

8
THE
T R I A L
O F
J O H N F A Y, Esq.

OF NAVAN in the COUNTY of MEATH,

For conspiring with others to KILL and MURDER the Revd.
THOMAS BUTLER of *Ardbracken*, and for administering
unlawful oaths to several persons styling
themselves DEFENDERS.

T R I E D

At LENT ASSIZES held at TRIM in and for the
COUNTY of MEATH;

ON THURSDAY, MARCH 13th, 1794.

B E F O R E

The Honourable JUSTICE DOWNES,
one of the Judges of his Majesty's Court of
KING'S BENCH in IRELAND,

A N D

A special JURY of the said County.

D U B L I N :

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1794.

Houses of the Oireachtas

Mr. FAY's TRIAL.

MR. JOHN FAY appeared at the bar, and the clerk of the crown read the indictment, No. 84, viz. that the said *John Fay* stood indicted for *aiding, abetting* and *encouraging* certain persons to *kill* and *murder* the Revd. *Thomas Butler* of *Ardracken* in the county of *Meath*, on the 24th day of *October*, in the Year of our Lord, one thousand seven hundred and ninety three.—He was a second time indicted on No. 85, for that he the said *John Fay* with other evil disposed persons, did *conspire* to and with each other on the 17th of *October*, 1793, to *kill* and *murder* the said *Thomas Butler*.

B

NAMES

NAMES OF THE JURORS.

- 1 JAMES BRABAZON, Esq. *Cunny-Hall.*
- 2 WM. HOPKINS, Esq. *Dantzes-Court.*
- 3 ROBERT KELLETT, Esq. *Ford's-Town.*
- 4 JOHN WADE, Esq. *Bellane.*
- 5 HENRY GARNETT the younger, Esq.
Athcaron.
6. FREDERICK EDWARD JONES, Esq. *Dollard's-*
Town.
- 7 ROBERT BATTERSEY, Esq. *Lakefield.*
- 8 JAMES KELLETT, Esq. *Ford's-Town,*
- 9 GORDON JACKSON, Esq. *Lisnabow.*
- 10 WM. HOPKINS, Esq. *Gills-Town,*
- 11 WM. MARTLEY, Esq. *Gravelmount.*
- 12 RICHARD DYAS, Esq. *Kells.*

Counsel for the Prosecution.

Counsel for the Defendant.

MR. ATTORNEY GENERAL, MR. CURRAN,

MR. SAURIN,

MR. MACARTNEY.

MR. RECORDER,

MR. PONSONBY,

MR. BLACKBURN.

Agent, MR. KEMMIS.

Agent, MR. TAYLOR.

After the JURY was sworn.—Mr. ATTORNEY
GENERAL said,

There is no evidence on either of the counts,
No. 84 and 85.

C O U R T.

Gentlemen of the Jury, there being no evi-
dence to support these Counts, you will there-
fore acquit the prisoner.

The jury brought in their verdict of ac-
quittal of Mr. *Fay*, on both these Counts.

The clerk of the crown read the indictment,
No. 86, charging Mr. *Fay* as follows. That
the said *John Fay* being an evil disposed person,
and not being duly qualified to administer an
oath, did administer an unlawful oath to Mi-
chael Gibney, Richard Byrne, George Mullen,
William Lynch, John Sherlock, Walter Logan,
and Patrick Sheerin.—That they would not give
evidence in the court of King's Bench, or any
other place against all true brothers of defence.
To which indictment they pleaded *not guilty*.

WILLIAM LYNCH, *sworn.*

Examined by Mr. *Attorney General.*

Q. Do you know John Fay?

A. I do.

Q. Do you know Michael Gibney?

A. Yes.—Identified him.

Q. Do you know the prisoner at the bar, John Fay?

A. Yes.

Q. Did you see him in *October* last?

A. I did.

Q. Were you present at any time when the prisoner Fay administered an oath?

A. I was, a fortnight before Mr. *Butler* was shot, he was shot on a Thursday in *October*, 1793.

Q. Did he administer an oath to any other persons at any other time?

A. Not at any other time, he administered an oath a fortnight before Mr. *Butler* was shot—he was shot on a Thursday in the month of *October*.

