

A
REPORT
OF THE
CHARGE
OF THE
LORD CHIEF JUSTICE,
IN
THE COURT OF KING'S BENCH,
UPON THE
TRIAL
OF
JAMES FORBES, AND OTHERS,
FOR A
CONSPIRACY.

DUBLIN:
RICHARD MILLIKEN, 104, GRAFTON-STREET,
BOOKSELLER TO HIS MAJESTY,
HIS EXCELLENCY THE LORD LIEUTENANT,
AND THE UNIVERSITY OF DUBLIN.

1823.

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1838.

THE CHIEF JUSTICE.

GENTLEMEN OF THE JURY,

It is in general the office of the Court to call the attention of the Jury to the nature of their duty, and the questions which they have to try. But in this case, perhaps inevitably, several topics not connected with the issue before you, have been addressed to you ; in consequence of which it becomes our primary duty to point out the questions which you have not to try, and to exclude from your consideration subjects not connected with the matters upon which you really have to determine.

The first of these to which I shall allude, is the alleged illegality of this Ex-Officio information. Gentlemen, the question of its legality, or illegality, cannot be decided, though it has been discussed, upon the issue which you are impannelled to try. The legality or illegality of this proceeding might have been brought before the Court by a proper plea : and you have been told by one of the Counsel for the Traversers, that it might have been determined upon a motion to the Court to quash the information. Had either

of these courses been pursued, we should have been able to decide the question according to the best of our judgments. But neither has been adopted, and a plea of Not Guilty has been put in to these Informations, under which neither the Court nor the Jury can pronounce upon the question raised as to their legality.— Gentlemen of the Jury, you are therefore bound, as in every other issue which you may be impanelled to try, to presume the proceeding to be legal ; and we are bound to tell you, that from every thing which has appeared before us, and after all the discussion, however irrelevant, which the subject has received, that this Ex-Officio Information is, in our opinion, a perfectly legal proceeding.

The next topic, Gentlemen, which I wish to exclude from your consideration, is the influence attributed to the act of the Commission Grand Jury, in ignoring Bills of Indictment, charging the present Traversers with the same offence as is contained in these Informations. That act of the Grand Jury is not in evidence before you.— It being in our opinion not connected with the issue, we deemed it our duty to reject it when offered in evidence. But for the purpose of considering what influence it ought to have, it must be assumed as a fact, that the Grand Jury did ignore the Bills. It was not only admitted, but distinctly stated, by the Attorney General ; and by the Counsel for the Traversers it has not only been assumed, but claimed as a fact material for

their arguments. And therefore for all the purposes of my present address to you, it must be considered as indisputable, although upon the issue between the Crown and the Traversers we did not think ourselves at liberty to admit it as Evidence. In one point of view, and in one alone, ought it to have the slightest influence upon your minds. It ought to call upon you to proceed with great caution, in a case upon which other men have already come to a certain conclusion. To say that it should govern, conclude, or influence you farther than that, would be a monstrous proposition. That Grand Jury acted upon their Oaths ; you are now to act upon your's. It is to be presumed, that they have acted according to the best of their judgments, and the dictates of their consciences. You are to be guided, not by their judgments, or their consciences, but by your own. If any further influence were to be attached to that act of the Grand Jury, it would lead to consequences of an alarming nature : amongst the rest, this may be fairly intimated as a result— that in every case in which one Grand Jury ignores a bill, another ought not to find it, and that whenever a Grand Jury had found a bill, and where the Prisoner or Traverser is unable to make a defence. a petty Jury would be bound to give a Verdict of conviction, upon the principle of deference to the Grand Jury's decision—In fact, the ignoring of the Bill is either a bar to the present prosecution, which cannot be seriously stated ; or it amounts at most

to a call upon the present Jury to proceed cautiously in a case, in which twelve men, at least, have already decided that there is nothing to be enquired into.

Another topic has been addressed to you of the same nature. An appeal has been made to you, upon the importance of this trial, in a political point of view. If it be true, as has been said, that the political interests and destinies of the Country, are involved in the event of this prosecution—if the consequences of it be really of so important a nature, let that circumstance call upon you for a patient, cautious, calm, dispassionate, and honest investigation—whatever may be your opinions upon the political interests of the Country, do not sanction by your decision that most alarming of all precedents, that most fatal symptom of bad times, a political or a factious verdict. Gentlemen, were political considerations to find their way into that Jury-box, the consequences would be most deplorable. One of the wisest and most valuable contrivances of the British Constitution, which provides for the distinctness of its several functions, would be deranged—if the Executive were to interfere with the Legislative, or if the Legislative were to interfere with the Executive—or if either were to interfere with the administration of Justice, or the administration of Justice with either; there would be an end of the Constitution of these Countries. Under the free Government which we enjoy, every man has political rights and functions of

one kind or other, and is at full liberty to act upon his political opinions. For the exercise of such rights, many opportunities are afforded. Every subject may petition the Throne and the Legislature. Many have the occasional right of exercising the elective franchise, or aspiring to the honor of representing their Country in Parliament. Every man is in the daily and habitual enjoyment of the free utterance and publication of his opinions. But, Gentlemen, when a subject of this land enters into a Court of Justice, in the character in which you now appear, he leaves his political rights and opinions at the threshold of the Court, for the purpose of assuming the duties of a Juror.

