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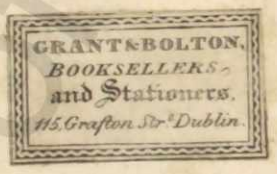
SPEECHES

ON THE

ADMINISTRATION OF JUSTICE IN IRELAND,

WITH A PREFACE.



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PREFACE.

THE violent attacks and more than usual misrepresentations made by slanderous, and probably venal, writers of the Government upon Lord Brougham's conduct in bringing forward the Irish Administration of Justice for the consideration of Parliament, have naturally given rise to the separate publication of the following Speeches. Those who read them will judge whether they are filled with violence, bitterness, personal animosity, factious scurrility, and a number of other things ascribed to them by persons, who most probably never heard a word of them—very possibly never read any report of them. But a few particulars may be stated usefully enough for the purpose of affording an additional proof that the people of this country are very well advised in no longer taking their opinions from the anonymous writers of newspapers, generally engaged, sometimes hired, by one of the contending parties to blacken the other, and who have long been in the practice of having their hand

against every public man, and but few hands held up for them even among those who amuse themselves by reading their handiwork.

That any kind of personal feelings or interested views should by possibility dictate Lord Brougham's conduct on this occasion, is quite as absurd as the same charge, or rather insinuation, always flung out against him since the time when (Nov. 1837) the declaration of the Government against Reform, followed immediately by their unconstitutional measures and refusal of common justice towards Canada, drove him into a reluctant and long-deferred opposition. No one who holds this very silly, and still more false, language can answer the question so often put to them—Why Lord Brougham supported the Ministers during the whole session of 1835, acted in concert with them during the year 1836, and supported them on all but the Canada question in 1837? In 1836 he even remained in the country at the express desire of Lord Melbourne, who said that if he came and opposed two or three of their measures, which he conscientiously disapproved, it would overthrow the Government. This he stated in 1838 before Lord Melbourne, to whom he appealed for the truth of his assertion in the face of Parliament and the country. Surely, if he had any personal grounds of opposition, these existed during the three first years of the Government formed in April, 1835, and could never have been created

since. That he had ample personal grounds, who doubts? Not certainly the Ministers, who never pretend to have the shadow of a claim upon him, though they suffer their adherents to argue as if Lord Brougham had deserted them, and was bound to return thanks for their ingratitude. But he did, till late in 1837, return good for evil. What has produced the change? Say rather, what change has since taken place? *The Government has changed its policy.* When the King and the Court were against the Ministers, they were fain to court the people by affecting a more reforming policy than they really approved. The moment the Queen and the Court were delivered over to them, bound hand and foot, they abandoned all pretences of the kind, and made their famous declaration of Finality. But this proved very distasteful to the country, which had been taught to fancy that Lord Melbourne wanted much to grant further improvements, only the Court would not let him. The country now found that, the Court being for him, he was quite satisfied; and having no further occasion for the country, pulled down the Reform colours, and hoisted the Conservative under the Royal standard. Be it observed that Lord Brougham has never once blamed Lord Melbourne for this. Why? Because, independent of personal considerations, Lord Melbourne never pretended to be much of a Reformer; nay, he had often passed as an enemy of Reform. There

were others, over whose conduct he well might sorrow, though he should avoid to cast blame. But the ministerial organs of both the press and the hustings—all their papers, all their spouters—took every occasion to deceive the people. One said that Lord John Russell's declaration was misunderstood:—he repeated it with aggravations the next day. Another said, it is Lord John Russell, and not the Cabinet: the Cabinet avowed it was theirs to a man; and indeed Lord John was and is after all, the very stoutest reformer among them. A third said, they don't mean what they say; wait and see their measures.—No measures came; men were weary of hoping, though the deceivers were never tired of their base trade; and discontent began to spread through the ministerial ranks. The Bedchamber quarrel brought the Ministers back to office, after confessing that they had not even the shadow of a constitutional right to hold it; and the regular Whigs now were content to be in place without the confidence of any but the Court, and that bestowed on the avowed ground of a mere Back-stairs movement—in place, too, stript of all power, either in Parliament or in the country. Forthwith came a strain of adulation,—and the trumpet was once more sounded to rouse the hopes, the sinking hopes, of the Liberal party. It would show human nature in its very basest form to collect the falsehoods with which the newspapers in town and country now teemed, and the speeches

of Government supporters abounded, as to the new and reforming policy intended to be pursued. Falsehoods they must have been; for not one of the Ministers even so much as gave the shadow of an authority for such reports; and accordingly no change whatever was made in the policy, the anti-reform policy, of the Government. The organs of misrepresentation, thus foiled in their attempts to propagate delusion among the people, now turned their attacks upon those who still adhered to the Reform principles which their patrons, the Ministers, had abandoned; and Lord Brougham of course came in for his very full share of the assault, as he had been among the greatest of those most unpardonable of all offenders,—the men who persisted in clinging to the principles which the Ministers had deserted.

It was a new feature, however, and a most unexpected one in the aspect which the Ministry now presented, that the Whig, or Constitutional or Popular Party stood upon the worst ground ever occupied by the Tories, whom their Liberal adversaries never assailed more bitterly, than for their disposition to stand upon Court favour, and parade the wishes and feelings of the Sovereign as a protection for his servants, against the wrath of Parliament and the People.

There was no one article of their political creed to which Whigs were, up to this period of time, more religiously attached, none in which their faith

more widely differed from that of the Tories, than this, of the use to be made of the King's name, the King's favour, and the King's influence. "The good old King," was the Tory rallying cry for many long years of misrule. "Don't disturb the good old King's repose." "Respect his Majesty's scruples." "Don't force his Majesty's conscience,"—was the comparatively decent appeal which that great and consistent party made to the country as often as a measure of toleration was to be opposed. "The Ministers are the King's choice." "Don't deprive your good old King of his favourite servants," was the constant set-off against all failures, all proofs of incapacity, all loss of public confidence. But never was there indignation more loud, never scorn more bitter, than were exhibited in the treatment which such appeals constantly met with from the Whigs. It would be hard to say whether Mr. Fox, Lord Howick (now Lord Grey), Mr. Whitbread, Mr. Tierney, Lord Holland, or Mr. Brougham (now Lord Brougham), poured forth the most fierce invectives against these topics and this policy of the Tories—in whom, nevertheless, they were tolerably consistent with their avowed principles—just as they stood in wide and impudent and disgusting repugnance to every article of the Whig faith. Let a single speech of Lord Grey in 1807 be given, as a sample of the sort of things which Whigs are now called upon to retract—now that this Whig party, for mere love of place with-

out power, and profit without credit, have deemed it becoming their position in the country and worthy of former recollections, to stand before that country —without blushing at those recollections to stand —upon a Bedchamber difference, and hold their offices in the teeth of Parliament and the country, relying for all their support upon the favour of "the good young Queen;" and fatiguing the weary country, rousing the flagging party, with cries of "Stand by your Sovereign."—"Don't let her bedchamber women be changed." What portion of this speech, about to be cited, except perhaps the last member of the enumeration, is inapplicable to the present moment? But what portion of it could a supporter of the Whig Ministry read without shuddering at the present position of his party?

"While I possess the power of speech," said Lord Howick (Grey), 23 June, 1807, "I must ever protest against any thing so fatal as introducing the Monarch's name into discussion. If such a practice is permitted, farewell to the freedom of deliberation; but farewell also to the personal security of the Monarch himself. Arraying him as personally opposed to the Whig party, and calling on the country to decide between them, endangers the King's personal security. If I am an enemy of an administration engendered in court intrigue— if I am an enemy of an administration composed of men differing from one another upon the most

important questions—if I am an enemy of an administration which does not possess the confidence of the country—if I am an enemy of an administration, of the first man of whom I will say nothing —it is because I am convinced that such an administration is pregnant with the greatest dangers to the King and to the Constitution."

Lord Brougham, a few years later, after enumerating the acts of misgovernment chargeable upon the Tories, above all, their mismanagement of the war, and their Walcheren expedition, says—

"After all these confessions, their (Tories) only excuse, the only attempt they make to regain the confidence of the people, is to tell us "that the King has reigned fifty years." They have ruined our allies; they have failed in every plan; they have brought us through slaughter and danger, wedded with misery, and weighed down with almost intolerable burthens, to the very brink of destruction." "But the King is very old," and "he has reigned above half a century."

Such are the words which Lord Grey and Lord Brougham are impudently expected impudently to eat up for the sake of supporting a set of Whigs, the remnant of the party, who, having separated themselves from their fast and faithful friends, joined some of their bitterest enemies, and cast off their oftentimes avowed principles, are following the very worst of the bad practices of their adversaries, and erecting the standard of mere office

upon the sole ground of Royal favour, in obsequious subserviency to the Court, and in open defiance of the country. It is a pitch of impudence, yet more extravagant and astonishing, to charge men with abandoning their party, who have only refused to be guilty of the gross apostacy which has been exacted from all adherents to the Whig standard!

The same agents of the Government have, on the same ground, charged those who refused to sanction Lord Normanby's Irish Administration, especially his use of the judicial powers vested in the Executive Government, with factious and personal motives. If any thing of a personal kind had been felt or acted upon, the evidence afforded free scope to indulge in a strain of remark very different from that which will be found in the following speeches. Some topics are omitted, and some heads of charge are entirely passed from, which an enemy might have really dwelt upon with satisfaction. The employment, by the Crown, of counsel to defend murderers prosecuted by the Crown, is not once alluded to. The reception of persons at the Castle, after official representations made of speeches exciting to acts of bloodshed—speeches themselves gross infractions of the law—is not even hinted at. The tone and temper of all the observations is as utterly free from all personal rancour, or disrespect, or even unkindness, as can well be imagined—and the whole blame imputed is excess of amiable feelings—and a casual indiscretion.

Whence then, it may be asked, all the fierceness of the very injudicious advocates, who have undertaken to repel attacks so measured and so abstinent? From this, that the Irish Administration had hitherto been the only ground whereon the Government conceived it had any thing like a firm footing--and the Irish successes were held up as a perpetual set-off against the constant failures in England. When, therefore, this only and favourite spot of ground was invaded, and invaded by the force always most formidable in English political warfare—the supporters of the Law marching under the standard of Justice, and whose rallying cry is the preservation of Judicial Purity—no wonder that great uneasiness was felt at the attack, and ill-concealed anxiety betrayed during the whole of the operation, and a bitter mortification shewn at its triumphant success. The defence was feeble beyond all former example; but the spirit of acrimony which had evaporated in the conflict without stimulating to a blow, was concentrated afterwards, and exhausted in petty efforts to harass the victorious party, instead of administering to the vanquished the consolation of revenge. It is necessary to note two things for the sake of edification in matters political—and as being really curiosities of a rare description, and of some relish to lovers of new and strange sights.

Lord Brougham was not at all answered, nor even attacked, in Parliament, except upon one ground;

and this wholly unprecedented. He had once, it seems, praised Lord Normanby; and Lord Melbourne, with much sarcastic contempt for the praise so bestowed, if not for its object, cited a passage from a work published under Lord Brougham's sanction, namely, his Speeches. He might have found much unretracted praise of Lord Normanby's Jamaica administration; nay, not a little even in the Irish debate of April last. One of these speeches was accompanied by a note, which, after giving much well-earned commendation to Lords Wellesley and Anglesey for their wise and liberal conduct towards the Catholics, eulogises Lord Normanby for following in their footsteps, and bestows a panegyric in passing upon his private and literary character, a panegyric which excited Lord Melbourne's great merriment, whether justly or not, could be no fault of its author. Perhaps of all ridiculous subjects of attack, this was the most ludicrous. The passage, although it speaks of holding even the balance between the two religions, plainly means and indeed in terms says, that this trimming process consisted in giving all the favours to the Catholics which the law allowed; and that Lord Brougham, or any one else, has ever since cast blame on Lord Normanby for not doing so, or could have cast such blame, is quite a new view of the case. But even if it were as true as it is false that he had ever stated an opinion in favour of Lord Normanby's whole Irish administration in May, 1838, how could he predict what came out in

committee, during forty-eight days examination of witnesses, in May and June, 1839? Did he in 1838 know—could he believe—the things which only came out when the Lord Chief Justice was examined this year? Was Gahan's case known? Was Sly's? Was the treatment of the Chief Justice? Was the reference of cases to attornies? Was the delegation of pardoning to turnkeys? Were the details of wholesale gaol deliveries ever dreamt of before 1839? Assuredly public men out of office are placed in a somewhat strange position when they are called upon to pass judgment upon public men in office, if the moment any praise is bestowed by the former upon one portion of the conduct pursued by the latter, a perpetual estoppel is created, and no change of conduct, no new facts brought to light, are ever to justify a change of opinion or of tone. But happy above all things are men in office if such a canon of criticism is adopted; for they have only to do some one thing deserving commendation, to be secure against censure for ever after. One matter, however, is quite clear. Whoever hereafter shall utter a word in approbation of Lord Normanby, does it at his peril; for once the irrevocable word flies forth, he must ever after hold his peace what conduct soever the Noble Marquis may pursue, upon pain of being assailed by himself and his friends as inconsistent, and malignant, and factious, and false. But another thing may also be safely predicted; no such apprehension will

ever deter Lord Brougham from warmly praising his former friend, as often as he shall honestly think that friend deserves it.

But then it is said that Lord Brougham is ready enough to complain of the ill administration of justice in Ireland now—he who never, while the Tories were misgoverning that ill-fated country, opened his mouth against them on this score. Indeed! Then if he never opened his mouth, how came he to make a speech, three hours long, 23rd June, 1823, so audibly that it is fully reported, with a long reply to Sir Robert Peel, and is to be found in the Debates—is contained in the publication cited by Lord Melbourne—nay, is the very identical speech, a note to which Lord Melbourne read in order to laugh at it? Look at the Minute-books of the two Houses—that of the Commons for June, 1823, and of the Lords for July, 1839; and the identical notice stands in both, given by the same identical individual, for a motion on the same identical subject, "The administration of justice in Ireland!" The difference is that the Whigs all voted with Lord Brougham's motion in 1823, and all voted and all bellowed against this motion in 1839, when the case was ten thousand times stronger.

Nor is this the only gross and most scandalous falsehood circulated by the conductors of the Ministerial press. They have charged Lord Brougham with volunteering needlessly his motion. They

have, in order to support this silly charge, suppressed all mention of the fact, twice over stated by him, that he never had thought of making any motion this session, and was, on the contrary, against such a course being pursued, until the ministerial defenders of Lord Normanby in the Committee took such a course as prevented the possibility of a report being made, containing such an abstract of the mass of evidence as would enable the House and the country to read and understand it. Then it was that he said he should feel obliged to undertake the task of making that portion of it known to the House, which alone he had deemed worthy of general attention, and to obtain which portion had been his only ground of supporting the motion for a Committee.

But other tricks to cover other falsehoods, and to excite astonishment by their audacity, remain to be mentioned. The whole proceeding against Lord Normanby was to be resented as merely factious. It was stated that not one person in the Lords had blamed his Lordship's conduct except enemies to the Government, and personal or political adversaries of them and Lord Normanby. But Lord Hatherton and the Duke of Richmond belong not to this class. What then was to be done? Both of these Noble Lords had joined in strong disapproval of the only part of Lord Normanby's conduct which Lord Brougham's motion seriously assailed. The one, Lord Hatherton, was the Noble

Marquis's avowed and very able defender, both in the Committee and in the House. No mention therefore was made of his having, when he came to the important subject of the gaol-deliveries, declared that for this there could be no defence, and that he could not "compliment away his conscientious conviction," on this head, to gratify his noble friend. The Duke of Richmond even voted with Lord Brougham, he who is known almost always to support the Government, and never to leave them when he can help it. Nay, the very night after the debate, that truly noble and honourable person, in solemn and impressive terms, declared that, acting as a juryman upon the charges against his Noble Friend, Lord Normanby, he was compelled to condemn him for this important part of his administration. And yet the Government writers say, none but the factious and the personal are found to blame the Marquis! Nay, some of the Government papers had actually the effrontery to cut out of their report of the Noble Duke's speech the above most remarkable part of it, for the manifest purpose of enabling them, in the other parts of the same publication, to propagate the falsehood that no friend of the Government had taken part against Lord Normanby!

This is truly and happily a thing unheard of in the history of party misrepresentation. But it remains to add another singular feature of the controversy. Can there be named any one person in any

one station, connected with the Whig party, by any one tie, however close, filling any one office with or under them, or even filled with hope of being promoted by them, who has ever yet *in private* expressed any approval of the Gaol Deliveries, and the Treatment of the Judges? Nay, has not every person living blamed Lord Normanby for these transactions, although some doubtless may have expressed their censure in far gentler terms than others? Why, the Noble Marquis hardly defended this course himself—certainly his colleague and leader, Lord Melbourne, defended it not. A strange scene, no doubt, was witnessed when the Noble Viscount rose to speak. He had not read the evidence, therefore he knew nothing at all of the matter from the evidence, and could not tell whether his friend and colleague were guilty or not. Indeed! Then why had he not read the case? It took two hours to read—no more. Was it chance, or was it design that kept him from the perusal? Had he picked up nothing of it from other quarters? Was he really and truly so ignorant as to be unable to tell that the act of reading might be attended with a risk of condemning? In a word, was not his ignorance voluntary—wilful? This he left in no kind of doubt, for he never dreamt of asking time to read by moving an adjournment, which must as a matter of course have been granted, had he demanded it. On the contrary, he moved the previous question,—the meaning of which is known to

be, "The motion cannot be negatived, for it contains nothing that is not true—but we object to its being put as needless or as inconvenient." Needless, no one ever pretended that it was,—inconvenient and excessively inconvenient every one felt it to be—for the Government. After this no person has any right to represent Lord Normanby as defended by Lord Melbourne. He was plainly and almost in terms given up by his leader. He was plainly and in direct terms given up by his defender, Lord Hatherton. He was openly condemned by his friend, the Duke of Richmond.

