THE KIRWAN CASE:

ILLUSTRATING

THE DANGER OF CONVICTION ON CIRCUMSTANTIAL EVIDENCE.

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ILLUSTRATING

THE DANGER OF CONVICTION

ON

Circumstantial Evidence,

AND THE

NECESSITY OF GRANTING NEW TRIALS

IN

CRIMINAL CASES.

"So long as the least doubt exists as to *the act*, there can be no certainty as to the criminal agent.—*Starkie on Evidence.*

"This is a conviction for murder, where no murder has been proved to have been committed."—True—it was not sworn that the body of Mrs. Kirwan was the body of a murdered woman.—*Extract of a Letter from Mr. Dennis, Foreman of the Jury who convicted Kirwan, published in "Saunders' News Letter," January* 10, 1853.

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CONTENTS.

PREFATORY REMARKS.

Since writing these observations, we have been startled, nay shocked, at a paragraph in a letter purporting to be signed by the foreman and ten of the jury who convicted Mr. Kirwan, in which they deliberately state that this was "*a conviction for murder where no murder has been proved to have been committed*"! "TRUE," they say, "it was not sworn that the body of Mrs. Kirwan was the body of a murdered woman." This is the language of men whose verdict should have been founded on the "absence of doubt whether the deceased met with a violent or a natural death;" of men who while thus running counter to the first principles of justice as well as law, dare to charge with "malignity and falsehood" an attempt to uphold its pure administration.

In a few days we trust that the true nature of the Boyer case will be laid before the public. We simply ask them to suspend their opinion on this or any unproved charge. Such have nothing to do with the present case; but if found to be true, would certainly make our task an odious one. Still, the object of it should not be confounded with the character of any individual. We have carefully abstained from the "manifest unreasonableness of appealing to men's passions in order to gain their assent;" we have taken no part in the discussions which have agitated the press. Perhaps

we have weakened our case by over-caution in this respect. The same course has not obtained in other quarters. Tales of horror, unsubstantiated tales, have been publicly put forward with all the boldness of proof—tales which, alleged against one with the rights of citizenship would have drawn heavy penalties on their fabricators and circulators. Are they more justifiable, when urged against one disabled from defence and excluded from redress—one dead in the eyes of the law?

The numbers referred to in the following pages correspond with the documents contained in Appendix II., and enumerated in the Table of Contents.

THE KIRWAN CASE,

&c.

It is not intended by the following remarks to advocate a particular cause, or excite sympathy for individual suffering. A higher interest is at stake. Life had been, under the sanction of authority, almost forfeited to the decision of an incompetent judgment; incompetent, as being founded on an incomplete and *restricted* production of evidence; and although this error has been removed, it has only given place to one perhaps more dangerous still—the confession of doubt, and yet the punishment of the accused; a violation of the fundamental principle of that law, whose maxim it is that all under its eye are innocent while there exists a doubt of their guilt—that it is better that ninety-nine guilty should be spared, than that one innocent person should suffer.

Considering then the question as public, and not merely individual in its application, it is only just to require that all personal feelings and prejudices should be laid aside; that rumours, unproved assumptions, and even facts of the prisoner's life not bearing on the question, should be disregarded.

But there is no room for preface, no excuse for delay; even while we write, the news is brought that, without warning, without the com-

mon preparation which frail humanity requires for so sudden a shock, Mr. Kirwan was this morning awakened from sleep to be informed that the time had arrived for his immediate removal to the convict depot. The consequences of this might have been foreseen. The spirit which, even under the prospect of execution, had retained its serenity, quailed beneath the near approach of such utter humiliation; the prisoner was seized by a violent fit, and when our informant had left him he was still dangerously ill from its effects!*

The substance of this paper has been partially submitted to government; the usual course has, we believe, been followed; the matter was referred to the judges who presided at the trial, who did not think the additional evidence sufficient to induce them to alter their opinion. *Yet the foreman of the jury has stated unreservedly that, if any one of the many facts mentioned to him had been submitted in evidence to the jury, he would not have quitted the box without pronouncing a verdict of acquittal.*†

A list of documents is subjoined in form of an Appendix, to which we shall frequently refer; but it is to be wished that some abler pen had been engaged in so important an office. Yet, perhaps, it is better as it is, for the cause of Truth: her strength will appear more conspicuous in the weakness of her

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* Dr. Rynd, the physician to the gaol, has just returned from visiting the prisoner. He left him in strong convulsions.

† Compare this, which, (and much more) can be proved by witnesses which even the jury will credit, with the whole of Mr. Dennis's letter as it appears in *Saunders*, with his "solemn declaration" that "not one rational doubt has been suggested to his mind."

advocate. A report of the trial, although, we fear, a very imperfect one, is also annexed.

Reason and justice, as well as law, establish the following conditions, as essential to circumstantial proofs:* 1st. That the circumstances from which the conclusion is drawn be *fully* established; 2nd, All the facts should be consistent with the hypothesis, so that any *one* incongruity is sufficient to negative it; 3rd, *All* the circumstances should be of a conclusive nature and tendency, that is, that they should actually exclude any other hypothesis but the one suggested, and therefore *no finite degree of probability should constitute proof adequate to the conviction of an offender;* hence, 4thly, the rule in criminal cases, "that the corpus delicti, the fact that a crime was committed, should be *first* established." We trust it will appear, from the following observations, that none of these conditions have been fulfilled in the case of Mr. Kirwan; perhaps to some it will appear that their opposites have been established.

The salient points of Mr. Kirwan's case seem to be, 1st, his previous immoral life, and the recency of Mrs. Kirwan's knowledge of it, as affording a motive for the crime; 2nd, the fact that cries were heard from the island at Howth and elsewhere; 3rd, the circumstances attending the finding of the body; 4thly, the medical testimony; and lastly, the meagreness, almost nullity, of the defence. It is not taking too high ground to assert that in each of these cases, *all* that could criminate Mr. Kirwan is unproved,

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* Starkie on the Law of Evidence.

much is disproved, and in some cases the circumstances almost amount to a positive proof of his innocence.

And, first, we would remark generally, that perhaps no more dangerous practice could exist in criminal cases, than instituting a necessary connexion between a man's general habits of life, however culpable, and any particular act attributed to him.* Judge Crampton informed the jury that there was no such connexion between the previous character of the prisoner, and his liability to the present charge; nor would we dwell upon the subject, were it not that the admitted profligacy of the accused too evidently formed the basis of the prosecution—the engine by which light and vague suspicion was compressed into a substantial evidence for crime. Connected with this, the prosecution rested mainly [solely] on two facts; that the connexion with the woman Kenny was known to Mrs. Kirwan only six months previously; and that she was subject to habitual ill-treatment from her husband. The first, and the most important (as peculiarly furnishing a motive for the deed,) is unsupported by evidence. The second depends on the testimony of the woman Campbell. Contrast this with her sworn informations before Major Brownrigg, "*that she never knew them to differ but on one occasion; that they then had high words, but she did not know what the quarrel was about, and that on all other occasions they lived as happily as any couple could.*" This, per-

* In the case of the Queen, *versus* Andrew Taggarty, tried before Chief Baron Pigot, at the Spring Assizes in Downpatrick, 1851, where the prisoner was arraigned for poisoning his wife, counsel for the prosecution offered in evidence the fact of concubinage with another woman; after a long argument, the Court did not allow the evidence to go to the jury.

haps, is enough to characterize her testimony; but there are other answers to the two points insisted on by the prosecution. Amongst many, let us select the evidence [No. 2.] of Mrs. Bentley, well known in Dublin as a lady of the highest respectability and character. She declares, "*That she was on intimate terms from her infancy with Mrs. Kirwan;* that this connexion with the woman Kenny *was known to her for twelve years;* that Mrs. Kirwan mentioned it as the only fault in her husband's character, *and spoke of it without excitement or emotion;* that in speaking of Mrs. Kirwan she invariably stated, "*a more quiet, gentle, good-natured, and generous-hearted man never existed;*" that he was "*kind and attentive to her in sickness.*" Such are not the facts, such is not the disposition, which would lead on a man to the murder of his wife. Nor is it a subtle deduction, but a broadly-based observation of human nature, that women without a family by their husbands regard them as almost suffering wrong or injury, and are therefore disposed to look with a more lenient eye than others on connections such as these. Again, we beg that we be not understood as palliating such. We acknowledge to the full their heinousness. Their actual injury to society has been, perhaps, greater than that of murder itself. But we do protest against the injustice and unreasonableness of establishing a natural connexion between the two.

Thus, the result of an inquisitorial search into a married life of twelve years' duration has been the production to the public of one quarrel, supported at the trial by such evidence as Mrs. Campbell's; substantially contradicted by her own sworn informations; and contradicted in all its assumed inferences by the

high authority of Mrs. Bentley's testimony, amongst many others! How many could stand the same test with a similar result? When we add to this, that they were *not* (as assumed at the trial) to have quitted their lodgings the next day, [see No. 3] but had taken them until November; that they did *not* return home on the previous evenings much earlier, *but later* [No. 3] than their proposed time of returning on the 6th of September; what, we say, should be the true nature of the inference from his former demeanour to his wife, as it thus appears? Does it any longer supply a motive for the deed? Is it not rather a strong presumption that he was incapable of committing it?

We next come to a more important part of the case, as bearing more directly upon the imputed crime; we mean the hearing of cries from the island by five several witnesses; and here the nature of the evidence deserves the most careful examination, not as reflecting (in the main) on the credibility of the witnesses, but as tending to throw some light on the mysterious aspect of events. Perhaps no better exemplification could be found of the well-known description of human testimony, that it is "substantial truth under circumstantial variety;" the substantial truth being the point in which all the witnesses agree, namely, that cries were heard; the circumstantial variety being the discrepancies respecting the *interval of time*, the *number*, *position*, and *nature* of the cries.* As to the *nature* of the cries, it is scarcely

* There were, however, other serious discrepancies between the depositions and the evidence at the trial.

necessary to remark that imagination at the time, or subsequent impressions, would insensibly colour the evidence in this respect; but even let us assume as fact the account of Larkin, the nearest to the island, that they were "*more like the cries of one in distress than one calling for a boat.*" Of the other discrepancies, the most striking at first sight is that regarding time; Larkin (the boatman) stating seven or eight minutes as the interval between the first and second cries, measured at two minutes by the rest; this incongruity, Judge Crampton directs the jury, *is not to be regarded* in persons of the witnesses' position in life; while, strangely enough, he makes scarcely a comment on other diversities to the full as important as the one he touched upon; namely, that Larkin thought the sounds proceeded from *different* parts of the island, while the listeners at Howth referred them to the *same* spot; and also, that *three* cries seem to have been heard by all the witnesses except one, (Barrett) who was standing at the pier, and who stated that he heard *many* cries—then, after an interval, *many* more —and so on. Are all these discrepancies satisfactorily reconcilable with the fact of *three* determinate cries being uttered at *one* spot on the island? Would it not have been more in the spirit of law, reason and humanity, to seek for some hypothesis which could meet them all naturally, than twist and break them down to square with a preconceived opinion. Judge Crampton also stated that cries heard by the witnesses must also have been heard by Mr. Kirwan; and it has been farther urged in support of this part of the case, that cries on the island have frequently been heard at Howth. With this last assertion we

fully agree. *The whole matter has been made the subject of varied and stringent experiments* since the trial; the result may be briefly stated, and seems conclusive. On three several days, (two of them much more favourable as regards the state of the air, for the transmission of sound, than the 6th of September) the effect of pistol shots, screams, and whistles uttered at the rock in the Long Hole was tried; on the third day (being then perfectly calm) *these sounds were doubled; there being the combined screams and whistles of two strong voices; moreover, there were the most accurate signals established by those in the Hole, and those appointed to listen.* In all cases the result was the same; *not the faintest indication of sound reached the ears of the listeners*, (who were stationed successively at the spots occupied by the different witnesses); *and at the ruins on the island, between two and three hundred yards from the place of the alleged murder, similar shouts and screams were also inaudible.**

This hypothesis about the cries being thus *doubly* overturned, we believe it is law as well as logic that any other account of them is *admissible* which reconciles the discrepancies, and is *highly probable* if it be the only one that can be suggested. We think that Mr. Kirwan's simple statement meets all the difficulties. He said that when it became too dusk to sketch, he went up the hill to meet Mrs. Kirwan on the path she had agreed to come back; that he called for her as he walked along, etc. 1stly, The *time* of his doing this would agree; most likely, shortly after seven o'clock. 2ndly, Larkin's account of the *nature* of the

* See No. 18, page 117, for partial accounts of these experiments. Indeed, any one visiting the island would confirm the truth of them.

cries, (and he was the nearest to Mr. Kirwan,) that they were "*more like* one in distress than one calling for a boat. 3rdly, Larkin's *long interval* of seven or eight minutes; for he probably heard Mr. Kirwan before closing on the island, and then not again until he got from under the land. 4thly, Larkin's observation, (at a distance of three or four hundred yards), that they came from *different parts* of the island, while the far more distant listeners at Howth necessarily referred them to one spot. And, lastly, Barrett being so much nearer the island than the women at Howth, naturally would hear *more cries* than either of them. Thus, Mr. Kirwan's account undesignedly reconciles all these diversities. Which, then, is most credible? Or rather, is not the one incredible and impossible, the other natural and likely? And if so, where was Mr. Kirwan at the time of the presumed murder? We ask a candid public to judge from *facts*, not *assumptions* or *prejudices?* Is it possible, consistently with the above, that this man could have been guilty.

But, putting aside for the present these inferences in favour of the prisoner, let us proceed to examine independently, the facts connected with the finding of the body; and first, we cannot but observe the extreme *naturalness* of Mr. Kirwan's account, which will bring us to the time of the first search. He states, that not having seen Mrs. Kirwan on the upper path, he thought she might have returned by the strand to the landing-place, and he accordingly retraced his steps; but, not finding her, he was proceeding by the strand towards the Long Hole, when the boat approached him on its way from Howth. He

returned with the boat to the landing-place, and called for one of the men to take down the bag and basket, which Pat Nangle did. Michael then came up the bank, (about 14 or 15 feet high,) and asked "Where's the lady?" "I don't know," replied Mr. Kirwan, "she left me about an hour and a half since, and I have been looking for her up the hill." What indication of guilt is here? would not rather a pretended and eager anxiety have been the demeanour of a guilty man? No agitation of manner, no confusion or disorder of dress or person, which should have followed the recent perpetration of so dreadful a crime; *nor was any suspicion excited in the minds of the boatmen.* But what we would chiefly insist on here is the *naturalness* of his story, as we have said; and it should be borne in mind that this is the strongest, perhaps the sole argument in circumstantial cases. They then proceeded, as detailed in evidence, to look for Mrs. Kirwan, *directed by this supposed criminal to the place where his murdered wife was lying.* The body was found to the landward of two rocks marked in the map, *one of which is three feet six inches in height, the other two feet, their united lengths about twelve feet;* and we now arrive at another cardinal part of the trial.

It was asserted by Pat Nangle that a sheet was found under the body; and this, if true, would in the minds of many be conclusive that a crime had been committed;* but a little reflection will show that

* In reality, this circumstance is quite reconcileable with the fact of a natural death; or rather it would be difficult to conceive, in the case suggested by Mr. Hayes, how the sheet could have got under the body at all.

his evidence was utterly unworthy of credit. In this particular, however, Pat Nangle was contradicted by Michael at the inquest, (No. 4) and at the trial, and also by his own express declarations to Mrs. Tate and Mr. Jackson (see Nos. 5 and 8). But although this is sufficient for the purposes of justice, it is necessary to analyse more minutely the evidence of a witness *on whom alone* (although thus contradicted) the prosecution rested;* this proof of a fact which, in the judgment of many, was sufficient to ensure the condemnation and death of a fellow-creature. It may be remembered that many horrible rumours were afloat as to the manner in which this supposed murder had been effected ;† and accordingly we find Nangle's testimony on the trial, with shocking and unscrupulous exactness, shaping itself to coincide with them.‡ There are, besides, other internal proofs of his falsehood; and we may class amongst them the harrowing expression of countenance, voice, and manner with which he gave his evidence. In the first place, then, he swore that Mr. Kirwan brought a *sword-cane* with him to the island, which, however, proves to be wholly

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* It has been asserted that Mr. Kirwan interfered with Pat Nangle's evidence at the inquest. For a full refutation of this, see No. 4.

† In answer to all such dreadful suggestions of morbid or evil imaginations, it is enough to say, once for all, that the medical gentlemen employed to examine the body (most probably in consequence of such rumours) found no marks of violence; and Dr. Hatchell, when asked by Mr. Curran at the investigation at the Castle, if there could have been such without his knowledge, emphatically replied, "Certainly not."

‡ If it be asked what motive Nangle had for ill will to Mr. Kirwan, it is sufficient for the purposes of truth to refer to the facts attending his obstruction of the removal of the body. Other motives also might be assigned, and perhaps much stronger; but as they are needless, we refrain from producing them.

undistinguishable from any common walking-stick! Then, *in so intensely dark a night*, this man, who in open court was unable to comprehend the plainest map of that island, so familiar to him, *was employed for more than half an hour in looking over a sketch-book.* We refer, with pain and reluctance, to that part of his evidence printed in italics,—for obvious reasons not before published. We will not dwell upon the evident falsehood of some of its particulars,* but simply mention that all recorded in that disgusting record of scrutiny was sworn by Pat Nangle to have been effected *before Mr. Kirwan came up*;† and we find by the next witness, Michael Nangle, and by all concurrent circumstances, that Mr. Kirwan had, in fact, reached the body *at the same instant as Pat himself!* Whatever be the grounds of his animosity, he has been enabled to fulfil to the uttermost his threat of, "*I'll pinch him at the trial.*"

We pass over, briefly, Mr. Kirwan's throwing himself upon the body, remaining with it alone, and his expressions of grief,—the reality of which is confirmed by his subsequent conduct at Howth, when in the room with the body (No. 3). It has been made the subject of harsh comment by the learned counsel for the Crown; an impartial public will judge how truly. We can see nothing in it more deserving of suspicion than the prisoner's present most hapless condition; and one would have thought that in such a case the

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* These fatal proofs of crime were not mentioned by him at the inquest.

† See Mr. Smyly's statement, and report of the trial in Appendix I.

duty even of a prosecuting counsel would have been merciful consideration, not injurious interpretation.

We must omit, in the body of these remarks, the multitude of minutiæ, which, however, have variously arrested the attention of the public. If possible, they will be made the subject of a brief note at the end. But on one matter so much stress has been laid, that it requires our special attention; we mean, Mr. Kirwan's trowsers having been wet on their arrival at Howth; and it has been thought inexplicable that, after three hours spent in walking on a dark night through dense fern after rain, and along the very verge of the sea, and stepping in and out of a boat, a man's trowsers should be wet! They certainly were wet; nor did he attempt to conceal it; for in the presence of witnesses a boy named Carey pulled off his wet stockings. They were *so* wet that they were dripping on the floor; and this at least proves that the wet *could not have been contracted four hours before*, [the time of the alleged murder] although the boatmen, *who were absent from him for an hour, swore that it was impossible he could have wet his feet.* But more: suppose, according to the presumption of the Crown, that a man had been struggling with a strong woman for many minutes in water even deeper than has been supposed;* with a woman striving against death, with body bent, and the sand and waters agitated by the contest, would the only result have been, *that his legs would have been wet half-way to the knees?* Would he not have been soaked with water from head to foot,

* We shall have occasion to remark afterwards the extraordinary difference between the evidence of Mr. Jones as to the height of the rock and depth of waters, and subsequent measurements.

and covered with marks of the struggle; and yet *no disorder in his dress is even hinted at;* nothing more than his wet feet. Would not his body, too, *and hers*, have exhibited palpable marks of this dreadful contention?* Yet none were traceable. This presumptive evidence of the crime seems then, to say the least, *more compatible with innocence.*

We trust that we have shown that in all the circumstances assumed to connect the crime with Mr. Kirwan, there has been, to say the least, an utter failure of proof; *no motive* proved, but rather disproved; the *cries* shown to be irreconcileable with his guilt, and compatible with his innocence; and the seemingly criminatory circumstances connected with the finding of the body either depending on testimony the most worthless, or shown not to be criminatory, but the reverse. But a question remains which rightly should have taken precedence of all this investigation; a question which, if unproved, *much less disproved*, renders all other enquiries nugatory. *Was there a murder committed at all?* Did Mrs. Kirwan die a violent death? And even if she did, why has it been so peremptorily assumed that it must have been by the hands of Mr. Kirwan? Five hundred men might have been on that island without the knowledge of

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* "It is the result of twenty years' experience," *says Dr. Alfred S. Taylor*, "in the investigation of these cases, that the resistance which a healthy and vigorous person can offer to the assault of a murderer intent upon drowning or suffocating him or her, is such as to lead to the infliction of a greater amount of violence than is necessary to insure the death of the victim. The absence of any marks of violence or wounds on the body of Mrs. Kirwan, excepting such small abrasions as might have resulted from accident, may be taken in support of *the only view which it appears to me can be drawn, namely, that death was not the result of homicidal drowning or suffocation, but most probably of a fit resulting from natural causes.*"

the Nangles, who *swore positively that no one could have been there without their knowing it, and yet they left it at four o'clock, and did not return until eight, when darkness had fallen.* Fishing boats had been constantly passing at the rere of the island; we are prepared to prove that others *were* on the island after the departure of Mrs. Brew; and there is reason to believe that more were there much later. But we rest the issue of this question on different and higher grounds. We think that we are prepared to show, if professional skill and enlarged experience are of any weight, that Mrs. Kirwan's death *was not, could not* have been the violent one assumed by the prosecution, much less that it was proved to be so. The former position establishes the innocence of the accused; the latter acquits him legally, and perhaps is not much less strong than the former, when combined with the doubt that overhangs every particular of this perplexed tissue of facts, suspicions, and assumptions.

It is hard to conceive what gave rise to the necessity of enquiry, harder still to account for the prosecution which followed it.* An inquest was held on the body; all heretofore-mentioned was either then, or in a few days afterwards, made known; no new facts seem to have been elicited; but in some way not made public suspicion awoke; *the object of it was informed of it;* yet as he was conscious, we trust, of innocence, he acted at least with the seeming of inno-

* We would fain hope, as some assert, that it was not owing to the suggestions of Maria Byrne. To read this woman's deposition is to condemn her. She asserted that Mr. Kirwan murdered his brother-in-law; and yet, at the time of the trial, Mrs. Crowe, the mother of Mrs. Kirwan, *received a letter from the murdered man.*

cence, and disregarded the menace. The body was exhumed a month after burial; still, from the then evidence, as well as from the nature of the case, the most careful examination seems to have yielded no confirmation to dark surmise; yet the suspected was put under arrest, and the day of the trial was fixed, *postponed for a month*,* finally arranged, and, almost without defence, the prisoner was tried, convicted, and sentenced, without a ray of hope being suffered to rest upon his doom. This, joined with the occurrences of the trial itself; the doubtful and contradictory evidence; the apparent inflexibility, vacillation and sudden determination of the jury; and the prevailing expectation that a verdict of acquittal was going to be handed down, all point it out as one of the most intricate and unsatisfactory cases on record.

But the most astonishing part of all is the question which now engages our attention—the very foundation of the case, which alone renders it a subject even of enquiry; namely, "Is it proveable that the deceased met with a violent death?" This now rests solely on medical evidence, *and that founded on Dr. Hatchell's description of the appearances found in the body;* we may add, the internal appearances, for all serious external injuries are confessedly disproved.

It is with great diffidence we make the remark, that the prisoner's case was seriously injured, by the refusal of the Court to allow the examination of the medical witnesses for the defence to be based on their knowledge of the symptoms from having heard Dr. Hatch-

* The coincidence is worth remarking of a body having been buried for a month in a wet grave. Would it not have been well for the ends of justice that the result of the experiment should have been made known?

ell's evidence. It necessarily changed the character of their evidence, and produced a most injurious, if not fatal, result to the prisoner's cause. But it is with much greater diffidence that we annex a note,* by which it seems that such evidence *should not have been rejected ;* and it is painful to reflect what a change its admission might have made in the prisoner's fate. This remark is verified and strengthened by the numerous opinions of medical men obtained since the trial ; opinions founded on the reports of the evidence. Before referring to them more particularly, we would also remark that the real medical question at issue seems not to have been mooted at the trial at all. The attention of counsel at both sides seems to have been engaged in drawing the distinction between *simple drowning* (as it was called) and *forcible* drowning, strangulation, or burking ; and it would appear the epileptic fit was only regarded as *the means* by which Mrs. Kirwan incurred the danger of drowning, and

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* "The opinions of medical men *are evidence* in cases where they have not themselves seen the patient, and have *only heard the symptoms and particulars of his state detailed by other witnesses at the trial ; their opinion of the nature of such symptoms is always admitted.*"—Phillips on Evidence, 10th ed. vol. i. p. 521.

"The testimony of medical men is constantly admitted with respect to the cause of disease or of death. . . . Such opinions are admissible in evidence, although the professional witnesses found them entirely on the facts, circumstances, and symptoms established by others, and without being personally acquainted with the facts. *Thus, when on a trial for murder the medical witnesses called on the part of the prosecution ascribed the death to strangulation, other medical men called on behalf of the prisoner were allowed to give their opinion that, from the evidence they had heard upon the trial, the death did not arise from strangulation, although they had not seen the body of the deceased, and had no means of forming a judgment of the cause of his death, except from the evidence given in court.*"—Rex *v.* Shaw, Russell on Cr. and Misd. vol. ii. p. 924, 3rd ed.

was deprived of the power of saving herself: whereas the true question lay between *death by epilepsy itself*, and death by drowning, (whether simple or forcible) strangulation, or any such death; for these are the cases in which the symptoms are radically different. Passing over the undeniable discrepancy between Dr. Hatchell's depositions and his evidence at the trial, let us confine ourselves to the latter; and here we find, in the first place, the proffered testimony of the most eminent professional men in Dublin, that "the appearances described by Dr. Hatchell for the most part explain *nothing but decomposition*;" (No. 9), and they deem it highly probable that "a fit was the unhappy cause of death." Would not this have been sufficient to have raised a "rational and well-founded doubt" in the minds of the jury? But suppose we go much farther, and prove (what the defence by no means *requires*) that Mrs. Kirwan *must* have died a natural death, and that death in the manner suggested by the Crown, or any such violent death, is quite incompatible with the symptoms detailed by Dr. Hatchell;* what becomes of the prosecution? what reparation is the law to make to its now degraded victim?

We lay before the public the result of no less an

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* One or two facts connected with this part of the case are intelligible to any reader. It is the *invariable* result of death by drowning or strangulation, in any such manner as that suggested by the crown, that engorgement of the lungs is always accompanied by large quantities of blood in the right cavities of the heart. *Mrs. Kirwan's heart was empty*; and although, we believe, medical books are without information as to the state of the heart in cases of death by epilepsy, yet we have it in our power to adduce an interesting series of experiments on the subject. Dr. Reid, late of Kingstown, having proposed a theory that epilepsy was caused by, or connected with, the departure of blood from the heart to the extremities, examined the bodies of five patients who had died from epilepsy; *in all, the heart was empty*. These facts require no comment.

opinion than that of Dr. Alfred S. Taylor, (the highest authority, we believe, in the kingdom) which seems almost to put this question out of the reach of discussion. His information about the state of the heart especially is derived from Dr. Geoghegan.*

His first impression was, that the prisoner was wrongly convicted; on deliberate examination, this impression became conviction, founded on his opinion that the appearances described are generally referable to decomposition; that there is *nothing to justify the statement that she died by a violent death;* and strong reasons for believing that *her death arose from natural causes*, i.e. *an epileptic or apoplectic fit while in the water.* This eminent medical jurist, zealous in the cause of science and of justice, has sent his detailed and *gratuitous* examination and analysis of the case. The whole will, we trust, be soon laid before the public;† but it will be sufficient for present purposes to mention the inferences he draws from the recorded appearances of the body. These briefly are, "that no inference, presumptive of death by drowning or any form of suffocation, can be drawn from the appearances which Dr. Hatchell saw and has described;" and that "so far as they can be relied on, they actually prove that the only certain signs of death from drowning were wanting;" that "the only appearance on which Dr. Hatchell relies is not of the least value as medical evidence, unless observed soon after death;" that, in fact, "*the theory of death assumed by*

* We are told that this gentleman has asserted that epilepsy is never accompanied by bleeding from the ears. Macbride, however, describes it as a common symptom. See also Copeland, Art. Epilepsy.

† It occupies more than sixteen pages.

the prosecution is not only not proved, but actually disproved by the appearances found on the body;" and remarking that it is "a necessary condition to support such a charge, that the evidence of the cause of death from violence should be distinct and conclusive," he states that there was "*an entire absence of proof that death was the result of violence at the hands of another;*" and that "*syncope, apoplexy, or epilepsy would, in his opinion, reconcile all the medical circumstances of this remarkable case.*"

This opinion, even coming from such a source, may be, probably will be, the subject of discussion and reply; but to take the lowest, and an almost impossible view of it, no argument against it can reduce the state of one's mind below that condition necessary to pronounce an acquittal; there still must, at the lowest, remain in the mind that "natural and well-grounded doubt," which the judge informed the jury should be accompanied by a verdict of acquittal.

There yet remains one of the greatest marvels in this tale of perplexities. The only defence was one suggested to counsel on the second day of trial (No. 15); that the death was due to epilepsy. This has been confirmed by theory; and witnesses to the fact of Mrs. Kirwan's having had epileptic fits, and other violent attacks, have *since* come forward; some of them beyond the reach of imputation (Nos. 1, 2, 11, 12, 13); and that no suspicion may arise as to the *time* of the production of this evidence, we have this moment before us the brief of one of the counsel for the prisoner, as it lay before him in court, *and it is distinctly noted in the margin opposite to Dr. Hatchell's evidence, and in the handwriting of the accused,* "I

"would suggest (and it is the opinion of her friends), "might not her death have been caused by apoplexy? "Her father, a few years since, died from apoplexy; "and Mrs. Kirwan was subject to, and complained "much latterly, of a flow of blood to the head." It is certainly most difficult to account for the absence of a defence; we can only suppose that it arose from a rash confidence that no case could be made against the prisoner. We trust we have shewn that it did not arise from lack of materials.

