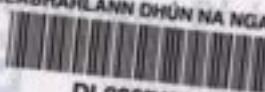




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1810.

A
REPORT
OF THE
TRIAL
OF AN
ACTION OF SLANDER,
WHEREIN
PHILIP BOYLE WAS PLAINTIFF,
AND
THE RT. REV. PETER M'LOUGHLIN,
ROMAN CATHOLIC BISHOP OF THE DIOCESE OF RAPHOE, WAS
DEFENDANT.

TAKEN IN SHORT HAND
BY RANDALL KERNAN, Esq.
BARRISTER AT LAW.

The laws which empowered Roman Catholic Bishops to excommunicate, have long since been repealed, and none but Bishops of the Established Church have, now, a legal right of exercising that authority. And I consider the sentence of Excommunication pronounced by the Defendant, in this Action, not only AN ASSUMPTION OF POWER, CONTRARY TO LAW, BUT AN USURPATION OF THE RIGHTS OF THE BISHOPS OF THE ESTABLISHED CHURCH, AND AN INFRINGEMENT OF THE JURISDICTION OF THE ECCLESIASTICAL COURTS.

Vide Baron McClelland's Charge to the Jury.

DUBLIN:

PRINTED BY GRAISBERRY AND CAMPBELL, 10, BACK-LANE.

1810.

THE TRIAL

OF AN

ACTION FOR SLANDER,

Brought by PHILIP BOYLE, against the Right Rev. PETER M'LOUGHLIN, Roman Catholic Bishop of the Diocese of Raphoe; tried at Lifford Assizes, in the County of Donegal, on the 21st of March, 1809, before the Hon. Baron M'Clelland, and a Special Jury.

NAMES OF THE JURORS.

Francis Mansfield, Esq. Foreman.

Wm. Todd, Esq.	John Cochran, Esq.
H. Montgomery, Esq.	John Kirkead, Esq.
R. Mansfield, Esq.	William Patterson, Esq.
James Cochran, Esq.	David Crawford, Esq.
Joseph Johnston, Esq.	William Walker, Esq.
William Ball, Esq.	

Counsel for the Plaintiff.

Mr. Rolleston.
Mr. Smyly.
Mr. Macklin.
Agent, G. Kieran, Esq.

Counsel for the Defendant.

Mr. Johnston.
Mr. Boyd.
Mr. Torrins.
Mr. Cole.
Mr. Deering.
Mr. Kieran.
Mr. Dickson.
Agent, G. Henderson, Esq.

THE DECLARATION.

County of Donegal } Philip Boyle Complains of
to Wit } Peter M'Longhilin, being
} in the Custody of the
} Marshal of the Marshalsea
of our Lord the King, before the King himself,
of a Plea of Trespass on the Case.

For that whereas, the said Philip is a good, true, faithful, and honest subject of this realm and as such, from the time of his nativity, conducted himself, and has always been taken, held, and respected, by all his friends and neighbours, and other worthy subjects of this realm, to be a man of good name, fame, credit and reputation, and has always, for all his life-time past, lived, and con-
tinued

tinued free, clear, innocent, and wholly unsuspected of, and from all, and all manner of crime, which might injure him in the estimation of his neighbours and friends and other worthy subjects.

And whereas, at the several times hereafter mentioned, Grace Boyle, Anne Boyle, and Mary Boyle, the daughter of the said Philip Boyle, lived and resided in the house of the said Philip Boyle, at Ballyshannon, in the County of Donegal, and then and there, used and exercised the business of milliners and mantua-makers, for the profit, advantage, and emolument of the said Philip Boyle, whereby the said Philip Boyle gained and got his livelihood and faculty of living. And the said Philip Boyle, at the time hereafter mentioned, had intended to have commenced the trade and business of a retail merchant, or shopkeeper, to wit, at Ballyshannon in the said county.

And whereas, the said Philip Boyle now is, and all his life, from his nativity, hath been a Roman Catholic, or person professing the popish religion; and whereas the said Peter M'Loughlin now is, and, for four years last past, hath
been

been the Roman Catholic titular bishop of the diocese of Raphoe. And whereas, the Roman Catholic chapel of the parish of Kilbarren is lying, and being at Ballyshannon, in the said county, and the said chapel is situate within the said diocese.

Yet the said Peter M'Loughlin well knowing the premises, and contriving, and maliciously intending, to hurt, degrade, and damnify the said Philip Boyle, in his good name, fame and reputation, and to deprive him of his substance, as aforesaid, on the 10th day of April, in the year of our Lord, 1808, at Ballyshannon, in the Roman Catholic chapel of the said parish, during the time of celebrating public worship therein, of his own wrong, without any just or lawful warrant or authority, and also without any reasonable or probable cause, openly, publicly, falsely and maliciously, in the presence and hearing of the whole congregation, then and there assembled, denounced, from the Altar of the said chapel, the said Philip Boyle, and cursed him, and declared him to be excommunicated, and from the Roman Catholic church
aforesaid

aforesaid, to be excluded and then and there publickly, maliciously and opprobriously warned the said congregation, then and there assembled, as aforesaid, not to have any dealings or intercourse whatever with the said Philip Boyle, under grievous pains, penance, and penalties, which he the said Peter M'Loughlin, there threatened he would inflict on any person, who should be discovered holding any intercourse with the said Philip Boyle.

And afterwards, to wit, on the day and year last aforesaid, at the Roman Catholic chapel, aforesaid, in the said county aforesaid, and during the time of celebrating public worship in the said chapel, the said Peter M'Loughlin, of his further malice against the said Philip Boyle, of his own wrong, and without any lawful authority, and also without any reasonable cause, openly, publicly, falsely and maliciously, in the presence and hearing of the aforesaid congregation then and there assembled, again denounced, and cursed the said Philp Boyle, and declared him to be excommunicated,—by means whereof, the said Philip Boyle saith he is greatly of himself but better joy to nothing hurt,

hurt, injured, degraded and damnified, in his good name, fame, credit and reputation; and fallen into disgrace among his neighbours and friends, and other good and worthy subjects of this realm, insomuch that many of his neighbours and friends, have always, from the time of pronouncing the denunciation, or curse aforesaid, and by reason thereof, and for no other reason or cause, deserted and withdrew themselves from the company and conversation of the said Philip Boyle, and still do, daily, more and more, refuse and desist from ever having any manner of fellowship or conversation with him, upon any account whatsoever, as before they were used and accustomed to have. And the said Philip Boyle saith that divers of his neighbours and friends, to wit, Mary M'Clean, Catherine M'Loughlin, Mary M'Cullen, Mrs. Elizabeth M'Golrick, Mrs. Mary Brennan, William Clancy, James Boyle, Mathew Mulherin, John Quin, Patrick McCormick, and other subjects of this realm, have always hitherto, from the time of the pronouncing of the said denunciation and curse aforesaid, and by reason whereof, and for no other reason, or cause, refused and declined to have

have any thing to do with, or in any manner to employ the said daughters of the said Philip Boyle, in the said trade and business above mentioned. And the said Philip Boyle hath, also, by reasons thereof, been prevented from commencing, or carrying on the busines of a shopkeeper, or retail merchant, as aforesaid, whereby the said Philip Boyle is reduced to the greatest distress, and is wholly unable to procure or obtain any livelihood or support for his family, and is otherwise grievously hurt, and injured to his damages of £1,000, and therefore he brings his suit and so forth.

JOHN SMYLY.

Mr. Macklin Opened the Pleadings,

And stated the cause of Action. The plaintiff laid his damages at £1,000 and the defendant pleaded the general issue.

Mr. Rolleston then addressed the Court and Jury, in the following words.

My Lord, and Gentlemen of the Jury.

“ In this case, I am counsel on the same side with Mr. Macklin; and Gentlemen, this action forms a most striking contrast from that which you have now been trying: Gentlemen this is a Case of the most singular and important nature; and involves in its consequences the dearest rights and interests of society.—It embraces the respect and reverence, which is justly due from the catholic laity, to the catholic clergy of this kingdom; and it will establish, by its decision, that protection and security which the laws of this Country afford to the Roman Catholic laity against the tyranny and oppression of their clergy: Gentlemen these are two points of the utmost consequence to the community at large; but particularly interesting to a great majority of his majesty’s subjects, in this kingdom

dom, and I trust you will keep them distinct in your mind.—If Dr. M'Loughlin, the plaintiff in this action has, not overstepped his religious duty, but merely acting in the capacity of a Catholic bishop has exercised the power of excommunication, and that the defendant has been guilty of an offence, which would justify the passing of that sentence, he cannot hope to receive any, the most trifling compensation in damages from so respectable a jury.

But gentlemen this is not the case of my client who, as I am instructed, has not been guilty of any crime; and when I state to you the dreadful anathemas which seem to constitute a part of the awful denunciation pronounced against him, you will scarcely think that any offence, less than murder, could have justified the bishop as a minister of heaven, in passing such a sentence. This sentence has been productive of the effect of banishing my client from the society of his most intimate friends; not even his relations can venture to speak to him, lest they too should ipso facto incur, the same dreadful censure; to touch even the hem of his garment would constitute a crime of an unpardonable nature.—My unfortunate

client has, ever since the passing of that sentence, been deprived of the comforts of participating in the rights of that church, in which he was baptized, and in which he was educated from his nativity ; and if he has done any thing to merit such a punishment, I beseech you gentlemen to find a verdict against him ; but if, on the contrary, the defendant, for the purpose of procuring temporal advantage to himself, and not from a motive of acting impartially in the exercise of his religious duty, has at the alter of the God he worships abused the power, which I conceive to be vested in him, by his church, it is your province to punish him, as he deserves, and for such an offence, no damages can be too liberal. Gentlemen, having prefaced thus much, I will now briefly state to you, the facts of this case.

About 13 years ago, the Roman Catholic inhabitants of the parish of Kilbarren, in the county of Donegal, entered into a voluntary subscription, for the purpose of building a chapel in the town of Ballyshannon.

It appears that Dr. M'Loughlin, the defendant, and titular bishop of the diocese of Raphoe, took

took possession of the parish of Kilbarren, and came to reside at Ballyshannon, about five years hence. Finding the chapel too small to accommodate the number of his parishioners, he proposed to them, the expediency of erecting two Galleries. To this proposal, the parishioners agreed, and the galleries were accordingly built. Immediately after they were finished, the defendant, and one of his parishioners, calling themselves a committee, allotted the principal pews to such of the wealthy parishioners, as would agree to purchase them at a certain price. When the parishioners heard of this partial allotment, they were much surprised, and conceived themselves to have been not only insulted, but ill treated by the bishop. They accordingly remonstrated, and told the defendant that it was not necessary to resort to the measure of disposing of the pews, in that manner, as they were ready to pay the amount of the arrears due to the builder. And to affect this purpose, a general meeting of the parishioners took place, when the plaintiff was appointed collector, to raise the amount of the arrear. The defendant, from this period, became vexed with the plaintiff's conduct ; and at meeting with

with this opposition from the parishioners ; he found he could not dispose of the pews to his favourites as he had intended, and had promised them. In some time after that meeting, the bishop addressed the plaintiff, in the chapel, in the presence of the congregation, in these words, "I perceive, Mr. Boyle, that the arrear due on account of building those galleries, has not yet been collected ; I shall therefore dispose of the pews, as I at first intended." The plaintiff answered : He hoped that his Lordship would grant a little longer time. To this humble request, the bishop angrily replied : " desist you set of combinator, or I will punish you with the weapons of the church." Gentlemen, was either this manner or menace becoming the minister of the gospel, standing before the altar of his God ?

On the following Sunday, the bishop persisted in his determination of disposing of the pews, to such persons as were his favourites, and desired them to take possession of their seats. The plaintiff on this occasion told the bishop, that the parishioners would never consent to the pews being disposed of in that way ; and entreated him to wait till the following Sunday. This only

served

served to enflame the bishop's passion, who then said: Gentlemen, I again call upon you to take possession of your pews; I perceive there is a combination formed amongst you against me in this parish, and you, Mr. Boyle, are at the head of it." The Plaintiff humbly replied, "I deny the charge, my Lord; I assure you it is not so." The defendant then addressed the congregation, and said: "do you hear this man, attempting to make a clergyman a liar at the altar of God;" then turning to the plaintiff, he said: "I will denounce you and your family, sir, on next Sunday." One would have thought that before the next Sunday had arrived, the bishop's passion might have subsided, and that he would not have had the imprudence of carrying his threats of excommunication into execution. But unfortunately for my client, this was not the case. On the following Sunday, the plaintiff and his family attended divine service at the chapel as usual. The bishop then asked him "if he were come to offer satisfaction, for the scandal he had given on the preceding Sunday." The plaintiff answered, that "if he had offended either against

God,

God, or the church, or the bishop, he was sincerely sorry for it."

