

STRICTURES

ON

MR. JUSTICE FLETCHER'S CHARGE

TO THE

GRAND JURY

OF

THE COUNTY OF WEXFORD,

AT THE

SUMMER ASSIZES, 1814.

TO WHICH IS-PREFIXED,

A Brief Memoir of the Learned Judge.

Dat veniam corvis, vexat censura columbas.

JUV.

KILKENNY :

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P R E F A C E.

IT may be necessary to introduce the following pages to the public by stating the circumstances to which they owe their existence. The zeal with which certain prints promulgated Mr. Justice Fletcher's Charge, the high encomiums that they lavished upon it, and the voracity with which all whose political appetites are vitiated by faction feasted upon it, gave birth to the idea that an examination of its statements might be useful to the public. The advertisements which have appeared in the Dublin papers announcing that the Charge was to be published at a cheap rate, for the purpose of being generally circulated, matured the thought ; and the Strictures that follow are submitted to the public without any claim to elegance, and without any dread of critics. They are the production of a few occasional hours, which the vocation of the author allowed him to devote to the subject. His original intention was to have offered them to the Editor

of *The Moderator*, for insertion in that paper, but the cavalier treatment which the Charge received from him, and his laconically expressed doubts of its authenticity, gave those remarks the durable form of a pamphlet, which were originally intended to share the fate of the evanescent columns of a newspaper. If blame be the lot of the author, as the reward of his labours, the whole weight must fall upon himself, for he has no associate, even as an adviser, in his folly. He has counted the cost of daring to brave the clamorous vehicles of faction and tongues of dissaffection ; and is prepared to be denounced as a hireling, or an orangeman, or a vulture of corruption, or by any of the elegant epithets which are the peculiar property of the advocates of insubordination, as they are the only arguments with which they can arm themselves against the friends of the Constitution and of Truth. Their outcries will not therefore surprise or terrify him ; and, though he deserves neither of the titles which they usually bestow on their opponents, he is not anxious to deprecate them, because he knows that it is useless to reason with prejudice. He

is not a member of any political society ; and he has no communication, direct, or indirect, with any member of the administration, or with any office of the government. He is merely an humble private individual who reads a little, thinks a little, and is desirous to make both subservient to the honour of the King, the security of the Constitution, and the welfare of the Country. Whether he has succeeded in his present attempt to promote these grand objects, the impartial and unprejudiced part of the community must determine.

County of Kilkenny,
Sept. 1, 1814.

BRIEF MEMOIR
OF
THE HON. WM. FLETCHER,
FOURTH JUSTICE OF THE COMMON PLEAS,
IN IRELAND.

THE family of the Fletchers originally came from Cumberland, and are said to be descended from the celebrated political writer, Andrew Fletcher, of Saltoun, a member of the last Scotch Parliament.—The learned Judge, who is the subject of this memoir, was the son of a Physician at Maryborough, at which place he was born about the year 1750. His father having destined him to his own profession, sent him to study medicine at the University of Edinburgh, where, it is said, he took the degree of Doctor of Medicine. But before he had qualified for actual practice, something occurred to induce him to renounce that profession and apply himself to the study of the Law. From this period no incident of moment happened in the life of the subject of this memoir until he was called to the Irish bar, which took place in 1778. There he loitered, unnoticed and unknown, until the year 1782, when, in vindication of some act that had brought him in collision

with the Judges of the Court of King's Bench, he retorted upon the Court in a speech of an hour's length, which brought him into as much notice as the harangues at the Catholic Board have given fame to a Finlay or an O'Connell. He was soon after introduced into the Irish Parliament, where he distinguished himself, as every member did who was the locum tenens of another—by supporting the politics of his patron. Fortunately for him, he sat with the party whom, in a moment of weakness, Lord Fitzwilliam was sent from England to propitiate. The Noble Earl, in the year 1795, appointed Mr. Fletcher a King's Counsel; which prepared him for further promotion on the return of that party to power. Accordingly, in 1806, during the memorable whig administration of Mr. Fox, the Duke of Bedford was sent over to Ireland as Chief Governor, and the Noble Duke appointed Mr. Fletcher one of the Judges of the Court of Common Pleas.—Since this elevation nothing material has occurred in the life of Mr. Fletcher until the Summer Assizes of 1814, when he delivered a Charge to the Grand Jury of the County of Wexford, remarkable for a distorted view of the state of Ireland dressed up in a most inflammable garb. Mr. Fletcher's learning is certainly profound and various. He has an amiable wife, and one son aged about 19. His


form was robust and his constitution good, but both are rather injured by thirty-six years attention to study. He lately made application, it is said, to be permitted to retire on a pension of £2000 per annum; but government did not think it advisable to burden the country with such an unnecessary charge, for though Mr. Fletcher has completed his 64th year, he is able to perform the duties of his office, and the Charge to the Grand Jury of the County of Wexford proves that his constitution is still vigorous.

STRICTURES

ON

JUDGE FLETCHER'S CHARGE,

&c. &c. &c.



THE Address of Judge Fletcher to the Grand Jury of the County of Wexford at the late Assizes held there, has engrossed an unusual share of public attention. As a Charge from the Bench it is perfectly unique; and affords a striking proof of the dexterity with which a man of genius may mix the grossest libels against the population with insinuations against the magistracy, to the delight of the vulgar. If we are to believe the learned Judge, he had discovered a panacea for the moral diseases of Ireland many years ago. That he remained so long silent on the subject, and allowed Parliament to legislate *in error*, is extraordinary if not unjustifiable. A feverish disposition to insurgency has often distracted certain districts of the country in the experience of Mr. Fletcher.—For the last twelve months numerous cases have occurred of outrageous insubordination. The Le-