We must not omit to refer, finally, to the position of the body, and the depth and strength of the current. There are the most unaccountable discrepancies between Mr. Jones's evidence and numerous measurements made since the trial (see No. 17); but they are to be renewed again and again, and the most accurate results possible attained. We may, in the meantime, safely assume that the body lay on a low, almost imperceptible rock, to the landward of two higher ones (three feet six inches, one of them), which effectually prevented the body from being washed out to sea, *and that it lay in the very spot where the current would naturally have carried it;* that the water at half tide was about five feet six inches* (No. 17); and that the current was so powerful that two strong swimmers, within fifty feet (to landward) of the body rock, at half tide, were taken off their legs, and found great difficulty in regaining the shore. All this alone would destroy the supposition of her having met her death at the rock at that hour; and, combined with the medical evidence, is *only* compati-

* This height was also sworn to by the Nangles at the inquest. (See No. 4).

ble with the conjecture that she, unable to swim,† had fallen in a fit into shallower water, and was carried by the current to where she was found.

But yet, after all, Mr. Kirwan was tried and convicted, after a patient trial, by a jury of his fellow-countrymen ; and this is a new fact which requires explanation. But make it the case of any one ; that even a few unfortunate coincidences should happen ; that an immoral life should colour them with suspicion; that ingenuity and perseverance should track out all the secret records of one's life ; that all the evil discoverable should be skilfully linked into a chain of evidence ; *and that no defence should be attempted;* if this were to be done, who could stand the test, or hope for acquittal ? But we live in a land of open investigation, not secret inquisition, and if an error has been committed, we look with confidence for both enquiry and reparation.

Our case is now closed, and more than at the beginning we feel its peculiar difficulty, and the wish that it had been entrusted to more experienced hands. We are no partisans, but simple advocates for justice and for truth. If we have been swayed by prejudice, (and who is not ?) it has been unconsciously. If our language seems ever to be that of acerbity or exasperation, it has been so without any corresponding feeling at our hearts. The weight of the evidences we adduce lies not in them singly, but collectively ; not in the *number* but the *effect* of the whole. Singly,

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* The fact of her not being able to swim is proved by Mrs. Tait, Mrs. Brew's daughters, and Mrs. Fredrick Hamilton, and by Mrs. Foakes, who frequently bathed with her, and never saw her swim, and was told by Mrs. M'Nally, the bathing woman, that she could not swim at all.

many of them may be weak; and this renders us peculiarly exposed to the attacks of those who, under the influence of passion, prejudice, or any other unreasonableness, use the vehicle of light and passing conversation to make such or such trivial points appear open to objection.* Of others, who easily, perhaps gladly, give credence to defamatory stories of the accused, suggested too often by malice and circulated without proof, I would ask, What *motive* have they for pressing a fallen man? Is it virtuous indignation which moves them, or self exaltation? Do they purify themselves by vilifying him? If they were exposed to the eye of man as he has been, could they boldly say that they would bide the test? When they contrast the ruin of another with their own impunity, let them not exult over *him*, but humble themselves; let them not be high-minded, but fear; let them look into their own hearts, aye, and examine their own lives, and ask themselves *who* are they that thus judge another? *what* are they that they should thus add insult to misery, and calumny to comdemnation? At the hands of his brother-man, has he not suffered enough,—broken, defamed, degraded? Leave *his frailties*, then, in the hands of Him whose strength alone upholds us all. His crimes, if he be guilty, let man avenge; *yet let proof precede conviction.* But it is vain to talk; it is our nature, ever will be, to press the fallen, and double-load the burthened:

"Dum jacet in ripa, calcemus."

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* It was only to-day, in a railway train, we heard several gentlemen hanging the whole weight of the Kirwan case on the allegation that he was represented as sketching in the dark!

But we appeal from these to those who, conscious of weakness themselves, can estimate the temptations of others; to those who judge not according to appearance, but judge righteous judgment; to Him who, while he is of purer eyes than to behold iniquity, yet knoweth our infirmities, and remembereth that we are but dust.

THE END.

APPENDIX I.

TRIAL OF WILLIAM BOURKE KIRWAN FOR THE MURDER OF HIS WIFE.

[Taken from *Saunders's News-letter*, and the *Freeman's Journal*, Dec. 10, 1852.]

The Hon. Justice Crampton and the Hon. Baron Greene entered court yesterday at ten o'clock, and took their seats on the bench.

THE PRISONER.

Shortly after ten o'clock the prisoner, William Bourke Kirwan, was summoned to the dock by the clerk of the crown. Intense anxiety seemed to prevail amongst all present to catch a view of the prisoner, who shortly after issued, conducted by a deputy goaler, from the door at the lower part of the dock, and ascended to the bar in front. The prisoner's demeanor was firm and collected. He is a respectable looking man of about thirty-five years of age, stout in person, with dark hair and eyes. On being called on, he presented himself in front of the dock and leant on the bar. The indictment charged the prisoner, William Bourke Kirwan, with having murdered his wife, Sarah Maria Louisa Kirwan, on the 6th of September last.

THE JURY.

The Clerk of the Crown called over the petty jury panel of the city of Dublin. The panel was called over, and forty-eight answered to their names.

The prisoner having been formally arraigned, and the offence with which he was charged having been stated to him,

"The Clerk of the Crown (addressing the prisoner) said, "Are you ready for your trial?"

Mr. Kirwan—Yes, I am.

A jury was then called and sworn to try the case. Three of the jurors called were challenged on the part of the prisoner. None were set aside by the crown.

The following gentlemen were sworn on the jury:—John Denis, foreman; David Drummond, Edward Evans, Maurice Flanagan, Edward J. Figgis, Christopher Flanagan, Edward Goodwin, James Halpin, Charles B. Johnson, Richard Johnson, James Kerr, and Patrick Langan.

On application of prisoner's counsel, all the witnesses in attendance, either for the prosecution or the defence, were directed to leave the court, with the exception of the medical witnesses.

COUNSEL FOR THE CROWN AND THE DEFENCE.

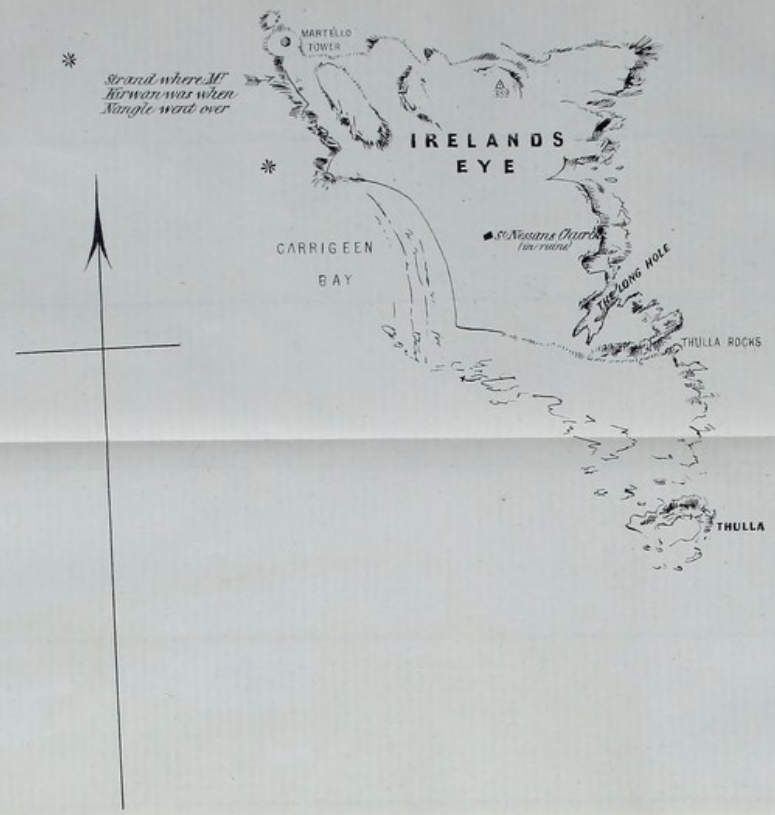
The counsel prosecuting on behalf of the crown were:—Mr. Smyly, Q.C., Mr. Hayes, Q.C., and Mr. John Pennefather. The counsel for the defence were, Mr. Butt, Q.C., Walter Bourke, Q.C., Mr. Brereton, Q.C., and Mr. John A. Curran.

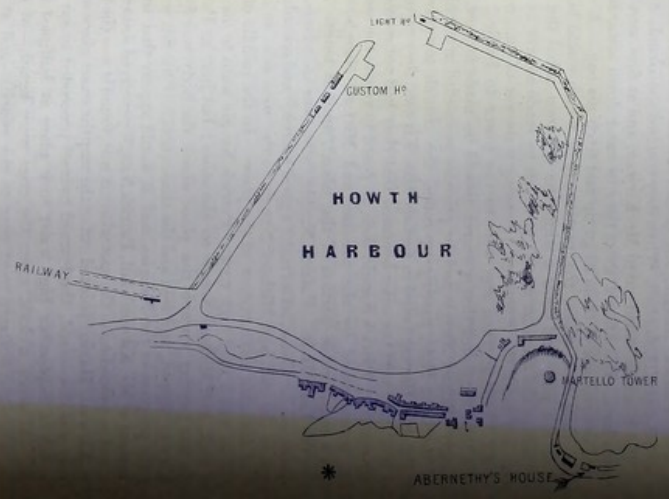
SPEECH OF COUNSEL FOR THE CROWN.

Mr. Smyly, Q.C., then proceeded to open the case for the prosecution. He said that until an hour previously he was under the expectation that the Attorney-General would be there to state the case to the jury on the part of the prosecution; and that he (Mr. Smyly) was then called on, in the absence of the right hon. gentleman, to put the jury in possession of such of the leading facts and circumstances of the case as wonld enable them to understand the evidence when laid before them in a more detailed manner. They had already heard from the Clerk of the Crown that the prisoner was indicted for the murder of Maria Kirwan, she being his wife. They were married twelve years ago, but had no family, and at the time of her death Mr. Kirwan resided at No. 11, Upper Merrion-street, in this city. In stating so much, he thought he had stated enough to make them feel the case to be one of the,greatest importance, not only to the prisoner himself, put also as regarded the administration of public justice and the protection of the lives of her Majesty's subjects; and for these reasons, therefore, they were bound to give the best consideration in their power to the evidence which would be laid before them. Nor was it the nature of the case alone which demanded their attention, but the nature of the evidence upon which that case was to be supported. The evidence which the Crown intended to adduce in the present instance was not what was called, in the language of the legal profession, direct, but circumstantial evidence. The jury would understand at once that direct evidence, from its very nature, was the evidence of persons who had actually seen the crime committed, the shot fired, the blow struck, or the injury inflicted, which had occasioned the death of the party. But on the other hand, where witnesses were produced, each of whom stated a set of distinct and independent facts, which, being brought, together would naturally lead their minds to a conviction of the guilt of the party accused, then they had a case which might be termed circumstantial evidence; and he would tell them, under the direction of the court, that upon this species of evidence a jury might act with the same safety as if it had been altogether direct. In saying that the case was important from the nature of the crime, he also told that it was committed upon the wife of the prisoner at the bar, upon the person whom, of all others, it was his duty to cherish and protect. In the present instance, however, he was afraid that affection did not go hand in hand with duty, because he apprehended it would be proved to their satisfaction, in the course of that trial,

that although the prisoner had been married to this woman twelve years ago, during the whole of that period he had lived with another female, by whom he had a large family of children. The prisoner, during the greater part of each day, was occupied in his profession as an artist, as an anatomical draughtsman, or in colouring maps for a respectable gentleman residing in this city. But it was his duty to tell them that the greater part of his time was spent with Teresa Kenny, the female to whom he had alluded; and that although he had been twelve years the husband of Maria Kirwan, and had eight children during that time by Teresa Kenny, it so happened that neither Maria Kirwan nor Teresa Kenny had the slightest idea that he was married to another person. Mrs. Kirwan believed that she was the sole possessor of his affections, and the same belief was entertained by Teresa Kenny until a comparatively recent period. And the thing was so well managed, that it was not until within the last six months that either of these women knew that there was another person who had a claim upon his attentions. However, at the time he alluded to, such a discovery did actually take place. The ordinary abode of Mr. Kirwan was Upper Merrion-street; but in the month of June last, he and his wife, Maria Kirwan, took a lodging at Howth for the advantages of bathing and the fresh air. He employed himself in sketching the interesting scenery of the locality, and they were to have remained there until the 7th of September, the day after that on which Mrs. Kirwan's death took place. The jury were well acquainted with a little island in the vicinity of Howth called Ireland's Eye. On the Wednesday, as well as on the Friday before Mrs. Kirwan's death, she and the prisoner went over to this island, and were conveyed thither by some boatmen connected with the neighbourhood. On Sunday the 5th September, they went to the boatmen, and arranged with them that they were to be taken over to the island the next morning. At this time they were lodging at Howth with a person named Camphell. On Monday, according to arrangement, the boat was ready for them, and they proceeded to Howth harbour, at ten o'clock, in order to cross over to the island; and on this occasion they had with them a basket, a carpet bag, two bottles, and a sketch book. They were duly landed on the island, and the boat immediately after returned to Howth harbour. But at twelve o'clock the same boat brought another party across to Ireland's Eye—namely, a Mr. Brew and his family, who went there for the purpose of amusement, and who remained from twelve o'clock to four, and then quitted the Island. During these four hours the Brew party saw Mrs. Kirwan on several occasions, and offered to take her back in their boat, if desirous of returning to Howth; but she stated, in reply, that she had ordered a boat to come for herself and her husband at eight o'clock. But the Brews were not the only party which visited the island on that particular day. A boatman, named Doyle, took over a gentleman named Hamilton, who, however, did not stay for more than an hour on the island, and was conveyed back to

Howth in the same boat. About four o'clock, when the Brews left the place, it would, he believed, be shown to the satisfaction of the jury that no persons remained on the island except Mr. Kirwan and his wife, Maria Kirwan. He told them that a boat was to take them back at eight o'clock. A person of the name of Hugh Campbell, who was leaning on the harbour wall at Howth, saw the boat in question (which belonged to a man named Nangle) leave the harbour, and go to the island at the hour of eight o'clock on that evening. But before that a matter of considerable importance attracted the attention of Campbell. About an hour or so before the boat went over, he heard a loud cry coming from the island, which was more than once repeated. This occurred at seven o'clock, or perhaps a little later, and Campbell was not the only person who heard cries about this hour of the evening; but it would be a question for the jury to consider whether the cries heard by Campbell were the same as those heard by other witnesses, who would be produced for the prosecution—whether they came from the same place, were heard at the same time, and were of the same nature. He (Mr. Smyly) did not wish to state his own deduction from the evidence; but he thought the jury would find that in point of time, the nature of the cries, and the direction from which they came, there was a pretty exact coincidence—Campbell would state that the cries occurred about three-quarters of an hour before Nangle's boat went over to the island. A woman named Alice Abernethy, who lived near to the ladies' bathing-place at the turn on the east side of the harbour of Howth, heard cries of a similar kind, which, it would be shown, occurred about the time mentioned by Campbell. A female named Catherine Flood, who was standing at the door of a gentleman named Singleton, also heard similar cries, the nature of which she would describe to the jury. A man named John Barrett heard cries likewise, and on hearing a cry, came down to the harbour with the view of making himself acquainted with its cause, and he afterwards heard cries coming down towards the harbour, the nature of which he would explain to the jury themselves. In a boat which was returning from fishing, and which passed round the island, and near to part of it, were four men, one of whom only (Thomas Larkins) was upon deck, and this man would tell them that at the time the boat was passing the island, he heard cries, which he (Mr. Smyly) apprehended were as nearly as possible the same description of cry which was heard by the other witnesses. The learned counsel then gave, for the information of the jury, a brief account of the geography of Ireland's Eye, illustrating his remarks by reference to a map of the locality, which he produced in court. The island, he said, lay directly opposite the harbour at Howth, the nearest point to the latter being a place called the Broad Patch, situate at the extreme east end of the island. Slanting to the west from this place were two strands, one of which was considerably longer than the other, that at the extreme west end, leading towards the remains of a Martello Tower, and being one of the points


MARTELLO TOWER
Strand where Mr Kirwan was when Mangle went over
IRELANDS EYE
St Nessans Church (in ruins)
CARRIGEEN BAY
THE LONG HOLE
THULLA ROCKS
THULLA


LIGHT HO
CUSTOM HO
HOWTH HARBOUR
RAILWAY
MARTELLO TOWER
ABERNETHY'S HOUSE

at which boats usually landed, and which was the place at which Mr. and Mrs. Kirwan were deposited on the 6th day of September last. Upon a flat ground, between the tower and the Black Patch, were the ruins of an old church; and at the back of the Black Patch, at a part of the island which was out of view from Howth harbour, was a place called the Long Hole, into which the tide came, and which was always filled with water when it was fully in. But when the tide was completely out, the Long Hole was left altogether dry. Now the cries of which he had spoken, according to the witness who would be produced before them, come from the direction of the Long Hole, and it would be made apparent to the satisfaction of the jury, that cries coming from that part of the island could be heard at the various places where the different persons who heard them were stationed that evening. At eight o'clock the boat left the harbour at Howth, at which time it contained four boatmen, whose names were Patrick Nangle, his cousin Michael Nangle, Thomas Giles, and Edward Campbell. When they reached the island, it was dark. The boatmen called out to Mr. Kirwan, and at first were unable to see him. But after a short time he came down towards the boat, and desired one of them to go up and fetch his bag. A conversation then took place, the particulars of which would be repeated to the jury, and after a while the boatmen asked the prisoner "where the mistress was?" to which he made answer he had not seen her since the "shower" (meaning a shower of rain which fell at six o'clock), when she went to the tower to bathe. The boatmen then suggested that a search should be made for her, and accordingly Michael Nangle and the prisoner proceeded in the direction of the Long Hole, passing up round the church towards the Black Patch. Having failed in finding Mrs. Kirwan, they returned to the boat, and told the other boatmen that they had not succeeded in their search. Patrick Nangle then proposed to renew the search, and he, accompanied by the prisoner and Michael Nangle, went through a considerable portion of the island, until at length they came to the Long Hole. Patrick Nangle, who was in advance of the others, said, "Come, let us make a good search," and accordingly he went to the east, and Michael Nangle to the west side, so as to make an accurate examination of the place. In the middle of the Long Hole was a very high rock. Patrick Nangle went to one side of the rock, and Michael Nangle to the other; but just as Patrick Nangle was moving towards the place where the body was found, Mr. Kirwan slipped, and fell, and the consequence of his fall was to delay the progress of the Nangles, and it would appear that at the very instant of Mr. Kirwan's fall, Patrick Nangle perceived something white, and on proceding to the spot where it was, found it was the body of Mrs. Kirwan. Having pointed out on the map the exact place where the body was discovered, the learned counsel proceeded to say that on the 6th of September high water took place at half-past three o'clock. At seven o'clock, when the cries were heard,—at eight o'clock, when the boatmen went over to the island,—and at nine

o'clock, when the first search was made—the tide was still receding; and at ten o'clock, when the body was found, it was low water. There was a small rock at the Long Hole, and on this rock the body was found. At the time it was found the rock was quite dry, and the tide was removed six feet from it. Mrs. Kirwan was found lying on the rock, on her back, with her bathing dress gathered up under her arms, and partly under her body was found a bathing sheet. Her bathing cap was missing, and the body was certainly warm when found by Patrick Nangle, at ten o'clock. There was no part of the case to which the attention of the jury should be more carefully directed than to the position in which the body of Mrs. Kirwan was discovered. The exact state of the body, and the exact position of the dress and the sheet, were both matters of the utmost importance. So soon as Patrick Nangle found the body he called out to his companion; but it appeared that he was for some time engaged in arranging it, so as to give it a decent look before they came to the place where it was. When they arrived at the spot, Mr. Kirwan rushed forward, threw himself on the body, and exclaimed, "Oh, Maria, Maria!" words which he (Mr. S.) trusted were sincere and genuine; and then he turned to the boatmen and said, "Go and fetch her clothes;" Patrick and Michael Nangle then went to look for the clothes, but being unable to find them, returned to the prisoner, who, on learning that their search had proved ineffectual, said, "I will go with you myself." He then went himself, and after a short time came back, and said that if they went up to the rock they would find the clothes. Patrick Nangle then went up and found the clothes in a place which he had searched shortly before, but without success, and this man was prepared to swear that they were not in that particular spot when he first examined it. The two boatmen proceeded to the boat, leaving the prisoner with the body, and it took nearly an hour to bring the boat round to the Long Hole, where the body was. The latter was then wrapped up in a sail, placed in the boat, and conveyed to Howth. Some time after these occurrences, a party, of pleasure which was on the island found a bathing cap, which it would be shown was that which belonged to Mrs. Kirwan. The state of the body when found was an important matter for the consideration of the jury. It lay upon its back; the face had some marks of scratches upon it, and blood was issuing from part of the breast, from the ears, and from another part of the body which we would not at present describe. When the boat containing the body arrived at Howth, it was observed that the sail which enveloped the body was saturated with the blood which had flowed from the wounds upon it. It was brought in a dray to the house of Mrs. Campbell, at Howth (where the Kirwans had lodged), and was washed by three women. On the following day an inquest was held, and the principal witness at it was the prisoner himself. The two Nangles, and a medical student named Hamilton, were also examined, and the matter was speedily brought to a termination, the verdict being, "that the lady had

been drowned while bathing at Ireland's Eye." He had already told them that when the body was found there was very little water about the rock on which it lay, but he was in a position to give them the depth of water at the different times after the day in question. High water was about half-past three o'clock, and at that time there were eight feet of water above the small rock on which the body was found. At half-past six o'clock, the time the prisoner said Mrs. Kirwan left him to bathe after the shower, there were two feet six inches of water over the same rock. At seven o'clock, just before the cries were heard, there was upon the rock one foot nine inches of water. At eight o'clock, the time the boat left the harbour to go back to the island, the quantity of water upon it was about three inches; and at half-past nine o'clock, which was about the time the body was found, the water was two feet below the rock in question. He had now given them a brief outline of the evidence to be laid before the jury—enough, however, he believed, to enable them to dovetail together the different facts and circumstances which would come out in the course of the trial. But, before he concluded, he had to inform them that a month after the inquest an investigation was held, and what had transpired at that investigation had led to the proceedings which were commenced that morning. The body of Mrs. Kirwan was buried in the Prospect Cemetery, at Glasnevin. The part of the ground in which the coffin was deposited was, however, exceedingly damp; perhaps the wettest spot in the whole of the cemetery. When it was exhumed, no less than two feet of water was found in the grave, and from the state of the body it was impossible to come to any exact or particular determination as to the nature of the injuries, or the cause of the lady's death. But an intelligent gentleman, who had examined the body and made himself acquainted with the locality where the death took place, would be able to give them some important information, which he hoped would be sufficient to satisfy them, one way or other, as to the truth of the matter. The death of this lady must have occurred either by accident, by suicide, or by homicide. The jury would have to ascertain whether the death was accidental, whether it was suicidal, or whether it was the act of a third person, that act being no less than the crime of murder; and if by another hand, whether it was possible that another hand than the prisoner's could have inflicted it. As to suicide, the position of the body, the state of the lady during the early part of the day, and the almost impossibility of the body being found in the position it was, put suicide altogether out of the question. Could accident have had any influence in the matter? If the tide was a rising tide—if she was outside the rock, and had been washed in by a rising tide, it might be supposed that the case was one of accidental drowning. But there was no rising tide. The wind was westerly, and the night was an extremely calm one. The neck of the bathing shift was untied. The arms were stiffened out from the body; the face was scratched, and the appearance of the body was not at all like

what it should be if the case had been one of accidental drowning. If it was a case of that kind, would the sheet have been partly under the body? Could any imaginable accidental circumstance have placed the sheet in such a position as that? He had now stated as much of the evidence as he thought would enable them to understand the case which would be submitted to them on the part of the prosecution, and he would at once proceed to call the several witnesses who were to be examined in support of it.

ALFRED JONES.

Mr. Alfred Jones examined by Mr. Hayes, Q.C.—I am a surveyor and reside at Rathgar; I was at Ireland's Eye on the 5th of October, and also on the 13th and the 20th of that month, and was accompanied on all those occasions by Major Brownrigg, Mr. Dunne, and Patrick and Michael Nangle; the Nangles pointed out certain localities (map produced); I constructed this, and believe it to be a correct map of the island; this tracing is from the ordnance survey, and represents truly the position of the island in reference to Howth harbour; this other map truly represents the Long Hole; the direction of the Long Hole is about north-east and south-west; from low to high water mark at the Long Hole is 163 feet; a large rock in the middle of it is about twenty-two feet high, and on either side of it is a strand passage; the sides of the rock are rough, and slope upward to a sharp point, at the land end of the rock, and the water rises about a foot upon the rock at high water; Patrick Nangle pointed out to me where the clothes were found (witness showed the spot on the map); it was about five feet six inches above the gravel; at the middle of the large rock and at high water the tide would be one foot six inches below it; Pat Nangle showed me where the body was found; it was on a rock in the Long Hole, about three feet long, and twelve inches high at one end, five or six inches high at the other, and about one foot high at the centre; it lies traversely in the Long Hole; on the 6th of September there was an ordinary tide—high water at half-past three on the bar of Dublin; at that hour the tide would have been seven feet over the rock on which the body was discovered, and at half-past six in the evening it would have been two feet six inches over it; at seven o'clock it would have been one foot nine inches, and at a quarter past seven, one foot four and a-half inches over it; at half-past seven o'clock, one foot, and at eight o'clock three inches; at half-past nine o'clock the tide would have been two feet vertically below the rock; the tidal mark would have been eleven feet six inches distant from it; the water passes out of the hole and leaves a bare strand round the rock, and inclined towards the sea on both sides of it; the inclination was about 1-18 in one place, and 1-10 in another; there were small rocks across the entrance to the Long Hole; it was rather difficult to get at where the clothes were; the place to which a boat came to take away the body was pointed out to me by Patrick Nangle (showed the place on the map); at the

mouth of the Long Hole there is a flat rock about sixteen feet from where the body was found, and at low water a person could get into a boat from it; the place where Mr. Kirwan was when the boat arrived for him and Mrs. Kirwan in the evening was pointed to me by Patrick Nangle; it is about 792 yards from the Long Hole in a straight line; I remember an old ruin on the island; it is 280 yards from the land entrance to the Long Hole; it is nearly on the direct route from where he was waiting to the Long Hole; the Martello Tower is forty-three yards from where he was standing and 835 yards from the Long Hole; I am informed that no person lives in the tower, and I don't know that any persons live on the island; there are two strands on the island which are separated from each other by the John Winter Rocks; that on the eastern side of them is 280 yards in length, and that on the west 160 yards in length.

Cross-examined by Mr. Butt, Q. C.—The two strands are on the Howth side of the island, near Baldoyle; the Long Hole points out in a direction to the seaward of Lambay; the highest point of the Broad Patch, which is on one side of the Long Hole, is thirty feet over where the body was found; on the other side of the Long Hole are very high rocks; an isthmus which joins the Broad Patch to the rest of the island is about forty yards long, and it is twelve feet above high water; I saw the high water and low water marks at the Long Hole at both neap and spring tides; they are about nine feet distant from each other; between the rock on which the body was found and the sea there is a rock two feet higher than the former rock; I took the tide for 6th September from the almanac; the part of the rock on which the clothes were found, and which is next the isthmus, is such that you could step on it from the strand at one point.

To Judge Crampton—A person could walk from the strand to where the clothes were without climbing during any portion of the way; I understand there was very little difference between the time of high water at the bar of Dublin and at the Long Hole.

To Mr. Hayes, Q.C.—The way down the rock on which the clothes were found is easiest on the land side of the rock.

To Mr. Butt—There would be no difficulty in climbing down from where the clothes were to the strand.

MARGARET CAMPBELL.

Margaret Campbell, examined by Mr. Pennefather—Has been a married woman; husband is dead; keeps a house in Howth; had no one of her own family living in her house in September last; Mr. and Mrs. Kirwan lodged with her; it was in the middle of June last that she first saw the prisoner and his late wife; knew nothing of them previously; Mr. and Mrs. Kirwan came as lodgers; they occupied one room; it was used as a sitting-room and bed-room; that room is opposite the kitchen; a passage intervenes; Mr. and Mrs. Kirwan had the room to themselves; Mrs. Kirwan slept in

that room; Mr. Kirwan did not sleep at his lodgings every night; he slept out about three nights in the week; Mr. Kirwan used to be away in town during the day; he used to return to Howth sometimes by the five o'clock train, and sometimes he arrived by the last train; during the first month the Kirwans lodged with her, witness heard quarrelling between them; heard angry words from Mr. Kirwan to his wife; he miscalled her; heard him say "He would make her stop there;" heard him call her a strumpet; heard him say "I'll finish you;" on another occasion heard Mrs. Kirwan say "Let me alone;" next morning Mrs. Kirwan said she was all black from the ill-usage she got; on the evening of the quarrel a woman named Anne Hannan came in; witness was in the kitchen; the door was open; heard no other dispute between Mr. Kirwan and his wife, unless a word now and then; Mrs. Kirwan was in the habit of bathing every day at Sutton Strand; witness's house is at the other end of the town; recollects the 6th of September; Mr. and Mrs. Kirwan slept in the house the night previous; they left the house together in the morning; witness knew they were going to Ireland's Eye; they took a bag with them; it was large enough to contain Mrs. Kirwan's bathing dress; recollects seeing a bathing cap with her; that cap she saw afterwards with Joseph Sherwood; Mr. and Mrs. Kirwan had been three times before at Ireland's Eye; after Mrs. Kirwan left the house on the morning of the 6th of September, witness never saw her again alive; saw her dead that night when the body was brought to the house, between the hours of ten and eleven o'clock; a man named John Barrett brought the body on a car or dray; Mr. Kirwan was with the body; there were some police in attendance; the body was brought and laid on the floor; it was wrapped up, face and all, in a sail; witness was present when the sail was taken off; the deceased lady had a bathing chemise on; the body was stripped by three women; witness did not examine the body; could observe nothing particular in the appearance of the body; could not unless she were to examine it closely; the body was laid out in the room occupied by deceased and her husband; Mr. Kirwan remained in the house that night; did not observe anything particular about Mr. Kirwan's clothes; remarked that his feet were wet; witness assisted him to change his stockings; can say nothing particular as to the general state of health enjoyed by Mrs. Kirwan whilst living with her; recollects her taking herbs; did not suppose that Mrs. Kirwan had been in bad health.

