

69

COURT OF QUEEN'S BENCH (IRELAND) (SUMMONSES, &c.).

---

RETURN to an Order of the Honourable the House of Commons,  
dated 22 February 1883 ;—for,

COPIES "of the SUMMONSES and NOTICES Served upon Messieurs *Healy*,  
*Davitt*, and *Quinn*, in the recent Proceedings against them in the Court of  
Queen's Bench, *Dublin* : "

"Of the JUDGMENT delivered against them :"

"And, of the WARRANTS or ORDERS under which they were Committed to  
Prison."

---

NOTICE to Mr. *T. M. Healy*, 2nd December 1882.

---

In the High Court of Justice in Ireland, Queen's Bench Division, Crown Side.

Sir,

TAKE notice, that on Tuesday the 5th day of December 1882, an application will be made on behalf of Patrick Bearnes, Head Constable of the Royal Irish Constabulary of Bagnalstown, in the county of Carlow, to the Queen's Bench Division of the High Court of Justice in Ireland, at the sitting of the said Court at the Four Courts, Inn's Quay, Dublin, that you may be required to give sufficient sureties to be of good behaviour towards Her Majesty the Queen, and towards all Her Majesty's subjects, and that in default of finding such sureties you be committed to prison for such time as to the said Court shall seem fit, and that for that purpose all writs and promises of good behaviour may issue and warrants be granted which be requisite in that behalf; and you are hereby informed that you may, if you so think fit, appear before the said Court at the said time and place to show cause why such application should not be granted, which application will be grounded on the affidavits and declarations in writing upon oath of the said Patrick Bearnes and William Weir, Sub-Constable, Royal Irish Constabulary, filed the 2nd day of December 1882, copies of which are herewith furnished for your convenience, and upon the grounds and for the reasons therein appearing.

Dated this 2nd day of December 1882.

To Thomas M. Healy, Esq., M.P.

*Thomas Gerrard*, Crown Solicitor,  
25, Westmoreland-street, Dublin.

---

NOTICE to Mr. *Michael Davitt*, 2nd December 1882.

---

In the High Court of Justice in Ireland, Queen's Bench Division, Crown Side.

Sir,

TAKE notice, that on Tuesday the 5th day of December 1882, an application will be made on behalf of Charles Edward Seymour, of Navan, in the county of Meath, Sub-Inspector of the Royal Irish Constabulary, to the Queen's Bench Division of the High Court of Justice in Ireland, at the sitting of the said Court at the Four Courts, Inn's Quay, Dublin, that you may be required to find sufficient sureties to be of good behaviour towards Her Majesty the Queen, and towards all Her Majesty's subjects, and that in default of finding such sureties you be committed to prison for such time as to the said Court shall seem fit; and that for that purpose all writs and promises of good behaviour may issue and warrants be granted which be requisite in that behalf; and you are hereby informed that you may, if you so think fit, appear before the said Court at the said time and place to show cause why such application should not be granted, which application will be grounded on the affidavits and declarations in writing upon oath of the said

## PAPERS RELATING TO THE COURT OF

Charles Edward Seymour and Bernard O'Malley, filed the 2nd day of December 1882, copies of which are herewith furnished for your convenience, and upon the grounds and for the reasons therein appearing.

Dated this 2nd day of December 1882.

To Mr. Michael Davitt.

Stephen J. Seed, Crown Solicitor,  
13, Upper Ormond Quay, Dublin.

## NOTICE to Mr. P. J. Quinn, 2nd December 1882.

In the High Court of Justice in Ireland, Queen's Bench Division, Crown Side.

Sir,

TAKE notice, that on Tuesday the 5th day of December 1882, an application will be made on behalf of Charles Edward Seymour, of Navan, in the county of Meath, Sub-Inspector, Royal Irish Constabulary, to the Queen's Bench Division of the High Court of Justice in Ireland, at the sitting of the said Court at the Four Courts, Inn's Quay, Dublin, that you may be required to find sufficient sureties to be of good behaviour towards Her Majesty the Queen, and towards all Her Majesty's subjects, and that in default of finding such sureties you be committed to prison for such time as to the said Court shall seem fit; and that for that purpose all writs and promises of good behaviour may issue and warrants be granted which be requisite in that behalf; and you are hereby informed that you may, if you so think fit, appear before the said Court at the said time and place and show cause why such application should not be granted, which application will be grounded on the affidavits and declarations in writing upon oath of the said Charles Edward Seymour and Michael O'Rorke, Sub-Constable, Royal Irish Constabulary, filed the 2nd day of December 1882, copies of which are herewith furnished for your convenience, and upon the grounds and for the reasons therein appearing.

Dated this 2nd day of December 1882.

Mr. P. J. Quinn.

Stephen J. Seed, Crown Solicitor,  
13, Upper Ormond Quay, Dublin.

## NOTICE to Mr. T. M. Healy, 12th December 1882.

In the High Court of Justice in Ireland, Queen's Bench Division, Crown Side.

*Ex parte* Patrick Bearns *against* Timothy M. Healy.

Sir,

TAKE notice, that I am directed by the Right Honourable the Attorney General for Ireland to inform you that the Secretary to the Lord Chancellor of Ireland has apprised the Right Honourable the Attorney General for Ireland, by his Lordship's directions, that a meeting of the Judges has been held, and that a Divisional Court cannot be constituted for the purpose of hearing this application in the Queen's Bench Division on Thursday next, the 14th day of December 1882.