The bishop then asked him, "if he would sign a written paper, containing certain terms of submission. The plaintiff begged to hear the contents of the paper read. The bishop then read from the paper, these words: "I, Philip Boyle do withdraw myself from the head of a set of combinators. My Lord, replied the plaintiff, "I know nothing of combination, and therefore, I cannot put my name to a paper, which accuses me of that offence. Gentlemen, after this, you would naturally suppose, that the minister of the gospel would not have gone further; but not content with this humble submission, and with the offer of the plaintiff, to make any attone-ment consistent with his conscience, the bi-
shop exclaimed, "I will now excommunicate you Sir;" and immediately after, he ascended the altar of his God, and thus pronounced the awful sentence of excommunication, in these words: I, Peter M'Loughlin, titular bishop of Raphoe, in the name of the Father, of the Son, and of the Holy Ghost; and of the Holy Apostles, Saint Peter, and Saint Paul, of the blessed

Virgin

Virgin Mary, Mother of God, and of all the Angels and Saints in Heaven, do excommunicate you, Philip Boyle, until you sign this paper. The candles were then extinguished. The chapel bells were rung ; and thus was my unfortunate client consigned to temporal infamy. Gentlemen, permit me to ask you, did his offence justify such a punishment ? Did he, for refusing to brand himself with infamy, merit expulsion from his God, from his religion, and from the society of his friends ? If this impious curse be registered in Heaven's Chancery, it will appear in judgment against the man that uttered it, and will not affect the injured person against whom it was pronounced. Gentlemen, the plaintiff being excluded from the chapel of Ballyshannon, attended divine service, at a neighbouring chapel, in another diocese, where the clergyman had the humanity to receive him. The defendant being informed of this circumstance, was resolved to cut off all spiritual communication (so far as in him lay) between the plaintiff and his God, and he therefore wrote to the bishop of that diocese, and complained of the conduct of the clergyman, for admitting the plaintiff to be present during the

time

time of divine service. The bishop, on receiving the complaint of the defendant, wrote to this clergyman, and charged him, under a severe penalty, not to suffer the plaintiff to enter the chapel, until he should have made the submission required of him by Dr. M'Loughlin. Thus was this wretched man rendered an outcast from all civil and religious society, and deprived of the spiritual consolation of worshipping God, for not pleading guilty to the charge of being a combinator.

Gentlemen, I have related the whole of the facts of this case to you. This is an action reluctantly brought by a Roman Catholic fellow-citizen, before a jury of his countrymen, against a bishop of his own religion—a clergyman whom he had always respected, and whom he had never offended. Gentlemen, this is the case of a much injured individual, who comes before a most respectable jury, and says, “ I am innocent of any crime; judge if I be deserving of being expelled from society, for not signing my own condemnation. For not subscribing my name to a falsehood, by professing myself a combinator.”

Gentlemen,

Gentlemen, if it will appear to you, in evidence, that Dr. M'Loughlin, in the whole of his conduct towards the plaintiff, was solely influenced by a sense of religious duty, and that he had sufficient cause, according to the laws and discipline of his church, for excommunicating my client, I trust you will find a verdict for the defendant.

But if the facts I have already stated to you shall be fully proved, and that Dr. M'Loughlin, for the purpose of procuring a temporal advantage to himself, has banished the plaintiff from society, and deprived his children of the means of earning his subsistence, no compensation, in damages, which you may think him entitled to receive, can be too liberal.

Evidence on the part of the Plaintiff.

ELIZABETH BOYLE, examined by Mr. SMYLY.

Q. You are daughter to the Plaintiff?

A. I am.

Q. Do you know the Defendant, Dr. M'Loughlin?

A. I do.

Q. Is he the bishop of your diocese?

A. He is.

Q. You, and all your family are Roman Catholics?

D

Q. We

A. We are.

Q. Were you in the habit of attending chapel on Sundays?

A. Yes.

Q. Did you hear Dr. M'Loughlin, on any occasion, in the chapel, say any thing respecting your father?

(When this question was proposed, the lady became so much agitated, that the judge ordered her to retire.)

GRACE BOYLE, *examined by Mr. MACKLIN.*

Q. You are a daughter of Mr. Boyle, the plaintiff?

A. I am.

Q. I believe you and your family profess the Roman Catholic religion?

A. We do?

Q. Do you know the Defendant, Dr. M'Loughlin?

A. I do.

Q. Do you recollect having been in the chapel on a Sunday, in the month of April, 1808?

A. I do.

Q. Did you, on that day, hear Dr. M'Loughlin say any thing about pews?

A. Yes. He desired some gentlemen to take possession of their pews, and that he would make them good to them.

Q. D.d

Q. Did any person make an objection to what Dr. M'Loughlin said on that occasion ?

A. My father said the parishioners would not agree, or give their consent to it.

Q. Did the bishop make any reply ?

A. He asked why not ?

Q. What did your father then say ?

A. He said that the arrear of debt due would be soon made up. He had returns in his pocket, amounting to £180.

Q. Do you recollect any conversation to have taken place between the bishop and your father, on any subsequent Sunday ?

A. At another time I heard the bishop say to some gentlemen, " take possession of your pews, I will make them good to you."

Q. Do you recollect any thing further ?

A. Yes. The bishop said, to indulge the parishioners, he had suffered them to subscribe some money, but he had done wrong, and he would order the collectors to give the money back again. He then pointed out to the pew where our family were sitting, and desired Mr. Michael Cassidy to take possession of his pew.

Q. Do you recollect any particular circumstance having happened after this ?

A. On the following Sunday my father went to the chapel, when something passed. The bishop asked my father, if he was come to make a submission ? My father said, that if by any

rash word, he had offended against God, or the church, or his lordship, he came to ask God's pardon.

Q. What did the bishop say then?

A. He asked my father, if that was all the submission he would make; and said, "Mr. Boyle, will you not give up in every thing?" My father then said, I will give up in every thing that Mr. Fausset told me; and then requested the bishop would put off the sale of pews until Mr. Fausset came from the assizes?

Q. Did you, on any former occasion, hear the bishop make use of any threats?

A. I heard him, one Sunday, desire certain persons to take possession of their pews; when one of the parishioners replied, that the debt was nearly made up?

Q. What followed after?

A. The bishop stamped, and desired the person to be silent.

Q. Did he say any thing further?

A. He then said, "Desist, you set of combinators, or I will meet you with the weapons of the church, and cut you off from the congregation?"

Q. Were you present in the chapel at any future period, when the bishop said, "Desist, you set of combinators," and in what manner did he say it?

A. He stamped when he said it, and, to all appearance, he was in a passion?

Q. Were

Q. Were you present when the excommunication took place?

A. I was present when the bishop called the attention of his hearers. He then put on his stole, and took out of his pocket a written paper. He then asked my father, if he was come to make a submission? my father said, if he had offended, he was willing to ask pardon, and requested him to read the paper.

Q. What followed?

A. The bishop read the paper, and my father repeated the words after him, till he came to these words, I, Philip Boyle, withdraw myself from a set of combinators.

Q. What did your father then say?

A. He said he was no combinator. He knew nothing of combination or conspiracy, and therefore he would not sign that paper. The bishop then said, if my father would not sign it, he would excommunicate him.

Q. What followed after this conversation?

A. My father said, he had no other objection to sign the paper, than to the word, combinator.

Q. Do you remember what the bishop did afterwards?

A. He asked my father, two or three times, to sign the paper; and then told him, he would excommunicate him.

Q. Do you recollect the words the bishop made use of, on that occasion?

A. He

A. He said, In the name of the Father, and of the Son, and of the Holy Ghost, I, Peter M'Loughlin, titular bishop of the diocese of Ra-phoe, call all the Saints and Angels in Heaven to witness, the Apostles, Saint Peter and Paul, that I excommunicate you, Philip Boyle, until you sign this paper.—He then rung the bell.

Q. In what line of life was your father?

A. He lived by his own industry, and by ours. I, and my sister Elizabeth, lived in his house.

Q. You were mantua-makers. For whose emolument did you work?

A. For my father's and his family's.

Q. How were the profits of your business applied?

A. For the support of my father's family.

Q. Were there many persons who employed you in the way of your trade?

A. There were.

Q. Did they continue their business after the excommunication had taken place?

A. Some of them gave me their business; and others of them withdrew their custom.

Q. Were the persons who used to frequent your house, both Catholics and Protestants?

A. They were.

Q. Have you observed any thing in particular in the conduct of your Catholic friends and acquaintances?

A. Some

A. Some of them came to our house, and others staid off.

Q. Do you know a person of the name of Mary M'Clean?

A. I do.

Q. Has she dealt with you since the ex-communication?

A. She has.

Q. Do you know one Sally M'Golrick; has she dealt with you since?

A. She has not.

Q. Do you know of your father having prepared a shop, some time previous to the ex-communication having taken place, for the purpose of commencing business?

A. I do.

Q. Did he carry his intention into execution?

A. He did not.

Q. Was he in expectation of receiving assistance from his friends?

A. He was.

Q. Had he many friends?

A. He had.

Q. Did they frequent his house as usual?

A. A great many of them staid off.

Cross examined by MR. JOHNSTON.

Q. I believe your father has been a shoemaker
in

in the town of Ballyshannon for upwards of 25 years?

A. He has.

Q. Have you heard, and don't you believe, that the Chapel of Ballyshannon was built at a very considerable expence?

A. I believe it was.

Q. There were two galleries erected, at a very considerable expence?

A. They were.

Q. Do you recollect the first Sunday, when the admonition was given by the bishop to your father?

A. I was not at the Chapel on that day.

[Here the JUDGE refused to admit this line of examination. He said that these admonitions were of no consequence. He was extremely sorry it should have fallen to him to express an opinion on this subject; but he could not help remarking, that he considered the conduct of the bishop on this occasion, as an assumption of power contrary to law. He thought it an infringement on the rights of the bishops of the established church. Roman Catholic bishops had no ecclesiastical jurisdiction to excommunicate, and therefore the act of the bishop being, in the first instance, illegal, he was answerable for all the bad consequences that ensued.

Mr.

Mr. JOHNSTON, in reply, said, that he conceived it to be perfectly clear, that the Roman Catholic religion was tolerated by the laws of this country. He considered it equally manifest, that Roman Catholic bishops had exercised the power of excommunication, merely as a matter of Church discipline, for time immemorial. He would therefore humbly ask, if the Catholic religion be tolerated, how can its discipline be contrary to law? Here no legal judgment of excommunication, purporting to have the effect of imposing certain disabilities, appeared; he, therefore, did not consider, that the bishop had, in this instance, acted contrary to law.

The JUDGE denied this position, and said, that the excommunication of a Catholic bishop, being in itself an illegal act, was a full answer to any argument his counsel could adduce.]

Mr. JOHNSTON then resumed the cross-examination of the witness.

Q. By virtue of your oath, were you present when a riot took place in the Chapel?

A. I was not.

Q. By virtue of your oath, have you not heard, and do you not believe, that a riot did take place in the Chapel, whilst the bishop was officiating at the altar?

A. I never heard of any such riot having taken place in the Chapel.

Q. Did you ever hear that your father, after he had excited that riot, left the Chapel, and said to one William M'Nulty, whom he had met in his retreat, "I have left them a hot house there?"

A. I never did.

Q. Did you ever hear, that Dr. M'Loughlin was protected in the Chapel from outrage and violence being offered to his person, by the soldiers of the Limerick militia?

A. I never did.

Q. You have mentioned the name of a professional gentleman, Mr. Fausset; was not he the attorney to whom your father applied for advice, concerning the submission he was to make to the bishop?

A. He was; I heard my father wished to apply to the laws.

Q. Don't you believe your father held several meetings with a certain description of persons in the parish, for the purpose of raising subscriptions, and going to law with the bishop?

A. I cannot tell.

Q. Was Dr. M'Loughlin an acquaintance of your father's before he came to Ballyshannon?

A. I believe not.

Q. It is only five or six years since your father became acquainted with him: had he any quarrel

quarrel or misunderstanding with your father during that time?