But to what purpose make these remarks, or record such facts as these? Not certainly in the vain hope of working impossibilities,—stopping the false tongue of the professional slanderer,—opening the hearts of party leaders to justice, or to truth the ears of their dupes,—or making shameless men blush—making those blush at being detected, who never blushed to cheat. No such impossible aim is here in view. But it is not without its use to take every opportunity of confirming the people of this country in their resolution wisely taken of late years, to think for themselves, and not let partisans and party prints dictate their opinions of men any more than of measures. It is not unimportant to give new and striking proofs how unsafe a guide party prints are in forming the public opinion on the conduct of public men. It is useful to show the worst kind of

party dishonesty in its very worst colours, in order to deter men from becoming faction's slaves. It is good to add a new and striking illustration of Hume's remark, as sagacious in substance as happily and simply expressed in words. "It is no wonder that faction is productive of vices of all kinds; for besides that it influences all the passions, it tends much to remove those great restraints, honour and shame; when men find that no iniquity can lose them the applause of their own party, and no innocence secure them against the calumnies of the opposite."—(*History of England, chap.* lxix.) It is as well also to note the injury which party does to public morals by the encouragement which it gives to a vile traffic in slander and falsehood; for neither can the people nor those who assume to guide them be in a sound state, when the one are occupied in fabricating malicious fictions which the other are habituated to contemplate, though they may not be able to believe. There are not many serious evils in a popular government, and none at all deserving to be compared with its advantges. But assuredly this is among the worst of those drawbacks to which we gladly submit for the blessings we enjoy, that one part of the community are trained to trick and deception, while another are drawn into unreflecting dupery; the feelings of public men are rendered callous to public opinion, by seeing its oracles so often devoid of all truth and justice;

and the dictates of right and wrong are confounded by observing how the best of party men, themselves incapable of such base proceedings, are yet willing enough to share in the benefits which their followers thus render to their cause.

SPEECH.

HOUSE OF LORDS, TUESDAY, AUGUST 6. 1839.

ADMINISTRATION OF JUSTICE IN IRELAND.

LORD BROUGHAM. — If, in addressing your Lordships, I looked only to the paramount — perhaps the unparalleled — importance of the case which I am about to bring under your consideration, as it regards the policy, the welfare, and the constitution of this country, I should feel much less anxiety than I experience at this moment. But I recollect that, unhappily for me, and, perhaps, unfortunately for the question itself, it is one of which the indisputable importance is even exceeded by the great interest it excites; —I mean not merely that natural, legitimate, and unavoidable interest which it must raise amongst the people of the country to which it more particularly relates, — I allude not merely to the interest which it excites among your Lordships, as the guardians of the pure administration of justice, — you, yourselves, being supreme judges in a court the most distinguished in all the world, — but I am pointing to the personal and the party feelings, — the heats naturally kindled among those who, on the one hand, may suppose that I stand here as the accuser of an individual or of the Government, and amongst those who, on the other hand, may conclude that the parties stand here placed on their personal defence; and, worse than this, —I allude, with feelings of a truly painful nature, to that interest which this question is calculated to raise, and which I wish that any effort of mine could lull or delay, — I may be supposed to come forward for the purpose of lending myself to personal views, or to party views, and not merely in the discharge of an imperative public duty. But, if the experience which your Lordships have had of me, while practising before you as a minister of justice at your bar, or as presiding, so far as any Peer can preside, over your judicial proceedings in the House, — if the whole tenor of my not short public life of thirty years and upwards (in which I have constantly — it is, perhaps, rather the result of good fortune than arising from any merit of my own — by accident I might perhaps say — without deviation, or change, or shadow of a turning — proceeded in the same course, and been guided steadily by the same uniform principles), — if this gives your Lordships no pledge that I appear on the present occasion only to discharge a public and a great responsible duty, then what further pledge can I give, — what more can I say than this? — Mark how I, this day, perform the duty which I have undertaken; and then — whosoever of the accusers may be disappointed, or whosoever of those who are on their defence may be chagrined, — whatsoever party feelings may be excited, or whatsoever party objects may be frustrated, by my discharge of public duty, — at least, I shall be able to appeal to your Lordships for my acquittal from the charge of having made myself, on this occasion, what I never did before — an engine of party feeling, or an instrument of personal attack.

My Lords, I shall detain you with no further preface: I have only detained you so long, because I thought it absolutely necessary for the question, as well as for myself, to make this appeal. I will, at once, proceed into the heart of this great subject. Rushing into the midst of it, I call upon your Lordships to examine the propositions which I read to you on a former day, and to which I now ask your assent. The first of them relates to a subject which, in my opinion, is second in importance to none of the others. If one thing more than another be essential to the due administration of justice in any country, it surely is, that evidence, when it is known to exist, for the conviction of an offender about to be put upon his defence, should be certainly forthcoming when the day of trial arrives, and the guilty not escape for want of witnesses to his crime. In England, and in Ireland, how is this great object of justice effected? In England, as in Ireland, those persons

who are known to have the power of giving evidence, are, by the committing magistrates, bound over to prosecute; this is to say, in common parlance,—for it is the Crown that prosecutes; but those persons are bound over to give evidence as witnesses for the Crown. In England, generally speaking, there is no difficulty in obtaining individuals, who will not forfeit their recognizances, and who are ready to come forward with their testimony. When they do happen to forfeit, those recognizances are estreated, the penalty which they have incurred by their default is levied, and, if they cannot pay that penalty, they are committed to prison;—not formally,—not nominally committed to prison,—no; but there they are kept till they give evidence, or till they have been sufficiently punished, by way of an example, to deter others from committing the like offence. This is the corner-stone of the administration of criminal justice in England, and if that stone be loosened, the fabric must be shaken to its base. How is it in Ireland? I may, now, as I come to this point, advert to the evidence. I mean to keep as nearly as possible to the letter of it in my statement; but, though I may have occasion to trespass at some length on your Lordships' time, I intend to trouble you with reading from the evidence as little as possible,—probably not above a page or two. I am acquainted with every word of the evidence that refers to this question; if necessary for the support of my argument, I can refer to it; if I hear any dispute in the debate, I will read the examinations in reply; but, in the outset, I shall read as few extracts as possible. We have, however, again and again, throughout the whole mass of this evidence, the most undeniable proof that, in Ireland, the administration of justice is not, in this respect, the same as it is in England. In the former country, indeed, as in the latter, when a man refuses to come forward and give his evidence in a criminal prosecution, the recognizance is estreated, and the form of inflicting the penalty is gone through,—but that exists only in form which in England is substantial. In ninety-nine cases out of a hundred, where there is default, no fine can be levied, because the party is not in circumstances to pay anything; and, then, instead of being imprisoned in such an effectual manner as,' by example, to deter others from pursuing the same course,—that happens, which must needs frustrate all criminal proceedings,—the offender is let out in ten, or twelve, or fifteen days,—the punishment being as nominal as the estreat; so that, for this paltry suffering, this mere inconvenience, a man escapes the obligation of telling the truth, in execution of the law.

And, my Lords, in what country, and in what state of society, and in what kind of circumstances, is it, that such a bad practice—calculated, on the one hand, to deter a man from volunteering his testimony, and, on the other, to seduce him from giving his evidence—has grown up, and now universally prevails? Not in England, where binding over to give evidence is considered as little better than a mere form,—where every person, so bound over, would come forward, were he secure from all penalty, and assured that nothing could ensue, from his default; but in a country where there exists every circumstance fitted to deter a witness from coming forward, and every inducement calculated to prevail on him not to appear. The persons whose evidence is desirable, are either the friends of the parties accused, or possibly accomplices, or persons affected by circumstances which grow up in troublous times, and, having been thus connected together, are, in consequence, most likely to have a strong fellow feeling towards criminals accused of certain offences. Such circumstances unavoidably operate to produce a favourable feeling in the minds of the witnesses towards the criminal, and even towards the offence itself, with which he is charged; and very little further inducement would altogether prevent them from coming forward to convict. But, then, there is the terror, the personal fear of maltreatment, nay, of death itself, to co-operate with the leaning towards the criminal. All who give evidence know that their lives are not safe, if they perform their duty; and they are taught, by the practice of the courts, and the proceedings, that they may exchange the risk of murder for a fortnight's residence in prison. But, if the circumstances were of a much less extreme nature,—if the terror were less,—if the risk actually run by witnesses in giving evidence were less,—if the accident of friendship, or alliance, or society, on the part of the criminal, were not so powerful to deter or seduce witnesses from their duty to the public,—it is quite enough to say that the office of prosecutor, or accuser, or witness against a prisoner, is none of the most agreeable duties which men perform; and, consequently, the law—feeling for human weakness, and knowing the little chance which a mere abstract love for the administration of justice has, in competition with such feelings as personal fear, or good nature, acquaintance with or

friendly feeling towards prisoners, — the law — seeing the little chance which the mere abstract love of the administration of justice has, in producing the effect of making men accusers, or making them give testimony — does not trust to volunteers; it cannot reckon upon willing testimony, and it compels them to come forward — it obliges them to come forward — it binds them to prosecute — it makes them enter into recognizances, which may force them to give evidence. But in Ireland, where the motives of fear and favour are infinitely more powerful, a rule has grown up which makes the entry into recognizances a merely formal proceeding, and wholly unavailing to its purpose.

In making this statement, I think I have laid sufficient ground for the first principle which I have laid down in my propositions. This principle affirms the expediency of rendering that process real and substantial, which, at present, is merely nominal, — of making it certain, that, if a witness forfeit his recognizances, he shall suffer the consequences which the law awards, by being imprisoned when he cannot pay the penalty. My Lords, I now approach my second proposition, which, I will say, is to the full as important as the first — more important it cannot well be. I may be suffered, however, in comparing the two propositions together, to make this distinction between them, in fairness to the Irish Government. I bring no complaint against any party for that which I have hitherto been describing; it appears to be a bad practice, which has grown out of a former state of things, and for which no one can be held, strictly speaking, responsible. I should be glad to have the satisfaction of making the same exculpatory observation with reference to the head of the subject to which I am now about to refer. A high Irish law authority has, to my great astonishment, recorded, in writing, that a certain right of setting aside jurors in criminal cases, which has been acted on in Ireland, never existed in England, — whereas the contrary is well known to be the fact. There is not, in this respect, — whatever there may be in others, — one law for Ireland, and another for England; it is in the power of the Crown to direct individuals who appear as jurors to stand aside without showing cause, until it shall be seen, afterwards, that the pannel is exhausted by challenge or non-attendance, and that twelve cannot be obtained. This right, however, is more sparingly used in our proceedings. It was, until lately, the custom in Ireland to set persons aside, who entertained the same party feelings as the persons accused; — where, for instance, they had attended party meetings, and made violent speeches, taken part with the prisoner, committed themselves to an approval of his offence. For these, and other matters of a similar nature, they were desired to stand aside until the legal number of jurors were sworn. But, in 1835–6, the then Attorney General (Sir Michael O'Loghlen) gave an instruction with reference to this point, which has been the subject of much animadversion, and is worthy of grave consideration. That learned person assuredly directed the Crown prosecutors not to challenge any person "on account of his religious or political opinions," or, "except in cases in which the juror is connected in some manner with the parties in the case." Now, although no human being is, in a general point of view, more decidedly adverse than I am to making religious or political opinions the ground for an exception to a man, as to his holding an office under the Government, or as to his acting in the capacity of juror, — still, I must say that I cannot go the full length of that peremptory exclusion, so strongly expressed in the instruction to which I have referred, and which forbids, in all cases, the right of setting aside on account of religious or political opinions; because I can well imagine a political trial, where everything may depend on having a jury altogether clear of party feeling, however clearly the fact may be proved. In such a case, let your Lordships suppose one or more persons, on a jury, holding precisely the same violent opinions, and participating in the same feelings as the accused, — feelings, out of which the offence arose, and connected with which the offence needs must be; — is there not a probability that, however evident the proofs may be, a just result will be frustrated, and the justice of the case defeated, by the composition of the jury? But it appears, from these instructions to which I have referred, that no person is to be set aside, except "he be connected, in some manner, with the parties;" so that, even if it should turn out that a person, about to be sworn as a juror, has expressed the strongest political opinions, and used the strongest language, — those opinions and that language being in accordance with the sentiments of the party accused, tending to excite the ferment out of which the crime arose, and thus making him all but an accomplice, — is he to be considered as a fit and proper person to be placed in the jury box, in order to sit in judgment on his

fellow offender, because he is not directly connected with him, although deeply implicated in his offence? Sir Michael O'Loghlen, in his evidence, put a construction on these directions, which is altogether about the most marvellous I ever heard of. I examined Sir Michael very fully upon this point. I questioned him for nearly half an hour; and all the members of the committee to whom I have spoken on this subject, agree with me in opinion, that the explanation was very short indeed of being a satisfactory, or even a consistent or an intelligible, statement. He said that "he conceived that a person who bore no relation to the parties, and, consequently, did not come within the grounds of challenge stated in his letter, might still be set aside for other reasons." Now, in his written instructions, he states, distinctly, that jurors should be set aside only for the one reason. I then questioned him as to whether, if a person were grossly ignorant, or incapable of understanding a case, although not at all related to the parties, or liable to strong objection on the ground of his having committed the same offence for which the prisoner was charged, such a person should not be made to stand aside? His reply was, that that case would not come under his instruction; but that such a witness might be set aside. Now, this, again, was contrary to the letter of the written instruction. His answer was similar, when questioned as to the case of a man of notoriously bad habits, — nay, an accomplice with the prisoner. To that he said, "Oh! I never meant that he should not be made to stand aside." But what construction was put by the Crown prosecutors in Ireland on Sir Michael's instructions? Mr. Kemmis — no novice in office (he has filled the situation of Crown solicitor in Ireland thirty-eight years) — stated, upon his examination, that he should not consider himself justified in setting aside a juror for those reasons which I have just now hastily gone over to your Lordships, being the first that present themselves, — rising up, as it were, in judgment against Sir M. O'Loghlen's rule. Thus, it appears that, in so important a matter as the composition of the tribunal, Mr. Attorney General gave his instructions to the Crown solicitor in such terms, that he put one construction on them, while the Attorney General, himself, put another — the person executing the order reading it one way, and the person giving it, another; — in plain terms, that one thing is intended to be directed, and another thing is deliberately done, — and done inevitably, because the person acting under orders could not avoid putting on them his own construction.

Now, if your Lordships turn to the evidence, not of parties hostile to the Government, but of men who agree with them in politics, you will find an almost uniform concurrence of testimony, to the effect that this system has very much injured the composition, by lowering the character, of juries in Ireland, — retaining upon them many publicans, a class of men who are, of necessity, very much under the influence and control of the popular voice. That great class of offenders, designated Ribbandmen, exercise, naturally, a considerable degree of control over the proprietors of public houses, where their meetings are, almost uniformly, held. My Noble Friend the chairman of the committee knows more of the details of this part of the subject than any man. I appeal to him, whether it is possible to expect that publicans serving on juries will dare convict a Ribband offender? My Lords, the observation made by one of the witnesses on this subject, now in the employment of the Crown, is decisive. This witness says, —

> I do not say that publicans are not honest men, and would not be honest jurors; but, in the circumstances in which parties are, they dare not do their duty as honest, upright, and impartial men.

Almost all the other evidence agrees in describing the juries as worse in consequence of the instructions; but to the universality of this testimony there is a remarkable exception, — that of Mr. Cahill, who was appointed, in 1836, one of the Crown solicitors. The evidence of this gentleman is such, that, though he may be a very able solicitor, and a very respectable person in private life, still, in his character of witness, I have not a very high opinion of him, how well soever he may perform the other duties of society. The reason for my entertaining a higher opinion of Mr. Cahill as a solicitor than as a witness, is founded on the following circumstance. Those Noble Lords who attended the committee will not easily forget it. Mr. Cahill seemed to have an impression, from the beginning to the end of his examination, that it was a bad circumstance for those who gave him his appointment, that he should have been a member of the General Association, — this association being one of a factious nature, aiming at the repeal of the Union, or, at all events, the demolition of the established church, and the cessation of the

payment of tithes. Mr. Cahill seemed to have heard that a charge had been made against him, and against his patrons, on that ground; and every part of the testimony he gave was tinged with the unpleasant recollection. He was asked, —

Were you a member of the General Association held at the Corn Exchange a few years ago? I cannot now confine myself to the year; but I never was a member of any association having the repeal of the Union for its object, — for I never supported that.

Were you a member of the last General Association that was held at the Corn Exchange in Dublin? — I think I was a member of that.

Were you a member when you were appointed Crown solicitor? — I am not quite clear that I was ever a member of that association. I cannot state that I was not.

If you were, did you attend its meetings? — I have been present looking on; but I never took any part in those meetings.

Did you attend as a member? Did you enter the room in right of being a member? — I am anxious to know whether I was a member. I am not certain whether I was or not.

Was there any payment on entering the association? — I am certain there was.

Did you make that payment? — I have no recollection. I am not anxious to deny I was, if I was. My impression is, that I was; and I should be happy to state what I recollect, if I could state it positively. I think that I became a member when it was first started, and took no further notice of it.

