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## IN THE HIGH COURT OF JUSTICE IN IRELAND.

## CHANCERY DIVISION.

VICE-CHANCELLOR.

Writ issued the 12th day of January, 1891.

In the Matter of the Estate of SIR ROBERT HAGAN, deceased,

ISABELLA MARY BEVAN, ANNA MARIA SMARTT,
ELIZA JANE BROOMFIELD, ALICIA ROSA
BELL, and PHILLIPPA SARAH VEREKER, Plaintiffs;

AND

CHARLES PATRICK MAHON-HAGAN, and WALTER BUTLER, .... Defendants.

## STATEMENT OF CLAIM

DELIVERED ON THE 17th DAY OF FEBRUARY, 1891, BY MESSRS. FOX AND CORCORAN, of No. 8 LEINSTER-STREET, IN THE CITY OF DUBLIN, SOLICITORS FOR THE PLAINTIFFS,

- 1. Sir Robert Hagan, late of 17 Pembroke-road, in the County of Dublin, Admiral R.N., deceased, by his will dated the 21st day of June, 1858, after devising to John Sherlock Paterson and David Gaussen, both since deceased, his reversionary estate and interest in the tithe rent-charge of the Parish of Ballingarry upon certain trusts and limitations, which in the events that have happened cannot now take effect, attached to the said devise the proviso in the words and figures following:—
- "Provided always and I do hereby direct that every son of either of my said daughters Anna Maria Bevan and Rosa Elizabeth
- " Hagan who under or by virtue of this my will shall become entitled
- "to the actual possession or to the receipt of the said tithes or tithe
- " rent-charge hereinbefore devised or shall become entitled in remainder
- " or reversion to the first estate tail in the same premises expectant on
- "the determination of the several estates for life by the said marriage
- " settlement of my daughter Anna Maria Bevan and by this my will
- " limited as therein and hereinbefore mentioned and who shall not then

" bear and use the surname of Hagan and the arms granted to me in " consideration and commemoration of my services in the suppression " of the African Slave Trade shall (unless prevented by death) within "6 months after he shall have attained the age of 21 years or in " case he shall have attained that age before he shall become so entitled " as aforesaid then within 6 calendar months after he shall have become "so entitled to take bear and assume and use upon all occasions "the surname of Hagan and the said arms so granted to me as afore-" said and shall within the said period of six months) unless prevented " by death) apply for and endeavour to attain a proper license from "the Crown or take such other steps as may be requisite to authorise "him so to take bear and use the said name and arms and further that " in case any such son of my said daughter Rosa Elizabeth shall refuse " or neglect within the said period of 6 calendar months to take use " and bear such name and arms as aforesaid or to take such steps as " aforesaid then and in every such case immediately after the expiration " of the said period of 6 months the limitation under which such son shall "be tenant in tail shall absolutely determine and become void and "the said premises hereinbefore devised shall immediately go to the " person or persons next in remainder under the limitations herein-" before contained precisely in the same manner as if such son were "then dead and there were a general failure of issue inheritable under " such limitation in tail."

2. The said testator thereby bequeathed a sum of £6,000 to the said John Sherlock Paterson and David Gaussen, to be invested by them in manner therein mentioned, and held upon certain trusts therein set forth not necessary to be here repeated, and after giving some specific legacies he made the bequest in the words and figures following:—

"I bequeath to the son of my daughter Anna Maria Bevan who shall first attain the age of 21 years and shall before attaining that age have taken and borne the surname of Hagan and the arms hereinbefore mentioned all my plate plated articles swords pistols books gold watch and chain medals prints pictures nautical or other instruments snuff boxes and timepiece to be delivered to him when attaining the age of 21 years and I direct that in the meantime my said wife during her life and after her death my said daughter Anna Maria Bevan shall have the custody and use thereof and in case there shall not be any son of my said daughter Anna Maria Bevan who shall attain the age of 21 years and shall before attaining that age have taken and borne the said surname and arms. Then I bequeath the said last-mentioned premises to the son of my said daughter Rosa Elizabeth who shall first attain the age of 21 years and shall before attaining that age have taken and borne the said