You are therefore to take notice that the application in this case will be renewed on the first opportunity, of which, if you inform me of any place in Dublin at which notice may be left for you, reasonable notice will be given you.

Dated this 12th day of December 1882.

To Timothy M. Healy, Esq., M.P.

Thomas Gerrard, Crown Solicitor,  
25, Westmoreland-street.

## NOTICE to Mr. Michael Davitt, 12th December 1882.

In the High Court of Justice in Ireland, Queen's Bench Division, Crown Side.

*Ex parte* Charles Edward Seymour *against* Michael Davitt.

Sir,

TAKE notice, that I am directed by the Right Honourable the Attorney General for Ireland to inform you that the Secretary to the Lord Chancellor of Ireland has apprised the Right Honourable the Attorney General for Ireland, by his Lordship's directions, that a meeting of the Judges has been held, and that a Divisional Court cannot be constituted

stituted for the purpose of hearing this application in the Queen's Bench Division on Thursday next, the 14th December 1882.

You are therefore to take notice that the application in this case will be renewed on the first opportunity, of which, if you inform me of any place in Dublin at which notice may be left for you, reasonable notice will be given you.

Dated this 12th day of December 1882.

To Mr. Michael Davitt.

*Stephen Seed*, Crown Solicitor,  
13, Upper Ormond Quay, Dublin.

NOTICE to Mr. *P. J. Quinn*, 12th December 1882.

In the High Court of Justice in Ireland, Queen's Bench Division, Crown Side.

*Ex parte* Charles Edward Seymour *against* P. J. Quinn.

Sir,

TAKE notice, that I am directed by the Right Honourable the Attorney General for Ireland to inform you that the Secretary to the Lord Chancellor of Ireland has apprised the Right Honourable the Attorney General for Ireland, by his Lordship's directions, that a meeting of the Judges has been held, and that a Divisional Court cannot be constituted for the purpose of hearing this application in the Queen's Bench Division on Thursday next, the 14th December 1882.

You are therefore to take notice that the application in this case will be renewed on the first opportunity, of which, if you inform me of any place in Dublin at which notice may be left for you, reasonable notice will be given you.

Dated this 12th day of December 1882.

To Mr. P. J. Quinn.

*Stephen Seed*, Crown Solicitor,  
13, Upper Ormond Quay, Dublin.

NOTICE to Mr. *T. M. Healy*, 9th January 1883.

In the High Court of Justice in Ireland, Queen's Bench Division, Crown Side.

Sir,

TAKE notice, that the application on behalf of Patrick Bearns, referred to in my notice dated 2nd December 1882, and served on you, which came before this Honourable Court on the 5th day of December 1882, and was adjourned, will be renewed on Thursday the 11th day of January 1883, on which day it is believed the matter will appear in the list of applications before this Honourable Court.

Dated this 9th day of January 1883.

To Timothy M. Healy, Esq., M.P.

*Thomas Gerrard*, Crown Solicitor,  
25, Westmoreland-street, Dublin.

NOTICE to Mr. *Michael Davitt*, 9th January 1883.

In the High Court of Justice in Ireland, Queen's Bench Division, Crown Side.

Sir,

TAKE notice, that the application on behalf of Charles Edward Seymour, referred to in my notice dated 2nd December 1882, served on you, which came before this Honourable Court on the 5th day of December 1882, and was adjourned by the Court, will be renewed on Thursday the 11th day of January 1883, on which day it is believed the matter will appear in the list of applications before this Honourable Court; and further, take notice, that the affidavits of Michael Wallace and of Michael O'Neill, filed in the

## PAPERS RELATING TO THE COURT OF

proper office of this Honourable Court on the 4th and 8th days of January 1883 respectively, and the exhibits therein referred to, copies of which said affidavits and exhibits are herewith sent you, will be used in support of said application.

Dated the 9th day of January 1883.

To Mr. Michael Davitt.

*Stephen Seed*, Crown Solicitor,  
13, Upper Ormond Quay, Dublin.

Take notice, that this application has been adjourned, and it is believed will appear in the list for hearing on Tuesday next the 16th instant.

Dated this 13th day of January 1883.

To Mr. Michael Davitt.

*Stephen Seed*, Crown Solicitor,  
13, Upper Ormond Quay, Dublin.

*Note.*—The above notice was not served on Mr. Davitt, owing to his absence from Ireland.

NOTICE to Mr. *P. J. Quinn*, 9th January 1883.

In the High Court of Justice in Ireland, Queen's Bench Division, Crown Side.

Sir,

TAKE notice, that the application on behalf of Charles Edward Seymour, referred to in my notice dated 2nd December 1882, and served on you, which came before this Honourable Court on the 5th day of December 1882, and was adjourned, will be renewed on Thursday the 11th day of January 1883, on which day it is believed the matter will appear in the list of applications before this Honourable Court.

Dated this 9th day of January 1883.

Mr. P. J. Quinn.

*Stephen Seed*, Crown Solicitor,  
13, Upper Ormond Quay, Dublin.

NOTICE to Mr. *T. M. Healy*, 22nd January 1883.

In the High Court of Justice in Ireland, Queen's Bench Division, Crown Side.

