

CURRAN

JOHAN PHILPOT CURRAN, a famous Irish lawyer, orator, and wit, was born of humble parentage at Newmarket, County Cork, July 24, 1750, and died at London, Oct. 14, 1817. He studied at Trinity College, Dublin, and at the Middle Temple, London, and in 1775 was called to the Irish Bar. Though of unprepossessing appearance and of comparatively short stature, he was gifted with rare eloquence, and had a delightful mother wit. His powers of sarcasm were unusual, and his speeches, though at times over-florid and pompous, rose usually to great forensic heights. In 1784, he entered the Irish Parliament, where he became a trenchant opponent of the government, opposed with Grattan the union of the two kingdoms, and, at considerable hazard to himself, he defended the leaders in the Irish rising of 1798. After the death of Pitt, when the Whigs came to power, he was appointed Master of the Rolls in Ireland. In 1813, he resigned this post and retired to London on a pension. His "Life," by his son, shows much of Curran's riant wit and many attractive social qualities, which still endear his memory to his countrymen. The closing years of his life, which were saddened by indifferent health, by the desertion of his wife, and by the death of his daughter whose heart was broken by the execution of her lover, the famous Robert Emmet, was brightened by the friendship of Sheridan, Erskine, and Tom Moore.

SPEECH IN BEHALF OF ROWAN

[This famous speech was delivered Jan. 29, 1794. Drennan and Rowan were brought before the Court of King's Bench for a seditious libel, not by a presentment of the grand jury, but by an information of the attorney-general. The former was acquitted on a mere point of form; the trial of the latter gave rise to this speech. In justice to Mr. Curran, one thing should be remembered in perusing it. Mr. Rowan had given directions that his counsel should aim not so much to obtain his acquittal as to defend his principles. This accounts for the want of that close argument on the exact point at issue, which has been the chief objection to this speech. Its true title would be, "A Vindication of Mr. Rowan's Motives, of the Irish Volunteers, of a Free Press, and of Catholic Emancipation."]

GENTLEMEN OF THE JURY,—When I consider the period at which this prosecution is brought forward; when I behold the extraordinary safeguard of armed soldiers, resorted to, no doubt, for the preservation of

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peace and order; when I catch, as I cannot but do, the throb of public anxiety, which beats from one end to the other of this hall; when I reflect on what may be the fate of a man of the most beloved personal character, of one of the most respected families of our country — himself the only individual of that family—I may almost say of that country: who can look to that possible fate with unconcern? Feeling, as I do, all these impressions, it is in the honest simplicity of my heart I speak, when I say that I never rose in a court of justice with so much embarrassment as upon this occasion.

If, gentlemen, I could entertain a hope of finding refuge for the disconcertion of my mind in the perfect composure of yours; if I could suppose that those awful vicissitudes of human events, which have been stated or alluded to, could leave your judgments undisturbed and your hearts at ease, I know I should form a most erroneous opinion of your character. I entertain no such chimerical hopes; I form no such unworthy opinions; I expect not that your hearts can be more at ease than my own; I have no right to expect it; but I have a right to call upon you in the name of your country, in the name of the living God, of whose eternal justice you are now administering that portion which dwells with us on this side of the grave, to discharge your breasts, as far as you are able, of every bias of prejudice or passion; that if my client is guilty of the offence charged upon him you may give tranquillity to the public by a firm verdict of conviction; or if he is innocent, by as firm a verdict of acquittal; and that you will do this in defiance of the paltry artifices and senseless clamors that have been resorted to in order to bring him to his trial with anticipated conviction. And, gentlemen, I feel an additional necessity of thus conjuring you to be upon your guard, from the able and imposing statement which you have just heard on the

part of the prosecution. I know well the virtues and the talents of the excellent person who conducts that prosecution; I know how much he would disdain to impose upon you by the trappings of office; but I also know how easily we mistake the lodgment which character and eloquence can make upon our feelings, for those impressions that reason, and fact, and proof, only ought to work upon our understandings.

Perhaps, gentlemen, I shall not act unwisely in waiving any further observation of this sort, and giving your minds an opportunity of growing cool and resuming themselves by coming to a calm and uncolored statement of mere facts, premising only to you that I have it in the strictest injunction from my client to defend him upon facts and evidence only, and to avail myself of no technical artifice or subtilty that could withdraw his cause from the test of that inquiry which it is your province to exercise, and to which only he wishes to be indebted for an acquittal.

In the month of December, 1792, Mr. Rowan was arrested on an information charging him with the offence for which he is now on his trial. He was taken before an honorable personage now on that bench and admitted to bail. He remained a considerable time in this city, soliciting the threatened prosecution, and offering himself to a fair trial by a jury of his country; but it was not then thought fit to yield to that solicitation; nor has it now been thought proper to prosecute him in the ordinary way by sending up a bill of indictment to a grand jury. I do not mean by this to say that informations *ex officio* are always oppressive or unjust; but I cannot but observe to you that when a petty jury is called upon to try a charge not previously found by the grand inquest, and supported by the naked assertion only of the King's prosecutor, the accusation labors under a weakness of probability which it

is difficult to assist. If the charge had no cause of dreading the light, if it was likely to find the sanction of a grand jury, it is not easy to account why it deserted the more usual, the more popular, and the more constitutional mode, and preferred to come forward in the ungracious form of *ex officio* information.