"surname and arms. And in case there shall not be any son of my said daughter Rosa Elizabeth who shall first attain the age of 21 years and shall before attaining age have taken and borne the said surname and arms then I bequeath the same to the daughter of my said daughter Anna Maria Bevan who shall first attain the age of 21 years and in case no daughter of the said Anna Maria Bevan shall attain the age of 21 years then I bequeath the same to the daughter of said Rosa Elizabeth who shall first attain the age of 21 years and in case no daughter of the said Rosa Elizabeth shall attain the age of 21 years then I bequeath the same to the eldest grandson of my said sister Rose Bingham."

3. After making certain other bequests, not necessary to be here mentioned, the said testator devised and bequeathed the residue of his real and personal estate in the words and figures following:—

"And as to all the residue of my real and personal estate " and effects hereinafter called the residuary fund I bequeath the same "to the said John Sherlock Paterson and David Gaussen and the " survivor of them and the heirs executors and administrators of such " survivor upon trust that the said John Sherlock Paterson and David "Gaussen and the survivor of them the executors and adminstrators of " such survivor shall sell the said real estate in such manner and with " such powers as hereinbefore provided with respect to the said tithe or "tithe rent-charge of Ballingarry in the event of a sale thereof and shall " sell and covert into money the said personal estate and invest the " net proceeds of the said real and personal estate in the public stocks " or funds of Ireland or with the consent of my said wife during her " life and after her death at the discretion of the said trustees or trustee " to invest the same upon such securities as hereinbefore described with " reference to the investments of the said sum of £6,000 with power " to vary such stocks funds or securities with such consent or with such " discretion as aforesaid and to pay he interest dividends and income " of such stocks funds or securities and the rents and profits of the said " real estate or of the unsold part thereof for the time being until the " whole shall be sold to my said wite during her life and after her death " in case the eldest son of my daughter Anna Maria Bevan shall then "have attained the age of 21 years and shall have taken and borne "the surname of Hagan and the arms hereinbefore mentioned to pay " and transfer the said residuary fund and the stocks funds and securities " on which the same shall then be invested to such eldest son of my " said daughter Anna Maria Bevan his executors administrators and " assigns but if such eldest son shall have attained the age of 21 years " but shall not have taken and borne the said surname and arms then " in case any younger son of my said daughter Anna Maria Bevan shall " at the time of the death of my said wife have attained the age of 21 " years and shall have taken and borne the said surname and arms to " pay and transfer the said residuary fund stocks funds and securities

"to such younger son or the eldest of such younger sons if more than " one his executors administrators and assigns and if at the time of the "death of my said wife there shall not be any son of my said daughter " Anna Maria Bevan who shall then have attained the age of 21 years " and shall have taken and borne the said surname and arms then to " accumulate the interest dividends and income of the said residury fund " stocks funds and securities or so much of such interest dividends and "income as shall remain after payment of the annual sum hereinafter "directed to be paid thereout in the way of compound interest by investing "the same and the resulting income thereof from time to time in the "same manner as hereinbefore directed with respect to the principal " until one of the sons of my said daughter Anna Maria Bevan shall "attain the age of 21 years and shall before attaining that age have "taken and borne the said surname and arms and then pay and transfer "the said residuary fund stocks funds and securities and the interest "dividends income and accumulations thereof to such son upon his "attaining the age of 21 years and in case there shall not be any son of "my said daughter Anna Maria Bevan who shall be entitled under the "limitations hereinbefore contained to the said residuary fund then in "case there shall be any son of my said daughter Rosa Elizabeth who " shall then have attained the age of 21 years and shall have taken and "borne the said surname and arms to pay and transfer the said residuary "fund stocks funds and securities and the interest dividends and income "and accumulations thereof to such son of my said daughter Rosa "Elizabeth or the eldest of such sons if more than one his executors "administrators and assigns but if there shall not be any son of my said "daughter Rosa Elizabeth who shall then have attained the age of 21 " years and shall have taken and borne the said surname and arms then " to accumulate the interest dividends and income of the said residuary "tund stocks funds and securities or so much of such interest dividends " and income as shall remain after payment of the annual sum herein-"after directed to be paid thereout in the manner hereinbefore directed " until one of the sons of my said daughter Rosa Elizabeth shall attain "the age of 21 years and shall before attaining that age have taken and "borne the said surname and arms and then to pay and transfer the " said residuary fund and the stocks funds and securities on which the " same shall then be invested and the interest dividends and income "and accumulations thereof to such son of my said daughter Rosa " Elizabeth upon his attaining the age of 21 years and I direct that until " one of the sons of my said daughters shall under the limitations "herein contained become entitled to the said residuary fund the said " trustees or trustee shall out of the interest dividends and income of the " said residuary fund apply the annual sum of £50 for the education of " such one of the sons of my said daughters as shall for the time being be "the eldest son capable of becoming entitled to the said residuary fund " under the limitation hereinbefore contained from time of his attaining the

