

1866
In the House of Lords.

ON APPEAL
FROM THE
HIGH COURT OF CHANCERY IN IRELAND.

OSBORNE HILLIARD, - - - Appellant.
LUKE EIFFE, - - - Respondent.

Joint Appendix
TO THE
CASES OF APPELLANT AND RESPONDENT.

E. T. LEWIS,
SOLICITOR FOR APPELLANT,
1, Albany Court Yard, Piccadilly, London.

WOODROOFFE & PLASKETT,
SOLICITORS FOR RESPONDENT,
1, New Square, Lincoln's Inn, London, W.C.

In the Court of Chancery

ON PETITION

FOR

THE COURT OF CHANCERY IN IRELAND.

Applicant
Respondent

Joint Petition

of

THE COURT OF CHANCERY IN IRELAND.

IN WITNESS

WHEREFORE

THE COURT OF CHANCERY IN IRELAND.

WITNESSES

THE COURT OF CHANCERY IN IRELAND.

THE COURT OF CHANCERY IN IRELAND.

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No. 1.

IN CHANCERY.

Between
LUKE EIFFE, *Plaintiff,*
and
OSBORNE HILLIARD, O'BRIEN
OSBORNE HILLIARD, & WILLIAM
LYONS, *Defendants.*

BILL OF COMPLAINT.

*To the Right Honorable Abraham Brewster, the
Lord High Chancellor of Ireland.*

Bill of Complaint, filed
14th November, 1867.

Humbly complaining sheweth unto his Lordship Luke Eiffe of Blackrock in the County of Dublin Esquire the

above named plaintiff as follows :—

1. John Norton late a Captain in Her Majesty's 34th Regiment in the year 1863 was residing at Bray in the county of Wicklow. He was at that date upwards of 77 years of age and lived altogether by himself without the society of any relation or member of his family.
2. The said John Norton was a man of high scientific attainments and claimed to be and in fact was the inventor of numerous improvements in the art of artillery and projectiles and believed that Her Majesty's Government were under considerable obligations to him for his inventions which had either been adopted by or submitted to the approval of the War Office and Ordnance Departments.
3. The said John Norton believed that he was entitled to a recognition from the Government for his numerous scientific inventions and by all means in his power was continually exerting himself to obtain a public recognition of his services and in consequence of his anxiety in this matter was easily deceived by and under the influence of those who sympathised with him or offered to assist him in attaining his object.
4. The said John Norton was possessed of a life estate in considerable landed property in this country also of some small property in fee-simple or fee-farm and of considerable personal estate.
5. In the summer of 1863 the said John Norton became acquainted with Mr. Osborne Hilliard and his family who then resided at Lower Gardiner Street in the City of Dublin.
6. Mr. Osborne Hilliard is a member of the Irish Bar of many years standing and having been previously connected with the business of a solicitor was well acquainted and experienced in business.
7. Captain John Norton was wholly unacquainted with matters of business and unusually ignorant of the ordinary means of obtaining the objects which he had in view.
8. Captain Norton after his first introduction to Mr. Osborne Hilliard was desirous of paying his addresses to a daughter of Mr. Osborne Hilliard who was then aged nineteen years or thereabout and such proposals were apparently approved of by Mr. Osborne Hilliard [who consented to the marriage but desired that in consequence of the age of his daughter the celebration should be postponed for a year and upon such terms Captain Norton spent much of his time in the house of Mr. Osborne Hilliard and became on intimate terms with his family.

9. Neither Mr. Osborne Hilliard or his daughter had any intention that the proposed marriage should in fact be celebrated but in the meanwhile Mr. Osborne Hilliard availed himself of Captain Norton's position by inducing him to expend large sums of money on the amusement of and in presents to the Hilliard family.

10. With the approval and by the directions of Mr. Osborne Hilliard Miss Hilliard although having no intention of marrying Captain Norton carried on a constant correspondence with him of such a nature as to keep him entirely under her influence and in constant company of the Hilliard family.]

11. Mr. Osborne Hilliard having acquired a knowledge of the objects which Captain Norton was anxious to accomplish under the show of friendship offered him his assistance assuring him that from his knowledge of the world that he could easily enable him to attain his desires.

12. Captain Norton consequently treating Mr. Osborne Hilliard as a relative and member of his family and trusting in his friendly professions was in the habit of consulting him on his affairs acted under his guidance and treated him as a friend and professional adviser.

13. Mr. Osborne Hilliard was employed by Captain Norton in taking all the steps which he advised for the purpose of bringing forward his claims before the notice of government and he proposed to exert himself with the editors of the public press and influential members of parliament in urging them to advocate a recognition of Captain Norton's services and continually communicated by letter and verbally with Captain Norton in such a manner as to induce him to believe that he would soon succeed in obtaining for Captain Norton the objects he desired by means of the extensive influence he brought to bear on the government.

14. In consequence of the connection between them Mr. Osborne Hilliard acquired great influence over Captain Norton who placing full confidence in his friendship acted under his advice.

[15. Mr. Osborne Hilliard abused the confidence of Captain John Norton by obtaining from him various sums of money nominally for the purpose of advancing Captain John Norton's claims. Among others plaintiff refers to the sum of £10 obtained by Mr. Hilliard in the month of May 1864 for the purpose of procuring the interest of the editor of a Dublin paper and of large sums of money about £200 procured by Mr. Osborne Hilliard from Captain Norton nominally for The O'Gorman Mahon to induce him to recommend Captain Norton's inventions to the King of Prussia and to procure a patent for them in the kingdom of Prussia and also Mr. Osborne Hilliard induced Captain Norton to send out to, and for a considerable time maintain at Paris a son of Mr. Osborne Hilliard for the purpose of obtaining through the aid of influential friends whom Mr. Osborne Hilliard falsely represented he had at Paris the adoption of Captain Norton's invention by the French government.]

16. In the month of October 1863 Mr. Hilliard proposed to Captain Norton that his son O'Brien Osborne Hilliard should reside with Captain Norton as his companion and Captain Norton having consented to this arrangement Mr. Hilliard proposed that the arrangement should be carried out by the execution of a deed of adoption.

17. Captain John Norton being persuaded by Mr. Osborne Hilliard that such was the ordinary and legal mode of securing the services of Mr. O'Brien Osborne Hilliard consented to execute the deed necessary for such purpose.

18. Mr. Osborne Hilliard caused the deed hereinafter stated to be prepared assuring Captain Norton that it was the ordinary form for carrying out such a transaction but owing to

Captain Norton's confidence in Mr. Osborne Hilliard the draft was never submitted to any legal adviser of Captain Norton nor was the legal effect thereof ever explained to him.

19. The deed was prepared by Mr. Vandeleur Osborne Hilliard a son of Mr. Osborne Hilliard and a solicitor of this Honorable Court under the direction of the said Osborne Hilliard.

20. The deed purported to be made between the said John Norton of the one part and the said Osborne Hilliard of the other part and recited that John Norton was seised and possessed of an estate in fee simple or some other good and sufficient estate of and in the lands thereafter mentioned and was also seised of a perpetual annuity or rent-charge of £64 12s. 4d. per annum charged on the lands of Molinan in the barony of Ratoath and county of Meath under the provisions of a certain deed dated the 18th May 1827 and that John Norton was advanced in years and had contracted an attachment for O'Brien Osborne Hilliard third son of the said Osborne Hilliard then aged fifteen years and had requested Osborne Hilliard to allow the said O'Brien Osborne Hilliard to reside constantly with him the said John Norton and in order to induce the said Osborne Hilliard to consent thereto he the said John Norton had offered to adopt the said O'Brien Osborne Hilliard as his own child and to provide for him in the manner thereafter mentioned and that the said Osborne Hilliard had consented to the said request of the said John Norton upon the terms of the said John Norton making such provision for the said O'Brien Osborne Hilliard as thereafter stated and the said deed witnessed that in consideration of the said Osborne Hilliard allowing and sanctioning the said O'Brien Osborne Hilliard residing constantly and permanently with the said John Norton and in consideration of the said O'Brien Osborne Hilliard leaving his father's house and going to reside with the said John Norton the said John Norton covenanted to provide suitable maintenance clothing and lodging for the said O'Brien Osborne Hilliard for the term of their joint lives in the same manner and of the same description as if the said O'Brien Osborne Hilliard were the son of the said John Norton. And the deed further witnessed that for the consideration aforesaid John Norton granted to the said Osborne Hilliard his heirs and assigns an annuity of £100 per annum to be issuing out of all the said John Norton's estate in the lands therein mentioned which included among others the lands of Dardistown and Molinan in the barony of Ratoath and the lands of Cappog and Rathland stated to be in the barony of Castleknock and county of Dublin. To hold the said annuity to and to the use of the said Osborne Hilliard his heirs and assigns, The said annuity to commence on the day after the day of the death of the said John Norton and to continue during the whole estate of the said John Norton in the said lands or any of them and to be payable by half yearly payments on the 1st of May and the 1st of November in each year. The deed next contained a power of distress and then further witnessed that by way of further security the said John Norton conveyed to the said Osborne Hilliard his heirs and assigns the said annuity of £64 12s. 4d. charged on the lands of Molinan by deed of the 18th May 1827 to hold the same to the said Osborne Hilliard his heirs and assigns from the day after the decease of the said John Norton during the continuance of the said annuity. In the said deed was further contained a personal covenant of the said John Norton to pay the annuity and a declaration of trust by the said Osborne Hilliard in favour of the said O'Brien Osborne Hilliard as by the said deed may appear.

21. The said deed was endorsed as "Deed of Adoption to O'Brien Osborne Hilliard."

22. The larger proportion of the lands in deed mentioned and charged with the annuity being those other than the lands hereinbefore mentioned were lands of which the said John Norton was only tenant for life.

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23. On the 19th of February 1864 Captain Norton dined at the house of Mr. Osborne Hilliard and was then treated as the accepted suitor of the said daughter of Mr. Osborne Hilliard upon which occasion in the drawingroom of Mr. Osborne Hilliard's house and in the presence of the female members of the family of Mr. Osborne Hilliard an engrossment of the said deed was produced and Captain Norton induced there and then to execute the same.]

24. There was present as a friend of Mr. Osborne Hilliard Mr. Henry O'Beirne one of the solicitors of this Honourable Court a neighbour and intimate acquaintance of Mr. Osborne Hilliard but who was not then nor ever had been a solicitor of the said Captain Norton and he the said Henry O'Beirne and the said Vandeleur Osborne Hilliard witnessed the execution of the said deed by Captain Norton.

25. For the purpose of making it appear that Captain Norton was acting under the advice of an independent solicitor the said Mr. Henry O'Beirne in addition to witnessing the execution of the deed by Captain Norton wrote at the foot thereof after the signatures the following memorandum:—

"Compared with draft and approved of on behalf of Captain Norton

"Henry O'Beirne"

although he neither then nor at any other time had been employed by Captain Norton as his solicitor.

26. [The adoption of Mr. O'Brien Osborne Hilliard and execution of the deed which were represented as necessary for the purpose were also represented by the said Osborne Hilliard as a condition preliminary to the marriage of Captain Norton with Miss Hilliard and previous to the execution of the deed of "Adoption" he was assured that his own marriage with Miss Hilliard would shortly follow.]

27. Down to the date of his death Mr. Osborne Hilliard and Mr. O'Brien Osborne Hilliard exercised great influence and control over Captain Norton [and finally by constant interference and intimidation reduced him to a condition of abject submission and terror.]

28. [In the month of November 1866 Captain Norton having discovered that he had been deceived by Mr. Osborne Hilliard expressed his desire and determination to break off his connexion with him but he was unable to remove Mr. O'Brien Osborne Hilliard from his house or to break off his connection with him although he frequently attempted to do so until the day but one before his death when he insisted upon his leaving his residence at Bray and implored some friends to remove him Captain Norton to their house upon which occasion when Mr. O'Brien Osborne Hilliard in collusion with and by direction of Mr. Osborne Hilliard surreptitiously possessed himself of and carried away from the house of Captain Norton and removed to the house of the said Osborne Hilliard a large amount of papers and documents the property of Captain Norton comprising almost all the letters and documents relative to the transactions between Captain Norton and the members of the Hilliard family.

29. Captain Norton was so abjectly subject to and in terror of Mr. Osborne Hilliard and his family on the occasion of his executing his will hereinafter mentioned he sealed it up and requested his executors to keep the fact of his having executed his will secret as if the Hilliard family were informed of it it would be his death warrant.]

30. Previous to his death Captain Norton having denounced the nature of the deed of 19th February 1864 expressed his intention of instituting a suit to set it aside but died before he was able to commence his intended proceedings.

31. On the 28th day of January 1867 the said Captain Norton executed his will and on the 2nd day of February following a codicil thereto whereby after various legacies he appointed the plaintiff his residuary legatee and devisee and he thereof appointed as his executors the Rev. Francis Heaton Thomas and William Lyons.

32. The said Captain Norton died on the 2nd day of February 1867.

33. The said William Lyons as one of such executors on the 6th day of March 1867 proved the said will in Her Majesty's Court of Probate in Ireland as by such probate may appear.

34. The said Osborne Hilliard has since the death of Captain Norton required the executor of the late Captain Norton to pay the aforesaid annuity and by legal proceedings compelled him to pay the same to him but such payment was made by him under protest and without prejudice to the rights of the plaintiff then a minor upon attaining his majority to dispute the validity of the said deed of 19th day of February, 1864.

35. The plaintiff on the 23rd day of September 1867 attained the age of twenty-one years.

36. On the 5th day of November 1867 the said Osborne Hilliard caused a writ of summons and plaint to be issued from Her Majesty's Court of Exchequer in Dublin against the said William Lyons as such executor for the purpose of recovering the half-yearly gale of said annuity which fell due on the 1st day of November 1867.

37. The said William Lyons as such executor having no personal interest in the estate of the late Captain Norton declines to institute proceedings for the purpose of setting aside the said deed and will unless restrained by the order of this Honourable Court pay to the said Osborne Hilliard the half-yearly gale of the said annuity which accrued due on the 1st of November 1867.

38. The plaintiff submits that under the facts hereinbefore stated the deed of the 19th of February 1864 is fraudulent and void and should be set aside by an order of this Honourable Court.

39. Captain Norton left a considerable personal and a small real estate and all his debts, legacies testamentary and funeral expenses having been paid by the said executor there remains a considerable surplus of the personal estate to which the plaintiff is entitled as such residuary legatee as aforesaid.

40. The said William Lyons as such executor has set aside the sum of £1,000 part of the personal estate of the said Captain Norton as a fund to meet the accruing gales of the said annuity.

41. The said Osborne Hilliard also during the transaction aforesaid possessed himself of numerous deeds papers and documents the property of Captain Norton including the said deed of the 18th May 1827 the number nature and details of which the plaintiff is ignorant and he

has thereby been unable to enforce payment of the annuity created by the deed of the 18th May, 1827 and otherwise embarrassed and hindered him in obtaining the possession of the real estate of the late Captain Norton.

PRAYER.

The Plaintiff therefore prays as follows:—

1. That the said deed of the 19th of February 1864 be declared to be fraudulent and void, and that the said deed may be delivered up to be cancelled.
2. That an account may be taken of the moneys paid by the said William Lyons as such executor to the said Osborne Hilliard on foot of the annuity created by the said deed of the 19th of February 1864 and that the said Osborne Hilliard be ordered to lodge the amount when so ascertained with the Governor and Company of the Bank of Ireland to the credit of the Accountant-General of this Honourable Court and the separate credit of this cause.
3. That the said Osborne Hilliard be ordered to lodge on oath in this Honourable Court all deeds papers and other documents formerly the property of the late Captain Norton and now the property of the plaintiff now in his possession custody power or procurement.
4. That by an injunction of this Honourable Court the said Osborne Hilliard be restrained from further proceeding in the Action now pending in the Court of Exchequer to which the said Osborne Hilliard is plaintiff and the said William Lyons is defendant and that the said William Lyons as such executor be also restrained by an injunction of this Honourable Court from making any payment to the said Osborne Hilliard or O'Brien Osborne Hilliard on foot of the annuity created by the said deed.
5. That the said Osborne Hilliard be ordered to pay to the plaintiff his costs of suit when taxed and ascertained.
6. That the plaintiff may have such further or other relief as the nature of the case may require.

The defendants to this Bill of Complaint are:—

OSBORNE HILLIARD
O'BRIEN OSBORNE HILLIARD and
WILLIAM LYONS.

ALEX. G. RICHEY,
F. W. WALSH.

NOTE.—This Bill is filed by SAMUEL FREDERICK ADAIR of No. 25 Clare Street Dublin Solicitor for the above-named plaintiff.

No. 2.

THIS INDENTURE, made the 19th day of February, 1864, between John Norton of Bray, in the County of Wicklow, Esq., late Captain in her Majesty's 34th Regiment, of the one part; and Osborne Hilliard of Lower Gardiner Street, in the City of Dublin, Esq., Barrister at Law, of the other part. Whereas, the said John Norton is now seized and possessed of an Estate in fee-simple or of some other good and sufficient estate, of and in the several lands hereinafter particularly mentioned, and is also seized and possessed of a perpetual Annuity or rent-charge for the sum of £64 12s. 4d. charged upon the Lands of Mollinam, situate in the Barony of Ratoath, and County of Meath, under the provisions of a certain deed bearing date the 18th day of May, 1827. And whereas, the said John Norton is now advanced in years, and childless, and has contracted an attachment for O'Brien Osborne Hilliard, third son of the said Osborne Hilliard now aged about 15 years, and has requested the said Osborne Hilliard to allow the said O'Brien Osborne Hilliard to reside constantly with him, the said John Norton, and in order to induce the said Osborne Hilliard to consent thereto, he, the said John Norton has offered to adopt the said O'Brien Osborne Hilliard as his own child, and to provide for him in manner hereinafter mentioned. And whereas, the said Osborne Hilliard has consented to the said request of the said John Norton, upon the terms of the said John Norton making such provision for the said O'Brien Osborne Hilliard as hereinafter particularly stated. NOW THIS INDENTURE WITNESSETH THAT in consideration of the said Osborne Hilliard allowing and sanctioning the said O'Brien Osborne Hilliard residing constantly and permanently with the said John Norton, and in consideration of his, the said O'Brien Osborne Hilliard leaving his father's house and going to reside with the said John Norton, he, the said John Norton doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree with the said Osborne Hilliard, that he, the said John Norton will provide suitable maintenance, clothing, and lodging for the said O'Brien Osborne Hilliard during the term of the joint lives of them the said John Norton and O'Brien Osborne Hilliard in the same manner and of the same description as if the said O'Brien Osborne Hilliard were the son of the said John Norton. And This Indenture further Witnesseth, that for the considerations aforesaid, he, the said John Norton hath given, granted, and confirmed, and by these presents doth give, grant, and confirm unto the said Osborne Hilliard, his heirs and assigns, one annuity, yearly rent-charge or sum of £100 per annum, to be yearly issuing, payable, and taken out of, and to be charged upon all his, the said John Norton's Estate and interest in the lands and premises following, that is to say—the Lands of Donoughmore—Donoughmore, and part of Great Bullstown—Great Bullstown, Dardistown, Greenouge, Raystown, and Molinam, situate in the Barony of Ratoath, and County of Meath, and also the Lands of Cappog and Rathland, situate in the Parish of Castleknock, and County of Dublin. To hold the same to and to the use of the said Osborne Hilliard, his heirs and assigns, the said annuity to commence on the day after the day of the death of the said John Norton, and to continue during the whole estate and interest of the said John Norton in said lands, and each and every of them, the same to be payable by half-yearly payments upon first day of May and first day of November, the first payment thereof to be made on whichever of said days shall first happen after the death of the said John Norton. And in case the said annuity or yearly rent-charge of £100 per annum, or any part thereof should at any time after the same become payable remain unpaid for the space of twenty-one days next any, gale or gales thereof shall become due, it shall be lawful for the said Osborne Hilliard, his heirs and assigns, from time to time into the said lands or any part thereof to enter and the distress and distresses found therein to take, drive and carry away, and the same to sell and dispose of according to law, and in the same manner as in distresses between land-

Deed of
Annuity to
O'Brien
Osborne
Hilliard, 19th
February,
1864.
Marked A.

lord and tenant, until the said Osborne Hilliard, his heirs and assigns of and from the said annuity or yearly rent-charge of £100, and all arrears thereof, and all costs and charges incident thereto or to the non-payment thereof shall be fully repaid, satisfied, and contented. And This Indenture further Witnesseth, that by way of collateral and additional security towards payment of said annuity of £100 per annum, and not as a further or additional charge upon said lands, the said John Norton doth hereby grant, convey, assign, and set over unto the said Osborne Hilliard, his heirs and assigns, all that and those, the hereinbefore recited annuity of £64 12s. 4d. charged upon the said Lands of Mollinam, by deed bearing date the 18th day of May, 1827, and each and every part thereof. To have and to hold, receive and take the same and each and every part thereof to and to the use of the said Osborne Hilliard, his heirs, and assigns, from the day after the death of the said John Norton, for and during the entire continuance of the said annuity, so charged as aforesaid. And the said John Norton doth hereby, for himself, his heirs, executors, administrators, and assigns, covenant and agree with the said Osborne Hilliard, his heirs and assigns, that the heirs, executors, administrators, and assigns, of him, the said John Norton, or some or one of them shall and will well and truly pay, content, and satisfy the said annuity of one hundred pounds a year, and each and every part thereof upon the days and at the times in that behalf hereinbefore limited, free and clear of all taxes, charges, and impositions whatsoever except income-tax. And the said Osborne Hilliard doth hereby testify and declare, that the said hereinbefore granted and assigned annuities have been so granted and assigned to him, the said Osborne Hilliard, his heirs and assigns, as a Trustee and Trustees for the said O'Brien Osborne Hilliard, his heirs, and assigns, and to his and their sole use and benefit, and to and upon no other trust, use or benefit whatsoever.

IN WITNESS whereof the parties aforesaid, have hereunto put their hands and affixed their seals the day and year first in these presents written.

Signed, Sealed, and Delivered by
the said John Norton in presence of
the words "a certain deed" being
written on erasure on first page, } JOHN NORTON. (SEAL)

HENRY O'BEIRNE,

26, Upper Gloucester Street, Dublin, Solicitor.

VANDELEUR OSBORNE HILLIARD,

105, Lower Gardiner Street, Dublin.

A Memorial of this Deed was entered in the Registry Office, in the City of Dublin, on the 20th day of February, 1864, at 20 minutes to 2 o'clock, in Book 6, No. 222, and the execution of said Deed and Memorial was duly proved pursuant to an act of parliament in that case made and provided.

Fees 10/6

JOHN CHAPMAN, A.R.

Compared with draft and approved of on behalf of Captain Norton,

HENRY O'BEIRNE,

19th February, 1864.

This Deed contains only 16 folios of 72 words.

V. O. HILLIARD.

No. 3.

IN THE NAME OF GOD. AMEN. I, JOHN NORTON, of Bray, in the County of Wicklow, late a Captain in the 34th Regiment of Foot, being of sound mind, memory, and understanding, do make, publish, and declare my last Will and Testament in manner and form following: First, I direct all my just debts, funeral and testamentary expenses to be paid and satisfied by my executors hereinafter named. I give and bequeath the sum of £2,000 sterling to my sister, Grace Norton, for life, the dividend or interest thereof to be paid to her by my executors. I give and bequeath the sum of £2,000 sterling to my cousin, Luke Eiffe, of Alexandra Terrace, Bray, in the County of Wicklow; the said sum of £2,000 sterling for his own use absolutely. And I hereby nominate William Lyons, of Kildare Street, in the City of Dublin, Solicitor, and the Rev. Francis Heaton Thomas, of Prince Edward Terrace, Blackrock, in the County of Dublin, Clerk, executors of this my Will, to whom I give and bequeath the sum of £20 sterling each, for the trouble they may have in carrying into execution the trusts of this my Will. And I direct my said executors to sell and convert into cash, as soon as may be after my decease, all my property of which I may die seized and possessed of, including my property at Rathland, in the County of Dublin, which I hold under the Earl of Meath, my property called Dardistown, in the County of Meath, which I hold under Lord Athlumney, and my property in Australia, in New South Wales. And as to the rest, residue, and remainder of my property, of whatever nature or kind soever, I give and bequeath the same to the said Luke Eiffe, hereinbefore named. And lastly, I do hereby revoke all former Wills by me at any time heretofore made, and I publish and declare this to be my last Will and Testament. IN WITNESS whereof I have hereunto set my hand, this 25th day of January, in the year of Our Lord 1867.

Copy Will of
John Norton,
Esq.
Marked B.

Signed by the above-named John Norton, the Testator, as
and for his last Will and Testament, in the presence of
us, present at the same time, who, at his request, in his
presence, and in the presence of each other, have
subscribed our names as Witnesses thereto.

JOHN NORTON.

GEORGE SCHOALES,
Barrister-at-Law,
Churchwarden of Bray.

JAMES HUBBARD;
12 Goldsmith Terrace,
Bray, Co. Wicklow.

COPY CODICIL. } I, JOHN NORTON, of Goldsmith Terrace, Bray, in the County of
Wicklow, Esquire, have made and executed my last Will and Testament,
bearing date the 28th day of January, 1867. NOW I hereby declare this present writing to
be a Codicil to my said Will, and I direct the same to be annexed thereto, and taken as part
thereof. WHEREAS I have, by my said Will, given and bequeathed the sum of £2,000
sterling, to my sister, Grace Norton, and directed the interest thereof to be paid to her during
her natural life, NOW I hereby direct my executors, in said Will named, to lay out and invest
the said sum of £2,000 as a first Charge on eligible Landed Security, and to pay the interest
thereof half-yearly to my said sister, Grace Norton, for the term of her natural life only, and

Copy of
Codicil.

after her decease it is my will that said sum of £2,000 should go to and form part of my residuary Estate. And I hereby ratify my said Will in every respect except where the same is hereby altered as aforesaid. IN WITNESS whereof I have hereby authorized William Samuel Tracy, of Prince of Wales' Terrace, Bray aforesaid, Resident Magistrate, to affix my name, being too weak to write it myself, this 2nd day of February, 1867.

JOHN NORTON.

Signed by authority of the Testator as and for a Codicil to his last Will and Testament, in his presence, and in presence of each other, he having acknowledged same in our presence, and to which we have subscribed our names as Witnesses thereto the word "my" having been first obliterated.

WILLIAM S. TRACY, R.M.

THOMAS L. WHISTLER,

Fellow, Royal College of Surgeons,

3 Prince of Wales' Terrace, Bray.

IN HER MAJESTY'S COURT OF PROBATE.

The Principal Registry, Dublin.

BE IT KNOWN that on the sixth day of March, 1867, the last Will and Testament, with one Codicil hereunto annexed, of John Norton, formerly Captain in Her Majesty's 34th Regiment of Foot, late of Goldsmith Terrace, Bray, in the County of Wicklow, deceased, who died on or about the 2nd day of February, 1867, at same place, was proved and registered in the Principal Registry of Her Majesty's Court of Probate, and that the administration of all and singular the personal Estate and effects of the said deceased was granted by the aforesaid Court to William Lyons of Kildare-street, Dublin, Solicitor, one of the executors named in the said Will and Codicil, he having been first sworn well and faithfully to administer the same by paying the just debts of the deceased, and the legacies contained in said Will and Codicil, so far as he is thereunto bound by law, and to exhibit a true and perfect account thereof whenever required by law so to do, and that power was reserved to make the like grant to the Rev. Francis Heaton Thomas, the other executor, when he shall apply for same.

M. KEATINGE, Register.

SEAL.

Extracted by William Lyons, Solicitor.

Effects sworn under £5,000.

No. 4.

Letter, 30th
Sept., 1863.
Capt. Norton
to Miss Hil-
liard.
Marked C,

"MISS HILLIARD,—I know that you are young—very young: that you are an only daughter, and therefore must be the cherished child of your parents. I offer you my hand and fortune. If you accept my proposal I shall do everything in my power to make you independent and happy. If you consider that you are yet too young to leave the paternal home, I shall be proud of the acquaintance of your family, and hope that your brother will keep the small present that I gave him, of a double barrel gun and revolver pistol.

"I remain, your obedient Servant,

"September 30th, 1863."

"JOHN NORTON."

in the parish of Castleknock and County of Dublin. TO HOLD the same to and to the use of the said Osborne Hilliard, his heirs and assigns, the said annuity to commence the day after the day of the death of the said John Norton, and to continue during the whole estate and interest of the said John Norton in said lands, and each and every of them, the same to be payable by half-yearly payments upon every 1st day of May and 1st day of November, the 1st payment thereof to be made upon whichever of said days shall first happen after the death of the said John Norton, and in case the said annuity or yearly rent-charge of £100 per annum, or any part thereof, should at any time after the same becomes payable, remain unpaid for the space of 21 days next after any gale or gales thereof shall become due it shall be lawful for the said Osborne Hilliard, his heirs and assigns, from time to time, into the lands or any part thereof, to enter and the distress and distresses found therein to take, drive, and carry away, and the same to sell and dispose of according to law in the same manner as in distresses between landlord and tenant, until he, the said Osborne Hilliard, his heirs and assigns, of and from the said annuity or yearly rent-charge of £100, and all arrears thereof, and all costs and charges incident thereto or to the non-payment thereof shall be fully repaid, satisfied, and contented. AND THIS INDENTURE FURTHER WITNESSETH that by way of collateral and additional security for payment of said annuity of £100 per annum, and not as a further or additional charge upon said lands, he the said John Norton doth hereby grant, convey, assign, and set over unto the said Osborne Hilliard, his heirs and assigns, ALL THAT AND THOSE the hereinbefore recited annuity of £64 12s. 4d. charged upon the said lands of Molinam, by deed bearing date the 18th day of May, 1827, and each and every part thereof to and to the use of the said Osborne Hilliard, his heirs and assigns, from the day after the death of the said John Norton, for and during the entire continuance of the said annuity so charged as aforesaid. And the said John Norton doth hereby for himself, his heirs, executors, administrators and assigns, covenant and agree with the said Osborne Hilliard his heirs and assigns, that the heirs, executors, administrators or assigns of him, the said John Norton, or some or one of them shall and will well and truly pay, content, and satisfy the said annuity of £100 a year and each and every part thereof upon the days and at the times in that behalf hereinbefore limited, free and clear of all taxes, charges, and impositions whatsoever, except income tax. And the said Osborne Hilliard doth hereby testify and declare that the said hereinbefore granted and assigned annuities have been so granted and assured to him the said Osborne Hilliard, his heirs and assigns, as a Trustee and Trustees for the said O'Brien Osborne Hilliard, his heirs and assigns, and to his and their sole use and benefit, and to and upon no other trust, use, or benefit whatsoever. IN WITNESS

No. 11.

Copy Draft Deed of Annuity, to secure £100 to O'B. O. Hilliard, approved of by John Norton.

THIS INDENTURE made the _____ day of November, 1863, by and between John Norton, of Bray, in the County of Wicklow, Esquire, late Captain in Her Majesty's 84th Regiment, of the one part, and Osborne Hilliard, of Lower Gardiner Street, in the City of Dublin, Esquire, Barrister-at-Law, of the other part. Whereas, the said John Norton is now advanced in years and childless, and has contracted an attachment for O'Brien Osborne Hilliard, third son of the said Osborne Hilliard, now aged about fifteen years, and has requested the said Osborne Hilliard to allow the said O'Brien Osborne Hilliard to reside constantly with him, the said John Norton; and in order to induce the said Osborne Hilliard to

Sup. 106
121.
Draft Deed of
Annuity,
Nov., 1863.
Marked K.

*This is in
handwriting of
O. O. & is
a copy of chaps 9.
with blue added*

by O. H. [illegible]

consent thereto, he, the said John Norton, has offered to adopt the said O'Brien Osborne Hilliard as his own child, and to provide for him in manner hereinafter mentioned. And whereas, the said Osborne Hilliard has consented to the said request of the said John Norton, upon the terms of the said John Norton, making such provision for the said O'Brien Osborne Hilliard as hereinafter mentioned.

NOW THIS INDENTURE WITNESSETH that in consideration of the said Osborne Hilliard allowing and sanctioning the said O'Brien Osborne Hilliard residing constantly and permanently with the said John Norton, and on consideration of his, the said O'Brien Osborne Hilliard leaving his father's house and going to reside with the said John Norton, he, the said John Norton, doth for himself, his heirs, executors, and administrators, covenant and agree with the said Osborne Hilliard, that he, the said John Norton, will provide suitable maintenance, clothing, and lodging for the said O'Brien Osborne Hilliard during the term of the joint lives of them, the said John Norton and O'Brien Osborne Hilliard, in the same manner and of the same description as if the said O'Brien Osborne Hilliard were the son of the said John Norton.

AND THIS INDENTURE FURTHER WITNESSETH that for the considerations aforesaid, he, the said John Norton doth hereby charge the several lands and premises following, that is to say—the Lands of Donaghmore, Donoughmore, and part of Great Bullstown, Great Bullstown, Dardistown, Greenouge, Raystown, and Molinam, situate in the Barony of and County of Dublin, with an Annuity or Yearly Rent-charge of £100 sterling, payable to and to the use of the said O'Brien Osborne Hilliard, his heirs and assigns: the first gale thereof to be payable to the said O'Brien Osborne Hilliard, his heirs or assigns, on the day after the date of the death of the said John Norton, and to be payable by half-yearly gales, commencing from said day, together with all legal powers and remedies for recovery thereof.

