

died with, but at all events he says he walked on the top of the earth—I don't know where that is—with his life in his hands, and when he went through the States and through Canada, in fact everywhere wherever he went, everybody was talking about the man who walked on the top of the earth; and he was exposed to dangers that we peaceful mortals are not exposed to; wherever he went the people were talking about the man that walked on the top of the earth, and whose life was in his hands. He seems, however, to have been a pretty good grip of it, for he turns out to be safe and sound, in spite of all those terrible dangers that he was exposed to. Then the private prosecutor had prepared a man with that pathetic reference to his sufferings, the counsel for the prosecution thought they had had enough of him, but of course he had sworn in good, round, positive terms that all these accusations against him in this article were false; there was no hesitation about that; as far as that went his recollection was perfectly clear, not disturbed by a solitary doubt; the accusations were perfectly false, and every one of them, and there was not one iota of truth in them: otherwise the gentleman was willing to die immediately. There was no trouble about his recollection so far; but sometimes it makes a difference in reference to what a man is asked, by whom the questions are put, and sometimes a man remembers a great many things and forgets a good many others that seem as easily remembered except, perhaps, when he has been out for dinner, and then he comes back with a hazy remembrance of what he had previously forgotten. Well, gentlemen, this man who swore at first that there was not one iota of truth in anyone of these accusations, and wanted to die in half an hour if there was, what does he do when he begins to be asked about particular facts and circumstances? Somehow or other, his recollection begins to get muddled. He remembers going to New York in '62 and seeing John O'Mahoney, and then coming back to Montreal, but he did not recollect or he wouldn't swear whether he did or he had not made a meeting and organized a Society. It is no part of my argument here, to dwell on this organization. What I want to draw your attention to is the evidence of Mr. MacNamee, and the way in which he gave it. He said he bitterly complained that it was a libellous, defamatory and injurious and false accusation to say that he was instrumental in organizing Fenianism in this country. That is what he says in his indictment, and that is what he said in the sworn information basing that indictment. It was something he repudiated and it tended to vilify and ruin him to accuse him of having done this; and when he comes in the box here he swears that that accusation about him is perfectly false and without an iota of truth; but, afterwards, when we come to particulars, when we get down to the *iotas*, and begin to question him on what he did as to Fenianism, he evinces a sudden want of recollection; and he resorted to the un-English word I *disremember*. He remembered seeing O'Mahoney in New York, but didn't recollect what that gentleman gave him, nor what he suggested about it, nor that he had a meeting at his own house on his return from New York, nor that a society was organized in New York, nor what the plans of that society were, and didn't remember exactly who belonged to it. And yet, gentlemen, the jury, with all this lack of recollection, with all this impossibility that seems to have come upon him of remembering what took place in the fall of 1862, this man, who could not recollect whether he belonged to such a Society or not, or whether he had formed one, that man sitting there before you had a few minutes previously undertaken to swear in that box that it was absolutely false that he had organized such a Society. It was a good beginning to the evidence that was going to follow. Would any of you, gentlemen, feel justified in swearing that there was not one iota of truth in a statement that you did not know anything about? Or that you had not done a certain thing, if you had not a particle of recollection whether you had done it or not? The prosecutor could recollect being sent for by Mr. A. P. Macdonald and going in a carriage to the St. Lawrence Hall, where he stated certain things which he (the prosecutor) recollects perfectly and which occurred in 1863, but what took place in 1862 in his own house between himself and his own friends? Having such a serious thing as the organization of a Society to assist in revolution is forgotten. Well, gentlemen this prosecutor who could not recollect goes to his dinner. I don't know whether it was because he was faint and hungry that he was unable, in the morning, to recollect, but when he came to the stand, by a mere accident, met with a man who had joggled his memory, but still he only had a kind of a hazy recollection. Of course the meeting with this man was an accident. It is true it is somewhat remarkable that he should happen to be a witness for the defence, but these accidents will happen, and people do sometimes evince peculiar interest in the witnesses whom other people summon. A similar accident happened when Mr. Whelan's letters were obtained by the prosecutor's friends from a witness for the defence. However, the prosecutor walking on the top of the earth had met a man who didn't walk upon the top of the earth and who had a memory which was not blurred; and so it might be convenient for the man who did walk on the top of the earth to have a hazy recollection. So he said he had some idea about a society in 1862 which had in view the amelioration of the condition of the Irish race, but he really did not remember what he actually did. Mr. McGrath, however, had told him there was a meeting, and he had a hazy recollection of it. This is the kind of evidence you are asked to believe, and upon which the whole prosecution is based. This prosecutor, evidently, on going into the box thought it an awful thing to be called a Fenian; but before he got down, and after he found that there were evidently men who were not ashamed of being Fenians as he had, he went under oath—I do not say whether they were right or whether the prosecutor was right in being ashamed to own that he was a Fenian—when I say he found that there were men coming forward, then this man who swore that it was a libel on him and an infamous disgrace to call him a Fenian—this man, I say, was ashamed in the morning of being a Fenian, and who told you that the Fenian organization was organized to strengthen the hands of Lord Palmerston; this man who wriggled in every way to get out of admitting that he had been a Fenian; this man who would descend to forget the past, to forget his own deeds, preferring to cover them up with the convenient word “disremember”; this man, who asks you to find the accused guilty because he has called him a Fenian; in the afternoon this very man, the prosecutor, admitted here in a sort of qualified way, that he did sympathize with Fenianism, but still didn't sympathize with what everybody knows Fenianism is. When he found that there were other people here who remembered better than he