Sir,

TAKE notice, that I am informed by the Clerk of the Crown that Judgment will be delivered by the Court on Wednesday next, the 24th instant, on the application of Patrick Bearn, mentioned in my notice to you, dated 2nd December 1882, and served on you on 3rd December 1882.

Dated this 22nd day of January 1883.

To Timothy M. Healy, Esq., M.P.

*Thomas Gerrard*, Crown Solicitor,  
25, Westmoreland-street, Dublin.

NOTICE to Mr. *Michael Davitt*, 22nd January 1882.

In the High Court of Justice in Ireland, Queen's Bench Division, Crown Side.

Sir,

TAKE notice, that I am informed by the Clerk of the Crown that Judgment will be delivered by the Court on Wednesday next, the 24th instant, on the application of Charles Edward Seymour, mentioned in my notice to you, dated 2nd December 1882, and served on you same day.

Dated 22nd day of January 1883.

To Mr. Michael Davitt.

*Stephen Seed*, Crown Solicitor,  
13, Upper Ormond Quay, Dublin.



NOTICE to Mr. P. J. Quinn, 22nd January 1883.

In the High Court of Justice in Ireland, Queen's Bench Division, Crown Side.

Sir,

TAKE notice, that I am informed by the Clerk of the Crown that Judgment will be delivered by the Court on Wednesday next, the 24th instant, on the application of Charles Edward Seymour, mentioned in my notice to you, dated 2nd December 1882, and served on you same day.

Dated 22nd day of January 1883.

To Mr. P. J. Quinn.

Stephen Seed, Crown Solicitor,  
13, Upper Ormond Quay, Dublin.

JUDGMENT of the Right Honourable the Lord Chief Justice in the Cases of *ex parte* Seymour v. Davitt, *ex parte* Bearns v. Healy, and *ex parte* Seymour v. Quinn, delivered on the 24th day of January 1883.

(Reported by Jones H. Stavelly, Barrister-at-Law.)

IN these cases application has been made in this Court by the Attorney General, that M. Davitt, T. Healy, and P. Quinn, should be ordered to enter into security for their good behaviour. The motion was made on the 3rd of last December, and affidavits were then sworn in the presence of the respondents. On that occasion Mr. Davitt applied for time to prepare his defence, and, as I understood, to obtain the assistance of counsel.

This application the Crown did not oppose, and accordingly the hearing was postponed for 10 days. It appeared, however, that a Divisional Court could not be constituted at the time then fixed, and the hearing was postponed until these sittings. On the second day of these sittings the Attorney General mentioned the case, but the hearing was again postponed owing to the absence of Mr. Justice Barry at the winter assizes; upon that occasion a gentleman stated in court that Mr. Davitt was then absent in England, and was expected to be in Dublin on the Tuesday following, and on that Tuesday the hearing took place. I mention these dates as it was suggested by Mr. Davitt that he had not had notice of the time of hearing. Neither Mr. Davitt nor Mr. Healy apparently obtained any professional assistance, but made speeches on their own behalf. Mr. Quinn was represented by Mr. Adams as his counsel. Counsel for Mr. Quinn contended that this court did not possess original jurisdiction to order sureties for good behaviour to be given, though it was admitted that the court did possess such original jurisdiction in cases of sureties to keep the peace. The origin of the jurisdiction to order sureties for good behaviour is usually attributed to the English statute 34 Edward III., c. 1, which is to the following effect:—1st. That in every county of England there shall be assigned, for the keeping of the peace, one lord, and with him three or four of the most worthy of the county, with some learned in the law; among other functions which these persons were directed to discharge in the way of repressing evil doers, "they were directed to take of all them that be not of good name sufficient surety and mainprize of their good behaviour towards the King and his people." That upon the construction of this statute justices of the peace, appointed by the ordinary commission, possess jurisdiction in proper cases to order sureties for good behaviour to be given, is not, and could not, be disputed. This court has on several occasions been recently called on to consider the law on this subject, and particularly in the cases of *Reg. v. the Justices of Cork* (Reynolds' case), 10 L. R. Ir. 1, and *Reg. v. the Justices of the Queen's County* (Feehan's case), reported at page 294 of the same volume; and it is sufficient to refer to those cases as showing the nature of this preventive jurisdiction, and I should much prefer referring to the judgment of Lord Fitzgerald in the latter case, to any judgment which I have pronounced. But with respect to the contention that this jurisdiction of ordering sureties to be given to be of good behaviour, though possessed by magistrates, is not possessed by this court, it is right to make a few observations. This court, and each member of it, are supreme conservators of the peace in every county in Ireland; they are so by immemorial prescription, and long before the statute of Edward III.; this statute does not mention or refer to the ordinary justices of the peace, but upon the construction of the Act it has been held to apply to them as conservators of the peace. It would seem, *a multo fortiori*, proper so to construe it, as to include this court, whose paramount office is the conservation of the peace throughout the country. In Burns' "Justice of the Peace," a book of considerable authority, it is laid down in treating of the surety of the peace. This surety of the peace every justice of the peace may take and command by a twofold authority: (1.) As a minister, commanded thereto by a higher authority, as when a writ of supplicavit out of the Chancery or Queen's Bench is delivered to him. (2.) As a judge, and by virtue of his office derived from his commission. This passage has reference to sureties for the peace; but Burns, and all the ancient writers on the subject, treat sureties for the

