

A  
**LETTER**  
ON  
THE TONE AND MATTER  
OF  
JUDGE FLETCHER'S  
PRINTED CHARGE.

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*Ita irritatis animis subdere ignem, non esse ætatis,  
non prudentiæ ejus.*

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KO

PRINTED CHARGE.

PLATE VII. C. 35.



A LETTER, &c.

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YOU inquire my opinion of *Judge Fletcher's Charge*. I cannot give it, without entangling you in that labyrinth of topics, which this miscellaneous composition has embraced. Part of my task will be to examine the Peace Preservation Bill; and contemporary Act, for the better execution of the Laws. Can the expediency of these statutes be accurately or duly weighed, without noticing what led to, and perhaps warranted their introduction? Thus observe what you will have rashly brought upon yourself. The conciseness which could compress discussions such as these, within the just or ordinary dimensions of a letter, being unattainable by any powers to which I can make pretension, the fate of Tarpeia must

B

accordingly



accordingly be yours : the boon which you have craved, in too loose terms, will overwhelm you. Nevertheless, I am most inhumanly about to grant it.

A preliminary inquiry, which solicits our attention, is whether all the topics, which Judge Fletcher has introduced, suit the character and legitimate objects of a Charge.—It appears to me that the counsels, fit to proceed officially from the Bench, are those only, which concern the administration of law and justice ; and that from so grave a quarter no topics should be heard, to which *non erat his locus* will apply. Whatever we may assume to be the merit of an opinion, the propriety of declaring it from the Judgment Seat must be determined, by the duties which are there to be performed. If to these it be quite foreign, the Horatian censure should preclude it. The Judge may happen to be eloquent ; *et fortasse cupressum scit simulare* : but however eminent his talent for roughly sketching a mournful wreath, to grace the obsequies of a Constitution, which it implies to be defunct\*, such funereal decorations will, on the

\* “Gentlemen, two Bills have recently passed both Houses of Parliament—one of these Acts consists of a complete Suspension of the Constitution.”

Judge Fletcher's Charge.



the Bench, be quite misplaced. From a High Priest of Opposition, in St. Stephen's Chapel, it may be questioned whether sepulchral rites of this kind would be endured. But at least the Temple of Justice is no fit theatre for their celebration; the ermined Magistrate no proper functionary to preside at their performance.

How shall we best determine the topics proper for a Charge? By defining the legitimate functions of those to whom it is addressed. In the one in question, for example, whatever tended to assist those to whom it was delivered, collectively as Grand Jurors, or individually as Magistrates, to discharge the important duties which either character imposed, was regularly and correctly introduced into that discourse;—provided always (in legal phrase) that nothing therein contained was deficient in respect, towards those high Authorities in the State†, to whom as much deference is due from the Judges of the Land, as these may, in turn, claim from the forensic auditories to which they dictate.

It

† That passage is not too respectful, in which it is suggested that two important Bills, *one suspending the Constitution*, passed both Houses of Parliament, without inquiry into the State of the Country, and almost without observation.



It is nearly superfluous for me here, in a sort of parenthesis, to observe—that the text to which my present commentaries all apply, is a short publication, entitled *Judge Fletcher's Charge*. Where the contents of this impute any thing reprehensible to the Judge, I am most willing to suppose that the publisher has misreported;\* and should it unexpectedly turn out that passages, of which I presume to question the propriety, involve no misrepresentation of what his Lordship said, I shall in such cases be disposed to doubt the justice of my censure; or admit at the very least, that whatever fell from that learned Judge,—was by him pronounced with the most laudable intentions.

But to return to the test which I have ventured to establish.—Which of his duties is a Grand Juror assisted to discharge, by being informed that Rents are grown exorbitantly high? Is he therefore to throw out Bills of Indictment against those, who with a strong and lawless hand, would preclude all competition,—and terrifying every rival bidder into silence, establish a comfortably cheap *maximum* for farms? The assertion of Judge Fletcher, that lands bear too high a price, may be, and I fear is, in some degree

\* It may be inadvertently.



degree well founded ; and though my information on the subject does not qualify me to be decisive, I will never stigmatize as falsehood, what I conjecture to be truth. But will the opinion of a Judge operate to lower the rates of land ? Is it not more likely to *raise* our peasants—than to *reduce* our rents ? I doubt the wisdom of proclaiming a grievance, which we cannot cure : of proclaiming it to an irritated and deluded population—too long and successfully tampered with by the agents of Sedition ; and who now assured upon authority, that they are right in thinking themselves aggrieved—may conclude that they are proceeding under the same high sanction, when aiming through violence and outrage at redress, they but fly from grievance,\* to take refuge in destruction.—The Judge's charge yet tingling in their ears, shall a Grand Jury, full of the extravagant and grinding price of land, send to trial a starving tenant, who would have “reformed” the crying evil,—and this not “indifferently,” but “altogether” ? † Shall a petty Jury convict the patriot of a capital offence ? The Judge sentence him to undergo the heaviest penalties of the Law ? and, with the passage on which I am commenting, of his

\* If this exist.

† As Hamlet advised the Players to do.



his profection before his eyes, decline even to recommend to a portion of the Royal Mercy, this Redresser of what himself had called intolerable grievance?—Might not our injured and neglected Convict undertake to recommend himself,—and copy into his Memorial the very words of our learned Judge?† Might he not dwell upon “the extravagant rents which are “bid for lands,” for which “the uttermost penny is exacted by Absentees, who strip their “Irish Tenants of even the comforts of an English Sow? Who letting their lands when out “of lease, by public auction to the highest bidder, have no gratitude for past services, no “preference of the fair offer, no predilection for “the antient tenantry, be these never so deserving,” in short, who feel no attachment to any “thing but “the highest price,” and visit “with depopulation the tract of country which “withholds it”? Proceeding in his complaint, to that “harassing payment of tithe,” which is so unmercifully “superadded to these exactions,” might he not close the climax, with those enormous “County charges,” which gleaning the scanty profits, that Rack Rents had left behind, cruelly waste the poor man’s pittance on the rich man’s job? Might he not then terminate his expostulation by inquiring, chased from the spot where

† Those, I mean, which are ascribed to him by the printed Charge.



where his earliest breath was drawn, incapable of devising other means than tillage, of existence, what the oppress'd and wretched peasant was to do? Was it "surprising, if thus harassed, he  
 "felt nothing to remain, but with strong hand  
 "to deter the Intruder from his farm, and ex-  
 "tort from the weakness and terrors of his Land-  
 "lord, a preference—which his gratitude and  
 "good feelings should have given"?

I do not say (would to Heaven I could!) that no part of the above picture is fairly taken from the life;—and if the passages which I have extracted from what is called Judge Fletcher's Charge, did really form a part of what he said,—I make allowance for the generous sentiment which hurried him into such description; and heartily do I wish that by removing the foul original, any selfish suborners of outrage who may have supplied it, would prevent the honest indiscretion of a Judge from exposing so disgusting a likeness to public view. But in the mean time, I not only doubt whether the copy be not overcharged; but more than doubt the prudence of exhibiting to an excited populace—what seems but too well calculated to goad their discontent; and might, to minds so unenlightened, appear to justify their excesses.

Its



Its connexion with England I think essential to the well-being of this country. But in the best of what is human, evil lurks among the good. From great blemishes no sublunary establishment can be free; and *optimus ille est, qui minimis urgetur*; is all that can be said. Thus amongst the pernicious but inevitable fruits of that connexion, which yet we pronounce to be invaluable on the whole, we shall feel ourselves obliged to enumerate absentees. Let our Statesmen do their best (they cannot well be more usefully employed) to mitigate an evil, which they cannot radically cure. But let us not rivet our attention on the ill, and overlook the good, which so much more than countervails it. Above all let the Judges of this land beware how they feed a disaffection, to which our commonalty seems too prone; and which our traitors have been long with fatal industry fomenting.

To that part of the Charge (as published) which relates to our paper currency, the remarks which I have just been making on another part, apply. Why tender our seductive pity to the embryo utterer of a forged note, whom, when on the faith of this compassion he shall have uttered it, we must hang? The invitation to "*Master Barnardine*" was less deceitful; when called on to "*come out,*" he

was



was fairly told—it was *to lose his head*. But who have in fact deluged the country “with this paper”? Napoleon and his Allies; amongst whom with grief and shame we must include those Irish friends, who long since clamorously anticipated Judge Fletcher’s grievance list;† and who are now reported to be as loud in their commendation of his Charge. But has not Government done its utmost to check these “*snows of paper*,” and remove the effect, by annihilating the cause? Have not their efforts at length been crowned, by that pacific consummation, long so little to be hoped for, yet so devoutly to be wished? Meantime, without the help of a circulating medium, could the internal traffic of the country be carried on? For this, were we not obliged to content ourselves with paper? And was it not indispensable, towards the maintenance of public credit, to guard against those frauds and adulterations, to which a currency of this sort is inevitably exposed? Again, how are the Ruling Powers, or Higher Orders of the State, responsible for the establishment or “failure of private Banks”? Or what have Magistrates, Grand Jurors, or Judges to do with this? Why then—by describing this paper currency, with its fruits, as one amongst the principal causes of disturbance,

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—resort

† As given in the publication above noticed.



