# AGAINST SIR HENRY HAYES.

## [ABDUCTION OF MISS PIKE.]

## CORK SPRING ASSIZES.

*April 13th*, 1801.

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Sir Henry Brown Hayes, Knight, was the son of Mr. Attwell Hayes, a wealthy citizen of Cork. At the time of the occurrence for which Curran prosecuted him, Sir Henry was a widower, with several children, and, being a man of address and fortune, was popular in Cork. It is said that his expenses had exceeded his means, and that he was induced to the abduction of Miss Pike to retrieve his affairs. The attempt at such an offence was then a capital felony under the statute law.

Mary Pike was the only child of Mr. Samuel Pike, a Cork banker, of a respectable Quaker family, who had died some time before, leaving her a fortune of over £20,000. Her mother was in weak health, resident in the city of Cork, and maintaining her connexion with the Society of Friends, which Miss Pike and many of her relatives had abandoned.

In 1797, Miss Pike, then twenty-one years old, resided with a relation, Mr. Cooper Penrose, at a beautiful demesne, called Wood-hill, near Cork. Sir Henry Hayes rode there on Sunday, the 2nd July, 1797, and, professing a desire to see the place, it was shown to him by Mr. Penrose, and he was finally (though previously unknown) asked to dinner by Mr. Penrose, and then met Miss Pike for the first time.

Sir Henry was captivated or content with this acquaintance. He wrote to Dr. Gibbings, Mrs. Pike's physician; and having learned Dr. Gibbings' hand-writing from the reply, this letter, in close imitation of that writing, was sent to Wood-hill:—

"TO COOPER PENROSE, ESQ.

"DEAR SIR,—Our friend, Mrs. Pike, is taken suddenly ill; she wishes to see Miss Pike. We would recommend dispatch, as we think she has not many hours to live.

"Yours, &c., ROBERT GIBBINGS."

This document reached Mr. Penrose after midnight of July the 22nd, and, as soon as possible, Miss Pike, accompanied by Miss Penrose, and a Mrs. Richard Pike, set off in Mr. Penrose's carriage. The night was wet and stormy. They had not gone far when their carriage was stopped by armed men, Miss Pike's name ascertained, and her person identified by a muffled man. The traces of their carriage were then cut; and Miss Pike, placed in a chaise with a lady, who seems to have been a sister of Sir Henry's, was driven off, under a mounted escort, to Mount-Vernon. She was carried from the gate up the steep avenue by the muffled man. Her treatment, then, Miss Pike thus describes in her evidence:—

*Q.* How did you get into the house? *A.* He took me in his arms into the parlour.

What happened after you got into the house; were there lights in the parlour? There was a snuff of a candle just going out.

Miss Pike, be so good as to tell what happened after you got into the parlour; did any other persons make their appearance? Yes, two women.

Did you see any body else in the house that night, but Sir Henry and the two women? I did not, until the next morning.

Did you see any other persons in that house at any time after? Yes, a man in priest's habits.

Was it that night or next morning? It was next morning.

At break of day, was it? Yes.

Did anything particular happen then? Before that, I was forced up stairs.

By whom? By Sir Henry Hayes and his sister.

After you were forced up stairs, did anything particular happen? Before that, there was a kind of ceremony read, and they forced a ring on my finger; before I was taken up stairs, there was a kind of ceremony of marriage, and a man appeared dressed in the habit of a clergyman.

Court—You said something about a ring? A ring was attempted to be forced on my finger, which I threw away.

After you were forced up stairs, and after this kind of a ceremony of marriage was performed, did anything particular happen above stairs? I was locked into a room.

What sort of a room? A small room with two windows.

What happened after that; do you recollect anything more? There was tea brought up, and after that Sir Henry Hayes came up.

After tea was brought up, and after Sir Henry came up stairs, did anything happen?

Court—It is now about four years ago; and, therefore, mention only what you remember.

I remember his father coming up.

It was after that? Before my uncle came to take me home.

Court—Was the room furnished or unfurnished? There was a bed and a table in it.

Do you recollect anything that passed after Sir Henry's coming up; and if you do, state it to the Court? I recollect perfectly his coming in and out, and behaving in the rudest manner, and saying I was his wife.

Were you restored shortly after? About eight o'clock next morning.

Was or was not any part of that transaction between you and Sir Henry Hayes with your consent or against it? Against it entirely.

Did you write anything while at Mount-Vernon? Yes; I wrote a note, directed to my uncle.

How did you come to write that letter? I was anxious to get to my friends, and repeatedly asked for pen and ink.

It was at length brought to you? Yes; and as well as I can recollect, I wrote to my uncle, to let him know where I was.

Sir Henry Hayes absconded. Government offered £1000 for his apprehension, and Miss Pike's relatives offered another reward—both in vain. He was outlawed, but returned to Cork, and lived there without concealment, and Miss Pike went to reside in Bath. About two years after, Hayes wrote to her a polite letter, offering to stand his trial at the next assizes. Upon this the outlawry was reversed by consent, and an application to remove the venue to Dublin city having failed, the case came on at the Spring assizes of Cork, on the 13th day of April, 1801, before Mr. Justice Day.