He was examined for a long hour, in the same way; but we got nothing out of him. Although he had been a member of only one other association — or, at most, two — all his life, — he did not recollect the objects of the General Association. He was asked, —

Have you ever been a member of any other association? — Of the Catholic Association; and, I think, of an association — I forget what it was called — to support the Reform Bill.

Have you any doubt that, at the time you paid a sovereign for admission to that association, you knew what were the declared objects of that association? — I cannot state positively that I ever did pay to the association, nor that I belonged to it; but I am not prepared to state that I did not. I never thought on the subject till the question was put to me. I know I belonged to one or two associations. I may have belonged to that particular one; I am not positive. I am cognizant of the operations of every society, for I read them in the newspapers at the time, though I have not thought of them since.

About what time was it that you left the association? — I do not recollect having ever resigned.

Was it as early as 1834? — If I state the time, I must state that which I do not recollect.

Have you a recollection whether it was one year ago, or ten? — I am quite certain it was not ten.

Are you not certain it was not five? that it was held in 1834? — I am not certain.

The former association you belonged to, — in what year was that? — I remember the Catholic Association was in 1835, I think.

Another association besides that? — I do not recollect the particular date of that.

You were a member of the Catholic Association in 1825? — In 1826, I think, I was a member.

Did you attend the meetings? — I did.

Did you attend frequently? — Very frequently, during the Catholic Association.

Have you any recollection of the first time you went to the meeting of the Catholic Association? — I was present at a meeting of it in 1823; it assembled in a room in Capel Street, and I think there were seven or eight persons present.

What an extraordinary contrast was here presented between the accuracy with which Mr. Cahill remembered a transaction that occurred sixteen years since, and his extreme shortness of memory as to whether he had ever been admitted a member of the Political Association, existing about four years ago, and very near the time when he received his appointment from the Government! Ask him about the recent transactions, he knows nothing; ask him about the remote ones, he is perfect, ready, minute, — can tell the street where the meeting was held, and the numbers that attended. This witness was further examined as follows: —

Do you recollect who it was that first proposed to you to become a member of that association? — No; I do not recollect the fact of being proposed at all, or where I paid, or whether I have ever paid; I think it likely that I may have subscribed to it; I have spoken merely to the likelihood; but I can ascertain the fact.

Will you undertake to swear that you were a member of it at all? — I stated, distinctly, that I would not.

Why do you think you were a member? — That is the impression on my mind; and, except that, I think that I cannot give any reason.

Will you swear you ever attended any of those meetings at all? — I certainly was in the habit of going into the place; I was in the habit of going down and looking on.

What is the last time you recollect being at either of these meetings? — I cannot state.

Though you say you will not swear you did not attend ten times or more, have you any recollection of any one subject you heard discussed there? — I have not, of any particular subject, at any particular time.

Do you mean to abide by that, — that you have been ten times to the meetings, and that you do not recollect anything which was discussed at the meetings? — I have not stated that I was ten times there; but that I would not swear that I was not.

Will you swear you were once there? — I am sure I was there repeatedly; I know I was.

But, however great the number of times you were there, you cannot recollect any one subject that was discussed at that meeting? — There is not, in my recollection, any particular subject.

Was anything said about tithes? — Yes, I am certain there was, *now that it is suggested to me.*

Anything said about abolishing tithes? — Yes.

Have you any doubt that that was one object of the meeting? — *I remember it was.*

Have you any doubt, that, at those meetings, something was said respecting separating from this country, if they could not obtain those objects? — I never heard that spoken of; but that may have been in the declaration. *Now that it is suggested,* I think that that was referred to in it.

It is wonderful what a plastic memory this witness possessed; and how, as if by sudden inspiration, he remembered, at once, when suggested to him, what was, previously, utterly beyond the range of his recollection. He was then asked, —

How long have you held your present appointment? — Since January, 1836.

Had you ceased to attend before you got your appointment? — I never did any formal act of secession.

But you have ceased to attend the meetings? — I do not mean to state that I have not been present at a meeting since my appointment; my recollection is that I have.

Do not you know that the association was formed in the year 1836? — I do not.

But you will not swear that you ever attended a meeting of this General Association before 1836? — I cannot distinguish what the several meetings were about; there were continually meetings at that Exchange, and I was in the habit of going to those meetings, and I have not a distinct recollection of the several classes of meetings.

In justice to Mr. Cahill, it is fit to add his answer to another question respecting the approbation of the magistrates of the county of his conduct in the discharge of his duty. He was asked, —

Have you, on any occasion, received any mark of approbation from the gentry and magistrates of the county, since your official appointment? — I received a vote of thanks from the gentry and magistrates of the county, Lord Donoughmore in the chair, for my activity in bringing the murderers of Cooper and Wayland to justice.

But, in justice to the Government, it is also fit to record their gratitude. This gentleman, whose memory is so treacherous where he might be supposed to know anything against his patrons, was, formerly, an election agent for Mr. Sheil, and owed his promotion to that gentleman's interest.

Having shown the ambiguity of the instructions, as well as their pernicious tendency, I now come to the other part of the second resolution, — that which regards uniformity of practice in respect of challenging. Your Lordships have already seen how the construction put by Sir M. O'Loghlen on his own instructions varies from that of the parties to whom they were addressed. But it appears that, not satisfied with giving orders that meant one thing and said another, the Attorney General gave different directions to different men. Mr. Tierney, a Crown solicitor like Mr. Kemmis, said, that prisoners always challenge, in order to get low people and publicans on the jury. Not having received Sir M. O'Loghlen's instructions in writing, his course was guided by verbal orders, — and it was a course wholly different from Mr. Kemmis's. "I always challenge illiterate persons," said he; "I had verbal instructions from him, to challenge such persons, and spirit dealers." So it appears that Messrs. Kemmis and Tierney act under directly opposite instructions in this important particular. In May, 1837, Mr. Drummond sent instructions to the different Crown solicitors, that the right to challenge jurors should not, in any way, depend on the political or religious opinions of the parties; and that they should not, in any case, object to a juror, unless he were, in some way, connected with the case, or, for some ascertained cause, was unfit to serve. Now, the grounds were here just, and fairly stated. It is worthy of remark, that Sir M. O'Loghlen, one week after giving the instructions to Mr. Kemmis, gave instructions of a totally different nature to Mr. Hickman, the Crown solicitor for the Connaught circuit. Was not this carelessness, in a matter so important, most objectionable? The instruction given by Sir M. O'Loghlen to Mr. Hickman was similar, in expression, to that which I have just cited as having been despatched in the circular, by Mr. Drummond, and included the words "unless the juror be, in some way, connected with the case, or, for some ascertained cause, is unfit to serve." Mr. Geale stated, in his evidence, that he had written to Sir Michael before going his circuit; and that Sir Michael, in his reply, "left him to use his own discretion as to persons connected with the case." Now, even if he had said, "Challenge all connected with the case,"—this is wholly different from saying, "Challenge all connected with the party."

Then we come to Mr. Perrin, another Attorney General, whose instruction was widely different from his learned successor's, and was as follows: — "I wish no man to be set aside by the Crown, against whom there is not a good and substantial objection." This was sound, and rational, and intelligible ground to take; but it no doubt looked plausible, and was probably very agreeable to the feelings of Mr. Attorney General O'Loghlen, to have the opportunity of telling his own sect and party, "See what I have done; I have tied up the hands of the prosecutors. They can never challenge a man, now, on

account of his religion or politics." Thus, therefore, although the case might be deeply imbued with religion — absolutely steeped in all the rancour of sectarian animosity, — though the quarrel might be a political one, and the denial of justice secured by empannelling, in the one case, a sectarian, in the other a political, jury, — notwithstanding this powerful, this decisive argument, it was ordered that no political or religious objection should ever be taken; and the Catholic Attorney General, the partisan of a well-known faction,— Sir M. O'Loghlen,— had an opportunity of telling the Catholics and agitators of Ireland, that which Mr. Perrin never had dreamt of telling them, and which had never appeared in any of the instructions to Crown solicitors preceding the regimen of Sir M. O'Loghlen. He, first, and alone, could truly say, "I have excluded from all challenge Catholics and agitators, who may now pass upon the juries that are to try offences growing out of and connected with ecclesiastical and political feuds."

I must apologise to your Lordships for having dwelt so long on these details, the propositions which I have enumerated being almost self-evident, — namely, that men bound to perform the duty of giving evidence should be compelled to fulfil their obligations; and that the law officers of the Crown should issue rational, intelligible, precise, and, above all, uniform, instructions. The two last heads of my resolutions are incomparably more important than the subject with which I have last occupied your attention. The first of these relates to the conduct proved, on oath, to have been pursued by the executive Government of Ireland with regard to the sentences of prisoners, and the course adopted in remitting or altering those sentences, in reference to the learned judges by whom they were passed. Whether your Lordships look to the high functions discharged by those learned persons, or to the sacred interests involved in the administration of justice itself, this is a subject of the deepest interest, and of supreme importance. If any man should think that I am now coming on personal ground, I can only say that, if it be absolutely impossible to satisfy your Lordships of the necessity of laying down some rule for guiding the future operations of the executive Government in Ireland, without showing to your Lordships that necessity, by referring to the deviations made from it, and if the inevitable consequence be, that any individual may think himself personally aimed at; I, conscious of not having any such intention, must only appeal to your Lordships for my defence and protection against so utterly unfounded an imputation. Would to God that I could go through my task without even hinting at persons and at personal matters: but your Lordships will take into consideration the absolute necessity of the case, and will ask yourselves, both how it is possible to censure a bad practice without pointing towards the conduct which has sanctioned it by adoption; and, also, how a public duty of paramount obligation can decently be shrunk from, merely because its performance may bring into discussion the conduct of an individual endowed with official powers. Nevertheless, there are feelings which make the discharge of this duty as painful as it is imperative; and the only comfort which I can draw, in my present position, from the case before me, is, that the burden of the blame I am about to cast, does not rest exclusively, nor even especially, upon the Irish Government. They do not stand out alone, or without support; their conduct does not come before your Lordships unsupported, unapproved, even unpraised, by the whole of the Government at home. My complaint is not against the Irish Administration. No charge is made by me, at all. But if, in the progress of my examination, any blame springs up, — if, in the course of my statement, any charge comes out, — it is urged, not against any single unprotected individual, but against the strong arm of the executive Government of this country, — a Government responsible for all the acts of their agents, so long as those agents stand unremoved, — a Government always, in law, responsible, but here, in fact, bound up together with their Irish servants; the Ministers in England have, in short, made themselves, regarding these transactions, one and the same with the Castle of Dublin. I will now proceed to this important question; and, passing over, for the present, any remarks upon the power vested in the Crown, of remitting or changing the sentences of prisoners, I will only take leave to state that this is a high and eminent function, always to be exercised after mature inquiry, and with great deliberation. It should never be forgotten, that the judges, too, stand in an eminently responsible position; that their character ought not to be lightly assailed, their privileges outraged, their authority set at nought. With respect to them, or all other public functionaries, you have no middle course between at once impeaching or removing them, and, while they continue unremoved, treating them

as if they were alike irremovable and unimpeachable. If there be in this world, one thing more inconsistent with itself, and with all sound principle, than another, it is to retain men upon the bench of justice, and hold them up to the hatred or the contempt of the people among whom they still sit to administer the laws. But I will now proceed to describe, from the evidence, the conduct which has been held towards these judges, — and which fully bears out the terms of my fourth resolution.

It appears that a memorandum was made on paper by a clerk under the Irish Government, — which memorandum was, by all, supposed to have been made under the authority of the Executive, — which memorandum could not have been made, *ex mero motu*, by the clerk, — which memorandum has, to this hour, never been disavowed by the Government in any way, but which memorandum, whether authorised or not, was acted upon, and was that which I will now describe. It was to the effect that no case, tried before Lord Chief Justice Doherty, — no case, on the trial of which he presided and pronounced sentence, — when it came to be considered by the executive Government, with a view to remission or commutation, should ever be sent to that learned and reverend judge for his advice upon its result, or for information upon its circumstances. I have, my Lords, administered justice; I have presided over the highest tribunal of the country; I have assisted your Lordships in the most important functions delegated to you by the Crown, and in the supreme judicial powers which you exercise by the constitution of the realm — as a minister of justice, and as a judge, my life has been passed in courts of justice; as a judge, I still sit on your bench here, and elsewhere; I have known the reverend judges of the present time, and those who preceded them; I believe no man is more intimately acquainted with their various opinions, habits, and feelings, for no man has had more unreserved intercourse with them; — and I protest that I do not know any one of those venerable persons, — the heads and administrators of the law of the land, — who could have brought himself to believe in the possible existence of such a minute as I have described; nor could all my own experience in judicial or in political affairs have brought my mind to this belief, but for the evidence of the witnesses uncontradicted, and the silence — the expressive silence — of the Government itself. I will venture to add, that, if it had been told the English judges that such a document existed, the answer of all of them, in one voice, would have been, — "Mistake, carelessness, error, misunderstanding, alone, could have given rise to such lines traced on any paper: depend upon it, 'tis all wrong; it is a fabric of the imagination, — and no such outrageous instruction ever existed; still less, could it have been acted upon by any executive Government." But how stands the fact? Has this been found to be a baseless creation of fancy? It is a reality as substantial as it is sad, — as little to be doubted as it is much to be deplored; and, so far from not being acted upon, there were, in the course of two or three years, twenty-seven cases tried before the Lord Chief Justice, over which he presided with conduct unimpeached, upon which he pronounced the sentence of the law; — and every one of those twenty-seven cases was referred, not to the Lord Chief Justice, — but, as the evidence on oath shows, was submitted, in obedience to the terms of the minute, either to the Attorney General, the Crown counsel, the prosecutor's nominee, holding his office during the pleasure of the Crown, — or the cases were referred, in nine instances out of ten, to the Crown solicitors — attorneys at law, practising in the Court of the Lord Chief Justice of the Court of Common Pleas, the second common law judge of the land.

I will take one of these cases. There had been a trial for abduction, accompanied with rape: the charge of rape was abandoned, but the party was convicted of the abduction, and the sentence next in severity to that of death — namely, transportation for life — was passed upon the offender by the Lord Chief Justice, who found, the next time he went the circuit, that, without any previous intimation to him, even of the ultimate result, — still less, without any communication before the step was taken, — the sentence so passed for so grave an offence had been changed to an imprisonment of twelve months; and he, to this hour, is utterly at a loss to tell on what grounds that change was made, — nor can he even now, with all his reflection, imagine any reason for it. So, again, in the case of Mr. Reynolds, a political agitator, convicted of a serious riot before his Lordship and Mr. Baron Smith, an experienced and humane judge, who concurred in the sentence pronounced by the Chief Justice, — a sentence of nine months' imprisonment. That sentence may, at first sight, be thought heavy; but it should be borne in mind that this was not the first instance of Mr. Reynolds having been convicted

of a similar aggression against the law and the King's peace. My Lords, shortly after the sentence was pronounced, a letter arrived from the executive Government, stating that the case had been referred to the Attorney General, and that he, for reasons stated, thought a great deal of doubt existed as to whether Mr. Reynolds had not been punished enough; and so, after two months' imprisonment, the other seven months of the sentence — pronounced by both the learned judges who had tried the case — were remitted. But it will be said, and naturally so, — "How did this arise? there must be some motive for this treatment of the judges, and for the extraordinary course which justice and mercy had taken." This brings me to the case of Gahan, — a case well known to the members of the committee, by whom it never can be forgotten,—and which it will, now, be my duty and my care to make known to your Lordships generally. Gahan was tried before Chief Justice Doherty, for having been party to a very gross and outrageous assault. He was indicted, by the mercy of the prosecutor, under the Irish Outrage Act, which provides a sentence of seven years' transportation for the offence, — though he might have been tried under a much more penal statute, and, indeed, for his life. In all my experience, I have never known a worse case. In Ireland it wore an aspect of peculiar aggravation. The assault was upon four policemen. It arose out of no party quarrel, — it originated in no heated passions, — it was a cold-blooded, and it was a deliberate, attack; and it was clearly proved, by the unimpeached and uncontroverted evidence of all the witnesses, to be an attack upon the policemen, especially the sergeant, or commanding officer of the party, in revenge for his having given evidence, in a certain prosecution, which had led to the conviction of the offender. This fact gives the deepest colour to the offence. The crime went to the very roots of the administration of justice, — it was an attempt to murder a man, in revenge for his having borne testimony, and to prevent his bearing testimony again. Why do I say so? — why call it murder, when it did not end in death? I do so on account of the injury, which was great. The sergeant's skull was fractured, his arm was dislocated, and two ribs were broken. It was also found that another ruffian leaped upon a second policeman, and with the weight of his body stamped upon him, and put out his shoulder. Am I, then, not justified in calling this a murderous attack? But I am not driven to conjecture the motive of this criminal from the act itself. *Habes confitentem reum.* For one of the ruffians, in encouraging his comrades, was heard to say, — exulting in his success, and after he thought he had disposed of the policeman by murder, — "He is dead now; he will never be a witness again." Another of the wretches had been heard to remind his accomplices of the place where they were to lie in wait for their prey. Therefore it is that I say, a more aggravated case I never heard of in the whole course of my experience and practice. At the trial, however, an objection was taken, that the policemen were not sober, and might not, therefore, be accurate in their statement of what had taken place; and this doubt as to their sobriety arose from one witness having said there was a smell of whisky about them: but a medical gentleman proved that the smell of whiskey arose from their wounds having been washed with spirits; and the result proved that the men were quite sober, and had given consistent and credible testimony of the circumstances of the transaction; for the jury, to whose attention this circumstance was fully brought, found the man guilty; and the Chief Justice, having tried the case, and approving entirely of the verdict, sentenced Gahan to the *maximum* of punishment known to the law for such offences, when not prosecuted under Lord Ellenborough's Act, — namely, seven years' transportation. This was at the March assizes; and, towards the end of that month, an application was made by Gahan to the executive Government for mercy. His memorial was considered, and the proper course was taken with respect to it: the learned judge was applied to for his opinion on the case, and for his notes of the trial. The notes were furnished by the Chief Justice, who gave his opinion that he saw no reason to doubt the verdict or change the sentence; and the Government, acting on that advice, returned an answer, on the 6th of April, that the law must take its course. On the 16th of April, a second application for mercy was written, and, on the 17th, was received by the executive Government, in the shape of a memorial, not from the prisoner, but from his brother, who, as it chanced, is a Roman Catholic priest. The memorial was couched in extremely offensive, and even insulting, language towards the learned Chief Justice; and it charged him with corruption and injustice; for it depicted him as a party tool,—"a judge," it said, "of the right sort," and from

whom neither the brother of the writer, nor any other in like circumstances, could expect justice. After four days had elapsed, — that is to say, on the 21st of April, — a letter was sent to the Chief Justice by my excellent friend Mr. Drummond. It was written by a clerk, but signed by Mr. Drummond. And here I must observe that, on the whole, it would be much better that such communications should proceed from a higher officer than an unknown clerk, who, though, very possibly, a respectable man, here did that which would not have been done if Mr. Drummond had acted in the matter, himself. This observation, however, applies much more strongly to the letter conveying a reprimand to the Chief Justice,— which ought, if written at all, to have been from the Viceroy himself, or the Chief Secretary. I trust I am not captious in making this remark; I hope I am not led away by habitual reverence for the judicial office, when I assert that they who hold it should be treated with all delicacy and respect, even by those administering the highest functions of the Government.