he admitted part of the truth then, and began to rather approve of Fenianism; and then it was no libel to call him a Fenian. If he stands here before the world and says, "I approve of that thing called Fenianism; I gave it my moral support; I use "only discussions I had among the Fenians," "letters of the Crown," about Fenianism, "were in its defence," where is the libel?" If this be the truth, why did he accuse the defendant of having libelled him? I leave that, gentlemen of the jury, to you to decide. I can understand a man standing upon one of two grounds. I can understand a man who says, "This thing was wrong, and it was an outrage to say a man was connected with it." I can understand a man who says that and comes before a jury of his countrymen and asks them to convict a man for having said it of him. Or, I can understand a man who says, "I did that; I approved of that thing; that thing was right." But then I would not understand that man coming before a Court of justice to ask for a conviction for saying he was that which he thought was right.

Now, in this connection let me draw your attention to an inaccuracy which goes further than lack of recollection on the part of this prosecutor. He told us positively that he had given nothing to Fenianism, but more support or sympathy, and that he did not give it material support. But we have it on the testimony of a witness, against whose credibility nothing has been brought,—that Mr. McNamee not only paid his dues while a member of the Army, but even after his ostensible withdrawal he subscribed the funds of the Fenian organization. This contradicts some of the evidence recently and mainly a man who heard and without fear to having done what he believed it was right for him to do; and that witness has told you this about the prosecutor actually helping the Fenian organization with funds, and he has testified to that in direct contradiction to the prosecutor's evidence.