A. No. I never heard of any.

Q. There were meetings in the parish for the purpose of collecting money, to pay the arrears due for building the galleries. Was it for that purpose the meetings were held at one Brigg's?

A. I cannot tell.

Q. Did you ever hear of any committee of which your father was a member?

A. I never did.

Q. Have you not heard that Dr. Sheil, Edward Kelly, and Mr. Owen Cassidy were appointed a committee by the parishioners, to transact the business of the building of the galleries.

A. I do.

MICHAEL DALY, *examined by MR. ROLLESTON.*

Q. Do you know the parties, plaintiff and defendant, in this action?

A. I do.

Q. You are an inhabitant of the parish of Kilbarren?

A. I am.

Q. Do you know how the Chapel of that parish was built?

A. I do.

Q. Were you appointed one of the collectors, for the purpose of raising money to pay the arrears due on the building of the galleries?

A. I was.

Q. Was the plaintiff appointed a collector for the same purpose?

A. He was.

Q. By whom?

A. By Dr. M'Loughlin.

Q. Do you recollect having been at the Chapel on Sunday, in the month of April last?

A. I do.

Q. Did you hear any conversation between the plaintiff and defendant on that day?

A. I did.

Q. Relate what it was?

A. Dr. M'Loughlin said, I have been raising subscriptions to defray the expences of building the galleries; and perhaps, if I were to ask you to contribute a further sum, the request would not be agreeable to you. I have, therefore, considered it right to dispose of the pews of one of the galleries, for the purpose of taking the burthen off the poor, and putting it on the rich.

Q. What passed afterwards?

A. In the course of that week there were great altercations among the parishioners; and they said, they would rather pay the amount of the debt themselves, if they were obliged to sell the

the shirts off their backs, sooner than the gentle men of Ballyshannon should get the pews. Two collectors were then appointed by the bishop to raise the amount of the arrear from the parishioners, and I am one of them. We were not able to make up the collection in the given time, and I do not know exactly what sum was collected.

Q. Did you see the plaintiff and defendant in the Chapel together at any time after this, and what did you hear Dr. M'Loughlin say on that occasion?

A. I heard him say he had done what he ought not to have done, and that he never should have appointed collectors, but sold the pews; then Mr. Boyle made some reply, but I do not recollect what it was. I think he said, he would not suffer it.

Q. What reply did the bishop make?

A. He said, if Mr. Boyle would not cease, he would denounce him.

Q. What more did he say?

A. On the following Sunday there was a great tumult in the Chapel; I heard the bishop say, he did not wish for any trouble in the Chapel.

Q. Were there any soldiers present?

A. There was.

Q. Did Dr. M'Loughlin address the soldiers?

A. Not

A. Not to my knowledge; after some conversation had taken place, the row immediately commenced.

Cross-examined by MR. BOYD.

Q. Was not this Chapel built by public subscription?

A. It was.

Q. Was it not Dr. M'Loughlin who suggested the plan of building two galleries, for the accommodation of the parishioners?

A. It was: the galleries were to have been built by the money collected from the parishioners.

Q. Did not Dr. M'Loughlin approve of that manner of paying the expences of the building?

A. He did.

Q. Was there not a certain time given to the parishioners to raise the sum required?

A. There was.

Q. How much money was raised by the collectors?

A. I do not know.

Q. Was it not very far short of the sum which the galleries cost?

A. It was.

Q. Was it not on that account that Dr. M'Loughlin proposed to dispose of some of the pews?

A. I don't

A. I don't know; if the collectors had got more time, they would have collected the amount.

Q. Did not the doctor enlarge the time?

A. He did.

Q. Did you ever hear Dr. M'Loughlin use any threats to the parishioners?

A. No: but I thought from his countenance he was not well pleased?

Q. There were two new galleries?

A. There were.

Q. Was not one of them appropriated to the use of the parishioners, without any distinction of persons?

A. It was.

Q. And the pews of the second gallery were to be disposed of to pay the expences incurred by the building of both?

A. They were.

Q. Do you recollect whether the tumult in the chapel was before or after Dr. M'Loughlin had admonished the plaintiff?

A. I cannot tell; I heard him admonish him more than once.

Q. Did you ever hear of any previous misunderstanding between the plaintiff and defendant?

A. I never heard of any quarrel between them; I know Dr. M'Loughlin very well. He is a very quiet man.

Q. Is the plaintiff, Mr. Boyle equally quiet and peaceable?

A. I never

A. I never knew an honest man.

Q. How does Dr. M'Loughlin discharge his religious duties towards his flock?

A. Extremely well indeed. We never had a better clergyman—a better could not be had for a flock.

(Question from one of the jury.—) Did you believe Boyle would have been able, from the money he had collected from the parishioners, to pay the expence of building the galleries? (The judge desired the witness not to answer this question, it being, in his opinion, immaterial and impertinent.

EDWARD BOYLE, *examined by MR. SMYLY,*

Q. Did you, on any occasion, in the chapel of Ballyshannon, hear Dr. M'Loughlin say anything to the plaintiff?

A. I heard him denounce him. The Dr. desired the collectors to return their accounts, and what money they had received.

Q. How much did their collection amount to?

A. I do not know. They gave in their returns to Philip Boyle, and he told the bishop what money was collected.

Q. Did you, at any time, hear any farther conversation?

A. I heard him say, "Desist, you set of combinators

" binators, or I will cut you off with the weapons of the church."

Q. Was Boyle, the plaintiff, in the chapel then?

A. He was.

Q. Did you hear the defendant say any thing to him on the following Sunday?

A. He excommunicated him on that day.

Q. What did the bishop say before he excommunicated him?

A. He asked him to sign a paper. Boyle said, if he offended God, or the church, he was sorry for it; and the Dr. was not pleased with that?

Q. Do you recollect Boyle's saying any thing to the bishop?

A. He asked the bishop to read the paper which mentioned, to withdraw himself from a set of combinators; and Boyle then denied having any thing to do with combinators.

Q. I suppose you were greatly surprised at what followed after?

A. I never heard such a thing in that chapel before.

Cross examined by Mr. COLE.

Q. Were you in the chapel each time that the bishop admonished Mr. Boyle?

A. I was.

F

Q. There

Q. There were several Sundays intervened between the admonition and the passing of the sentence of excommunication?

A. There were.

Q. Were you in the chapel on the day the riot took place there?

A. I saw no riot. I only heard a great noise.

Q. Did you hear the plaintiff make use of this expression: "Come on, boys; now, parishioners of Kilbarren, speak for yourselves." You seem unwilling to give an answer to this question?

A. I am no way unwilling, but I was at a distance from them.

Q. Did you ever hear the plaintiff say, that "he would support the parish as long as he had a button on his coat."

A. I never did. I heard Boyle say he would stand to his rights, as long as he would live.

The evidence being closed on the part of the plaintiff, MR. JOHNSTON addressed the Court and the Jury as follows:

My Lord, and Gentlemen of the Jury.

I shall submit to you, in as brief a manner as I possibly can, what I conceive to be the nature of this case, and the only question which appears to me, you are to determine:

Whether

Whether the case of my client, which I am instructed to make, shall be fully supported by evidence, it will be your exclusive province to decide. The question of fact you will take from the witnesses—the question of law from the Court.

Gentlemen, the plaintiff, in this action, professes himself to be a Roman Catholic. The fact is on record, and is made a part of his case. It is also on record, that the defendant is titular bishop of the diocese of Raphoe.

Gentlemen, having premised these facts, I will now call your attention to what I consider the only question in this case; namely, whether the defendant, as a Roman Catholic bishop, has, in discharging the functions of his profession, maliciously used such discipline and such ceremonies of the Roman Catholic church, as have been adopted by its clergy, from the earliest ages of Christianity, down to the present time; either for the procurement of temporal advantage to himself, or for any other improper motive.

Gentlemen, it may be necessary to inform you of the nature of excommunication, as at present practised in the Catholic church. It is, as I am instructed, divided into two parts, namely, the major and the minor excommunication; the punishment in both being proportioned to the nature of the crime. There are several

offences

offences which fall under the major degree of excommunication, for the commission of which, I admit, that the delinquent is deprived of the society of the faithful. But for crimes of a minor nature, for instance, such as that of which the plaintiff has been guilty, the offender is merely deprived, *pro tempore*, of the participation of the sacraments. Gentlemen, in this case, it never was the defendant's intention to exclude, by excommunication, the plaintiff from society; and this I conceive to be a most material fact for your consideration. So far from the sentence having been productive of the effect of banishing the plaintiff from society, it has appeared to you, in evidence, by the testimony of his daughter, that many of those persons with whom he was in the habit of associating, continued to keep company with him, as usual, after the excommunication had taken place, and it is not in evidence, that any one of those persons were ever censured by the defendant, Dr. M'Loughlin, for having associated with Mr. Boyle.

Gentlemen. As to the legality of the defendant's conduct, I never, until to-day, conceived it to be doubted, that the Roman Catholic hierarchy had not a legal right to exercise the ceremony of excommunication, merely as a part of the discipline of their church.

The Roman Catholic religion is incorporated
with

with the laws of this country, and will the hierarchy and laity professing that religion now endure to be told this singular doctrine, namely, that—"True it is, the laws have "tolerated your religion and mode of worship, "but the discipline and ceremonies of that religion are contrary to law." Divest any religion of its ceremonies and discipline, and I should wish to be informed, what part is left behind for toleration to act upon? Gentlemen, there is something in this declaration, so repugnant to common sense, that I confess it very far exceeds the limits of my comprehension; for would it not be highly prejudicial even to civil, as well as to religious society, if there were not a power vested somewhere to correct such abuses as occur from the frailties of mankind, and are incident to every human institution.

Gentlemen, it is contended, that by a statute passed in the reign of Henry 8. the power of excommunication was taken away from the Roman Catholic clergy. Gentlemen, in answer to this observation, I care not by what name the learned gentlemen call the ceremony which was made use of on this occasion by the defendant. Whether they entitle it excommunication, lecture, or denunciation, suffer me to tell you, that, in this case, no legal judgment of excommunication, similar to that pronounced by a bishop of the established church, and purporting

to have the same effect, appears on record, therefore, in my mind, neither the statute, nor the common law, can at all apply to this case. If it were otherwise, and that the law had the effect contended for, it would amount to this absurd anomaly — namely, that the discipline of a church, tolerated by law, was illegal.

Gentlemen, I now come to the point which I have already submitted to you, as the only question for you to exercise your judgment upon, namely — whether Dr. M'Loughlin was influenced by a malicious motive; and I request you will keep this fact in your recollection, that it does not appear in evidence, that the slightest misunderstanding, or quarrel, previous to the riot in the Chapel, had ever subsisted between the plaintiff and defendant.

Gentlemen, I am happy to be informed that most of you are acquainted with the revered character of the man, who is accused of doing an act of the greatest injustice to the plaintiff, publicly, falsely, and maliciously, and for the procurement (as was stated by counsel) of temporal advantage to himself. By the very first authority in this country I am told, that the defendant is one of the last men living who would be capable of doing an act of injustice, even to the veriest outcast of society; or of deporting himself unbecoming the character of a dignified clergymen, or the feelings of a man of honour,

and

and of a gentleman. He is a man of the most humble, gentle, and conciliating manners; of the most unimpeachable moral conduct, and exemplary piety. Upon his character alone, which is well known to all of you, I think I might safely rest his case. For is it probable, or can it be imagined for a moment, that such a man, in such a place, standing before the altar of his God, could be guilty of committing the malicious act of excluding the plaintiff from society, without any probable cause, or previous dispute, for the base, mercenary motive of procuring temporal advantage to himself. The thing is too monstrous to obtain credit with you, gentlemen; and is too grossly absurd to be believed by any rational man in the community.

Gentlemen, I shall now detail to you the facts of this case. In the year 1794, there being then no Catholic Chapel in the parish of Kilbarren, the parishioners entered into a subscription for the purpose of building a Chapel in the town of Ballyshannon. And I feel much pleasure, in having it in my power, here, to pay a compliment to the liberality of the Protestant inhabitants of that town, who, by their contributions, subscribed a sum of £200. for the laudable purpose of building this Catholic Chapel.