Cross-examined by Walter Bourke, Esq., Q.C.—It was in or about a week after Mr. and Mrs. Kirwan came to live at her house that witness first heard any difference between them; they came about the 15th of June; cannot say that there was any more than one serious quarrel between them; might have said that Mr. and Mrs. Kirwan lived most happily together, and united; has no doubt but that she did say so; recollects having been examined by a Mr. Dunne before Captain Furness; made an information on that occasion, but was not sworn; is positive she was not sworn;

would know if an oath was put to her; heard nothing of an oath at the time, nor heard any mention of her taking the book in her hand; recollects well having made an information. [The information deposed to by this witness was then read; which stated that for the first fortnight Mr. Kirwan and his wife did not seem to live happily, but that afterwards no couple could live more united.] Witness admitted that she had deposed to the above facts, and said that she meant to convey that there had been no serious quarrel between Mr. Kirwan and his wife. [Counsel called the attention of this witness to an information subsequently deposed to by her, re-asserting her former statement as to the harmony existing between Mr. Kirwan and his wife, save during the first fortnight, and adding that she (Margaret Campbell) had heard Mrs. Kirwan's mother (Mrs. Crowe) cautioning her daughter against being too venturesome when bathing.] Witness admitted that she had stated these facts; but when she found herself called on to swear to the entire truth, she felt bound to say that she heard Mrs. Kirwan complain of ill-usage given her by her husband, and of her being all black from the treatment she had received; witness knew that Mr. Kirwan was in the house on the night that the body was brought over from the island; witness did not examine the body; there were three women in attendance, who washed and laid out the deceased.

PATRICK NANGLE.

Patrick Nangle, sworn and examined by Mr. Smyly, Q.C.—Is a fisherman and a sailor; has lived at Howth all his lifetime; spent a great part of his life in boats; knows the tides at Dublin Bar, Howth, and at Ireland's Eye; there is not more than some two or three minutes' difference; the tide is earlier by about three minutes at Dublin Bar; knows the island of Ireland's Eye well; keeps a boat to convey parties to the island from Howth; recollects Mrs. Kirwan; she was about twenty-eight or twenty-nine years of age; she was a stout handsome women; recollects that Mr. and Mrs. Kirwan crossed in witness's boat to the island on three or four occasions; recollects the 6th of September; Mr. and Mrs. Kirwan came down to his boat on that day, and witness took them over to the island; they had a bag and two bottles of water; Mrs. Kirwan had a reticule bag also; Mr. Kirwan had a stick of the kind called a "tuck stick."

Court—What is that?

Witness—I mean a cane with a sword in it. Ireland's Eye is one mile and a-quarter from Howth; witness's boat is a row-boat; it takes a quarter of an hour to go across; landed Mr. and Mrs. Kirwan on the island near the tower; no one lives there; at twelve o'clock same day witness brought over Mr. Brew and family; heard Mrs. Brew speak to Mrs. Kirwan; she asked her was she returning to Howth; witness was then in the boat with the other men; Mr. Brew and his family were then in the boat; seeing Mrs. Kirwan on

the strand, Mrs. Brew supposed the lady wished to give some message; it was then that Mrs. Brew asked Mrs. Kirwan if she were about to return to Howth, when Mrs. Kirwan replied that she was not just then, and then she said that the men were to come for her and Mr. Kirwan at eight o'clock in the evening; in the evening, at half-past seven o'clock, witness, together with Michael Nangle, Giles, and Kavanagh, rowed over to the island, which they reached at about eight o'clock; on coming near the shore of the island, near the landing place, they saw Mr. Kirwan standing at the landing place; he had the bag, a book, and the stick; when going to the boat Mr. Kirwan gave witness the bag to carry; in their way to the boat they passed witness's cousin, Michael Nangle; witness heard Michael say to Mr. Kirwan, "Where is the mistress?" Mr. Kirwan said, "I did not see her this hour and a-half;" Michael said then, "Mr. Kirwan, hadn't you better go and look for the mistress?" Michael Nangle and Mr. Kirwan then went off on their search; meanwhile witness overhauled the book, which Mr. Kirwan had left, and saw sketches in it; witness left the bag and book in the boat, and left the other two men in the boat; after witness had waited for some time, he went in the direction of the tower, and hailed loudly for Mick Nangle and Mr. Kirwan; he got no reply until he came close to him, and Mr. Kirwan said, "Well, Paddy, did you get Mrs. Kirwan?" witness said, "No, did not you get her?" Mr. Kirwan then proposed to renew the search, telling witness to take one side near the shore, and that he would take the other side; Michael Nangle accompanied Mr. Kirwan; it was then whilst Mick Nangle and Mr. Kirwan were below witness on the strand, that witness heard Mick Nangle say that Mr. Kirwan had slipped and fell; witness did not see Mr. Kirwan slip; it was very dark at the time; witness did not heed what Mr. Kirwan said, but he heard him as he went along moaning to himself, and crying, "Oh Maria! oh Maria!" shortly after, witness, on getting down to the Long Hole, saw something white before him, and cried out, "Oh Mick, I see something white here, and there are no white rocks hereabouts;" on getting nearer, witness found the body of the lady, and cried out, "Here she is;" the deceased was lying on the broad of her back in this way—[Here witness stretched himself out, with his arms by his sides]—She had her bathing shift on her; it was gathered up about her waist, leaving the rest of her person exposed; there was a sheet under her back; the sheet was wet, and so was the bathing shift; her head was lying right between two little rocks—[Witness attempted to describe by action the position of deceased]—her feet were lying in a little pool or hollow, containing about half a gallon of water; witness narrowly inspected the face and person of deceased as well as he could; there was a cut under the right eye, and scratches on the cheeks, and a cut on the forehead; the cuts were such as might have been given by a pin, or some sharp instrument; blood flowed from the ears; there was a great deal of blood on the face; there was also blood flowing about from other parts of de-

ceased's person.* Witness stooped down and tied the sheet, which was under the deceased, about the neck of the body, and folded the other end round the feet; when Mr. Kirwan came up, he threw himself on the body, and cried "Oh, Maria! Maria!" Mr. Kirwan then told witness to go and look for the lady's clothes; witness did so, and could not find them; witness was now on his oath, and he would swear that the clothes were not in the place where he searched, where they were afterwards found; when witness came back after his unsuccessful search for the clothes, Mr. Kirwan rose up from the body and went to seek the clothes; he came back in a few minutes and told witness they were on the top of the rock; witness then went up and found them; witness told Michael Nangle to go over and bring the boat round, as he said it would break their hearts to try and bring the body across the island; they left Mr. Kirwan alone with the body and went to the boat; they were about an hour away; when they brought the boat around, it was half-past ten o'clock; they placed the body in the boat and wrapped it up in the sail, and proceeded to Howth; witness subsequently went to the island with Dr. Hatchell; knows Dr. Geoghegan; showed these gentlemen the various places connected with the event; Ireland's Eye is in the county of Dublin.

Cross-examined by Mr. Brereton, Q.C.—I am a fisherman; this case is not a good haul for me; there was no difference between Mr. and Mrs. Kirwan about the time the boat was to come; Mr. Kirwan was very near being killed himself that evening, where the body was found; only I called out and caught hold of him, he would have gone over the rock; the body was not stiff when I saw it; there was froth about the mouth; there were a good many scratches over and under her eyes; the strand is gravelly; if there had not been a rock at the mouth of the hole, Mrs. Kirwan would have been carried out by the water, if she were in it before the water fell; this was not the rock where the body was found.

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* Counsel—*What else did you observe?*
Witness—*I saw blood flowing from other parts of the body.*
Counsel—*Do you mean* —— *?*
Witness—*No, but* * * *
Witness then described the part of the body minutely, which has been referred to in the rumours about the sword-cane.
Counsel—*You saw blood?*
Witness—*Yes.*
Counsel—*But it was natural?*
Witness—*No, it was from a cut.*
Counsel—*From a cut?*
Witness—*Yes, from a sword cut.*
Counsel—*How do you know?*
Witness—*I SAW IT.*
He then, according to his own statement, straightened the limbs, pulled down the bathing dress, and tied the body up in the sheet before Mr. Kirwan came up.

Mr. Brereton—The rock was not very smooth?

Witness—Why, no rock is smooth (laughter).

Cross-examination continued — The wounds were more than scratches; there was a positive cut in one place where the blood came from; there were no crabs to injure the body; will not swear that there were no crabs there, but will swear that crabs did not inflict the wounds; they could not have caused such marks in so short a time; will not swear that the marks were not pin marks; was examined at the inquest, but was made to draw back when I came to the part about the sheet, and before the time I tied her up; there was no shawl about the corpse when I left to go for the boat, but when I came back there was, and Mr. Kirwan was lying across the body; did not hear Mr. Kirwan say Mrs. Kirwan must be in the boat, or that she went in the boat; no such word passed; he asked me if I had seen Mrs. Kirwan; he told us to search and to shout out "Maria Kirwan;" only for us, (continued witness) Mr. Kirwan himself would have lost his life; he was at the very brink of the rock when I caught him; if he took one step further in the direction he was going, he would have gone over the rock; he would certainly be killed; a horse would be killed if he fell there; that was the very rock under which the body was afterwards found; did not try to bend the arms of the body; it was not stiff, the knees were bent; saw the face; there were several scratches; the mouth was frothing; in witness's opinion the tide was receding; the body presented the appearance of being checked by the smaller rock, but there was no swell to bruise the body; there were wounds on the body; could not say how deep; the under part of the body was in a shocking state; the wound was severe; thinks so by reason of there being so much blood; there were no crabs there, at least witness did not see them; these injuries could not occur from scraping against the gravel, nor could they be caused by crabs; was examined at the inquest; his evidence then went as far as where he stated having found the sheet under the body; did not find any shawl under the body; saw a shawl afterwards when he came back with the boat; then he found Mr. Kirwan just as he had left him, lying with his face on the breast of the body; it was then witness first saw the shawl; it was round the neck of deceased; does not recollect having said anything about Mr. Kirwan telling him that the clothes were above on the rocks. [Counsel here read the previous information of this witness.] Witness said nothing about Mr. Kirwan's having found the clothes, when giving his information; will swear that witness searched the rock well; does not care how dark it was, will swear he searched the rocks and could find nothing, but afterwards Mr. Kirwan went up, and after being a few minutes away, came down and told witness to go up again and he would find them; witness then went up and found them; will swear that the clothes were not on the rock where he found them, they had not been there for him to find; he found them when Mr. Kirwan sent him up for them; no one could have gone to the island

that day without the knowledge of witness; cannot swear it was a sword-cane which Mr. Kirwan had with him; it looked like one; Mr. Kirwan used to carry the same cane before.

To a juror—Mr. Kirwan could not have wet his feet in the pool at deceased's feet when he threw himself on the body; there was not above a quart of water in that pool.

MICHAEL NANGLE.

Michael Nangle, examined by Mr. Hayes, Q.C.—Is a fisherman; lives in Howth; takes passengers to Ireland's Eye occasionally; rows in the same boat with Pat. Nangle, Giles, and Kavanagh; recollects the 6th of September last; took Mr. Kirwan and his lady across to Ireland's Eye on that morning, and left them there; afterwards, witness and his crew took over Mr. Brew and his family to the island; saw Mrs. Kirwan then; it was about twelve o'clock; Mrs. Brew asked Mrs. Kirwan if she was returning to Howth; but Mrs. Kirwan said, No; Mr. and Mrs. Kirwan desired the boat to come for them at eight o'clock in the evening; witness and crew came back at the time appointed; the wind was north-east—it was calm; when the boat was approaching the tower, witness could see Mr. Kirwan, who called Pat Nangle up out of the boat; witness followed; witness asked Mr. Kirwan where was the mistress? Mr. Kirwan had just made two or three steps towards the boat, about four yards; "Nangle," said Mr. Kirwan, "I am after looking for the mistress this half hour;" witness rejoined, and said, "Oh, Sir, you ought to have the mistress with you at this hour;" he said, "She went in that direction," pointing to the Long Hole; he added that he had not seen her since he went sketching, shortly after the last shower, and said he had advised her to bathe in another spot, but she declined, saying, "That there was a disagreeable smell there;" witness then accompanied Mr. Kirwan to look for the body, he calling out "Mrs. Kirwan, Maria, why don't you answer?—the boatmen are waiting;" witness then proceeded till they came to Cahirgran, when witness said to Mr. Kirwan, "You see, Sir, she is not here;" they then went towards the Long Hole, and Pat Nangle went round by the other side, calling loudly; witness and Mr. Kirwan searched the Long Hole as far as they could, but without success; they continued their circuit of the island till they met Pat Nangle at John Winter's Rocks; witness said then, "This is a nice job, to have us here at this hour of night;" witness said "Let us leave the other two men at the boat, and we will go round again, and if Mrs. Kirwan comes in the meantime they can go on the top of the bank and hail us;" witness and Pat Nangle and Mr. Kirwan then made another circuit nearer the shore, and whilst proceeding Mr. Kirwan stumbled; witness supposed he tripped against a stone: soon after Pat Nangle cried out, "I see something," and then he cried out "Here she is;" Mr. Kirwan went over and threw himself on the body, and began to moan and cry; before witness had quite reached the body, Mr. Kirwan desired

him to go and look for the clothes; witness took the strand way, and Pat Nangle went up the rock; neither of them found the clothes; when they came back, Mr. Kirwan rose up from the body and went up to the rock; soon after witness heard him say, "Here they are," and then saw Mr. Kirwan come down bringing something white in his hand and also a shawl; Mr. Kirwan then told Pat Nangle to go up the rock and bring down the clothes, which he did; witness and Pat Nangle then left Mr. Kirwan with the body and went to the other side of the island for the boat, which they rowed round and brought up to the rock near where the body was; then, with the help of Pat Nangle and Giles, witness lifted the body and placed it at the bottom of the boat, wrapped up in a sail; no one got wet except Giles, who wet his feet getting into the boat; did not see Mr. Kirwan get wet; he could not get wet if he went the way witness did; the place where the clothes were found was a bad place to bathe, the rocks being sharp and dangerous; did not see the body closely until next day; only saw the face; there were cuts or scratches on the face; the water in the Long Hole was smooth as in a well.

Cross-examined by Mr. Butt, Q.C.—It was over half-an-hour from the first time witness went to the Long Hole till they went there again; on the second time they entered it, Pat Nangle was first, witness followed, and Mr. Kirwan was farthest off; when Pat Nangle called out he saw something, that instant Mr. Kirwan went over and threw himself on the body; witness saw Pat Nangle do nothing to the body; witness was about ten yards from Mr. Kirwan when he found the clothes; heard him cry, "Here they are," and then he saw Mr. Kirwan bringing down a shawl and something like a sheet; Mr. Kirwan slipped when coming down the rock; when the body was put into the boat, the shawl was on it and the sheet; left gentlemen often at the Long Hole to bathe; never saw ladies bathe in it; it was witness proposed to search the Long Hole, and remarked that if any thing happened the lady they would be apt to find her at low water; Mr. Kirwan seemed uneasy whilst searching for Mrs. Kirwan.

THOMAS GILES.

Thomas Giles, examined by Mr. Pennefather—This witness deposed that he remained in the boat with his comrade Kavanagh, whilst the Nangles went with Mr. Kirwan to search for the lady. Afterwards he helped to row the boat round, and to put the body of deceased into it. (Not cross-examined.)

ARTHUR BREW, ESQ.

Arthur Brew, Esq., examined by Mr. Smyly, Q.C.—Was at Ireland's Eye with his family on 6th of September; saw Mr. and Mrs. Kirwan on the island; saw Mrs. Kirwan more frequently; when leaving the island saw Mrs. Kirwan on the shore, and conceiving she wanted something, he told the men to put back, but she

told the men to come for her at eight o'clock; that was all; saw her walking about and apparently reading; witness saw Mr. Kirwan also.

To Mr. Curran—Mr. Kirwan appeared to be engaged in sketching the old ruin on the island.

HUGH CAMPBELL.

Hugh Campbell—Is a fish driver; lives in Howth; remembers the 6th September; was leaning over the wall in the evening; heard cries from Ireland's Eye; the voice came from the eastward of the lighthouse; the voice was very weak; the cry was calling for assistance.

To the Court—Could distinguish no words; witness heard three cries; the second cry was in about three minutes after the first, and the third shortly after.

Counsel—What kind of cries were they—was there any difference between them?

Witness—The cries were still weak.

Mr. Butt objected to these questions.

Witness could distinguish no words, but they seemed as if uttered by some one for assistance, or for a boat to come; it was after these cries that Nangle's boat put off; often heard cries before from the island.

Cross-examined by Mr. Butt, Q.C.,—It was not dark when he heard the cries; it was between day and dark—about half-past seven o'clock; witness said nothing of these cries till persons came and asked him; recollects having sworn informations; mentioned to the coast-guard that he thought it was some one who had fallen asleep on the island, and was calling for a boat.

THOMAS LARKIN.

Thomas Larkin—Is a fisherman; was out fishing on 6th September; witness's boat is about thirty-six tons; steered for Howth in from sea on that evening; passed about twenty perches from the Martello Tower on Ireland's Eye; heard a loud scream; witness was on deck by himself; was steering; on hearing the scream, witness went over to leeward of the helm in order to look out what could be the matter; soon after, when halfway between the Martello Tower and the quay, he heard another scream, and then a third scream, lower than the others; the men were below; witness told them what he had heard; the water was smooth that evening.

Cross-examined by Mr. Butt, Q.C.,—Was not sailing before the wind; there were between five and seven minutes between the first and second cries; there could not have been eight minutes; it was between day and dark when he passed the island; recollects having laid an information (information read); might have sworn that eight minutes may have intervened between the cries; did not intend to swear anything but the truth.

ALICIA ABERNETHY.

Alicia Abernethy sworn—Lives at Howth harbour, between the bathing place and the pier; her house is about a mile across from Ireland's Eye; recollects the 6th of September; on that evening a neighbour told her it was five minutes past seven o'clock; was leaning over her own garden wall; heard a violent screech, than in a few minutes another screech, and then another lower; it was perfectly lightsome; witness could see across to the island and to the harbour; the screams were those of a woman.

Cross-examined by Mr. Butt, Q.C.,—Knows the east pier of Howth and the Bailey Light; she lives near the old abbey, within a quarter of a mile of it; believes she lives about a mile from Ireland's Eye; will not swear that the house she lives in is a mile or more from the east pier of Howth; she lives about a quarter of a mile from the old abbey; swears she first looked towards Ireland's Eye; looked at the clock before she came out.

Counsel—In order to hear the screams, I suppose?

Witness—Yes (laughter); it was not with any intention she came out except to ascertain if her child was coming, who was out in a boat with a party of boys; did not fabricate this story; is in the habit of going to ask what o'clock it is from her neighbours.

To a juror—The last scream was, in witness's opinion, that of a woman in pain and agony; the first scream was dreadful; witness saw no boat put off after she heard the screams.

CATHERINE FLOOD.

Catherine Flood, examined by Mr. Hayes—Lives at Howth; on the night in question she heard screams coming from the direction of Ireland's Eye; the first scream was a very wild one; the second was cut off; that was about seven o'clock in the evening; saw Mrs. Kirwan bathe, and saw her bathe in high waves when many other women would not go out at all.

Cross-examined by Mr. Bourke, Q.C.—Mrs. Kirwan was the boldest bather she ever saw—she was excellent; witness was washing in Mrs. Singleton's, and on opening the hall-door she heard screams.

To the Court—Opened the door to see if it was dark, because she had to go home; after that she washed the hall by direction of the mistress of the house.

JOHN BENNETT.

John Bennett, examined by Mr. Pennefather—Lives on the head of Howth harbour; recollects the evening of the 6th of September; was standing at his own door when he heard a screech coming in from the harbour; heard three or four after, which appeared to grow fainter; heard three while standing at the door, and three or four after; took Mrs. Kirwan's body that night on his dray to Mrs. Campbell's house from the harbour where it was landed; the body was enveloped in a sail.

Cross-examined by Mr. Brereton—Made no information in the case; had no conversation with Catherine Flood on the subject; did not tell the police sergeant that day that he had heard the screeches.

ANNE LACY.

Anne Lacy, examined by Mr. Smyly—Lives at Howth; saw Mrs. Kirwan's body at Mrs. Campbell's; was there when Bennett brought it on his dray; there was a sail-cloth about the body; saw a blood stain on the sail: there was a bathing sheet tied round the chest, knees and feet; a shawl was twined round the head; took off the sheet; the hair contained bits of seaweed, and there was blood on the face; blood came from the inside of the ears; there was a scratch on the face; the blood continued to flow from the ears after she sponged them; there was a cut on the right breast, which bled very freely; is a nurse-tender; the cut on the breast was a clean one; her right side from the arm down to the knee was black; another woman washed the other side; her mouth was swollen, the under lip especially; there was blood from another part; the discharge from that was not natural; the blood was clotted; the blood flowed so freely from the ear that she could not take out the earring; the belly was flat in to the back-bone, and contained no water; one of the eyes was closed, and the white of it was as red as blood; the body was clean and white, a beautiful creature; saw Mr. Kirwan; his trowsers were turned up.

Cross-examined by Mr. Curran—Has been forty years a nurse-tender; is certain from the appearance that the discharge she alluded to was not natural; has seen the bite of crabs.

To Mr. Smyly—There was nothing like the bite of a crab on the body.

CATHERINE M'GAR.

Catherine M'Gar, examined by Mr. Hayes—Lives at Howth; was engaged with the last witness in washing Mrs. Kirwan's body; there were wounds under and over each eye, as if torn, and a scratch on the temple; the mouth was swelled, and the nose was crooked on the face; there was white slime on the mouth; blood was flowing from the inside of the left ear; when she put water to the breast, blood continued to flow from it, like suck from a woman who had a full breast of milk; the left side was black; there was blood flowing from another part; cannot say if the discharge was natural, but it did not appear to be so; she saw Mr. Kirwan there that day; would not allow the body to be touched till after the inquest; to which he replied that he did not care a d—n for the police, or any else, the body should be washed; saw him sitting at the fire with his trowsers turned up; he was drying his drawers.

Cross-examined by Mr. Butt, Q.C.—She washed the left side of the body; there was no cut on the left breast; cannot say if there was one on the right; there was a bruise or scratch on it.

MARY ROBINSON.

Mary Robinson, examined by Mr. Smyly—Held the candle for the women who washed the body; did not observe what state the mouth was in; one of her eyes was shut; cannot say that either of them was blood-shot; saw Mr. Kirwan sitting at the fire; the place was wet where he was sitting.

ADJOURNMENT OF COURT.

At this stage of the proceedings, the Court decided upon adjourning.

Mr. Justice Crampton said that as it would be necessary that the jury should not separate pending the trial, they might be taken to some hotel and accommodated for the night. They should of course be supplied with dinner, but not with any strong drink.

One of Jurors asked if they might not be allowed a glass of wine.

Mr. Justice Crampton—It is better not, gentlemen (laughter). This is an invariable rule with me, from which I never depart.

Bailiffs were then sworn to keep the jury from communication with others, &c., and the court was adjourned till this morning at ten o'clock.

COMMISSION COURT—DECEMBER 9.

EVIDENCE FOR THE CROWN CONTINUED.

For a considerable time before ten o'clock, the hour appointed for resuming the trial of Mr. William Bourke Kirwan for the alleged murder of his wife, Maria Kirwan, on the 6th of September last, the doors of the court-house were besieged by a large number of persons, who evinced the utmost anxiety to obtain admittance. The judges took their seats on the bench at ten o'clock, at which time the court was thrown open. The jury having answered to their names, the trial was proceeded with.

JOSEPH SHERWOOD.

Joseph Sherwood, head-constable, was the first witness called and examined by Mr. Hayes—I am a sergeant of constabulary; I was stationed at Howth in September last; I recollect being present at the inquest held on Mrs. Kirwan; I saw the face of the body on Monday evening in Mrs. Campbell's house, before the inquest took place; I saw scratches on the face, and a swelling about the mouth; I saw Mr. Kirwan at the quay that evening; that was before I saw the body, which was brought in in the boat; I subsequently saw Mr. Kirwan sitting at the fire in Mrs. Campbell's; he was wet from the knees down; I saw him change his socks and boots; I saw the drops of water from his trousers on the hearthstone; I know Mr. Kirwan's house, No. 11, Upper Merrion-street; I was there the morning after the inquest; I saw in the house a woman; I have seen her since, and I now know her name to be Kenny; I also saw two children, one was about ten years old, the other was between

two and three years old; the elder of the two was a boy; saw the woman afterwards at Howth, and at the Castle before the magistrates; Mr. Kirwan was present.

To Mr. Butt—Mr. Kirwan was under arrest on these occasions.

Mr. Butt—Then I object to this evidence being received.

To the Court—Informations were taken at the time.

Mr. Justice Crampton said that as there were informations taken, oral evidence as to their contents could not be given.

Examination resumed—I was in all the rooms of Mr. Kirwan's house on the morning I have mentioned; I saw but one bed in the house.

Mr. Hayes—Did you see any signs of breakfast?

Mr. Butt did not think this evidence relevant.

Witness—I did see signs of breakfasting; I saw tea, bread, and butter on a table; I was on Ireland's Eye after this transaction; I was present there on the Saturday after the 6th, when a bathing cap was found by a Mrs. Hamilton; I was standing beside her when I saw her take it up at high-water mark in the Long Hole (produces the bathing cap); that is the cap produced yesterday to Mrs. Campbell; it is in the same state in which it was found; I have been thirteen months stationed at Howth; shouts from Ireland's Eye can be heard at Howth; I have heard them.

To Mr. Butt—I saw Mrs. Kirwan's clothes at Mrs. Campbell's house, the night the body was brought in.

To Mr. Hayes—I saw a flannel and a white petticoat; a gown, shawl, and stays; I am sure there were two petticoats; I did not see any chemise; I did not see any marks of blood or soiling on those clothes.

ANN MOLLOY.

Ann Molloy examined by Mr. Smyly, Q.C.—I was cook and thorough servant to Mrs. Kirwan; I know the prisoner at the bar; I lived with them both in Upper and Lower Merrion-street; I was with them for twelve months; they had no children; I was discharged on the 15th September, 1850; while I was with them Mr. and Mrs. Kirwan always occupied the same bed-room.

This witness was not cross-examined.

WILLIAM BRIDGFORD.

William Bridgford, examined by Mr. Pennefather—I know the prisoner; I am the owner of houses in Sandymount; Mr. Kirwan lived in one of the four houses in Spafield, of which I am the landlord; he resided there for about four years; he became tenant on the 1st of April, 1848, and, as well as I can say, he remained till the 5th of July, 1852; I saw a woman there whom I always supposed to be his wife; I have seen her since the 6th of September; I saw children in the house; I had notes from that woman, and I think she signed herself Teresa.

To Mr. Butt, Q.C.—I was at the Castle, but I was not examined there.

CATHERINE BYRNE.

Catherine Byrne, examined by Mr. Smyly, Q.C.—In the month of July last, I lived at Sandymount-avenue as a servant; I lived as such with the prisoner; Mrs. Kirwan lived there; there were seven children in the house; Mr. Kirwan used to be there a good deal in the day-time; he slept there, with Mrs. Kirwan, frequently at night; her name was Teresa Mary Frances Kenny; I have not seen her since I left: a strange lady called at the house once to make inquiries.

The witness was not cross-examined.

ANNE HANNA.

Anne Hanna examined—I live in Howth; I knew the late Mrs. Kirwan; I washed for her when she came to Howth; I have been in Mrs. Campbell's house where she lived; I recollect going there one day when something remarkable happened; Mr. and Mrs. Kirwan were in a room opposite the kitchen; I heard the voice of a man in the room; I suppose the voice to have been Mr. Kirwan's; I heard the man speak loudly of being robbed, something also about a mother, and "I will end you, I'll end you"; I heard the rattling of furniture on the floor.

Cross-examined by Mr. Butt, Q.C.—I never had a quarrel with Mr. Kirwan; he never threatened to prosecute me; I recollect his passing by my door one day when we had a water dog that barked at him; Mr. Kirwan threatened to summons, if the dog was not parted with; we sent the dog away; he never had occasion to threaten me.

JAMES ALEXANDER HAMILTON.

James Alexander Hamilton, examined by Mr. Pennefather—I am a medical student; I have attended all my lectures during six years, and I have dissected; I was at Howth in September last; I recollect seeing the body of a lady at the house of Mrs. Campbell, at Howth, on the 7th September; it was on the occasion of the inquest; the body was ready to be put into the coffin; there was a cap, a sort of coarse shirt, and a piece of calico round the lower part of the body; I saw the face, of which I made a superficial examination, to see if there was any fracture or depression of the skull; I saw none; there were marks over the right temple, such as a rub against a rock would cause; there were abrasions of the skin round the eyes; I did not open the eyes; the eye-lids presented a livid appearance, and in a state of decomposition; I remarked that the lower edge of one of the ears was cut, as if something had been biting at it; the ear-ring was held on by a slight integument; I stripped the body; there was white thin froth about the mouth, covering it from angle to angle; the face was rather pale; when I removed the clothes I examined the abdomen, which was rather full and firm; I could not be certain whether there was water in the body or not; there were no marks on any part of the body that attracted my attention; I did not exa-

mine the body very closely; I did not see any blood where she was lying; I did not raise the body; the shoulders and neck were stiff.