—resort to what, involving no just censure upon Government,—and suggesting no possible measure of correction,—must be confessed, if it does not palliate (and thereby encourage) crime, to be a nugatory topic, accomplishing absolutely nothing?

The publication which I am examining§ proceeds as follows. “In the next place, the “country\* has seen a *magistracy*, over-active “in some instances, and quite supine in others.” The propriety of referring the disturbances of Ireland to the demerits of a Body†, which the Public ought to respect, I cannot avoid doubting; and must therefore be allowed to question. It is observable too that the sentence which, thus stigmatizing the national magistracy *en masse*, echoes † language, with which Faction had long rendered us familiar, seems also to envelop my Lord Chancellor in blame; for having neglected to exercise those censorial powers, with which the Constitution is supposed to clothe him. That it is the Judge’s duty, and thereby becomes his right, to animadvert on, and

§ And to which alone my observations are to be confined.

\* Ireland.

† Distributed into two classes; the over-active and the supine.

‡ Inadvertently I admit; supposing the Report to be here a faithful one



and represent, the conduct of all Magistrates who come within the sphere of his Assize Commission, must be at once admitted; and is not here denied. With me the only question is that already raised, viz. whether it be decorous or expedient, to address to the Populace an anathema from the Bench, denouncing the Corps of Magistracy in Ireland as tainted;—thus stamping a degree of credit on the uproars of Sedition; and impliedly censuring the highest Dignitary of the Law, for having suffered a contagion so mischievous to spread. Grant this body to be unsound—and you indeed admit that “Justice is poisoned at its source;” inasmuch as to informations, taken before some justice of the peace, nearly the whole of our Crown proceedings may be traced. Nevertheless, since a scrutiny has been thus publicly demanded, (with honest zeal we must presume, but surely not with sound discretion,) I make no doubt that, *if requisite or expedient*, it will be granted: and though it must be extremely irksome, and difficult to carry on,—yet conducted with delicacy, firmness, and circumspection, it might possibly be attended with advantageous results. Perhaps some instances of supineness, and activity, could be shewn. But with respect to the latter, let me be understood to hold, that a genuinely active Magistrate is as respectable, as he is useful.



useful. One I mean, whose activity, no less deliberate than prompt, does not compromise his dignity; much less hurry or betray his justice. A Magistrate cannot be "over-active," as long as his exertions are of a right and appropriate kind; which they will be, while conducting himself with integrity and decorum, he marks the limits of his duty; and never steps beyond them. That cannot be exorbitant, which keeps within its orbit. A gadding and counterfeit activity must therefore be what the learned Judge condemns; and from his reprobation of this, I do not disagree. It is one of those excesses, into which men are betrayed, who, instead of confining themselves within their proper spheres, are like *Bottom*, ambitious of acting many parts. A man's conduct in his private capacity I do not seek to fetter: but in his public character, every Magistrate is a Judge; who, whether he be Justice of the Peace, King's Bench, or Common Pleas, should never seek, while acting *ex officio*, to pass the settled line, which circumscribes his province; but ought in each of those situations, to be that *pietate gravis vir*, whose appearance is the signal for tranquillity and decorum: one who *regit dictis animos, et pectora mulcet*; who assuages and controuls; not irritates or inflames†. Never (so far as human

† Especially if he have to do with matter so combustible as the *ignobile vulgus*



human infirmity will allow) should Prejudice or Passion be seen to warp his impartiality ; or ruffle the even tenor of his judicial calm.

The Orange Societies, as one of the causes of disturbance, supply its next topic to the printed Charge. The learned Judge is there represented to have affirmed, "without any hesitation," (for which, indeed, there was no room), "that ALL associations of persons," (the capital letters are not mine) "bound to each other by the obligation of an oath, in a league for a common purpose, endangering the peace of the country, are combinations contrary to law." Let me now, in my turn, with the assistance of large letters, give emphasis to the words ENDANGERING THE PUBLIC PEACE. I do so merely for the purpose of suggesting—that whether in pronouncing Orange Associations to be illegal, our learned Judge was warranted or not, will turn on a previous question, which he has forgotten to discuss; viz. whether those societies, *in their frame and constitution*, be leagued for a common purpose, *endangering the public peace*. If not, however objectionable we might for argument suppose them, they would not fall within that class, which he has declared to be unlawful † ; nor would

† Here and elsewhere, I assume for argument, without meaning to pronounce, that the sentiments and language which this publication attributes to Judge Fletcher, were really his.



would any excesses, committed by Orange-men, operate *ex post facto* to il-legalize the institution ; but the responsibility would all attach upon the individual transgressors. For the rest, if a rumour, which I do not vouch, were true,—that the Judge of the Prerogative Court is an Orange-man, I should leave him and his friend Mr. Justice Fletcher to discuss, with whatever temper these two Civilians could command,\* the question, whether “bills of indictment should “be sent up,” wherever “the charge” of being an Orange-man is sustained. In Fermanagh, one of the counties of that North West Circuit to which his Lordship so frequently alludes, I doubt whether the consequences would be fatal to the Doctor; even though the (perhaps groundless) rumour, which I have noticed, was “a charge” distinctly made, and “properly sustained.”

Another report which has also reached me, is, that all oaths, even that of allegiance, have been abolished in the Orange system ; which accordingly is not now, nor was when Judge Fletcher’s charge was given, “a combination “bound together by an oath.”

I am not an Orange-man ; but I have always understood that the originating and common purpose

\* Judge Fletcher is L. L. D.



purpose of this institution was—to venerate and preserve, as a sort of sacred flame, what, at the Revolution was solemnly recognized as the true, and hailed as the immortal Spirit of our Constitution. If the same spirit animate our Establishments at this day, I find it difficult to conceive—how such a purpose can, abstractedly considered, endanger the public peace; or render those whom it has united an illegal combination. Widely different the case of a Society would be, whose federative principle was not Loyalty, but Disaffection. *Such* a common purpose must endanger the country's peace; since from every well-affected subject of the land, its accomplishment, or furtherance, must encounter opposition. But though as well of Orange, as of Ribbon Associations, what I shall call the technical illegality were ascertained, and though consequently a Judge, when required, would be obliged to wield the law indifferently against them both, does it follow, that in the mean time he should step out of his way, (especially during periods such as these in which we live) in order to link together, and involve in common stigma, bodies substantially as distinct as true Allegiance is from Treason?

Yet his Editor would have us believe that Judge Fletcher went still further; and while he outlawed and anathematized both the  
Orange



Orange and the Green, yet contrived to reserve his emphasis of condemnation for the former ;— which he reprobated as productive “ of the “ most mischievous effects.” To such a pre-eminence I cannot admit its claim ; nor join in the pursuit of this obnoxious colour, with an antipathy as rational, as that which turkey cocks indulge in against red cloaks.

Neither can I dissemble my surprise, that while giving to Orange Societies a rank so prominent and distinguished, in his list of the main sources of disquiet in this country, his Lordship should have so totally overlooked the Catholic Board ; or his Editor have so entirely omitted this portion of his Charge. To me that Board appears, in the agitations of this island, to have acted no obscure or secondary part. Much of the tempest, in which we have tossed, was of their brewing. Day after day they “ untied the winds ; and bad them “ fight against the Churches.” Day after day they scattered the seeds of rebellion far and wide. But at length the mighty whirlwind, in which they rode, is hushed ; the storm of Bigotry and Faction, which they directed, is appeased. It fell, soon after Paris had struck to the Allies\* ; and I shall only now observe, that

\* The French Capital surrendered on the 31st of March. Two months afterwards the Board yielded to the combined efficacy of the Proclamation of Dublin, the Capitulation of Paris, and Abdication of Fontainebleau.



that while the hurricane endured, its loudest fury roared against that not disloyal colour, of which Judge Fletcher appears, from his printed charge, to think so ill.