But to return to my narrative. On the 21st of April, Mr. Drummond wrote to the Chief Justice, and called his attention to the case of Gahan, — stating that it was to be reconsidered, though not informing the Chief Justice that the memorial from the brother was the ground for its reconsideration. That letter, however, inclosed the offensive memorial. It was sent on the 21st of April; and in a few days afterwards, — namely, on the 27th, — the Chief Justice wrote a letter in answer, stating that he was very much surprised at receiving so slanderous a communication, and still more that it should be made the ground for a reconsideration of the case. He sent it back with his notes; and added, that he had deemed it prudent to keep a copy of the paper which had been transmitted to him. I understand that this now forms the ground for a sort of stigma on his Lordship. But it turned out that Mr. Drummond never intended to send the memorial to the Chief Justice; and it was urged in proof of this, that if any such intention had existed, the paper would have borne upon its margin the official note, "Refer to the Chief Justice." As that note did not appear on the margin, the inference now drawn is, that the memorial was not intended to be forwarded to the Chief Justice, but to the priest, with a reprimand for the expressions it contained, and a desire that those expressions should be expunged. There was, indeed, no official note on the margin, "Refer back to the priest," any more than there was a note, "Refer to the Chief Justice." It, however, stands on the statement of the Irish executive Government, that, by mistake, it was sent to the Chief Justice; and it has been sworn in evidence that the intention was, to let the priest have it back, with a reprimand: but this was not done at the time which might have been expected; and therefore I think there must be some mistake, — at least, so the dates prove,— for the minute of the Lord Lieutenant, referring it back to the priest, was produced, and was dated the 18th of April. It appears that it was sent on the 21st of that month, not to the priest, but to the Chief Justice, who returned it; and then it must, on the 22d, have been sent to the priest,—for the priest answers a letter, which, he says, is dated the 22d, and says he has to express, not his contrition to the Chief Justice, but his sorrow for having given the Government any offence. He frankly avows it was his interest not to give offence to them; but he does not say one tittle of being sorry for having so scandalously outraged the Lord Chief Justice by his libel. This, however, either from want of care, or owing to the multiplicity of business, did not strike the Irish executive Government; for this letter of the priest's was afterwards described by the executive Government as having expressed the most humble contrition for the offence offered to the Chief Justice; and it was described by a Noble Friend of mine (Lord Morpeth), in another place, as a letter expressing humble contrition. In that place, the letter was not produced, but only the description of its tenour. In the committee we had the letter itself; and it was found to express no contrition, humble or most humble, except to the executive Government. Then, in point of date, came the explanation given to the Chief Justice, that the memorial was never intended to have been sent to him, but to the priest; and though the minute was dated the 18th of April, it was not sent to the priest either on the 18th, or the 19th, or the 20th, or the 21st, nor until the 22d.

Why, then, was there such haste in sending it to the Chief Justice, when four or five days were allowed to elapse before it was sent, as so early directed, they say, to the priest? However, the Chief Justice was bound to believe the statement given in the explanation, and he did believe it. In reply to that explanation, his Lordship said he never objected to their sending him the memorial; on the contrary, he seemed

to think, that, if the Government were in the habit of receiving libellous attacks on the judges, it was better to send them to their objects, than keep them concealed. He rather thanked the Government for sending him the document, — at all events, of that he did not complain: "But," said the learned judge, "what I do complain of is, that you — the Government — should act on such a letter; and that, having decided on the case before the priest wrote the libel upon me, you should make that libel the only ground for a reconsideration of this felon's case." The Chief Justice's complaint, and its grounds, were now, at length, understood by the Government; and then came the minute of the Lord Lieutenant of the 29th of April, stating that the learned judge was mistaken in supposing that the offensive memorial of the priest was the cause of reconsidering the case of the prisoner Gahan, and affirming that the reconsideration of the case was owing to — what do your Lordships suppose? — to verbal communications of persons not named — not alluded to — not described; and never before, in any way, general or specific, so much as hinted at; but, among others, one was named, — the Attorney General himself. I am quite certain that there could be no intention to fabricate this reason, wearing though it does the semblance of an after-thought. I am sure there could have been no wish to state that which was not true; but I am equally certain, that, from some inadvertence, — perhaps in the hurry of business, — an excuse, in point of fact, was made to the Chief Justice, which was totally devoid of foundation in fact, and which is now distinctly and peremptorily negatived by the evidence. I am bound to state this most painful part of the case, how much soever it may cost either others or myself. I entreat the attention of your Lordships while I point out, to demonstration, that the letter of the priest was the cause, and the only cause, of the case being reconsidered. The whole course of the dates would prove this in any court of justice, civil or criminal, where men were accustomed to regard what is proved — not what is asserted by parties on their own behalf. First, there was the letter of the 6th of April, stating that the law must take its course; then came the priest's letter of the 17th; and then, and not till then, was it that the second consideration of the case was determined upon. Next came the minute of the 18th, to refer the priest's letter back to him; but which was not so referred until the 22d, having been sent, in the mean time, by mistake, as is said, to the Chief Justice. Then followed the priest's answer of the 23d; next, the letter of the Chief Justice of the 27th; and then, for the first time, the statement was made by the minute of the 29th, that other grounds beside the priest's letter existed for a reconsideration; but this was not until two days after the Chief Justice had complained. It was to meet his complaint that this disconnection of the priest's letter and the reconsideration of the case was first made, or attempted to be effected; then came the communication of the 30th of April, from Mr. Drummond, stating to the Chief Justice that the letter had been sent by mistake to him; and, lastly, there was the note of the 7th of May, in which Mr. Drummond reprimanded the Chief Justice for having kept a copy of the slanderous memorial, — a very venial offence, as I conceive, in a judge so attacked, and who perceives the executive Government so far patient of the attack upon him, as to act upon the representation of its author. But the Attorney General, it seems, was very much staggered at this proceeding on the part of the Chief Justice, and considered it to be a strange and a reprehensible thing for the learned judge to proceed to consult his friends and brethren upon the bench on the matter. He could not comprehend how any judge, when so attacked, should have any wish to defend his judicial character. Why, really, I should think a man would be very stoical indeed, if, when so assailed by libellous memorials to the Government, he did not take some notice of them, — if he did not adopt some precaution against them, — if he did not consult his friends upon them. Chief Justice Doherty did consult with five of the other judges, and they all approved of his conduct. But it was asked of the Learned Attorney General in the committee, whether, if the learned judge had not taken a copy of the libel, the Government would have given him either a copy or the original? "Oh, yes," said Sir Michael O'Loghlen; "no doubt they would. These things are given, as a matter of course, to parties libelled, if they apply for them." Are they, indeed? Then this is the first time I ever heard of such a "course of office." It is to me quite new, that a Government should give up, as of course, and whenever asked for it, either the original or a copy of any letter defamatory of a judge on the bench, or any other functionary, sent to any public department. But I return to the circumstantial evidence which connects the priest's memorial with the Government's reconsideration of his brother's case; and I have to add that the

dates of the letters form one ground only for saying that it is absolutely impossible to disconnect the second inquiry with the priest's application. Those dates are not the only ground upon which I raise my conclusion; there is Mr. Drummond's note, and there is Mr. Drummond's evidence, — both of which clearly confirm the view I have taken of the matter. On the 21st of April, "he presents his compliments (as stated in page 129. of the evidence) to the Chief Justice of Common Pleas, and begs to send the Lord Lieutenant's minute in reference to a further application in behalf of Joseph Gahan, tried; and to request the Chief Justice will be so good as to send a copy of his Lordship's note of the trial." This minute referred to the priest's memorial, no doubt; it could not, by possibility, refer to anything else: but it was not till the 29th of April that anything was heard of the other verbal communications, — and, above all, of the Attorney General's communications. So much for Mr. Drummond's note, written at the time. His evidence is still stronger, if possible. He is asked, —

What is the further application here alluded to?

His answer is, —

The case had been under the consideration of the Chief Justice before, and the Lord Lieutenant had decided that the law should take its course.

There is a letter dated Dublin Castle, the 6th of April, 1836: — "My Lord, with reference to the report of the 30th ult. on the case of Joseph Gahan, prisoner in the gaol of the county of Wicklow, under sentence of transportation, I beg to acquaint you that the law must take its course?" — Yes, that was the letter.

Looking to the note of the 21st of April, to which your attention has been called, what is the further application there alluded to? — The further application was a memorial from the brother of the convict, — I apprehend, a priest.

The committee are to understand that that is the further application to which allusion is made? — I apprehend it is.

So did I, as well as everybody else, apprehend. Nobody could apprehend otherwise than that the priest's memorial was acted upon, and occasioned the case to be reconsidered, as the Chief Justice supposed, and as the Lord Lieutenant's minute denied.

Then he is asked, what other verbal communications there were? and he says he knows of none. But I am not left to conjecture, as to whether or not there was some mistake in the minute of the Lord Lieutenant of the 29th of April, which at once puts the reconsideration upon a communication from the Attorney General; because the Attorney General, himself, has been examined to this point, and he not only denies all such verbal communications, but proves that it was impossible for them to have taken place. He is asked, —

Had you ever been spoken to on the case before the Lord Lieutenant spoke to you? — I do not think I ever had.

Are you quite certain you never volunteered any observations? ——

The reason for using the term "volunteered" was, that the minute of the 29th of April implied that proceedings were volunteered by the Attorney General; for it said, "in consequence of verbal communications and suggestions from the Attorney General."

Are you quite certain that you never volunteered any observations? — Perfectly certain; I never originated any observations, and know nothing about the case, further than having directed Bayly to be prosecuted, until I was spoken to, as I said, by the Lord Lieutenant, or his secretary, or some person connected with the Government.

Do you know any other cause for a second investigation of the case, except priest Gahan's memorial? — I do not know any other cause for a second investigation, except what I perceive from perusing the minutes of the Lord Lieutenant to-day and yesterday — that the Lord Lieutenant had a recollection of Judge Moore's previous report upon Connors's case.

Did you know anything of Judge Moore's report, except by its being communicated to you by Government? — Never; I never heard of it till the papers came to me.

And it appears that Judge Moore did not make his report until the 11th of May, the reference to the Lord Lieutenant having been made on the 18th of April. So, then, it was impossible that the reconsideration of Gahan's case could have been owing to any communications from the Attorney General; he declared that he never made any, — nay, more, could not make any, for he knew nothing of the subject. But after all this, which made the matter quite clear, came a vague and deceptive answer, obtained not very fairly, from Mr. Drummond, who was asked a question which was calculated to deceive a cursory observer, though assuredly not one who understood the case. Mr. Drummond, who knew nothing about the Attorney General at all, or the communications said to have been made by him, — was asked, by way of salving over the wounds made in the other parts of the evidence by the dates and facts given in that evidence, —

Had any communication been made to the Lord Lieutenant respecting the reconsideration of this case of Gahan, after the 6th of April? — I do not remember that.

Upon a review of the whole of the case involving the commutation of Gahan's sentence, would you say that the Lord Lieutenant had

acted upon the report of the Attorney General, or upon the memorial in favour of Gahan, sent in by his brother, the priest.

But, then, the question was not as to the ultimate decision, to which, alone, this measure refers; for here the words "had acted" must be particularly observed, because, on the 29th of April, the Lord Lieutenant had not commuted the sentence at all; that did not take place until six weeks afterwards. But the "acting" alluded to in the previous questions, on which the whole dispute turns, was the sending for the judge's notes, in order to a reconsideration of the case; the re-opening of the question already decided; and the re-opening it upon the insolent, offensive, and slanderous letter of the priest, the brother of the convict. The answer was — "That he acted upon the report of the Attorney General, of course." But does not any one see that the drift of that question and answer would be to lead the mind of an inattentive observer away from the fact that the decision, as to reconsidering the case, was not founded upon the Attorney General's representations? The Lord Lieutenant says, in defending himself against the Chief Justice's complaint, that the priest's memorial had occasioned the reconsideration of the felon's case. "We acted on the Attorney General's suggestion, not on the priest's memorial." The Attorney General says, "That is quite impossible, for I never made any suggestion at all." Mr. Drummond says, "That is impossible; the priest's memorial was the thing acted on." But, then, an insidious question is put, in order to confound this plain matter; and because the answer is, that, in commuting the sentence, not in reconsidering the case, the Attorney General's opinion was taken and acted on; therefore an attempt — a desperate attempt — is made to confound the two stages of the transaction, — the beginning with the end, the act of reconsidering with the act of deciding on that reconsideration, and so to make the statement in the Lord Lieutenant's minute wear — falsely wear — the colour of fact. The real fact is, — and no one can affect to doubt it, — that he had acted in the spirit and according to the letter of that strange memorial which came from the priest. The Chief Justice remained of his former opinion: he had sent for the notes of the case, and re-examined them, but he was only confirmed in his opinion. Yet, in the teeth of the deliberate opinion of the judge, — in the teeth of the previous declaration, "Let the law take its course," — and in despite of all that had since passed, showing that there was no ground for a change of opinion, but that the judge was right in repeating his deliberate advice in favour of the law taking its course against this atrocious criminal, — an appeal was made from that judge, from the Lord Chief Justice, who tried the case, — who had seen and heard the witnesses, — who had sifted the evidence of the witnesses, — who had seen the jury and charged the jury, — who had approved of their verdict, — who had deliberated on the sentence he pronounced, — who had twice over considered it, and twice over deliberately come to the same decision, — an appeal was made from this judge, who was cognizant of the facts, who recollected the jury and the witnesses, and whose mind was imbued with the whole particulars of the case, whose authority was paramount to dispose of the case, — from that reverend judge, who was the most able to decide aright, and who had repeatedly reconsidered the case, and decided thereon in the same way as at first, — from him was an appeal made to Mr. Attorney General, of the same sect with the priest, the author of instructions respecting religious and political opinions upon trials, the individual who gave the evidence to which I have adverted already, who construed his own instructions so differently to one and another of his subalterns, — to him who had seen no witnesses, — who had seen no jurors, — who had heard no arguments, — who had given no consideration to the case, — and whom all the evidence convicts, and more than convicts, of an utter and hopeless ignorance of all the particulars, — to him was the appeal made, — from the knowing, the qualified, the capable, to the disqualified and the ignorant was the appeal made; and, as might well be expected, a decision was given, utterly and absolutely wrong. I affirm it to be glaringly, and without any dispute, wrong. I will go further; — let any twelve lawyers of Westminster Hall — any twelve jurors in the country — any twelve men who never served as jurors, and knew nothing of the practice of the law — have the case laid before them; and if any one of those, understanding this case, has a shadow of a doubt remaining on his mind upon reading the evidence — ay, reading the evidence of Sir Michael O'Loghlen himself, — I go not beyond his own evidence, — and I say, if any one being, who can read and understand it, has the shadow of a doubt on his mind that, up to this hour, Sir Michael does not understand a tittle of the case, — either cannot, or will not, I do not care which, — but, at any rate, does not under-