If such bill had been sent up and found, Mr. Rowan would have been tried at the next commission; but a speedy trial was not the wish of his prosecutors. An information was filed, and when he expected to be tried upon it, an error, it seems, was discovered in the record. Mr. Rowan offered to waive it, or consent to any amendment desired. No. That proposal could not be accepted. A trial must have followed. That information, therefore, was withdrawn, and a new one filed; that is, in fact, a third prosecution was instituted upon the same charge. This last was filed on the eighth day of last July. Gentlemen, these facts cannot fail of a due impression upon you. You will find a material part of your inquiry must be, whether Mr. Rowan is pursued as a criminal or hunted down as a victim. It is not, therefore, by insinuation or circuitry, but it is boldly and directly that I assert that oppression has been intended and practised upon him; and by those facts which I have stated I am warranted in the assertion.

His demand, his entreaty to be tried was refused; and why? A hue and cry was to be raised against him; the sword was to be suspended over his head; some time was necessary for the public mind to become heated by the circulation of artful clamors of anarchy and rebellion; those same clamors which, with more probability and not more success, had been circulated before through England and Scotland. In this country the causes and the swiftness of their progress were as obvious

as their folly has since become to every man of the smallest observation. I have been stopped myself with, "Good God, sir, have you heard the news?" "No, sir, what?" "Why, one French emissary was seen travelling through Connaught in a post-chaise, and scattering from the windows, as he passed, little doses of political poison, made up in square bits of paper; another was actually surprised in the fact of seducing our good people from their allegiance by discourses upon the indivisibility of French robbery and massacre, which he preached in the French language to a congregation of Irish peasants!"

Such are the bugbears and spectres to be raised to warrant the sacrifice of whatever little public spirit may remain among us; but time has also detected the imposture of these Cock-lane apparitions, and you cannot now, with your eyes open, give a verdict without asking your consciences this question: Is this a fair and honest prosecution? Is it brought forward with the single view of vindicating public justice and promoting public good?

And here let me remind you that you are not convened to try the guilt of a libel affecting the personal character of any private man. I know no case in which a jury ought to be more severe than when personal calumny is conveyed through a vehicle which ought to be consecrated to public information; neither, on the other hand, can I conceive any case in which the firmness and the caution of a jury should be more exerted than when a subject is prosecuted for a libel on the state. The peculiarity of the British constitution (to which, in its fullest extent, we have an undoubted right, however distant we may be from the actual enjoyment, and in which it surpasses every known government in Europe, is this, that its only professed object is the general good, and its

only foundation the general will. Hence the people have a right, acknowledged from time immemorial, fortified by a pile of statutes, and authenticated by a revolution that speaks louder than them all, to see whether abuses have been committed, and whether their properties and their liberties have been attended to as they ought to be. This is a kind of subject which I feel myself overawed when I approach. There are certain fundamental principles which nothing but necessity should expose to a public examination. They are pillars the depth of whose foundation you cannot explore without endangering their strength; but let it be recollected that the discussion of such topics should not be condemned in me nor visited upon my client. The blame, if any there be, should rest only with those who have forced them into discussion. I say, therefore, it is the right of the people to keep an eternal watch upon the conduct of their rulers; and in order to that, the freedom of the press has been cherished by the law of England. In private defamation let it never be tolerated; in wicked and wanton aspersion upon a good and honest administration let it never be supported; not that a good government can be exposed to danger by groundless accusation, but because a bad government is sure to find in the detected falsehood of a licentious press a security and a credit which it could never otherwise obtain.

I have said that a good government cannot be endangered: I say so again; for whether it be good or bad can never depend upon assertion; the question is decided by simple inspection; to try the tree look at its fruit; to judge of the government look at the people. What is the fruit of good government? "The virtue and happiness of the people." Do four millions of people in this country gather those fruits from that government to whose injured purity, to whose spot-

less virtue and violated honor, this seditious and atrocious libeller is to be immolated upon the altar of the constitution? To you, gentlemen of that jury, who are bound by the most sacred obligation to your country and your God to speak nothing but the truth, I put the question — Do they gather these fruits? are they orderly, industrious, religious, and contented? do you find them free from bigotry and ignorance, those inseparable concomitants of systematic oppression? or, to try them by a test as unerring as any of the former, are they united? The period has now elapsed in which considerations of this extent would have been deemed improper to a jury; happily for these countries the legislature of each has lately changed, or, perhaps, to speak more properly, revived and restored the law respecting trials of this kind. For the space of thirty or forty years a usage had prevailed in Westminster Hall by which the judges assumed to themselves the decision of the question whether libel or not. But the learned counsel for the prosecution are now obliged to admit that this is a question for the jury only to decide. You will naturally listen with respect to the opinion of the court, but you will receive it as matter of advice, not as matter of law; and you will give it credit, not from any adventitious circumstances of authority, but merely so far as it meets the concurrence of your own understandings.