gislature, as in duty bound, takes these cases into serious consideration, and the result of their inquiry is, that both Houses of Parliament, by unanimous votes, determine that certain enactments are necessary to allay the prevailing ferment. But the learned Judge continues mute. Like Cobbett's infallible scheme for discharging the National Debt, Judge Fletcher's method of tranquillizing Ireland remains a profound secret in his own bosom, until the Bills to which he objects have received the Royal Assent, and are placed among those statutes of which he is an official expounder. He receives a commission to go the Leinster Circuit, with the perfect consciousness that the first duty of the Judges of Assize was, to explain, in the respective Courts in which they sat, the nature of those laws relative to the state of Ireland which the Legislature, in its wisdom, and on the proposition of the Chief Secretary of the Irish Government, had thought proper to enact subsequent to the Spring Assizes. But how did the learned Judge perform this duty? At Kilkenny, his first circuit town, he did not even advert to their existence. By the reports in the newspapers, he was equally silent as to their nature at Clonmel, although he presided in the criminal Court of the populous county of Tipperary. On the same authority, a similar taciturnity on that subject distinguished the learned Judge at Waterford. But when he gets to Wexford, the last town on the circuit, the secret so long pent up in his impenetrable bosom bursts forth upon the astonished auditory, in an oration characteristic

of the special pleader, tedious and in some parts obscure, but chiefly distinguished by a stile calculated to inflame the multitude; and by such allusions to the new laws as must inevitably produce an effect directly the reverse of that which the more rational projectors of those laws contemplated.— The preservation of this voluminous charge is almost as miraculous as the matter is objectionable. If it was spoken from the Bench, it must have engrossed the time of the Court for four hours. No man could read it, much less speak it, in less time, with the solemnity of a Judge or the deliberation of a Lawyer. We do not say that Mr. Fletcher, or the reporter of the speech, wrote for the press what was not delivered in the Court; but we are quite certain, that if it really was delivered, the learned Judge must have had the supreme felicity to address for two hours a sleeping congregation, the most flattering of all critics to an incomprehensible orator. The preservation of so remarkable a charge, under such circumstances, is extraordinary. The *Dublin Evening Post*, which first ushered it to the world, had the modesty (a virtue, by the bye, in which it is not very conversant) not to claim any credit for having procured the report, but neither did it say the copy was sent to the printing-office by the learned Charger himself. It is, in one point of view, of little consequence who drew it up. It has been published as the speech of Judge Fletcher and he has not disclaimed it. As such we shall review some of its statements; and if, in so doing, we prove that the charge is not, as the factious

prints insinuate, a correct exposition of the state of Ireland, though our labours may not happen to flow in all the dirty channels through which the Charge circulates from those sources, we shall at least have the satisfaction of counteracting, in some degree, the bad effects of a speech as much more mischievous than the harangues at a seditious club, as the judicial dignity of Mr. Fletcher elevates him above the starving barristers whose inflammatory orations at a late Board filled their mouths with bread.

The Charge was addressed to the Grand Jury of the County of Wexford. A very small portion of it, however, relates to that district or even to the duties of Grand Jurors. The learned Judge commences by congratulating the gentlemen before him on the appearance of the state of their county, as collected from the calendar. But he does not close the first paragraph without evincing that prejudice which prevents him from judging coolly of the internal condition of Ireland. One of those barbarous midnight assassinations which have too long disgraced our country, and which distinguish it from every nation pretending to civilization, had been committed in the County of Wexford. The unhappy victim was seduced by treachery the most base, as operating upon his charitable feelings, to open his door in the dead hour of night, and to admit to the comforts of his cabin, the vipers who stung him to death. Several persons were charged on the calendar with this crime, which the learned Judge designates, as merely originating in "private

malice." Did he forget that private malice was the general motive to assassination among the deluded peasantry. It is, indeed, the revenge of faction and not the avarice of individuals that prompts them to murder. If a person gives offence by communicating information against any disturber of the peace, if he dares to refuse his assistance in the commission of any unlawful act, if he presumes to give a shilling an acre more for land than the last tenant of the farm shall authorise, if he be on friendly terms with the neighbouring magistrate, he is marked as a victim by the banditti, and a commission is issued for his murder—he perishes, and because he originally offended an individual, he is, according to the learned Judge, the victim of "private malice." Is it thus that a crime which every good man should hold in utter detestation—which every Magistrate and Judge ought to describe with undismayed eloquence as our country's bane and the antidote of its prosperity—is it thus, we say, that deliberate murder by an armed banditti should be stripped of its horrors by the Bench? We will defend Ireland, where the learned Judge has exposed it to reproach. Murders are not committed here either to gratify "individual revenge," as he says, or for the sake of any other plunder than arms and ammunition. They are invariably the result of that system which has long prevailed, under different names, by which the life of every man is placed at the mercy of idle and illiterate nocturnal legislators, who presume to regulate rents and services, and to punish those who have the virtue to despise their mandates.

After a few well turned compliments to the peasantry of the County of Wexford, the learned Judge adverts to the rebellion which raged there in the year 1798, and which he very gently denominates an "unhappy disturbance." For what purpose that period, to which no loyal man can look back without horror, was introduced, it might be difficult to guess, did not the whole tenor of the charge afford the solution. In unveiling that bloody picture before the public eye, Mr. Fletcher does not point out the wickedness of the insurgents or the crime of rebellion. He does not defend the Government or warn the public against the guilt treason; but he drags in the rebellion of 1798 to let us know that he was Counsel for the Crown at that period, and that he is in possession of a great many secrets about the cause of it. He is an absolute depository of secrets, but affectation in this case is ridiculous. The cause of the rebellion is too well known. It was loudly proclaimed during the short triumph of the rebels. The motive and the object stain the records of the Country. But in this part of the Charge more is meant than meets the ear. The learned Judge insinuates what he dare not avow—and he labours through fifteen or sixteen lines to render his meaning incomprehensible by the obscurity of his stile; but that very obscurity, in adverting to a plain historical fact, allows of an inference which cannot be mistaken. Mr. Fletcher's observations on the contradictory opinions published by certain magistrates of the County of Wexford as to the state of

that county, we leave them to treat as they think proper. Our object is not to interfere with matters purely local, but to correct what we conceive to be the mistatements of a general or national description which abound in this very remarkable Charge.