stand the case,—if any one of those twelve lawyers, or laymen, or jurors, or non-jurors, will say he has any doubt that Sir Michael O'Loghlen does not — even now, after all his examinations — understand the case, — then I will say that I do not understand the case, that Lord Chief Justice Doherty does not understand it, and that all the Noble Lords who served upon the committee are plunged into the same hopeless incapacity to comprehend one of the plainest cases that I have ever seen in the course of nearly forty years' professional experience. To go through the details would be quite superfluous; but with these I am, of course, ready: and if I shall see any attempt to set the opinion of the Attorney General against that of the Lord Chief Justice, in this case of Gahan, I pledge myself to demonstrate, although the ignorant man has reversed the judgment of the man acquainted with the case, that Gahan ought not to have been set free. But he was allowed to go free, though he was one of the greatest criminals that ever disgraced humanity, for his intention was to commit murder — he had laid a plan to commit murder — he thought he had committed murder — he gloried in having, as he believed, effected his diabolical purpose, and boasted that he was a murderer. Such a man was allowed to go free. The Attorney General, who was ignorant of his case, reported in his favour, on the ground that, a year before, Judge Moore tried another party, named Connors, connected with the same outrage, — there being a doubt in that case whether the policemen were sober or not. But the jury, notwithstanding that doubtful circumstance, returned a verdict of guilty. The judge was so far satisfied of the prisoner's guilt, that he pronounced upon him the *maximum* of punishment which the law allows; and no application was made by him to the Government to alter the sentence, nor was there any change of opinion intimated, nor was there any hint that he doubted, until the Government applied to him, in consequence of a memorial on behalf of the prisoner from a county Member. Then it was that he doubted for the first time, and reported to the effect that a question existed about the identity of the man; which, in plain English, if it meant anything, was a doubt of his guilt, — and, in fact, was an acquittal. But, then, because he had this doubt, what was the *non sequitur?* A free pardon to Connors, who was not guilty, but who was mistaken for another man? No; but — that he should be imprisoned for twelve calendar months! Because he did not commit the offence, therefore he must be imprisoned for twelve calendar months,—the greatest punishment which, till a few years ago, the law awarded for the worst manslaughter! I leave your Lordships to determine whether or not much weight is ascribable to the opinion of a learned judge who comes to such conclusions. But if his mind be smitten with some strange want of apprehension, his malady seems to have been contagious; it extended to the Irish Government. There was a person, a Catholic, named Comyn, tried before Chief Justice Doherty for stabbing a Protestant; he was found guilty, and sentenced to seven years' transportation. An application was made to the then Lord Lieutenant (Lord Haddington), who decided that the law must take its course. It appeared that an *alibi* was set up at the trial, but the Lord Chief Justice left the case to the jury, as, indeed, it would have been left, whether an attempt to prove an *alibi* had been made or not. But the remark of the late Baron Graham, that "an *alibi* oftentimes turns out an *ibi*," was here verified; because the evidence brought the offender into immediate juxtaposition with the very place, time, and circumstances of the offence. The jury saw no *alibi* at all; but they saw that the attempted *alibi* only proved the case. They returned a verdict of guilty, and Chief Justice Doherty sentenced the prisoner to seven years' transportation. A second application was made to the Government, now administered by Lord Normanby; and it was stated, in a letter from the Under Secretary to the judge, that his Excellency, having maturely considered all the evidence on the judge's notes, arrived at the conclusion, that, had he been one of the jury, — which he was not, and, probably, never had been on a jury in his life, — he would have believed in the *alibi* of the prisoner, and would have acquitted him altogether. Therefore, it was not unreasonable to expect that his Excellency should come to the conclusion that the man should be set free. But did he? No. His Excellency, after the manner of Judge Moore, added, that, because he believed the man not guilty, therefore he directed him to be imprisoned for twelve calendar months. So that, in Ireland, one man is imprisoned for twelve calendar months, because it is not proved that he, rather than some other man unknown, committed the offence charged against him; and the other, because he is proved to have been absent from the place at the time the offence was committed. This, I surely do think, is the strangest manner of administering

criminal justice that any human being ever heard of in this world. But though the Lord Lieutenant falls into Judge Moore's inconceivable error in Comyn's case, he sees the absurdity in Connors's, and sets him free.

My Lords, let us now consider the difference in the conduct of Sir Michael O'Loghlen, with respect to the case of Gahan, and that of Mr. Slye. The Attorney General said that nothing could have induced him to put Gahan on his trial after Connors's liberation; and now let your Lordships follow me for a few moments, that you may see the very different mode in which Slye was treated. A certain priest, Walsh, it was stated, had fallen from his horse, while galloping along on his way from a market, and was found dead; and what was the result? He was a Roman Catholic priest; and forthwith a cry was raised that he was a murdered man, — it was impossible that he could have died a natural death. No evidence, however, for a long time, could be obtained that Walsh had been murdered; but at last the Roman Catholic priests took an active part in the matter, and a clamour was raised that Mr. Slye, a gentleman farmer, and a Protestant, had murdered the priest. Mr. Slye, beside being a Protestant, had made himself rather active, politically, in his county. A gentleman of the bar — a Queen's counsel — was sent down to investigate the case, and to collect evidence. Ann Rooney was brought forward, and swore, in the most positive terms, that she saw the priest murdered; but that evidence was as positively contradicted; and it was proved, beyond the possibility of doubt, that she could not have seen the priest murdered, because she was, herself, confined in gaol at the time when she declared that she saw Slye murder Walsh. But was Slye let off? No such thing! If I had been the Attorney General, — if I had instituted these proceedings against Slye, — if I had placed Rooney in the position of being examined before a magistrate, — and if I had seen her evidence thus disproved, — I should have opened my ears very reluctantly to any witness of a similar stamp, who came to tell a story so direct as to carry along with it the strong marks of improbability. But Sir M. O'Loghlen produced, or at least received — I will not say welcomed — another witness of the same stamp. Thomas Corregan swore he had heard Slye confess that he had murdered the priest. There was, of course, no improbability in that statement, — no reason to doubt that Slye had confessed himself, in the hearing of a witness, guilty of this murder! Such was the very improbable story of Corregan. But was it disbelieved? Was it refused to be acted upon by Sir M. O'Loghlen, who would have declined to try Gahan because Connors had been half-acquitted? No such thing! The Attorney General was still desirous of putting Slye on his trial, though not on the evidence of Rooney, or of Corregan, nor even on the report of Mr. Tickell. He sent for Corregan to examine him, as one of his subalterns, Seed, swears, and as he himself says, to have him examined at Dublin; — and what was the result of that examination? Sir M. O'Loghlen said, "Let us get, if possible, other evidence to produce against him." Very proper, and very just. Still, Slye was put upon his trial; Corregan was produced as a witness, and other witnesses were brought forward whom they did not dare to examine, or even to show; and yet all the world knew, beforehand, that Corregan, the only witness whom he did produce, was not to be relied on. And why do I say that the Attorney General showed a want of confidence in the evidence of Corregan? In the first place, he must have doubted the story put forward by Corregan, that he had heard Slye confess the murder of Walsh; and, in the second place, from his second examination of Corregan, he must have been persuaded that he was not to be trusted, because he said that he wanted other evidence. But that is not all; he had actually sent down a short-hand writer to take Corregan's evidence on the trial, because it was expected that Corregan would perjure himself, and he wanted to be provided with evidence to convict him of perjury. They tried Slye on the evidence of this man; they relied on his evidence; and Slye was acquitted, because the witness was guilty of the grossest prevarication. A witness was produced, who, it was allowed, was not to be trusted, — who was expected to perjure himself, — and whom the Attorney General so much doubted, as to send a short-hand writer in order to obtain evidence to convict him of the perjury which he expected him to commit. No wonder that the Attorney General distrusted Corregan. It was proved that he had gone to a police officer named Patterson, and tampered with that officer to correct his day returns; because those returns would have proved that Corregan was in the barracks at the time he swears to hearing Slye's confession. Patterson refused to alter his returns; and what was the result? He was dismissed from his office. Patterson presented a memorial

asking to be tried, and desiring to know the reason which led to his dismissal. No trial, no explanation was, however, granted; even though the magistrates under whom he acted approved of his conduct, and strongly recommended his memorial for consideration. I do trust that some account of this extremely strange dismissal will now be given. All that we know at present is, that a man has lost his place and his bread, because he refused to be a party to suborn the perjury plotted for destroying an innocent man, under colour of law. There might have been some just reason for the dismissal of Patterson, not connected with this subject, but the case certainly requires explanation; and even although sufficient reason could be shown for that dismissal, the case of Slye would not be affected by it in the smallest degree. Strong recommendations were made to Mr. Maloney, not to put Slye upon his trial on the evidence of Corregan; but that gentleman persisted, saying that his orders from the Attorney General were peremptory. Compare his evidence with Captain Vignolle's, read his second examination especially, and there can, on this, be no kind of doubt. Nor was it to be wondered at that those recommendations were made. Patterson's statement in regard to Corregan had become known; and so suspected was Corregan of an intention to commit perjury, that the Attorney General (wisely, as it proved) resorted to a step which no English counsel would have dared to adopt,—that of seeing, privately, the witness he meant to call, according to Seed's evidence; that of making another King's counsel see the witness, according to his own account. But it is also found that he sent a short-hand writer, in order that he might have evidence to convict his own witness of perjury. Yet, under such circumstances, the Attorney General allowed the case against Slye to go on; and what was the result? Slye was acquitted. I need hardly add, that there was not a tittle of evidence, that could be relied on, to convict him. In the justice of that acquittal, I fully concur, as all men must: it is now generally acknowledged that the verdict, so much attacked, at first, by the priests and their mob, was a proper one, and the only one that could have been given. Even the Roman Catholics, once so vehemently excited against it, and against Slye, are now convinced that the case against Slye was a fabrication from beginning to end. But, although Slye was thus justly acquitted, what became of the witnesses who were produced on his trial? They failed to convict Slye; but Slye did not fail in convicting them. Ann Rooney and Corregan were put upon their trial for perjury; and in connection with that trial, there is a circumstance which may be worthy of your Lordships' attention. Was the charge of perjury laid upon the informations which had been sworn by these infamous persons? No: by a somewhat suspicious fatality, those informations were not to be found at the time of the trial. They had, it was said, been taken from the office of the Crown solicitor, and, it was believed, by the friends of the parties charged with perjury, because the Crown solicitor's office had been besieged by the priests during Slye's trial, and before it, and the informations had never appeared till the appointment of your Lordships' committee, when it was stated that they had been found one day by one of the clerks. Those informations, then, were not produced at the trial; and Corregan was not, in consequence, tried on the evidence contained in them, but on the evidence of of the short-hand writer's notes, who had, with a provident caution, suited to his knowledge of his witnesses' character, been sent down by the Attorney General. This perjured murderer—for he was nothing else, who attempted to swear away the life of an innocent man—was tried on those notes, which were made by the precaution of the Attorney General. Rooney and Corregan were both convicted of perjury, and were sentenced to be transported for life. Such is the case of Slye;—such is the difference between the treatment, by the Attorney General, of Gahan, and of Slye. When I consider the conduct of the Chief Justice, and compare it with the conduct of Sir M. O'Loghlen, I can have no hesitation in concluding as to who acted with most propriety, and with the greatest regard for justice. I hold it to be clear that the proper course to be taken in applications for mercy is, to consider maturely, and to weigh calmly, the whole circumstances of the case; and I will say, also, that the case should be considered with all the aids and with all the lights which can possibly be obtained, in order to arrive at a sound determination. I am of opinion that all such applications should be considered with the assistance, the invaluable assistance, of the judge who tried the case. The judge has seen the criminal,—he has examined the case,—he has seen the jury,—and, above all, he has seen the witnesses,—and if any one think that any Attorney General, any Crown lawyer, or any lawyer whatever, is able to form a better

or safer opinion, as to the merits of an application for mercy, than the judge, I may marvel at such a man's confidence, but I cannot envy his soundness of judgment.

Again, my Lords, I am clearly of opinion that, to treat a judge as Lord Chief Justice Doherty has been treated, was to make a black mark against his name,—to stamp him with a mark of degradation before his fellow judges; and, before the profession, to declare to every counsel, to every lawyer, to every clerk, and to every apprentice in every attorney's office, that the Chief Justice is not to be treated as if he were one of the King's judges; and that, while allowed to bear about the King's commission as a badge of honour, as a mark of authority, as an emblem of power and of justice, he is all the while to be scorned and reviled as unfit to exercise his high functions, and as unworthy of having any one case which he has tried sent before him for his consideration, when an application for mercy is made. Such treatment of a judge I hold to be most improper, most unwise, most unjustifiable, and most indecent. If the judge erred,—if he did wrong,—if he be obnoxious to censure,—let him be brought to his trial; let him be put on his defence; or let Parliament be called upon to address the Crown, and to ask for his removal; but, as long as he is allowed to hold his commission, and to exercise the high functions with which it invests him, it is utterly unjustifiable,—whether you consider the sanctity of the law, or the venerable aspect of the representative of justice,—to treat him as a criminal, while you suffer him to fill the office of a judge. The administration of the law can sustain no such injury as thus degrading, for some miserable party purpose, the sacred character of its oracles.

I now come to that part of the subject which relates to the granting of pardon; and in the observations which I have addressed to your Lordships, I have already, in some degree, anticipated what I have to say on this important head. I have, no doubt, passed over some matters which are perfectly familiar to my Noble Friend (Lord Wharncliffe); but I have thought it right to direct your attention towards those matters which bear upon the result, and touch the principle, rather than to any particulars unnecessary to the case. I will now deliver my opinion to your Lordships, as to the high power of granting pardon, vested entirely, by our constitution, in the Sovereign, for purposes of paramount importance. It is not a power confided to the Sovereign merely for the gratification of feelings, however praiseworthy those feelings may be; much less to be wielded arbitrarily, or under the guidance of personal caprice. When the monarch, clothed with the high functions of his office, exercises this ancient prerogative, he may not, without mature consideration, yield even to the most amiable of his feelings, and allow a love of mercy to overcome a sense of justice. He is to act with a due regard to justice, and to mercy also: but mercy is not to be exercised till the whole facts of the case are ascertained; for the knowledge of all the facts ought, above all, and before all, to preside over the administration of mercy. In truth, the attribute of mercy forms a part, only, of the function of justice; for the law, if executed in all its inflexible rigour, would become odious and intolerable; an occasional mitigation of its awards is, therefore, necessary to its existence. But, it is after due inquiry,—it is by regular means,—it is in solemn form,—that this attribute must be displayed to the people. The throwing open of prisons at coronations, and liberating prisoners confined for small faults,—and it is only persons guilty of small faults that ever were liberated on such occasions,—and the jubilee pardons of other days,—though most of those pardons were granted with the sanction of the Legislature,—are practices now obsolete, and which have been expunged from our constitution and its operations, with other traces of a more barbarous state of society.

I know not that I need trouble your Lordships with any authorities to support these positions, or to illustrate the mode in which the prerogative of mercy should be exercised; but perhaps it will not be out of place to quote a few opinions of men whose sentiments are entitled to the greatest deference, as the fountains of our jurisprudence, and best expounders of our mixed constitution. In the first place, I will quote the authority of Staunford, which shows, in the clearest manner, the sense of the law on this subject. Staunford says, that the Sovereign ought to have the power of pardon; but that the power ought to be exercised only when it can be done without violating his coronation oath, by which he swears to administer justice with mercy. The Statute of Northampton also defines what the cases are in which mercy can be exercised. Homicide in self-defence, and homicide by accident, are alone specified. The preamble recites the abuses of the prerogative of pardon,

and restricts it in future to these cases. Bracton also says that investigation should go before pardon. He observes, —

Et licet tutius sit reddere rationem misericordiæ quam judicii tamen tutissimum est palpebras ejus ito procedere gressus suos, ut judicium suum nec vacillet per incircumspectionem — nam cum indulget judex insigni delicto, nonne ad prolapsionis contagium provocat universos?

In the same way, Lord Coke, in his Third Institute, says, that there are three modes of preventing crime, — which, he justly adds, is always better than punishing: the first of these is good education; the next, the execution of good laws; and the third, that pardons shall be very rarely granted, and only granted on the reasons assigned, — that is, after full and deliberate investigation. Last of all, Mr. Serjeant Hawkins, in his well-known work on the Pleas of the Crown, makes use of these remarkable words: —

This is very agreeable to the reason of the law, which seems to have intrusted the King with this high prerogative, upon a special confidence that he will spare only to those whose case — could it have been foreseen — the law itself may be presumed willing to have excepted out of its general rules, which the wit of man cannot possibly make so perfect as to suit any particular case.

Having seen, then, what are the principles which should guide the exercise of this high prerogative, it becomes your Lordships to inquire whether there are not some circumstances connected with the late administration of this prerogative in Ireland, which call on your Lordships, by way of future example, to declare what is the mode in which mercy ought to be administered. It appears, that persons to the amount of 240 were discharged by verbal order, in the course of a progress which his Excellency the Lord Lieutenant made through part of Ireland, in the summer of 1836. The evidence on this point is contained in pages 253. 256. 346. 461. 469. and 905. of the Report. The course of proceeding was this; — his Excellency came to a town, and visited the gaol, attended by the gaoler, and followed by a great concourse of people. He then had the prisoners — or, I should rather say, certain of the prisoners — drawn up, and paraded in the prison; and those prisoners were such as the gaoler chose to recommend for liberation. But there were very often many prisoners left behind, whose cases were not considered at all. This, for instance, was the case in the gaol of Clonmel, where 57 prisoners were discharged, and 200 left in the gaol, without the least inquiry into the circumstances of their conviction. Everything, therefore, depended on the *fiat* of the gaoler. Your Lordships will now observe in what manner the judgment of the gaoler was considered, and to what extent it was reckoned decisive. The gaoler stated that he recommended several prisoners to the Lord Lieutenant for discharge, and that his recommendations were adopted. He stated that the chaplain of the gaol was there, but the gaoler did not know whether the reverend gentleman was asked if he could recommend a prisoner for discharge, or not. He, however, interposed in one case, and it was lucky that he did so; for it had happened to him to be present at the trial of two of the men who were recommended to be discharged; and it appeared that they had been found guilty of manslaughter under circumstances very nearly amounting to murder. This the chaplain, whose name was, I believe, Bell, represented to the Lord Lieutenant; and his Excellency, very properly, attending to the representation, the men were not discharged, but remained in prison, and were transported for life, according to their sentence, instead of being set free in consequence of his Excellency thinking they were well-behaved men, and sufficiently punished. There was another person, named Dee, who was under sentence for an assault, whose discharge was recommended, but who was, nevertheless, not liberated by the Lord Lieutenant. The account which the gaoler gave of it was this, — and it serves to illustrate the power and prerogative of gaolers on those occasions: —

His Excellency, at the last section of the New House of Correction, turned round and said, "Now, Mr. Prendergast, if there is any other man you would name, I would discharge him on your recommendation." I turned round and saw a man of the name of Dee, whom I considered a well-behaved man; he had been about eighteen months in gaol. I mentioned his name, and Ryan stepped up and said, "My Lord, I beg leave to differ with Mr. Prendergast about him;" and I was so confounded I could not speak, — the man came forward in such a way.