Upon the merits of the Orange System, on the whole, with a view to its salutary or pernicious influence on the state of Ireland, if it be not very difficult to form, it at least is somewhat irksome to offer an opinion. I believe, if amongst the superior members of this order, (to the loyalty of which our Country has been more than once indebted,) some hot-headed and intractable enthusiasts may be found, who mistake bigotry, and a narrow *esprit du corps*, for public spirit, yet that generally in the conduct, principles, and sentiments of *these*, nothing materially reprehensible prevails. But the order comprises various degrees of rank and cultivation; and to many of its *tiers etat*, (I will not call them its *canaille*,) I more than doubt whether such favourable testimony could be borne. If amongst these *poor knights* of the Order, Orange discipline cannot check a rancour, which in vulgar soils the Orange *principle* excites, consequences more or less pernicious must ensue; and the system be in some sort answerable for these mischievous results.— Again, if in times of peril, the Orange institution have been found of use, may not the very energies and union which made it so, but render

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it the more objectionable, as a permanent and peace establishment?—In claiming continually to keep guard over the spirit of the Constitution, does it not practically impeach the vigilance, intrude upon the functions, and usurp the legitimate privilege of the more regular Authorities of the State? Does it not assume a political posture, of at least concurrent superintendence, which it scarcely suits the dignity of Government to brook? And is there, in the mean time, no ground for apprehension, that the flame, which Orange Lodges fan with so much zeal, may in some enthusiastic moment, blaze too high, and the tranquillity of the country be caught in it and consumed? Nevertheless, if considerations of State Prudence render it desirable that in times no longer critical, the Orange Union should dissolve, still it is but justice to bear gratefully in mind, the sound and honourable principle, on which these Societies were founded; the aid which they lent to Ireland, in it's need; and that conclusive testimony to their political uprightness, which may be extracted from the abhorrence, in which they have been ever held by Treason. Bodies such as these ought not to be hooted down; or disbanded with any marks of ignominy or disgrace. —We should beware of inadvertently promoting the views of those, who while they vociferate against the Orange glare, are longing to refresh their aching eyes on Green. It were impolitic as well as base, to turn our backs on men, who



who never turned theirs upon the King and Constitution ; it were folly to allow the flame of loyalty to expire ; while we were cherishing a spirit of—perhaps treacherous—repose. No : with that “gratitude for past services” which Judge Fletcher recommends, let us take leave of liege societies, whose efforts are no longer wanted ; and casting a veil over those excesses, into which some members may have fallen, conjure the Body, in the name of the Constitution, to dissolve. Should the hour of danger come, we know they will be found, reunited, at their post :—but in the mean time they should remember, that Political Associations, acting independently of the Executive Government, however legal we may suppose them, are anomalies in the State.

Private Distillation supplies Judge Fletcher with another topic. He inveighs against it as “one of the greatest practical mischiefs ; by which the morals of the people are depraved, and their proceedings rendered riotous and savage.” Nay considering the ferocity which spirituous liquors are known to inspire, he does not scruple to include murder in the catalogue of its effects.—Be it so. Towards extirpating what is branded as so ruinous a practice, has not Parliament adopted measures of so vigorous a nature, that some are even disposed to cen-  
sure



sure them as too severe? Why then accuse Government of applying, to the disorders of this country, no remedies but banishment, the gibbet, and the rope? In truth (and by the way) if the Accuser had looked back, but to the Acts of the last Session, he would have found the Minister for Ireland, attentively observing the situation of our humbler classes; not despising those seeming *nugæ, quæ seria ducunt in mala*; not disdaining to examine the *minutiæ* of lowly grievance; and pry into what may be called the early rudiments of tumult. He would have discovered him employed in assisting the poor man, to recover the little earnings of his industry, when withheld, without the usual costs or delays of litigation. He would have found him making provision for the prevention of assaults, (that is to say, nipping riot and disturbance in the bud), by rendering it easier, and less expensive to the assaulted, to obtain redress. I allude to chapters 116 and 131 of the Fifty-fourth of the King.

As for the laws for suppressing illicit distillation, I doubt my being properly qualified to criticize them; even as far as they can, decorously, be made the objects of animadversion. I have prejudices to encounter; which may not be the more easily conquered, because they are my own. I therefore listen to myself—and do



do you also listen to me—with distrust ; more especially when I have acknowledged, that persons of whose good intentions towards this country I have no doubt, and of whose judgment I have every reason to think well, are not only advocates for the existing system ; but (to adopt the language of their own confession) would contemplate its abandonment with very great reluctance.

Nevertheless, this Still Fine Law, having been enacted, tried, relinquished, and resumed, may be considered as holding the Legislative favour by a precarious sort of tenure ; and as exposed to the possibility of being abandoned once again. If this were to occur, I might be led to think that the doubts started by many, of its expediency, had some strength : on the contrary, if the present arrangement is persevered in, I shall conclude, that in the objections which are made to it, there is no sufficient weight ; and that whatever inevitable evil it may occasion, is abundantly countervailed, by the benefits which it procures.

I have heard persons of intelligence, very confidently assert, that it was upon the point of effecting its purpose, at the moment when it was laid aside. But that it was ineffectual appeared ; that it would have become efficient, has not yet been proved.

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Be this, however, as it may, for the removal of the mischief, against which this system points, it will not be denied that great sacrifices have been made. Thus the Law, as it now stands, involves the abrogation of certain rules of evidence, which, founded in first principles of morality and justice, are usually suffered, in other cases, to prevail. On the contrary, in these, the testimony of a person, directly and strongly interested, is received. If he were not scrupulous, and had credit, he might earn a handsome, if not an honest competence, by oaths. A callous conscience would, in this case, be his capital; while the Gospels of God were the implements of his trade; and the temporal pains of perjury the sole impediments to his fortune.—The oath of a person, tempted as I have described, may not only produce the punishment of a criminal, real or supposed, (attended with an accessory, and sort of *qui tam* gratification to himself;) but may frequently involve in heavy penalties, many others, who, through the medium of this system, appear guilty of having connived at what, to a cursory observer, it seems highly improbable they should have known; and who, be their actual innocence what it may, must abide the consequences of constructive and technical offence. Meantime, the peasant inhabitant of a large townland is puzzled, to conceive how one, really not guilty,

can



can be an offender by implication, and in point of law; nor, whatever be the stock of Irish Disaffection upon hands, does this seem likely to be materially diminished, by affording an excuse to our Peasantry, for imagining that under our law, the path of innocence is not always the road to safety. But I already mentioned that the merit, attributed to this system, is not so much that the price which it pays is low; as that the benefit which it purchases is great. I mentioned its being deemed necessary that sacrifices should be made; and formidably much we should have sacrificed indeed, if the Subject once mistook for his oppressor, that Law, which he should cling to, as his protector and his friend.

Having already warned you of my bias, I may with the less risk of unduely influencing your judgment, continue—shall I call it my *tirade*?—not indeed against the system; but against certain faults which I suppose it to contain; faults, outweighed perhaps by excellencies, to which my prejudice is blind; but which are visible, I again confess, to abler men than me; and whose integrity, though I may equal, I am far from claiming to surpass.

Let me inquire then, how are the inhabitants of a townland to secure themselves from fine?

Shall



Shall they turn their industry into a new channel, and instead of cultivating their farms, or following their trades, adopt the profession-errant of Still-hunters and Informers? This restless calling they could give over, as soon as illicit distillation was put down. But, for this event, (mutter those *frondeurs*, of whom I suspect myself to be one,) what calends have they to wait for? the Latin or the Greek? *Rusticus* (cry they) *expectat dum defluat amnis*; but, unless gaugers are incorruptible, this river of strong waters may flow on, as long as it continues their interest to let it run. If the penalties on collusion be replied, the malcontents rejoin, that he must be a slovenly and incautious knave, who cannot elude the probability of detection; an improvident one, who cannot provide against the worst, by indemnifying himself in advance, out of the profits of his fraud.—Penalties of collusion! The pains of perjury stare every interested witness in the face; and menace him with the grievous consequence of false swearing. Yet the dissuasive is not held to be equivalent to the temptation; and Interested and Incompetent are synonymous at law.

It is unquestionably the interest of the officer of excise to procure convictions, of individuals, parishes, and town-lands. He has an inducement to obtain them, in the rewards provided  
by



by the law ; and probably the Revenue Board encourage successful exertions of this kind. It is because he is thus strongly interested, that in other cases his evidence would be rejected by the Court. But is it equally the interest of the gauger, that private distillation should have an end ? That his lucrative occupation should be o'er ? That premiums upon one side, and (who knows but) compliments on the other, should cease to maintain the *embonpoint* of his purse ? That the hen, which is laying him golden eggs, should be destroyed ? No : the integrity of the officer is that on which we should rely ; for the wish which his interest, if listened to, must breathe, would be that fines, convictions, and private stills should all abound. His gain, he knows, being accessorial, *sequitur suum principale* ; and where would be the perquisite, if the illegal practice were put down ? Accordingly, if he were not a high-minded man, his dread of poverty might seduce his will to give consent, that those Spirits should "*flourish in immortal youth*," under whose influence he enjoys so warm and comfortable an existence. Nay, even for their frail and mortal tenement, The Still, some officers are said to have felt so pious a regard, that as long as this was at all able to perform its functions, their tenderness and humanity (fomented by a stipend regularly paid them by the owner,) left it wholly unmolested ; and

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only



only when at length, quite "*batter'd and decay'd*," and full of "*chinks, which*" working and which "*time had made*," it had become altogether useless and effete, did they deliver it, without scruple, to the clutches of the law; gravely pocketing the rewards ensuing on so invaluable a consignment; and this without the risk of having their feelings wounded, by any "*heart rending woe*" on the part of the Distiller; with whose concurrence, on the contrary, the seizure had been made.