We are now approaching the grand discovery of the causes which the learned Judge avers to be the occasion of all the disturbances in Ireland. But he offers a few preliminary observations, the most striking of which is, that “never, during the entire period of my judicial experience (comprising sixteen Circuits), have I discovered or observed any serious purpose, or settled scheme, of assailing his Majesty’s Government, or any conspiracy connected with internal rebels or foreign foes.”—On this subject we shall only remark, that if he could establish the fact, he would dissipate one very odious cloud which envelopes the character of Ireland. But unfortunately the archives of France and the judicial records of Ireland must first be destroyed—the great father of Irish eloquence and patriotism and the government of the Island and of the Empire must be discredited—and certain threats about applying to Foreign Powers, and the hints in the Judge’s vehicle of publication about *an American Invasion of Ireland!!!* must be forgotten, before this bold assertion can have a more secure foundation than “the baseless fabric of a vision.” We might quote the proceedings in Assize Courts to prove that the Judge’s opinion is erroneous, but we shall satisfy ourselves with an

extract from a speech delivered by Mr. Peele in the House of Commons on the 23d of last June; partly because the dignity of the body to whom it was addressed, and the character of the speaker, place it above all suspicion; and partly, because Mr. Peele has much better means of judging correctly on this subject than Mr. Fletcher. In speaking of political combinations in this country, Mr. Peele said, “ He could not suppose that these combinations, which had for their object the overthrow of the Government and the separation of Ireland from Great Britain, could find any supporters among men of any talents or weight in the country. These combinations consisted of idle infatuated people, with little education, and who were the dupes of men who possessed certainly more means of acquiring information than themselves, but still, he trusted, had none of those qualifications which could render them formidable, as the leaders of popular insurrection. But that there were combinations, whose object was to overthrow the existing Government, to transfer the allegiance of the people to foreign powers, and for other objects of a similar kind, and that the individuals composing those societies, were bound together by oaths, there could not, unfortunately, be a doubt. In stating the grounds upon which he made assertions of this kind, he should rely only upon documents, the authority of which could not be questioned; he would not quote the verbal or written communications which had been made to Government, which, though in many instances

were well founded, yet in others might be liable to a suspicion that they were exaggerated from the fears naturally entertained by individuals from the appearance of immediate danger, and the recollection of past events. But to prove the existence of these combinations, he should only rest upon documents of unquestionable authenticity—he should refer to the oath which was proved in evidence, at the last Assizes in Ireland, against several persons charged with these combinations, and upon which they were convicted. Mr. Peele then read the oath, by which the person taking it, bound himself to suffer death rather than give any information against his companions before Judge or Jury; to join the French upon their landing in Ireland, &c. This oath proved that combinations had been formed, the object of which was, to call in the assistance of a Foreign Power.”

In opposition to these facts, the learned Judge attributes all the disturbances in Ireland, first, to the high price of land—second, to the enormous issue of paper money—third, to the Orange Associations—fourth, to the failure of the influence of the Roman Catholic Clergy over their flocks—fifth, to the County Presentment Laws—and lastly, to illicit Distillation.

As to the high price of land and the excessive issues of paper, little need be said, because neither the observations of the learned Judge nor our remarks upon them can materially affect either.—But, if Mr. Fletcher had paid due attention to the subject he must have known, that during the late

war the price of land was not higher in proportion than that of its produce. No husbandmen live more comfortably than those of England, and they deem 10 per cent. upon their rent and capital an excellent return. The farmers of Ireland, with equal industry, might have averaged 15 per cent. during the last 10 years. It is not, however, in the rate of the rents, but in the desire of the peasantry to hold land which they have not sufficient capital to cultivate to advantage, that their difficulties originate. If they could be persuaded that they would be much more comfortable as farmer's servants or humble cottiers than as holders of large tenures, and if they would allow the land to be peaceably held by practical agriculturists of capital, their own comforts and the prosperity of the country would increase. But while they cannot cultivate the soil themselves, and will not suffer those to do so who have the means to put in practice the improved system of agriculture, complaints and misery and disturbances will continue amongst the idle and dissipated portions of the community. With regard to paper currency, the circumstances of the country required it, and the advantages of the system have greatly outweighed the mischiefs that may have resulted from its adoption. The only question is as to over-issues. But the boundary line of propriety can neither be defined nor permanent, and in a free commercial country, all vocations that are lawful must lie open to monied men.

Mr. Fletcher's 3d assigned cause of the distur-

bances, is the existence of the Orange Associations. As his observations principally apply to a province in which these Strictures will not circulate, this topic shall not detain us long. But the Judge makes charges which must not be dismissed without rebuke. They recoil upon his own head. He does not hesitate to assert that *he has known* these Associations to "poison the fountains of Justice," and their influence to induce "Magistrates to violate their duty and their oaths." Juries also come in for a portion of the obloquy. Trials for murder, he says, have come under his own view, in which, under the same influence, "Juries have declined to do their duty." These are plain but alarming declarations. Judges, Magistrates, and Juries are bluntly accused of perjuries of the most flagrant description. Either Mr. Fletcher has spoken the truth or its opposite. If the former, his legal knowledge ought to have instructed him, that in witnessing the commission of these crimes without accusing the aggressors, he became a partner in their guilt. If the latter, the sacred ermine does not become his shoulders. In either case, his Majesty's Government ought to institute an inquiry, that the guilty, whether the assertions of the learned Judge be founded or not, may meet with deserved punishment. But he does not confine his reprehension to Orange Societies. He says the Ribbon Associations are also contrary to law. As to these, however, he is mildness itself. They are wrong—they do much mischief, he admits, but then it is all attributable to the Orange Societies,