Mr. Prendergast was, very naturally, confounded, when he had just been invested with the prerogative of mercy by delegation from the Viceroy, that it should be suddenly, untimely snatched out of his hands, in this way, by an obscure individual like Ryan.

Ryan said, when he was overseer of the works he had a complaint against the man. I assured his Excellency that I had never heard of it;

— and, therefore, the offence was not committed, I suppose.

Ryan said he had been obliged to punish him; and his Excellency was kind enough to say, if

the man continued to behave well a couple of months, he would discharge him. When his Excellency went away, I was so confounded at this man's coming forward, I felt very uneasy. I went to the punishment book, and the man's name never appeared upon it.

The consequence of all this was, that whoever the gaoler recommended — unless somebody happened to be present who thought proper to interfere, like this officious and meddling individual, Ryan, which, of course, very rarely happened — was sure to be discharged. Now, an attempt was made to show that many of the persons liberated were afterwards recommitted for other and subsequent offences. I will not go into this question. My objection to the whole proceeding lies much deeper. I care not, if every one of the discharged prisoners has, ever since, led an irreproachable life. Nay, I care not if every one of them was altogether deserving of mercy. In this instance, there were 57 persons discharged from the gaol at Clonmel; and, of these, only 2 appear to have been recommitted. But there is another gaol,— the gaol of Westmeath, — from which 19 prisoners were discharged; and, out of these, 6 have been recommitted, 2 of whom have been transported for life. Now, the difference between the proportions of 6 in 19, and 2 in 57, only shows how necessary it is to act upon the sound and recognised principle for which I have contended. In Clonmel, nearly all may have been, in some degree, deserving of the clemency extended to them; but, in Westmeath, the proportion of prisoners who were recommitted shows that it is extremely unsafe to act upon the recommendations of a gaoler. In the Clonmel case, however, not only was no judge consulted, but the time taken up in the examination of the prisoners was something of the shortest, — to say the least of it. All was done in an hour or two, during the Lord Lieutenant's stay in Clonmel. The time spent by his Excellency in the gaol has been stated by the witnesses as not more than one hour and a half; of that short space, half an hour was occupied in moving from place to place, and the rest was employed in considering the cases of the prisoners. Less, therefore, than one hour was given to examining 57 cases, — somewhere about one minute for an inquiry into all the circumstances of each case, including the conduct of the individuals. Many of these, too, were very heavy cases. In one instance, the party had been convicted of receiving stolen goods to a considerable amount; in another, manslaughter had been committed: but they were all discharged, because the gaoler said they had been well-behaved in prison. One was sentenced to nineteen months' imprisonment, with nine months' hard labour; the other to a year's imprisonment, and six months' hard labour. But his Excellency acted on the gaoler's statement, that they were well-behaved men. Now, I do not profess to understand this principle. The good behaviour might be a reason for not treating them harshly while in prison, but it is no ground for letting them out of it. The rule for liberating prisoners, confined for crimes under sentence of a court, is this, — and this is the only legitimate ground of granting pardon; — either it is found, after the trial, that the conviction was erroneous, from facts not coming to the knowledge of the court and jury which have since been discovered; or it appears that the sentence was too severe, from mitigating circumstances having come out after trial, which, if known at the time, would have lessened the sentence.

The MARQUESS of NORMANBY.— Persons may also be liberated on the ground of ill health.

LORD BROUGHAM. — Oh, yes! if they are too ill to undergo the punishment, that is a clear ground. In fact, the sentence always contains an implied condition that the prisoner shall be able to undergo it. These are the just grounds of pardon; and not that the convict has behaved well under his sentence, — much less that a Viceroy has, by mere accident, visited the town where the culprit chances to be undergoing the punishment awarded by the law. I know that an opinion prevails in some quarters,— an impression, rather for it merits not to be called an opinion,— that there is all the difference in the world between the course which ought to be pursued in pardoning, and that which is right in convicting, — that we should be slow to convict, and swift to pardon, — that we do no harm at all in rashly and inconsistently rescinding a sentence, though we cannot be too averse to pronounce it; in short, that the pardon being to undo the sentence, the granting it should be regulated by principles the very reverse of those which guided the infliction of the punishment. Nothing can possibly be more thoughtless, more absurd, than this notion. There not only should be the very same deliberation in the act of pardon as in the act of punishing, but the self-same principles which demand it in the one case, equally demand it in the other; nay, if deliberation be not used

n rescinding the sentence, a clear con-
ession is made that the sentence itself
vas wholly unjustifiable. For, observe,
he infliction of punishment has, and can
nly have, one justification, — the inevi-
able necessity of the case. We have no
ind of right to punish except that we
re compelled to do so by overruling ne-
essity; we do not punish, because we
re pleased to do so, — because we choose
o do so, — but because we must do so, and
annot help it. If so, what right can we
ave to remit the sentence — the neces-
ary sentence — the unavoidably necessary
entence? Our remitting it without an
qual necessity, at once confesses that
here was no necessity for ever passing it
— that it might have been avoided; con-
equently, that to pass it was wholly un-
ustifiable. This plain consideration shows,
o absolute demonstration, that he who re-
cinds a penal sentence without necessity,
dmits that it had been pronounced without
ecessity; and, therefore, that the very
ame deliberation is necessary before par-
loning which was required before con-
lemning, and is necessary for the same
eason. If the judge was right in con-
lemning, he could not avoid it; he was
ompelled to condemn. If the Crown
ardon without sufficient cause, the judge
tands condemned, who condemned the
ffender. A rash and inconsiderate par-
lon assumes that the judge rashly and
nconsiderately sentenced. This proposi-
ion is wholly irresistible; the least re-
lection proves it at once. But I need
ardly resort to principles such as lie
earest the surface of this great argu-
ment, for illustrations of the gross ab-
surdity which has been committed. Can
here be anything better calculated for
olding out a premium to offenders, "*ad
rolapsionis contagium universos provo-
are*," as old Bracton has it, than for
riminals to know that, if a Member of
Parliament, or an agitator, or a body of
nen connected with the Government by
ies of any description, make an appli-
ation to the Government on their behalf,
hey shall, without any consideration of
he case at all, receive its favourable con-
sideration? The law loses its authority,
— the right arm of justice is paralysed, —
nd the administration of criminal juris-
prudence ceases to be respectable, or even
olerable, if mercy is to flow without de-
liberate judgment on the part of those
who stand by its sacred fountains, and
direct the flow of its blessed stream. In
all this, I do not mean to say that any-
thing more than an error in judgment has
been committed. I make no harsher
charge; it is the "incircumspection," de-
nounced by the lawyer of the Plantagenets,
with which I charge the executive Go-
vernment of Ireland. They who should
have deliberated, paused not at all;
they who should have judged, deliberated
not at all; they who should, themselves,
have acted, judged not at all; they dele-
gated to others the prerogative intrusted to
themselves; and the appeal was made from
a judge and from a jury, not even to an
Attorney General, or a Crown solicitor,
but to a gaoler — one of the lowest, though
one of the most useful, officers of the law.
Nor will it be wise to rest the discharge of
a prisoner, not on the circumstances of
the trial, but on his treatment of the
gaoler and his servants, while an inmate
of the gaol. It should not be kept out of
sight, that the persons who have been most
often committed to prison, are oftentimes
the best behaved within its walls. The
wild bird will flap her wings against the
bars, when the tame one, born and bred in
slavery, will never touch a wire of her
cage with a feather of her pinions. But
if the prerogative of mercy is to be not
only delegated to an Attorney General
sitting in appeal from the Lord Chief
Justice, and to a turnkey sitting in appeal
from the Lord Chief Justice, — if it is to
depend on the mere precarious accident
of a Viceroy going to one town rather than
another in the course of his tour, — then,
I ask, if justice, of which mercy is a part and
an attribute, can be dispensed upon fixed
principles, and if the established rules do
not more depend on the personal caprice
of one man, or the accidental direction
given to the course of another?

These things, however, have not only
been passed over without observation, but
there are remarkable passages to show
that they have been sanctioned, approved
of, commended, thanked, and adopted by
the Government at home. I say nothing
of the more recent adoption of them, im-
mediately before this inquiry began, — I
say nothing of that judicious, deliberate,
calm, legislative act of a grave authority,
— the national senate, — the Commons
of England in Parliament assembled, —
whereby, having heard that an inquiry
was just instituted, but was not begun, —
whereby, having asked for information,
and having received information in pro-
mise, but before one tittle of it had been
produced, much less considered, — the Com-
mons, on this express ground, that they
had not proceeded to inquire, and that no
man living could tell what the results of
the inquiry might be, — that grave and
venerable body, the representatives of
the people of England and Ireland, did
pronounce, though by a narrow majority,

made up of the representatives of Ireland, — for, glorying in their shame, they have published their names in their votes, — they, the Commons, because the inquiry was pending, in utter ignorance of the facts, — for they could not tell, without the gift of prophecy, which they did not affect to possess, what might be the result, — pronounced a verdict of acquittal and approval beforehand, deeming it more rational and decorous that judgment should precede trial, — that inquiry should follow, not go before, the formation of opinion. Of this marvellous passage in our recent parliamentary history, I say nothing. It is unprecedented in the annals of the Plantagenets and the Tudors. But I may, in passing, express my satisfaction that the like course has not, as yet, been pursued on other matters, to which it would be just as appplicable. Happily, the Commons have not, as yet, drawn over to themselves the decision of any causes in which your Lordships are engaged as supreme judges of appeal from all the courts of the realm. As yet, the Commons have not taken possession of any case, interesting to their constituents, and passed a vote thereupon, while you were about to hear it argued before you in order to form a deliberate opinion upon its merits. How long it may be before this course shall be taken, and the principle of the astounding vote in April acted upon in cases wholly judicial, as well as in one almost wholly judicial, I cannot pretend to foresee; but this I know, full well, — that not one tittle of a reason can be conceived, why they should not pass a vote, by anticipation, in any one cause now pending before your Lordships, if they were right, if they acted rationally, in anticipating the decision of the Irish question, before a single witness had been sworn by you, or a single one of the documents called for by themselves had been produced. Not one distinguishing circumstance can be pointed out in the Auchterarder case, which has flung all Scotland into the most violent excitement, or in Lady Hewley's case, which still agitates the North of England, — not one distinction can be drawn between these questions, and the one which the Commons were pleased to decide upon before either you or they had considered it, — except only that England and Scotland feel a deep interest in the one, and Ireland in the other. The act of passing a vote (though, I admit, by a very narrow majority) in the one House, on a case about to be examined by the other, — a case which both Houses had resolved to investigate, but which neither had taken one single step to consider, — is precisely the same in point of justice, reason, common sense, and common decorum, in the instance which has happened, and in the case, only a very little more monstrous, — hardly at all more outrageous, — which I have put, as no longer beyond the bounds of probability. But it is not that act of the Commons to which I now allude. That branch of the Legislature, at the instigation of the Ministers, without any deliberation, — nay, before entering upon the deliberation to which they were pledged by their last preceding vote, — pronounced a sentence of sweeping and unqualified approbation of all the acts of the Irish Administration for the last four years. This, of itself, would, indeed, impose upon your Lordships the necessity of guarding the pure and decent administration of criminal justice against future invasion and corruption, by a resolution such as I now propose. But I am, now, referring to an approval by the sanction of another branch of the Legislature, — the Crown.

Parliament was dissolved on the 17th of July, 1837. On the 18th of July, there was issued a letter, signed by the Secretary of State, addressed to the Lord Lieutenant. The substance of that letter might, from all that appears, have been very well communicated to him by word of mouth; the Lord Lieutenant was in this House on the 11th of July; on the 21st, he was at the drawing-room; and he went back to Dublin on the 24th; and he could hardly have returned here, and gone back to Dublin, in the interval. It is clear, then, that his Excellency was here when the letter was written, and might have received the contents in an interview or an audience. Notwithstanding, the letter was written on the 18th of July, for, as it is said, *litera scripta manet;* so *litera scripta* is capable of being fixed to walls; and so was it affixed, both in the North of Ireland and the South of Ireland, while the elections were in progress. In the letter, certainly used, most probably intended, for election purposes, it was stated that her Majesty had been pleased to express her entire approval of the Government of the Lord Lieutenant, her desire that his conduct should continue to be guided by the same principles, and her promise to support him in such a course of proceeding. This was a most complete, sweeping, and general approval of all that the Lord Lieutenant had done; and, among other passages of his conduct, it was an approval of all that which is described by the expression of going behind the backs of the judges to deliver the gaols filled by their solemn sentences. It was an ap-

approval, also, of his calling on the Attorney General and the Crown attorneys to sit in judgment on the decisions of the judges; — it was an approval of the delegation of the pardoning power to the gaolers by the Viceroy; — it was an entire sanction and approval of that which was a common part of the Irish Government's conduct, — namely, the delivery of gaols in the manner I have described, through the accident of a Viceroy taking one road rather than another, in his vacation tour of business, of relaxation, or of pleasure. The Ministers, therefore, are now the parties whose conduct is in question; and their adoption of the Lord Lieutenant's proceedings not only makes them accomplices in it, but makes your Lordships accessories after the fact, unless you at once record your dissent.

There is another reason why your Lordships should express an opinion on this subject,—and it is equally a reason why the expression of that opinion should not be delayed till next Session. Chief Justice Doherty is, while we yet speak, carrying the Queen's commission over Ireland; he is going the circuit, trying indictments, and sentencing criminals. But the black mark remains against his name; he lies under a stigma; he must be washed clean, even if that offence committed against him should not be repeated. He must be vindicated — justice, in his person, insulted, must be vindicated — from past outrage; and all future insult must be prevented. The present Lord Lieutenant must have an intimation given him, that his course be guided by different principles. Your Lordships will recollect that the Noble Lord, now Viceroy, declared, in his place, his determination to tread in the steps of his predecessor in office. Therefore, if he be resolved to tread in those steps which carried the late Lord Lieutenant to the Attorney General in Gahan's case, rather than to the Chief Justice, — in other cases to the Crown solicitor, rather than to the venerable judge that tried the prisoners, — and, in Clonmel, to the gaoler, and even to the turnkey, — it is high time Lord Ebrington should be told that this is not the mode in which the functions of mercy should be dispensed under the law and the constitution of England.

These are the grounds on which I have felt it indispensably my duty to bring the case before your Lordships, — presenting it in a shape which would enable you to find the needful remedy for the mischief that has been done. It is absolutely necessary that I should persevere, deeming, as I do, that the highest of all the functions existing in any of the powers in the state, — that the most important of all the offices of the Government, the highest prerogative of the Crown, and the most sacred right of the subject, — is the due administration of justice; and that abuses in any manner of way connected with the administration of justice, are of importance paramount to all other questions; deeming, as I do, that if no steps be taken — and promptly taken — by your Lordships, to express an opinion of the true mode in which the executive Government ought to discharge those exalted duties, you will again and again see mercy exercised, not according to established principles and fixed rules, nor restrained within intelligible limits by a true sense of judicial and responsible discretion, but the mere sport of feelings more or less amiable, weaknesses more or less venial, caprice more or less guilty. Unless, I repeat, some judgment shall be pronounced in this matter by your Lordships, you will again witness scenes like those which Ireland has lately displayed, of the highest prerogative of sovereignty prostituted as an itinerant show — the pardoning power of the Crown used to grace the mere pageant of a Viceroy's progress; — and you will again see, in that pageant, justice and mercy change places and characters; — mercy blind, and justice in tears!

If any among your Lordships shall think that it signifies nothing whether witnesses come forward according to the tenour and obligation of their recognizances to give evidence so that crimes may be punished, — if there be any one who thinks that, in Ireland — (differing in this respect from England), criminals should be left to go free by the default of witnesses who hold back, and for that default only suffer ten days' imprisonment, rather than that murderers should by their testimony be convicted and punished, — that individual will be prepared to vote against the first of these resolutions. If, again, any of your Lordships hold that the most important element in the composition of juries — the right exercised, heretofore, in Ireland, of bidding jurors stand aside for just cause — ought not, in future, to be in existence, or be temperately, discreetly, but fearlessly, exercised for the public service, — if any of your Lordships hold that the connections of offenders, in point of crime, though not of blood, may act as jurors, — that persons who take part in the agitation and conspiracy against the laws, which give rise to the offences, may sit and decide on their brother and perhaps minor offenders, — if, above all, any of your Lordships think that the instructions of the Government

to its law agents respecting challenge of jurors need not be clear, intelligible, and uniform, but may safely be confused and various, left to the construction of every individual whose conduct they are meant to guide, liable in different parts of Ireland to different interpretations, and never the same to any two prosecuting agents,—then, whoever of your Lordships thinks so, will be prepared to vote against my second and third resolutions. If, again, any one of your Lordships be disposed to vote against the fourth resolution, he must be prepared also to say that the judge should not be consulted in reference to the exercise of the prerogative of mercy, — that those who have seen neither witnesses nor jurors nor prisoners at the trial are the fittest persons to say whether the judge's sentence should or should not be carried into effect; and he must, moreover, be prepared to affirm the monstrous proposition, — this outrage upon all justice, and all consistency, and all decency,—that it is fitting to stigmatise and degrade the office of the judge on account of a political or a personal difference between an individual high in office and the Chief Justice, — that it is proper to leave men clothed in the ermine which they never defiled, while you mark them out for contempt by the acts of Government, and to let criminal justice be administered all over Ireland by men whom you stamp, by your treatment of them, as unfit to judge. Finally, those Noble Lords who are ready to vote against the last resolution, must also be ready to say that mercy no part of justice, and that it signifies nothing how lavishly, how intemperately, how casually, how accidentally, how capriciously it be dispensed; that gaolers who execute the sentences of the courts should sit in judgment upon those sentences; that they know better than the judges how far each culprit is worthy of mercy; and that the exercise of the pardoning power is not a matter of grave and deep deliberation as a solemn act of state, but a thing to be played with at random,—a freak to be indulged in caprice — an operation depending on the humour of the hour, the temperament of the individual, the clamour of a mob, or the chance of a journey. I have no fear that any one of these irrational conclusions will be adopted by those whom I now address.