At the expence of a large sum of money, and far exceeding the amount of the subscriptions, the Chapel was built. In the year 1803 it was

ishop

found

found too small to contain the number of parishioners, who had considerably increased from the time of building the Chapel; and to remedy this inconvenience, a further subscription was then entered into to build a gallery. The addition of this gallery had not the desired effect of affording, in addition to the body of the Chapel, sufficient room to contain the congregation; and in the year 1804, Dr. M'Loughlin, for the purpose of accommodating the parishioners, suggested to them the necessity of building two additional galleries. The expence was to be defrayed by a subscription, to be raised by a Committee, appointed for the purpose, from the parishioners. This committee, after some time had elapsed, returned an account of the money they had received to the treasurer, and to the parish at large, and, at the same time, informed the defendant, that they were unable to procure a further sum from the parish.

Unfortunately for my client, he had rendered himself personally liable to the architect for the sum contracted for the building of those galleries. The architect, finding that there was not a sufficient fund in the hands of the treasurer to discharge his demand, became very troublesome to Dr. M'Loughlin. He made several applications to the defendant for payment of his bill, and, after some time, threatened that he would

would give directions to his law agent to sue the bishop for the amount: and it was not till after the architect had instructed an attorney to take proceedings against the defendant, that the plaintiff complained to the congregation. He then stated to the parishioners, the embarrassments he had involved himself in for the purpose of procuring their accommodation; and prayed them to devise some prompt measure to prevent his being insulted and sued at law by the architect. Finding, after several applications, that all his appeals to the justice and gratitude of the parishioners, were exerted in vain; for the purpose, as described by one of the plaintiff's witnesses, "of taking the burthen off the poor, and putting it on the rich." The defendant proposed to the parishioners to dispose of the pews in the front of one of the galleries, to such persons, without making any distinction, as would agree to pay a certain price for them.

Gentlemen, I am not instructed by my client to contend, that there was any temporal right vested in him to make sale of those pews; and here, permit me to tell you, that I do not think the disposal of them has any thing to do with the question which you are now called upon to try; the abstract point being this, whether for the contumacy and insolent conduct of the plaintiff, as well as for exciting a riot in the house of God, the bishop was authorised, by

the laws and discipline of the Roman Catholic Church, to pass the sentence of minor excommunication against Philip Boyle. I again repeat, that I don't care by what name the censure passed by the defendant on the plaintiff is called. It is enough for me to establish, that excommunication, as a point of church discipline, has been exercised by Catholic bishops, from that remote period of history, when there was no other religion in Europe but itself, down to the present time.

Gentlemen, I have already stated, that a certain committee, composed of particular persons, was appointed by the parishioners. The gentlemen composing that committee, finding that all other means to raise the amount of the arrear due to the architect, had proven ineffectual, not only sanctioned the measure, but advised Dr. M'Loughlin to adopt the plan of disposing of the pews.

Gentlemen, shortly after the proposal of paying a certain price for the front pews had been made to the congregation, the plaintiff, Mr. Boyle, commenced his shameful opposition to the measure. He conceived that he had a right to insist on the exclusive possession of a front pew; and the best method he thought of obtaining his object was, to place himself at the head of a number of the lower order of the parishioners, whom he imposed on in this way. He endeavoured

endeavoured to persuade them, that the bishop, by disposing of the pews, intended to excite a disturbance between them, and the wealthy inhabitants of the town of Ballyshannon, and to deprive them and their families from having a seat in the galleries.

Gentlemen, in the most insolent and authoritative stile, the defendant told the bishop, that he would not suffer the pews to be disposed of in that manner. He then demanded six weeks time to raise a subscription sufficient to pay off the arrear. To this demand the bishop, contrary to the advice of the committee, immediately assented. After a lapse of twelve weeks, the bishop called on the plaintiff for an account of the money he had collected. The plaintiff replied, that he had not been able to collect the sum required, and that a longer period must be granted to him. The defendant said, he thought it unnecessary to grant any further time, as it appeared to him, that the parishioners did not feel disposed to subscribe for the building of the galleries. The bishop then concluded, there was no other method left for him than to adopt the plan he had originally proposed, namely, to appropriate the two side galleries, and the body of the Chapel to the use of the parishioners indiscriminately; and to dispose of the third gallery, in which there were only four pews, for the purpose of liquidating the debt.

Gentlemen, I am instructed that £20. was the sum offered for each of those pews, and it is a remarkable circumstance, that the whole amount of the plaintiff's subscriptions, from the first building of the Chapel, down to the period of the building of the galleries, had never exceeded the paltry sum of £1. 2s. 9d.

Mrs. Boyle, the plaintiff's wife, however, to gratify the pride and vanity of the young mantua-makers, her daughters, who wished for a front seat in the gallery, to display their extraordinary beauty, requested the curate of the parish, a Mr. Hanigan, to inform the bishop, that a sum of two guineas would be paid by her husband for one of those pews. We are now, Gentlemen, coming to the transaction, which gave rise to the riot and tumult in the Chapel, and consequently to the excommunication; for had Dr. M'Loughlin been satisfied with Mrs. Boyle's proposal, you never would have heard of this disgraceful action. On the following Sunday, Mrs. Boyle's liberal offer to Mr. Hanigan, was communicated to the parishioners by the bishop; when the defendant, fearing that his friends and colleagues would charge him with duplicity, for the proposal made by him, through his wife, (at a time, when he affected to be most determined in his opposition to the bishop) contradicted, in the most insolent terms, the information given by the clergyman,

Mr.

Mr. Hanigan, to the bishop; and denied that he had ever made any such proposal. The defendant's improper conduct, on this occasion, excited a general murmur, among the parishioners. The bishop admonished him for thus directly contradicting a clergyman, standing before the altar, and conjured him, by every thing sacred, not to disturb the congregation in their devotion. This gentle admonition of the bishop's had not the desired effect: the plaintiff persisted in his insolence. He said that the assertions of Mr. Hanigan were untrue; and then, addressing himself to his colleagues, he declared, that he would support the parishioners against the defendant, as long as he had a button on his coat. He then concluded his harangue, by giving the signal for a riot, in these words—"Now let the parishioners of Kilbarren come forth, and speak for themselves."—Mr. Boyle's party were obedient to the signal, and a most alarming riot, shouting and tumult arose; but the plaintiff, well knowing what was to follow this watch word, had the low cunning, to leave the Chapel, and supposing a person whom he met in his retreat, (and who will give evidence of the fact) to have been one of his party, he told him (assuming at the same time an air of triumph, and pointing out to the Chapel) that "he (the plaintiff) had left a hot house there."

Gentlemen,

Gentlemen, the effect of the plaintiff's conduct in the Chapel, on the minds of some of the deluded people was such, that had it not been for the exertions of a Captain Ash, (who was obliged to draw his sword to preserve the peace) and a company of soldiers of the Limerick militia, the plaintiff would now, in all probability, be taking his trial in the criminal court for the crime of murder. The friends of Mr. Boyle seemed as if they had been predetermined to commit acts of violence and of outrage on this occasion, and had not their disposition to riot been restrained by the appearance of the military, in all probability the bishop would have been murdered.

When the riot had, in some degree, subsided, Dr. M'Loughlin said, he conceived it his duty to denounce the plaintiff, and declared that if, after having been admonished for three Sundays successively, he should then refuse to make an adequate submission, for the scandal he had given by exciting such a tumult and disorder in the house of God, he, the bishop, would excommunicate him.

Gentlemen, this conduct of the plaintiff, coupled with his insolence to the Rev. Mr. Hannigan, and his obstinacy in refusing to make the necessary apology, was the true ground, and only cause of his having been excommunicated.

Gentlemen,

Gentlemen, I will now call your attention to what I consider a material circumstance in this case. It is said by one of Mr. Boyle's witnesses, that the plaintiff offered to make the most humble apology. If he did, he has so far pleaded guilty to the charge made against him by the bishop.

And this witness further added, that the plaintiff had consulted his attorney, Mr. Fausset, (who, you will observe, Gentlemen, is a Protestant) on the nature and extent of the humble submission which he intended to make.

Gentlemen, I perceive that Mr. Fausset is now in Court. He has been summoned by the plaintiff, to give evidence on this trial. Why did not the plaintiff produce him? Gentlemen, I will tell you the reason. Because he knew that Mr. Fausset would prove, that Dr. M'Loughlin did offer to accept of certain terms of submission, which he (Mr. Fausset) declared that he thought it would be advisable in the plaintiff to make.

We now call upon the gentlemen, on the other side, to produce Mr. Fausset; if they think it advisable not to do so, you will draw what conclusion, you may think proper, from the suppression of his testimony.

Gentlemen, it will appear to you in evidence, that it never was the bishop's intention to punish the plaintiff's offence by sentence of excommunication, if he could, consistent with the duty

duty he owed to religion, avoid it. On each of the three Sundays, which succeeded the riot in the Chapel, the defendant prayed and beseeched the plaintiff, for the love of God, and the sake of religion, to make a proper submission, for what he had done; and that he (the defendant) was ever ready to forgive him those personal insults, which he (Boyle) had offered to himself.

Gentlemen, of the fact of the excommunication having had the effect of excluding the plaintiff from society, there is no evidence. You have it in proof that his friends associated with him as usual. Nor do I conceive there has been any evidence to ascertain the second count in the declaration for special damages. The plaintiff's daughter, who told you, that she had never heard of a riot in the Chapel, has also told you, that several persons "staid off, but that others continued to give her their business." Surely, gentlemen, this is not sufficient evidence of any special damage sustained by Mr. Boyle, the plaintiff, who, it appears, has been a shoemaker, in the town of Ballyshannon, for upwards of 25 years. You have not been told of any of his customers having (to use an expression of Miss Boyle's) "staid off."

Gentlemen, what is the second ground of special damage, and how has it been supported by evidence? Mr. Boyle, an industrious shoemaker, after having exercised his trade for 25 years,

years, now seeks to recover the sum of £1000 from the defendant, for a business "in nubibus," which he had only intended to commence. And the evidence to sustain this damage is, that he had purchased a shop in Ballyshannon, and intended to commence grocer, and, as a matter of course, to make a fortune.

Gentlemen, I will not insult your understandings, by making a single comment on this part of the case; for can any thing be more absurd, than to seek to recover damages to the amount of £1000, for an imaginary loss, which never had existence, but in "the mind's eye" of the shoemaker, who had it in contemplation to commence grocer. It is worthy of remark, that those persons, whose names are stated in the declaration, and who are said to have withdrawn their business, not from the industrious shoemaker, but from his industrious daughters, the mantua-makers; have not been produced to give evidence of the fact, of having withdrawn their custom from the Miss Boyles, in consequence of the excommunication by the defendant.

Gentlemen, like Mr. Fausset, those persons have been summoned by the plaintiff to give evidence on this trial, and they are now in court, waiting to be called on. After having travelled from Ballyshannon, it is not found adviseable to examine them, because, as I am in-

structed, they would give evidence, that they had neither withdrawn their custom from the Miss Boyles, nor had they ever ceased to associate with them, as usual. And admitting, for the sake of argument, that the excommunication had produced the effect of excluding the plaintiff from society, no one could be so ignorant of the nature of the sentence, as to suppose, that the children of the plaintiff were to be banished from society—that they too were to be excommunicated for the crimes of their father. Had Dr. M'Loughlin excluded the ladies from society—had he even touched the hem of their garment, as Mr. Rolleston called it, I should feel very unwilling to advocate his cause. Gentlemen, with respect to those persons, however, I cannot help remarking, that withholding their testimony from you, which I conceive, was the best evidence the nature of the plaintiff's case admitted of, is a badge of fraud upon that case; and I therefore conceive, you ought not to pay the slightest attention to that flimsy testimony, which I consider the weakest evidence that ever was offered in a court of justice, to sustain damages for a civil injury.