which, according to Mr. Fletcher, are the *primum mobile* of all political delinquency in Ireland. But pray, my Lord, did the White Boys, the Right Boys, and all the other banditti who for fifty years distracted Ireland, under different assumed titles, before the Orange Societies were instituted, originate in their misconduct? If the learned Judge had said that these Societies were always obnoxious to the factious and to the disloyal he would have said the truth. In their zeal, they have sometimes, perhaps, overstepped the bounds of propriety, but their services to the state, during the most trying period of our history, might have shielded them from the attacks of a Judge of the land. We do not mean that these services should protect any individuals from merited punishment who may be guilty of crimes. The law is open to the meanest of the people. Government is pledged to prosecute on behalf of every injured party who cannot afford the expence. The ends of justice cannot, therefore, be defeated, as the learned Judge asserts. Several instances of their determination in this respect occurred during the late Assizes, and Orangemen are suffering at this moment, in the gaols of the North, for breaches of the peace, committed to the annoyance of Roman Catholics.—The Protestant ascendancy, we are told, is the bane of the country's peace; but if Orangemen are Protestants—Ribbonmen, and Threshers, and Carders, and Caravats, and Shanavests, are all Roman Catholics. Is it admitted that the desire of ascendancy prompts to their unlawful acts? A late

dispute between the titular Bishop of Londonderry and one of his priests might answer the question. That difference elicited the important fact that the Ribbonmen were organised in immense numbers, and were bound together by oaths, not of conditional loyalty, indeed, which is the grand charge against Orange Societies, but literally and positively of a treasonable nature. This is in some measure confirmed by the trials which have taken place at the Summer Assizes at Downpatrick. Baron M'Clelland states, that from the evidence as to different riots at Seaford, Down races, &c. "it evidently appeared, that they were the result of previous combination in the parties with whom they originated, for the purpose of disturbing the public peace, and destroying their opposers." But who are their opposers whom they wish to destroy? The citizen soldiers of the country. Hence, on the same high authority, we are assured, that a multitude of "defenceless opponents," as Judge Fletcher calls the Ribbonmen, attacked a party of yeomen at one of those places, crying out, "Damn their murdering, Orange, heretic souls!" If the wrath of Mr. Fletcher, who ought to be of no faction, and who repeatedly declares that he is connected with no party, burns so fiercely against a body of the most loyal men and steadiest servants of the Government in the country, because some of them may have violated the laws, could he spare no reproof for the numerous banditti whose transgressions, on a comparison with those of the others, are as Slievenaman to an ant-hill, and who

make no secret of their hostility to the Church and State? We do not allude to Roman Catholics generally, many of whom are worthy members of Society, but to those insurgents, who, under the guise of that faith, wage perpetual war against "Orange heretics;" and we do think that if Mr. Fletcher had seriously desired to tranquillize the public mind, he would have exposed the crimes of all the guilty with an impartial tongue; but alas! he is no party man; and, therefore, to flatter factions, which are always most injurious to the commonweal, he levels his arrows at the party which raised and still maintains the Protestant Government that supports him.

As to the failure of the influence of the Roman Catholic Clergy over their flocks, which forms Mr. Fletcher's 4th topic, the learned Judge is again in error. The Caravats are as obedient to their clergy as the White Boys were, and the influence of the priests is, of consequence, as coercive as it was fifty years ago. A very cursory view of the history of the few last years may suffice to convince any unprejudiced person, that the clergy can controul assemblies of the delegated talent and wealth of the country, even when the desire of the Government has been expressed without producing any effect. Among the lower orders, the best results have been the consequence of exertions on the part of several of the clergy; an unquestionable proof that the conscientious priest, though, as he must be, hostile to the proceedings of the disturbers of the peace, can controul the

excesses of his parishioners in proportion to the zeal of his exertions. At the executions in this county last month, it was ascertained that one dying criminal, less hardened than his fellow, was inclined to acknowledge his guilt, to which he was urged by the High-Sheriff, but hesitated until he consulted the priest in attendance. This gentleman being brought to the unfortunate man, they conversed together for some time, after which the convict declined saying any thing on the subject. The priest may have advised him to confess. *If he did*, the result establishes, in this case, the Judge's statement as to the influence of the clergy having declined. But we have no right to admit the decay of this influence until it has been fairly tried without effect. Let the Roman Catholic clergy urge upon their people the propriety of boldly and candidly informing against the violators of the law and the corrupters of the innocent—let them admonish their flocks in public and private as to the sin of perjury, or of bearing false witness even to save the life of a brother—let them recommend the peasantry, as salutary to their souls, to give no shelter to unregistered arms, midnight prowlers, or murderers,—and, finally, let them refuse the offices of their religion to the persons guilty of capital crimes, until they shall make atonement to the country by an open and frank confession of all that they know about unlawful confederacies and their acts. Let them faithfully and earnestly try their power over the conscience in this way, and the result will either prove that the learned

Judge was correct in his view of the decay of clerical influence—or, as we fully believe, it will tranquillize and civilize the country.

The 5th cause to which the learned Judge attributes the disturbances of Ireland is the County Presentment Code. On this subject, his remarks are scattered through so many columns, with such a chaos of inflammable matter intervening, that it is very difficult to compress them into a tangible shape. We can gather, however, that it is not the laws themselves, but the abuse of them, which he meant to reprobate. We have no wish to justify abuse. The Presentment Code has conduced more to the improvement of the interior of Ireland, and to the comforts and prosperity of the people, than any other measure that could have been adopted. Abuses may have crept into the administration of these laws, for no human institution is exempt from error. But the vague and indefinite declamation about jobs and undertakings on the part of the gentry, and consequent murmuring and heart-burnings among the peasantry, are more suited to the meridian of Smoke Alley than to the dignity of the Bench. If abuses are committed, let them be specified that they may be removed.—But to represent the gentry as improving their estates at the expence of presentments on the farmers, and to describe the day of the visit of the collector of the cess as one of general mourning, and distress, and tribulation—and then to add, that these hyperbolical and inflated observations will “allay and soothe” the country—evinces