There are others besides the ganger, (I admit) whose interests would fain persuade them to join in this sneaking kindness for unlicensed whiskey; which is indeed an *esprit folâtre*; as capable as Jupiter, or Proteus, of assuming various seductive forms. For the landowner it is rent; for the land occupier it is a market; for the distiller and his *turris aeneæ*\*, it is a shower of gold; while, in the form of a strong elixir, it at least flatters the consumer's palate; if it does not promote his health.

For a wholesome and agreeable malt beverage this latter, in general, will look in vain; and of whiskey there is none worth drinking, that is not contraband. Accordingly he thinks it hard, that it should be criminal to taste the only good liquor he can find; and meritorious to extirpate the race of persons who supply it.

There

\* Which may, in excise language, be rendered *Copper Still*.



There is a ludicrous anecdote, so connected with what (still in my grumbling character) I have been observing, that as it is authentic, I am tempted to record it. An unlicensed distiller, after conviction, being called upon, to say whether he had any thing to offer, in the way of mitigation, replied that he was "ready to prove, " that since the last Assizes, two loyal Protestant Yeomen had been poisoned with Parliament whiskey ;" as he was pleased to term it.

Of this tragi-comic murder, I of course fully acquit the system, to which this convict would have ascribed it. But I have already fairly, and more than once, put you on your guard against prepossessions, from which I doubt my being exempt. When I recollect the opinions of some, whom I very highly, and not less deservedly respect, I cannot but surmise that I see things through a medium, which distorts the beauty and fair proportions of what I look at, and they approve ;—a medium which gives a strong colouring to the blemishes, and obscures the merits of the system ; thus leading me, unawares, to overcharge the one, and pass the other by unnoticed.

I may be biased by my remembrance of the alarming consternation, which I happened to witness about six years ago, produced by fines



to the amount of fourteen thousand pounds, imposed on a county neither opulent nor extensive. Yet there, with Judge Fletcher, I am disposed to believe, that Perjury (with becoming indifference) had wielded the buckler, as well as spear; now striking at the Smuggler; now warding off Revenue blows; and in short that the proceedings, which ensued, drained the country of at least as much morality, as cash.

But whatever may be my bias, (supposing me to have any,) I at least have no prejudices, which forbid me to admit that putting down the practice of illegal distillation, abolishing the frequent and inordinate use of spirituous liquors, and substituting a different beverage in their place, is an object of the very first importance; and this still more in a moral, than in a fiscal point of view:—though by the way, it might, I believe with perfect truth, be said, that we scarcely could improve the morals of the People, without *thereby* augmenting the revenues of the State.

But we do little in ascertaining the utility of an *end*, unless we add a judicious choice of *means*, for its attainment. These should be warrantable; it is not enough that they be efficacious. What could be more efficient than the forest laws of William the Conqueror?

Or



Or in modern times, than the system of Buonaparte? If the means be just, and honourable, and adequate, they are well chosen. Yet still another point will deserve consideration; viz. that the bargain which we make is but an ill one, when we pay for any thing, a great deal more than it is worth. Accordingly the sacrifices, which are made, should in every case bear a proportion to the acquisitions which are sought: we ought not to incur an expenditure of *means*, beyond what the *end*, if gained, could in benefits repay. If on the one side I beheld Finance,—and Disaffection, with Immorality on the other,—I should never wait to *tot*; but on the view of such debet and credit entries in the State Book, at once pronounce the balance to be against the country. What follows? That though the age of Chivalry be gone, while that of Calculators is supposed, by Mr. Burke, to have succeeded,—and though it is desirable that the Treasury should be full,—yet our Legislature will never suffer the State Coffers to be replenished, at the expence of the Religion, Morals, or warm Allegiance of the Realm.—To return; and, so far as regards this topic, to have done:—Judge Fletcher should have recollected, that without resorting to either “rope or gibbet,” Government had strained every nerve, to close that “source, from which a dreadful “torrent of crimes and evils has flowed in upon

“OUR



"our land;" and I too should remember that the system, adopted for this purpose, is approved of by sound hearts; and wiser heads than mine.

"Tithes (proceeds Judge Fletcher) are generally complained of as a great grievance." He very fairly and distinctly adds, that "the Clergy have as good a title to their tithes, as any of the laity have to their estates."—Here in fact is one of the difficulties of the case. Tithes are *quasi* private property; so that, independently of that respect for the possessions of the Church, which connects itself with our regard for the interests of Religion, our hands are in some degree tied, by that principle, and almost sentiment, inherent in the constitution, which holds private property to be inviolably sacred; exempt from every claim, so long as the proprietor incurs no forfeiture, save its share of contribution to the exigencies of the State.—Again, tithe being a sort of corn-rent, not liable to be affected by fluctuations in the value of money, the Church enjoys, in this way, an advantage, of which we must be reluctant to deprive it†. Nor in theory does there seem to be any thing unfair, or discouraging to agriculture, in the demand of tithe: especially if we so far

qualify

\* Charge.

† See Blackstone's Commentaries, B. ii. c. 20.



qualify this theory, as to recollect, that of the titheable produce, the Parson seldom receives above a twentieth; if so much.

Suppose a farmer to have determined that it will be a good speculation to till ground, from which he calculates on a return of forty barrels of corn;—will the speculation cease to be a good one, if it produce him no more than thirty eight? Suppose the husbandman to be a Catholic; and deduct another twentieth, on account of his Priest's dues. Surely if, for a produce of forty barrels, it was worth his while to till, he must still be a gainer, though, for him, the crop be reduced to thirty-six.\*

Nevertheless, I fear that in practice Tithe is found to be a burthen; and it is said to be even more vexatious, than it is burthensome; perhaps from the peeping scrutiny and *espionnage*, which sometimes accompany this claim. Add to which, that (whether with or without reason) it is, at least amongst our lower orders, an extremely obnoxious, and unpopular demand. The circumstances of this Country, with reference to the two Religions which divide its population,

\* To object that from this you are to deduct rent, &c. &c. would be mere declamation. My hypothesis is—that the farmer, aware of these deductions, thinks it worth while to till, on the prospect of a return of forty barrels.



pulation, must also be admitted to bear upon this subject. But it bears on it, in a two-edged and complicated way. On the one hand, to the Roman Catholic Peasant it may seem hard,† that he should be called on to contribute to the maintenance of two ecclesiastical establishments ;—while on the other hand, the present situation of the Church of Ireland is not one, which encourages a tampering with its rights. Therefore though the subject may deserve the attention of our Legislature, yet their wisdom will feel the necessity of touching it (if at all) with an extremely delicate and cautious hand.

Upon the matter of Presentments, it appears to me that the observations, made by the learned Judge, were, in the general, highly pertinent and proper ; and which it was quite within his sphere to make. In truth this too seems a subject, to which it might be well if the mind of Parliament were turned \*. In the Presentment department—

† It is not hard in theory, that the liberally *tolerated* should assist to maintain the established Religion.—*Quære*—Might not tithe, taken out of the Clergyman's pocket, pass from thence into that, not of the Tiller, but of the Owner of the Land, leaving the former where he was—and merely changing the name of what is demanded of him, from *Tithe* to *Rent* ?

\* The Chancellor of the Exchequer has given notice of his intention to bring this subject under the consideration of Parliament ; and has invited communications from all quarters—with the view of correcting any abuses in the system.



department,—over which the Judges have rather a nominal and formal, than a solid and really efficacious controul,—it is confidently alleged, (and with what degree of truth, must deserve to be ascertained,) that there lurks a deal of jobbing, profusion, and abuse. In the conduct of different Grand Juries, dissimilarities may be found,—corresponding to the different materials, of which they happen to be composed. These are, in some places, most respectable and aristocratic : in a few only have I chanced to find the Grand Inquest (*soi-disant*) consist of an ignorant and half-bred race ; gentlemen—rather by the courtesy of others, than through their own ; and with whose manners their knowledge and sentiments appeared to be marvellously on a par. But I doubt whether, in any instance, investigation would be altogether superfluous, or inopportune. Unquestionably the cess is, in many counties, extremely high. Still, however, it is important to bear in mind, that the expenditure of what has been thus exacted—is all at home ; while to the poorer classes of the county, in the form of the price of labour, a considerable portion of their contribution is returned. Accordingly, whatever corrective measures Parliament may adopt, they will never think of making the change an arrangement of finance ; or of turning the assessments which the people now endure, into the

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far



far more exhausting channel of general taxation. Any system which they substitute, will be one calculated, *bona fide*, to alleviate the burthens of the poor. To lighten these, (if it were possible,) would be wise, as well as just. The comforts of our lower orders are too few. Not one of them can boast of having a fowl in his pot\* ; too many of them are even without milk to their potatoes. From a sort of torpor, which better prospects would remove, they can be easily roused to a smarting sense of those privations, which, even while they are thus slumbering over them, they feel. Of these propensities to a dissatisfaction, for which there is too much room, and of the ignorance and simplicity which attend upon their lot, the Factionous, inhumanly as well as traitorously, take advantage; and industriously whet and point the poor man's discontent, against a Government which does not injure, and which wishes to protect him.—Part of what was addressed to Landlords, at Wexford, on this head, (though mixed with matter of which I less approve,) appears to be well deserving of attention ; and what, if Land-owners alone were listening, one might be glad they heard. The Irish Peasant feels that he wants something. The Agitators persuade him that some political change (say Catholic Emancipation) is what he wants. But if, under the fostering care

\* I allude to the wish of *Henri IV.* on behalf of the Peasantry of France.



care of a Protestant Landlord, he found himself and his family surrounded with all the warmth, and comforts of a rustic plenty,—must he not soon acknowledge that he wanted nothing more? not even seats in the House of Commons, for the Members of the Catholic Board?

