. What was his Christian name—is he alive? I don't know whether he is alive or not; I did not hear that he died. How were they both placed? Reilly was on his knees inside the rails, and Corrigan was on his knees inside the rails. Pray are you the man that Mr. Lyons accused of living with a woman that you were not married to? He never accused me of any thing not right; I never lived with any one but my lawful wife. Did he not refuse you the Sacrament for this? No, for I never lived with any woman but my wife, and he never gave that as a reason. The Priest had no vestments on when he spit in Reilly's face? I don't know—(to other questions)—I was standing in the flock with both; I did not hear him preaching then about the wrecks the day Corrigan was spit at. It is so long ago I can't say whether he preached about the wrecks or no; he often preached about them; I am not sure whether he did or not on that day; I might have heard he did; but I don't recollect it; he called him inside the rails, and when he came in he knocked him down. Did he not say to Mr. Lyons something of God and the devil? He did not give him time; I did not see him kick him or clout him; but he took hold of him behind his back and pushed him on; I did not see him take him by the face. Did he say to him "Paddy Corrigan come inside here?" He called him in, and he came in, and fell on his knees, and then Mr. Lyons spit in his face; he had some words before he asked was he there, on which he came forward; this was after mass; all the people were standing round; I saw it as well as another; I don't know whether I was standing or kneeling at the time, or whether the people were so or no; he did not charge Corrigan with any crime in my hearing that day; I heard him call him by his name; I don't know how

near I was ; I might be up to the rails ; was near enough to see him knocked down, and he spitting in his face ; Corrigan said nothing at all in my hearing ; he forced him out of doors ; I don't know whether the priest went on with his sermon after ; the entire of the flock rushed out when they saw the man used so, except very few ; I don't know whether he read mass that day, for seldom he does read mass in it ; I don't know whether he or his curate read it that day ; I was a tenant of S. Knox ; I am a tenant of Major Bingham's now ; I was employed by one Lavelle, Owen Lavelle, a brother of Pat. Lavelle's.

M. Bennett—My Lord, I close.

[*Mr. O'Connell* endeavoured to make a statement of his rebutting case, but was not permitted.]

REBUTTING CASE.

The Rev. Patrick Flannery examined by *Mr. O'Connell*. Witness belongs to the diocese of Killala ; was a parish priest ; is acquainted pretty generally with the description of the diocese ; was employed by the Bishop to investigate the charges against Mr. Lyons ; repaired to the parish for the purpose ; the parish was apprised of his intention, and apprised them also of his intentions, which were as witness told the parish ; that he was sent by the Bishop to enquire into the truth or falsehood of charges laid before him by some of the parish, with instructions to lay before his Lordship at witness's return the result of his investigation, observing that if they proved that the charge was true, the Bishop was ready to redress their grievances ; attended on the evening of Sunday accordingly.

[The memorial was handed up to him.]

Mr. O'Connell—Would you have performed that duty to the full extent of your authority ? I would, and I did.

Mr. Bennett—That is not a legal question—but go on.

Mr. O'Connell—State what occurred. The memorial was read to the people in my presence ; it was read by Mr. Lyons first ; I read it afterwards, but I cannot say I read every word of it ; but I am ready to say that I read the substance of it ; but Mr. Lyons read it all audibly, so that every one could hear it, if they were not very deaf ; having represented that I came, deputed by the bishop, to inquire into the truth or falsehood of the charges ; I remarked audibly that any subscriber or any other person, who thought that the charges were true, should come forward and show how far they were true, and to produce proofs to show it ; no one came forward spontaneously to that general invitation ; I recognized in the chapel one whose name was attached to the memorial ; I knew him, and no one having responded to my invitation, I called him by name, and I desired him to come forward and prove his charge ; he came forward. and I told him to go easy about the business, that we should go about it systematically, that I should read out some of the charges, and that if he

thought he could prove others of them, that I would allow them; I directed his attention to the charge of revealing confession. That would have been the most serious complaint? It would; for divulging confession is the worst of crimes for a Catholic clergyman to commit; he would deservedly be expelled for it. How were you met on that charge? I was not met on it; Pat. Lavelle began to give me a history of a difference between him and Mr. Lyons for a year or two back; I observed that I did not come there to enquire into the differences between him and Mr. Lyons, but into the truth or falsehood of the charges in that paper; he would not come to the charge; he alleged that no priest but Mr. Lyons had refused confession; I asked him had he been at confession, and he said Mr. Lyons knew that; I urged him as far as I possibly could to the complaint; I availed myself of every *artifice* to induce him to come forward and prove the charge; he said I was not reading the memorial right, as if he would impress on the people that such a charge was not in this paper, or that I read that charge unfairly, as I thought; I said no one could deny but that such a charge was in the paper; he made no reply; I don't recollect that I offered him the paper; I again invited every person to come forward and to substantiate the charges, and there was no reply; and at last they departed; I gave them full and deliberate time; during the course of the *investigation* an old man came forward and said that he had put his name to the memorial; I *think* his name was *Kane*; I am not positive; he said he put his name to the document, but he said it could not be the one that was in my hand, for that such things were not in the document he signed; I repeatedly called on the persons to come forward to establish the truth or falsehood, and they refused saying anything on the subject; I asked if there was any person to establish that class of charges or any other; they did not give any attention to that, but they wanted any other in the memorial; but no one came forward; the only thing I recollect then was Lavelle crying out, "come away, boys, let us leave the chapel, there is no justice for us here;" I told him that the Bishop would not listen to more memorials, but in a qualified sense; I qualified it in this manner; there was some noise in the chapel; how it was I don't know, but it affrighted some, and some were under the impression that there was a riot from the violence; I got on the altar to command a view, and asked did they submit to this investigation; and afterwards I said, that if they should address the Bishop, and send him a complaint, and afterwards not come forward to prove it, but treat the investigation of the Bishop with contempt, that he would not ever again attend to any memorial from them; I alluded to the fable of the "Shepherd and the Wolf," and said they would be considered as the shepherd was in the fable; and by acting as he did, no attention would be paid to them in future.

Mr. O'Connell—Had you said to them, what you have now told us, AFTER you had called on them to bring forward proofs?—

Witness—I made repeated calls on them, and no one attended, before I told them that there would in future be no attention to their complaints, and gave their conduct as a reason for there not being any attention paid to it—and said all this, before that; Lavelle called out and said,—“Boys come away, &c.” I cannot say how long I remained—more than a week—I went about investigating in private—I went to every house then, and on a future occasion, about a month or six weeks after, I went by myself, in some cases, in others, Mr. Lyons went with me, and not only did I go to every house every day, but when I was out, every person I met on the road, I made inquiry from, as to these charges. I also made a private investigation.

Mr. Bennett—Don't say any thing about that.

Mr. O'Connell—Did you make a report to the Bishop?

Mr. Bennett—Is it in writing?

Witness—I did both, verbally and in writing.

Mr. Bennett—Then he cannot say what he reported verbally.

Mr. O'Connell—I must get that from him, I am entitled to it.

Court—On what ground?

Mr. O'Connell—It is a privileged communication, and he apprized Lavelle he would make it.

Court—I take it for granted, the report was the same as his verbal statement.

Witness—Precisely.

Mr. O'Connell—That the material charge could not be substantiated?

Witness—Precisely.

Mr. O'Connell—Did any person whose name was to the memorial, disclaim it?

Mr. Bennett—And was Lavelle by?

Mr. O'Connell—I am entitled to all that occurred.

Mr. Bennett—Not as you put the question.

Mr. O'Connell—I am—Did any one in Lavelle's presence disclaim?

Mr. Bennett—Come, that is a *tack* to the question indeed, it is as hard to catch you, as to catch a *rat*. Lavelle must also have heard it.

Witness—The man of whom I spoke—

Mr. Bennett—Was Lavelle within hearing, Sir?

Witness—I cannot say—I don't think that Lavelle was then in the chapel.

Mr. O'Connell—Did any one say any thing of the reason for signing, while Lavelle was in the chapel?—I don't think there was.

Mr. O'Connell—I will put the question as I at first put it.

Mr. Bennett—I object to your doing so.

Mr. O'Connell—I have a right to put it “during that investigation.”

Mr. Bennett—Why, there was no investigation.

Mr. O'Connell—In that transaction, and during the investigation in the chapel that day, did any person, and if any, who (whose name was in the document) state any reason for his having put his name to it. *Witness*—No one came forward but Pat. Lavelle, and, I think, another. Then if any thing of that kind occurred, it must have been on your private investigation. Yes. Do you know the dues in Mr. Lyons's parish? Yes. Did they receive the sanction of the bishop? I have from the bishop that they received his Lordship's sanction. Are they higher or lower than usual? They are higher than some, lower than others. That question is not important, but they are not higher than in other parishes, but I will put it to you in another shape; according to their description are they or are they not exorbitant? I don't consider them exorbitant. How long do you know Mr. Lyons? I know him from 12 to 13 years. You know his character for correctness as a clergyman?

Mr. Jackson—That is quite an illegal question.

Court—In general the rule is so, but I was reading an authority yesterday, which seemed to make a libel case, when a plea of justification was put in an exception. *Mr. Phillips*, in his Treatise, does not give the rule the sanction of his approbation. *Lord Alvanley* was the judge who determined the point.

Mr. Jackson—If your Lordship be in favor of the question being put, let it be so, subject to my objection.

Mr. O'Connell repeated the question.

Witness—The general character of Mr. Lyons, as a clergyman, is that of being attentive to the duties of his station and to the wants of his parish, and, until this memorial, I never heard any person say that Mr. Lyons—

Mr. Bennett—I must object to all this.

Witness—All I could hear of improper or oppressive conduct of Mr. Lyons was in the memorial, and I made enquiries about it in the parish.

Mr. O'Connell—Was the result favorable or unfavorable to Mr. Lyons?

Mr. Jackson—We object to that too.

Witness—The result of that enquiry was favourable to Mr. Lyons; I made the enquiry as minutely as I could, and that, subsequent to what occurred in the chapel, and before I departed.

Mr. O'Connell—Your opinion is as the opinion of a person sent to make an enquiry, and to report on it.

Mr. Bennett—No such question can be asked.

Witness—I don't understand you.

Mr. O'Connell—The only opinion which I ask you is, your opinion on the investigation, you were sent to report on the memorial?

Witness—Still I don't understand the question.

Mr. O'Connell explained his meaning.

Witness—In my mind Mr. Lyons stood innocent of the charges

in the memorial; I sought for as much evidence as I could get, and I did not get it; I knew nothing of the state of the parish before Mr. Lyons came in; I knew nothing to my knowledge of his building chapels.

Mr. O'Connell—Was there not a *plan devised* on the Sunday of the investigation to collect the parish together? There was.

Mr. Bennett—Your Lordship will recollect, that I object to these questions.

Court—The leaning in my opinion is, to permit this question, if Mr. Flannery had not taken all the pains in his power —

Mr. O'Connell—Go on with what you were telling the jury.

Witness—I did not announce any particular plan, save mentioning to the people, and in the course of the week that it was expected there would be a large meeting that Sunday, and that there would be no meeting for mass elsewhere, in order to have this meeting full.

Mr. Bennett (cross-examined him)—Where do you live? I live about 50 miles from the chapel; more than 30, less than 50. Were you ever in the parish before? I was before that Sunday; I dare say three months, or four, or five months before; I went sometimes there. Where did you stop in the parish, when you went on this enquiry? I did not go from where I lived to Mr. Lyons's on that occasion; I lived in the same deanery of Erris with him; I was often in the parish before. Did you go there immediately before that Sunday? How long before the day noticed for your investigation were you with him? I think it was late in the week when I came—it was Friday or Saturday. You went to his house and remained there, while you were in the country? Yes. It is a comfortable house—is it not? I have seen some houses more—some less comfortable. Why, you could say that of almost any house; but I should suppose it was comfortable to you, for you seem to be in good case; you remained there a week during the enquiry, and a week after, and you were all the time in Mr. Lyons's house? I was not often in the parish—I can't say that I slept there every day. But generally you were commorant there? Yes. Did you stay longer than a week there? I can't say, not a fortnight. And you gave that notice immediately—the next day perhaps in the chapel? I did. The memorial was sent to Dr. Waldron? Yes. Who is Dr. Kelly? He is the Roman Catholic Archbishop of Tuam. And Dr. Waldron Roman Catholic Bishop of Killala? Yes. A remonstrance was first sent to Dr. Waldron, and he sent you to report upon it? Yes. Of course, the Archbishop is his superior? Yes, in some respects. At what time of the year was that? In September. How long had the Bishop the memorial? I can't say, but I saw it with the Bishop in June in the same year. And he had it all that time, from June to September? Yes. Mr. Lyons was in the chapel when you began what *you* call an investigation? Yes. And he read the memorial? Yes. Out loud? Loud enough

to be heard. And they were mostly the lower order that were there? High and low as they live in the parish; there are some respectable people in the parish, but in general many are of the lower order. And the first thing you said was, this memorial charges Mr. Lyons with having revealed confessions? No, Sir, I said, I came there to enquire into the truth or falsehood of the statement in the memorial, and that I was ready to hear any one who would substantiate it. But first Mr. Lyons set about reading the complaint? Yes. Did you not tell them, that the memorial stated, that they had charged Mr. Lyons with revealing confessions? Yes. The paragraph you drew your conclusion from was this—(reads) “calling us knaves and robbers, but who knows better than our father confessor what we are”—that was the paragraph which I conceived contained that charge. And, therefore, you called on them to come forward and prove it? Yes. Lavelle differed from me, and said I was not reading the memorial right. Thereby you understood that Lavelle meant that he did not charge Mr. Lyons with revealing confessions? It seemed to be his meaning. And you said he did, and called for his proof? Yes. Then you called for proof of what he alleged was not in it? I called for proof of what I found in the memorial. But you called for proof? Yes.

Court—There was a difference between you in the construction of the memorial, and you called for proof notwithstanding? Yes.

Court—I confess I should have construed it as Mr. Flannery did.

Mr. Bennett—At least, my Lord, the meaning is equivocal. But pray did you not ask the people whether they ever saw Mr. Lyons drunk? I did. And did they not tell you that the memorial contained no such charge against him as drunkenness? I don't recollect that I got such an answer, but not one of them came forward. Or any of them charge him with drunkenness? No. The memorial told the bishop that they wanted a sober character? Yes. And what was said on it? Of course as no one came forward I could have had no conversation as to drunkenness. But the two points you dwelt on were those I mentioned, or did you mention any more? I can't say I mentioned any one of them; I think I read the substance of the memorial. But they appeared dissatisfied with this mode of being treated—I mean Lavelle and “his boys?” Yes. Did they say any thing about a petition to Dr. Kelly? They did not, but I said I thought it would be useless to forward any petition to him, as they would not come forward now; I continued two hours after in the chapel, and there was no evidence offered; there was a very large congregation that day. You said that the dues were sanctioned by the bishop, when did he give his sanction? I can't say, but I know the bishop was acquainted with them; I heard the bishop say so. Did he distinctly tell you that he had sanctioned the 1s. 3d. or the 1s. or any of the other charges specifically? He told he gave

his sanction to Mr. Lyons's dues and discipline. But he did not tell you what they were? No; but I heard him saying that *Ss.* were the dues that he said Mr. Lyons had his sanction for; he told me this frequently, and as late as a fortnight since. When had you first any communication on the subject with the bishop? I can't say, but since he received the memorial he said it. Did he before — well —? I think Dr. Waldron said his dues had his sanction since he began to get these dues from the people. Come now pray tell me precisely—did you hear of this sanction from the bishop till after the memorial? Till after the memorial? I don't think —, yes, he also said it before. Was drunkenness or revealing confession the first charge you mentioned to the people? Which ever was first in the memorial. The word you say put drunkenness into your head, I mean the word "*sober*" was the first which occurred in the memorial; which of these subjects can you recollect did you speak on first? If *sober* came first in the memorial it was on that subject; but the principle charge to which I directed my attention was revealing of the confessions.

Charles O'Brien examined by Mr. Whiteside—Witness lives convenient to Binghamstown; knows the Plaintiff; was in his employment; it ceased about two years ago; had no employment under him, but in the chapel; attended it always on Sundays and holydays; Mr. Lyons returned from England in 1830; recollects him preaching about the shipwreck.

Mr. Bennett—This is giving parol evidence of sermons.

Mr. Whiteside—Do you recollect him preaching on the subject of the wrecks? I do, and I recollect the occasion of the affair about Corrigan; I recollect that Corrigan raised his voice; he was near the far end of the chapel, and I believe Mr. Lyons was on the move, after divine service; no mention was made of Corrigan, but he read out several names who had transgressed at the shipwreck; I heard Corrigan's voice, but I did not see him; I was told it was him; he came across in the priest's path as he was going out, and asked him why he was speaking of him at all? and said something about *God* and the *devil*, but I could not hear it. Did he use any expressions of defiance?

Mr. Litton—Pray ask him what he did.

Witness—He came before him in his path, as I could learn; the row commenced, and I had to enquire what was its cause; Mr. Lyons had come down about fifty feet from the altar before I heard a noise; I was in the habit of attending chapel.

Mr. Whiteside—Did you ever see Mr. Lyons spitting in any of the parishioners faces? I never did; I am in the habit of attending chapel regularly for these five years past; I saw slates in the chapel; they were remaining there before, and after the chapel house was slated; I believe they were placed in the aisle next the priest's own house; the chapel was not finished then; I was present when a part of the committee and he made an agreement to

take away these sates, for which he was to pay them ; I was three years in the employment of Mr. Lyons, and seen sawyears cutting timber in the chapel for seats for the chapel ; I never seen them thrashing for Mr. Lyons in the chapel, but I saw them thrashing for Major Bingham in it ; Mr. Lyons was at that time in England, or in this city ; he censured any person for so doing ; he knew nothing of it ; it was I told of it on his return, and he told me that I was very wrong in not having thrown them out of the chapel ; I was present at the agreement with the committee and Mr. Lyons, that they should pay for seats to use for the children in the school ; there was received for these seats £5 1s. and some pence ; it was paid to the chapel committee ; Mr. Lyons did not receive one farthing of it, to my knowledge ; Mr. Lyons, on the transaction as to Corrigan, was preaching from an hour and a half to two hours.

Mr. Litton (cross-examined him)—How long are you living in that country ? Five years, but it is twelve years, or more, since I first came to it. Where were you since then ? In several places ; I was first in the county of Clare, next in the county Galway, next in the county Mayo ; and I remained there ever since. Come then, we have you in three counties in a short period—what occupation had you in those places ? I was a policeman in Galway and Mayo. And why are you not so still ? That was my misfortune and not my fault. I believe Major Warburton held some enquiry upon you ? He dismissed me without it. And now you are a schoolmaster for Mr. Lyons ? No, I am a national teacher. Oh ! that is a still greater promotion ; so you are schoolmaster for the nation !!! Who manages this national concern ? The Rev. Mr. Lyons. I thought so : was it not by his interest that you got it ? I was elected by the parish. It was he proposed you, however ? No, it was Mr. Everard. Mr. Lyons is the manager of it though, and the whole under his care—? where is it held ? It is held in Binghamstown. In what house ? In one part of the chapel. (To other questions)—I knew Fleming ; I don't know whether I got his place or not ; he was not turned out to my knowledge ; he was not the master immediately before me. You have heard Mr. Lyons preach ? I have, for near two hours at a time. Did you not think him tedious ? I never think what is good can be so. You don't ? then you attended to all he said ? I did. What was the last sermon about which you heard from him ? I have heard him preach on the subject of the shipwrecks on the coast. What did he say ? I can't tell you the words of his sermon at this distance of time ; it is about three years ago. Mr. Lyons preached several times since then concerning the shipwreck ? He did, but only once, for two hours. You must have some patience to hear a man for two hours on one subject ? I have heard him for three hours. Have you indeed : pray when were you discharged from the police ? Next St. John's eve five years. What became of you since ? I was stew-

ard to Mr. Lyons for three years. Now, as to the slates, was not Mr. Lyons about that time building a house for himself? He was. And that since the chapel was rebuilding? Yes. And his house is nearly opposite to the chapel? It is.

Mr. O'Connell—One question, if your Lordship will please to allow me; I wish to ask merely, if the part of the chapel used as a school now, is not walled off from the rest? It is, it is separated from the rest of the chapel.

Mr. Litton—How high is it? From ten to twelve feet, it is all under one roof.

Mr. O'Connell—I only wished that it should not go out to the public, that this school was held actually in the very chapel.

Mr. Whiteside resumed him—Why were you dismissed? I was dismissed from the police for being an advocate for Mr. O'Connell; that is my opinion and belief, and the opinion and belief of the public at the same time. Did you ever see Fleming drunk? I did, several times. Did you ever hear Mr. Lyons say in the chapel, any thing about laying waste the streets of Binghamstown.

Mr. Litton—If he says no, how can what he did *not* hear be evidence for you? You were examined at the sessions, and, I believe gave some account of your dismissal from the police there, I think it was a different account you gave then, as to the reason of it? If I did, I did not then tell the court that the reason I gave for my dismissal was, in my firm belief, the true reason, as I have done here. Then you believe that Major Warburton adopted a cause which did not exist, as an excuse to dismiss you? I really believe he did.

To the Jurors—I was three years in the police, and was stationed in Binghamstown when I was dismissed.

James Harte examined by *Mr. O'Connell*—I will ask you very few questions. Were you in the chapel when an occurrence took place between Mr. Lyons and Corrigan? I was. I saw Corrigan that day, and I heard Mr. Lyons, who had been after coming from England, preaching about a vessel which had been wrecked on the coast, and Mr. Lyons had heard what the people had done, and he did not like it; it was of a Sunday, and he preached against it, and said something about a man who had cut off the hand of another man, and he did not mention the name of the man who did it. I saw Mr. Lyons after the Sermon, going out; Pat. Corrigan's name was not mentioned at the altar; shortly after, the priest was going out, and the public opened a passage for him, and Corrigan came after him, and said, "Why were you talking of me?"—whatever I am, God or the Devil can't prove that against me. Whiff! says the priest, just so, you are the man, go off out of that. I heard after from Corrigan, that Mr. Lyons had apologised to him. *Mr. O'Connell*—That is the reason that they have not produced Corrigan.

Mr. Jackson—That is a very improper observation.

Mr. O'Connell—Do you know one Wm. Reilly? I do. I attend chapel regularly, and I saw every thing out between Reilly and Mr. Lyons. I never heard Mr. Lyons say, that he would waste the streets of Binghamstown, and I attend the chapel very constantly, or any thing to that effect. He preaches frequently, and very long sermons.

Mr. Geraghty cross-examined him—I live in the parish, and am a constant attendant at chapel; mass is celebrated once on a Sunday, in Binghamstown chapel; on Christmas-days, twice. I did not see two masses there on a Sunday. Don't you believe that Corrigan understood that day, that Mr. Lyons had mentioned his name? I believe he understood that he meant him, he mentioned names, many of them, a great many, he did not mean Corrigan. Will you swear that? I will. I can't tell what were the names he mentioned—he mentioned many more than I can recollect. I am a summons-server for Captain Ireland, the Stipendiary Magistrate.

A Juror—When was this Sermon preached?

Witness—I am not sure whether it was in October or in November, 1830.

Ignatius M'Loghlin examined by *Mr. O'Connell*—I am agent to Lloyd's at Belmullet; was in Mr. Lyons's parish originally; knew the state of both ends of it. When Mr. Lyons came to it, there was not one slated, or even one thatched chapel in the parish; there are two in it now; they have been erected by Mr. Lyons, and the other gentlemen of the country.

Mr. O'Connell—Is that document Mr. William Bingham's hand-writing? To the best of my opinion it is.

Mr. Jackson—I object to any case being made against Major Bingham.

Court—No, I don't think they can.

Mr. O'Connell—My case is so strong, that Mr. Jackson is afraid of it. Were you an attendant on Mr. Lyons's chapel? I attended it regularly when in the parish, and out of it repeatedly, and heard him repeatedly preach for three years exactly together, and never heard one word from him, saying that he would lay waste the streets of Binghamstown; on my oath, I never heard him say any thing of the kind; I was not in the chapel the day of Corrigan's affair; I never saw him spit on him. Did you hear of the report of his having done so to William Reilly.

Mr. Litton—That is not legal evidence.

Mr. O'Connell—My Lord, the first time we ever heard of such an attack on William Reilly was within this court, I therefore put this question, and submit I have a right. [The memorial was produced.]

Witness—This is Owen Henaghan's handwriting; I often saw him write letters; I have never heard any thing prejudicial to his character, and think that he is deserving of credit in a court of justice; I am not aware that he had been examined before Mr. Ellis; I never heard any harsh complaints of dues until lately.

Mr. O'Connell—Until this year? Yes.

Mr. Bennett cross-examined him—I lived adjoining to Binghamstown; I was then a farmer, a small farmer. Suppose you knew a man who had written out and composed a long paper, and knowing it to be a lie, had signed it, and advised other people to sign it, would you say such a man was worthy of credit? If he had nothing to say to it, it might be different, but if he did it wilfully, and was interested, I don't think I would consider him worthy of credit, I certainly would not. There has been said a great deal here, about Mr. Lyons erecting chapels; pray, sir, by the virtue of your oath, who gave the ground for those chapels, and built the one in Binghamstown? I could hear it was Major Bingham. Do you believe it? I do.

Mr. O'Connell—Did you ever hear of a learned counsel, and a king's counsel drawing a long bill in equity, stuffed with most notorious lies, and charges against a respectable individual, and then this counsel signing his own name to it, and doing this too for money? I often heard counsel were "trickative" enough.—

Mr. O'C. we close now.

Mr. Litton then addressed the Jury—

GENTLEMEN OF THE JURY—Permit me to congratulate you and the public that this disgusting trial is drawing to a close. It is a case which never should have been brought into a court of justice; one pregnant with discredit and dishonour to the plaintiff; one, in which he has rashly and wildly forced into public view his own demerits, and by which, in every step he has advanced, he has established a triumphant case of justification for the Defendants.

The Plaintiff has presented himself to you in the sacred garb of a Minister of the Gospel—one which it is our duty, as well as our interest to respect, when we find that it is, as it ever ought to be, the emblem of a mild and Christian spirit. But, when we find it thrown around the wearer, but to cover his offences—when we find that it is used, not as a shield to protect, but as a sword to wound; that it is held up, not as the mantle of peace, but as the flag under which personal vituperation, private animosity and political agitation, have rioted, then it is equally our duty to drag it from the shoulders of him who has degraded it: the interests of religion, the interests of society require it; and if you believe the evidence which has been given (and you cannot disbelieve it,) you will have a painful duty to perform, but you must perform it. You must, by your verdict say to this Plaintiff "Sir you come into this court with unclean hands—you have visited your unhappy parishioners with cruelty and insult, in your career of vengeance against them—you have violated the most important duties of your calling—you have desecrated their temple of worship, and made the alter at which they knelt a forum for the utterance of malicious feeling, and the development of plans of vengeance; and how can you expect to have the verdict of a Jury in your favour. Gentlemen, the first question for you will be, whether you can disbelieve the evidence of the four witnesses who have

been produced for the defendant. They have not come here to swear to any thing by which their worldly interests can be promoted. They are Roman Catholics. They well know that after this trial they must return to the parish, over which the Plaintiff, as Roman Catholic clergyman presides, and be exposed to a continuance of that persecution, which has been already dealt out so severely to them. If we find a personal object to promote, and witnesses coming to advance their personal interests, there may be some reasons for withholding a ready assent to their accuracy in the detail of their evidence. But will you believe that in despite of all the influence the Roman Catholic priesthood possess and exercise over their flock, these four respectable men would voluntarily come forward to commit wilful and corrupt perjury, without any personal object to promote, against all their interests and in the very presence of the Plaintiff, whose conduct their evidence arraigns. Look to your notes, exercise your judgments, consider the manner in which they have given their testimony. Do you discredit the witness, James Daly, who is a Roman Catholic, whose residence is in the same town with his clergyman, and who comes forward without profit or reward to give his evidence? Do you discredit the witness who told you that he still thought the Roman Catholic religion, in which he had been brought up, a good one, but that he had been driven from the exercise of it, and from his chapel, by the cruelty and persecution of the Plaintiff? Will you say that he is a perjurer? Do you discredit the witnesses Hughes and Harte, both of them respectable men? Would not their interests have been consulted by a concealment of the misconduct of the plaintiff, if, with truth, they could have concealed it? But is this all? Are we to believe, or can you believe, that 136 Roman Catholic parishioners would, in a memorial signed by them, depose falsely as to the conduct of their priest and against him? that under the eye of that priest, they would have affixed their names to a memorial containing, not general inculpatory language, or stating general misconduct merely, but detailing many isolated, independent facts, establishing his utter abandonment of the duties of his sacred office, if such detail were false; the same facts have been sworn to yesterday and to-day, consistently—convincingly sworn to. This memorial was signed by 136 Roman Catholic parishioners against their own parish priest—it was in the form of a complaint to his own bishop; and yet we are told, that it contains falsehoods against their clergyman; what could be their motive for voluntary and corrupt perjury? It is said, that those who signed were the tenants of Major Bingham the defendant; but it has appeared in evidence, that many of those who signed never have been, and are not the tenants of Major Bingham; but if they had been, can you bring yourselves to believe the case opened to you upon this ground, for the purpose of attacking the credit of these witnesses? Ask yourselves, whether it is probable—whether it is

possible, in the state of this country, as it has been detailed to you, and in despite of the exercise of that influence of the Roman Catholic clergy over their hearers, which has been found to sever the closest ties, which bound tenant to landlord, that Major Bingham, though he had been aided by all the landlords in the country, could have induced 136 Roman Catholics by false accusations, to attack the character and arraign the conduct of their priest? Nothing short of a persecution which human nature could no longer yield to—nothing short of a misconduct on the part of the plaintiff, which outraged decency, and made attachment or respect, on the part of the parishioners, no longer possible, could have induced that memorial, which thus carries with it intrinsic evidence of the truth of the facts it details, you cannot but believe that the facts stated in that memorial are substantially true. It is your peculiar province, gentlemen, looking to the class of witnesses we have produced, to the manner in which they have given their testimony, to their motives for deviation from the truth, if any can be suggested, to arrive at a sound conclusion, as to the credit which is to be given to that testimony. The leading counsel for the plaintiff, in a species of cross-examination, which might have had its effect upon an unenlightened jury of the last century, but cannot have had any weight with you, endeavoured to break down (as it is technically called) the defendant's witnesses, by seeking to establish slight discrepancies in their relation of the facts to which they have respectively deposed, even if it had been found, that men, unused to such a course of cross-examination had, by reason of it, become puzzled, and perplexed, could it therefore be said, that they were not deserving of credit upon their oaths? but in this case, the witnesses for the defendant were from the first to the last clear, distinct, and consistent, in their testimony; and, in truth, they withstood and utterly baffled the effects of forensic ingenuity; the slight differences in their evidence, as to minute facts, but confirmed its truth, evincing the absence of concert or of plan, but presenting an array of circumstances all converging to the same point, which must have carried to your understandings a conviction of the truth; those who pretend to doubt the truth of important facts, because the witnesses, who depose to them, differ in their account of the minute incidents which have accompanied them, should be taught to remember, that the blessed truths of the Gospel amongst the many invincible bulwarks which they have presented to the attacks of the infidel, may reckon not as their weakest, that the inspired writers of them agreeing in the great and all-important facts, yet differ in the minute circumstances attendant upon them; the absence of concert in the detail of minute facts, is always evidence of truth. But whilst the Plaintiff's council would endeavour to lead you to disbelieve our witnesses, the Plaintiff's own rebutting case most strongly confirms their testimony. A Mr. Flannery is produced by the Plaintiff to sustain his falling

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case ; a Roman Catholic clergyman, who, for the purpose of inducing you to believe that the facts stated in the memorial were not true, tells you, that by the order of the Bishop he held an inquiry into the conduct of the Plaintiff, that he called on the parishoners, and that they did not come forward to make good their charges against the Plaintiff. But what was the nature of that inquiry? It was held in the chapel, by one priest upon the conduct of the other ; the Plaintiff present occupied one or two hours ; no time given for the production of evidence ; the tribunal was one before which justice could not be done, calculated most strongly to impede the object it professed to promote ; it was, in truth, a mere mockery of an enquiry. There have been two other witnesses produced to sustain, what the Plaintiff calls his rebutting, what I call, his confirming case. One Charles O'Brien has been presented, who has had the hardihood to tell you, that a gentleman, who fills an office of high trust, who has been for many years known to all, as exemplary in every private and public relation of life—in violation of every principle of justice, had dismissed this O'Brien from the police, because of his politics, and had sheltered himself under a mean and paltry pretext ; this is the story O'Brien would have you believe, against a high public functionary, who has filled his office of trust, with a degree of honor to himself, and advantage to the public, which has scarcely been ever equalled, and has obtained for himself a well earned reputation—now for the first time attacked by this infamous Witness, who has added further degradation to the case he has been brought forward to sustain. With respect to Harte's and Mc Laughlin's testimony, it calls for no observation ; their evidence is, that they did not hear, and did not see that which others have sworn, that they did hear and did see—I need not waste an observation upon their evidence—it goes for nothing—it was an idle waste of public time to produce such Witnesses, and their testimony has not advanced the Plaintiffs' case, or gone one step to redeem it, from its well earned ignominy. What then are the facts which now stand indisputably proved against the Plaintiff, I wish I could avoid the recapitulation of them—they present a melancholy picture of political violence and religious persecution, degrading in any man—in a minister of the Gospel, a violation of all the doctrines he professes, and the duties he is bound to inculcate. I speak not of his oppression in relation to his ecclesiastical fees, which yet he appears to have increased in some instances to nearly double of what his predecessors had claimed, or received ; nor yet do I especially advert to the desecration of the Holy Temple of his religion—yet, I deem it a great offence in a clergyman, or in any man, to apply to profane and secular purposes, the house of worship, in which but one interest should be promoted, and one object inculcated. It has been established in evidence, that this reverend pastor made the Roman Catholic Chapel a storehouse for the materials to be employed in

building his own habitation; that sawyers and carpenters, his workmen, pursued their respective trades within the chapel walls, in open day; that another and smaller chapel of the parish had been used by him as a sheep and cow house, for his own cattle, and that of his father and brother—all these matters, though indecorous, indecent, and reprehensible in the last degree, I do not now so especially advert to—but I do especially advert to that which no man can have heard of, without horror; that this pastor presumed, because certain of his parishioners remained in the employment of the Defendant, Major Bingham, to deny them the rites of the church, which they considered necessary to their salvation: this religious tyranny was not exercised merely upon men who became the object of his vengeance, but upon weak and helpless women! Not content with holding up my client, the Defendant Lavelle, as an object of common hatred, and a fit subject for universal attack, he refused to his unoffending wife, a religious rite which Protestant and Roman Catholic alike consider as desirable and comforting, and he compelled this poor woman, after a severe confinement, to travel a distance of thirty-three miles for the purpose of being churched. A Roman Catholic clergyman, residing in a distant part of the country, as a matter of charity, performed the rite, which the Plaintiff was bound, as a matter of duty, to have administered. Gentlemen, have you ever, in modern times, heard of persecution like this? Have you ever, to a like extent, known the feelings of religion, of kindness, and all sense of common charity and common decency, yield to the overwhelming force of a determined revenge. Gentlemen, I address a jury composed of Roman Catholics and of Protestants. I am a Protestant, but I do aver, that if the Primate of England had acted as this Plaintiff has done, I would be the first to drag him from his eminence, and should feel that in the act I did but justice to the doctrines I profess, and to the religion he would have disgraced. But further, what says this Reverend Pastor to the profanation of his altar, from which, forgetting every thing but vengeance, for a supposed offence, he was heard, whilst still clothed in his clerical garb, to declare, in the presence of an assembled multitude, from that altar at which he had but a few minutes before solemnized the rites of his religion, that he never would rest till the grass had grown upon the streets of Binghamstown; in other words, that he would proceed in his career of persecution till he should succeed in depopulating the defendant, Major Bingham's estate, and making his town a waste!

As to the other acts of this reverend father, his low insults to his poorer parishioners, his vulgar exhibitions of his power, to which they were compelled to yield, his invention of new modes of degradation, by which to oppress and sink them, they are too fresh in the memory of every man who has heard this trial to need recapitulation or comment. But again—what has been the course pursued by the reverend plaintiff at this trial? Is there any term of vituperation which his leading counsel has not applied

to the defendants? Has it not, by the plaintiff, been made the pretext for the introduction of every topic calculated to increase the unhappy differences which exist amongst us; to excite civil discord; to exasperate all the feelings which have created division amongst those who should know no enemy but the enemy of their common country? Has not this temple of justice been made an arena for political combat, and the time which should have been passed in developing facts and arriving at justice, been employed in enforcing agitation, and the dissemination of principles which have already been the ruin of our peasantry? Has not my humble client been held up as a pest to society, simply because he acted as under agent to his landlord? Was not the object of this to excite tenant against landlord, to lead the people to believe that the tenant was ever the oppressed, and the landlord ever the oppressor? Did not every effort of the opening statement tend to this point? What right had he to send my client back to his native country, branded with the epithet of a "multifarious scourge?" How has my client, who has peaceably pursued his humble walk through life, deserved such an epithet? If, Gentlemen, indeed there be a man who lives, and moves, and has his being, in the distractions of his unhappy country, whose business is agitation, whose pastime is tumult, who rides upon the storm he has excited, whilst friends and foes are alike its victims; if your eye should rest upon such a man, to him apply the epithet; call him, for he deserves it, the "multifarious scourge of his country;" but apply it not to my client, whose only offence has been, that he refused to leave the employment of a kind landlord, whom an infuriated priest, in unholy language, thought fit to denounce from the altar. I do aver, that my client has proved his justification; he has produced testimony which has not been impeached, and which cannot be impeached; and with you I leave his case; with you also I leave the case of the Plaintiff—decide between us. When a clergyman presents himself to public view, as a messenger of peace and good-will amongst men, excuse and forgive his foibles and his errors, in respect for the calling, forget the frailty—sustain him and support him. But when he shall elect to occupy the station of a fierce and relentless political agitator, to become a public denouncer, and to villify the character, and put in peril the property of any man with whom he has had a difference—to sacrifice his spiritual duties at the altar of personal malignity and private revenge; he throws aside the cover which would otherwise have protected him; he disowns, as well as dishonours, the clerical garb, and he must be dealt with as other men. Gentlemen, in the course of this trial I have heard something of the term "prejudice." It is but true, that in almost every grade of society in this devoted country, we have had our political and our religious differences, unhappily fermented and encouraged, to the ruin of social comfort and of public peace.—Would that there was an end of this—would that all were forgotten, save that we are brethren, born and living in the same

land. I do cherish the hope, that I shall still live to see the day when Protestant and Roman Catholic shall be found to have but one common object—their country's good. But even now, when our discords are still fresh, I disclaim, and wholly repudiate the idea, that prejudice can find an entrance to that tribunal, where you are placed to administer rights, upon your oaths, between man and man. I should feel that to dwell, even for a moment, upon such a topic, would be degradation to myself and an insult to you; and I speak with sincerity when I say, that to the discernment and justice of the jury whom I now address, I could fearlessly commit my fortunes and my life.