either an ignorance of human nature, little insight into the mind of the Irish peasantry, or a lamentable perversion of truth to serve the ends of faction. When these doctrines are taught from the Bench, what are we to expect? A people whose ear is ever open to accusations against the nobility and gentry of the land are to be soothed, says the learned Judge, by being told that they are robbed and oppressed by the rank and wealth of the country! We must check our pen. Honest indignation is, indeed, roused by such insidious attempts to exasperate the populace and to counteract the efforts of a wise, a humane, and a vigorous government to promote internal peace—but the station of the declaimer demands that respect which could not be shewn to the inferior orators from whom the learned Judge has borrowed his hacknied accusations. We shall close our observations on this topic by simply observing, that Mr. Fletcher's story about "a Magistrate in a Western County," who signed affidavits in blank to be filled up at the pleasure of the party, is as disgraceful to himself as to the Magistrate. It is an indictable offence at common law, and ought not to be treated with the delicacy of secreting either the name of the county in which it was committed or of the man who was guilty of the crime. From the obscurity of the allusion, therefore, we may infer, that the accusation was merely introduced as a figure necessary to give effect to one groupe in the terrific picture of imaginary injustice and oppression which he was drawing "to soothe" the vulgar.

The next operating cause against the peace of the country, is, according to Mr. Fletcher, the practice of illicit distillation. Decidedly of opinion that this crime is productive of the most injurious effects, as well to the morals of the people as to the revenues of the crown and to the profits of the fair dealer, we would here dismiss this topic, did not the learned Judge, after mentioning it as one primary cause of disturbance, immediately represent it as an effect of the high rents of farms, and state it to be encouraged by the gentry as bringing to the doors of their tenantry a market for their corn. From this it is manifest that, in the judgment of the learned Judge, scarcely any crime can be committed in Ireland, that may not be resolved into the oppression of the higher orders. The quantity of grain consumed by private distillers is no doubt great, but surely he cannot pretend that the extra profit on corn sold on any one estate above that sold in the public markets, is so considerable as to induce any gentleman to encourage a practice dishonest in itself and destructive of the peace of his neighbourhood. He either spoke at random, or he knows little of the character of an Irish country gentleman. But the laws, the laws, and their administration, and not the crimes of their transgressors, meet the castigation of the learned Judge. The revenue laws tender (he says) "a kind of bounty to false swearing; and we all know the revenue folk are not very remarkable for a scrupulous feeling in such cases.—These oaths are answered again by the oaths of the parties charged,

who, in order to avoid the fine, deny the existence of any still upon their lands. Thus have I witnessed trials, where, in my judgment, the Revenue Officer, who came to impose the fine, was perjured—the Witness who came to avert it perjured—and the Petty Jury who tried the cause perjured !” This is a fair specimen of the logic of the learned Judge, by which a small spice of accusation against the peasantry is introduced to season more loud and alarming charges against the higher ranks or the officers of government. How the person who brings a charge and he that repels it can both be guilty of perjury is beyond our comprehension, or perhaps that of our readers. We question whether the learned Judge, with all his acuteness of discrimination, could explain the paradox. But it was probably a necessary part of the plan to puzzle reflecting minds. The lower orders will not dispute about the facts while they can feast on judicial charges against magistrates, revenue officers, and jurymen.

In pursuing the course marked out by the learned Judge, we have arrived at his account of the business of the late Circuit. He had heard, it seems, rumours of the alarming state of the county of Kilkenny, but he does not think that they were justified by his assizes experience. Of the number of prisoners arraigned in this county four only were capitally convicted ; but he is not, doubtless, so very ignorant of the state of the country as to conclude that all the others were innocent of the crimes of which they were accused.

The operation of the system of terror prevents witnesses from prosecuting. It defeats the ends of justice, and lets the guilty loose upon society ; but where is the man of sound understanding who is not persuaded, by numerous stubborn and irresistible facts, that the commission of fresh crimes, crimes the most insulting to God and the country, rather than the innocence of the accused, is often the cause of their acquittal ? On the first day of the Kilkenny Assizes two men were tried for an atrocious burglary in the house of Colonel Nugent. A great quantity of plate, apparel, and other property belonging to that gentleman was found in one of their houses. They were arrested on the sworn, positive and particular informations of one of the gang. This fellow, however, from the influence of terror, when brought into court, denied all knowledge of the transaction. The Jury did not find the accused guilty, but were they innocent ? One of them was, indeed, convicted of stealing to the amount of 4s. 11d. On what principle was this modified verdict brought in ? If he was not one of the armed banditti who entered the house and carried off a horse-load of arms, plate, linen, &c. why was he found guilty at all ; and if one of them, what right had the Jury to restrict the punishment ? On the third day of the Assizes, two men were tried for tumultuously entering a certain house by night, with an armed gang of the executors of caravat law. The old woman of the house, who had been guilty of the high crime of setting a piece of ground to a stranger, swore positively

that one of them was of the party. To rouse her, they fired two shots into her bed, and afterwards carded her until they broke two of her ribs. Her testimony was supported by other witnesses, and the accused brought none to rebut it. But the system of terror induced her to plead piteously that they might not be hanged, *as they only wanted to frighten her!* The Jury saved the Court the trouble of interfering on behalf of mercy—they acquitted the prisoners! To go over the Calendar would be a tedious and an ungracious task. In the City Court, in which Mr. Fletcher presided, two men were accused of sedition. They had been tried at the Spring Assizes, before Mr. Baron McClelland, but the Jury not having agreed, they were dismissed without coming to a decision. The Hon. Baron declared there could be no doubt of their guilt. The evidence against them was direct, and they offered no witnesses in exculpation. Mr. Fletcher decided otherwise, and the Jury acquitted them! At Clonmel, Mr. Fletcher sat in the Criminal Court. He boasts that he discharged the Calendar, consisting of 120 names, in two days and a half. We always thought that a Judge might be proud of deliberation. We never knew one to exult in his dispatch on the Bench. Let us inquire—suppose that the Court sat ten hours each day, the 220 cases were disposed of in 25 hours, which is at the rate of more than eight and three quarters each hour, allowing nothing for the time occupied in charging the Grand Jury, &c. A very pretty specimen truly of judicial celerity in doing business,