peace and sureties for good behaviour as of near affinity and scarcely distinguishable; and Burns, in treating of sureties for good behaviour, cites a passage from Pulton, a contemporary of Lombard, in these terms:—"The surety for the good abearing is ordained for the preservation of the peace, and doth differ in nothing from that of the peace but that there is more difficulty in the performance of it, and the party bound may more easily slide into the peril and danger of it. The surety for the good abearing is most commonly granted in open sessions, or by two or three justices, or upon a supplicavit, and great cause shown and proved, it is granted in the Chancery or Queen's Bench." It would seem that in those early times, in cases of importance, application was made to the Court of Queen's Bench, not to the inferior tribunals, in cases of this nature. It appears to me, that if any doubt existed as to the jurisdiction of this court, it is removed by the statute 10 & 11 C. 1., c. 10 (Irish), which corresponds with the statute of 21 James I. (English), which, reciting the inconvenience and hardship which the subjects had been put into by having process of the peace or good behaviour awarded against them in Chancery, or in the Queen's Bench, enacts that all process of the peace or good behaviour shall be void unless awarded in open court, and upon sworn declarations made in open court. It plainly appears from this statute that such process had issued frequently out of these superior courts, and had been abused, and the statute regulates the practice in the Queen's Bench, both as to sureties for the peace and for good behaviour. Assuming that the jurisdiction of this court exists, it is next to be considered whether on the present occasion, and as against the three respondents, it should be exercised. The charge against them is grounded on certain speeches severally made by them, by Mr. Davitt and Quinn, in the county of Meath, and by Mr. Healy, in the county of Carlow.

The affidavits of Charles Seymour and Patrick Bearn's depose as to the existence for several years past of an agitation of an agrarian character in various parts of Ireland, and including the counties of Meath and Carlow; and state that in consequence of such agitation great excitement prevailed, and a combination had been set on foot against the payment of rents, and numerous crimes and outrages had been committed in various parts of the country. The affidavit of the said Charles E. Seymour proceeds to state that on the 26th November 1882 a meeting was held at Navan, in the county of Meath, summoned by placards; that such meeting was attended by four or five thousand persons, and that upon that occasion Michael Davitt made a speech, a few passages of which I will advert to. After mentioning an apprehended distress in some parts of Ireland, and that the periodical famines to which he declared this country subject were to be attributed to the system which permitted large portions of the land to be applied to grazing purposes, Mr. Davitt proceeds, "I say unless wise and just legislation should prevent its necessity, the time will come when the starving people of Donegal and Connemara will be told to march down in their serried phalanxes upon the plains, and seize the lands upon which to live like civilized beings in a Christian country." And after speaking of compelling the Government to support the people during the coming winter, he proceeds:—"I propose that in case Mr. Gladstone does not apply the surplus of the Arrears Act estimates to save the people, that no rent should be paid from November till next May; that out of this sum a portion should be placed in the National Relief Fund, by which to save our people from starvation." The first passage I have referred to seems to me to amount to an open attempt to procure certain legislation by the threat of a treasonable insurrection. It seems that this portion of the speech approaches very nearly to an open and advised speaking which would bring the utterer within the operation of the Treason Felony Act, 1848. The second recommends that in a probable event rents payable to the owners of lands should not be paid to those entitled, but should be confiscated. I do not think it necessary for me to characterize such language particularly, having regard to the recent unhappy history of this country. It is true that it is foolish and absurd. It is very improbable that any such insurrection will take place; nor can we apprehend that this advice as to non-payment of rents will now be followed as such exhortations have recently been followed. But its folly and absurdity does not excuse its wickedness; and, in my opinion, its use, to say the very least of it, brings Michael Davitt clearly within the jurisdiction which the court is called upon at present to exercise. On the 26th November 1882, at a meeting held at St. Mullins, in the county of Carlow, for the purpose of founding a branch of the National League, Mr. T. Healy made a speech in which he made use of the following language. Impressing on them the necessity of organization, he said, "The British Government in Ireland, which was simply a system of land piracy, was upheld simply by organization. The police they saw there were simply the officers of what they might call the Government League. The Government of this country, being as it was an organization against the will of the people, was simply an organization of so many pirates and so many brigands. It was entitled to the same moral respect as a cut-purse, who held a revolver at your head, and said to you, 'Your money or your life.'" Is it necessary to say that such language is clearly and grossly seditious, calculated to bring the Government of Her Majesty into hatred and contempt, and its use affords grounds abundantly sufficient to induce, or rather call upon, this Court to exercise the same jurisdiction.