[It now was very late, half-past seven o'clock Mr. Fitzgibbon applied to his Lordship that he should not be required to address the jury in their and his present exhausted state. The Court left it to the jury, who retired to consult, and finally it was determined to adjourn to to-morrow.]

SATURDAY, 14TH DECEMBER.

FOURTH DAY.

At twelve o'clock the Judge took his seat on the Bench, when Mr. Fitzgibbon rose to speak to evidence on behalf of the Plaintiff:

MY LORD AND GENTLEMEN OF THE JURY—My duty is to address some observations to you on the case of the Plaintiff, and upon the evidence upon which the Defendants have sought to destroy that case; it has occupied three days of your close attention. I took little part in it during the time; but it now becomes my painful duty to address you; for I feel I have undertaken a great responsibility on myself by doing so. From the line adopted by the Defendants the character of my client, a thing dear to every man of education and sentiment, and my client is a man of education and sentiment; his character, I say, is put in issue considerably beyond what generally occurs in ordinary cases. Pleas of Justification have been put in, and you have heard no less than three speeches from Counsel at the other side, in every one of which my client's character has been most inhumanly and unsparingly assailed. Having now to reply to three speeches, and to observe upon the evidence of seventeen witnesses, I fear I shall put your patience to a trial, but I trust to your indulgence, and claim your attention.

My very learned and much respected friend, Mr. Bennett, in his speech thought fit to introduce this case to you as a "Mayo squabble," that should never have been brought into this court, to (as he was pleased to term it) the postponement of more im-

portant questions of property. Now I happened myself to have been engaged in one of those cases he alluded to ; and I applied to the Judge to send it to a lower court, the action being only for £7 10s. ; but this the court here refused, and very properly refused ; for the Plaintiff was not to be turned round in this court and told it would not listen to his cause. Gentlemen of the Jury, when such was the opinion of this court, than which there is not a higher or more august one in the realm, I implore you to give your deepest, your most serious attention to a cause, in which the character of such a man as my client is at stake ; a case in which his character is so concerned, as even by the very statement of the counsel for the Defendants, he must leave this court either a gentleman and a clergyman deserving to discharge the duties of the ministry of the Gospel, or, he must go forth from it, to the world, a monster !

Yes, this is a question concerning that, in comparison of which the best of poets has told us, that "property is trash ;" therefore do I implore you to give the case your closest attention. I think I see on that jury some gentlemen who were serving in a similar capacity the other day, when Mr. Bennett lauded in the highest terms the principle of bringing Lord Sligo's Mayo squabble before a jury of this city.

Mr. Bennett—I did not use the words "Lord Sligo's squabble," and if I even did, what I say in one case should not be brought against me in another.

Mr. Fitzgibbon—I say that the learned gentleman lauded to the skies the principle of bringing a case from a county where prejudices might prevail, in regard to the question, into a court and before a jury, where no such thing could exist. I approve of that principle to the full, as much as Mr. Bennett, and do not mention it, as any thing against him. No one can hear Mr. Bennett, without being impressed with the greatest respect for him ; but for the reasons I have been just mentioning, I again repeat, the case is deserving of the utmost possible attention from that jury whom it is now my duty to address. I shall next beg to call your attention, gentlemen, to the opening speech of my learned coadjutor, Mr. O'Connell, for the Plaintiff. Imputations have been thrown out against him plentifully, as having gone into extraneous matter, such as the erection of light-houses, the collection of funds for charitable purposes, and the relief of the starving poor of his district. Now, I would ask you, gentlemen, whether these were all together extraneous topics in the present case ; may they not be fairly considered as shewing the *animus* exhibited against my client, for his exerting himself by such means, to prevent plunderers from illicit gain. But there has been much more extraneous matter on the other side. I would ask, for instance, what had my client to do with the interference of clergymen, in the differences and feuds between landlords and their tenants ? I call the particular attention of the

jury to the fact, whether it has been shewn that my client had ever used any interference in this way, or that he ever attended any political meeting? It is one part of the present libel, that he had employed his week-days in writing incendiary paragraphs for newspapers, and that he devoted part of his time preaching slander from the pulpit. Now such allegations as these, if true, could easily have been justified; but did they mention in the pleadings, that they were true? Did they justify one of these assertions? No such thing; had he written incendiary paragraphs, nothing could have been more easily proved; at once the accusers could put their fingers on the paragraphs, if such existed, for there was not a newspaper published in the country, for the last 20 years, that they could not lay their hands on, without the slightest trouble. If they could do this, why did they not throw down upon that table those paragraphs, or some one of them. If they had done so, the Plaintiff could never have asked for a verdict at your hands; but, no, they had not the hardihood—

[Here, and frequently during this address, the learned counsel was interrupted by the noise of persons endeavouring to get into the already crowded court; on order being restored, he proceeded.]

This trial came before you after a lapse of three years of the greatest agitation that had ever been known in Mayo, between landlord and tenant, in political matters; yet was it as much as attempted to be shewn, that my client had, during that time, or at any other period, ever interfered in such things; has it been said that he had ever interfered to collect the O'Connell rent, or mingled in any other political subject in the parish? No, he was one of those pastors in the ministry, who closely confined himself to the discharge of his parochial duties, and the only occasion on which he ever appeared as a public man, was, when he sought relief for the starving peasantry in Mayo. Much has been said about instructions having been given to counsel by the plaintiff to lacerate the character of Major Bingham, and to call his drivers such names as scourges. Now, I solemnly protest, that not one word of the kind has been intimated to me by Plaintiff, or those concerned for him, nor is any thing to the effect to be found in my brief, from beginning to end. It was stated in the case, and indeed it was a most material point, that the witnesses that came here for the Defendants were drivers and servants of Major Bingham, and, therefore, under his influence, and that is all that is in my brief on that subject, and beyond that, I will not say a word touching the Defendants character.

I will now proceed on the three questions laid down so properly by Mr. Bennett, as the only three in this case. 1st. Whether the publication had been brought home to the Defendants. 2nd. Was it libellous or not; and, 3rd. If so, the amount of the damages, [on the first questions, counsel proceeded to read at great length extracts from *Holls Law of Libel*, and from the 1st vol. of *Sturkie*

—his Lordship remarking he considered this more for the court, but would not interrupt his course, after which he said] I confess I was considerably surprized when I found the jury called on by Mr. Litton to observe the manner in which the witnesses on both sides gave their evidence. I put it to you, gentlemen, can you, on your notes, discover any inconsistency in the testimony of any of the plaintiff's witnesses; but Mr. Litton would have it, that this consistency in the witnesses for the Plaintiff, is a badge of fraud, and that the inconsistency on the part of the witnesses for the Defendants, is an infallible proof that all they uttered was true; and thus, by a new species of logic, perverting the rule hitherto distinguishing between truth and falsehood. I was also not a little astonished to find that he referred you to the sacred writings, and compared the discrepancies of the gospel with the glaring inconsistencies of Plaintiff's four witnesses, who agreed in nothing material, nor could their account of the one thing, by any two of them, have possibly been true.

[Counsel then endeavoured to show this, and afterwards remarked on Henaghan's evidence, and the failure of Mr. Ellis's testimony to injure his credit, which he considered was admitted by the learned barrister himself. He then proceeded at great length to defend the other witnesses for the Plaintiff, and said he could safely rest the case on the comments made by the three counsel on the other side, to shew that the publication was a libel; he then said.]

Mr. Jackson says, this memorial is either true or false, that is no very difficult dilemma; but then he says, if true, what a pretty picture is it of a clergyman? He hangs my client on one of the horns of his dilemma—I beg to hang his client on the other, and ask, if what is in this memorial be false, what amount of damages will you, Gentlemen, not give to a clergyman so libelled by it? [The counsel then strongly reprobated the mode in which the pleas of justification were put in by intermediate sentences, and parts of sentences, the Defendant not daring to justify as to the remainder. He excused the spitting in the parishioner's face, if it had been proved at all, by begging the jury to consider the situation of a clergyman in that bare west-coast of Ireland, surrounded by barbarians, and seeing the clothes of shipwrecked mariners on a ruffian, in a moment of excitement and disgust he spits at the inhuman robber; if he had tamely beheld him—if he could have brought himself to participate in the plunder, he would not be in this court now, waiting the verdict of a jury, to send him to the world a gentleman, worthy the sacred vocation in the ministry, or a monster! Counsel did not pretend to be as great a theologian as Mr. Litton, but still he would venture to say, that his client, depending on these ruffians for his morsel of bread, had the moral and phisical courage to stand with his back to the altar, reprove the wicked, and scourge out those hypocrites, who had polluted the temple of their God, and that he was thus

made more like the follower of the Redeemer than the other side would like to allow.

[Counsel then went into a full examination of the evidence on both sides, and made acute observations thereon, which occupied a considerable time, but this report has already extended to a greater length than was contemplated, so these details must be omitted, and it can only be stated, that generally he said, that Davis and Harte deported themselves with great firmness, and were not affected by the able cross-examination which they met with. Neither was O'Brien's testimony shaken, who however was attempted to be disposed of by Mr. Litton with a flourish, passing imputations on his credit, and calling him an "*infamous witness*," solely because he said that he considered Major Warburton had dismissed him from the police on account of his politics. Counsel said he did not himself believe, that that was the real cause of this man's dismissal, but he considered it not unnatural that a poor fellow so circumstanced, might look out for, and hit on, a wrong motive against the person depriving him of a situation, a punishment he felt he did not deserve. His Lordship here asked counsel "did he not hear witness stating, that he was dismissed by Major Warburton without any enquiry?" Counsel replied—it was not proved that any enquiry was necessary—by "no enquiry." The witness might have meant no public trial, but there was no foundation for taking away his credit in a court of justice on account of any thing he had said on that subject; he asked, could his assertions, as to his belief in the motive of Major Warburton for doing any act, give any reason for saying that the testimony of four witnesses were false? Counsel again called the attention of the jury to the words in the alleged libel which had been omitted to have been justified by Defendant Lavelle, although they were along side or dovetailed into the words and sentences which he had justified. The omission to justify these words, counsel insisted, was a great aggravation of the offence, and should induce the jury considerably to encrease the damages he expected for his client at their hands. He deprecated the defendant's counsel using such expressions as these against his client's "persons who follow the sentiments of modern liberalism." How was such a taunt connected with him, and particularly the observation of "God knows how long Major Bingham will be allowed to enjoy his estate," how was that applicable to the Plaintiff? no doubt the opposite counsel would endeavour to connect this ejaculation with him, by *their* proofs to shew that he had said he would lay waste the streets of Binghamstown, and make grass grow in its streets, but the jury must feel that this was a flat falsehood, they would turn to their notes, and find that it was an assertion which has not been made in any kind of a connected manner by any of the witnesses who had deposed to it. Counsel then finally added—]

I pray you, Gentlemen, to read attentively the parts of the libel

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which has been justified by Lavelle, and particularly the words which he omits to justify, throughout the whole you will perceive, that no serious imputation whatever, is justified by him at all, and when you find all these shameful charges brought forward against a man of known probity and attention to all his public and private duties, I cannot do any thing further, than call on you to suppose yourselves in his situation, and in that way to measure the damages he should receive. I would ask, did any of you ever sit on a committee of charity, and I would then ask you, what damages you ought to get from a person who would dare to assert that you were putting the charity money in your own pocket; and yet this is plainly stated and was justified in this libel, and, as it is not justified, I am quite enabled to say it is wholly false. (Reads the passage.)

“The creatures who cannot afford to pay those dues and demands, are forced to work for his farmer or builder, at one job or another; and others are paid by him for their labour, by the charity given by England, to support those unfortunate subjects or slaves, rather”—mark that sentence, it is a little obscure, it would insinuate this, that Mr. Lyons promised payment for work to his flock, and that it should come out of the charity money; and when that fund is received by him, that he then says—oh! but you owe me my fees, and I will take them out of this fund; and thus would set forth, he gets their labour, and the charity money besides. They have not dared to justify this, and I call on you to say, what you think you should receive in damages, had this been published against you? You are aware, Gentlemen, of Major Bingham’s means, of his extensive property; he is well able to pay, not only for the share he had in this outrage against my client’s feelings, but also for the portion of it borne by his assistants; as to these, however, give us a verdict against them all, and we will get the full amount against the Major, and leave him to sue the others for contribution.

I should beg pardon for having thus trespassed on you so very long; my feelings, I know, have been involved in this case, having happened to be intimately acquainted with all the circumstances of it, and the gross facts connected with it; but, gentlemen, I shall now have done with returning you my best thanks, for the attention you were pleased to listen to me, and with assuring you, that I with confidence leave to you, the case of my client

Sir W. C. Smith, then charged the jury.

Gentlemen of the jury, this is an action on the case, for a libel. Towards supporting such an action, it is necessary in the first place, to shew that the alleged defamation has been published, and to trace this act of publication to the defendants; and if this be not done, the jury, without further investigation must find in favour of these defendants, or of such of them as are not shewn to have shared in the publication. Here, if the action were brought against the proprietors of the *Mayo Constitution*, there

could be no doubt that publication would have been proved as against them. The question is, whether it has been proved against all or any of the present defendants; and if you believe the evidence (some portions of which are of the presumptive kind) I shall not be surprised by your pronouncing that it has, as to one of the documents (I mean the memorial) against *all* the Defendants; as to both against Mr. William Bingham and Lavelle. As to the letter, the evidence against the other Defendant, Major Bingham may be, indeed *is*, still more circumstantial and presumptive, and in proportion weak, but on the conclusiveness of this you, gentlemen, will decide; and if the presumptions be sufficiently strong and not rebutted, they will form a legitimate foundation for your verdict to rest upon. If the objections taken be well founded, my error in admitting such evidence being matter of law, will be corrected by the court of which I am a member. The evidence of publication of both documents, as against William Bingham and Lavelle was this, that on the 18th of October, 1831, they called and had an interview with the assistant editor of the *Mayo Constitution*, at the office of that paper. Bingham was the spokesman; but he made his communication in the presence of Lavelle, who concurred in its import—saying, amongst other things, that what Mr. Bingham stated was all true; and part of what he had been saying was, that Lavelle wished to give publicity to a certain letter, through that paper. Bingham then, still in Lavelle's hearing, dictated the substance of the intended letter; which, at their request, Mr. Feeny minuted down, and also at their desire undertook to put in form, and appointed the next day for shewing to them. The memorial was then also left for publication, and the signature of Lavelle to that memorial is proved to be his handwriting. They then went away, but in the evening of the same day, Bingham returned alone, with more matter which he wished to have embodied in the publication; this was also promised, and next day both returned as appointed. What Feeny had proposed in the mean time, being thereupon read by him, Lavelle objected to the passages introduced, in consequence of the evening communication had with Bingham. These passages being struck out, *both* approved of the letter, as drafted by Feeny, and Lavelle having subscribed it, (first signing but half of his name,) they left both documents for publication. Bingham, still in the presence of Lavelle, paying 2*l.* 10*s.* for such publication; they then went away. At this *second* interview, Mr. Boles, another member of the printing establishment, was present, and recommended the omission of the passages objected to. In this interview, these two Defendants adopted (with the exception of the omitted part) the draft made by Feeny under their authority, recognizing him as their agent, and making what he had done their act. This manuscript letter has been produced. Feeny *said* he did not know what had become of it; and if I was wrong in admitting the parole evidence, that what appeared in the news-

paper was an exact, and by him compared transcript of it, my error will be corrected by the Court above. The printing and publishing was part of the agency which these Defendants accepted from Feeny; and they do not appear to have ever complained, that what *was printed*, was different from what they had authorized. They merely asked a return of the manuscripts, which was refused. The memorial had been at the same time left by them for publication; and I conceive, that if you believe the Witnesses, the publication of both documents by these two Defendants is sufficiently proved. Then, how is the remaining Defendant, Major Bingham, implicated in the act of publication? Presumptively as to the memorial, if you believe the evidence thus. By the share which he is sworn to have taken in the preparation of it, his intercourse with Henehan on the subject, his payment of him for the draft, his connexion with Lavelle, his exertions to procure signatures, his declaration of an intention of publishing these complaints against the Plaintiff in the newspapers of England, Scotland, and Ireland. If the memorial seems on the face of it, a document *meant* for newspaper publication, you would take this also into consideration; and see upon the whole, whether you ought so to connect Major Bingham with William Bingham and Lavelle, as to make their proceedings at the office, acts done with his knowledge, concurrence, and virtual participation. You will also consider whether this presumptive evidence confines itself to the memorial, (which, by the way, has been produced,) or extends over the letter. Other circumstances will assist you to decide this point. The publication of the letter was part of the *res gesta* by William Bingham and Lavelle; its contents were connected with those of the memorial, it furthered the same objects. From some of the evidence, if believed, these seemed to be favourable objects with Major Bingham, and the contents of the letter, to correspond, with sentiments to which he is said to have given utterance. Thus, upon the point of publication, the question and evidence seem to me to stand. Now as to the character of the publication itself. The law of libel is different from what it was. At a very early period of my life an alteration took place, under the auspices of the late and celebrated Mr. Fox. Formerly what constituted libel was deemed a question for the court. It was then, indeed, as it is now, necessary, towards supporting the action, that malice should be shown; but from certain language malice was inferred; and the inference was considered to be one of law, to be drawn from the publication itself, unless certain circumstances attending the act went to rebut and negative such an inference. In those days malice seemed to be considered, in such cases, as *questio juris*, to which not the jury, but the judge, was to *respond*. The action is founded, as it ever was, in malice; but it is now the province of the jury to search for this foundation; but the jury may make this search in the same quarters in which the court used formerly to make it. I use the language of legal

authority when I say that "malice may be inferred from the publication, or proved by extrinsic evidence," and I may add, as a corollary, that conjointly from both sources, may malice be inferred. "It must often," the law writers say "be extremely difficult to produce direct evidence of a malicious design, extrinsic and independent of the publication which may be in question." For this amongst other reasons, the law writers add, "that the publication itself *will often afford the most convincing proofs of malice.*" And the same writers very rationally observe that "if the words are directly calculated to degrade character." The obvious inference is, that they were *designed* to produce the effects, which they were thus *calculated* to produce; unless something, to repel such inference, can be drawn from the circumstances attending the publication. *All* the circumstances, therefore, the manner, the occasion, and the matter of the publication, are most material and important considerations. The "occasion," we have seen, of the publication may be used, to assist in discovering whether the motive to such publication was malicious; and the publication, therefore, libellous. Thus, if a document be a *bonâ fide* petition and legitimate complaint, addressed to a proper quarter, that which might, under other circumstances, be libellous, would not be so. But we are to consider, not what a document *purports to be*; but what *it is*. The law will look behind the mask; and a libeller will not escape the consequences which attach upon his act, merely by calling that act a petition or complaint. Otherwise, how easy would it be to elude the provisions of the law! But it is not what merely turns out, upon investigation, to be the falsehood; by which I mean the groundlessness of the statements of a petition, or the severity of those statements that will convert a petition to a libel, if there be nothing to show *mala fides* and pretext, and that the document is a tissue of falsehoods, known to be so by the stater, and made with a malicious and vindictive view. But to make a complaint—to forward that complaint, and in so far to divulge it, is one thing; it is an inevitable, and therefore innocent publication. But it is a widely different thing to publish in a newspaper; which latter act, accordingly, does not come within the range of privilege extended to the necessary circulation of the genuine complaint. Therefore, those who have published this document (whoever you think them to have been) in the *Mayo Constitution*, cannot exculpate themselves on the mere ground that this was a regular complaint, and privileged as such. But certainly if this, as a mere complaint, were warranted, and the transgression of privilege, but consisted in publishing in a newspaper what might be legitimately circulated to some extent in another way; if this, and no more than this, should appear to have been the transgression, it ought to carry less damage than might be but commensurate to a differently circumstanced case. There is a possibility that you may be of opinion that though there be evidence, connecting Major Bingham with the prepara-

tion of the petition or complaint, there is none satisfactorily connecting him with the publication in the newspaper. Then, perhaps, we should be thrown back upon the question, whether the memorial was, or was not, a *bond fide* and privileged complaint. I have already however called the attention of the jury to certain menaces, attributed to Major Bingham of circulating the censures contained in the memorial, through the papers of England, Scotland, and Ireland; but though we should disconnect Major Bingham with the publication in the newspaper; yet, if we consider the form and guise of complaint to be but *means*, colour, and pretext; and the *end* to have been malicious vituperation, and that in *this* dissemination be shared, he has failed in his defence. On this question, the tone of the memorial will, perhaps, be evidence one way; the deputation of Mr. Flannery to investigate the charges, be evidence of an opposite tendency, I not only entirely agree with those, who observe that every irrelevant topic should be put aside, especially if it be one calculated to excite an unperceived prejudice or bias—but I so confide in your intelligence and uprightness, that I will not affront you, by recommending you to keep aloof from everything which might withdraw you from the performance of your duty; and that *duty is*, to make the pertinent and credible evidence which you have heard, the only foundation of your verdict. It has been observed, that a landlord has a right to assist and protect his tenants. He has so; and of putting them in the way of doing themselves justice; especially if his doing so be but a compliance with their request. And though a Protestant landlord might be delicate, scrupulous, and slow, about assisting and seconding Roman Catholic parishioners in their complaints against their priests; (and the priest ought to be equally reluctant to set tenants against their landlords;) yet circumstances might be imagined that would obviously justify lay and Protestant interference. If abusing, and most exorbitantly transgressing his authority, a clergyman of either persuasion, oppressed, injured, and tyrannized—he would render it the right, if not the duty, of the natural protectors of the peasantry to defend them. If a clergyman, Protestant or Catholic, became temporal in his proceedings, his spiritual character and privileges would, in my mind, be suspended, and he might be encountered with temporal and lay requital and defence. A question, however, might remain, whether, in a given transaction, the landlord was the *bond fide* assistant and protector of the tenants, or they the servile instruments of his resentment or ill-will. It seems, (it has been observed) improbable that a Protestant landlord should be able to instigate 132 Roman Catholics to oppose themselves violently to their priest; and more likely that the complaint should have originated spontaneously with themselves, and their wishes to obtain redress have been seconded by him. Under *one* view which might be taken by a jury of this case, this observation would not be undeserving of attention: and, by the bye, let me add, that some of the me-

memorialists appear not to have been the tenantry of Major Bingham; or, consequently, under the influence to which that relation might give birth. On the other hand, several were Major Bingham's tenants, and subject to an influence countervailed, however, by that of the parish priest. For the rest, this was but a natural consequence of Major Bingham's being a large landed proprietor in the parish. Evidence was offered that Mr. Lyons had been fired at. If this were the fact, it might tend to show, that, whether rightly or wrongly, he was not so popular in the parish but that some of his flock might complain of him without being unduly influenced by Major Bingham. The evidence which the plaintiff urges, as shewing a zeal in promoting the complaint which brings home malicious purpose to this defendant, is found in the testimony of Owen Henaghan and some others. The credit of these, and the other witnesses, one and all, is exclusively with you; and I will here read short extracts from my notes of what they swore:—Henaghan tells us that Major Bingham employed and paid him for drafting the memorial; that he desired him to make it stronger—(this is equivocal); that he did so; and that the Major then approved of it; that he said, if that did not do, he would write another to the Roman Catholic Primate, and publish it in the newspapers; that he desired him to bring it to Lavelle for his signature; that the charges were false, but that he (Henaghan) signed it second for fear all he had would be canted; yet, he said that William Henry Carter was his landlord; he also said that 32 of Binghamstown people, whom he saw sign it, were Roman Catholics.—That Lavelle and Cosgrave were agents, and Barrett a driver of the Major's. Thomas Dickson swore he signed the memorial at the desire of the Major, *who produced it at the Castle*. That he was his tenant, and signed through fear. He owed him rent. Anthony Tighe swore that the Major asked had he signed the paper against Father Lyons? Applied to him to get his friends to sign it. Said Lyons was a tyrant and should be published in all the papers in England, Scotland, and Ireland; that he had been for employing him as a care taker. But there was no direct evidence that this was as an inducement to sign, or broken off by Bingham on his not signing. Charles Daby said the Major asked him to sign; that he refused; that he owed no rent, but was distrained. Said he would not have priest Lyons domineering over his tenants; that his cattle being in pound, the Major said, "devil mend him, why would he not gain indulgence as well as the others that signed?" Said his cattle were in pound for 102 days. Why he preferred paying 51s. pound fees, to paying the 35s. claimed as rent, if he explained, I did not catch the explanation, except that he did not conceive he owed the rent. In this action it is the right of a Defendant, even admitting the publication, and its defamatory nature, to justify the alleged libel, as a statement of mere truth. Of this right, one of the Defendants, Lavelle, has availed himself; and to prove this justification, some witnesses

have been called. Before I enter on the amount of this evidence let me recur to the testimony of Owen Henaghan, and at the same time connect it with that of Mr. Ellis; he will agree with me he has already implied as much, that the credit of Henaghan ought rather to stand on whatever may be its own intrinsic claims to credit or the contrary, than on any thing contained in the candid testimony of Mr. Ellis. This gentleman began (as became him) by observing that he had, for the last five years, little intercourse with Mayo, and little knowledge of Henaghan for twelve or fourteen years before, and that others would be better qualified to give evidence of his character. Of these, however, it is fair to add, that three referred to by Mr. Ellis are all Defendants, and, therefore, could not be produced as witnesses. I will now make short extracts from the proofs offered in support of the plea of justification by Lavelle, premising that as to him *alone* arises the issue upon the *truth* of the publication, and that, as to the other two defendants, if you believe them to have published, and consider the publication to have been defamatory, (and I think it likely you will so consider it) you must find against them; for this, amongst other reasons, that a publication in a newspaper is no legitimate circulation of a complaint. I now come to the proofs offered to the truth of the publication on the part of Lavelle. William Barrett swore that he heard the Plaintiff often say, in chapel, from the altar, that he would never stop till he should waste Binghamstown; but qualified this by adding, "If a certain party, *who were annoying him*, did not stop."—So it was *retaliation* he denounced. He then stated the insult to Corrigan; certainly a gross one as he described it. He testified similar treatment of a person of the name of Reilly. He stated the making the chapel a store for building materials; and that cows and sheep were kept, and corn threshed occasionally in another. This latter, however, appears to have been some miles distant from where Mr. Lyons lived, and might, therefore be without his knowledge. He said some could not get their wives churched for three or four years. It has been truly observed, that to refuse, from personal resentment, these rites of the church, would be conduct of a highly culpable nature. But in admitting this, we must add, that the more defamatory must the imputation be, and especially the more censurable, if unfounded. This witness said, that the Rev. Mr. Flannery had, in his hearing, said that if the parishioners sent in an ass-load of petitions to the bishop, they would get no satisfaction. I mean just now to collate the testimony of Mr. Flannery. In the meantime I would observe that this witness admits that Mr. Flannery called on the people to come forward and substantiate the charges in the memorial; and that there was confusion and uproar in the chapel. James Donoghoe saw slates for house building in the chapel, and saw threshing and sawing go on there. He also swore to an augmentation of former dues; and an addition of new claims. He also

testified to the outrages offered to Corrigan and Reilly. Also to one offered on a Christmas day to one Padon, by throwing a penny at his head, which cut him; and to his frequent denunciations of making grass grow in Binghamstown. He said that before the memorial, Mr. Lyons had refused to admit Lavelle or his family to confession; and that this arose from a dispute concerning Fleming, whom Lavelle had introduced into the parish against the will of Mr. Lyons; and whom this witness admitted he had seen drunk, though not often.—I need not remind you that no acts of Mr. Lyons done *since* the memorial, can support a justification of the truth of charges contained in that memorial. The very utmost they could do would be to corroborate proofs of similar acts alleged to have been done before. He said that the plaintiff alleged the cutting off the hand against Corrigan. William Hughes and John Hart swore to the ill-treatment offered to Corrigan and Reilly. Thus you have four witnesses forsworn, if the substance of these facts did not occur. Towards determining their credit—you will consider the discrepancies which their evidence may involve, or seem to do so. You will recollect too, that there are some discrepancies which impeach, and others which rather strengthen the credit of witnesses. Those discrepancies, I mean, which exempt it from a coincidence so exact and close as to smell of fabrication, and become suspicious. You will also collate this part of the evidence with the contradictory evidence offered in the rebutting case. Hart also swore to the threats against Binghamstown. To contradict this justification the Rev. Mr. Flannery was first produced. The substance of his account is—that he gave notice of his intended visit; took measures for a full attendance; had one; that the memorial was first read by Mr. Lyons, and its substance afterwards by him; that he called on persons to come forward, and substantiate their complaints. That, as the most important, he proposed first to investigate the charge of revealing disclosures made in confession; and secondly that which seemed to impute drunkenness to the plaintiff; but that afterwards *he called on the complainants generally to come forward and support any of the charges in their memorial.* As to the first, Lavelle denied their having made such a charge. I confess I agree with Mr. Flannery in thinking that the memorial does substantially contain such an imputation. As to drunkenness, Lavelle may have been right that by the passage in which the word “soberly” or “sober” occurs, it was not intended to convey a charge of intoxication.—Thus Mr. Flannery’s statement seems in substance to be this—that if the investigation proved abortive, that this was not his fault, but that of the parishioners, who did not, in obedience to his call, come forward to support their charges, and that the meaning of what he then said, was, that the bishop would not regard their memorials, if when opportunity was offered, they did not substantiate or support them. The dues, he said, were not ex-

orbitant, and were sanctioned by the bishop. This witness also gave a good character of Mr. Lyons. Charles O'Brien gave an account of the proceeding with regard to Corrigan, which, if it related to the same transaction, to which the testimony of Lavelle's witnesses applied, is so inconsistent with their narrative, that their credit and his must be weighed against each other. As to what this and other witnesses say, of their never having seen certain proceedings, this does not necessarily contradict the testimony on the other side, inasmuch as that may have happened, which they did not see. You are certainly to found your verdict upon evidence, not on statement. But if the evidence be contradictory, on a certain fact, you may throw in, as corroborative of the testimony of the Witnesses for Lavelle, that the instructions given by the Plaintiff have not so much denied the degrading treatment of one of his flock, as attributed it to a motive, moral; but whose impulse carried him too far. And here I would observe, that if you should think upon the evidence, (this I leave to you,) that the conduct and proceedings of Mr. Lyons have been generally good and well intended, it is not because you find him, on a few occasions, betraying the effects of human infirmity and passion (especially if this passion originated in virtuous indignation) that you should so curtail the damages as to hold the Plaintiff up as a man whose character is of little value. This would be unjust; and it might be pernicious. It would stigmatize,—without sufficient cause, a character which, in this action, is in some degree in issue; and which belongs to a person who is entrusted with the discharge of sacred religious duties, and ought not lightly to be held up to odium or disrespect. But a material part of this Witness's evidence is, that the sawyers were cutting up timber for chapel seats, which was no profanation; that the slates were left in the chapel by the chapel committee; and that he saw no threshing, except for Major Bingham; that this was in the absence of Mr. Lyons, and the proceeding censured by him on his return. I hope O'Brien is more correct in his facts than he is in his rash and injurious conjectures. I am persuaded he was in error, when he attributed unfair motives and indirect and intentionally unjust proceeding to Major Warburton. I have thus, I hope, summed up the whole of the evidence correctly. I conceive, that if you believe the Witnesses, the Plaintiff is entitled to your verdict against the three Defendants; provided, upon this evidence, you consider Major Bingham to have participated in the newspaper publication, or to have had the memorial drawn up with a defamatory and malicious view. I conceive that Lavelle is liable to such a verdict, because even though you should, as possibly you may, believe the Witnesses produced to prove his justification, that justificatory proof does not cover the whole of the publication; and if much of serious defamation remain uncovered, you ought to proportion to this residue, the damages you award. But if you should be of opinion that he has gone far towards ustifying,

though not the entire way, you can give him the benefit of this view, by a proportional reduction of the damages. If, on the other hand, you do not believe his Witnesses, he will stand in no degree on better ground, perhaps, by his failure, upon worse, than that on which the other two Defendants stand. The verdict I leave to you. The amount of damages I even more especially and entirely leave to you; if you find for the Plaintiff, against these Defendants. The charges, contained in what has been published, are serious and severe; and brought against one of the ministers of a christian church; whose character ought to be the more protected from aggression, because it is a sacred one. But if you believe him to have provoked aggression, by a certain degree of tyrannical, violent, and oppressive conduct; and the memorial and letter to have been an illegal but natural outbreak, of not altogether groundless exasperation,—in assessing the damages, you may be warranted in bearing this mitigating circumstance in mind.—There has been in this trial something to disconcert, and something to console us. The first is so connected with baneful Irish discord, that I shrink from the irksome topic. As for the second, every one will agree with me, that the jury have had the assistance of most able advocacy on both sides. The ability which stated the Plaintiff's case we have long recognised; and I need not insist upon. And will any man who has heard the counsel for the Defendants, deny that this ability has had to encounter champions worthy to wrestle with it? or has been otherwise than strongly supported in the reply?—Will any, who have witnessed the amicable conflict between some of these learned counsel, deny them to have shown how cordial might be our intercourse with each other, if we would? If, instead of trying, perhaps on the one hand to pass the bounds of legitimate influence, to over-reach and ambitiously to encroach, and on the other hand, being disposed to view elevation and advance, with a too jealous and grudging eye, if instead of this, we would mutually cultivate fraternal harmony and peace. Gentlemen, I half rejoice that the jury which I address, consists of a mixture of both religions; and I half lament that this should be a topic of congratulation—for many a long year it has been my wish that the day might soon arrive when there would live, cherished, in our memory, nothing that tends to sever and estrange; but every thing that on the contrary is calculated to unite us. That our recollection should ever be, that unbiassed impartiality is our common duty, Christianity our common faith, and distracted Ireland our unhappy, but beloved and common country. That we should respect and obey the law. That in manifestations of this obedience and respect, our only rivalry should be; while we bore and promoted good will and kindly feeling to one another. The charges in this publication are harsh and angry. If they have proceeded from the parishioners, not unduly influenced, Major Bingham may have nothing to say to this. If from mutual exas-

peration matters may have assumed an acrimonious character, I wish that they could be reconciled. What human passion may have excited, I wish that Christian feeling would assuage. I should feel (may I say humbly) proud, if—late as the present moment is, my recommendâtion, even now, could lead to this. If not, in finding your verdict, and (if that verdict should be for the Plaintiff) in assessing the damages, you must consider the credit of the witnesses, the amount of the credible evidence, the aggravated or mitigated nature of the libel, if you think it one, —the pecuniary circumstances of the parties; the quantity of injury which has been sustained, and which is to be compensated; the interests of religion and of morals, and the general nature and complexion of the case.

The jury retired at twenty minutes after 3 o'clock and remained in their jury room until after 7 o'clock, when they returned, and the foreman declared it was quite impossible they could agree on a verdict. The court enquired, whether the parties would consent to withdraw a juror, Mr. Fitzgibbon said, that as junior counsel in the absence of the Plaintiff and of his leading counsel, he could not take upon him to determine; but that he would go to Mr. O'Connell's house to consult on what should be done. He accordingly left the court for the purpose, and the jury again retired, and remained in the room till after 8 o'clock, when

The Court—finding Mr. Fitzgibbon had not returned from Mr. O'Connell's, sent in for the jury, who still said it was unlikely they should agree, the court said, that he felt that he could not keep a jury like them locked up until Monday morning, after such a declaration, and enquired whether the parties would agree to an adjournment.

Mr. V. B. Fowler said, when Mr. Jackson left court, he directed, that his client, Major Bingham, should consent, if called on, to withdraw a juror, but not to any adjournment.

The Court—Then, as we have been adjourning every day for mutual convenience by tacit consent, I shall take it upon myself to adjourn the jury till Monday:—gentlemen of the jury, you will meet here on Monday morning at 11 o'clock, and I am sure I need not caution you as to your conduct in the meantime.

MONDAY 16TH DECEMBER.

FIFTH DAY.

At twelve o'clock the judge took his seat upon the bench, and the names of the jury having been called over,

Mr. Fitzgibbon apologised to the court for being absent upon Saturday evening, when the jury returned a second time into

court. He stated that he had gone to consult Mr. O'Connell upon the proposition which had been made; but that gentleman would not take upon himself the withdrawal of a juror without the consent of Mr. Lyons. The reverend gentleman had quitted court before two o'clock, and on his, Mr. Fitzgibbon's searching at his lodgings he found he had not arrived there. He sought at every place where he thought it likely he would be found; but not succeeding, he returned to court, where he found a messenger from Mr. Lyons, who stated that he had been taken suddenly ill on his way from court, and was obliged to stop at the shop of Mr. Willis, apothecary, on Ormond-quay, not being able to proceed further. He thought it necessary to make this explanation to his Lordship and the gentlemen of the jury, lest it might be supposed he meant them any disrespect.

Court—The court is satisfied.

Mr. Fitzgibbon requested the jury would retire, and perhaps still they might come to a decision.

At twenty minutes past two, the jury came into court.

Clerk of Nisi Prius—Have you agreed to your verdict, gentlemen?

Foreman—My Lord, we have not; and I am sorry to say, there is little likelihood of an agreement.