Q. Was it the latter end of *October*?

A. I believe it was not the latter end of *October*.

Q. Where did the prisoner Mr. *Fay* administer the oath?

A. In

A. In his own office, near the Barracks in Navan.

Q. In what county ?

A. In the county of Meath.

Q. What were the names of those persons to whom the oath was administered ?

A. Cappagh, Sherlock, Gibney, Byrne, Logan, myself, Duff and Sheerin.

Q. Do you see Richard Byrne in court ?

A. I do not—but immediately afterwards pointed him out.

Q. Did Mr. *Fay* administer the oath to every man you see now at the bar ?

A. He did administer the oath to every man I now see at the bar.

Q. Did he administer the oath to any other person.—Name the person who took it ?

A. Cappagh, Sherlock, Gibney, Logan, Duff, Sheerin and myself; Logan I do not see here, he is not at the bar.

Q. What was the oath ?

A. To aid and assist to kill *Thomas Butler*, and never to come to give evidence in the King's-Bench, or any other place, against all true brothers of defence,—meaning the Defenders.

Q. Upon what did he administer that oath ?

A. Upon the book.

Q. You

Q. You said it was administered to yourself and you took it?

A. I did.

Q. And the other persons whom you mentioned?

A. Yes.

CROSS EXAMINATION.

Examined by JOHN P. CURRAN, Esq.

Q. You said this oath was administered about a fortnight before the death of Mr. *Butler*—how do you know it was a fortnight before the death of Mr. *Butler*; when did he die?