IN WITNESS whereof the parties aforesaid have hereunto put their hands and affixed their seals the day and year first above written.

The above fully meets my wishes.

Bray, 28th Nov., 1863.

JOHN NORTON.

No. 12.

"Goldsmith Terrace, Bray, December 9th, 1863.

"MY DEAR SIR,—I have attentively read your letter of the 3rd instant, and give my full "adhesion to all you explain in it. I was told by my agent—Mr. Lyons, that I have the "power to sell Rathland if I wished it, also to sell Dardestown, but I do not at present wish "to do either. By my late uncle's will, I think I was left something like £30 a year, charge- "able on property in Meath, perhaps Molinam, and by my brother's will, if I marry, £250 a "year is chargeable on some part of the property; my great difficulties arise from Mr. Arthur "Barlow's base conduct, as my agent, when my faculties were laid prostrate under the opera- "tion of poison, most likely arsenic.

"Faithfully Yours,

"Osborne Hilliard, Esq."

"J NORTON."

Letter of 9th
Dec., 1863,
Norton to
Hilliard.
Marked L.

p. 76-106, 107

See p. 75
107
126

No. 5.

"Goldsmith Terrace, Bray, November 23rd, 1863.

Letter of
Norton to
Lyons, 23rd
Nov., 1863.
Marked D.

"MY DEAR SIR,—Allow me to introduce to you my young friend, Mr. Hilliard. I wish you to be known to him in the event of his father requiring any information from you regarding my Irish property.

"And remain, sincerely yours,

"J. NORTON."

"WM. LYONS, Esq.,

"Office, Kildare Street."

Endorsement on Envelope—

"WM. LYONS, Esq.,

"15, Kildare Street, Dublin."

Forwarded by Devere Hilliard, Esq.

No. 6.

Record No. 12.

IN CHANCERY.

VICE-CHANCELLOR.

LUKE EIFFE, *Plaintiff.*
OSBORNE HILLIARD, O'BRIEN
OSBORNE HILLIARD, and
WILLIAM LYONS,
Defendants.

SIR,—You are required to produce, upon the hearing of this cause, all letters referred to in your Answer, and also all original letters, or copies of letters written by you or any member of your family to the late Captain Norton, and also

Notice
to produce
Letters and
Documents,
7th Nov. 1868.
Marked E.

all originals or copies of letters written or addressed to you, or any member of your family, by Captain Norton; and in case you decline or refuse to do so, secondary evidence will be given.

SAMUEL F. ADAIR,

Solicitor for Plaintiff,

25 Clare Street.

Dated this 7th day of November, 1868.

To JAMES MORAN, Esq., Solicitor for Defendants,
13 Lower Ormond Quay.

No. 7.

Instructions for Counsel to settle Draft Deed of Annuity.

Instructions for Counsel to prepare Draft Deed to be executed by Captain Norton, in favour of O'Brien Osborne Hilliard, a minor, third son of Osborne Hilliard, of Lower Gardiner Street, Barrister-at-law. Captain Norton has manifested a strong feeling of attachment for the Minor, whose affections he appears to have completely gained, and has proposed to Mr. Hilliard to adopt him as his own child, to take him to reside permanently with him, to provide him with suitable board, lodging, and clothing, the same as if he were his own son, during the joint lives of both, and to settle on him and his heirs an Annuity of £100 per annum, to commence from the death of Captain Norton.

Instructions
for Counsel
to settle Draft
Deed of An-
nuity.
Marked F.

Captain Norton has handed Mr. Hilliard a printed Rental of his lands to be charged with the annuity, but as it does not appear from it how he derives, Mr. Hilliard will get the necessary information on the subject and send particulars to Counsel.

*the words
"heirs with deed" are
in the original.*

Mr. O'Brien Hilliard is at present residing with Captain Norton who is very desirous of completing the arrangement proposed as soon as possible.

No. 8.

Copy Original Draft Deed of Annuity in handwriting of Mr. Berkeley, Q.C.

Draft Deed of
Annuity,
Nov., 1863.
Marked G.

THIS INDENTURE, made the day of November, 1863, by and between John Norton, of Bray, in the County of Wicklow, Esquire, of the one part, and Osborne Hilliard, of Lower Gardiner Street, in the City of Dublin, Esquire, Barrister-at-Law, of the other part. WHEREAS the said John Norton is now advanced in years and childless, and has contracted an attachment for O'Brien Osborne Hilliard, third son of the said Osborne Hilliard, now aged about 15 years, and has requested the said Osborne Hilliard to allow the said O'Brien Osborne Hilliard to reside constantly with him, the said John Norton, and in order to induce the said Osborne Hilliard to consent thereto, he, the said John Norton, has offered to adopt the said O'Brien Osborne Hilliard as his own child, and to provide for him in the manner hereinafter mentioned. AND WHEREAS the said Osborne Hilliard has consented to the said request of the said John Norton, upon the terms of the said John Norton, making such provision for the said O'Brien Osborne Hilliard as hereinafter mentioned.

NOW THIS INDENTURE WITNESSETH, that in consideration of the said Osborne Hilliard allowing and sanctioning the said O'Brien Osborne Hilliard residing constantly and permanently with the said John Norton, and in consideration of his, the said O'Brien Osborne Hilliard, leaving his father's house and going to reside with the said John Norton, he, the said John Norton, doth hereby for himself, his heirs, executors, and administrators, covenant and agree with the said Osborne Hilliard, that he, the said John Norton, will provide suitable maintenance, clothing, and lodging for the said O'Brien Osborne Hilliard during the term of the joint lives of them, the said John Norton and O'Brien Osborne Hilliard, in the same manner and of the same description as if the said O'Brien Osborne Hilliard was the son of the said John Norton.

AND THIS INDENTURE FURTHER WITNESSETH that for the considerations aforesaid, he, the said John Norton, doth hereby charge the several lands and premises following, that is to say:—the lands of , situate in the Barony of , and County of , with an annuity or yearly rent-charge of £100 sterling, payable to, and to the use of the said O'Brien Osborne Hilliard, his heirs, and assigns, the first gale thereof to be payable to the said O'Brien Osborne Hilliard, his heirs, or assigns, on the day after the day of the death of the said John Norton, and to be payable by half-yearly gales, commencing from said day, with all legal powers and remedies for the recovery thereof.

*was this filled
up originally*

No. 9.

[No. 89756.]

"Dublin, November 27th, 1863

Cheque for
£2 2s. 0d.
Marked H.

"Royal Bank of Ireland. Pay R. J. Berkeley, Esq., or Bearer, Two Guineas.

"£2 2s. 0d."

"OSBORNE HILLIARD."

Further Copy Draft Deed of Annuity, as amended by Mr. Berkeley, Q.C.

THIS INDENTURE, made the day of between John Norton, of Draft Deed of Annuity, Marked I.
 Bray, in the County of Wicklow, Esquire, late Captain in H. M. 34th Regiment, of the first
 part and Osborne Hilliard, of Lower Gardiner Street, Dublin, Esquire, Barrister-at-Law, of
 the other part. WHEREAS the said John Norton is now seized and possessed of an Estate
 in fee-simple, or of some other good and sufficient Estate of and in the Lands following; that
 is to say, the lands of Donoghmore, Donoghore, and part of Great Bullstown, Great Bullstown,
 Dardistown, Greenogue, Raystown, and Molinam, situate in the barony of Ratoath, and County
 of Meath, and also the lands of Cappog and Rathland, situate in the parish of Castleknock and
 County of Dublin.

107.93.76-115
 122.134.135
 127

AND WHEREAS the said John Norton is now seized and possessed of a perpetual annuity or rent-charge for the sum of £64 12s. 4d. charged upon the lands of Molinam, in the Barony of Ratoath, and County of Meath, under the provisions of a certain deed bearing date the 18th day of May, 1827.

AND WHEREAS the said John Norton is now advanced in years and childless, and has contracted an attachment for O'Brien Osborne Hilliard, now aged about 15 years, and has requested the said Osborne Hilliard to allow the said O'Brien Osborne Hilliard to reside constantly with him, the said John Norton, and in order to induce the said Osborne Hilliard to consent thereto, he, the said John Norton has offered to adopt the said O'Brien Osborne Hilliard as his own child, and to provide for him in manner hereinafter mentioned. AND WHEREAS the said Osborne Hilliard has consented to the said request of the said John Norton upon the terms of the said John Norton making such provision for the said O'Brien Osborne Hilliard as hereinafter particularly stated.

NOW THIS INDENTURE WITNESSETH that in consideration of the said Osborne Hilliard allowing and sanctioning the said O'Brien Osborne Hilliard residing constantly and permanently with the said John Norton, and in consideration of his the said O'Brien Osborne Hilliard leaving his father's house and going to reside with the said John Norton, he the said John Norton doth hereby for himself, his heirs, executors, and administrators covenant and agree with the said Osborne Hilliard that he, the said John Norton, will provide suitable maintenance, clothing, and lodging for the said John Norton and O'Brien Osborne Hilliard during the term of the joint lives of them, the said John Norton and O'Brien Osborne Hilliard, in the same manner, and of the same description as if the said O'Brien Osborne Hilliard were the son of the said John Norton.

AND THIS INDENTURE FURTHER WITNESSETH that for the considerations aforesaid he, the said John Norton hath given, granted, and confirmed; and by these presents doth give grant, and confirm unto the said Osborne Hilliard, his heirs and assigns, one annuity, yearly rent-charge or sum of £100 per annum, to be yearly issuing, payable, and taken out of and to be charged upon all his the said John Norton's estate and interest in the lands and premises following; that is to say, the lands of Danoughmore, Donoughore, and part of Great Bullstown, Great Bullstown, Dardistown, Greenogue, Raystown, and Molinam, situate in the Barony of Ratoath, and County of Meath, and also the lands of Cappog and Rathland, situate

No. 13.

"Lower Gardiner Street, Wednesday Evening, December 2nd, 1863.

Letter of 2nd
Dec., 1863,
Appellant to
Norton.
Marked M.

"MY DEAR SIR—I received your letter this evening, and will speak to Mr. Costello as you desire, and have just sent the papers which explains your views.

"As to your son O'Brien, I know you will get on well together, but you promised me much, let us say, in supposing for an instant that either Mrs. Hilliard or myself ever thought of your making a present allowance to him, our only view of your proposition was, that it should be as you yourself properly termed it, "a post mortem one" for the plain reason, that, living with you in comparative ease and luxury as your son, the habits he so acquires must necessarily turn his mind from all notions to the up-hill hard work of life which a youngster must be taught to rely on as his only independence, unless indeed other large and certain sources are available to him. We have the utmost reliance that in your most kind proposal to adopt and provide for him as your son, you felt all the parental regard necessary for his future independence; and you fully evinced this by the draft deed you signed on the 28th ult., and also by promising to see your solicitor to have it strictly carried out, and saying you would get a copy of your brother's will. I wished to save you all expense on that head, and as I knew I could read the will, for I did so to-day, it seems most carefully drawn, and deals with all the lands in your printed rental, making you strict tenant for life, to most of the denominations, without a particle of power to charge the lands even for younger children; you may not be aware that this is the legal construction of the will, but it is so, and as you mentioned that evening that you had a property worth £5000 in England, I am very happy to feel that you are independent of all restrictions imposed by your brother's will, and that you are in a position to give effect to your kind intentions in a certain and definite manner, free of all legal technicalities.

"Believe me, my dear Sir, yours very truly,

"Captain Norton, Bray Club."

"OSBORNE HILLIARD."

No. 14.

"8 Warwick Terrace, January 6th, 1864.

Letter from
W. H. Greene
to O. Hilliard,
6th January,
1864.
Marked N.

"DEAR SIR.—In order to prevent any misunderstanding between Captain Norton and me from proving injurious to the success of my cousin's prospects, I purpose that in addition to his Bond for £1,000 principal money, he places in the hands of a mutual trustee (yourself for instance), £1,000 worth of paid-up propository shares, on which no calls can ever be made, and guaranteed as such to be held as collateral security. There is not a single judgment on record against my cousin, in Ireland, and he has invested over £2,600 in these patents. I have committed myself so completely to him, in respect of Captain Norton's loan, by sending over his first letter, in which he stated he would invest £500, that I feel losing his friendship if I fail to carry it out, so as to enable him to tender for the painting of the house. I rely on your kind efforts. Answer my query, re 4 per cent. on loan.

"Yours, dear Sir, faithfully,

"WILLIAM HASTINGS GREENE,"

"Osborne Hilliard, Esq."

Sup. 76
106.

36. 119. 126

No. 15.

"9, Goldsmith Terrace, Bray, January 13th, 1864.

Letter, 13th
Jan., 1864,
Norton to
Lyons.
Marked 'O.'

"MY DEAR SIR,—Mr. Metcalfe has been playing a queer game. I will thank you to give
"the bearer, Mr. O'Brien Hilliard, ten pounds for me, in cash, and for the remainder I can call
"in a few days, when the weather becomes more mild. Whatever you have done in regard to
"my agent, Mr. James Norton, at Sidney, New South Wales. The bearer will take me your
"grandfather's portrait; have you got the print framed? What of the Doctor and his posterer,
"Mr. Spark. I have had a narrow escape of being brown to the tune of £600, to be lent on a
"bond payable with interest at the end of two years, the loan to be cancelled should the borrower
"succeed, through his cousin—an M.P.—to prevail on the Government to give me the long-
"promised Ordnance pension of £500 a-year. I hope to call on you in a few days, and remain

"Very truly yours,

"William Lyons, Esq.,

"J. NORTON."

"15 Kildare Street, Dublin."

No. 16.

"9, Goldsmith Terrace, Bray, 19th February, 1864.

Letter, 19th
Feb., 1864,
Norton to
Respondent.
Marked 'P.'

118. "MY DEAR SIR,—Among the papers, letters, &c. you received from Dr. Cameron, I expect
"there may be some from Messrs. Hutchinson, of London, brokers, and my agents there. As
"those letters are of the greatest importance to me, I shall be obliged if you will make a
"diligent search for them, and if you find any to give them to the bearer, Master Hilliard,
"who will deliver them over to his father for examination.

"Very truly yours,

"Luke Eiffe, Esq."

"J. NORTON."

No. 17.

"Lower Gardiner Street, March 23rd, 1864.

Letter, 23rd
March, 1864,
Appellant to
Norton.
Marked 'Q.'

"DEAR CAPTAIN.—I hope you will give us the pleasure of your company with the
"O'Brien on Easter Sunday, of which happy festival we all wish you many returns, and health
"to enjoy them.

"The "Mail" affair is under perusal, and will be done effectively.

"Colonel Beamish's letter, which you sent me this evening, is to the point and purpose and
"showshim to be an honest and independant man. Depend on it, we will come out strong, but
"you must be careful to act on the advice I gave the last day you were in town—you under-
"stand me.

"The copy of Hutchinson's account of 1835, as to the £3,000 Cubas, is important, and
"will be a guide to subsequent dealing with that fund.

"Sincerely yours,

"OSBORNE HILLIARD.

"How are we to send back your crock and barrel?"

No. 18.

"29, Upper Gloucester Street, Monday Evening, April 25, 1864.

Letter, 25th
April, 1864,
Appellant to
Norton.
Marked 'R.'

"MY DEAR CAPTAIN,—I have a case on at Court to-morrow, but will endeavour to be
"at home to meet you at 2 o'clock, and will be happy to sit with you till 5.30.

"You ought in the morning sketch out the heads of a leading article beginning from the
"first start of your first claims, and we would then more readily amplify and put flesh on the
"ribs of the good subject.

"I will make it a point to see Mr. Lyons on my way from Court. With kind regards
"from all here.

"Yours truly,

"OSBORNE HILLIARD."

No. 19.

"29, Upper Gloucester Street, May 3rd, '64.

Letter, 3rd
May, 1864,
Appellant to
Norton.
Marked 'S.'

"MY DEAR CAPTAIN,—The letter being directed "Doctor Maunsell," who was not at the
"Mail Office to-day, was the reason it did not appear in this day's number, but it will be all
"right to-morrow, and I have desired 50 copies to be sent you for distribution through Parlia-
"mentary and English friends. My business in Court will be over to-morrow, and I will be
"ready to see you on Friday. I will write before that, fixing an hour.

"Yours very truly,

"O. H.

"All send best regards to you and the O'B."

No. 20.

"Upper Gloucester Street, Friday Evening, 6th May, 1864.

Letter, 6th
May, 1864,
Appellant to
Norton.
Marked 'T.'

"MY DEAR CAPTAIN,—I received a letter this evening, on my return from Bray, from the
"O'Gorman, which affords a good opportunity of paying a compliment that would not be
"misplaced. He sent me the last week a power of attorney, to receive £500 for him out of
"Court here, and thinks I have got it, and he particularly requests me to send £150 to London
"for him by Monday next, for which he says his honour is pledged.

"If you can manage to-morrow to give an order on Hutchinson's for it, I could repay you
"in the course of the week, and I think it would be an excellent mode of putting him under a
"little compliment to you, which I would take care to explain to him.

"Unless you could do it without the slightest inconvenience, don't think of it.

"Yours very truly,

"OSBORNE HILLIARD."

No. 29.

Letter, 20th
May, 1865,
Norton to
Appellant.
Marked 'C1.'

"Bray, January 20th, 1865.

"MY DEAR SIR,—I am about making my Will, but before I do so it is necessary to appoint two Executors, and having already named one, will you allow me to name you as the other? The trust will not be very onerous, as, after bequeathing a few legacies, I shall leave the residue of my property to charitable purposes. Of course it is my intention to leave my Executors some small legacy to remunerate them for the trouble. Your kind compliance with the request will much oblige

"Yours very truly,

"JOHN NORTON."

No. 30.

Letter, 9th
Dec., 1866,
Mrs. Hilliard
to Norton.
Marked 'D1.'

"165, Lower Gardiner Street, Dec. 9.

"MY DEAR CAPTAIN NORTON,—I trust you will give us the pleasure of your company on Xmas day to dinner, along with your son, O'B., and we shall then arrange a day for all of us to come out and pay you a visit at Bray, weather permitting.

"Believe me, my dear Sir,

"Very sincerely yours,

"CAROLINE OSBORNE HILLIARD."

No. 31.

Letter, 18th
Dec., 1866,
Mrs. Hilliard
to Norton.
Marked 'E1.'

"Upper Gloucester Street, 18 Dec. 1866.

"MY DEAR CAPTAIN NORTON,—We hope you will give us the pleasure on Xmas day. I will have a well-aired bed and comfortable room ready for you.

"Very sincerely yours,

"CAROLINE OSBORNE HILLIARD."

No. 32.

Letter, 11th
August, 1866,
Mrs. Hilliard
to Norton.
Marked 'F1.'

"Victoria Cottage, Sandycove, August 11th, '66.

"MY DEAR CAPTAIN NORTON,—We have taken a small cottage near Kingstown, and as I understand you come every Sunday, we shall be very happy if you dine with us to-morrow, at 5 o'clock.

"Very sincerely yours,

"CAROLINE O. HILLIARD.

"Take a car, for 6d., from Whitley's up to this; it is just opposite Ballyghien Avenue.—
"O'B. O. H."

No. 33.

Letter, 14th
Sept., 1866,
Appellant to
Norton.
Marked 'G1'

"18, Sandycove, Kingstown, Sept. 14th, '66.

"MY DEAR CAPTAIN NORTON,—We are glad to find O'Brien has been so successful in
"Liverpool.

"We hope to have the pleasure of seeing you on Saturday, at dinner.

"Very truly yours,

"OSBORNE HILLIARD."

No. 34.

"Bray Club, Nov. 27, '66.

Letter, 27th
Nov., 1866,
Norton to
V. O. Hilliard
Marked 'H1.'

"Metcalf v. Norton.

"MY DEAR SIR.—If necessary, you have my authority to enter a rule to change
"Mr. Lyons in this matter, and appoint yourself, in order to have the decree corrected.

"Faithfully yours,

"J. NORTON."

"To Vandeleur O. Hilliard, Esq."

No. 35.

"Dec. 14th, 1866, Head Quarters.

Letter, 14th
Dec., 1866,
Miss Riddick
and Miss
Hilliard to
Norton.
Marked 'I 1.'

"SIR,—You are requested to put the O'Brien under orders for Gloucester Street, on
"Sunday next, in order to form an escort to the "Meet" of the Ward Union Hounds, and the
"Theatre, on Monday, for

"Your obedient servants,

"JULIANNA RIDDICK.

"ZAYDA CHRISTINA OSBORNE HILLIARD.

"To Q.-M. General Captain Norton."

No. 36.

"MY DEAR CAPTAIN NORTON,—My mother deposes me to request that you, in company
"with the O'Brien, will give us the pleasure of your company to dinner on Monday next, at
6 o'clock.

Letter, 4th
Jan., 1867,
Miss Hilliard
to Norton.
Marked 'J 1.'

"We expect to have a few friends. If you are so kind as to come, you will of course
remain all night, and we will make you most comfortable.

"Believe me, very sincerely yours,

"ZAYDA CHRISTINA OSBORNE HILLIARD.

"Gloucester Street, Jan. 14th, 1867."

No. 37.

In the Matter of John Norton, Esq., deceased.

"SIRS,—Referring to your notice to the creditors of the deceased, I apprise you, as you
"are already aware, that the deceased stood indebted to me in his lifetime and at the time of
"his death, as his Solicitor, in a considerable sum for costs, which are not yet ascertained, but
"with which you shall be furnished in due course, and I require you, in pursuance of your
"advertisement, to provide for payment thereof when taxed; and I also formally apprise you,
"of which you are already aware, that by Indenture bearing date the 19th day of February,
"1864, and duly registered, the said John Norton charged, amongst others, the lands of
"Dardistown and Rathlands in his said will particularly mentioned, with a yearly rent-charge
"of £100, payable half-yearly, in favour of O'Brien Osborne Hilliard, Esquire, and his heirs,
"and in which deed is contained a covenant by the said John Norton, for himself, his heirs,
"executors, administrators, and assigns, that he and they, or some or one of them, shall and

Notice of
Claim of
V. O. Hilliard
and
O. O. Hilliard
Marked 'K1.'

No. 21.

"Monday Evening, May 9th, 1864.

Letter, 9th
May, 1864,
Appellant to
Norton.
Marked 'U.'

"MY DEAR CAPTAIN,—The cheque was all right, and I sent off to-day Post-Bills to London. I believe to be the best step yet taken to secure real influence, and I am confident you will find the most beneficial result.

"As to the "Mail," they were so pressed for space by American News that the Editor requested to postpone us for a day, and promised all attention to everything we may require.

"Yours very truly,

"OSBORNE HILLIARD."

On the faith of this promise I was induced to give a cheque for £150, on the National Bank of Kingstown, at great inconvenience, and overdrawing by £30.

Capt. Norton's Account

No. 22.

"29, Upper Gloucester-street, May 17th, '64.

Letter, 17th
May, 1864,
Appellant to
Norton.
Marked 'V.'

"MY DEAR CAPTAIN,—The article in the "Mall" is beyond all praise, and will do infinite service; it is most clear and powerful. You should, I think, write to the Editor a handsome letter of acknowledgment, and if there was any mode of paying him a compliment, I should be glad to be the bearer of it. I called to the papers to-day, and hope to get them to lead also. I think we are all right now before the wind, but we must sketch the sails and avoid all calms until we have obtained a full measure of justice.

"The balance of the memorandum I gave O'Brien is wanted to-morrow for the O'Gorman affair; send me some of the papers.

"Now that the article is in fact published, I think that a private note to the Editor, from yourself, with a cheque of ten guineas, might not be thrown away, but you are best judge of this, and should act entirely on your own clear opinion. Of course, if he objected, he would return it to you.

"Yours sincerely,

"OSBORNE HILLIARD."

No. 23.

"9, Goldsmith Terrace, Bray, May 18th, 1864.

Letter, 18th
May, 1864,
Norton to
Appellant.
Marked 'W.'

"MY DEAR SIR,—I regret that I cannot comply with your request, and therefore return the bill, which would be of no use to me. I dislike having anything to do with bill transactions. I lent you the £150 on the faith that it would be returned to me in a week, according to your promise, and it is serious inconvenience to me to have overdrawn on the National Bank of Kingstown by about £30. I therefore return you your promissory note by the O'Brien, who will also hand you twelve copies of "The Dublin Evening Mail," containing the admirable article on my case by the Editor. I will, as a matter of course, write him a letter of thanks, but altho' willing to send him a "quie qind honararium," I have at present no real funds to draw a cheque on. I would go into Dublin myself to have the pleasure of seeing you and explaining more fully, but I am suffering from slight fever, brought on by my overwalking on the 16th inst.

"I remain sincerely yours,

"Osborne Hilliard, Esq., &c., &c.

"J. NORTON."

No. 24.

"29, Upper Gloucester-street, May 19, 1864.

Letter, 19th
May, 1864,
Appellant to
Norton.
Marked 'X.'

"MY DEAR SIR,—I received your letter to-day, and am happy to say that in consequence of a letter which I wrote last evening after receipt of your letter, I was to-day promised a payment of £350 out of the sum to be paid to me as mentioned in my last.

"I shall be very glad indeed to arrange your advance without a moment's delay after receipt of this money, and beg to assure that I regretted extremely the tone of your letter yesterday so unexpected and different as it was from anything I had reason to expect from you. We were bound to regard you as a sincere friend (which we did), and had hoped that a corresponding feeling was not undeserved on our part. However, I shall very soon satisfy you that you are mistaken in the strange notion which must have influenced you in writing to me yesterday, and meantime

"Remain yours sincerely,

"OSBORNE HILLIARD."

Norton's
Memoranda
on foregoing
letter.

I do not understand the allusions in the above letter.

J. NORTON.

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My letter stated that the bill was never put to my credit in the Kingstown Bank, as he appeared to think by his letter that it was. I explained to Mr. O. H. that the reason that I did not desire that it should was that the Manager pointed out to me the great liability I would put myself under by having it put to my credit in the Kingstown Bank.

J. NORTON.

No. 25.

"9, Goldsmith Terrace, Bray, 19th May, 1864.

Letter, 19th
May, 1864,
Norton to
Appellant.
Marked 'Y.'

"MY DEAR SIR,—I think I can relieve your mind from all fear of injury in regard to my declining to accept a bill or promissory note at 3 months. The amount of it was never placed to my credit in the bank at Kingstown, for the reasons explained to me by the Manager.

"I regret quite as much as you that any contretemps should have taken place in the matter of the £150 advanced to a certain party at your friendly suggestion. I have requested a friend, the Rev. Mr. Thomas, who is on the most friendly terms with the Editor of the "Evening Mail," and who, I understand, is his next door neighbour, to express to the Editor my very best thanks, and I have emphatically informed Mr. Thomas that it is my intention to present the Editor with a "quinquid honorarium" when I am in possession of ready cash.

"I remain, sincerely yours,

"J. NORTON.

"Osborne Hilliard, Esq., &c. &c."

No. 26.

"27, Upper Gloucester Street, Wednesday, 5.30, 20 May, '64.

"MY DEAR SIR,—I had only just returned this evening from seeing Sir J. Gray, with whom I had very friendly interview on your case, who promised his advocacy and in my presence instructed his Sub-editor on the subject, when O'Brien handed me your letter and the newspaper. I was so astonished at the strange inconsistency between your very cordial agreement, as you expressed on Monday, to receive the bill which you told me you had at once sent to the bank, where no doubt it was placed to your credit, and your present communication, that I really must confess I do not understand it. It was to save you any inconvenience that I sent you my note, as you are aware that it was to secure the co-operation of a certain party in your case, in which I have taken a great deal of trouble and interest, that you advanced the money, and it was applied accordingly. I regret there has been any delay in the matter, but you remember I showed you the power of attorney under which I am to receive a large sum for the party in question, out of which you shall be immediately paid, and I can assure you that the money is as safe as if it were in the Bank. I do hope you have not done me an injury by withdrawing the note from the Bank, in the manner you have done; but I fear that such must be the result.

Letter, 20th
May, 1864,
Appellant to
Norton.
Marked 'Z.'

"Yours faithfully,

"OSBORNE HILLIARD."

No. 27.

Copy Osborne Hilliard's Acknowledgment.

"29, Upper Gloucester Street, Dublin, 19th day of November, 1866.

"Mr. Lyons has handed me eight letters addressed by me to Captain Norton.

"OSBORNE HILLIARD."

Appellant's
acknowledg-
ment for eight
letters,
Nov. 27th.
Marked 'A1.'

No. 28.

"Upper Gloucester Street, Oct. 15th, 1864.

"MY DEAR SIR,—It is a great satisfaction to me to acquaint you that in my visit to Tipperary, I succeeded in getting all parties to consent to pay the money out of Court, and that I shall obtain an order for the purpose early next month, when your £100 and my £50, which I sent you, will be repaid with interest. Had any further obstacle occurred, I was resolved to sell out stock to pay you; but it being a fund laid by for a particular object, I felt reluctant to encroach on it, and am glad to be now saved the necessity of doing so. I have given Devere a message for you, which I have not time to write, as I am going to chapel.

Letter, 18th
Oct., 1864,
Appellant to
Norton.
Marked 'B1.'

"With kind compliments from my family,

"I remain yours faithfully,

"OSBORNE HILLIARD."

will, well and truly pay and satisfy the said annuity upon the days and times in that behalf
 "specified in said deed, free of all taxes whatsoever, and I require you, and each of you, as
 "executors of said will, to take notice of said charge, and to provide for the due payment
 "thereof, in pursuance of the provisions of said deed, so as to render the remedies for distress,
 "&c., unnecessary to be resorted to.

"Dated this 11th day of March, 1867.

"VANDELEUR OSBORNE HILLIARD,

Solicitor for said O'Brien Osborne Hilliard,

To William Lyons, Esq., and

29, Upper Gloucester Street.

Rev. T. H. Thomas,

Executors of said will.

No. 39.

Summons and Plaint.

COURT OF EXCHEQUER.

Court of
 Exchequer,
 Copy of
 Summons and
 Plaint, 13th
 Nov., 1867.
 Marked 'L1.'

OSBORNE HILLIARD, of Number
 Twenty-nine Upper Gloucester
 Street, in the City of Dublin, Bar-
 rister-at-law, Plaintiff.

WILLIAM LYONS, of Number Fifteen
 Kildare Street, in said city, one of
 the Attornies, Executor of John
 Norton, Esq., deceased,
 Defendant.

County of the City of Dublin.

Plaintiff in the sum of Fifty Pounds.

VICTORIA, by the Grace of God, of the
 United Kingdom of Great Britain and Ireland, Queen,
 Defender of the Faith, and soforth, to the said
 William Lyons. Greeting: William Lyons, the Defen-
 dant, is summoned to answer the complaint of Osborne
 Hilliard, the Plaintiff, who complains that the
 Defendant is executor of John Norton, deceased, late
 of Goldsmith Terrace, Bray, in the County of Wicklow,
 and that as such executor he is indebted to the

For that the said John Norton in his lifetime, by deed dated the Nineteenth day of
 February, One Thousand Eight Hundred and Sixty-four, granted to the Plaintiff, his heirs,
 and assigns, one annuity, yearly rent-charge or sum of One Hundred Pounds per annum, to be
 yearly issuing, payable, and taken out of, and to be charged upon all his, the said John
 Norton's estate and interest in the lands and premises in said deed mentioned, to commence
 on the day after the death of the said John Norton, and to continue during the whole estate and
 interest of the said John Norton in said lands, and each and every of them, to be payable by
 half-yearly payments, on every First day of May and First day of November, the first payment
 thereof to be made upon whichever of said days should first happen after the death of the said
 John Norton; and by said deed the said John Norton, for himself, his heirs, executors,
 administrators, and assigns, covenanted with the Plaintiff, his heirs, and assigns, that the heirs,
 executors, administrators, and assigns of him, the said John Norton, or some or one of them,
 should and would well and truly pay, content and satisfy the said annuity, and each and every
 part thereof, upon the days and at the times limited in said deed as aforesaid, free and clear of

all taxes, charges, and impositions whatsoever, except Income Tax; and afterwards the said John Norton died, and thereupon the Defendant became, and was, and still is the Executor of the last will and testament of the said John Norton; and afterwards to wit, on the First day November, One Thousand Eight Hundred and Sixty-seven, being the second of said gale days which happened next after the death of the said John Norton, the sum of Fifty Pounds, being for one half-yearly payment of said annuity, became due and owing to the Plaintiff under the said covenant. And the Plaintiff says, that at the time of the death of the said John Norton the estate and interest of the said John Norton in the said lands, or some or one of them, was and thenceforth hitherto continued, and now is subsisting, and all the conditions were performed, and all times elapsed, and all things happened necessary to entitle the Plaintiff to be paid the said sum of Fifty Pounds by the Defendant as such Executor, yet same still remains wholly due and unpaid, the particulars of which are endorsed hereon, and the Plaintiff prays Judgment against the said Defendant as such Executor, to recover the said sum of Fifty Pounds and his Costs of Suit.

Therefore the Defendant is hereby required to appear in the said Court within Twelve Days after the service hereof, and answer the said complaint, or in default thereof, Judgment shall be given according to law.

Witness the Lord Chief Baron, and other Barons of Her Majesty's Court of Exchequer at Dublin.

Dated Tuesday, the Fifth day of November, One Thousand Eight Hundred and Sixty-seven.

RICHARD P. CARTON.

VANDELEUR OSBORNE HILLIARD,

Attorney for the Plaintiff,

No. 29, Upper Gloucester Street, Dublin.