Mr. Bennett observed, that he had never, where he was concerned, approved of the principle of keeping gentlemen of respectability shut up so long in the jury box, after such a declaration.

Mr. Fitzgibbon—My Lord, perhaps the jury have agreed as to any one of the defendants. The Court is aware that they may agree as to the acquittal of one and the finding against the other two, or the acquittal of two and the finding against the other.

Court put the question to the Foreman, who asked leave, on the part of the jury, to retire before he gave a reply.

At three o'clock the jury again came into court, and the Foreman inquired if they agreed as to the other defendants—could they be enabled to bring in a verdict without including Major Bingham?

Court ordered Mr. Jackson to be sent for; and upon his appearance, communicated to him the question.

Mr. Fitzgibbon, on the part of the plaintiff, agreed to receive such a verdict, subject to the opinion of the Court above. He had not the slightest doubt on his mind that it was perfectly competent for the jury to return this verdict.

Mr. Jackson—Notwithstanding that Mr. Fitzgibbon has no doubt, I do not recollect a case in which a similar verdict has been brought in.

Court—I recollect one in which the circumstances were similar; but how it was disposed of, has totally escaped my memory.

Mr. Jackson—If this case came to be tried again, I do not

know how the difficulty, with regard to the jury process, could be got over.

Mr. Litton—It was impossible that two *verdicts* could issue upon one record.

Mr. Fitzgibbon—When the difficulty arises which *Mr. Litton* contemplates, it would be then time enough to argue the question.

Mr. Jackson—I have no objection to this sort of verdict, provided we are not to be considered consenting parties to it.

The *Court*, reserving this question for argument in the court above, was disposed to allow the jury leave to bring in a verdict, excluding Major Bingham, if on further deliberation they did not agree to a verdict including all the defendants. The jury accordingly retired, and at five o'clock returned, announcing that they could not agree at all.

Mr. Litton—Surely, my Lord, it would be quite improper, after—

Mr. Fitzgibbon—I will save *Mr. Litton* further observations. I consent now to withdraw a juror. This was accordingly done, and thus terminated this extraordinary trial.

THE END.



ERRIS.

The following description of this district is taken from an article in the *Critical Notices* of the DUBLIN UNIVERSITY MAGAZINE, for this month, (Jan. 1834): Title—*Journal of the Geological Society of Dublin*:—Published by WM. CURRY, JUN. AND CO. 9, UPPER SACKVILLE-STREET.

“ An unfrequented, and an almost unknown tract of country is the subject of Mr. P. Knight’s observations in the next memoir. It is a notice of the General Geology of *Erris*, in the county of Mayo, and contains some curious and interesting facts. The high and beautiful ranges and groups of mountains of these pathless wilds, may truly be said to gratify the eye of the Geologist, or, indeed, the lover of nature. The Reviewer has passed these solitudes, not without the deepest sense of wonder and admiration; nor had the deep circular mountain excavations, (wrongly so called,) mentioned by the author, with their deep embosomed tars, their architectural precipices, and giant amphitheatres of rocks, a mean share in exciting those feelings. There is, in these mountains, a style of scenery which is peculiar to them, and which vies with the ‘sweet solitudes,’ as Captain Portlock has it, of the Branden Range. Erris is now, perhaps, the only part of Ireland where the red deer ranges, untamed and free, an indigenious tenant of his native mountains.”



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TRIAL
OF AN ACTION FOR LIBEL,
BEFORE
Baron Sir William Cusack Smith, Bart.,
WHEREIN
The Reverend Patrick Lyons,
P. P. OF KILMORE, ERRIS, IN THE COUNTY OF MAYO, WAS
PLAINTIFF ;
AND
Major Bingham, and William Bingham, Esq.,
and Patrick Lavelle, were
DEFENDANTS.

The following jury having been sworn,

1 WILLIAM WILLANS,	7 CHARLES MEARA,
2 JOHN ELLIOTT HYNDMAN,	8 JOHN MARTIN,
3 RICHARD O'GORMAN,	9 WILLIAM DIXON,
4 JOHN MALLET,	10 JAMES MEARA,
5 GEORGE HOWELL,	11 HENRY PIELE, and
6 CHAS. FOSTER DOWLING,	12 MARTIN KEENE, Esqrs.

Mr. Whiteside opened the pleadings—

This was an action on the case for a libel. The first count stated that the Plaintiff was a clergyman of the Roman Catholic Church, and Parish Priest of Kilmore in Erris, in the county of Mayo; and the Declaration stated that the Defendants had published a libel of him in these words—"To the most "Worshipful Father in God, Oliver O'Kelly, by Divine Grace "R. C. Archbishop of Tuam, &c. &c. &c. The humble and re- "spectful memorial, &c. &c.—That time immemorial our hitherto "peaceable, friendly, and benevolent Parish, nay, Barony at "large, enjoyed union, peace, love, and good will, ——"

Before Counsel had concluded the parts of the memorial he considered necessary to read at this stage of the case, he was interrupted by Mr. O'Connell, who said that he would have to read and to observe on the greater part of the libel, and therefore he must request Mr. Whiteside to read no more of it at present.

Mr. Whiteside said that the Defendant, Patrick Lavelle, had justified some passages in it; that the other two Defendants had pleaded the general issue, and that the damages had been laid at £4000.

Mr. O'Connell then rose and said—

MY LORD, AND GENTLEMEN OF THE JURY—I stopped the counsel in going through the libel, which is of considerable length; for, with respect to the points in which the Defendant, Lavelle has justified, I shall have occasion to remark fully on them in addressing the jury, and therefore did not wish to occupy your time with a repetition of it. This proposition will not be controverted, that if we had demurred to this plea of justification, the Court would have allowed the demurrer. Gentlemen, what I have now stated, relates to the law of the case. His Lordship will tell you that any inference of malice, is alone for your consideration. It is fit that I should tell you then, Gentlemen, who the parties are here before you. The Plaintiff is a Roman Catholic clergyman, the Parish Priest of Kilmore, in the barony of Erris, a very extensive district in the county of Mayo, and at one time a very lawless place—and now containing not less than 10,000 inhabitants, under the spiritual care of the Pastor, and requiring, under their circumstances, much of his temporal assistance, which he has always given them, in an unequalled degree for a man in his class. He was the pastor of this parish from the year 1825; and I will say, that never was a greater change effected any where than was in this parish by him since he was appointed to it. The Defendants here are three; the first is Major Bingham, having a very large property in the parish; the second is Mr. William Bingham, his son, but who never can be his heir at law; the third is one of those multifarious creatures, who are employed by landed proprietors, particularly on remote properties, known

by the denomination of DRIVERS ! one of those SCOURGES who have been compared to those who use the lash in the West Indies, to lacerate the backs of the slaves ; but in general they are more humane than are those *drivers* on a rack-rent estate in Ireland. Major Bingham and his son are Protestants, and Patrick Lavelle will, as some speeches quaintly end, “die an unworthy member of the Church of Rome.” Why this memorial, which professes to be a complaint by the Roman Catholic parishioners against their priest, should have been got up by the three Defendants, I cannot say : such conduct of the priest there complained of as faulty, must have been as indifferent to Mr. William Bingham as it could have been to the Major ; and as to Patrick Lavelle, it was equally immaterial to him what a priest or a parson did, he could set both at defiance ; and I say, as the complaint was to a superior of the Roman Catholic church, the Bingham could have no motives of a spiritual nature for making it : Patrick Lavelle might have such an excuse ; but as far as the Bingham are concerned, we must disembarass the case from any spiritual causes—as to them, they must have been of a *temporal* nature ; and I think I will show that they arose from temporal motives of a most malignant nature indeed.

When Mr. Lyons first came to this parish, Major Bingham and his son were magistrates, and they had a colleague, a clergyman of the Established Church. There were three Protestant magistrates then in the parish—there is not one of them there now, *hinc illa lacrima*. A stipendiary magistrate was sent down there by Government ; a complaint had been made against these Protestant magistrates—it must have been founded in justice ; for, since then, this Protestant clergyman, Major Bingham, and his natural son Mr. William Bingham, have been deprived of this commission of the peace ; and what the consequence of all this was, I am bound to tell you, and to explain the true cause of all that followed. When Mr. Lyons was first appointed to this parish, Major Bingham had several situations in it ; he was landed proprietor, and he collected the rents ; he was chief constable, and he collected the barony cess ; he was perpetual church

warden, and he collected the parish cess ; he was the tithe-jobber, and he collected the tithe. Why, *Caleb Quotem* himself had not more occupations than Major Bingham once had in the barony of Erris ; but they are all gone, and he is now merely, what he ought to be, the owner of his own landed property.

Mr. Jackson—And God knows how long he may be that !

Mr. O'Connell—He is no longer chief constable, churchwarden, tithe-jobber, or magistrate—all, all, are blotted out ; nine-tenths of his places are taken from him, and all this is attributed to my client—and most justly, I will say, attributed to my client. On his representation, Government sent down to inquire into all these things, and the local magistrates were removed, and a stipendiary magistrate appointed in their stead, and now the business of the public is done, and well done, by that stipendiary magistrate. This barony of Erris had been inflicted with a famine common in Ireland, and in 1831 and 1832 it prevailed much in this parish. The rents were paid here by their crop of corn, and the produce of the poor people's land was seized by such *creatures* as Pat. Lavelle !

Pat. Lavelle, (the Defendant)—You ought not to say any thing against me, Mr. O'Connell, or about driving ; for I often paid you the rent, and saw others driven for it for you—and I never drove for the Major's rent so hard as your drivers drove for yours.

Mr. O'Connell—What is that fellow making a noise about ? Oh ! it is this same Patrick Lavelle ; see what a creature that fellow is ; he actually thinks now he is not in your Lordship's court, but that he is in Major Bingham's court.

Mr. Bennett—Let the poor man alone, he is only saying that he often paid and was driven for your rent.

Mr. O'Connell—Oh, that is the standing joke, these four years, of every blackguard, whether in a good coat or a bad one.

Gentlemen—We will come back from this Patrick Lavelle to his master, and to the state of this parish in the year 1830. The parish was in such a state of famine that it became necessary for Mr. Lyons to leave the barony, and to go and wait on the Duke

of Northumberland, whose hand was always in his pocket to afford relief for those in adversity; there was then no public fund for the purpose, and the Plaintiff was obliged to go to England, and in Liverpool, Manchester, and other towns, he collected sufficient to relieve the immediate wants of Major Bingham's wretched and starving tenants.

Before the corn crop was ripe the potatoe crop had failed, and Mr. Lyons was obliged again to go over to England, and as there was no available fund to resort to here, he repaired to London, and was instrumental in obtaining those subscriptions which relieved the people in 1830 and 1831. [Exclamations of surprize from Defendants' counsel.]

Mr. O'Connell—I am interrupted here, but, gentlemen, I assert distinctly that the exertions of Mr. Lyons were mainly calculated to keep the tenantry of Major Bingham from starving, to preserve their very existence, you will naturally ask, did Major Bingham contribute? I will tell you, he did—nothing! The proprietor of the soil, he who is so anxious for the spiritual welfare of his tenants, contributed nothing to the support of their famishing bodies. You might, gentlemen, have seen in some of the reports of parliamentary debates in the newspapers, that Mr. Stanley had expressed his surprize that Major Bingham had not contributed any thing to this charitable fund. I am placing before you the cause of all this conduct—a quantity of potatoes were bought from the London subscription fund, and brought to Erris by Mr. Lyons. Who do you suppose were the most active to put themselves on the committee of distribution? why Major Bingham and this son of his—it was all for charity, but we have heard of charity which begins at home. I defy them to prove, that he contributed one farthing to this charity of which he chose to be distributor; on the contrary, it was found that of these very potatoes, Major Bingham had converted a quantity to his own use as seed potatoes. [Here the witnesses on both sides were ordered to leave the court, and not to be present during any of the trial, on pain of not being examined as witnesses.]

Mr. O'Connell—This I can prove by a letter in William Bingham's own handwriting, but in which he says "I gave them other potatoes instead, but sowed the English, as being better

seed;" why to be sure he did, it was not because they were worse he kept them, no, he sowed them, and in their place gave the people what he would not give to pigs. What was the consequence? that Major Bingham and his son William were struck off the committee of distribution; but is that all? need I give one instance more? We have a volume of facts to show why this malicious libel was brought against a gentleman, who has done more for the cause of humanity than any other person in his station and circumstances; and is he who has done his duty to his God and to his country, to be, therefore, the victim of that slander, which it was hoped would disqualify him from repeating his benevolent and charitable acts, which prevented destruction and starvation again visiting this barony of Erris. But to another fact—there was another crop to which the landlord looked for his rent, besides the crop of oats, a crop from ship-wrecks! There had been then no light-house on the Erris coast, and an Austrian vessel, from Trieste, had the misfortune to be wrecked there; some of the crew were drowned, others of them were unhappily saved from the waves, for they fell into the hands of the most brutal barbarians in broad cloth and in frize, who, on their reaching the shore, struck them down, and stripped them of their clothing; one man had reached the shore, it was said he was dead, or nearly so, but he held in the strong grasp of death, a rope—what did one of the vile barbarians do to get the rope which was worth, perhaps, six-pence? he took a hatchet and cut off the hand with the rope in it, that he might have the rope uninjured. What a hellish deed is there for you? Well—an auction was called, by these local magistrates, to sell this wreck; and the hull of the vessel, the masts, the spars, the iron, every thing, was knocked down for £25! This was a material fact, for it justifies what I said of the *Protestant Clergyman*, for it was on that occasion that he was struck off the list of the magistrates of the county.

Mr. Bennett—I protest, my Lord, I am altogether unprepared to defend my client (who is Lavelle) against these statements, if they be meant as charges; indeed I cannot see what they have to do with him at all.

Mr. O'Connell—Lavelle is the very man to whom this part of

the case more particularly applies, as he has put in a plea to justify the charge against my client, of spitting in a man's face.

Mr. Bennett.—But what has that to say to one man cutting off another man's hand?

Mr. O'Connell.—It has much. I will justify the act of his spitting in the face of one of those tenants, for I will show that Mr. Lyons, in the fervour of his disgust, did commit that act, and spat with disdain at the very barbarian who thus cut off that hand, when he met him among his flock on leaving the altar. One of the charges against Mr. Lyons is, that he denounced this wretch from the altar, and threatened him with hell for his crimes. But, I would ask, was it possible to find language strong enough to denounce barbarians so wicked?—and could he refrain from spitting at them in the phrenzy of disgust at the abominable and atrocious crime? But what is said in the memorial? “This is our father confessor, we will take care and never go to him again to confession, to be betrayed as we were on that occasion;” stating therein, that he was guilty of such a disgraceful breach of duty, but, at the same, allowing that they themselves had also been guilty of those odious atrocities.

Gentlemen of the Jury—I should state to you that Mr. Lyons, on this occasion of the shipwreck, to prevent in future, the shameful robbery of these shipwrecked individuals, denounced temporal punishment, and Divine vengeance upon them; and twice has this libel complained of this, though he would not be a man or a Christian Priest, if he had not denounced the vile conduct and trade of these disgusting wreckers. He has since, to be sure, succeeded in getting light-houses built on the coast; can you be surprised that this act of benevolence has displeased those who made a property out of the misfortunes of hapless mariners. Besides, having these useful works completed, he has also built two chapels in this parish; and there is no individual Clergyman of his means and station, who has distributed more books, or has more attended to the education of the people in his parish, than Mr. Lyons. I have now broken the case to you—it is the case of a meritorious Catholic Priest, totally given up to providing for

the wants of his flock, both spiritual and temporal, twice visiting England to obtain her charitable contributions for them. In this barony, I admit, that in this one particular instance, my opinion concerning the Poor Laws is erroneous, for there the proprietor takes all he can, and don't give one penny himself to the poor. But this libel appeared in the *Mayo Constitution*, and also in the *Christian Examiner*; the latter a paper which circulates very much through a large class of persons in England, constituting the religious public there,—persons, perhaps, of sectarian feelings, but of charitable dispositions. They all read this *Christian Examiner*, and there they found this libel, aye, and they will read in it, your verdict too. Find, then, a verdict—I call on you to find a verdict now of liberal damages, and thus prove that he who twice saved a district from starving, sought the aid of Englishmen not in vain, and then distributed their alms with fairness, and as the donors intended. Shew all this by your verdict, I entreat of you. Therefore, was it, that Mr. Lyons was bound to go first to the *Christian Examiner* in defence of his character. The Editor of that paper at once saw his error. Don't proceed against me, says he; you don't want money of me. No, replied the other, I want only my character. You shall have it, says the Editor; send your attorney to me, I will take him off your hands. I will put such an apology into my paper, as shall completely re-establish your injured character; and he did so, and the action was in consequence withdrawn. He also brought an action against the *Mayo Constitution*: they said, "why attack us, we had no bad feeling against you; this came to us in the way of business; we were paid for it as an advertisement." It don't appear as such, said Mr. Lyons. "We will prove to you," say they, "that we were paid £2 10s. for it. Pat. Lavelle and Mr. William Bingham brought it here; and Pat. Lavelle not being a literary character, he got the Reporter of the paper to settle a letter for him, which he dictated, and which, when it had been arranged by the Editor in better words, he afterwards signed "*Pat. Lav.*" The Editor said, that is not your name, on which he added "*elle.*" These, says the proprietors of the *Mayo Constitution*,

these are the facts, we will prove them to you. Well, then, says Mr. Lyons, I will forgive you ; I will look to the real delinquents. A deal will, no doubt, be said of the omnipotence of the Catholic Clergy—of the overwhelming influence they have over every one of their flock. You will hear much said of their omnipotence ; but, Gentlemen, you will allow that to weigh as a feather on your minds, when you hear that this reliever of the destitute, this promoter of harmony, was actually fired at by ruffian miscreants, who not only raised their voices against his conduct, but raised their hands against his life. And will you then think that such influence exists here, when you are told, that one hundred and twenty of the parishioners of Mr. Lyons' parish, were prevailed on to sign this memorial against their priest—a memorial that I won't insist on, was drawn up by the Bingham and Lavelle alone ; for I will prove that the more technical part of it was actually drawn up by their attorney, as I may call him, for this purpose—a Mr. Owen Heneghan—a man sixteen years in Major Bingham's employment ; and the Bingham employed him to draw up this memorial, and, more than that, they paid him for it more liberally than they ever paid him for any job before, for they paid him five shillings, and they ordered him a piece of a dead cow besides, for this his splendid composition. To this memorial Lavelle was despatched to get signatures ; and I shall prove to you that a poor man's cow was kept one hundred and two days in pound, to force him to sign it. He had to pay £2 11s. fees to drivers for this one distress. I will prove, in short, all the exactions and contrivances used by the Bingham to have this memorial signed by his own tenantry.

I will now bring your attention to that part of the libel which Lavelle has been called on to justify, and then I will call on you to consider what damages you should give my client, when you will find that Lavelle has not justified one fiftieth part of this libel, and now I will proceed and read it to you :—“ To Oliver O'Kelly, by divine grace, Roman Catholic Archbishop of Tuam,” —Major Bingham, I am sure, thought a deal of this divine

grace!—"Most humbly complaining, sheweth"—the very words in which a bill in Equity commences. If any of you have had the misfortune of ever being brought into a Court of Equity, you will recognize the language of this attorney's clerk; but hear more, "The Priest and the Minister, the Protestant and Catholic, sat together in the same house, and room, and enjoyed the passing jest or argument (either moral or *divine*) alike,"

There is language for you!—there is a description, and of what? a theological joke! Why, that is new in composition—it was reserved for the Bingham and Lavelle to discover such a new joke. Again, "We seem to dwindle apace of our former hospitality, good name, fame, credit, and reputation," the attorney's clerk breaks out again. And, again, here, "with threats of damnation more dire than those of doom's-day book."

[Thus Mr. O'Connell proceeded through the alleged libel, making observations, now and then, on different parts of the language, and shewing such parts of it as were justified by Lavelle; and observed that he would prove by a witness, that he, the witness, had signed it, but that he was told that it was an enrollment for a corps of yeomanry! and that every man who signed it was to get one shilling a day. He also shortly stated the fact of the Bishop having sent down his vicar-general to enquire into the facts of the memorial; and when this reverend gentleman was reading over the memorial, and calling on these people to come forward and prove each distinct charge, Lavelle told him he was reading the memorial incorrectly. I will read it again, says the clergyman. I see, cried Lavelle, we are to get no justice here; and off he went, carrying away with him about twenty of Major Bingham's *drivers*. He then continued—I understand they have brought up fifteen or sixteen of these drivers, all under the custody of Lavelle. I should be glad to see them in that witness box; their testimony will make a fair closing to the whole of this transaction.

Having then pointed out the parts of the memorial justified by Lavelle, and the parts not, and stated other facts as to Major Bingham and others, he called on the jury to give his client the stamp of innocence by their verdict, which he might be able to carry

hereafter to England as a testimonial, that should he ever be again obliged to go there to seek aid, he would meet with the same kind charity, he has shewn that he could so well dispense, and would again be able to serve his country.]

The first witness examined was,

Patrick Malvogue Feeney—[This witness applied for his expenses, and said he was going to England when he was subpoenaed. He was examined by Mr. Fitzgibbon.]—Was employed in the *Mayo Constitution*, in the year 1831, as sub-editor and reporter to it; knows the parties; saw the Defendants, William Bingham and Lavelle, in the month of October, 1831, at the office of the *Mayo Constitution*; Mr. Bingham told witness that the Defendant, Lavelle, had a letter to get published in that paper, and said that Lavelle was an ignorant man, and begged witness to take it down, and Lavelle said, that what Mr. Bingham had said, was all true; witness took it down, and said he would write it out plainly to-morrow; Mr. Bingham said he would call again and have it read over; in the course of that day Mr. B. came back to witness alone; he said he wished to have the letter made as strong as possible, and that Mr. Lyons had treated the people of Erris very badly; that he had acted very tyrannically to them; Mr. B. gave witness some additional matter to be embodied in the letter; witness did so; Mr. B. and Lavelle both called the next day; witness had the letter written then, and read it to them; when witness came to the part which Mr. B. had desired him to embody, Lavelle objected to it, and said he could not swear to that; Mr. Boles also was present then; Mr. Bingham said, as this is Lavelle's production nothing should be inserted without his authority, and the part Lavelle objected to was accordingly left out; Mr. Bingham gave witness a paper he said was a complaint of Mr. Lyons' conduct; Lavelle was present; witness has not that paper—(looks at the publications in the *Mayo Constitution*)—Mr. Bingham paid £2 10s. for them; he said that was too much, for that Lavelle was a poor man; witness said they would occupy much space in the paper; Lavelle was present then, but it was Mr. Bingham who paid for their in-

sertion ; witness does not know where the originals are ; after the publication, witness met Mr. Bingham ; they had some passing conversation, something about an action against the paper ; the substance of what the witness then said to him was, that witness thought it would be a hardship that the paper should suffer for publishing what he gave ; witness don't know what he said in reply, but he treated the matter very cavalierly ; Major Bingham resides in Erris ; he is called " The King of Erris."

Mr. Bennett (cross-examined him)—So you only were going quite by accident to England, from the *Constitution* when you got the subpoena, you were going there for your *own constitution*, I suppose. You said something about a prosecution meditated against yourself.

Witness—No, against the paper ; I was only editor and reporter to it. *Mr. B.*—That is rather more than printer I should think ? Is not the composer of a libel worse than the mere printer of it ? I am a bad lawyer. Is there any prosecution now pending against this paper ? I am not aware that there is. But there was ? Yes. You have been the editor of two or three papers ? Yes. Why you are an elegant and experienced writer, what were these papers ? *The Mayo Telegraph* and the *Mayo Free Press*.

They are what are generally called, I believe, liberal papers—papers that are in the habit of abusing landlords and magistrates, rent, tithe, and tax payers, and this is called liberality now a days ; this is modern liberalism, is it not ? Yes, I believe so. Did Mr. Lyons ever write any thing for any of those papers ?

Mr. O'Connell—Mind, did he ever write so, that you *know* of ?

Witness—I think when I was editor of the *Mayo Free Press* I saw some articles that were his ; he was very intimate with the proprietors of that paper. *Mr. B.*—And also with the proprietor of the *Mayo Telegraph* ? Yes, I think I have seen him go into his house frequently. Sometimes landlords have been abused in these liberal papers ? They have. And the people are sometimes told to have nothing to say to the payment of tithes ? Yes. And this is all mere liberality—when was it that Lavelle, you say, went into your office ? It was about October, 1831. That is

more than two years ago ; why you have a wonderful accurate recollection of what passed when an action was pending over your paper ? That circumstance made me recollect it. You said you had a written paper, and the memorial was also written too ? Yes. And the two were handed to you ? One of them I wrote out by Mr. William Bingham's dictation. I presume you embellished it with some of your *own peculiar* stile ? I do not know that I added any thing, I only took notes, I don't suppose that I copied them exactly. Oh ! but surely you tickled up the stile ? I don't think that I added any thing. You must, if you did not, you copied the exact words ? I added connecting words. Where does Major Bingham reside ? About 40 miles from Castlebar. The paper you got, was signed by a great number of parties ? It was.

Mr. Jackson—I am for Major Bingham, but I wont occupy time, by cross-examining this witness, but being for a different Defendant from Mr. Bennett, reserve to myself all my rights over this and every other witness for or against Lavelle. *Witness.* (to a question from Mr. O'Connell) The paper I wrote was signed by Lavelle, he first wrote "*Lav.*" and then added "*elle.*"

Mr. O'Connell—The Mayo Constitution is admitted, will you admit these two papers also ?

Mr. Bennett—We have nothing to say to them.

Mr. O'Connell—Then, I must trouble you, Mr. Vernon.

[*Charles Vernon*, the officer from the stamp office, proved the *Ballina Impartial* and the *Sligo Journal*, containing these publications.

Alexander Boles examined by *Mr. Whiteside*—Witness is one of the proprietors of the *Mayo Constitution* now, was not so, when this memorial and letter were published, was in the office of the paper when he heard an action mentioned, and when it was stopped, in consequence of the author having been given up, recollects the transaction mentioned by the last witness, between him and Mr. William Bingham, who had also a conversation with witness ; the Monday before the publication, which was on Thursday, he said that he had a memorial to have published in the paper, got up by the parish against the clergyman, Mr. Lyons, it was a memorial to the Bishop ; that he also wanted to have a letter inserted, accompanying that memorial, from a man named

Lavelle, that Lavelle was not capable of writing himself for publication, and he wished to have his letter put in order for him for the purpose, witness begged of him to call the next day, he did so, and one passage in the letter was left out, at the instance of Lavelle, who came with him; £2 10s. was paid by Mr. Wm. Bingham for the insertion. He afterwards called for the MS. which witness delivered to him, he said there were a sufficient number of witnesses to prove the truth of it.

Mr. Jackson (cross-examined him)—Did you write your name, or put any mark on this MS. or any part of it? I did not. How long is it since you saw it? It is several months. What is there on it to enable you to state positively that it is the same MS.? One principal thing is, these signatures on the back of it, with a different shade of ink. Then, you know it from the signatures in columns, and the different shades of ink to some of them? I do, I have no doubt that it is the same document which had remained in my possession, until I gave it up to Mr. Edmond Nolan; I put it on the file in my office, after the document had been used. Was it under lock and key? No, it was not, but my office was, and was only accessible to Mr. Feeney; Mr. Nolan inquired of me about this MS. and I gave it up to him, by the direction of the proprietors; I don't know what their object was, but my view of it was, in order that Mr. Nolan should make such use of it as should protect the proprietors. Was it Feeney who first suggested that there ought to be a letter? No. Or did he volunteer to write it before he was asked? No. Do you know any of the signatures to it? I do not. Don't you know Lavelle's? I said I saw Lavelle write his name; I did not take any liberty of the kind by suggesting any thing to Feeney, who was the editor; I never considered or dreamed that the publication was libellous, if I had, I would not have received it.

Juror—Did you read the memorial? No.

Mr. O'Connell—Who was Nolan acting for? For Mr. Bourke, one of the proprietors, I supposed that he defended him in the action.

Feeney was again called up, and proved the document to be the same which was handed to him by Lavelle, and said he did not know how any alteration could have been made in the MS.

Mr. Bennett—Will you positively swear, Sir, that this is the identical paper, without any alterations, which you got from Lavelle? I believe it is, on my oath. Will you swear that it is the identical paper? I will swear that it is the identical paper which I got from Mr. William Bingham.

Owen Heneghan examined by *Mr. O'Connell*—Witness is a writing-clerk; writes in Erris; knows Major Bingham; has written for him; wrote a memorial against the parish priest for him, some drafts, and a fair copy; has written for Ignatius Kelly; there is no other particular clerk that witness knows of in the barony of Erris, but schoolmasters; the memorial was in witness's handwriting, and copied at the instance of Pat. Lavelle and Jas.

Cosgrave ; the composition is all witness's ; Pat. Lavelle and James Cosgrave told witness that they were sent to him, witness, to do it, by Major Bingham ; witness saw Major Bingham after, and produced to him the draft, of which this memorial is a fair copy, and witness was paid five shillings for it by Major Bingham, and a piece of beef.

Mr. O'Connell—Was it not a piece of a dead cow ? Myself dont know whether it was a cow or a bull ; but I know that a piece of good beef is a great stranger in Erris. What piece was it ? A piece of the ribs. When witness carried the draft to the Major, it was obliged to be changed, and he desired him to bring it again ; witness made a few words in the latter part of it, which is not in this, which were desired by Lavelle and James Cosgrave to be put in ; and on going with it to Major Bingham, he desired witness to make it *stronger* in the language, and then after, he gave witness a glass, and a good warrant he was to do so ; knows Pat. Lavelle's handwriting ; saw him often write ; this is his handwriting ; Major Bingham told witness, that if this memorial would not do, he would send one to the Primate of Ireland, and publish it in the newspapers in England, Ireland, and Scotland ; he desired witness to bring it to Pat. Lavelle, and leave it with him for signatures ; Lavelle is over the *drivers* ; witness knows the different *handwritings* to it, and *most* of those, whose marks are to it, *don't write* ; witness was brought to the Major on the 21st December, 1830 ; had the draft made the night before ; he went the evening before the 24th of December, with the draft, when witness made it stronger.

Mr. Jackson cross-examined him—Did you sign it ? Yes, I signed it myself. It is all a parcel of lies ? I don't think it is—Oh, I mean I think it is—you took me short. You are not the boy that would sign a lie ? Faith, then, if you were in my place, you would put your name to it too, if you were desired, or all you had would be taken and canted. Then you would tell a lie, if doing so would save you from being canted ? I should, in that case. Who is your landlord ? William Henry Carter is my landlord. You know Mr. Lyons ? I know him since he was the parish priest, four or five years. You are very fond of him ?—Sir ? You are hard of hearing. *Witness*—Why, then, I am hard of hearing in one ear—I just have found that out, you would rather, I engage, have Mr. O'Connell than me ? I don't care which. Who was by when the Major gave you the five shillings and the beef ? No one, but his own man, Edward M'Andrews. Who brought you to town ? The Rev. Mr. Lyons gave me the subpoena and one guinea ; I have been living since up at the Yellow Lion. With the Erris people, I engage ? There are eleven of us come to town by Mr. Lyons' direction ; we are here since Saturday ; we slept in different apartments. You have attended the Quarter Sessions frequently, I believe ; what character have you there ? there are few more respected than you ? I don't

say I bear a bad character there. You have been accused of making free with some of Mr. Ignatius Kelly's property? Never; if I was, I would not be called on to go back to him. You have been examined as a witness at Mayo, and turned off the table as a person not to be believed on his oath? Never. [To different other questions he answered]—I don't write for Priest Lyons now; I did a small bit of a petition for a chapel there; Pat. Lavelle and Edward M. Andrew were the two by whom Major Bingham desired me to "make it stronger;" I copied it at Clogher; Clogher is about two miles from Bingham Castle; Pat. Lavelle sent Cosgrave, and William Barrett was present when I wrote the original; these three told me what to put into it; I was a piece of a night *writing*; I can't tell how long, we had no watch in company; I saw some of the townspeople sign it, all of them at the bottom here, thirty-two, and others, besides, inhabitants of *Binghamstown*; they are all Roman Catholics; Mr. Lyons is priest of Binghamstown; he says mass there, and all there commonly go to chapel, and others of them *latterly* go to church; the priest lives opposite the chapel; Major Bingham leased him the ground on which his house is.

Mr. O'Connell [resumed the examination, and he answered as follows]:—I lived on Major Bingham's land, thirteen or fourteen years; I was a tenant of his at Binghamstown, when this paper was signed; Pat Lavelle afterwards accompanied me to Major Bingham's; Barrett was one of the drivers, and Cosgrave his agent; the others were tenants of Binghamstown, and owed him rent; the agent and drivers were sent out for them, and they came in and signed.

Thomas Diskson (examined by *Mr. O'Connell*)—Witness can write; the paper produced is subscribed by witnesses hand writing; he signed it by desire of Major Bingham at his castle; he read part of it, and said he was going to send it to the bishop; witness went to the castle to buy an ass; the Major had many asses there; sometimes they had been distrained for rent, and he then buys them and sells them out again; witness was Major Bingham's tenant, and was afraid if he would not sign this paper, that the Major would persevere on him, and turn him out of his place.

Mr. Jackson cross-examined him—Did you know what you were signing? He read part of it to me. Was it true or false? Part of it was true, and part false. Pray which part of it was true, and which false? I did not believe the charges to be true; I signed it in dread of him, as he was persevering against some of the tenants, and I owed him rent at the time. He decreed you by ejectionment at the last Sessions for non-payment of rent? He did at Castlebar. (To other questions)—I know Owen Henaghan; he was not by at the time I signed; Austin O'Malley was by; he is not here now; he was a tenant of Major Bingham's, and Pat Lavelle, *Major* We call him by that name to dis-

tinguish him from Pat Lavelle, *French*. I would not put my name to a lie. Why did you put your name to this then? I did not know whether it was a lie or not. Did you not say that part of what Major Bingham read was false—what did you mean by telling me that, sir? I did not say that; I knew it was going to the bishop; that was all he read for me; I never read it myself.

Mr. O'Connell (resumed him.) An ejectment was brought against me for £3 14s. I appealed from it, and Major Bingham owed me more, but I did not succeed in the appeal.

Anthony Tigue examined by *Mr. O'Connell*—Major Bingham asked witness whether he had signed the memorial; witness told him it was time enough; he told witness he had a paper to send to the Archbishop of Tuam; witness read some of it; the first signature to it is Pat. Lavelle; he told witness that witness had a number of friends at his side of the country, and wanted witness to bring it down to get it signed by them; he had agreed with witness before, that he was to be a care-taker of his, at four acres of land, rent free, and ten pounds a year, in money; witness told the Major he would be with him back in a few days after he consulted his friends; he told witness that Mr. Lyons was a tyrant, and that he would not let him domineer over his tenants, and that he would publish him in the papers in England, Ireland, and Scotland; got spirits from him.

Mr. Geraghty cross-examined him—Who was present at all this? No one. I thought so; where was it? The conversation took place at Bingham Castle; there was no person present but a child of about six or seven years old. Quite a convenient witness; were you ever in the police? No. Or ever discharged? No; I live in Conlough, about two miles from Binghamstown. [To other questions]—I knew that the charges were not right; I never saw any one sign this paper, but did the other papers in the house of James Cosgrave; a good many were there signing it, or ordering their names to be signed to it; I did not tell any of them that they were signing a falsehood.

Carroll Daly examined by *Mr. FitzGibbon*—Witness was a tenant to Major Bingham; had a conversation with the Major about this paper; James Cosgrave, and Pat. Lavelle, and the Major were present; witness refused to sign it; owes no rent.

Mr. Fitzgibbon—Were you distrained for rent?

Mr. Jackson—Is this evidence? His name is not to this memorial at all.

Court—It might be applicable to the question of malice.

Mr. Jackson—I object to this evidence, and let them go on at their peril. No paper is shewn to the witness, to identify the paper which he says Major Bingham asked him to sign.

Mr. Fitzgibbon—Did the Major tell you what it was? The wrong charges he laid against Priest Lyons; he said he would

not have him in his parish at all, domineering over his tenants, when I refused; my cattle were at the pound at the same time, and he said the devil mend me, I would not gain indulgence as the others did; if I did, that my cattle would be enlarged, and to go my ways for a rogue and knave; I might get indulgence as well as the others did who had signed; my cattle were in pound one hundred and two days; I paid keepers fifty shillings, and my gale rent was but £1 15s. [Thomas Dickson, the pound keeper's receipt was produced by witness.] They took my cow and kept her in fifteen days, and then let her out, and then put her in for fifteen days more; and in two or three days more, they took my calf, and my ass, and put them in for fifteen days, and they never canted any of them, and I was obliged to pay the rent before they were returned the last days.

Mr. Litton cross-examined him—It seems that you preferred paying fifty-one shillings to paying thirty-five shillings—did you not owe this rent? I don't think I did. Why then pay it? I was compelled. Why not pay it at first, and not allow the distress of one hundred and two days? Because I had it earned. Is not Major Bingham able to pay any debt he justly owes? He is—but not willing.

Mr. Litton—Thank you, and you should thank Mr O'Connell for that hint. I don't think, however, my Lord, that this witness should be prompted thus.

Mr. O'Connell—I was only prophesying that he would say so.

Mr. Litton—It was audible prophesying and real prompting.

Witness—I had not money to go to law with Major Bingham for what he owed me. But you have money to pay pound keeper's fees to the amount of fifty-one shillings; where are you living now? In town, at the Yellow Lion. You spoke about this business to Mr. Lyons or his attorney? To be sure I talked to him about the pouncing; my cattle were three or four times in the pound. At the least? Aye, and at the most; that transaction with Major Bingham was the 14th of March 1832.

Rev. Sir Francis Lynch Blosse sworn—This witness was produced to prove, as one of the committee for managing the charity fund procured from England, the amount of this fund.

Mr. Jackson objected to his evidence. He could not see on what ground it was offered.

Mr. O'Connell—It will shew that Lyons accounted for all the money he received.

Mr. Jackson—There is no justification of that charge, so you are not entitled to prove its falsehood.

Mr. O'Connell—I mean to shew that Mr. Lyons has been actually £800 out of pocket on that occasion.