Gentlemen, In stating, that I consider the defendant was clearly warrantable, in point of law, to pass sentence of excommunication on the plaintiff, I am under the correction of the Court. It is stated, in the declaration, that the plaintiff

is

is a Roman Catholic, and that the defendant is the titular bishop of the diocese of Raphoe. (Here Mr. JOHNSTON was interrupted by the Judge, who said, "That on no occasion whatever, had a Roman Catholic bishop a legal right to punish any of his parishioners by sentence of excommunication. He further said, "that he could not help repeating, that the exercise of such an authority, by the defendant, was an assumption of power, contrary to law; and an usurpation of the rights of the bishops of the established church.") Mr. JOHNSTON, in reply to the Court, observed, that the plaintiff's conduct in the chapel, where he insulted a clergyman, in the act of doing his duty;—his having afterwards excited a riot and tumult among the congregation, coupled with his several declarations, and with persisting in a refusal, for three Sundays successively, to make the necessary submissions, was sufficient ground, in his mind, to justify the bishop, in point of law, to exercise that authority, which he had always known, and conceived to be the discipline of his church. If the Plaintiff found himself injured, he might have appealed to the Primate. It was not pretended, or relied on, that the excommunication, pronounced by Dr. M'Loughlin, had the same effect of imposing disabilities, on the plaintiff, as the sentence of excommunication in the established church. In the one case, there

there is a legal judgment; but in this case no legal judgment appears either in evidence, or upon record. He therefore felt himself at a loss to conceive, how the discipline of the Catholic church could be deemed an usurpation of the rights of the bishops of the established church; for it appeared to him an inconsistency to contend, that though the Laws had tolerated the Roman Catholic religion, yet, at the same time, they had proscribed its discipline. He concluded a most able statement of the defendant's case, by saying, that if the doctrine, laid down by the learned judge, was the law of this country, and that the Catholic hierarchy had no legal right to exercise the discipline of their church, it were better for the Roman Catholics of Ireland, that the penal laws had never been repealed.

Evidence on the part of the Defendant.

MICHAEL CASSIDY, examined by Mr. BOYD.

Q. Do you live at Ballyshannon?

A. I do.

Q. Do you profess the Catholic religion?

A. I do.

Q. How long has Dr. M'Loughlin resided in the parish of Kilbarren?

A. About

A. About six years.

Q. Were there any improvements made in your chapel, within that period?

A. For the purpose of making more room for the congregation, two galleries were built.

Q. Have you any reasons for knowing what was the expence of building those galleries?

A. I was appointed the treasurer for the parish, and I have reason to know that the galleries cost about £346.

Q. What was the state of the parish funds in your hands at that time?

A. The parish was very much in debt, and there remained but little or nothing in my hands.

Q. By whom were the materials for building the galleries ordered?

A. The timber was ordered by the committee.

Q. Did Dr. M'Loughlin order the materials?

A. He contracted with Lyster the architect, for building the galleries.

Q. After the galleries were built, how did the parishioners purpose to pay the expence?

A. It was the intention of the committee to give two of the galleries to the parishioners, and to dispose of the pews of the other for the purpose of defraying the expence of building them.

Q. Was there any proposal made by the Plaintiff, Mr. Boyle?

A. He proposed to pay the debt if the pews were not sold.

Q. What

Q. What was done in consequence of that?

A. Dr. M'Loughlin agreed to the proposal, and said, if the parishioners paid the debt, they should have the entire use of them, as it was not his wish that they should be disposed of in any other way.

Q. Was there any time given to the parishioners to collect, from among themselves, the amount of the debt?

A. On the first application, the Dr. gave them nine weeks, and finding that they could not raise the money within that time, he gave them three weeks longer.

Q. After the expiration of twelve weeks, what sum of money did you receive from the collectors?

A. Not one farthing at all.

Q. Have you any reason to know that Boyle, the plaintiff offered any money for a front seat in one of the galleries?

A. I know that he offered two guineas, provided the parish agreed to it.

Q. Were you in the chapel of Ballyshannon, on the first Sunday of last Lent?

A. I was.

Q. Do you recollect Dr. M'Loughlin addressing the congregation on the subject of his being personally liable for the debt to the contractor, and on the necessity of disposing of the pews, provided the parishioners did not discharge the arrear.

A. I do.

A. I do. When Mr. Boyle got up, and said, he would not allow any pews in the chapel to be disposed of.

Q. Did Dr. M'Loughlin make any reply?

A. After some conversation, he told Mr. Boyle that if he did not desist, he must be under the necessity of denouncing him.

Q. What followed?

A. Mr. Boyle got up, and said "he would support the parishioners as long as he had a button on his coat."

Q. Did he say any thing more?

A. He then came forward, and turned round to the people, and said—"I have spoken for the parish; now let the parishioners come forward, and speak for themselves."

Q. When he was making this speech, in what temper of mind did he appear?

A. He appeared to me to be as full of venom and malice as any man I ever saw.

Q. What happened next?

A. A great many of the people then got up, and some of them advanced towards Dr. M'Loughlin, as if they were going to destroy him.

Q. In this situation what did Dr. M'Loughlin do?

A. He told them that if they attempted to treat him improperly, he would punish them most severely.

Q. What

Q. What happened after?

A. The persons in the gallery stood up, and some of them went down to the body of the chapel as fast as they could.

Q. Did you then see any of them going towards the Dr.?

A. I saw the soldiers of the Limerick militia going towards the place where the Dr. was.

Q. Do you know Capt. Nash, of the Limerick militia?

A. I do.

Q. Was he obliged to draw his sword on that occasion, to preserve the peace?

A. He was.

Q. Do you recollect any conversation having taken place at a Mr. Hanly's, between Dr. M'Loughlin, Mr. Fausset, the attorney, and the plaintiff, Boyle?

A. I do. Mr. Boyle said, the parishioners would pay off the defendant, if they got time. Dr. M'Loughlin replied, that he had given them more time than they demanded, and that they had not paid off the debt. Some warm words took place, when Dr. M'Loughlin was provoked to call Boyle a rascal.

Q. Did any further conversation take place?

A. Dr. M'Loughlin told Mr. Fausset, that he was willing to accept of such submission as he (Mr. Fausset) would dictate. When Mr. Fausset observed, that if he were to speak to a bishop

of his church in the manner that Boyle had spoken to Dr. M'Loughlin, he (the bishop) would order his footman to kick him out of the house.

Cross-examined by MR. ROLLESTON.

Q. Did you hear Boyle, on any occasion, offer to make a submission to Dr. M'Loughlin?

A. I heard him say, "If I have offended God or the church, I am sorry for it."

Q. Was that all the submission you heard him make?

A. It was.

Q. Did you hear the bishop make use of these words—"In the name of the Father, and of the Son, and of the Holy Ghost, I, Peter M'Loughlin, titular bishop of the diocese of Raphoe, &c. &c. do excommunicate you, Philip Boyle, until you sign this paper."

A. I did.

Q. You are a Catholic—would you consider yourself entitled, by the rules of your church, to associate with the plaintiff after the excommunication?

A. I would not like it: but I have spoken to him several times since, and Boyle himself refused to speak to me.

Q. According to the tenets of your religion, by virtue of your oath, could you hold the same

communion with him after as before excommunication?

A. I consider that if a man would bring an excommunication on himself, it would not be right to hold any communication with him.

CAPTAIN NASH examined by MR. TORRENS.

Q. You are a captain of the city of Limerick militia?

A. I am.

Q. Do you recollect having been in the chapel of Ballyshannon on a Sunday of last lent, when a great tumult and riot happened?

A. I do.

Q. Was there a person of the name of Boyle present: if so, relate what you heard that man say previous to the riot?

A. I heard him several times speak in the most disrespectful and insulting manner to the bishop, Dr. M'Loughlin.

Q. What did you hear him say?

A. He said, "he would support the parishioners against the bishop as long as he had a button on his coat." He then came forward, and looked round the chapel to the people, who were kneeling in the different parts of it, and addressing himself to them, he said, "now, parishioners of Kilbarren, come forward and speak for yourselves." After these words, a great riot and

and shocking noise arose from every part of the chapel. The tumult and cries of the people were so shocking, that I could compare it to nothing that I ever heard but an Indian war-whoop.

Q. Did the people press forward towards Dr. M'Loughlin?

A. They did; and from their manner and violence, they appeared to me, as if they had formed the design of taking his life. I was very much alarmed for the bishop's safety, and I told him the fears I had entertained, and begged of him to retire from the chapel. He replied, "They will not, I am persuaded, attempt to hurt me. God help and forgive the poor deluded people, they know not what they are doing."

Q. What was Mr. Boyle doing during this time? Did he not take an active part?

A. He did. He clenched his fist, and shook it in a menacing manner at the place where the Dr. was.

Q. How soon after Boyle had addressed the parishioners, did the riot commence?

A. Immediately afterwards; and had not a number of the soldiers of our regiment been present, I certainly think that the mob would have taken the bishop's life?

Q. What did you do upon that occasion?

A. I went

A. I went out of the chapel to a place in the yard, where I saw a number of the mob collecting. I heard them threatening to pull down the pews of the galleries: they swore violently that there should be no pews—no galleries: and one fellow cried out, "Come on, boys—by Jesus we'll support Boyle—hallo for Boyle!"

Q. What happened after that?

A. I perceived my own men assembling together, and they appeared to be very much incensed by the conduct of the mob towards the bishop, and I was apprehensive that some lives would have been lost; I then drew my sword, and commanded the soldiers by no means to attack or interfere with the rioters; and further, that the first man who would attempt to draw his bayonet, I would instantly cut him down. The soldiers obeyed my orders; and I waited in the chapel-yard until the mob had entirely dispersed, and all was quiet.

Cross-examined by MR. SMYLY.

Q. Did you hear any thing that the plaintiff, Boyle, said on that occasion?

A. The first thing he said was, "that he would support the parishioners, while he had a button on his coat."

Q. Did he appear to be full of malice and venom at that time?

A. He did appear to me to be so.

Q. The

Q. The next thing he said was, "Parishioners of Kilbarren speak for yourselves?"

A. I believe it was.

Q. You have told us, Sir, that there was a great riot and shocking noise, resembling an Indian war-whoop: as we are ignorant of those savage notes in this country, give me leave to ask you, have they ever been set to music?

A. Sir, I tell you again, that they set up such a dreadful howling and shouting, and clapping of hands, resembling nothing that I had ever heard, but an Indian war-whoop.

Q. Do you not think that those were shouts of triumph?

A. I believe they proceeded from disrespect and mutiny to the bishop. I think that Boyle set the parishioners on. It was certainly he who first began the riot.

Q. Do you know Dr. Shields? He is one of the principal Roman Catholics of that parish?

A. I believe he is.

Q. Have not he and the bishop two of the best pews in that chapel set apart for themselves?

A. They have two pews.

Q. You were in that chapel before. Did there appear a greater number of persons on that day, than on any other former occasion?

A. There

A. There were a greater assembly of people in the chapel on that day than I ever remember to have seen on any former occasion.

Q. (*by a juror*) Were there any pews pulled down by the mob on that day?

(The Judge desired the witness not to answer that question, and told the jury that this was a mere civil transaction, in which the bishop had no more right to exercise any authority over his parishioners than he had.)

WILLIAM M'NULTY, *examined by Mr. COLE.*

Q. Do you recollect the Sunday on which a dispute arose in the chapel of Ballyshannon?

A. I do.

Q. Did you see the plaintiff, Mr. Boyle, on that day?

A. I met him running as fast as he could from the chapel.

Q. Had you any conversation with him?

A. Yes, he spoke to me, and told me he had left a hot house there. He did not mention the chapel; but he had just come out of it, when he said he had left a hot house there.

MICHAEL SWEENEY, *examined by Mr. DEERING.*

Q. Do you know Philip Boyle, and had you any conversation with him about the chapel of Ballyshannon?

A. I had

A. I had some talk with him, at the house of Mr. Bridges, when he said, let the parishioners take the pews away.

Q. Did he want you to make a speech in the chapel, on any occasion?

A. He did. There was a talk, that the bishop and Dr. Sheil were to speak to the parishioners, and he requested me to oppose them.

Q. Did he say any thing further?

A. He spoke of raising a row, which he said would be like the convention of Paris, and that after that there would never be another word about it.

Cross-examined.

Q. What reason did he give for wishing you to oppose Dr. M'Loughlin?

A. He said that his own temper and disposition was such, that he would not depend on himself.

JOSEPH LYSTER.

Q. You are an architect. Do you recollect having been employed in repairing the chapel of Ballyshannon?

A. I do.

Q. By whom were you paid?

A. By Mr. Michael Cassidy for one part, and by Dr. Sheil for the other.

Q. Do

Q. Do you remember applying, at any time, to Dr. M'Loughlin for payment of your contract?

A. I made several applications, several times, to get my money.

Q. Did you apply to Dr. M'Loughlin?

A. I spoke to him to get me my money.

Q. By virtue of your oath, did you not apply to an attorney, to take legal steps against Dr. M'Loughlin, if he did not pay you?

A. I did, if he would not pay me.

Dr. SHEIL, examined by MR. JOHNSTON.