A. He was killed on a Thursday in October.

Q. How do you know he was shot?

A. I know, because I was there, I was in the middle of a field in the Bishop of Meath's land.

Q. Did you see Mr. *Butler* shot?

A. Yes, I was standing by George Mullen.

Q. Did you ever swear that, at any other time?

A. I swore it yesterday.

Q. Do you believe the jury believed you?

A. I believe they did.

Q. So you swear positively you were by when George Mullen shot Mr. *Butler*, and you believe the jury believed you?

A. I do.

Q. What

Q. What profession in life are you?

A. I was bred to the church—to the church of Rome.

Q. Why don't you look up?

A. I never fear.

Q. You are not a Bishop or a Minister?

A. No.

Q. Will you let me ask you Mr. Lynch what makes you laugh?

A. Why, upon your laughing at me, I laughed at you.

Q. Did you laugh when you saw Mr. Butler shot?

A. I did not.

Q. Had you ever before that night any particular spleen to Mr. Butler, did you hate him?

A. I was a little afraid of him?

Q. Did you hate him,

A. I did.

Q. Did you wish he should be killed?

A. To be sure I did.—If I did not I would not go to the place to kill Mr. Butler.

Q. You went there that night in order to murder Mr. Butler?

A. I did.

Q. Were you ready to give your assistance to murder Mr. Butler?

A. I was.

Q. You

Q. You mistook a question of mine, I did not ask you about your religion ?

A. Which of them was it ?

Q. I did not ask you about your religion, I meant your station in life ?

A. I was no labourer, no other occupation, I got into the army.

Q. You were in the army ?

A. I was.

Q. Then you left the army ?

A. I deserted.

Q. You did not get any promotion ?

A. No.

Q. They did not make a general of you ?

A. No.

Q. How came you to be produced upon the table yesterday ?

A. I was produced.

Q. How came you to be brought here yesterday ?

A. I was ordered to attend as evidence by the man that was the Goaler, he came to the place of my imprisonment.

Q. Where is the place of your imprisonment ?

A. Beyond the bridge.—The man came to me and said I must come along with him.

Q. Who put you there ?

A. It was Mr. *Wainright*.

Q. Were you there of your own consent ?

A. I was

A. I was sent there.

Q. Were you bolted ?

A. No.

Q. Were you fed with victuals ?

A. Such victuals as the common men eat.—
I had nothing but common victuals.

Q. Did they boil it for you ?

A. To be sure they did, would you have them give it to me raw.

Q. From what place did you come ?

A. From *Naas*.

Q. Who found you out ?

A. I gave myself up to the law, to Mr. *Dawson* a Justice of peace at *Ardee*.

Q. What made you give yourself up ?

A. Is that the question you ask ; for the love and peace of my country ?

Q. I believe few men do great services merely for the love of their country ;—then you say that you gave yourself up for the love and peace of your country ?

A. Yes.

Q. You went to murder Mr. *Butler* for the love of your country ?

A. It was not for the love of my country that I consented to murder Mr. *Butler*, but I gave myself up that I might pacify the country.

Q. Did you expect to be hanged ?

A. No.

Q. You knew that you were guilty of this crime ?

A. Yes, and knowing these men guilty, and in order to have these men punished according to their deserts.

Q. Did any one speak to you and advise you to give yourself up for the peace of the country ?

A. No.

Q. Did you ever learn to read ?

A. No I did not.

Q. Did you ever read any news-paper ?]

A. No I never did.

Q. You heard that rewards were offered for the discovery of the murderers of Mr. *Butler* ?

A. I heard it as a common report of the country, I never knew how much it was.

Q. Did you not know that Government offered great rewards—how much do you know was offered for discovering the murderers ?

A. Great rewards was offered, I do not know how much it was.

Q. Did you know who was to give the rewards ?

A. No.

Q. You heard great rewards were offered ?

A. I did.

Q. You were determined to give the reward to some charity and not to put it in your own pocket ?

A. I never

A. I never expected any reward;—I swear that.

Q. Upon your oath do you not expect to receive the rewards offered?

A. Upon my oath I do not.

Q. Upon your honour—you a military man—I ask you do you not expect to receive rewards, upon your honour?

A. Your law does not touch Military, as counsel or attorney—did not I tell you I was in the army.

Q. I believe you are cross examining yourself?

A. How by cross examining?

Q. I have got a great deal more from you by your own answers.—I ask you are you an officer?

A. No.

Q. So Mr. Lynch you come forward and say you are not afraid to look up.—You do not fear any thing yourself, and you have no shame about yourself—upon your oath you say so?

A. No I have not.

Q. Upon your oath you did not come into this court and know that you were speaking here in the presence of God Almighty—did that come into your mind?

A. I know it full well.

Q. When you were standing on the ditch to shoot Mr. Butler did you believe that there was a God in Heaven ?

A. I knew it full well.

Q. You knew it then, and did you think of it that night ?

The witness gave no answer to last question.

Q. You did not feel any shame ?

A. I have sworn that,—I did not speak of fear.

Q. Are you afraid ?

A. No.—I am not.

Q. Have you spoke nothing but truth ?

A. No.—I have not.

Q. You did give evidence yesterday ?

A. I did.

Q. When you gave your examinations before Mr. Dawson of Ardee, did you swear the truth ?

A. I did.

Q. You were once sworn not to give evidence ?

A. Yes—I never give evidence on oath only for the love and peace of my country.—I do not expect to get any reward.

Q. Do you expect to get any reward ?

A. I hear the common report through the country that rewards was offered.

Q. Do you believe that report ; were you determined not to take any reward ?

A. I did

A. I did not swear that.

Q. If you had been offered One Thousand Pounds would you return any change out of it ?

A. I believe if you were offered One Thousand Pounds yourself, you would not return change out of it—but I never expected it.