Mr. Jackson—Oh, very likely, no doubt, but I still object.

Mr. O'Connell—Whatever that document in the hand of the witness is, let us establish it.

Mr. Bennett—Whatever that document is, it is not in issue, and my client could not now be prepared to controvert it. How could we come and investigate that account? I don't care whether Mr. Lyons is out of pocket £800 or not, however I may doubt it; but there is no averment of any such thing, or no justification of it.

His Lordship having intimated his opinion, that this testimony could not regularly be given, Mr. O'Connell gave up pressing it.

Sampson Carter examined by *Mr. O'Connell*—Is a stipendiary magistrate of the police; was specially sent down to the Barony of Erris in January 1831; received a letter from Major Bingham as to the plaintiff. [Letter handed in by witness.] Don't know whether it is in Major Bingham's hand writing, but it was delivered to witness by his confidential man, Cosgrave, with an affidavit, on which witness was to examine him; never saw Major Bingham, witness having been ill while he was at Erris.

[Lavelle's letter in the newspaper was then put in. Defendant's counsel objected to its being read, stating that it was drawn up by Feeny; there was no evidence of any search having been made for the original letter; the newspaper is no publication of Lavelle's.]

Mr. O'Connell—I would not have produced the memorial had Major Bingham been present at the newspaper office; but I produced Feeney, who was employed by William Bingham and Lavelle to write this letter, and for the publication of which he was paid £2 10s.; they make those people thereby as their agent for the publication.

The Court was inclined to think the original letter to be a link in the transaction.

Mr. O'Connell said, it was for the Defendants to show that Feeney exceeded his authority.

There was then an objection by Defendants' counsel to examining Feeney again, which was argued for some time; but he was again called up and re-examined by order of the Court, by *Mr. Fitzgibbon*, to show he published the letter as left with him, and that both it and the memorial were included in the payment for publication. *Mr. Bennett* objecting to all as illegal evidence.

Mr. Jackson—Have you now closed your parole evidence? I object to your reading these documents against my client, Major Bingham.

Mr. O'Connell—I am entitled to read them against the other Defendants, and I offer them against the three.

Court—There might, perhaps, be presumptive evidence to go to the jury, that Major Bingham was connected with one or both these documents, Mr. William Bingham being the publisher of the letter appears less doubtful. [The *Mayo Constitution*, containing the documents, was handed in; Mr. O'Connell tendered the *Ballina Impartial* and *Sligo Journal* newspapers.]

Mr. Bennett opposed these two latter being entered or read; nothing had been proved about them but their publication by *Mr. Vernon*; after which the Court adjourned at half past five, till to-morrow at eleven o'clock.

The following is a copy of the memorial and letter.

To the Most Rev. Doctor O'Kelly.

My Lord—It is with considerable reluctance I fell myself called upon to address your Lordship, upon the misconduct of our parish priest, the Rev. J. P. Lyons; but I think it my duty on behalf of my parishioners, to lay some facts before your Lordship, which cannot fail to make a due impression upon you, relative to the unfortunate situation in which we are placed. In the month of January, 1831, I, in conjunction with the parishioners of Kilmore, Erris, addressed a memorial to the Right Rev. Doctors MacHale and Waldren, complaining of the exorbitant exactions of our parish priest, and stating the harsh and cruel treatment which we have experienced from him, and praying that they would afford us some redress. To this memorial we received no reply; and in the month of September following, at the request of the parishioners, I addressed a letter to the Bishops, requesting of them, in the name of the parishioners, to send some clergyman to hear our confessions, in consequence of which, the Rev. Mr. Flanagan, of Easky, was sent in to investigate our complaints, and he stated to us, after mass on Sunday, the 25th of September, that if the parishioners sent an ass load of petitions and memorials, they would obtain no satisfaction against Mr. Lyons from the Bishop. This showed us what we had to expect, and when the investigation before priest Flanagan did take place, we could obtain no redress. Priest Flanagan opposed the parishioners in every instance, and as it appeared to them, took an active part in favour of Mr. Lyons.

Since that time we have received no satisfaction of any sort from the bishops. It will appear to your Lordship, from the subjoined memorial, that the dues and exactions claimed by the Rev. Mr. Lyons are most exorbitant, and not collected by any other priest in this union—that my family and myself, and many others in the parish, are without the benefit of confession for the last year and a half, and priest Lyons has declared from the altar, that he “would let us die sooner than administer the rites of the Church to us.” Such is our present melancholy situation, and there is no prospect of our obtaining redress, because the moment any representation or complaint is sent forward against him, by the parishioners, he calls together a parcel of half-buckeens, connexions of his own, who wear caroline hats, although they have not a penny in their pockets, and those persons are always ready to scrape and sign any resolution that is got up in his favour.

From the first day that Mr. Lyons came into the parish, in the

year 1825, he has received half-a-guinea for every marriage for the use of the chapel, besides the usual fee—he has been frequently travelling through this country and England, getting subscriptions for the chapel, while his poor parishioners are neglected; he has charged seven shillings a year for forms in the chapel, and five shillings a year for seats at the altar to each individual, and all this money, which must amount to an enormous sum, is unaccounted for, and the parishioners do not know how he has expended a single penny of it. In the same way, he went last year and this year to England, to collect money to relieve the poor of Erris; he has boasted himself that the sum subscribed for this purpose was very great, and all the poor people ever received was thirty-six tons of oatmeal. What sums he has received, or how he disposed of the money, remains still to be accounted for. Whatever aid was granted by the Central Committee, was laid out by himself and his own Committee, in making roads through the villages of his friends, the buckeens, and he has still a large quantity of meal stored up in his dwelling house, which he disposes of as he thinks proper. He keeps his gates locked, and the poor people are not able to know what quantity of relief they receive, as it is thrown over the wall to them.

Such is the manner in which the Rev. Mr. Lyons has disposed of the charitable funds that were placed at his disposal. He stated, last year, that he would give two dinners every week to the poor of the parish, and accordingly they were twice supplied with a quantity of hot water on which a little bacon and cabbage was boiled. The fame of his extraordinary generosity soon spread abroad, and the poor swarmed in from every quarter, infecting the houses of the inhabitants with disease, upon which the charitable priest locked his gate and his meal-store, and set off for England, leaving the unfortunate people without any further relief during the summer.

I have now a few words to address to your Lordship respecting myself. I am acting as agent to Major Bingham, in Erris, and in the habit of collecting rent for him, but from the violent conduct of the Rev. Mr. Lyons I have been compelled to give up my house in Binghamstown, and leave my ground untilled, at a loss of nearly £50 to myself, and in consequence of Mr. Lyons declaring from the altar that he would lay Binghamstown waste, I have been compelled to give up the agency of that town, finding it impossible to collect the rents or do my duty honestly to my master. Major Bingham then employed a man, named James Cosgrave, to act in my place, but priest Lyons sent for him to his house, and “damned him,” if he would collect any rent for Major Bingham, as appears by the affidavit of Cosgrave, which can be produced. On the 28th of September last, a letter was sent to the Telegraph, as if written by a hatter named Clynes, but which was evidently written by Mr. Lyons—in this letter it was stated that I canted all his furniture and crop. This is a gross falsehood

—some oats and hay, belonging to him, were canted by James Cosgrave for rent; but the furniture, which was also under seizure, was carried away by the Rev. Mr. Lyons's boy and horse and cart, as can be proved by persons who saw the transaction.

I have now, my Lord, stated some of the grievances under which the parishioners of Kilmore labour, from the tyrannical conduct of the Rev. Mr. Lyons, and I trust that you will direct an investigation to take place, when I will be able to substantiate every charge that I have brought against him. Your Lordship will decide, whether it is creditable or becoming a priest to interfere between landlord and tenant—whether it is honest or just to receive large sums of money for the improvement of our house of worship, and render no account to the parishioners—whether it is right to collect large subscriptions from the charitable people of England for the relief of a starving peasantry, and then put them off with a few tons of meal, without accounting to the benevolent donors for the manner in which he has appropriated their contributions. We, one and all, distinctly state there will be neither peace nor good will among the parishioners so long as he is allowed to domineer over us. Remonstrances are totally disregarded. Mr. Lyons, when at home, spends his time in farming, and scribbling for an incendiary newspaper in this county, instead of attending to the spiritual wants of his flock; and the people of Erris, I can assure your Lordship, would feel for ever grateful, if you would send them a pious and exemplary pastor, and remove the Rev. Mr. Lyons, who has totally neglected our interests and the interests of the Church, since he came among us; and whose avocations as beggarman general of the West, farmer and grazier at Belmullet, and assistant editor of the Telegraph, in which he is in the habit of abusing the people who support him, leave him no time to devote to the spiritual duties of his station, and unfit him for the important duties of the ministry.

I am, my Lord, your Lordship's obedient servant,

PAT. LAVELLE.

To the Most Worshipful Father in God, Oliver O'Kelly, by Divine Grace, R. C. Archbishop of Tuam, &c. &c. &c.

The humble and respectful Memorial of the undersigned respectable inhabitants of the Parish of Kilmore, Barony of Erris, and County of Mayo.

Most humbly complaining, sheweth—That time immemorial our hitherto peaceable, friendly, and benevolent Parish—nay, Barony at large—enjoyed union, peace, love, and good will towards all, and more particularly towards our clergy of every persuasion—the Priest and the Minister—the Protestant and Catholic sat together in the same house and room, and enjoyed the passing jest or argument (either moral or divine) alike: and if one happened to foil the other in argument, it was done with a good grace, and

still all was harmony. But alas ! how changed this scene of late years ! in a few years all was joy and harmony over emancipated Ireland, but our parish alone, which in those years unfortunately feels the very reverse—and all this owing to the conduct of the Rev. J. P. Lyons, our Parish Priest, who is denominated by every person—but those who know him best, his parishioners, whom he rules with an iron rod—to be an enlightened clergyman ; as ever since his first entrance into the parish, our union as parishioners has ceased, and we seem to dwindle apace in our former hospitality, good name, fame, credit, and reputation ; in fact our religion is changed, and we are sorry to say not for the best : for religion is not put into the heart of the hardened sinner, by any fear but that of God alone, delivered in courteous modest sermons or lectures, and not such as the Rev. Mr. Lyons preaches, who enters the House of God on Sunday, more like a field officer, in exalted rank and pride, coming to parade, than a clergyman of the Church of Rome coming to mass, where his poor chaplain, like a subaltern officer, is obliged to deliver his commands—and like reading the dreadful articles of war, rehearses a sermon to them, with threats of damnation more dire than those of Doom's-day book—calling every person present sinners at the beginning, telling them that they will be all damned, secondly,—and calling them all devils incarnate, at the end, and such like discourse, until at length, the principal part of the parishioners, tired of such language, or afraid of going to hell at once, are frightened, get cold in their religion and devotions to God, hoping (as threatened) for no salvation.

Besides this, he with pen and tongue from his altar, and in the public papers defame us, our ancestors, and ways, and if the fame of Erris for hospitality to the stranger and indigent was not so anciently and modernly well known, his words would be believed. But pray who made gentlemen of him and his needy family ? Unfortunate defamed Erris. A big nothing—an unlicensed public-house, great words, a school and scholars. But this rhetorical oratory, thus delivered from his altar, is not sufficient—from the pulpit, he assumes the bar and politics—so that he assumes the politician, lawyer, magistrate, and constable at once, regardless of his clerical functions ; as, instead of practicing or reading a humane sermon on Sunday, his study is to prepare and form a column for the newspaper, odious to the fame and character of some magistrate, gentleman, or public character ; while curses heaped on curses from the principal part of his sermon on Sunday, matters unfit for the demeanour or character of a clergyman of any sect or persuasion, laying aside the Church of Rome. And besides the penance imposed, when he calls the unfortunate penitents in chapel, (some of whom, perchance, approach him on their knees,) who have hitherto been deemed honest, respectable, good Christians, and well-conducted ; his first mode of disrespect and disgrace is a fulsome spit into the mouth or face, or perhaps sorer, but not worse treatment than that which the Jews gave our

Saviour ; and if they dare reply, or fly—if he cannot overtake them in his passion, may fling the Breviary after them, if he meets nothing else in his way to fling—or the penny offered, as too trifling, and cut the poor donor therewith, to the great shame, disgrace, and injury of many, and confusion of the flock at large ; while some performing his severe enjoined penances, are, after the performance thereof, confined to their bed, not for weeks but for months, to the great loss and injury of their unfortunate starving families.

We have many good and respectable schoolmasters in the parish, who refused teaching free-schools heretofore, whom he denounces for no reason at all, and are forced to live idle, while others, brought in by Mr. Lyons himself, after trial of a long series of time, doing no service, were dismissed by himself, (for Erris, though secluded, has ever been an enlightened country.) Although our good teachers are walking about, doing nothing, our parish chapel, is by turns, employed as the work-house of the slator, cooper, sawyer, carpenter, and thresher, with his consent ; while our children are thus neglected—the only thing we feel most for. He got a railing made round the altar, and forms for the greater part of the rest of the chapel, and charges five shillings for every individual inside the railing yearly, and two shillings and sixpence for those on the forms ; and those unable or unwilling to pay this are disrespected : he ordered and tore down the pew allowed and erected by one respectable man, James Cosgrave, of Binghamstown, (whose family's character and his own is well known to every clergyman ever known to reside in Erris,) for the use of his little family and wife, (the daughter of a respectable Protestant,) to hear the word of God in, which was thrown out of the chapel, merely on account of becoming the agent of Major Bingham, on the complaint of a man named Collins, whose family or himself have not, for many years past, had the benefit of confession or sacrament, through premeditated malice, as aforesaid.

And further sheweth that many married women, respectable in name and character, for want of being able to pay such heavy dues as hereafter set forth or for some alleged family fault remain unchurched from two to more years past, and still, while those bearing illegitimates are churched through the favour of those for whom they bear such children. He trespasses on the world, but who dare trespass on him ; for the sheep, the lamb, or any other beast trespassing on any of his farms, must pay double trespass ; or a person going to do the penance enjoined by himself across any of his fields, which they were wont to cross, and was their way—shoe, stocking, and perhaps hatless as enjoined, are hindered and reproved, among whom one going a horse path-way, his mare was taken, impounded, and not released till his mare picked foal. Good God ! compare this with the benevolent conduct of him whom he would denominate tyrant, before the hall door of whose

castle, the barony at large might come on horseback, and leave their horses in his lawn or meadow, whilst warrants or summonses were granting, perhaps, the whole day long during their examinations, and who dare impound such cattle? Erris at large is defied to deny this? Or did this tyrant (denominated only so by him) allow any of Major Cormick's tenants' cattle just nearing his estate to be impounded by his herds? No; his words were—"If I keep a dog he must bark for me—my herds must keep them off." But what avails this to his enormous salary, and taxes on the poor, which in some instances excel some creature's yearly rent, and taxes to king and country, viz: his annual salary on man and wife three shillings and two pence, and for every child ten years old in that family (for they must go to confession at that age,) one shilling; together with twenty sheaves of oats or barley or one shilling and six pence in lieu thereof; and if one sheaf of the bart is deemed bad, the residue is kept, and the one and six pence charged with all; besides duty work to do his spring harvest, and other jobs, and offerings at Christmas and Easter, collected by collectors in each village, and those who don't pay are called out in the flock; and yet what is more ridiculous—the creatures who cannot afford to pay those dues and demands, are forced to work for his farmer and builder at one job or another; and others are paid by him for their labour by the charity given by England to support those unfortunate starving subjects or slaves rather; and accounted for, paid by his salary; for every baptism from 3s. 1d. to 3s. 4d., and this for twins as well as one; and a candle, which, if it should be a half-penny one, is kept, and a penny charged besides, although all christenings are performed in the chapel or house adjacent in open day, perhaps many at once, except for such persons as those for whom respect is due, or from whom some benefit derives.

Legacies for the dead five shillings, and one shilling for extreme unction as often as it happens, besides two shillings and six pence for blessed clay, and no corpse dare be interred without it, although the priest wont go to bless the grave, but sends this clay by some lay person; as if this consecrated ancient burying-ground and grave-yard, and the clay thereof, was not as blessed as clay sent in this way by those renounced denounced sinners—Marriages from one pound eleven shillings and six pence to three pounds each, as solvent or adequate to pay, and holds some in suspense after the match is concluded, to the great shame, risque, and danger of the young woman, for some months, until this and other dues aforesaid, not only due by the young couple, but their kin on either side, as far as known is fully paid to an extent unbounded and hitherto unheard of. He proclaimed to us on the Sunday before Christmas-day, that on that day, midnight or first mass would be given in both ends of the parish, instead of reading mass in the parish chapel in Binghamstown, in the centre of the parish. But what was done? After disappointing the flock, the

Rev. Mr. M'Dermott gave first mass up stairs in a private room, within a few paces of the chapel in Binghamstown, to please one individual, and never announced it to the inhabitants of the town, while some, who by chance heard of it, were forced to stand out in the street under the drifting snow, and numerous other matters too tedious for insertion.

In short, my Lord, the short and the long of our tale is, with due respect to your Lordship, as our only acknowledged ruling pastor—let us have rules, laws, and regulations: first—as to demeanour in our church by our officiating clergymen; and secondly, such behaviour towards us as we deserve, agreeable to the laws of our adjoining parishes, and such as our holy church allows—“one God, one church, and one baptism,” and why not one law in every parish? We and our ancestors are and had been Roman Catholics before the iron-ruling hand of this tyrant (whose ancestors had been otherwise,) knew aught about us. We therefore now humbly crave your Lordship's redress as a mediator between us and our nominal parish priest, the Rev. J. P. Lyons, and that you will deign to order our diocesans, who have refused to hear our petitions against the Rev. J. P. Lyons, to send us a sober, steady, humane, moderate clergyman, such as the Rev. Mr. Kelly, the Rev. Mr. M'Nulty, the Rev. Mr. Hopkins, or the Rev. Mr. Mallowney, sen., our adjoining parish priest, whose care will be his flock, and not his farms and stocks—a man of sense and humanity, and not a young man with a train of brothers, sisters, and other relative paupers at his heels, to be enriched by his avarice and oppression of the poor, and defaming us and our country afterwards, as our present parish priest does, when at home, (for he is often from home, and his duty is done by two coadjutors at a trifling salary, calling us thieves, robbers, &c. &c., matters to which we have not been accustomed; but who knows better than our Father Confessor what we are? But we will take care never to confess to him again, to be thus divulged and upbraided publicly for our crimes, so that the fact and truth is, if your Lordship does not order us an exchange of a clergyman, as our own Bishops, who are bribed by him, 'tis said, and will not, we must do without such duty in future, as after such conduct, the Rev. J. P. Lyons and Memorialists can never be properly united. Under such harassed and untoward circumstances, your humble and respectful Memorialists humbly crave such redress in the premises as the nature and circumstances of their case requires, and your Memorialists (as in duty bound,) will ever pray.

January, 3, 1831.

Here follow the signatures of One hundred and thirty-four individuals.

THURSDAY, 12TH DECEMBER.

SECOND DAY.

At the sitting of the Court, Mr. Bennett rose and addressed the Jury for the Defendant—P. Lavelle.

My Lord and Gentlemen of the Jury—On the part of one of the defendants, and the most material person on this record—I mean Patrick Lavelle—it is my duty to lay before you some observations to defend him against this action, brought by Mr. Lyons. I shall do so with a double view, either of showing you that he is not entitled to any damages at all, or, should you be of opinion that there must be a verdict against him, that he is only entitled to the smallest damages it is in your power to give. Gentlemen, I have certainly a good deal of difficulty to encounter; I have to meet in argument, and contend in the examination of witnesses, with one of the ablest men I have ever met with in my professional experience—a man I have ever found greater difficulty in standing up against, than against all the rest of the professional men put together. He is the very cleverest man possible, to have engaged in a bad cause; and an excellent one in a good one. He has such a peculiar power of mind—such great strength of body, that there is really no withstanding him, or contending with him—by his physical strength he carries every thing before him—he puts down a person of weak nerves; and being so dexterous, he has an equal effect on those who have stronger powers; and, above all, his skilful and peculiar manner of forcing into the Jury-box, all kind of illegal evidence, against the wishes of his opponent, or his endeavours to prevent it, renders him an over match for any of his cotemporaries. If I was a young man, I should say of myself, compared to him, that I was, “*Infelix puer atque impar congressus Achilli.*” I cannot but admire ability in any man in his profession; it is really pleasing to see it in any human creature: it would, however, be delightful to see it always tending to promote good. Though I admired much of his speech, I wondered how he would venture to commence such a case, with such an extraordinary preamble, filled with praise of his own client. Now this is an action brought by Mr. Lyons against Major Bingham and others, for a libel written by them. But what do we find? Instead of going at once into the case, a deal of time is expended in stating that Mr. Lyons had built light-houses on the coast, and chapels in the country, and that he was wholly occupied in these good works, and in getting in charity money for his parishioners; and all this is made a boast of, merely to give you, Gentlemen, a favourable impression of Mr. O’Connell’s client. But what had it to say to the case? I cannot possibly imagine—and even if it had, I have

since enquired into those facts so boastingly set forth, and I find that the light-house built on the coast of Erris, was built by Government, on an island belonging to Major Bingham himself, and at the suggestion of quite a different person from Mr. Lyons; and that not only as to the chapel, but also the house in which this grateful priest resides, one was a gift from the Defendant, Major Bingham, and the other is held at a nominal rent from him; so that the praise bestowed yesterday on this wonderful good priest, reminds us of the praise we have read on a bridge of another good man—

“ Who of his great and wonderful bounty,
Built this bridge at the expense of the county.”

But Mr. O'Connell does more—after bestowing the most unbounded praise on his client, he would wish to swell the damages against Major Bingham, by stating the great distress that was in the country—that the people of England subscribed to relieve it, but that Major Bingham did not give one shilling to it. We may easily imagine very good reasons for Major Bingham not wishing to trust the catering of his alms to Father Lyons. But Mr. O'Connell has further stated, that a Protestant clergyman of his neighbourhood had been removed from the commission of the peace; and all this, too, is told merely to heap damages on Major Bingham. But, Gentlemen, I will lay before you the facts belonging to the case, and, with your assistance, I will clear away all these unnecessary and improper topics. I call upon you, therefore, to lay aside every thing which is extraneous to the enquiry before you—I call upon you to look at the real character of the publication—I implore of you to lay aside those prejudices which Mr. O'Connell would excite in your minds; and you will find that this is an action which should be discountenanced by you totally, and that you will feel that you should not have been troubled with this County of Mayo squabble, to the postponement of more important questions of property; you will see that it ought to have been settled in the county where the parties and witnesses are known, and that a City of Dublin Jury should never have been annoyed with it. In whatever point of view I look at the case, the afflicting picture of the state of the country which it exhibits, is quite disgusting. Here we have a landlord possessed of a large tract of country, with a Roman Catholic clergyman in it, who, by his own statement, is doing every thing but promoting the peace of his flock; on the contrary, he is completely disturbing it, for we have here one fact, proved beyond question, that one hundred and thirty-six of the parishioners of this Reverend Father, have signed a memorial complaining of conduct utterly unworthy of any clergyman. We find it is the Plaintiff's case, that one hundred and thirty-six of his own Roman Catholic parishioners could have been prevailed upon, by their landlord, to fabricate a false memorial and state-

ment against him. This Reverend Father tells you himself, that there were found one hundred and thirty-six parishioners of his own persuasion, in his own parish, who would put their hands to a falsehood from some fear of their landlord. If this be so, it surely speaks badly for the conscience of these parishioners, particularly as being forwarded against one of the parish priests of the Roman Catholic communion, whose influence over their flocks is so well known, and who ought to be so much looked up to by every one of his parishioners; but whatever the influence proceeds from, the allegation is, that one hundred and thirty-six of these parishioners had put their hands to a complaint against Mr. Lyons for mal-practices. Is there one amongst you, Gentlemen, who is not under the impression, and has it not been conveyed to you, that all this complaint was got up under the influence of Major Bingham, and merely to commit an act of vengeance upon Mr. Lyons? but I wish to shew you the difference between statement and facts, in order that you may come to a rational and honorable conclusion, between these parties. First, then, we come to the fact of the memorial; and as to the Defendant, Lavelle, I cannot deny that his hand writing is affixed to it; it has been proved by witnesses, but I say the signature to it, was the signature of a parishioner, put to a memorial, complaining of his parish priest, to the proper tribunal. As to the other paper, it is not produced; I cannot admit that its existence is satisfactorily proved; and it is a curious circumstance, that the memorial is kept with such scrupulous care, but that this letter should not have been produced at all. So far as the memorial goes, the manuscript is produced; and so far as the parties say they have the letter, they shew it in the newspapers; but I say, gentlemen, the letter itself is not produced. His Lordship, however, has said, that the evidence is for you to determine, whether it is the identical paper which had been inserted. The memorial, however, is here, and I beg you will always keep in your recollection that the letter is not forthcoming. Let us see what this memorial is: the person for whom I am concerned, lives in the parish to which the Plaintiff had been appointed. This poor client of mine happens not to have been born to a fortune; he is of humble rank—he is a kind of under agent in the country, necessary for collecting the rents; but he has been described by Mr. O'Connell, according to the language of modern liberalism, "*a multifarious scourge*"—a wretched creature made use of to oppress the poor of the country. If slander is complained of by Mr. Lyons, I am sure it is evident that in *that* he is more than a match for us, when he comes to instruct his counsel to state what my client is; but if that poor man had collected *other rent* than Major Bingham's, he would not have been so persecuted, or so represented before you this day. Pray, are the landlords in Ireland not to have their rent at all? Some persons think that this event is coming about. This principle is, in

modern times, called liberality. The newspaper doctors we had here, Bole and Feeney, have told us almost as much. But this poor Defendant is called a "multifarious scourge!" What did he do? But sign a petition to this priests' superior. Even on liberal notions would he have been subject to an action for that? But the learned counsel begins with this term of reproach, and tries thereby to influence the jury, forgetting that, with you, such an attempt must be vain. Now this Defendant has put on record here, a justification of part of this libel, and says thereby, if you shall consider it libellous, under the circumstances, I call on you, on my pleading, to say whether it be not true, and whether I do not fairly justify it. And who is proved to have written it? Owen Henaghan; it was he, if any one, who gave it its false character. Did not this witness wish you to believe that it was signed solely through the influence of Major Bingham; but what more did he say, "I went home and I deliberately contrived to induce upwards of one hundred of the parishioners to sign this document, which I knew at the time to be false; and thus I implicated them with myself in this fraud." That is his own account of what he had to do with the transaction. Now we come to another witness, *Dickson*, whose name also appears to the document, and who attempts to give some account of it. Observe, the case made on the other side was, that all the tenants of Major Bingham who could be influenced by him, by means of his taking proceedings against them for non-payment of their rent, *alone* were the persons who were induced to sign this memorial. But it turns out, that the one hundred and thirty-six persons who did sign it, were not all the tenants of Major Bingham, at the time; and although at the time Dickson refused to sign the memorial he was not proceeded against for his rent at all, or until long after this, and very lately; and as the Major so lately proceeded against him, it must be presumed that he could not be much in dread of any thing this witness could truly depose on the subject; and yet this fellow now has the hardihood to swear as you have heard him, and to tell you, that the paper was signed by him in Major Bingham's presence: but it will be proved to you, Gentlemen, that the place where he signed it was four miles from Binghamstown, so that we find that the first witness is the fabricator of the entire, and therefore should be considered incompetent; and the second comes to swear falsely as to the circumstances of his own signature, and this man I will convict of this and other deliberate falsehoods. There is another witness of the name of Tigue, and he comes to prove that Major Bingham wanted him to sign it, and offered to make him a care-taker, and give him three or four acres of ground. Now this fellow only comes forward to prove that he did *not* sign the memorial, and according to his own account, he had a great struggle of conscience whether he should or not; and he stated that he told the Major he would go home and consult his friends, but he never, he says, signed it.

Daly, the next witness, also refused to sign it; and who is he? According to his own account he had been distrained by Major Bingham for his rent. Oh, says he, I don't owe any rent; "*Nemo testes in propria causa*," says the law: but we shall see whether he owed the rent or not, for which he was distrained. Of all the rest of the memorialists, from 130 to 136 in number, not one of them, notwithstanding the document has been in the possession of the Roman Catholic clergyman for nearly two years, not one of them, I say, though all are his parishioners, have come forward for the purpose of condemning it, or stating it was a fabrication, and only two out of the whole 136 have come here to say, that it was not put forward by them as a cause of complaint. It is a document which every one knows that any parishioner has a right to prefer, if it is a *bona fide* complaint; and there are only two names to it; those of Henaghan and Dickson, one, according to his own account, is found signing it with disgrace to himself; and the other saying he did it under the influence of his landlord and this man now comes forward to give this evidence to revenge himself on that landlord for having lately evicted him. But Mr. O'Connell has laughed at the rough manner in which the memorial is dressed up. Now I consider it exceedingly expressive. You cannot expect much from a country clerk; but it is in tolerable good style, and there is a great deal of feeling in it. It states, that "from time immemorial, their hitherto peaceable, friendly, and benevolent parish, nay, the barony at large, enjoyed union, peace, love, and good-will towards all, and more particularly towards our clergy of every persuasion; the priest and the minister, the Protestant and the Catholic, sat together, and all was harmony."

This may be rough, but the sentiment is good, and I should not be ashamed to be the author of it myself. Again, he says, "Alas! how changed the scene of late years. In a few years, all was joy and harmony over emancipated Ireland, but our parish alone, which, in those years, unfortunately feels the very reverse, and all this owing to the conduct of the Rev. J. P. Lyons, our parish priest." Here is what Henaghan drew up as a picture of the parish, he who, by his own account, fabricated a falsehood, and all this he would make out to be the statement of the landlord! but take it either way, whether it is the statement of the landlord or of the parishioners—what a miserable picture is it of a parish and its priest! Beyond all question there was a great hostility between two persons, who should have joined heart and hand to promote harmony; but here the priest accuses the landlord of tyranny; his counsel did so in his presence here, he called his driver "a scourge." I should be glad to know what Mr. Lyons had to say to this; I should think it extremely wrong of a clergyman of my creed, were he to espouse the quarrels of the tenantry with the landlord; their moral and religious duties should be his only care, and he should not go out of these duties, and no doubt,

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as long as he should think it right to interfere in temporal matters between landlord and tenant, there can never be any hope of seeing peace or regularity in a country; a tenant will often complain even of the kindest landlord, and if the clergyman interferes, he can't be on terms, as he should be, with both parties. This memorial unquestionably accuses Mr. Lyons of acts unbecoming a clergyman of any persuasion; it charges him with extorting excessive dues from his parishioners, with making an improper use of the Roman Catholic Chapels, with permitting artificers to work in them, and housing cattle in them, it charges him also with admitting some persons to rites from an improper partiality, and of withholding them from others out of vengeance, and with cursing and damning people, for receiving rent for Major Bingham; and further, it charges him with this, that when a person went up to him, when he was administering the rites of his religion in the chapel, he commits the impropriety of spitting publicly into the face of this unfortunate person; and what would the other side have you believe? That all this is a fabrication; but for what purpose? There must be a Roman Catholic Clergyman in the parish, and what a miserable and disgusting picture, at all events, is thus presented to us of this parish. But, as I said to you, the priest had this document for two years, and no one, I am sure, will say, that *he* could have been under any difficulty in procuring evidence favourable to himself. You have heard the amount of what they have said. Mr. O'Connell, when he was stating respecting the spitting in the face, certainly admitted that the circumstance had occurred, but said, "that it was only done on one occasion, and from disgust at some previous conduct of the individual he spat upon;" and he then brought forward a doleful story of a man who cut off the hand of a dying or dead man, for the sake of a rope, he held in his deadly grasp. Now pray let me ask, who told him this story? The jury are aware of this charge, and where is there a syllable of proof of this heart-rending statement of counsel, where is there any proof of this melancholy story of the dead hand, where, I say, has one word of it been read to you or examined into, or shown you in any proof, however slight? Now, if I should tell you any thing which I shall not prove, I call on you not to attend to it, and I will add, that Mr. O'Connell had no right to make statements which he did not afterwards attempt to prove. But though there has been no proof whatever of this part of the subject, let us for a moment take it as a fact, without at all admitting it; here then is a poor creature, guilty of the combined crimes of robbing and murdering, he goes into the temple of God, to the priest, he was just going on his knees, to make confession, and seek for atonement as a penitent, when the priest spits in his face; that is Mr. O'Connell's account of the matter.

Mr. O'Connell—Certainly not.

Mr. Bennett—Then I mistook him most grossly—did he not say it was in chapel?

Court—I thought counsel had impliedly admitted that the fact took place once, but that if it did, it was under circumstances of plunder, calculated to excite indignation to a degree, which was considered might excuse such conduct.

Mr. O'Connell—I conveyed myself exactly as your lordship, it appears, understood me.

Juror—Mr. Bennett was right so far, for it was stated that the man was on his knees, but not that he was at confession.

Mr. Bennett—Be that as it may, counsel has, however, committed his client, by his admission, for I will prove to you that Mr. Lyons did this disgusting act *more than once*, and that too, to a person on his knees, and let Mr. O'Connell, if he can, prove that the shameful act was perpetrated against a person, charged with cutting off a man's hand; if I prove this to your satisfaction, Gentlemen, shall I not be sure of your verdict? But Mr. O'Connell says that he found this stated on the record, and then says, "Oh! this is all a professional trick, no one knows better how to practise such tricks than our opponents, they have put in bad pleas, but we cannot demur to them, and why? because a demurrer would admit the facts, and then Mr. Bennett and Mr. Jackson would read them against us;" but who, I ask, told him that any one, at this side of this cause, was such a professional trickster? I say, a barrister who would act so, intentionally, would be a fabricator of false evidence, and a disgrace to his profession; but if such a man could be found, doing such a thing in this hall, the learned judge would stop him, and would say, "he had no right to take any such advantage," but, however, the fact is, when counsel found that we were likely to produce witnesses to overwhelm his case; he then says, "oh! he is not afraid," and he looks then twice as big as ever he did. No doubt he will watch and torment the witnesses with cross-examination; [I hope I shall never be under his cross-examination] he will, probably, try to frighten our witnesses, but he may bully us, he shall not frighten us. I fear his talent, I own, he is a person, we all acknowledge, of great physical powers, but I am not afraid of bringing forward all our witnesses, even before him—he shall not break down the evidence of men, who have the manliness to come forward, and with truth swear such facts against their parish priest as you shall hear; they may be tormented for so doing, counsel may try to coax them, he may exercise his talent in any manner he pleases on them, but, gentlemen, you shall see them in that box, and I know you will believe them; you will see their statement, on the face of it, is worthy of credit, is manly and fair—and when you will see all this, there will, I think, be an end of Mr. Lyons and his case. But I will shew you more, I will prove that this priest denounced and cursed every one who would collect rents for Major Bingham, and if all these things are proved, what

ought to become of his action—will you not send these parties back to the County of Mayo to settle their disputes among themselves, and tell them that they must not expect to have a respectable Dublin jury troubled with them. The defendant, Lavelle himself, is not permitted by this man to receive the rites of his church, and why? because he is the multifarious scourge of a relentless landlord, who would not give one penny to his tenants when starving, or even potatoes which could be eaten by his pigs, while this benificent priest went to England to beg alms for them, to be sure, we could not investigate his accounts on this alms-getting mission, but according to the story he told you, it would appear that he had got so wonderfully rich in 1830, that he was actually enabled to distribute £800 of his own money on this charity, and which he will probably say is still due to him. So, here we have a poor parish priest, of a poor tenantry, driven and starved by their landlord, unable, of course, to pay one shilling to their priest, and yet we have him saying he advanced £800 of his own money for charity for them, wishing to make it appear that he accounted with some charitable committee in this country, who, however, knew nothing of the extent of his collections for this charity in England. All this story about the advancing of the £800 is, no doubt, mere statement, but on the face of it, is one word of it credible? No, gentlemen, it cannot be believed by any one of you, and when it will be further shewn to you that this charitable clergyman has determined to lay the landlord's town of Binghamstown waste, what will you think of him and his conduct in this parish? What! a Roman Catholic clergyman acting thus in his parish, where 136 of his parishioners complain against him, and two of them only come forward to repudiate it; what then, I say, must be your opinion of his case, you can have no doubt, that a complaint had been made to the Roman Catholic Bishop by his parish, and it is said, that there has been some enquiry upon it, but is there any evidence of any proper investigation into all the circumstances of it, and suppose such had taken place, and that this priest had been cleared upon such investigation, was this action for damages also necessary, to leave his character without stain? but I maintain, there was no such investigation, and surely any man, against whom there has been such charges, ought first to have desired a full and not a mock investigation, and that before the proper tribunal, where alone it could have been properly inquired into, but no such investigation would, it seems, have satisfied the plaintiff, such a fair and proper inquiry would not have given him an opportunity of hearing his counsel, in statements and speeches, impeaching and inveighing against the conduct of the landlords in Ireland; such a dainty opportunity was not to be lost—but, gentlemen, you must see that the complaint contained in this memorial has been prepared by these parishioners against their priest, under circumstances which must induce you to believe, at least, that they considered they had good

ground for making it. The complaint in that memorial has been the subject matter of this action; it has not been proved to have been false, you have every reason to believe it was true, but, in any point of view, I feel that you will, one and all, be of opinion that it is an action which should, at all events, never have been brought into these courts, and I know you will treat it accordingly.

Mr. Bennett having concluded, counsel for the other parties differed on the mode of proceeding next to be adopted, Mr. O'Connell insisting that if there was to be an address for the other two defendants, now was the time for it, Mr. Jackson and Mr. Litton maintaining that the evidence as to Lavelle's case should first be completed.

The Court considered the former was the usual mode of proceeding, and more conformable with principle, and decided against Mr. Jackson, who accordingly commenced the case of the Messrs. Bingham.