I have now, by no methodical or formal course, reached opinions of Judge Fletcher, with which I less agree;—those, I mean, which regard the state of Ireland; and the Bills lately introduced into Parliament, by *Mr. Peel*.

To infer the general tranquillity of the country, from that orderly state, which we will suppose Wexford to enjoy, would be to argue from particular to universal; a sophistry, in which the learned Judge would be the less likely to persevere, because he cannot have forgotten that this county of Wexford might be *now*, that “moral curiosity,” which he describes it as *formerly* having been. Neither can he dub the Calendar a sure criterion of the situation of things within a County, when he calls to mind that, in Tipperary, “the appearance of one “hundred and twenty names, on his Crown “Book,” did not deter him from denying that County to have been materially disturbed. He will feel that if a crowded calendar involve a *suggestio falsi*,—the scanty one might originate in



in *suppressio veri*. If over active Magistrates might "crowd the gaols with prisoners, and "swell the calendars with imaginary crimes,"—"supine" ones, on the other hand, might leave a County full of guilt; while its gaol was, notwithstanding, empty, and its calendar a blank. Nor is this the more unlikely to occur, if Magistrates have been at issue on the true state of the County. For will those who have called it tranquil, be vigilant searchers for disturbance, or prompt, by numerous committals, to disprove their own assertion? Thus, on the state of Wexford, we find different opinions to have prevailed; and Judge Fletcher to have wanted sufficient means for pronouncing which of them was the more correct. For my part, I can conceive a County's being in an unsettled and lawless state,—with yet, but little business to do in its Crown Court. If persons, from terror, partiality, or connivance, be reluctant to lodge informations, or appear as witnesses in Court, how will calendars or convictions ascertain the state of the country? I look on that to be at once a perilous, and not unprecedented case, in which, while the inhabitants are anxiously keeping guard over their own safety, the Judges of Assize have a very easy time.

Judge Fletcher did not consider the County of Tipperary as disturbed. Do the Magistrates of Middlethird vouch the rectitude of this opinion? Have these, at the expence of truth, con-  
 sented



sented to impose a heavy liability on their barony, in order to compliment the Government, and contradict the Judge? If not, it only follows, that in that frequently disordered county, the *ignes suppositi* happened to escape the observation of this latter.

As to the County of Kilkenny too, he apprehends that there was considerably more of "bustle and parade," than the real state of things either warranted or required. On this, however, he refers to the authority of *Judge Day*; who, from having presided in the Crown Court, was more competent to form and deliver an opinion. He *has* delivered one. It will be found in his eloquent and published charge:—in which we discover a strong picture of the criminal complexion of the County; an expression of complimentary surprise, that the abode of *such* a gentry should be reduced to *such* a state;—in short, in that discourse, we seem more likely to discover any thing, than a concurrence in sentiment with his brother judge.

But let us have done with opinions for the present; and pass from them to facts. Where are we to look for the mighty "bustle," of which Judge Fletcher has complained? In the intimation, by Government, of a desire, that the circuit should commence at Kilkenny, instead of Wicklow? Causes incomparably short of national



onal disturbance, might justify such a departure from the ordinary direction of the circuit route; which has formerly (and I believe without impropriety or inconvenience) been occasionally altered, at the mere discretion of the senior Judge. Was there nothing to warrant such an alteration here? A prison, thronged with supposed criminals in Clonmel; of whom it was not easy for Mr. Peel, or the Attorney General, to foresee, that in the course of a few weeks, they would be nearly all "acquitted felons;"† —in Kilkenny a "heinous burglary;" I use Judge Fletcher's words; which might have been even stronger, without being too strong, for the singular and alarming atrocity of that transaction; in the same Kilkenny, the hand of Justice for a year arrested, and in suspense, over the heads of persons charged with "a most atrocious outrage;" and whom the event demonstrates to have been guilty of this charge:—in Waterford, first, "an abominable conspiracy to poison;" secondly the murder of a gentleman of the name of Smyth; and thirdly, "a burglary in a dwelling house;" which the learned Judge describes as having been "a transaction of a public nature; an attack planned and executed by a body of armed men; whose motive for this outrage was, that the owner of the house, a stranger to the country, had ventured to take a farm there."

I have

† An expression, if my memory serves me, of the late Mr. Wyndham. In general, the passages marked as quotations are extracted from Judge Fletcher's Charge.



I have been confining myself to the statement of *convictions*: but many prosecutions may have failed, not from the innocence of the accused; but through fatalities, and legal flaws. Independently of all such possible frustrations of public justice, have I offered no satisfactory or sufficient reason, for that “inversion of the ordinary course of circuit,” about which Judge Fletcher seems to me to make too much “bustle and parade?” Suppose that in Kilkenny, there was not much (in *quantity*) of offence; yet if, within that county, savage outrage was a novelty, (as appears to have been suggested by Judge Day,) was it reprehensible, in Government, *venienti occurrere morbo*? Should they have waited to let the malady take a deeper hold?—Then, to pass to the contagion which was at their doors, did the populous Gaol, (I believe I may have already asked this question) of the seldom too languidly tranquil County of Tipperary, contain no apology for the course which the Irish Minister had recommended?—Is it improbable, that, before the circuits had gone out, he was apprized of that menacing aspect of affairs, of which the Magistrates of Middlethird have since given us the results? Was there no reason (not even that of *cautela major*) for promptly delivering the gaols of Kilkenny, Waterford, and Clonmel? Would it have been more expedient to dispatch the Justices in eyre, in the first instance to Wicklow, where there

was



was nothing for them to do, and to Wexford, which Mr. Justice Fletcher represents as in a state of "the most profound tranquillity and peace"—The burglary, in Waterford, his Lordship has treated as an offence, of what he calls "a public nature"; and, in noticing it, digresses into an ejaculatory lamentation, over those "terrible delusions," which not only produced this outrage, but are "pregnant with violence, anarchy, and bloodshed;" "delusions which," I agree with him in thinking, that "the Peasantry cannot too soon reject, as ruinous and absurd;" but into which some declamatory and turbulent Ringleader may have betrayed them, by harangues upon the griping conduct of land-owners; and by asking what an unfortunate Irish Peasant had to do, but to apply to the terrors of those, who had no kind feelings that could be addressed, and with strong hand, to deter the stranger from intruding on their farms?

I am now arrived at the two Statutes, introduced in the last Session of Parliament, by *Mr. Peel*; which the Charge of Mr. Justice Fletcher appears to have confounded; but which, in fact, are perfectly distinct. They however admit of being considered jointly, with reference to a foundation, which is common to them both. This may be found in their respective preambles; of which one recites "*disturbances*" to  
 "have



“ have from time to time existed,” in different parts of Ireland ;”\* and the other adverts to the possibility of “ actual *disturbance* ;” or of the Country’s being “ in immediate danger of “ being disturbed.”† To vouch the truth of such recitals, and the reasonableness of such fears, I shall not call on *Shanaghvests*, or *Caravats*, *Threshers*, *Ribbonmen*, or *Carders* ; nor yet invoke the *manes* of their predecessors in disorder, *Defenders*, *Houghers*, *Peep-of-day boys* ; the *Whiteboys*, *United Irishmen*, *Hearts of oak*, or *Hearts of Steel*. I shall not point to the plundering of arms, to the orations of the Catholic Board, to the harangues at popular meetings, or paragraphs in the Irish Magazine, Evening Herald, or Evening Post. I grant that it might be wrong to recur to 1798 ; and I have no need to recall the Summer and Autumn of 1803. Judge Fletcher relieves us from the trouble of resorting to such proofs. More than echoing the preliminary recitals of those statutes, he not only admits the disturbances of this Country ; but entering on an elaborate investigation of their causes, declares that as long as these are left remaining, it is vain to hope that the effects should be removed.

Let me here digress, for a moment, from my subject ; and admit, for argument, that “ my

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Lord

\* St. 54. G. III. c. 131.

† St. 54. G. III. c. 180.



Lord has hit it :”\* that his reasonings are all just ; his deductions all correct :—I do not thereby admit the inexpediency of these statutes. On the contrary, they might still be justified, on a principle the most obvious. For will it be denied, that if a seditious or disorderly spirit is abroad, this ought vigorously to be repressed, be its remote causes what they may ? Let tranquillity and subordination be first restored, with (if requisite) a strong hand ; and then, and not before, let all grievances be redressed, all irritations be withdrawn, so far forth as either Legislative or Executive can reach them. Where goading ill-treatment and vexation have caused frenzy, an opposite system of conduct may conduce to the patient’s cure ;—but, until the paroxysms are removed, he should, by measures of coercion, be prevented from doing injury, to others or to himself.