And what are those duties? They may be described and comprehended in a very few words. They are simply these—to do justice in the particular case, which the Jury is sworn to try. Indeed the very use of the word “Sworn,” implies a rebuke to him who could address to a Jury, any thing upon this subject, founded merely upon moral or political considerations, or who for a moment could forget, that in this Christian country, the highest duty due from man to man, is enforced and sanctioned by the most solemn appeal which man can make to God. In this Court, when you discharge the office of Jurors, you invoke Almighty God; and in the simple and emphatic language of the Law, call upon him *so to help you*, that is, so to deal with you in this world and the next, as you shall do jus-

tice in the particular case which you are impannelled to try. What then Gentlemen of the Jury, is in the present case, the nature of that oath? Are you sworn, as you have been called upon to do, to decide on the affairs of the empire? to pronounce upon the question of Roman Catholic emancipation, or of Protestant ascendancy?—upon the merits of one Lord Lieutenant or another? the character of the Orange association; or any other association? or to consider whether conciliation or discord is likely to be the consequence of the present proceeding? Certainly not—you are sworn, and I call it to your recollection; in the beautiful simplicity in which the Law describes your duty, *a true verdict to give according to the evidence.*

Having now pointed your attention to the topics, which, although perhaps justifiably and inevitably addressed to you, it is necessary to exclude from your consideration—it becomes my next duty to apprise you of the nature of the question to be tried. That question is simply this—whether the Traversers at the Bar, or any of them, and which, are guilty of the charges, or any of them, contained in these Informations.—The first Information is for a Conspiracy, and consists of three Counts. The first Count states that the Lord Lieutenant intended to go to the Theatre Royal on the 14th of December; and that the Traversers and others, before the Play, conspired to go there and make a riot.

2dly, It states a conspiracy to hiss, groan, in-

sult, and assault the Lord Lieutenant, and to cause him to be hissed, groaned, insulted, and assaulted.

3dly, It states, that in pursuance of that conspiracy they prepared handbills and placards, the purport of which is set out in the Information, and that they caused these to be dispersed through the Theatre, for the purpose of exciting thereby a great riot and disturbance.

4thly, That in furtherance of that intention, they bought Play tickets to enable evil disposed persons to be present at the Theatre.

5thly, That on the night of the representation, they assembled themselves at the Theatre, in pursuance of the Conspiracy, and there distributed these handbills and placards.

The second Count states, that on the night of the play, and whilst the Lord Lieutenant was at the Theatre, the Traversers conspired to make a riot, and hiss, groan, insult, and assault him; and to cause him to be hissed, groaned, insulted, and assaulted; and that in pursuance of such conspiracy they circulated handbills, &c. This Count differs from the first, in alleging a conspiracy at the Theatre itself, which, in point of law, is just as much a conspiracy, as if meditated for a week before.

The third Count states generally a conspiracy to make a riot and to hiss, groan, assault, and insult the Lord Lieutenant, and to cause him to be hissed, groaned, insulted, and assaulted, without setting out any overt act.

The second Information is for an actual Riot, not for a conspiracy to commit one. It contains two Counts, the first of which alleges that the Traversers did make a riot, and hissed, hooted, groaned, insulted, and assaulted the Lord Lieutenant, and threw at him pieces of wood, copper, and glass bottles; and the second charges only a Riot, without any of these outrages against the person of the Lord Lieutenant.

All these, taken together, constitute as grave and heavy a charge, as a midemeanour well can amount to. The course which the Trial has taken, and especially that which has been adopted in argument by the Counsel for the Traversers, makes it necessary for me to inform you, that there is no Count in either of these Informations, stating merely a conspiracy to assault or insult the Lord Lieutenant, that is to say, which states this as the sole object of the Conspiracy. It is stated only as one amongst others; nor does any Count charge Henry Handwich, or any other individual with throwing a bottle, or a stick, or any thing else at the Lord Lieutenant: an observation which it would be unnecessary to make, but for the quantity of discussion which that circumstance has produced. I have therefore now to tell you, with respect to the first Count in the Information, for a Conspiracy, which must first go to you, that if you believe that any two of the Traversers, or any one of them, with any other person unknown, so as to make two in the whole, did conspire, either to go to the Theatre, and

make a riot, or to hiss, groan, or insult, or assault the Lord Lieutenant, or to cause him to be hissed, groaned insulted, or assaulted, or in pursuance of that intention prepared the printed Handbills, mentioned in the Information, and caused them to be dispersed through the Theatre, thereby to excite a great riot or disturbance, or in pursuance of the same intention, bought Play tickets to enable evil-disposed persons to be present, or assembled at the Theatre, in pursuance of such conspiracy—if you believe that any one of these charges has been substantiated in evidence against the Traversers, or any of them, although you should believe others of those charges not to be so substantiated, you will be bound to find such of the Traversers guilty upon that Count. Upon the second Count of the first Information, if you shall believe that the Traversers, or any two of them, or any one, with any other person, conspired at the Theatre to make a riot, or to hiss, groan, insult or assault the Lord Lieutenant, and in pursuance of that intention, circulated the placards, and Handbills, stated in the Informations, I give you the same direction, as upon the first Count and upon the third Count, which charges no overt act, if you shall believe that the Traversers, or any two of them, or any one of them, with any other person, joined in a conspiracy, to make a riot, and hiss, groan, assault, or insult the Lord Lieutenant, I give you a similar direction.

Upon the first Count of the second information, I have to tell you, that if you believe that any three of the Traversers, or any one of them, with any two other persons, or any two of them, with any other third person, did commit an actual Riot in the Theatre, and either did hiss or groan, or hoot, or insult, or assault the Lord Lieutenant, or throw at him, wood, copper, or glass-bottles, you are to find such person guilty : and on the second Count, which contains a charge of a Riot in the Theatre, without stating any attack upon the Lord Lieutenant, if you believe, that any of the persons now on trial to the number of three, or two of them with another, or one of them with two others, committed such a Riot, you must find him or them also guilty : of course, such of them as you do not consider to fall within those classes, you are bound to acquit.

In order that you should discover, whether any of the Traversers do or do not fall within this description, it will be necessary for the Court to define the legal characters of the offences imputed by the Informations. For that purpose, I shall state from the highest authority, what in point of law, constitutes a Riot. It is a tumultuous disturbance of the Peace, by three persons or more, assembling together, of their own authority, with an intent mutually to assist one another, against any who shall oppose them in the execution of some enterprize of a private nature, and afterwards actually executing the same in a violent and turbulent manner, to the

terror of the people, whether the act intended were of itself lawful or unlawful. It is the effectuating it by force, and in an unlawful manner, that makes a Riot. In every riot there must be circumstances either of actual force or violence, or at least, of an apparent tendency thereto, such as are naturally apt to strike a terror into the people, as the shew of armour, threatening speeches, or turbulent gestures ; for every such offence must be said to be done to the terror of the people ; but it is not necessary, in order to constitute this crime, that personal violence should be committed. The reading of this last paragraph, and the recollection of some mistakes which seemed to prevail on the subject, suggest to me the necessity of stating to you the concurrence of this Bench, in the description of an assault, and the legal character of that offence, as given by the Solicitor General.