Cross-examined by Mr. Brereton, Q.C.—The skin round the eyes was rather more abrased; I saw the breasts, no mark on them attracted my attention; there might have been a cut across the breast without my observing it; I do not think there could have been a deep cut without my seeing it; on looking over the body I did not see any mark that might be produced by violence; I never saw a drowned body before; I did not observe any trace of blood around the mouth; I did not examine the froth to discover if there was any blood; I did not examine the ears, but the cap was stained over one of the ears with blood; there is a cavity outside the tympanum from which blood would come; the appearance presented by the abdomen was such as I would expect in a case of drowning; I did not see any marks on the body that would lead me, as a medical man, to say death was not caused by drowning.

To a Juror—I was engaged by the coroner to make the examination; I do not consider I was discharging my duty properly in making so superficial an examination.

GEORGE HATCHELL, M.D.

George Hatchell, M.D., examined—I am a physician, and also a surgeon; I was called on to make a *post mortem* examination of the body of Maria Kirwan, thirty-one days after death; I saw the grave opened at Glasnevin, and the coffin raised; there were about two feet of water in the grave; I saw the coffin opened; there was a shell enclosed in a larger coffin; I made the examination in the grave yard; Surgeon Tighe was with me; there were police present, and some of the men of the cemetery; the grave clothes were taken off; they were wet; the body was wet; there was water in the coffin; to a certain extent the body was macerated; I made a very careful examination; I examined the scalp very carefully, and I did not find any marks of violence; over the right eye I found an abrasion, and on the prominent part of the right cheek; both eyes were protruded, but I presume that was rather from decomposition; I examined the ears; there was an ear-ring in the left ear, and the lobe of the right ear was wanting; there were no injuries outside behind the ear that I could observe, decomposition having set in too far; the upper lip was swollen, the inside of the lips was vascular; the tongue protruded, and was marked by the teeth; I opened the head very carefully, the membrane containing the brain was quite flaccid; the brain was all of a pinkish colour; this colour was natural; the brain was in a state of semi-fluidity; I examined very carefully the base of the skull, and I found no fracture there; I examined the trachea and larynx, but there was nothing remarkable; I examined the vertebræ, but there was nothing like dislocation; I examined the breast, and I found a scratch under the right nipple; there was a lividity; the cuticle of the hands was coming off like a glove, but that was from decomposition; there were no marks on

the cuticle; parts of the lungs were congested on the posterior, inferior, and the lower part of the anterior; the heart was perfectly healthy; the appearance of the lungs would be caused by sudden stoppage of respiration; the body was that of an exceedingly well-formed woman; I visited Ireland's Eye, and went to a place called the Long Hole; Nangle, the boatman, pointed out to me where the body was found; the Long Hole is a deep creek running up into the island; the creek is divided by very large stones placed transversely; they are very rugged and covered with sea-weed; the stones are about midway between high and low water-mark; (Dr. Hatchell here pointed out the position of the stones on the map, and the high and low water marks).

Mr. Smyly, Q C.—From your knowledge of the place, the observations you made upon it, and from your observations of the body, are you able to form an opinion as to how this lady came by her death?

Mr. Butt objected to this question. He submitted that the inference drawn by the witness from what he had seen and learned ought not to be received in evidence. He did not object to the witness stating the opinion resulting from his professional skill and knowledge.

Mr. Justice Crampton, after citing a few authorities, expressed his opinion that the question could not be admitted as it was.

Mr. Smyly, Q.C. then put his question as follows:—From the appearances you observed on the body, are you able, as a medical man, to form an opinion as to the cause of death, and what is that opinion?

Witness—I am of opinion death was caused by asphyxia, or the sudden stopping of respiration.

Mr. Smyly—Were there any appearances on the body that would enable you to say how the stoppage of the respiration was occasioned?

Witness—From the appearances presented I would say the stoppage of respiration must have been combined with pressure or constriction of some kind; I arrived at this conclusion from the congested state of the lungs and vagina.

Mr. Smyly—Would simple drowning cause the appearances presented?

Witness—Not to the same extent; there was a combination of circumstances with drowning to cause the congestion; I have seen the bodies of persons who have been drowned, and I don't know whether I have seen appearances to the same extent; it does not follow that a person drowned must of necessity be full of water; it occurs very often that there is no water in the body at all; bodies sometimes float immediately after drowning; I heard of a case of a gentleman at Kingstown, who was said to have tied himself, and whose body floated immediately after drowning.

Cross-examined by Mr. Butt, Q.C.—I understand you to have said, as a medical man, that the body of Mrs. Kirwan presented appearances that death by drowning alone would not cause?

Witness—Not to the same extent.

Mr. Butt—I ask you as a matter of medical skill, were the appearances on the body such as could not be produced by drowning alone?

Witness—I don't think I would have found the same amount of congestion in the vagina in a case of simple drowning.

Mr. Butt—Then there were appearances not to be accounted for by drowning alone?

Witness—There were.

Mr. Butt.—What were those appearances? Extreme congestion of the vagina and of the lungs, swelling of the upper lip, and extreme congestion of the inside of the mouth; I first formed the opinion that death by drowning would not account for the appearances presented, at the time I was making the *post mortem* examination.

Mr. Butt—Do you swear that congestion of the vessels of the lungs could not have been produced by drowning? I don't say they were thoroughly incompatible with death by drowning.

Mr. Butt—Will you swear that the appearances presented by the lungs to the full extent could not have been caused by drowning alone? I don't think they would to the same extent; I made an information in a day or two after the *post mortem* examination.

Mr. Butt having read the informations, proceeded with the cross-examination as follows—

Will you say now, on your solemn oath, that the appearances of the lungs were not consistent with death by drowning? I think the engorgement was more than ever I saw in cases of drowning before. This opinion is founded on what I have seen.

Mr. Butt (reading the information)—Is it true that the lungs exhibited an appearance compatible with death produced by drowning?

Witness—You have not finished the sentence.

Mr. Butt (reading)—"The lungs and heart exhibited the appearances compatible with death produced by drowning or strangulation." Is that true?

Witness—It is true.

Mr. Butt—Is it true they are compatible with death produced by drowning? To a certain extent they are.

Do you swear from these appearances that death could not have been caused by drowning alone? I have said that the engorgement I saw was to an extent I never saw produced by drowning before.

Was the engorgement compatible with death by drowning alone? I don't think it was.

You say it was not compatible? It depends altogether on how the drowning occurred. If the drowning occurred very suddenly the engorgement would be greater, as also where the drowned person struggled to save himself or herself.

Supposing this lady struggled to save herself, was the engorgement greater than would occur in such an event? Certainly.

Could the engorgement you saw be produced by a person drowning and struggling for life? It could; but I don't call that simple drowning—it was compounded with other circumstances; there have been persons frequently drowned who did not struggle to save themselves. The appearance presented might have been produced by her struggling under any circumstances, as by her struggling to save herself.

Mr. Butt—Was that what you meant to convey on your direct examination? I did not mean to say whether she might have struggled by herself or with another. The appearance presented by the body would be occasioned by a person drowning struggling with himself or herself; the appearance presented by the lungs must have been caused by struggling; I think it is very likely that the appearance of the vagina would have been occasioned by struggling in the water for life—a struggle and compression amount to the same thing; I went down to Ireland's Eye on several occasions in company with Major Brownrigg; I am surgeon to the constabulary, and he is deputy inspector of constabulary; he took a strong interest as a magistrate in the prosecution; I was asked by Major Brownrigg to go to Ireland's Eye; I thought it right for the sake of the prisoner, and for every other reason, to make myself acquainted with all the facts.

Mr. Butt—Did you alter your opinion as to the cause of death after you had visited Ireland's Eye? I did not.

You had heard of violence having been used before you made the *post mortem* examination? I had; I had heard of bleeding from the ears and other parts, and my examination was specially directed to what I had heard; there was no injury of the ears internally; I did not examine the *tympanum;* but I did not see any marks of violence about the ears; having been told that instruments had been run up into the body, I examined to see if there were any traces of such having been done, but I did not find any whatever.

Suppose a person went into cold water with a full stomach, would that be likely to cause congestion? It would, but not to any great extent; going into cold water is likely to cause a fit, but it is not likely to cause a bleeding from the ears; I think a fatal result might follow from a person going into cold water with a full stomach.

Mr. Butt—Would the congestion that might bring on a fit, be more extensive than what you saw on the body of Mrs. Kirwan? No, I don't think it would.

Do I understand you, then, to say those appearances presented were consistent with the fact of a person with a full stomach going into cold water? I think it probable.

Is it not probable that such was was the cause of death? I am not prepared to say whether it was or not.

From your knowledge and judgment as a medical man, is such not probable? Taking it *per se*, it is.

Have you ever read of a fit of epilepsy being produced by a person going into cold water with a full stomach? It is possible. If a person bathing got a fit, he or she might work about on the rocks; or when seized with the fit might fall on the face and be cut by the rock; and if they rolled down the sides might be bruised; I don't think the blackness I saw on the body was occasioned by violence; it might have been occasioned by the gravitation of the blood to the particular part: it was not the blackness of a bruise.

To Mr. Smyly—I have heard of persons falling in a fit of epilepsy giving one very loud scream; I never heard more than one scream.

Mr. Butt—Do you mean to say that a person in epilepsy will not give more than one scream? Witness—I will not say that they would not give more than a single scream, but I never heard more than one.

Do you remember in Dr. Cheyne's works the anecdote of the parrot and a gentleman who was seized with a fit of epilepsy? Yes, but in that case there was only one scream.

Mr. Butt—But the scream was so violent that the parrot fell off its perch? Witness—Yes; nothing is more frightful than the scream of a person in a fit of epilepsy.

Will you undertake to say that a strong person falling in a fit of epilepsy might not give more than one scream? I think if such a person fell in the water they would find it difficult to give more than one scream, but I don't mean to say it would be impossible for them to give more than one scream.

Mr. Butt—Did you ever read in the newspapers of the defendant in a case in which I was engaged in the court-house of Roscommon, being seized with a fit of epilepsy, and screaming so loudly and so frequently that the court had to be adjourned.

Witness—I did not, but frequent screams are not impossible.

HENRY DAVIS, COUNTY CORONER.

Henry Davis, County Coroner, examined by Mr. Hayes—Remembers holding an inquest on the body of Mrs. Kirwan, on the 7th of September, at Howth; the inquest was held in the house where the body lay: saw Mr. Kirwan at the inquest, but never before; he was examined at the inquest; the last witness; the deposition produced is that made by him.

Cross-examined by Mr. Brereton, Q.C.—Has been coroner for ten years; did not know when holding the inquest that the body had been washed and laid out; saw bodies that had been bitten by crabs; the marks on the eye-lids were like those marks; the nipples of the breasts had similar marks; from his experience, a body would not be long in the water before being attacked by those crabs or fish; has known it to be the case where a body was not more than an hour in the water; held the inquest regularly like others; read the depositions of the witnesses to them, and asked them if they were cor-

rectly taken down, and if they had any more to say; the jury wished to have Mr. Kirwan examined, after having heard the evidence of the other witnesses; he was no prisoner before me.

To Mr. Hayes—Asked the witnesses the questions he mentions as to the truth of their depositions, and whether they had anything more to say? asked Michael Nangle those questions; Patrick Nangle signed his depositions either with his name or his mark; recollects Mr. Kirwan interfering with one of the witnesses under examination; it was one of the Nangles; does not recollect what he said; one of the Nangles also interfered with the other; crabs generally attack the eyelids first; a crab-bite is like an eating sore, but not like the scrape of a pin; heard of crabs attacking the ears, but not the insides of the ears.

MR KIRWAN'S DEPOSITIONS.

The depositions of Mr. Kirwan, taken at the inquest, were then read by the clerk of the crown. They stated:—I am an artist, and resided at Upper Merrion-street; the deceased was my wife; we were married nine or ten years; we were living in Howth for five or six weeks previous to her death; I was in the habit of going to Ireland's Eye as an artist, and Mrs. Kirwan used to accompany me; she was fond of bathing, and while I sketched she used to walk about the island and bathe; we were there yesterday as usual, she bathed at the Martello Tower, but could not stay long in the water at that time, as the boatmen were to return, bringing over other parties; she left me at about six o'clock to bathe again, and said she would walk round the hill after bathing, and meet me at the boat; I did not see her alive again, and only saw her body as described by the sailors.

The case for the prosecution closed here.

SPEECH OF MR. BUTT FOR THE DEFENCE.

Mr. Butt, Q.C., then proceeded to address the jury for the prisoner. The learned gentleman said he was sure the jury would agree with him, that it would be impossible to exaggerate the solemnity of the duty they had to discharge. He need not tell them that on their verdict in this case the life of the prisoner at the bar depended; and more than life even, for their verdict may not only consign him to an ignominious death, but would also subject him to the most fearful imputation that could rest upon any man, or that ever rested upon any man in the annals of crime. If the duty of the jury was a solemn one, he (Mr. Butt) need not say that his was so too. It was no part of his duty—even to protect the man who had entrusted to his advocacy the defence of his character, his honour, and his life—to attempt to lead the jury astray, or pervert a single fact in the case. He would rather look upon himself altogether in the light of a person having to assist them in the discharge of their arduous duty, as one bound to suggest everything in the case favour-

able to the prisoner, but certainly not bound, even to protect him, to misstate a single fact, or wilfully to mislead their judgment. Certain rumours had been spoken of—Dr. Hatchell had told them that there were such; but he (Mr. Butt) implored them to dismiss from their minds every one of the slanders which, he regretted to say, had been unworthily circulated to the prejudice of the unfortunate prisoner, and to poison the public mind against him. He asked them to dismiss all those slanders from their minds, or only to recollect them in order to feel how cruel had been the injustice done him. He would proceed to examine the evidence on which they were asked to come to the conclusion that the wife of the prisoner met her death by violence at his hands. Three pieces of evidence had been offered to their notice, for the purpose of leading them to that conclusion—first, the appearance of the body; secondly, suspicion against the prisoner, and the cries from the island; and thirdly, what it was impossible to put out of consideration, and what was founded on the grievous stain that rested on the matrimonial character of the prisoner. He (Mr. Butt) might then observe that as to the cries, and the suspicion raised on this point against the prisoner, from the whole case for the prosecution it was impossible for it to be encountered by any evidence except his own, which could not be given. It could not be denied that it was a case for investigation; but he hoped the jury, after that investigation, would be convinced that the prisoner was entitled to be acquitted. The prisoner and his wife were alone on the island when she met her death—no human eye witnessed her dying struggles, and it would be impossible for him to offer evidence to contradict the case of suspicion made against him on this part of the case. But suspicion would not be sufficient to warrant a verdict of guilty. The jury should look at all the facts, and ask themselves if they established his guilt, or left a reasonable doubt on their minds, though it might be better for him to be carried back to a felon's cell than be acquitted on that ground. The law and Christianity presumed every man innocent till he was proved to be guilty. If that was the rule in a case where some person had done the fatal deed, how much more did it apply to a case where the question was raised—was there a crime committed at all? As to the cries sworn to, if they came from the deceased, it was while she was in a fit, which resulted in her death. Counsel then read the evidence of Larkin, who deposed to the cries, and asked the jury if it did not strike them as possible that the cries the witness stated he heard might not be the calls of the prisoner and the Nangles on the island. One of the Nangles deposed that he heard his companions calling out, and the jury would judge whether the cries were not from those who were looking for the body, or of those calling for the boat. In the interval of time between Larkin hearing the cries, as he stated, and the landing of the boatmen on the island, it would be impossible for the prisoner to arrange the body on the rock where it was found, and return to wait for the boat at the landing.

Larkin was the only witness as to the cries, whose evidence could be relied on. A woman was examined on that point, but she was a mile further from the island than the man at the pier. The jury would, on the whole of this part of the case, ask themselves whether the cries Larkin heard were not those of the persons who were on the island calling out for the deceased, or for some of their companions. There were policemen, coastguards, and railway guards at Howth, who would be the most likely to hear the cries, but none of them were examined. On such vague testimony they were asked to consign the prisoner to death: but he (Mr. Butt) was sure they would give it no more weight than it merited. Larkin's evidence as to hearing a cry might be fairly given, but the guilt of the prisoner could not be deduced from it. The deceased was a strong woman, and would not be accidentally drowned without uttering a cry. The evidence of Larkin was accounted for by that of Nangle; and if they attached any weight to it, they would recollect that Mr. Kirwan had been looking for his wife for half an hour before the boatmen arrived, and the cries might be his while doing so. It was impossible to take them on reliable evidence as dying cries; but even if they were dying cries, there was nothing to fix the prisoner with guilt. It might be a case of suspicion, but they were asked to believe that he killed her in some way.—But how? Dr. Hatchell talked of compression, which was a convenient phrase; but he asked them as rational men to fix in their minds any one way in which consistently with the evidence, he could have murdered her? Did he strangle her? Did he go into the water and drown her? It would not do to say that they were alone on the island, and that he must have killed her in some way, for the jury must have distinct grounds for arriving at such a conclusion. Dr. Hatchell's ingenuity would not be sufficient, for he (Mr. Butt) defied even the doctor's ingenuity to show, consistent with the evidence in what mode the deceased met her death at the hands of the prisoner. If her death was the result of violence, and that Larkin heard her death cries, how was it that eight minutes elapsed between the first and the second; What would a strong woman be doing in the meantime?—Was it consistent with any conceivable way in which he could kill her, that she cried once, and then in eight minutes again? One supposition would lead to such a conclusion, and that was consistent with the innocence of the prisoner; that supposition was that she had been attacked with epilepsy, which Dr. Hatchell admitted was compatible with the appearance of the body, and with the suggestion that she shrieked first, revived afterwards and shrieked again. On no other supposition could it be accounted for. There was another part of the case which he approached with pain, and the punishment of the prisoner was severe in having it alluded to there. He had formed an unfortunate connexion; but there was a long way from that conclusion to the conclusion that he therefore murdered his wife. Evidence was given on this point to supply a motive for the crime. He (Mr. Butt) asked them did it supply a

motive? The connexion alluded to was not a new one; the late Mrs. Kirwan was very well aware of it, and forgave it, and she and her husband were reconciled. Did the evidence, then, on this point, supply a motive for the commission of the crime? He called upon them, no matter how much they might reprobate the immorality of the connexion, not to permit the fact to prejudice the prisoner in their minds at that solemn hour. He would not say let him who is without sin cast the first stone; but he would ask them to remember the frailties of human nature, and that men had at all times yielded to seduction from the path of virtue who were incapable of the crime imputed to the prisoner. He was not palliating or excusing the offence of the prisoner, arising from the unfortunate connexion alluded to, as he believed he humbled himself there for the offence, which no man could justify, and that he had humbled himself before that Judge in whose presence all should one day appear. He asked them in the language of inspiration to judge not lest they be judged. They knew but half the case. They knew nothing of the temptation, nor of the agony of remorse, that followed the fall. While they might condemn for that offence against his wife, let it not lead them to the conclusion that he was capable of imbruing his hands in her blood. Such a supposition would be monstrous. He did not shrink from that part of the case, but he left the frailties of the man to their charity, and demanded, if they believed him innocent of the crime with which he was charged, an acquittal from their justice. He would next proceed to allude to the evidence respecting the examination of the body, or the appearance it presented. The side was blackened, but it was not the result of bruises. Dr. Hatchell said the blackness which he saw was not such a blackness as would be occasioned by a bruise, but such as would arise from the gravitation of the blood to the parts, from the body lying in one position for a length of time. He swore there were no marks of violence; and any medical man would tell them that if the blackness was occasioned by bruises or injuries, they could not mistake it for that which could be caused by gravitation of the blood. This blackness, so much dwelt upon by some of the witnesses, particularly the women, turned out to be nothing at all. Then came the congestion of the lungs and other parts, and the bleeding from the ears; and on this subject he would remind them that his learned friends were most unwilling to ask Dr. Hatchell whether he could form an opinion as to the cause of death from the medical appearances. No, but they wanted to get from him an opinion, compounded with the officious tutorings of the officials of the constabulary and of the Crown Solicitor's office, who brought him down to Ireland's Eye. It was said there was oozing of blood from the ears and other parts; but was there any conceivable description of compression or injury to a body that, while it left no marks of violence, caused this bleeding? This bleeding could be accounted for, and in no other way, by supposing that this lady, while bathing, was seized with epilepsy, and

struggled in the fit in the water. In his information, Dr. Hatchell thought proper to introduce the word "strangulation." But he admitted that he examined the vertebræ and the trachea to discover if such took place, and he found no trace or sign whatever either of strangulation or violence of any kind. He also spoke of death having been caused by "compression." What, in the name of common sense, did he mean by that expression? Did he mean to convey that the prisoner took the deceased lady round the waist, and crushed her to death as a bear would his victim? but then that would not cause the bleeding from the ears. Nothing could more reasonably account for the congestion of the brain, and lungs, and other parts than the circumstance of her having gone into the cold water after eating her dinner, and there was evidence of her having eaten; but he defied the learned counsel for the crown, or any one else, to say there could have been compression sufficiently forcible to cause the flow from the ears without that compression injuring some vital organ. No such suggestion could be made; but it was possible, nay, probable, that the bleeding was the result of the very congestion that terminated the existence of this lady. There was froth round her mouth—that would be caused by a fit of epilepsy or by drowning. He (Mr. Butt) relied upon the froth and the swelling of the upper lip as perfectly consistent with the occurrence of a fit; nay more, every particle of the medical evidence was consistent with the supposition of a fit. Next came the cut round the eyes, upon the breast, and upon the ear, all of which might have been done by crabs. Any one present who had ever seen the body of a person drowned taken out of water, must recollect the horror they experienced at seeing the number of these voracious fish that fastened upon the body. It was well known, and there was distinct evidence to prove it, that these crabs set upon a body almost immediately after it was immersed. Besides, they remembered no doubt, Mr. Hamilton, the medical student, stating that one of what were called the cuts presented the appearance of a bite. Then, as to the scratches, nothing was more likely to occasion them than the lady, if she were seized with a fit, falling amongst the rocks; or he did not know of anything to defeat the supposition that while struggling in the fit she might have scratched herself. Let the jury, however, bear in mind that though these scratches might not be positively accounted for, yet he was not driven to account for them, for it was the case of the prisoner—that if he were innocent he knew as little as to the causes of the appearances presented by the body as any one in that court. Still he (Mr. Butt) thought these scratches might be accounted for by the supposition of her working in a fit, by her falling on the rocks, or by the crabs. The conclusion that these appearances were caused by the crabs assailing the poor perishing remnant of this unfortu nate lady, or by her own struggling while in a fit—a conclusion based on either of these suppositions was perfectly reconcileable with all that was known on the subject, or that could be inferred.

But were those scratches reconcileable with the supposition that this lady's death was the act of the prisoner at the bar? If a man went to murder a woman, surely he would not begin by scratching her forehead or her eyelids. If there was a scratch or the mark of a blow, or blows, on the face of the prisoner, then he (Mr. Butt) could understand the allegation that they were caused by the deceased woman in her struggles with him to save herself. It was plain that the more the incidents and circumstances of this case were investigated and considered, the stronger proofs did they afford of the prisoner's innocence. If he was guilty, his (Mr. Butt's) prayer was that they would that day declare him so; but if he were innocent, his prayer was that providence might interpose, even in the most trifling circumstances of the entire case, and render them so explicable as to enable the jury with a satisfied conscience to vindicate his innocence before the world. No human being would venture to say that this lady was murdered in some other way than by drowning; that he then undressed her, put on her bathing clothes, and placed her in the position in which she was found for the purpose of creating the impression that she had been drowned. If this idea was suggested, let him (Mr. Butt) ask how did he kill her? It was proved that there was no appearance whatever of strangulation or violence. If the jury believed the prisoner to be guilty, he (Mr. Butt) could imagine no other way in which the murder could have been committed than by supposing that she went into the water to bathe, that the prisoner followed her, and held her under the water till he drowned her. To make that case, evidence was given for the purpose of showing that that the prisoner's trousers and boots were wet. Why, if he killed the unfortunate woman in this way, it would be his arms and his coat that would be wet as much as his boots and trousers. If, however, they came to the conclusion—as they should—that the woman went in to bathe herself, they at once got rid of all that had been said about the unlikelihood of her going to bathe in the Long Hole. They had it in evidence that she was fond of bathing, and that she was an expert swimmer; but good swimming was no protection against the drowning of a person seized with a fit. Many of them, perhaps, remembered the case of a man—a member of the legal profession—who was considered one of the best swimmers in the country, but who was most unfortunately drowned a few years ago in one of the canal docks, into which he had plunged for the purpose of saving a person who had fallen in. It was incontestible that good swimmers very frequently met their death by drowning. He would repeat that they had not a particle of evidence that a single blow or injury was inflicted upon this unhappy lady by the hands of her husband. Dr. Hatchell had the body taken up for the express purpose of looking for marks of violence; he told you he had heard of the insertion into her body of sharp instruments, or the bleeding from her ears and other parts; he carefully examined in these parts, and found no trace of any kind of violence; he had heard of her breast being cut, but that turned out

to be only skin-deep. They had heard Nangle the boatman swear to Mr. Kirwan having carried something which seemed to be a sword cane, evidently showing he had heard the infamous rumour of the insertion of sharp instruments; the supposed sword cane had proved, however, to be merely a stick. If this lady had been strangled, the medical men must have discovered the marks; and if anything sharp had been run up into the body, they most certainly would discover the wound. And here he (Mr. Butt) would take occasion to ask why did not the crown produce Dr. Tighe, the medical gentleman who assisted Dr. Hatchell in making the *post mortem* examination? They did not produce him, for he was not under the influence of Major Brownrigg, but they brought forward Dr. Hatchell, who, after swearing that the appearances presented by the body were consistent with the supposition of death by drowning, was brought down to the Long Hole to be tutored, and to alter his opinion upon being shown various rocks and other matters. He (Mr. B.) never witnessed a more disgraceful exhibition than Dr. Hatchell made upon that table; and after such an exhibition it was due, he (Mr. Butt) would assert, by the crown counsel to the prisoner, and to the administration of justice, to produce some medical man that assisted at the *post mortem* examination, and on whose evidence a jury could place reliance. In the course of his examination, Dr. Hatchell stated that the brain was of a pinkish colour. That was exactly what would happen from the determination of blood, which would produce a fit in the water. They had it established, reluctantly it was true, that death did not result from any internal injury. The abnormal internal appearance was congestion, and that, he had shown, was perfectly consistent with drowning, or the occurrence of a fit in the water. Let them now consider the conduct of the prisoner on the evening in question. He sought for his wife, but without success at first. The principal evidence on this subject was that of Michael Nangle, who gave his testimony very fairly. The jury would remember his saying to the prisoner, when they were searching for Mrs. Kirwan, "Perhaps she went to bathe in the Long Hole; let us go there and search for her." That statement he (Mr. Butt) would put against all that had been thrown out about the improbability of this lady selecting the Long Hole to bathe in. When the body was found, the unhappy and bereaved husband threw himself across it, and the boatmen on their return with the boat, which they brought from the landing place, an hour having elapsed, found him lying in the same position. Could the jury believe that if this man had been her murderer, that he would have dared to watch by the body of his unfortunate wife for a full hour alone on that dark and dismal night in so desolate a position? Was it not much more likely that he would have gladly embraced the offer of the boatmen to accompany them to the boat, horrified as he would have been at the sight of his victim, if she was such. He (Mr. Butt) pointed out and dwelt upon these little incidents for the purpose of showing how completely they refuted and dissipated the many slanderous

rumours that had been so sedulously circulated. But if she was the wife he wronged—and he had wronged her—it was easy to conceive the gush of sorrow and affection for her he loved in the manner he acted. With such feelings, and grieved at the sudden death of his wife, it was most natural for him to act and conduct himself in the way that had been described. He (Mr. Butt) would now proceed to deal with the subject of the sheet, upon which his learned friends, the counsel for the crown, appeared to place considerable reliance. It should, in the first instance, be recollected that they had no evidence on this point but what had been stated by Pat Nangle. It might be imagined that if this lady had been seized with a fit in the water, she might have struggled towards the sheet, and grasped it. But were they satisfied the sheet was there at all? It was sworn positively by Michael Nangle that the prisoner brought down from the rock a shawl and something white, which he afterwards saw wrapped round the body. The very position in which the body was found, afforded in his (Mr. Butt's) opinion the strongest proof that the prisoner did not place it there, for, if he did murder this lady, he might have gone a step farther, and by raising the body over the reef of rocks it would have been borne away perhaps for ever by the ocean. The learned counsel here referred to the evidence for the prosecution, particularly as comprised in the testimony of Patrick and Michael Nangle, the boatmen. He dwelt with much emphasis on that portion of Michael Nangle's evidence wherein that witness swore that, from the position of the body lying across the rock, with the head jammed in between two fragments, or parts of that rock, it seemed as if the body had been there stopped, and prevented from being carried out with the tide. He (the learned counsel) said he believed that such was the case—that it had been those rocks, or this divided rock, which had prevented the body from being taken out to sea by the receding tide; and this fact, taken together with other clear and undenied portions of the evidence, showed that at the time when the sad event had been discovered, and for a long time afterwards, neither the witness Patrick Nangle, nor any of the other men who were examined, had entertained the remotest suspicion that there was anything in this sad case but the result of the merest accident. The witness Michael Nangle in giving his evidence, had testified to seeing Mr. Kirwan bring down a portion of the deceased lady's clothes, and a shawl, and a sheet. The other witness, Patrick Nangle, had sworn that he saw no shawl nor sheet in Mr. Kirwan's hands on his coming down from the rock. Both men happened to be quite near to Mr. Kirwan at the time. Now it was obvious that if the jury believed the testimony of the former of those witnesses, they would be compelled to refuse credence to the other. Patrick Nangle had sworn that Mr. Kirwan had nothing in his hands when he came down from the rock; on the other hand, Michael Nangle positively sworn and asserted that when Mr. Kirwan came down from the rock he carried in his hand a shawl, and something