Endorsement of Particulars.

1867—Nov. 1st.

To amount of Half Year of the Annuity within-mentioned, due this day, £50 0 0

VANDELEUR OSBORNE HILLIARD,

Plaintiff's Attorney,

29, Upper Gloucester Street, Dublin.

COURT OF QUEEN'S BENCH.

Court of
Queen's
Bench,
Summons and
Plaint.
Marked 'M1.'

OSBORNE HILLIARD, of No. 29, Upper
Gloucester Street, in the City of
Dublin, Esquire, Barrister-at-law,
Plaintiff.

WILLIAM LYONS, of No. 15, Kildare
Street, in said City, one of the
Attorneys, Executor of John Nor-
ton, Esquire, deceased,
Defendant.

County of Kildare.

VICTORIA, by the Grace of God, of the
United Kingdom of Great Britain and Ireland, Queen,
Defender of the Faith, and soforth, to the said
William Lyons, Greeting: William Lyons, the
Defendant, is summoned to answer the complaint of
Osborne Hilliard, the Plaintiff, who complains that the
Defendant, as Executor of John Norton, deceased,
late of Goldsmiths Terrace, Bray, in the County of
Wicklow, and that as such Executor, he is indebted

to the Plaintiff in the sum of £50.

FOR that the said John Norton, in his lifetime, by Deed dated the 19th day of February, 1864, granted to the Plaintiff, his heirs and assigns, one annuity, yearly rent-charge or sum of £100 per annum, to be yearly issuing, payable, and taken out of, and charged upon all the said John Norton's estate and interest in the lands and premises in said Deed mentioned, to commence on the day after the death of the said John Norton, and to continue during the whole estate and interest of the said John Norton in said lands, and each and every of them, to be payable by half-yearly payments on every first day of May and first day of November, the first payment thereof to be made upon whichever of said days should first happen after the death of the said John Norton, and by said Deed, the said John Norton, for himself, his heirs, executors, administrators, and assigns, covenanted with the Plaintiff, his heirs and assigns, that the heirs, executors, administrators and assigns of him, the said John Norton, or some or one of them, should and would well and truly pay, content, and satisfy the said annuity, and each and every part thereof upon the days and at the times limited in said Deed as aforesaid, free and clear of all taxes, charges, and impositions whatsoever, except income tax, and afterwards the said John Norton died, and thereupon the Defendant became, and was, and still is the Executor of the last Will and Testament of the said John Norton, and afterwards—to wit, on the first day of May, 1867, being the first of said gale days, which happened next after the death of the said John Norton, the sum of £50, being for one half-yearly payment of said annuity, to become due and owing to the Plaintiff under the said covenant, and that the Plaintiff says that at the time of the death of the said John Norton, the estate and interest of the said John Norton in the said lands, or in some or one of them, was, and thenceforth hitherto continued, and now is subsisting, and all conditions were performed, and all times elapsed, and all things happened necessary to entitle the Plaintiff to be paid the said sum of £50, by the Defendant, as such Executor, yet same remains wholly due and unpaid, the particulars of which are endorsed hereon, and the Plaintiff prays judgment against the said Defendant, as such Executor, to recover the said sum of £50, and his costs of suit.

THEREFORE the Defendant is hereby required to appear in the said Court within twelve days after the service hereof, and answer the said complaint, or in default thereof judgment shall be given according to law.

WITNESS the Lord Chief Justice and other Justices of Her Majesty's Court of Queen's Bench, at Dublin,

Dated Wednesday, the 26th day of June, 1867.

JAMES MORAN, Attorney for the Plaintiff,
No. 13, Lower Ormond Quay.

RICHARD P. CARTON.

No. 40.

"Hilliard v. Lyons.

"Chambers, 25, Clare Street, 27th June, 1867.

"Sir,—Enclosed you have my cheque for £52 10s. in satisfaction of the action brought
 "at suit of Osborne Hilliard against William Lyons, Executor of John Norton, deceased, for
 "recovery of half year's annuity to 1st May last, under deed of 19th February, 1864, with
 "costs, and I beg to inform you that this payment is made without prejudice to the validity
 "of the claim made being contested by Mr. Luke Eiffe, the owner of the property charged
 "with the annuity in the plaint mentioned, on his coming of age, and is not to be considered as
 "in any way a recognition of the validity of the demand of the Plaintiff, or to prevent such
 "being disputed. Please send me receipt and oblige

Letter, 27th
 June, 1867,
 Adair to
 Moran.
 Marked 'N1.'

"Your obedient,

"SAML. FREDK. ADAIR.

No. 41.

"Eiffe v. Hilliard.

Mrs. Eiffe's version of the Short Conversation.

I then said to Hilliard, in a casual way :—Is the Captain as much interested (afraid of being poisoned as ever), in the poisoning cases? His answer was :—He is just as bad as ever (he is always showing it up), he is always talking about them. I then said :—Are you afraid of being poisoned, Master Hilliard? He said :—No, indeed, Mrs. Eiffe, I am not. I said :—Neither am I; however, it would not be much consequence, as I have nothing to leave.—
 Extracts from Mrs. Eiffe's Letter.

Marked 'PP.'

p. 42. 187

We were all speaking about the poisoning cases, and the danger of being poisoned—a new bottle of pickles being the innocent cause of the conversation at the time. I said to Mrs. Barnes :—Don't take any of the pickles to-day; Luke said he would prove them when he came home. I gave my reasons for being cautious, saying that Captain Norton has been telling me of several poisoning cases that had come under his notice. Mrs. Barnes said :—Indeed, I do not wonder at people being afraid, the food is so adulterated. However if I had not paid attention to your caution why did I not allow the pickles to be opened. I was also given to understand that remarks had been passed on my visiting the Esplanade, as if there could have been any impropriety in the wife and daughter of acquaintances accompanying a lady friend to hear public music.

No. 42.

THIS IS THE LAST WILL AND TESTAMENT of me, Robert Norton, of Eccles street, in the City of Dublin, and of Cappoge, in the County of Dublin, Esquire, Barrister-at-Law. I give and bequeath to each of my two sons, Mrs. Mary Ann Robinson, and Miss Grace Norton, the sum of £100, to be paid by my executors, hereinafter named, by and out of my personal estate, within three months after my decease, free of legacy duty. I will and direct that my body may be interred in a burial place to be selected by my executors, hereinafter named (if not previously selected by myself), in the Cemetery of Mount Jerome, Harold's Cross,

Will and
 Codicil of
 Robt. Norton.
 Marked 22

with as little expense and ceremony as is consistent with my station in life, but at the discretion of my executors, by whom I direct that all my simple contract debts and funeral expenses shall be paid out of my personal estate. I give, devise, and bequeath to the tenant for life in possession who may from time to time succeed to my Cappoge estate, under the limitations contained in this my Will, my three family portraits of Colonel Robert Norton, by Sir Godfrey Kneller; my own portrait and that of my nephew, George Augustus Frederick Robinson, and my late dear niece, Sidney Grace Robinson, and also my Oxford Bible in two volumes folio, which was presented to me at my Christening by the late Lady Grantly (at that time Lady Norton); and also my pair of Silver-mounted Cavalry Pistols, which were taken from a French Officer in action at the battle of the Boyne, and on the spot delivered to my great grand-father, Colonel Norton, then a Captain in Duke Schomberg's Regiment of Horse; but for the life of such person only, it being my intention that the same portraits, bible and pistols should descend and go as heirlooms to the person and persons who may from time to time become entitled in possession to my said Cappoge estate. I give and devise to my brother, John Norton, of No. 23, Upper Berkeley-street, Connaught-square, London, All That my fee-simple estate, messuage, or tenement lands and hereditaments called the Cappoge estate, in the barony and parish of Castleknock, and county of Dublin; and also All That my fee-simple estate of Roystown and Grenoge, situate in the Union of Ratoath, in the county of Meath, of and in which said lands and hereditaments I am now seized of an estate of inheritance in fee-simple; and also All That my freehold estate, lands and hereditaments at Donamore and Great Bullstown, held by me under the representatives of the late Isaac Holroyd, Esquire, and situate in the barony of Ratoath and county of Meath; and also All That my freehold estate, lands and hereditaments of Molinam, held by me under the representatives of the late George Lowther, Esq., and situate in the union and barony of Ratoath, of which said last-mentioned estate I am seized of an estate of freehold for lives, with covenant for perpetual renewal: To hold to him, his heirs and his assigns, for and during the term of his natural life, but subject to all such judgments, debts, and such other debts of record as now affect all my estates generally, and which said judgment and other debts of record I hereby expressly charge upon the estates included in this devise: Provided always that it shall and may be lawful to and for my said brother, John Norton, by any deed or deeds to be executed by him, in the presence of and attested by two or more credible subscribing witnesses, to charge and incumber my said estates of Cappoge, Roystown, and Grenoge, Donamore and Great Bullstown, and Molinam, or a competent part or parts thereof at his discretion, with an annuity or rent-charge, by way of jointure, for any woman with whom he may intermarry, not exceeding the sum of £250 per annum, and for the purpose of securing the payment of such jointure, I hereby authorize my said brother to grant and limit all my said last-mentioned estates, hereditaments and premises, or a competent part thereof, or parts thereof, to trustees or a trustee, for a sufficient term of years, with a proviso for cesser after the decease of any such jointress, and the payment and satisfaction of all arrears of the said annuity, up to the time of her decease; and from and immediately after the decease of my said brother, the said John Norton, I give and devise all my said estates of Cappoge, Raystown and Grenoge, Donamore and Great Bullstown, and Molinam, with their respective appurtenances, but subject as aforesaid unto the first and every other son of the body of the said John Norton, lawfully begotten or to be begotten, severally, successively, and in remainder, one after another, in order and course as they severally, successively and in remainder, one after another, shall be in seniority of age and priority of birth, and the heirs

male of the respective bodies of all and every such son and sons issuing, every elder of such sons, and the heirs male of his body being always preferred, and to take before the younger of the same sons, and the heirs male of the respective bodies issuing; and in default of issue male of my said brother, John Norton, then I give and devise all my said estates of Cappoge and Gruroge, Donamore and Great Bullstown, and Molinam, with their respective appurtenances, unto the first and every other daughter of my said brother, John Norton, severally, successively, and in remainder, one after another, in order and course as they shall be in seniority of age and priority of birth, and the heirs male of the respective bodies of all and every such daughter and daughters issuing, every elder of such daughters, and the heirs male of her body, being always preferred and to take before the younger of the same daughters, and the heirs male of their respective bodies issuing, and subject to the proviso hereinafter contained as to taking the name of Norton in case of marriage. And in default of all issue of the said John Norton, then I give and devise all my said estates of Cappoge, Raystown, Grenoge, Donamore and Great Bullstown and Molinam, with their respective appurtenances, but subject as aforesaid unto my nephew, George Augustus Frederick Robinson, of Hardwicke-place, in the City of Dublin, Esquire, Barrister-at-Law, and to his assigns, for life, but subject to the aforesaid proviso as to taking the name of Norton after and in addition to Robinson; and from and immediately after the decease of my said nephew, George Augustus Frederick Robinson, then I give and devise all my said estates of Cappoge, Raystown and Grenoge, Donamore and Great Bullstown and Molinam, with their respective appurtenances, but subject as aforesaid unto the first and every other son of the body of the said George Augustus Frederick Robinson, lawfully begotten, severally, successively and in remainder, one after another, in order and course as they shall be in seniority of age and priority of birth, and the heirs male of the respective bodies of all and every such son and sons issuing, the elder of such sons, and the heirs male of his body being always preferred and to take before the younger of the same sons, and the heirs male of their respective bodies issuing, and subject to the same proviso as to taking the name of Norton; and in default of issue male of my said nephew, George A. F. Robinson, then I give and devise all my said estates of Cappoge, Raystown and Grenoge, Donamore and Great Bullstown, and Molinam, with their respective appurtenances, but subject as aforesaid unto the first and every other daughter of the body of my said nephew, George A. F. Robinson, lawfully begotten, severally, successively and in remainder, one after another, in order and course as they shall be in seniority of age and priority of birth, and the heirs male of the respective bodies of all and every such daughter and daughters issuing, the elder of such daughters, and the heirs male of her body, being always preferred and to take before the younger of the same daughters, and the heirs male of their respective bodies issuing, and subject to the same proviso as to taking the name of Norton. And in case of failure of the issue male of my said nephew, George A. F. Robinson, and of the issue male of the first and other daughters of my said nephew, then I give and devise all my said estates of Cappoge, Raystown, and Grenoge, Donamore and Great Bullstown, and Molinam, with their respective appurtenances, but subject as aforesaid unto the first and every other son, and failing sons then to the first and every other daughter of the body of my half sister, Mrs. Letitia Purcell, widow and relict of the late Reverend James George Purcell, now residing in the town of Manchester, lawfully begotten, severally, successively and in remainder, one after another, in order and course as they shall be in seniority of age and priority of birth, and the heirs male of the respective bodies of all and every such son and sons, daughter and daughters issuing, the elder

of such sons, and the heirs male of his body, being always preferred and to take before the younger of the same sons, and the heirs male of their respective bodies issuing, and before the eldest or other daughters of my said half sister, and the eldest of such daughters, and the heirs male of her body being always preferred and to take before the younger of the same daughters, and the heirs male of their bodies issuing, and subject as to the issue of my said half sister, Mrs. Letitia Purcell, to the proviso next hereinafter mentioned: Provided always, and I declare it to be my will and intention, and do therefore direct that every person who shall by virtue of any of the limitations hereinbefore contained become seized of an estate for life, or other interest of and in my said estates of Cappoge, Raystown and Grenoge, Donamore and Great Bullstown, and Molinam, shall and do immediately upon that event taking place, or within the period of two years next after his or her becoming seized of said estates, and in the actual possession thereof, or entitled to the receipt of the rents, issues and profits thereof, and not being disabled or prevented from so doing by any reasonable cause or impediment; or if so, then within the period of one year next after such cause or impediment shall have been removed, assume the surname and use and bear the arms of Norton in addition to and after any other name he may be entitled to bear. And in case any person of the name of Purcell so becoming seized as aforesaid, such name is to be sunk and disused altogether, and the name of Norton assumed and used exclusively in lieu thereof, which name and arms shall be used and borne by such of their issue and posterity as shall by virtue of such limitations become entitled to the inheritance, possession and enjoyment of said estates. And in case any such person or persons or any of his or their issue or posterity shall refuse, decline or neglect within the respective periods hereinbefore mentioned after the accruing of their respective titles to the seizing and possession of said estates to assume or bear, or shall thereafter discontinue the use of said surname and arms, such person or persons shall be thenceforth barred, and for ever precluded of and from, and shall forfeit and lose such estates and interest as he or she shall have taken or become entitled to under the limitations of this my will, and immediately from thenceforth the said estates, and every part thereof, shall pass to and become vested in the person next entitled thereto in remainder, after the estate of the person so forfeiting under the limitations of this my will, who shall assume and bear the name and arms of Norton, it being my intent and meaning that no person whoever shall take interest or enjoy my said estates so hereinbefore limited as aforesaid, or any part or parts thereof respectively, who shall refuse, neglect, or decline to take and use the said surname and arms of Norton as aforesaid, and continue so to do, anything in this my will contained to the contrary thereof in anywise notwithstanding. I give and devise all that my freehold estate and lands of Rathland, near Harold's Cross, in the county of Dublin, and which I hold under the Earl of Meath, for lives, with a covenant for perpetual renewal; and also my freehold estate and lands of Dardistown, and part of Balfstown, in the barony of Dunboyne and county of Meath, and which I hold under, for three lives, unto my said nephew, George A. F. Robinson, and his assigns, for the term of his natural life, or as to the said lands of Dardistown, and part of Balfstown, for so long as the lives therein, or the survivors or survivor of them, shall continue clear and indemnified by and out of my said principal estates so hereinbefore devised and limited as aforesaid, from all my judgments or other debts of record, but exclusively subject to an annuity or rent-charge heretofore granted by me of £100 per annum in favor of Mrs. Mary Emma Ingram, otherwise Freeman (and paid up to the 1st day of this December), for the term of her natural life, and which said annuity I hereby charge on my

Rathland

Dardistown

Mrs. Ingram

said estate of Rathland, and direct that the same shall be raised and paid to the said Mary Emma Ingram, otherwise Freeman, by four equal quarterly payments, and I hereby give to her the usual powers of distress and entry for recovering the same out of my said estate of Rathland; and from and immediately after the decease of my said nephew, George A. F. Robinson, then I give and devise all my said freehold estate of Rathland so chargeable with said annuity as aforesaid, and also my said estate of Dardistown, and part of Balfstown, unto the first and every other sons of the said George A. F. Robinson, lawfully begotten, severally, successively and in remainder, one after another in order and course as they shall be in seniority of age and priority of birth, and the heirs male of the respective bodies, of all and every such son and sons issuing, every elder of such sons, and the heirs male of his body, being always preferred and to take before the younger of the same sons, and the heirs male of their respective bodies issuing; and in default of such issue male of my said nephew, George A. F. Robinson, then I give and devise all my said freehold estates of Rathland and Dardistown, and part of Balfstown, so chargeable as aforesaid, unto the first and every other daughter of my said nephew, George A. F. Robinson, lawfully begotten, severally, successively and in remainder, one after another in order and course as they shall be in seniority of age and priority of birth, and the heirs male of the respective bodies of all and every such daughter and daughters issuing, the elder of such daughters, and the heirs male of her body, being always preferred and to take before the younger of the same daughters, and the heirs male of their respective bodies issuing. And failing issue male and female of the said Mrs. Letitia Purcell, I give and devise my said estates of Cappoge, Raystown and Grenogh, Donamore and Great Bullstown, and Molinam, with their respective appurtenances, but subject as aforesaid unto the heirs of my maternal grandfather, Luke Eiffe, Esquire; and failing issue male and female of my said nephew, George A. F. Robinson, I give and devise my said estates of Rathland and Dardistown, and part of Balfstown, so chargeable as aforesaid, unto the aforesaid heirs of my said maternal grandfather, Luke Eiffe. And I declare it to be my will, that it shall and may be lawful to and for every person taking an estate for life under the limitations hereinbefore contained, in all or any estates hereinbefore respectively devised, to grant and demise such parts of the said estates of which they may be in possession for the time being, or any part thereof, as they may happen to fall out of lease, to any person or persons, for any term or terms not exceeding 31 years, or the life of the lessee, so as such lease or leases be made in possession and not in reversion, and at the best and most improved yearly rent or rents that can or may be reasonably had or gotten for the same, without taking any sum of money or other thing by way of fine or present emolument, for or in respect of any such lease or leases, and so as in every such lease there be contained clauses of distress and re-entry in case of non-payment of the rent or rents to be thereby reserved, and that the tenant or tenants, lessee or lessees, to be therein named, seal and deliver counterparts thereof respectively, and so as none of such leases be made dishonourable of waste for any express words to be therein contained. And as to all the rest, residue, and remainder of my personal estate and effects not hereinbefore specifically bequeathed, and subject to the aforesaid legacies to my said two sisters, and the payment of my simple, contract and other debts, not of record, I will and direct that my executors shall pay and apply the same in discharge of such of my debts as affect my real property, so far as such residue will go. I hereby nominate and appoint my aforesaid brother, John Norton, and my aforesaid nephew, George A. F. Robinson, to be the executors of this my last will and testament, hereby revoking all former or other

wills by me at any time heretofore made. In testimony whereof, I, the said Robert Norton, the testator, have set my name and affixed my seal to this my will, and a duplicate thereof, each contained in six sheets of paper—that is to say, my name to the first five sheets thereof, and my name and seal to the sixth and last sheet thereof, this 2nd day of December, in the year of our Lord, 1845.

ROBERT NORTON, SEAL.

Signed, sealed, published, and declared by the within-named Testator, Robert Norton, as and for his last Will and Testament, in the presence of us who have subscribed our names as witnesses thereto in his presence, and in the presence of each other.

ROBERT SIMPSON,

City of Dublin, Solicitor.

JAMES CANNON,

Clerk to Messrs. R. Hamilton and Co., Solicitor.

THIS IS A CODICIL to the Will of me, Robert Norton, of Eccles Street, in the City of Dublin, and of Cappoge, in the County of Dublin, Esquire. WHEREAS, I have by my said Will, within written, and bearing equal date with this Codicil, but which I executed previously directed, that all my simple contract debts should be paid out of my personal estate. NOW I, the said Robert Norton, the Testator, do by this, my said Codicil, and which I desire may be had and taken as part of my said Will, direct and declare that my said executors shall and do, by and out of my personal estate which may remain after payment of my said simple contract debts, pay and satisfy all such fines and the expenses of all such renewals as may be due and payable, and which ought to be paid and obtained at the time of my decease, for or in respect of all or any of my freehold leases, for lives devised by my said Will. And I hereby will and direct that my brother, John Norton, and my nephew, George A. F. Robinson, in my said Will respectively named, and all and every person and persons who shall or may for the time being be entitled under the limitations in my said Will, to any estate for life in possession of, and in all or any of the said freehold leases for lives renewable, shall and do at their own expense, costs, and charges, and by and out of the rents and profits of the freehold lands of which they may respectively be in possession, or other their own monies and effects, pay all such renewal fines, and the expenses of all such renewals as may become due and payable either at the time of my decease (in case my personal estate may not be sufficient to discharge the same, as hereinbefore directed), or after my decease, and which ought to be paid and obtained by reason or in consequence of the falling in of any life, or of the decease of any one or more of the cestui que vies, upon whose life the said freehold leases may from time to time be held during the life of such tenant for life, and that without calling for or being entitled to call for any contribution from the next, or any other person or persons in remainder. In testimony whereof, I, the said Robert Norton, have to this Codicil to my Will set my hand and seal, this 2nd day of December, 1845.

ROBERT NORTON.

[SEAL.]

Signed, sealed, published, and declared by the above-named Testator, Robert Norton, as and for a Codicil to his said last Will and Testament, in the presence of us, who have subscribed our names as witnesses thereto, in his presence, and in the presence of each other.

ROBERT SIMPSON,

JAMES CANNON.

Monday, the 20th April, 1868.

VICE-CHANCELLOR..

BETWEEN LUKE EIFFE Plaintiff.
 OSBORNE HILLIARD, O'BRIEN OSBORNE HILLIARD, AND WILLIAM
 LYONS Defendants.

Order to give
 evidence in
 chief at hear-
 ing of cause,
 20th April,
 1868.

WHEREAS, Mr. Walsh and another of counsel, with the Plaintiff, this day moved the court, pursuant to the notice of motion dated the ninth day of April, one thousand eight hundred and sixty eight, upon debate of the matter, and on reading the said notice of motion, and hearing what was offered by Mr. Kelly, of counsel, with the said defendants, Osborne Hilliard and O'Brien Osborne Hilliard, it is ordered by the Right Honorable the Vice-Chancellor of Ireland, that the evidence in chief as to the facts and issues hereinafter specified be taken viva voce at the hearing of this cause, that is to say :—first, the character, habits, and disposition of the late Captain John Norton. Second, the dealings and transactions of the late Captain John Norton with the defendants, Osborne Hilliard and O'Brien Osborne Hilliard, and the other members of the family of the defendant, Osborne Hilliard, showing undue influence exercised over the said Captain John Norton. Third, the circumstances preceding and attending the agreement for, and the making preparation and execution of the indenture of the nineteenth day of February, one thousand eight hundred and sixty four. And the Court doth declare the costs of the parties on this motion to be costs in the cause.

Compared, A. T. B.

W. PETERS SMITH, A.R.

REC. No. 12.

IN CHANCERY.

VICE-CHANCELLOR.

LUKE EIFFE Plaintiff;
 OSBORNE HILLIARD O'BRIEN OSBORNE HILLIARD and WILLIAM LYONS Defendants.

AFFIDAVITS filed on the part of the PLAINTIFF by S. F. ADAIR his Solicitor
 25 Clare-street.

No. 1.

Filed 3rd June, 1868.

INTERROGATORIES for the examination of WILLIAM LYONS.

1. Read the copy of the deed of the 19th day of February 1864 and indorse your name thereon.
2. Are you aware of your own knowledge of the estate and interest of the late Captain Norton in the several lands which are included in the parcels of the said deed and if so state which was his estate or interest in them respectively under what instruments he held the same and also your means of knowledge.
3. Read the 25th paragraph of the answer and state whether the statements therein contained are correct or incorrect and if incorrect state in what particulars the same is incorrect and also state the person by whom the time and circumstances at which and the cause wherefore the defendant's exhibit Number 8 was written.

Interroga-
 tories and
 Affidavit of
 Lyons, filed
 3rd June,
 1868.

4. Read the 26th paragraph of the answer State whether the statements therein contained are correct or incorrect and if incorrect state in what particular the same is incorrect and state the circumstances under which and the terms upon which the half-yearly gale of the annuity in said paragraph mentioned was made and received and your means of knowledge.

5. Read the last sentence of the 37th paragraph of the answer page 20 lines 11 to 19 and state whether the statements therein contained are correct or incorrect and if incorrect then and in what particular and state whether the late Captain Norton made any and if so what statements relative to his satisfaction or dissatisfaction as to the execution of the deed in question and state also whether the late Captain Norton made any statements and if so what statements as to his satisfaction at the arrangement in the said paragraph of the answer mentioned and as to the comfort and advantage he derived from the society and accomplishments of the defendant O'Brien Osborne Hilliard and also state your means of knowledge.

6. Read the 44th paragraph of the answer down to the end of line 10 in page 25 and state whether the statements therein contained are correct or incorrect and if incorrect in what particulars the same are incorrect and state under what circumstances your costs referred to in the said paragraph were taxed and progress and result of such taxation and as to matters not within your personal knowledge state your means of knowledge.

7. Read the paragraph number 48 of the answer from the beginning of line 13 to the end and state whether the statements therein contained are correct or incorrect and if so in what particulars and also state upon what terms the late Captain Norton was with the plaintiff and his mother so far as your personal knowledge extends.

No. 45.

I WILLIAM LYONS of Kildare Street in the city of Dublin Esquire make oath and say in answer to the foregoing Interrogatories—

1. I have read a copy of the deed of the 19th February 1864.

2. I am well aware and have full knowledge of the estate and interest the late Captain Norton took in the several lands which are included in the parcels of the said deed viz. the lands of Donamore Great Bullstown Greenogue Raystown Molinam in the county of Meath and Cappoge in the county of Dublin in all of which he took an estate for life only the lands of Donamore and Great Bullstown were held in fee-farm Greenogue and Raystown in fee-simple Molinam in fee-farm and Cappoge in fee-simple he took an absolute estate in the lands of Davidistown county Meath which was held under lease for one life aged fifty years he also took an absolute estate in the lands of Rathland in the county of Dublin which were held by him in fee-farm. My means of knowledge is derived from the fact of my having acted as the late Captain Norton's land agent and receiver of his rents from the month of April 1860 until the day of his death in February 1867 and having had in my possession for the greater part of that time the several title-deeds and documents relating to said several lands.

3. It is untrue as charged in said answer that the bill and interrogatories in this cause were filed at my instigation and procurement but I say that by the desire of the plaintiff and in accordance with the wishes of my co-executor the Reverend Mr. Thomas I prepared a short case for counsel setting forth the facts as far as they were within my knowledge connected with the preparation and execution of the deed of the 19th February 1864 which case was submitted to eminent counsel who wrote his opinion thereon by which the Plaintiff was governed and placed it in the hands of his solicitor Mr. Adair with instructions to take such proceedings as counsel might advise and it is not true that I advised and procured the

statements contained in the 15th paragraph of the bill to be printed and published for the purpose of casting obloquy upon the Defendant or that I have extensively circulated or published any slanderous imputations relating to the prejudice of the Defendant with the aim or object of damaging his character socially or professionally I admit that I sent through the post directed to the Defendant O. Hilliard the statement referred to in said paragraph entitled a contrast number five "Truth and Falsehood" in or about the month of March 1867 and my reason for sending it was from the fact of the Plaintiff having handed me the original anonymous statement all in Defendant's handwriting called "Falsehood" which he found amongst testator's papers after his decease and on perusing which I naturally felt most indignant as I believed at the time and now know that the Defendant's object in writing said untrue statement and handing it to Captain Norton was not only to prejudice me in my client's estimation but to influence him thereby to give up a letter marked "private and confidential" written by me to my client respecting the taxation of the costs referred to bearing date the 13th November 1866.

4. I have also read the 26th paragraph of said answer and it is utterly untrue that the suit instituted against the Defendant is in substance my suit or that it was instituted to get rid of the effect of paying said annuity under the compulsion of a suit at law and I say that I have no personal interest whatever in the matter.

7. I had his instructions to pay the Plaintiff a regular allowance for clothes and pocket-money and also his expenses at school and college which were regularly charged against Captain Norton in my agency accounts and have often heard him speak in terms of affectionate regard for the Plaintiff in whose welfare he always took the deepest interest.

Sworn before me this 3rd day of June 1868 at my Office Four Courts Inn's-quay in the city of Dublin the words "upon my return" or "message" "far as" on 2nd page of this Affidavit interlined and "under" page 1 and "read" page 5 being on erasures.

WILLIAM LYONS.

JAMES WALKER, A. C. R. and W.

This Affidavit is filed on behalf of the Plaintiff.

S. F. ADAIR, Solicitor.

Folios 26.

No. 46.

WILLIAM S. TRACY, examined by Mr. Walsh.

I know Captain Norton for several years. Four or five years previous to his death we were on terms of very great intimacy. He was deaf. I was aware that O'Brien Hilliard resided with him.

Did you make any communication to O'Brien Hilliard?

Dr. Whistler was the spokesman on the occasion at which I was present. O'Brien Hilliard was not in the room with me and Dr. Whistler, when this communication took place between me and Captain Norton, and Dr. Whistler. He was in the adjoining room. We went with a message from Norton to him. This was the day before Norton's death.

What was that message delivered by Dr. Whistler to O'Brien Hilliard from Captain Norton?

(Question objected to, but allowed).

Evidence of
William
Tracy. R. m.

R. m. p. 30

Dr. Whistler stated to O'Brien Hilliard that Captain Norton wished him to return to his own family as soon as possible. Was anything more stated? We told him that Captain Norton did not wish his presence any longer in his house and lodgings. O'Brien Hilliard said he had no objection, but was quite willing to go; but said he:—I have some matters of my own—a piano, guns, and some papers here which I wish to take away with me. We stated we had no objection to his doing so. What further? He went into the room to collect some papers that were in his drawers. I think then he went into the room where Captain Norton was in bed. I was at the door of the room, and Dr. Whistler went in on the moment with him. He said the papers were in his own drawers. I had no further conversation with O'Brien Hilliard. I was at the door of Norton's room, but cannot state what took place there. I knew Norton very intimately indeed; we conversed together on every possible subject, particularly on those connected with love and war. He was very eccentric, but a kindly-hearted worthy old man. He frequently spoke about his projectiles, and gave me a book on the subject. He complained bitterly of the Horse Guards, and thought he had many claims on Parliament which had not been recognised. He was equally complaining of the affairs of love.

Cross-examined by Mr. Sullivan—Was that the day when the will was made? No, I think it was before that—certainly it was, for he sent for me, and wanted me to be one of the executors, and said that time pressed him. I don't think I saw William Lyons about the place that day. I believe Lyons was sent for to prepare the codicil. I can't tell you who signed it by his authority. I forget it. I have a very shadowy memory of the day and my impression is that he died the next day. I am perfectly sure he had his intellect the day he signed it. He spoke of the delicacy of the message to O'Brien Hilliard, and said he was very sorry he had to send it. He was quite as rational that day as any other, and he knew what he was doing when he made the will? I think he knew what he was doing when I read the will, and he said:—You need not speak so loud, for young ears are sharp. Would he keep a bank account right? I don't think he could at the time. Could he at any other time? I don't think he could. If I saw his account correctly kept, I would say my estimate of him was wrong, notwithstanding, I think he could dispose of any sum. He told me Lyons had been a long time his law and land agent, and that he had the highest opinion of him. Did you think him capable of keeping an account with Lyons? I don't think he was capable of going into the details of an account. He never spoke to me of the cause of *Metcalf v. Norton*. I read his letters to the Treasury and to the Horse Guards. I thought him visionary and wild in his views like any man who thinks himself wronged. Did you believe, on the day you signed that Codicil that he knew what he was doing? I do believe it, and that he had sense enough to do it.

Re-examined by Mr. Walsh—When he said about young ears being sharp O'Brien Hilliard was in the next room, and so was the plaintiff Eiffe.

By the Court,—Of what was the nature of his eccentricity? He was very susceptible of love, and very anxious to get a wife just before his death. Had he any other eccentricity? Except constantly talking about his inventions, he spoke rationally, but with a good deal of warmth. I knew him in 1863 and 1864, and there was not much difference in the state of his mind at that time from what it was at his death. In 1864 would you think him capable of understanding a deed of annuity? I think he was—I think he would understand the nature of a deed of that kind. Was he under any other influence? He was of a very confiding nature, and would repose confidence in anyone easily, particularly if they touched upon two points—his inventions and his love.

No. 47.

REV. FRANCIS H. THOMAS, examined by Mr. Richey.

I reside at Blackrock. I knew Captain Norton. I first met him at Kingstown. He then resided at Howard's hotel, Kingstown; that was in the summer of 1862. I was very intimate with him afterwards, down to the period of his death. He was frequently at my house. What opinion had you of his ability and of character? He was the most extraordinary mixture I ever met of weakness on some points and ability on others. He was eccentric on two points—first, wanting to marry and thinking to have a child; and secondly, on projectiles. He was a beautiful classical scholar. He spoke of his claims on government. I tried to do something for him, and his claims were in some degree acknowledged. On what terms did Norton stand to the plaintiff? He was on very affectionate terms.