and of proving the tranquil state of the country.— Two persons were, however, capitally convicted. Of the other cases we only know, that one was that of a person who had broken through the roof of the prison hospital and escaped, for which the gaoler was fined at the preceding assizes. The accused was subsequently arrested and brought to trial for the offence before Mr. Fletcher. The learned Judge asked the Gaoler if he saw the prisoner escape. He replied, that he would have prevented the fellow if he had seen him make the attempt; upon which the Jury were instructed by the Bench, that there was no evidence of escape, and the man was acquitted! At Waterford, several persons were capitally convicted of murder, conspiracy, and other crimes arising out of the illegal combinations of the peasantry. Of the other cases, as well as of the result of the trials at Wexford, we know little; but enough, certainly, transpired on the circuit to satisfy any unprejudiced man that a spirit of disaffection and disorganization was abroad in the country. We have already adverted to the system of terror instituted by the midnight legislators, which dreadfully impedes the course of justice, by deterring witnesses, and even the persons injured, from coming forward to prosecute the guilty. When they do appear, they too generally balance between the consequences of truth and perjury; and the futile testimony of such witnesses, which ought to excite horror, seems only to produce amusement. Nor are jurymen themselves always exempt from such an influence.

This subject we shall treat with more delicacy than the learned Judge exercised while speaking of northern and revenue-case jurors. It is of importance, however, that jurors should ever keep in view the nature of their oaths. The evidence before them, and not their tender feelings or their personal fears, ought to determine their verdict. It is only by acting upon this principle, or rather by a conscientious obedience to their oaths, that Trial by Jury can be a blessing to the country.— Let witnesses and jurors, magistrates and judges, do their duty like honest men who fear God and honour the King, and the evils which the learned Judge attributes to the causes we have been reviewing, will cease to exist.

Having closed his circuit report, Mr. Fletcher proceeds to lecture the absentee landholders of Ireland, and to lacerate the character of her magistracy, clergy (the Protestant, alone, of course!) and gentry. We know not whether a judge be permitted to libel with impunity, but of this we are well aware, that more unfounded charges could not have been brought against any description of men than Mr. Fletcher has published against those whom, in the exercise of his official duty, he ought to have sustained with the authority of his station. We cannot defile these pages by copying accusations of as irritating a tendency as they are unfounded in fact, and which resemble as much the emanations of Fishamble-street Theatre, in the days of triumphant sedition, as they are unlike the observations of a grave and constitutional judge.—

Mr. Fletcher, who has travelled a little and read more, must be aware, that in no well-governed realm upon earth do the land-owners invariably reside in the respective provinces in which their estates lie—but he must be ignorant of the nature of the Christian Revelation and of the dispositions of the Protestant Clergy, or a wilful reviler of both, otherwise he could not have insinuated that any of the Ministers of the Established Church thought that they ought to act under the exterminating commission of Joshua the son of Nun—he should have said of Pope Innocent IV. the father of the Inquisition, but such a slip would have dumb-founded the hawkers of his charge.

Mr. Fletcher, among the accusations to which we have alluded, asserts that the English people are kept in utter ignorance of the state of Ireland by the arts of our most respectable fellow-subjects.—He must either have shut himself out of society for some time back, or have great command of nerve, to hazard the assertion, that they hand about every English tourist “from one country gentleman to another, all *interested* in concealing from him the true state of the country; he passes from squire to squire, each rivalling the other in entertaining their guest—all busy in pouring falsehoods into his ears, touching the disturbed state of the country.” If the Irish gentry were of this wretched description, which we utterly deny, they have been very unsuccessful in their efforts to deceive English visitors. Has he never heard of Young, Hare, Weld, Carr, Wakefield. &c. who

unquestionably do not answer his description of hood-winked tourists? If his library does not comprise modern publications, might not the very politic interchange of the militia forces have satisfied him that Englishmen cannot remain ignorant of the internal condition of Ireland, whatever might be the wish of our country gentlemen? It is really painful to review the farrago of accusations which are strewed through this part of the charge. The learned Judge has the address to speak hypothetically of an oppressive and persecuting lay and clerical magistracy. But he must be perfectly aware that the multitude, for whose edification his charge is circulating through the country by the whole company of flying stationers, cannot draw the line of distinction. If we might speak of these hypothetical accusations as they deserve, we would address the learned Judge in very different language. As it is, we can have no hesitation in saying, that if he knew there were magistrates against whom he could substantiate the charges which he insinuates, it is to the justice of the government and not to the passions of the people that he should apply for redress. The populace receive all that he states hypothetically, and all that he charges positively against the nobility, gentry, clergy, and magistracy of the land, as indisputably well-founded. It arrests the progress of returning virtue, which the wise measures of the government, aided by the judicious zeal of the magistracy, and, in some places, of the Roman Catholic clergy, had called into existence. His laboured inuendoes

against the guardians of morals and of the public peace may exasperate and inflame, but they can neither soothe nor extinguish the angry passions of an unreflecting and combustible people.

As to tythes, the learned Judge is equally acrimonious as on other subjects. He says, they are "a tax upon industry, upon enterprize, and upon agricultural skill," but, after declaiming awhile in this way, he turns round and adds, "far be it from me to say, that tithes are not due to the clergy.—By the law of the land, they have as good a title to their tithes as any of you have to your estates." In this manner of denouncing a system and then excusing it, there is less of the wisdom of the dove, than of something else. The peasantry have another of their hypochondrical affections irritated under the pretence of "soothing" them; but the learned Judge cannot be so deficient in an acquaintance with the human mind as not to know that his apology for tythes will be wholly forgotten in the hatred of the great body of the people to the system which he elsewhere reprobates, or that their dislike to the Protestant Clergy and opposition to the collection of tythes will derive new vigour from his hostile and dogmatical opinions, however erroneous those opinions may be.