But now to take a separate view of the Statutes which I have mentioned. By the 54th of the King, chapter 131, it is declared that “for suppression” of those “disturbances,” which it has noticed, “the ordinary police hath been found insufficient. Towards denying the truth of this declaration, it would be necessary to affirm, either that we *have* no disturbances ; or that we *have had* no police. But indeed the fact is too notorious for contradiction. So far

\* See the 19th page of Judge Fletcher’s Charge.



far from disputing,—Judge Fletcher builds upon it. The disturbances, he says, exist ; (whence, say I, it follows—that the “ ordinary “ Police hath proved insufficient for their suppression ;”) and like disorders, adds his Lordship, will continue to molest us, until causes, which he proceeds to enumerate, shall have been removed. All this, for argument, we have already granted ; and but ask, in return, a concession, which we would be entitled to *without purchase* ; inasmuch as it is one, which can hardly be refused. The *postulate* is no more than this ; that while we are deliberating on, and promoting the (assumed to be) requisite reforms, “ it is” what the Legislature has pronounced it to be “ expedient to make provision “ for” the “ case” premised ; that is to say for the inability of an ordinary police, to suppress disturbances, which are found, in spite of it, to prevail. Attend to this “ provision ;” and what is the effect ? that you *suspend* those tumults, which you are taking measures to *preclude* ; that you check the growth of outrage, ’till you can detect and fully eradicate its lurking cause.\* Neglect this “ provision ;” and what, on the contrary, may ensue ? That when your reforms are all digested, and ready to be applied, these disorders, which in the mean time you have left free from all constraint, will have attained a stature

\* I am still, for argument, concurring in the opinions of Judge Fletcher.



stature so gigantic, and acquired such formidable strength, as shall set at nought both ordinary and extraordinary police.

It having thus been proved, or not denied, that the Country is disturbed,—that the ordinary Police has been found insufficient for maintaining its tranquillity,—and that for a failure and emergency of this nature, it was expedient to provide,—I would ask of the unprejudiced, whether such a case could have been met, more mildly, prudently, or constitutionally, than by the Act which has been passed? Before it can operate on any district, it must sufficiently appear to the Lord Lieutenant and Privy Council, that such district (inadequately protected by its ordinary Authorities) is disturbed. And what ensues on its so appearing? A remedial system is introduced, as simple in its frame, as it is likely to be effectual in its operation; for simplicity is as characteristical of Wisdom, as of Truth. This salutary innovation neither spreads itself beyond the precincts which are disturbed; nor survives the complete restoration of the public peace. The unsettled district is placed under the temporary controul of—not a military, but Civil establishment; calculated to act with vigilance, energy and effect. The municipal law is not altered; it is but invigorated and braced; and this Bill might have passed the Barons, in—was it the reign of Henry the third?

*Nolumus*



*Nolumus mutari leges* would not have thrown it out. The provisional establishment consists of a superintending Magistrate; his Clerk; a Chief, and as many petty Constables, as (within a number not to be exceeded,) the circumstances may require. The expense of this extraordinary Establishment,—which *cannot* exceed the *rate* of £3500. a-year, and is likely to fall very short of this amount,—is to be entirely borne by the district which is disturbed.—This, in my mind, forms a just and useful part of the arrangement; inasmuch as the prospect of a virtual penalty, of this description, is at once calculated to prevent the tumults which are thus mulcted; and to discourage an unnecessary call upon the Government, for that proclamation which is requisite, towards bringing the Statute into action; a call, by the way, which in his wisdom and discretion, the Lord Lieutenant, with the advice of the Privy Council, may attend to, or disregard.

In approving of that implied penalty which has just been noticed, I apprehend that I shall not be found inconsistent with myself. Public Outrage bears no resemblance to private distillation. *Hæc amat obscurum*; while the former instead of eluding, almost solicits observation.—As soon as the first gust of tumult strikes their ears, the vicinage should unite to prevent its rising to a storm. This is a natural, a manly, and



and a reputable duty. I would not hesitate to apprehend a rioter ; or to beat up the quarters of a disturber of the public peace ; though I might be ashamed of whispering a gauger, where he could surprise a distiller on his form.— I would lay in wait for midnight gangs, or search for plundered arms ; although I might be slow to rummage out-houses, for still-heads and worms ; or learn to distinguish pot-ale from hog-wash, by the taste. Those who dwell together may, without impropriety, be held answerable for that good behaviour of each other, which consists in refraining from all breaches of the peace ; and such was accordingly their responsibility, by our ancient common Law :\*— but no British subject should be called upon to sacrifice the comforts of that rank, or compromise the dignity of that honourable title, by entangling himself in abject, troublesome, and degrading occupations.

Where there are no substantial *Contras*, it is not easy to imagine *Pros*. An argument upon one side implies that the question has another, on which something may be said ; and accordingly, if upon the Statute now before us I have offered little, it is because I feel puzzled, pretty much as I should be, if required to demonstrate that two and two make four.

Upon this part of my subject, I shall therefore close, with an inquiry, whether, in a Country

\* *Blackst. Com. Introd. Sect. 4 and elsewhere.*



Country so prone to disturbances, as Ireland seems to be, a measure calculated to suppress them can be considered as ill-timed, at a moment when the restoration of peace (all sublunary Good, we have already observed, has its alloy,) may throw such a leaven of idle, turbulent, and disorderly matter in upon us? And when (it might be added) in consequence of what passed recently at Fontainbleau, the Conscripts of Sedition may have also been disbanded, and thus precipitated at once from the sublimities of Treason, to those humbler walks, of domestic violence and outrage, in which, henceforth, they must keep the not "noiseless tenor of their way?"

But is not the expediency of this Act beyond contradiction vouched, by that application which the Tipperary Magistrates have made,—shall I say against, or on behalf of, the barony of Middlethird?

Neither is the manner undeserving of remark, in which the powers vested in the Government, by this Statute, have been exercised, on this the first occasion for exerting them. Mr. Willcocks has been appointed the superintending Magistrate; and that experience and fitness for the office, which he will be allowed eminently to possess, we must in common candour conclude to have been his recommendations to the appointment. The Chief Constable has been selected from the Dublin Police; on the recommendation



commendation of the Head Office there. The Chief Clerk had served the late Commissioners of Inquiry; and has every testimony in his favour, from them;—and the Sub-Constables have been chosen from amongst those discharged Sergeants of Militia, who could produce the strongest certificates of good conduct.

We are not to argue against the *use*, from the *abuse* of an Institution; unless it can be shewn that, from its inherent nature, this was peculiarly liable to be abused. But even were such a source of argument open to us, it yet is plain, from the facts which I have just mentioned, that we could not turn its course against the Government of this Country.

Such is the Act of Parliament, of which Judge Fletcher's Charge, if not seriously yet truly, has pronounced, that "it is a wholesome mode\* of "administering the old powers, already vested "in the Magistrates, by Law."† The seriousness.

\* Wholesome, as long as the diseased symptoms, to which it is applicable, are unremoved.

† A M. S. S. Report, which I have seen, represents Judge Fletcher as taking a widely different view of the Statute; and calling it a wholesome mode of administering the old law *of the Curfew*.—Though this M. S. S. note is said to have been taken by one, who has the character of being correct, I am inclined to doubt his accuracy, where I find him representing a paragraph as terminating with "*Oh Mr. Peel! Mr. Peel!*"—If the Charge contained (but it cannot have contained) such an apostrophe as this, one might be tempted, in a paraphrase of the old parody, to cry

*O Justice Fletcher! Justice Fletcher, O!*

Nay, completing the distich, to inquire,

*Was this polite? decorous? judge-like?*

The answer to which interrogatory would fill up the metre, and supply the rhyme.—But, I repeat it, here the M. S. Reporter must be incorrect.



ness of the commendation is rendered more than doubtful, as well by the general context, which seems to import no vehement approbation of either statute\*,—as by the sneering tone of the *familiarities*, which follow: “Now, you are to meet: A Head Magistrate is to be appointed, at a salary of £700. a year: he is also to have a house and offices; his Clerk is to get a salary of £150. a year; the Constables are to get £100. a year each; any seven of your Magistrates may get all this done: but listen to one thing more: the disturbed district is to pay the expense of the whole.”—What was really said about these Acts I cannot tell: what is reported I do not relish. It is not admirable, on the score either of wit, or of decorum; and I am less disposed to describe it as “*insufferably clever*,” than to doubt whether it be not a little too “*furiously to the purpose*.”†

I come now to that temporary Statute, § (for such it is) which received the Royal Assent on the 30th of last July; very shortly after that which I have just been considering. To this law, I have little fear that it will be ever necessary to recur. I hope that it *will* act, and have reason to think that it *has* operated, as a preventive of those disturbances, against which, by punishments so summary and deterring, it

H provides

\* Either the 131st or 180th Chapters of the 54th of the King.