There were two indictments, one for the abduction, another for procuring it, but on coming into court the Crown quashed the second indictment. The sustained indictment had two counts, one for abduction, with intent to marry, the other charging a still baser purpose.

The trial excited great interest, and Sir Henry came into court, attended by numerous and influential friends.

Witnesses having been ordered out of court, CURRAN spoke as follows:—

MY Lord and Gentlemen of the Jury—It is my duty, as one of the counsel in this prosecution, to state to your lordship, and to you, gentlemen of the jury, such facts as I am instructed will be established by evidence, in order that you may be informed of the nature of the offence charged by the indictment, and be rendered capable of understanding that evidence, which, without some previous statement, might appear irrelevant or obscure. And I shall make a few such observations, in point of law, on the evidence we propose to adduce, with respect to the manner in which it will support the

charge, if you shall believe it to be true, as may assist you in performing that awful duty which you are now called upon to discharge. In doing so, I cannot forget upon what very different ground from that of the learned counsel for the prisoner, I find myself placed. It is the privilege, it is the obligation, of those who have to defend a client on a trial for his life, to exert every force, and to call forth every resource, that zeal, and genius, and sagacity can suggest. It is an indulgence in favour of life—it has the sanction of usage—it has the permission of humanity; and the man who should linger one single step behind the most advanced limit of that privilege, and should fail to exercise every talent that heaven had given him, in that defence, would be guilty of a mean desertion of his duty, and an abandonment of his client.

Far different is the situation of him who is concerned for the crown. Cautiously should he use his privileges—scrupulously should he keep within the duties of accusation. His task is to lay fairly the nature of the case before the court and the jury. Should he endeavour to gain a verdict otherwise than by evidence, he were unworthy of speaking in a court of justice. If I heard a counsel for the crown state anything that I did not think founded in law, I should say to myself, "God grant that the man who has stated this may be an ignorant man, because his ignorance can be his only justification." It shall, therefore, be my endeavour, so to

lay the matters of fact and of law before you, as shall enable you clearly to comprehend them, and, finally, by your verdict, to do complete justice between the prisoner and the public.

My Lord, and Gentlemen of the Jury, this is an indictment, found by the grand jury against the prisoner at the bar, for having feloniously carried away Mary Pike, with intent against her will to marry her; there is another charge also, that he did feloniously carry her away with intent to defile her.

There was a former statute made on this subject, enacting the punishment of death against any man that should, by violence, carry away a female, and actually marry or defile her. But it was found that young creatures, the victims of this sort of crime, for their natural timidity, and the awful impression made upon them in an assembly like the present, were often unequal to the task of prosecution, and that offences against that statute often passed unpunished, because the natural delicacy and modesty of the sex shrunk from the revolting details that were unavoidable on such trials. It, therefore, became necessary to enact a new law upon the subject, making the taking away with intent to marry or defile, although, in fact, no such marriage or defilement had taken place, felony of death. Thus was suppressed the necessity of all those shocking, but necessary, details, that were otherwise required.

Of the enormity of the crime, I trust I need say

but little. I trust in God there could not be found in this great city twelve men, to whom it could be necessary to expatiate on the hideous enormity of such an offence. It goes to sap the foundation of all civil society; it goes to check the working of that natural affection, which heaven has planted in the breast of the parent for the child. In fact, gentlemen of the jury, if crimes like this shall be encouraged and multiplied by impunity, why should you defraud your own gratifications of the fruits of your industry?— why lay up the acquisitions of self-denying toil, as an advancement for your child? —why check your own appetites to give her all?— why labour to adorn her person or her mind with useless, with fatal accomplishments? You are only decking her with temptations for lust and rapine; you are refining her heart, only to make her feel more profoundly the agony of violation and of dishonour. Why, then, labour to multiply the inducements of the ravisher?—why labour to augment and to perpetuate the sufferings of the victim? Instead of telling you my opinion of the enormity of this crime, I will tell you that of the legislature upon it:—the legislature has deemed it a crime deserving the punishment of death.

I will now state to you the facts as I am instructed they will appear to you in evidence.

The prisoner at the bar, (and considering his education, his age, his rank, and situation in society, I do regret, from my soul, that he is there,)

married many years ago; his wife died, leaving him the surviving parent of, I believe, many children. Miss Mary Pike is the only child of a person, whom, I suppose, you all knew—Mr. Samuel Pike, of this city. He had devoted a long life to a very persevering and successful industry, and died advanced in years, leaving this his only child entitled to all the fruits of his laborious and persevering application. The property she is entitled to, I understand, is very great, indeed. At the time of the transaction, to which your attention must be called, she was living in the house, and under the protection, of an universally respected member of society, Mr. Cooper Penrose. From the moment her mind was susceptible of it, no expense was spared to give her every accomplishment that she was capable of receiving; and in the house of her own father, while he lived, and in the house of Mr. Penrose, when she came under his protection, her mind was formed to the most correct principles of modesty, and delicacy, and decorum, with those additional characteristics, humility and reserve, that belong to that most respectable sect of which her father was a member. The prisoner at the bar, it seems, had heard of her, and had heard of her property; for it is a material circumstance in this case, that he never by any accident had seen her, even for a moment, until he went to see and identify her person, and mark her out the victim of his projected crime.