To strike at a man, or aim a blow, or missile at him, is as much an assault as if the blow or missile actually took effect. But to return to the subject of Riot ; whenever three or more persons use force or violence, in the execution of any design where the Law does not admit or allow the use of such force, all persons concerned therein, are Rioters. And the Law is, that if one person encourages, promotes, or takes a part in a riot, by signs, by gestures, or by wearing any badge, or ensign, of the rioters, he is himself a rioter. If he in any way encourages the rioters, he is guilty.

The nature of a Conspiracy is now to be described. It is defined to be, where two or more persons confederate together for the effecting of an illegal purpose, or to effect a legal purpose by the use of unlawful means, even although such purpose should never be effected. The merely confederating constitutes the crime, though the object be not effected. Such is the legal character of the crimes charged in these Informations, in the opinion of the Court; and I have now to state the unanimous opinion of my brethren upon the result of the evidence, that if the evidence given be true, upon which we do not pronounce any judgment, and on which you exclusively are to decide and determine, that evidence is in point of law abundantly sufficient to support both these Informations. Gentlemen, whether that evidence be true or not, whether the Witnesses deserve credit or not, is a matter upon which we shall intimate no opinion. We shall leave it to you, as the proper tribunal, to decide upon it. In stating the character of the crime, and the effect of the Evidence, if believed, we perform our duty. It remains with you to perform yours.

Before I proceed to sum up the evidence, it will be necessary for me to examine a doctrine asserted by the Traversers' counsel in opposition to what I have announced, as the opinion of the Court upon the law of the case. It has been insisted, that in a public Theatre, any man has a right to disturb and terrify the audience by expressing

his censure or approbation, of public and political characters ; that such right has been constantly exercised, and enjoyed in the Theatres of both Countries ; and that such a disturbance, of the peace under such circumstances, loses its illegal character, and becomes excusable. Gentlemen of the Jury, there is no such right. It is a position, in our opinion, not founded in point of law. If it were allowed to go abroad uncontradicted, it would be productive of the most dangerous consequences to society. The rights of an audience at a Theatre are perfectly well defined. They may cry down a play, or other performance which they dislike ; or they may hiss or hoot the actors who depend on their approbation, or their caprice. Even that privilege, however, is confined within its limits. They must not break the peace, or act in such a manner as has a tendency to excite terror or disturbance. Their censure or approbation, altho' it may be noisy, must not be riotous. That censure or approbation must be the expression of the feelings of the moment.— For if it be premeditated by a number of persons confederated before hand to cry down even a performance, or an actor, it becomes criminal. Such are the limits of the privileges of an audience, even as to actors, and authors. But if their censorial power were to be extended to public or political characters, it would turn the Theatre into a den of factious rioters, instead of a place of cultivated amusement, or as some conceive, of

moral Improvement. What public man in any department would himself go, or would take his family to a Theatre, if he were to incur the risk of being hissed or insulted by a rabble, instigated by ruffians, exasperated perhaps against him by the discharge of some public duty? We are therefore anxious to disabuse you as to this topic, which has perhaps not unjustifiably been used by the Counsel for the Traversers, but which we are bound to discountenance; and to tell you that no length of time during which licentiousness may have remained unpunished, can be sufficient to sanction so mischievous a pretension, or protect it from the reprehension of a Court of Justice. There is no distinction between a Theatre and any other public assembly. There is no difference between the rights of an audience in a Theatre, and the persons now assembled in this Court, except in the greater degree of respect which is due to a Court of Justice, or between such an audience and a congregation in a Church, except in the veneration which is due to a place of worship. No person in any public assembly, has a right to break, or endanger the public peace.

Gentlemen, I shall now bring your attention to the evidence in this case, abstaining as I have already told you, from making a single observation upon the credit due to the Witnesses, which is a consideration exclusively for your understanding and consciences: I must however

apprize you, that there are two kinds of Evidence ; the one direct and the other circumstantial. With respect to the charge of Riot, the evidence in this case is all direct. The persons who prove it, swear that they actually witnessed the facts to which they have deposed. The evidence as to the Conspiracy is partly direct and partly circumstantial. The evidence of a Conspiracy, must from the nature of the thing, be in most cases circumstantial ; indeed must always be so, except in those cases, where by accident, the Conspirators have been overheard, or where an accomplice in the guilt, comes forward to betray his associates—the latter is the present case, so far as the evidence of Conspiracy is direct. I allude to the testimony of two accomplices, George and John Atkinson—they come forward to impeach their associates and to give evidence against them in a Court of Justice. Upon every principle of evidence and of the duty of a Juror, such testimony is to be regarded with great suspicion, and reviewed with great caution. That circumstantial evidence may however be added to the direct testimony of these accomplices—I presume you will not find it difficult to comprehend. If you have been in the habit of attending upon Juries in criminal cases, you cannot be at a loss to understand the nature of circumstantial evidence, and of the corroborations which it may afford to the evidence of accomplices. I am warranted in saying, that it is frequently considered more unerring and satisfactory than direct proof,

which may be the result of misrepresentation and perjury. If a man be murdered, but no one sees by whom, or how, there can be no direct evidence of the fact; but if another person who has been known to have borne an antient grudge against the deceased, and has been heard to make sanguinary and vindictive declarations against him, be found near the bleeding corpse with a deadly instrument covered with blood; this, though not direct evidence of his guilt, would yet, if unexplained, form a mass of circumstantial evidence, which it would be next to impossible for the human mind to resist. Again, in the more common case of robbery, it most frequently occurs that there is no direct proof of the commission of the crime. But if the stolen goods be found instantly after the robbery in the immediate neighbourhood of the place where the crime was committed, upon a person who can give no satisfactory account of them, it furnishes evidence most powerful and satisfactory of his having committed the offence. As a short description of circumstantial evidence, it may be stated to be a state of facts which though not establishing guilt directly, is inconsistent with any thing but the existence of that guilt. You will consider the circumstantial evidence in this case whether it be of that description, if considered merely by itself, and for that purpose you will weigh first its credit, and next whether it leads necessarily to a conclusion of the guilt of the persons accused. You will

next have to consider whether supposing it in itself to be short of that degree of weight, it yet may not be sufficient to assist the testimony of the Atkinsons, should you be disposed to doubt what they have sworn.