Mr. Jackson—Gentlemen of the jury, I say it with great sincerity, that I always bow with satisfaction to every decision of his Lordship; and though in this instance I feel that my clients may in some degree be prejudiced by the order which has been just pronounced; yet I am convinced that the decision has been made with a view to the furtherance of the ends of justice, and that we shall have a full, fair, and impartial trial in this case. I shall therefore, without further preface, submit to you a few observations on the part of my clients, Major Bingham and Mr. William Bingham, in order to convince you, that they ought not to be visited with damages in this action at the instance of the Rev. John Patrick Lyons; and in doing so, I shall apply myself chiefly to the case of Major Bingham. You, Gentlemen, must be already apprized, that the several defendants here, stand on quite different grounds. First, as to their pleadings—The two Defendants for whom I am concerned, have not put on the record any plea of justification; their plea is only that they are not guilty of any libel on the Reverend Plaintiff; they deny that they are publishers of the matter which is here alleged to be a libel; and they insist, that even if the publication thereof be established against them, yet, that it does not partake of the character of a libel. I am not entitled, for my clients, to take the ground, that the publication contains matter which is true; that defence is open to my friend, Mr. Bennett, for his client Lavelle, and he has told you that he will avail himself of it, and will bring forward evidence to satisfy you that the several statements in the publication are true. But, Gentlemen of the Jury, not only do the two Defendants, who are my clients, stand on different grounds from the defendant Lavelle, in point of pleading, but you will observe that their cases differ from each other. My observations are addressed to you, subject to the correction of his Lordship; and I hope he will have the kindness to set me right in case I should be mistaken in any legal proposition which I may have

occasion to submit to you; and that he will prevent me from unintentionally misleading you upon any matter of fact appearing upon the evidence, of which his Lordship has taken an accurate note. I say unintentionally, because, I assure you, it is not my intention to do so. Gentlemen, I feel fully warranted in saying, that as against Major Bingham there is no *direct* evidence whatever to bring home to him the fact of causing this publication in the *Mayo Constitution*, I feel fully warranted in that proposition; but as I believe it is the intention of the very able counsel whom you have already heard for the Plaintiff, again to address you for his client, I think it necessary.—

Mr. O'Connell—I do not intend to do so.

Mr. Jackson—I am sure I am very glad to hear that. But as, no doubt, whatever counsel shall address you for the Plaintiff, will endeavour to establish publication against Major Bingham, it becomes my duty to examine the evidence on that subject in detail, for be assured, Gentlemen, of the Jury, they have no small object in making Major Bingham amenable in this action. He is the only Defendant here of any property. One of them is a man obviously in very humble life; and there have been some observations thrown out by way of disparaging one of my clients. It has been said that Mr. William Bingham can never be the *heir at law* of Major Bingham; but I will go farther and tell you, that he is not a subject for any substantial damages, so that the managers of this action have abundant motives prompting them to endeavour to hook in Major Bingham; they have the motive of cupidity, and the further motive of gratifying their hostile feelings against him. For, Gentlemen, it will be found that Major Bingham is much "more sinned against than sinning;" and the fact is indisputable, that the Rev. Plaintiff entertains a malignant hostility against him. Have you not already had sufficient proof of this? You heard the language of the learned gentleman who stated the Plaintiff's case—you must have observed his efforts to represent Major Bingham, wherever he spoke of him, as a very demon incarnate. Acting, no doubt, upon his instructions, he exhausted every term of abuse which our language affords, with reference to my client; whilst on the other hand, he described the Rev. John Patrick Lyons as a perfect angel of light. And why did the learned counsel do this? Was it to lead your minds to find a verdict according to the evidence? No; but to prejudice you against Major Bingham, and to induce you to draw this inference, that where two persons were so contrasted, and so opposed to each other in the country, a libel being published against the one, it most probably originated with the other. But, my Lord, I would respectfully submit, in point of law as to this publication, that if it were a *bona fide* memorial, got up by the Roman Catholic parishioners of Kilmore, complaining of their parish priest to the competent authority, namely, their bishop, it must be considered a privileged communication.

If, for example, an officer be complained of to the Horse Guards, however it may reflect upon his character, there is authority to shew that such complaint should be deemed a privileged communication.

Court—No doubt you are right, provided it be done *bond fide*; but whether it be *bond fide* or not, may be partly evidenced from the language of the document itself.

Mr. Jackson—I quite concur in your Lordship's observation.

Mr. O'Connell—A Roman Catholic might have a right to make such a privileged communication, but what has a Protestant to say to it?

Mr. Jackson—I am now considering the document itself, and I ask who were the Protestants that signed this memorial? I hear a muttering near me, that there were some; I assert there was not one Protestant amongst the whole one hundred and thirty-six whose names are subscribed to it. They are all Roman Catholics who make this complaint against their paragon of a parish priest, as he is described by Mr. O'Connell. I don't say that such a privileged communication ought to be published in the newspapers. No; being so published it is no longer privileged. Members of Parliament, who frequently assume ample liberty for their tongues, and who enjoy an almost unbounded privilege within the walls of their respective chambers, cannot, with impunity, publish such speeches afterwards. So that taking this memorial *per se*, as a privileged document, I freely admit there is no privilege for publishing it in the newspaper. I would follow this with another observation in point of law, and it is this, I conceive that if the tenantry of a Protestant landlord have just cause of complaint against their parish priest, such tenantry may fairly seek the advice of their landlord, and that he would be justified in upholding the cause of his oppressed tenantry, and in assisting them to obtain justice from their bishop, and this though they should be of a different religious persuasion from himself.

Now, Gentlemen, permit me to make an observation to you on another topic, and that is, as to the venue which has been chosen in this case. Why, think you, has it been laid in Dublin? Why should it not have been laid in Mayo, where the characters of the parties are all known? Is the character of Major Bingham, or of Mr. Lyons, better known in Dublin than they are there? No, Gentlemen, the fact is not so. But the Rev. Plaintiff calculated on bringing his action where he might be lauded to the skies by his counsel, and where the praise would not be known to be wholly undeserved. That could not be attempted in the County of Mayo. "No," said the Reverend concoctor of this action, "we will go to Dublin, where the people know nothing of our pretty doings in Mayo—where our counsel may be primed and loaded to the muzzle with panegyrics on our exemplary conduct and benevolent character. We will, moreover,

insinuate that it is a party case ; and, perhaps, we may get such men as Mr. O'Gorman, or the Mr. Meara's on the jury, and no doubt they will find for us against such a monster, as we will represent Major Bingham to be. But, above all, we shall have Mr. O'Connell for our counsel in Dublin ; he does not come the Connaught circuit ; and, no doubt, he will bestow all manner of praise upon his friend, the Rev. John Patrick Lyons. And thus with O'Connell for counsel, and O'Gorman in the jury, we cannot fail of a verdict

Gentlemen, what a hopeful speculation is this. The Plaintiff knows little of you if he entertains such an expectation. I do not mean to flatter you when I say, that I would not desire to see a better jury empannelled than that which I have the honor to address ; and I rejoice that, *in this case*, we have a jury composed of gentlemen of different religious persuasions, convinced, as I am, that they will find their verdict according to the evidence—agreeably to the solemn oath which they have taken—regardless who are the parties, on the one side, or upon the other. Gentlemen, you are called upon by the Plaintiff in this case, as I have already said, to infer that Major Bingham has been the publisher of this alleged libel, without a particle of direct evidence to affect him, but from a variety of extraneous topics which have no proper connection with this case. The Rev. Plaintiff has drawn largely upon his imagination, for materials to instruct his counsel. Amongst other things you were told that Major Bingham had been a magistrate of the County of Mayo, and that his son had also been a magistrate, and that Mr. Lyons had made such representations to the Government against them, that they had been dismissed from the magistracy ; and said the counsel, "*hinc ille Lachrymæ !*" Gentlemen of the Jury, I meet that statement with a flat denial. Those who so instructed counsel, have put forward what they must have known to be an absolute falsehood. I state it boldly, Gentlemen of the Jury. Did you hear a particle of proof in support of that scandalous allegation ? Not one tittle ; and why ?—because the fact was otherwise. It was a vile and slanderous invention, and that, I regret to be obliged to say, to the knowledge of the Plaintiff himself.

Major Bingham is a gentleman of extensive landed property ; he is of an ancient and noble family ; he had been in the commission of the peace for three adjoining counties, Mayo, Sligo, and Galway ; and if he had been turned out of the commission for Mayo, by the Government, for misconduct, as is alleged, I ask you, would he still have been continued by that Government in the commission of the peace for the counties of Sligo and Galway ? He has, I admit, ceased to be a magistrate of the county of Mayo ; and why ? Is it because he has been dismissed by Government on the complaint of Priest Lyons ? No, the fact is, that the Marquis of Sligo, who is Lord Lieutenant of the county of Mayo, with whom rests the appointment of the magis-

tracy, considered Major Bingham being too far advanced in life to undertake the active duties of the office. His Lordship was desirous to have in the commission young and active men, who would undertake regularly to attend the petit sessions of the county. This Major Bingham was unable to do, from age as well as infirmity. On the death of the late king, all such commissions expired, and the Lord Lieutenant of the county retained on his list, for renewed commissions, such persons only as he could reckon upon for constant and punctual attendance at the sessions. Such was at least the ostensible ground for the omission of Major Bingham's name from the magistracy of Mayo. I am bound to believe it to be the real ground, and if it were so, it must be acknowledged to have been adequate and satisfactory. It has been said that it arose from electioneering or political differences. I, for one, cannot believe it. Until the contrary appear, we are bound to give the noble lord credit for purity of motive in the discharge of the important trust confided to him. But, Gentlemen, one thing is certain, that my client is to this very hour a justice of the peace for the counties of Sligo and Galway; and that the statement put forward by the Plaintiff, through his counsel, is utterly false, and the inference sought to be deducted from it is equally unfounded—that Major Bingham caused the alleged libel to be published in the *Mayo Constitution*, to avenge himself of the Reverend Plaintiff, by whose successful complaint to the Government his name had been erased from the list of the magistracy. But, Gentlemen, the learned counsel went on and said, that Major Bingham was a perfect *Caleb Quotem*, he filled so many offices and discharged so many functions when Father Lyons came to the parish; and that the priest had shorn him of all his honours, his employments, and his perquisites in the county of Mayo; and the counsel was instructed to boast, that nothing was now left him but his estate. Gentlemen, I entertain no doubt of the good intentions of his Reverence towards my client; I dare say he exerts his good offices to the uttermost, and the evidence in this case will prove that it will not be the fault of Priest Lyons if Major Bingham shall not also be defrauded of his estate. If such be not the intention of the Reverend Plaintiff, why are the wretched peasantry excited to acts of hostility against their landlord? Why are the altar and the pulpit desecrated by political discussions? Will it be believed, that this man, filling the station of a minister of religion, has had the audacity to denounce Major Bingham and his family in the parish chapel! Will it be credited, that in the house of worship, erected on my client's estate, in the midst of his tenantry, built on ground which was given by him for the purpose, gratuitously; by him, of whom this grateful priest instructed his counsel to say, that "he would not give a potatoe to one of his tenants if it could be eaten by one of his pigs."—Will it be credited, I say, that Father Lyons has dared to use such language in such a place, with regard to the

resident proprietor of the soil, as this—"There is a family in this parish, who, if they do not desist from annoying me, I will make Binghamstown a desert, and cause grass to grow in its streets." Is this the return my client receives for his mistaken liberality? I have told you that he gave the ground on which this chapel was erected; he also gave £100 towards the building; the house likewise in which this truly exemplary priest resides at this moment, is erected upon another piece of ground, containing nine acres, which my client also gave to the Plaintiff, in perpetuity, at a rent nearly nominal! To what vile purposes has this Reverend clergyman devoted that house of worship, which, by him at least, should be held sacred. He, however, thinks it a proper arena for abusing all those whom he deems are deserving of his ill-will or malice, and from the altar he dares to publish such denunciations of Major Bingham and his family as those already stated. "He," forsooth, "will hunt the family of Bingham from the country, make their town a desert, and cause grass to grow in its streets." When such is his conduct to the landlord, who can wonder at his brutal and tyrannical treatment of the wretched tenantry who have the misfortune to excite his displeasure. Just conceive a man upon his knees, about to perform some of his religious duties before the congregation in the chapel, and this minister of religion thinks it decent and proper to rush upon this person, to seize him by the hair of the head, and to spit into the mouth or face of one of his flock, under such circumstances; and this is done, not to one individual, but to several on different occasions. I heard yesterday something said in extenuation of this brutality. It was alleged that it was not done when the poor man was on his knees, and that some gross misconduct had been committed by the individual which made the blood of this meek divine to boil up, that his indignation could only get vent by means of this spit. Something was said of the priest having been informed of this man having cut off the hand from some dead body for the sake of getting the rope which was grasped in it. But I ask you, Gentlemen, was there one word of all that affecting, blood-stirring story proved to you, and why was it not? Simply because it could not have been proved. It was one of those ingenious inventions of which we have had many other specimens—

Mr. O'Connell—I object to this statement of Mr. Jackson; we could not, as to his client, prove any thing, as he did not justify—

Mr. Jackson—I am prepared to meet this objection. The Plaintiff might have made the proof as against Lavelle; for Lavelle has stated, as a justification, this record. True it is, I did say that Priest Lyons spit in the mouths and faces of some of his people on their knees in chapel, because the fact is as I have said. This plea is on the file since March last, and the Plaintiff has had abundant time to prepare his proofs, if he had any excuse or

explanation to offer for such indecent and tyrannical conduct. But no such attempt has been made.

Court—It strikes me as if you, by pursuing this course, were extending to yourself this plea of justification, which is, in fact, Lavelle's, and not yours.

Mr. O'Connell—And Mr. Jackson is not counsel for Lavelle, but for persons who are merely denying that they are publishers, therefore Mr. Jackson cannot take advantage of Lavelle's pleading.

Mr. Jackson—I think I am plainly entitled to do so.

Court—It was considered by both sides that I was not wrong in stopping the evidence offered yesterday as to the Plaintiff's accounting for the charity money, although the Plaintiff's character is in some degree put in issue; but supposing the Plaintiff to be at liberty in this action to give evidence of antecedent good character. At farthest, such evidence is to be confined to general character, and is not to extend to evidence of particular facts, when there is no justification applicable to them on the record.

Mr. Jackson—This particular statement in the publication is justified by Lavelle; the other statement, as to the misappropriation of the charity funds, has not been justified, that makes the whole difference. I admit that my clients are precluded from proving the truth of these charges; their counsel, however, must be permitted to remark on every topic discussed by the Plaintiff's counsel in his opening statement, and to observe on the whole conduct of the Plaintiff in the cause and throughout the trial. He is only precluded from proving the truth of that which he did not justify.

Mr. O'Connell—I submit, and shall not further persist in my objection.

Mr. Jackson—Gentlemen, before I was interrupted, I was observing that the Plaintiff was warned by the Defendant, Lavelle's pleading that such a fact would be proved, and he had it open to him to prove, if he could, that it was not true, or to offer any explanation or qualification of the fact, if in his power.

Mr. O'Connell—I thought it better that I should waive the objection, and go into evidence on the subject in reply.

Mr. Jackson—But I must disabuse counsel, and tell him that he cannot hereafter go into any evidence on this subject, for he was apprized that this fact would be proved against his client, and he was therefore called on fully to prove his case, if he at all went into it.

Mr. O'Connell—With that you have nothing to do.

Mr. Jackson—Have I not? Where Mr. O'Connell has embarked us all in the same ship. Every Defendant has an interest in having the rules of evidence, and the due course of proceeding observed. Gentlemen of the jury, you have understood me, I am sure, notwithstanding these interruptions. I ask, is not what I have been describing gross and abominable misconduct on the

part of a man clothed with the clerical character? Have not his flock a right to complain to his superior against him? and can their memorial be denominated a libel, if it be drawn up and presented, *bond fide*, with a view to redress? and has not a landlord a right to help his tenants in forwarding their memorial, and obtaining such redress. But another irrelevant topic has been introduced most unwarrantably, in order to prejudice your minds against my client. It is said that Major Bingham did not contribute one shilling to the necessities of the poor on his estate, during the season of distress. It is not at all improbable that Major Bingham had very substantial reasons for not entrusting any of his alms to the hands of Mr. Lyons; but he was able, and was also willing to give, and he did give his tenantry the most effectual and valuable assistance during the time of scarcity. He did not give money, but he gave them potatoes, meal, corn, clothing, medicine, in short, he administered to all their wants; I admit, however, without the intervention of Father Lyons, so that what has been said of him on this point is quite a gratuitous aspersion. But, gentlemen, why was so foul and unwarrantable a slander uttered against him? Why was he said to be such a monster, that he would not give to one of his starving tenants a potato which would be eaten by a pig! I will tell you, gentlemen—

Mr. O'Connell—Let Mr. Jackson prove that Major Bingham subscribed one shilling to the subscription at the time of the famine, and I will give up the entire case.

Mr. Jackson—Have I not admitted that he did not subscribe in money, and is it not plain why he did not? but though he did not subscribe to Mr. Lyons's collection, he gave his assistance to the people in a much more valuable and effectual manner. What fine stage effect is now attempted by the learned counsels nugatory offer. His object is to divert your attention from the real question in the case. I early apprized the court and jury, that I did not come here with witnesses—that I conceive I am entitled to your verdict, on the plea of the general issue; that I stand here, upon the total insufficiency of the Plaintiff's case, and yet, the Plaintiff's counsel, who knows perfectly well that my client would not have been at liberty to offer evidence as to his subscriptions, that nothing of the kind is put in issue on this record, and that we could not, by possibility, bring witnesses now from Mayo to prove such matters, most *liberally* offers to let the case abide that issue. But, gentlemen, it is in order to poison your minds against Major Bingham, and, if possible, to get you to find against him, without evidence, that numerous topics have been brought into the present case, to which Mr. O'Connell did not, and was well aware, he could not, apply any proof. And now, gentlemen, let us examine the proofs which have been offered on the part of the Plaintiff; and, first, let me ask, what is the evidence of publication here, as against Major Bingham? Look to your notes, and

tell me, have you any evidence on them, that Major Bingham was the publisher? By whom was it proved? Was there one word said by any witness to bring home the publication to him? The first Witness, Feeney, proved nothing against him—he did not name or allude to him. Did the second witness (Mr. Vernon) prove it? No, he was only called, as it would appear, for ornament! to produce newspapers from the stamp-office, which were not and could not be read. Did the third witness (Bole) advance the case a step against my client? No—he said that he had never even seen Major Bingham; therefore, gentlemen, on the testimony of the three first witnesses produced by the Plaintiff, I call on you to show me one iota of evidence to prove that Major Bingham was the publisher of the alleged Libel in the *Mayo Constitution*; but, I confess, we have yet to come to another witness, who, if believed, would, by his testimony, supply a link in the chain of evidence which might tend to prove it, but if he be not believed, I defy the Plaintiff's counsel, in any way, to eke out a case against Major Bingham. You anticipate that I allude to the celebrated OWEN HENAGHAN! Can you credit that infamous witness, branded, as he was, in your presence, out of his own lips? A fit tool, indeed, to be resorted to, in the desperation of the Plaintiff's case, to fix upon my client a guilty participation in the publication of this memorial, for the purpose of putting damages into the pocket of the Rev. Mr. Lyons. I already apprized you, that nothing would be gained by this action, unless the Major could be included in your verdict. If this trial took place where it properly ought, in the County of Mayo, that wretch would not be listened to in a court of justice. We shall produce to you a witness of the first respectability, Mr. Ellis, the late chairman of the Quarter Sessions of that County, who will tell you, upon oath, that from his knowledge of the general character of this Owen Henaghan, he is not worthy of credit as a witness in a Court of Justice. But, gentlemen, does the character of Henaghan rest merely on the testimony of a fallible witness, however respectable? Pray observe the story which this fellow did not blush to detail of himself and his conduct relative to this memorial in your presence. Who is the concoctor of this very document? Why this same Owen Henaghan. Are the contents of it true? No, he says it is a tissue of falsehood from the beginning to the end. At first he had stated that it was all true, but I admit, that seeing the effect of his answer, he corrected himself in the next breath, and said that it was all false. But it is either true, or it is false; if it be true, does not the Rev. Plaintiff come here with an extremely modest demand, asking you for only £4000 as compensation for the loss which this document has inflicted on his immaculate character? But if it be false, who put it together? who signed his name to it? who stands second on the list? who procured signatures to it? Why, this very Owen Henaghan. Gentlemen, I have the honor to know some of you. I think I may venture to

calculate that you are not wholly devoid of common understanding; perhaps I might venture to say, that all of you possess a few grains of common sense; but this I will say, that, in my opinion, unless you have been selected as a jury of dolts, the very refuse of some asylum for idiots, you could not be expected to act upon the testimony of this witness.

Court—If the jury were such as you have described, they would be a very suitable assistance to a “dotard judge.”

Mr. Jackson—Gentlemen, I shall not trust myself to give utterance, in the presence of his Lordship, to the sentiments of sincere respect which I entertain for him; and, with regard to the jury, I am sure I cannot have been understood to have spoken of them in the language which I have just used, otherwise than ironically. But to return to the witness Henaghan. This fellow says that he compiled this collection of gross and abominable falsehoods, as he would now have you to believe it, against his clergyman without any cause. And what was the consideration which induced him to do so? Why, he says himself, that he did it for the sake of five shillings, and a piece of a rib of beef.

Court—A few pounds, but not pounds sterling.

Mr. Jackson—Gentlemen, I put it to you, if you believe his statement of himself, that he was capable of preferring falsely and deliberately, charges of so heinous a nature against his parish priest. Is he not capable of any species of falsehood? Is he not, in a word, the very fittest instrument to be now employed by that priest, to fasten this publication falsely upon my client, Major Bingham? I ask you, Gentlemen, will you credit such a fellow? If he be not believed, I repeat it, there is no evidence at all of publication against Major Bingham; and there is a total failure of that link which is essential to connect him with the document which appeared in the *Mayo Constitution*. I have admitted already that if Owen Henaghan be credited, there would be evidence from which a jury might infer that the memorial mentioned by other witnesses, in connection with his name, had been inserted in the *Mayo Constitution*, with the assent, if not by the procuration of Major Bingham. Now let us see what has been proved by Dickson, Tigue, and Daly.

Court—Let me ask you, Mr. Jackson, supposing there was no evidence connecting Major Bingham with the publication in the *Mayo Constitution*, but that there was evidence connecting him with the publication of the memorial otherwise; and supposing that the jury should think the memorial not a *bonâ fide* complaint, how would you then view the case?

Mr. Jackson—That comes to the very point to which I was going to address myself, and to call the attention of your Lordship and the jury. I say, then, here is the precise point for which Owen Henaghan's testimony is essentially necessary; for without his evidence, what is there to identify the document spoken of by the other witnesses, with the publication which

forms the subject matter of this action? Nothing is proved of the contents of that document.

[His Lordship having been called out of court, during his Lordships absence one of the jurors (Mr. O'Gorman,) called on Mr. Jackson to state why he thought fit, in the beginning of his address, to particularise his name in some observations he was making on the conduct of the Plaintiff in this cause, and said that he felt hurt at his having been so particularised. Mr. Jackson assured the gentleman, that he must have mistaken his meaning altogether, if he supposed that he (Mr. Jackson,) meant to say any thing disrespectful towards him, or hurtful to his feelings. On the return of his Lordship Mr. Jackson said]

In your absence, my Lord, it was stated by one of the jurors, that some observations which I had made in the beginning of my address, in which I had mentioned the name of him and others of the jury, had hurt his feelings. I think it therefore right, in the same presence in which the observations were made, to declare that it was the farthest thing from my intention, to say any thing that could give, in the slightest degree, any pain to the feelings of that gentleman, or any other of his respectable fellow jurors in that box. I do conscientiously believe him to be as fit and proper a juror as any other individual, to try this or any other case.

Court—I know to what part of your address you allude, and it certainly did not convey to my mind any such idea. I feel convinced that you did not intend to do any thing so unwarrantable, or, indeed, I may add, so imprudent, as to wound the feelings of any of the jury. I can say that in my experience, I never knew a person who would be less likely to act so than yourself.

Mr. O'Gorman—I only wanted to know the object of Mr. Jackson in naming me and two other jurymen. I am now perfectly satisfied.

Mr. O'Connell—The whole bar concur in what has been said by your Lordship relative to Mr. Jackson.

Mr. Jackson—I was observing upon the evidence of Owen Henaghan. If he be believed, Major Bingham may be considered as involved in the publication of the document complained of in this action. If he be not, there is no evidence to connect him with it. And before I have done with this witness, let me observe, that if Major Bingham had been disposed to put forward this memorial for any sinister purpose, or with a view to its publication, he never would have committed himself to such a wretch as that. Could he not have done it himself—could he not have employed some of his own family or dependants to prepare it in his own house, and secretly. But I fatigue you, Gentlemen, by dwelling unnecessarily upon such incredible evidence. And now I beg you to look to your notes. As to the testimony of Thomas Dickson, what has he said affecting Major Bingham with this alleged libel. He was asked whether he had signed

this memorial, and he said he signed a *paper* by the desire of Major Bingham. But is Dickson a man on whose testimony you would be disposed to found your verdict. Recollect that he had been evicted by Major Bingham at the last October Sessions, for non-payment of rent. Are not the circumstances suspicious—has he not some revenge to gratify against Major Bingham: but is he not also one of Mr. Lyons's congregation and under his influence; and does he not feel that he is doing him an acceptable service in giving evidence against Major Bingham. Again, is it likely if Major Bingham had so committed himself to Dickson, and was conscious that he was in his power, that he would have ejected him so lately as last November, this action then pending? And we cannot disguise from ourselves, that the priests are a very powerful and influential set of men, particularly amongst persons of Dickson's class; and sorry am I to say that too many of them lose sight of their legitimate character, and duties, and assume political functions, stirring up strife and discord. Mr. O'Connell has said they are not quite omnipotent. This is true; I rejoice to know that there is a power which can controul even them. But this observation of the learned counsel was made the vehicle of another irrelevant and groundless statement, which the Rev. Plaintiff had instructed his counsel to put forward in this case. You were told he was fired at. Gentlemen of the jury, I firmly believe that the Plaintiff never was fired at, at all. I am credibly informed that nothing could be more ludicrous than the whole story about this alleged firing at Father Lyons. The persons who were charged with doing so, were prosecuted by his Reverence; but that indictment was necessarily tried in the County of Mayo, where he and his witnesses were known. And what was the result? Why the accused were acquitted without even a cross-examination of the witnesses brought forward by the Plaintiff to prove the charge. One of these witnesses said that he saw the wadding of the gun, and some of the gunpowder on the floor of the priests room immediately after the shot was fired!! Now I tell you that after such absurd and impudent perjury, the case was scouted out of court, and that without the production of a witness for the defence; and yet this idle story is served up here again. Surely the Plaintiff expects that any thing will go down with a *Dublin* jury! Who was the next witness?—*Anthony Tighe*. He was also asked whether he had signed the paper. He said he was asked by Major Bingham to sign the paper—(what paper?)—but that he had answered that he would take time to consider of it. I do not think the testimony of this man free from suspicion; but supposing it to be true, what does it amount to? If the paper spoken of by the witness, be the memorial complained of, and if Major Bingham believed it to be true, had he not a right to co-operate with his tenantry, to get rid of so ill-conducted and oppressive a priest; nay, would he not be bound to stand by his

poor tenantry under such circumstances? He would not be justified in publishing it I admit, but where, I ask, is the evidence that he did publish it in the newspaper, or give it unnecessary publicity in any manner whatsoever? I say none, if you throw the testimony of Owen Henaghan over board, as I respectfully submit you ought to do. I said the testimony of Tigue was not free from suspicion. Did he not come forward also, under the influence of irritated feelings, against Major Bingham—had there not been a contract to employ him, which was broken off?

Court—The evidence is, that Major Bingham offered to employ him, but he did not return, and it was thus broke off.

Mr. Jackson—At all events I am correct in saying that the contract was not carried into execution; recollect also, we asked him who was present at the interview with Major Bingham, deposed to by him? Tigue conveniently says, there was no one by at the interview but a child of six or seven years old. It is observable as to each of those witnesses, that they take especial care that it shall not be in our power to contradict them by the production of any persons who were present on the occasions to which their evidence refers. Daly is the only remaining witness; now, supposing his testimony is believed, it only amounts to proof of considerable harshness of conduct by Major Bingham towards him. Gentlemen, I need not remind you, that you are not trying whether Major Bingham be a landlord of a harsh character, but whether he be guilty of publishing a particular libel; and if Daly's statement be true, under what feelings does he come forward here to give his evidence—has he no inducements to assist in making out a case for his priest against Major Bingham? This, Gentlemen, is the whole of the evidence that has been produced for the Plaintiff, and I ask you, is it such as to enable you, with safety and satisfaction, to find a verdict for the Plaintiff against Major Bingham. I feel, Gentlemen, that I should not be warranted in trespassing on your time, by a separate discussion of the case as regards Mr. William Bingham; it is quite unnecessary that I should do so, for as regards the pleadings, he stands on the same grounds with the Defendant, Major Bingham; but as regards the evidence bearing upon the question of publication, his case appears to be precisely the same as that of the Defendant, Lavelle; so far, therefore, as he is embarked in the same bottom with that Defendant, I feel that I cannot do better for him than to request that you will give him the benefit of the able speech which has been addressed to you by my learned friend Mr. Bennett, as counsel for Lavelle. So far as William Bingham's case is identified with that of Major Bingham, the observations which I have already submitted to you, will be fully applicable. Gentlemen, I am sensible that I have unavoidably occupied no small portion of your time, and I am grateful for the attention with which you have heard me. I fearlessly submit this case to your determination. Has the Plaintiff entitled himself to a verdict against any of the

Defendants? Does he come into court as a meritorious suitor in such an action as this? Can you conscientiously act upon such testimony as he has brought forward? What must you think of the Plaintiff, whose case is mainly supported by such a witness as Owen Henaghan? But if you could find a verdict for such a Plaintiff, even for nominal damages against any of the Defendants, how can you feel justified in including Major Bingham in that verdict?

DEFENDANT'S EVIDENCE.

William Barrett examined by *Mr. Geraghty*—Witness lives in Erris; has been in the employment of Major Bingham for twenty years; drives for rent for him; knows the plaintiff; is one of his congregation; is a Roman Catholic; has been in the habit of attending the Plaintiff's chapel for two years and a half; was sexton to that chapel for two years and a half, about four years ago; witness has a wife; they used to attend chapel; has not gone to chapel as sexton for four years; attended mass, but not for the last four months; did attend there up to the last four months; was in the habit of going there on Sundays; Mr. Lyons is in the habit of preaching often there.

Mr. Geraghty—In the course of his preaching did he make any allusion, and what, to Major Bingham the Defendant?

Witness—He did; I heard him say that there was a certain family in the parish was annoying him, and that if they did not stop, he would lay waste the streets of Binghamstown; heard him say it at the altar; heard it several times from him; he was finishing the service, and it was then that he spoke these words; it was on a Sunday; heard him several days as well as Sundays, speaking words like these, while the congregation remained in the chapel; some Sundays the chapel is full, on others it is not half full; cannot remember whether it was full or no, then.

Mr. Geraghty—Pray does your wife attend chapel? *Witness*—That is, the last wife I had. You have a wife now, have you not? I have. Do you live with her? To be sure I do—she does. Do you know one Reilly? I know a deal of people of the name of Reilly. Do you know one Corrigan? I do; I remember seeing him in the chapel; I recollect Mr. Lyons and he had some difference in the chapel; I saw Mr. Lyons knocking him down and catching him by the nose, and spitting in his face, and turning him out of the chapel. How long ago? I think it is better than three years ago; I don't remember what day of the week; it was I believe—I can't answer that question. Do you know William Reilly? I do; I saw him at the chapel; it was myself that was sent for him, and brought him to the chapel, and Mr. Lyons put him on his knees, and he acted in the same way towards him that he did to Corrigan; he spit in his face and turned him out of the chapel; that was from three to four years ago; Priest Lyons sent me for him; I brought him to the railing,

and Mr. Lyons set him on his knees to ask his and God's pardon, and he spit in his face and turned him out. Did you see any improper use at any time made of this chapel to your recollection? For a year Mr. Lyons was building a house there, and he had timber stored there and slating in the chapel; I never saw cows in that chapel of Binghamstown, but in one which was four miles off; I was at his place there superintending it, and it was into that chapel that we used to put the cows and sheep at night; I was in the habit of going to confession, but not since we memorialled the bishop; I would not be received, or a good many more who memorialled the bishop; any of us that signed it, and did not make submission he would not give confession to, or any one belonging to them; this, I know, because I tried him, and others beside tried him in the country; there is some of us, indeed, who did not get our wives churched by him for three or four years; I have known some of them who applied to get their wives churched.

Court—What is the date of the time that this witness is speaking of.

Mr. Geraghty—The 3d of January, 1831.

Court—That would give us not quite three years.

Mr. Geraghty—Name some of those persons?

Witness—There was Pat. Lavelle French's wife, and young Tom Dickson's wife.

Court—But it would seem that the refusal was the consequence of signing the memorial.

Mr. Bennett—There was an interval of some months between signing the memorial and the publication of it.

Mr. O'Connell—The memorial is of its date, it makes no difference,

Mr. Geraghty—Where is Corrigan now?

Witness—He left the country, and went to Tyrawley; I don't know where he lives now.

Mr. O'Connell cross-examined him—Have you been the entire of twenty years in the employment of Major Bingham? I have. I don't ask you whether you did it; but were you ever charged with robbing the altar? I never heard I was charged with it; but I heard Mr. Lyons said that I did, what I did not do; that I got his dues, and that I took them by wrong means. Was it that charge made you quit the country? No; for it was after that I heard of it; it was not mentioned while I remained there.

Mr. Bennett—I object to this; he is giving now the declaration of the Plaintiff

Mr. O'Connell—My question was, whether any one had charged him. What you heard, was it said? Yes; what I heard Mr. Lyons gave out to the congregation, and it was at Westport that I heard he said that I took money out of the altar; I was about three months then at Westport. Did not Mr. Lyons cen-

sure you publicly for having cursed Major Bingham? By virtue of my oath he did not; I was away a year and a half when that was said. It was Mr. Lyons turned you out of your office? To be sure it was, when he had a man to put in my place; I was in the militia four years. What made you leave it? I was disembodied. Did you go to any prayers for the last four months? I did, to church. Did you ever, before the last four months, go to church? I did. For how long? Thirty years ago, when I was in the Monaghan militia, we all used to go to church at that time; we all were obliged to do so. *Mr. O' C.*—That could not have been the case; if it was, it was very improper. What place of worship did you lately go to? To the church of England in Binghamstown—To the church of England! When did you go there first? It is not a year itself; I believe it was in April last. Was that before you were tried for the libel? No, after. You were tried and convicted? I was. Did Mr. Lyons apply to the Court, and interfere that you should be more punished or less? I can't say. Did he not apply to have the sentence less? That is more than I know of. Where were you tried? At the sessions at Westport. It was that made a Protestant of you? It was to church I went immediately after; it was; and I intend to go there while I live. You got a month's imprisonment? I did. And did not Mr. Lyons interfere for you, sir? I did not hear it if he did. Was not Mr. Lyons put on the table as a witness? I don't know, I was in the dock with sixteen or seventeen more; I was but poorly that day; I don't know whether he was or not; I know he was at the trial, but I can't say whether he was sworn as a witness or not; I was married by Parson Dawson; I can't tell how long ago; it was in January, I believe; my wife was a Catholic. And you made a Protestant of her?

Mr. Bennett—Now, is this a proper topic for cross-examination?

Mr. O'Connell—I have a right to examine him to these points particularly on a cross-examination; it is wrong of Mr. Bennett continually to interrupt me in it.

Mr. Bennett—It is really not right of you to say of me, that I continually interrupt you; you know I don't do so, nor could do so, though often you give me fair occasion to do so; and your saying this of me will not prevent me doing my duty, I assure you.

Mr. O'Connell—It is unprofessional to interrupt a cross-examination.

Court—We cannot say that counsel has not a right to interrupt, if the cross-examination be improper.

Mr. O'Connell—Here I was in the most important part of the cross-examination. The witness comes here affecting to be a Catholic, and saying that he had been prevented from going to confession: if I can shew he is as sincere a Protestant as any

gentleman in court, have I not a right to do so? and I was on that topic when I was interrupted.

Mr. Bennett.—I objected fairly to the questions, as to when he and his wife became Protestants; but I am really afraid to object to Mr. O'Connell's questions, he interrupts so wickedly; but he shall not prevent me going on in this case. goodhumouredly, and I hope he will do so too.

Mr. O'Connell.—Was your wife a Catholic until you married her? I suppose she was. Did you make a Protestant of her? She made one of herself. On your marrying her? Yes. And she has gone to church ever since? Along with me ever since, until I left home. When were you there? Paddy Lavelle sent me back. For what? I stopped in town here for 15 days, waiting for the trial, and it was put off till Wednesday. Who was by when Parson Dawson married you? My own son, and his wife. Were you called in church? I was, three Sundays. Were you ever a wreck-guard for Major Bingham? I don't understand that. A guard to watch the *racks*? I was, a long time ago, before the water guards. Were you so, when the German vessel was wrecked in Poulacoppel? I was. For whom were you guarding? For Major Bingham. Were you ever accused of stealing any tea—do you remember about a chest of tea? A chest of tea! I remember there was a cargo of tea. Do you forget the charge of stealing it? I do, there was nothing like it. But was it not said? I don't know who said it, for I never heard of it. Did Major Bingham ever turn you off? He never did, for stealing any thing. But did he not turn you off for any time? I was turned out of his employment after having been a year in Priest Lyons' employment. How long before the signing of this memorial was it, that you were taken back into Major Bingham's employment? I can't say. Was it a week? I don't know whether it was before or after it, I was in all with him, a year and a half or two years. You never were charged with pocketing any of the Major's rent? I don't understand that word. Were you never charged with pocketing for your own use any of the rent you collected for the Major? I never was. When were you taken back? I think it was in the same year I was taken back, but I can't say whether it was before or after the memorial was signed. But it was in that year? I believe it was after. Do you remember a threatening notice being put up in Mr. Lyons' chapel? I don't understand that word. You are bound to answer me, Yes or No. I don't know what a *threatening* notice is at all, I know what a notice to quit is. And you know what threatening is, but not what a threatening notice is? I know there was a notice on the chapel, and that Fleming went to copy it; that is his handwriting; I know the name of Thomas Dickson, jun.; Paddy Lavelle *Major*, is alive; I don't know whether Paddy Corrigan is; both were alive when I was in the country, so was Reilly; Reilly is a tenant to Mr. Carter; I

cannot positively say whether the spitting at him occurred on a Sunday, but I think it was. Was it or was it not, Sir? I think it was; I know Captain Ireland, he is the only magistrate of the district; Mr. William Bingham is not now a magistrate, nor is Major Bingham. Were you bound over before Captain Ireland on any charge? I was bound over to keep the peace; it was part of my sentence on my imprisonment; three sons of mine were also bound over; they had nothing to do with the libel; I was not bound over about any threatening notice. What day of the week was it on which you heard Mr. Lyons say, that he would lay waste the streets of Binghamstown? It was of a Sunday, several Sundays. In what week—what year was it? I can't say what week or year it happened in. Was it within the last three years, or this year, or within the last five years? I can't tell which of the years it was in, but I often heard him say it; I made no remark what time of the year it was in. Was it winter, summer, autumn, spring? It was several times in the chapel. Can you tell how often—was it 100 times—1000 times—a million of times? I did not hear it 1000 times. Did you 100 times? No. Or 60 times. I kept no almanack how often I heard it. Did you hear it 40 times? No. How often then? I heard it twice or thrice, or things of that sort. Do you write your name? No, Henaghan or Fleming put my name to the memorial. Were you—then in Major Bingham's employment? Upon my word I cannot answer that question; Patt Lavelle was there signing; he was a tenant of Major Bingham; Owen Henaghan was there and Thomas Esmond, and Wm. Moran, and John M'Donough, and Pat Flanagan, and Wm. Kelly, and Brien M'Loughlin. I don't know whether he was a tenant then.