Q. You are acquainted with Mr. Fay, you are an intimate acquaintance of his ?

A. No.

Q. You went to the same school with him ?

A. No.

Q. Were you in the army together ?

A. No.

Q. Had he dined at your house ?

A. No.

Q. Were you not at the Brandy-Shop together ?

A. Never.

Q. Did you ever stand god-father for any of Mr. Fay's children ?

A. I never did.

Q. How came he to know you were acting in the company of Defenders and was a captain of the Defenders ?

A. I went to Navan to Mr. Fay's house.

Q. Mr. Fay is a merchant in the town of Navan ?

A. He was one.

Q. He

Q. He was a rich man,

A. I believe he was a man respected.—I believe he was a great merchant at Navan.

Q. He has a good many clerks to do his business?

A. He carried on very great trade.

Q. He has some kind of office?

A. Yes.

Q. Was it not a market-day you went to *Fay's* at Navan?

A. It was.

Q. Was it not the business of his office to pay money and get receipts, and do business with different parts of the country?

A. I suppose so.

Q. Was there a place for clerks to sit at the desk?

A. There was.

Q. How many clerks were in the office?

A. One.

Q. Who was he?

A. A young smooth faced fellow, he was in the office when I went there.

Q. What time of the day was it?

A. About one o'clock at noon.—It was market-day in the town of Navan.

Q. You say there was nobody in the office but one clerk?

A. No.

A. No.

Q. Did you know these people at the bar at that time ?

A. I did, Sherlock and others.

Q. They took the oath of defenders ?

A. Yes.

Q. Had you spoken to them all before ?

A. I knew them very well, they all came to Mr. *Fay's* office, and Mr. *Fay* desired the clerk to go out, and then the clerk said I am going to my dinner, and went away. This was at one o'clock.

Q. He dined early ?

A. Yes.

Q. Had you the prayer book in your pocket ?

A. No; Mr. *Fay* had one.

Q. These people you knew as defenders before they were brothers of defence ?

A. They were sworn before, or they could not have the articles.

Q. How long had they been sworn before ?

A. This time twelve months.—They must have been sworn, or they could not have had the articles—They were sworn about a year before they had got the articles.

Q. Would not Mr. *Fay* have taken a more private opportunity of swearing them, and not on a market-day ?

A. On

A. On that day they were sworn before Mr. *Fay*, on a market-day.—They were in his office sworn over again.

Q. Give me leave to ask you ?

A. You are welcome to ask me any thing.

Q. I thank you.

A. You need not thank me, Sir, I am willing to answer you ; you may thank your wife when she beats you.

MR. CURRAN.

If the gentlemen on the part of the Crown would put an end to this scene, I wish to sit down.

MR. ATTORNEY GENERAL.

The prisoners at the bar have been indicted for this offence, it was my duty in justice to the public, and to themselves, to put the prisoners upon their trial ; I have done so, and the jury will determine whether the prisoners are guilty of the charges laid against them or not.

Question

Question to LYNCH.

Q. How many desks were in Mr. Fay's office ?

A. There was one desk—I saw no more than one, it was not so long as this desk on this table.

Q. Was there a fire in the office ?

A. There was no fire at that time, there was a grate, but no fire in it.

Q. Was the grate large or small, was it like a kitchen grate ?

A. It was 20 or 22 inches wide as far as I could observe.

Q. Was there any brick work about it ?

A. I think so, but I did not look so earnest at it.

Q. It was not so large as a kitchen grate ?

A. It was about a 22 inch grate, at the end of the office next to this town.

Q. Did Mr. Fay give you any directions afterwards, or let you go about your business ?

A. There was no particular directions given that day, there was a little money given—No other conversation.

D

Q. Was

Q. Was there any other conversation ?

A. He bid me come to him at dusk at night, when we came at night, Mr. *Fay* gave us one gun, one blunderbus, and a pound and a half of powder.

Q. By your evidence, Mr. *Fay* swore those ten men to be true brothers of defence, and gave you fire arms ?

A. Yes.

Q. Did you come in the evening ?

A. I did, and Mr. *Fay* gave us a gun and a blunderbus, and a pound and a half of gun-powder ; the gun and the powder was given to me, and the blunderbus was given to *Mullen*.