I shall first state the evidence in the abstract, and assist you in comparing the particular parts of it which relate to the individuals upon trial, and shall then read you my notes, as well for the purpose of refreshing your recollection, as that if any mistake may have occurred it may be corrected.

When I shall have done so, I propose to leave to you four questions. I shall desire you to tell me by a fair and honest verdict, first, do you believe that there was any riot in the Theatre on the night of Saturday, the 14th day of December last? Secondly, if so, do you believe that any, and which of the Traversers were guilty of it as described in any, and which of the charges in the counts for a Riot? Thirdly, if they were, do you believe that it arose from a sudden or momentary impulse, or that it was the result of a previous conspiracy? and, fourthly, if there was such a conspiracy, do you believe that the Traversers, or any of them, were engaged in that conspiracy as described in any, and which of the charges in the counts for a conspiracy? Once for all I shall apprise you that it will be your duty if you believe these men, or any of them to be guilty, to find them so—if innocent, to acquit them—and if you should entertain any rational

or conscientious doubt as to the guilt of any of them, to give to that person the benefit of such doubt by a verdict of acquittal. You will take care, however, that the doubt upon which you may feel yourselves warranted in acting, be not only a rational, but an honest doubt. Not such as an ingenious man may fabricate as a pretext for a bad verdict; but such as a sound unsophisticated understanding and a pure conscience will justify, both acting under the safeguard of a solemn oath.

In performance of my undertaking to sum up the evidence, first in the abstract and then in detail, I shall begin by adverting to the direct evidence of Conspiracy, as stated by the two Atkinsons—of which it is the more necessary to give a summary, because inevitably in the course of a trial like this, the evidence as it was given, was in point of order and dates, deranged and perplexed, and would not be easily understood from the mere reading of my notes. If the Atkinsons have sworn truly (of which you exclusively are to judge,) it appears, that on Wednesday, the 11th of December, John Atkinson supped with several persons, not now on trial, at the Shakspear Tavern. That a plan was then proposed to have the Lord Lieutenant insulted at the Theatre, on the following Saturday, in order to cause it to be believed by the Ministry in England, that he was unpopular in Ireland, and thus to procure his removal from this Country. That to effectuate this purpose, it was

agreed, that a subscription should be raised to purchase tickets for the poorer classes of Orangemen. That on the following day, Thursday, John Atkinson received some money, in a blank cover, which had been promised to him on the night before. That on the same Thursday, he went to a carpenter's shop, where Henry Handwich worked, and left a message that he wished to see him. That on that evening, he went to Daly's in Werburgh-Street, and there met Henry Handwich and others. That the same subject was discussed there, and a plan laid for effectuating their intention; and that Henry Handwich undertook to collect sixty or seventy to whom tickets for the Theatre were to be given. That on the following evening, Friday the 13th, John Atkinson went with his brother George to the same house in Werburgh-Street, where an Orange Lodge was assembled, of which, John Atkinson was Deputy Master, and George the Secretary. That the same subject was there canvassed, a subscription made, and a meeting appointed for the following evening, at the Black-Bull, in Ship-Street, a house frequented by the lower order of Orangemen. That on the following morning, Saturday, John Atkinson went to the Theatre with two others, and stood at the door whilst the others went in and purchased the tickets. That that evening he met the party in Ship-Street, collected by Henry Handwich. That the party was furnished with sticks. That they were supplied with drink, that whistles

bought for the purpose, and placards ready printed, were distributed amongst them. That they then went to the Theatre, and that upon going out, Henry Handwich said "boys be wicked." That at the theatre, there was a riot, in which different persons took different parts. That some of the party were there apprehended. That others of them met after the play, at a tavern in Essex-Street, kept by a Mrs. Flanagan, and there conversed on the subject of the riot at the theatre, in such a manner as demonstrates, if the evidence is believed, that those who joined in that conversation had been actually engaged in the riot, and in a previous confederacy, to make such a riot. That is the exact substance of what the Atkinsons have stated, and it inculcates the traversers, in the several parts of the transaction in different degrees, to which I shall now call your attention.

As to the Shakspeare Tavern, there is no evidence that any of the Traversers were then present. The proceedings at that meeting are, in point of law, evidence against them only on the principle of their having been adopted and acted upon at the subsequent meetings, at which some of the Traversers attended. The next transaction in point of order, is, the calling at the carpenter's shop, as to which George Atkinson states, that Matthew Handwich received from John Atkinson, a message to his Brother, to collect the lower Orangemen, and that he assented. If this stood alone, it would be very

weak evidence as against Matthew Handwich, and the more weak because it is contradicted by John Atkinson, who says that the man who received the message was another brother of Henry, not now on trial. Were there nothing else therefore I should be bound to tell you, that upon that feeble and contradicted evidence, the charge against Matthew Handwich could not be considered satisfactorily supported. But we shall just now see how far Matthew Handwich is involved in the subsequent parts of the transaction. The next period is the meeting at Werburgh-Street, on Wednesday. That was the first night that John Atkinson was there, he does not speak of any of the Traversers having been present, except Henry Handwich, who is the man for whom he had left the message the day before at the carpenter's shop. The next is the meeting on Friday evening, in Werburgh-Street, none of the Traversers except Forbes is represented by either of the Atkinsons as having been there present. The next fact is the buying of the tickets, at the Theatre. As to this George Atkinson gave no evidence. John Atkinson imputes the purchase of the tickets to another person not now upon trial. The next transaction is that at Ship-Street just before the opening of the theatre : George Atkinson states, that George Graham, Forbes, and Henry Handwich, were there: John Atkinson, says, that Forbes was there, but has not mentioned the names of the others. As to the Theatre, which is the next