If there be any one thing which more than another deserves the anxious attention of this House, above all other tribunals, it is the thing, whatever it may be, that touches the function peculiarly appertaining to this assembly, — this supreme judicature, — this highest court of justice in the kingdom. Whoever has practised in our courts,—whoever has presided over them, — whoever has observed the mode in which the judicial business is carried on, — whoever has meditated on the constitution of these realms, as regards its executive, legislative, and judicial branches, — must be prepared to say, with me, that, of all the branches of our polity, the pure, correct, and inflexible administration of justice is by far the most important. It is this great power, this prodigious clamp, which binds all the parts of our vast social structure together. It is this great solid belt, which guards and strengthens our whole system, — our great pyramid,—formed, as it is, of various and of discrepant materials, in form and size differing from the lowest and broadest to the most exalted and the most narrow. As long as that mighty zone which connects the upper and lower parts, while it strengthens the whole edifice, remains unimpaired, you may well disregard all the perils with which the constitution can be threatened, in what quarter soever its assailants may be found, or against what part they may point their attacks. Let the Crown have all the lust of power that can inflame a tyrant — give it a venal House of Lords — give it an obsequious House of Commons — give it a corrupt Court, and a people dead to the love of freedom, — from the King's Court at Windsor I will appeal to the King's Courts at Westminster; thither I will flee for safety, to the remains of liberty, — and, in the sacred temple of justice, I shall find the impenetrable *palladium* of the constitution. Or let the danger come from another quarter. Let there be a vacillating House of Commons, — a Parliament in which the people's representatives know not their own minds, dare not declare any firm or fixed opinion, but mutter resolutions which they cannot articulate — voting, now this way, by a narrow majority, and now that, by no larger a balance, — let the force of the constitution, thus neutralised in the one House, be concentrated in the other, so that the Lords shall seem to rule the whole, the mixed monarchy to be gone, the balance long vaunted to be at length destroyed, and an aristocracy to be all but planted in its stead, — still, against the corruptions of oligarchy and the insolence of patrician domination, I seek for shelter to liberty and protection to right, in the impregnable bulwark of judicial power. Or, again: if the danger should threaten from another quarter, — the quarter whence, certainly, it is the least to be dreaded, — if the pres-

ure should come from the swelling, and loosening, and cracking of the foundations, — if the "fierce democratie" should wield unsafely its powers, — if the outrages of popular violence should assail the fabric, — to its wild waves I will oppose the judicial system as a rock against which the surge may dash — and dash in vain. Of that judicial system, the assembly which I now address is emphatically the guardian; with that administration of justice, this House is eminently, and in the last resort, intrusted by the constitution; — and to you, therefore, my Lords, it is, that I now earnestly make my solemn appeal. In all the difficulties of our country, in all her perils, she looks to you with the best hopes for preserving the judicial constitution by which she may surely be saved. As often as any attempts can be perceived to break down this barrier, the growth of ages, — attempts slowly and gradually made, and, it may be, made without evil design, — for, in the present instance, I impute no bad intention, nor anything more than indiscretion, or excess of feelings in themselves harmless, nor do I even suspect any unkindly or unamiable disposition, — still the inroad must be resisted in the outset, and a solemn authoritative declaration from your Lordships must loudly promulgate the sacred principles which have been violated, and eternly warn against a repetition of the fault. Wherefore it is, that I have deemed it my duty to press upon you the adoption of the resolutions which I now submit to your calm and deliberate consideration; and, on behalf of the British constitution, — bound up, as it is, in the pure administration of justice, — I implore your Lordships, this night, to pronounce upon them your decision of affirmance. I move you, — "That, when persons bound over to give evidence in any prosecution shall not appear, or shall refuse to be sworn, it is necessary, for the due administration of criminal justice, that not only their recognizances should be estreated, and the penalty be levied upon them, but, in case they shall not pay the same, that they should suffer such imprisonment as may compel them afterwards to give evidence, or may operate, by way of example, to deter others from failing in like manner:

"That it does not appear expedient, with a view to the due administration of criminal justice, that the exercise of the right hitherto possessed by the Crown, in prosecuting cases of felony tried before the courts of Ireland, of desiring persons called as jurors to stand aside, should be confined to the cases of such persons as are relatives of the defendant; but that persons connected with the offence charged, by having previously expressed strong opinions on the subject, or persons under the influence of the defendant, and of those who usually take part in his offence, or persons who are notoriously of such life and conversation, or of such ignorance, as renders them unfit to perform the duty of jurors, may properly be desired to stand aside until it be found that the full number of twelve, not falling within the above description, do not remain on the panel to try the defendant:

"That it is expedient to give instructions identically the same to the Crown solicitors and counsel conducting prosecutions in the different parts of Ireland, with respect to the general principles by which the exercise of their discretion, in setting aside jurors, shall be guided; and to frame those instructions in a precise and distinct manner, leaving no room for misapprehension of their meaning:

"That it is the duty of the executive Government, when considering any case of conviction had before any of the King's judges, with a view to remitting or commuting the sentence, to apply for information to the judge or judges who tried the case, and to afford such judge or judges an opportunity of giving their opinion on such case, unless circumstances should exist which render any such application impossible, or only possible with an inconvenient delay; but that it is not necessary that the executive Government should be bound to follow the advice, if any, tendered by such judge or judges:

"That the prerogative of pardoning all offenders in the conviction for which private parties are not interested, and other than offences against the Habeas Corpus Act (31 Charles II. c. 2.), is a high, indisputable, inalienable prerogative of the Crown; but that it is vested in the Crown for the purpose of aiding in the administration of justice, and is to be exercised so as best to attain that important object; that it ought never to be exercised without full and deliberate inquiry into all the circumstances of each case and each individual; and that its exercise ought to depend on those circumstances; and never, on the accident of the Sovereign, or his representative, happening to visit the place where an offender under sentence may be confined."

REPLY.

LORD BROUGHAM. — At this late hour, and after the lengthened indulgence your Lordships were pleased to extend to me at the commencement of the debate, I need scarcely say that I shall trespass upon your time but very briefly; and that I much wish I could relieve you and myself from the necessity of my doing so at all, — the more especially as the symptoms of impatience, which were manifested during the able speech of my Noble Friend (Lord Stuart de Decies), afford sad warning of the waning night and the waning patience of the House, and give me, whose fate it is to come later still before you, a mournful presentiment of the hard encounter that awaits me with your exhausted powers of attention. There are, however, one or two points upon which I have been misunderstood, or misrepresented, and on which, therefore, I feel it necessary to give some further explanation. It has been stated, that the Noble Marquess, on visiting some gaol, — I believe Waterford, — minutely examined the cases of all the prisoners who were confined there, and liberated those only to whom he thought it was fit that mercy should be extended. I, however, have seen no evidence bearing out that statement; and, certainly, with regard to another prison, he did not enter into a minute investigation, — for in that instance no fewer than fifty-seven persons had their cases examined, and were discharged by the Noble Marquess, within one hour. And I believe some such examination and release took place, also, in Sligo.

As for my Noble and Learned Friend behind me (Lord Plunkett), he has entirely misunderstood me; for he seems, by the tenor of his address to your Lordships, to think that I am bringing in a Bill to alter the law of recognizances. Now, I do not complain of the law, — therefore I have no occasion to propose any alteration in it; but I do object to the manner in which the law is executed. We have evidence that the recognizances have been estreated; that the sheriff attempted to levy; but that he could not levy, because the parties bound had no property; — they were of the same class of persons as the offenders, and they had little or nothing on which to make a levy. Then they were imprisoned, it is true; but they were let out in ten or twelve days. This is what we complain of; it is what could not happen, unless in extremely rare instances, here; and it altogether paralyses criminal justice in Ireland. That is the short case. All the learning, therefore, thrown away by my Noble Friend on the practice of the Exchequer respecting estreats, the various absurd stages which belonged to this process under the old rules, and the changes which have, in late years, been made to simplify that once complicated operation, is just so much learning thrown away on the present occasion. My Noble Friend seemed to have some compassion for our ignorance of these Crown Office details. The truth is, they are familiarly known, here, to the profession; but they are as useless in this debate, as they are familiar. No man, now, calls for any change in the law; no man impugns its sufficiency for its object. But all complain that it is unexecuted, and its object not attained. Then it is asked, and the question was cheered by a Noble Friend of mine (Lord Holland), who is also a friend of liberty and of the constitution — except on a question in which Canada or Jamaica liberty and constitution may chance to be concerned, — it is asked, who is to attend to this? Why, the answer is plain enough, — the very parties who let these persons out of gaol. They it is, who are to execute, and not break the law. If the judges let them out without the consent of the Crown, — the cognizee of the bond, and to whom the penalty is due, — then these judges must henceforth change their course — and nothing can be more wholesome than such a hint as is conveyed to those learned persons in this first resolution; but if the judges do not proceed thus, — and I have no reason to think the fault lies with them, — then the officers of the Crown, who have been remiss, must be cautioned and stimulated, — and, surely, they will act properly in future, after your Lordships shall have

reminded them of their duty. Then my Noble Friend (Lord Plunkett) says, that I am unacquainted with the meaning of the prerogative of mercy, and that I entertain an unconstitutional or an ignorant notion of this eminent office of the Crown, — a function which he extolled as beyond every other possessed by any kind of functionary, elevated, peculiar, beyond being touched; a function spoken of as above being controlled. But I am not half so ignorant, permit me to say, as my Noble and Learned Friend, himself, who thinks that this is distinguished from every other prerogative of the Crown; that it is to be exercised at the mere grace and pleasure of the Crown; that it differs from every other prerogative, inasmuch as the subject has no claim upon the Crown for it, and no right whatever to ask it. If this, indeed, were the only one of the prerogatives exercised at the pleasure of the Crown, how does the Crown create Peers? How does it grant franchises? How does it confer pensions? No man, surely, has any right to a peerage, or other honour, though we every day see many men obtain such. No man has a right to a pension, or other Crown grant of profit. No body of men have a right to a charter, or other liberty. In this respect, these ordinary prerogatives of the Crown differ not at all from my Noble and Learned Friend's peculiar and special prerogative of mercy. Why, really, instead of its being any distinguishing feature of the pardoning power, that it is exercised gratuitously, and that no one can claim its benefit as of right, this seems rather to be the most ordinary feature in all the prerogatives of the Crown, and to be an incident common to them all. Out of its mere grace and favour, the Crown confers honours. Yet, if we see the Crown playing with that undoubted prerogative, as a child does with a bauble,—or if we see it used for wicked purposes, — who can doubt that the Minister will be responsible?—ay, and who can doubt that Parliament, seeing honours thus recklessly lavished, or unworthily bestowed, —distributed for a bad purpose, or for no rational purpose at all, — would interfere by a resolution, and control, or at once stop, the abuse of the Crown's right? Mercy is a prerogative of the Crown, to be exercised in the same manner as all other prerogatives, — with sound discretion, by responsible Ministers, for the public good, not for the personal gratification of the Sovereign or his servants. It is, like all other powers in the state, — whether held by the Prince, the Peers, or the Parliament, — a public trust for the people's benefit; and the higher, the more important the subject matter of it, the more delicate is the trust,—and the more cautiously, the more tenderly, the more deliberately, must it be executed by the Crown. My Noble and Learned Friend asks, who ever heard, and when did we ever know, of an interference with the prerogative of mercy? Why, over and over again, even within the last two centuries.

There were the cases of Strafford and Stafford, in the reigns of Charles I. and II., where the people interfered with the mercy of the Crown; but these were bad precedents, and I will not refer to them; but the Statute of Northampton was made with this express view. To show my Noble Friend how little he knows of the subject he has been schooling us upon, I will only refer to two or three lines of that statute. I feel some satisfaction in proving to him that I am not so ignorant of the points of this law as he seems to think. "Whereas" (says the st. 2 Ed. III.), "offenders have been greatly encouraged, because the grants of pardon have been so easily granted, in times past, of robberies, felonies, and other trespasses." Is not this precisely the argument in the present case? And upon this preamble the Legislature restricted the prerogative, within limits which have subsequently been, no doubt, removed. But I do not consider that the reason thus assigned, and the law made in that year (1328), and confirmed ten years later, are a peculiarly ill authority for my own doctrine; at any rate, I am sure it is an answer to the somewhat triumphal question of my Noble and Learned Friend — when did any man ever dream of restricting or of touching the pardoning power? My Noble Friend, on this subject, while declaiming against our ignorance, only dealt, be it observed, in vague generalities. He laid down some positions; but he quoted not one single authority, save the very general and well-known panegyric of Blackstone, which applies to my doctrine just as well as to my Noble Friend's. Now, I, on the contrary, have quoted authorities; I have referred to Bracton and Staunford, as well as the Statute Book; and I have especially referred to Serjeant Hawkins, — as great an authority, surely, on this question, as Mr. Justice Blackstone. If both Blackstone and Hawkins, on a point of criminal law, were quoted in any court of justice, I know which would be considered the best authority; but, in truth, Blackstone does not differ from Hawkins: he calls it, "the high and amiable prerogative of the Crown;" but he does

not state that it is to be exercised without responsibility in the Ministers by whom the Crown is served; far less does he say that it may be exercised through mere caprice, either of the Sovereign or his servants. I prefer, however, the authority of Hawkins; because, instead of keeping to generals, he specifies the very principle that ought to govern the pardoning process. He lays it down, that mercy is not to be shown, but in cases where, on due examination of all the facts, it shall clearly appear that, had the law been able to foresee the particular circumstances, it would have excepted the offender from the penalties which it has denounced. It is not to be adopted, because there are fifty or sixty prisoners in the gaol, and the governor shall say, — "I have a mind to let them out; if we make some of them shake hands, lecture others on their future conduct, and they all go out, either in a mass, as at Sligo, or in platoons, day after day, as at Clonmel, the movement will improve the state of the country." Much less is it said that the gaols may be cleared in one place, and left filled in another, according as the Viceroy shapes his course on a tour. Neither Mr. Justice Blackstone, nor Mr. Serjeant Hawkins, gives any countenance to so wild a plan of mercy as this. Nor does any one former precedent of our Government, since the time of the Plantagenets and Tudors, and first of the Stuarts, when a coronation or an accession was the signal of gaol delivery in cases of a trifling sort.

But the state of the country has been referred to, by way of a set-off, I suppose, against these strange acts of the executive power. Certain facts have been proved; they are not denied; the inferences from them are hardly disputed now, how guilty soever these may be: but certain other facts have been stated also, of a wholly unconnected class, and the case runs parallel and not counter to that which it was intended to meet. No cause has been stated for the Government being able to withdraw 2000 men which were required in other and more disturbed parts of the country; it is all ascribed to the gaol delivery. Whatever charges are brought against the Irish Government, — how specific soever they may be, and how plain the evidence to support them, — though they show the administration of justice to have been extremely defective, and the use of the pardoning power to have been most inconsiderate, — though the direct tendency of these errors and abuses is to the encouragement, and not to the suppression, of crimes, — still, in answer, or rather in compensation for all this, they bid us look to the flourishing state of Ireland. The peace is unbroken by rebellion; agriculture thrives; the means of the people are improving; there is no immorality to be complained of. Nay, my Noble Friend near me (Lord Stuart de Decies) conceives that all jealousy has ceased out of the land; and, consequently, I presume, all cause for it too; — this is the fairy picture we are desired to look at.

> Tutus bos etenim rura perambulat.
> Nullis polluitur casta domus stupris
> Mos et lex maculosum edomuit nefas.

I wish, indeed, I could add, as correctly, —

> Culpam pœna premit comes.