Q. You know the plaintiff and defendant in this action?

A. I do.

Q. Do you recollect the building of the chapel of Ballyshannon?

A. I do. It was built by public subscription.

Q. Do you recollect the building of two galleries?

A. I do.

Q. Was there a committee appointed by the parishioners, to superintend the work?

A. There was a committee appointed, which continued to act for two or three months.

Q. From the time of Dr. M'Loughlin's succeeding to the parish, who managed the business of the galleries?

A. Dr.

A. Dr. M'Loughlin himself.

Q. Do you know in what state the funds in the hands of the committee were, when it was proposed to build those galleries?

A. Extremely low indeed; and by no means adequate to defray the expence of the building. Dr. M'Loughlin consulted me on this business, and the first step taken was to send for an architect to Enniskillen, to draw a plan. At a very considerable expence the galleries were finished; and I have already mentioned how inadequate the funds were to liquidate the amount of the debt and expences incurred. Some time after the building of the galleries, a general meeting of the parishioners took place, when it was resolved, that each of the respectable parishioners, should be accommodated with certain pews, on their paying a sum of money, to be applied in discharge of the debt incurred.

Q. Were you one of the committee appointed by the parishioners?

A. I was.

Q. On finding that the contributions were not adequate to defray the expence of the building, how did the committee propose to discharge the debt?

A. It was determined to appropriate one of the galleries to the use of the parishioners indiscriminately, and to dispose of the pews in the other, in order to pay the expence of the building.

Q. Have those galleries been yet paid for?

A. All the workmen are paid, but there is still a sum due, which has arisen from a loan.

Q. Did you desire the architect, Mr. Lyster, to furnish you with his account?

A. I did, and at the same time told him, that I would pay him the amount of his account, in addition to the sum of £50. which I had originally subscribed. The chapel was then considerably indebted to me, having already advanced the sum of £122. to defray the expence of building the galleries.

Q. Were you in the chapel on the day the riot took place?

A. I had been there before its commencement, but was called away on professional duty. I think it necessary to state, that my garden communicates with the chapel yard. Some time after I had left the chapel, and had returned home, I was walking in my garden, where, to my great surprize, I was alarmed by the cries and shrieks of my wife and children, who, at that moment, were escaping from the riot, and entering the garden gate. I ran to their assistance, and entreated Mrs. Sheil, for God's sake, to tell me what was the matter? My gardener, at that instant, came running towards me, and told me that—

(Here the Judge interrupted Dr. Sheil, and told him that the account of the transaction given by Mrs. Sheil, and the gardener was not evidence.)

Q. What

Q. What happened after?

A. I attempted to get into the chapel, but several persons laid hold of me, and begged I would not venture, lest I should meet with injury.

A. Did you see many people assemble there?

A. I did. The congregation were then going out of the chapel, and I saw a number of persons climbing over the walls.

Q. Do you know of the excommunication of the plaintiff?

A. I do.

Q. Was the effect of that excommunication to exclude Boyle from society?

A. I never considered it as such; nor do I believe it to be one of the tenets of our church, that by excommunication a Catholic is expelled from society for every offence of which he may be guilty, against the laws of our religion.

Q. Did you, as a Catholic, feel yourself at liberty to associate with Boyle, after his having been excommunicated?

A. I did, and conceiving myself to be perfectly at liberty to associate with him, I have had several conversations with him since.

Q. How long have you been acquainted with Boyle?

A. I have known him these twenty years. He was by trade a shoemaker.

Q. In appearance, are his circumstances as good now, as they were before the time of the excommunication?

A. They are.

Q. Did you ever go to Boyle for the purpose of accommodating matters between him and the bishop?

A. Repeatedly: and on those occasions, I endeavoured, with some success, to convince him of his error. After having had two or three conversations with him on the subject of his conduct in the chapel, he appeared willing to make the submission required of him by the bishop; but when I thought I had gotten all to my great surprise, I again called on Boyle, when, averse to a reconciliation with the bishop, and more determined to give him opposition than ever, in consequence of which I gave him up.

Q. (*By the Court.*) Would you conceive yourself at liberty to hold the same communication with the plaintiff, after the excommunication had taken place, as you had done before that event had happened?

A. In my commercial or money transactions, I would hold myself as much at liberty, after as before; but would not consider one capable of incurring such a censure, as a proper person to associate with.

Q. (*By the Court.*) Have you read church history, and do you recollect the effects of excommunication, for ages past, in the Catholic church?

A. I do

A. I do not recollect the particular instances; however, I conceive, there are different degrees of excommunication in our church.

(*By the Court.*) I am sorry that a professional gentleman of so much respectability, should be so ignorant of the history of his church.

Cross examined by Mr. ROLLESTON.

Q. Have the Catholic clergy a power of inflicting any punishment heavier than that of excommunication?

A. I do not know that they have.

Q. Do you think that the lower order of Catholics would associate with an excommunicated person?

A. The lower order of the people of all religions are, in my opinion, very ignorant; therefore I cannot tell how they might be affected by their prejudices; but, in some cases, I should have no objection myself.

Q. After a Catholic has incurred the censure of excommunication, you would not like to associate with him yourself?

A. Indeed I would not. No Catholic could entertain a good opinion of that person, who, by his irreligious conduct, had brought such a sentence upon himself.

Q. If you happened to be excommunicated, do you believe your own servant would attend you?

A. In

A. In some cases, I think he would.

Q. Has not excommunication, in your opinion, the effect of depriving the delinquent from society, until, by doing penance, he shall be permitted to return within the pale of the church?

A. In my opinion (as I before expressed myself) there are different degrees of excommunication; one of which goes to the length of depriving the delinquent of participating in the sacraments, until, by sincere repentance, the censure is taken away.

Q. By virtue of your oath, did you, directly or indirectly, interfere with the parishioners of Kilbarren, to prevent their paying the amount of their subscription?

A. I did; and for these reasons only:—First, because I considered the resistance given by Boyle to the bishop, to raise the amount of the debt, by disposing of the pews, as an act of the greatest ingratitude, as well as of injustice to him; and secondly, because I found those combinators were composed of the very lowest order of the parishioners; and I had sufficient reasons for knowing the dangerous consequences of either suffering or encouraging such associations.

Q. Did you ever speak of the transaction to any person?

A. I mentioned it to a gentleman who was then, on a visit at my house; and before I interfered, I was very well convinced, that the parishioners

rishioners would never pay the debt due on account of the galleries.

Q. If you thought so, why did you interfere to prevent them?

A. I interfered to prevent the formation of associations, which I was convinced, from what had happened in other places, would be productive of the most dangerous effects.

[The case being closed on the part of the defendant, Mr. SMYLY spoke to evidence to the following effect :]

My Lord, and Gentlemen of the Jury,

It is with sincere regret, that I trespass on your time, at so late an hour. His lordship has intimated, that this case is of sufficient importance, to call for the observations of counsel on the evidence, and much as I must despair of throwing any light on the testimony, which you have with so much patience and attention heard, yet I should be wanting in zeal to my client, and offer violence to my own anxious feelings, were I to withhold my humble efforts for the plaintiff's success, from any motives—even from the consciousness of inability to do justice to his cause. Permit me, however, to congratulate him, and myself, that he lives under laws, which have provided him with a tribunal, where, if he has

been

been injured, he will be redressed; and that, in the sagacity and learning of the Judge, and in the integrity and good sense of the Jury, he will find a protector, not only from the wrongs of his adversary, but from the errors or omissions of his advocate.

Gentlemen, it is quite unnecessary to impress on minds like yours, the awful importance of the duty you have now to perform. This discussion is not confined to a question of property or right, disputed between two individuals, and important only to them. You are not now to balance the weight of evidence between two parties, on a subject where the public is not interested; and on the decision of which, no rule to govern the conduct of any class of men can depend. No—your verdict, in its consequences, will, of necessity, involve the dearest privileges, and rights esteemed the most sacred, of a highly respectable class of your fellow subjects.—You are called upon, in the exercise of your solemn function, as Jurors, to draw some line of demarcation between the civil rights of the Catholic laity, and that spiritual power, which is claimed by their clergy.—You are not required by the plaintiff to compensate any injury of his, by the destruction of all spiritual power in the pastors of his church; but he does require of you satisfaction, if the legitimate authority of a Catholic bishop, has, to his damage, been transgressed

by

by the defendant;—if spiritual power has been abused or usurped, and more particularly, if that abuse or usurpation have been exercised with a spirit of oppression, which no conciliation could assuage, no submission appease.—In this general view of the subject, the case before you is of public moment, as well as of the most interesting and vital concern to my client.—His complaint is, that the defendant unlawfully, maliciously, and without probable cause, excommunicated him, and that, in consequence of this excommunication, he has not only been excluded from the society of those, with whom he was in the habit of association, but he suffered the special damage stated in the declaration.

Gentlemen, if the act of excommunication by the defendant, be, in itself, unlawful, and if it has produced damage to the plaintiff, the action will be supported, without resorting to the proof of malice, or want of probable cause. I speak under the direction of his Lordship, but, with humble confidence, I affirm, that the defendant had no lawful right to pronounce the plaintiff excommunicated.—It is not my intention to argue, nor is it here necessary, that the question, whether a Catholic bishop has a right, under our laws, to excommunicate one of his flock, be argued. I shall only advert to the con-

sequence of supposing such a right to be either proved or conceded.

In the Established Church, excommunication is the sentence of a Court, in which the person to be sentenced has the means of defence, and superior Courts to which he may appeal. The forms of the Catholic Church, where it is established, allow, and, in these countries, before the reformation, afforded the same just indulgence to parties accused. But if the right claimed by the defendant, be affirmed, to excommunicate without notice, means of defence, or power of appeal, what dreadful power will be lodged in the Catholic bishop? Can it be seriously contended, that the laws of this country, which check and controul the power of excommunication in the established Protestant bishop, would indulge the tolerated Catholic with the same power, unfettered with any form, and uncontrollable by any corrective? In this view of the subject, without pretending to any detail of argument, and looking only to one obvious consequence, I utterly deny that the defendant had a right to excommunicate my client; and if the act itself were unlawful, the action is sustained by the evidence.

Much stress is indeed laid by Mr. Johnston on the word malice, in the declaration, as if evidence of express malice were necessary, or if necessary, as if it were not proved. I submit to your understanding,

understanding, whether abundant evidence *is* not laid before you, from whence malice is to be directly inferred; and if no such evidence were given, I still assert, that it was not necessary. If the act were unlawful, and occasioned damage to the plaintiff, the law would infer and supply that species of malice which the declaration alleges.

Here then I might rest the case of the plaintiff, and at once call on you for a verdict and damages, commensurate with his temporal loss, adequate to compensate the wounds which his character and feelings have sustained, from the misconduct of the defendant. But I willingly surrender this impregnable fortress, and, confiding in the strength of my cause, I dare to take the open field. I submit to you, that even if I concede to the defendant the power of excommunication, it will yet appear that he has abused that power, by applying it to temporal purposes. I go still farther, and affirm, that, even if he possess such power, and may apply it to temporal uses, he has exceeded even this latitude, by exercising, in this case, spiritual authority for temporal purposes, which he knew to be unjust.

Gentlemen, allow me to direct your minds to the history of this transaction, as it is to be collected from the evidence. It appears that this chapel was originally built by public sub-

scription: for a considerable time there were no galleries, but there were two pews in the back of the chapel, set apart for the exclusive accommodation of the bishop and Dr. Sheil. It became necessary to build galleries; and, let me ask, for what purpose? Certainly for none other than the general convenience, and accommodation of the parishioners. The fund, from which the expence was defrayed, shews, that the right to these galleries, was not restricted to any class of individuals in the congregation. But the additional improvement of pews in those galleries, was determined by the parishioners to be adopted. The mode of providing for the expence was suggested, or at least approved of, by the defendant. A certain number of collectors were appointed, by whom the necessary expenditure was to be raised from the parish. Those collectors were not deficient, in ardour or diligence, in the discharge of their duty: they made returns of the greatest part of the sum which was to be collected, and for the residue the tradesmen offered credit. It is at this critical period, that we hear of a self-created committee. To these persons, the plan which had been formed, and almost completed, was not agreeable: they were rich inhabitants of the town, and preferred the appropriation to themselves of these pews, rather than that the use of them should be common to the poorer parishioners,

rishioners, who lived in the country. You have heard from a witness, whom I am inclined to treat only with kindness and respect, that the scheme of subscription, and of indiscriminate use of the pews, was displeasing to him and the committee. The character of Dr. Shiell must give him a leading influence in any society of which he is a member, and we find that when his influence was announced to the bishop, the face of affairs entirely changes.