With respect to Patrick Quinn, it appears upon the affidavits that at a meeting at Ross, in the county of Meath, called for the purpose of establishing another branch of the same National League, Mr. P. J. Quinn made a speech, in which, after stating he had been arrested with many others as a suspect, and detained in prison ten months, he proceeded, "Well, my friends, how did we come out of those prisons? We went in mild, but how did

did we come out? We went in reformers, and we came out as rebels. (Sensation.) Nine hundred of us were thus imprisoned during the term of the Coercion Act. What are those nine hundred doing now, and where are they? They were trained in the prisons, and are now spread over the country from the Giant's Causeway to Cork, and from Dublin to my native county, and those are the men who are now inculcating the minds of our countrymen in their duties towards their native land; inculcating such advice, it may be assumed, as rebels usually offer." In another passage he says, "Our enemies have boasted that the Land League is dead. Well, it has been declared illegal. True, its flags are not seen here to-day; no banner bears its inscription here, but the banners on which it appears are carefully rolled up and hidden past for a future time, when they shall expand themselves in the breeze," and so forth. That is, the resuscitation of an organized body declared illegal, and for the present dormant, is announced and advocated. He then proceeds, "I will make one remark to the farmers; they did not obey our words of advice they received from the prison, 'pay no rent.' Till they come to this the people have not come to a right conclusion. Pay no rent, and when the agent, the bailiff and satrap of the landlord comes, button up your pockets, and when they come again the farmers know what to do." This portion of the speech brings the case exactly with that of Mr. Feehan, in which a general exhortation to the tenants of a landlord owner to pay no rent until a certain evicted tenant should be restored to his holding, was held by this court to justify magistrates in requiring sureties for good behaviour. Neither Mr. Davitt or T. Healy offered any evidence. Quinn made an affidavit in which he simply stated that the report of his speech was not a full or accurate report, but he did not deny that he had made use of language of similar import. None of the three respondents have made any apology, or said anything approaching to an apology, nor a word that could mean that they intended to desist from holding such language in the future. T. Healy, on the contrary, had the hardihood to state in court that he had made very many much worse speeches, and that he intended to continue making them. Now, having regard to all the circumstances of these cases, recollecting that these speeches were addressed by conspicuous persons to large bodies of people, and that those made by T. Healy and Michael Davitt were manifestly intended to be reported, and have been reported in public journals having a wide circulation, copies of which have been handed up to the court; such speeches being attended with danger to the public tranquillity, as I think they are, in my opinion the officers of the Crown were well advised to make the application they have made to the Supreme Court of Criminal Judisdiction, and not to any inferior tribunal. I think the Court clearly possesses jurisdiction to make the orders sought.

The responsible officers of the Crown have applied to us to exercise the preventive jurisdiction in the present case, and I think the application must be granted.

---

JUDGMENT delivered by the Right Honourable Judge *Lawson* in the Cases of *ex parte Seymour v. Davitt*, *ex parte Bearns v. Healy*, and *ex parte Seymour v. Quinn*, on the 24th day of January 1883.

(Reported by *Jones H. Stavelly*, Barrister-at-Law.)

IN these cases of *Davitt*, *Healy*, and *Quinn*, I desire to state in a few words the reasons which have led me to concur in the judgment of the court. We are asked on the motion of Her Majesty's Attorney General to make an order compelling the traversers to give security for their good behaviour, and in default thereof to be committed to prison. The application is grounded upon the allegation that they have delivered speeches of a seditious tendency calculated to endanger the public peace, and that they intend to continue to do so unless prevented. Such applications are usually made to Justices at Petty Sessions, and recently orders made by them in such cases have been brought before this court by *certiorari*, with a view to quashing the orders, but they have been sustained after argument. These authorities are *Reg. (Reynolds) v. the Justices of Cork*, and *Reg. (Feehan) v. the Justices of the Queen's County*, both reported in the 10th Vol. of the Irish Reports. The judgments given in these cases exhaust the learning as to the jurisdiction of justices in such cases, and establish beyond all doubt the existence of such jurisdiction, and that its exercise will in a proper case be upheld by the court. An application, however, to the Court of Queen's Bench in the first instance is in recent times not usual, and when the case was first mentioned to the court by the late Attorney General, it struck me as strange that we should be called upon to do what would appear to belong more properly to Justices at Petty Sessions. But if we possess the jurisdiction, and if the cases be such as call for its exercise, the reasons assigned by the Attorney General for applying to this court appear to possess considerable force. He says such cases are of frequent occurrence, that they involve a matter of great public importance and of wide application, and in order to prevent the necessity of many applications to justices in different and remote localities, he asks, not unreasonably, that this court should itself exercise the jurisdiction, and authoritatively expound the law, in order to guide the action of magistrates and others in similar cases. It appears to me, therefore, that only



two questions arise for our judicial consideration: first, have we jurisdiction to make the orders sought; and secondly, are these three cases such as in their circumstances call for the exercise of this jurisdiction?

As to the first question, it does not in my mind admit of any doubt whatever. Ordinary magistrates possess this power, and have continually exercised it from the earliest times, and the cases recently decided in this court have affirmed the legality of such action. It would certainly be a strange thing if we were to hold, as contended for by Mr. Adams in an able argument, that the judges of this High Court have a more limited jurisdiction in respect of the public peace than ordinary justices appointed by Commission. I am clearly of opinion that at common law, and independently of any statute, we as conservators of the peace have jurisdiction to require security for good behaviour from any person whose acts or speeches are shown to be likely to endanger the public peace. Our jurisdiction is entirely independent of the statute 34 Edward III., and the statute of 21 James I., or the corresponding statute of Charles I. in this country, which was passed in order to prevent abuses in the exercise of the jurisdiction by the Courts of Chancery and Queen's Bench, and prescribes the mode in which it is to be carried out.