"age of 17 years until he shall attain the age of 21 years and the " receipts of his father or guardian shall be sufficient discharges to the "said trustees or trustee for the amount of such annual sums and in "case there shall not be any son of my said daughter Rosa Elizabeth "who shall be entitled under the limitations hereinbefore contained to "the said residuary fund then the said trustees or trustee shall hold "the said residuary fund and the stocks fund and securities on which "the same shall be invested and the interest dividends and accumula-"tions thereof upon trust to pay and transfer the same to all the "daughters of my said daughters Anna Maria Bevan and Rosa "Elizabeth who shall attain the age of 21 years or marry to be divided "amongst them if more than one in equal shares per capital and the "said trustees or trustee shall in she meantime apply the whole or "such part as they or he shall think fit of the interest dividends and "income of the share of the said Residuary fund to which any daughter "shall for the time being be entitled in expectancy under the trusts " hereinbefore contained for or towards her maintenance and education "and may either themselves or himself so pay and apply the same or " may pay the same to the father or guardian of such daughter for the "purpose aforesaid without seeing to the application thereof. And in "case there shall not be any daughter of either of my said daughters "who shall attain the age of 21 years or marry then the said trustees " or trustee shall hold the said residuary fund and the stocks funds and "securities on which the same shall be invested and the interest "dividends and accumulations thereof in trust for the grand children " of my said sister Rose Bingham in equal shares provided always and "it shall be lawful for my said trustees or trustee out of the capital "income or accumulations of the said residuary fund to pay the "necessary expenses of obtaining proper permission for any son of either " of my said daughters to take and bear the name of Hagan and my "said Arms."

- 4. The said testator by his said will appointed the said John Sherlock Paterson and David Gaussen to be his executors.
- 5. By a codicil to his said will, executed on the 18th day of June, 1862, the said testator revoked the appointment of the said David Gaussen as trustee and executor as aforesaid, and in his place he thereby appointed his son-in-law, Dr. Philip Bevan, to be trustee and executor of his said will. And having by his said codicil made some further bequests and charged an annuity of £24 per annum in favour of Martha Devonish for the term of her life on his said residuary estate the said testator proceeded to give the direction in the words and figures following:—"I have some intention of investing my "residuary estate in building a house, amount about £1,200, in which case the rent received therefrom after my dear wife's death would be applied first to the payment of Miss Devonish's annuity, and the residue