My Lords, the two cases do not meet; they are parallel, — and the defence is a set-off, not an answer, to the charge. Then it is said, "How soon you bring forward this motion! we have not yet had an opportunity of reading the evidence;" — yet, that the Noble Marquess has evidently read every part of the evidence bearing on his own case, and necessary for the present debate, is quite clear; not a tittle of it, knowingly, has escaped him, — although he has not, certainly, stated its purport in debate as clearly as he seems to recollect it. But, if we were to wait until those to whom the subject is very disagreeable shall have read the evidence, I fear that we should never bring forward any motion, or come to any decision, upon the question at all. I have more than once informed your Lordships how this motion originated. I had supported the Noble Earl's (Roden's) demand of a committee, upon one only ground, — the charges made, and never denied, respecting the administration of justice, and especially that important branch of the judicial administration — the exercise of the prerogative in pardoning. In the committee, I confined myself chiefly to that portion of the inquiry. I appeal to all who served with me, whether I did not hold the balance, as far as it was in my hands, with strict equality and fairness between the two parties — whether I did not subject the witnesses against the Government to full as strict an examination as those produced in its behalf, — whether I did not extend the same protection to the one class as to the other. But a mass of evidence was collected, of vast bulk, various aspect, and great importance. We almost all deemed it necessary to give the House some Report upon its contents, — not expressing any opinion, but stating

the substance of the proofs, and enabling your Lordships easily to understand the result of our inquiries. We determined, therefore, to furnish an abstract, which might embody the contents of the evidence, and serve as a key to unlock it. Several of the members took, each, a department. My Noble Friend opposite, our chairman (Lord Wharncliffe), undertook the whole subject of the Ribband conspiracy; my Noble Friend near him (Lord Ellenborough) took the state of crime, and the granting of pardons; I undertook to form an abstract of the other matters relating to the judicial administration, — naturally enough, — because that had formed the main object of my attention in the course of the long inquiry we had conducted. When we met to consider these several abstracts, objections were raised, — and raised by the Noble Lords who had all along defended the Government, — of such a kind, — partly as to expressions, partly as to omissions, partly as to arrangement, — at almost every line, — that, it was quite manifest, weeks and months would not suffice to agree upon any Report or Abstract, or even any Index, at all; and I therefore at once said that I found I had been wrong in supposing anything ever could be agreed to, and that those Noble Lords, who were taking the objections, had been right in stating that there ought to be no Report, except merely laying the evidence upon the table of the House. But I added, that I should endeavour to supply the defect by a motion respecting the pardons of the Viceroy, which, in my estimation, was the most important subject of all, by far; and that, as I had been driven, by the supporters of the Irish Government, from what I deemed absolutely necessary to the discharge of my duty, I should take the only course left for us, by moving your Lordships; and I pledged myself to make you masters of, at least, one branch of the evidence. This pledge I have to-day redeemed.

That I took any party unprepared, I therefore utterly deny. The Noble Marquess had the evidence daily sent to him, and nobody can doubt that he read it. At any rate, he has read it fully before this night; and I expressly said from the first, that I should confine myself to the thirty or forty pages of the evidence which bear upon the administration of justice. These could be read easily in two hours of time. I put it to your Lordships, whether I have not performed my promise? — whether I have travelled one hair's breadth beyond that portion of the case? But I must now go further. I ask your Lordships, whether I have not had my prediction fulfilled as to the course the debate would take? and whether all the opposite prophecies are not now falsified by the event?

Then it is said that I have been unjust towards Sir M. O'Loghlen, and that I have violated my own doctrine, — namely, that the judges should be held up to public respect, and not to public censure. But, then, my reference to Sir M. O'Loghlen was not in his judicial character, but as Attorney General, in the advice he gave at the Castle, and the conduct he held when public prosecutor. As to the case of Gahan, I will only say that it has been totally misrepresented; but I will not go into it again. Every one who reads the evidence must agree with me. The nonsense that is told about Judge Moor having applied for Conner's pardon, who was concerned in the same desperate fray, is really below contempt. First, he never applied at all, but waited till the Government asked him, upon some Member of Parliament applying. Next, he reported, not for a pardon, but for a year's imprisonment. Again: he had sentenced him, on the jury convicting, to the greatest punishment the law allows. Fourthly, he had reflected for months on that verdict and that sentence, and never gone beyond doubting on the case. Fifthly, the ground, and the only ground of his doubt was removed by the second trial, when the sobriety of the policemen was directly put in issue. Lastly, the defence of Connors was totally different from that of Gahan, — being a question of identity; — so that nothing could be more easy than to believe the one guilty, although the other had been acquitted. They who argue thus, really are in as perverse a state of mind, and as hopeless an ignorance of the case, as ever Sir M. O'Loghlen was in, either when he took upon him to sit in judgment, by way of appeal from Chief Justice Doherty, who had tried the cause, or when he came before the committee to defend his judgment and explain its grounds. Greater ignorance of a case it is unnecessary, and it would be impossible, to conceive. With respect to that Right Honourable and Learned person, my Noble and Learned Friend (Lord Plunkett) needed not give himself the trouble of defending him at length, — not even of eulogising his general conduct, still less of praising his judicial merits. I am no adversary of the Master of the Rolls, in his character at the bar; and of his conduct on the bench I never said one word. I join in the respect usually paid to him as his due in

this high capacity. I did not even say a word of his demeanour as a witness. But, surely, the most ludicrous of all absurdities is, to hold an Attorney General, — a public prosecutor, — a partisan at the bar or in the senate, or on the hustings, — exempt from all censure, — nay, from all comment, — the instant he is removed to the bench. My whole remarks applied to him while in his lower sphere, — in the mere human stage of his existence. He is now removed to that exalted state, among the blessed spirits who adorn the bench; he is above all censure of mine, as long as he falls not from those ethereal regions. But I only referred to the acts of his former state, — the things done in the body, — when he sojourned among us clothed with the infirmities of our limited nature, and was amenable, like ourselves, to the bar of public opinion, and could be questioned and blamed without detriment to the sacred purity of the ermine that now clothes him and covers him from all attack.

With respect to the composition of juries, I quite agree that religious opinions ought not to be the ground of setting jurors aside; but, certainly, persons who may, the day before a trial, exhibit at a tumultuous public meeting great political violence, and bear a forward part in exciting the people to acts of lawless violence, ought not to be put upon the jury which is to try that very offence. My Noble Friend (Lord Hatherton), who fairly and candidly gave up the Noble Marquess's case upon the important point of the gaol deliveries, and admitted that nothing could be said for this part of his proceedings, stickled, nevertheless, much for the Attorney General's instructions respecting juries. He could say nothing as to their uncertainty and their diversity, — nothing for the Attorney General's (O'Loghlen's) failure in explaining them, — nothing for the construction attempted to be put upon them; — but he contended that they had done no harm; and that only one witness, whom he seemed to charge with prejudice, had been found to disapprove them. Really, this is one of the many statements of my Noble Friend, which are at considerable variance with the facts in the evidence, and for which I am somewhat at a loss to account. Only one witness disapprove? Only one person say that juries have been the worse for the instructions, or for the various meanings given to them? Really it is just the reverse; — all but one have condemned them; all but one have complained loudly of the juries being much worse constituted: and almost all these complaints come from men in the employment of the Government, and even employed in the Attorney General's own peculiar department. I will not fatigue your Lordships with reading over the evidence at this late hour; but I must run over the heads of it, and refer to the substance and to the pages. Mr. Hatton (p. 242. to 245.) swears that the juries are worse since the instructions of Sir M. O'Loghlen; that Protestants have no longer any confidence in them; that the inferior class of jurors, now serving, are liable to be influenced by threats when attending markets; that convictions are more difficult to be obtained. Captain Despard (p. 276. to 278.) says that, formerly, too many jurors were set aside; but, now, the error is too far the other way; that connections of the prisoners, and publicans, get on juries now; that the latter class cannot afford to act honestly, though not intentionally dishonest; and that, where a popular feeling exists, there is not any fair chance for a prosecution. Mr. Rowan (p. 156. to 188.) swears that the not setting aside has a very injurious effect; that a lower class of jurors serve than before; and that persons connected with the offence may now be on the jury, and prevent a conviction. Mr. May and Mr. Plunkett (p. 379. and 390.) both swear that the Crown's power, if discreetly used, has a useful operation. Mr. Hamilton (p. 706.) swears that, in consequence of the instructions in party cases, there are, generally speaking, no convictions at all, where there ought to be. Mr. Seed swears (p. 302.) that though, in ordinary cases, there be no objection to the new system, yet that the old is preferable where party feeling or intimidation exists; and he explains how perniciously the new operates against the due administration of justice. Mr. Finn (p. 814.) says he is sure the new plan has proved injurious to the administration of justice. Mr. Mackinnon, another Crown solicitor (p. 660.), gives the same unfavourable account of the system's operation. And these nine witnesses are the single person who my Noble Friend has actually had the boldness to assert was the only witness to disapprove of the Attorney General's instructions!

But nothing in this debate has astonished me so much as my Noble Friend at the head of the Government (Lord Melbourne) complaining of the time at which this motion has been brought forward. Why, I gave above a fortnight's notice; and there were only forty pages of the evidence to read! I beg the House to ob-

serve how closely I have kept to those forty pages,—referring to not one tittle of the evidence beyond them. I beg the House, also, to observe how completely all the predictions have been falsified by the event, of those who confidently foretold the impossibility of confining this debate to its proper object, — the administration of justice. I also must claim to be regarded and followed as a safe guide, when it is remarked how entirely my prophecy has now been fulfilled. I was told that the whole matter would be gone into, and that it was quite impossible to keep the debate within its proper bounds. I said I was quite confident I should be able to do so; and that no one topic would be touched on or alluded to, except the one subject which I was to bring forward. Well, the debate is now over; and all the speeches have been heard, save the small residue of this my reply; and I ask if any one allusion has been made,—if any one word has been uttered regarding any one tittle of the evidence,— except what related to the administration of justice? Why, then, were not two or three weeks amply sufficient to prepare all men for this discussion? What right can my Noble Friend (Lord Melbourne) have to complain of the question being hurried on? What earthly ground can there be for his assertion that he could not read the evidence? Two, at most three, hours were all that he required to peruse it; and he now comes down, after two or three weeks, to tell us that he has not read a word of it,— knows nothing about it,—and cannot tell whether the Noble Marquess be guilty or not! From this, I naturally expected him to conclude his speech by asking for more time, or moving for an adjournment of the debate. No such thing. He moved the previous question, which is an admission — not that he is ignorant of its merits, but that he has considered it, and, in some way or other, made up his mind upon it; — that he feels he cannot resist the motion; but that he also feels it an inconvenient one for him, and therefore wishes the question may not be put upon it. To be sure, if the argument of my Noble Friend were allowed to prevail, nothing could well be imagined more comfortable for the Government, — and for any Government. They have only to say, — "We have not considered the case; therefore, do you resolve not to pronounce a sentence upon us." I will answer for it, on these terms, no unpleasant case would ever be considered by the Government, and no inconvenient vote would ever be passed by Parliament. The ignorance would not be a pretence — but it would be real; and the advantage resulting from it would be a reality too.

But my Noble Friend charges me with violence — with acrimony — with undue severity against the Noble Marquess. No man is a judge of the exact force and weight of his own expressions. I can only say that I had no intention to be violent or severe. I know that I omitted some heads of attack altogether, — heads much dwelt upon by members of the committee during our investigation. I know, too, that not one word escaped me which had not a close connection with the subject,— the administration of justice; and this I well know,—that I abstained from numberless topics, numberless illustrations, which would have been used by me, had another person's conduct been the subject of debate. But, it seems, I have, elsewhere, praised the Noble Marquess; and therefore it is unfair in me, and unfriendly, to blame him, here. That the former praise may have been very friendly, I do not deny; but that this circumstance renders the present blame less amicable in its aspect, I do not clearly understand. My Noble and Learned Friend cites a note, published, as he says, under my sanction, and applied to a speech delivered in 1823, on the administration of justice in Ireland; and he seems, by his reference, to insinuate that there is some inconsistency in my now disapproving him, whose conduct I approved above a year ago. There is not the shadow of inconsistency, or anything like it, in this proceeding, even if you take into the account the panegyric bestowed in the note — and very sincerely bestowed — on the private and literary character of the Noble Marquess, — a panegyric read by my Noble Friend with a mingled sneer at the author of the praise and its object. My Noble Friend really could not resist this, his besetting sin, of constantly holding cheap all men and almost all things. That is his way. Also, it is his way to bring out roundly, and sometimes roughly too, whatever passes through his mind. This it is, among other and higher qualities, that makes him so agreeable a debater here, and so delightful a companion elsewhere. The humour is his own, and it is racy and pungent. No respecter of subjects or of persons, out it all comes — no matter who is by, or whom it hurts. He gives mirth, and he shares it too, largely enough. It is generally one word for his audience, and two for himself; one laugh from them, and two from himself. So on he rolls, with his lively and careless speech, or his yet livelier and more careless conversation.

Good sense and good humour are always at the bottom. No gall — not a particle of self-conceit — is anywhere to be found. If other men are little respected, he is, himself, never set up in any invidious contrast, but seems to be as little thought of as any of those he handles. Some startling paradox, to pass for profound and sagacious originality, — some sweeping misanthropy, to show deep and penetrating knowledge of human nature, — nothing can be more agreeable — though, very often, nothing can be less correct. And so it was to-night. The praise of his Noble Friend, which he laughed so much at, was very sincerely given by me, and I still think very well deserved by him. I have constantly repeated it behind his back, — and in quarters where the echo of any sound of it never could reach his ear. I defy all the persons who have ever heard me speak of him, up to the hour in which I now address your Lordships, — and they are not a few, — I defy them all to say upon what occasion I have ever said a twentieth part as much against him as I have felt compelled to do this day; — nay, I defy them to say what I have ever uttered, that was not kind and friendly; and whether I have not uniformly confined my charges against him to his conduct respecting justice and mercy, and, on that, limited my blame to an amiable and a venial indiscretion. I suspect the loud bawlers in his praise could not safely make the same searching and broad appeal.

But what is the supposed inconsistency on which my Noble Friend remarks? The subject of praise was Lord Wellesley and Lord Anglesey holding even the balance between the contending sects, — that is to say, giving the Catholics their share of promotion fairly with the Protestants. The Noble Marquess is then commended for treading in their steps. Have I said a word, to-day, that is at variance with that eulogy? Surely my Noble Friend cannot mean to rely on so very poor a quibble, as that the phrase "holding even the balance" implies the giving no preference to the Catholics, and that yet, to-day, we accuse the Noble Marquess of trusting to Romish priests against Protestants; — for the whole passage must be taken together, and then it is perfectly manifest that the whole subject of panegyric is, that the three successive Lords Lieutenants had all promoted Roman Catholics more than their predecessors ever did. But I will not stop to defend myself against this childish argument, which only shows the extremity of the case now on its defence. Suppose I had changed my opinion of the Noble Marquess's administration since June, 1838. Has the evidence of June, 1839, brought no new facts to light? Was Gahan's case — was Slye's case — were the details of the gaol deliveries — was the treatment of the judges — was the appeal to the gaolers — known in 1838, when the note appeared? Surely a more absurd — nay, a more desperate — argument than this never yet was brought to prop up a hopeless case.

But, from this topic, my Noble Friend, in a luckless hour, passed to a still worse — and that really did astound me. He sneered at the course of my public conduct; and indicated his disposition to withhold from it the praise of consistency, which I had openly claimed by a reference to thirty years' public life and upwards. Now, I repeat my challenge, to which I am compelled by the doubts which my Noble Friend, without any one attempt at particularising, but wrapping himself up in mere vague and general insinuations, has chosen to ventilate. I defy him, or any man, to show the single instance in which my conduct has varied upon any one of the great subjects which divide statesmen, and agitate the world at large. I see around me, in all directions, abundant instances of men who have changed their course upon many subjects, and who have connected themselves with many parties in succession. I speak of them with all respect; their conduct and their changes have been, doubtless, directed by pure public principles, and never guided by personal motives. Nor, while I acquit them, do I now, nor did I when I last addressed your Lordships, claim any merit to myself for what I expressly called — and what I really do think, in the various course of human affairs — a piece of good fortune, much rather than any desert. But the fact is undeniable, that, upon all the great questions which divide men's opinions, I have, ever since 1810, when I entered Parliament at an early age, been fortunate enough to hold precisely the same course throughout this long interval of time, without any exception or variation whatever. I have consistently supported reform, — the abolition of the slave trade and slavery, — the Catholic question, — the reduction of expenditure, — the resistance of oppression, — the extirpation of abuses, — the reformation of the law, — the limitation of the executive power. Moreover, I have uniformly adhered to one political party; and if, at the end of this long period, I have found myself under the painful necessity of separating from my former political friends, it has

been, not on personal but public grounds, — it has been, — it has notoriously been, — not because I changed, but because they have changed their course. When out of the Government in 1835, I zealously supported them; in 1836, I abstained from attendance, that I might not embarrass them; in 1837, I supported them on all but one question, when their conduct was a violation of liberty. But in 1838, when they abandoned their reform principles, and carried further than ever the unconstitutional government of the colonies, — and still more in 1839, when they have utterly forgotten the very name, as well as the nature, of Whigs, and consented to stand upon a mere court intrigue — a mere bedchamber quarrel, — against Parliament and against the people, — then, of course, my opposition became habitual, and I heartily desired the end of their reign. I will not deny that I desired their fall, when I saw them — with astonishment saw them — stand on the most Tory ground, — ground ever most bitterly assailed by them in their better days, — for the Tories always had the decency to cover over the nakedness of their courtly propensities with some rag of public principle, and spoke of danger to the church and the other institutions, when they really meant risk of the King being thwarted, and their own power subverted. But these Whig Ministers, under my Noble Friend, stripping off all decent covering, without one rag of public principle of any kind, stand before the country stark naked, as mere courtiers, — mere seekers of royal favour; and do not utter a single whisper to show that they have a single principle in their contemplation, save the securing a continuance of their places by making themselves subservient creatures of the palace. To leave such guides, and such associates, may be very painful, from old habits and connections; but, surely, it became absolutely necessary to all who would not join them in leaving their former principles. My Lords, I grieve to have so long detained you at so unseasonable an hour; and I only, now, recommend these resolutions to your immediate adoption.

The House then divided; when there appeared —

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