Q. Where did he take you to give you these things ?

A. He came down into a green field ; Mr. *Fay* brought those arms out of his own house.

Q. Who brought them ?

A. Mr. *Fay* brought them in his own hands, a gun, a blunderbus and a pound and a half of gun-powder.—He brought one in each hand.

Q. Had he no pistol ?

A. *Sheerin* had a pistol, but Mr. *Fay* did not bring the pistol.

Q. You

Q. You received the powder ?

A. Yes, some of that powder the gun was loaded with that killed Mr. Butler.

Q. How much money did Mr. *Fay* give you at his office ?

A. Half a guinea a-piece.

Q. Was there any clerks in his office ?

A. No clerk but one, I did not observe any other.

Q. Did you ever go to school any where ?

A. No, I never did.

Q. If a man should perjure himself, what would be the consequence of it to him in the other world ?

A. It would be very bad, the whole world would know of it at the last day.

Q. Is that the consequence you think would follow ?

A. Why they say there is a hell.

Q. Who says so ?

A. The clergy.

Q. What do you think of hell ?

A. I do not know, barring as I heard say.

Q. Is it a comical place ?

A. They say it is a very comical place.

Q. Did you never hear the wicked go there ?

A. I am not to judge any one.

Q. Do you know who goes there ?

A. I am not a judge—I cannot judge any man.

Q. When you die, do you think you will go any where except to be buried—What is your notions about it ?

A. Yes.—My soul will go to some place, I cannot tell where.

Q. Do you think your soul is buried with your body ?

A. They say not. They say that the soul goes to a place of residence, where God above would have it, God will do every thing fit.

Q. Where do you live now ?

A. In a part of a building near the gaol—I see the prisoners out of the window.

Q. You have no bolts upon you ?

A. No.

Q. Are you well fed ?

A. I get victuals.

Q. Do you get wine or punch to drink ?

A. No, nothing but small beer.

[The case on the part of the prosecution closed.]

The witnesses produced on the part of the defence were first—DANIEL SULLIVAN.

MR. DANIEL SULLIVAN, *sworn.*

Examined by Mr. GEORGE PONSONBY.

Q. Do you know George Mullen, one of the traversers?

A. I do know him very well.—Here the witness pointed out George Mullen standing at the bar.

Q. Were you in any employment in the month of *October* last?

A. Yes, as inspector of the works at the 3d Lock on the Grand Canal.

Q. What distance is the 3d Lock from Dublin?

A. About two or three miles.—My brother-in-law contracted for the repairing the 3d Lock, I attended there from the 24th of September last to about a week ago.

Q. During that time did you see George Mullen there?

A. Yes

A. Yes, he was employed there from the 8th of October to the 10th of November.— He came there on Monday the 8th of November and continued there every working day; was absent only two quarters of days, on 19th and 29th of October.—They worked from sun rise to sun set. I called over the roll every morning and evening.—The men worked very constantly, I have an account of the names of the men, and the Witness produced the original account book in court wherein the name of George Mullen was regularly entered.

Mr. P O N S O N B Y,

The witness Lynch swore that George Mullen went to Mr. Fay's house on a market day, a fortnight before Mr. *Butler* was shot on the 24th of October, 1793. We shall prove that George Mullen was working on the Grand Canal at that time.

Question

Question to SULLIVAN.

Q. Was George Mullen working at the 3^d Lock from the 8th of October to the 10th of November, and on the 24th of October?

A. Witness read from his original account-book that George Mullen was actually working on the Grand Canal the 24th of October, and from 8th of October to November 10th.

Q. Did he work the whole of the 24th of October?

A. He did. I called the roll-call morning and evening. I called the roll every morning early.

Q. At whose request did you come here?

A. By Mr. Armstrong Fitzgeralds.

Q. Did Mr. Armstrong Fitzgerald pay your expences?

A. I must be paid for trouble and expences in coming here—I do expect to be paid.

Question

Question from MR. ATTORNEY GENERAL.