else which was white, and looked like a sheet, and added, that then Mr. Kirwan sent Pat Nangle up to the rock for the remainder of the clothes. Now it was utterly ridiculous, in the face of this clear and positive evidence of Michael Nangle's, to suppose that the clothes had not been on the rock when Patrick Nangle first went to seek them. It was clear that the clothes must have been lodged higher up on the rock, where Patrick Nangle had not searched, and yet, in the face of the clever and conclusive testimony of Michael Nangle as to those clothes, they found Patrick Nangle obstinately asserting that the clothes had not been there, and that Mr. Kirwan had brought down no portion of them with him. He (the learned counsel) would ask the jury to attach no weight to Patrick Nangle's testimony, but, on the contrary, to accord due credit to the evidence of Michael Nangle to this effect, that when Mr. Kirwan discovered the clothes he brought down with him such portions of them as sufficed to cover the body at the time, and that he then desired Pat. Nangle to go up and fetch the remainder of the garments. The jury would doubtless recognise the truth and justice of this position, that it was impossible to attach credence to that portion of Pat. Nangle's testimony wherein he swore that Mr. Kirwan had brought nothing down with him from the summit of the rock. Now, he believed he had gone through the whole of the leading facts of the evidence. There were, however, some other little matters, of apparently trivial import, but which, when taken in connexion with other facts, would perhaps be found worthy of consideration. There was, for instance, the conduct and demeanour of Mr. Kirwan on his first seeing the body of his wife, and on ascertaining the fact of her death. There was no discrepancy between any of the witnesses who had been present on that occasion, as to the fact of Mr. Kirwan's deep affliction. But there was one expression attributed to Mr. Kirwan, one of which he (the learned counsel) had asked the jury to make a note. It was stated to have been uttered by Mr. Kirwan, after the body had been brought to Mrs. Campbell's house, and it was said to have been spoken in reply to a suggestion that the body ought not be washed until a coroner's inquest was held, and until the police arrived. Mr. Kirwan was reported to have exclaimed that "he did not care a d—n for the police, that the body should be washed." Now, this might look as if Mr. Kirwan wished to avoid the evidence which might be created by the appearance of the body when found. But he (the learned counsel) would put it to the jury themselves, if any of them had to deplore the sudden loss of a dear friend or relative, if in the very moment of uncontrollable grief, in the agony of severe affliction, he should be interrupted with a coarse and unfeeling suggestion to leave the body in the state in which it had been found, as in this case, half-stripped, and covered with the mud and soil of the sea shore,—if such a suggestion were to be made to one of themselves, perhaps he might not swear, but he doubted much if any one of them would not feel disgust and indignation. Indeed he did not

envy the man who would be disposed to found on such an expression, uttered under such circumstances, a supposition, much less a proof of guilt. One witness had given a turn to a single circumstance, which, in itself, might be looked on as the strongest proof of the prisoner's innocence. Mr. Kirwan was stated to have dried his boots, and to have changed his stockings, after returning to the house. The boatmen were called on to swear that he could not have got wet whilst with the body on the island. Now, it should be remembered, that the body was discovered lying with the feet resting in a small pool of water. It had been also sworn to by all the witnesses who were present when the body was found, that Mr. Kirwan threw himself across the body, and bewailed bitterly her loss. Surely when it was remembered that he remained still prostrate across the body—alone with the dead during all the time the boatmen were away—if he loved his deceased wife, as it seemed evident he did, were the jury prepared to say, that whilst extended beside, or lying across the body, suffering all the agonizing pangs of grief and misery, he might not have got his feet wet from the very pool of water which lay at the feet of the deceased? In fact, every one of those incidents seemed to present proof, when maturely considered, more and more conclusive of the prisoner's innocence, and his perfect unconsciousness of any necessity to conceal a single act of his. The police were present in the house when he took off his boots to dry, and changed his stockings—the police were present when he called for dry socks. What was the natural inference from all this? Why simply that every act of the man was the act of a man conscious of no crime, but suffering under deep affliction. How deep must he have gone into the water, if he went to raise the body of his wife after drowning her, and to place it on the rock where it was found?—would his feet alone have been wet? He (the learned counsel) would beg the jury to pardon him, if, in his anxiety, he might reiterate those arguments and comment again on those plain facts, or press them too often on their consideration. He would never forgive himself if he thought that, by not repeating those truths again and again, he should fail to establish the innocence of the prisoner, and proclaim to the world his freedom from the horrid crime imputed to him. The jury had heard the evidence. Mr. Kirwan openly asks the landlady to get him dry stockings, and that in presence of the police. From the very moment that the body had been discovered, he lay or sat beside it; he remained sitting beside the corpse afterwards all night in the house. Could any man with the blood of a fellow-being—and that being his wife—sit beside the body of his victim—first alone in the dark night on the strand where the body was found, and afterwards in the house during the entire night? In short, he (the learned counsel) would defy them, even if they were as prejudiced against the prisoner as Dr. Hatchell seemed to be, to form a conclusion as to the prisoner's guilt; and he demanded at their hands a verdict which would proclaim his innocence to the world. The evidence

which had been given as to the cries that had been heard from the direction of the island, had been put forward as a proof of the prisoner's guilt ; but it could be shown that these cries were by no means inconsistent with his perfect innocence. The witness Larkin had told the sergeant of police the nature of the cries which he had heard; and every old woman in the vicinity who had heard, or fancied she heard a cry or a shout, began to suit her imagination to the point. One said to another, "Did you hear a cry?" In fact, were it not for this story of Larkin's, not a word would ever have been heard of the cries and screams which were alleged to have been heard at such a distance by others. If the jury even believed that those cries had been the death shrieks of the deceased, those shrieks, or their occurrence rather, was perfectly compatible with the case submitted on the part of the prisoner; but if, as Larkin himself admitted, these cries were the shouts of some person calling for a boat, no greater importance should be attached to them in connexion with this case than they deserved. It should be also remembered that the Long Hole, as it was called, was situate in a kind of gulley hemmed in at either side by high cliffs, constituting in fact that picturesque division of the little island of Ireland's Eye, so often remarked by all who pass the bay of Dublin. This creek or gully, thus hemmed in at the sides, might re-echo with cries which would scarcely be heard at other parts of the island, by reason of the high rocks, or banks at either side. But the cliffs opened towards Howth, so that the cries which could not be heard by a person on another part of the island, might easily be heard across the water at Howth. He (the learned counsel) would ask the jury, when they should patiently go over and review the facts of this case, to cast aside all extraneous suspicions. They were bound to come to their conclusion on the evidence before them, and he confidently asserted that there was no evidence to justify the assumption of the prisoner's guilt. He had spoken as he felt, as regarded this foul accusation brought against the prisoner. As regarded the one stain on the prisoner's previous character, which, in fact, had caused this prosecution, it was, doubtless, a crime—a serious crime to have been unfaithful to his wife, and to have formed a connexion with another; but the jury should not, because of that lapse from rectitude of conduct, be disposed to give credence to a charge so heinous as that now brought against the prisoner—and surely the torture of mind, the humiliation, and the ignominy to which he was exposed on this trial, constituted an amount of suffering which was in itself sufficient punishment. Let them not, because, yielding to the impulses of human frailty, the prisoner had been unfaithful to his wife —let them not on that account believe him to have been instrumental in the perpetration of a shocking murder. He (the learned counsel) would call on them to repudiate and dismiss from their minds all considerations in connexion with previous events. If they did that, he (the learned counsel) hoped that the prisoner would leave that court a wiser and a better man—at least not branded with the stigma and infamy of having committed the fearful crime of which he stood accused before them. The learned counsel con-

cluded his able and eloquent address, by leaving the case in the hands of the jury.

Evidence was then called for the defence.

SURGEON RYND.

Surgeon Rynd, examined by Mr. Butt, Q.C.—Is a surgeon practising in Dublin.

Counsel—Have you heard the evidence as regarded congestion of the brain, lungs, etc., and of general congestion, as given on the *post mortem* examination of the deceased in this case?

Counsel for the Crown interposed, and objected to the question being put to the witness in this form.

Mr. Butt maintained the perfect legality of the question.

Mr. Justice Crampton interposed, and gave his opinion that the evidence sought to be arrived at should be obtained by a different mode of interrogatory. The learned judge cited and read an authority in support of the opinion of the court.

Witness proceeded, in reply to Mr. Butt—Heard that in the present case the vessels of the lungs were congested, and also the blood vessels of other parts of the body of deceased; supposing these appearances were to be found in the body of a subject otherwise healthy, witness would attribute those appearances to congestion.

Baron Greene—The question is, supposing such appearances to exist, what would be your conclusion as to the cause?

Mr. Butt—What would you say that death was attributable to in such a case?

Justice Crampton thought that this question appertained rather to the jury box.

Witness said such appearances as those mentioned would indicate asphyxia, and the patient would die; a mere cut on the surface of the skin would not produce such appearances, nor account for them if present; in witness's judgment, as a medical man, those appearances as described would be produced by epilepsy.

Mr. Justice Crampton—Without any concurring cause?

Witness—Without any other cause, epileptic patients often scream loudly; a patient in epilepsy might utter several screams; in witness's opinion, as a medical man, sudden immersion in cold water with a full stomach might superinduce a fit of epilepsy; an epileptic fit, in witness's judgment, would cause the appearances mentioned; this would be more likely to occur in a person of full habit, but epileptic seizures were not peculiarly confined to persons of full habit; the pink appearance presented in the colour of the brain might be merely an indication of previous congestion, and of the presence of a greater quantity of blood in the minute vessels; the flow of blood from the ears might be caused by great congestion, but in giving an opinion on such a point a careful examination would be necessary, as the blood might flow from the exterior or interior vessels; witness had seen blood flow from the eyes of a patient in epilepsy; the same cause (general congestion) might lead to the

exudation of blood from other parts of the body; general congestion might be produced by bathing or immersion in cold water on a full stomach; general congestion might cause blood to exude from the nipples; had once seen a patient, from all parts of whose body blood was exuding; extreme congestion, if not relieved in time, might be followed by apoplexy; these effects might occur without any important organ being injured; apoplexy might follow from a blow on the head, of which no mark might be discoverable; wherever compression was used on soft parts, sufficient to cause death, as in strangling, the parts compressed would become decomposed sooner than others; in such a case witness would expect to find, on examining the body, congestion of the lungs and congestion of the brain; indeed, he would not be much surprised to find general congestion.

To Mr. Smyly, Q.C.—Witness never saw blood flow from the ears in cases of mere drowning; in such a case the blood would continue fluid probably till the day after death; froth might continue to flow from the mouth; the extent of the continuance of froth flowing from the mouth would in a great measure depend on the quantity lodged in the trachea; high congestion of the blood vessels might take place without any external pressure having been applied; recollects the accounts of the Burking business, when a wet sheet had been used to suffocate the victim, by pressing it tightly over the nose and mouth; no outer violence had been perceptible, witness heard, in those cases; epileptic patients generally scream out when about to fall down in the fit; witness often heard epileptic patients scream after falling down; recollects having attended deceased six years ago; never heard that deceased had had a tendency to consumption; witness had been told that deceased's father died of apoplexy; heard that statement from a gentleman interested in this trial; an epileptic fit might continue for about ten minutes.

SURGEON ADAMS.

Surgeon Adams, examined by Mr. Brereton—Is a member of the Royal College of Surgeons; congestion of the lungs might arise from a variety of causes—from drowning or epilepsy; general congestion would cause general exudation of blood; cannot say whether it would cause a flow of blood from the nipples of the breast; going into the water suddenly after a full meal would cause congestion; a slight cut or abrasion would be more likely to cause exudation; the seizure of a person in epilepsy is announced by a scream; has known persons seized with epileptic fits to scream violently more than once; the first scream is the most violent.

Cross-examined by Mr. Hayes—Putting a wet cloth over the mouth and nose would produce all the effects of drowning or hanging; it would produce congestion; doubts whether extreme pressure on the breast would cause congestion, but pressure on the windpipe would; if the mouth and nose were held under the water, congestion would be produced; slight pressure would not add to the effects; extreme struggling under water would produce greater congestion; the air

in the windpipe, the water and mucus would produce slime on the mouth; there would be more froth in the case of a person who died by violent drowning than where there was accidental drowning, and it would remain longer; does not recollect of a case in which accidental drowning caused bleeding from the vagina or ears; cannot remember that he ever heard that those effects were produced by death from epilepsy or accidental drowning.

Mr. Brereton—If a wet sheet were placed over the mouth or nostrils, would it produce three loud screams? That is the question.

Dr. Adams—That is not a medical question (laughter). Pressure on the chest that would produce the effects in question, would leave some external mark.

To the Court—It would be impossible by the appearances described to distinguish between accidental and forcible drowning.

Mr. Butt then read the deposition of Margaret Campbell, in whose house the prisoner and his wife lodged at Howth. It was to the effect that she never knew them to disagree except on one occasion; she did not know what caused them to disagree then, but, except in that instance, she always knew them to live happily together as could be. The deposition also stated that the witness heard the mother of the deceased caution her against being too venturesome in bathing.

The defence closed here.

REPLY OF COUNSEL FOR THE CROWN.

Mr. Hayes, Q.C., then proceeded to reply on the part of the crown. After a few preliminary remarks, he said—This case was to be decided—not upon rumours or reports, but upon the evidence given; and he heartily subscribed to the observations of Mr. Butt, that these rumours should not be thought of for one moment, except to be entirely discarded. They ought not to believe the prisoner guilty because unfounded rumours had been circulated; nor were they, on the other hand, to consider him innocent because of equally unfotnded reports, if the evidence led them to the conclusion that he was guilty. His learned friend thought it right to go a little out of his way in speaking of the manner in which that case was got up, and he seemed to indulge in something like unnecessary strictures upon those acting for the crown. Mr. Butt did not condescend, however, to point out any one fact calculated to throw the slightest discredit upon those concerned for the prosecution. Mr. Butt talked of witnesses being tutored; he had no foundation for that assertion—no more than he could put forward any justification for the statement that a gentleman of Dr. Hatchell's high character and professional evidence had been tutored by official authorities. Doctor Hatchell's testimony did not come up to what the crown had been led to believe, but there was no ground for insinuating that he did not state the truth. His evidence, which was most impartial, was in effect that the appearances presented at the time of the *post mortem* examination were consistent with death by other means than

violence. That testimony was generally favourable to the prisoner, and yet the learned gentleman who gave it had fallen under the lash of Mr. Butt's indignant eloquence. Let them now proceed to a consideration of the facts in their natural order. It was sworn that the prisoner had been carrying on an illicit intercourse for ten or twelve years, with a female named more than once that day—that he had a family by her—that for her he supported an establishment at Sandymount, and that it was his custom to sleep there. This woman bore his name, and was received and known as Mrs. Kirwan, although he had his legitimate wife living in Dublin. He (Mr. Hayes) referred to this matter more for the purpose of supplying motives for the alleged crime than for any other reason. In the month of June he took lodgings at Howth, in the house of Mrs. Campbell, who proved to hearing him use towards Mrs. Kirwan angry words in a loud voice, and his dreadful expression, "I'll end you, I'll end you; I'll finish you!" She then heard the knocking about of the furniture as if a beating was taking place, and it was sworn that on the following morning Mrs. Kirwan complained of having been beaten. Were these facts consistent with the genuine affection that ought to exist between husband and wife? Was it consistent with such affection that a man should have had during ten years a concubine who bore his name, and that having this concubine he beat his wife—could such a man be supposed to entertain for the woman towards whom he so acted, sentiments of connubial affection? He (Mr. Hayes) would not insult the jury by asking them if they supposed, for a moment, that this man cherished feelings of regard for the wife that ought to have been the partner of his affections. He (Mr. Hayes) admitted that after the occasion in question he did not beat her—nay more, that he endeavoured to gain her affections and to inspire her with confidence in him. The prisoner visited Ireland's Eye four times, and on three of these occasions he was ferried over in Nangle's boat. Nangle swore that on the first occasion he remained on the island till half-past six o'clock, on the second occasion till seven o'clock, and the third time it was fixed that the two should return at eight o'clock—the hours of return becoming later as the season advanced. On the 6th of September, the day in question, the prisoner and Mrs. Kirwan were ferried over by the Nangles at an early hour. Mr. Brew and a party also visited the island, but they left it at four o'clock, between which hour and eight o'clock there was not a human being on the island but the prisoner and his wife. What took place in the interval? At seven o'clock shrieks were heard, and these shrieks were deposed to by five witnesses. There could be no question as to their occurrence. There was no evidence to support the ingenious supposition of Mr. Butt that these were the shrieks of a person seized with a fit of epilepsy. Had there been a shadow of evidence to show that this lady had ever been affected in a similar manner, it was not too much to suppose that it would have been brought forward; and no such thing having been attempted, it was not too much to infer that there was no evidence of the kind. On

the contrary, they had it proved that the deceased was a perfectly healthy woman. The five witnesses who deposed to the screams were perfectly incapable of concert. One of them, moreover, swore that, about half an hour after he heard the screams, he saw Nangle's boat leave the quay for the island. How accurately did that tally with the statement of Nangle himself, for he said he did not leave the quay till about half-past seven o'clock. They had it indubitably established, then, that the cries were heard before Nangle's boat left the harbour; and that put to flight the airy phantoms Mr. Butt was conjuring up, that the cries heard by the fishermen might have been the cries of Nangle and those with him. Mr. Butt said, however, he would rather have the cries accounted for on the other supposition—that of their having been uttered by the deceased lady while labouring under a fit of epilepsy in the water. Let them take that supposition for a moment, and proceed to discuss it, for it was absolutely necessary that all the rest of Mr. Butt's poetry should be got rid of in this case. If five persons on the main land, at a distance of one mile and a quarter, heard the screams from Ireland's Eye, might it not be asked did the prisoner, who was on the same island, hear them? Feeling the pressure of this fearful question, Mr. Butt, when referring to this point, was obliged to indulge in reference to the science of acoustics, and to speak of persons on the main land hearing cries that a person on the island might not hear. But let any of the jury imagine the idea of his being on that island —no matter at what part of it—and his not hearing those fearful screams—screams so loud as to have been heard at Howth. They had the prisoner swearing, at a time when he was not charged with any offence; "She left me at the latter part of the day—about six o'clock—to bathe again." She went to bathe in a place where a lady was never known to bathe. She was an hour away, and yet this affectionate husband, whose ears should have been alive even to the rustling of the fern, to get tidings of his absent wife, did not hear her dreadful dying shrieks for aid. Supposing he knew her to have been subject to fits of epilepsy, would it not have been his duty as a man—not pretending to love, but even to a particle of humanity—to fly, if possible, upon the winds to render aid to the struggling woman, and save her from suffocation in the water? When the boatmen came to the island, was he found searching for his wife? No; he was standing at the west end of the island; the men hailed him; he answered, and they would be astonished to hear how this man expressed himself at a time when a natural ebullition of sorrow for the loss of his partner might have been expected. His words were, "Nangle, take down my bag;" and when the man went to take the bag the prisoner proceeded two or three yards towards the boat. While Pat Nangle was carrying down the bag, Michael Nangle stopped the prisoner in his course, and asked him, "Where is the lady, Mrs. Kirwan?" and that is the first mention made of this unfortunate woman. It came not, however, from the distracted agonized husband, but from the poor boatman, who appeared to have

known what his duty was on such an occasion. What was the reply? —"She went away from me in that direction after the shower, and I have not seen her since." At eight o'clock—two hours after the lady set out to bathe—the search for her is commenced. The first search was fruitless. Pat Nangle swore he found the body on the back, with a sheet under it, and the bathing dress drawn up under the arms. It was for the jury to determine whether death arose from accident, or was caused by the prisoner, for it was not even hinted at that this lady laid violent hands on herself. If they believed death was brought about by criminal means, that criminality must involve the prisoner to the extent of wilful murder. The crown could give no positive evidence as to the commission of the alleged crime; for no third mortal ever witnessed the awful deed; it was only from circumstantial evidence, therefore, the jury could form a conclusion, on which account every minute fact was of the utmost importance. Whether this lady died by simple drowning or by epilepsy, the position of the sheet under her body was altogether inexplicable. The position of the bathing dress was also inexplicable. His learned friend (Mr. Butt) challenged him, or any one else, to imagine any possible state of things in the case criminatory of the prisoner. He (Mr. Hayes) accepted the challenge, and it would be for the jury to judge on which side the probabilities lay. Let them then suppose that the prisoner induced the deceased to go bathe in the Long Hole, he meditating her death; it must have been about seven o'clock when she bathed, and at that time the water was two feet nine inches deep. Now it would be for the jury to judge whether a healthy young woman, who was also an expert swimmer, could have been accidentally drowned. But let it be supposed that she was in this water—only two feet nine inches deep—that the prisoner come into the hole with the sheet in his hand for the purpose of putting it over her head—that on seeing him approach in this manner, his dreadful purpose at once flashed on the mind of his victim—might she not then have uttered the dreadful agonising shriek that was first heard on the main land?—a shriek of agony at the frightful idea of being murdered in so fearful a manner, in so wild and desolate a spot. If he succeeded in forcing her under the water, notwithstanding her fruitless struggles, with all her youthful energy against his superior strength, might they not, in that event, reasonably expect the fainter, agonised, and dying shrieks which both men and women swore they heard from the main land, growing fainter and fainter. It was for the Jury, on considering carefully all the facts, to say whether this for the present suppositious case was not most probable. The learned counsel then proceeded to comment upon the statement of Patrick Nangle —that he searched for the clothes of the deceased, where he was directed by the prisoner, and did not find them till he searched in the same place a second time after the prisoner had gone up to it. He called attention to the fact that the chemise of the deceased was not to be found in the bundle of her clothes; and he observed upon

the evidence of Catherine M'Gar, who swore that the prisoner, when told that the police would not allow the body to be touched, said he "did not care a d—n for the police, that the body should be washed." As to the scratches about the eyes and forehead of the deceased, it might be supposed that they were caused by her own hands in her endeavour to drag the horrible sheet from over her face. It was worthy of observation that her bathing cap was not on her head when she was discovered, but was found in five or six days after at high water mark, with its strings tied as if it had been torn off her head. Dr. Adams, one of the most eminent of his profession in Dublin, swore he never knew or heard of a case in which a person who died by simple drowning, or from epilepsy, ever bled from the ears or other parts; and yet, in the face of all these facts, with this opinion, they were called on to believe that death resulted from accidental drowning or epilepsy. After dwelling upon a few minor points, the learned gentleman said Mr. Butt seemed to think that his (Mr. Hayes's) zeal was not consistent with his position as a public prosecutor; if so, he confessed he was not fit for such a position, for he never took up any duty that he did not always discharge with zeal. If he was too zealous, he would call on the jury not to let the prisoner be prejudiced by that zeal. Let them consider, weigh, and compare the facts, and if, after doing so, they were satisfied of the innocence of the prisoner, in heaven's name let them pronounce a verdict of not guilty. In the name of justice he would ask them, if they could, to come to that conclusion. Moreover, if they entertained a reasonable doubt of his guilt, let them give him the benefit of that doubt, and in God's name, open his prison doors, and set him free. But if, on the other hand, after bringing their calm and sober judgment to the consideration of this all-important case, they came to the conclusion without entertaining any rational doubt, let them do so. If they were conscientiously convinced that this woman met her death by the hands of him who ought to have been her protector—come well or ill, come weal or woe, it was their duty—painful though it might be—to bring in the dreadful verdict of guilty, and to leave the rest to God.

JUDGE CRAMPTON'S CHARGE TO THE JURY.

Mr. Justice Crampton then proceeded to charge the jury. He said—Gentlemen, the prisoner at the bar stands charged with the wilful murder of Sarah Maria Louisa Kirwan. Gentlemen, I re-echo the sentiment uttered by the learned and able counsel who addressed you on both sides with such zeal and ability, that it would be impossible to exaggerate the importance of the case, or of the solemn duty that devolves upon you. You are called upon to decide upon the guilt or innocence of the prisoner—and to do so upon the evidence laid before you. I take it for granted that you will do that which is required of you, and discharge from your minds, as far as possible, the remembrance of all you heard out of court on the circumstances of the case, and give your verdict alone upon the

evidence laid before you on the part of the crown and of the prisoner. The charge is one undoubtedly of great enormity. The offence is at all times of a class the most serious in the catalogue of crime; but in the case of a charge against a man for having violently and feloniously taken away the life of the partner of his bosom, the enormity of the offence is aggravated by many degrees. When I say this, I at the same time call upon you to give the most earnest, anxious, and conscientious consideration to the evidence, and the deductions you are called upon to make from it. That is the duty of every jury sworn to decide between the crown and the subject, even in the most petty case, and it is emphatically so when they are empanelled to try a case of such magnitude as the present. There is no direct positive testimony against the prisoner. No one saw or witnessed the mode in which the unfortunate deceased met her death. A mantle of mystery is spread over the subject, and you are called on to exercise your judgment on what is called circumstantial evidence; that is, evidence of facts and circumstances bearing directly on the question you are to try, the guilt or innocence of the prisoner; evidence of facts and circumstances on which you are called on naturally and necessarily to infer his guilt or innocence. If, in such a case of circumstantial evidence, you cannot in your consciences reconcile the innocence of the prisoner with the facts laid before you, with all the facts and circumstances—if you cannot reconcile his innocence with them you are bound to find him guilty. If, on the other hand, you can reconcile the facts and circumstances relied on with his innocence, you will find him not guilty. But if you are not able honestly and fairly to arrive at a conclusion on the evidence—if your minds are in a state of doubt in the matter—your duty will unquestionably be to acquit the accused. The material date to which your attention is to be fixed is the 6th September, 1852. Circumstances previous to that date, and immediately following it, which are relied on by the crown, will be also for your attention; but the 6th September is the material date for your consideration. No doubt the circumstances following the finding of the body, and the conduct and the declarations of the prisoner, are also of the greatest importance for your consideration. The evidence as to occurrences before the 6th of September, relates to circumstances not necessarily connected with the guilt or innocence of the prisoner. You have heard of the character and moral habits of living of the prisoner before the 6th of September, but there is no necessary connexion between that conduct and character, and his responsibility and liability to the charge which is the subject of the indictment. They might furnish a motive, no doubt; but recollect how difficult it is to connect a single motive with the subsequent act. I don't wish to dwell on that part of the case, and I will now bring you to the 6th of September. On that day the body of the deceased was found on a little rock, in what is called the Long Hole, on Ireland's Eye. [His lordship here pointed out the locality on a map to the jury]. The head was hanging down on one

side, and the feet on another, in a pool of water. Your first and important inquiry will be, what was the cause of death. There are some undisputed facts in the case, to which I wish to call your attention, as guides to the evidence that is more perplexed. It appeared that the prisoner and his wife lodged at Howth; there was a passage between their room and the kitchen, and Mrs. Campbell, the owner of the house, lived at the rere of their room. It appeared from her evidence that language of a very threatening character was used by the prisoner to his wife, one evening at the end of June or the beginning of July, which would lead to the conclusion that they were not living on very happy terms as man and wife. The language was not only that of unkindness, but was of a threatening nature. It might be only the language of passion, but there is evidence of treatment unbecoming any man, but especially a husband. Mrs. Campbell stated that during the first month there was disagreement between them, but she was not aware of any other subsequently; that there were some words, but not enough to lead to disagreement, and that after the first month they lived as happily as any man and wife. All that will be for your consideration. That the prisoner did not entertain a single and entire devotion of heart and affection to his wife, is beyond all doubt. How far that circumstance is material for your consideration is for you to say. This being the state of things, and being an artist fond of sketching, and she a strong woman, twenty-eight or twenty-nine years, fond of bathing, on three occasions before the 6th of September, she accompanied him to Ireland's Eye. He occupied himself in sketching, and she in bathing and walking. On the 6th of September they agreed to go to the island at ten o'clock, and return at eight. It appears there was no person on the island but themselves after four o'clock. There were injuries on her person, but none of a serious character, or sufficient to cause death. You heard the evidence of the medical gentlemen. The testimony of Dr. Hatchell is substantially the same as that of Doctors Rynd and Adams. The substance of all the medical evidence is that the cause of death was not the external injuries. The question for your consideration will be, was it an accidental death, or a designed death by a felonious hand—by the hand of the prisoner, for there was no other person there? The medical men concur in this, that there was no external cause by violence to account for her death. I don't mean what has been suggested by counsel,—putting a wet sheet or cloth to her mouth. That would leave no external mark different from suffocation or drowning. It is agreed that no violent pressure led to death, and that the external appearances would all be consistent with a person being drowned either by simple drowning or forcible immersion, by being kept under water. Dr. Hatchell went a little further; he was under the conception that the appearance of congestion would be to a greater extent developed by forcible than by simple drowning. Dr. Adams was of opinion, from the appearances suggested to him, that a distinction could not be made between

forcible and simple drowning. Therefore the cause of death is left, even by the doctors, in a state of great uncertainty. The counsel for the crown suggested that possibly the prisoner may have used a wet sheet, and while in the water put it forcibly on her mouth and nostrils, and that all the appearances on the body, external and internal, are accounted for in this mode. Counsel for the prisoner suggests that the marks on the face were the bites of crabs. Now all these are matters for your consideration. But no man should be found guilty on suspicion or conjecture. His lordship then proceeded to detail and comment upon other portions of the evidence. After adverting to the evidence given respecting the finding of a sheet under the body of the deceased, his lordship commented upon the screams that were sworn by five witnesses to have been heard from Ireland's Eye, about seven o'clock on the evening of the alleged murder. He said the witness Larkin, who was in a boat at the far side of the island from the Long Hole, heard three screams about seven o'clock, so that any person on the island must also have heard them, as the sound must have crossed the island to reach the ears of Larkin. Speaking of the evidence given by Dr. Hatchell, his lordship said he would be disposed to think that the learned counsel for the prisoner commented too severely upon that gentleman's evidence. As to the question of accidental drowning, it would be for the jury to judge whether the deceased, who was an experienced bather and an expert swimmer, could have been drowned in, or, perhaps he should rather say, out of the water, the place where she was found not having a depth of water of two feet nine inches at the time.—if she was seized with epilepsy, was she swimming at the time, in water only two feet nine inches deep? The jury would also consider, if they believed that she was seized with a fit, how her body got across the rock on which it was found, and over which there was only one foot nine inches of water. Could the tide have thrown her on that rock? They could not pass over or go beside these facts and circumstances if they were unable to reconcile them with the innocence of the prisoner; and if they were not satisfied that death was caused by violent means, they were bound to give him the benefit of their well grounded doubts. Having recapitulated various portions of the evidence, his lordship said he had now, he believed, exhausted himself and all the material facts of the case, and he would conclude by again imploring of them to recollect the solemn duty they were called on to discharge. Life and death, and an honourable reputation, were hanging on the verdict. They were under the solemn obligation of an oath, taken in the presence of the court, and in the sight of God, to find a true verdict according to the evidence. Let them then give the utmost, the most anxious, the most painful consideration to all the facts of this most extraordinary case, and let them find such a verdict as would be satisfactory to their own consciences, consistent with the solemn oath they had taken, and with the demands of justice.