(Mr. O'Connell examined this witness, as to several others whose names were signed to the memorial, and said he made out all, but 24, to be tenants to Major Bingham; he said there are but 24 who are not tenants, and out of them he alleged several were forgeries he then said.) Can you tell any one who was by at the sermon preached the day of the spitting? There were the two M'Donnells by. Are they here? No. Are they respectable persons? They are. What was the sermon about? I cannot tell; I never told any one I could prove the words about laying the streets of Binghamstown waste; I never was asked; I know Mr. Robinson; I was in his office, his clerks were there, they did, I believe, take down my evidence, at least I suppose they did, but no one asked me about these words; they took down my evidence about the dues; it was some day this week; I can't recollect whether they asked me about laying waste the streets of Binghamstown; but I recollect they did about the dues; I don't know whether it was Monday or Tuesday last; I am sure it was not to day; I am not sure whether it was yesterday or the day before; I believe they asked me about the spitting in the face; I cannot swear positively whether they did or no. Had you

counsel or attorney at your trial at the sessions? I had, I know I had. How many of them? I believe I had Counsellor Courtenay and Counsellor Bourke; I can't recollect who was the attorney. Perhaps you did not pay either? Pat Lavelle paid them; he is the head driver to Major Bingham; he also paid for my support there; I can't say whether he charged it to Major Bingham; I answered Mr. Robinson about the dues; I might have told him about the streets of Binghamstown.

Mr. Bennett—When did you go to Mr. Lyons to ask for confession? I did not go to Mr. Lyons, but to one of his coadjutors.

Mr. O'Connell—Did you ask him for a ticket to go to a neighbouring priest? No, but he said he would not give me a ticket without the leave of Mr. Lyons.

[*Mr. O'Connell* objected to this evidence, *Mr. Bennett* insisted on it, and it was finally admitted.]

Mr. O'Connell—What was the name of this priest? Mr. Miles. It was this time twelve months that we went to Mr. Miles, and he told me he could not do it without the leave of Mr. Lyons. Do you remember the jubilee? I do. What religion were you of then? A Roman Catholic. Did you believe it to be the true religion up to April? I did, and when Mr. Lyons refused me confession, I made a vow never to have any thing to say to it. Do you still believe it to be true? It is hard for one to believe it true, when I see so many persecuted in the parish by its clergyman. Do you believe it now to be true or false? I told you before I made a vow that I would not go to chapel when I saw such persecution. Do you believe the Catholic religion a true religion? I believe it still to be a good religion, but when I saw the clergymen of our parish, behaving as they did, I never would have any thing to say to it if I lived 100 years.

Mr. Bennett (again took him up)—Twelve of us were convicted at Westport, and bound over to keep the peace; I saw Mr. Flannery, he was sent into the country, to shew justice between the priest and the parishioners—I heard himself say so; heard him say when he was there, that if we sent in an ass load of petitions, we would get no satisfaction; I was never tried for taking money from the altar, or for any thing else in my life.

Mr. O'Connell—Did not Mr. Flannery say, "now is your time to come forward, and if you don't, you won't be believed another time?" I don't know whether he did or no. Had you not a weeks notice? I don't say but we had. Did he not press you to come forward to prove against your priest? He did. And said then if you don't come forward and prove now, you will never be believed hereafter? That was not what he said, but he said, that if we sent an ass load of petitions into the bishop, they would not be minded against Father Lyons; there was a great noise and confusion in the chapel then, and P. Lavelle spoke, and then we all went out of it. (To questions from the jury.) I did not mind distinctly what he said; I left the militia at the first disembodying

of it a great while ago; I was in no other regiment but the Mohaghan. We had sent a memorial to the bishop. Mr. Flannery was the only one I saw standing at the altar that day, that I know of; I was idle after leaving Major Bingham's employment for four or five months.

Mr. O'Connell—Did you ever go on your knees outside Major Bingham's window, to curse him? I went down on them to call God to witness, whether what I was accused of before him was not a lie. A servant girl had told Major Bingham some lie about me, that I had cursed him; I went on my knees, and could swear I was wronged. (To one of the jury.) There is a dispensary now in Erris—one Bourns has it.

William Henry Ellis, Barrister at Law (examined by *Mr. Bennett*)—Was appointed Barrister of Mayo; knew Owen Hennaghan. *Mr. B.*—Do you conceive him to be a person—; do you know his character? It is five years since I have been acting officially in Mayo, and twelve or fourteen years ago I knew something of his character.

Mr. O'Connell—The only legal question can be asked is, do you know his general character?

Witness—There are many years that he was out of my sight.

Mr. Bennett—Can you say you are acquainted with his character? I was, at the time I was chairman of the county, up to the time I left it. Do you think him worthy of credit on his oath? I certainly did not.

Mr. O'Connell—Don't you think that Major Bingham and the other Defendants knew his character better than you did? Certainly I have looked at the memorial, and don't know it to be his handwriting; I think he has come into my court to prove something for Major Bingham. Could you tell who you heard his character from? Mr. Ignatius Kelly was his original employer; he was his writing clerk; I first heard his name—certainly within the last twenty-five years; he was Mr. Kelly's clerk; I should not be surprised to hear that he was afterwards in Major Bingham's employment.

It was now a little after six o'clock; and the court adjourned to to-morrow.

FRIDAY 18TH DECEMBER.

THIRD DAY.

The first witness for the Defendant this day was *James Donohue* (examined by *Mr. Litton*.) *Witness* lives in Binghamstown; knows the Plaintiff; is the son-in-law of the Defendant.

Mr. O'Connell—Hem !

(*Mr. Litton* deprecated the interruption.)

Mr. O'Connell—I was only making a *setto voce* remark, and I object to your question as illegal.

Mr. Litton—Do you know where Mr. Lyons's house is? *Witness*—I do, it is opposite the chapel at Binghamstown, at the other side of the road. *Witness* remembers to have seen the chapel used to put slates in, and to have seen the slates used for Mr. Lyons's house, and the timber there likewise, and people threshing in it, and others sawing in it; lived in the parish before Mr. Lyons came to it; since he came, there has been an increase of fees payable by the people to the priest, and some charges which are new altogether, and which did not exist before; there is an addition advanced to the dues of each house-keeper, also on baptisms and marriage money, and on clay—money, for consecrated clay, used at the time the deceased is brought to his burying-place; a *bart* of corn, that is twenty sheaves is given, or one shilling and eight pence in lieu, if the corn is not given; the people were compelled to give it; the most of them were not willing to give it, but it was demanded and received; there was an additional advance on the baptisms; two and six pence Irish was paid before Mr. Lyons came, and he now charges three shillings and two pence, English. The marriage money was formerly a guinea; after he came, he made it three half guineas, and three pounds to some.

Mr. Litton—For a man and wife, householders, how much?

Witness—It had been two shillings; he changed it to three shillings and two pence; the yearly *salary* for a child of ten years going to confession, ten pence each; and for all of them going in a family, I can't recollect what had been charged before, but it is now five or six shillings; for extreme unction, one shilling; for anointing I don't see there was any charge for legacies for the deceased not claimed, there used to be a charge of six shillings, and I believe it is the same now; there were seats near the altar; the charge was for them five shillings, and outside, for any couple, two shillings and six pence; and those who did not pay it, were not compelled to do so; but those who got a seat, paid for those who got no seat; this charge was never made before.

Court—Were there any seats there before?

Witness—I said there were none.

Mr. Litton—As to the "blessed clay," is there any change since? Not that I recollect; there was two shillings and six pence for it, and the same is the charge now; but Mr. Lyons's predecessor used to go in person and officiate at the burials, and bless the clay, while Mr. Lyons charges for the blessed clay, but don't stir towards the burying place at all. Did you apply to Mr. Lyons to administer any of the rites of the Roman Catholic

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church? I did, and was refused; I applied to him and to his coadjutors, and they all refused.

Court—What rites do you mean?

Witness—To give me confession, and to give churching to the women after being brought to bed. That rite was refused to my wife, and I was obliged to bring her to Ballina, to the Bishop of Killala, thirty-three miles, as far as I can judge, in order to receive those rites.

Mr. Litton—What was the reason of this refusal? I don't know, unless it was that I was married to Lavelle's the Defendant's daughter; I can think of no other reason. Who applied to Mr. Lyons to administer those rites to you and your wife? I did myself; Bishop Waldron ordered Mr. Murray to do it; Bishop M'Hale would not do it, and the other ordered a young clergyman to church my wife in his own house, and the ceremony was performed there. Do you know a man named P. Corrigan? I do. Do you know any thing remarkable occurring as to him? I do: on Sunday, after the sermon, it was pretty near the altar, Mr. Lyons had called him within the rails, and made him kneel down, and then he took him by the face and nose and spit in his face, and turned him out of the chapel, and the chapel full of people: I saw him do the same to one William Reilly, and kick him out; he was ordered to the rails, and he kicked him out, and Reilly ran away; that was also on a Sunday; he called him in, you see, and desired him to go on his knees, and ask his and God's pardon, and the congregation's pardon, and then he spit in his face, and *clouted* him outside the rails; on Christmas-day there was a collection, and one man gave a penny, and Mr. Lyons took the penny and flung it at him, and struck him with it over the eye; this was at the Station; it is a large parish; it had been two parishes before, till Priest Lyons came; Patrick Padden was the name of the man that was struck with the penny. Did you hear Mr. Lyons saying any thing, by way of threat, against any one in the parish? I did; he said that there was a family in the parish that he would never stop annoying until he made the streets of Binghamstown giving grass; he likewise cursed any one that would collect rent for, or pay rents to, Major Bingham. Did you hear that more than once? I did, about six or seven times from him, at the latter end of his sermon, after mass; the chapel at the time was full; I heard him say that he would not administer the rites of the church to any one who would not come in and ask his pardon for signing the memorial against him.

Mr. O'Connell—I object to this; there is, first, no such charge in the memorial; besides, it relates to what passed after the memorial had been sent in.

Mr. Litton—I concur if it be so. When were these rites refused, were they so at any time before the memorial was signed? I saw him refusing the rites of the church before the memorial ever was signed. Why did he say he refused these rites to Lavelle? On account of a schoolmaster who was brought into

the parish, one Fleming, that, I understand, was his reason, for Lavelle had been a great favourite of his, and there were no two more gracious until this dispute occurred about Fleming; I suppose bringing him in was contrary to his will; saw Thomas Dickson who was examined here, signing the memorial at James Cosgrave's House, in Binghamstown, (the memorial was shewn to the witness) I don't know that it was that, I am a bad scholar gentlemen, you will excuse me.

Mr. O'Connell (cross examined him)—Oh! you are a very good scholar, you have your lesson very well, look at that name? *Witness*—I read very badly, but I see Tom Dickson's name here. There, put your finger on it.—(Putting his finger on the name) That is the name, and this is the paper I saw him sign. It happens to be another, Tom Dickson, and we will shew that, in proper time; whose handwriting is the body of this memorial? I don't know, I have seen Owen Henaghan write, but I don't know whether this is in his handwriting, I am one of the drivers, and Pat Lavelle is the head driver. How many drivers are there on this estate. (The witness enumerated seven, and mentioned their names) I got no fees but my house for nothing, and six acres of land; I can't say whether the clerks fees were included in all the priest's dues, but the whole of the 3s. 2d., was for the priest himself, there was 3s. 1d., and 1d. for a candle, for churching my wife, some of the neighbours bring a candle for themselves, my wife had brought a candle—and 30s. were charged for marriages.

Mr. O'Connell—Bah!

Mr. Litton—Do let the witness go on.

Mr. O'Connell—Was there any agreement that part of the marriage fee should be applied to the building of the Chapel? *Witness*—It was said in my presence, that half a guinea was to go to build the Chapel, half a guinea to the Bishop, and the third half guinea to Mr. Lyons. Did you know any one else but yourself pay this 3s. 2d.? I did, Con O'Donnell, a brother-in-law of mine. Any one else, not a relation; can you name any one who paid this charge for confession? I can, Con O'Donnell, Michael, and Paddy Goggan, them two in my own neighbourhood, and Archibold Donlevie. And there were 3s. for certain seats inside the rails, and 2s. 6d. for outside seats. For how many years did they pay? For one year—the first year they left it to himself, the second year they thought it too much. Now was it not the Chapel Committee that did all this? I cannot say, but I saw Mr. Lyons receive the money. Who was the treasurer? There was many a treasurer to it, James M'Donagh was one. Upon your oath was not the seat money handed to Daniel Vickars, the Treasurer of the Chapel Committee? I know no more who Daniel Vickars is, than the man in the moon. I must persevere in sifting this witness, in consequence of some evidence which I have to bring forward on this subject.—Now, is that man M'Donogh, whom you say was Treasurer, living now? No Sir,

he is not. On your oath, is it not the duty of a Priest, not to church any woman who has not gone to her Easter Devotions? I allow it is, but myself and my wife had not the use of the Chapel, and I paid him, and he is there, and he cannot deny it—and he kept me from the year 1829, from the use of the Chapel.

Witness—I allow he was entitled to send her to the bishop, but no such reason was given us, for though my wife came and offered his dues, he kept her out from the year 1829, and sent her to church. And do you swear that the priest did not say that he had tickets for those to whom he would not give rites, to enable them to get them from another? I acknowledge that he gave that out, but he never performed it. Tell me any one who did not get a ticket? I got a ticket myself from his clerk, but it was not signed, and I applied to himself, and he refused to sign it; many persons were by, could prove it, there was Richard Barrett and many others. Oh, I forgive you the rest, but you heard an announcement of his to celebrate rites for all? He did, but it was on condition that each man should come in and ask his pardon. It was not, you swear, without conditions? On my oath I don't think he did it without conditions; it could not be easy for him to do so without my hearing him, he might in my absence. Did not Mr. Flannery give notice that he would on the next Sunday attend, and investigate the complaints of the parishioners? He did. And he came on the ensuing Sunday? He did. And then offered to hear every one who would come forward and substantiate their complaints? He did. And don't you believe, that he went about from house to house to see whether any one could substantiate any complaint? He did, he came to my place and preached a fine sermon to us not to fall out with our *clergy*. Did he not press them to come forward and prove their complaints? He did, and when they did come forward, he told them that if they sent an ass load of petitions to the bishop he would not hear them; and Reilly said that was a bold word of him, and Lavelle said, well, boys, you may as well come away, as we will get no justice here; they did not agree on the investigation. Did Father Flannery refuse to go on with it? Paddy Lavelle said he would begin at the commencement of the memorial, and then go on and see that all was right; but Mr. Flannery began to cross question, and he asked whether Priest Lyons was a drunkard; Paddy Lavelle said, there was no such thing in the memorial, any thing that was in it could not mean that; there is, says Father Flannery, and here it is in the memorial; said Paddy Lavelle, I deny that it is, and then Paddy Reilly said that it was a daring thing. *Mr. O' C.*—We heard all that before. *Witness*—Well, then, most of the people walked out and left him there.

Court—Is there any charge of drunkenness against Mr. Lyons in the memorial.

Mr. Bennett—None.

Mr. O'Connell—It only says that they want a sober priest.

Witness—I say that Mr. Flannery said that there was a charge of drunkenness against Mr. Lyons in it, and he asked was he not a sober man; we said we never saw him drunk, and no wonder, he was sober, but what we meant was, we wanted a sober priest who would not kick and abuse us, and spit in our faces.

Mr. O'Connell—Did not Mr. Flannery ask as to his divulging the confessions? He did, and Lavelle denied that it was not in it, he denied that. Answer me, Sir, give me a yes or no—did Lavelle deny that there was a charge in the memorial against Mr. Lyons of disclosing the confessions? I don't understand "disclosing" them, but of divulging them he did; but he said Mr. Lyons published them to be knaves and robbers in the parish of Kilmore, and who knew better than our father confessor; we will take care not to confess to him again; we said there was no such charge in the memorial, but he said there was in it as I mentioned to your lordship; he said he mentioned in the memorial as I explained it, that Mr. Lyons had published us as knaves and robbers, &c.; he certainly said that *that* was in the memorial; Mr. Flannery read a part of the memorial, and on that Lavelle told him that he had not read one third of it, and I believe myself that he did not read one fourth of it. Was it not explained in English and in Irish by Mr. Lyons, from one end of it to the other? No, Sir, not that day. In English? No, Sir, not that day. Is Wm. Reilly here? He is not. Tell us what was it occurred as to him? He was called inside the rails particularly. And Pat. Corrigan was also inside? I did not say so; I think he was not within them; I don't know whether he was or not; I am not certain; Pat. Corrigan is not here; it was on Christmas day in the year 1828 or 1829, when he flung the penny at the man, as he was a poor man, and hit him on the brow; I know James Cosgrave; I believe he can write. Did you ever swear that he could not write? I never did swear it, for it is my opinion that he could write; he was agent to Major Bingham, or driver; I never did or could swear it. Was there anything said that day about a shipwreck? There was, Mr. Lyons spoke about shipwrecks, and about the cutting off of a man's hand. And spoke of those who plundered the sailors, and wore their jackets in his chapel, and against the wickedness of plundering the wreck? He did certainly, and denounced Divine vengeance against those concerned in it, and against the man who had cut off the sailor's hand, and alleged that was done by Corrigan; Corrigan had been a jobber from Tyrawley, and he appealed to the whole parish whether he was not a fair, honest dealer; and he was going on this way when Mr. Lyons spit in his face and turned him out of the chapel; I never heard it alleged against him by any one but Mr. Lyons. Did not Corrigan interrupt Mr. Lyons as he was going out, and say, that "he defied God and the devil on the subject?" On my oath, I did not hear him; Mr. Lyons was half an hour in the chapel after Corrigan went out; he spit in

his face while he was on his knees ; if he said any thing of the kind I can't recollect it ; my God Almighty, Mr. O'Connell, could you recollect every one that dined at your table ere last night, let alone expecting me to tell you what happened a year ago, so particularly. But you saw the transaction ; was Corrigan, at the time, inside the rails ? Why, then, by virtue of my oath, I don't know whether he was or not ; I was *purty* near the rails ; I can't recollect how far from them ; about three or four yards when I saw Mr. Lyons spit at him ; the man was a tall man. You never heard Barrett swear that he was inside the rails ? I never did ; I never heard the man express the words that he would defy God and the devil, in his life, and I know him long ; I heard what he said that day, at the time, and he did not say that certainly. Did Mr. Lyons take him by the nose ? I think he did. I don't know whether it was by the nose or the face, but it was by one or the other. Did you ever get part of that wreck ? I did, sir. Who gave it to you ? Mr. Davis and Mr. Dickson, who canted it ; I never was accused of plundering it ; I went two or three times down to it when it came in ; I never was accused of taking iron or canvass belonging to it ; Pat. Padden is alive ; he is at home ; I am not bound to keep the peace to any one but Mr. Lyons. Since you know so minutely about his taking Corrigan by the face, I suppose you can tell whether he was on his knees or not ? I think not ; I am partly sure he was not ; I cannot certify to the truth one way or other. Was he on his knees or not, sir ? Indeed I cannot swear to it ; I will not swear to it ; I don't know whether or no ; I know young Dickson well ; he is in town here. Did you ever hear of a threatening notice having been put on the chapel ? I heard of it, but I never saw it. Or spoke to Dickson about it ? Never. Pray, do you write yourself ? I could, my name, and no more. Mr. Lyons has a school in the parish, now a national school ? I could hear so. Did he not pay out of his pocket for a school until this national school was established ? He did not. Did you hear that Fleming was the school-master ? Yes. You have seen Fleming drunk ? I have. Often ? Not often. Did you not hear Mr. Lyons warn the people from employing a man of the description of Fleming ? I did ; and he would not allow any of the parishioners to employ him ; but that was after the parish had agreed with Fleming ; I can't say whether Mr. Lyons had turned him off, for I did not hear it. I come now to another subject ; before Mr. Lyons came to the parish, it had been two parishes ? Yes, now it is one parish. And two curates ? It is not long ago since a third came to him. At the time of the memorial had he not two curates ? He had for a short time ; it was late when Father Duffy came into the parish ; I know Edward Nally ; he lives in Binghamstown ; I don't know that he is a son-in-law of Major Bingham's ; he is married to one Mary Mitchell, I think ; I never heard that she was half sister to William Bingham. Now I will

come back again with you to the dues, and beg you will tell me whether or not the dues were settled by a meeting of the parishioners? I know they were not. Tell me positively whether Mr. Flannery did not, on the investigation, offer to hear every evidence that should be given on the charge of divulging the confessions? He wanted to get into that, and Lavelle said he mentioned nothing in the memorial about divulging the confessions; but he said, we are accused of being robbers and——. Ah! sir, you told me all that before; did he not call on him to sustain that part of the charge? He did; but Lavelle denied there was any such charge. I have done with you, sir.

Mr. Bennett (resumed him)—The last answer you gave when you were asked whether Mr. Flannery asked about divulging the confession was—

Mr. O'Connell—I beg pardon. You know, Sir, that there were two men tried for firing at Mr. Lyons? There were, and they were acquitted on his own evidence. Did he not say at the trial that he believed they were not guilty? Never. I was in Court and at the trial; and if Mr. Lyons told the Counsel so—Did he not say it? No—for on his own evidence, that he brought forward for the prosecution, the men were acquitted. P. Lavelle was one of the witnesses? I did not hear. Did you ever endeavour to get a witness against the Barretts? I never did—they were nothing to me. I was the first that Mr. Lyons wanted to put up for shooting at him; and the Stipendiary Magistrate would not believe the charge against me. There was a reward of £100 offered by Government, to discover who fired at him.

Mr. Bennett—Did not Mr. Lyons employ Counsel on that occasion? I don't know, but I could hear he did. What did Mr. Flannery say? First, he asked Patrick Lavelle how he could prove that Priest Lyons was a drunkard?—he said that he had nothing of the kind in that memorial; but that they begged the Bishop would send them a sober Priest, who would not kick, spit at, or abuse them. And as to divulging confessions what was said? He said he had not put such a case in the memorial—but said he had mentioned in it that Priest Lyons accused his flock of being robbers, and that he could know that well; and then Mr. Flannery said, as I mentioned about the ass load of petitions. And as to spitting at Corrigan in the Chapel, was Corrigan inside or outside the rails at the time? I really cannot tell which. How high are they? They are about three or four feet high—they were nearly up to my hip; there was a crowd in the Chapel at the time, and all on their knees. Now about the number of drivers. How many miles long is Major Bingham's estate? That is unaccountable to me; I could never give you an account of it, it is so long. Is it twenty miles? Indeed it is, sixty or eighty miles—a wild mountainy place; and often they wanted more drivers in it; the drivers were often attacked and rescued in

it. Who was the Priest before Mr. Lyons? Mr. Conway was, Mr. Lyons came in. I don't know when he came in, but he has three times as much as Mr. Conway had out of it, to the best of my belief.

Mr. O'Connell—You say the rails were up to your hip; is not the space inside raised higher than it is outside? It is, close to the Altar only, but not near the rails.

Mr. Bennett—Was Corrigan ever charged before that with cutting off that man's hand? Never.

Mr. O'Connell—That is quite a general *alibi* for him.

Mr. Bennett—I wish we could get an *alibi* for you. If he believed the charge he ought to have brought the man to justice.

Witness (to a question from the Jury)—I was on my knees, as was the others about me, when the Priest spit at Corrigan.

Juror—Did it produce any sensation? They were surprised.

Juror—Did they express any surprise? They positively were displeased, for they all consented that Corrigan was a very honest man, and Mr. Lyons was displeased at their saying that of him.

Mr. O'Connell—I think it was after the sermon? I can't say when it was. What did Corrigan say? He said nothing; but when he called him a thief and a robber he appealed to those near, whether he was so or not; and I think it was after the sermon. And you were kneeling down at the sermon—it was after mass you know? It is a general rule after mass to stand up, and then after the sermon to kneel down, and say a prayer. Oh! indeed, you are as clever a fellow as ever I saw in that box. Did he say that prayer? When that commenced they all rose up; we were all on our knees when the Priest first spoke about him.

Mr. Bennett (who had in vain endeavoured to interrupt Mr. O'Connell during this second cross-examination)—I must presume you have not heard me, Mr. O'Connell, or you would have attended to me when making an objection. You have already cross-examined this witness at great length; and when I resumed him he said nothing to any question to enable you to attack him now again.

Mr. O'Connell but one question—You were all then on your knees? All that were about the altar were. And it was, then, Mr. Lyons spoke against the wreckers? Against Corrigan only then—he called him a thief and a robber; and Corrigan then appealed to the congregation; and on that Mr. Lyons made a *glawm* at him, and spit in his face. (To questions from the Jurors.) Generally we were all on our knees when he spit; I think this man was on his knees; at first we were not; the floor of the altar, near the railing and the outside, I think is on a level.

Juror—No one but the Priest stands at the altar? *Sir!* I think Corrigan was not inside the altar, but I won't swear plump to it; but then it is my opinion that he was not; it is the habit

to address a sermon to the people; Mr. Lyons was a good warrant to do so; the people are then standing up; I never saw an instance of any portion of them kneeling when he was preaching on this occasion; there was no difference from any other time.

Court (to Mr. O'Gorman, one of the Jurors)—You have been assuming that the witness said, that a portion of the people were on their knees during the sermon? *Juror*—I have, my Lord.

Witness—Sir—I did not say so, Sir.

Juror—It was during the sermon that he charged Corrigan? No, Sir, but after it. Was it a continuation of the sermon? Sir—what, Sir—what is that. Was the speaking of the wreck after the sermon, while the people were on their knees? When he charged Corrigan with being a thief or a robber all I could see were on their knees; to the best of my belief he did not believe Corrigan to be the man who cut off the man's hand. *Juror*—He preached very often against these wreckers? I did not hear him that day, except that he charged Corrigan, and I conceive, that only the flock followed Corrigan out he would have continued it longer.

Mr. O'Connell—Corrigan's face was to you? We were both looking in; I was as if here, and Corregan there (explains their position)—so that his back was not to me. What did the Priest preach on that day? A sermon about some of the Saints.

Juror—Did you not use words that the Priest spoke of cutting off a man's hand, and that he alleged that against Corrigan? I did, Sir. [Here the witness repeated what he said before on this subject.]

Mr. O'Connell—Did the Priest kick Corrigan? He did. Was he in his vestments? He was not.

Juror—He must have dragged him through the Chapel? He put him to no trouble on that, for he shortened the road as fast as he could.

William Hughes examined by *Mr. W. Burke*—Witness lives at Binghamstown; knows the Plaintiff; was at chapel there; was present when, as far as witness could understand, it was about some wreck that Mr. Lyon's was preaching; he called Corrigan a thief and a rogue, on this Corrigan applied to the flock, and asked them could any one say there he was either, and with that Mr. Lyons ran at him, and caught him by the hair of the head, and spit in his face; I can't tell any more, for I did not think there would be any of this work about it; this happened of a Sunday; witness knows William Reilly; was present when he did the same thing to him, of another Sunday; is living in the parish of Kilmore about thirteen years all to three months, and went to live at Ballina, and then came back; knew the priest who was there before Mr. Lyons; can't tell the charges he used to make, but that family money was 2s. 2d. for baptism it was 2s. 8d. of the old coin, and a guinea for marriage, and when the chapel of Binghamstown was begun, they began to rise it to three half-guineas,

half-a-guinea for building the chapel, that was raised by Mr. Jordan, who was the former priest, before Mr. Lyons; Mr. Lyons charges for baptism 3s. 1d. and 3s. family money; he charges more than the former priest; there is oats also given to Mr. Lyons, and those who don't give them he charges 18d. a Bart. In the chapel of Binghamstown, when Mr. Lyons was building his own house, he kept sawyers in it, and persons dressing the slates there. There is another chapel where Mr. Lyons has a farm in the parish. Witness bought half a score of sheep from Mr. Lyons once, from his father, and got the sheep within in the chapel, and there was a heap of dung at the chapel door.

Mr. O'Connell cross-examined him—You have been in England? Yes. And are a driver of Major Bingham's? I am about six months. You were on the run? What is the nature of that? Don't you understand it, on your oath? I *was* on the run, I'll tell you the truth. After you got away from the soldiers? I never did so, it was all settled, I never was in gaol.

Mr. Bennett—We should know what the offence was with which this witness was charged.

Mr. O'Connell—You shall have it—what was it? A girl went away with me, and they indicted me for taking her away. Were you ever in gaol? I was put in by Mr. Bingham for executing a decree, and acquitted by the barrister, but never was tried by barrister or judge for any other offence. But you were charged with killing a woman named Barrett? How could I be charged with killing her, for she is alive yet; how could I kill her, when she is alive; I was sent to gaol for executing a decree. You know a brother-in-law of yours called Crump? I do not, for I have ne'er a one of the name. Do you know any one of the name? I knew Richard and John Crump. Was either of them killed? I was not in the country when Crump was killed, I was at Ballina when the man died, or rather when there was no account of him. About this spitting at William Reilly—what Sunday was it? I can't tell. What year was it? I can't tell. Did you not tell all this to the attorney? I did, but I did not tell him the year; I think it was 1831 or 1832. Can you give me within three years of the time? It was before the petition was sent to the bishop I can't say how long before. A month? I am sure it was. What time of the year? I can't tell; I never thought it would come to this. What part of the chapel was he in when he took that fancy, of spitting at Corrigan? At the altar, near the rails; Corrigan was outside the rails, and he came out to meet him where he was standing; I was about the length of the court from him; I don't know whether James Donoghue was there that day; some of us were standing, all that were about the rails, for we had no place to sit; Mr. Lyons spoke about Magan, he was one of them; I did not hear him mention any other name. How much did you get out of this wreck? What I had to say to the wreck was a little iron and leather, and I gave it to Mr. Lyons; he was

abusing those who robbed the wreck ; he then named Corrigan, and then Corrigan appealed to the parishioners.—Don't tell me about that any more. Well, don't ask me and I won't. It was then during the sermon ? It was. And all were standing ? Some of them were standing ; those outside the railing were standing, and Corrigan appeared to me to be standing ; he was a tall man, and I am sure he was not inside the railing ; he kept a *hault* of him, and took him to the door ; the priest after came back to the altar, and he kept on with some more, and the rest of the flock remained standing ; Corrigan had took the third part of the chapel after him ; I did not hear Corrigan say he defied God and the devil. Did Mr. Lyons say on his returning, that he was sorry he had been in a passion ? I can't say whether he did or not, I did not hear him, but he finished the rest of his sermon. He had his preaching dress on him ? I am not sure what he had on, but he had the scarf down on his shoulder ; I cannot write or read. Mr. Lyons, however, talked something of a person having cut off a man's hand ? He said nothing of that, if he did, I did not hear it. You were in England ; both of us, I see, speak with the same English accent ; you say he said nothing about the cutting off a hand ? On my oath I did not hear him, if I did, don't you think I would tell you ; at this distance I could not say whether he did or no ; a person at the time must have been more occupied at seeing him spit in a man's face. If he said that, it would have been a remarkable thing too ? Perhaps it would.

John Hart examined by *Mr. Litton*—Witness lives at Erris, in Binghamstown ; knows Mr. Lyons ; saw the Chapel, at Binghamstown ; it was used by Mr. Lyons for the dressing of slates, and there was timber built up in it ; the slates were afterwards used for Mr. Lyons's house ; there is another Chapel up the country ; I saw cattle belonging to Mr. Lyons in it ; horses sheep and cows ; they belonged to Mr. Lyons's family, himself, his father, or his brother ; knows that he charged £1 12s. for marriages ; 3s. 2d. for yearly sallary ; 2s. used to be paid for that before, and £1 2s. 9d. for marriages before ; as to clay money for consecrated clay I never could hear any thing charged for it, before Mr. Lyons came ; but since he has charged 2s. 6d for it ; as to baptisms before his time 2s. 6d. was charged ; he charges 3s. 1d. since he came ; was present at an insult he put on one Corrigan in the chapel ; he spit in his face, and threw him outside the doors of the chapel ; was also present at an insult he gave to another parishioner, one Reilly ; he done the same thing to him ; he spit in his face and threw him out in like manner ; knows of some of the parishioners applying for the rites of the church, and refused. Witness himself was refused when he wanted to confess to him ; recollects threats used by Mr. Lyons ; he said that there was a certain family in the parish that had been annoying him, and that he never would stop annoying them, until he made the streets of Newtown Bingham give grass ; the entire of his flock were then present.

Mr. O'Connell cross-examined—There has not been one single attempt at a date in any of those dialogues. Were you with the attorney? I was. You were examined by him about that and about the spitting in the two faces? I was. And he examined all the rest of you in the same way? I suppose he did. Did Barrett or you go into him first? I don't know. What day was it? I don't know; it was Monday I believe; but I am not certain of it; it was Tuesday I think. Will you swear that the dues were not settled by a public meeting of the parishioners when Mr. Lyons first came into the parish? I don't know whether there was a meeting or no; I never heard there was, to my knowledge. When did you see their cattle in the Chapel? Three years last harvest. That was in the year 1830; where was Lyons at the time? He was in that country, and had been so for some time. Whose men were the Thrashers? I don't know, but I know that he owned the corn; I saw the straw and the grain, but not the Thrashers. When pray? I saw the straw in the Chapel; it is three years ago. What time of the year? In winter. Which of these men did he spit at first? Corrigan; I don't know then whether it was Reilly or McAndrews; it was after Corrigan that he spit on Reilly. What was his Christian name—is he alive? I don't know whether he is alive or not; I did not hear that he died. How were they both placed? Reilly was on his knees inside the rails, and Corrigan was on his knees inside the rails. Pray are you the man that Mr. Lyons accused of living with a woman that you were not married to? He never accused me of any thing not right; I never lived with any one but my lawful wife. Did he not refuse you the Sacrament for this? No, for I never lived with any woman but my wife, and he never gave that as a reason. The Priest had no vestments on when he spit in Reilly's face? I don't know—(to other questions)—I was standing in the flock with both; I did not hear him preaching then about the wrecks the day Corrigan was spit at. It is so long ago I can't say whether he preached about the wrecks or no; he often preached about them; I am not sure whether he did or not on that day; I might have heard he did; but I don't recollect it; he called him inside the rails, and when he came in he knocked him down. Did he not say to Mr. Lyons something of God and the devil? He did not give him time; I did not see him kick him or clout him; but he took hold of him behind his back and pushed him on; I did not see him take him by the face. Did he say to him "Paddy Corrigan come inside here?" He called him in, and he came in, and fell on his knees, and then Mr. Lyons spit in his face; he had some words before he asked was he there, on which he came forward; this was after mass; all the people were standing round; I saw it as well as another; I don't know whether I was standing or kneeling at the time, or whether the people were so or no; he did not charge Corrigan with any crime in my hearing that day; I heard him call him by his name; I don't know how

near I was ; I might be up to the rails ; was near enough to see him knocked down, and he spitting in his face ; Corrigan said nothing at all in my hearing ; he forced him out of doors ; I don't know whether the priest went on with his sermon after ; the entire of the flock rushed out when they saw the man used so, except very few ; I don't know whether he read mass that day, for seldom he does read mass in it ; I don't know whether he or his curate read it that day ; I was a tenant of S. Knox ; I am a tenant of Major Bingham's now ; I was employed by one Lavelle, Owen Lavelle, a brother of Pat. Lavelle's.

M. Bennett—My Lord, I close.

[*Mr. O'Connell* endeavoured to make a statement of his rebutting case, but was not permitted.]

REBUTTING CASE.

The Rev. Patrick Flannery examined by *Mr. O'Connell*. Witness belongs to the diocese of Killala ; was a parish priest ; is acquainted pretty generally with the description of the diocese ; was employed by the Bishop to investigate the charges against Mr. Lyons ; repaired to the parish for the purpose ; the parish was apprised of his intention, and apprised them also of his intentions, which were as witness told the parish ; that he was sent by the Bishop to enquire into the truth or falsehood of charges laid before him by some of the parish, with instructions to lay before his Lordship at witness's return the result of his investigation, observing that if they proved that the charge was true, the Bishop was ready to redress their grievances ; attended on the evening of Sunday accordingly.

[The memorial was handed up to him.]

Mr. O'Connell—Would you have performed that duty to the full extent of your authority ? I would, and I did.

Mr. Bennett—That is not a legal question—but go on.