stage of the transaction, John Atkinson, in his direct examination did not mention the name of any of the Traversers, as having been there, except Forbes. On his cross examination, however, he said he saw Henry Handwich in the Upper Gallery. George Atkinson goes further. He saw George Graham, Forbes, and Henry Handwich at the Theatre. The last transaction is the meeting at Flanagan's, at which George Atkinson describes Forbes, William Graham, and Brownlow as present. John Atkinson mentions them also ; but they differ in their account of what Forbes said and did on that occasion. They differ also, as to the share that Brownlow took, but, as to him I shall make no observations, because I look upon him, after what passed yesterday, to be fully acquitted.

Such, Gentlemen, is a summary of the narrative of these two witnesses. It is not necessary, I am sure, to state, that if you believe what they say, they have in the fullest manner proved the whole of the crimes imputed by these informations against the several persons mentioned in their evidence. But whether you believe them or not, is the first question for your consideration ; and here I shall make a few observations on the nature of the testimony of accomplices. Every accomplice is in law a competent witness ; the Judge is bound to receive him, but whether he is credible is for the Jury alone. In determining that question, various circumstances must be taken into consideration. In the first place the

man who thus comes forward proves himself to be in a certain degree destitute of moral sense by admitting himself to have been a participator in guilt. In estimating the credit of a man, we are naturally led to enquire what is his moral character, and if you find that exceptionable, it will make you cautious in relying upon his evidence. But in following this principle to its practical results, it will be necessary to recollect the nature of the crime in which the Witness admits his participation. A man guilty of an atrocious offence, whose hands have been stained with blood, or whose heart has been polluted by treason, is a competent witness ; but unless satisfactorily corroborated, a Jury will seldom act upon his testimony. However if the crime be of a less dark complexion, the inference to be deduced from his admission of being concerned in it, will be proportionably weakened ; in this case you will remember the nature of the offence of which the Witnesses admit themselves guilty, and consider to what extent their participation in such a crime will entitle you to hold them unworthy of credit ; especially when that crime in the progress of the defence has been represented to you as not merely venial and excusable, but as actually meritorious. An offence committed under the influence of party spirit or the delirium of political feelings, is very different from enormous crimes, indicating great moral depravity.

There is however, another source of discredit in every case of an accomplice, which a Jury is

bound to take into consideration. I mean the interested motives which may induce such men to come forward—sometimes perhaps to escape punishment—to save their lives—to shield themselves from prosecutions—or to entitle themselves to rewards. In all these cases a Jury should act with such jealousy, as almost to reject their evidence, unless satisfactorily corroborated by other and more unimpeachable witnesses. In this case the Atkinsons have been cross-examined as to their motives, and although this is not a case in which the lives of any of the parties are at stake, or in which the witnesses could have had any danger of that sort to apprehend, yet according to my recollection, one, if not both of them distinctly admitted that he was influenced by the hopes of retaining situations which some of their families hold in public offices, a circumstance well deserving the attention of the Jury—another topic has been glanced at, in order to shew, that the Atkinsons are unworthy of credit, which the Court feels itself bound to advert to :—it was stated hypothetically, that if it be part of the Oath, or obligation of an Orangeman to keep inviolate the secrets of his brethren, these witnesses ought to be considered as stigmatized for violating that oath. No such oath or obligation has been proved to exist. I trust it could not have been proved, for if such an engagement forms part of the Orangeman's oath, it would be impossible to administer the justice of the Country in any case

such as the present, in which one Orangeman is concerned as a party, and another is a witness. Nothing of the kind has been proved ; and we are to hope and presume that it does not exist.— But if unfortunately it had been 'proved to exist it would have been the bounden duty of the Judges who are sworn to administer the laws, to state to you, that the crime of the witnesses would consist in the observance of such an oath, and not in the violation of it ; and that if two inconsistent obligations should come into collision in any man's mind, the one voluntary, secret and unlawful, (for unlawful such an oath unquestionably would be,) and the other public, and sanctioned by the laws of his Country, as an oath in a court of Justice is, it would be the duty of that man, upon every principle of law, of morality, and of religion, to observe the oath he had taken in court, and trample upon the criminal obligation, by which he had bound himself elsewhere.

Upon this subject of the credit which may be given to accomplices, it is right that I should make another observation. There never (it must be admitted) existed any man, so bad or depraved but that he might possibly speak the truth : and therefore, when a witness gives evidence in a court of Justice, it is not the true question whether he is or is not a credible person, for that is only part of the means of forming a judgment upon the real question—which is, whether what he states be true ; because it is possible that

an incredible man may disclose the truth. The way to discover whether he has done so or not, is to try whether his statement be substantiated by other evidence, either of the facts to which he has deposed, or of such a state of facts as is inconsistent with any thing but the truth of what he has sworn. By that test, I therefore call upon you to examine the credit due to those two accomplices in this case, and consider, whether, to the satisfaction of a sound unperverted understanding, conscientiously deliberating upon the subject, their testimony be corroborated by the other witnesses who have been examined.

The corroboration relied upon by the Crown in this case is two-fold. First, the proof by witnesses alleged to be credible, that in point of fact a riot was committed in the Theatre by the very persons whom the Atkinsons have described as engaged in it, this would go to establish the charge of riot; and secondly, the inference drawn from the character and nature of the riot, that it was impossible it could have arisen from a sudden or momentary impulse, or have been the result of any thing but a previous conspiracy; and in support of that latter view, a fact is relied upon, which is certainly worthy of careful consideration. I mean that printed placards, containing sentiments in unison with the language held by the Rioters, were dispersed through the Theatre by some of the Traversers. This circumstance, it is alleged, furnishes indubitable evidence of premeditation and design.