Evidence of
Rev. F. H.
Thomas and
John Tozier.

Cross-examined by Mr. Sullivan,—My opinion was that except on two points, he was very acute. He was keen in money matters when things were put plainly before him. He knew the value of a £5 note. General Dunne told me, in the House of Commons, that he thought him perfectly justified in seeking a reward. I called and spoke to General Dunne about it. Captain Norton paid my passage to London that time for that purpose. He sent me a ticket. He paid my passage to London and back. I did not know whether I would succeed or not. I thought it a proper thing to do, and General Dunne thought he deserved something for his inventions. I considered him the discoverer of fog signals for railways. I went to the office of the London, Chatham and Dover railway to urge the adoption of his invention on the secretary. He did not pay my passage on that occasion. I was in London on other business, and he wrote to me about various things, and I wrote to him that I could not afford to stay for his business, and he sent me £5. The traffic manager took up the fog signals. They were taken up, but rejected, because they were too expensive. Norton was a remarkably acute man, but very easily imposed upon.

By the Court,—Before the year 1864 had you the means of forming a judgment upon his state of mind? Yes, I was very intimate with him. In the beginning of 1864 had he intelligence to understand a short deed? Under certain circumstances he would have had. If he read it carefully and applied his mind to it, could he have understood it? He could, certainly. He would not have enquired into it at all, under certain circumstances, as where he had formed an idea about marriage; for instance, to make it personal, in the case of my own daughter, he would, I believe, have signed a deed giving £200 a-year for ever; or if I would have got his projectiles acknowledged, he would have given me any amount of money. Except on these two subjects he was acute, keen, and suspicious. On one occasion he said to me *gutta cavat lapidum*. Did he appear to have any disinclination to apply his mind to business? Oh, no; he looked very sharp after his affairs.

JOHN TOZIER,—examined by Mr. Richie.

I am station-master at Bray. I knew Captain Norton very well. I knew him in 1863 and 1864. I knew him about five years before his death. I was in the habit of conversing with him almost daily; he was very eccentric. His subjects were projectiles and love affairs. He was constantly speaking of fog signals and guns. He spoke of his claims on government, and of love affairs. Did he speak of his love affairs in 1863 and 1864? He did. He mentioned Miss Hilliard to me before February, 1864. He said it was all right this time; that he had taken very expensive lodgings at Goldsmith's terrace, and was to be

married immediately. This was two and a-half or three years before his death. He had been staying, before and at the time he spoke this to me, at the International Hotel. Did he move to Goldsmith's terrace? Yes; I don't know exactly when. I attached not much weight to the conversation. We often conversed afterwards about his intended marriage with Miss Hilliard.

By the Court,—About how long did he continue to speak to you about her? For about a month, and he continued speaking nearly every day. Do you recollect whether it was during that month that he made the move from the hotel to Goldsmith's terrace? I think he did. Then during both the time before he went to the lodgings and after he moved there he continued to speak of Miss Hilliard? He did. About how long was it from the time he first mentioned her name to you in this manner to the last time he spoke of her in that way? About one month or six weeks; it appeared to go out of head again.

No. 48.

JAMES HUBBARD,

Evidence of
James
Hubbard.

By the Court,—I was the owner of a house in Goldsmith's terrace in 1863. I recollect Captain Norton coming to lodge with me. I had only one house then, it was No. 9. He came on the 14th of October, 1863. He left No. 9 for No. 12 in December, 1864. No. 12 was also mine. He remained there till his death. The precise day the first of the Hilliards came to stay with Captain Norton was the 22nd of November, 1863, and that day De Vere came, and two or three days after the other Mr. Hilliard came. *p. 71
See p. 30. 1454 above
See p. 105*

Cross-examined by Mr. Hemphill,—I know this from entries in my book (book produced). This is my expense book in my handwriting made at the time, and furnished to Captain Norton every week.

By the Court,—De Vere Hilliard came there the first, O'Brien Hilliard came two or three days after. What is there in the book to enable you to say that De Vere came there on that? Because that an extra breakfast and dinner charged; there are two extra breakfasts charged on the 27th October, in the book. I can't say who they are for; there were often friends came to him.

By Mr. Hemphill,—Did any friends ever breakfast there except the young Hilliards? There might have been instances of it. There is an extra breakfast charged for every day from the 22nd of November to the end of the month. This book was kept by myself, and entered from day to day, and went up to Norton, for his inspection every week. I know nothing but what I can collect from that book.

To the Court,—Captain Norton did not come to lodge with me before the 14th October.

No. 49.

IN CHANCERY.

Wednesday, the 9th day of December, 1868.

VICE-CHANCELLOR OF IRELAND.

LUKE EIFFE, ... Plaintiff;
OSBORNE HILLIARD, O'BRIEN OSBORNE HILLIARD and WILLIAM LYONS, Defendants.

Decree, dated
9th December
1868.

This cause coming on the 10th, 11th, 12th, 13th, 17th, 18th, 20th, 21st, 23rd, 24th and 25th and 26th days of November, 1868, to be heard and debated before the Right Honorable the Vice-Chancellor of Ireland, in the presence of Counsel learned for the Plaintiff and for the Defendants, Osborne Hilliard and O'Brien Osborne Hilliard, the Defendant, William Lyons, attending in person, and the pleadings in this cause being opened upon debate of the matter,

and hearing the order bearing date the 21st day of December, 1867, appointing Guardian ad litem of the minor Defendant, O'Brien Osborne Hilliard; the deed of Annuity, dated 19th day of February, 1864, marked "A"; Probate with the will annexed of John Norton, granted to William Lyons, marked "B"; letter from Captain Norton to Miss Hilliard, dated the 30th day of September, 1863, marked "C"; letter from Captain Norton to William Lyons, dated the 23rd day of November, 1863, marked "D"; Notice in this cause to produce letters and documents, marked "E"; Instructions to Counsel, marked "F"; draft deed of Annuity, marked "G"; Cheque dated the 27th day of November, 1863, for two pounds two shillings, in favor of Robert James Berkeley, Esquire, Q.C., marked "H"; draft deed of Annuity (called second draft), marked "I"; draft deed of Annuity (called third draft), marked "K"; copy letter from Captain Norton to Osborne Hilliard, dated the 9th day of December, 1863, marked "L"; copy letter from Osborne Hilliard to Captain Norton, dated the 2nd day of December, 1863, marked "M"; letter from William Hastings Greene to Osborne Hilliard, dated the 6th day of January, 1864, marked "N"; copy letter from Captain Norton to William Lyons, dated the 13th day of January, 1864, marked "O"; letter from Captain Norton to Luke Eiffe, dated the 19th day of February, 1864, marked "P"; letters from Osborne Hilliard to Captain Norton, dated respectively the 23rd day of March, 25th day of April, and 3rd, 6th, 9th and 17th days of May, 1864, and marked respectively "Q," "R," "S," "T," "U" and "V"; letter from Captain Norton to Osborne Hilliard, dated the 18th day of May, 1864, marked "W"; letter from Osborne Hilliard to Captain Norton, dated the 19th day of May, 1864, marked "X"; letter from Captain Norton to Osborne Hilliard, dated the 19th day of May, 1864, marked "Y"; letter from Osborne Hilliard to Captain Norton, dated the 20th day of May, 1864, marked "Z"; receipt for letters signed by Osborne Hilliard, dated the 19th day of November, 1866, and marked "A 1"; letter from Osborne Hilliard to Captain Norton, dated the 15th day of October, 1864, marked "B 1"; letter from Captain Norton to Osborne Hilliard, dated the 20th day of January, 1865, marked "C 1"; Letters from Mrs. Hilliard to Captain Norton, dated respectively the 9th and 18th days of December and 11th day of August, and 14th day of September, 1866, and marked respectively "D 1," "E 1," "F 1," and "G 1"; letter from Captain Norton to Vandeleur Osborne Hilliard, dated the 27th day of November, 1866, marked "H 1"; letter from Juliana Riddick and Zaydee Christina Osborne Hilliard to Captain Norton, dated the 14th day of December, 1866, marked "I 1"; letter from Zaydee Christina Osborne Hilliard to Captain Norton, dated the 4th day of January, 1867, marked "J 1"; Notice served on executors of Captain Norton by Osborne Hilliard, dated the 11th day of March, 1867, marked "K 1"; copy Summons and Complaint at suit of Osborne Hilliard, against William Lyons, dated 5th day of November, 1867, marked "L 1"; like dated the 26th day of June, 1867, marked "M 1"; letter from Samuel F. Adair to James Moran, dated 29th day of June, 1867, marked "N 1"; document in handwriting of O'Brien Osborne Hilliard, marked "P P"; Probate Will of Robert Norton granted to John Norton, dated the 28th day of July, 1846, marked "Q Q"; Order in this matter, dated the 20th day of April, 1868, as also the following portions of the Affidavit of William Lyons, filed the 3rd day of June, 1868—paragraph 2, page 3, line 31 to end, paragraph 3, page 3 from words "it is untrue" in line 19 to "1866," in page 4, line 4, paragraph 4, to word "matter" in line 13, and paragraph 7 from words "I had" in line 8 to end, read, and the oral testimony of Robert James Berkeley, William Samuel Tracey, Thomas L. Whistler, the Reverend Francis Heiton, Thomas John Tozier, and James Hubberd, who were sworn and

examined as witnesses on behalf of the Plaintiff, and cross examined on behalf of the Defendants, and hearing copy letter from Osborne Hilliard to Captain Norton, dated the 2nd day of October, 1863, marked "A A;" cheque drawn by Osborne Hilliard in favor of Captain Norton for £50, dated the 3rd day of June, 1864, marked "B B;" receipt of Captain Norton for £50, received from Osborne Hilliard, dated the 27th day of November, 1864, marked "C C;" cheque drawn by Osborne Hilliard for £5 in favor of Captain Norton, dated 24th February, 1865, marked "D D;" Captain Norton's receipt for £5, dated the 23rd day of March, 1865, marked "E E;" cheque for £20 drawn by Osborne Hilliard in favor of Captain Norton, dated 17th day of May, 1865, marked "F F;" receipt of Captain Norton for said sum of £20, dated same day; Captain Norton's receipt for £10 received from Osborne Hilliard, dated the 24th day of August, 1865, marked "G G;" cheque for £5 drawn by Osborne Hilliard in favor of Captain Norton, dated the 18th day of August, 1866, marked "H H;" printed rental of estate of John Norton, Esquire, in Counties Meath and Dublin in the year 1859, marked "I I;" copy letter from Osborne Hilliard to Captain Norton, dated the 28th day of November, 1863, marked "K K;" deed of Annuity from Robert Norton to John Norton, dated the 18th day of May, 1827, marked "L L;" draft deed of Annuity from John Norton to Osborne Hilliard, with approval of Mr. O'Beirne thereon, marked "M M;" letter from John Arthur Keatinge to Captain Norton, dated the 18th day of October, 1866, marked "N N," as also the letter from Captain Norton to Henry O'Beirne, dated the 16th day of February, 1864, marked "O O;" read and hearing the oral testimony of Thomas Quill, Osborne Hilliard, John Arthur Keatinge, William Shaw, Henry O'Beirne, O'Brien Osborne Hilliard, Vandeleur Osborne Hilliard, De Vere Osborne Hilliard, Zayda Christina Osborne Hilliard, Caroline Osborne Hilliard, and Dr. Frederick Kirkpatrick, who were sworn and examined as witnesses on behalf of the Defendants, Osborne Hilliard and O'Brien Osborne Hilliard, and cross examined on behalf of the Plaintiff: the oral testimony of Mrs. Martha Bonham, who was sworn and examined as a witness on behalf of said Defendants; and the oral testimony of Thomas Mathews, who was sworn and examined as a witness on behalf of the minor Defendant, O'Brien Osborne Hilliard. The documents hereinbefore mentioned as marked respectively "D," "F," "R," "O," "P," "D," and "E," were objected to by Counsel for said Defendants as not being evidence in this cause, but were admitted by the Court; and the letters marked respectively "Q," "R," "S," "T," "U," "V," "W," "X," "Y," "Z," "B 1," and "C 1," were objected to by Counsel for the minor Defendant, O'Brien Osborne Hilliard, but admitted by the Court: and on hearing what was alleged by said Counsel,—it was ordered that this cause should stand for judgment, and the same standing this day accordingly in his Lordship's list for judgment, in the presence of said Counsel, his Lordship doth declare that the deed of Annuity, dated the 19th day of February, 1864, in the pleadings mentioned, is fraudulent and void, and it is ordered that the Defendant, Osborne Hilliard, do deliver up said deed of Annuity to the Plaintiff's Solicitor to be cancelled; and it is ordered that the injunction awarded in this cause by the order, dated the 2nd day of December, 1867, be, and the same is hereby made perpetual; and it is ordered that the Defendant, Osborne Hilliard, do, within one month from the date of this decree, pay to the Plaintiff the sum of £50, being the amount admitted by the Defendant, Osborne Hilliard, to have been by him received from the Defendant, William Lyons, on foot of the annuity purported to be created by the said deed of the 19th day of February, 1864; and it is ordered that the said Defendant, Osborne Hilliard, do, within the like period, deliver over to the Plaintiff, the deed of Annuity, dated the 18th day of May, 1827, from

Robert Norton to John Norton, being the document proved in this cause by the Defendant, Osborne Hilliard, and marked "L L." And his Lordship doth declare the Defendants, Osborne Hilliard and O'Brien Osborne Hilliard, entitled to so much of the costs of this suit as have been occasioned by or arose from the charges mentioned in the portions of the Plaintiff's bill hereinafter mentioned, and which charges have not been proved—that is to say, part of the 8th paragraph, from and including the words "who consented" to the end of the paragraph; the 9th paragraph, the 10th paragraph, the 15th paragraph, the 23rd paragraph, from and including the words "and was then treated" to the end; the 26th paragraph, the 27th paragraph, from and including the words "and finally" to the end; the 28th paragraph and the 29th paragraph; and the Court doth declare the Plaintiff entitled to the costs of this suit, save the costs to which the Defendants, Osborne Hilliard and O'Brien Osborne Hilliard, are hereinbefore declared entitled, to be paid by the said Defendant, Osborne Hilliard; and it is referred to one of the Taxing Masters of this Court to tax and ascertain the said costs. And it is ordered that the Plaintiff, Luke Eiffe, do pay to the Defendant, O'Brien Osborne Hilliard, so much of his costs of this suit as the said Defendant is hereinbefore declared entitled to, when same shall have been taxed and ascertained. And it is ordered that the said Defendant, O'Brien Osborne Hilliard, do, save as aforesaid, abide his own costs of this suit. And it is further ordered that the said Taxing Master do set off the costs to which the Defendant, Osborne Hilliard, is declared entitled, against the costs to which the Plaintiff is declared entitled, and that he do strike a balance, and certify to whom such balance is payable; and it is ordered that the amount which shall be so found due in respect of such costs shall be paid by the party from whom to the party to whom the same shall be so certified to be due. And it is further ordered that the documents lodged in court, pursuant to the order bearing date the 27th day of January, 1868, be retained until further order; and it is further ordered that any of the parties are to be at liberty to apply as occasion may require.

W. PETERS SMITH, A.R.

No. 50.

IN CHANCERY.

1868. November 26.

LUKE EIFFE v. OSBORNE HILLIARD, O'BRIEN OSBORNE HILLIARD, AND WILLIAM LYONS.

COPY OF THE VICE-CHANCELLOR'S JUDGMENTS WITH RESPECT TO THE FRAME OF THE SUIT
AND IN THE CAUSE.

JUDGMENT AS TO FRAME OF SUIT.

THE VICE-CHANCELLOR,—A question has been raised by the infant defendant that the present suit cannot be maintained as the plaintiff has not established any right to sue either as devisee or legatee, that he has shown no title as devisee, as the will has not been proved in this cause as to real estate, and as notice has not been served under the Probate Act of using the Probate for that purpose, that he has not alleged or proved any assent to the residuary gift to him of the personal estate, and that he has not shown collusion or insolvency on the part of the executor to entitle him, as legatee, to sue the infant defendant or his trustee, Osborne Hilliard. It seems a strange oversight to have omitted to prove the will as to the real estate, when the deed impeached by this suit purports to charge the annuity upon it as well as upon the personal estate. In consequence of it I cannot regard the will as giving the plaintiff any title to that real estate, or make any decree in his favour in respect of it, if I come to a conclusion in his favour upon the invalidity of the deed.

Vice-Chancellor's
Judgment.

I cannot hold that any assent has been expressly proved, and I should have much difficulty in holding that it is to be fairly presumed from the facts established in evidence. The question therefore appears to me to turn mainly, if not altogether on the contention of the plaintiff that, as to the personalty, even without proof of assent, he has made a case to sustain his Bill. The paragraphs in the Bill bearing on this matter are the 34th, 36th, 37th, 39th, and 40th. These, if sustained by proof, would undoubtedly suffice. But the most important of them (the 37th) which alleges that the executor declines to institute proceedings, has not been established in evidence, no proof having been given that he was ever applied to for the purpose. The facts that have been proved amount to this: that the executor, being sued at law by Mr. Osborne Hilliard, paid the half-yearly gale of the annuity which fell due on the 1st of May, 1867, doing so under protest, as shown by Mr. Adair's letter of the 29th of June, 1867, which expresses the payment to be made without prejudice to the contesting the validity of that claim by the present plaintiff, who is stated to have been then under age; that the executor was again sued at law for the next gale in the action now sought to be restrained; that he had not at the institution of this suit put in any defence to such action; and that as he states in his affidavit, he has not any personal interest in the matter. There is no proof of any express refusal of the executor to take proceedings to set aside the deed, and there is of course neither allegation nor proof of collusion between him and his co-defendants.

I shall ^{not} consider the rules of equity applicable to this state of facts.

The rule originally was, as laid down by Lord Redesdale in his treatise, and in the earlier cases, that there must be either collusion with or insolvency of the personal representative pleaded and proved, to entitle a creditor or legatee to sue for the recovery of assets. This rule was first relaxed in cases where the personal representative of a deceased partner was sued with a surviving partner (as in *Bousher v. Watkins*, 1 *Russell v. Mylne*, 277), for reasons unnecessary now to be considered. It was further relaxed when there was proved to have been an express refusal of the personal representative to sue, and the more readily when the assets in question were only recoverable in equity. It was said in some of the cases where this was done that such refusal might be deemed evidence of collusion within the original rule. But I think that this is too narrow a ground on which to rest the decision, as there are many cases where such a refusal could not have been ascribed to collusion. In *Lancaster v. Evors*, 4 *Beav.*, 158, Lord Langdale held that a refusal by the executors to recover certain assets was in itself sufficient to take the case out of the rule, and he also seemed to be of opinion that the rule only applied to a proceeding against a debtor to the estate and did not extend to a proceeding to realise a specific fund in Court for the augmentation of the assets. But the case which appears to me to come nearest to the present is that of *Consett v. Bell*, 1 *Y and Coll. Chan. Cas.* 569. There one of the defendants, named Wilson, claimed a sum of money under a deed executed to him by the testator, and the executors, believing the deed to have been obtained bona fide, paid him the money. They afterwards, having reason to think that the deed was not valid, called on Wilson to refund, which he refused to do. The plaintiff, who was an infant and a devisee and legatee in the will, filed a bill against the executors and Wilson and others, for the purpose (amongst others) of setting aside the deed as fraudulent and obtained by undue influence, and praying that Wilson might be ordered to refund the sum which he had received from the executors, and for the administration of the assets of the testator. Wilson raised the point that the plaintiff's remedy was against the executors and not against him, and relied upon the general rule that a legatee cannot sue a stranger indebted

to the estate, or holding part of the assets. The Vice-Chancellor of England overruled this objection, although there was neither collusion nor insolvency, nor any refusal to sue on the part of the executors, and decreed Wilson to refund the money. That case appears to me to be a conclusive authority against the objection to the frame of this suit. The rule now appears to be subject to the exceptions of cases of collusion, of insolvency of the personal representatives, of refusal by them to sue, whether collusively or bona fide, or of the existence of what has been rather vaguely termed "special circumstances." The last exception seems to comprehend and to be confined to cases in which, from the nature of the assets or the position of the personal representatives, it would be either impossible, or at least seriously inconvenient for the representatives to take proceedings. In the present case I am of opinion that after what has occurred there would be very great difficulty in the way of the executor with respect to, at least, that portion of the Bill which seeks repayment of the moneys already paid, and that his conduct, though not amounting to an actual refusal, affords evidence of an unwillingness to embark in so serious litigation sufficient to justify the plaintiff in filing his Bill against him and the other defendants on these grounds, and on the authority of *Consett v. Bell*, in the principle of which I concur, I shall overrule the objection to the frame of the suit.

JUDGMENT IN THE CAUSE.

VICE-CHANCELLOR'S COURT.

Luke Eiffe v. Osborne Hilliard, O'Brien Osborne Hilliard, and William Lyons.

1868. December 9th.

Copy of the Vice-Chancellor's judgment.

THE VICE-CHANCELLOR.—This suit has been instituted by the residuary legatee of the late Captain John Norton against Mr. Osborne Hilliard, a member of the bar, his son O'Brien Osborne Hilliard, and Mr. William Lyons, the acting executor of the will of Captain Norton, for the purpose of impeaching a deed of the 19th of February, 1864, by which Captain Norton granted to the defendant Osborne Hilliard a perpetual annuity charged on his property for the benefit of the co-defendant, O'Brien Osborne Hilliard. The Bill prays

[His Honor read the prayer]

I have already given my opinion as to the frame of the suit, so that I need not here observe upon it. As the relief sought in itself involved grave questions as to the character and conduct of Mr. Osborne Hilliard, and as the Bill contains charges of very gross fraud on the part of him and certain members of his family, I have felt it my duty to delay until now my judgment in this case, in order to have full time to consider the evidence and the arguments adduced to me. I have gone through all that evidence more than once, and given it my most careful consideration.

The case made by the Bill and relied upon at the bar, is, first, that the deed in question was fraudulently obtained from Captain Norton, an old man of about seventy-five years of age, whose mind at the time was full of his merits as an inventor, and of disappointment at those merits not having been appreciated and rewarded, and thus easily deceived and influenced by persons professing sympathy with him on these matters, and whose weakness on this subject was taken advantage of by the defendant Osborne Hilliard, a barrister of several years' standing, and of experience in business.. Secondly, that Captain Norton became enamoured of a daughter

of Mr. Hilliard, and Mr. Hilliard and his family availed themselves of this fancy to acquire and retain influence over the old man, without any intention of accepting his addresses. Thirdly, that Mr. Hilliard was in the light of a professional adviser to Captain Norton, and had thus acquired influence over him; that Mr. Hilliard availing himself of the influence so acquired, induced Captain Norton to adopt the defendant O'Brien Osborne Hilliard, then a boy of fifteen, and to execute for his benefit the deed impeached; that Captain Norton had no independent professional advice; and that, to give a colour of such protection to the transaction, the form was gone through of getting a memorandum of approval of the deed signed by Mr. O'Beirne, a solicitor, and friend of Mr. Hilliard, as if he were acting as the solicitor for Captain Norton, which he was not; and that the adoption of this boy and the making provision for him were required as the condition on which Captain Norton was to obtain Miss Hilliard's hand. The Bill proceeds to allege, that after the execution of the deed, Captain Norton was kept so completely under the control of the Hilliard family that he was unable to make any effort to impeach the transaction. These charges, grave enough in themselves, are put forward in the Bill in much stronger terms, and most of them have been repeated in no very measured language by the plaintiff's counsel. No doubt the plaintiff in taking such a proceeding as the present, has to encounter much difficulty. The only person besides those opposed to him who could throw any light upon these transactions is dead, and the plaintiff was obliged to spell out the case as best he could from the scanty materials at his command, but I must at the outset, in justice to Mr. Hilliard, or say that there was no justification from the facts known to the plaintiff, or from any legitimate inferences to be deduced from them, for the manner in which many of those charges were put forward in pleading. This subject I shall have occasion to revert to. It will be my duty to analyze the evidence to ascertain how far any of these charges have been substantiated.

Before doing so, I shall consider what the rules of equity applicable to such a transaction are.

It has been contended for the defendant, O'Brien Osborne Hilliard, that this is not a mere voluntary deed in its inception, and also that it may be supported as for value on the consideration supplied after its execution, by the residence of Mr. O'Brien Osborne Hilliard with Captain Norton. As to the first of these propositions, I must enquire from whom the consideration to Captain Norton moved, and what it was. I cannot hold that any valuable consideration moved from the father, who was relieved from the future support of this boy. The only consideration that can be imagined as moving from him, is his giving a consent to his son living with and being supported, educated, and provided for, by Captain Norton. This is not a valuable consideration. Then, did any move from the son? Certainly not; he was no party to the deed, nor would he, an infant, have been bound by it if he were. Neither stipulated for services of any kind being rendered to Captain Norton by O'Brien Osborne Hilliard, nor even for the shortest continuance of O'Brien's residence with Captain Norton, so that it is vain to contend that there was originally a valuable consideration. Nor can I accede to the second proposition as I do not think that O'Brien Osborne Hilliard was induced, on the faith of this deed, to do any act of such a nature as to make that for value, which before was voluntary. I do not understand how a deed, in itself voluntary, can be retrospectively changed into one for value. The case cited in support of this construction (*Crosbie v. McDoual*, 13 Ves. 148), was one where a gentleman wishing to provide a house for a lady, entered into a treaty through an agent to purchase and pay for it. But at his request this was done in the lady's name, and the

conveyance was made to her, and she covenanted to pay the price. It was held that, in undertaking this legal liability for him, she did so on an implied promise from him to indemnify her. Here O'Brien Osborne Hilliard incurred no obligation to Captain Norton, or any one else, to do anything. He continued, of his own free will, an inmate of Captain Norton's house, which he might have left when he pleased. As to his losing the opportunity of advancing himself in life, I have no evidence that he was debarred from so doing. His residence with Captain Norton was not for the rendering any services to him in any capacity, but it is said, as a son, and one of the defendant's witnesses stated a conversation with Captain Norton, in which he expressed an intention to bring him up to some profession. But if the deed, when executed, was voluntary, it appears to me fallacious to argue that it is not to be judged in respect of the mode of its procurement and execution by the rules applicable to voluntary deeds, because afterwards something happened which is contended to have in some way imparted to it a consideration. I must therefore treat this as a voluntary deed. There is not of course anything to prevent a man from making a voluntary disposition of his property inter vivos, any more than by his will, and if he, understanding the nature of his act, and without fraud, surprise, or undue influence, make such a gift, it will not be interfered with by this Court, no matter how unreasonable or improvident it may appear. But in the case of a voluntary gift, the Court will scrutinize the transaction closely, especially when the donee obtains a large pecuniary benefit, and will require him to establish that the person giving him that benefit knew and understood what it was that he was doing. Lord Romilly, in *Cooke v. Lamotte*, 15 Beav., 240, and *Blackie v. Clarke*, 15 Beav., 600, still goes further, and holds that in every such case the onus lies on the donee of proving that the transaction was fair and honest, and the bounty purely voluntary, and not produced by undue influence or misrepresentation. It is perhaps going too far to apply this rule to cases where no fiduciary relation or special circumstances exist, and so would appear to be the opinion of the same learned judge in the case of *Haghton v. Haghton*, 15 Beav., 299, where he says that the donee in such a case gives the necessary proof, if it is shown that the donor knew and understood what it was that he was doing. Perhaps it is confining the principle within too narrow limits to deal with it as a question of onus of proof. The true rule appears to me to be, that in the case of a voluntary gift where there is neither fiduciary relation nor special circumstance shown by the party impeaching it, the Court will not set it aside, unless fraud, surprise, or undue influence be established affirmatively by the plaintiff. On the other hand, where any relation is shown to have subsisted between the donor and donee, by which the donee might have exercised undue influence over the donor, this Court will set aside the transaction, without any further proof, unless the donee is able clearly and satisfactorily to establish the bona-fides of the transaction, and its freedom from any influence flowing from such relation.

This most valuable jurisdiction is not confined to the relations between any specified classes of persons, but, in the language of Sir Samuel Romilly, in *Hughes v. Baseley*, 14 Ves., 273, which has been adopted so frequently by judges of this Court as to give it the full force of a judicial decision, "the relief stands upon a general principle applying to all the variety of relations in which dominion may be exercised by one person over another". In *Smith v. Baye*, 7 H. L. Cas., at p. 779, Lord Ringsdown says: "The principle applies to every case where influence is acquired and abused, where confidence is reposed and betrayed. The relations with which the Court of Equity most ordinarily deals are those of trustee and cestui que trust, and such like. It applies specially to these cases for this reason, and this reason only, that

from these relations the Court presumes confidence put and influence exerted, whereas in all other cases, where these relations do not exist, the confidence and influence must be proved extrinsically, but where they are proved extrinsically, the rules of reason and common sense, and the technical rules of a court of equity, are just as applicable to one case as the other." But even where no such relation properly so called is shown to exist, there are many cases where the special circumstances require this Court to call upon the donee to show affirmatively that the transaction was fair. Practically this class of cases does not form an exception to the rule, as there the Court, from the existence of these circumstances, such as the age and infirmity of mind of the donor, the improvidence of the gift, and the like, will require less proof of unfairness from the plaintiff, to cast the burden of proving the fairness of the transaction on the defendant. In showing extrinsically the existence of confidence or influence, proof is certainly not confined to direct evidence of the confidence having been actually reposed, or the influence used so as to produce the act complained of. This in most cases would be unattainable. It is sufficiently supplied by circumstances showing that the donor was readily susceptible of influence to do the act, and that the donee was in a position with regard to him which rendered him capable of exercising such influence. To use the words of the Master of the Rolls in *Hoghton v. Hoghton*, 15 Beav., 299, "if, besides the obtaining the benefit of the voluntary gift from the donor, the donor and donee were so situated towards each other that undue influence might have been exercised by the donee over the donor, then a new consideration is added". It is not possible to lay down any precise rule on this subject, as each case must be decided on its own circumstances, but when once the Court is satisfied by such evidence that undue influence may have been exercised in the transaction, it scrutinizes it with jealousy, and expects to be satisfied by the donee that such influence was not exercised, either to procure the act itself, or to produce in the mind of the donor the intention to do it.

Rhodes v. Bates
12 R. 3, App. 252

In entering upon such an inquiry some of the most important heads of evidence are the mental capacity and power of the donor; the probability and reasonableness, or the reverse, of the act itself; the opportunities of the donor of obtaining independent advice, and how far he availed himself of them; the nature and extent of the connection and intercourse between the donor and donee; and the motives which may be supposed to have led the donor to make the gift.

I shall now proceed to consider the evidence upon all these matters, and first as to the character of mind of Captain Norton.

Adverse

The earliest evidence on that subject is supplied by Dr. Kirkpatrick, who knew him intimately from 1847 to 1857, and was his medical attendant from 1847 to 1850. He describes him as very shrewd, of good mental capacity, and perfectly free from delusion. From 1857 to the latter part of 1862 he lost sight of him, and from that time to his death he had no sufficient opportunities of forming a satisfactory opinion as to his mental condition, as he only met him occasionally and casually in the streets for two or three minutes at a time. But on the said occasions he did not observe any change in his mental capacity. He seemed much surprised at hearing the facts proved in this case as to Captain Norton's having proposed for the ladies mentioned in evidence, which he had not previously heard of, and stated that these facts would lead him to think unfavourably of his intellect.

Adverse

The next witness in point of time was Mr. Keating, a young gentleman who became acquainted with Captain Norton about 1861, the acquaintance originating, it would appear, in some matters relating to an archery club, and who stated that he knew Captain Norton

intimately till his death; and he describes him as one of the most shrewd and knowing men whom one would meet. He said that, in the spring of 1864, Captain Norton had spoken to him about some love affair of Captain Norton's, and that he spoke a good deal about ladies, which, he said was a general failing of his.

It appears that in the year 1862, or the beginning of 1863, Captain Norton left Kingstown, where he had been residing, and went to live at Bray, and from that time we have evidence as to his character and capacity from several witnesses. Mr. Treacy, Dr. Whistler, Mr. Thomas, and Mr. Tozier, on the part of the plaintiff; Messrs. Quill, Shaw, and Mathews, and Mrs. Bonham, on the part of the defendants, besides the evidence of the Hilliard family and Mr. O'Beirne. Who must be looked upon in a different light from the others, being actors in the transaction in question.