Give me leave, now, to state to you the charge as it stands upon the record: It is that Mr. Rowan, "being a person of a wicked and turbulent disposition, and maliciously designing and intending to excite and diffuse among the subjects of this realm of Ireland discontents, jealousies, and suspicions of our Lord the King and his government, and disaffection and disloyalty to the person and government of our said Lord the King, and to raise very dangerous seditions and tumults within

this kingdom of Ireland and to draw the government of this kingdom into great scandal, infamy, and disgrace; and to incite the subjects of our said Lord the King to attempt, by force and violence and with arms, to make alterations in the government, state, and constitution of this kingdom; and to incite his Majesty's said subjects to tumult and anarchy, and to overturn the established constitution of this kingdom, and to overawe and intimidate the legislature of this kingdom by armed force," did "maliciously and seditiously" publish the paper in question.

Gentlemen, without any observation of mine you must see that this information contains a direct charge upon Mr. Rowan; namely, that he did, with the intents set forth in the information, publish this paper, so that here you have, in fact, two or three questions for your decision: first, the matter of fact of the publication; namely, Did Mr. Rowan publish that paper? If Mr. Rowan did not, in fact, publish that paper, you have no longer any question on which to employ your minds. If you think that he was in fact the publisher, then, and not till then, arises the great and important subject to which your judgments must be directed. And that comes shortly and simply to this, is the paper a libel; and did he publish it with the intent charged in the information? But whatever you may think of the abstract question whether the paper be libellous or not, and of which paper it has not even been insinuated that he is the author, there can be no ground for a verdict against him unless you also are persuaded that what he did was done with a criminal design. I wish, gentlemen, to simplify, and not to perplex; I therefore say again, if these three circumstances conspire — that he published it, that it was a libel, and that it was published with the purposes alleged in the information—you ought unquestionably to find him

guilty; if, on the other hand, you do not find that all these circumstances concurred; if you cannot, upon your oaths, say that he published it; if it be not in your opinion a libel; and if he did not publish it with the intention alleged; I say upon the failure of any one of these points my client is entitled, in justice and upon your oaths, to a verdict of acquittal.

Gentlemen, Mr. Attorney-General has thought proper to direct your attention to the state and circumstances of public affairs at the time of this transaction; let me also make a few retrospective observations on a period at which he has but slightly glanced; I speak of the events which took place before the close of the American war. You know, gentlemen, that France had espoused the cause of America, and we became thereby engaged in war with that nation. "*Heu nescia mens hominum futuri!*"¹

Little did that ill-fated monarch know that he was forming the first causes of those disastrous events that were to end in the subversion of his throne, in the slaughter of his family, and the deluging of his country with the blood of his people. You cannot but remember that at a time when we had scarcely a regular soldier for our defence, when the old and the young were alarmed and terrified with the apprehension of invasion, Providence seemed to have worked a sort of miracle in our favor.

You saw a band of armed men come forth at the great call of nature, of honor, and their country. You saw men of the greatest wealth and rank; you saw every class of the community give up its members and send them armed into the field to protect the public and private tranquillity of Ireland. It is impossible for any man to turn back to that period without

¹ "Such are the minds of men!
Unconscious of their fate and coming fortune."

reviving those sentiments of tenderness and gratitude which then beat in the public bosom; to recollect amid what applause, what tears, what prayers, what benedictions, they walked forth among spectators agitated by the mingled sensations of terror and reliance, of danger and protection, imploring the blessings of heaven upon their heads and its conquest upon their swords. That illustrious, and adored, and abused body of men stood forward and assumed the title which I trust the ingratitude of their country will never blot from its history, "The Volunteers of Ireland."

Give me leave, now, with great respect, to put one question to you: Do you think the assembling of that glorious band of patriots was an insurrection? Do you think the invitation to that assembling would have been sedition? They came under no commission but the call of their country; unauthorized and unsanctioned except by public emergency and public danger. I ask, was that meeting an insurrection or not? I put another question: If any man had then published a call on that body, and stated that war was declared against the state; that the regular troops were withdrawn; that our coasts were hovered round by the ships of the enemy; that the moment was approaching when the unprotected feebleness of age and sex, when the sanctity of habitation, would be disregarded and profaned by the brutal ferocity of a rude invader: if any man had then said to them, "Leave your industry for a while, that you may return to it again, and come forth in arms for the public defence,"—I put this question boldly to you, gentlemen,—it is not the case of the Volunteers of that day; it is the case of my client at this hour, which I put to you,—would that call have been then pronounced in a court of justice, or by a jury on their oaths, a criminal and seditious invitation to insurrection? If it would