Now, gentlemen of the jury, let us pass on to another accusation against the prosecutor, that of being a crimp and bounty broker, and of transporting men from here to the States during the American war; and let us consider his own evidence upon that accusation. When his counsel asked him if that were true he replied that it was not; but there was evidently something that troubled him for all that; for he added, "Oh! I can give an explanation about that." Somehow, however, his counsel did not want the explanation, for he put the prosecutor off by telling him he would have an opportunity later. And sure enough Mr. McNamee had an opportunity of giving that explanation; and, gentlemen of the jury, I don't think that as reasonable men, looking at facts and the statements of men in a reasonable manner, that you can require anything more than that explanation of Mr. McNamee, unasked for and unasked for, which he himself laid forth within himself that it was necessary to give of that wholesale and wholesale he admittedly he was asked in, of men from this country to be sent to the United States at a time when a great civil war was going on there, at a time when the population in that country was liable to be drafted into the army, when men for the military service of that country were at a premium. I say I don't think you require any further evidence than that explanation of his in order to satisfy you as to the purpose for which he exported those men. I don't know how it is possible to qualify that explanation unless indeed I were, like the writer of this so-called libellous article, to travel out of the region of fiction any word to indulge in a slang term and say it was too run; for it is really the most incredible story that, I think, so far as my limited experience goes, an intelligent jury have been asked to believe in. You are told by Mr. McNamee, a contractor, a man who has made his money in that business of contractor, a man who has been in the business a great number of years, that in '63 he went to the St. Lawrence Hall and there saw another contractor, Mr. Angus P. Macdonald, who told him he had a promise of a contract for the construction of 70 miles of railroad in Ohio, in which contract Macdonald would give him a half interest. McNamee says Macdonald gave him the prices he was getting, which prices, says McNamee, were enormous in comparison to the prices got in this country, so much so that he thought if he was going to make a fortune. Well, this contractor of experience, this man, who must know as well as anybody can, that there is many a slip betwixt the "cup and the lip," and that it is very unsafe to enter into serious obligations without knowing where you stand, this experienced contractor took Macdonald's word for it; the only precaution he took being to take a journey to Ohio where he saw a railroad officer who told him Macdonald was going to get the contract, provided he could stock that 70 miles of railroad with men. McNamee in his unabashed confidence accepted, not only the word of Macdonald that he would give him half an interest in a contract he was going to get, but with child-like faith he took the word of this other gentleman, this stranger, that Macdonald was going to get the contract. Well, McNamee asks you to believe that on the strength of this came into Canada, went into the several large cities of the country, took men and shipped them off to the States and guaranteed them from two to five dollars a day each; and he says he took about 2,000 of them; thus undertaking an obligation of from \$4,000 to \$10,000 a day. This shrewd contractor says he did that upon the mere word of Angus P. Macdonald, that he was going to get a contract, or that somebody had promised Angus P. Macdonald a contract, and that Macdonald had promised him a half interest in the profits. I do not know if there are limits to the faith of human nature, but I think there are limits to the credibility of stories that are told by men who tell you the story of Fenianism. I think there are limits to that possible belief that you can have that of McNamee's *calibre*—a man of his experience in that business, who has labored and made money in the business as we are given to understand—asked no scrap of writing, asked no evidence that Macdonald had a contract, in fact, knowing that he had not a contract, but merely a promise of one, and took all this risk upon the chance of Macdonald keeping his word to give him a half interest in the contract and upon the chance of this other party keeping his word with Macdonald. He asked you to believe that on the strength of this he undertook this immense obligation, and that he gathered men in different cities here and took all the trouble and exertion described to you without anything in the world to guarantee him, and with no tangible evidence that he was entitled to anything for it. Now, that is his own story, gentlemen. But I don't think you believe that story. If, however, there was any shadow of a doubt in your minds, any possibility of your thinking that story true, I would ask you to call mind one or two other witnesses—not very willing witnesses—who have been put before you by the defence, and from whom I

cannot misgrieve the fact) we did not edit the evidence which, according to our instructions, we believed we could elicit, but by whom, nevertheless, we have provided several facts in connection to the prosecutor.