- "I desire may be invested in railway securities or shares till the arrival of the period when it is directed to be applied for the use of a grandson bearing my name and arms."
- 6. The said testator died on the 25th day of April, 1863, without having altered or revoked the said will save by the said codicil, and without having revoked the said codicil, and probate of the same was on the 11th day of June, 1863, granted forth of the principal registry of the then Court of Probate in Ireland to the said John Sherlock Paterson and the said Philip Bevan, the executors therein named. The said testator left him surviving his widow, Isabella Hagan, and his 2 daughters, the said Anna Maria Bevan and Rosa Elizabeth Hagan.
- 7. Previous to his death the said testator had entered into an agreement for a lease of a plot of ground on Raglan-road, in the County of Dublin, and for the erection of a dwelling-house thereon, and in pursuance of the said agreement by Indenture dated the 9th day of June, 1863, and made between the Right Hon. Richard Charles Francis, Earl of Clanwilliam, and the most Noble George William Frederick, Marquis of Ailesbury, trustees of the will of Richard, late Viscount Fitzwilliam of the 1st part, the Right Hon. George Robert Charles, Earl of Pembroke and Montgomery of the second part, and the said John Sherlock Paterson and Philip Bevan, therein described as executors of the will of the said Robert Hagan of the third part, all that plot of ground therein particularly described was demised to the said John Sherlock Paterson and Philip Bevan to hold the same for the term of 150 years subject to the payment of the rent and performance of the covenants on the lessees part thereby reserved and contained. The said testator had made all the arrangements necessary for the erection of the contemplated dwelling-house on the said plot of ground, and upon his death the said John Sherlock Paterson and Philip Bevan carried on and completed the erection of the said house, and same is now known as No. 6 Raglan-road.
- 8. The Plaintiffs are informed by the Defendant, Walter Butler, that the various articles representing the bequest mentioned in the second paragraph hereof are lodged in the Munster and Leinster Bank, Limited, Dame-street, Dublin, in the name of the Defendant, Walter Butler.
- 9. After payment of the testator's debts, funeral and testamentary expences and legacies, and providing the sum of £6,000 in said will mentioned the testator's estate was insufficient to provide the expenses necessary for the completion of the said house now known as No. 6 Raglan-road, and to enable them to complete the same the said John Sherlock Paterson and Philip Bevan borrowed the sum of £750 on the security of a mortgage of the said lease. The said sum of £750 and interest due thereon were subsequently paid off out of the rents and

profits of the said house. The said house, No. 6 Raglan-road, now represents the entire of the said residuary fund.

- 10. The said Philip Bevan died on the 6th day of December, 1881, and by deed dated the said 6th day of July, 1885, made between the said John Sherlock Paterson of the one part, and the Defendant, Walter Butler, of the other part. The said Walter Butler was appointed a trustee of the will of the said testator in place of the said Philip Bevan, deceased.
- 11. The said Anna Maria Bevan was the eldest daughter of the said testator, and died on the 20th day of September, 1866. There was issue of the marriage of the said Anna Maria Bevan and Philip Bevan one son, Robert Hall Hagan Bevan, and five daughters, Isabella Mary, Auna Maria, Eliza Jane, Alicia Rosa, and Philippa Sarah, who are the Plaintiffs in this action. All the said daughters have attained their age of 21 years, and the said Isabella Mary Bevan is the eldest of such daughters. The said Eliza Jane Bevan on the 21st day of July, 1887, married Dr. Humphrey J. Broomfield; the said Alicia Rosa Bevan on the 24th day of May, 1887, married Dr. Theodore Bell; the said Philippa Sarah Bevan on the 28th day of February, 1838, married Amos. Francis Vereker; and the said Anna Maria Bevan on the 21st day of August, 1889, married Dr. Henry Warner Smartt. No settlement, or agreement for a settlement, was executed on the respective marriages of Mrs. Bell, Mrs. Vereker, or Mrs. Smartt, or subsequently thereto; a settlement was executed on the marriage of Mrs. Broomfield, but such settlement does not in any way relate to the property passing under the said will of the said testator, and contains no covenant to settle any after acquired property.
- 12. The said Robert Hall Hagan Bevan was born on the 13th day of January, 1860, and died on the 18th day of August, 1880, without having attained his age of 21 years.
- 13. In the year 1865, the said Rosa Elizabeth Hagan married Charles George Mahon, and there was issue of the said marriage one son, the Defendant, Charles Patrick Mahon, now called Charles Patrick Mahon-Hagan, one of the Defendants in this action, and two daughters, both of whom died before attaining the age of 21 years, and without having eyer married.
- 14. The said Rosa Elizabeth Mahon died on the 13th day of November, 1868. Lady Hagan, the widow of the said testator, died on the 21st day of July, 1870. The said Charles Geo. Mahon died on the 6th day of May, 1882. The said Martha Devonish is also dead.
- 15. The said Charles Patrick Mahon was born on the 14th day of May, 1867, and attained his full age of 21 years on the 14th May, 1888.