As to his intellect, all these witnesses agree in describing him as naturally shrewd, intelligent, and acute, and as quite capable of understanding a deed like that impeached, if he applied his mind to it. He is represented by several of them as a person of superior education and refined mind, and by all as an upright honourable man. But all the witnesses with whom I am now dealing, except Mr. Quill and Mr. Mathews, who were not examined by either side upon the subject, state that he had peculiarities, the nature and extent of which it is necessary to endeavour to ascertain. These peculiarities were not such as to show incapacity to understand what he was doing, but are strongly relied upon by the plaintiff, as showing him to be weak and easily imposed upon in reference to the subjects of them. They were two, one an engrossing opinion of the importance of his inventions for the improvement of projectiles and of his claims on the country which had never been fairly acknowledged, and remained unrewarded; the other, an extraordinary liability to falling in love. The former was, in my opinion, no proof of weakened mind, and although it formed for years the principal topic of his conversation and appears to have absorbed nearly all his thoughts, I see nothing in it indicative of unsoundness. He may have made important inventions, and he may have, like many others, being slighted and unappreciated so that his complaints may have been just and his pretensions well founded. The utmost to which the evidence carries this point is that he was liable to be imposed on by any persons who could induce him to think that they could advance his claims, and that he could have been thus influenced by such persons to do acts which he would not otherwise have done. I have not, however, been able to discover in this case any evidence of his peculiarities on this subject being taken advantage of to induce him to adopt O'Brien Hilliard, or to execute the deed in question. The other peculiarity is, however, of much more importance. It appears by the evidence of Mr. Shaw, that down to the end of the year 1862, Captain Norton could not, as he expressed it, afford a lady a good word, and he had lived to the very advanced age of seventy-five, or thereabouts, a bachelor. But in the year 1863 a sudden and extraordinary change came over him in this respect. In the summer of that year he fancied himself violently in love with a lady of high rank, large fortune, youth and beauty; and, without any acquaintance with, or even introduction to her, so far as I can ascertain, this old man actually proposed for her. He was led by his desire to obtain favour in her sight to subscribe a sum of £50 to the building of a church, a matter stated to be very inconsistent with his former habits. Not only this, but he spoke openly to his acquaintances of his having so proposed, and being refused, as of course he was, if he got any reply. These facts plainly show that his mind had, on this subject at least, lost its strength, and, perhaps, even its soundness.

In the month of September, 1863, very shortly after this occurrence, he was introduced to Mr., Mrs., and Miss Hilliard, at a dinner party at Captain Whitley's, an old friend and brother officer. It is not unimportant to notice that at this house Captain Norton had openly spoken before this of the former affair, and I cannot doubt that it was frequently the subject of conversation there. Mrs. Hilliard stated that she did not hear of it till after the 30th of September, and I am willing to believe her statement. Captain Norton appears to have taken a similar fancy at first sight to Miss Hilliard, a girl of nineteen, and Mrs. Bonham stated that he informed her, in a day or two after they were introduced, that he intended to propose for her. I shall presently deal with the circumstances of this proposal. These it appears were not his only fancies of this kind, and from the beginning or middle of 1863, ladies appear to have shared his thoughts and conversations with his inventions: such a change in a man of his very advanced age, leading him into such absurdities, indicates the existence of a weakening of his mind on this subject to no trifling extent. This weakness would naturally expose him to be unduly influenced to do unwise and imprudent acts, connected with, or springing from the fancy that possessed him.

Captain Norton, in a very short time after he had been introduced to Miss Hilliard, and had announced to Mrs. Bonham his intention of proposing for her, called at Mr. Hilliard's house, and paid an ordinary morning visit, and may have met her once again, before the 30th September, at Captain Whitley's, but there is no evidence or allegation of any other meeting. However, before that day, he had made acquaintance with one of her brothers, not O'Brien, probably De Vere, and had made him the rather valuable presents of a double-barrelled gun and a revolver, his object being most probably to ingratiate himself with the family, and thus help his suit. On the 30th of September he paid another morning visit at Mr. Hilliard's, and on leaving left with Miss Hilliard a letter, which she and her family were greatly surprised to find, after he had left, was a proposal. The language of it is very important; he begins by speaking of Miss Hilliard's youth, and says, that if accepted, he will do all in his power to make her independent, in other words to make a good settlement upon her, he makes no allusion to his own age as any possible obstacle, but considers the possibility of Miss Hilliard considering herself yet too young, not for him, but to leave her father's house, and begs that in that event he may be allowed to continue his acquaintance with the family, and he shows that the presents to her brother were given with a view to this suit, as he thinks it necessary to request that, if he were not accepted, these presents would not be returned. I draw two very important inferences from this letter, first, that his hope was, that by continuing his acquaintance, he might, when the young lady was older, be accepted; and secondly, that he looked to the friendship of her brother as an important element in his favour. Mrs. Hilliard says that she thought this proposal showed great presumption, as, no doubt, it did. To the question, whether she did not think that it also showed great folly? she gave the rather remarkable answer, that she did not, after she heard, in a week or a fortnight subsequent, that he could settle a handsome jointure. According to her statement, therefore, when the reply was written, she, and of course her husband, thought the proposal both very presumptuous and very foolish. What reply, then, might have been expected? In the words of Mr. Hilliard's Answer, "An instant and absolute refusal by his wife and himself, and also by his daughter." But was this so? First—Captain Norton was never refused by the daughter herself, nor was any refusal given by any of them, except by the letter of the 2nd of October, written by Mr. Osborne Hilliard. I pass over the complimentary expressions in the commence-

ment of it, which may mean something or nothing. But I find that the reason assigned for declining the offer is the youth of the lady, being the only contingency contemplated by the proposal; and Captain Norton's request to be allowed to continue his acquaintance is, in most flattering terms, complied with. The letter speaks of an intimacy as existing, but it consisted only of two or three morning calls, made with no other object than to pay court to the young lady, and of that intimacy the long continuance is hoped for. To a man of suitable age and position that letter would have been an encouragement to persevere; how much more to an old man of seventy-five, "presumptuous and foolish" enough to propose under such circumstances for a girl of nineteen. In writing that letter, I do not attribute to Mr. Hilliard any crafty design; he may have meant it, as he says, for a polite refusal; but that is not the meaning which it appears to me calculated to convey to this amorous old gentleman.

Miss Hilliard then goes from home for a few weeks to avoid meeting Captain Norton, a matter which would have been much more easily accomplished by politely declining his future visits. What Captain Norton himself thought of the reply is shown by Mr. Tozier's evidence.

He was in the habit of conversing with him nearly every day, and he fixes the date of his first speaking to him on the subject before the 14th of October, as when it occurred Captain Norton was living at the International Hotel.

He says that Captain Norton told him that he was "all right this time," alluding to some prior unsuccessful affair; "that he was to be married to Miss Hilliard; and that he had taken expensive lodgings in consequence."

This conversation was, he says, repeated almost every day for a month or six weeks. I can have no doubt of the accuracy of this evidence, the witness being perfectly disinterested and a man of intelligence and business habits, and it is worthy of remark that he was not cross-examined. I am aware that Mrs. Bonham stated, that in about a week after he had first spoken about Miss Hillard, he told her that he had proposed and been refused. I can hardly suppose that Captain Norton was so irrational as at the same time to tell one person that he was refused, and another that he was accepted; and if it were necessary to decide between conflicting statements, I should have no hesitation in relying upon Mr. Tozier's evidence, more than on Mrs. Bonham's. But I think that they may be reconciled by taking Mrs. Bonham to be in error as to the time of the conversation, she in other places not being very clear as to dates; or, perhaps, by considering her evidence on this subject as being rather an inference drawn by her from what she heard from Captain Norton. Mr. Shaw says that, about the end of 1863, Captain Norton told him that he had proposed for Miss Hilliard, but was declined; but the vagueness of the time renders this of little moment.

The events of the very important period between the proposal and the 27th of November, are left in much obscurity, and depend almost entirely on the evidence of the Hilliards. It is clearly proved that Captain Norton went to his lodgings at Goldsmith Terrace on the 14th of October; that some time after De Vere Hilliard went on a visit to him; that O'Brien Hilliard soon afterwards became an inmate of his house, De Vere returning to his father's; and that some time before the 27th of November, Captain Norton expressed a wish to adopt O'Brien. So far all are agreed.

The evidence of those members of the Hilliard family who have been examined, goes into some detail as to what occurred in this interval. Mr. Hilliard states that, about the 8th or 10th of October, De Vere Hilliard went on a visit to Captain Norton at Bray. How this occurred, no explanation is given; and, for the reasons already stated, I have no doubt that

at that time Captain Norton was full of his fancy for Miss Hilliard. It was certainly calculated to keep up that feeling in his mind, and was a compliance with the request in his proposal for the continuance of the acquaintance. Mr. Osborne Hilliard states that about the 10th or 15th of October, Captain Norton requested him to allow O'Brien Hilliard to go on a visit to him, and that he consented. I find it impossible to reconcile this with the evidence of O'Brien Hilliard, who swears that he went out merely to see his brother De Vere, and without invitation; and that he had no acquaintance with Captain Norton previously. Mr. O'Brien Hilliard says that he went there without being prepared to stay, and the substance of his evidence on this matter is that, having gone out merely to see De Vere, who had been away only two or three days, and having then first made Captain Norton's acquaintance, he was invited to remain, and did so; that De Vere went home the next day, and that he remained for about a week, though he took no clothes with him, and then came home to get his clothes, intending to return, and that he did return after a couple of days. He does not say a word as to who invited him, or under what circumstances he stayed at first, or returned afterwards. He says that, about a week or fortnight after his return, Captain Norton first proposed that he should live with him. This statement is not on its face a very probable one, and I can believe it only on the assumption that Captain Norton was not then in the possession of those qualities of shrewdness and good sense which he has got credit for. Mr. Osborne Hilliard states that, about a fortnight after O'Brien went to Captain Norton's, Captain Norton called on him, expressed the greatest attachment for O'Brien, and said that he was most anxious to adopt him, and that, if he were allowed to do so, he would make a handsome provision for him. On cross-examination he states that this occurred about the 15th or 16th of October, and that the first invitation was about the 8th or 10th. Mrs. Hilliard states that a little after O'Brien had gone on the visit, Captain Norton called on her, and expressed a similar wish, and that she at first opposed it. Mr. Osborne Hilliard states that in the first week in November, Captain Norton again called at his house and repeated his request, and that he again told him that he would think of it. Mrs. Hilliard says that within a fortnight or three weeks after his first mention of the matter to her, Captain Norton called on her, and said that he would provide handsomely for him after his death, but still she did not consent. The time, which she does not anywhere fix, must have been much about the same time as to the last interview which I have mentioned with her husband. On the 9th of November there was a dinner party at Mr. Hilliard's, and of this date there cannot be a doubt. Captain Norton dined there, and I am disposed to think that Miss Hilliard had returned, and was also present; and up to that time, Mrs. Hilliard says that she had not given her consent to the adoption, but she did so in a week or ten days after. Mr. Osborne Hilliard says that about the same time, namely about the middle of November, Captain Norton called on him for the third time on this subject, and offered to settle £100 a-year on O'Brien, and that he then, for the first time, consented, and that Captain Norton thereupon produced a printed rental of his property, and begged of Mr. Hilliard to get the necessary deed prepared. Mr. Hilliard inquired as to his title to the lands, and suggested, he says, that his agent, who he knew was Mr. Lyons, a solicitor, should give him the required information on this head. The date of this he fixes as the 22nd or 23rd of November, by the letter of Captain Norton to Mr. Lyons on the 23rd. All these details are calculated to lead to the conclusion that this proposal emanated from Captain Norton; that it was reluctantly complied with by Mr. and Mrs. Hilliard after it had been repeatedly pressed upon them, and that the acceptance of it was the result of Captain Norton's deliberate

perseverance. Mr. and Mrs. Hilliard's history of the transaction is, at least, a plausible one; but only so, if it be assumed that Captain Norton's conduct on this subject also was very singular and eccentric. It is rather startling to one's common sense, that a man who had lived alone to his advanced age, should so suddenly take a fancy to a boy of fifteen with whom he was previously wholly unacquainted, whose family he had never known till a month or so before, whose abilities or disposition he had no opportunity of forming a just opinion of, and should in a very few days conceive the project of adopting him as a son, and settling a provision irrevocably upon him. But when it is remembered that less than a month before he had, under the circumstances which I have mentioned, proposed for his sister, and fancied, as he well might, that he had not been finally refused, I think that a clue is afforded to what would otherwise be perplexing, and I am thus led to form the opinion that the inception at least of this fancy sprang from his absurd court to the young lady. His thoughts were running in the same channel as when he before then made the presents to another brother. I have proceeded thus far on the evidence of the defendants as correct. I have now to deal with the evidence of a witness which, if true, upsets the whole of these details, and presents the case in a very different aspect. I, of course, refer to Hubbard. At the close of the plaintiff's case, I, for obvious reasons, was desirous to fix accurately the date of Captain Norton's removing from the hotel to Goldsmith Terrace, and stated that I should require clear proof of this before the case closed. After the evidence on the part of both the plaintiff and the defendant Osborne Hilliard had been given, Mr. Hubbard was tendered by the plaintiff to prove this date, and I examined him myself. He was the owner of the house where the lodgings were taken by Captain Norton, and he proved that he came there on the 14th of October. At the plaintiff's request I examined him also as to the time when the Hilliards came to stay there. He swore as a matter of fact, that De Vere Hilliard first went to stay with Captain Norton on the 21st of November, and that in two or three days after O'Brien came to the house to stay. Finding this evidence so remarkable, I allowed the defendant's counsel to cross-examine him, and it appears that he kept an account book, in which he charged Captain Norton with each breakfast and dinner supplied to him and his friends from day to day, and settled this account with him every week; and that on the 22nd of November he commenced to charge for extra breakfasts and dinners, and continued to do so thenceforward regularly. He also stated that these were supplied for the Hilliards regularly. I inspected that book carefully, and it appeared to me to bear out the witness's statement fully, and to have been kept so accurately and checked by Captain Norton so carefully as to lay it open to no suspicion. The only other entry I found in it of any moment, was one of two extra breakfasts between the 21st and 22nd of October, for whom supplied the witness could not say. Startling as this evidence may be, I find it impossible to disbelieve it, the witness not having the slightest interest in this case, not even being produced as the witness of either party, and refreshing his memory from a book kept in the due course of business, and from day to day, as these matters occurred, having a motive for charging everything that was supplied, and being checked from week to week by Captain Norton, whom all the witnesses represent as shrewd upon such matters. No application was made to me to recall any of the defendant's witnesses to contradict or explain this evidence, and although the proofs of the defendant, O'Brien Hilliard, had not then been made, and a witness on his part was subsequently examined, and it was open to him to examine others if he so desired. No attempt was made to rebut this statement. Painful therefore as it is to me to do so, I am obliged to believe these dates to be true, and so believing

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I cannot place any reliance on all those dates and particulars given by the defendants. I should be sorry to have to brand them as a concocted story, but true they cannot be if Hubbard has told the truth. The facts so stated by Mr. and Mrs. Hilliard, or most of them, may have occurred. But if so, either they all happened after the 21st of November, or there was a negotiation for the adoption of one of the sons before either of them went on a visit to Captain Norton, and therefore before he had even become acquainted with O'Brien Hilliard. If the latter alternative be true, which I can hardly think possible, the conduct of Captain Norton shows positive fatuity, a supposition destructive of the defendants' case. If the former, can any one believe that a man not blinded by some strange infatuation would, in three or four days, at the most, from first becoming acquainted, have seriously decided on adopting a boy wholly unconnected with him, providing for him in the way alleged, and authorising his father in haste to have a deed prepared binding him irrevocably to such a step? I have arrived at the conclusion that, whichever state of facts be true, that stated by the Hilliards or that by Mr. Hubbard, Captain Norton was, in the transactions which followed, acting under an influence, arising either from his sudden fancy for Miss Hilliard, or from a still more sudden and unreasonable fancy for her brother, working on a mind which on these subjects had become weak, and that the Hilliards must have been aware, not only from the information of others, but from the strange nature of the transactions themselves, that they were dealing with a person under such influence. I am bound then to see, and I think that the defendants are bound to prove that there was perfect good faith on their part, and that Captain Norton had all the protection that this Court deems a person under such circumstances entitled to. It is not enough to show that he understood what he proposed to do, and what he did; but that his judgment in forming the intention to do it was not warped by that influence; and that he had all the independent counsel and advice necessary to enable him to resist it; and that so armed he voluntarily conferred the benefit on the donee. I therefore proceed to consider the circumstances of the preparation and execution of the deed.

It appears that on the 22nd or 23rd of November, according to Mr. Osborne Hilliard's statement, Captain Norton begged of him to have the necessary deed prepared, handed him the printed rental for the purpose, and promised him a letter to Lyons to obtain the necessary information. He received the letter of the 23rd by the hands of De Vere Hilliard, and it is observable that it purports to introduce not Mr. Osborne Hilliard, but his son, described as Captain Norton's young friend, and who must have been De Vere, as appears by Captain Norton's superscription on the envelope. I refer to this only as a slight corroboration of Hubbard's evidence, which would show De Vere to have been just leaving Captain Norton's, after his short visit about this time. Mr. Osborne Hilliard was aware then, that Mr. Lyons was a solicitor, and the land agent, at least, of Captain Norton, and therefore, the most fit person for Captain Norton to place himself in the hands of for this business. That letter was never delivered, the excuse being that next morning Captain Norton called to prevent it, as he intended changing Lyons as his agent. Passing over the vacillation shown by referring to Mr. Lyons one day, and withdrawing that reference the next morning, and the very insufficient cause for it so assigned, I find that Mr. Lyons never was changed as agent, to the day of Captain Norton's death, that he acted for him as his solicitor in other affairs, and that Captain Norton told Mr. Treacy that Mr. Lyons had been a long time his land and law agent, and that he had the highest opinion of him. Under these circumstances, I can scarcely believe the statement of Mr. Osborne Hilliard, and if I do, it must be at the expense of Captain Norton's

capacity. But, whatever may have been the cause, Mr. Lyons was not applied to, or ever acquainted with the transaction. Mr. Hilliard states, that on the 24th of November, Captain Norton, after countermanding the application to Mr. Lyons, told him to have the deed prepared and sent to himself, and that he would take care that all was right, and requested him to have it done as soon as possible. This Mr. Hilliard admits that he undertook to do. It is surprising that a barrister of considerable standing and some practice, should, to say the least, have acted so unwisely as to undertake so grave a confidence. He thereby accepted the responsibility of becoming the legal adviser of this old man, in a transaction that imperatively called for the interposition of independent advice. That character he cannot now disclaim: his time to reject it was when it was offered. In the words of Lord Eldon, in *Huguenin v. Baseley*, 14 Ves. 273, "if a man does not choose to act upon the confidence appearing in the course of the transaction to be reposed in him, he ought to reject it as soon as possible." Mr. Hilliard employed no solicitor for himself; he was not bound in law to do so. But it adds to the improvidence of his undertaking to act for Captain Norton. He, with his own hand, prepared instructions for counsel for the preparation of the deed, and submitted them to a gentleman of high position and long experience, handing them to him in person, and, as that gentleman has proved, telling him at the same time, that a Mr. Cullen was the solicitor from whom they came, a statement untrue, to his knowledge. Mr. Hilliard had the advantage of direct personal communication with his counsel, and was informed by him most properly at the outset, and even before the first draft was prepared, that Captain Norton being a very aged man, and no relative, should be represented by a perfectly distinct solicitor. The draft was then prepared by counsel, who plainly in this transaction, was employed by Mr. Hilliard, and acted throughout as his counsel, and not as the counsel for Captain Norton. These instructions have not been positively identified by the gentleman before whom instructions were laid. They purport to be instructions to prepare the draft of a deed to be executed by Captain Norton in favour of O'Brien Osborne Hilliard, a minor, third son of Osborne Hilliard. They state that Captain Norton appeared to have completely gained the affections of the minor, and that he had proposed to adopt him as his own child, and so forth, and to settle on him and his heirs an annuity of £100 per annum, to commence from the day of the death of Captain Norton, that Captain Norton had handed Mr. Hilliard the printed rental of his lands (which was sent therewith) to be charged with the annuity; and that Mr. Hilliard would get the necessary information on the title, and send particulars to counsel; and that Captain Norton was very desirous of completing the arrangement proposed as soon as possible. Nothing can be more plain and simple than these instructions; and it would be expected that counsel would without difficulty or doubt have prepared a draft binding Captain Norton to maintain the boy suitably during their joint lives, and charging for him and his heirs a perpetual rent charge on the lands in the rental. It appears that before any draft was prepared, there was a conference between Mr. Osborne Hilliard and his counsel on the subject, and that the original draft was prepared that day, and sent to Mr. Hilliard, and that next day they met again in the Law Library, and read over the draft together, and alterations were made in it by counsel at Mr. Hilliard's suggestion. I have taken every pains to ascertain from the draft the different stages which it went through, and have satisfied myself as to what they were, and with much pain, I have arrived at the conclusion that there are grave grounds for suspecting that the instructions in proof are not those from which the draft was originally prepared. It originally rested wholly in covenant, and contemplated a provision by subsequent deed or will, the amount of the annuity which was to

no evidence of this

32.106.115.121
125

be provided was left in blank, it was to continue during O'Brien Hilliard's life at the least, and instead of the annuity, Captain Norton was to have had the option of leaving to or securing for him a sum (left in blank) at the least, payable at Captain Norton's death, and charged in priority on all his assets. It bound Captain Norton to keep a horse for this boy's use. I shall now read the draft as I think, beyond all reasonable doubt, it stood at first:—"And further that the said Norton will either by his last will and testament or by some further deed to be executed in his lifetime, charge and encumber all his property, real and personal, or some fully adequate portion thereof, with an annuity or annual sum of £ , at the least, for, or for the use of the said [O'Brien Osborne Hilliard, same to continue during the life of the said term of his natural life, at the least], or will in lieu and stead thereof bequeath to or secure for the said O'Brien Osborne the sum of £ , at the least, the same to be payable to or to the use of the said O'Brien Osborne Hilliard, immediately upon the death of the said Norton, and to be a charge on all his assets, real and personal, in priority to all legacies and voluntary charges created by his will."

Fac-simile
of the draft of
the V.C. in
his judgment.

It is impossible for me to believe that any counsel would have departed so widely from simple written instructions, and drawn on his imagination for these provisions. The counsel employed was certainly a most unlikely person to do so. He must, therefore, have prepared this original draft from verbal instructions of Mr. Hilliard, who, in such case, must have offered some excuse for delaying to give written instructions, and supplied those in proof afterwards, or there must have been other written instructions for the first draft. Whichever of these suppositions be true, how can I doubt that if this old man, who reposed such confidence in this matter in Mr. Osborne Hilliard, gave any specific directions as to this provision for O'Brien Hilliard, he gave those in substance according to which the draft was first prepared? The alterations were not matters of form, but of very substance, and above all, that which touched the duration of the annuity, "the life of O'Brien O. Hilliard at the least." Could an experienced and skilful conveyancer, with the alleged written instructions before him, or with verbal instructions in substance corresponding with them, have inserted such a clause as that? But that is not all. This draft was altered into an intermediate state before it was finally disposed of. Some parts of these alterations are obliterated with such extraordinary pains that I have been unable completely to discover the words, but I have succeeded, after much difficulty, in reading a few words in the beginning of the first of these obliterations, viz.: "and to continue", and a few words at the end, viz.: life of the said O'Brien O. Hilliard." The second obliteration is still more effectual, and although I think that I have discovered some of the words, I do not consider myself justified in asserting what they are. The word "heirs" did not occur in any place, and the provision for the annuity was for the life of O'Brien Osborne Hilliard at the least, and was not a grant out and out to him in fee. But there are legible words preceding and following the second obliteration which put the matter beyond any doubt, viz.: "together with a proportionate part of the said rent charge accruing between the last gale day preceding the", then follows the obliteration, and after it came, "and the day of his death", making it a matter of certainty that this annuity was only for the life of O'Brien, whose must be the death here referred to. It could not be Captain Norton's death, as the first gale was to be paid on the day after the death of Captain Norton. The draft ran thus, as far as I can read it:

"And this indenture further witnesseth that for the considerations aforesaid, he the said

Norton doth hereby charge and incumber the several lands and premises following,
that is to say the lands of situate in the barony of

Fac-simile.

*Draft as it
originally stood*

*Alteration
1st alteration*

and county of Meath, with an annuity or yearly rent charge of £100 sterling, payable to and to the use of the said O'Brien Osborne Hilliard, his executors, administrators, and assigns, the first gale thereof to be payable to the said O.B. O. Hilliard on the day after the day of the death of the said Norton, and to be payable by half yearly payments, commencing from said [day and to continue

Fac-simile:

Fac-simile.

life of the said O'Brien O. Hilliard] together with a proportionate part of the said rent charge accruing between the last gale day preceding the

Fac-simile.

[and the day of his death, with full power, in case any of the said half-yearly gales should be in arrear, to distrain upon any parts of the said lands and premises, for recovery of said gale or gales which may then be in arrear", etc., etc.

Therefore, even in the altered draft, the duration of the annuity was for the life of O'Brien Hilliard only. It was, however again altered, and then at last made to correspond with the instructions given in evidence, save in this, that I am not satisfied that the amount of the annuity was expressed. It occurs but in one place, and is then inserted in figures which look to me as if filled in after the draft was prepared. But what leads me to the belief that they were is, that in the fair copy made at the time by Osborne Hilliard, the blanks in the draft for the parcels were so left, and afterwards filled; and just in the same way it is evident that there was left a blank for the amount of the annuity, which was filled in afterwards (but when, I cannot of course, discover) with the words "one hundred." This becomes the more important from what appears in a later document. All these circumstances raise a doubt, a very grave doubt, in my mind as to the proved instructions being the instructions first given to counsel. But, however this may be, I have arrived at the conclusion that when Mr. Hilliard first instructed his counsel, he had not ascertained from Captain Norton that this was to be anything beyond a life annuity. He does not pretend to have had any communication with him between that time and the sending him the copy of the draft, so that he must have taken upon himself to instruct his counsel to change the draft into the form which it assumed when so copied, without the authority of the man who confided to him the preparation of the deed. But Mr. Hilliard was repeatedly warned by his counsel, that Captain Norton should have the aid of an independent solicitor, and under the circumstances which I have mentioned there surely never was a case in which this was more necessary. Yet what does he do? He gets this draft settled after his own fashion, and sends it to Captain Norton on the same day on which it was discussed with counsel, altered, re-altered, and copied; with a letter dated the 28th of November, stating that he had requested the gentleman named to prepare the draft of a deed to carry out his (Norton's) wishes, and encloses him a copy of it for his perusal. He adds, that counsel considered it necessary to have the draft approved by a solicitor on his part. Here Mr. Hilliard greatly failed in his duty, for he was bound then and there to have insisted on Captain Norton's employing an independent solicitor, and refusing to go further till the draft was approved of by him. The draft could not have reached Captain Norton till late in the afternoon of the 28th, and yet I find his approval at foot written the same day, and the draft was returned by Norton in person on Monday, the 30th November. Mr. Hilliard then accepted, notwithstanding the repeated warnings of his counsel and his own professional knowledge of his duty, an approval binding this old gentleman to the draft so prepared without his having had the aid of any professional adviser, or the time to deliberate on its nature or effect,

2nd alteration

p. 35

The 29th was Sunday

and having young Hilliard as the only inmate of his house, I am forced to the conclusion that Mr. Hilliard avoided such intervention intentionally, and avoided it because he feared it. When he had once obtained the written approval of Captain Norton, he must have known that with a man of his high and honourable feelings he had gained his object as effectually as if the deed were executed. After that there was not the same need of haste.

On the 1st of December he had another visit from Captain Norton, who spoke about allowing O'Brien pocket money, which Mr. Hilliard verbally declined; and on the same day, strange to say, he received a letter from Captain Norton, but he has not put it in evidence. I think he said that he handed it to Mr. Costelloe, named in his reply. That reply was written on the 2nd of December, and is in my opinion of some importance. (His Honour read the letter.) Mr. Hilliard reverts to the subject of pocket money, although he had positively declined it verbally the day before, and thinks it advisable to recapitulate with great precision what he represents as Captain Norton's proposition. He three times calls O'Brien his (Captain Norton's) son, speaks of his paternal regard necessary for his future independence, which he says he fully evinced by the draft deed which he signed on the 28th of November, and, to use the words of the letter, "by promising to see your solicitor to have it strictly carried out" It appears, then, that the view presented to Captain Norton by Mr. Hilliard of the necessity of his having the advice of an independent solicitor, was but to have that draft to which he had so pledged himself strictly carried out. Whatever uncertainty there had been in the letter of the 28th of November on this subject, there was none here. All that a solicitor would have had to do was to have been for the benefit of Mr. Hilliard, and not for the protection of Captain Norton. In this letter also occurs the expression "unless other large and certain sources are available for him," and it is remarkable that, with all its particularity on other points, there is not anywhere mentioned the amount of the provision. The letter appears to have been written to obtain some kind of admission from Captain Norton of all the matters stated in it, and to bring him to something more certain and definite than the draft which he had approved, which was uncertain only as to the blanks it contained. It was replied to by Captain Norton on the 9th, in a strange letter, which does not anywhere in terms even advert to O'Brien or a provision for him. It mentions Mr. Lyons as his agent advising him as to his powers over his property. It speaks of his power to sell certain lands, and his not wishing to do so at present; says he was left £30 a year on certain lands; and speaks of his power to jointure, "if he marry"; and then rambles off to some notions about Mr. Barlow and poisoning; which were relevant to nothing. The letter in itself would arouse my suspicions as to the condition of mind of the writer.

Mr. Hilliard says that Captain Norton soon after called with a deed granting him a rent charge which was to be included in the property charged, and Mr. Hilliard afterwards made a copy of the draft which had been approved of by Captain Norton, and sent it with the draft so approved, and a copy of the deed of rent charge, to the same counsel who had been before employed. I think it is much to be regretted that that learned gentleman, who from the papers sent him, must have seen the approval of the draft by Captain Norton himself, and observed that no solicitor had been employed on the part of Captain Norton, did not then decline to settle this draft till his advice on that subject, given so long before, had been complied with. He altered the draft sent him, the only change of importance being the addition of a personal covenant for the heirs and personal representatives of Captain Norton for payment. The instructions for the introduction of it must have been verbal, and I cannot

3rd alteration
See p. 93

See Kelley says he
never saw such a
draft 115

find any proof that Captain Norton understood and authorized it. Mr. Hilliard was asked three times on his cross-examination, whether he explained to Captain Norton the nature and legal effect of this covenant. His only reply was, "I explained to him it would be satisfactory." To whom satisfactory? To Mr. Osborne Hilliard. Surely this was not exerting the influence which he acquired in this transaction for the benefit of the person subject to it, and not for the advantage of the person possessing it. Mr. Hilliard copied the deed so prepared, and sent it, he says, to Captain Norton about the 12th or 14th of December; but it is not alleged that any letter was sent with, or any explanation of it given, or the attention of Captain Norton called to the important alteration made in it. This could not have happened if Captain Norton had had the assistance of an independent solicitor.

There is no evidence of anything in reference to the deed between this time and the 16th of February, nor is any explanation given of the delay. But it appears there were several communications, both verbal and written, between Mr. Hilliard and Captain Norton; on other subjects during the interval.

On the 16th of February, a written communication was addressed by Captain Norton to Mr. Henry O'Beirne, solicitor, of a remarkable character. It has been given in evidence by the defendants, as a retainer of and instructions to Mr. O'Beirne from Captain Norton, to settle the draft on his behalf. The paper on which it is written, and the expression "after my post mortem", are not what might have been expected from a person in the position, and of the education of Captain Norton, but these are of very little importance. It is important to observe, that Captain Norton refers to a solicitor only for the sake of regularity and legal strictness, and that what he employs him for, is to see the annuity well secured, and to approve of the draft by which that annuity is to be settled. This tallies with Mr. Hilliard's letter of the 2nd December, and leaves no doubt on my mind that it was written at the suggestion, if not from the dictation of Mr. Osborne Hilliard, as indeed the first line of it shows in terms. It was not for the benefit of independent advice that this solicitor was employed, but at the wish of Mr. Hilliard, for the sake of regularity and legal strictness, to approve of the draft already prepared by Mr. Hilliard. Now, if the transaction was a fair one, and if a solicitor was really to be employed for the sake of Captain Norton, I think that the selection of Mr. O'Beirne was unfortunate. Captain Norton had no acquaintance with him, except that several years before, he had been the solicitor of a tenant with whom Captain Norton had some litigation, and that in October or November, 1863, he had met him at a Dinner party at Mr. Hilliard's and conversed with him on the merits of the Hilliard family, and of O'Brien Hilliard in particular. But he was the intimate friend of Mr. Osborne Hilliard, visiting and dining at his house, and dropping in in the evenings after dinner. There had been professional relations between them; he is thus shown to have been Mr. Hilliard's friend, not Captain Norton's, and all this time Captain Norton had an agent a solicitor, to the knowledge of Mr. Hilliard. Either then Mr. Hilliard, in some way, directly or indirectly, suggested the employment of Mr. O'Beirne, or if by some not very probable chance, Captain Norton himself suggested him, Mr. Hilliard, instead of objecting, as he ought, to his own friend being so employed, acquiesced in and approved of it. The draft then is sent to Mr. O'Beirne, not by the opposite party, as would have been the case in regular course, but by Norton, who by the letter which I have observed upon, limited the duties which he was to perform. On the draft, when sent to Mr. O'Beirne, no approval fee was marked, and Mr. Hilliard, before he prepared it, knew that it was to be sent to him. Mr. Hilliard was the person who should have paid that fee; none was

33.93.107.115.122

In approval of
Mr O'Beirne's letter
was written 8/12/64
See p. 93

ever paid to Mr. O'Beirne, nor was any demand of fee or costs, in respect of this business, ever made by Mr. O'Beirne upon Captain Norton. Mr. O'Beirne marked his fee on the back, but never asked Mr. Hilliard for it. Is it likely that he would have worked for nothing for Captain Norton, a stranger, and a man of substance? It shows still further his friendship for Mr. Hilliard, who have relinquished, for his benefit his legitimate professional charges. I do not hold Mr. O'Beirne to have been guilty of any connivance or collusion with Hilliard in this business. But I think that these matters derogate very much from the independence of his position as the protector of Captain Norton. He states that he went over this draft with Captain Norton, who appeared fully to understand the deed, and he asked him as to his title and so forth. He says that Captain Norton told him that his intention was to settle £100 a year on O'Brien Hilliard for ever, to take effect after his death, and expressed his wish to have it legally done. In fact, he repeated to Mr. O'Beirne the words in his letter. Beyond this Mr. O'Beirne did not go, and if I had merely to enquire whether Captain Norton understood this draft, I might perhaps be to some extent satisfied. But the duty of a solicitor under such circumstances is not fulfilled by such perfunctory acts. He is bound to ascertain from his client that he, as a reasonable man, of his own free will, and as the result of his calm and uncontrolled judgment, determines on making a voluntary disposition of his property, and to advise with him on these matters. Mr. O'Beirne did not do this. He went to Mr. Hilliard with the draft, is informed by him that it had been settled by counsel, and is shown the former draft signed by Captain Norton as approved of. He does not compare these drafts, nor did he know, till he was examined upon the subject, that there was a material difference between them. The amount of the annuity is everywhere, in the draft sent to him, written upon an erasure made with anxiety to obliterate what was first written, and so plain as readily to catch the eye. But this he never observed, and therefore asked for no explanation of. He then, in Mr. Hilliard's house, signs the draft unaltered, and leaves it for engrossment. He never called Captain Norton's attention to the fact that it was irrevocable; that, no matter how badly O'Brien Hilliard might turn out, he was still bound to maintain him; that if he died the next day, still his heirs were to have this charge for ever from Captain Norton's death; and that though Captain Norton bound himself by covenant to perform his part, there was no obligation on O'Brien Hilliard to continue with him, or on his father to permit him to do so. I attach great importance to the production by Mr. Hilliard to Mr. O'Beirne of the draft approved in writing by Captain Norton, which appears to have had the effect of completely satisfying Mr. O'Beirne. I think it shows the object of Mr. Hilliard in at once getting this approval, and the futility of the form of employing a solicitor when once Captain Norton had so bound himself. Mr. Hilliard then gets the deed engrossed, and sends it in the draft to Mr. O'Beirne. On the day following, the deed is executed in Mr. Hilliard's house, and I need not advert to the circumstances of its execution.