Whether it does or does not will be for you to determine; & in considering it you will remember that no account has been given to you by the Traversers of the use intended to be made of these placards; or of the origin, printing, or composing of them; or of any honest purpose for which they were prepared.

In order to see how far the evidence of the Atkinsons is corroborated, I shall take the Traversers at the bar one by one, and read the statement of each man's case as distinct from the other.

The first whom I shall select is James Forbes. There is a fact of corroboration as to him, if you think it bears upon his case, (on which you have a right to decide), very worthy of your attention. Mr. Lowther, the Box-Keeper, swore, that on the morning of Saturday, Forbes, together with two others, one actually along with him, and the other near, bought a quantity of pit tickets, and that the number each purchased was at least six. You will therefore find that so much of Atkinson's story as relates to the procuring tickets for the poorer order of Orangemen is supported by the evidence of Mr. Lowther if you believe that the tickets purchased by Forbes and his companions were purchased for that purpose, in considering which you will recollect that Forbes has not gone into evidence to shew for what purpose he required those tickets, which certainly were not for his own use, as he sat in the Boxes.

The next witness against Forbes, who corroborates Atkinson, (I do not mean generally, but in particular parts of the case) is Mr. Graves, who says that Forbes was most active in the riot. That he stood in the upper lattices, where they are connected by a grate with the upper gallery; a part of the house, you will recollect, from whence it is proved, that some of the placards were thrown; that he was, with two others, apparently using whistles; that immediately afterwards he saw him in the act of whistling, and that on Mr. Graves asking him why he did so, he said, for fun; that he took him into custody, that he observed his hand shut, that upon his requesting him to open it, he did so reluctantly, and that a small whistle was found in it. If you believe this, the testimony of the Atkinsons is in an important and material point corroborated. Be the Atkinson's who they may, be they ever so infamous in character, the fact of Forbes's using a whistle at that time and place, you cannot doubt, unless you discredit Mr. Graves.

The next witness, who as to Forbes, corroborates the statement of the Atkinsons, is Mr. G. Farley, who deposes to the scene at Flanagan's in Essex-Street. If he has described truly the occurrence at the Tavern, he has sworn to a state of facts, and declarations and speeches, some by Forbes, and others made in his presence, utterly inconsistent with the innocence of Forbes, either as to the riot or the conspiracy, and which are in exact conformity with the evidence of the Atkin-

sons, as to the nature of the conspiracy, and as to the intentions of the parties concerned in it.--- James Troy is another witness, who affects Forbes in the same way. Both these men concur in the kind of evidence which I have been representing, which identifies Forbes with the guilt of the conspiracy and the riot, even of the very worst part of it:—But, Gentlemen of the Jury, on the other hand you will have to consider that Mr. Pouden, & Mr. Smith have been produced on the part of the traversers, to give an account of the transactions at the Tavern. To a certain degree they have supported the evidence of Farley and Troy, and to a certain degree they have contradicted it. I must leave it to your sagacity and fair investigation, to discover to what extent their evidence supports or overthrows that of the Atkinsons, and what influence it ought to have upon your minds.

The next party, with respect to whom, I shall call your attention for the purpose of trying the credit of the Atkinsons, by the test of corroboration, is Henry Handwich. The first witness in corroboration as to him, is Christopher Moran, who saw him (if you believe him) rioting in the Gallery. The next is Michael Farrell, who saw him throw a bottle, and heard him use expressions offensive to the Lord Lieutenant. This fact of throwing a bottle, is not charged against him in any of the Counts of the informations—but if true it is a strong fact against him in support of the charge of riot—as to the fact it has been

alleged—first that no bottle was at all thrown—secondly that even if a bottle were thrown, Henry Handwich did not throw it. Upon both assertions, you will exercise your judgments, but from one difficulty, your minds must be now relieved—I mean the allegation that it was impossible to throw a bottle from that part of the Upper-Gallery—in support of which, the Prompter was produced with a map of the Theatre—if his evidence excites any doubt, you find it removed by a witness, whom Henry Handwich himself produced, I mean Mr. Brocas, who swore that he saw a stick or rattle thrown exactly from behind the place where Henry Handwich stood; which is the same place from which it is alleged, to have been impossible to throw a bottle. We have it proved, (if you believe Captain Webster's evidence,) that that rattle hit the cushion of the box next to that of the Lord Lieutenant. If no bottle were thrown, therefore, it is not because the thing was impossible. The next witness, who swore to Henry Handwich's participation, was Doctor M'Namara—he says he saw him throw the bottle, after an expression of “boys mind your fire.” This expression is not proved by any other witness—on the contrary, every one of them denies having heard the words. That circumstance, together with what has been sworn by Mr. Trench, must have a strong effect upon your minds; as to the degree of credit to be given to Doctor M'Namara—independently of what Mr. Trench has sworn, and of the par-

ticular expression to which I have alluded—I believe you were very much struck (as I confess I was) with the circumstance, that a man situated in the Middle Gallery, should be so positive, as to the person of a man in the Upper Gallery, whom he had never before or afterwards seen, as to be able at the end of two months to recognize him this day in the court—all this makes his evidence open to a good deal of observation. Mr. Trench does not consider him worthy of credit on his oath. If that opinion were formed from the result of the trial at the Sessions, it would seem to rest on very slight foundation—That transaction, as far as we have at present the means of understanding it, seems a very strange kind of proceeding. We are not however, at liberty in our present imperfect view, and ignorant as we are, of the facts of it, to pronounce upon it. Mr. Trench has however given more legal satisfactory evidence by swearing to the general character of the witness: should you discredit him, the effect will be to withdraw him from the number of those who support the testimony of the Atkinsons, but will not necessarily impeach the credit of those other witnesses, or render them unworthy of your consideration.—For it may be true, that Henry Handwich threw that bottle, and yet that Dr. M. Namara did not see him throw it. Let us suppose, therefore, his evidence rejected and condemned by you, yet still, Moran and Farrell prove the fact of Handwich participating in the riot, pro-

vided you believe their evidence. But is there nothing further in the case against Henry Handwich? I am now to call your attention to the testimony of Mr. Brocas, not of an enemy but a friend—his own witness, the man to whose credit he appeals, and whose oath he calls upon you to believe. As to this man however you are not bound to believe him because he is a witness in the defence, you may disbelieve him, tho' produced by the Prisoner, but if you do believe him the result of his testimony is this—he has acquitted Henry Handwich of the charge of throwing the bottle, a charge not contained in either of the Informations, but he has fixed upon him every other charge which is contained in them. In the way in which I took the evidence of Brocas it really did appear to me, to furnish more distinct and precise proof, not only of Henry Handwich's participation in the riot, but of the nature and extent of that riot, and of the previous conspiracy, than all the witnesses for the Crown put together, had afforded.