Could you consider these particular facts in connection with the fact that the prosecution was doing in reference to the expedition of these men, and which he himself considered required explanation, and place those facts with that explanation and with the manner of his giving it, and then I would ask you what do you believe these 2,000 men were sent to the United States for. You have it established in evidence that 600 of these men were sent in batches of 200 a week, within a period of three weeks to the one point in Ohio, and were set to work together to build what they were told was to become a switch in a swamp near Akram, Ohio, and that when the last batch of 200 men arrived the work on this bit of a switch was stopped and 600 men were left in a foreign country, without means and without work, to shift for themselves, and being hundreds of miles away from home there was no alternative open to them but starvation, or that employment or service that Mr. McNamee would soon to run any man into. The prosecution have undertaken to adduce evidence in rebuttal, which evidence has tended to rebut nothing at all; for where they had substantial facts to meet they made no attempt to rebut. You have the evidence Mullins, undated—requiring no firmly established facts to support it—that these men were sent by McNamee ostensibly to work on a railroad, and that shortly after their arrival the majority of them were forced to enlist in the American army; and you have also the evidence of John Mackenzie, who deposes to seeing McNamee on the wharf at Quebec, when he (McNamee) was sending off a batch of men, and he says that on that occasion Mr. McNamee came up to him and Mr. Gariety and, referring to the men he was sending away, as a species of cattle, he said, "There goes a load worth a hundred dollars a head to me." Take all this into consideration along with the evidence of A. P. Macdonald in rebuttal, that every man taken into the United States at that time was liable to be drafted into the army, so much so that he went to the extraordinary expense of \$3,000 in getting passports for his men. Take and connect all these facts together, and I ask you where was the \$100 ahead going to come from that Mr. McNamee was going to get? You know who got the men and sent them over. Who was he going to get the pay from? I leave that to you.

The innocence and confiding nature of Mr. McNamee is only equalled by his self-sacrificed devotion to the interest of A. P. Macdonald. He tells you that he labored for three months gathering men together, and sacrificed his cousins and first cousins and his wife's relations and shipped them to Ohio, and that he went there himself and spent his time and gave his trouble, and then he says he got a telegram from Mr. Macdonald, who, when he went to see him, told him it was all a humbug; that he hadn't got the contract and was not going to have it; and that they had all been humbugged together; but if he McNamee liked to work as a superintendent on the work he would get so much a day. But McNamee did not want so much a day; he wouldn't take anything for his trouble; he had gathered and sent away all these men, and they were worth \$100 a head to him; and he would not take anything from A. P. Macdonald. There is McNamee's story of explanation; and there also are the facts proved in relation to this business of exporting men and that go to throw light upon that explanation, and I ask you what you think about it? But as if that explanation did not satisfy the prosecutor's counsel, and left a lingering idea that their client's conduct wanted further explanation; or if they felt that his explanation wanted little more explanation, and as if they did not expect you to believe their own client,—for you know we did not bring any witnesses expressly to contradict that explanation, for: it contradicted itself,—the prosecution think it necessary to have it bolstered up, and they bring Mr. A. P. Macdonald from Toronto to tell you his story. Well, he told his version of the thing: "The first thing he told you was that he did not tell McNamee that he was promised a contract, "because," says he, "I had the contract long before I saw McNamee." The witness who came to corroborate began very early in his evidence to contradict. McNamee had told us that this section of railroad was 70 miles long. Macdonald says nothing of the kind, but that it was 200 miles long. Second corroboration of McNamee's evidence (?) Then Mr. McNamee had told us that the prices under this contract were so fabulous that he was going to make a fortune. There were millions in it. McNamee was going to retire after that contract. He was going to be a wealthy man forever; and he wanted the contract to go on, but Macdonald sent for him and told him there was no contract; but they could both go on at day wages, at which McNamee was highly indignant because those prices were immense, and he was greatly annoyed; and Mr. Macdonald, says that he told him the whole thing up. Well, the gentleman who comes here to strengthen Mr. McNamee's explanation, proceeds to corroborate that part of the story in this way. He says he did not tell McNamee that he could keep to his arrangement—a half interest—on account of not getting the contract, because, says Macdonald, "I had the contract." And with regard to the immensity of the prices, he corroborates McNamee by saying that the prices were so low that they would not pay, and McNamee would not continue the work, he declined it. The fact is that Mr. McNamee's disinclination to go on with this business seems to have arisen just when it was getting about time to stop bringing men. As long as it was a business of bringing men over, and could get \$100 ahead for an odd 600, he could afford to work for Macdonald for nothing, but when that could not be kept up any longer McNamee found the prices too low. Angus P. Macdonald could afford to tell you the whole truth about so far as his knowledge goes. He had nothing to explain, and he was willing by his evidence to assist Mr. McNamee so far as he could truthfully. That gentleman did not know, I suppose, about that \$100 ahead, and he told the facts as they were, so far as he was concerned. Mr. McNamee had to keep up his character. He had said that he was getting \$100 ahead for these men, and he had to tell something that would explain to him why it was that he was getting \$100 a head for these men without showing the source whence he was getting the money; and so he says that the prices mentioned by Macdonald in connection with this compact were immense. It is very unfortunate sometimes to have witnesses in corroboration coming from a distance, when the corroborating witness in telling the truth happens to contradict the witness he is brought to corroborate. The flimsy web of delusion which McNamee had tried to weave over your brain is gone; it is wiped away.