I have now gone fully through the evidence in the case down to the execution of the deed, and I have arrived at the conclusion that that instrument cannot be allowed to stand. I think the intention that led to it emanated from Captain Norton's sudden and foolish fancy for Miss Hilliard, or, if I take the dates as given by Hubbard, from a still more sudden and unreasonable fancy for the boy, her brother; that Mr. Osborne Hilliard, with full knowledge of the old man's weakness, availed himself of it, if he did not encourage it, to obtain from him this improvident deed without affording him the independent advice which he was entitled to. But, even if this were not so, I am of opinion that Mr. Osborne Hilliard accepted from

Captain Norton his confidence as to the preparation of a deed for the purpose of making some provision for the defendant O'Brien Hilliard, and that he not only failed in the discharge of the duties which that confidence entailed upon him, but that there was an amount of management, to say the least of it, in the preparation of the deed to his own advantage, and the possible, if not actual, prejudice of the man who confided in him, which amounts to fraud in the eye of this Court.

Having arrived at this conclusion, it becomes unnecessary for me to consider in detail the charge that Mr. Hilliard was in other matters the professional adviser of Captain Norton, and that a fiduciary relation thus subsisted between them. I must say that the evidence to sustain this, anterior to the execution of the deed, is slender, and I doubt that it would be sufficient to satisfy me that any such relation, leading to the transaction complained of, existed.

A good deal of evidence was given of matters which occurred between the execution of the deed and the death of Captain Norton, which I admitted only on the ground that there was some allegation by the defendants of acquiescence operating as a confirmation of the deed, and also that the Bill contained charges of very gross misconduct by the defendants during that period, which I thought it right that they should have an opportunity of meeting. As to acquiescence, there was but little urged by the counsel for the defendants, and the answer to it is, that, to maintain a defence on that ground, there must be a total cessation of the influence tainting the original transaction, and a knowledge that that transaction was impeachable. Here the influence of Mr. O'Brien Hilliard, who resided with this old gentleman till a day or two before his death, undoubtedly continued during that period, and must have been very considerable; and there is a good deal of evidence to show that Mr. Osborne Hilliard also had acted in many ways as professional adviser and otherwise for Captain Norton, which must have kept up that influence which he possessed with him before the execution of the deed. The lapse of time was not great; and there is no evidence to show that Captain Norton ever knew that the transaction was invalid. The whole contention of the defendants is to the contrary. The nature too of the gift is important, for the onerous part of it, namely, the annuity of £100 a year, did not become payable till after Captain Norton's death. I am therefore of opinion that if the transaction were voidable in itself, there was nothing which subsequently occurred to validate it.

Mr. O'Brien Hilliard cannot stand in any better position than his father. For him this provision was procured: and if wrongfully procured, he cannot have the benefit of it, even though he were himself a perfectly innocent party.

The defendants also have relied on the frame of this suit as entitling them to have it dismissed, on the ground that the case proved varies from that pleaded, and that the right to relief being based upon charges of gross fraud, which have failed in proof, cannot be maintained on any other basis. The first objection is applied to the absence of any statement of Captain Norton's weakness of mind in reference to falling in love; and the argument is, that the only weakness of mind relied on by the Bill, was in reference to his inventions, in which the plaintiffs have failed; and that the only charge as to his susceptibility is confined to the instance of Miss Hilliard; and that, as to her, the case is not one of weakness of mind, but of a designed and continued deception practised upon him by the Hilliards for their own ends, in proof of which the plaintiff has also failed. I cannot accede to this argument: for the important instance in which alone this weakness affects the present case, is put forward in the Bill, and though the gross deception charged to have been practised on him has failed wholly

in proof, yet there remains the fact, which to me seems so very important, namely, the fancy which thus took possession of him. The other instances of a like nature, the evidence of which was received without objection, as was also the general evidence of his state of mind on this subject, only go to sustain the allegation of a liability to influence connected with, or springing from, his fancy for Miss Hilliard. There was no surprise on the defendants on this subject, nor were they in any way embarrassed in their defence by the absence of the allegation of general susceptibility; and their evidence showed that they were aware of all these matters, which indeed, as far as any particulars were proved, came out upon the examination of the defendants and their own witnesses. As to the principles upon which such objections are dealt with by this Court, I need only refer to the judgment of Lord Cranworth in the case of *Smith v. Kaye*, 7 I. E. L. Cas. 763. "The first objection that was made on the part of the appellant, or at least one objection which I will deal with first, is an objection to the pleading. It was said that the fraud complained of is not stated in the Bill with that precision which the Court requires. Now, my lords, I should be very loth indeed to throw any doubt upon what was stated, that a court of equity, as well as a court of law, in suits instituted for the purpose of impeaching transactions for fraud, requires that it should be distinctly stated what that fraud is, so that the parties who have to meet it may know what the charge is, and therefore what the defence, if they have any, ought to be."

The other objection is grounded on the often quoted case of *Hickson v. Lombard*, L. R. I. E. L. 324. But that case, as have I before had occasion to observe, decides this only, that when the claim for relief is rested solely on the ground of fraud, facts stated in proof of fraud cannot be availed of to establish an equitable relation, irrespective of fraud, and thus entitle the plaintiff to a decree. That has no application to the present case, where relief can only be granted on the ground of fraud; fraud, too, not in the mere technical sense in which that term is often used in this Court, but moral fraud, proved or presumed, of greater or less degree.

But, in justice to the defendant Mr. Osborne Hilliard and his family, I cannot thus pass by the charges in this Bill. It is averred that Mr. Hilliard consented to the marriage of his daughter with Captain Norton, and desired that, in consequence of her youth, the celebration should be postponed for a year, and that on these terms Captain Norton kept up an intimacy with the family, while Mr. and Miss Hilliard had no intention that a marriage should ever be celebrated; and that Mr. Hilliard availed himself of this position to induce Captain Norton to spend large sums on his family; and that Miss Hilliard, by the directions of her father, although she had no intention of marrying Captain Norton, kept up a constant correspondence with him of such a nature as to keep him entirely under her influence and in constant company of the family; that at the time of the execution of the deed Captain Norton was treated as the accepted suitor of Miss Hilliard, and that the execution of it took place in the presence of the female members of the family; and that the adoption of O'Brien and the execution of this deed were represented by Mr. Hilliard as a condition preliminary to the marriage, which Captain Norton was assured would quickly follow. The Bill also states that Mr. Hilliard and his son, by constant interference and intimidation, reduced Captain Norton to a condition of abject submission and terror; that O'Brien Hilliard, in collusion with and by directions of his father, serruptionally possessed himself of and carried away a large amount of papers of Captain Norton's, comprising almost of the letters and documents relative to the transactions between Captain Norton and the Hilliard family, and that Captain Norton was so abjectly

subject to and in terror of Mr. Osborne Hilliard and his family, that he requested that the fact of his making his will should be kept secret, as, if the Hilliard family were informed of it, it would be his death warrant. These charges, so specific and detailed, were originally made, so far as appears, without any materials for proof. They were persevered in after express denial by the Answer; were again put forward in statement, and attempted to be justified in reply. In every particular of them the plaintiff has wholly failed in proof, and not only so, but in establishing any facts by which the allegations could be justified. They are charges of gross frauds committed at the expense of those feelings which ought to be among the dearest to every man. Of every one of these charges I acquit Mr. Hilliard and his family; I cannot too strongly condemn the putting of them forward. They have not even the excuse of being necessary to sustain the plaintiff's case. I should mark my sense of this impropriety, by refusing to the plaintiff all costs in this suit, but that I am obliged upon the established facts to come to so unfavourable a conclusion as to Mr. Osborne Hilliard's conduct in this transaction. In other respects, I can only dismiss so much of the Bill as contains these unfounded charges, with costs. I shall make a decree for the plaintiff, with costs, to be paid by the defendant, Osborne Hilliard, against which the costs so awarded to the defendants must be protanto set off.

I certify that the within is an accurate copy of the Judgment of the Vice-Chancellor, in the case of Eiffe v. Hilliard.

WILLIAM BARLOW,
5 North Great George's Street.

I allow of the foregoing being furnished to the party.

WILLIAM WOODLOCK.

January 18th, 1869.

No. 51.

Record No. 12.

COURT OF APPEAL IN CHANCERY.

IN CHANCERY.

Lord Chancellor.

Lord Justice of Appeal.

Monday, 31st day of May, 1869.

LUKE EIFFE, Plaintiff;
OSBORNE HILLIARD, O'BRIEN OSBORNE HILLIARD, and WILLIAM LYONS, Defendants.

Record and
Writ Office
copy, filed
day of
May, 1871.

Whereas, the Defendants, Osborne Hilliard, and O'Brien Osborne Hilliard, an infant, by Vandeleur Osborne Hilliard, his guardian ad litem, did, on the twenty-sixth day of January, one thousand eight hundred and sixty-nine, prefer their Petition of Appeal to this Court, setting forth and praying as therein is set forth. And whereas, the Plaintiff, Luke Eiffe, did, on the twenty-ninth day of February, one thousand eight hundred and sixty-nine, lodge his Case by way of answer to the said Petition of Appeal, and the said O'Brien Osborne Hilliard having died on the twenty-ninth day of January, one thousand eight hundred and sixty-nine. And whereas, by an order dated the eleventh day of February last, it was ordered that this suit do stand revived against the said Defendants, Osborne Hilliard and William Lyons; and this appeal matter coming on to be heard on the twenty-third, twenty-sixth, twenty-seventh, twenty-eighth, twenty-ninth, and thirtieth days of April, one thousand eight hundred and sixty-nine, in the presence of Counsel learned for the Appellant, Osborne Hilliard, and for the said Plain-

tiff, Luke Eiffe, upon opening and debate of the matter, and hearing the said Petition of Appeal and Case by way of answer thereto, as also the Vice-Chancellor's decree, dated the ninth day of December, one thousand eight hundred and sixty-eight, and the said order dated eleventh day of February, one thousand eight hundred and sixty-nine, read, and what was alleged by counsel, the matter was ordered to stand for judgment, and judgment having been this day given accordingly in the presence of said counsel, it is ordered by the Court that the Petition of Appeal in this matter do stand dismissed with costs, as hereinafter mentioned. And it is ordered that the decree of the Right Honorable the Vice-Chancellor of Ireland, dated the ninth day of December, one thousand eight hundred and sixty-eight, do stand affirmed. And it is ordered that the deposit of ten pounds, lodged with the Registrars, be handed over to the Plaintiff, Luke Eiffe, or to Samuel F. Adair, his solicitor, in part payment of said costs. And it is ordered that the Appellant, Osborne Hilliard, do pay to the said Luke Eiffe the amount of his costs incurred in this appeal matter, over and above the said sum of ten pounds, when such costs shall have been taxed and ascertained. And it is ordered that the Registrar of this Court do hand over to Samuel F. Adair, solicitor for the Plaintiff, the Deed of Annuity, dated the nineteenth day of February, one thousand eight hundred and sixty-four, and the Deed of Annuity, dated the eighteenth day of May, one thousand eight hundred and twenty-seven, in the pleadings in this cause mentioned.

. Dated 26th April, 1871.

J.W.A.G.
J.S.

O'HAGAN, C.
1st May, '71.
JAS. WALKER, A.C.R.W.

No. 52.

Copy Judgment of the Lord Chancellor.

EIFFE *v.* HILLIARD.

Judgment of
the Lord
Chancellor.

This is an appeal from the decision of the Vice-Chancellor, in a suit instituted by Luke Eiffe, the residuary legatee of Captain John Norton, against Osborne Hilliard, O'Brien Osborne Hilliard, and William Lyons, the executor of Captain Norton's will, for the purpose of setting aside an instrument executed on the 19th day of February, 1864, and granting Osborne Hilliard an annuity, perpetually charged on Captain Norton's property, for the benefit of his son, O'Brien Osborne Hilliard.

The prayer of the Bill was, that the deed should be declared fraudulent and void, and delivered up to be cancelled, and that the plaintiff should have other consequential relief.

The Vice-Chancellor made a decree in favour of the plaintiff, and the question for our determination is:—Should that decree be affirmed? I have felt much interest and some anxiety in the consideration of this case.

It is one of those in which the duty of the Court is as delicate as the just discharge of it is important to the interests of society. On the one side they touch most seriously the character of the individuals whom they particularly affect, and the general principles which take validity from contracts deliberate in their preparation and solemn in their forms; and on the other they require a scrutiny of the secret springs of action by which human conduct is prompted and controlled, and the interior workings of the heart and intellect.

Such a scrutiny is always troublesome in prosecution, and always doubtful in result, and it must be managed in the light of equitable doctrines, wisely established for the protection of the weak and the unwary, but lacking necessary precision in the definition of them, as they vary continually in their application to the changing circumstances of social life. I know of no cases in which the responsibilities of this Court are graver or its functions more difficult of fulfilment, and the responsibility is increased, and the function made doubly onerous when we are called on as an appellate tribunal to reverse a decision reached after a long and laborious examination of witnesses on the question essentially of fact, as it regards the ascertainment of the motives and feelings of men without the opportunity of seeing one of these witnesses, or judging of their comparative credibility by the living aid of language and demeanour. But we are driven to the best we can, and after pausing long and hesitating much, I do not see reason to differ from the judgment of the Vice-Chancellor, though I may not adopt all the views upon which it is founded.

The Bill impeaches the deed in question substantially in a double way. It charges that fraud was practised on the eccentric old man, through the weakness which he indulged as to certain supposed or real inventions, and as to his relations with women, and his desire to obtain a wife which led him to propose for the daughter of Mr. Osborne Hilliard, a girl of 19 years of age, and put him more or less under Mr. Hilliard's influence, which was used to procure for him wrongfully the perpetual annuity for Mr. O'Brien Osborne Hilliard; and it further charges that Mr. Hilliard placed himself in a position of trust and confidence towards Captain Norton in relation to the execution of the deed, that he accepted that position with all its responsibilities, that it thereupon became his duty to protect the old man, by seeing that he had independent professional advice and was thoroughly informed as to the nature and effect of the act he proposed to do, that this duty was not performed, but that on the contrary no such advice was provided for Captain Norton, and no such information supplied to him, and that Mr. O'Beirne, who was his nominal solicitor, was in reality the friend of Mr. Hilliard, regarded Mr. Hilliard's interest and not Captain Norton's as the paramount object of his care, and took no proper pains either to consider the legal operation of the deed, or to instruct Captain Norton about it. The charge is, that Captain Norton was really *inops consilii*, and insufficiently advised, or that at least his position, his age, his relations with the Hilliards, and the confidence which that gentlemen accepted at his hands, cast upon Mr. Hilliard the onus of shewing that he was not so unassisted and unadvised, and that as this has not been done satisfactorily, the deed cannot be allowed to stand according to the established principles of equity.

A preliminary objection was taken by Mr. Butt, on the ground that the Bill should be dismissed, because the charges of fraud on which it was founded had absolutely failed in proof, and that the plaintiff is not entitled to succeed on the grounds to which I have just adverted, as the case he makes in his pleadings is mainly a case of actual and wilful deception, practised by the Hilliard family in specified ways, through the instrumentality of the old man's affection for Miss Hilliard. I do not think this objection tenable, undoubtedly it would have been better if the case ultimately made at the bar had been more clearly and precisely made under the pleadings, and if very much of the statements by which that pleading was burthened and deformed had been omitted. It is plain that the advisers of the plaintiff, groping in the dark, did indulge largely in fishing fancies, and put forth a number of allegations without a shadow of proof.

The Plaintiff must suffer for those very wanton and very unwarrantable figments, by paying the costs arising from their introduction; but there is enough on the face of the Bill to open up the real questions in the case, and the Answer and the evidence demonstrate that those real questions were present to the minds of the parties, and were on both sides made the subject of controversy and proof.

I learn from the judgment of the Vice-Chancellor that the general statements of the witnesses were not objected to, and it is impossible to say that there has been anything of surprise or consequent miscarriage in the conduct of the proceedings. I adopt the opinion of Lord Cranworth in a closely analogous case in the House of Lords "that to listen to that objection now would be to regard form instead of substance" (*Smith v. Kaye*, 7 H. Lords' cases 757). And seeing that there has been no surprise and no injury, that on the Bill and Answer taken together, and taken in connection with the whole of the evidence given at a hearing which stretched through long weeks, it is manifest that the real issues were not misconceived or avoided on either side. I think I may safely dispose of these issues on their merits.

In *Archbold v. Commissioners of Charitable Bequests* (2 H. L. Ca. 440), Lord Cottenham said "if fraud be imputed and other matters alleged which will give the Court jurisdiction as the foundation of a decree, then the proper course is to dismiss so much of the Bill as is not proved, and to give so much relief as, under the circumstances, the Plaintiff may be entitled to." At the same time, I feel bound to express my great regret that such a pleading in many respects a romance, as Mr. Butt describes it, and he might have described it more strongly as a very slanderous and scandalous romance—should have been put on the files of the Court. It is the merest justice to Mr. Hilliard and his family to say that there is no shadow of pretence for the statement, that any consent was ever given to the marriage of Captain Norton with Miss Hilliard, by her father, or any member of his family, or that Captain Norton was ever kept in a state of fear or terror by that family, or any one of them, or that O'Brien Hilliard ever carried off any of his papers, or that he was induced, as an accepted suitor, to spend money largely on the Hilliards; or that Miss Hilliard kept up such a correspondence with him as to obtain an influence over him, in subordination to the evil designs of her father and her brothers. On that young lady such a charge is a gross and most groundless libel, and I am bound to say that I see no reason whatever to impute to her one act or word inconsistent with the strictest propriety and the highest sense of self respect. It is much to be lamented that the records of the Court should be made the vehicle of unmitigated falsehood; and the use of it is poorly justified, because it flowed from the affluent imagination of the Pleader's instructor, speculating on what might have been instead of speaking according to his knowledge. Coming then to the questions in the case. They are, as I have said, really questions of fact, and before I say a word of the law, as it bears upon them, I shall briefly state what seems to me to be the result of the evidence and the admissions as to the conduct and dealings of the parties.

[His Lordship here stated the facts of the case down to the employment of Mr. O'Beirne as the Solicitor for Captain Norton.]

How Mr. O'Beirne came to be selected is left in utter obscurity, although his intimacy with Mr. Hilliard seems beyond dispute. The engagement was not to protect Captain Norton, to inform him, and keep him harmless, but to carry out the arrangement already made with strictness, and to see that it was binding for the benefit of the donee of the annuity. Mr.

O'Beirne manifestly took the instructions in that sense, and acted upon them rather for the advantage of the donee than the doner. A fee was marked on the instructions, but no fee was paid, although there were ample means to pay it. This again is "a trifle light as air;" and why, if the transaction were an ordinary one, and Mr. O'Beirne was acting in the ordinary way for the protection of an ordinary client, was he not paid his fee? He acknowledged no obligation, and no favour to Captain Norton. But if he had been paid it, I doubt whether the payment would have been for sufficient consideration. Mr. O'Beirne appears to me to have regarded himself, and under the terms of the letter of the 16th February, to have been warranted in regarding himself as mainly interested for the protection of the grantee of the annuity. He declares on his direct examination that he gave to Captain Norton the benefit of his "independent professional assistance," but on his cross examination he is unable to say that he read to his nominal client every word of the draft of the deed. He read the recitals and other parts of it, but he cannot say that he read the whole. Then the draft that was approved of by Captain Norton on the 28th November was shewn to him by Mr. Hilliard, he could not say on his cross examination that he had read that draft through, but he is quite sure that he had compared the draft so approved of with the draft ultimately adopted. In fact he took no trouble, and acted under no sense of responsibility to the old man. His principal object in his examination of the draft was to see that the recital in the deed, as a certain rental securing the annuity was correct. He did not consult counsel on a matter certainly of much importance, and not without difficulty.

He did not examine the draft of Mr. Berkeley, as he says he assumed that Hilliard would not send a draft not settled by counsel. And it is perfectly plain that he never entered into any discussion with Captain Norton as to the terms of the deed, and never gave him any real explanation about it.

He never told Captain Norton, for the matter was unknown to himself, through his own indifference to enquiry, that the draft approved by him materially differed from the deed to be engrossed, by the insertion in the latter of an important covenant. He never pointed to the want of any covenant on the part of the Hilliard family, and of any legal reciprocity of obligation between the parties to the instrument. He did not explain to Captain Norton that the property would go from him for ever, though Mr. O'Brien Hilliard should die immediately after the execution of the deed. There was no statement that even if the young man survived he might go away at any moment, as he was bound by no legal obligation to remain, and his father was equally unbound by any to compel him to do so, and that if he took that course his benefactor's remedy, if remedy he would have, would be at best difficult and doubtful, and he sought through expensive machinery of a Court of Equity, if he was not disposed to submit for ever to the payment of the annuity, which in that case would have purchased nothing for him.

It is entirely inconceivable, that if a really independent solicitor had acted for Captain Norton, he would not have made the enquiries which Mr. O'Beirne pretermitted, and communicated the essential information which he never thought of giving, and could not have given, from his own indifference and ignorance of the character of the transaction, arising from his not very untrue appreciation of his position in it. He had been told in the letter of the 16th February, 1863, that he was employed at Mr. Hilliard's instance to see that the annuity was well secured with regularity and legal strictness; and acting fully in the spirit of that instruction, he regarded the protection of Mr. Hilliard's interest, and cared little and said nothing for the protection of the interest of Norton. That instruction must be taken on the evidence

to have been prompted by Mr. Hilliard, to have been in fact his instruction conveyed through the old man. It was the very opposite of that which ought to have governed the person chosen to guard in a jealous spirit the rights of one very incapable of self-protection, and for that instruction and its consequences, and Mr. O'Beirne's manifest failure, so to guard those rights, Mr. Hilliard must be held responsible.

I have not discussed the question whether the deed as to which the controversy has arisen, is to be regarded as purely voluntary. I incline to agree with the Vice-Chancellor that there was no valuable consideration for it, moving either from Osborne or O'Brien Hilliard. The father permitted the son to go to Captain Norton, but was so relieved from the expense of his maintenance, and promoted his advancement in life. The son was no party to the deed. I do not see that there was consideration for the gift. But even if there was I would say of it, in Lord Eldon's words, "It amounts to so little as valuable consideration that the Court would not be justified in paying much attention to it".

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The principles which shield innocence and imbecility from the wiles of fraud are not to lose their guardian influence, merely because there may be for an instrument, fraudulently procured, a scintilla of something like consideration. Neither do I propose to discuss the very division of the case, which belongs to the preparation of the successive drafts, before Berkley arrived at his final settlement of the draft; certainly it seems tolerably clear that originally the interest intended to have been secured to O'Brien Hilliard was only for his life, and it is very difficult to understand how the learned counsel, who according to the instructions produced should have made that interest perpetual, should have so deviated from them, if they were really before him, and it is equally difficult to reconcile the draft, so originally framed, with the supposition that Captain Norton had proposed to give, and Mr. Hilliard conceived his son was to obtain, an annuity for ever. I do not care to rest much upon this inexplicable circumstance, and the strange character of the drafts which have been submitted to our examination, as I am not sure that full enquiry was instituted about them in the Vice-Chancellor's chamber. I prefer to ground my judgment on facts which I think clear, and on evidence which is unequivocal. But this at least must be said, that it lay much on Mr. Hilliard to have explained this part of the transaction, and that he has not done so satisfactorily; and things being so, it comes positively in aid of the other circumstances of impeachment, which forbid us to allow the deed to stand.

For the law is clear in its policy and principal although it may be difficult of application in many instances. In the words of a great judge:—"Upon principles of natural justice and upon considerations important to the interests of society, the law of this country examines, scrutinises, and, if I may borrow an old expression, weighs in golden scales, every transaction between a guardian and his ward, or between a parent and his child," (1) in which undue influence may probably or possibly be exerted, and its jealous strictness is not confined to cases of that kind, or to other cases in which, as between solicitor and client, principal and agent, there are clearly defined and recognised fiduciary relations, but extends to every case in which confidence reposed and accepted, involving the assumption of duty, and implying the existence of influence, casts upon a man the obligation of seeing that the duty is faithfully performed and the influence exercised without impropriety or abuse. It appears, in the words of Lord Kingsdown, "in every case where influence is exercised and abused, where confidence is reposed and betrayed." "The broad principle," says the present Lord Chancellor of England, "is the latest case touching the subject, on which the Court acts in cases of this description is that wherever there exists such a confidence, of whatever character that confidence may be, enables

the person in whom confidence or trust is reposed to exert influence over the person trusting him, the Court will not any transaction between the parties to stand unless there has been the fullest and fairest explanation and communication of every particular resting in the breast of the one who seeks to establish a contract with the person so trusting him." The authorities are many and various, but the principle is clear, and its application to the circumstances before us seems just and reasonable.

Mr. Osborne Hilliard accepted the confidence of an old and unfriend man, who had been operated upon by a strangely fickle affection first for his daughter, and then for his son, and designed for that son a bounty which, if not necessarily improvident, was not such as under such circumstances an ordinary person, acting on ordinary motives, and in full and calm possession of all his faculties, would probably have contemplated. The old man intrusted him with the preparation of the deed to carry out his hasty purpose. Mr. Hilliard clothed himself with that trust, and thereupon it behoved him to see to the honest and complete fulfilment of it, and more than that, to be prepared with proof of that fair fulfilment, if it should ever come to be disputed. The dispute has arisen, but in my judgment the proof has not been satisfactory. Whether the opinion of Lord Brougham, in *Hunter v. Atkins* (3 M & K, 137), as to the doctrine upon the interposition of a third person in cases of this description, be or be generally maintainable, nothing can be clearer than this, that under the peculiar circumstances of this case it was the bounden duty of Mr. Hilliard, and assuming his bona fides, his clear interest also to have Captain Norton thoroughly informed as to the nature and consequences of his proposed act, and thoroughly protected by independent counsel. He has not proved that he did this duty, and the onus of the proof lay upon him. The contrary appears to me to have been proved.

The direction that had been given as to the employment of a distinct solicitor, was obeyed in seeming, but in fact wholly disregarded.

Mr. O'Beirne was not a distinct solicitor; he was not, nor do I believe he conceived himself to be in reality Captain Norton's solicitor at all, so as to be charged with the obligation of making full, on his behalf, for his benefit, giving him full information for his own protection. The enquiry was not made—information was not given—the obligation was in no way fulfilled; and Mr. Hilliard cannot be held blameless who permitted such a course to be pursued, and to whose inspiration it seems to me impossible not to attribute the letter of retainer and instruction by which the aged client largely warranted that most improper course. "Represent the question thus," said Lord Eldon, in one of his most famous judgments, "whether she executed not only voluntarily, but with all knowledge of all their effect, nature, and consequences, which the Defendant and the attorney were bound to communicate to her before she was suffered to execute them, and though perhaps they were not aware of the duties which this Court required from them in the situation in which they stood when the decision rests upon the ground of public utility, for the purpose of maintaining the principle, it is necessary to impute knowledge which the party may not actually have ever had." The principal Defendant had full knowledge of his duty, and was pressed repeatedly by his own counsel to perform it, and the attorney who was introduced to give color to the transaction, and impart to it a semblance of legal validity, may have been mistaken, and thought himself bound to look to his friend and not to his client. But whether he was or not, the result is plain, that neither by him nor by Mr. Hilliard was proper care applied to inform Captain Norton as to the effect, nature, and consequences of his execution of the deed. We can have assurance that he was so informed, or that if he had

been he would have persisted in acting as he did ; and in that state of circumstances arising from the default of the principal Defendant, he cannot be permitted to derive benefit from the instrument which has been successfully impeached.

No. 53.

COURT OF APPEAL IN CHANCERY.

EIFFE v. HILLIARD.

Judgment of the Lord Justice of Appeal.

Judgment of
Lord Justice
of Appeal,
May 31st,
1869.

I am sorry to be obliged to add to the time which the case has already occupied, and which between this Court and the Court below, has been fully as much as was demanded by either its importance or its difficulty. It has seemed to me, throughout, that the sentimental and sensational elements that were so largely imported into it, might very safely be dispensed with, and that it might be treated and disposed of on the tritest equities of the Court. In that, more humble and common-place light I now proceed to consider it, taking occasion to observe in passing that I do not concur in the vindication, not to say the panegyric, which has just been bestowed on some of the actors in these affairs.

In the first place then I dissent from the proposition that the impeached instrument was a voluntary deed. In my opinion it was a deed for valuable consideration, not as stated by one of the defendant's counsel, a consideration proceeding from the boy O'Brien Hilliard, it is between the parties to a contract that consideration must be sought for ; the parties to this contract were Captain Norton and Osborne Hilliard, the purchaser of the deed (for his son) was Osborne Hilliard, and the consideration he gave was the handing over to Captain Norton of the society, the services, the direction of the future of his child. I cannot admit the notion that these things do not constitute consideration, and so long as they should be suffered, *de facto*, to exist, the deed would be based on value. If Osborne Hilliard should ever destroy the consideration by withdrawing his son, it is possible that an action at law might lie against him, notwithstanding the absence of any covenant on his part in the deed (unexecuted as it was by him), but however, that may be ; I do not doubt but that Captain Norton might, in that event, maintain a suit in Chancery for the cancellation of the deed. I must add, that although for these reasons I hold that the deed was one for value, I do not in this case attach the same importance to that circumstance which seems to have been thought to belong to it. A voluntary deed is binding upon the grantor, as well as one for value, and I am not aware that even the burthen of proof is to be reversed merely because of the absence of consideration. On the other hand, the consideration which imparts the element of value, may be of a nature so unusual, so apart from the ordinary track of human motive, so startling as to awaken the jealousy and vigilance of a Court more even than would a simple voluntary gift.

Again, I entertain the opinion that those two special idiosyncracies which are said to have developed themselves in Captain Norton in his latter years, the one, an extravagant belief in his own merits, as an inventor of military projectiles ; the other, that impulse towards matrimony, one of the manifestations of which was for his proposal for Miss Hilliard ; I entertain, I say, the opinion that those matters do not possess the vast importance in the case which has been attributed to them. As to the first, I think it is of no value whatever ; there is no evidence which would warrant the Court in concluding that this was a mere delusion in Cap-

tain Norton, that his inventions were not substantial things, and did not really possess something of the merit and value he ascribed to them. No doubt they greatly engrossed his thoughts; they constituted probably what we call a hobby, and like all such pet subjects they may have afforded a handle for the exercise of influence, and I suppose there are not many of us who would venture to say, that we are not conscious of some favorite weakness by a judicious manipulation of which we might be brought into a more complying humour. But granting all that, I think the plaintiffs' have wholly failed to connect by evidence, this trait in Captain Norton's character, with the deed of 19th February, 1864, and I dismiss that topic entirely from my consideration.