He was not induced by the common motives

that influence young men—by any individual attachment to the mind or the person of the lady. It will appear, that his first approach to her was meanly and perfidiously contrived, with the single purpose of identifying her person, in order that he might feloniously steal it, as the title-deed of her estate.

Some time before the 22nd of July, in the year 1797, he rode down to the residence of Mr. Penrose. Mr. Penrose has a country-house, built in a very beautiful situation, and which attracts the curiosity of strangers, who frequently go to see it.

The prisoner at the bar went into the grounds as one of these, and seemed to observe every thing with great attention. Mr. Penrose immediately came out to him, and conducted him to whatever objects he supposed might gratify his curiosity. He affected to be much entertained; he lingered about the grounds until the hour of Mr. Penrose's dinner approached. Mr. Penrose, quite a stranger to the prisoner at the bar, was not, I suppose, very anxious to invite a perfect stranger in among his family, more desirous, probably, of enjoying the little exclusive confidential intercourse of that family. However, with that good nature which any man of his cordial and honest turn of mind will feel it his duty to exercise, he did invite Sir Henry Hayes to dinner. The invitation was accepted of; and thus the first step towards the crime he meditated, was an abuse of the sacred duty which the

hospitality of his host imposed upon him, as a man, and as a gentleman. He placed himself at the friendly and unsuspecting board, in order to the accomplishment of his design, by the most unfeeling and unextenuated violation of the rights of the host, whom he made his dupe—of the lady, whom he marked as his victim—and of the law, which he determined to trample upon, and disgrace by the commission of a felony of death. There, when the eye of the prisoner could escape from the smiles that were lavished upon him—those honest smiles of respect and cordiality, that come only from the heart—it was to search the room, to find out who probably was the person that he had come to identify. He made his observation, and took his departure; but it was not a departure for the last time.

Mrs. Pike, the widow, mother of the prosecutrix, was then in Cork, in a dangerous state of health. In order to get Miss Pike out of the hands of her protector, a stratagem was adopted. Dr. Gibbings was the attending physician upon her mother; it does not appear that the prisoner knew Dr. Gibbings' handwriting: it was necessary that a letter should be sent, as if from Dr. Gibbings; but to do so with effect, it was necessary that a letter should be written to Mr. Penrose in a hand-writing, bearing such a similitude to the doctor's, as might pass for genuine. To qualify himself for this, the prisoner at the bar made some pretext for sending a written message to Dr. Gibbings, which procured,

in return, a written answer from the doctor. Thus was he furnished with the form of the hand-writing of Dr. Gibbings, which he intended to counterfeit; and, accordingly, there was written, on the 22nd day of July, 1797, a letter, so like the character of Dr. Gibbings, that he himself, on a slight glance, would be apt to take it for his own. It was in these words:—"Dear Sir,—Our friend, Mrs. Pike, is taken suddenly ill; she wishes to see Miss Pike; we would recommend despatch, as we think that she has not many hours to live. Your's, Robert Gibbings." Addressed "to Mr. Cooper Penrose." The first step to the crime was a flagrant breach of hospitality, and the second, towards the completion, was the inhuman fraud of practising upon the piety of the child, to decoy her into the trap of the ravisher, to seduce her to destruction by the angelic impulses of that feeling that attaches her to the parent—that sends her after the hour of midnight, from the house of her protector, to pay the last duty, and to receive the parting benediction. Such was the intention with which the prosecutrix, of a rainy night, between one and two o'clock in the morning, rose from her bed; such was her intention; it was not her destination; it was not to visit the sick bed of a parent; it was not to carry a daughter's duty of consolation to her dying mother; it was not for that she came abroad; it was that she might fall into the hands of preconcerted villany; that she should fall into that trap, which

was laid for her, with the intention to despoil her of every thing that makes human existence worth the having, by any female who has any feeling of delicacy or honour.

I should state to you, that she left the house of Mr. Penrose, in his carriage, attended by two female relations, one of them his daughter; and when they had advanced about half way to Cork, the carriage was suddenly met by four or five men. They ordered the coachman to stop. One of them was dressed in a great coat, and armed with pistols, and had the lower part of his face concealed, by tying a handkerchief round it.