Q. Do you know any of the names of the persons who were employed on the Grand Canal?—who lives in the neighbourhood of the Grand Canal?

A. I do not know particularly.

Question from JUROR.

Q. You said that on the 19th and 29th of last *October* Mullen was on the 3d Lock at work?

A. Yes, and William Mullen was absent two quarters of days, on the 19th and 29th of *October* on account of the weather being wet.

Question from MR. MACARTNEY.

Q. Was George Mullen there on the 24th and 25th of *October*?

A. He was.

Question

Question from Mr. P O N S O N B Y:

Q. Could George Mullin have gone from his work on the Grand Canal to Navan without your knowledge?

A. I do not think he could.—My brother-in-law contracted for the works and I was overseer of the men.

Q. How far is the 3d lock of the Grand Canal from Navan?

A. I do not know—I never was before in the county Meath.

Q. How far is the 3d lock from Dublin?

A. About a mile and a quarter.

Q. Have you any particular reason for knowing that George Mullin the prisoner at the bar worked there?

A. I have, because there was not a better workman than he was.

Question from Mr. M A C A R T N E Y.

Q. Before the 7th of *October*, did you know George Mullin ?

A. I never saw him before that day.

Q. Did any body else take an account of the attendance of the workmen at that time ?

A. No—I always took the names of the men morning and evening.

Mr. P O N S O N B Y.

We desire Lynch may be called into court again, as all Mr. Fay's Clerks will attend in order that Lynch may point out the Clerk he said he saw in Mr. Fay's office.

Mr. A T T O R N E Y G E N E R A L.

To be sure.

Lynch was again brought on the table, and five clerks who are in the employment of Mr. Fay produced.

Lynch swore to one of them.

Mr.

Mr. F A Y ' s C L E R K *sworn.*

Examined by Mr. R E C O R D E R.

Q. Do you remember the month of *October* last?

A. Yes.

Q. The whole of that month?

A. Yes.

Q. Were you ever in Mr. Fay's office?

A. Yes.

Q. Where is it situate?

A. Eight or nine perches from the Barracks.

Q. Is there any clock or fire-place in that office?

A. There is fir.

Q. How many market days are there in the week in Navan?

A. Wednesdays only.

Q. Is there any grate in that office?

A. No.

Q. Was there any grate?

A. I never saw any in it.

Q. Was there a 22 inch grate there?

A. Never to my knowledge.

Q. How far is Navan from Dublin ?

A. Twenty two miles reckoned.

Q. Do you do a great deal of business on market days in Navan ?

A. We do.

Q. What is your general dinner hour ?

A. Sometimes about one or two and sometimes in the evening according to my business.

Q. Is there a considerable resort of people about the hour of one o'clock on market days at Mr. Fay's office ?

A. There is.

Q. What time of the day is there the greatest concourse ?

A. From eleven 'till one is the busiest time of the day.

Q. Upon the market day about a fortnight before Mr. Butler was killed, do you remember seeing William Lynch in Mr. Fay's office ?

A. I never saw him there.

Q. Did you ever see him there on a market day with ten men more ?

A. I never did see him there with ten men more.

Q. Did Mr. Fay, on a market day, in the month of October, desire you to go out of the office when 10 men came in ?

A. He never did.

Q. Did

Q. Did you tell Mr. *Fay* at one o'clock on a market-day in *October* last, that you were going to your dinner?

A. I never did.

Q. How far is *Ardbracken* from *Dublin*?

A. Twenty-four miles.

Q. Did you know such people as *Byrne*, *Cappagh*, *Logan*, and *Sheerin*?

A. I know some of them.

Q. Did you ever see them and others to the amount of ten come in a body to Mr. *Fay's* office?

A. I never did.

Q. Did you see all those men come to Mr. *Fay's* office, and he desired you to go out?

A. I did not.

Q. Did you ever see them all together in Mr. *Fay's* office with *Lynch*?

A. Never.

Q. Have you seen *Lynch* come to the office?

A. I believe not, but there are many people come there who I do not know.

Q. Might he not have been there without your remembering him?

A. He might have come there.

Q. Might not *Gibney*, *Byrne*, *Cappagh*, and *Sheerin* come there?

A. They might.

Q. Has Mr. *Fay* another office at the mills?

A. He has,

CROSS EXAMINATION.