Now, with regard to this accusation that McNamee was one of the first to introduce Fenianism here, and that he induced certain misguided persons to join the organization, and then betrayed his dupes and revealed the plans of the organization to the Canadian Government, so that he might be thereby enriched. Now, gentlemen of the jury, I have no desire to bridge over any hiatus in the evidence in this case. It is not necessary for the case of my client; and I am free to admit that upon this accusation there were witnesses who, our instructions justified us in believing, would give certain testimony, but who failed to give it. My client, relying upon the information which he had received, and trusting himself with bringing such witnesses, and did not bring others who could explain and unravel this part of the business, and who my client still believes could do so; and consequently we do not wish to deny the fact that three of our witnesses, whom we brought into the box, did not make the proof we expected. Nevertheless there are certain things in this case that tend to a certain direction, and it is my duty to draw your attention to them. In the first place I will bring you back to Mr. McNamee's evidence, and I will ask you to contrast with that the evidence of Mr. McGrath, and ask yourselves why these two men, who it is proved were members of the same society, the one being the organizer and the establisher and the other merely a member, why these men have taken such different attitudes. The prosecutor in the box evinced hesitation and a reluctance to admit his connection with the organization or society, whereas McGrath, whether this man be right or wrong matters not, had no hesitation at all to tell the truth. Why was it that the prosecutor hesitated and doubted and was reluctant to say anything about it? Gentlemen of the jury, there must have been a motive. It is evident that when he could not get out of admitting his connection with the organization he tried to say he proved himself to be some sort of a very general person. Why did he not speak out like a man, be it right or wrong? Why didn't he say "I have done it, and I dare to stand up and say I have done it." Why? There must have been some other reason other than the mere reason of his membership in that organization. You will readily understand that while the man who having been merely a member of such an organization might stand up in the broad light of day and say "I was a member of that organization and I promised not to be unfaithful to that organization," whereas another man, who, it is true, had been a member but had not been loyal to that organization which he had joined in secrecy and in private and who knew that the powers and authorities of this country were aware of the manner in which he acted towards the organization that he had sworn to be faithful to, would naturally be reticent, and you can understand that reticence, and you can explain by this motive the difference of attitudes taken by the private prosecutor and this man McGrath. For my part I felt to see any other explanation. But there is another consideration. I would ask you to note this fact that while there was no Fenianism in Canada when there was no organization in the kind for an informer to operate upon Mr. McNamee goes to New York, where he sees Mr. John O'Mahoney. He returns to Canada seemingly languished with enthusiasm for Fenianism; he gathers other men around him and he calls a meeting, at which a branch society is organized, having regular meetings, regular contributions and sending regular remittances to persons outside of Canada, to be used for Fenian purposes. When that Society was begun, Mr. McNamee was hot and strong. Now, a man who organizes a Society from honest motives, would be the most active in keeping it up after getting it properly started, and the most anxious to remain in it. But the prosecutor having brought this Society into existence, having given it shape and life, who had induced other men to come into this Society formed with a constitution similar to that of the Fenian Brotherhood, that man who still continued to approve of Fenianism, when the work of the Society was to be done, when he should have been most anxious to remain in it, slips quietly out. Gentlemen of the jury, his peculiar work was done. There was now a Fenian organization where there had been none before; there was work for the operations of an informer where there had been none before. The web had been woven, the flies had dropped into the net, and they were ready for the sacrilard. The private prosecutor, as I have already said, slipped quietly out. He had set the ball rolling and he took steps to let it be known that he had some sympathy with the Fenian movement. He took occasion to talk to Ministers of the Crown, and got known as a Fenian. Gentlemen of the jury I leave you to consider what that points to. I ask you to explain to yourselves the conduct of that man. The pretended motive for leaving the Society is that he left because some people who wanted to join did not like him. I would ask you to consider his character and to say whether that is a likely thing or not, on the part of a man who is shown, by the uncontradicted evidence before you, to have forced himself forward in Irish matters, who has insisted on being a representative Irishman. Do you believe that such a man, from no ulterior motive, would step down and out from a movement in which his sympathy was enlisted and to which he still subscribed, a movement of which he was the creator and father? I do not believe that it was possible for you to believe that story or to come to any other conclusion than that there was an ulterior motive in that withdrawal. Gentlemen of the jury, what that motive was is a matter which I leave to your consideration. You have heard it established here that there were men whose business it was to spy and ascertain and give reports of the movements of the Fenian organization, and that such men were paid for the information they gave was paid for. It is true that we have not been able to put in the box a witness who would swear that, to his personal knowledge, the private prosecutor was among those persons who so supplied information; but, gentlemen of the jury, in the absence of any explanation satisfactory to you, of his withdrawal from that Society, the sudden cooling of the zeal of a man who felt it necessary to establish Fenianism where Fenianism was not, and whose zeal suddenly died out in two or three months after the organization