The ladies, as you may suppose, were exceedingly terrified at such a circumstance as this. They asked, as well as extreme terror would permit, what they sought for; they were answered, "they must be searched." On looking about, they observed another chaise, stationed near the place where they were detained. It will appear to you, that Miss Pike was taken forcibly out of the carriage from her friends; that she was placed in the other chaise which I have mentioned; in which she found, shame to tell it—she found a woman. The traces of Mr. Penrose's chaise were then cut: and the ladies that came in it left, of course, to find their way as well as they could, and return in the dark.

The carriage, into which the prosecutrix was put, drove off towards Cork; the female that was with her will appear to you to have been the sister of

the prisoner. Happy! happy for her! that death has taken her away from being the companion of his trial, and of his punishment, as she was the accomplice of his guilt: but she is dead. The carriage drove on to the seat, belonging to the prisoner at the bar, called Mount-Vernon, in the liberties of the city; at the bottom of his avenue, which it seems is a steep ascent, and of considerable length, the horses refused to go on; upon which the prisoner rode up to the chaise, dismounted from his horse, which he gave to one of his attendants, opened the door, took the prosecutrix out, and carried her, struggling in his arms, the whole length of the avenue, to his house. When he arrived there, he carried her up stairs, where she saw a man, attired in somewhat like the dress of a priest; and she was then told that she was brought there to marry the prisoner at the bar. In what frame of mind the miserable wretch must have been, any man that has feelings; must picture to himself. She had quitted the innocent and respectable protection of her friends and family, and found herself —good God! where?—in the power of an inexorable ravisher, and surrounded by his accomplices: she looked in every mean and guilty countenance; she saw the base unfeeling accomplices induced by bribe, and armed for present force, bound and pledged by the community of guilt and danger, by the felon's necessity, to the future perjury of self-defence.

Thus situated, what was she to look to for assistance? What was she to do? Was she to implore the unfeeling heart of the prisoner? As well might she have invoked her buried father, to burst the cerements of the grave, and rise to the protection of his forlorn and miserable child. There, whatever sort of ceremony they thought right to perform, took place; something was muttered in a language which she partly did not hear, and partly could not understand; she was then his wife—she was then Lady Hayes.

A letter was then to be written to apprize her miserable relations of their new affinity. A pen was put into her hand, and she consented to write, in hopes that it might lead to her deliverance; but when the sad scroll was finished, and the subscription only remained, neither entreaties nor menaces could prevail upon her, desolate and forlorn as she was, to write the odious name of the ravisher. She subscribed herself by the surname of her departed father; as if she thought there was some mysterious virtue in the name of her family, to which she could cling in that hour of terror, as a refuge from lawless force and unmerited suffering.

A ceremony of marriage had taken place: a ring was forced upon her finger; she tore it off, and indignantly dashed it from her; she was then forced into an adjoining chamber, and the prisoner brutally endeavoured to push her towards the bed.

My lord, and gentlemen of the jury, you will

soon see this young lady. You will see that whatever grace or proportion her person possesses, it does not seem formed for much power of resistance, or of self-defence. But there is a last effort of sinking modesty, that can rally more than the powers of nature to the heart, and send them to every fibre of the frame, where they can achieve more than mere vulgar strength can do upon any ordinary occasion: that effort she did make, and made it with effect; and in that instance, innocence was crowned with success.

Baffled and frustrated in his purposes of force, he sought to soften, to conciliate. "And do you not know me?" said he. "Don't you know who I am?" "Yes," answered she, "I do know you; I do now remember you did go to my cousin's, as you say you did. I remember your mean intrusion, you are Sir Henry Hayes." How naturally do the parties support their characters! The criminal puts his questions under the consciousness of guilt, as if under the forecast of his present situation. The innocent victim of that guilt regards him already as his prosecutrix; she recognizes him, but it is only to identify him as a malefactor, and to disclaim him as a husband.

Gentlemen, she remained in this captivity, until her friends got intelligence of her situation. Justice was applied to. A party went to the house of the prisoner, for the purpose of enlarging her. The prisoner at the bar had fled. His sister, his

accomplice, had fled. They left behind them Miss Pike, who was taken back by her relations. Informations were lodged immediately. The prisoner absconded. It would be base and scandalous to suffer a crime of that kind to pass with impunity, without doing every thing that could be done to bring the offender to justice. Government was apprized of it. Government felt as it ought. There was offered, by proclamation, a reward to a considerable amount for taking the prisoner. The family of Miss Pike did as they ought. They offered a considerable additional sum, as the reward for his apprehension. For some time he kept in concealment; the rewards were offered in vain; the process of the law went on; an indictment, to the honour of this city, to the honour of the national character, was found; they proceeded to the outlawry of the prisoner.