Examined by Mr. SAURIN.

Q. Is not your hurry of business pretty well over at one o'clock?

A. About two o'clock it is.

Q. Is not the business over at one o'clock?

A. One o'clock is the busiest hour—sometimes the business is not over 'till night.

Q. Do not these gentlemen alluded to live in Navan?

A. They all do.

Q. Do you pretend to say that you never saw those men come all together?

A. Not that I recollect.

Q. Might they not come all together to speak to Mr. Fay?

A. They never did to my knowledge.

Q. Were they not intimately acquainted with Mr. Fay?

A. I do not know more than by hearsay.

Q. Is not the office frequented more on market days than on other days?

A. Yes.

Q. Do any other clerks sit in that office?

A. They

A. They sit in another office—I am the only clerk that sits in that office.

Q. Do you know Sheerin; did he come to that office?

A. There are a great many strangers who come to the office that I do not know.

Q. Then Lynch might have been there many times, for you did not take notes in your books of the looks of people?

A. I did not, but I would know them again.

Q. Do you sell out flour to poor people?

A. Yes.

Q. Might not a great resort of people come there?

A. There might.

Q. By virtue of your oath might not there have been a private meeting with Mr. Fay and some of his friends?

A. There never was that I knew of.

Q. Have you heard of meetings any where else?

A. There was a secret committee of gentlemen, I heard of that; but they did not meet in the office—I heard it reported in town, but I did not know it.

Q. Did you see Mr. Fay and these men together?

A. Never.

Q. Where did that committee meet?

A. I never enquired after them.

Q. Upon

Q. Upon your oath do you know what they met about?

A. I did hear only by report.

Q. Was it about making defenders—by virtue of your oath did you hear was Mr. Fay of that secret committee?

A. I did not, positively.

Mr. CURRAN.

We shall give evidence to Mr. Fay's character, as the charge against him might have made some impression on the minds of individuals.

WILLIAM WALLER, Esq; *sworn.*

Mr. BLACKBURN.

Q. Do you know Mr. Fay?

A. I have known him a great many years.

Q. Do you know any thing of his general character?

A. I never heard a better character—I have had great dealings with him; and all my friends who have, always found him to be a man of the greatest integrity.

Mr.

MR. CURRAN.

I offer to let the gentlemen on the other side produce any witnesses whatever in this county against Mr. Fay—This is a species of evidence which is only proposed to be gone into under particular circumstances. Is there any man, gentleman, or not gentleman, who can contradict the character that has been given of Mr. Fay?

The Honorable Mr. Justice DOWNES,

Gentlemen of the jury.

In this case, Mr. John Fay stands indicted for administering an unlawful oath to several persons therein named; whereby they swore, that they would not give evidence against each other at the King's-Bench, or elsewhere, against any true brother of defence.—The said Mr. Fay stands further charged, that he, the said John Fay, did administer an unlawful oath to William Lynch, that he would not swear against Duffy, Logan, and others, or any of them; the said John Fay not being qualified to administer oaths.—The only witness

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in support of the prosecution was William Lynch ; he has proved, *if you believe him*, that the said John Fay did administer the oath in those words—to the purpose laid in the indictment;—that the said Lynch and others were to kill the reverend Thomas Butler,—that they would not give evidence against all true brothers of defence.—The *latter* part only of this charge is the present charge laid in the indictment, “ that they would not “ swear, or give evidence in the court of King’s- “ Bench, or elsewhere, against all true brothers “ of defence.”