Gentlemen, we now find a clue that leads us through the labyrinth of the evidence. The wish of the bishop was now bent upon rescinding his engagement with his flock, but in such a manner as to hold out the appearance of adhering to it; to break his promise and contract, without incurring the odium of violating his faith, a plausible pretext presented itself.

The time for collecting the subscriptions had elapsed, and the money was not in the hands of the collectors; they had indeed the returns or promises of the parishioners, which they considered equivalent to the money. In vain did they remonstrate, and represent to the bishop, that the tradesmen, who had done the work, were alone interested in the payment, and that they had offered credit. The bishop still insisted on having the money; but, as a proof of his moderation and indulgence, he allowed three weeks longer for the collection of it. Even this indulgence,

indulgence, you will perceive, gentlemen, to be delusive. He knew, that no efforts of diligence could have enabled the collectors to raise this money, in so extensive a parish, within so limited a period: but observe a most remarkable fact, which happened about this time. You are told the subscriptions fell off among Admiral Packenham's tenantry, who were warned by Dr. Shiel, the land agent, not to pay their shares to the collectors. This tenantry composes the greatest part of the Catholic parishioners of Kilbarren; and is it surprising, that the fund was not levied within the time prescribed? We find also, at some times the language of the defendant corresponded with the change of his conduct, for he occasionally said, "I have done wrong in advising this subscription; I must take the burthen off the poor, and place it on the rich: the pews must be disposed of to such persons as I think proper." And, at the same moment, he complains that the collectors have not done their duty; that they have not raised the subscriptions within the time he allowed; and declares, that he can grant no further indulgence. He thus, with the same breath, resolves not to allow the subscriptions to be raised, condemns the collectors for remissness in the collection, and, through the influence of Dr. Shiel, prohibits the payment of that very money, which he reproaches the collectors for not having raised.

You

You do not forget, gentlemen, that the plaintiff was one of those collectors; and that he was not deterred by the opposition of Dr. Shiels, or the duplicity of the bishop, from persevering in his exertions to raise his part of the collection; and this perseverance in doing what the bishop had originally sanctioned and advised, was the sole claim of my client to the title of combinator.

Gentlemen, after throwing, what the defendant knew to be, insurmountable obstacles, in the way of the collection, the bishop came to the chapel: he complained of the falling off in the collection, and told the congregation that he must dispose of the pews.

You are told, that, on hearing this, a murmuring arose among the parishioners; and no wonder. They felt that they were deceived and imposed upon, by a person from whom, of all others, they could not have expected falsehood; and, in a matter, which, of all others, was least likely to be the subject of fraud. They prayed for further time. Not a moment would be granted; and this refusal from their bishop excited among them general indignation. They were then convinced that it was the intention of the defendant to temporize, and, by shutting out the poor, to give the preference to the rich.

Gentlemen,

Gentlemen, one of you has asked, with whom was the contract for this building made? There is no evidence on the subject: nor is it in proof that the defendant was in danger of being called on, or responsible for the payment. But, even if he were responsible, ought he to have introduced the discussion of such a subject, at the time of divine service, in the temple of the Almighty? Aware of the general disapprobation of his designs, he selects his favourites, and, by name, he directs them to take possession of their pews. Is it not obvious, why he thus acted? He apprehended opposition, and he must have reasoned with himself in this manner, "I am doing what I am conscious is wrong, but if there be any breath of opposition here, I will call it clamour; and, any murmur, I will call disobedience. The matter will then be of spiritual concern; and, resistance to my orders, shall be called combination, and be punished with the weapons of the Church." Yet, gentlemen, this is the person who banishes my client from civil society, because he profaned the chapel, by an assertion of the rights of himself and his fellow parishioners.—See, how the shaft of malice recoils upon the guilty accuser.—Why did he not chuse some other place than the House of God, to arrogate the power of enforcing his own unjust claim? Why did he subject his own flock to the miserable alternative

alternative of submitting to injustice, or of incurring the blame of irreligion? The object was to effect a vile purpose by wicked means.

Gentlemen, the counsel for the defendant have, with some dexterity, endeavoured to draw your attention to the accounts of expenditure, in building the chapel; and a stranger coming into court, bearing the proofs, on the part of the defendant, might have imagined this to be an action of assumpsit; or of covenant for breach of contract; or any action, rather than one in which the plaintiff complains of an injury, done to his fortune, feelings and reputation, by the malice of the defendant. But, gentlemen, I have no fears, that you can be misled. Your good sense will instruct you, as to the nature of the action: Whether any riot took place in the chapel? Whether it was raised either by the plaintiff; or whether, in the matter of the subscription, the plaintiff was right or wrong, forms not the subject of this action. The power assumed by the defendant did not belong to him, and was most cruelly exercised.

But I deny that there was any incorrectness in the plaintiff's conduct. You will recollect, that immediately after the bishop had desired his chosen favourites to take possession of the pews, the only person who stood up in the chapel was Philip Boyle. From what motive? and to what end? Not to scoff at religion, and insult his

bishop; not to abuse the sanctuary, or offend his Maker; but to assert with humility and firmness the civil rights of himself and his friends. I appeal to you, was he wrong in doing so? Do you not applaud his courage, and can you perceive any indecorum, in his conduct? He had the intrepidity to scorn the assumed power of the defendant, and to resist it with fortitude, which ought to have commanded respect from his bishop, and not to have drawn down his inexorable revenge. His expressions contain no sentiment of disrespect to the defendant, and only announce that his determination to support the parish, was fixed and unalterable. The same feeling was emphatically expressed by another of the parishioners, "I will," said he, "sell the shirt off my back, to pay the debt, rather than the gentlemen of Ballyshannon shall turn the poor out of their pews." The feeling was common; but the courage to utter it was peculiar to the plaintiff, and he was singled out, for that reason, as the mark for vengeance. I again ask, was he culpable in thus opposing what his heart and conscience instructed him to be wrong? And, good God! is this unfortunate man, with his entire family, to be cut off from all association with his friends, and with human society? Are their fortunes to be ruined, and their hopes blighted for ever, for his honest and conscientious resistance to oppression and injustice?

Gentlemen,

Gentlemen, let me remind you, when the bishop discovered, that his schemes were resisted by Boyle, no means were omitted to cajole and threaten him into an abandonment of the rights of the parishioners. You have it, in evidence, from his own trusty treasurer, Mr. Cassidy, that, in private, the bishop exhausted on Boyle his powers of persuasion to no purpose. He then became choleric, and the inflexible resolution of Boyle, made more irritating by his submissive demeanour, at length provoked the bishop to call him a rascal. This Christian bishop, whose first duty is to teach the sinner to command his passions, and to restrain his wrath, bursts into a paroxysm of anger, because his fraud is unsuccessful, and he calls his hearer a rascal. Is this language which becomes the lips of a Christian bishop? Of a member of the hierarchy of the church of Christ? Are these the words of a divine, exalted in his calling by the holiness of his life? No—it is the language of the lowest of the vulgar. We hear it from the blackguard, and are not prepared to expect it from a bishop.

This suggests to my mind, a topic, which seems not unconnected with the case. I would observe, that there is no class of men, in the community, on whom it is so incumbent to exhibit an exemplary life, as the Catholic clergy. To the laity the scriptures are a sealed book. The great and sublime truths of our holy religion can, by that clergy, be best expounded by their own re-

semblance to the character, which that religion is so admirably calculated to form. If the fountains of eternal life and truth are to be closed against the flock, it should, at least, be expected, that they may taste of the clear stream, in the purity of the pastor's example. If the clergy will bar out the light of heaven from their followers, they should, at least suffer it to fall reflected from their own conduct, upon the Christian who is detained in darkness.

Advert to the behaviour of this bishop, on the succeeding Sunday. He threatens denunciation against Boyle. A voice is heard, exclaiming, "Denounce him, denounce us all." The threat of denunciation is executed against Boyle, by the bishop, who, at the altar of his God, stamps in a fever of passion. Is this, gentlemen, the religion which the defendant taught as Christianity? Was it from such conduct, that this assembly of Christians were to imbibe the mild precepts of the Gospel? Was this man the mirror, in which they were to behold the image of their Saviour? If I did not fear that the very contrast were blasphemy, how easy would it be to set this man's in an odious opposition, to that of the blessed founder of religion. The one with the splendour and majesty and power of heaven at his command; despising all greatness, and cloathing himself in meekness, humility and gentleness; taking his station among the most lowly of the earth.

earth. The other haughty, arrogant and overbearing ; assuming authority to which he had no title, and using it cruelly for the sake of injustice. Lofty pride and unfeeling arrogance distinguished this man's deportment. The character of our redeemer was patient and unaspiring. Gentleness and forgiveness of injuries were the precepts which our Saviour illustrated by his life. In this man's conduct we see nothing, but hatred, anger and inexorable revenge.

Gentlemen, it has been much relied on, that my client excited a riot in the chapel. I deny the fact—or that it has been proved. And, if a riot had been raised, it was nothing less than what the bishop's own conduct should have prepared him to expect. On the Sunday of the ferment, an unusual concourse of people assembled. For what reason ? Because they believed that the bishop would not have taken the occasion of divine service for enforcing what was detestable to them. They came with mixed sensations of fear, anxiety and indignation ; scarcely hoping that among their whole number, one could be found bold enough to espouse their rights in the chapel, against the spiritual tyranny which oppressed them. What a temper of mind was this for a Christian bishop to inspire into his congregation, when he met them in the temple of the Most High ? What feelings were these, with which they were called together to the exercise

of devotion. Were their hearts filled with religious or brotherly love? Were their minds abstracted to the contemplation of divine truth, during the ceremony of public worship? No:—They thought only of violated engagements—of the time-serving preference of the rich to the poor—of the pews—of the bishop. Their indignation had before expressed itself in whispers and murmurings, when Boyle openly and boldly vindicated their cause, the chapel resounded, not with the tumult of rioters, but with the acclamations and applause which burst from the congregation, without thought or premeditation.—No tumultuous or violent act—nothing but the explosion of feelings, which could no longer be suppressed. No, gentlemen, Boyle was not to blame for this. The combustible matter had been prepared by the bishop. He flung into it from the altar the lighted torch, and does he pretend surprize that the flame arose? Yet this is now urged, as the justification of the defendant's conduct. Was there, gentlemen, any thing to justify a sentence of excommunication against Boyle? What offence had he committed, which ought to have raised against him the weapons of the church? What had he done to deserve excommunication, that most dreadful and terrible weapon that man can wield against man.

But it is strenuously argued, that no special damage has been proved. Here, again, I must deny

deny the assertion ; while, I contend, that if it were true, it is unimportant. Under his lordship's correction, I affirm, that it is superfluous to prove special damage. The act being unlawful, the law would, if, necessary, imply malice, and general damage will support the action. Do you suppose, that this general damage must be pecuniary ? No, gentlemen, tarnished reputation—wounded feelings—loss of society would be grounds for ample damage at your hands. Was there not loss of society occasioned to the plaintiff, by this excommunication ? This, indeed, I had always conceived to be the necessary consequence of excommunication in every church, until I heard the testimony of Dr. Sheil. Much, however, as I esteem him, I can yet believe, that he is not infallible. But the testimony of the other witnesses, on a level, in rank, with Boyle, proves, that he must have been deprived of their society, to which alone he had been accustomed. Whether Dr. Sheil be right or wrong, in the abstract, the consequences were therefore equally, in either case, injurious to Boyle. Though the rich man might, with impunity, associate with his excommunicated friend. The humble Catholic was awed by the censure of the church from such unhallowed society. But is there not another claim for damages ? Are wounded feelings to be compensated in other actions with damages, and is Boyle to receive nothing at your hands,

for

for the agonies of his mind. What must have been his sufferings, when he returned to his family, and saw them and himself at once cut off from all intercourse with mankind? When he felt his friendships ended, the supplies of his industry stopped; the sources of his subsistence dried up. When even the innocence of his daughters did not palliate the crime of their affection for him.