What I have stated hitherto reflects honour upon all persons concerned, except the unhappy man at the bar, and his accomplices; but what I am about to relate, is a circumstance that no man of feeling or humanity can listen to without indignation. Notwithstanding that outlawry; notwithstanding the publicly offered rewards, to the amount of near one thousand pounds, for the apprehension of the prisoner at the bar, (would to God the story could not be told in a foreign country! would to God it were not in the power of those so ready to defame us, to adduce such a

circumstance in corroboration of their charge!) for near two years did the prisoner live in public, almost in the heart of your city; reading in every newspaper, over his tea, the miserable proclamation of impotent public justice, of the laws defied and trampled upon. The second city in the nation was made the hiding-place—no! no! not the hiding-place, where guilt hid its head—but the receptacle where it walked abroad, unappalled, and threw your degraded city into the odious predicament of being a sort of public accessory and accomplice in his crime, by giving it that hideous appearance of protection and impunity. Here he stayed, basking in the favour of a numerous kindred and acquaintance, in a widely-extended city.

Sad reverse! It was not for guilt to fly! It was for guilt to stand, and bay at public justice! It was only for innocence to betake itself to flight! It was not the ravisher that fled. It was the helpless female, the object of this crime, the victim of his felony! It was hers to feel that she could despair of even personal protection in that country which harboured and cherished the delinquent! It was she who was hunted, a poor fugitive from her family and her home; and was forced to fling herself at the feet of a foreign nation, a suppliant for personal protection. She fled to England, where she remained for two years.

A few months ago, previous to the last term, a

letter was written and sent to Miss Pike, the prosecutrix, by the prisoner. The purport of it was, to state to her, that his conduct to her had been honourable and delicate, and asserting, that any lady, possessed of the smallest particle of humanity, could not be so sanguinary as to wish for the blood of an individual, however guilty; intimating a threat, that her conduct upon this occasion would mark her fate through life; desiring her to withdraw her advertisements, saying, he would abide his trial at the assizes of Cork; boasting his influence in the city in which he lived, thanking God he stands as high as any man in the regards of rich and poor, of which the inefficacy of her present and former rewards must convince her.

He thought, I suppose, that an interval of two years, during which he had been an outlaw, and had resided among his friends, had brought the public mind to such a state of honourable sympathy in his favour, as would leave any form of trial perfectly safe. After this he thought proper to appear, and the outlawry was reversed without opposition by counsel for the prosecution; because their object was not to take advantage of any judgment of outlawry upon which he might be executed; but to admit him to plead to the charge, and take his trial by a jury of his country. He pleaded to that indictment in the court above, and accordingly he now stands at the bar of this court for the purpose of trial.

The publicity of his living in this city, of his going to festivals and entertainments, during the course of two years, did impress the minds of the friends of this unhappy lady with such a despair of obtaining public justice that they did struggle hard, not, as it is said, to try the offence by a foreign jury; but to try the offence at a distant place, in the capital where the authority of the court might keep public justice in some sort of countenance. That application was refused: and justly did you, my lord, and the learned judges, your brethren, ground yourselves upon the reason which you gave. "We will not," said you, "give a judicial sanction to a reproach of such a scandalous atrocity upon any county in the land, much less upon the second city in it." "I do remember," said one of you, "a case, which happened not twenty years since. A similar crime was committed on two young women of the name of Kennedy; it was actually necessary to guard them through two counties with a military force as they went to prosecute; that mean and odious bias, that the dregs of every community will feel by natural sympathy with every thing base, was in favour of the prisoners. Every means were used to try and baffle justice, by practising upon the modesty and constancy of the prosecutrixes, and their friends; but the infatuated populace, that had assembled together to celebrate the triumph of an acquittal, were the unwilling spectators of

the vindication of the law. The court recollected that particular respect is due to the female who nobly comes forward to vindicate the law, and give protection to her sex. The jury remembered what they owed to their oaths, to their families, to their country. They felt as became the fathers of families, and foresaw what the hideous consequence would be of impunity, in a case of manifest guilt. They pronounced that verdict which saved their characters; and the offenders were executed."

I am glad that the Court of King's Bench did not yield to the despair which had taken place in the minds of those who were anxious to bring the prosecution forward. I am glad the prisoner was sent to this bar, in order that you may decide upon it.

I have stated to you, gentlemen of the jury, the facts that I conceive material; I have stated that it was necessary, and my duty, as counsel for the crown, to give you an exact idea of the nature of the offence, of the evidence, and of the law; that you may be enabled to combine the whole case together, and to pronounce such a verdict as shall fairly decide the question, which you are sworn to try, between the public and the prisoner. Any thing I say, either as to the fact, or as to the law, ought not to attract any thing more than bare attention for a single moment; it should make no impression upon your belief, unless confirmed by

credible evidence. I am merely stating facts from instruction; but I am not a witness.

I am also obliged, as I told you, to make observations as to the law, but that is wholly submitted to the court; to which it is your duty, as well as mine, to bow with all becoming deference and respect.

My lord, the prisoner is indicted as a principal offender, upon the statute; and, therefore, it is necessary that the jury shall understand what kind of evidence is necessary to sustain that charge. Formerly there was a distinction taken by courts of justice between two species of principals; the one, a principal at the doing of the very act; the other, a principal in the second degree, who was then considered as an accessory at the fact: a distinction in point of law, which, as Mr. Justice Forster observes, was a great inconvenience in the course and order of proceeding against accomplices in felony; tending, as it plainly did, to the total obstruction of justice in many cases, and to great delay in others; and which induced the judges, from a principle of true political justice, to come into the rule now established: "That all persons present, aiding and abetting, are principals."