† See Walter Scott's *Life of Dryden*; p. 526. Note.

§ Stat. 54th of the King, c. 180.



provides. This is precisely the operation, which we must desire it to have. In the language of Judge Fletcher, its efficacy should consist in "that wholesome warning to the Turbulent and "Audacious," which "the notoriety of its existence, in the Statute Book," will produce.— In the mean time it is merely a revival of some provisions of a Statute commonly called the Insurrection Act; which passed, for the first time, in 1796; and for the last in 1807; from which period it remained in force for three years. By the way, does my memory deceive me? or had this Act, in the year last mentioned, the support of Mr. Grattan? and did he upon that, or even some *subsequent* occasion, avow his opinion, that there existed a *French* Party in this Country? Assuredly, and at least, I am not mistaken, in pronouncing the year 1807 to be included within that "entire period of "judicial experience, comprising sixteen circuits,\* during which," Judge Fletcher has assured us, that he never "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." So entirely and quickly, (and spite of the fretting causes enumerated by his Lordship) had the Country got rid of those acrimonious humours, which, after having broken forth in the rebellion of 1798, again shewed themselves

\* The years from 1807 to 1814, both inclusive, would comprise no more than sixteen Circuits.



themselves so alarmingly in the Summer of 1803!—So strange must have been the conduct, so unwarrantable the assertion, of any Member of Parliament, pretending to be a friend of Ireland, who in 1807, when our learned Judge's career of circuits had begun, supported a bill, amounting to "a complete suspension of the constitution;" and alleged that in this Country, a French Party might be found!

To this part of the subject it is my intention to return. In the mean time, allow me to acknowledge my surprise, that before he attempted to comment on the Statute now before us,† his Lordship did not read it with more scrupulous attention, than there is any trace of in his printed Charge. In the latter part of the seventh clause he would have seen, that if Magistrates could be found, base enough to consult their private interest, in the determination of a freehold, by transporting those upon whose lives the lease depended, the very provisions of the law itself precluded so gross and infamous an abuse of power;§ and that the "*fell Serjeant*,"

† Stat. 54. G. III. c. 180.

§ "Gentlemen, I have seen times, when persons, who thinking the lives named in their tenant's leases were lasting too long, have, by the aid of *such a law*, found means to recommend a trip across the Atlantic, to the persons thus unreasonably attached to life; and thus atchieved the downfall of a beneficial lease; and a comfortable rise of their income in consequence. Such things have occurred. I have known the fact."

Judge Fletcher's printed Charge, p. 22.



*jeant*," to whom he unceremoniously enough alludes,† is authorized to be "*so strict in his arrest*" of improper judgments, that no irregular "trips across the Atlantic" need be feared.

Both the Statutes, which I have been discussing, rest on the *Disturbances* of this Country, as the ground for their enactment: but the one, now more immediately under consideration, contemplating disorders of a particular description, adverts to a state of things, no vestige of which has Judge Fletcher been ever able, in his eight years judicial experience, to detect:—I mean a state of actual or impending disturbance, originating in the machinations of "*seditionous persons*."

That the Country might happen to be disturbed (and that so far the recitals of this statute may be acquiesced in) "*by persons entering into unlawful combinations*," the learned Judge would probably allow: for he pronounces all Societies of Orange (and indeed of Ribbon) Men, to be unlawful combinations; and the former of these to be so likely to produce disturbance, that "*until they are effectually put down*, in vain will the North of Ireland expect "*tranquillity or peace*."

But

† "You are to have the assistance of a learned Serjeant from Town; who may send abroad offenders, in a summary way."—*Ibid.*—This language very much resembles *persifflage*.



But as for "any conspiracy, connected with  
 "internal rebels, or with foreign foes," not the  
 faintest trace of this, during the whole term of  
 his public career, has he discerned. For about  
 three years of that term, the Insurrection Act  
 was in force ; under arms ; and ready to be  
 called, if requisite, into action. Has the Coun-  
 try been equally quiet since its expiration ?  
 The fall of the Insurrection Act, and rise of the  
 Catholic Board,—have, or have not these seem-  
 ed to be the signals for disquiet ? Judge  
 Fletcher would say not ; for that from the mo-  
 ment of his ascending the Bench, until the pre-  
 sent, whatever heavings of a more private kind  
 there may have been, yet as far as Conspiracy or  
 Sedition are concerned, the Population of Ire-  
 land has been

"Calm and unruffled, as a Summer Sea."

Others, however, have taken a different view of  
 the state of things. These, more timorous, or  
 less prejudiced, with stronger discernment, or  
 weaker nerves, have thought the plundering of  
 arms to be a suspicious and alarming sort of out-  
 rage ; betraying ulterior objects ; and but fur-  
 nishing the *means* for some (probably) rebellious  
*end*. Extensive and secret, yet audacious con-  
 federacies against the Law, they have consider-  
 ed as closely allied to Conspiracy against the  
 State ; and have held the classification to be too  
 refined, which distinguishes the insurrectionary  
 Spirit from Sedition. Is not Law an emanation  
 and



and effluence from the Constitution? and shall we be told that multitudes in array against the former, must not be mistaken for, or confounded with, the Seditious? Besides, those who, in credulity, or sagacity, exceed Judge Fletcher, connecting what they see perpetrated, with what they have heard taught, and distinctly perceiving the precept of the master to be political, attribute a like character to the practice of the pupil. If the lower orders of the Catholics proclaim a terror, affected or inspired, for those bugbears called Orangemen,—the speeches, bel-  
 lowed at their Board, give chapter and verse for this pretence, or this sensation. The intention-  
 ally mischievous harangues at this Committee,—their reports, to Aggregate Meetings, of sedi-  
 tious progress,—the paragraphs in some of our daily, and our monthly publications,—the studi-  
 ed and systematic efforts to bring the admini-  
 stration of justice into disrepute, by aspersions upon all who are appointed to dispense it; Ju-  
 rors, Magistrates, and Judges of the King's su-  
 perior Courts,—the coarse insolence with which the Government is insulted and traduced,—  
 these have made, on men who pass (with them-  
 selves at least) for rational, impressions diffe-  
 rent from those which Judge Fletcher has avow-  
 ed. These conceive that the language of facti-  
 ous Orators, towards England, neither breathes,  
 nor means to breathe, anything short of separati-  
 on; and how the disclosure of a principle so hostile



hostile to that constitutional spirit, which unites the countries, can be, by any man, denied to be seditious, they are (not unnaturally) at a loss to comprehend. Nay some can scarcely dissemble their surprise, that our learned Judge should not have heard from Lord Norbury, or his brother Fox, of the terrifying state in which things were lately, in Westmeath; or of those oaths, to be faithful to Napoleon and the French, which were taken by some deluded Combinators, in that county:—oaths which did not, from being absurd in the extreme, the less evince a seditious sentiment in the taker.

In the frame and nature of those Confederacies, which were known by the appellation of *Shanaghvests* and *Caravats*, there always appeared to me, to be something mysterious and obscure. Their turbulence filled a criminal space too large, to be contemplated without suspicion and alarm. Yet I do not know that in the constitution of either, any thing *directly* seditious was demonstrated to exist; and I further believe that those fierce bodies were in array against each other. But it is certain that both were in array against the Law: and the tumultuary spirit, which animates such combinations, is not likely, in our days, to be long without some factious leader, who will give the flame a political direction; and reduce to a determinate and seditious purpose, the vague, violent, and indistinct objects of the Mob. In associations,

at



at first very imperfectly cemented, and whose aims were neither political nor well defined, I apprehend we should find the rudiments of that Society of United Irishmen, whose acts occupy so many pages in our annals of high treason.

In the infancy of the Insurgent Spirit, before it has yet developed itself, and acquired consistency and strength, most opportunely the Insurrection Act\* appears; a sword, which—sheathed in the Statute Book,—is ready if occasion require it, to be drawn; but whose premonitory and in-terrorem-operation is, without its leaving the scabbard, not unlikely to suffice.