It appeared to me, that he gave the most distinct and precise evidence of an actual riot, that could have been the result of a previous conspiracy. If you recollect, he stated, that the Lord Lieutenant was repeatedly insulted.—He mentioned the words sworn to by the Atkinsons. He says there was a riot, in the course of which he saw a rattle, or part of a rattle thrown at the Lord Lieutenant, as, (if you connect Captain Webster's evidence with

his) must be inferred, a riot, in which placards were used, and in which the same watch word deposed to by Atkinson, was repeated.—In short if I were to take up the counts of these informations, one by one, I should find something in the testimony of Brocas to support every count in each of the Informations—and if he had not been produced as a witness for the Traversers, I should have supposed that it was from his lips and instructions that the Crown pleader had framed the informations. If upon this man's evidence, you believe, that there was such a riot, in which Henry Handwich participated, you will be bound to find him guilty upon the evidence of his own witness. But if you believe him, you must suppose something further, and you will be bound to find every one guilty, whom you shall believe to have joined in the riot, either by encouragement or otherwise, in any part of the Theatre. If from Brocas's evidence you shall be satisfied, that there was a riot of such a description, as is inconsistent with any other supposition, than that of a previous conspiracy, then his evidence applies in corroboration of the Atkinsons' as to that charge. I have already alluded to those parts of it, the throwing down placards, and the use of the words "look out," which Atkinson swore were preconcerted.

The next party to whom your attention is to be directed, with reference to the question how far the Atkinsons are corroborated, is Mathew Handwich—as to him, you will find that the only corroboration which they receive, is from

Eastham, who says, he saw him actually engaged in the riot; and from Moran, who states, he was active, and that he cried out "a groan for Wellesley," and "down with the Popish Government" If you believe this person, you must find Mathew Handwich guilty of the riot. As to his greater or smaller share in it, that is not for you—it will be a matter for the future consideration of the Court, if he should be convicted. There is no other evidence against him, and should you have a conscientious doubt about him, you are bound to acquit him.

The next traverser whose case is in this view to be noticed, is William Graham. The first fact against him, as to which Atkinson is corroborated, is an important one. It appears by the testimony of Mr. Lowther, who knew Graham, that he purchased at least six Pit tickets in the Theatre. John Atkinson, in describing his going to the Theatre to buy tickets, drops the name of Graham. He does not mention him, whether from forgetfulness, or indulgence, or favour to him, truly we cannot say; he omits his name and does not criminate him. But Lowther swears that he got six pit tickets at the least: he adds to that, that though he bought six pit tickets, he took places in the Boxes for his family. We find him in the same circumstances as Forbes, buying more tickets than he wanted for himself; in this respect the evidence of Atkinson as to the fact of buying tickets is corroborated. John Lambert also swore, that William Graham hissed

and groaned the Lord Lieutenant, and that he had in his hands printed hand bills, which he brought in with him to the Theatre. One more corroboration remains: and that is, the testimony of Farley and Troy, as to what passed at the tavern in Essex-Street. Graham was then present. You will consider, as I have already said to you when speaking of Forbes, whether their credit is taken away by Smith or Pouden: But if you believe them, they swear to facts against Forbes and W. Graham, utterly incompatible with the innocence of either, and fully confirmatory of the evidence of the Atkinsons.

The next person is George Graham. The testimony of the Atkinsons against him is corroborated by four witnesses. One of them, Philip Ryan, saw him active in the riot, and saw him throw a piece of the rattle after breaking it.—James Tiernan saw him also actively engaged, and throwing the head of the rattle. He never lost sight of him till he was in custody. Serjeant Major Harris saw him active in the riot, and saw him throw the rattle. The fourth is that same Brocas, who though he does not reach Graham individually, as the person who threw the rattle, yet stated directly that it was thrown.

The only other party is Brownlow. The prosecution is given up against him, there being no evidence against him except what relates to the Tavern in Essex-Street. It would appear very plainly, that if he had been originally engaged in this conspiracy, he declined, from compunction

or timidity, to go on with it ; he was rebuked at the Tavern for withdrawing himself from the confederacy, and seems to have made no very satisfactory defence against the charge.

It appears to us, therefore, that there is very little evidence against him. The Attorney-General, however, has taken a course very satisfactory to us, by giving up the prosecution against him.

I have now stated the corroborations of the Atkinsons by nine distinct witnesses as to the several Traversers in different degrees. Independently of these nine, you will find six other witnesses who, without implicating any particular individual, or pointing out any of the prisoners, corroborate the Atkinsons as to the nature and extent of the riot. These are John Rooney, Charles O'Flaherty, Giles O'Brien, Philip Staunton Cahill, Captain Webster, and Mr. Brocas. All these depose to the fact of the riot and the nature of it.

Of the six witnesses whom I have last enumerated, though none identify any of the Traversers, yet three swore to the throwing the bottle. Rooney, O'Flaherty, and the medical student Mr. Cahill : and the other three swore to the throwing of the rattle—O'Brien, Captain Webster, and Brocas. The Atkinsons therefore appear to be corroborated as to the Traversers by nine witnesses—by six as to throwing of the stick, and by five as to throwing the bottle, in all by fifteen persons, and all this independently of the trans-

action at Flanagan's deposed to by Farley and Troy.