After reprehending the Magistracy, the Clergy, and the Gentry, by which the learned Judge exclusively means Protestant Land-holders, the "pretenders to loyalty" share his vituperation. It is very necessary distinctly to understand Mr. Fletcher's meaning in this sweeping phrase; and,

fortunately there is no difficulty in finding it out. He is at no pains to disguise it. All those who stand in the gap in the moment of popular commotion to check the torrent of disaffection come under the rod of his tongue. Every man who exerts himself to bring to punishment the violators of the laws, and who, fearless of vulgar enmity, endeavours to calm the agitations of the peasantry by a vigorous effort to nip the bud of discontent, is included in this insidious denunciation. Mr. Fletcher says, indeed, "a truly loyal man is attached to the constitution under which we live," and we cordially adopt his definition of loyalty; but whilst he continues to palliate the outrages of the lower orders, and to extenuate the fancied faults of those who are devoted to the government—whilst he libels the Judges and the Magistrates by recommending "an equal and impartial administration of justice," and touches gently the disturbances of the peasantry, as occasioned by the cruelty of their masters, and by the operation of "a painful system" and of bitter grievances, it would be a meer affectation of delicacy to doubt that, by the men who bring their "loyalty to market," the learned Judge means not only those who are in the service of government, but all who are interested in the support of the present order of things. In short, all whose loyalty is obvious; for, as he cannot be vain enough to pretend to search the hearts of men for the motives of their conduct, it must be their visible and active loyalty that composes, in his opinion, their unpardonable sin.

The long and ridiculous parade about the stone that was thrown at the learned Judge at Callan might be passed without remark, were it not for a puerile attempt at wit in which the learned Judge indulges against the High Sheriff, &c. of this county. He knows little of the character of that gentleman, or of the gentlemen of the county in general, otherwise he would not speak of them so slightly as he does, unless he be desirous to bring into derision all those who eminently distinguish themselves as the supporters of the Constitution, and the destroyers of illegal confederacies. It is said, indeed, that Mr. Fletcher expressed great chagrin before he left this county ; not in consequence of the nature of his escort, but because his Hon. Colleague was hospitably detained at the house of a Nobleman, whilst no invitation awaited him, and he was suffered to proceed in sombre mood to Clonmel ; but so trifling a cause could not, it must be supposed, operate upon the mind of a Judge. As to the bailiffs who attended him, and their horses, he says they resembled “ so many cossacks in every thing but utility.” This may be very fine ; the factious witlings laugh at it as mighty pretty ; but it happens to be as deficient as the more profound parts of the charge in a very necessary ingredient—truth. The costume, the chins, the arms, &c. of the bailiffs bore no resemblance to those of cossacks. Whether they might be equal to cossacks in utility the learned Judge did not see tried, and therefore could not certainly know—at any rate, the idol of the mob

should not represent a body of stout Irishmen as *inferior to cossacks in utility!* After all that has been published in the papers about the throwing of the stone at Callan, and the vehement denials which have appeared in some of them, Mr. Fletcher admits that a stone was thrown at his escort, and he moreover knows the age of the boy that threw it, although his first information of the fact was from the newspapers, which were not so very particular. We have no desire to exaggerate the affair. It might be the act of a young boy, but if so, it evinces an early-disrespect to the higher authorities, which should be repressed rather than laughed at.

At length, the learned Judge adverts to the two Bills which were passed by Parliament during the last session for preserving the peace of Ireland. He does not expatiate on their provisions—he doubts the necessity of their enactment—he briefly gives the title of the Acts—laments, as he does, more than once in his charge, that banishment, the rope, and the gibbet are always resorted to as the means of tranquillising Ireland; and, instead of exhorting to submission, makes some absurd and inflammatory assertions about tenantry having been, to his knowledge, transported, not because guilty of crimes, or for the sake of justice, but for the purpose of falling their leases. Mr. Fletcher has witnessed by his own confession the commission of many atrocious crimes. Why did he never bring any of the guilty wretches to condign punishment? Because, we fancy, they were merely

ideal cases floating on the surface of a distempered imagination, to which he gives "a local habitation and a name," and by which he wounds from the Bench, and through a disturbed community, those whom he dare not attack in a more direct or manly way. The country, he says, may require the re-enactment of "the Old Insurrection Act," but he is not quite sure of it, because "he is not in the secrets of the Castle." What can he mean by this trite and indefinite phrase, a phrase which has been hacknied by every pettyfogging politician and factious writer, who must have perished if they did not succeed in catching fish in the waters which they troubled, for the purpose, by this and similar phrases? If the government of Ireland have not thought fit to give him a seat in the Privy Council, how can he know secrets which the Privy Councillors are sworn to keep? But this need not provoke Mr. Fletcher. His own "broad bottomed" whig administration, which raised him to the Bench, never trusted him with such secrets; and yet, although they originated the Insurrection Act at which he now sneers, he did not then declaim about the "suspension of the constitution." But times have changed, and he has changed with the times. In a word, all the causes which he represents as operating against the internal peace of Ireland existed while his "talented" friends were in office as well as since. He was silent, however, so long as any prospect of their return to power remained to flatter hope. Now that peace has rewarded the firmness of Ministers and

blasted all the expectations of their opponents. Mr. Fletcher discovers that the whole system of the government of this country is wrong, the whole conduct of the magistracy and gentry oppressive, and even the posthumous progeny of his patrons—the Insurrection Act—is discovered to be a source of avaricious tyranny to the land-owners! This is really a precious discovery, but is made rather late. Either there is no foundation for these weighty accusations, or the grave personage who makes them has discovered in “literary retirement” what more active intercourse with mankind hid from his view; or of which, knowing their existence, their causes and effects, his knowledge lay most carefully concealed while any chance of the return of his patrons to power existed to cheer the gloom of discontent. The peace having dispelled every ray of hope, the learned Judge can no longer brood in silence over disappointed desires. He flings firebrands through the land, scorching with inuendo, and bespattering with turgid accusation, all that is eminent for dignity or worth amongst us. The present Ministry, who have overthrown the colossal despotism of the tyrant of Europe, and withstood the blustering predictions of the party which raised Mr. Fletcher from obscurity, are, however, fixed on the firm foundations of a prince’s confidence, a people’s love, and a world’s admiration. The party which arrogated to itself the title of “all the talents,” is now known only by the cognomen of “all the blocks.” No change of Ministry can open the doors of office to them. The

Irish Government, strong in its own rectitude, despises alike the paper-shot of a Cox, a Scully, or a Fletcher. Like the roaring signals of a sinking ship, their guns are noisy but harmless; and, whilst they indicate distress and hoplessness, they excite pity even in an adversary, but it is mingled with emotions of scorn and contempt.