I now proceed to show what kind of presence it is that will make a man concurring in the crime, in judgment of the law, "present, aiding, and assisting:" which to explain, I shall read the

words of the last-mentioned writer, as follows: "When the law requireth the presence of the accomplice at the perpetration of the fact, in order to render him a principal, it doth not require a strict, actual, immediate presence; such a presence as would make him an eye or ear witness of what passeth." And I may thus exemplify this case: "Several persons set out together, or in small parties, upon one common design, be it murder, or other felony; or for any other purpose, unlawful in itself; and each taketh the part assigned him: one to commit the fact, others to watch at proper stations, to prevent a surprise, or favour, if need be, the escape of those who are more immediately engaged; they are all (provided the fact be committed,) in the eye of the law, present at it. For it was made a common cause with them; each man operated in his station, at one and the same instant, towards the same common end: and the part each man took, tended to give countenance, encouragement, and protection, to the whole gang, and to ensure the success of their common enterprise."

If the prisoner at the bar formed a design of doing the illegal act with which he is charged, namely, running away with Miss Pike, in order to marry or defile her; if he projected the perpetration of it by dividing his accomplices in such manner, as that each might contribute his part to its success; that it was made a common cause; that

what each man did, tended to secure the success of the common enterprise; then every person so acting, although not an eye or ear witness of what was done, yet in the eye of the law is guilty. He is a principal, and punishable as such.

Suppose, that some should guard at Mr. Penrose's bounds; others guard at different stations on the road; others guard at the bridge; others remain at the house at Mount-Vernon. In that case, I should not hesitate to say, in point of law, that the man stationed at the back door of Mr. Penrose's house (supposing her to be taken out by violence,) the men guarding on the road, and at the bridge; nay, the priest that waited at Mount-Vernon to celebrate the marriage, were all a combination of one common power; acting each man in his station, to produce the intended effect; and, as such, were all equally principals in the offence.

But, in the present case, it is not necessary to argue upon a constructive presence; for here is an actual presence. If what I have stated should be supported by the witnesses, there is full ground to convince the jury, that Sir Henry Hayes was the person in disguise, who put her into his carriage, when taken out of Mr. Penrose's; particularly when the circumstance is considered, that he went to the house in order to identify her person, for that knowledge of her person would have been useless, unless he had been present at the first taking of her.

If the jury believe he was there at such first taking, he was actually present and guilty. But, supposing the jury to doubt, strange as the doubt must be, yet if there shall be evidence to satisfy them that the prisoner, at the bottom of the hill leading to his house, took her out of his carriage, and led her to the house, that is, as to him, a taking and carrying away, clearly within the statute. There cannot be the least doubt, that every step the chaise proceeded from Mr. Penrose's to Mount-Vernon, that every man who joined the cavalcade, and became an assistant in the project, became a principal in the entire transaction, and guilty of carrying her away, contrary to the statute.

In further illustration, suppose this case. A highwayman stops a traveller, and proceeds to rob him; and another comes up to the assistance of that robber; there is not the least doubt, that the man who joins in the robbery a little later, is equally guilty with the former in the eye of the law. This is applicable to the present case.

Thus I have stated the nature of the case, and what I conceive to be the law touching that case. I know not what kind of defence may be set up. There are some defences which, if they can be established clearly, must acquit the prisoner. If he did not do this, if she was not taken away, or if Sir Henry took no share in the transaction, there can be no doubt in the case. It will be for your consciences to say, whether this be a mere tale of

the imagination, unsupported by truth, and uncorroborated by evidence. It is material, however, to state to you that, as soon as guilt is once established in the eye of the law, nothing that the party can do can have any sort of retrospect so as to purge that criminality, if once completed. It is out of the power of the expiring victim of a death-blow to give any release or acquittal to his murderer; it is out of the power of any human creature, upon whom an illegal offence has been committed, by any act of forgiveness to purge that original guilt; and, therefore, the semblance of a marriage is entirely out of the case.

In the case of the Misses Kennedy, the young ladies had been obliged to submit to a marriage, and cohabitation for a length of time; yet the offenders were most justly convicted, and suffered death.

It is, therefore, necessary for you to keep your minds and understandings so fixed upon the material points of the charge, as that, in the course of the examination, no sidelong view of the subject may mislead or divert your attention.