Those who term the Insurrection Act “a complete suspension of the Constitution,” may, with reason, be suspected of using declamatory language; and describing this Statute with more of acrimony than of truth. It is first a warning denunciation, to all whom it may concern, of the penal consequences which will ensue upon Sedition, not only to the Conspirators themselves, but to the vicinage in which their practices are allowed to ripen to disturbance. It then does little more than bring (with previous notice) into action, that abstract principle of social union, which establishing a reciprocal relation between protection and allegiance, will not squander the full benefits of the former

\* As I will call the 54th of the King, c. 180.



former on the Disloyal§. It fairly admonishes the Disaffected, that they shall not at once assail, and enjoy the Constitution; nor pervert the privileges which it confers, into means and instruments of aggression. Is that Act a suspension of the Constitution, which leaving ninety-nine portions of the community in full possession of it, blockades the hundredth, only *because*, and *as long as* it is in revolt, at once cutting off its communication with the sounder parts, and straitening it, by wholesome rigours, into submission to those laws, by which its happiness will be promoted, and its liberties secured? Is that a vexatious Statute, which comprehends within its controul, no more than the immediate neighbourhood of Commotion? Obligated to do so by the necessity of the case,—and, while it does so, but enforcing the rule of ancient law,\* that those who dwell together, should be answerable for the good behaviour of each other?†

## I

## To

§ I have said that the Insurrection Act does *little more*, than bring into operation an abstract principle, which is noticed in the text. There is a sense, in which it does *much less*. The Law, even where the Insurrection Act is in operation, extends a most solid and valuable *protection*, to those who have ceased to pay the *quid pro quo*, viz. *allegiance*. It but deducts, and abrogates, for a time, a portion of those free and clement doctrines, of which Disloyalty has justly forfeited the benefits; and in which, without danger to it's own existence, the Constitution cannot, in certain emergencies, indulge. Let it be recollected too, that Government cannot, at it's pleasure, bring the Insurrection Law into action. A memorial from Magistrates of the County, not fewer than seven in number, is a preliminary *sine qua non*, to the activity of the Statute. **THOUGH** the Justices memorial, the County (perhaps) may not be proclaimed; but **UNLESS** they memorial, the Government cannot expose it to the rigours of this Law.

\* Already alluded to.

† Blackst. Com. Introd. Sect. 4.



To cavil at vigorous measures, in emergencies of the State, is far from being the symptom of strong attachment to the Constitution. *Ne quid detrimenti capiat Respublica* will ever be a cogent argument, with the patriot mind, for clothing the supreme Authorities with unusual powers; nor will it unfrequently occur, that while Party and Mob-courting Ambition are clamorous against restraint, the more genuine friends of freedom, with worthier sentiments, and larger views, will be supporting measures of coercion; and holding the language of controul. While Cæsar was silyly canting about clemency and moderation, Cicero crushed the schemes of Catiline with a rigorous hand; and it was not Cicero,\* who afterwards overthrew the liberties of Rome.

If the Wexford charge be truly given, the present is not the first instance of the Charger's blindness, to the true situation of this Country. He describes the rebellion of 1798, as "an explosion, sudden and unexpected."—That it was unforeseen by those, with whom at that period he was supposed to act, is their best excuse, for having opposed those measures, which more discerning men thought necessary, to keep the Country quiet. It was their persuasion then, as it is Judge Fletcher's now, that "no serious purpose of assailing His Majesty's Government"

\* Nor yet *Cato*, who seconded the strenuous measures of the Consul.



“ment was on foot ;” “nor any conspiracy, connected with internal rebels, or foreign foes.” They then were of opinion, as he is reported to be now, not that the Country was obviously in such a state, as required very prompt and strenuous controul ; but that the necessity for enacting the Insurrection law, so far from being apparent to all, who would but see what was before them,—was one “of the secrets of the Castle; not in their possession.”\*

Upon those who “winking with both their eyes,”† upon the perils which approached us, inveighed against the appointment of that Dictator-Statute, which assumes no authority unless commotions have arisen,—and abdicates, when once the tumult is appeased;—upon those it is to be hoped, that the Rebellion came by surprise :—but can we allege that no *explosion* was *expected*, by that Government, who day after day proclaiming the Country to be in danger, justified the preventions which they recommended, by continual recurrence to this assertion ? Had the Parliament which passed the Insurrection Act‡ no apprehension of disturbance,—or did the events of 1798 refute the justice of their fears ?

But on periods so calamitous, I shall dwell no longer. “Over the events of those days, and their causes, I willingly draw a veil ;”—and only wish that the passage, which contains the  
the

\* Judge Fletcher’s Charge, p. 22.

† Ibid.

‡ In 1796.



words that I have just borrowed, were less equivocal, and liable to misconstruction, than it is. Some might doubt what it was meant to insinuate lay behind the veil:—the misconduct of those rebelled against,—or crimes of those rebelling? Should any give the former interpretation to this sentence, though the context might not justify, I fear it would excuse them.

Judge Fletcher assures his hearers, (if the Editor report truly), that he is “attached to no party; connected with no party; indifferent about party:” one who never mixed with the zealots of either; and has “accordingly been calumniated by both.”—If there were no such monster as an honest party man,—or if no person could be a partisan, without knowing that he was so,—I should feel myself concluded, by his Lordship’s positive disclaimer. But when even of a man “*born for the universe*,”\* it has been said, and said by an admirer, that

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“narrowing his mind,  
 “He to Party gave up—what was meant for Mankind,”

this learned Judge can scarcely be offended, if I doubt his being as exempt from political prejudice, as free from party bias, as I am convinced he both wishes and conceives himself to be. The Government of Lord Hardwicke (from whose practice in this particular the Duke of Richmond did not swerve,) in selecting for legal promotion, those who (rightly or wrongly) they thought

\* The late Mr. Burke. See *Retaliation*.



thought best deserved it, took the objects of their favour indifferently from all sides ; and certainly, and at the least, displayed *no preference* to those, who in the great Imperial crisis of 1799 and 1800, at the expense of their popularity, and in the teeth of Slander, had intrepidly lent the Constitution their support. Those who, bearing in their minds the political annals of that day, turn their eyes upon the present Dignitaries of the Law, will there see little, that can in any degree discredit this assertion. In the mean time (not yet Judge) Fletcher remained wholly unpromoted ; nor was he appointed to the Bench, until those Talents came into power, which gave the Seals to Mr. Ponsonby, and placed Mr. Curran at the Rolls. It might to some appear to follow, that those who then *bore sway*, and raised him from his *private station*, were not aware how thoroughly detached he was, from every thing connected with, or however faintly resembling party. They possibly remembered, that when in Parliament, he had been a partner in the firm of Grattan, Ponsonby, and Curran ; that, with them, he resisted the vigorous measures then proposed ; failed, with them, to observe any purpose of assailing His Majesty's Government ; seceded,\* with them, from that Parliament which neglected their

\* I believe this to have been the fact. The Records of the time will shew. In the mean while, I am merely attributing to him a course, which some of the other respectable Personages unquestionably took.



their advice ; with them, avowed opinions, which the year 1798 confuted ; but which seem, in 1814, to have revived.

It is true, that in a manuscript report of the learned Judge's charge, which I have seen, he is represented to have said he "*believed* ! he " was in Parliament, at the passing of the Insurrection Bill ;§ and that he voted for it ; at " the same time declaring that it would not operate as a preservative of the peace." But this must be a mistake of the Reporter, or the Judge;† and it is far more likely that the Parliamentary line, which I have attributed to this latter, is the one which he in fact pursued. To a measure which he reprobates so severely,—which he describes as " a complete suspension of the constitution,"—it cannot be supposed, that he would have given his support, feeling that, by so sad a sacrifice, he would restore no tranquillity to his country ; and that the *positive* evil which he was incurring, would not be *relatively* a good. Again, how could the " explosion" of 1798 come so " unexpectedly" on him, who thought matters in such a state the year but one before ?

But it is time that I should have done ; and I will, without a peroration : preferring the risk of

§ In 1796.

† Who only says he *believes*. That he should not have attained certainty on such a point---may seem surprising.



of being abrupt, to the certainty of being prolix. —I conclude then, by declaring—that though I respect the integrity, learning, and abilities of Judge Fletcher,—and hold him to be free from all unworthy bias,—yet of the publication, called his Charge, I am obliged to disapprove. To me, that publication\* does not seem to bear the marks of a judgment the most cool, a temper the best regulated, or a mind altogether free from the prejudice and warp of Party. Were I to believe that he uttered every thing there purporting to be his, I should pronounce, not merely, that in entering on several topics which it contains, he manifestly outstepped the limits of his duty ; but that many of his statements were as erroneous and unfounded, as still more of them were extra judicial and indiscreet : I should fear, that in overcharging the picture of grievances which he drew, he palliated † the excesses, which he referred to those oppressions, as their source ;—and on the whole I should lament, that one, apparently so little qualified for a Statesman, transgressing the grave province his Commission had assigned him, should lose himself in discussions on affairs of State ;—those *ardua regni*, which the Constitution has committed to other hands.

Far be it from me to lower the dignity, or trench however slightly, on the independence of the

\* Which, however, may grossly misreport him.

† Even though the Report were accurate, —I should readily admit the overcharge to have been unintentional ; and the palliation inadvertent.



the Bench. They are amongst those bulwarks of our freedom, which I would strenuously defend. But that dignity is most consulted, when Judges keep within their sphere; that independence best maintained, when they dispense unbending justice. Aloof from the storm of politicks, and prejudice of party,—regardless of the cry of Faction, or the frown of Power,—let Judges proudly hold their equable and lofty course; and while they scorn to serve the purpose of a Minister, disdain alike to play the game of his opponents; or flatter and foment the passions of a Mob.

I. U. M.

October 13th, 1814.



Houses of the Oireachtas