It is only necessary to refer to the most elementary treatises on our law to establish this proposition. In 4 B. C. Comm. C. 18, the subject is fully explained, viz., the means of preventing offences; he says, "This preventive justice consists in obliging those persons whom there is probable ground to suspect of future misbehaviour, to stipulate with, and to give full assurance to the public that such offence as is apprehended shall not happen by finding pledges or securities for keeping the peace, or for their good behaviour." He says mention is made of this in the laws of Edward the Confessor: "*tradat fidejussores de pace et legalitate tuendâ.*"

And he says, "Any justices of the peace by virtue of their commission, or those who are *ex officio* conservators of the peace, as was mentioned in a former volume, may demand such security according to their own discretion; or it may be granted at the request of any subject upon due cause shown." We turn to Vol. I., c. 9, where he says, "The Lord Chancellor, &c., and all the Justices of the Court of King's Bench, by virtue of their offices, are general conservators of the peace throughout the whole kingdom, and may commit all breakers of it, or bind them in recognizances to keep it." Therefore we, in exercising this jurisdiction, are not embarrassed by considering the precise import of the words "of evil fame" in the statute of Edward, or the construction of the words of the commission of the peace; we have only to consider whether the language or conduct complained of endangers, or is likely to endanger the public peace. Neither is this a case in which musty statutes and obsolete laws are called into existence in order to abridge the liberty of the subject and deprive him of his constitutional right to be tried by the ordinary course of law; if it were I should be no party to it. It is an act of prevention, and may be fitly used, though no offence actually indictable has been committed, and entails no hardship on those who intend, not to defy and outrage the law, but to conform to its just and reasonable requirements.

There comes the second question: do the acts and words of the parties charged before us call for the exercise of this salutary jurisdiction? Hawkins, book 1, chap. 28, lays down, "No one ought to be bound to the good behaviour for any rash, quarrelsome, or unmannerly words, unless they either directly tend to a breach of the peace, or to scandalise the Government by abasing those who are entrusted with the administration of justice." And he says, such recognizance will be forfeited "by speaking words tending to sedition." Now it appears in these cases, from the affidavits before us, and the reports of the speeches furnished to us, that they were delivered at public meetings to large numbers of persons, "held," to use the language of the affidavits, "in pursuance of an illegal combination against the payment of rent, and in consequence of which numerous crimes and outrages were committed in various parts of the country."

I have read the reports of these speeches, and in my opinion they far transcend the limits of just comment upon public affairs; it would be a very mild description of them to say they tend to sedition. They are, in my judgment, a distinct incentive to crime and outrage; I think it unnecessary to repeat the language here. Michael Davitt, in effect, invites to civil war when he points to the possible incursion of hordes from Donegal and Connemara to take possession of the fertile lands of Meath; he advises the people not to pay any rent from November till next May, unless, forsooth, Mr. Gladstone will comply with Mr. Davitt's requirements.

Mr. Healy describes the British Government in Ireland as "a system of land piracy, and being an organization against the will of the people, was simply an organization of so many pirates and so many brigands, and was entitled to the same moral respect as the wishes of a man who held a revolver to your head, and said, 'Your money or your life.'" And, in no ambiguous terms, he advises his hearers not to pay the judicial rents any more than the former rents. We may well ask, how is it possible that Government can be carried on; that peace can be preserved, or Her Majesty's subjects be protected from outrage and assassination if such meetings and speeches are allowed to pass unchecked.

Mr. Quinn's speech is to the same effect, and very little less violent than those of his companions.

We are asked, then, by the Attorney General, as conservators of the public peace, to put this jurisdiction in force in order to prevent the recurrence of these things. The case has been met by the traversers in a very defiant manner. Mr. Healy boasted that he had



had since made many speeches as criminal, and would continue to do so. He alleges that other persons in high positions have made use of language as seditious as his. With that we are not concerned even if true, which I do not believe it is, and it affords no argument when addressed to a judicial tribunal.

It may be that the remedy sought for by this application may be wholly inadequate or insufficient to meet this state of things; upon that I express no opinion; it is a matter for the Executive Government of the country to consider. Our duty is plain and clear to deal with the case before us according to law.

---

JUDGMENT delivered by the Right Honourable Mr. Justice *Barry* in the Case of *ex parte C. E. Seymour v. Davitt, &c. &c.*, on the 24th day of January 1883.

(Reported by *Jones H. Starchy*, Barrister-at-Law.)