The jury then (seven o'clock), returned to their room, and their

lordships left the bench. At twenty minutes before eight o'clock, their lordships resumed their seats, when

Mr. Justice Crampton directed the sheriff to summon the jury.

Having made their appearance in court,

Mr. Justice Crampton, addressing the foreman, asked him if they were likely to agree?

The Foreman—I don't think we are likely to agree.

A second Juror—There is not the most remote chance of our agreeing.

A third Juror—There is not the slightest chance of an agreement.

Mr. Justice Crampton—It will be necessary for you, in that case, gentlemen, to remain in your room during the night.

The foreman inquired what would be the latest hour at which his lordship would receive a verdict, in the event of an agreement?

Mr. Justice Crampton, after a brief conversation with some of the jury, said he would return to court at eleven o'clock, for the purpose of ascertaining if they had come to an agreement.

The jury then retired, and special constables having been sworn to prevent any communication with the jury-room, the court adjourned till eleven o'clock.

CONVICTION OF THE PRISONER.

Eleven o'Clock, p.m.

According to arrangement, Mr. Justice Crampton returned to court at eleven o'clock, to ascertain whether the jury had agreed. Even at that late hour, the building and the approaches to it were crowded with persons anxious to learn the result of the trial.

His lordship having taken his seat, the jury were called out, and the prisoner was placed at the bar.

The foreman, in reply to an inquiry from the learned judge as to whether they had agreed, stated that they had not.

Mr. Justice Crampton—Are you likely to agree?

Foreman—Upon my word, my lord, I don't think we are.

Mr. Justice Crampton—Is there any use in my remaining, in expectation of your agreeing?

Foreman—I don't know, my lord, I cannot say; but I will take the opinion of the jury again.

Another Juror said he did not think there was any likelihood of their agreeing.

Mr. Justice Crampton—If I thought you would agree to a verdict within any reasonable time, I would think it my duty to remain; but if you are not likely to agree, all I can do is to let you remain together for the night, and adjourn the court till to-morrow. Consult together again for some time, and let me know if you can agree.

The jury having conferred for a few minutes, the foreman stated that there was not any likelihood of their agreeing, and that they did not make any progress towards an agreement. One of the jurors wished to hear the evidence of Dr. Adams again.

Mr. Justice Crampton said that his note book was at home, but

if there was any portion of the evidence the juror desired to hear, he might be able to give him information upon it.

Another Juror asked, if his lordship could take the verdict at nine o'clock next morning?

Mr. Justice Crampton—If you have agreed to a verdict at that hour, I will come down to court; but if you have no question to ask now upon the evidence, you had better retire, as I can be of no assistance to you. I hope you have your great-coats.

A Juror said they wanted chairs; they had only two forms in their room, and some of them had to walk about while others sat.

The learned judge directed the sheriff to provide every accommodation for the jury, except refreshment, which the law did not allow.

A Juror asked if his lordship could state to them the evidence of Doctor Adams, as to what the appearances on the body might be caused by—whether by accidental or forcible drowning?

Mr. Justice Crampton said the evidence of the doctor was that congestion of the lungs and the other parts might arise from simple, innocent drowning, or by drowning caused by forcible immersion.

A Juror—Those appearances might be from simple drowning?

Mr. Justice Crampton—They might; and that excludes the other appearances. His evidence was substantially the same as that of Dr. Rynd and Dr. Hatchell. The appearance of the body might result from simple drowning under particular circumstances, or it might be the result of strangulation or suffocation. None of those medical men saw the body. Am I to wait now, gentlemen?

A Juror—If your lordship will be good enough to wait for five minutes more.

The jury then conferred together for a short time, and the foreman said there was a likelihood of their agreeing, and asked for a few minutes longer to consider the matter.

Mr. Justice Crampton—Very well, gentlemen, you had better retire to your room.

The jury then retired, and after an absence of about twenty minutes again came into court. The utmost desire was now evinced by those present to learn the result, and the prisoner cast an anxious and searching look up to the jurors' box, from which his fate was about to be pronounced. The most profound stillness prevailed in the court as the foreman handed down the issue paper. The names of the jury having been called over,

The Clerk of the Crown asked—Gentlemen, have you agreed to your verdict?

Foreman—Yes.

Clerk of the Crown—How say you, gentlemen, is the prisoner, William Kirwan, guilty or not? You say he is GUILTY.

The prisoner, who seemed to have up to this period entertained the hope, if not of an acquittal, at least that there would be no verdict, appeared sensibly surprised and overcome by the announcement of a verdict of guilty.

The verdict was received by the dense assemblage present with a subdued expression of feeling, which was certainly not one of disapprobation.

The Clerk of the Crown having recorded the verdict, Mr. Justice Crampton directed the prisoner to be removed till next morning.

The court then adjourned.

Friday, December 10th.

SENTENCE OF DEATH UPON THE PRISONER.

It being generally understood that sentence would be passed yesterday morning upon Mr. William Bourke Kirwan, convicted of the murder of his wife, a vast concourse of persons assembled in front of the Court-house, Green-street, at an early hour, for the purpose of securing, if possible, a favourable position within the building The doors were thrown open shortly after ten o'clock, and in a very few minutes every available space in the court was crowded to its utmost capacity. After the confusion and noise, consequent upon the efforts of those who were fortunate enough to obtain admittance, to locate themselves, had subsided, the strictest silence was observed during the entire of the solemn proceedings that ensued. The crown counsel, and the learned counsel for the prisoner, were in attendance. Several other members of the bar occupied seats in the vicinity of the table.

At a quarter before eleven o'clock, Mr. Justice Crampton and Mr. Baron Greene took their seats, and at once directed William Bourke Kirwan to be brought to the bar. In a few moments the prisoner made his appearance at the front of the dock. Great anxiety was manifested by those present to obtain a view of him. As on the previous days, he was attired in a very neat, and even elegant style. His countenance exhibited no traces of care or affliction, and his manner was perfectly composed. He was dressed in black, and wore black kid gloves.

Mr. Butt, Q.C., here rose and, addressing the court, said he believed that this was the proper time for him to make an application on behalf of the prisoner, with reference to two points which were then of considerable importance. After the conviction of a prisoner was the proper period to move to reserve questions for the decision of the Court of Criminal Appeal, and there were two questions he wished to bring under the notice of their lordships. One of those points arose with reference to what occurred on the previous evening, and the other with regard to the establishment at Sandymount. Respecting the latter point, the question he would submit was, whether the evidence of one establishment at Sandymount, and of another person passing as the prisoner's wife there, was properly received or not. He (Mr. Butt) considered the admission of that evidence illegal, and if the court felt any doubt about it, he was sure their lordships would reserve the point. The evidence he referred to was, that from 1848 to 1852 the prisoner lived with another woman at

Sandymount, and that that woman called herself Mrs. Kirwan. It was proved that a lady called to inquire for the prisoner, and was received by this female as Mrs. Kirwan, and it struck him (Mr. Butt) that such testimony was legally inadmissible, and not very fair, as calculated to give rise to a motive.

Judge Crampton—That is a matter for after consideration, but is no reason for postponing the sentence.

Mr. Butt said he was aware that it was not a reason for postponing the judgment of the court, but it was a matter worthy of consideration. The second point he had to make was this—the verdict of the jury was evidently founded on Dr. Adams's testimony.

Judge Crampton—It may have been.

Mr. Butt—There was no doubt of it. Mr. Brereton proposed to ask him had he heard the evidence of Dr. Hatchell ; and if so, to state his opinion as to the cause of death—and whether he agreed with that gentleman or not. Now, he (Mr. Butt) submitted that that was a legal question, and the court having refused to allow the witness to answer it, it might have caused a prejudice in the minds of the jury ; and on that ground he thought their lordships would feel justified in entertaining the point. The learned gentleman then in conclusion, referred to the statute, giving the court jurisdiction to reserve questions of law arising in a criminal case for the Court of Criminal Appeal, and to respite judgment, if it thought proper, in the meantime.

Judge Crampton—My learned brother Greene and I both carefully considered all these matters when they were under discussion, and we are clearly of opinion against the prisoner.

Mr. Curran—There is another matter I would wish to bring under the notice of the court. There are several authorities as to whether the examination of a prisoner can be raised against him, and it has been decided that depositions on oath cannot be admitted ; yet in this case they were admitted on behalf of the crown.

Judge Crampton—That is only applicable to a prisoner, but Mr. Kirwan was not a prisoner at the time.

Mr. Curran—We think there may be something in these points. There are a vast number of authorities on the reception of depositions.

Judge Crampton—I will take every authority you refer me to with pleasure.

Mr. Hayes inquired if it would be necessary for him to make any observation.

Mr. Justice Crampton said they did not require to hear him. They would be overturning first principles to admit that point.

The Clerk of the Crown, addressing the prisoner, then said—William Bourke Kirwan, you have been indicted for the wilful murder of your wife, Maria Kirwan, at Ireland's Eye, on the 6th September last. You have thrown yourself on God and your country, and your country has found you guilty. What have you now to say why sentence of death and execution should not be passed against you?

The Prisoner, who rested his arms on the railing in front of the dock, proceeded to speak as follows, in a very low tone, which, however, as he continued, became gradually elevated, firm, and distinct :—May I claim the indulgence of the court for a few minutes while I state some matters connected with this unfortunate affair? On the morning of the Monday in question, Mrs. Kirwan, my late wife, and myself went over to Ireland's Eye, as we had done on several occasions before in other boats besides Nangle's. We brought a bag containing some provisions for the purpose of dining on the island, as usual. Your lordship may recollect that when you were speaking of this matter to the jury, you made an observation with regard to Mrs. Kirwan's bathing dress being in the bag with the provisions. You said it was unlikely they would be in the same bag. Now, on that morning Mrs. Campbell was desired by Mrs. Kirwan to give the bag, with the bathing dress and the sheet, to Nangle's daughter. There was also a basket containing some provisions. Nangle's daughter received these things from Mrs. Campbell, and brought them down to her father, Michael Nangle, who put them into the boat. We got into the boat, but we did not proceed direct to the island, as we sailed about to accommodate the men for taking passengers. We at length arrived at the island. There are two large strands, and one smaller. Mrs. Kirwan went to bathe near the Martello tower, and while she was bathing I was walking about. After a short time she came up to me, partly dressed, and said she saw a boat advancing with another party of passengers. These men had told her they were to come with another party. She remained behind at the boat, speaking to Pat Nangle, while I was walking about with Michael Nangle. As I have stated, I was walking about when Mrs. Kirwan told me she saw a boat advancing ; the wind was direct for the island, and the boat came very rapidly over. We then walked about for some little time. After a little I proceeded to the old church and made a couple of sketches, where I remained a considerable time, Mrs. Kirwan occasionally reading and walking about. We afterwards left that, previous to the company leaving at four o'clock, after which there was a shower. Previous to that we went to another part of the island, where, under the shelter of some rocks, we partook of the dinner we had brought with us. After that I went to make a study or a sketch towards Howth. From that place Mrs. Kirwan left me, stating she would go to bathe, taking her bathing dress with her, and that she would walk round the island and meet me at the landing place. This was usual with us, we having been there on former occasions in other boats besides Nangle's. I continued at the sketch for more than a couple of hours, till it was getting duskish, which was a common thing with me. I then washed my brush and colours, and put them into my bag. I came to the landing-place and deposited it there. I saw that Mrs. Kirwan had not come according to appointment. I walked towards the high ground to see if she was coming along the hill. I called out her

name, saying the boat was coming. I then turned to the bank for the purpose of seeing if the boat was coming. I walked towards the strand ; in the meantime I saw the boat advancing. I turned back, and called out from the edge of the bank to the men. Nangle states he did not hear me, but one of his companions did. The boat advanced, I knew none of the men by name except Nangle. I called out and asked them what delayed them, to hurry and make haste. One of the men, Pat Nangle, came up and took the things off the bank, not from me, for I had them not in my hands as he stated. I still continued calling Nangle, for I did not know this man's name. The other man, Michael Nangle, whom I recognised as the proprietor of the boat, came up. I advanced a couple of steps towards him, but as he came up he said, "Where is the mistress, sir ?" I immediately told him she went to bathe after the shower, that I was looking and calling for her, and that we would go and look for her. I told the other man, who remained behind with the boat, that if Mrs. Kirwan came, she was to go to the boat, and that he was to call for us. We went along the bank, and struck inwards towards the old church. There is a great quantity of thick rank grass there, and weeds, and wild fern ; and in passing through these things I got very wet, for your lordship may be aware that thick close grass, after a shower of rain, may retain water for a long time. I had on light trousers and boots, passing through this. Previous to going to the left to the high ground, I expressed to Nangle my opinion that Mrs. Kirwan, in going over the rocks on the high ground, might have slipped and hurt herself, and that if we called out she might hear us. Nangle put up his hand to his mouth in this manner (here the prisoner described the action by putting his right hand to the right side of his mouth), and gave a loud halloo ; we waited a second or two to hear if there was any response. I called out loudly for Mrs. Kirwan by her Christian name—not lowly, but loudly ; he (Nangle) called too. When we got on a line with the larger strand, I told him to call out a second time. He did so ; there was no answer. I still occasionally called, "Maria Kirwan." We went to the old church, over where the land is flat, to where there is a hill that shuts you out entirely from Howth ; you cannot see Howth at all. We shouted again, and there was no response. We went again into the Long Hole, as it is called, as far as the water would permit us ; we looked narrowly and closely, and could see nothing. I then suggested to this man that we would go round back, and see if Mrs. Kirwan might have hurt herself, and was delayed by it. At that time we heard the cries of Pat Nangle from the bank. Pat Nangle states he did not hear Michael Nangle answer his cries, but Michael Nangle did answer his cries. I told Michael Nangle to answer, and expressed my gratification that Mrs. Kirwan, I was sure, had come to the boat——

Mr. Justice Crampton—I am sorry to interrupt you at this painful moment, and you must be well aware that your counsel entered into all these subjects. It is impossible for me now to go into the evidence.

The Prisoner—I beg your pardon, my lord, for the interruption. I consider myself to be a doomed person from the trial that has taken place, and the sentence about to be passed; and I state these matters as well out of regard for my own memory as for the sake of those friends who have been with me, who know my character from childhood, who know my innocence, and who feel it yet as I do. If your lordship be willing, I will proceed—if not I will stop.

Mr. Justice Crampton—If you wish to add anything you may do so.

The Prisoner—I have only to state with regard to the provisions being found, there being no evidence on the subject. Mr. Sergeant Sherwood was one who had charge of the bag, and he was not asked about it. The coroner also knew of it, but he was not asked about it, and therefore he did not state what he knew. My sketch-book was examined by the jury—it was produced for them.

Mr. Justice Crampton then proceeded to pass sentence on the prisoner. The learned judge, who seemed deeply affected, and spoke in a low tone of impressive solemnity, said—William Bourke Kirwan, it becomes now my very painful duty to pronounce upon you the sentence necessarily consequent on the crime of which you have been convicted. That crime is murder—a crime denounced both by human and Divine law as the most heinous crime that man can commit against his fellow-man. Your case has been most patiently and deliberately investigated. You have been tried before a very intelligent, and, I believe, a very impartial jury, and you have had the aid of some of the ablest and most eloquent counsel at our bar; and the result has been that after a very mature, protracted, and deliberate investigation, that jury has found you guilty of the murder charged in the indictment under which you were tried. Upon that verdict it is not in my province to pronounce any opinion; but after what has been said, I cannot help adding this observation, that I can see no reason or grounds to be dissatisfied with it; and in saying this, I speak the sentiments of my learned brother who sits beside me as well as my own. Now, William Bourke Kirwan, according to the evidence and the finding of the jury, yours is not an ordinary murder—great as the guilt of murder always must be. You raised not your hand in daring vengeance against a man from whom you had received, or thought you had received, injury, provocation, or insult; but you raised your hand against a female—a helpless, unprotected female—one who, by the laws of God and man, was entitled to your protection even at the hazard of your life, and to your affectionate guardianship. That victim was the wife of your own bosom. In the solitude of that rocky island, to which you brought her on that fatal 6th of September, under the veil of approaching night, where there was no hand to stay and no human eye to see your guilt, you perpetrated this terrible—this unnatural crime. And what was your motive? It appears that for years you had been leading an immoral, profligate life. You were living with a female who was not your wife, by whom you had a large family;

and thus circumstanced, it would appear, you married the unhappy lady whose death you no doubt now deeply regret. You gave her the title and character of your wife, whilst you continued to give to the partner of your illicit connexion which I have alluded to, the affections, the rights, and the duties which you owed to your lawful wife. I have been looking for a motive for the unnatural act which you, by the verdict of the jury, have been found to have perpetrated. Embarrassed you may have been by the painful predicament in which you have placed yourself under this double engagement, and you seem to have resolved to extricate yourself by a desperate crime. Instead of dismissing the mistress and providing for her as well as you could, you appear to have meditated the destruction of the wife. You took lodgings at Howth, and, according to the evidence, during the first month of your sojourn there you treated your wife with rudeness, cruelty, and on one occasion made use of threatening language—threatening her life. In a moment of excitement and passion you did so threaten her life. It does appear, certainly, from the evidence, that after the first month of that sojourn you appear to have treated your wife more kindly, and lived with her on better terms than you had done before. You were by profession an artist. It appears that your wife was passionately fond of bathing, and she had opportunities at Howth of indulging in it. Frequently you visited in company with her a little island—Ireland's Eye—a mile from the main land. On three occasions before the 6th of September, you and she appear to have gone together, returning late at night, having spent the day—you in sketching, and she in amusing herself; and on this fatal 6th of September you and she paid your last visit to that island; and on that day it was, and under circumstances wrapped up, no doubt, in great mystery, the unfortunate lady was deprived of life. She was in the prime of her years; she was in sound health; and suddenly her life was cut short. No human eye could see how the act was done—none but your own conscience and the all-seeing eye of Providence could develop this mysterious transaction; but the verdict of the jury has established that by some means or other—by violence, and after a struggle, your unfortunate, unhappy wife, became the victim of your cruelty and vengeance. Now, I shall not enter further into any detail upon this matter, nor did I state what I have stated with any view to inflict pain upon you. I feel for the painful predicament in which a gentleman of your condition, of your education, and of your habits, now stands. What I have stated I stated for two purposes. First, for the purpose of public edification. Let the young take warning from the subject to which I have been referring—the cause which has led to your now degraded and painful position. Let them beware of forming immoral engagements, and of entering into profligate courses. The steps of crime are very gradual—there is not much descent from one step to another, and the first leads naturally to the second, and so on until the last fatal step which has placed you where you are. I also allude to these circumstances in the hope—it may be vain that I

should do so, but I sincerely trust it may not be a vain expectation —that, during the brief interval which must remain for your painful sojourn on this earth, you may withdraw your mind and affections from secular affairs, from worldly objects, and fix them upon that which is the proper subject for every man's most serious consideration —the awful subject of judgment to come. I cannot hold out to you one ray of hope of pardon on this side of the grave. The die is cast, and I fear it is against you, and cannot be reversed. Consolations you can have none now. Henceforth you can have but the consolations of religion. Hope you can have none now, but the hope of pardon and salvation through the sacrifice and merits of an all-loving Saviour. No human being can be saved but through that Saviour, and through faith in his atonement and his merits—not even the most virtuous man that lives; and, thanks be to God, we know upon authority that cannot err, that the door of that Saviour's mercy is not shut against the greatest sinner that ever lived. The blood of Christ can cleanse from all sin. Though your sins be as scarlet, through him they will become as white as snow. He calls upon all men to come to him, and his special call is to sinners. Listen, I implore of you to that call. I entreat of you, to turn your thoughts to those solemn and sacred subjects. There will be an interval for humiliation, for repentance, for contrition, for reconcilement to your God. He is the way, the truth, and the life; through him only can any man be saved, and through him you may not only be saved but you may have a crown of eternal glory prepared for you hereafter. Do not, I implore of you, consider what I am now saying as words of course, or matters of mere official duty. I speak as one who feels what he says—as one who is convinced that your eternal happiness or misery will depend upon what passes in your soul during the short period that is now left to you on this earth. Do, then, cast yourself on that Saviour—keep your thoughts and mind fixed upon him—embrace him in your love—have confidence in his mercy as in his power; and it yet may be well with you, as it has been with some who have at the eleventh hour repented and believed in their Saviour. Having said so much, it now remains for me to pronounce upon you the last awful and solemn words of the sentence fixed by the law. [Here his lordship assumed the black cap, which caused a shudder to pass through the crowded court]. That sentence is, that you, William Bourke Kirwan, be taken from the place where you now stand to the place from which you came, the jail, and that from thence you be taken to the place of execution, the gallows, and that you be there hanged by the neck until you be dead, and that your body be buried within the precincts of the prison in which you are now confined. And oh! may the Lord have mercy upon your soul (great sensation).

During the delivery of this solemn and deeply impressive address the prisoner continued leaning upon the bar in front of the dock, looking intently at the learned judge, and preserving a firm, calm, collected demeanour; but when his lordship pronounced the words

" and that your body be buried within the precincts of the prison," he appeared to be for a moment overcome, his pent-up feelings gave way, and, dropping his head between his hands, he gave utterance to a low suppressed moan expressive of the deepest anguish of mind. He speedily, however, recovered his self-possession, and, after making some remarks to one of the turnkeys who was with him in the dock (apparently with a view of learning whether he would be permitted again to address the court) said in a clear and firm voice :—

" Convinced as I am that my hopes in this world are at an end, I do most solemnly declare, in the presence of this court, and of that God before whom I expect soon to stand, that I had neither hand, act, nor part in, or knowledge of, my late wife's death ; and, I will state further, that I never treated her unkindly, as her own mother can testify."

The prisoner was then removed from the dock, and was shortly afterwards conveyed to Kilmainham Jail in a covered car, escorted by a party of mounted police.

APPENDIX II.

DEPOSITIONS AND DECLARATIONS ILLUSTRATIVE OF THE EVIDENCE ON THE TRIAL OF MR. KIRWAN.

No. 1.

MARIA CROWE, of No. 88, Lower Gardiner-street, in the city of Dublin, relict of Lieutenant James Crowe, of the Second West India Batallion, the mother of Sarah Maria Kirwan, late the wife of William B. Kirwan, Esq. the prisoner in this case, maketh oath and sayeth : That her said daughter was married to the said W. B. Kirwan, with the full consent and approbation of Deponent, on the 20th of October, 1840, in the parish church of Rathfarnham, near Dublin. This Deponent, during the eleven years and upwards, and after the period since elapsed to the decease of Deponent's said daughter, [she, this Deponent, had] save when prevented by intervening indisposition, had constant and most affectionate intercourse with her said daughter, with the full knowledge, approbation, and consent of her said daughter's said husband, the said William B. Kirwan. And Deponent saith, that during such intercourse and conversation, the circumstances, and health, and treatment of her said daughter and of her said husband towards her, occasionally formed the subject of their discourse ; and Deponent positively saith that on all occasions save one, said Deponent's said daughter invariably stated to Deponent, and which she, Deponent, believed and

still believes to be true, *that there could not be a more industrious, sober, or quiet husband than said William B. Kirwan was towards her said daughter.* And Deponent saith, that having ample opportunities of judging from this Deponent's usual habit of visiting and being visited by her, Deponent's, said daughter, at least once in each week, and frequently oftener, that she, Deponent's said daughter, *had the full, comfortable, and respectable supply of her every want and desire, and was never without money in her purse, supplied to her by her said husband* for the purchase of dress, and of every article of comfort and respectability suited to her rank and station in society. This Deponent further saith, that her said daughter had from her childhood been used to sea-bathing, which she was fond of, and which she was recommended to take as necessary for the preservation of her good health. This Deponent further saith, that from her said daughter's habit of bathing she became very venturesome in the water, going into the deep parts of the sea, and sometimes continuing therein for a much longer period than other ladies there bathing; and Deponent often reproved her said daughter for such habits, and frequently expressed to her said daughter her fears lest her continuing to observe such practice might prove injurious to her health, or other bad results; but which advice her said daughter heedlessly attended to. This Deponent saith, that she knows that her said daughter continued, up to the time of her melancholy death by accidental drowning, to bathe in the sea at or near Howth, where she unfortunately met her death. This Deponent further saith, that her said daughter was of the same religious persuasion as Deponent; and Deponent saith that said William Kirwan never, within the past five years, as Deponent heard or believes, interfered with his said wife in continuing in and attending to her own religious belief, or of attending her own place of worship; but on the contrary, Deponent's said daughter used to publicly, and with the full knowledge and consent of her said husband, accompany Deponent to the house of worship for Deponent's said religious denomination, same being Roman Catholic. This Deponent further saith, that she has heard read to her the copy of an information made or purporting to have been made in this case by one Maria Byrne, stating herself of Lower Merrion-street, Dublin, on the 21st day of September, 1852; and Deponent saith, that for the reasons hereinbeforementioned, and for those hereinaftermentioned, Deponent does not believe it to be true as in said Maria Byrne's information stated, that Deponent's said daughter had the conversation with the said Maria Byrne, on her, said Maria Byrne's, information deposed; for Deponent positively saith, that it is wholly false and unfounded in fact that she, Deponent, was present at any such conversation as that detailed in her, said Maria Byrne's, informations stated, viz., that said Mrs. Kirwan said to her, said Maria Byrne, that she would leave her death on her husband, whose intention she had no doubt of was to poison her; or that she, Deponent's said daughter, would have her said husband, the said

William Kirwan, tried for his life, or any words or conversation of that or the like nature or effect, as that so untruly deposed to by said Maria Byrne. This Deponent further saith, that she has no doubt upon her mind that her said daughter did not entertain any such opinion of her said husband, nor was she, as Deponent verily believes, in any way apprehensive of meeting any improper or unkind treatment at his hands; but on the contrary, Deponent verily believes she entertained feelings of quite the opposite nature as regards said William B. Kirwan, as did Deponent, as an industrious husband, and in every way a correct and respectable man. This Deponent further saith, that her said daughter used to complain frequently to Deponent of want of sleep during the hours of night; and Deponent has a perfect recollection that her said daughter mentioned to her that, whilst she was paying a visit to her aunt and other relatives, at the residence of her cousin, Mr. Thomas Harrison, jun., attorney-at-law, in Parliament-street, Dublin, she there met his first cousin, with whom for years previously she had been acquainted, Mr. Charles Harrison, who had for several years been conducting business as an assistant in a respectable medical establishment, having served his apprenticeship to the apothecary profession; *and that she, Deponent's said daughter, mentioned to said Mr. Charles Harrison that she did not get sleep during the hours of night, and asked of him a cure, and he advised her to take a small quantity of the tincture of henbane*, and which Deponent has since learned, on enquiry at five most respectable establishments in Dublin, is a proper and general medicine to be administered in such cases to promote sleep, and that she, Deponent's said daughter, would likely obtain composed rest. This Deponent saith, *that her said daughter subsequently informed her, Deponent, that she had purchased the said tincture and had used it in large quantities.* This Deponent further saith, that on or about the month of January last, she, Deponent, had a conversation with said Maria Byrne, who spoke in the most derogatory and vindictive language of Deponent's son-in-law, the said William Kirwan, and on this occasion spoke thus: "Bloody Billy," (alluding to said William Kirwan), "and Hodges and Smith murdered my husband," alluding to the husband of the said Maria Byrne, "and I, (meaning the said Maria Byrne,) wlll bring an action against them;" upon which Deponent enquired of said Mrs. Byrne whom she meant by "bloody Billy," to which said Mrs. Byrne replied, "I mean your son-in-law, bloody Billy Kirwan;" Deponent then observed to said Mrs. Byrne that she ought to be cautious in the use of her language, as if Mr. Kirwan, who had proved himself a good and kind husband, was present, or if Deponent narrated such observations of said Mrs. Byrne to him, he would certainly bring an action against said Mrs. Byrne for defaming his character. This Deponent further saith, that having, on or about the thirteenth day of January last, learned that Mr. Byrne was in hospital, Deponent went to the residence of said Mr. Byrne to ascertain the fact; on that occasion Deponent saw the said Maria

Byrne, who introduced Deponent to a room where was laid out tobacco, etc., said Mrs. Maria Byrne observing at the moment, "Mrs. Crowe, here is a wake, but no dead man." Mrs. Byrne then stated that her said husband had died in hospital, but that she knew nothing about him for three months before his death. This Deponent further saith, that she entertains no doubt whatsoever on her mind but that said Mrs. Byrne has been actuated by base, malicious, revengeful, hostile, and unworthy motives towards the said William Kirwan, the more particularly from the aforesaid untruths so set forth in the information of her, said Maria Byrne, in this case; for this Deponent further most positively saith, that it is wholly untrue and unfounded in fact that the said William B. Kirwan, or any other person, made away with Deponent's son, or any other member of her family, under any suspicious circumstances whatsoever; and Deponent saith, that the only other member of her family with or over whom said William B. Kirwan had any intimacy or influence was Deponent's son, alluded to in said information of said Mrs. Maria Byrne; who of his own free will and accord, and for the hope of bettering his condition in life, had, with the knowledge of Deponent and of all his friends, emigrated to America, and to whom said William B. Kirwan had acted in a very good-natured manner; and Deponent saith, that since the departure of her said son, and after the receival of correspondence from him, said William Kirwan contributed money for his advancement. This Deponent saith, that as regarded the conduct of the said William B. Kirwan towards his own parents, Deponent can from her knowledge, information from her said daughter, and belief, depose that he always acted the part of a dutiful and affectionate son. This Deponent further saith, that in pursuance of notice to that effect, *Deponent attended on three several days at the office of Messrs. Kemmis, Crown Solicitors, and there detailed all the important facts in this affidavit set forth, which was noted by a gentleman in their office; nevertheless Deponent was not called upon or examined, though in attendance for that purpose, before the gentlemen of the Grand Jury*, on the investigation by them in relation to the finding by them of the bill of indictment in this case.