by him of this society, that sudden change and alteration of his principles and ideas,—which induced him to abandon the work he had begun, and to throw it aside,—all seem to point to one conclusion. We know, however, from the further statements of a man or two, that he actually did not; for he was, after his withdrawal, still in communication with the members, and knew its doings, and subscribed to its funds; and we know the fact that the Government was paying for and obtaining information of the doings of the Fenians. Sworn constables did not get this information. This was a secret society; somebody who was trusted by the society must have supplied the information. These facts, coupled with the manner of the prosecutor in giving his evidence, must be carefully considered by you, and I leave it to you to decide what conclusions they point to.

Now, with regard to the public character of this man. You have had it established before you that he occupies to-day the position of President of the St. Patrick's Society, the representative Society of the Irish nationality in Montreal; that he has occupied that position for four years; and that at the time of the publication of this article he was a candidate for the office. You have had it established in evidence that the position of the President of the St. Patrick's Society is a representative position; and it is for you to say whether this publication of a man or two saying that his position was in the interest of the public; whether it was the duty of any fearless, disinterested, impartial journalist to say to those who were blindly placing this man in the position of a public representative, in the position of representative of the Irish Catholic part of the community, "Know you what manner of man this is? Do you know what kind of man you have been putting forward as your representative,—that you are putting forward the man against whom there exists this terrible evidence concerning his association with the business of crimping and bounty-broking,—of taking the population of this country and selling them to the service of a foreign country?" A man of whom, with regard to the accusation against the prosecutor of having made an offer to put daylight through a prominent citizen, you have the testimony of Michael O'Leilly, who says that McNamee attempted to hire him for \$500 to assassinate Mr. C. J. Brydges, at that time occupying the prominent position of General Manager of the Grand Trunk Railway. It is true that this man O'Leilly with perfect candor and frankness admits that he is no friend of Mr. McNamee, and that he has no true sense about his feelings of friendship, "between us we have injured me, and I have not forgotten it, I do not wish to do him an injury, I do not wish to do otherwise than tell the truth." What man of you, gentlemen, is there who,—if anyone approached you with a proposition of that kind,—would not shun the individual who should either be capable of making such a proposition or capable of conceiving the probability of your entertaining it? If men such as that,—men guilty of such offenses as have been proved so clearly as can be proved against the prosecutor—are to stand forward and hold representative positions, and to lead those different classes of population that are ultimately to be called upon to make great Canadian people, those different classes—whom we all hope to see at so very distant day consolidated together in that great Canadian nationality, which we all proudly look forward to, to which these different public representatives should be recognized as possessing or representing the characteristics of each of these classes so united together, and if the Celtic portion of that great Canadian nationality must be judged of by such a representative, then, gentlemen of the jury, I have got to say that I should for the first time in my life have to regret to say that I am an Irish Canadian.