AFTER the able and exhaustive judgments just delivered, it is only necessary for me to say that I concur in the opinion that this order should be made. In the addresses delivered at the bar by the defendants, Messrs. Davitt and Healy, a great deal was urged or suggested to the effect that in instituting this proceeding the Government displayed political, and some of its members personal, inconsistency; and that the Government, whatever may be the legal position of the case, acted unconstitutionally in adopting this form of procedure instead of submitting their complaint, if they have one, to the determination of a jury. I need scarcely say that on these points I, directly or indirectly, offer no opinion; in fact I can best describe my state of mind by saying that I am not conscious of having formed any opinion. I confine myself to the only two questions submitted to us for determination, namely, first, has this Court jurisdiction to make the order applied for by the Attorney General; and, secondly, are the facts such as to entitle him to demand at our hands the exercise of that jurisdiction? Now, as to the jurisdiction, I confess that if, as has been mooted during the argument, the origin of, and sole foundation for, requiring persons to find sureties for good behaviour on such a charge as that put forward by the Crown in this case was the language of the Statute 34 Edward III., respecting "them that be not of good fame," I should hesitate, in the absence of any authority, and there is none, to hold that the provisions of that Statute could by a sort of implication be held to extend not merely to the local justices who were to be appointed under its direction, but to this Court. It might be, no doubt, a very anomalous state of things that local justices should possess a jurisdiction which this Court would not possess, but even the existence of such an anomaly could not affect the construction of the language, if otherwise clear and unambiguous. It was argued for the Crown that the words "process of the peace and good behaviour" in the Statute 10 & 11 Car. 1, c. 10 (Irish), must have reference to or include all cases, whether originating in the Statute of Edward III. or otherwise. But this is by no means necessarily so. It does not seem disputed that not only this Court, but local justices, possessed power irrespective of the Statute of Edward III. to hold persons to good behaviour in certain cases, and the words of the Statute of Car. I. would be satisfied by referring them to the issuing of process in such cases. But I do not think it necessary in this case to have recourse to a construction so forced of the Statute of Edward III. as that it created a novel jurisdiction, and merely by implication conferred it upon this Court. I am disposed to hold, and as present advised would hold, that the Statute of Edward III. created no new jurisdiction, and that the true construction and result of the Statute is that it directed local justices to be appointed throughout the kingdom, and it then proceeds in general terms to describe the powers to be possessed and exercised by these magistrates; powers, some of them, perhaps, new to local justices, but previously possessed and exerciseable by this Court and the other high tribunals or functionaries entrusted with the conservation of the public peace and good order.

But whatever may be the construction or effect of the Statute of Edward III., whether it created any new jurisdiction and conferred it upon this Court, or whether it merely conferred upon the new local magistrates a jurisdiction primarily existing in other tribunals, I am of opinion that in a case like the present, where the charge against the defendants is the public utterance of language of a seditious character, calculated to endanger the public peace and promote public disorder, in such a case I am of opinion that, irrespective of the Statute of Edward III., or any other Statute, this Court possesses, and has possessed from the earliest times, an original inherent jurisdiction to entertain such a charge, and if it be established to issue process of good behaviour against the defendants.

The only question then remaining is, has the charge been established in evidence? The affidavits filed for the Crown *prima facie* sustain the charge; no affidavits in contradiction have been filed by Messrs. Healy and Davitt; an affidavit has been filed by Mr. Quinn, but of a character so vague as not to amount to any contradiction or qualification of the evidence adduced by the Crown. Under these circumstances I am of opinion that the Court has no alternative but to make the order applied for.

ORDER.

IN the High Court of Justice in Ireland, Queen's Bench Division, Crown Side.

Wednesday, the 24th day of January 1883.

*Ex parte* Patrick Bearns *against* Timothy M. Healy.

THE Right Honourable the Attorney General of Ireland, with whom were Mr. J. Murphy, Q.C., Mr. T. P. Law, Q.C., and Mr. J. N. Gerrard, of counsel on behalf of Patrick Bearns, of Bagnalstown, in the county of Carlow, head constable in the Royal Irish Constabulary, on Tuesday the 16th January instant, renews application standing from the 5th and 14th days of December last, and 11th day of January instant, pursuant to notice of the 2nd December last, "That Timothy M. Healy might be required to give sufficient sureties to be of good behaviour towards Her Majesty the Queen, and towards all Her Majesty's subjects, and that in default of finding such sureties he should be committed to prison for such time as to the said Court should seem fit; and for that purpose all writs and processes of good behaviour might issue, and warrants be granted, which might be requisite in that behalf."

And the said Timothy M. Healy is (by leave of the Court), on Thursday the 18th day of January instant, heard on his own behalf.

Whereupon, on reading the declarations in writing upon oath of the said Patrick Bearns and William Weir, taken and sworn in open Court upon the said 5th December 1882, the affidavit of John Flower, filed 5th December 1882, and hearing what was offered by the said Timothy M. Healy in person,—

It is ordered that the said motion be, and the same is hereby granted, and it is accordingly ordered, that the said Timothy M. Healy do within one week after the service of this order upon him, enter into a recognizance before the Queen's Bench Division of the High Court of Justice in Ireland, himself in the sum of 1,000 £, with two or more sufficient sureties in the aggregate sum of 1,000 £, conditioned that he the said Timothy M. Healy shall be of good behaviour towards all Her Majesty's subjects for the space of 12 calendar months, to be computed from the date of this order.

And it is further ordered that, in default of the said Timothy M. Healy entering into such recognizances with such sureties as aforesaid, he the said Timothy M. Healy be committed to, and confined in, the prison of our said Lady the Queen, at Kilmainham, in the county of Dublin, for the space of six calendar months, to be computed from the date of such committal, unless in the meantime the said Timothy M. Healy shall have entered into such recognizance with such sureties as aforesaid, to be of good behaviour in the manner and for the term aforesaid.

*John Fox Goodman,*  
Master of the Crown Office.

*Thomas Gerrard,*  
Crown Solicitor.

ORDER.

IN the High Court of Justice in Ireland, Queen's Bench Division, Crown Side.

Wednesday, the 24th day of January 1883.

*Ex parte* Charles Edward Seymour *against* Michael Davitt.