Mr. O'Connell—State what occurred. The memorial was read to the people in my presence ; it was read by Mr. Lyons first ; I read it afterwards, but I cannot say I read every word of it ; but I am ready to say that I read the substance of it ; but Mr. Lyons read it all audibly, so that every one could hear it, if they were not very deaf ; having represented that I came, deputed by the bishop, to inquire into the truth or falsehood of the charges ; I remarked audibly that any subscriber or any other person, who thought that the charges were true, should come forward and show how far they were true, and to produce proofs to show it ; no one came forward spontaneously to that general invitation ; I recognized in the chapel one whose name was attached to the memorial ; I knew him, and no one having responded to my invitation, I called him by name, and I desired him to come forward and prove his charge ; he came forward. and I told him to go easy about the business, that we should go about it systematically, that I should read out some of the charges, and that if he

thought he could prove others of them, that I would allow them; I directed his attention to the charge of revealing confession. That would have been the most serious complaint? It would; for divulging confession is the worst of crimes for a Catholic clergyman to commit; he would deservedly be expelled for it. How were you met on that charge? I was not met on it; Pat. Lavelle began to give me a history of a difference between him and Mr. Lyons for a year or two back; I observed that I did not come there to enquire into the differences between him and Mr. Lyons, but into the truth or falsehood of the charges in that paper; he would not come to the charge; he alleged that no priest but Mr. Lyons had refused confession; I asked him had he been at confession, and he said Mr. Lyons knew that; I urged him as far as I possibly could to the complaint; I availed myself of every *artifice* to induce him to come forward and prove the charge; he said I was not reading the memorial right, as if he would impress on the people that such a charge was not in this paper, or that I read that charge unfairly, as I thought; I said no one could deny but that such a charge was in the paper; he made no reply; I don't recollect that I offered him the paper; I again invited every person to come forward and to substantiate the charges, and there was no reply; and at last they departed; I gave them full and deliberate time; during the course of the *investigation* an old man came forward and said that he had put his name to the memorial; I *think* his name was *Kane*; I am not positive; he said he put his name to the document, but he said it could not be the one that was in my hand, for that such things were not in the document he signed; I repeatedly called on the persons to come forward to establish the truth or falsehood, and they refused saying anything on the subject; I asked if there was any person to establish that class of charges or any other; they did not give any attention to that, but they wanted any other in the memorial; but no one came forward; the only thing I recollect then was Lavelle crying out, "come away, boys, let us leave the chapel, there is no justice for us here;" I told him that the Bishop would not listen to more memorials, but in a qualified sense; I qualified it in this manner; there was some noise in the chapel; how it was I don't know, but it affrighted some, and some were under the impression that there was a riot from the violence; I got on the altar to command a view, and asked did they submit to this investigation; and afterwards I said, that if they should address the Bishop, and send him a complaint, and afterwards not come forward to prove it, but treat the investigation of the Bishop with contempt, that he would not ever again attend to any memorial from them; I alluded to the fable of the "Shepherd and the Wolf," and said they would be considered as the shepherd was in the fable; and by acting as he did, no attention would be paid to them in future.

Mr. O'Connell—Had you said to them, what you have now told us, AFTER you had called on them to bring forward proofs?—

Witness—I made repeated calls on them, and no one attended, before I told them that there would in future be no attention to their complaints, and gave their conduct as a reason for there not being any attention paid to it—and said all this, before that; Lavelle called out and said,—“Boys come away, &c.” I cannot say how long I remained—more than a week—I went about investigating in private—I went to every house then, and on a future occasion, about a month or six weeks after, I went by myself, in some cases, in others, Mr. Lyons went with me, and not only did I go to every house every day, but when I was out, every person I met on the road, I made inquiry from, as to these charges. I also made a private investigation.

Mr. Bennett—Don't say any thing about that.

Mr. O'Connell—Did you make a report to the Bishop?

Mr. Bennett—Is it in writing?

Witness—I did both, verbally and in writing.

Mr. Bennett—Then he cannot say what he reported verbally.

Mr. O'Connell—I must get that from him, I am entitled to it.

Court—On what ground?

Mr. O'Connell—It is a privileged communication, and he apprized Lavelle he would make it.

Court—I take it for granted, the report was the same as his verbal statement.

Witness—Precisely.

Mr. O'Connell—That the material charge could not be substantiated?

Witness—Precisely.

Mr. O'Connell—Did any person whose name was to the memorial, disclaim it?

Mr. Bennett—And was Lavelle by?

Mr. O'Connell—I am entitled to all that occurred.

Mr. Bennett—Not as you put the question.

Mr. O'Connell—I am—Did any one in Lavelle's presence disclaim?

Mr. Bennett—Come, that is a *tack* to the question indeed, it is as hard to catch you, as to catch a *rat*. Lavelle must also have heard it.

Witness—The man of whom I spoke—

Mr. Bennett—Was Lavelle within hearing, Sir?

Witness—I cannot say—I don't think that Lavelle was then in the chapel.

Mr. O'Connell—Did any one say any thing of the reason for signing, while Lavelle was in the chapel?—I don't think there was.

Mr. O'Connell—I will put the question as I at first put it.

Mr. Bennett—I object to your doing so.

Mr. O'Connell—I have a right to put it “during that investigation.”

Mr. Bennett—Why, there was no investigation.

Mr. O'Connell—In that transaction, and during the investigation in the chapel that day, did any person, and if any, who (whose name was in the document) state any reason for his having put his name to it. *Witness*—No one came forward but Pat. Lavelle, and, I think, another. Then if any thing of that kind occurred, it must have been on your private investigation. Yes. Do you know the dues in Mr. Lyons's parish? Yes. Did they receive the sanction of the bishop? I have from the bishop that they received his Lordship's sanction. Are they higher or lower than usual? They are higher than some, lower than others. That question is not important, but they are not higher than in other parishes, but I will put it to you in another shape; according to their description are they or are they not exorbitant? I don't consider them exorbitant. How long do you know Mr. Lyons? I know him from 12 to 13 years. You know his character for correctness as a clergyman?

Mr. Jackson—That is quite an illegal question.

Court—In general the rule is so, but I was reading an authority yesterday, which seemed to make a libel case, when a plea of justification was put in an exception. *Mr. Phillips*, in his Treatise, does not give the rule the sanction of his approbation. *Lord Alvanley* was the judge who determined the point.

Mr. Jackson—If your Lordship be in favor of the question being put, let it be so, subject to my objection.

Mr. O'Connell repeated the question.

Witness—The general character of Mr. Lyons, as a clergyman, is that of being attentive to the duties of his station and to the wants of his parish, and, until this memorial, I never heard any person say that Mr. Lyons—

Mr. Bennett—I must object to all this.

Witness—All I could hear of improper or oppressive conduct of Mr. Lyons was in the memorial, and I made enquiries about it in the parish.

Mr. O'Connell—Was the result favorable or unfavorable to Mr. Lyons?

Mr. Jackson—We object to that too.

Witness—The result of that enquiry was favourable to Mr. Lyons; I made the enquiry as minutely as I could, and that, subsequent to what occurred in the chapel, and before I departed.

Mr. O'Connell—Your opinion is as the opinion of a person sent to make an enquiry, and to report on it.

Mr. Bennett—No such question can be asked.

Witness—I don't understand you.

Mr. O'Connell—The only opinion which I ask you is, your opinion on the investigation, you were sent to report on the memorial?

Witness—Still I don't understand the question.

Mr. O'Connell explained his meaning.

Witness—In my mind Mr. Lyons stood innocent of the charges

in the memorial; I sought for as much evidence as I could get, and I did not get it; I knew nothing of the state of the parish before Mr. Lyons came in; I knew nothing to my knowledge of his building chapels.

Mr. O'Connell—Was there not a *plan devised* on the Sunday of the investigation to collect the parish together? There was.

Mr. Bennett—Your Lordship will recollect, that I object to these questions.

Court—The leaning in my opinion is, to permit this question, if Mr. Flannery had not taken all the pains in his power —

Mr. O'Connell—Go on with what you were telling the jury.

Witness—I did not announce any particular plan, save mentioning to the people, and in the course of the week that it was expected there would be a large meeting that Sunday, and that there would be no meeting for mass elsewhere, in order to have this meeting full.

Mr. Bennett (cross-examined him)—Where do you live? I live about 50 miles from the chapel; more than 30, less than 50. Were you ever in the parish before? I was before that Sunday; I dare say three months, or four, or five months before; I went sometimes there. Where did you stop in the parish, when you went on this enquiry? I did not go from where I lived to Mr. Lyons's on that occasion; I lived in the same deanery of Erris with him; I was often in the parish before. Did you go there immediately before that Sunday? How long before the day noticed for your investigation were you with him? I think it was late in the week when I came—it was Friday or Saturday. You went to his house and remained there, while you were in the country? Yes. It is a comfortable house—is it not? I have seen some houses more—some less comfortable. Why, you could say that of almost any house; but I should suppose it was comfortable to you, for you seem to be in good case; you remained there a week during the enquiry, and a week after, and you were all the time in Mr. Lyons's house? I was not often in the parish—I can't say that I slept there every day. But generally you were commorant there? Yes. Did you stay longer than a week there? I can't say, not a fortnight. And you gave that notice immediately—the next day perhaps in the chapel? I did. The memorial was sent to Dr. Waldron? Yes. Who is Dr. Kelly? He is the Roman Catholic Archbishop of Tuam. And Dr. Waldron Roman Catholic Bishop of Killala? Yes. A remonstrance was first sent to Dr. Waldron, and he sent you to report upon it? Yes. Of course, the Archbishop is his superior? Yes, in some respects. At what time of the year was that? In September. How long had the Bishop the memorial? I can't say, but I saw it with the Bishop in June in the same year. And he had it all that time, from June to September? Yes. Mr. Lyons was in the chapel when you began what *you* call an investigation? Yes. And he read the memorial? Yes. Out loud? Loud enough

to be heard. And they were mostly the lower order that were there? High and low as they live in the parish; there are some respectable people in the parish, but in general many are of the lower order. And the first thing you said was, this memorial charges Mr. Lyons with having revealed confessions? No, Sir, I said, I came there to enquire into the truth or falsehood of the statement in the memorial, and that I was ready to hear any one who would substantiate it. But first Mr. Lyons set about reading the complaint? Yes. Did you not tell them, that the memorial stated, that they had charged Mr. Lyons with revealing confessions? Yes. The paragraph you drew your conclusion from was this—(reads) “calling us knaves and robbers, but who knows better than our father confessor what we are”—that was the paragraph which I conceived contained that charge. And, therefore, you called on them to come forward and prove it? Yes. Lavelle differed from me, and said I was not reading the memorial right. Thereby you understood that Lavelle meant that he did not charge Mr. Lyons with revealing confessions? It seemed to be his meaning. And you said he did, and called for his proof? Yes. Then you called for proof of what he alleged was not in it? I called for proof of what I found in the memorial. But you called for proof? Yes.

Court—There was a difference between you in the construction of the memorial, and you called for proof notwithstanding? Yes.

Court—I confess I should have construed it as Mr. Flannery did.

Mr. Bennett—At least, my Lord, the meaning is equivocal. But pray did you not ask the people whether they ever saw Mr. Lyons drunk? I did. And did they not tell you that the memorial contained no such charge against him as drunkenness? I don't recollect that I got such an answer, but not one of them came forward. Or any of them charge him with drunkenness? No. The memorial told the bishop that they wanted a sober character? Yes. And what was said on it? Of course as no one came forward I could have had no conversation as to drunkenness. But the two points you dwelt on were those I mentioned, or did you mention any more? I can't say I mentioned any one of them; I think I read the substance of the memorial. But they appeared dissatisfied with this mode of being treated—I mean Lavelle and “his boys?” Yes. Did they say any thing about a petition to Dr. Kelly? They did not, but I said I thought it would be useless to forward any petition to him, as they would not come forward now; I continued two hours after in the chapel, and there was no evidence offered; there was a very large congregation that day. You said that the dues were sanctioned by the bishop, when did he give his sanction? I can't say, but I know the bishop was acquainted with them; I heard the bishop say so. Did he distinctly tell you that he had sanctioned the 1s. 3d. or the 1s. or any of the other charges specifically? He told he gave

his sanction to Mr. Lyons's dues and discipline. But he did not tell you what they were? No; but I heard him saying that *Ss.* were the dues that he said Mr. Lyons had his sanction for; he told me this frequently, and as late as a fortnight since. When had you first any communication on the subject with the bishop? I can't say, but since he received the memorial he said it. Did he before — well —? I think Dr. Waldron said his dues had his sanction since he began to get these dues from the people. Come now pray tell me precisely—did you hear of this sanction from the bishop till after the memorial? Till after the memorial? I don't think —, yes, he also said it before. Was drunkenness or revealing confession the first charge you mentioned to the people? Which ever was first in the memorial. The word you say put drunkenness into your head, I mean the word "*sober*" was the first which occurred in the memorial; which of these subjects can you recollect did you speak on first? If *sober* came first in the memorial it was on that subject; but the principle charge to which I directed my attention was revealing of the confessions.

Charles O'Brien examined by Mr. Whiteside—Witness lives convenient to Binghamstown; knows the Plaintiff; was in his employment; it ceased about two years ago; had no employment under him, but in the chapel; attended it always on Sundays and holydays; Mr. Lyons returned from England in 1830; recollects him preaching about the shipwreck.

Mr. Bennett—This is giving parol evidence of sermons.

Mr. Whiteside—Do you recollect him preaching on the subject of the wrecks? I do, and I recollect the occasion of the affair about Corrigan; I recollect that Corrigan raised his voice; he was near the far end of the chapel, and I believe Mr. Lyons was on the move, after divine service; no mention was made of Corrigan, but he read out several names who had transgressed at the shipwreck; I heard Corrigan's voice, but I did not see him; I was told it was him; he came across in the priest's path as he was going out, and asked him why he was speaking of him at all? and said something about *God* and the *devil*, but I could not hear it. Did he use any expressions of defiance?

Mr. Litton—Pray ask him what he did.

Witness—He came before him in his path, as I could learn; the row commenced, and I had to enquire what was its cause; Mr. Lyons had come down about fifty feet from the altar before I heard a noise; I was in the habit of attending chapel.

Mr. Whiteside—Did you ever see Mr. Lyons spitting in any of the parishioners faces? I never did; I am in the habit of attending chapel regularly for these five years past; I saw slates in the chapel; they were remaining there before, and after the chapel house was slated; I believe they were placed in the aisle next the priest's own house; the chapel was not finished then; I was present when a part of the committee and he made an agreement to

take away these sates, for which he was to pay them ; I was three years in the employment of Mr. Lyons, and seen sawyears cutting timber in the chapel for seats for the chapel ; I never seen them thrashing for Mr. Lyons in the chapel, but I saw them thrashing for Major Bingham in it ; Mr. Lyons was at that time in England, or in this city ; he censured any person for so doing ; he knew nothing of it ; it was I told of it on his return, and he told me that I was very wrong in not having thrown them out of the chapel ; I was present at the agreement with the committee and Mr. Lyons, that they should pay for seats to use for the children in the school ; there was received for these seats £5 1s. and some pence ; it was paid to the chapel committee ; Mr. Lyons did not receive one farthing of it, to my knowledge ; Mr. Lyons, on the transaction as to Corrigan, was preaching from an hour and a half to two hours.

Mr. Litton (cross-examined him)—How long are you living in that country ? Five years, but it is twelve years, or more, since I first came to it. Where were you since then ? In several places ; I was first in the county of Clare, next in the county Galway, next in the county Mayo ; and I remained there ever since. Come then, we have you in three counties in a short period—what occupation had you in those places ? I was a policeman in Galway and Mayo. And why are you not so still ? That was my misfortune and not my fault. I believe Major Warburton held some enquiry upon you ? He dismissed me without it. And now you are a schoolmaster for Mr. Lyons ? No, I am a national teacher. Oh ! that is a still greater promotion ; so you are schoolmaster for the nation !!! Who manages this national concern ? The Rev. Mr. Lyons. I thought so : was it not by his interest that you got it ? I was elected by the parish. It was he proposed you, however ? No, it was Mr. Everard. Mr. Lyons is the manager of it though, and the whole under his care—? where is it held ? It is held in Binghamstown. In what house ? In one part of the chapel. (To other questions)—I knew Fleming ; I don't know whether I got his place or not ; he was not turned out to my knowledge ; he was not the master immediately before me. You have heard Mr. Lyons preach ? I have, for near two hours at a time. Did you not think him tedious ? I never think what is good can be so. You don't ? then you attended to all he said ? I did. What was the last sermon about which you heard from him ? I have heard him preach on the subject of the shipwrecks on the coast. What did he say ? I can't tell you the words of his sermon at this distance of time ; it is about three years ago. Mr. Lyons preached several times since then concerning the shipwreck ? He did, but only once, for two hours. You must have some patience to hear a man for two hours on one subject ? I have heard him for three hours. Have you indeed : pray when were you discharged from the police ? Next St. John's eve five years. What became of you since ? I was stew-

ard to Mr. Lyons for three years. Now, as to the slates, was not Mr. Lyons about that time building a house for himself? He was. And that since the chapel was rebuilding? Yes. And his house is nearly opposite to the chapel? It is.

Mr. O'Connell—One question, if your Lordship will please to allow me; I wish to ask merely, if the part of the chapel used as a school now, is not walled off from the rest? It is, it is separated from the rest of the chapel.

Mr. Litton—How high is it? From ten to twelve feet, it is all under one roof.

Mr. O'Connell—I only wished that it should not go out to the public, that this school was held actually in the very chapel.

Mr. Whiteside resumed him—Why were you dismissed? I was dismissed from the police for being an advocate for Mr. O'Connell; that is my opinion and belief, and the opinion and belief of the public at the same time. Did you ever see Fleming drunk? I did, several times. Did you ever hear Mr. Lyons say in the chapel, any thing about laying waste the streets of Binghamstown.

Mr. Litton—If he says no, how can what he did *not* bear be evidence for you? You were examined at the sessions, and, I believe gave some account of your dismissal from the police there, I think it was a different account you gave then, as to the reason of it? If I did, I did not then tell the court that the reason I gave for my dismissal was, in my firm belief, the true reason, as I have done here. Then you believe that Major Warburton adopted a cause which did not exist, as an excuse to dismiss you? I really believe he did.

To the Jurors—I was three years in the police, and was stationed in Binghamstown when I was dismissed.

James Harte examined by *Mr. O'Connell*—I will ask you very few questions. Were you in the chapel when an occurrence took place between Mr. Lyons and Corrigan? I was. I saw Corrigan that day, and I heard Mr. Lyons, who had been after coming from England, preaching about a vessel which had been wrecked on the coast, and Mr. Lyons had heard what the people had done, and he did not like it; it was of a Sunday, and he preached against it, and said something about a man who had cut off the hand of another man, and he did not mention the name of the man who did it. I saw Mr. Lyons after the Sermon, going out; Pat. Corrigan's name was not mentioned at the altar; shortly after, the priest was going out, and the public opened a passage for him, and Corrigan came after him, and said, "Why were you talking of me?"—whatever I am, God or the Devil can't prove that against me. Whiff! says the priest, just so, you are the man, go off out of that. I heard after from Corrigan, that Mr. Lyons had apologised to him. *Mr. O'Connell*—That is the reason that they have not produced Corrigan.

Mr. Jackson—That is a very improper observation.

Mr. O'Connell—Do you know one Wm. Reilly? I do. I attend chapel regularly, and I saw every thing out between Reilly and Mr. Lyons. I never heard Mr. Lyons say, that he would waste the streets of Binghamstown, and I attend the chapel very constantly, or any thing to that effect. He preaches frequently, and very long sermons.

Mr. Geraghty cross-examined him—I live in the parish, and am a constant attendant at chapel; mass is celebrated once on a Sunday, in Binghamstown chapel; on Christmas-days, twice. I did not see two masses there on a Sunday. Don't you believe that Corrigan understood that day, that Mr. Lyons had mentioned his name? I believe he understood that he meant him, he mentioned names, many of them, a great many, he did not mean Corrigan. Will you swear that? I will. I can't tell what were the names he mentioned—he mentioned many more than I can recollect. I am a summons-server for Captain Ireland, the Stipendiary Magistrate.

A Juror—When was this Sermon preached?

Witness—I am not sure whether it was in October or in November, 1830.

Ignatius M'Loghlin examined by *Mr. O'Connell*—I am agent to Lloyd's at Belmullet; was in Mr. Lyons's parish originally; knew the state of both ends of it. When Mr. Lyons came to it, there was not one slated, or even one thatched chapel in the parish; there are two in it now; they have been erected by Mr. Lyons, and the other gentlemen of the country.

Mr. O'Connell—Is that document Mr. William Bingham's hand-writing? To the best of my opinion it is.

Mr. Jackson—I object to any case being made against Major Bingham.

Court—No, I don't think they can.

Mr. O'Connell—My case is so strong, that Mr. Jackson is afraid of it. Were you an attendant on Mr. Lyons's chapel? I attended it regularly when in the parish, and out of it repeatedly, and heard him repeatedly preach for three years exactly together, and never heard one word from him, saying that he would lay waste the streets of Binghamstown; on my oath, I never heard him say any thing of the kind; I was not in the chapel the day of Corrigan's affair; I never saw him spit on him. Did you hear of the report of his having done so to William Reilly.

Mr. Litton—That is not legal evidence.

Mr. O'Connell—My Lord, the first time we ever heard of such an attack on William Reilly was within this court, I therefore put this question, and submit I have a right. [The memorial was produced.]

Witness—This is Owen Henaghan's handwriting; I often saw him write letters; I have never heard any thing prejudicial to his character, and think that he is deserving of credit in a court of justice; I am not aware that he had been examined before Mr. Ellis; I never heard any harsh complaints of dues until lately.

Mr. O'Connell—Until this year? Yes.

Mr. Bennett cross-examined him—I lived adjoining to Binghamstown; I was then a farmer, a small farmer. Suppose you knew a man who had written out and composed a long paper, and knowing it to be a lie, had signed it, and advised other people to sign it, would you say such a man was worthy of credit? If he had nothing to say to it, it might be different, but if he did it wilfully, and was interested, I don't think I would consider him worthy of credit, I certainly would not. There has been said a great deal here, about Mr. Lyons erecting chapels; pray, sir, by the virtue of your oath, who gave the ground for those chapels, and built the one in Binghamstown? I could hear it was Major Bingham. Do you believe it? I do.

Mr. O'Connell—Did you ever hear of a learned counsel, and a king's counsel drawing a long bill in equity, stuffed with most notorious lies, and charges against a respectable individual, and then this counsel signing his own name to it, and doing this too for money? I often heard counsel were "trickative" enough.—

Mr. O'C. we close now.

Mr. Litton then addressed the Jury—

GENTLEMEN OF THE JURY—Permit me to congratulate you and the public that this disgusting trial is drawing to a close. It is a case which never should have been brought into a court of justice; one pregnant with discredit and dishonour to the plaintiff; one, in which he has rashly and wildly forced into public view his own demerits, and by which, in every step he has advanced, he has established a triumphant case of justification for the Defendants.

The Plaintiff has presented himself to you in the sacred garb of a Minister of the Gospel—one which it is our duty, as well as our interest to respect, when we find that it is, as it ever ought to be, the emblem of a mild and Christian spirit. But, when we find it thrown around the wearer, but to cover his offences—when we find that it is used, not as a shield to protect, but as a sword to wound; that it is held up, not as the mantle of peace, but as the flag under which personal vituperation, private animosity and political agitation, have rioted, then it is equally our duty to drag it from the shoulders of him who has degraded it: the interests of religion, the interests of society require it; and if you believe the evidence which has been given (and you cannot disbelieve it,) you will have a painful duty to perform, but you must perform it. You must, by your verdict say to this Plaintiff "Sir you come into this court with unclean hands—you have visited your unhappy parishioners with cruelty and insult, in your career of vengeance against them—you have violated the most important duties of your calling—you have desecrated their temple of worship, and made the alter at which they knelt a forum for the utterance of malicious feeling, and the development of plans of vengeance; and how can you expect to have the verdict of a Jury in your favour. Gentlemen, the first question for you will be, whether you can disbelieve the evidence of the four witnesses who have

been produced for the defendant. They have not come here to swear to any thing by which their worldly interests can be promoted. They are Roman Catholics. They well know that after this trial they must return to the parish, over which the Plaintiff, as Roman Catholic clergyman presides, and be exposed to a continuance of that persecution, which has been already dealt out so severely to them. If we find a personal object to promote, and witnesses coming to advance their personal interests, there may be some reasons for withholding a ready assent to their accuracy in the detail of their evidence. But will you believe that in despite of all the influence the Roman Catholic priesthood possess and exercise over their flock, these four respectable men would voluntarily come forward to commit wilful and corrupt perjury, without any personal object to promote, against all their interests and in the very presence of the Plaintiff, whose conduct their evidence arraigns. Look to your notes, exercise your judgments, consider the manner in which they have given their testimony. Do you discredit the witness, James Daly, who is a Roman Catholic, whose residence is in the same town with his clergyman, and who comes forward without profit or reward to give his evidence? Do you discredit the witness who told you that he still thought the Roman Catholic religion, in which he had been brought up, a good one, but that he had been driven from the exercise of it, and from his chapel, by the cruelty and persecution of the Plaintiff? Will you say that he is a perjurer? Do you discredit the witnesses Hughes and Harte, both of them respectable men? Would not their interests have been consulted by a concealment of the misconduct of the plaintiff, if, with truth, they could have concealed it? But is this all? Are we to believe, or can you believe, that 136 Roman Catholic parishioners would, in a memorial signed by them, depose falsely as to the conduct of their priest and against him? that under the eye of that priest, they would have affixed their names to a memorial containing, not general inculpatory language, or stating general misconduct merely, but detailing many isolated, independent facts, establishing his utter abandonment of the duties of his sacred office, if such detail were false; the same facts have been sworn yesterday and to-day, consistently—convincingly sworn to. This memorial was signed by 136 Roman Catholic parishioners against their own parish priest—it was in the form of a complaint to his own bishop; and yet we are told, that it contains falsehoods against their clergyman; what could be their motive for voluntary and corrupt perjury? It is said, that those who signed were the tenants of Major Bingham the defendant; but it has appeared in evidence, that many of those who signed never have been, and are not the tenants of Major Bingham; but if they had been, can you bring yourselves to believe the case opened to you upon this ground, for the purpose of attacking the credit of these witnesses? Ask yourselves, whether it is probable—whether it is

possible, in the state of this country, as it has been detailed to you, and in despite of the exercise of that influence of the Roman Catholic clergy over their hearers, which has been found to sever the closest ties, which bound tenant to landlord, that Major Bingham, though he had been aided by all the landlords in the country, could have induced 136 Roman Catholics by false accusations, to attack the character and arraign the conduct of their priest? Nothing short of a persecution which human nature could no longer yield to—nothing short of a misconduct on the part of the plaintiff, which outraged decency, and made attachment or respect, on the part of the parishioners, no longer possible, could have induced that memorial, which thus carries with it intrinsic evidence of the truth of the facts it details, you cannot but believe that the facts stated in that memorial are substantially true. It is your peculiar province, gentlemen, looking to the class of witnesses we have produced, to the manner in which they have given their testimony, to their motives for deviation from the truth, if any can be suggested, to arrive at a sound conclusion, as to the credit which is to be given to that testimony. The leading counsel for the plaintiff, in a species of cross-examination, which might have had its effect upon an unenlightened jury of the last century, but cannot have had any weight with you, endeavoured to break down (as it is technically called) the defendant's witnesses, by seeking to establish slight discrepancies in their relation of the facts to which they have respectively deposed, even if it had been found, that men, unused to such a course of cross-examination had, by reason of it, become puzzled, and perplexed, could it therefore be said, that they were not deserving of credit upon their oaths? but in this case, the witnesses for the defendant were from the first to the last clear, distinct, and consistent, in their testimony; and, in truth, they withstood and utterly baffled the effects of forensic ingenuity; the slight differences in their evidence, as to minute facts, but confirmed its truth, evincing the absence of concert or of plan, but presenting an array of circumstances all converging to the same point, which must have carried to your understandings a conviction of the truth; those who pretend to doubt the truth of important facts, because the witnesses, who depose to them, differ in their account of the minute incidents which have accompanied them, should be taught to remember, that the blessed truths of the Gospel amongst the many invincible bulwarks which they have presented to the attacks of the infidel, may reckon not as their weakest, that the inspired writers of them agreeing in the great and all-important facts, yet differ in the minute circumstances attendant upon them; the absence of concert in the detail of minute facts, is always evidence of truth. But whilst the Plaintiff's council would endeavour to lead you to disbelieve our witnesses, the Plaintiff's own rebutting case most strongly confirms their testimony. A Mr. Flannery is produced by the Plaintiff to sustain his falling

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case ; a Roman Catholic clergyman, who, for the purpose of inducing you to believe that the facts stated in the memorial were not true, tells you, that by the order of the Bishop he held an inquiry into the conduct of the Plaintiff, that he called on the parishoners, and that they did not come forward to make good their charges against the Plaintiff. But what was the nature of that inquiry? It was held in the chapel, by one priest upon the conduct of the other ; the Plaintiff present occupied one or two hours ; no time given for the production of evidence ; the tribunal was one before which justice could not be done, calculated most strongly to impede the object it professed to promote ; it was, in truth, a mere mockery of an enquiry. There have been two other witnesses produced to sustain, what the Plaintiff calls his rebutting, what I call, his confirming case. One Charles O'Brien has been presented, who has had the hardihood to tell you, that a gentleman, who fills an office of high trust, who has been for many years known to all, as exemplary in every private and public relation of life—in violation of every principle of justice, had dismissed this O'Brien from the police, because of his politics, and had sheltered himself under a mean and paltry pretext ; this is the story O'Brien would have you believe, against a high public functionary, who has filled his office of trust, with a degree of honor to himself, and advantage to the public, which has scarcely been ever equalled, and has obtained for himself a well earned reputation—now for the first time attacked by this infamous Witness, who has added further degradation to the case he has been brought forward to sustain. With respect to Harte's and Mc Laughlin's testimony, it calls for no observation ; their evidence is, that they did not hear, and did not see that which others have sworn, that they did hear and did see—I need not waste an observation upon their evidence—it goes for nothing—it was an idle waste of public time to produce such Witnesses, and their testimony has not advanced the Plaintiffs' case, or gone one step to redeem it, from its well earned ignominy. What then are the facts which now stand indisputably proved against the Plaintiff, I wish I could avoid the recapitulation of them—they present a melancholy picture of political violence and religious persecution, degrading in any man—in a minister of the Gospel, a violation of all the doctrines he professes, and the duties he is bound to inculcate. I speak not of his oppression in relation to his ecclesiastical fees, which yet he appears to have increased in some instances to nearly double of what his predecessors had claimed, or received ; nor yet do I especially advert to the desecration of the Holy Temple of his religion—yet, I deem it a great offence in a clergyman, or in any man, to apply to profane and secular purposes, the house of worship, in which but one interest should be promoted, and one object inculcated. It has been established in evidence, that this reverend pastor made the Roman Catholic Chapel a storehouse for the materials to be employed in

building his own habitation; that sawyers and carpenters, his workmen, pursued their respective trades within the chapel walls, in open day; that another and smaller chapel of the parish had been used by him as a sheep and cow house, for his own cattle, and that of his father and brother—all these matters, though indecorous, indecent, and reprehensible in the last degree, I do not now so especially advert to—but I do especially advert to that which no man can have heard of, without horror; that this pastor presumed, because certain of his parishioners remained in the employment of the Defendant, Major Bingham, to deny them the rites of the church, which they considered necessary to their salvation: this religious tyranny was not exercised merely upon men who became the object of his vengeance, but upon weak and helpless women! Not content with holding up my client, the Defendant Lavelle, as an object of common hatred, and a fit subject for universal attack, he refused to his unoffending wife, a religious rite which Protestant and Roman Catholic alike consider as desirable and comforting, and he compelled this poor woman, after a severe confinement, to travel a distance of thirty-three miles for the purpose of being churched. A Roman Catholic clergyman, residing in a distant part of the country, as a matter of charity, performed the rite, which the Plaintiff was bound, as a matter of duty, to have administered. Gentlemen, have you ever, in modern times, heard of persecution like this? Have you ever, to a like extent, known the feelings of religion, of kindness, and all sense of common charity and common decency, yield to the overwhelming force of a determined revenge. Gentlemen, I address a jury composed of Roman Catholics and of Protestants. I am a Protestant, but I do aver, that if the Primate of England had acted as this Plaintiff has done, I would be the first to drag him from his eminence, and should feel that in the act I did but justice to the doctrines I profess, and to the religion he would have disgraced. But further, what says this Reverend Pastor to the profanation of his altar, from which, forgetting every thing but vengeance, for a supposed offence, he was heard, whilst still clothed in his clerical garb, to declare, in the presence of an assembled multitude, from that altar at which he had but a few minutes before solemnized the rites of his religion, that he never would rest till the grass had grown upon the streets of Binghamstown; in other words, that he would proceed in his career of persecution till he should succeed in depopulating the defendant, Major Bingham's estate, and making his town a waste!

As to the other acts of this reverend father, his low insults to his poorer parishioners, his vulgar exhibitions of his power, to which they were compelled to yield, his invention of new modes of degradation, by which to oppress and sink them, they are too fresh in the memory of every man who has heard this trial to need recapitulation or comment. But again—what has been the course pursued by the reverend plaintiff at this trial? Is there any term of vituperation which his leading counsel has not applied

to the defendants? Has it not, by the plaintiff, been made the pretext for the introduction of every topic calculated to increase the unhappy differences which exist amongst us; to excite civil discord; to exasperate all the feelings which have created division amongst those who should know no enemy but the enemy of their common country? Has not this temple of justice been made an arena for political combat, and the time which should have been passed in developing facts and arriving at justice, been employed in enforcing agitation, and the dissemination of principles which have already been the ruin of our peasantry? Has not my humble client been held up as a pest to society, simply because he acted as under agent to his landlord? Was not the object of this to excite tenant against landlord, to lead the people to believe that the tenant was ever the oppressed, and the landlord ever the oppressor? Did not every effort of the opening statement tend to this point? What right had he to send my client back to his native country, branded with the epithet of a "multifarious scourge?" How has my client, who has peaceably pursued his humble walk through life, deserved such an epithet? If, Gentlemen, indeed there be a man who lives, and moves, and has his being, in the distractions of his unhappy country, whose business is agitation, whose pastime is tumult, who rides upon the storm he has excited, whilst friends and foes are alike its victims; if your eye should rest upon such a man, to him apply the epithet; call him, for he deserves it, the "multifarious scourge of his country;" but apply it not to my client, whose only offence has been, that he refused to leave the employment of a kind landlord, whom an infuriated priest, in unholy language, thought fit to denounce from the altar. I do aver, that my client has proved his justification; he has produced testimony which has not been impeached, and which cannot be impeached; and with you I leave his case; with you also I leave the case of the Plaintiff—decide between us. When a clergyman presents himself to public view, as a messenger of peace and good-will amongst men, excuse and forgive his foibles and his errors, in respect for the calling, forget the frailty—sustain him and support him. But when he shall elect to occupy the station of a fierce and relentless political agitator, to become a public denouncer, and to vilify the character, and put in peril the property of any man with whom he has had a difference—to sacrifice his spiritual duties at the altar of personal malignity and private revenge; he throws aside the cover which would otherwise have protected him; he disowns, as well as dishonours, the clerical garb, and he must be dealt with as other men. Gentlemen, in the course of this trial I have heard something of the term "prejudice." It is but true, that in almost every grade of society in this devoted country, we have had our political and our religious differences, unhappily fermented and encouraged, to the ruin of social comfort and of public peace.—Would that there was an end of this—would that all were forgotten, save that we are brethren, born and living in the same

land. I do cherish the hope, that I shall still live to see the day when Protestant and Roman Catholic shall be found to have but one common object—their country's good. But even now, when our discords are still fresh, I disclaim, and wholly repudiate the idea, that prejudice can find an entrance to that tribunal, where you are placed to administer rights, upon your oaths, between man and man. I should feel that to dwell, even for a moment, upon such a topic, would be degradation to myself and an insult to you; and I speak with sincerity when I say, that to the discernment and justice of the jury whom I now address, I could fearlessly commit my fortunes and my life.

[It now was very late, half-past seven o'clock Mr. Fitzgibbon applied to his Lordship that he should not be required to address the jury in their and his present exhausted state. The Court left it to the jury, who retired to consult, and finally it was determined to adjourn to to-morrow.]

SATURDAY, 14TH DECEMBER.

FOURTH DAY.

At twelve o'clock the Judge took his seat on the Bench, when Mr. Fitzgibbon rose to speak to evidence on behalf of the Plaintiff:

MY LORD AND GENTLEMEN OF THE JURY—My duty is to address some observations to you on the case of the Plaintiff, and upon the evidence upon which the Defendants have sought to destroy that case; it has occupied three days of your close attention. I took little part in it during the time; but it now becomes my painful duty to address you; for I feel I have undertaken a great responsibility on myself by doing so. From the line adopted by the Defendants the character of my client, a thing dear to every man of education and sentiment, and my client is a man of education and sentiment; his character, I say, is put in issue considerably beyond what generally occurs in ordinary cases. Pleas of Justification have been put in, and you have heard no less than three speeches from Counsel at the other side, in every one of which my client's character has been most inhumanly and unsparingly assailed. Having now to reply to three speeches, and to observe upon the evidence of seventeen witnesses, I fear I shall put your patience to a trial, but I trust to your indulgence, and claim your attention.

My very learned and much respected friend, Mr. Bennett, in his speech thought fit to introduce this case to you as a "Mayo squabble," that should never have been brought into this court, to (as he was pleased to term it) the postponement of more im-

portant questions of property. Now I happened myself to have been engaged in one of those cases he alluded to ; and I applied to the Judge to send it to a lower court, the action being only for £7 10s. ; but this the court here refused, and very properly refused ; for the Plaintiff was not to be turned round in this court and told it would not listen to his cause. Gentlemen of the Jury, when such was the opinion of this court, than which there is not a higher or more august one in the realm, I implore you to give your deepest, your most serious attention to a cause, in which the character of such a man as my client is at stake ; a case in which his character is so concerned, as even by the very statement of the counsel for the Defendants, he must leave this court either a gentleman and a clergyman deserving to discharge the duties of the ministry of the Gospel, or, he must go forth from it, to the world, a monster !