The other matter, however, is more relevant, and has not been dwelt upon possibly more than it deserved. My own opinion is, however, that its bearing upon this deed, which is all we are concerned with, has been greatly exaggerated. The view which I should myself be disposed to take of that matter, if it were necessary to be precise about it, which I do not think it is at all, is this: I do not regard the impulse which prompted those advances to Miss Hilliard, and the other ladies who have been mentioned as a mere idiotic or frantic outburst of senile amativeness. I think it had another source. As the man sunk into age, the dreariness of his isolation would press upon him more and more, and he would yearn for companionship; for the companionship so dear to the old—that of youth, some object which would interest him during his lifetime, and be the recipient of his property at his death. Assuming such thoughts to have been in his mind, he would naturally, in the first instance, turn in the direction of matrimony, which he might fancy would afford him at once a companion in the present, and a hope of offspring in the future. But entering on such an enterprise at some years after 70, and having been until then, it is said, some what of a misogynist, it is not surprising that his methods of courtship should be fantastic, and that the results should be failure and ridicule. Would it be surprising then, if a man of his undoubted intelligence and general capacity should, after repeated discomfitures in that line, perceive the futility of his pursuit, and turn from it to the only other mode by which a portion of his object might be obtained—the adoption of some boy of such an age as that he would not be too old to interest the affections, or too young to be a help. Now I confess the impression left on my mind by the whole complexion of this transaction is, that whatever may have been the case at first when the subject of this adoption deed was fully on foot, in the end of November, 1863, Captain Norton had ceased to have any expectation of becoming the husband of Miss Hilliard. I have not been satisfied by the evidence or by the arguments which were adduced to us, that the motive of this deed was to propitiate Miss Hilliard or her family, with a view to the renewal of his proposals. I do not believe he meant that the adoption of O'Brien Hilliard should be a means towards obtaining his sister, but rather that it was to be his solation for having failed to obtain her. If it were otherwise, it seems to me incredible, that we should not have had evidence of a renewal of his proposals after he had executed the deed, and of some outbreak of rage and disappointment, and repudiation of the deed when again refused, as I have no doubt he would have been by the young lady. The purpose of this deed was, I think, simply what it professes, viz: the adoption of the boy without any *arrière pensee* regarding the sister. However, I think, Captain Norton was of sufficient capacity to understand such a deed, and to understand any explanation of its ulterior effects which might be given to him, and, I think, he did understand it in the superficial shortsighted way in which a man like him, unenlightened by the aid of skilled professional insight would be likely to understand it. And if Mr. Osborne Hilliard,

when the subject of this adoption was first broached to him, had at once drawn back and said, "Captain Norton, in this I must be passive; you shall have no advice or aid from me; go to your own solicitor; take counsel with him; give him what instruction you please; get him to prepare whatever deed you and he conceive will carry out the views you entertain, and when all that has been done, let the draft be sent to me, in order that before I part with my child, I may see that his future is secured." If Mr. Hilliard had thus acted, and Captain Norton had taken that course, and the result had been precisely the deed of 19th February, 1864. I believe I should be of opinion—indeed, I have no doubt, I should be of opinion that that would have been a valid and unimpeachable transaction; in other words, I hold that all the special and sensational part of this case, which occupied three-fourths of the discussion, has little or no value in its judicial consideration.

But Mr. Hilliard did not act in the way I have just indicated, and it is precisely and only because he did not, that I think this instrument has been rightly set aside. I am satisfied, beyond doubt, by the evidence, indeed by Mr. Hilliard's own statements, that he must be held, not merely to have refused, but to have accepted and assumed in this very transaction the character of legal agent for Captain Norton; that being fixed with that character, he underlay in this cause the burthen of making it clear, that in a dealing so exceptional, so beneficial to his own son, and so prejudicial to his client, he gave the latter all the advice and enlightenment which the most competent of disinterested advisers could and ought to have afforded, and finally that not only has he not successfully borne that burden of proof, but that his case amounts to positive disproof of it, upon that one short and simple ground—one of the mere common places of equity. I hold that Mr. Hilliard has failed in maintaining this deed.

It now only remains for me, to justify very briefly the two conclusions of fact which are involved in the foregoing proposition, viz.: first, that Mr. Hilliard accepted the character of Captain Norton's legal agent in the matter of this deed; second, that he has not proved that he gave him that insight into the nature and consequences of the act he was about to do, which a disinterested and competent adviser would presumably have done.

On the first of these points it will be sufficient to read Mr. Hilliard's own statement in his oral examination. It is this,—that after he had, in November, consented to Captain Norton's proposal to adopt his son, and settle on him £100 a year, Norton, to use his own words, "begged me to have any deed prepared that was necessary, and handed me a rental of his estates for the purpose. I prepared short instructions for Mr. Berkeley to prepare a draft of such a deed as he might consider necessary to carry out Norton's wishes. I sent those instructions with my cheque for two guineas to Mr. Berkeley. I felt warranted in laying them before him without the intervention of any solicitor. At Captain Norton's request I undertook to have it done." Now who and what was Mr. Osborne Hilliard when he undertook this duty? He was a barrister of then 16 years' standing. He was no mere *dilettante* member of the profession. His original training had been in another branch of the law. That he was in some practice as a barrister appears from Mr. O'Beirne's evidence, and from a statement of his own to the effect that he declined to be named as Norton's executor, because he had found that another executorship had interfered too much with his professional business. Well, I say that, when such a gentleman as that had such a task proposed to him by a man like Captain Norton—a man without friends—of no experience in legal matters, and who had just transferred, with a suddenness a little startling, his affections from his (Hilliard's) daughter to his son—if, I say he wished to hold aloof—if he desired not to stand between Captain Norton and the disinterested counsel which the occasion

so urgently called for, he should have peremptorily and unequivocally—in a way to leave room for no misapprehension—refused the task which was proposed to him. But, so far from doing so, he accepted and entered upon it. No mind but his was in communion with Norton's on the subject till after the draft deed had been finally settled, and was on the eve of engrossment and execution. Mr. Berkeley was counsel for Hilliard, and not at all for Norton. That is too plain to need to be dwelt on. As to Mr. O'Beirne, the effect of his intervention I shall speak of in a moment; but keeping him out of sight for the present, it is obvious from what I have said that Hilliard, at the outset, took on himself, in their fullest extension, the duties and responsibilities which would have been rested on a separate and independent solicitor; if, to such a one, Captain Norton had been advised in the first instance to resort.

What would these duties and responsibilities have been, and how far did Mr. Hilliard fulfil them? That is our next enquiry. The office and the scope of legal counsel will vary largely with the nature of the occasion for it. If the business in hand be of an ordinary description, such as a mortgage, or a simple purchase, the lawyer's function may be barely that of the conveyancer. But if it be something out of the beaten track—something strange, eccentric, perilous—the qualities in request should be those of the sage, confidential, skilled, suggestive counsellor, before the conveyancing stage can be reached at all. The client of average capacity may, of himself, understand, in a sufficient, outside sort of way, the nature of the act he is about to do; but such knowledge might be but misleading, without the aid of that more esoteric vision with which the trained professional mind can pierce the surface and call up before him eventualities that he never would have dreamt of himself. Let me fancy Captain Norton *tete-a-tete* with such an adviser, and producing to him the draft of this deed as Mr. Hilliard had prepared it. What may it be presumed that such a person would say to him? You say you understand this draft—that it carries out your views; that you want to put yourself in the place of a father to this boy, and to provide for him by a perpetual annuity of £100. So far, well. But have you observed that, while incurring more than the legal obligation of a father, you will not have the vantage ground of a father. Of course, you cannot yourself have the natural parental control, but you might be enabled to exercise it vicariously by the insertion of a covenant to that effect on the part of Osborne Hilliard himself. But as this draft has been prepared, there is not a word of the kind. If the boy were to run away or prove disorderly, there is nothing expressed in this draft to oblige the father to lend his authority to recall or restrain him; nothing even to prevent the father himself removing him at his pleasure. But again, are you aware that the provision you are making for the boy is wholly unlike what it is the usage for fathers to do for their own children. No father thinks of giving a vested portion to a child before he reaches the time of life at which portions are wanted, *i.e.*, the age of 21 or marriage. This boy is but 14; but, under this draft, if he were to die in infancy—die after the day after the deed was delivered—the adoption, with all its hopes, thus perished and gone for ever. Nevertheless the annuity would remain, and your property would be burthened in perpetuo with £100 a year—for whom? For Osborne Hilliard himself, whose title as heir-at-law of his infant son there would be no possibility of averting. Lastly, do you realize the effect of the personal covenant, by which yourself and your heirs and executors are to be bound? The great bulk of your income will terminate with your life, and the first thing probably your executors would have to do would be to impound a sufficient fund out of your personal assets to guard against any future deficiency in the small continuing real estate to satisfy this annuity. You have a sister—you have other relatives to

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whom you may wish to leave something by will, but your testamentary power will be crippled by this deed—crippled not possibly even for the sake of the boy, who may be dead, but of his father, to whom you intrusted the framing of this draft. Well, supposing Captain Norton were thus interrogated and instructed by such a person, what might be his answer? It is possible he might have said, all you are telling me I know already; these are but the legal consequences of the act I have I understand I am about to do, namely—to settle a perpetual annuity after my own death, and if that were his answer, all would be well. But, on the other hand, it is to say the least of it, not impossible but it might strike him very differently. He might have recoiled in dismay! You take away my breath; I have no authority over the boy—burthen my property for ever, though he should die before me in childhood, in favor of his father—disable even in that event my own testamentary power. I never dreamt of such consequences; the thing can't go on upon that footing. Which of these views would Captain Norton have taken? That is precisely what the Court cannot now know, and the reason why it cannot know it is because Mr. Hilliard, the grantee in this deed, unfortunately dispensed with Captain Norton's seeking for such counsel by himself, at the outset assuming the office of his counsellor.

It is not pretended that he or any one near did give Captain Norton such explanation as I have spoken of, and thus it is if the Court be now under an impossibility of pronouncing whether the grantor in this singular and highly exceptional deed ever had an intelligent perception of its true meaning and consequences, it is owing to the conduct of him on whom the commonest principles of the Court throw the burthen of making clear the transparency of such knowledge.

But it was argued whatever consequences might have flown from the position originally taken by Mr. Hilliard, if it had remained unchanged, he withdrew from that position before the transaction was completed. He required that Captain Norton should have his own solicitor, and Captain Norton acted on that suggestion, and chose Mr. Henry O'Beirne, and if he fell short of the duties of his position Mr. Hilliard should not be held responsible. This makes it necessary now to give some attention to the mise en scene of this Mr. Henry O'Beirne, which is certainly not the least remarkable part of the transaction.

The moment the case went before Mr. Berkely he was struck, as he could not fail to be with the extraordinary indelicacy and indiscretion of Mr. Hilliard's position, and he said once that the Captain Norton should be represented by a "perfectly distinct solicitor." What Mr. Berkeley's meaning was of course nobody can doubt. He was Hilliard's counsel, and not Norton's, and he gave his advice for Hilliard's protection, and not for Norton's; but he meant what every lawyer and man of honour in his place would mean, in order that you may be protected, Norton must be protected; if you would be secure in what you are getting, you must first run a real and serious risk of losing it altogether by throwing Norton into the hands of a perfectly distinct solicitor." To follow Mr. Berkeley's advice in spirit there was but one way, that was for Hilliard to repair his original fault by casting himself loose at once of all further connection with the subject till Norton, with his own solicitor, should have matured and put in legal form his own intentions. This was no case for technicalities about purchasers preparing their own purchase deeds. Every principle of prudence as well as of delicacy required in a transaction so peculiar a fastidious inaction on the part of the intended grantee. But Mr. Hilliard saw things with other eyes. He quite appreciated Mr. Berkeley's advice so far as it pointed to his own protection; but he looked askance at what was nevertheless the very life of it—the perils of an independent solicitor. Accordingly he went on as he had begun. The manipulation of

See also Hilliard v. Hilliard
Norton's Will

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of the drafts commenced. Mr. Berkely's first draft, which beyond all doubt was a mere covenant to charge a life annuity or a gross sum, at Norton's option—a covenant which, if the boy died in childhood before Captain Norton, no court of equity would enforce, was changed into a direct grant of a perpetual rent charge for him and his heirs, and it was not until after the matter had gone that length that the subject of a separate solicitor was ever named to Captain Norton. The first mention of it to him was Mr. Hilliard's letter of the 28th November, accompanying the copy of the settled drafts. The terms in which that letter refers to Mr. Berkeley's advice are insignificant contrast with Mr. Berkeley's, and even Mr. Hilliard's own statement of it. Unfortunately, no written opinion of Mr. Berkeley has been produced, and he is not even sure whether he wrote one. His oral statement of his advice I have already given the substance of. The very terms of it were these:—"Norton being a very aged man, and having no relative, ought to be represented by a perfectly distinct solicitor." Hilliard's own evidence is that Mr. Berkeley desired that a distinct solicitor should be employed by Norton on the subject, but what the letter tells Mr. Norton, along with the already prepared draft, is that "Mr. Berkeley considers it necessary to have the draft approved of by a solicitor on your part." "The draft approved of," assuming that all but the mere form of conveyancing had already been accomplished facts. Well, the draft is returned on the instant by Captain Norton, with his own personal approval written on it, and Hilliard then knows that no eye but the old man's own has seen it; that is to say, that he is still relying on Hilliard himself. What does he do next? He returns to his task of forging further fetters for his client. The collateral security of the £60 annuity is first inserted, the burthensome personal covenant is next introduced, in Hilliard's own handwriting, and without, as far as I can find, any previous authorization at all, or even mention of it to Captain Norton, and then at length, the last link being rivetted, the copy of the copy of the final draft is some time in December sent to Captain Norton, and on the back of that, in Hilliard's handwriting, for the first time in the transaction, so far as there is any document to guide us, appears the name of Mr. Henry O'Beirne, as the solicitor, before whom it was Hilliard's expectation that Captain Norton would lay the draft for approval as his solicitor. Captain Norton had then, as he had for years, his own trusted solicitor and agent, Mr. Lyons. And who was Mr. O'Beirne? Why he was the intimate friend for years of Mr. Hilliard and his family. Mr. Hilliard had repeatedly acted as his counsel, not merely for his clients, but for himself. He was at the time, in the habit of daily familiar resort at Hilliard's house. It was there Captain Norton had met him and formed his acquaintance. The Captain's whole previous knowledge emanated in Mr. O'Beirne's having been some years before concerned against him, in a litigation with a tenant. O'Beirne speaks of having been once at Norton's lodgings, but I cannot collect with any certainty whether this was before or after the transaction in question. Mr. Hilliard says that Norton had some days before the final draft was sent him himself, named O'Beirne as the solicitor before whom it should go, and that this was (Hilliard's) for so endorsing the draft, unfortunately this rests on Mr. Hilliard's own statement, and one of the misfortunes of the position in which he indiscreetly placed himself, is that his own sole evidence on vital points does not afford a satisfactory basis for decision. It seems strange, that if such a direction had been given by Norton; Hilliard did not follow the usual course of sending the draft direct to O'Beirne instead of to Norton himself, certain it is that in the one piece of reliable evidence we have of O'Beirne's first appearance on the scene, he comes before us in the light of a nominee of Hilliard's, and what corroboration does this receive from the terms of the very first

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communication that was made on the subject to O'Beirne himself, from which he would naturally take his cue as to the purpose and object for which he was brought into the business. I allude to Captain Norton's extraordinary letter to him of the 16th February, 1864, just three days before the deed was signed. No one can read that deed without seeing that the writer's idea however produced, and therefore the idea that would be communicated to his correspondent, was that his (O'Beirne's) instruction was to be simply to make assurance doubly sure for Hilliard; to see, in the words of the letter, that the annuity of "£100 for O'Brien Hilliard, his heirs and assigns, &c., was well secured," in other words, it was as Hilliard's solicitor in reality though nominally as Norton's that he was to intervene. A circumstance not without significance in that view that when the draft was sent to Norton it bore on it the name of no other solicitor whatever except O'Beirne, but that at some later period, as if to take off the edge of suspicion, the name of Mr. Cullen was put on it by Hilliard, as being his own solicitor, but who it is now admitted from first to last had had no connection with the business, and another circumstance again is that whereas O'Beirne marked his own fee on the back of the draft, and said in his evidence it was not paid, but ought to have been; he seems to have never demanded it from any one, a circumstance not easily explainable, if he thought the rich old stranger had been his client, but much more intelligible if he regarded in that capacity his friend Hilliard, whom he had employed as his counsel in a suit against himself, and with whom it is not inconceivable that there may have been cross accounts of fees. But the best interpreter of Mr. O'Beirne's own understanding of his position, is Mr. O'Beirne's own conduct. The day after he received his extraordinary instructions, he saw Captain Norton on the subject of them, and the draft was produced to him. The very first question he asks was as to the Captain's power to settle the annuity, as he understood he was bound up by his brother. The next was where was the annuity deed of 1827, in order that he might see that it was properly recited in the draft. These two points both obviously in the interest of Hilliard's greater security, exhausted the professional acumen of Mr. O'Beirne. All else that he did, a scrivener's clerk might have done as well. He says he first looked at the draft himself, and then explained it to the Captain. He could not say that he read every word of it; he read the recitals and other parts of it. He explained to him "the nature of the deed, and what was in it." "What was in it?" but he did not explain what was not in it, though that is the very first thing that would catch the attention of any man of ordinary intelligence if really acting in the interest of Norton. He noticed no omission—he altered not a word. As to legal counsel in the higher sense, the bringing skilled penetration to the aid of the less informed intelligence by unrolling before him those hidden eventualities in which lay the risks and deceptions of the scheme; these are things which possibly have no place at all in Mr. O'Beirne's professional repertoire, or if they have, which he did not on this occasion produce for Captain Norton's edification. The next day, the 18th, he went to Hilliard's, he did so, he tells us, in pursuit of the point which seems to have mainly exercised his intelligence to satisfy himself, that the annuity deed was properly recited in the draft. Hilliard made no secrets with him, he frankly exhibited that amazing succession of former drafts the very aspect of which would have filled with distrust and misgiving the most credulous of men, and which it is not conceivable, would ever have being displayed to a bona fide solicitor for the other side. But Mr. O'Beirne had, he says, no suspicion, Mr. Berkely's original draft, the executory covenant for a life annuity, or a sum in gross at Norton's option, had grown into the absolute grant of a perpetual rent charge. Norton's written approval was got on it in that shape, and after that, and behind Norton's

*Sept. 1871 the bond
was only used*

back, the draft further ripened into the collateral guarantee by the existing £64 annuity, and again, into the all embracing personal covenant. O'Beirne asks no questions as to his supposed client's privity with all this, he does not think of referring back under circumstances so startling to the client himself; to use his own expressive language, I did not bother myself with any of these things, I assumed that Hilliard would not send me a draft different from that settled by counsel, and so he marks his approval, and the next day the deed is engrossed and executed. What I now have to ask myself, is, whether this comedy of Mr. O'Beirne's has altered the situation to the advantage of Mr. Hilliard. Whether it removed from the shoulders of Mr. Hilliard one iota of the responsibility, the consequent burthen of proof, which his original assumption of the functions of sole law agent, acting for both parties, had imposed upon him. In my opinion, it did not. I feel that I put the case in a very forbearing way, when I say that I do not think Mr. Hilliard's position is better than it would have been if Mr. O'Beirne had never come upon the stage at all. In that negative way, I am for my own part content, to treat the matter. The Vice-Chancellor took a severer view; he held the case to be one of fraud positive, not merely of fraud presumptive. I have chosen rather to view it in the latter light. But this much I will say, that if there be anything in the facts to justify the sterner interpretation, it is in my opinion, in this very episode of Mr. Henry O'Beirne, that it is to be found.

I hope I have said enough to shew that after all this case of *Eiffe v. Hilliard*, is no cause celebre of which somehow we seem to be having so many of late, but a case as ordinary in principle as it is trifling in subject, in which a professional man having obtained a benefit for himself, from one towards whom he stood in fiduciary relation is forbidden by one of the most hackneyed of equities to retain it.

EVIDENCE ON BEHALF OF DEFENDANTS.

No. 54.

1868.—

No. 12.

Filed 15th January, 1868.

IN CHANCERY.

BETWEEN—LUKE EIFFE, ... Plaintiff ;

AND

OSBORNE HILLIARD, O'BRIEN OSBORNE HILLIARD, and WILLIAM LYONS, Defendants.

THE ANSWER OF OSBORNE HILLIARD, Barrister-at-law, one of the Defendants to the Bill of Complaint and Interrogatories of LUKE EIFFE, the Plaintiff.

In Answer to the said Bill, I the said OSBORNE HILLIARD, say as follows :—

1. In the summer of 1863, I and my family first became acquainted with the late Captain John Norton in the usual course of society, meeting him casually in visiting at the house of Captain Whitley, at Kingstown. I was wholly unacquainted with his previous mode of life, or whether or not he was then residing in the society of any relation or member of his family, but he informed me at the time, and I believe that he was a member of some most respectable clubs, and among others of the Bray club, where he was in the daily habit of associating with gentlemen of position and intelligence, he was then residing at the Bray club-house, in the County of Wicklow, and continued to reside there up to his death, and was, as I believe, upwards of seventy years of age. He frequently stated to me, in the course of my subsequent acquaintance with him, that he had invented, many years previously, improvements in artillery and projectiles, for which he considered himself entitled to a pension from the Government, and that he was constantly publishing advertisements in newspapers on the subject; but beyond such statements, and save as hereinafter mentioned, I never knew or had reason to believe nor did I, in fact, ever believe that his desire to obtain a recognition from the Government influenced his acts or conduct in any other matter. He always appeared to me to be a very shrewd and intelligent man, and I do not believe that he was a person of such a nature or character that he could be easily deceived or influenced by any person who sympathised with him, or offered to assist him in attaining his object. I know of no instance in which he was so deceived; but I was informed by him at the time and under the circumstances hereinafter mentioned, and I believe it to be true that a clergyman of the Established Church, who had been on terms of great intimacy with him, had induced said John Norton to give him two sums of £5 each, for the purpose of going to London and obtaining the influence of a certain Member of Parliament on his behalf; and I positively say that I had nothing whatever to say to either of these two transactions, directly or indirectly, and that I did not know or hear of them at the time they took place.

2. The only knowledge I had as to the property of the said John Norton was from a printed rental, which he handed me as hereinafter mentioned, containing several denominations of land, situate in the Counties of Meath and Dublin, showing yearly rents to the amount of

Answer of
Defendant
Osborne
Hilliard.

£1,989 4s. 9d., to most of which I heard and believe he was tenant for life, subject to heavy incumbrances, and the remainder, as I understood, he held in fee or fee-farm; and he also informed me that he possessed some small property in Australia, which produced him no income; and that he held some railway shares in England, but to what amount or value I cannot state.

3. I am a member of the Irish bar, and was called thereto in Easter Term 1847. Previous to being called to the bar, it had been my intention to become a solicitor, and with that view I was placed by my family in the office of a solicitor in extensive practice. I attended said office for a few years, assisting in the general business thereof, and, under the advice of said solicitor and of the late Chief Baron Woulfe, I studied for the bar, and became a member thereof in 1847.

4. I do not believe, as stated in the 7th paragraph of the Bill, that said John Norton was wholly unacquainted with matters of business, and unusually, or at all, ignorant of the ordinary means of obtaining the object he had in view. On the contrary, he was a keen and shrewd man, thoroughly acquainted with business, and one upon whom an attempted imposition would be most unlikely to succeed.

5. I was informed by said Captain Whitley and his sister that, in the autumn of 1863, and previous to the writing by said Captain Norton of the letter next hereinafter mentioned, he expressed to them his desire of paying his addresses to my daughter, but I was not so informed by them, or either of them, or by anyone else at that time, neither do I know, nor have I heard, of any circumstances in connexion with it. My daughter was then in her 19th year; but not having then heard of, or known, said John Norton's wishes in that respect, I neither at that, nor any other time, approved nor expressed, or signified any approval thereof. *see below.*

6. On the 30th September, 1863, as I afterwards learned, the said John Norton paid a visit at my then residence in Lower Gardiner-street, and on that occasion, when about leaving, handed a letter to my daughter, which he requested her to think over at her leisure, and let him hear from her. I was not present when this occurred, nor had I had any previous communication with him on the subject. That letter produced and shown to me at the time of swearing, this, my answer, and marked No. 1, to which I refer, contains a proposal of marriage for my daughter, and was first communicated to me on the evening of the same day by my wife, but we, considering the very great disparity between the respective ages of my daughter and said Captain Norton, regarded such a match as an unnatural one, and, for that reason, not deserving of any serious consideration, and my daughter also expressed to me similar sentiments; and it was thereupon resolved by all three of us that a polite and decisive answer should be at once given by me to said John Norton, declining his proposal, and accordingly on the 2nd of October, 1863, I wrote and posted to said John Norton, directed to his address at Bray, a letter of that date, declining his said proposal both on behalf of myself, my wife, and daughter, sent in the regular course of the post and received by him, and in the custody or procurement of the Plaintiff as I believe.

7. I say I know not, nor have I ever been informed whether, after his first introduction to me, Captain Norton was, or when first he became, desirous of paying his addresses to my daughter; but I say it is wholly untrue, as alleged in the 8th paragraph of the Bill, that such proposals were apparently or at all approved of by me, or that I consented to the marriage but desired that, in consequence of the age of my daughter, the celebration should be postponed for a year, or for any other period, because, as already stated, the proposal was never approved *see above*

of by me, or my wife, or daughter; and it is absolutely false that said John Norton, upon such terms, spent much or any of his time in my house, or became on intimate terms with my family.

8. I say that said John Norton was not on terms of great intimacy with me and my family, and that his visits to my house were, in fact, limited to some ten or a dozen during the whole year, but he evinced great regard for all of us, and, having frequently invited my sons to visit him at Bray, I felt indebted to him for this kindness and attention to them, and he was subsequently treated by all my family as a friend, and I invited him to dinner in return in the same way as I am accustomed to do with other friends and acquaintances; and I positively say that said Captain Norton never dined with me without a previous invitation from me or my wife.

9. I positively say that I never, for one instant, approved, or affected to approve, of such proposal; and that on grounds of delicacy and propriety, considering his time of life, it was instantly and absolutely declined by my wife and myself, and also by my daughter; and I was informed by Captain Whitley, and his sister, who were the most intimate friends of said John Norton, and which I believe to be true, that said John Norton declared to them, after the receipt of my said letter, declining his proposal, that he had given up all idea of my daughter; and I positively say that I never, in fact, intended that such marriage should take place, and that every word of said 8th paragraph of the Bill, from the word "such" on the 4th line, to the word "family" on the 9th, is a gross untruth and fabrication.

10. It is also wholly untrue, and utterly false, as alleged in the 9th paragraph of the Bill, that in the meanwhile I availed myself of said John Norton's position, by inducing him to expend large sums of money on the amusement of, and in presents to, my family. I positively declare that I never induced, encouraged, or permitted him to spend any sum whatsoever on any member of my family for any purpose whatever, nor did he ever, to my knowledge or belief, spend any sum in the amusement of my family, or any member thereof, and the only presents I ever heard of his making to any member of my family, were two guns, two pistols, and an archery bow, to one or other of my children, of which I was ignorant at the time such presents were made; and also a piano which, without any communication with me, he purchased for my son O'Brien, some time after the execution of the deed of annuity in the Bill, and hereinafter mentioned, while residing with him, as hereinafter mentioned.

11. It is also utterly untrue, as stated in the 10th paragraph of the Bill, that with my approval, or by my directions, or at all, my daughter carried on a constant, or any correspondence with said John Norton, of such a nature as to keep him entirely, or at all, under her influence, or in constant company of herself and other members of my family, nor did my daughter ever carry on any correspondence with said John Norton. My daughter has informed me, and which I believe to be true, that the only letters she ever wrote to him were mere casual invitations to dinner, written at the request of, and as amanuensis to her mother in like manner as she is accustomed to write to other friends on similar occasions. And whenever said John Norton dined at my house, he was invited as an ordinary friend and acquaintance, to meet other friends at dinner, without the remotest idea or object on my part, or that of any member of my family, as I believe, beyond ordinary friendship and courtesy, and in return for his attention to my sons; and I feel and believe it to be a malicious falsehood, as stated in the concluding passage of the 10th paragraph of the Bill, that my daughter, or any member of my family, ever contemplated keeping said John Norton under her influence, and in constant company of my family.

12. I say that the only knowledge I acquired of the objects which said John Norton desired to accomplish was by his telling me, in like manner as he told many others, that he had suffered injustice at the hands of the Ordnance Department of the Government in reference to his military inventions, and that he was well satisfied that the only means by which he could effect a consideration of his claims by Government were through the public press, and that he had pursued that course for many years; that he had expended several hundred pounds annually for more than 20 years past in publishing his claims through the English and Irish press, and that he would never cease doing so as long as he lived. I believed at the time, from his statements, that some of his inventions were appropriated by the Ordnance Department—that he was not fairly dealt with, and I felt interested in his case, just as I would feel towards a friend whom I believed to be wronged, and I was desirous to serve him if in my power, and being at the time on intimate terms with a gentleman then named by him who, I believed, possessed some influence, I told him that if a favourable opportunity presented itself, I would try to get that party to interest himself on the subject, and actuated by such friendly feelings, I expressed to him my anxiety and willingness to assist him in obtaining the objects which he desired to accomplish, but such offer was made by me from a feeling of kindness, and I solemnly declare that, in so expressing myself, I was influenced solely by the disinterested feelings of a friend, and without any personal aim or object whatsoever.

13. I say that, acting on such feeling, I did exert myself voluntary to have his case published by some of the Dublin press, but that he never, to the best of my recollection or belief, requested any active interference by me on the subject until about the end of March or April, 1864, when he called to my house, and requested me, as a personal favour, to call on the proprietor of one of the morning journals on the subject of his inventions. He mentioned to me at this interview that Mr James Malley, of Sackville-street, had applied to him to support a movement for the erection of a harbour and pier at Bray; that he was greatly inclined to join in the project, and to invest £500 in it, and that, as he understood Mr. Malley had great influence with a certain leading journal in Dublin, and appeared to be so much interested in promoting the proposed project, it struck him to be a good opportunity of asking Mr. Malley's influence in having his claims put forward in the journal referred to. He then asked me if I knew Mr. Malley. I told him I did, and at his request I accompanied him to Mr. Malley's office, and introduced him to him as a friend of mine, when, after discussing the Bray project, the subject of said John Norton's claims was introduced, and Mr. Malley promised to use his influence with the journal in question, as desired by said John Norton. At this interview I perfectly recollect having stated to Mr. Malley, in said John Norton's presence, as a reason for my feeling an interest for him, that he had lately adopted one of my sons, and the provision he had made for him by deed, and that, therefore, I would feel personally obliged by his forwarding said John Norton's wishes, which he promised to do. In some days afterwards I met Mr. Malley, who told me he had done as requested, and that if I called on the proprietor of the journal and explained what was required, Captain Norton's wishes would be complied with. I at once communicated the circumstance to said John Norton, who called on me immediately after, and decided to have the facts of his case published by way of letter. I assisted him, at his request, and as a friend, in preparing a statement of his claims, and he begged of me to call upon the proprietor of the journal with it and some printed papers which he then handed to me. I afterwards had an

interview with the proprietor, who told me Mr. Malley had been speaking to him on the subject, and he introduced me to his editor, with a view to comply with said John Norton's wishes. I afterwards received from the editor the letter dated the 5th of May, 1864, produced and shown to me at the time of swearing this my answer, marked No. 2, on which I have endorsed my name and to which I refer.

14. I say that, in so complying with said John Norton's request, I was influenced solely by feelings of friendship, and a desire to forward his wishes; and I never, for an instant, had the remotest personal object or motive in connection with the subject for my own benefit, or that of any member of my family.

15. I say it is absolutely false as alleged in the 11th paragraph of the Bill, that, under the show of friendship, I offered said John Norton my assistance, assuring him that, from my knowledge of the world, I could easily enable him to attain his desires, no such assurance having been ever given by me, but for the reasons stated I was sincerely anxious to do all in my power to promote his just objects, and so I told him.

16. I say it is untrue as stated in the 12th paragraph of the Bill, that said John Norton ever treated me as a relative or member of his family, but he did so treat my son, O'Brien, from the period of his adoption of him to the day preceding his decease. He always treated me as a friend; and, as such, asked my opinion occasionally on matters relating to his affairs; and the only times on which he so asked my opinion, and the only affairs of his which formed the subject thereof were, to the best of my knowledge, recollection, and belief, as follows:—

17. In the year 1864 he told me he had been asked by a Mr. Green to lend a sum of money to a certain Member of Parliament who had promised to bring his claims before Parliament, but that he had some suspicion on the subject, which he then mentioned to me, and I told him that under such circumstances I would not consider it wise or prudent to lend money, and he said he would not do so, and I believe he did not lend such money. He also asked my opinion, as a friend, as to whether a tenant of his was not bound in honour to pay him arrears of rent outside the Statute of Limitations. I told him that he was, but that he had no legal remedy. He also consulted me in the same year as to some accounts furnished to him by stockbrokers, and in the year 1865, he consulted me as to what steps he should take against the clergyman hereinbefore referred to, who, he stated, had grossly imposed on him by obtaining two sums of money from him under false pretences, and he requested me and my wife to have the gentleman referred to, prevented from visiting at the house of a connexion of mine residing in the neighbourhood of the Blackrock, where he was on terms of intimacy, which I declined to do, and recommended him not to take any steps against the gentleman referred to. At the close of the year 1866, he expressed to me his disapproval of the conduct of his land agent, the Defendant, William Lyons, and his desire to remove him in consequence, as he stated, of his having acted dishonourably towards him in denying a confidential agreement entered into between them, by which said Defendant, in consideration of being appointed his land agent, expressly agreed with him not to charge him any costs as a solicitor, beyond the mere outlay, and at his request I accompanied him to Fitzwilliam-square, in order to call on two gentlemen who resided there, and were land agents, and whom he told me he intended to appoint in place of said Defendant, but on arriving at the Square, and finding it close to five o'clock, at which hour the Bray train was to start, he postponed the matter on that occasion, and wrote me afterwards that he had told the Defendant,

who called subsequently to see him, that it would be inconvenient for him to change his agent, owing to his severe illness, and I refer to said letter, dated the 25th of January, 1867, produced and shown to me at the time of swearing this my answer, marked No. 2 B, and to an affidavit of said John Norton, filed in the cause of *Metcalf v. Norton*, and sworn the 31st of December, 1866, marked No. 3, on which I have respectively endorsed my name.