THE Right Honourable the Attorney General of Ireland, with whom were Mr. J. Murphy, Q.C., Mr. T. P. Law, Q.C., and Mr. J. N. Gerrard, of counsel on behalf of Charles Edward Seymour, of Navan, in the county of Meath, Sub-Inspector in the Royal Irish Constabulary, on Tuesday, the 16th January instant, renews application standing from the 5th and 14th days of December last, and 11th day of January instant, pursuant to notice of the 2nd December last, "That Michael Davitt might be required to give sufficient sureties to be of good behaviour towards Her Majesty the Queen, and towards all Her Majesty's subjects, and that in default of finding such sureties he should be committed to prison for such time as to the Court should seem fit; and for that purpose all writs and processes of good behaviour might issue and warrants be granted which might be requisite in that behalf."

And the said Michael Davitt is (by leave of the Court), on Thursday the 18th day of January instant, heard on his own behalf.

Whereupon, on reading the declarations in writing upon oath of the said Charles Edward Seymour and of Bernard O'Malley, taken and sworn in open Court upon the said 5th December 1882, the affidavit of Michael Wallace, filed 4th January, and of Michael O'Neill, filed 8th January, the affidavit of John Flower, filed 5th December 1882, and hearing what was offered by the said Michael Davitt in person,—

It is ordered that the said motion be, and the same is hereby granted, and it is accordingly ordered that the said Michael Davitt do within one week after the service of this order upon him enter into a recognizance before the Queen's Bench Division of the High Court of

of Justice in Ireland, himself in the sum of 1,000 *L.*, with two or more sufficient sureties in the aggregate sum of 1,000 *L.*, conditioned that he, the said Michael Davitt, shall be of good behaviour towards Her Majesty the Queen, and towards all Her Majesty's subjects for the space of 12 calendar months, to be computed from the date of this order.

And it is further ordered that, in default of the said Michael Davitt entering into such recognizance with such sureties as aforesaid, he the said Michael Davitt be committed to and confined in the prison of our said Lady the Queen, at Kilmainham, in the county of Dublin, for the space of six calendar months, to be computed from the date of such committal, unless in the meantime the said Michael Davitt shall have entered into such recognizance with such sureties as aforesaid, to be of good behaviour in the manner and for the term aforesaid.

Stephen Seed, Crown Solicitor.

*John Fox Goodman,*  
Master of the Crown Office.

---

O R D E R.

In the High Court of Justice in Ireland, Queen's Bench Division, Crown Side.

Wednesday, the 24th day of January 1883.

*Ex parte* Charles Edward Seymour against Joseph P. Quinn.

THE Right Honourable the Attorney General of Ireland, with whom were Mr. J. Murphy, Q.C., Mr. T. P. Law, Q.C., and Mr. J. N. Gerrard, of counsel on behalf of Charles Edward Seymour, of Navan, in the county of Meath, Sub-Inspector in the Royal Irish Constabulary, on Tuesday, the 16th January instant, renews application standing from the 5th and 14th days of December last, and 11th day of January instant, pursuant to notice of the 2nd December last, "That J. P. Quinn might be required to give sufficient sureties to be of good behaviour towards Her Majesty the Queen, and towards all Her Majesty's subjects, and that in default of finding such sureties he should be committed to prison for such time as to the Court should seem fit; and for that purpose all writs and processes of good behaviour might issue and warrants be granted which might be requisite in that behalf."

Whereupon, on reading the declarations in writing upon oath of the said Charles Edward Seymour and of Michael O'Rorke, taken and sworn in open Court upon the said 5th December 1882, and the affidavit of the said Joseph P. Quinn, filed the 15th day of January instant, and affidavit of Thomas P. McKenna, filed 16th day of January instant, the affidavit of John Flower, filed 5th December 1882, and hearing what was offered by Mr. Richard Adams, of counsel for the said Joseph P. Quinn,—

It is ordered that the said motion be, and the same is hereby granted, and it is accordingly ordered that the said Joseph P. Quinn do within one week after the service of this order upon him enter into a recognizance before the Queen's Bench Division of the High Court of Justice in Ireland, himself in the sum of 500 *L.*, with two sufficient sureties in the sum of 250 *L.* each, conditioned that he the said Joseph P. Quinn shall be of good behaviour towards Her Majesty the Queen, and towards all Her Majesty's subjects for the space of 12 calendar months, to be computed from the date of this order.

And it is further ordered that, in default of the said Joseph P. Quinn entering into such recognizance with such sureties as aforesaid, he the said Joseph P. Quinn be committed to and confined in the prison of our said Lady the Queen, at Kilmainham, in the county of Dublin, for the space of six calendar months, to be computed from the date of such committal, unless in the meantime the said Joseph P. Quinn shall have entered into such recognizance with such sureties as aforesaid, to be of good behaviour in the manner and for the term aforesaid.

Stephen Seed, Crown Solicitor.

*John Fox Goodman,*  
Master of the Crown Office.

COURT OF QUEEN'S BENCH (IRELAND)  
(SUMMONSES, &c.).

---

COPIES of the SUMMONSES and NOTICES Served upon Messieurs *Healy, Davitt, and Quinn*, in the recent Proceedings against them in the Court of Queen's Bench, *Dublin*; of the JUDGMENT delivered against them; and, of the WARRANTS or ORDERS under which they were Committed to Prison.

(*Mr. Leamy.*)

---

*Ordered, by The House of Commons, to be Printed,*  
*20 March 1883.*

---

[*Price 1½ d.*]

98.

*Under 2 oz.*

H. 11, 4. 85.