MARIA CROWE.

Sworn before me, this 8th day of November, 1852,
in the Court of Queen's Bench,
PIERCE MAHONY, *Clerk of the Crown.*

No. II.

I, MARGARET CAROLINE BENTLEY, wife of Robert Bentley of Peter-street, in the City of Dublin, Solicitor, do solemnly and sincerely declare, that *I was, from her infancy, on most intimate terms with Mrs. Sarah Maria Louisa Kirwan*, otherwise Crowe, late of Upper Merrion-street, in the City of Dublin, deceased. That it was with the greatest astonishment I have read in reports of the

trial of Mr. William Bourke Kirwan, that his wife, the late Mrs. Kirwan, until within a few months of her death, was unaware of her husband's connection with a woman named Kenny; that *to my knowledge, as well as that of several members of her family, the late Mrs. Kirwan was fully acquainted thereof before the expiration of one month after her marriage, now more than twelve years ago;* that such was in course of conversation frequently alluded to by her, and I often was surprised she *exhibited so little excitement or emotion on the subject.* I never knew of her to have acted otherwise than for a short period some years ago, when she told me she was influenced and instigated by a person called Mrs. Byrne, to quarrel with Mr. Kirwan about it; although she had been in the habit of visiting me two days in each week for many years since her marriage; and that when she ceased to allow this Mrs. Byrne to call on her, her former peace of mind and calmness of feeling returned and continued; and I perfectly recollect Mrs. Kirwan calling on me and asking me to congratulate her on having given up the acquaintance of this person, who, she stated, intruded herself on her whenever Mr. Kirwan was absent, and whose conversation she assured me was not alone calculated to pollute her mind, but to estrange, exasperate, and excite her against her husband, and which, she stated, appeared to her to be the principal object in forcing her acquaintance upon her. I further solemnly declare, I never saw Mr. William Bourke Kirwan, or spoke to him, except on five occasions, and that *Mrs. Kirwan invariably stated to me, that a more quiet, gentle, good-natured or generous-hearted man never existed. She also frequently spoke of his tenderness, attention, and kindness to her when sick, and spoke of the fact of his intimacy with Miss Kenny as the only fault of his character. That about two years and nine months ago, Mrs. Kirwan told me she had been quite suddenly attacked with a trembling of her entire frame, her knees knocked violently together, her teeth became clenched, she lost all power to move,* so that if even a fire burst out about her in her room (as she expressed it), she could not stir; and when she recovered, she stated she was unconscious of how long she had remained in that state. *That subsequently she told me that on Mr. Kirwan's going into the bed-room, he found her suffering under a similar attack,* and he was just in time to catch her in his arms before she fell from her chair to the floor; that for years before, and long after these attacks, she *constantly complained of giddiness and pains in her head, accompanied with violent flushings in her face,* on which account on hearing of her melancholy, sudden and regretted death, when I recalled these circumstances to my mind, I did not feel at all so shocked or surprised as I would otherwise have felt. And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of an Act made and passed in the session of Parliament of the fifth and sixth years of the reign of his late Majesty King William the Fourth, intituled, "An Act to repeal an Act of the present session of Parliament, intituled, An Act for the more effectual abolition of

Oaths and Affirmations taken and made in various departments of the State, and to substitute Declarations in lieu thereof, and for the more entire suppression of voluntary and extrajudicial oaths and affidavits, and to make other provisions for the abolition of unnecessary oaths;" and I make this declaration at the instance and request of my husband, Robert Bentley, and as an act of justice.

MARGARET CAROLINE BENTLEY.

Declared at Dublin, the 22nd day of December, 1852.
GEORGE HOYTE, J.P.

No. III.

I, MARGARET CAMPBELL, of Howth, in the County of Dublin, widow, do solemnly and sincerely declare that William Bourke Kirwan and his wife, lately deceased, took lodgings at my house in Howth, on or about the fifteenth of June last. I say that I am not certain what time they came there, but it was about a fortnight before St. John's Eve, the twenty-fourth of June last, for I recollect the late Mrs. Kirwan taking my little daughter to see the bonfire lit on the hill on that evening, aud they, Mr. and Mrs. Kirwan, were stopping with me about a fortnight before that time. Mr. and Mrs. Kirwan came to me on a Wednesday, and agreed with me to be out on the Saturday following; they did not come on the Saturday, but were at my house on the next day, Sunday, when I came back from church. *They took lodgings from me by the week, and Mrs. Kirwan used always to pay me on a Saturday.* Mrs. Kirwan and Mr. Kirwan both told me at the time they came to me that *they would stop till November.* Mrs. Kirwan told me they would pay monthly, or quarterly, or whatever way I would wish; *I preferred getting payment by the week, and I was so paid.* I recollect Mrs. Kirwan, some time before her death, asking me to kill a goose for her; I tried one, but they were not fit; and Mrs. Kirwan, some time after, told me to fatten one for her, and she would have it killed for Michaelmas dinner.

I recollect the night that the body of Mrs. Kirwan was brought in from Ireland's Eye. *The body was rolled in a sail, tied up in a sheet;* the sheet was taken off the body and thrown in a corner of the room; I took it up immediately thereafter, and had it in my hand. It was wet, but not wringing wet; *it was not wet as if it had been dragged in the sea;* there were a few small spots of blood on it; I threw it down again, and it remained there till it went to the wash. I say that Mr. Kirwan came up out of the room where the body was taken out of the sail, and asked me to see that his wife's body was washed. I told him I would, but after he went into the kitchen, I said to the policeman who was standing by, that I

thought it was not allowed to wash the body; I thought I had better wait till I saw the sergeant; and the policeman told me he did not think there was any occasion to wait for him, which I understood as giving liberty to me to wash the body. I then called the women out of the kitchen into the room where the body was, and got them to wash it. *The policeman was standing by when I called the women and told them to wash the body, and said nothing.*

Before the women washed the body, I gave them a drop of spirits. After the body was washed, Mr. Kirwan himself desired me to give the women some spirits out of what he had in the house; Mr. Kirwan did not know that I had previously given them any. The women were Mrs. Lacy and Catherine M'Garr, and Mrs. Robinson held the candle. After these women washed the body, they made no remark in my hearing that they thought violence had been used. *Mrs. Lacy was present at the inquest, and a son of hers, Jem Lacy, was on the Coroner's Jury.*

I say that after the body was washed, and the people gone away, (all but those who washed the body and some others, and two policemen,) *Mr. Kirwan was in the room with Mrs. Kirwan for a long time;* he was then walking about the room for some time, and sitting by the bed-side where the body lay. *He was very much affected during that time; I saw him crying, and he had his elbow on the pillow where the head of the body lay, with his handkerchief up to his eyes.*

I say that on the Thursday and Friday before Mrs. Kirwan's death, she and her husband went to Ireland's Eye, and that they did not return home on those two occasions till about nine o'clock in the evening.

I say that Mrs. Kirwan was in the habit of taking herbs; she used to use comfrie root and mountain sage; she brought some comfrie root to Howth with her, and after it was out she got some out of my garden. She dropped taking the comfrie root, and used mountain sage. A month before her death she ceased taking herbs; she threw out a jug-full of the mountain sage juice, as she said she thought it was making her sick and heavy. And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of an Act made and passed in the sixth year of the reign of his late Majesty, (5th and 6th Wm. IV. c. 62.) intituled "An Act to repeal an Act of the present session of Parliament, intituled, An Act for the more effectual abolition of Oaths and Affirmations taken and made in various departments of the State, and to substitute Declarations in lieu thereof, and for the more entire suppression of voluntary and extra-judicial oaths and affidavits, and to make other provisions for the abolition of unnecessary oaths;" and I make this declaration for Mr. Kirwan's benefit.

MARGARET CAMPBELL.

Made and subscribed before me this 27th day of December, 1852.

GEORGE HOYTE, J.P.,

No. IV.

STATEMENT OF ALEXANDER BOYD, OF 52, GRANBY-ROW, FOREMAN OF THE CORONER'S JURY.

I resided at Howth from midsummer till the latter end of October, 1852.

I was in Howth on the 6th of September last. On the morning of the 7th September, I heard from a gentleman, who was going to Dublin in the train, of "*the awful murder*" which had occurred at Ireland's Eye the night before; how that Mrs. Kirwan was found tied up in a sheet in the sea, and that Mr. Kirwan and herself were the only persons on the island. About eleven o'clock, on the 7th September, one of the police called on and requested me to attend the Coroner's Inquest; this I did. Two of my brothers accompanied me and were on the jury.

The inquest commenced at about one o'clock, and lasted until near four o'clock.

The inquiry commenced by the jury viewing the body, which was laid on a bed in Mrs. Campbell's house, where Mr. Kirwan and his wife had lodged. The body was covered with a sheet which the Coroner threw off, and it appeared naked, except the head, on which was a lady's night cap, which was not removed by us. I examined the body carefully as it lay, but did not see the back; it was lying on the back. I never saw a cleaner or fairer skinned person; *there were no bruises whatever on it; or marks produced by blows or pressure.* The colour of the skin was one and the same throughout, except a scratch on the right temple, such as I have often got on my knees when bathing in coming out of the water on a rocky shore; the eyelids were disfigured; they appeared to me as if one used a blunt pincers and pressed or pinched the tender skin under the eye completely off; the skin, in fact, appeared to have been nibbled off; there were marks on the ears like one or two of the same nibbles; the skin just cut and no more; the nipples of the breasts were cut in the same way; the left more than the right breast; there was also one slight pinch of the same kind on the inside tender part of the left thigh; there was no redness or inflammation round any of those marks. There was a blackness along the side, near the back, but it appeared to be under the skin and not to be occasioned by violence, as it had all the same appearance, and the skin was not at all irritated. The Coroner said the marks about the eyes were occasioned by the crabs, *and the blackness about the back was the settling down of the blood, but that the medical man would explain.* There was also some blood in the inside of the ears; *a little froth also appeared at the mouth; the stomach seemed swollen* for a person who lay on her back as the body was; and the Coroner said, judging from the appearance of the breasts, the woman seemed to be "in the family way;" a watery substance oozed from the breasts.

There were no scratches of finger nails on the face or any other part of the body.

The inquiry then commenced—

The first witness examined was Patrick Nangle—He was sworn, and stated that he had been employed by Mrs. Kirwan to take her and her husband over to "the Eye," on the morning of the 6th of September; that they left about ten o'clock in the morning, and that they landed the two (Mr. and Mrs. Kirwan) on the island, near the Martello Tower. Pat Nangle stated that there were three boatmen in the boat besides himself. Michael Nangle, himself, and two others, made the crew. Pat said that Michael and he alone knew of the transaction; that the others knew nothing, as they did not leave the boat; the other two were present when this was said. Pat Nangle stated that on leaving Mr. and Mrs. Kirwan on the island, they directed him not to go back for them till eight o'clock in the evening. He also stated that Mr. Kirwan had a leather travelling bag with him. *This leather bag the Coroner's Jury required to be produced. There was in it a shank of ham, part of which had been recently cut off; a piece of brown bread, two or three plates, which were dirty from use, and some knives and forks which appeared also to have been used.* There was also a pint bottle, empty.

The contents of this bag seem not to have been known on the late trial.

Pat Nangle stated that he had put a party over to the island in the middle of the day of the 6th, and had brought them back about four o'clock. This was Mr. Brew and his family; Mr. Brew was examined on the inquest, and afterwards on the trial.

There were several other parties over on the island on that day

Pat Nangle stated that he and his crew went over to the island in the evening at eight o'clock as desired; that they approached the land near the tower. Pat said he had appointed that place for meeting Mr. Kirwan and his wife, as being the best landing place for the state of the tide at that hour. He (Nangle) did not see Mr. Kirwan, and called him, when Mr. Kirwan answered. Mr. Kirwan was standing on the bank, which is high and rocky at that part, holding the leather bag before mentioned and his cloak in his hand.

The boat reached the land, and Mr. Kirwan called one of them to come up and take his bag. Pat Nangle then went up for his bag, and got it and the cloak, and brought them to the boat. Pat stated that when he was going up for the bag, *Michael Nangle, who was below at the boat, asked Mr. Kirwan, who was standing above, "Where is the Misses?"* that Mr. Kirwan said she had gone from him about an hour and a half ago, and that he had not seen her, *that he had been looking for her up there (pointing up the hill) and had not found her.*

Pat Nangle then detailed the fact of Michael Nangle getting up the bank when the conversation was going on, and that Mr. Kirwan and Michael went to look for Mrs. Kirwan.

Pat Nangle said that Mr. Kirwan and Michael, when making the search for Mrs. Kirwan, shouted frequently; he said that Mr. Kirwan and Michael returned, and said they could not find the lady; that then Mr. Kirwan, he, and Michael, went together in the same direction looking for Mrs. Kirwan, and "kept hailing" as they went. They went on, taking different tracks till they came to the "Long Hole," which they passed by, and examined the "Broad Patch" first; that Mr. Kirwan went very near the edge of the bank of the Broad Patch over the Long Hole, and he (Pat) cautioned him not to do so. This was after they had gone round the whole shore of the Patch next the sea.

Pat said they found nothing on the Patch, and they all went into the Long Hole; he went first, the others followed. Pat said he saw something white, and he went to it, *and he put his hand on the body and said, "Here she is." Mr. Kirwan then came and threw himself on the body*, and cried, "O Maria! Maria!" and then told them to go look for the clothes. *Pat said there was a sheet partly under the body when first he saw it; that the body was lying stretched, with the head jambed between two rocks, and the feet in a pool of water.*

When Pat spoke about the sheet, Michael Nangle (who had been present from the beginning of the inquest,) interrupted him and said, "No, the gentleman brought the sheet;" then Mr. Kirwan said, "The man (Pat) is astray; he mistakes; the other man tells the true way of it." The Coroner told Michael to say nothing for the present till Pat was done, then he would be examined. Then, Michael, much excited, said to Pat, "do you tell your way of it, when it comes to my turn I will say what I know," or some words of that meaning. *This was the only interruption that Pat Nangle got on the whole inquiry.* He did not tell the truth when on the trial; he said "he was put back, and the other man brought forward by Mr. Kirwan's direction." Every opportunity was given to him to explain fully everything, and he was frequently questioned, and often, as he proceeded, he appealed to me, as he knew that I was acquainted with all the localities. After this interruption, Pat said he went, as he was desired, with Michael, to look for the clothes, and could not find them. He did not say, as he said on the trial, that he got up the rock, where they afterwards were found, to look for them; he said he went up the Hole, and then came back and said he could not find them. He then said Mr. Kirwan got up, and went up the rock, and found them; and when he was coming down, he (Mr. Kirwan) fell and lay for some time. Pat said to Michael or Michael to Pat, (I don't recollect which,) "The gentleman is hurt; I hope we won't have to take a second corpse home with us," or something to that effect; that Mr. Kirwan, after a while, got up and went to the body, and he (Pat) and Michael went off to bring the boat. They brought the boat about ten o'clock, and got the body wrapped up in the sheet, and brought it and Mr. Kirwan to Howth. Nothing was said of the sail at the inquest. The body was landed at Howth and brought on a cart to Mrs. Campbell's.

Pat Nangle stated that when he found the body there was no covering on it but a bathing dress and boots, and the bathing dress was up under the arm-pits, leaving the body naked, and that he pulled it down over the limbs.

When the fact of the boots being on was mentioned, I asked what sort of boots, and to have them produced; they were accordingly produced and identified as those which had been found on the body. The boots were lady's black cloth boots, which seemed to be much worn; the cloth was worn off altogether round the edge of the sole in many places. They opened in front, and on either side of the front was sewed on a piece of white tape, which was for the purpose of fastening the boot on by tying in front.

Pat Nangle was also particularly questioned as to any other article which Mr. and Mrs. Kirwan had with them on the island. *He said nothing of Mr. Kirwan's stick; but he stated that Mrs. Kirwan had a small basket with her. The jury required this basket to be produced, and it was accordingly produced by the police;* it was a net-work cord basket, such as is used by ladies. Pat Nangle stated the basket was got beside the lady's clothes, and it was brought over with them. On examination, *its contents were—in the bottom a large shawl pin, a pair of garters laid together, and a pair of lady's stockings on the top, drawn carelessly inside one another.*

Pat Nangle was also asked particularly as to what Mr. Kirwan said about his wife's absence; and he told us that Mr. Kirwan gave them to understand that Mrs. Kirwan had left him about six o'clock, after the heavy shower, with the intention of bathing, (there was on that evening a very heavy shower, which ceased about six o'clock,) and that she had gone in the direction of the strand or east side of the island. *He said that about half-past six, the time when she might be supposed to be bathing, it was half tide, and that at the place where the body lay, there would be at that time about five or six feet of water.* From my knowledge of that place, and from subsequent observations, I would say that at six and a-half o'clock on that evening, the height of the water where the body lay was about five feet.

I should say that I have been living at Howth for the last seven or eight summers; that I have a small boat or yawl, not quite so large as Nangle's, and that I and my brothers have been seldom a week at Howth in the summer months without going round the island, and running our boat in at various places. I never, as I recollect, ran the boat into the "Long Hole," but I have frequently been in it at high and low water, and knew the place well before the 6th of September, and have visited it frequently since. It would not be a good place for a person who could swim to bathe in, as there is not room enough in it for swimming so as to avoid the rocks. But for a person who could not swim, as I have been informed, and believe, Mrs. Kirwan could not, there could not be a more inviting or tempting place for bathing, and Pat Nangle has said so, and that ladies did bathe there.

In reference to the statement of Patrick Nangle at the trial, that the body was found lying across the rock, I state that he told me that the body lay at the land side or shore side of that rock, and not on it; at the inquest he stated that the head was jambed between two rocks, as it would be lying at the shore side of the rock; but not so, if it were lying across the rock. Since the inquest I went with him, when he was on the island with Dr. Hatchell and others, and got him to show me the position of the body; *he then said the body lay at the shore side of the rock, and it was that which prevented its being washed out to sea.* When Pat Nangle was with me at the period just alluded to, he shewed me low water mark, which was at the other side of the rock where the body lay, and almost on a level with its base. That rock is more than two feet high from the bed of the Long Hole; near it, and where it touches the cliff on one side, it is considerably higher. I would say that next the cliff, it is fully three feet higher than the bed of the Long Hole.

After Pat Nangle showed me low water mark, I asked him to point out to me the high water mark, and he (Nangle) got upon the rock before mentioned, called on the trial "the body rock," and reached up as far as he could, and with his hand stretched above his head touched the cliff above, and said "the high water mark is there."

The next witness examined by the Coroner's Jury was Michael Nangle. He agreed generally with the account given by Patrick Nangle, and corroborated it. He said, when he and Mr. Kirwan were at the Long Hole first, they could not go down into it, for the tide had not left it. Michael stated on the trial that when the boat went for Mr. and Mrs. Kirwan, and before he (Michael) asked "where was the Mistress," Mr. Kirwan "had made two or three steps to the bank to go down." This statement, he (Michael) did not make before the Coroner. The saying of Mr. Kirwan, and which Michael stated before the Coroner, that when asked where was the Mistress, *he said "he was in trouble; that she had gone from him to bathe an hour and a half ago, and had not returned, and that he could not find her, though he looked for her up the hill—"* this statement Michael Nangle omitted at the trial.

Mr. Kirwan's statement before the Coroner was—"that he wished to sketch the evening appearance towards Dublin, and that Mrs. Kirwan went to bathe; that she said she would after bathing go up the hill, and try and get the large deer on the island to come to her, and would go round and be down with him for the boat." After Mr. Kirwan stated this, the Jury called for the sketch-book, and made Mr. Kirwan shew what he had been doing; and he did shew a sunset or evening sketch of the country towards and beyond Dublin from Ireland's Eye. He could not have made this sketch unless he were near the Martello Tower. Mr. Kirwan must have been occupied fully an hour in making the sketch. It was a sketch in water colors.

In respect to the sheet being under the body, upon which so much stress was laid at the trial, Michael Nangle positively stated before the Coroner that no sheet was under the body, and he as positively—more positively indeed—asserted that Mr. Kirwan, when he went for the clothes, brought the *sheet* with a shawl down with him, and wrapped the body in it. This fact I state without fear of contradiction; it was the great fact discussed at the time of the Coroner's Jury, *and the difference in the testimony was commented on by all.* Mr. Kirwan asserted at the inquest that there was no sheet under the body, and that he had brought the sheet down with him.

Pat Nangle on the trial has added that the sheet *was wet;* this fact he did not state before the Coroner.

Michael Nangle on the inquest said "that Mr. Kirwan, when he saw the body of his wife, was much affected; and that he called out, "Oh Maria, Maria, have I lost you, and must I go home alone to-night?" or to that effect.

Patrick Nangle and Michael Nangle both of them were asked by the Coroner had they anything further to add, and they stated "*that they had said all they knew, and could add nothing further.*"

I positively state that neither of the Nangles was prevented from stating fully all he had to say; and Pat Nangle's statement as to his being put aside at the Coroner's Inquest is positively not the truth.

It may be supposed that I am an old acquaintance of Mr. Kirwan; I never knew him till the investigation before the Coroner. I never saw Mrs. Kirwan till I saw her a corpse.

After the death of Mrs. Kirwan, the hostile feelings of the people of Howth against Mr. Kirwan were excessive. It was openly asserted that he was the murderer.

The corpse had not been removed from the boat when he was so assailed; and when I left Howth in the latter end of October, there was no end to the absurd rumours of the many crimes it was openly asserted he had been guilty of. Then arose the story of his having used the sword-cane to destroy his wife; then the story was set on foot of the three women whom it was said he had before murdered, one of whom was said to be his mother; then he was accused of having made away with his brother-in-law; then Mrs. Kirwan's ghost appeared, and men sat up at night to ascertain the credibility of the story.

As to the fact of Mr. Kirwan being wet about the trousers, the constable who proved it at the trial was present at the inquest, and said nothing about it. I believe the truth to be, that Mr. Kirwan's trousers were wet by the grass and by the gravel in the Long Hole on which he lay or knelt. There was a heavy shower of rain on the evening of Mrs. Kirwan's death; that shower ceased about six o'clock, or a little after. Mr. Kirwan passed from the Tower to the Long Hole twice that night at least; the grass, brambles, nettles, and other weeds are very long, thick, and high between the two places. Mr. Kirwan could not possibly have gone through these

as he did without being very much wet after such rain; besides, the gravel in the long Hole is flat slaty gravel, not sand, and retains the water very much. The feet sink considerably in it when walking. If Mr. Kirwan lay on the body or beside it, or kneeled down over it on the gravel, he must have wet himself considerably.

Mr. Kirwan's clothes were not torn, nor were his face and hands torn, scratched, or bruised in any way.

On conferring with Mr. Gallaher, my fellow-juror, who has called some matters to my recollection, I have to add that in respect of the sheet being under the body, Pat Nangle did not appear at all convinced, when before the Coroner's jury, that his remembrance about the sheet was distinct. He hesitated a good deal about it, and said he was bewildered rather when the body was found.

Nothing was said on the inquest about cries of distress.

The facts above detailed I am prepared to verify on oath, if so required.

ALEXANDER BOYD,
Foreman of the Jury.

13*th December*, 1852.

Howth, 13*th December*, 1852.

I was one of the Coroner's jury, and the facts, so far as they occurred before that jury, I am fully prepared to corroborate.

HENRY GALLAHER.

I was one of the Coroner's jury above mentioned, and the facts related, so far as they refer to what occurred before that jury, I am fully prepared to corroborate.

GEORGE RESTON.

I will be prepared at any time to corroborate the above statement on oath.

ROBERT BOYD,
One of the Jury.

I perfectly recollect all that occurred before the Coroner's jury, and I will state on oath, if required, that the above statement of those occurrences is correct.

WALTER BOYD, Jun.,
One of the Jury.

I was on the Coroner's jury, and will corroborate on oath if, required, the facts above stated, so far as they relate to what was said on the inquiry.

THOMAS FLEWITT.

V.

MARIANNE TATE, late of Howth, now of 27, Hardwicke-street, in the city of Dublin, Widow, maketh oath and saith, I had several conversations with Patrick Nangle relative to the finding of Mrs. Kirwan's body and clothes. My first conversation with him took place on the morning of the 7th September, about ten o'clock. He did not enter into any particulars respecting the boat or hour, but merely stated, on arriving at the island Mr. Kirwan called him, (Patrick Nangle) and gave him *a bag and basket*, with which he was returning to the boat, when he heard Mick Nangle ask where the mistress was. Mr. Kirwan replied, "She left me after the shower to go bathe, and I have not seen her since, but I have been looking for her for some time." Mick Nangle and Mr. Kirwan then went in search of Mrs. Kirwan, calling her loudly by name as they proceeded; after some time, they were joined by Pat Nangle. The three then continued the search, and on arriving at the Long Hole, Pat Nangle stated he stood upon a rock or bank and looked down; on doing so, he said he perceived something white: he then called to his companions, "Here she is." On putting down his hand to feel the supposed white object, he stated he placed his hand on Mrs. Kirwan's person, her bathing dress being up round her shoulders. He then stated, Mr. Kirwan threw himself on the body, exclaiming, "Oh, Maria, Maria!" Saith, I then remarked, "*But Paddy, what about the sheet? People say it was under her.*" "*God bless you, no, ma'am*, [thinks it best to give his own words] *it was the poor gentleman got the sheet to cover his poor wife, and no wonder, as she was quite stripped.*" Saith, Mr. Kirwan then told them to look for her clothes, not being able to find them. Saith, Mr. Kirwan assisted them; after looking for some time, returned with something white in his hand, and, pointing to a rock, said, "There they are." Pat Nangle then stated he went up and brought down the clothes; he described the rock as being about six feet above high-water, and also *the natural position of the clothes, her dress and petticoats just as she had stepped out of them, her boots as she had taken them off, one partly under her clothes, the other at a little distance.* He then stated he returned for the boat, leaving Mr. Kirwan with the body; on their return with the boat, Mr. Kirwan was still stretched on the body. Pat Nangle then tied the sheet across the chest and knees. There was a shawl upon the head, which he said he supposed her poor husband had put on; they then placed the body in a sail, previous to conveying it to Howth in the boat. Saith, on several occasions he repeated the same fact, though his feelings towards Mr. Kirwan seemed considerably changed; but saith, I attributed this to his not having received what he considered a liberal remuneration for his trouble. Saith, I only spoke to him once after his examination at the Crown Office, when his whole manner was changed; appeared most vindictive in his feelings towards Mr. Kirwan. Saith, I then particularly remarked his say-

ing Mrs. Kirwan was so near the sheet, that he was able to draw it under her, also then stated that at the inquest he was not allowed to give his evidence, but was put back; that he had not told this at the Crown Office, but would do so the next time he went there. Saith, I never spoke to Nangle after.

MARIANNE TATE.

Saith, neither Mr. or Mrs. Kirwan were friends or acquaintances of mine, and nothing but what I consider a most imperative duty, alike incumbent upon male and female, to vindicate truth and punish falsehood, induces me to make this declaration. *Saith, I was summoned, attended, and examined at the Crown Office; they were therefore perfectly aware of the evidence I could have given in this case.*

MARIANNE TATE.

Taken and sworn this 18th day of December, 1852, at No. 2, Kildare-street, Dublin.

PEIRCE MAHONY, *Clerk of the Crown.*

VI.

STATEMENT OF MR. ROBERT JACKSON, No. 1, Talbot Street, Dublin, Secretary to the Dundalk and Enniskillen Railway Company, in relation to the lamentable occurrence connected with the death of the late Mrs. Maria Kirwan, at Ireland's Eye, Howth, County of Dublin, on the 6th September, 1852, he being then resident there.

Firstly. Was present at the inquet (near its termin ation) at the time when Mr. Brew was examined; perfectly recollects the Coroner having asked all present if they were satisfied as to the verdict, which was unanimous, and can recollect both the Nangles giving their *marked* assent, also that several questions were asked by the foreman and jurors prior to that verdict.

Secondly. Visited Mr. Kirwan the evening of the inquest, for the purpose of tendering him any assistance in my power under his painful position; sat in the room with him and deceased, and conversed about her habits, &c. During this time, I narrowly scanned appearances, and can testify that he was deeply grieved, and exhibited *all the symptoms of suffering from such a domestic calamity.* I may add that he spoke on all things concerning his lost wife as evidenced his affectionate feeling for the deceased, observing that his then abode was ill calculated in all respects to meet what was now necessary. *I proposed* that he should remove Mrs. Kirwan at once to his house in Dublin, and that I would write to town, and order the undertaker to have all in readiness when he would call that night. After some hesitation, he assented. I then sent an express messenger with a note to Mr. Thomas Farrell, of Marlborough-street, who was the party employed.