To conclude—the learned Judge, in his zeal to vindicate the disturbers of the public peace among the peasantry, and to reprobate the strenuous exertions of the magistracy to bring such persons to punishment, seems to have lost sight of several things of no small importance to the right understanding of the state of Ireland. If he duly estimates the baneful influence of his laboured and highly coloured catalogue of grievances upon the inflammatory population of the country, or in relaxing the efforts of any of the magistracy who may be deluded by his rank, there is no epithet in the English language descriptive of a person cloaking himself in a legal robe to enable him to agitate the country with impunity, which ought not to be applied to him. But we rather hope that the “literary retirement” in which, he says, he has spent his time, is the cause of his errors; and that his dreams about OCEANA and UTOPIA have bewildered his mind and unfitted him for the study of human nature as it really appears in the country of his birth. In this case, it is due to society, it is due to himself to recal him to a sense of the folly of his conduct, and to urge him to make all the atonement which a widely diffused recantation of

his errors can effect. If he be not radically corrupt, he is too sentimental for his judicial situation.— It is mercy to the community and even to the people who are labouring under political delusion, to check the progress of crime by prompt examples. His charge may promote disaffection, but it will not save the lives or increase the comforts of the guilty; whereas the strenuous efforts of the magistracy, if aided by honesty on the part of Witnesses, firmness on that of Juries, and steadiness on that of Judges, would very soon, at a small expence of fatal example, cause the laws to be respected, and enable the people to live in peace and security in their own houses. The Magistracy, Justices, and Judges have no right to interfere between the guilty and the laws. It is a mistake to say that our statutes are vindictive.— Penal laws are enacted to prevent rather than to punish the commission of crimes. Every reader has heard of the just and judicious reply of Judge Burnet to a horse-stealer. “ My Lord (said the thief) it is very hard to hang me for *only* stealing a horse.” The learned Judge, in a brief but comprehensive exposition of the principles of punitive justice, answered, “ Man, thou art not to be hanged *ONLY* for stealing a horse, but that horses may not be stolen.” This English Judge did not seem to think, because horses were high-priced, or the issue of paper-money too great, or the activity of magistrates and loyal associations exemplary, or the influence of the dissenting clergy declining, or because of any other plea which the apologists

of horse-stealers might invent, that he ought to excuse the guilty by attributing their crimes to these causes. He looked through human nature, and saw the relation between guilt and punishment, between disobedience to the laws and the honest performance of judicial duty, in the only light in which it can be viewed with benefit to the community. But the humanity and good effects resulting from the firm and impartial administration of justice are more forcibly displayed by the following historical anecdote than obscured by the fine-spun theories or coarse invectives of Mr. Fletcher. "In the days of Queen Ann, during the war in Flanders, when the Duke of Marlborough and Prince Eugene commanded the Allied army, a soldier, under the immediate department of the Prince, was condemned to be hanged, for marauding. The man happened to be a favourite with his officers, who took great pains to save his life; and for this purpose interceded with the Prince, who absolutely refused to grant their request. They then applied to the Duke of Marlborough, begging his Grace to interfere; he accordingly went to Prince Eugene, who said, "he never did, and never would, pardon a marauder." "Why (said the Duke) at this rate we shall hang half the army. I pardon a great many."—"That is the reason (replied the Prince) that so much mischief is done by your people, and that so many suffer for it. I never pardon any, and there are very few punished in my department." The Duke still urged his request, on which the Prince

said, "let the matter be inquired into, and if your Grace has not executed more than I have done I will consent to pardon this fellow." The proper inquiries were accordingly made, and the numbers turned out very highly in favour of Prince Eugene; on which he said to the Duke, "There, my Lord, you see the benefit of example; you pardon *many*, and therefore you are forced to execute *many*. I never pardon *one* therefore *few* dare offend, and of course but *few* suffer."

Until we read the Charge which we have thus reviewed, we thought that Judge Fletcher was a party man. That speech, even if he had not repeatedly declared that he was no party man, would have satisfied us that he belonged to no political party in the state. We knew, indeed, that the whig party, in 1795, during Lord Fitzwilliam's brief viceroyalty, made him King's Counsel, and that the same party, during the Duke of Bedford's short residence in Ireland, raised him to the Bench. But he does not, as he says, belong to that party. They promoted him to gloze a faction, and to that faction Mr. Fletcher's charge, in every line, seems to proclaim his affinity. Parties are generous; they differ in opinion, it is true; but in their discussions they reverence the law, and bend submissive to its voice whenever it demands a cessation of their differences. Faction, on the other hand, seeks the destruction of her enemies by any hand, foreign or domestic; she submits to the laws with reluctance; and plots and conspiracies are matured in her bosom.—Under every free government, par-

ties must exist, and the man who disclaims all connection with party may justly be suspected of favouring faction. But factions are excrescences on the body politic, because they perpetually seek to overthrow the ruling power, and have so little regard to the quality of the means which they employ, that the most hostile to the country's honour would gladly be embraced to accomplish the detestable object. Parties watch over each other, and frankly oppose whatever they think would injure the fabric of the Constitution. What these wish to preserve, factions are eager to destroy by exciting distrust of the governing powers and hatred of the magistracy, by audacious or sullen conspiracies, and by opposing and calumniating the honest parties, who, though they differ in opinion, unite in patriotism. In this country we have too much of the spirit of exotic faction, and, perhaps, too little of that of patriotic party—but Mr. Fletcher is no party-man, *ergo* ———

FINIS.