In another, and more awful view of the subject, what must you conjecture to have been his feelings. You may, at least, give Boyle the credit of believing in the faith in which he was nurtured. Was it no violence to his feelings, to be torn from the bosom of that church, from which he has always drawn spiritual comfort and consolation? Was it no wound to his soul, that he believed himself, by this excommunication, to be not only deprived of the society of man on earth, but to be debarred from all future communication with the saints and angels in heaven. What torture must he have felt from that sentence, which condemned him to a living death—to a life worse than death—to a life with the horrible consciousness of annihilation. To aggravate the misery of such a state of existence, you will see that death itself could not be looked to as a refuge, since he must have believed, that it would only lead to eternal perdition. Gentlemen, have those feelings no claim upon you for compensation.

But

But the special damage has been sufficiently proved to comply with the averment in the declaration, and the amount proved is by no means to be the measure of your damages.

An objection has been made by Mr. Johnston, that the persons named in the declaration have not been produced to prove, either that their custom was withdrawn, or the motive of their ceasing to deal with the plaintiff's daughters. Two obvious answers occur. We have deemed it unnecessary to prove the fact further than by the testimony of Miss Boyle, whose veracity cannot be impeached. There was another obvious reason. Those persons are Catholics, and by the very fact of excommunication, we have been prevented from conversing with them. We only know, that they ceased to deal with us instantly after the sentence, and have not held intercourse with us since. We could not interrogate them respecting their testimony, and we have declined to resort to them as witnesses. You can easily imagine a sufficient motive for our omission, without imputing to us any wish to suppress the truth. The second ground of special damage, has been distinctly proven. The plaintiff had taken a shop, with the view of embarking in trade. His friends deserted him, and his project was abandoned. Yet this is called no damage; as if to prevent the exertion of industry were less a damage, than to

plunder the fruits which industry had acquired. I will not further enlarge on a topic, which would insult your understanding to discuss.

Gentlemen, I again sincerely express my regret, that I have been obliged to consume so much of your time, at so late an hour. I will not apologize to you, for having endeavoured to serve my client. You have too deep a sense of your own duty, to expect an apology from others, for having discharged theirs. With the most implicit confidence in your honour and integrity, I commit my client to your care.

BARON McCLELLAND charged the Jury to the following effect :

Gentlemen of the Jury,

Since I have had the honour of being appointed one of his Majesty's Judges, I have never, on any occasion, felt more sincere reluctance in discharging my duty, than on the present trial. And I cannot avoid remarking, that it was highly imprudent in such persons as are principally interested in this cause, to suffer such an action to have been brought before a Court of Justice. But, gentlemen, you and I have a solemn duty to perform on our oaths ; and, though I may lament that it should have fallen

fallen to my lot, yet, in no case, will I ever shrink from the performance of my duty.

Gentlemen, this is a special action on the case brought by the plaintiff, Philip Boyle, to recover compensation in damages from the Rev. Peter M'Loughlin, for having excommunicated him, and thereby depriving him of the society of persons professing the Catholic religion.

Gentlemen, it is my duty to tell you, that the laws which empowered Catholic bishops to excommunicate, have long since been repealed. None but bishops of the Established Church have, in this country, a legal right of exercising that authority: and I am compelled to tell you, that I consider the sentence of excommunication pronounced by the defendant in this action, not only AN ASSUMPTION OF POWER CONTRARY TO LAW, BUT AN USURPATION OF THE RIGHTS OF THE BISHOPS OF THE ESTABLISHED CHURCH, AND AN INFRINGEMENT OF THE JURISDICTION OF OUR ECCLESIASTICAL COURTS.

It has been very ingeniously contended by the gentlemen on the other side, that the effect of excommunication in the Catholic Church is twofold—namely, either to deprive the persons censured of participating in the sacraments, or to exclude him from society. And they have endeavoured to shew, that the excommunication pronounced in this instance by Dr. M'Loughlin, did not extend to exclude the plaintiff from society. If this were really the fact, (which I

confess I very much doubt) and that any clergyman professing the Catholic religion had given satisfactory evidence of that circumstance, it would, in my opinion, materially alter this case. But, gentlemen, evidence of a contrary tendency has been given; and this has been proved by one of the witnesses, namely, that he, the witness, would consider himself guilty of a crime, did he associate with a person excommunicated. Another of the witnesses has taken upon him to say, that he would not enter into any commercial intercourse with a person excommunicated, and he would not like him.

Gentlemen, I am bound to tell you, that if it were a matter of notoriety, that the sentence of excommunication did not extend the whole length of depriving the plaintiff of the benefit of society, it was competent to the defendant to have given evidence of that fact. Gentlemen, I conceive it absurd to contend, (at the present day) that the sentence of excommunication by a Catholic bishop, has not the effect of banishing the delinquent from the society of Catholics.

Let me ask any gentleman conversant with ecclesiastical history, what was the power and effect of the sentence of excommunication, in those dark times of bigotry and superstition, when Christian popes and prelates exercised an absolute

absolute power and dominion over all the Christian world.

It is an historic fact, that such dread and apprehension did this odious weapon of the Church excite, such terror did it create in the mind, that even the very name of it made Christian princes tremble on their thrones. And, gentlemen, unless the tenets and doctrine of the Catholic religion have undergone an entire change, have we any right to infer, that the nature and effects of excommunication are not still unaltered? What were its dreadful effects on the mind of an English monarch, Henry the second, when he bowed down and humbled himself to the then reigning pope, begged pardon of him as if he were his vassal, and prayed his forgiveness. Gentlemen, the defence attempted to be sustained by the defendant, has reluctantly drawn from me those historical facts. And from those times down to the present, we have not heard that the effects of excommunication have undergone any change in the Catholic Church; I therefore consider that the nature and effect of excommunication are very little altered from what they were in those times to which I have alluded, and, feeling that impression on my mind, I do not entertain a doubt, that the sentence pronounced by the bishop in this case, was intended by him to have had the effect of

excluding

same person unites in himself, contrary to the spirit of our constitution, the distinct province of judge and jury. Gentlemen, I repeat that it would be a monstrous thing, if such an assumption of power were to be sanctioned by law, in this free country, but for a moment. Therefore, if you are satisfied that the effect of the excommunication pronounced against the plaintiff, extended so far, as to have deprived him of the benefit of society, and if this be the fact, I think you can have no doubt, I feel it my duty to tell you, that the conduct of the defendant was illegal, that therefore the law will imply malice, and that you must find a verdict for the plaintiff.

If a man acts contrary to the laws of the Established Church, he can only be punished for spiritual offence, *prosalutem animi*; and if the Ecclesiastical Court do compel obedience to its orders for a temporal transaction, of which it had not jurisdiction, should proceed by means of excommunication, the Court of King's Bench would issue a writ of prohibition, and put an end to the proceedings.

Gentlemen, let me now call your attention to the facts of this case. A Roman Catholic chapel appears to have been built by public subscription in the town of Ballyshannon; the defendant is the Catholic bishop doing duty there; two galleries are built, partly by subscription. The
bishop

bishop applied several times to the parishioners for payment of the arrear, for which he had made himself personally liable, and he is put off, from time to time, by the parishioners.

It was recommended by one of the parishioners, Dr. Shiel, that certain pews should be sold, and it was stated, that £150. would be raised by the disposal of those pews. The parishioners objected to this sale, and some of them emphatically said, that "they would sell the shirts off their backs, rather than indulge the gentlemen of Ballyshannon." You have been told, that £180. had been actually collected from the parishioners; and, if the defendant was anxious that the arrear should be paid in that way, he ought to have accepted of that money. But what does the defendant tell the parishioners? I am sorry that I granted you so much time: I will now dispose of the pews. Gentlemen go, and take possession of them. From this, gentlemen, we find, that this bishop has arrogated to himself the rights of the Established Church, and he proceeded, as if he felt conscious that a Catholic bishop possessed the same legal power and authority as a Protestant bishop. Gentlemen, those galleries were built by public subscription. Collectors were appointed by the parish, and were in the very act of doing their duty, when they were prevented by the interference of Dr. Shiel. Let me ask you, was it either

either wise or prudent, in this bishop, to raise a tumult, in the chapel, in opposition to the sense of the parishioners? It appears to have been the work of Dr. Sheil, to have excluded the people from those galleries.

In my mind, the moment the celebration of divine service was over, the bishop should have retired from the chapel, either to an ale-house, or to a market-house, for the purpose of debating the subject, relative to those pews. He should not have contaminated the house of God, by exciting such a tumult, and on whose head are all the ill effects arising from his own misconduct, to be visited. What was the beginning of this riot? The bishop ordered certain gentlemen to take possession of their seats. The plaintiff speaks from the gallery, in order to oppose this measure. Provoked by the opposition, the bishop lost his temper; stamped upon the altar, and said, "desist you set of combinators, " or I will punish you with the weapons of the " church." I confess, gentlemen, I cannot see in what the guilt or immorality of the plaintiff's conduct consisted, or how he demeaned himself contrary to the laws of the church. How could the bishop have been so far mistaken, as to call the conduct of the plaintiff, upon this occasion, an act of combination or conspiracy. From this authoritative language of the defendant, one would imagine, we were living, in the dark bi-

gotted times of James II. Gentlemen, I cannot help saying, that I consider the conduct of the bishop, throughout the whole of this transaction, as being most improper. First, he calls a meeting of the parishioners, who resolve, that the expence of the galleries shall be paid by subscription. Collectors are accordingly appointed to raise the amount, and, then, the bishop says, the pews must be disposed of. To this the plaintiff replies, that they should not be sold. Gentlemen, I am bound to tell you, that the plaintiff had a right to say so. See how the Defendant meets the objection. "Desist, you set of combinators, or I will denounce you. Then one of the parishioners calls out "if you denounce him, you may denounce us all. From this it appears, that the bishop was setting himself up against his whole flock.

It is said, that the people began to shout, and clap their hands, making the house of God resemble a theatre. Gentlemen, might not those shouts and acclamations have been a sort of tumultuous joy, arising from the bishop's having been defeated.

Captain Nash says, that a general ferment took place, the noise of which he knew nothing on earth to compare to, but an Indian war whoop. But, gentlemen, the plaintiff was not accountable for this shouting and tumult of the parishioners, nor could the riot excited on that occasion

occasion be attributed to spite and malvolynce in him. Mr. Nash further says, that the plaintiff was guilty of disrespectful conduct. Was there any attempt to commit violence? I cannot be persuaded, that a Catholic would raise his hand against his bishop. We all know the feelings of that body of people, and happy it is for the country that they possess such reverence and regard for their clergy.

Gentlemen, I am bound to tell you, that I consider the bishop himself was the only person to blame for exciting this tumult and disorder, of which you have heard so much. What would you think of a Protestant bishop who would act thus? In the Protestant church a vestry would have been called, and the business disposed of without any confusion.

Gentlemen, it is my duty to tell you, that this transaction was a temporal meeting for a temporal purpose. What the bishop has called a combination, but what I call the contrary. See with what submission the plaintiff afterwards humbled himself to the bishop. He said, "If I have offended "against the laws of God and of the church, I am "sorry for it." One would think that this submission was sufficient atonement. Is an innocent man to be compelled to make confession of his guilt? Is there any authority, in this country, so strong to do that, which the laws of the land cannot

compel? Or are we to be told, that a Catholic bishop has a legal right to assume such authority, and to take the decision of the criminal law into his own hands? God forbid that such were the case.

I am sorry, gentlemen, to be obliged to go one step further; but I cannot omit mentioning a particular fact. It appears that a meeting between the plaintiff and the defendant, a Mr. Cassidy and a Mr. Fausset took place. At this meeting some warm discussion about those pews, arose, when the bishop so far forgot the dignity of his character as to call the plaintiff a rascal.

Gentlemen, what would you think of a Protestant bishop who would thus demean himself, by making use of such language. In my mind, he would not only reflect dishonour upon his religion, but be a disgrace to the bench of bishops. It appears, gentlemen, that the plaintiff was ready to submit to every thing contained in the written apology, except to the accusation of his having been a combinator. He was then told, by the defendant, that if he refused to do so, the sentence of the church should be pronounced against him.

I say, gentlemen, from that moment only, the tumult had its beginning, and from that moment, as I conceive, did the bishop's conduct become illegal.

Gentlemen, under all the circumstances of the
case

case, if you shall be of opinion, that by the sentence of excommunication the plaintiff was deprived of the benefit of society, you ought to find a verdict for him, and compensate him in damages, not only for the loss of business, but for the trouble and anxiety of mind, which this poor man and his family have, ever since the passing of the sentence of excommunication, suffered.

The jury retired, for some time, and returned a verdict for the plaintiff. Damages, £125.

FINIS.