Well, gentlemen of the jury, you are asked to say in the first place whether John P. Whelan published this article, and I think you will find that there is no proof before you that he did. If, however, you should by any possibility come to the conclusion that he did publish it, then you will have to enquire whether he did it maliciously, and I think you will find that that is utterly impossible. If you do get as far as that, you will have to decide whether on the 15th of March last it was the duty of the defendant as a public journalist, occupying the position of the publisher of a newspaper like *The Post*, to publish these things in the face of his honest belief in their truth, knowing this man to be a public man, knowing he aspired to a public position, knowing he was endeavoring to put himself forward in the distinguished position of which I have spoken, in the face of the fact that this man, the private prosecutor himself, felt that so critical was his position that his deeds, or rather misdeeds, required ventilation in his own interest. I ask you, under these circumstances, what any one of you would have done under similar circumstances. Would you have stood quietly by and seen this man go on in his career? Would you have stood quietly by while this disgrace was inflicted on your people? Would you have stood quietly by and seen this man exalted to be your representative and the representative of your people? Would you have stood quietly by while a man who felt that the charges hanging over his head were of so grave and serious nature that there was a necessity for an investigation? Would you stand quietly by while that man, I say, was using endeavors in which he had been previously successful, and in which there was too much reason to believe he would still be successful to get himself into that distinguished position of which I have spoken? I ask you as respectable men, as honest men with the interests of your people at heart, and with the interests of this country and of this city at heart, would you stand quietly by and see that work going on and say nothing,—more particularly if your people looked to you as a public journalist to keep an eye on public men and see that they should be guarded from being represented by any but men of whom a people might be proud and not ashamed? If any one of you stood in that position, with the sacred duties of a public journalist imposed upon you, if you had undoubted information that the man aspiring to and holding this high representative position had organized a society of the nature of the Fenian Society and afterwards revealed his doings for his own gain, that he had attempted to hire a person to assassinate a prominent citizen of this city, if you had information that led you to any other conclusion, that pointed out the prosecutor as an informer, and as guilty of all these different offenses; and if, to supplement all this, the man's own guilty conscience urging him, that man came and said, "I must have an investigation; my position is such that I require it." Would you not think your duty remained undone, that you were false to the trust reposed in you, and that you had failed in one of the sacred duties incumbent upon you as a publisher if you did not publicly state what you knew? It was at a moment when something must be done. This had been going on for years. The prosecutor had been occupying this re-

representative position for four years. No other had been found to undertake the task of exposing him. There had been no other man with the courage to do it; no other man with that devotion to his people and that determination to do his duty, which would impel him to give his time, pains, anxiety and money to the investigation of the charges and charges which the whole Irish people of this country had an interest in solving. In the person of my client the man was found to do his duty, with nothing to gain for himself—neither money, position, credit, reputation with nothing to gain, and having nothing before him but great expense, and perhaps criminal prosecution also,—but that I know his case is safe in your hands,—I might add a verdict of guilty, with consequent consignment to a prison cell; the man was found I say with nothing but that prospect before him to set about his duty, he set about the duty that other men had failed to do. He undertook to solve and investigate these charges; for long months he has labored, spending his money and giving his time so that this matter might be cleared up, and that justice might be done to his people; so that this man entitled for this representative position of which I have spoken should cease to occupy it. This is what my client says to you gentlemen; that is all that my client has done. I say to you that this prosecutor has done a great injustice to public position, it was not just and right and proper that what has been proved against him here should be made known to the public, and that it was to the public interest that the whole of the accusations made in the article should be publicly investigated and made manifest. Of course I do not pretend that it is my province to tell you what the law is. That is the province of the honorable Judge; but I desire to draw your attention to this: that it is incumbent upon you to decide whether or not, as a matter of fact, the accused is guilty of the offence with which he is charged, and it is your duty, in endeavoring to arrive at a conclusion, to take into consideration the whole of the facts concerning it—the position the defendant occupied as a journalist and the facts he had before him—and to enquire whether, under the circumstances, and in view of his position, he felt it honestly to be his duty to do that which he did; and I think that you will come to the conclusion that under the circumstances, with the evidence having regard to the relative positions of the prosecutor and defendant, and their respective relations to and connection with the crime, and the facts of the case, that it was not only a lawful thing for my client to do, but that if he wished to fulfil the duty incumbent upon him as a journalist he was in duty bound to bring those charges before the public, and to state exactly that which he knew and believed to be true.