The point before you is, whether the crime was once committed; and if so, nothing happening after can make any sort of difference upon the subject. It has been my most anxious wish to abstain, as far as was consistent with my duty, from every the remotest expression of contumely or disrespect to the unhappy prisoner at the bar; or to say or to do anything that might unhinge his mind or

distract his recollection, so as to disable him from giving his whole undisturbed reflection to the consideration of his defence; but it is also a sacred duty, which every man placed in my situation owes to public justice, to take care, under the affectation of false humanity, not to suffocate that charge which it is his duty to unfold, nor to frustrate the force of that evidence which it is his duty to develop. Painful must it be to the counsel, to the jury, and the court, who are bound by their respective duties to prosecute, to convict, and to pronounce, and to draw down the stroke of public justice, even upon the guilty head; but despicable would they all be, if, instead of surrendering the criminal to the law, they could abandon the law to the criminal; if, instead of having mercy upon outraged justice and injured innocence, they should squander their disgraceful sympathy upon guilt alone. Justice may weep; but she must strike where she ought not to spare. We, too, may lament; but, when we mourn over crimes, let us take care that there be no crimes of our own upon which our tears should be shed.

Gentlemen, you cannot be surprised that I hold this language to you. Had this case no reference to any country but our own, the extraordinary circumstances attending it, which are known to the whole nation, would well warrant much more than I have said. But you cannot forget that the eyes of another country also are upon you: another

country, which is now the source of your legislation. You are not ignorant what sort of character is given of us there; by what sort of men, and from what kind of motive. Alas! we have no power of contradicting the cruel calumnies that are there heaped upon us, in defiance of notorious truth, and of common mercy and humanity; but, when we are there charged with being a barbarous race of savages, with whom no measures can be held, upon whose devoted heads legislation can only pour down laws of fire, we can easily, by our own misconduct, furnish proof that to a much less willing belief may corroborate their base evidence, and turn their falsehood into truth.

Once more, and for the last time, let me say to you, you have heard the charge. Believe nothing upon my statement. Hear and weigh the evidence. If you doubt its truth, acquit without hesitation. By the laws of every country, because by those of eternal justice, doubt and acquittal are synonymous terms. If, on the other hand, the guilt of the prisoner shall unhappily be clearly proved, remember what you owe to your fame, your conscience, and your country. I shall trouble you no further, but shall call evidence in support of the indictment; and I have not a doubt, that there will be such a verdict given, whether of conviction or acquittal, as may hereafter be spoken of, without kindling any shame in yourselves, or your country.

Before the witnesses were called Mr. CURRAN objected to any

person but the prisoner being suffered to stand at the bar. Prisoner's counsel declared they were not anxious about it, but mentioned the case of Mr. Horne Tooke, where the Court allowed him to be attended by his counsel. The Court said, the prisoner here should have that indulgence, when he came to his defence; but, for the present, all other persons, save his attorney, and one of his counsel, were ordered to withdraw from the bar.

Miss Pike proved the facts stated before, but her cross-examination by Mr. Quin contained some inconsistencies:—

*Q.* Can you swear, that, at that time, you knew any one of the persons who took and carried you away from that part of the Glanmire Road, where you were stopped? *A.* No, I cannot.

Your uncle mentioned something as you went along of the necessity of giving immediate informations—did he not? I said before he did.

When did you give the informations? The Monday morning following.

Do you recollect what day of the week it happened? I believe Saturday.

And you gave informations on Monday? I did.

Where did you swear them? At my aunt's.

Who drew them out? Indeed I do not know who wrote them.

Do you recollect whether you swore in the informations, that Sir Henry took, and carried you away on the Glanmire Road? I believe I did not.

Was there any interposition used with you to induce you to come into court this morning? No, there was not.

Did any person describe the dress or person of Sir Henry to you before you came into court? No, sir.

Will you now say upon your oath, that if, at the time you came into court and sat upon the table, you were asked the question, that you could have said positively you knew Sir Henry Hayes? No, I could not, because he might have been very much disguised.

Mr. and Miss Penrose, Dr. Gibbings, and Mr. Richard Pike proved the other facts. Mr. Quin spoke for the prisoner, but declined to call witnesses, and pressed for an acquittal in law, from the insufficiency of the evidence under the statute of abduction. CURRAN shortly replied, as follows:—

It is the undoubted privilege of the crown to reply in all criminal cases, not only to a point of law, but if the prisoner's counsel speak to evidence, the crown is warranted to reply. I might by law have prevented such speaking altogether; but I will never oppose such indulgence to a prisoner. The evidence adduced upon the part of the crown has not been attempted to be denied by a single witness, and, therefore, I think it would be absurd to go about to establish the credibility of testimony uncontroverted, even by the prisoner. I feel myself, therefore, only called upon to answer the objections in point of law. Much has been said about that indictment which was quashed; the observations on that, as far as they go, are a complete answer to themselves. It is undoubted law, that if a man be indicted as a principal, and acquitted, and afterwards indicted as an accessory before the fact, that the former acquittal is a conclusive plea in bar. The law is clearly settled in that case, and an acquittal upon the present indictment would be a complete bar to any prosecution upon the second; therefore it was, that the second indictment was quashed. We sent up that indictment in fact, because we did not, with precise exactness, know