16. The said Charles Patrick Mahon some time after he had attained his full age of 21 years, took the surname of Hagan, and assumed the arms in the said will mentioned; but the Plaintiffs aver and charge that the said Charles Patrick Mahon had not before he attained the age of 21 years, taken and borne the name of Hagan and the arms in the said will mentioned in accordance with the provisions of the said will; and the Plaintiffs claim and submit that in the events which have happened, the Plaintiff, Isabella Mary Bevan, is entitled to the property mentioned in the bequest set forth in the 2nd paragraph hereof, and the Plaintiffs, Isabella M. Bevan, Eliza J. Broomfield, Alicia R. Bell, Phillipa S. Vereker, and Anna M. Smartt, are entitled in equal shares to the said residuary fund in the said will mentioned, and the securities representing the same.

17. Both the Plaintiffs and the Defendant, Charles Patrick Mahon Hagan having required the said executors of the said will to hand over to them the articles comprised in the bequest set forth in the 2nd paragraph hereof, and to put them into possession and receipt of the rents of the said house, No. 6 Raglan Road, as representing the residuary fund in said will mentioned; the said John Sherlock Patterson and Walter Butler on the 14th day of June, 1889, commenced an action in this Division of the High Court of Justice, seeking to have the trusts of the said will of Sir Robert Hagan, deceased, carried into execution, and his estate administered under the direction of this Honourable Court. and it was subsequently arranged between all parties to the said suit to have a special case stated therein. The said John Sherlock, however, died pending the said suit, leaving the present Defendant, Walter Butler, sole Plaintiff therein, and the said Walter Butler thereupon refused to proceed further with the said suit, and the Plaintiffs have consequently been obliged to bring this action to enforce their rights.

The Plaintiffs claim :--

1. That it may be declared who, in the events which have happened, are now entitled under the trusts of the said will of Sir Robert Hagan, deceased, to firstly, his plate, plated articles, swords, pistols, books, gold watch and chain, medals, prints, pictures, nautical or other instruments, snuff boxes, and time piece; and secondly, to the residue of his real and personal estate in the said will called "the residuary fund," and the investments or securities representing the same, and the accumulations of the income thereof.

- 2. That if necessary the real and personal estate of the said Sir Robert Hagan, deceased, may be administered, and the trusts of his will carried into execution under the direction of this Honourable Court.
- 3. That the Plaintiffs may have such further and other relief as the nature of the case may require.
- 4. That the costs of this action may be provided for.

CHARLES L. MATHESON.

In the High Court of Justice in Ireand.

CHANCERY DIVISION.

VICE-CHANCELLOR.

Writ issued the 12th day of January, 1891.

In the Matter of the Estate of SIR ROBERT HAGAN, Deceased.

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in, deceased, may be

BEVAN AND OTHERS

-v.-

MAHON-HAGAN AND ANOTHER

## STATEMENT OF CLAIM

FOX and CORCORAN, Solicitors, 8 Leinster-street, Dublin.



24, Aorfolk Street, Park Lane. W.

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Fer. 13th 1891.