I likewise proposed, in order to alleviate his difficulty and suffering, that he should leave the house, and accompany me to a friend's until he left for town. I then left him, say at six P.M., and returned at eight, when he accompanied me, and took a cup of tea. I parted him at the train, ten P.M.; he returned with the hearse, but I did not see him or it, but was shocked to hear that the *Nangles offered obstruction, and demanded payment before the corpse would be permitted to pass.* This ended my personal interviews with Mr. Kirwan.

Thirdly. When Mr. Kirwan had left Howth for Dublin, I returned to the house in company with a friend, for the purpose of having the deceased lady paid proper attention. I again took particular notice of her, and am ready to depose on oath that there was no external mark of violence, save a slight scratch under the eye (or something resembling a pinch), which I was told was caused by crabs. The wound on the breast was the mere bursting of the skin, which, happening on the fleshy and most tender part, would be easily caused: further, the body (back and loins) was shewn me by a woman who was present, and although tinged with discoloration, it was evidently produced by lying on the rock and in the water; the mouth presented the appearance of a person having had a "fit," *being frothy and having the teeth clenched; I particularly noticed the feet and hands, which were without the slightest injury.* I submit here, that at this time I had a more favourable opportunity for observation and examination than any previous (non-medical) party, the excitement having subsided, and only three persons, including myself, being present. Now for a material fact; Mrs. Campbell, the owner of the cottage where the Kirwans lodged, being present same evening, I entered into an earnest conversation with her as to the past mode of their social habits. She stated, without hesitation, that they lived happily, with one exception, when she heard *noise as if from chairs being disturbed, but could not say more than infer that there was a quarrel. Most certainly the words stated by Mrs. Campbell on the trial, "I'll end you," were never mentioned by her to me, and the tenor of her conversation was natural, and satisfied me.*

On the other hand, another woman who was present complained bitterly of Mr. Kirwan having acted so *shabbily* as locking his boxes, and leaving no money for *refreshments.* Indeed I may safely say that this party exhibited *strong* prejudice, which I am sure a little golden ointment would have easily cured.

Fourthly. Was on the island called Ireland's Eye with the Nangles some short time after the occurrence, and previous to *the Crown prosecution;* the spot where the body was found was most minutely pointed out, but not a word of the "sheet," or any other imputation. On the contrary, they stated that Mr. Kirwan threw himself on the body, when found, in "great distress."

Fifthly. I was summoned as a witness by the Crown, and waited upon by the policeman Sherwood, stationed at Howth, to request

that I would call on the Crown solicitor. The latter I declined. Sherwood said I could be fined [a lie] for not doing so. I could not help being struck with the revolution in this man's mind. Having had several previous conversations with him at Howth, he always spoke in favour of the accused, and said that nothing was bad enough for the Howth people, etc., etc. Finally, about a week before the 6th of December, appointed for the trial, I did go to the Crown solicitor's office, and the result of my interview there was to further convince me of the innocence of the accused. My attendance as a witness for the crown being dispensed with, after I stated the nature of my evidence, and expressed a wish to that effect. My previous views as to the trial were now fully confirmed, namely, that it was an indispensable act as regards public duty, but that after the prisoner had gone through the ordeal, "however painful," he would be fully exonerated. I was truly shocked at the unlooked for result, and at once resolved on making this statement, (which nothing but the most solemn conviction that it was due to myself and the unfortunate object of it, would induce me to do; especially as I had not appeared on the trial, where I feel my evidence must have been favourable to the accused) at the request of his friends who are about to memorial the Government in the case; and I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of an Act made and passed in the session of Parliament of the fifth and sixth years of the reign of his late Majesty King William the Fourth, intituled, An Act to repeal an Act of the present session of Parliament, intituled, an Act for the more effectual abolition of Oaths and Affirmations taken and made in various departments of the State, and to substitute Declarations in lieu thereof, and for the more entire suppression of voluntary and extrajudicial oaths and affidavits, and to make other provisions for the abolition of unnecessary oaths.

ROBERT JACKSON.

Declared at Dublin this 21*st day of December*, 1852.

GEORGE HOYTE, J.P.

No. VII.

CATHARINE BREW, late of Howth, now of Usher's Quay, in the City of Dublin, married woman, saith, in a conversation which took place in her presence at Howth between Patrick Nangle and others, shortly after the inquest held on the body of the late Mrs. Kirwan (and at which inquest said Patrick Nangle was duly examined, as deponent heard and believes), the said *Patrick Nangle expressed himself thus, "If I am called on again, I will pinch him,"* meaning Mr. Kirwan.

CATHARINE BREW.

Taken and sworn before me this 20th December, 1852,

PIERCE MAHONY.

Fitzgerald, Attorney.

No. VIII.

I, ELIAS GEORGE JACKSON, of number One hundred and fifty-one, Upper Rathmines, do solemnly and sincerely declare that I had a small cottage in Howth, known as Barrett's cottage, and which was in close proximity to the dwellings of the fishermen of the place; I resided in this cottage before and after Mrs. Kirwan's death. I had frequent conversations with the Nangles on the subject, and was told by both that the body, when found, had a bathing shift on it, which was gathered towards the shoulders; that Mr. Kirwan exhibited much grief on finding his wife drowned. *The man said he appeared ashamed on seeing his wife so exposed, and ran for a sheet to cover her, and that he did cover her with the sheet.* I was a temporary resident in Howth for the benefit of the sea air and bathing, and I declare solemnly that, though I had repeated conversations with the Nangles, they never altered this statement, nor did they or any other of the fishermen ever make mention of a sheet being found under Mrs. Kirwan. I spoke over and over again both to them and several fishermen and people of the town, but never heard such an assertion made, and I believe if the fact of a sheet being found were real, I should have come at the truth. Being anxious to test my memory on the subject, I have spoken to a Mr. and Miss Hill who were also in Howth at the time, and who heard the particulars often repeated, and they both coincide with me in saying that they were not told a sheet was found under the lady. My inquiries were minute; and living almost amongst the fishermen, I had full opportunity of doing so. I think it right to add, Mr. Kirwan is a stranger to me; and I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of an Act made and passed in the fifth and sixth year of the Reign of his late Majesty, (5 & 6 Wm. IV. c. 62,) intituled an Act to repeal an Act of the present Session of Parliament, intituled an Act for the more effectual abolition of Oaths and Affirmations, taken and made in various departments of the State, and to substitute declarations in lieu thereof, and for the more entire suppression of voluntary and extra-judicial Oaths and Affidavits, and to make other provisions for the abolition of unnecessary Oaths.

ELIAS GEORGE JACKSON.

NOTE—22nd December, 1852.

On calling at the Head Office this day, to perfect this Deposition, the magistrates refused to receive it, alleging that their doing so would be outside their jurisdiction, and, in fact, the interference of an inferior with the duties of a superior court.

ELIAS GEORGE JACKSON.

No. IX.

Copy.—Information of James A. Hamilton, of Howth, Medical Student, sworn before Henry Davis, Esq., 7th of September, 1852.

Saith, that I am a Medical Student; I have examined the body of the deceased lady; there are no marks of violence, a few scratches, as if from rocks; the body presents the appearance of a person being drowned.

End of Information.

Copy information of George W. Hatchell, Esq. M.D. of the Constabulary Depot in the Phœnix Park. Sworn 15th October, 1852.

Saith, on the 6th day of October, instant, I proceeded to Glasnevin Cemetery, for the purpose of making a post mortem examination on the body of the late Mrs. Kirwan. The grave in which the body lay had from two to three feet of water in it; and when taken up, a quantity of water flowed from the coffins, of which there were two; the surface of the body was in such a state of maceration as to render it impossible to trace with certainty any marks of violence.

I opened the head, but found no fracture. The brain was in a fluid state. The upper lip appeared swollen; found the lungs collapsed, and the minute vessels gorged with blood. The heart appeared healthy; the stomach was contracted and empty. The body appeared to be that of a fine healthy woman. The lungs and heart exhibited those appearances which are compatible with death produced by drowning or strangulation.

End of Information.

Deponent having been asked by Mr. Curran if he found any marks of violence in the ears, private parts, or neck of deceased, replied he had not. *Mr. Curran having again asked, Could there be any marks of violence without your observing them?* he replied, *Certainly not.*

CERTIFICATE OF SUNDRY PHYSICIANS AND SURGEONS.

Having well considered the foregoing statements, more especially those that describe the appearances presented by the body at the post mortem examination, made after it had been exhumed; when the body, having died a sudden death, had remained during thirty days in a grave that had from two to three feet of water in it, we are of opinion that *for the most part the appearances explain nothing but decomposition.*

We are further of opinion that the *appearances unaccounted for by the process of decomposition are quite compatible with death caused by simple drowning, or by the seizure of a fit in the water; and we deem it highly probable the latter was the unhappy cause of death in this instance;* for it appears from the sworn testimony annexed of Arthur

Kelly and Anne Maher, that Mrs. Kirwan was subject to fits; and we are given to understand that her mother, now alive, derives her pension on the medical certificate that her husband, the late Lieutenant Crowe, Mrs. Kirwan's father, died of a fit eight years ago, in Irishtown, County of Dublin.

WILLIAM JACKSON PORTER, M.D., Professor of Surgery, Royal College of Surgeons.

ROBERT J. GRAVES, M.D., F.R.S.

THOMAS EDWARD BEATTY, M.D, Professor of Midwifery, formerly Professor of Medical Jurisprudence, Royal College of Surgeons.

J. MOORE NELIGAN, M.D., Physician to Jervis-street Hospital.

H. MARSH, Physician in Ordinary to the Queen in Ireland, &c.

CHARLES JOHNSON, M.D., Ex-Master Lying-in Hospital.

JOSIAH SMYLY, Examiner in Surgery, F.R.C.S.I.

THOMAS P. MASON, M.B., F.R.C.S.I.

THOMAS RUMLEY, Examiner on Medicine and Surgery, College of Surgeons, Dublin.

FRANCIS RYND, A.M., F.R.C.S.I.

CERTIFICATE OF SURGEON CUSACK.

I have read the evidence given as to the appearance of the body of Mrs. Kirwan, after exhumation. I am of opinion that decomposition had so extensively taken place, that it was *not possible to arrive at the conclusion that her death had been occasioned by immersion in the water, or suffocation.*

W. CUSACK, M.D.
F.R.C.S.I., and University Professor,
3, Kildare-street.

December 20th, 1852.

No. X.

LETTER OF DR. NELIGAN TO REV. J. A MALET.

Merrion-square, Dublin,
December 21*st*, 1852.

Dear Sir,

I have just received the enclosed note relative to Mr. Kirwan's case, from my friend Dr. A. S. Taylor of London. should you think well of so doing, you are at liberty to make any use you wish of it.

Doctor Taylor is the highest authority in England on all questions relating to legal medicine, and is invariably referred to and employed by the Crown on such; for example, in the celebrated case of Tawell, and in the more recent one of Jael Denny.

He is also author of the standard works of the age on Medical Jurisprudence and on Poisons.

Truly yours,
J. MOORE NELIGAN.

The Rev. J. A. Malet.

DR. ALFRED S. TAYLOR'S REPLY.

15, St. James's Terrace, Regent's Park,
December 20*th*, 1852.

My dear Sir,

Before the trial of Kirwan took place, some of the particulars were communicated to me by Dr. Geoghegan. It struck me at the time that although the conditions of the body were certainly not incompatible with death from drowning, there was *an entire absence of such appearances as would justify a medical opinion that the deceased had died in this manner.*

Several friends have referred to me on the point. Mr. Rodwell, the barrister, considers there was not sufficient evidence to convict. On Saturday, my friend B. Cooper, the surgeon of Guy's, came to me and *most strongly stated his opinion from the medical evidence, that the prisoner has been wrongly convicted.*

After the appeal which you have made to me, I will give an immediate and close attention to the medical evidence and the medical circumstances of the case. My present conviction is, that *all the medical circumstances are explicable without reference to any act of violence on the part of the prisoner, and that therefore to execute him for the alleged offence would be a most dangerous proceeding on the part of our law authorities.*

I am, dear sir,
Your's very truly,
ALFRED S. TAYLOR.

Dr. J. M. Neligan.

No. XI.

I, ANNE MAHER, of No. 16, Bachelor's-walk, thorough servant, do solemnly and sincerely declare that I knew the deceased, Sarah Maria Louisa Kirwan, and that I lived with the deceased and her husband, William Bourke Kirwan, as servant for the space of twelve months, during which time I on one occasion remember the deceased to have been attacked with a fit. About two years ago I was attending to my duties in the kitchen, when my attention was attracted by loud screaming up stairs; and when I went up *I found the deceased (Mrs. Kirwan) working in a fit, her arms, hands and legs*

working violently as if in convulsions, and froth coming from her mouth. This fit lasted for half an hour. *There were present on the occasion along with me, Mr. Kirwan, and a person of the name of Kelly, an assistant to Mr. Kirwan.* During my stay with Mr. and Mrs. Kirwan, *I never knew them to disagree, but on the contrary they lived on very affectionate terms.* I have been out of their employment for the last twelve months. I was summoned by the Crown on Mr. Kirwan's trial, but was not produced; and I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of an Act made and passed in the session of Parliament of the fifth and sixth years of the reign of his late Majesty King William the Fourth, intituled, "An Act to repeal an Act of the present session of Parliament, intituled An Act for the more effectual abolition of Oaths and Affirmations taken and made in various departments of the State, and to substitute Declarations in lieu thereof, and for the more entire suppression of voluntary and extra-judicial oaths and affidavits, and to make other provisions for the abolition of unnecessary oaths."

Her
ANNE X MAHER.
mark.

Made and subscribed before me,
this 16th day of Dec. 1852,
RICHARD BOURKE.
B Divisional Office of Police, College-street.

No. XII.

I, ARTHUR KELLY, of 15, Fleet-street, in said city, Artist, do solemnly and sincerely declare that I *knew the deceased*, Sarah Maria Louisa Kirwan, and was an assistant to Mr. Kirwan *for twelve years, during which time I was almost constantly, in the day time, in the house in Merrion-street.* I remember the deceased to have been attacked with two fits; one about two years ago, on which occasion there were present along with me Mr. Kirwan and a servant girl of the name of Anne Maher; and the other in the latter end of June last, shortly before Mr. Kirwan left for the sea-side; on which occasion I was below stairs in the office, when I was alarmed by loud screams up stairs. On going up to see what was the cause, *I saw the deceased lying on the floor, working in a fit, her arms and legs seeming greatly convulsed, and froth coming from her mouth.* These fits I should say lasted half an hour each; I was summoned by the Crown on Mr. Kirwan's trial, but was not produced. During my acquaintance with Mr. and Mrs. Kirwan, *I never knew them to disagree, but always to live on the best terms with one another;* and I make this solemn Declaration, conscientiously believing the same to be true, and by virtue of the provisions of an Act made and passed in the sixth year of the reign of his late Majesty, (5 and 6 Wm. IV. c. 62) intituled an Act to repeal an Act of the present session of Parlia-

ment, intituled an Act for the more effectual abolition of Oaths and Affirmations, taken and made in various departments of the State, and to substitute Declarations in lieu thereof, and for the more entire suppression of voluntary and extra-judicial Oaths and Affidavits, and other provisions for the abolition of unnecessary Oaths.

ARTHUR KELLY.

Made and subscribed before me this 16th day of Dec. 1852.
RICHARD BOURKE,
B Divisional Office of Police, College-street.

No. XIII.

WE, THOMAS HARRISON, SEN. and THOMAS HARRISON, JUN., both of Bishop-street, Dublin, do solemnly and sincerely declare as follow:—I, Thomas Harrison, Senior, Solicitor, do for myself declare that I am uncle of the deceased, Sarah Maria Kirwan, the wife of William Bourke Kirwan of Merrion-street, in said city, Artist; and I, Thomas Harrison, Jun. of same place, Attorney-at-Law, do likewise declare that I was the cousin-german of the above-named Sarah Maria Kirwan, and we, Declarants, do solemnly and sincerely declare as follows, that by reason of both the Declarants' relationship with the said deceased, and by reason of the fact that deceased very frequently visited the *Declarants' family, with whom the deceased was on terms of affectionate and constant intercourse;* and furthermore, as Declarants were several times present at various conversations had by the said deceased to and with the Declarants, and other members of her family assembled thereat, these Declarants had opportunities of hearing, and did hear, *the said deceased complain and oftentimes express in conversation that she felt dizziness of sight, confusion of ideas;* and Declarants were informed that a short time before said Sarah Maria Kirwan went to Howth, that *she had an attack, which it was stated,* and which Declarants verily believe to be the fact, *was occasioned by a flow of blood to her (deceased's) head.* These Declarants further say, that the said *deceased always spoke in the kindest manner of the conduct pursued towards her by her said husband, and always appeared in the full and affluent enjoyment of comfort and respectability;* and that she, the said Sarah Maria Kirwan, was in the habit of paying the workmen employed in repairing the house in Merrion-street. These Declarants say that the facts abovementioned can be affirmed by the mother of the said deceased, and that she stated she could and would affirm the same if necessary; and We make this solemn Declaration, conscientiously believing the same to be true, and by virtue of the provisions of an Act made and passed in the Session of Parliament of the fifth and sixth years of the reign of his late Majesty King William the Fourth, intituled, "An Act to repeal an Act of the present Session of Parliament, intituled, An Act for the more effectual

abolition of Oaths and Affirmations taken and made in various departments of the State, and to substitute Declarations in lieu thereof, and for the more entire suppression of voluntary and extrajudicial Oaths and Affidavits, and to make other provisions for the abolition of unnecessary Oaths."

THOMAS HARRISON,
THOMAS HARRISON, JUN.

Declared at College-street Police Office, Dublin, this 22nd day of December, 1852.

RICHARD BOURKE.

No. XIV.

DUBLIN, *December* 18th, 1852.

DEAR SIR,

In reply to your communication, we hesitate not to say that the part of the *defence in Kirwan's case attributing the death to a fit was only decided on as the trial was going on, and in consequence of the medical gentlemen positively asserting that the appearances were perfectly reconcilable with death by a fit.*

To all unprejudiced minds, this will *account for your not having procured the all-important evidence of Arthur Kelly and Anne Maher for the trial.*

WALTER BOURKE,
W. W. BRERETON,
J. A. CURRAN.

To Charles Fitzgerald, Esq.

No. XV.

Carleton Club,
December 18*th*, 1852.

DEAR SIR,

In accordance with your wish, I hasten to state to you the facts connected with the defence of Mr. Kirwan on the ground of a fit being the cause of Mrs. Kirwan's death.

Whilst the trial was actually going on, I had a conversation in court with one of the medical witnesses, who stated to me his positive opinion that death resulted not from ordinary drowning, but from a fit of epilepsy, and that from all the circumstances of the case he felt convinced that this was the cause of her death.

It was then that we determined to put forward this case to the jury. This occurred on the second day of the trial, and when of course it was impossible for you to obtain any evidence to sustain this view of the case.

Yours very truly,
ISAAC BUTT.

C. Fitzgerald, Esq.

No. XVI.

I, JOHN LEESON, Architect, of No. 25, Clare-street, in the city of Dublin, do solemnly and sincerely declare that William Bourke Kirwan, the person now in prison at Kilmainham under sentence of death, applied to me the evening previous to Mrs. Kirwan's interment, in the month of September last, to go to the Burying ground or Cemetery at Glasnevin, and choose for him a burying-place for Mrs. Kirwan his wife, who had been drowned at Ireland's Eye. I declare that I accordingly immediately thereafter went to Glasnevin Cemetery, and *without the said William Bourke Kirwan's knowledge*, or without any preconcert with the said William Bourke Kirwan, *chose and selected the burying-place where the said Mrs. Kirwan is now interred ;* and I declare that the said *William Bourke Kirwan had no knowledge of the burying-place so chosen by me*, as I believe and am persuaded, *until the day of the funeral and interment of Mrs. Kirwan, when he, Mr. Kirwan, was present and saw the place ;* and I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of an Act made and passed in the sixth year of the reign of his late Majesty, (5 & 6 Wm. IV. c. 62,) intituled an Act to repeal an Act of the present Session of Parliament, intituled an Act for the more effectual abolition of Oaths and Affirmations, taken and made in various Departments of the state, and to substitute declarations in lieu thereof, and for the more entire suppression of voluntary and extra-judicial oaths and affidavits, and to make other provisions for the abolition of unnecessary oaths.

JOHN LEESON.

Made and subscribed before me this 16th day of December, 1852,

J. G. STRONGE,

B *Divisional Office of Police, College-st.*

No. XVII.

I, JOHN WESTON FOAKES, residing at 46, Mary-street, in the city of Dublin, do solemnly and sincerely declare that I was *educated as an engineer*, and have had great experience in surveying and levelling both in England and abroad, under Robert Stephenson, and some of the first engineers in England. On the 17th December last, I went to Ireland's Eye, accompanied by Mr. Walter Boyd, jun. for the purpose of ascertaining the depth of the Long Hole on that day; making a section of the strand from the place where the body of the late Mrs. Kirwan was found to the high-water mark in the Long Hole; and of ascertaining the heights of the rocks on each side of the Hole, opposite to where the body was found, and the height of the bank between the Long Hole and Howth.

The wind was blowing from the west, and though the sea between

Ireland's Eye and Howth was calm, there was a considerable swell running into the Hole. *It was high water on Dublin bar at* 3.30 P.M. The place where the body was found was pointed out to Mr. Boyd and myself, by Sergeant Sherwood of the Howth Constabulary, as being between the high rocks which form the boundary of the Broad Patch and a rock which runs across the tide-way, almost at right angles to the boundary rock of the Hole. *I found the depth of water over the spot where the body lay at half-tide (half-past twelve o'clock,) to be about six feet three inches, and the depth at high water on the same day to be ten feet.* The section that I took shows *a fall of about one foot, from where the head and shoulders lay to where the feet were found,* and then a gradual ascent of two feet six inches in the next sixty feet. Being anxious to test if there was any current receding towards the sea, *Mr. Boyd and I undressed and went into the water, a little after half tide; when I arrived at about fifty feet from where the body was found, the water being then about up to my breast, I was swept off my feet, and had I not been able to swim, I have no doubt I should have been carried into deep water and against the rocks which cross the channel. I had a thick staff with me, but the current was so strong that, even with its assistance, I was unable to keep my feet where the water was only four feet six inches deep. I swam as hard as I could, but made little or no way against the receding wave, when Mr. Boyd ran in and gave me the end of a staff he had with him, about eight feet long, to help me out.*

On Wednesday, the 22*nd of December, I again went to Ireland's Eye,* for the purpose of checking the levels I had previously taken, and of taking the height of the tide, in order to compare it with my previous observations; being convinced, from the form and situation of the Long Hole, that the effect of the wind on the sea causes greater variation in the height of the tides there than it does in less exposed situations. *I found the water at half tide to be four feet eight inches deep over the spot where the head and shoulders lay, and five feet eight inches over the feet,* and the level of low water on that day to be about six inches vertically below the former place. *The day was perfectly calm and clear, and there was scarcely a ripple on the sea,* either towards Howth or on the east side towards Lambay. *The height of the rocks forming the two sides of the Long Hole, exactly opposite where the body was discovered, I found to be thirty-one feet on the north-western, and twenty-six feet on the south-eastern side of the Hole; and the bank above the strand, between the entrance of the Long Hole and Howth harbour, to be about twenty feet above where the head and shoulders lay.* As I checked the heights of the tide on both sides of the island, with a variation of not more than three inches, I have no doubt of their accuracy. I have no recollection of ever having seen Mr. Kirwan previous to the trial; but having resided at Howth for nearly three months during the autumn, and being in the habit of bathing every morning about the same time, *I was induced to take the levels after reading the*

evidence as reported in the "SAUNDERS'" *newspaper, from a conviction, founded upon a knowledge of the locality, that there must have been some serious error in the observations, or some misunderstanding of the evidence with regard to the tide. My observations have been made voluntarily, without any application from Mr. Kirwan or any person concerned for him;* and I make this solemn Declaration, conscientiously believing the same to be true, and by virtue of the provisions of an Act made and passed in the fifth and sixth year of the Reign of his late Majesty, (5 and 6 William IV. c. 62,) intituled an Act to repeal an Act of the present Session of Parliament, intituled an Act for the more effectual abolition of Oaths and Affirmations taken and made in various departments of the State, and to substitute declarations in lieu thereof, and for the more entire suppression of voluntary and extra-judicial Oaths and Affidavits, and to make other provisions for the abolition of unnecessary oaths; and I make this declaration for the benefit of William Bourke Kirwan.

JOHN W. FOAKES.

Made and subscribed before me,
this 27th day of December, 1852,
GEORGE HOYTE, J. P.

No. XVIII.

ON the 22nd of December, 1852, Captain J. A. O'Neill, John W. Foakes, Alexander Boyd, Walter Boyd, Jun. and John M'Intosh went to Howth and Ireland's Eye, for the purpose of ascertaining the possibility or impossibility of parties standing on Ireland's Eye near the Martello Tower there, (where Mr. Kirwan is said to have been sketching) or stationed at Howth Abernethy's cottage, and Mrs. Singleton's house, hearing cries, shouts, or screams made in the Long Hole on the island. Captain O'Neill and Alexander Boyd stationed themselves near the Martello Tower, and Walter Boyd and John M'Intosh went down into the Long Hole, and Walter Boyd shouted, screamed, and whistled on his fingers. Captain O'Neill and Alexander Boyd listened attentively during the time the others were down in the Long Hole, and heard no noise or screams whatever.

Alexander Boyd and John M'Intosh stationed themselves on the Tower Hill at Howth, near Abernethy's house, and afterwards at Mrs. Singleton's house at Howth; and, on giving signals John Foakes and Walter Boyd went down into the Long Hole and shouted both of them at the utmost pitch of their voices, screamed and whistled as before. These shouts or screams were not heard by Alexander Boyd or John M'Intosh, though they listened most attentively. There were several other parties standing by with the two latter, and they all expressed themselves that they heard no noise. There

was little or no wind on the day in question; the smoke rose almost directly from the chimney tops; whatever air there was blew from the south-east by east. The wind was almost but not altogether in the direction from the Long Hole to the Martello Tower on the Island.

The parties above named have made declarations verifying this statement. These declarations were furnished to the Lord Lieutenant, and no copies of them were kept; I cannot therefore let you have them.

ALEXANDER BOYD.

To J. K. Boswell, Esq.

No. XIX.

I, ELLEN MALONE, of Number 3, South Earl-street, in the County of the City of Dublin, thorough servant, do solemnly and sincerely declare that I lived with Mr. and the late Mrs. Kirwan at their then residence, No. 6, Lower Merrion-street, for two years and a half; left their service two years and a half ago. Shortly before leaving, a little boy about seven years of age called at Mr. Kirwan's, and asked to see his "dada." I asked him who was his dada? he replied Mr. Kirwan. Mr. Kirwan was at home, and Mrs. Kirwan was with him in the parlour. I went into the parlour and told Mr. Kirwan that there was a relation of his, a little boy, who wished to see him: Mr. Kirwan then went into the study. Mrs. Kirwan called me up stairs and asked me who was there; I stated it was a relation of Mr. Kirwan's; she, Mrs. Kirwan, told me "not to be mistaken, that it was Mr. Kirwan's son, and that he had two or three more of them." On another occasion since that, a Miss Kenny called at Mr. Kirwan's said house, and asked to see Mr. Kirwan (he was at home at the time); a Mrs. Byrne, who lived within two doors, rushed in at the moment, and went up to Mrs. Kirwan, and in a loud voice cried out, "Come down and see the Yellow One (meaning Miss Kenny); there is your servant receiving messages underhand from her for Mr. Kirwan." Mr. Kirwan, hearing the loud words of Mrs. Byrne, ran up stairs and asked "what was all the noise about." He then took Mrs. Byrne by the shoulder and ordered her to leave his house. Mrs. Kirwan told me after she (Mrs. Byrne) was dismissed the house, that Mrs. Byrne used to tell her stories to aggravate the master, and to state to him that I was the person who told them to the mistress, not to mention her name. Mrs. Byrne used to run into a little room off the kitchen and hide, if the master came home whilst she was in the house. On one occasion, about six months before I left Mrs. Kirwan's service, and whilst she was sitting in a tin bath of lukewarm water, Mrs. Kirwan told me "she felt her senses leaving her." I perceived her face turn suddenly very red, and she became insensible; she remained in that state for nearly half an hour; I

was greatly frightened, as I was unable to do anything for her, and there being no person in the house at the time. After she got out of the bath, I remarked her putting on her gown, the skirt where the body should have been, and I found that she was quite queer. I induced her to go into bed, thinking she would get better. During the whole period I lived with Mr. and Mrs. Kirwan, there was but one quarrel between them, and it was Mrs. Kirwan who commenced it; it was about the purchasing of a dress; Mrs. Kirwan was very passionate, and Mr. Kirwan did all he could to pacify her, and desired me to do the same. During the period I lived with them, Mr. Kirwan treated his wife with the greatest kindness and generosity, and I never lived under a better or quieter master. And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of an Act made and passed in the sixth year of the reign of his late Majesty, (5th and 6th Wm. IV. c. 62,) intituled "An act to repeal an Act of the present session of Parliament, intituled, An Act for the more effectual abolition of Oaths and Affirmations taken and made in various departments of the State, and to substitute Declarations in lieu thereof, and for the more entire suppression of voluntary and extra-judicial oaths and affidavits, and to make other provisions for the abolition of unnecessary oaths."

ELLEN MALONE.

Made and subscribed before me this 24th day of December, 1852,

H. O'CALLAGHAN.

Printed by Webb and Chapman, Great Brunswick-street.