Yes, this is a question concerning that, in comparison of which the best of poets has told us, that "property is trash ;" therefore do I implore you to give the case your closest attention. I think I see on that jury some gentlemen who were serving in a similar capacity the other day, when Mr. Bennett lauded in the highest terms the principle of bringing Lord Sligo's Mayo squabble before a jury of this city.

Mr. Bennett—I did not use the words "Lord Sligo's squabble," and if I even did, what I say in one case should not be brought against me in another.

Mr. Fitzgibbon—I say that the learned gentleman lauded to the skies the principle of bringing a case from a county where prejudices might prevail, in regard to the question, into a court and before a jury, where no such thing could exist. I approve of that principle to the full, as much as Mr. Bennett, and do not mention it, as any thing against him. No one can hear Mr. Bennett, without being impressed with the greatest respect for him ; but for the reasons I have been just mentioning, I again repeat, the case is deserving of the utmost possible attention from that jury whom it is now my duty to address. I shall next beg to call your attention, gentlemen, to the opening speech of my learned coadjutor, Mr. O'Connell, for the Plaintiff. Imputations have been thrown out against him plentifully, as having gone into extraneous matter, such as the erection of light-houses, the collection of funds for charitable purposes, and the relief of the starving poor of his district. Now, I would ask you, gentlemen, whether these were all together extraneous topics in the present case ; may they not be fairly considered as shewing the *animus* exhibited against my client, for his exerting himself by such means, to prevent plunderers from illicit gain. But there has been much more extraneous matter on the other side. I would ask, for instance, what had my client to do with the interference of clergymen, in the differences and feuds between landlords and their tenants ? I call the particular attention of the

jury to the fact, whether it has been shewn that my client had ever used any interference in this way, or that he ever attended any political meeting? It is one part of the present libel, that he had employed his week-days in writing incendiary paragraphs for newspapers, and that he devoted part of his time preaching slander from the pulpit. Now such allegations as these, if true, could easily have been justified; but did they mention in the pleadings, that they were true? Did they justify one of these assertions? No such thing; had he written incendiary paragraphs, nothing could have been more easily proved; at once the accusers could put their fingers on the paragraphs, if such existed, for there was not a newspaper published in the country, for the last 20 years, that they could not lay their hands on, without the slightest trouble. If they could do this, why did they not throw down upon that table those paragraphs, or some one of them. If they had done so, the Plaintiff could never have asked for a verdict at your hands; but, no, they had not the hardihood—

[Here, and frequently during this address, the learned counsel was interrupted by the noise of persons endeavouring to get into the already crowded court; on order being restored, he proceeded.]

This trial came before you after a lapse of three years of the greatest agitation that had ever been known in Mayo, between landlord and tenant, in political matters; yet was it as much as attempted to be shewn, that my client had, during that time, or at any other period, ever interfered in such things; has it been said that he had ever interfered to collect the O'Connell rent, or mingled in any other political subject in the parish? No, he was one of those pastors in the ministry, who closely confined himself to the discharge of his parochial duties, and the only occasion on which he ever appeared as a public man, was, when he sought relief for the starving peasantry in Mayo. Much has been said about instructions having been given to counsel by the plaintiff to lacerate the character of Major Bingham, and to call his drivers such names as scourges. Now, I solemnly protest, that not one word of the kind has been intimated to me by Plaintiff, or those concerned for him, nor is any thing to the effect to be found in my brief, from beginning to end. It was stated in the case, and indeed it was a most material point, that the witnesses that came here for the Defendants were drivers and servants of Major Bingham, and, therefore, under his influence, and that is all that is in my brief on that subject, and beyond that, I will not say a word touching the Defendants character.

I will now proceed on the three questions laid down so properly by Mr. Bennett, as the only three in this case. 1st. Whether the publication had been brought home to the Defendants. 2nd. Was it libellous or not; and, 3rd. If so, the amount of the damages, [on the first questions, counsel proceeded to read at great length extracts from *Holls Law of Libel*, and from the 1st vol. of *Sturkie*

—his Lordship remarking he considered this more for the court, but would not interrupt his course, after which he said] I confess I was considerably surprized when I found the jury called on by Mr. Litton to observe the manner in which the witnesses on both sides gave their evidence. I put it to you, gentlemen, can you, on your notes, discover any inconsistency in the testimony of any of the plaintiff's witnesses; but Mr. Litton would have it, that this consistency in the witnesses for the Plaintiff, is a badge of fraud, and that the inconsistency on the part of the witnesses for the Defendants, is an infallible proof that all they uttered was true; and thus, by a new species of logic, perverting the rule hitherto distinguishing between truth and falsehood. I was also not a little astonished to find that he referred you to the sacred writings, and compared the discrepancies of the gospel with the glaring inconsistencies of Plaintiff's four witnesses, who agreed in nothing material, nor could their account of the one thing, by any two of them, have possibly been true.

[Counsel then endeavoured to show this, and afterwards remarked on Henaghan's evidence, and the failure of Mr. Ellis's testimony to injure his credit, which he considered was admitted by the learned barrister himself. He then proceeded at great length to defend the other witnesses for the Plaintiff, and said he could safely rest the case on the comments made by the three counsel on the other side, to shew that the publication was a libel; he then said.]

Mr. Jackson says, this memorial is either true or false, that is no very difficult dilemma; but then he says, if true, what a pretty picture is it of a clergyman? He hangs my client on one of the horns of his dilemma—I beg to hang his client on the other, and ask, if what is in this memorial be false, what amount of damages will you, Gentlemen, not give to a clergyman so libelled by it? [The counsel then strongly reprobated the mode in which the pleas of justification were put in by intermediate sentences, and parts of sentences, the Defendant not daring to justify as to the remainder. He excused the spitting in the parishioner's face, if it had been proved at all, by begging the jury to consider the situation of a clergyman in that bare west-coast of Ireland, surrounded by barbarians, and seeing the clothes of shipwrecked mariners on a ruffian, in a moment of excitement and disgust he spits at the inhuman robber; if he had tamely beheld him—if he could have brought himself to participate in the plunder, he would not be in this court now, waiting the verdict of a jury, to send him to the world a gentleman, worthy the sacred vocation in the ministry, or a monster! Counsel did not pretend to be as great a theologian as Mr. Litton, but still he would venture to say, that his client, depending on these ruffians for his morsel of bread, had the moral and phisical courage to stand with his back to the altar, reprove the wicked, and scourge out those hypocrites, who had polluted the temple of their God, and that he was thus

made more like the follower of the Redeemer than the other side would like to allow.

[Counsel then went into a full examination of the evidence on both sides, and made acute observations thereon, which occupied a considerable time, but this report has already extended to a greater length than was contemplated, so these details must be omitted, and it can only be stated, that generally he said, that Davis and Harte deported themselves with great firmness, and were not affected by the able cross-examination which they met with. Neither was O'Brien's testimony shaken, who however was attempted to be disposed of by Mr. Litton with a flourish, passing imputations on his credit, and calling him an "*infamous witness*," solely because he said that he considered Major Warburton had dismissed him from the police on account of his politics. Counsel said he did not himself believe, that that was the real cause of this man's dismissal, but he considered it not unnatural that a poor fellow so circumstanced, might look out for, and hit on, a wrong motive against the person depriving him of a situation, a punishment he felt he did not deserve. His Lordship here asked counsel "did he not hear witness stating, that he was dismissed by Major Warburton without any enquiry?" Counsel replied—it was not proved that any enquiry was necessary—by "no enquiry." The witness might have meant no public trial, but there was no foundation for taking away his credit in a court of justice on account of any thing he had said on that subject; he asked, could his assertions, as to his belief in the motive of Major Warburton for doing any act, give any reason for saying that the testimony of four witnesses were false? Counsel again called the attention of the jury to the words in the alleged libel which had been omitted to have been justified by Defendant Lavelle, although they were along side or dovetailed into the words and sentences which he had justified. The omission to justify these words, counsel insisted, was a great aggravation of the offence, and should induce the jury considerably to encrease the damages he expected for his client at their hands. He deprecated the defendant's counsel using such expressions as these against his client's "persons who follow the sentiments of modern liberalism." How was such a taunt connected with him, and particularly the observation of "God knows how long Major Bingham will be allowed to enjoy his estate," how was that applicable to the Plaintiff? no doubt the opposite counsel would endeavour to connect this ejaculation with him, by *their* proofs to shew that he had said he would lay waste the streets of Binghamstown, and make grass grow in its streets, but the jury must feel that this was a flat falsehood, they would turn to their notes, and find that it was an assertion which has not been made in any kind of a connected manner by any of the witnesses who had deposed to it. Counsel then finally added—]

I pray you, Gentlemen, to read attentively the parts of the libel

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which has been justified by Lavelle, and particularly the words which he omits to justify, throughout the whole you will perceive, that no serious imputation whatever, is justified by him at all, and when you find all these shameful charges brought forward against a man of known probity and attention to all his public and private duties, I cannot do any thing further, than call on you to suppose yourselves in his situation, and in that way to measure the damages he should receive. I would ask, did any of you ever sit on a committee of charity, and I would then ask you, what damages you ought to get from a person who would dare to assert that you were putting the charity money in your own pocket; and yet this is plainly stated and was justified in this libel, and, as it is not justified, I am quite enabled to say it is wholly false. (Reads the passage.)

“The creatures who cannot afford to pay those dues and demands, are forced to work for his farmer or builder, at one job or another; and others are paid by him for their labour, by the charity given by England, to support those unfortunate subjects or slaves, rather”—mark that sentence, it is a little obscure, it would insinuate this, that Mr. Lyons promised payment for work to his flock, and that it should come out of the charity money; and when that fund is received by him, that he then says—oh! but you owe me my fees, and I will take them out of this fund; and thus would set forth, he gets their labour, and the charity money besides. They have not dared to justify this, and I call on you to say, what you think you should receive in damages, had this been published against you? You are aware, Gentlemen, of Major Bingham’s means, of his extensive property; he is well able to pay, not only for the share he had in this outrage against my client’s feelings, but also for the portion of it borne by his assistants; as to these, however, give us a verdict against them all, and we will get the full amount against the Major, and leave him to sue the others for contribution.

I should beg pardon for having thus trespassed on you so very long; my feelings, I know, have been involved in this case, having happened to be intimately acquainted with all the circumstances of it, and the gross facts connected with it; but, gentlemen, I shall now have done with returning you my best thanks, for the attention you were pleased to listen to me, and with assuring you, that I with confidence leave to you, the case of my client

Sir W. C. Smith, then charged the jury.

Gentlemen of the jury, this is an action on the case, for a libel. Towards supporting such an action, it is necessary in the first place, to shew that the alleged defamation has been published, and to trace this act of publication to the defendants; and if this be not done, the jury, without further investigation must find in favour of these defendants, or of such of them as are not shewn to have shared in the publication. Here, if the action were brought against the proprietors of the *Mayo Constitution*, there

could be no doubt that publication would have been proved as against them. The question is, whether it has been proved against all or any of the present defendants; and if you believe the evidence (some portions of which are of the presumptive kind) I shall not be surprised by your pronouncing that it has, as to one of the documents (I mean the memorial) against *all* the Defendants; as to both against Mr. William Bingham and Lavelle. As to the letter, the evidence against the other Defendant, Major Bingham may be, indeed *is*, still more circumstantial and presumptive, and in proportion weak, but on the conclusiveness of this you, gentlemen, will decide; and if the presumptions be sufficiently strong and not rebutted, they will form a legitimate foundation for your verdict to rest upon. If the objections taken be well founded, my error in admitting such evidence being matter of law, will be corrected by the court of which I am a member. The evidence of publication of both documents, as against William Bingham and Lavelle was this, that on the 18th of October, 1831, they called and had an interview with the assistant editor of the *Mayo Constitution*, at the office of that paper. Bingham was the spokesman; but he made his communication in the presence of Lavelle, who concurred in its import—saying, amongst other things, that what Mr. Bingham stated was all true; and part of what he had been saying was, that Lavelle wished to give publicity to a certain letter, through that paper. Bingham then, still in Lavelle's hearing, dictated the substance of the intended letter; which, at their request, Mr. Feeny minuted down, and also at their desire undertook to put in form, and appointed the next day for shewing to them. The memorial was then also left for publication, and the signature of Lavelle to that memorial is proved to be his handwriting. They then went away, but in the evening of the same day, Bingham returned alone, with more matter which he wished to have embodied in the publication; this was also promised, and next day both returned as appointed. What Feeny had proposed in the mean time, being thereupon read by him, Lavelle objected to the passages introduced, in consequence of the evening communication had with Bingham. These passages being struck out, *both* approved of the letter, as drafted by Feeny, and Lavelle having subscribed it, (first signing but half of his name,) they left both documents for publication. Bingham, still in the presence of Lavelle, paying 2*l.* 10*s.* for such publication; they then went away. At this *second* interview, Mr. Boles, another member of the printing establishment, was present, and recommended the omission of the passages objected to. In this interview, these two Defendants adopted (with the exception of the omitted part) the draft made by Feeny under their authority, recognizing him as their agent, and making what he had done their act. This manuscript letter has been produced. Feeny *said* he did not know what had become of it; and if I was wrong in admitting the parole evidence, that what appeared in the news-

paper was an exact, and by him compared transcript of it, my error will be corrected by the Court above. The printing and publishing was part of the agency which these Defendants accepted from Feeny; and they do not appear to have ever complained, that what *was printed*, was different from what they had authorized. They merely asked a return of the manuscripts, which was refused. The memorial had been at the same time left by them for publication; and I conceive, that if you believe the Witnesses, the publication of both documents by these two Defendants is sufficiently proved. Then, how is the remaining Defendant, Major Bingham, implicated in the act of publication? Presumptively as to the memorial, if you believe the evidence thus. By the share which he is sworn to have taken in the preparation of it, his intercourse with Henehan on the subject, his payment of him for the draft, his connexion with Lavelle, his exertions to procure signatures, his declaration of an intention of publishing these complaints against the Plaintiff in the newspapers of England, Scotland, and Ireland. If the memorial seems on the face of it, a document *meant* for newspaper publication, you would take this also into consideration; and see upon the whole, whether you ought so to connect Major Bingham with William Bingham and Lavelle, as to make their proceedings at the office, acts done with his knowledge, concurrence, and virtual participation. You will also consider whether this presumptive evidence confines itself to the memorial, (which, by the way, has been produced,) or extends over the letter. Other circumstances will assist you to decide this point. The publication of the letter was part of the *res gestæ* by William Bingham and Lavelle; its contents were connected with those of the memorial, it furthered the same objects. From some of the evidence, if believed, these seemed to be favourable objects with Major Bingham, and the contents of the letter, to correspond, with sentiments to which he is said to have given utterance. Thus, upon the point of publication, the question and evidence seem to me to stand. Now as to the character of the publication itself. The law of libel is different from what it was. At a very early period of my life an alteration took place, under the auspices of the late and celebrated Mr. Fox. Formerly what constituted libel was deemed a question for the court. It was then, indeed, as it is now, necessary, towards supporting the action, that malice should be shown; but from certain language malice was inferred; and the inference was considered to be one of law, to be drawn from the publication itself, unless certain circumstances attending the act went to rebut and negative such an inference. In those days malice seemed to be considered, in such cases, as *quæstio juris*, to which not the jury, but the judge, was to *respond*. The action is founded, as it ever was, in malice; but it is now the province of the jury to search for this foundation; but the jury may make this search in the same quarters in which the court used formerly to make it. I use the language of legal

authority when I say that "malice may be inferred from the publication, or proved by extrinsic evidence," and I may add, as a corollary, that conjointly from both sources, may malice be inferred. "It must often," the law writers say "be extremely difficult to produce direct evidence of a malicious design, extrinsic and independent of the publication which may be in question." For this amongst other reasons, the law writers add, "that the publication itself *will often afford the most convincing proofs of malice.*" And the same writers very rationally observe that "if the words are directly calculated to degrade character." The obvious inference is, that they were *designed* to produce the effects, which they were thus *calculated* to produce; unless something, to repel such inference, can be drawn from the circumstances attending the publication. *All* the circumstances, therefore, the manner, the occasion, and the matter of the publication, are most material and important considerations. The "occasion," we have seen, of the publication may be used, to assist in discovering whether the motive to such publication was malicious; and the publication, therefore, libellous. Thus, if a document be a *bonâ fide* petition and legitimate complaint, addressed to a proper quarter, that which might, under other circumstances, be libellous, would not be so. But we are to consider, not what a document *purports to be*; but what *it is*. The law will look behind the mask; and a libeller will not escape the consequences which attach upon his act, merely by calling that act a petition or complaint. Otherwise, how easy would it be to elude the provisions of the law! But it is not what merely turns out, upon investigation, to be the falsehood; by which I mean the groundlessness of the statements of a petition, or the severity of those statements that will convert a petition to a libel, if there be nothing to show *mala fides* and pretext, and that the document is a tissue of falsehoods, known to be so by the stater, and made with a malicious and vindictive view. But to make a complaint—to forward that complaint, and in so far to divulge it, is one thing; it is an inevitable, and therefore innocent publication. But it is a widely different thing to publish in a newspaper; which latter act, accordingly, does not come within the range of privilege extended to the necessary circulation of the genuine complaint. Therefore, those who have published this document (whoever you think them to have been) in the *Mayo Constitution*, cannot exculpate themselves on the mere ground that this was a regular complaint, and privileged as such. But certainly if this, as a mere complaint, were warranted, and the transgression of privilege, but consisted in publishing in a newspaper what might be legitimately circulated to some extent in another way; if this, and no more than this, should appear to have been the transgression, it ought to carry less damage than might be but commensurate to a differently circumstanced case. There is a possibility that you may be of opinion that though there be evidence, connecting Major Bingham with the prepara-

tion of the petition or complaint, there is none satisfactorily connecting him with the publication in the newspaper. Then, perhaps, we should be thrown back upon the question, whether the memorial was, or was not, a *bond fide* and privileged complaint. I have already however called the attention of the jury to certain menaces, attributed to Major Bingham of circulating the censures contained in the memorial, through the papers of England, Scotland, and Ireland; but though we should disconnect Major Bingham with the publication in the newspaper; yet, if we consider the form and guise of complaint to be but *means*, colour, and pretext; and the *end* to have been malicious vituperation, and that in *this* dissemination be shared, he has failed in his defence. On this question, the tone of the memorial will, perhaps, be evidence one way; the deputation of Mr. Flannery to investigate the charges, be evidence of an opposite tendency, I not only entirely agree with those, who observe that every irrelevant topic should be put aside, especially if it be one calculated to excite an unperceived prejudice or bias—but I so confide in your intelligence and uprightness, that I will not affront you, by recommending you to keep aloof from everything which might withdraw you from the performance of your duty; and that *duty is*, to make the pertinent and credible evidence which you have heard, the only foundation of your verdict. It has been observed, that a landlord has a right to assist and protect his tenants. He has so; and of putting them in the way of doing themselves justice; especially if his doing so be but a compliance with their request. And though a Protestant landlord might be delicate, scrupulous, and slow, about assisting and seconding Roman Catholic parishioners in their complaints against their priests; (and the priest ought to be equally reluctant to set tenants against their landlords;) yet circumstances might be imagined that would obviously justify lay and Protestant interference. If abusing, and most exorbitantly transgressing his authority, a clergyman of either persuasion, oppressed, injured, and tyrannized—he would render it the right, if not the duty, of the natural protectors of the peasantry to defend them. If a clergyman, Protestant or Catholic, became temporal in his proceedings, his spiritual character and privileges would, in my mind, be suspended, and he might be encountered with temporal and lay requital and defence. A question, however, might remain, whether, in a given transaction, the landlord was the *bond fide* assistant and protector of the tenants, or they the servile instruments of his resentment or ill-will. It seems, (it has been observed) improbable that a Protestant landlord should be able to instigate 132 Roman Catholics to oppose themselves violently to their priest; and more likely that the complaint should have originated spontaneously with themselves, and their wishes to obtain redress have been seconded by him. Under *one* view which might be taken by a jury of this case, this observation would not be undeserving of attention: and, by the bye, let me add, that some of the me-

memorialists appear not to have been the tenantry of Major Bingham; or, consequently, under the influence to which that relation might give birth. On the other hand, several were Major Bingham's tenants, and subject to an influence countervailed, however, by that of the parish priest. For the rest, this was but a natural consequence of Major Bingham's being a large landed proprietor in the parish. Evidence was offered that Mr. Lyons had been fired at. If this were the fact, it might tend to show, that, whether rightly or wrongly, he was not so popular in the parish but that some of his flock might complain of him without being unduly influenced by Major Bingham. The evidence which the plaintiff urges, as shewing a zeal in promoting the complaint which brings home malicious purpose to this defendant, is found in the testimony of Owen Henaghan and some others. The credit of these, and the other witnesses, one and all, is exclusively with you; and I will here read short extracts from my notes of what they swore:—Henaghan tells us that Major Bingham employed and paid him for drafting the memorial; that he desired him to make it stronger—(this is equivocal); that he did so; and that the Major then approved of it; that he said, if that did not do, he would write another to the Roman Catholic Primate, and publish it in the newspapers; that he desired him to bring it to Lavelle for his signature; that the charges were false, but that he (Henaghan) signed it second for fear all he had would be canted; yet, he said that William Henry Carter was his landlord; he also said that 32 of Binghamstown people, whom he saw sign it, were Roman Catholics.—That Lavelle and Cosgrave were agents, and Barrett a driver of the Major's. Thomas Dickson swore he signed the memorial at the desire of the Major, *who produced it at the Castle*. That he was his tenant, and signed through fear. He owed him rent. Anthony Tighe swore that the Major asked had he signed the paper against Father Lyons? Applied to him to get his friends to sign it. Said Lyons was a tyrant and should be published in all the papers in England, Scotland, and Ireland; that he had been for employing him as a care taker. But there was no direct evidence that this was as an inducement to sign, or broken off by Bingham on his not signing. Charles Doby said the Major asked him to sign; that he refused; that he owed no rent, but was distrained. Said he would not have priest Lyons domineering over his tenants; that his cattle being in pound, the Major said, "devil mend him, why would he not gain indulgence as well as the others that signed?" Said his cattle were in pound for 102 days. Why he preferred paying 51s. pound fees, to paying the 35s. claimed as rent, if he explained, I did not catch the explanation, except that he did not conceive he owed the rent. In this action it is the right of a Defendant, even admitting the publication, and its defamatory nature, to justify the alleged libel, as a statement of mere truth. Of this right, one of the Defendants, Lavelle, has availed himself; and to prove this justification, some witnesses

have been called. Before I enter on the amount of this evidence let me recur to the testimony of Owen Henaghan, and at the same time connect it with that of Mr. Ellis; he will agree with me he has already implied as much, that the credit of Henaghan ought rather to stand on whatever may be its own intrinsic claims to credit or the contrary, than on any thing contained in the candid testimony of Mr. Ellis. This gentleman began (as became him) by observing that he had, for the last five years, little intercourse with Mayo, and little knowledge of Henaghan for twelve or fourteen years before, and that others would be better qualified to give evidence of his character. Of these, however, it is fair to add, that three referred to by Mr. Ellis are all Defendants, and, therefore, could not be produced as witnesses. I will now make short extracts from the proofs offered in support of the plea of justification by Lavelle, premising that as to him *alone* arises the issue upon the *truth* of the publication, and that, as to the other two defendants, if you believe them to have published, and consider the publication to have been defamatory, (and I think it likely you will so consider it) you must find against them; for this, amongst other reasons, that a publication in a newspaper is no legitimate circulation of a complaint. I now come to the proofs offered to the truth of the publication on the part of Lavelle. William Barrett swore that he heard the Plaintiff often say, in chapel, from the altar, that he would never stop till he should waste Binghamstown; but qualified this by adding, "If a certain party, *who were annoying him*, did not stop."—So it was *retaliation* he denounced. He then stated the insult to Corrigan; certainly a gross one as he described it. He testified similar treatment of a person of the name of Reilly. He stated the making the chapel a store for building materials; and that cows and sheep were kept, and corn threshed occasionally in another. This latter, however, appears to have been some miles distant from where Mr. Lyons lived, and might, therefore be without his knowledge. He said some could not get their wives churched for three or four years. It has been truly observed, that to refuse, from personal resentment, these rites of the church, would be conduct of a highly culpable nature. But in admitting this, we must add, that the more defamatory must the imputation be, and especially the more censurable, if unfounded. This witness said, that the Rev. Mr. Flannery had, in his hearing, said that if the parishioners sent in an ass-load of petitions to the bishop, they would get no satisfaction. I mean just now to collate the testimony of Mr. Flannery. In the meantime I would observe that this witness admits that Mr. Flannery called on the people to come forward and substantiate the charges in the memorial; and that there was confusion and uproar in the chapel. James Donoghoe saw slates for house building in the chapel, and saw threshing and sawing go on there. He also swore to an augmentation of former dues; and an addition of new claims. He also

testified to the outrages offered to Corrigan and Reilly. Also to one offered on a Christmas day to one Padon, by throwing a penny at his head, which cut him; and to his frequent denunciations of making grass grow in Binghamstown. He said that before the memorial, Mr. Lyons had refused to admit Lavelle or his family to confession; and that this arose from a dispute concerning Fleming, whom Lavelle had introduced into the parish against the will of Mr. Lyons; and whom this witness admitted he had seen drunk, though not often.—I need not remind you that no acts of Mr. Lyons done *since* the memorial, can support a justification of the truth of charges contained in that memorial. The very utmost they could do would be to corroborate proofs of similar acts alleged to have been done before. He said that the plaintiff alleged the cutting off the hand against Corrigan. William Hughes and John Hart swore to the ill-treatment offered to Corrigan and Reilly. Thus you have four witnesses forsworn, if the substance of these facts did not occur. Towards determining their credit—you will consider the discrepancies which their evidence may involve, or seem to do so. You will recollect too, that there are some discrepancies which impeach, and others which rather strengthen the credit of witnesses. Those discrepancies, I mean, which exempt it from a coincidence so exact and close as to smell of fabrication, and become suspicious. You will also collate this part of the evidence with the contradictory evidence offered in the rebutting case. Hart also swore to the threats against Binghamstown. To contradict this justification the Rev. Mr. Flannery was first produced. The substance of his account is—that he gave notice of his intended visit; took measures for a full attendance; had one; that the memorial was first read by Mr. Lyons, and its substance afterwards by him; that he called on persons to come forward, and substantiate their complaints. That, as the most important, he proposed first to investigate the charge of revealing disclosures made in confession; and secondly that which seemed to impute drunkenness to the plaintiff; but that afterwards *he called on the complainants generally to come forward and support any of the charges in their memorial.* As to the first, Lavelle denied their having made such a charge. I confess I agree with Mr. Flannery in thinking that the memorial does substantially contain such an imputation. As to drunkenness, Lavelle may have been right that by the passage in which the word “soberly” or “sober” occurs, it was not intended to convey a charge of intoxication.—Thus Mr. Flannery’s statement seems in substance to be this—that if the investigation proved abortive, that this was not his fault, but that of the parishioners, who did not, in obedience to his call, come forward to support their charges, and that the meaning of what he then said, was, that the bishop would not regard their memorials, if when opportunity was offered, they did not substantiate or support them. The dues, he said, were not ex-

orbitant, and were sanctioned by the bishop. This witness also gave a good character of Mr. Lyons. Charles O'Brien gave an account of the proceeding with regard to Corrigan, which, if it related to the same transaction, to which the testimony of Lavelle's witnesses applied, is so inconsistent with their narrative, that their credit and his must be weighed against each other. As to what this and other witnesses say, of their never having seen certain proceedings, this does not necessarily contradict the testimony on the other side, inasmuch as that may have happened, which they did not see. You are certainly to found your verdict upon evidence, not on statement. But if the evidence be contradictory, on a certain fact, you may throw in, as corroborative of the testimony of the Witnesses for Lavelle, that the instructions given by the Plaintiff have not so much denied the degrading treatment of one of his flock, as attributed it to a motive, moral; but whose impulse carried him too far. And here I would observe, that if you should think upon the evidence, (this I leave to you,) that the conduct and proceedings of Mr. Lyons have been generally good and well intended, it is not because you find him, on a few occasions, betraying the effects of human infirmity and passion (especially if this passion originated in virtuous indignation) that you should so curtail the damages as to hold the Plaintiff up as a man whose character is of little value. This would be unjust; and it might be pernicious. It would stigmatize,—without sufficient cause, a character which, in this action, is in some degree in issue; and which belongs to a person who is entrusted with the discharge of sacred religious duties, and ought not lightly to be held up to odium or disrespect. But a material part of this Witness's evidence is, that the sawyers were cutting up timber for chapel seats, which was no profanation; that the slates were left in the chapel by the chapel committee; and that he saw no threshing, except for Major Bingham; that this was in the absence of Mr. Lyons, and the proceeding censured by him on his return. I hope O'Brien is more correct in his facts than he is in his rash and injurious conjectures. I am persuaded he was in error, when he attributed unfair motives and indirect and intentionally unjust proceeding to Major Warburton. I have thus, I hope, summed up the whole of the evidence correctly. I conceive, that if you believe the Witnesses, the Plaintiff is entitled to your verdict against the three Defendants; provided, upon this evidence, you consider Major Bingham to have participated in the newspaper publication, or to have had the memorial drawn up with a defamatory and malicious view. I conceive that Lavelle is liable to such a verdict, because even though you should, as possibly you may, believe the Witnesses produced to prove his justification, that justificatory proof does not cover the whole of the publication; and if much of serious defamation remain uncovered, you ought to proportion to this residue, the damages you award. But if you should be of opinion that he has gone far towards ustifying,

though not the entire way, you can give him the benefit of this view, by a proportional reduction of the damages. If, on the other hand, you do not believe his Witnesses, he will stand in no degree on better ground, perhaps, by his failure, upon worse, than that on which the other two Defendants stand. The verdict I leave to you. The amount of damages I even more especially and entirely leave to you; if you find for the Plaintiff, against these Defendants. The charges, contained in what has been published, are serious and severe; and brought against one of the ministers of a christian church; whose character ought to be the more protected from aggression, because it is a sacred one. But if you believe him to have provoked aggression, by a certain degree of tyrannical, violent, and oppressive conduct; and the memorial and letter to have been an illegal but natural outbreak, of not altogether groundless exasperation,—in assessing the damages, you may be warranted in bearing this mitigating circumstance in mind.—There has been in this trial something to disconcert, and something to console us. The first is so connected with baneful Irish discord, that I shrink from the irksome topic. As for the second, every one will agree with me, that the jury have had the assistance of most able advocacy on both sides. The ability which stated the Plaintiff's case we have long recognised; and I need not insist upon. And will any man who has heard the counsel for the Defendants, deny that this ability has had to encounter champions worthy to wrestle with it? or has been otherwise than strongly supported in the reply?—Will any, who have witnessed the amicable conflict between some of these learned counsel, deny them to have shown how cordial might be our intercourse with each other, if we would? If, instead of trying, perhaps on the one hand to pass the bounds of legitimate influence, to over-reach and ambitiously to encroach, and on the other hand, being disposed to view elevation and advance, with a too jealous and grudging eye, if instead of this, we would mutually cultivate fraternal harmony and peace. Gentlemen, I half rejoice that the jury which I address, consists of a mixture of both religions; and I half lament that this should be a topic of congratulation—for many a long year it has been my wish that the day might soon arrive when there would live, cherished, in our memory, nothing that tends to sever and estrange; but every thing that on the contrary is calculated to unite us. That our recollection should ever be, that unbiassed impartiality is our common duty, Christianity our common faith, and distracted Ireland our unhappy, but beloved and common country. That we should respect and obey the law. That in manifestations of this obedience and respect, our only rivalry should be; while we bore and promoted good will and kindly feeling to one another. The charges in this publication are harsh and angry. If they have proceeded from the parishioners, not unduly influenced, Major Bingham may have nothing to say to this. If from mutual exas-

peration matters may have assumed an acrimonious character, I wish that they could be reconciled. What human passion may have excited, I wish that Christian feeling would assuage. I should feel (may I say humbly) proud, if—late as the present moment is, my recommendâtion, even now, could lead to this. If not, in finding your verdict, and (if that verdict should be for the Plaintiff) in assessing the damages, you must consider the credit of the witnesses, the amount of the credible evidence, the aggravated or mitigated nature of the libel, if you think it one, —the pecuniary circumstances of the parties; the quantity of injury which has been sustained, and which is to be compensated; the interests of religion and of morals, and the general nature and complexion of the case.

The jury retired at twenty minutes after 3 o'clock and remained in their jury room until after 7 o'clock, when they returned, and the foreman declared it was quite impossible they could agree on a verdict. The court enquired, whether the parties would consent to withdraw a juror, Mr. Fitzgibbon said, that as junior counsel in the absence of the Plaintiff and of his leading counsel, he could not take upon him to determine; but that he would go to Mr. O'Connell's house to consult on what should be done. He accordingly left the court for the purpose, and the jury again retired, and remained in the room till after 8 o'clock, when

The Court—finding Mr. Fitzgibbon had not returned from Mr. O'Connell's, sent in for the jury, who still said it was unlikely they should agree, the court said, that he felt that he could not keep a jury like them locked up until Monday morning, after such a declaration, and enquired whether the parties would agree to an adjournment.

Mr. V. B. Fowler said, when Mr. Jackson left court, he directed, that his client, Major Bingham, should consent, if called on, to withdraw a juror, but not to any adjournment.

The Court—Then, as we have been adjourning every day for mutual convenience by tacit consent, I shall take it upon myself to adjourn the jury till Monday:—gentlemen of the jury, you will meet here on Monday morning at 11 o'clock, and I am sure I need not caution you as to your conduct in the meantime.

MONDAY 16TH DECEMBER.

FIFTH DAY.

At twelve o'clock the judge took his seat upon the bench, and the names of the jury having been called over,

Mr. Fitzgibbon apologised to the court for being absent upon Saturday evening, when the jury returned a second time into

court. He stated that he had gone to consult Mr. O'Connell upon the proposition which had been made; but that gentleman would not take upon himself the withdrawal of a juror without the consent of Mr. Lyons. The reverend gentleman had quitted court before two o'clock, and on his, Mr. Fitzgibbon's searching at his lodgings he found he had not arrived there. He sought at every place where he thought it likely he would be found; but not succeeding, he returned to court, where he found a messenger from Mr. Lyons, who stated that he had been taken suddenly ill on his way from court, and was obliged to stop at the shop of Mr. Willis, apothecary, on Ormond-quay, not being able to proceed further. He thought it necessary to make this explanation to his Lordship and the gentlemen of the jury, lest it might be supposed he meant them any disrespect.

Court—The court is satisfied.

Mr. Fitzgibbon requested the jury would retire, and perhaps still they might come to a decision.

At twenty minutes past two, the jury came into court.

Clerk of Nisi Prius—Have you agreed to your verdict, gentlemen?

Foreman—My Lord, we have not; and I am sorry to say, there is little likelihood of an agreement.

Mr. Bennett observed, that he had never, where he was concerned, approved of the principle of keeping gentlemen of respectability shut up so long in the jury box, after such a declaration.

Mr. Fitzgibbon—My Lord, perhaps the jury have agreed as to any one of the defendants. The Court is aware that they may agree as to the acquittal of one and the finding against the other two, or the acquittal of two and the finding against the other.

Court put the question to the Foreman, who asked leave, on the part of the jury, to retire before he gave a reply.

At three o'clock the jury again came into court, and the Foreman inquired if they agreed as to the other defendants—could they be enabled to bring in a verdict without including Major Bingham?

Court ordered Mr. Jackson to be sent for; and upon his appearance, communicated to him the question.

Mr. Fitzgibbon, on the part of the plaintiff, agreed to receive such a verdict, subject to the opinion of the Court above. He had not the slightest doubt on his mind that it was perfectly competent for the jury to return this verdict.

Mr. Jackson—Notwithstanding that Mr. Fitzgibbon has no doubt, I do not recollect a case in which a similar verdict has been brought in.

Court—I recollect one in which the circumstances were similar; but how it was disposed of, has totally escaped my memory.

Mr. Jackson—If this case came to be tried again, I do not

know how the difficulty, with regard to the jury process, could be got over.

Mr. Litton—It was impossible that two *verdicts* could issue upon one record.

Mr. Fitzgibbon—When the difficulty arises which *Mr. Litton* contemplates, it would be then time enough to argue the question.

Mr. Jackson—I have no objection to this sort of verdict, provided we are not to be considered consenting parties to it.

The *Court*, reserving this question for argument in the court above, was disposed to allow the jury leave to bring in a verdict, excluding Major Bingham, if on further deliberation they did not agree to a verdict including all the defendants. The jury accordingly retired, and at five o'clock returned, announcing that they could not agree at all.

Mr. Litton—Surely, my Lord, it would be quite improper, after—

Mr. Fitzgibbon—I will save *Mr. Litton* further observations. I consent now to withdraw a juror. This was accordingly done, and thus terminated this extraordinary trial.

THE END.



ERRIS.

The following description of this district is taken from an article in the *Critical Notices* of the DUBLIN UNIVERSITY MAGAZINE, for this month, (Jan. 1834): Title—*Journal of the Geological Society of Dublin*:—Published by WM. CURRY, JUN. AND CO. 9, UPPER SACKVILLE-STREET.

“ An unfrequented, and an almost unknown tract of country is the subject of Mr. P. Knight’s observations in the next memoir. It is a notice of the General Geology of *Erris*, in the county of Mayo, and contains some curious and interesting facts. The high and beautiful ranges and groups of mountains of these pathless wilds, may truly be said to gratify the eye of the Geologist, or, indeed, the lover of nature. The Reviewer has passed these solitudes, not without the deepest sense of wonder and admiration; nor had the deep circular mountain excavations, (wrongly so called,) mentioned by the author, with their deep embosomed tars, their architectural precipices, and giant amphitheatres of rocks, a mean share in exciting those feelings. There is, in these mountains, a style of scenery which is peculiar to them, and which vies with the ‘sweet solitudes,’ as Captain Portlock has it, of the Branden Range. Erris is now, perhaps, the only part of Ireland where the red deer ranges, untamed and free, an indigenious tenant of his native mountains.”