how the evidence would turn out upon the trial. The second indictment was a mere charge of an accessorial offence; but feeling that, to bring forward the real merits of the case, we should go upon the first indictment, we thought it would be an act of unwarrantable vexation not to apprize the prisoner, the court, and the jury, that that was the only charge against him. And therefore it is, that that indictment should be dimissed entirely from the subject. The argument contended for is, that the evidence adduced does not support the indictment; to that, and that alone, it is necessary for me to reply: the only question is, whether there is sufficient evidence to maintain the indictment. [Reads the indictment.] On this a question of law occurs. What is a taking and carrying away? I see no possibility that the jury can disbelieve that the man who took her out of Mr. Penrose's carriage was the prisoner at the bar, who went before to identify her. He could not make use of that knowledge of her person on that occasion, if he was not there; he should have shown that he was then in some other place, but to do so was not attempted. Observe upon the latter part of the transaction, on the carriage proceeding with her in it to the passage leading to Mount-Vernon, that there a man, dressed as the lady describes, alit from his horse; but there has been strong evidence that he did not come from the house; took the handkerchief from his face, took her in his arms, and

carried her in his arms from the foot of the hill to Mount-Vernon house, and where that marriage was absolutely solemnized. Upon this part of the question there does, to be sure, arise a question—Was that a taking and carrying away within the statute? I do admit that the taking and carrying away are essential; but it is not being the first taker that is necessary within the act of parliament: for if ten different persons had rescued her from one another, and another had taken her into the place, where, &c., he would be guilty, because he had taken her, and carried her away. The question, therefore, is, Was there a taking within the act or not? Mr. Quin has argued from two cases, that he supposes similar to the present; the one was burglary, the other was murder. They differ materially in this from the present, that they are things done at one moment of time, and, in the present case, a continuance of the force is a continuance of the taking; upon the statute of Henry VII. there must be an actual marriage in order to constitute the offence; but in England, as well as here, there must be a previous taking and carrying away; therefore, what is there considered as such, must be, in this country, a taking and carrying away. 2 Hawkins, 315. Also, if a woman be taken away by force in one county, and carried into another, and there married, the offender may be indicted, and tried in the second county upon the statute of Henry VII., because it is a continuation

of force, and of such kind as amounts to forcibly taking within the statute; and so it is, if the prisoner at the bar had taken her by force in an adjoining county, and brought her into this.

You have an unquestionable authority, and a most respectable one, stating that a continuance of force in the county where the indictment is laid, is a sufficient taking and carrying away within the statute.

Suppose a man hires a gang of people to seize a woman in Dublin, and bring her down by force; in the last stage, he goes and takes her in his arms, and carries her into his house; will any one say, that because he had not seized her in the first instance himself, that his seizing her by force, in the last stage, is not a taking within the statute?

The simple question to be decided upon is this, in point of law, whether the taking her out of that chaise, in which she was brought to the avenue of the prisoner, was a sufficient taking, and whether the carrying her up to his house, was such a carrying away, as, added to the taking, brought the present case within the statute.

To support this, I shall cite the case of the King and Lapyard, an indictment on which the facts were,—"That Mrs. Hobart, coming out of the playhouse, had an attempt made by the prisoner to snatch her ear-ring from her ear; it appeared that the snatch at it was so violent, that it tore through her ear. When she went home, she found not only

that the ear-ring had not been taken away by the prisoner, but actually found it sticking in the curls of her hair." It was necessary, then, that there should be a taking, and also a carrying away; and the question was, whether the facts did amount to that taking and carrying away. The judge gave in to the doubt proposed by the prisoner's counsel. I shall mention two cases, one where a man turned a cart from a horizontal to a perpendicular position to get at the goods; the other case was, where a person removed a parcel into the head of a waggon in order to steal it, which had been before in the tail of it, and in each case there was judged a sufficient taking and carrying away. A man lodged at an inn, and in the morning took the sheets out of his bed, and carried them into the stable, and another stole them. The jury found the prisoner guilty; but judgment was respited, and the case submitted to the consideration of the twelve judges, who were of opinion, that he was guilty of the charge of felony laid in the indictment. Compare these to the present case. Miss Pike was taken by force out of the chaise; she was carried by force up the avenue; she was taken by force into a room. What would become of the law, if miserable subterfuges of this kind could have any effect? The circumstances of this case make it ridiculous to suppose that the conduct of the prisoner was from any motive of hospitality, as has been insinuated, for she stated other facts inconsistent with such a

defence. Every fact, if the jury believed the prosecution, was by force, and against her consent. Let me remind the jury that such an idea as this ought not to go abroad, that a gang may be hired by a man, to force away a woman, and that that man, meeting her in the last stage of the transaction, shall completely commit a felony against the statute, with impunity.

The judge charged fairly, and after an hour's deliberation the jury found the prisoner Guilty, but recommended him to mercy. The law point on the insufficiency of the evidence was referred to the twelve judges, and decided against Sir Henry, but the recommendation to mercy was acceded to, and he was transported.