Gentlemen of the Jury, this is the whole of the evidence on the part of the Crown, in an abstracted form. The witnesses on the part of the Crown, have been in parts contradicted by some called on the part of the Traversers, whose testimony I shall presently read, and have already alluded to—you will judge to what extent the contradiction extends, and to what weight it is entitled; and whether it be sufficient to excite a reasonable doubt, as to the guilt of any of the Traversers:—You will recollect that the Traversers were charged with this offence, immediately after the riot occurred; and of course, might easily have produced persons either to prove that they were not at the Theatre; or that their demeanour there was peaceable. The former was not attempted, and the only witness produced for the latter purpose, was Mr. Brocas, upon whose testimony I have already observed. The testimony of Dowager Lady Rossmore, does not apply to either of these objects, but at first seemed calculated to induce a belief, that no riot whatever had taken place—however, it is quite plain, that no such inference can be drawn from her Ladyship's evidence, or indeed any inference very material in the present case—although it appears, very creditably to her courage, that she was not in the least alarmed by what she witnessed. But although she did not observe occurrences in her own box, to which Captain Webster gave evidence, particularly the appre-

hensions and illness of Lady Anne Gregory, yet, such difference of recollection between those respectable persons, cannot properly be considered as a contradiction of the one by the other, or any thing but what, in such a scene, is not surprising, that one did not see and hear every thing that was seen and heard by the other—a circumstance the more to be expected when the age of Lady Rossmore is recollected, and that her sight and hearing, are, as she states, in a certain degree impaired.

Some of the Traversers have also gone into evidence of characters. Such evidence is admissible, but the effect of it is this, and no more—that if there be a rational doubt, that doubt ought to be much influenced in favour of a Traverser, by his good character, inasmuch as it is improbable, that such a person should be guilty of what is imputed. But in a case free from doubt, such evidence is of little or no value. A man proved to be guilty is not to be acquitted, because he has heretofore borne a good character. The nature of the character is also material. If a man be charged with murder, evidence of his being a humane man will be important; so will character for honesty on a charge of robbery—or for a peaceable disposition, in the case of a charge of riot. You will judge how far in this respect the evidence of character relied upon here applies. I cannot omit one observation; the character here given, is a character for loyalty. Loyalty, well understood, implies an attachment to the

Laws, the Sovereign, and the Constitution. A Loyal man therefore, thus considered, will not be likely to insult the King's Representative, or violate the Laws.

But if the principle of loyalty be in any instance perverted into a particular direction, or if a man has taken any partial view of what ought to be the conduct and feelings of a loyal man, perhaps you will not think that evidence of a character for loyalty, when you advert to the nature of the defence in this case, in the course of which the crime was almost justified as a loyal act, is to have as much influence as in an ordinary case it might be entitled to. (His Lordship then minutely read from his notes the whole evidence from beginning to end.)

MR. JUSTICE JEBB.

GENTLEMEN OF THE JURY,

HAD there been any difference of opinion in the Court upon the law of the case, it would have been the duty of every member of it, to declare his opinion upon the subject; or if any of the Judges conceived, that in the summing up of the evidence, or the observations made upon it by my Lord Chief Justice, any inaccuracy had existed, we should have been likewise bound to notice it; but when

a perfect unanimity prevails in these respects, and where we all concur in thinking, that no error has been committed in the recapitulation of the evidence, or in the observations with which it has been accompanied ; that no position has been advanced, which is not supported in point of law, and no topic has been omitted, which ought to have been adverted to, it would be an unwarrantable consumption of the public time, and not conducive to the attainment of justice, were I to detain you by a charge. If I dissented in any respect from my Lord, with respect to the law as applicable to the present case, I should be guilty of an unpardonable dereliction of duty, if I did not express my opinion upon the subject. If I thought that the observations which have been addressed to you were not sustained by the evidence, that in the comments which have been made upon it, more stress had been laid upon any part of it than it deserved, or that any portion of it had not received the due attention which it was entitled, I should, without regard to what has been already addressed to you, and still more to any personal considerations, discharge the duty which would have devolved upon me. But concurring, as I fully do, in what the Chief Justice has declared to be the law, and agreeing with him in the view which he has taken of the evidence, and of the topics which have been irrelevantly introduced on the present trial, I feel it unnecessary to add any thing to what has fallen from him. In his recommendation to

you to discard from your consideration the topics to which I have alluded, I perfectly coincide : as also in his masterly and luminous arrangement of the evidence in the early part of his charge, and the accuracy with which it was finally detailed. I have, by a careful comparison with my own notes, satisfied myself of its correctness.

I do not think however, that I ought to content myself upon the present occasion, with merely expressing my concurrence with the head of the Court. I owe it to myself, as well as to the public, to say, that that concurrence has not been the result of any hasty or inadvertent impression. I have considered the subject in all its bearings, with the anxiety which should govern a Judge in every case, and particularly one of such great public importance, as the present. In coming to the conclusion of unanimity with my brethren, I have not bowed to any superiority of understanding : I have first consulted my own, and applied it coolly, calmly, and indifferently to the subject. So much with respect to the law. As to the evidence, and the law bearing upon it, I have devoted the whole of the leisure hours, after the adjournment of the Court, to a careful examination of the evidence of each day. and the result of my labour has been, my perfect concurrence with my Lord, in the law as stated by him. I conceive therefore, that I best discharge my duty, by expressing my opinion to be in conformity with his, and declaring my opinion to

be, that if you believe the evidence, the informations have been both supported.

MR. JUSTICE BURTON.

I think it necessary merely to state, that I fully concur in all the legal propositions laid down by my Lord, and in every observation which he has made upon the evidence; and that no additional observation seems to me to be necessary or important.

MR. JUSTICE VANDELEUR.

I have only to express my entire concurrence in every proposition, which, in point of law, has been laid down by the Chief Justice. With respect to the observations upon the evidence, they have been so clear, so luminous, and so satisfactory to my mind, that I should think myself unjustifiable, were I to do away the effect of that light which they have thrown upon the trial.

Houses of the Oireachtas