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(Vide page 44 of the Esport, Lord mealt Especially Lectes assis lance at the. present lime, owing to the heed that has arisen for lawing \$ 3000, for the Laying out of 11 acres at. Bethnal Green, as. des-- Crubed in the Enclosed Ceaflets:

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9up. Pembroke St Dublin 14th Feb. 1891

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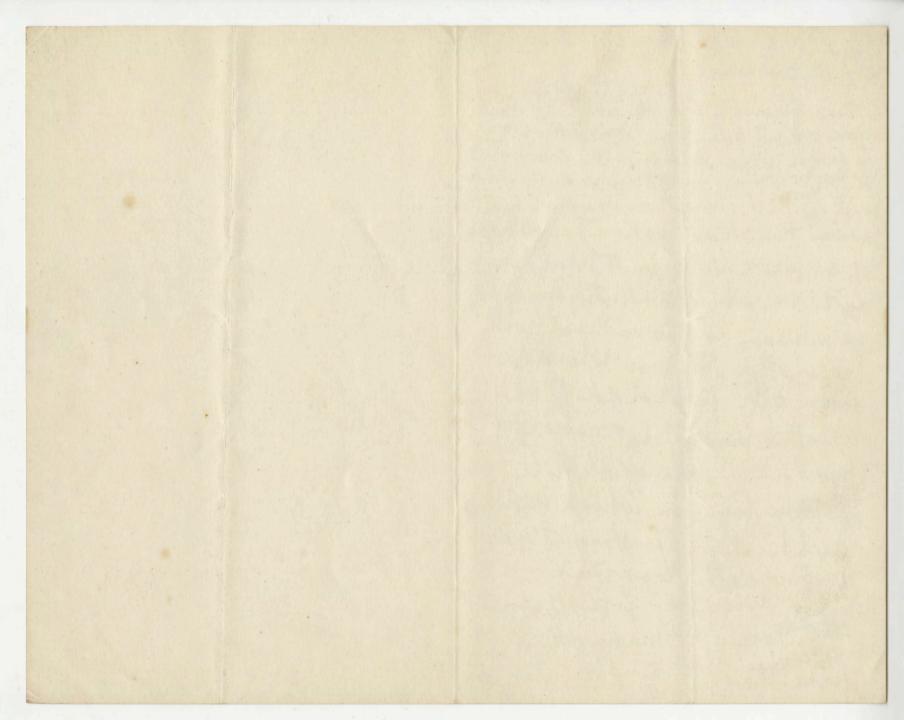
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5.2 Sweep St.
S. Kensington
Monday.

[Opril]

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with literature, and but sure that there is plenting of work connected with the paper that I might do. I may mer tion that besites bung an expired graduate in 2rd class this try Honous Jane a good Beach scholar, heory usided several was a loved, and here a snottening of German and Italian Thanking for very much for the interest you are taking I semain lows sincerely T.P. Amoting

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Filswrings 4th april 1891

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35 Wellington Proad Dullin 26 th april 91 Try clear Olyonnon maken I scanle to town on Wednesduch, and I legas to morrow for Theole alds Ishall write Later on and give you my address Thind Charlie to ablicated to but a large gold and

Posted by his Cousines Engraved with the As Ethylis has no kon Coat of arus of his to any a cral, or pay Grand Father Sir his les penses to Cotage Probert Hagan, Es to Join the milities Wideral of his for training Thave having assumed given hish the E25° 204 Delit me the arkers the as obfor his use Iderine - liged to under the him write to tale you Will his beach adviser Egill les midles La. Thape I have acted in the matter be called whom to As you wished be produce a exal as Hally wants it a laidence, as lavely he your left me the point to being dis. Hower of helping

Hasable for mest living there later on loudel lacate if hecers aref. Jam sarry to hear 92 mac Dannell had had la much illues. Zomember me to them Theokald & his wife clesive this lock. the little profell are all well such 4 homies 42011/2 to as meredeed very Mostly- Walter resks Pattier Boorly when was bearing, a touch of your esternet, brought neice malilda



INFIELD.

BARROW-IN-FURNESS.