I, therefore, leave the case now in your hands, in the hands of a jury of my client's fellow countrymen, confident that you will come to the conclusion that the prosecution have not in the first place made out a case against my client, and that you will find his plea of not guilty well founded; but even if you should go further to the plea of justification, I feel confident that you will weigh and consider the evidence thoroughly and impartially, that you will have due regard to the positions these parties respectively occupy, and consider the nature of the evidence made out by the prosecutor and the evidence brought forward by the defendant, and that you will in fine consider carefully the whole of the circumstances of the case and come to the conclusion that far from doing a thing for which he should stand indicted here before you today, far from him being in the position of a wrong-doer using and impugning mercy, my client has done that which he conscientiously believed to be his duty, and that which I believe any one of you in this position would believe to be his duty, and I therefore feel full confidence that you will not by your verdict declare the man a criminal for doing that which—knowing the facts and circumstances he did know—it was his duty to do.

AFTERNOON SESSION.

On the opening of the afternoon session of the Court of Queen's Bench on Thursday, Mr. W. H. Kerr, Q. C., on behalf of the defence proceeded to address the Court. He said that before addressing the jury he wished to make some observations to the Court to some legal points arising in the case. He then pointed out that under the Libel Act there were, as he submitted, two distinct classes or descriptions of libel, one of which consisted in the publication of a defamatory libel by a defendant, knowing it to be false, and this offence, under the second section of the act, was punishable by fine to the extent of \$100 and imprisonment not exceeding two years; while the other description of libel consisted in merely publishing a defamatory libel, the ingredient of knowledge of its falsity being wanting, and this offence, under the third section of the Act was punishable by fine to the extent of \$200 and imprisonment not exceeding one year.

In the present case the libel charged against Mr. Whelan was the printing and publishing of libellous matters, knowing them to be false. The indictment, therefore, in this case, was framed under the second section of the Act, and in order to maintain that indictment he (Mr. Kerr) maintained that it was absolutely requisite that the prosecution should have established that the defendant not only published the libel in question, but that when he so published it he knew it to be false, and that if that proof had not been made by the prosecution, the indictment in law must fall to the ground. The recent Libel Act had introduced new ingredients into the law of libel. It had, for instance, brought in the plea of justification, which did not exist under the old law of libel; and it had also divided libel into these two classes or offences, by its second and third sections respectively. There was only one count in the present indictment, and that was framed under the second section of the Act, which second section threw the onus on the prosecutor to prove guilty knowledge on the part of the defendant of the falsity of the libel charged. The learned counsel was not aware of any case in which this point had been argued, but he cited the most recent work on Libel (Odgers, page 590) to show that where the indictment was framed under section 4 of Lord Campbell's Act (analogous to the second section of the Canadian Libel Act), the prosecutor must give some evidence that the defendant knew that the words used were false; but in no other case need the prosecutor give any evidence of the falsity of the libel. The ordinary presumption of malice and of guilty knowledge would not arise from the mere publication of a libel charged under the second section of our libel act. It was for the prosecutor to make special and conclusive proof that the defendant caused the publication knowing it to be false, and then and only then could the presumption arise that he did it to gratify his malice.

Mr. EDWARD CARTER, Q. C., replied that Mr. Kerr's point might have been well taken in a case where the defendant had pleaded a simple plea of not guilty; but in this case there was a plea of justification by which the defendant, in effect, admitted the libel, but

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