If you should believe the testimony of Lynch, he has given evidence that the oath which he has sworn was administered as charged in the indictment.—Gentlemen, if you believe that it is proved to your entire satisfaction that the oath was administered, tho’ not in the actual words laid in the indictment—the question is, whether you shall believe that the oath was administered by the prisoner—you will judge of the credit that you shall give to Lynch, he was the only witness produced, you must have observed the manner in which he gave his evidence ; and you will consider,

consider, whether it be in any degree probable; in my mind you ought to expect proof of the charge, equal to the greatness of it, for it is a charge of a very atrocious nature.—Gentlemen, you will consider, if it is in any degree an improbable story. This gentleman at the bar is a merchant, in the town of Navin—Lynch says that Fay administered oaths to him of the nature mentioned in the indictment—If you believe it an improbable thing, you should have good evidence of that fact; in this case the man who swears to this charge has confessed, that he has committed the crime of murder, and he has told you that he has neither fear nor shame, and he has told you of the reverend Mr. Butler's expiring; and in describing this, you must have observed his manner. In the case of a man of this description, you must consider the manner in which he has attempted to fasten guilt in a court of justice upon the prisoner at the bar—you will consider what degree of credit such a man deserves: if you believe the fact as given in evidence by him, the most that can be said, is, it is admissible evidence to go to a jury.

Gen.

Gentlemen of the jury, it is for your consideration, this is the testimony of an approver ; there is no doubt that the law upon the subject is, that such evidence is admissible, but if you entertain a doubt that the facts charged in the indictment are not proved to your entire satisfaction, you ought to acquit the prisoner, but if you believe the testimony of Lynch and have no doubts upon your mind, you ought to find the prisoner guilty.—I have already observed to you the situation in which this man is brought before the court, for the man himself admits he has been guilty of murder.—You will therefore require very strong circumstances to induce you to give credit to his testimony, where he charges another man as guilty of the charges laid in the indictment, and that charge rests solely on the testimony of Lynch—There is an objection further to discredit Lynch, he has upon the table sworn a falsehood in a part of his testimony, if you believe the evidence of Sullivan, for he has sworn that George Mullin was working at the Grand Canal at the time that Lynch has sworn that Mullin had an oath administered to him by said Fay.—Lynch has sworn that about a fortnight before the murder of Mr. Butler,

Butler, which was on the 24th of October last, that said Mullin was at Mr. Fay's office—Sullivan has given evidence that Mullin was working at the Grand Canal from the 7th of October to the 10th of November, and was only absent a quarter of a day on the 19th and 29th of October.—Compare this with the time that Lynch has sworn that Mullin was at the office of Mr. Fay, about a fortnight before the murder of Mr. Butler : now gentlemen if you believe the evidence of Sullivan, that Mullin was working at the Canal at the time stated, it was impossible for him to have been at one o'clock at Mr. Fay's office, about a fortnight before the death of Mr. Butler—If you believe Sullivan, that Mullin was working at the Grand Canal, Lynch's evidence must have been a falsehood with respect to him, and it is for you to consider the whole of the testimony and the circumstances under which Lynch comes before you. —Gentlemen, a clerk to Mr. Fay, who was sworn to by Lynch, to have been in the office of Mr. Fay, positively denies the circumstance as stated by Lynch, of his having seen 10 persons in the office of Mr. Fay, or of his leaving the office by Mr. Fay's direction, and swears that he
never

never saw one of them at that office; that he never saw Lynch there on the day mentioned, tho' he might have been there at other times without his observing him.—Gentlemen, I shall just observe to you, that from the conduct of this man, which must have made an impression upon your minds; he swore that he gave his testimony for the love and peace of his country, and not with any desire of being rewarded; and he said he did not expect to be hanged.—When any man comes forward to tell such a story without expecting reward, it does affect his credit.—Upon the whole, the facts sworn to deserve your serious consideration.

VERDICT OF THE JURY.

We find the prisoner John Fay, not guilty of the charges laid in the indictment.

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