24th april

The year forman Mahon I Suas ela policiel to get me tules letter This morning, thank her for mes- Idas very meases on heaving that the reports in the pubers of your health here sa had Theobald Telemaker of for me In 6 2 mill

has not yet reached me as soon as sget it School let you know I broke you approved of my I hat Style- I had hat gruing Charlie the Tem mondays papers Checher he Eschef as Jaas trabelling here Required it - I had that day but itheres a long talk with him all the Bish perpers had most alamines about herefoarly, he accounts at your illness is 24 a chef tot che what Thank galchurer you your wish on the are hail & hearty as matter & to leave me hit the whatt. there for life. of course Igat your Jelig 2ams In Exply to my letter the fact of his atprefrom Dublih The cent being in a position letter you wrote me to marrish & settle there on Saties class to Stillarning when the plan more

of the disputed Will - Terday-Stind Theokald did not go to Sondon the time Ithought he died mafar Garman has your To Join his Prigt (the 10th) at Cawarpors. Believe me clear Your affectionals Rice matilda

Infield Barrow in Furness Janeashire 30th april 41 My dear Offorman Malion. I gat your letter this morning from Gillams Walter labound it al has begun to hook an estimate a drawing prepared by the Contractor be one. Blog tel to repair

in the matter. las let after poor We are each char espect O. Go death he is a - ma hatice of trial My good tracks man m Charlier care the 2 12 should wish to other side make the Implay him if there heat move which is, to work to be dout. an application in Court Duyer, the present as to whether, the loiden thaut must cut six is to be by affichavit, or by the witness in person mouther notice Ithink Charlie has to go to but Jam not quite Towns for the Militia Turn of the terms of the absorment, as the his exillence will be letting was made after by affidavit I too ans Charlie came afage. To be called to prove Walter with Milow, and the etchs I took to will do what is heaveny fulfil, the conditions

52. Sydnesst.
S. Kennighi.
Rida.
May 91

Dear Colone Ofrener Mahon. I must not let to - day 30 by without ending con a line to thank for very much for the little book which I have received from wor. It is sure to interest me and to be useful, especially as I have been making some fuble attempts to master Italian letil. Janu already making great progress in the art of conversation, which I have begun to study while I am dressing. Some dos or other I have to go to Italy and then my progress will be rapid.

cus wife joins with me in Kind regards
and Believe me
brus respicable,
7.7. Amoting.

52. Sweep St. S. Kensington 9th may 181.

Dear Colonel the O'Circuan Mahon. cles wife to be when I came home on Thursday that con hed very kindly offered to has for her joining a course of lectures or electricity. and that con has left a chique for that purpose we have tacked the water over together, and have come to the Conclusion that there are several good wasno, who she shows not do. So. Amongs others I doubt very much if she is strong enough: then we are est very settled, and it is difficult to look nas lar as six norths.

It womes be a great his it after having haid the fees she were obliged blive it up. lith may thanks, neverthe less, for your Kindness and the interest we have taken and he ping that if we can ). ofting for so in horaco trivial a was for will let us know of it Believe un. low very tinky T. P. Amoting

Colone the O'Green haha. M.P.

and letterneys will
have hat spats in
the next worldShape your affections
better
here goes affections

25 th may 91 Prodecar Marmon Malion. I Hust had a letter from Charlie he has ken in by of ill les Gat chill & headache the 92 eggs it is not State horried Sheflueng & but it comes like it If he had your to Form to sed you, as

agrosol whon when they he intended I should lare les each het Duredor have been seem he lovet etaled in the hose Laught it then, but of your places, but as he tack ill the day long as he is under defore he gat leave to go. Zelet les better for Charlie, who lear I do not know what lette else to dependon, Letter you allerde to holting her shout which puts ful lo the laded cerit hat Lour Elan about hand June meddlesiely Barken Charlie Lays and one at the leppidoist he cannot burn out he ex likely to make Mr. Duyer butil al a nice neles of it the arrangements for another, Landergues the after ations the are