18. I say that, throughout my acquaintance with him, the said John Norton, treated me on all occasions as a friend whom he valued, and that he never, directly or indirectly, gave me reason to suppose that he entertained any other feeling towards me. I never, save on one occasion was his professional adviser, nor was I so treated by him, as appears from the fact that the suit of *Metcalf v. Norton* already referred to was instituted against him in the year 1865, in the Court of Chancery, and I was never once consulted on his part throughout its progress. The only professional business I was ever concerned in for him took place in the month of May, 1866, when he instructed my son, Vandeleur Osborne Hilliard, to employ me as Counsel on his part to attend on the taxation of a Bill of Costs in the suit of *Metcalf v. Norton*, which had been furnished to him in that cause by said Defendant, Lyons, and many of the charges in which the said John Norton objected to, and stated his resolve not to submit to them without investigation, and I accordingly attended as such Counsel before the Taxing Master on the taxation of said costs.

19. I say I never was "employed" by or, save as herein mentioned, consented, or professed to assist said John Norton in taking any steps for the purpose of bringing forward his claims before the notice of the British Government, or bringing his inventions, or any of them, under the notice of the British or other Government, and beyond mere friendly suggestions and voluntary acts of kindness towards him, as hereinbefore mentioned, I never was otherwise employed or engaged for him on the subject. He never "employed" me for any such purpose; and the only color for such an allegation was that I did, after the execution of the deed of the 19th February, 1864, and not before, endeavour, as a friend, to get for him the support of some of the Dublin press, and of a certain Member of Parliament, to bring forward his claims before Parliament; and with that view I did, in the month of April or May, 1864, request and procure for him the publication of his case in the leading Dublin newspapers; and I did introduce him about the same time to a Member of Parliament, who promised him his advocacy, if satisfied that his case was a just and proper one; and at said John Norton's request, I afterwards sent to said member some printed books, published by him on the subject of his claims. During the circumstances referred to I corresponded with said John Norton respecting the furtherance of his claims, but I am unable to say how many letters I addressed to him, and I have set out in the schedule hereto the dates of all my letters on the subject to the best of my knowledge, recollection, and belief; and I do not believe that I ever, represented to said John Norton, by letter or otherwise, that with my assistance he would succeed in obtaining the objects he desired.

20. There was no connection between me and said John Norton, beyond the adoption of my son as his child, and I never to my knowledge or belief acquired any influence over him by means of such connection, or of the friendship which existed between us, or by any other means whatsoever; but I believe, by reason of the fact of my son living with him as his adopted child for so long a time as he did, and on such affectionate terms, from the time he first went to reside with him until within a few hours of his death, that he may have had such influence

with him as his adopted child would naturally have; but I entirely deny that he ever used such influence for any undue or improper purpose. I never had or pretended to have any influence with the Government, and it is wholly false that I ever represented anything of the kind to said John Norton or to anyone else.

21. I indignantly deny that I ever abused the confidence of said John Norton in any manner, as untruly alleged in the 15th paragraph of the Bill. I never obtained from him various sums, or any sum, of money nominally for the purpose of advancing his claims, or under any circumstances whatever, nor did I ever obtain from him a sum of £10 in the month of May, 1864, or at any other time, for the purpose of procuring the interest of the Editor of a Dublin paper, nor for any other purpose, nor did any member of my family, to my knowledge or belief, obtain any sum whatever from him for any such purpose. I say it is utterly false that I ever obtained from said John Norton, or that he ever gave me, any sum of money whatever for the Editor of any Dublin or other newspaper, or for myself, or for any member of my family, or any sum of money whatever, save as hereinafter mentioned. I wrote to him on the 17th of May, 1864, recommending him to pay a compliment to an Editor who had taken much trouble in his case, and had published a leading article thereon, and I suggested to him to send said Editor a cheque for ten guineas, just as I would have done myself under similar circumstances; but he wrote me that he was not then in a position to do so, and I refer to his letters of the 18th and 19th of May, 1864, produced and shown to me at the time of swearing this my answer, marked respectively No. 4 and No. 5 upon which I have endorsed my name. The only sum I ever received from said John Norton was a sum of £150 on the 9th of May, 1864, as a temporary loan for a third party, and to whose wife I at once remitted the same, and, as it passed through my hands, I treated it on the instant as a debt for which I was personally liable to the said John Norton, and I sent him at the time my bill to cover the amount, in order that he might pass it to his credit in the bank, to which I would at once become liable for the amount, and I say that if he had so placed it to his credit I would have paid the same when it became due.

22. I say that I never put into my pocket or applied to my own use or benefit a single penny of that sum, and I feel that the name of a private friend who, at said John Norton's request, was induced through me to interest himself in his favour, has been unjustifiably, as I conceive, introduced into the printed Bill and 15th Interrogatory in this cause.

23. I afterwards repaid, in cash, £140 of said sum to said John Norton, with interest, and I paid the remaining £10, in cash, at his request, towards the compulsory taxation on his part of the bill of costs of Defendant, Lyons, referred to in the suit of *Metcalf v. Norton*, and I have set forth in the 2nd Schedule annexed hereto the times and sums so repaid; and I say that such payments were made at the times and in the manner so stated, with the entire sanction of said John Norton; and that £5 of the said money so paid, was paid for interest on said sum of £150; and when I got said sum from said John Norton I did believe I could have repaid the same within the time mentioned, being at that time the holder of a power of attorney securing a larger sum to be paid to me, on account of the party for whose use the same was advanced, but which payment was unexpectedly delayed for a considerable time.

24. In the month of November, 1866, and notwithstanding such payment, the Defendant, William Lyons, having, pending the taxation of his said bill of costs, thrown out insinuations to me in the Taxing Office with reference to my letters written to said John Norton, I wrote to said John Norton on the 14th of November, 1866, complaining of such conduct, and

requesting my letters to be given up to me. He thereupon at once sent me copies of ten of my letters to him, and enclosed therewith a letter from him to said William Lyons, dated on said 14th of November, 1866, to be delivered or sent by me to said Lyons, stating that I had honourably settled the O'Gorman matter with him, and directing said Lyons to hand me my letters on the subject; and I refer, to my said letter of the 14th day of November, 1866, produced and shown to me at the time of swearing this, my answer, marked No. 6, on which I have endorsed my name, and which was returned to me by said John Norton, pursuant to the request therein contained; and I also refer to the letter of the said John Norton to the Defendant Lyons, dated 14th November, 1866, in the custody or procurement of the Plaintiff or of Defendant, Lyons, as I believe.

25. I sent said letter of 14th November, 1866, to said William Lyons on the 15th of said month, requiring him to deliver my letters to bearer, who was one of my sons; but he refused to see him, and it was not until I threatened proceedings against him on the 19th of said month, to compel the delivery of said letters, that I received the letters hereinafter mentioned, and I refer to the letter of said William Lyons, dated the 19th November, 1866, addressed to me, upon which I have endorsed my name, shown to me at the time of swearing this, my answer, marked No. 7, and in which he states that he sent me therewith 8 original letters of mine, referred to in Captain Norton's letter of the 14th November, being, as therein stated, "all the letters of mine to Captain Norton remaining in his possession," and for which he requested me to give the bearer, who was his clerk, an acknowledgment; and I believe and charge that the Bill and Interrogatories in this cause have been filed at the instigation, and by the procurement of the said Defendant, Lyons, who is a solicitor of this honourable Court: that the instructions and materials for the same have been supplied, suggested, and furnished by him to Plaintiff's solicitor, that he is in privity with the Plaintiff in respect thereof, and that, notwithstanding his having in his possession the letter of the 14th of November, 1866, from Captain Norton to him, declaring that I had honorably settled the demand referred to, he advised, permitted, and procured the unfounded imputations contained in the 15th paragraph of the Bill to be printed and published therein, for the sole purpose of casting obloquy upon me from malicious motives, and that he has since, as I believe, extensively circulated, and caused to be circulated and published the same *ex parte* and slanderous imputations to my prejudice, and with the deliberate aim and object of damaging my character socially and professionally; and to show the animus of the said William Lyons against me, I refer to an anonymous letter or statement, in the handwriting of his clerk, named Andrew Logan, marked No. 8, produced and shown to me at the time of swearing this, my answer, and on which I have endorsed my name, and which letter the said clerk afterwards admitted to me he had written by the dictation of the said William Lyons; and I say that, being in London at the time said letter was delivered at my house, in Dublin, it was opened by my wife (with other letters) and produced a great shock and outrage to her feelings.

26. And I believe and charge that the suit, although in form the suit of said Luke Eiffe, is in fact and in substance the suit of the said Lyons as acting executor of said John Norton; and that the said suit has been so instituted in order, if possible, to get rid of the effect of the said Lyons having, as such executor, paid one gale of the said annuity under the compulsion of a suit at law, duly instituted against him in that capacity; and I say that a summons and plaint having been issued at my suit from the Court of Queen's Bench, on the 26th day of June last, against, and duly served upon, the said Lyons, claiming the half-year gale of said annuity,

which became due on the 1st day of May last, the said Lyons paid the amount so claimed in said action, together with the costs thereof; and that such payment was made on the 2nd day of July last, to the attorney for the Plaintiff in that suit, and was so made and received by him unconditionally, and without such protest or saving of the rights of the Plaintiff, as in the 34th paragraph of the Bill stated, as I am informed by my said attorney and believe; and as evidence of the matters in this paragraph stated, I refer to the letter of the 29th June, 1867, marked No. 9, on which I have endorsed my name, addressed by the said Mr. Adair to my solicitor in this suit, and to the said letter of Messrs. Nunn and Jones hereinafter referred to; as also to the said writ of summons and plaint, marked No. 10, on which I have also endorsed my name at the time of swearing this my answer.

27. It is also utterly false, as stated in the 15th paragraph of the Bill, that I ever induced said John Norton to send out to, and for a considerable time, maintain at Paris a son of mine for the purpose of obtaining the adoption of his inventions by the French Government, or for any other purpose. My son, O'Brien Osborne Hilliard was sent, as he afterwards informed me, and I believe by said John Norton, and at his expense, to Paris in the month of September or October, 1864, without any communication with me, and I was wholly ignorant of his being about to be, or of his having been so sent, until my said son called on me at my hotel at Versailles, where I was then on my way to join my family on the Continent. I was informed by my said son, and believe that he was sent to Paris on that occasion, from his knowledge of the French language, to effect a sale or letting of said John Norton's patent for railway fog-signals. I never represented to said John Norton, nor did any of my family, to my knowledge or belief, ever represent to him that my said son could or would bring the inventions of said John Norton under the notice of the French Government in any manner, nor did I ever, to my recollection or belief, hear the French Government spoken of by the said John Norton, and although I have several friends of high social position residing in Paris and other parts of France, of which fact I have no doubt the said John Norton became aware during his intercourse with my family, yet it is utterly untrue that I or, to my knowledge or belief, any member of my family ever stated to him, or led him to believe that they were persons through whose aid the adoption of his inventions by the French Government could be obtained. And as to procuring a patent for said John Norton in the Kingdom of Prussia, I never to my knowledge or belief, heard of it until reading the Bill in this cause, and no such thing was ever spoken of between me and said John Norton, or thought of by me, or as I believe by said John Norton.

28. In answer to the 17th Interrogatory, I say I have been informed by the said John Norton, and believe that a Mr. Greene offered to the said John Norton to procure the interest of a Member of Parliament to advocate said John Norton's claims on the Government, and that the said Greene at the same time asked the said John Norton to lend him a sum of £500, but the said Greene was neither a friend nor acquaintance of mine, and was, until I had been so informed by the said John Norton, a total stranger to me, and such offer was not alone made without my privity, but I entirely agreed with said John Norton in thinking that the offer should be refused, and, in fact, it was refused.

29. It is wholly untrue that in the month of October, 1863, or at any other time, I proposed to said John Norton that my son, O'Brien, should reside with him as his companion, or otherwise; no such proposition was ever made by me, or to my knowledge or belief, by any of my family; and the relation and arrangement, which afterwards existed between said John

Norton and my son, took place under the following circumstances and no other:—the said John Norton, after his proposal for my daughter was declined in the month of October, 1863, expressed his desire to continue his acquaintance with my family, and requested me to allow my son, O'Brien, to spend some time on a visit with him at Bray, to which I assented. During such visit the said John Norton evinced, and as I verily believe, had formed a great attachment to him, and afterwards, in said month, called to my house, and expressed that feeling to me, and his earnest desire to adopt him as a son, saying that if Mrs. Hilliard and I consented he would settle a handsome provision on him. I was wholly unprepared for such a communication from the said John Norton. That arrangement was first proposed at my house in Lower Gardiner Street, by the said John Norton, upon the terms hereinafter mentioned, and it was not then, and never was at any time, save by sending him the draft deed as hereinafter mentioned, proposed that "a Deed of Adoption" should be executed; and I solemnly declare that I was averse to it in the first instance, but the said John Norton pressed the subject so much upon me, and with such earnestness, that I promised to consider it. He called on me again at my house about the middle of November, 1863, and repeated his expressions of attachment to my son, declaring his anxiety to adopt him, and, to induce me to agree to his living permanently with him, he stated his readiness to settle an annuity of £100 a-year upon him for ever, and to promote his happiness and advancement in every possible manner, as if he were his own child. I then believed, as I still do, that Captain Norton's attachment to my son was sincere; and considering that I ought not to let my own personal or selfish feeling interfere with the advantage to be derived by my said son from such an arrangement, I, for the first time, then consented to said John Norton's request upon the terms so proposed by himself, at which he expressed to me the greatest gratification, and begged me to have any deed that was necessary to secure the annuity prepared as soon as possible, and he then handed to me, for the purpose, a printed rental of his property, as by said rental, marked No. 11, on which I have endorsed my name, and to which I refer, will appear. On reading it over in his presence, and observing that it contained no information as to how he held the lands, I said I presumed that his agent would give the necessary information on that subject, to which he replied that he would be most happy to send me a letter of introduction to him. Accordingly, on the 23rd November, 1863, he sent me, by one of my sons, who was dining with him on that day at Bray, the letter of introduction of that date, produced and shown to me at the time of swearing this my answer (marked No. 12), on which I have endorsed my name, and to which I refer. He called on me the day following, to say that he wished me not to present the letter, as he intended for some time past to change his agent, whom he had only known for a year or two previously, and that he did not much like him, or wish to refer to him on the subject, but that if I got the deed ready, and sent it to himself, he would take care that everything was done to make it all right, and that he would expect to hear from me in a few days. I then requested him to send my son, O'Brien, into town to me the next day, as I wanted to ascertain his feelings on the subject; and having ascertained from him, on his calling the day following, that he was well satisfied to remain permanently with said John Norton, and felt happy with him, I then consented to have the proposed arrangement carried out in accordance with the wishes of the said John Norton. I positively say that the proposition that my said son should reside with said John Norton came entirely from said John Norton himself, and the same was made by him to me, without any request, suggestion, or hint from me, either for that purpose, or with that object, or that he should execute the

See p 58. 120

Letter is in conformity with the

p. 31. 121

The letter shows Mr. did not intend to employ his agent to prepare the deed but H. See 37

After preparation, was made to make the deed

deed of annuity, or any other deed; and I further say that, save the said deed of annuity, no deed of adoption, nor any other deed, was prepared to be executed by the said John Norton. The original draft of the deed of the 19th February, 1864, was prepared by Mr. Berkeley, Q.C., from instructions sent to him by me, in accordance with Captain Norton's proposal, and was so prepared by him without any suggestion from me as to its form or otherwise, save what is contained in said instructions, and I refer to the said instructions, and draft deed produced and shown to me at the time of swearing this my answer, marked respectively "No. 13 and 14," and upon which, respectively, I have endorsed my name.

30. I sent a copy of the draft, as settled by said counsel, to said John Norton on the 28th November, 1863, with a letter which was received by said John Norton, and is in the custody of the Plaintiff, as I believe, and I refer to the said copy draft, marked No. 15, and to a copy of said letter marked No. 16, produced and shown to me at the time of swearing this, my answer, and on which I have respectively endorsed my name, and which copy I say is a true copy of said letter. I received the draft back from said John Norton on Monday, the 30th November, 1863, with his approval written at foot in his own handwriting, and I say that it was never, save by the sending to him of said draft in conformity with his express wishes, proposed by me, or any person on my part, as untruly alleged in the 16th paragraph of the Bill, that the arrangement should be carried out by the execution of a deed of adoption.

31. I positively say that I never, save as aforesaid, proposed either the arrangement or the deed to said John Norton, or any one on his part, but that from the beginning it emanated entirely from himself and was carried out from his repeated and pressing requests to me, as hereinbefore mentioned; and I never approved of or settled the said draft of said deed, nor was it prepared under my direction, nor did I, save as hereinbefore stated, interfere in any way with the preparation of said deed.

32. It is wholly untrue, as alleged in the 17th paragraph of the Bill, that I persuaded said John Norton that such was the ordinary and legal mode of securing "the services of my son." I never, to my knowledge or belief, gave him any assurance as to the form of the deed, nor did he require any, and it is untrue that the draft was never submitted to any legal adviser of his, or that the legal effect thereof was never explained to him, inasmuch as he employed a respectable solicitor on his part, as hereinafter mentioned, for the express purpose of seeing that the matter was properly carried out, and said solicitor fully explained to said John Norton the effect and purport of said deed in my presence before the same was executed.

33. The said John Norton again called at my house on the 1st of December, 1863, and stated that he and his son (meaning the Defendant, O'Brien) were getting on very well together, and liked each other more and more every day, and as I was seeing him out on his return home, he asked me would I wish him to allow O'Brien a weekly sum for pocket money; I told him I should not at all wish it, as it might lead to extravagance, and to prevent him making any such allowance to my son, I wrote and posted to said John Norton the following day a letter, directed to his address at Bray, dated 2nd December, 1863, which letter was received by said John Norton and is in the custody or procurement of the Plaintiff as I believe, and I refer to a copy of said letter, marked No. 17, produced and shown to me at the time of swearing this my answer, and on which I have endorsed my name, and which I say is a true copy of said letter; and on the 9th of the same month I received a letter from said John Norton in reply, expressing his full concurrence in the views stated in my said letter of the 2nd December, as by the said letter produced, and shown to me at the time of swearing this

my answer, marked No. 18, on which I have endorsed my name, and to which I refer, will appear.

34. In consequence of my said letter, in which I mentioned that his brother's will seemed to me to make him, said John Norton, tenant for life to most of the denominations in the printed rental, which he had handed me. He called on me some days afterwards to say that his brother had granted him, several years ago an annuity to himself and his heirs, of about £70 a-year on the Lands of Molinam, in the County of Meath, and that as that would be a good security for so much of the annuity to O'Brien, he wished it to be included in the deed, and said no matter how he derived under his brother's will, he had ample property both in England and Ireland to secure the annuity, and would bind himself to do so, and he promised to bring me the deed referred to. I thereupon in his presence wrote the marginal observation on the second page of the said copy draft, at foot of which the said John Norton had subscribed his approval as hereinbefore mentioned, as by reference thereto will appear. 115

35. The said John Norton called on me shortly afterwards with the original deed of annuity, granted to him on the Lands of Molinam, and told me keep it, repeating his desire to have the matter completed immediately. I reminded him of Mr. Berkeley's advice that the deed should be approved of by a solicitor on his part, to which he replied that Mr. Robert Lyle had been his solicitor a few years ago, but that he had a difference with him, and did not since then require to employ any solicitor; that his then land agent was a solicitor, but that he did not wish to trouble him on the subject for the reasons he had already told me; but he then mentioned that, at the time Mr. Lyle was acting for him, Mr. Henry O'Beirne was concerned against him for a tenant of his named Bobbett, and showed himself to be an intelligent, clever man of business, and that he thought it quite right, to have assistance of a solicitor; and that he would get Mr. O'Beirne to see that all was right on his part, and would call on him on the subject. After this interview, I made a further copy of said draft, and sent the same, together with said copy draft, No. 15, and said deed of annuity, to Mr. Berkeley, and I refer to said further copy draft, marked No. 19, on which I have endorsed my name at the time of swearing this, my answer. Mr. Berkeley thereupon altered said copy draft by including in it said annuity, which amounted to £64 12s. 4d., by way of collateral security, but not as a further or additional charge, and being still anxious to test the feelings of both parties, I thought it prudent to let the matter rest for some time longer, fearing that at my son's age he might still change his mind, and dislike living permanently away from his family. I therefore postponed allowing the arrangement to be completed until the month of February, 1864, when I agreed, with the concurrence of my wife, to have the arrangement finally carried out, and I wrote to said John Norton that I was ready to do so on hearing from his solicitor. See 37

36. In answer to Interrogatory No. 20, I say that I had a fair copy of said draft as so altered made, and I handed the same to said John Norton; and I refer to said fair copy, marked No. 20, produced and shown to me at the time of swearing this, my answer, and on which I have endorsed my name. And I further say, as I have been informed by said Henry O'Beirne and believe, said fair copy draft was submitted to him, as solicitor for the said John Norton, by the said John Norton himself, on the 17th February, 1864, and said Henry O'Beirne perused it, and wrote thereon his approval of same, as such solicitor. I thereupon had the draft engrossed by a scrivener, and having returned the draft and engrossment to said Henry O'Beirne he compared the draft so approved of by him with the engrossment 38.93.122 p.123

before its execution, having, as I am informed by him, and believe, fully explained to the said Captain Norton the legal effect of such deed while it was in draft and before its engrossment; and said Henry O'Beirne attended, pursuant to appointment by him with said John Norton, at my house, on the 19th of February, 1864, when the deed and memorial were read aloud by said Henry O'Beirne to said John Norton, who expressed his full approval of every part thereof, and then duly executed the same in presence of said Henry O'Beirne and my eldest son, who are the subscribing witness thereto. And I say that, although the name Vandeleur Osborne Hilliard appears endorsed upon the engrossment of said deed, and also in the fold thereof, as having been the party who certified the said deed for the purpose of registration; and although he also made the said fair copy of the draft of such deed after it had been settled by counsel as aforesaid, and was, in fact, the witness who made the affidavit of perfection for the purpose, he never was employed in the preparation or engrossment of the said deed as solicitor, nor was he at the time of such preparation or engrossment a solicitor at all, not having been admitted as such until the month of May, 1864, and save as aforesaid he never was employed in such preparation or engrossment, and, in fact, his name was so endorsed, as I have been informed and believe, in or about the month of May, 1867, without my previous knowledge. And, save as aforesaid, no member of my family was employed in the preparation or engrossment of said deed. The recital therein, as to the nature of the said John Norton's property, was introduced from the printed rental thereof, handed to me by the said John Norton, as hereinbefore mentioned, and the recital of the annuity granted to said John Norton by the deed of the 18th May, 1827, was taken from the deed itself which the said John Norton handed me. The said deed was not, prior to its execution, nor was it at any time, nor is it now, endorsed "deed of adoption to O'Brien Osborne Hilliard," nor was the original draft of said deed at any time so endorsed, as untruly alleged in the 21st paragraph of Bill, and in the affidavit of the Plaintiff verifying the same.

The rental does not show the name of the deed as in

37. The said deed was executed by said John Norton on the 19th of February, 1864, in the dining room of my house, in the presence of said Henry O'Beirne and my eldest son, and the only other persons present on said occasion were the said O'Brien, myself, and my second son, De Vere Osborne Hilliard. The said John Norton dined at my house on said day, but it is wholly and absolutely false, as alleged in the 23rd paragraph of the Bill, that said John Norton was then or at any time to my knowledge believed himself to be, treated or received as the accepted suitor or intended husband of my daughter. I positively say that, at the date of the execution of said deed, or previous or subsequent thereto, it never was represented by me, or to my knowledge or belief, by any member of my family to said John Norton, nor was he ever induced to believe, nor did he in fact believe that he would be shortly after married to my daughter, nor was he ever induced or permitted to believe that the adoption of my son and the execution of the deed were or was a condition preliminary to or connected with the arrangement of his marriage or intended marriage with my daughter as untruly stated in the 26th paragraph of the Bill, and it is also utterly untrue that any of the female members of my family were present at the execution of the deed, or that said John Norton was there, and then induced to execute it. It was entirely a voluntary and deliberate act on his part, and no inducement whatever was ever held out by me, or, to my knowledge or belief, by any member of my family to procure the execution thereof. On the contrary, I postponed the completion of it for several months, contrary to the repeated and pressing requests of said John Norton, made during that period to me. And I further say that, although he lived for nearly 3 years

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after the execution of said deed, he not alone took no step to set aside said deed, but he never, to my knowledge or belief, expressed the slightest dissatisfaction in respect of his said execution thereof, or any intention to set the same aside or have it declared void; but that, on the contrary, he repeatedly, during the period above mentioned, expressed to me and to others his entire satisfaction with said arrangement, and the comfort and advantage he derived from the society and accomplishments of my said son.

38. The said Henry O'Beirne was an acquaintance of mine, and to my knowledge was, prior to such date, also an acquaintance or friend of said John Norton, for he told me he had been introduced to said John Norton some years previously by a client of his, but he did not mention the time or place of such introduction, and I am unable to state the same, and I also heard the same facts from said Captain Norton; and I say that the said Henry O'Beirne, and said John Norton appeared to me to be intimate, and to have been well acquainted with each other, long prior to my acquaintance with said John Norton. I know that the said Henry O'Beirne was, in fact, employed by said John Norton, as his solicitor, for the purpose of seeing that the proposed arrangement on his part, with reference to the said deed, was properly carried out, the said John Norton having told me previous to the execution of said deed, that he had so employed him and the said Henry O'Beirne also communicated the fact to me in person on the 16th or 17th February, 1864, and I say that, as I am informed by the said Henry O'Beirne and believe, he, as solicitor for said John Norton, perused and examined the draft of said deed in his own office, prior to its engrossment, and also examined the draft thereof as settled by counsel, and perused and examined the original deed of annuity of the 18th May, 1827, therein recited, prior to the execution of said deed of the 19th February, 1864, and acted in the transaction as the independent solicitor of the said John Norton, and I say that the memorandum which appeared in the fold of said deed, and which is referred to in the 25th Interrogatory, as the comparison and approval of said deed was written in the fold of said deed, and signed by the said Henry O'Beirne, on the 19th day of February, 1864, prior to said John Norton's execution thereof, and the said Henry O'Beirne, in my presence, on said day, and before the execution of said deed, told the said John Norton, that he had carefully compared the engrossment with the draft thereof, and with the annuity deed therein recited, granted to him by his late brother, and on said occasion the said Henry O'Beirne referred and called the attention of said John Norton to his memorandum or certificate to that effect in the fold of said engrossed deed, to which the said John Norton replied that it was all right, and I solemnly declare, that from the time the proposal of the said John Norton was declined by me and my wife and daughter on the 2nd October, 1863, down to his death, the subject was never once renewed or hinted at by him to me, or, to my knowledge or belief, entertained by any member of my family, but was absolutely abandoned by him from that day, and I say that no influence or inducement was ever used or resorted to by me, or to my knowledge or belief, by any member of my family, to procure the execution thereof.

39. I am totally unaware, and never had the slightest reason to imagine that down to the date of Captain Norton's death, or at any time, I or my son, O'Brien, or any member of my family, ever exercised great, or any influence over the said John Norton. There was no conceivable ground, save as aforesaid, that I can conjecture for supposing that any of us had any control or influence over him, and it is a most wicked and malicious calumny, wholly devoid of truth or foundation, to assert, as alleged in the 27th paragraph of the Bill, that I

and my son, O'Brien, by constant interference and intimidation, reduced the said John Norton to a condition of abject submission and terror. I most solemnly declare that on all occasions that I ever met said John Norton, from my first acquaintance with him down to the Sunday preceding his death, when I called to see him at his residence, at Bray, and lunched with him, that he invariably appeared to me, and acted towards me as a cordial and warm friend, and in reply to an invitation by me he stated to me on that day that he would come to my house in Dublin to spend a few days with me for change of air as he wished to attend the then approaching levee. I never saw him afterwards, and it is my firm and conscientious belief that he was utterly incapable of the monstrous and dishonourable sentiments attributed to him in the 28th paragraph of the Bill, and in refutation of the base charges and insinuations unjustly levelled against me and my son in said paragraph of the Bill, and which I believe to have been suggested by and made at the instance of the Defendant, Lyons, I refer to the letter of the said John Norton to said Defendant, of the 14th November, 1866, hereinbefore mentioned; also to a letter addressed by said Defendant to said John Norton, dated 19th November, 1866; and to said John Norton's reply thereto, dated 20th November, 1866, sent to me by the latter for my perusal; also to a letter addressed by said John Norton to my son, dated the 27th November, 1866, and to the affidavit of the said John Norton, sworn the 31st December, 1866, and upon which said several letters, numbered respectively 21, 22, 23, produced and shown to me at the time of swearing this, my answer, I have endorsed my name. I say there was not, and could not be the remotest foundation in truth for the alleged discovery by Captain Norton, in November, 1866, that he had ever been deceived by me. My last interview with him on the 27th of January, 1867, which was within a few days of his death, is a direct contradiction of this gross charge; and I never heard, nor did my son, who resided with him for a period of three years, in pursuance of the deed of the 19th February, 1864, ever hear from him, as I have been informed by him, and believe that said Captain Norton expressed a desire or determination to break off his connexion with me. And it is also, as I believe, utterly false that said John Norton ever attempted to remove my son from his house, or to break off his connexion with him, or that he frequently, or at all, attempted to do so; but I was informed by my son, and which I believe to be true, that on Friday, the 1st day of February, being the day preceding said John Norton's death, the doctor who was attending him suggested that, for certain reasons which he then gave, it would be convenient for my said son to come into town until the Sunday following, to which my son at once assented, but that he left the said house of his own free will, and not by any desire or request expressed by said John Norton to him; but, on the contrary, that on the same day, and before leaving said house, my son went unto the room, and mentioned to said John Norton the doctor's suggestions, that he should come into Dublin for a few days; upon which said John Norton then warmly pressed his hand, and told him to come back to him on Sunday morning. My son did, to my knowledge, return to Bray on said Sunday, but found that said John Norton had died the day preceeding.

40. The said John Norton never, to my knowledge, alleged any reason for my son's removal, and never desired or suggested to him to remove; and I say that my son removed entirely of his own free will, and acting solely on the suggestion of the doctor, as hereinbefore stated.

41. I say that it is positively untrue that my said son, on that or any other occasion, in collusion with me, or to my knowledge or belief with any other person, by my direction, or to

*Compare this
with the
statement by
his mother &
Lyons -*

my knowledge, or at all, surreptitiously or otherwise, possessed himself of, or carried away from the house of said John Norton, and removed to my house or elsewhere, a large or any amount of papers and documents then the property of, or then in the custody of said John Norton; and I say that such allegation is an utter falsehood. The suggestion so made to my son to come to my house was, as he told me, and as I believe, unexpectedly made to him by Doctor Whistler and Mr. Treacy, on Friday afternoon, the 1st of February, and he was so hurried at leaving, as not to have time to remove several of his own personal matters. I was equally surprised at his unexpected arrival at my house the same night, never having had the slightest previous intimation of such a circumstance.

42. I deny that Captain Norton was ever at any time abjectly, or in any respect subject to, or in terror of me or my family. I know nothing of the occasion of his executing his alleged will, and in refutation of the calumny contained in the 29th paragraph of the Bill, I refer to a letter addressed to me by him, dated Bray, 20th January, 1865, produced and shown to me at the time of swearing this, my answer, marked No. 24, on which I have endorsed my name requesting me to become one of his executors, which, however, I declined, stating to him that having already filled that office, I found it to interfere so much with my professional business that I could not, with propriety, undertake another; and I verily believe it to be an utter untruth and fabrication, as set forth in the 36th paragraph of the Bill, that the said John Norton who received me most cordially on the Sunday preceding his death, could be guilty of the injustice of then, or at any other time, denouncing, or in any manner disavowing, his solemn act and deed of the 19th February, 1864, which he never in any manner repudiated, but, on the contrary, always expressed to me and others the gratification and benefit he derived from such arrangement.

43. I say that, except the two documents in this paragraph particularly described, and which are in the possession of my son, O'Brien Hilliard, since the 1st of November, 1866, or since the date at which my son, O'Brien, returned to my house on the 1st of February last, no member of my family, to my knowledge or belief, has had in his or her possession, custody, or procurement, any documents, letters or papers, once the property of the late John Norton, save my eldest son, who, in his character of solicitor, holds some papers and letters, 21 in number, handed to him for examination by said John Norton in his lifetime, in reference to his Australian property, and some letters, 6 in number, relating to matters of account in which the said John Norton was concerned, and also several documents connected with the taxation of the said John Norton's costs in the cause of Metcalf v. Norton hereinbefore referred to, the costs of which are still due to him. I received myself from said John Norton the deed of annuity of the 18th May, 1827, I also received from him on the 14th November, 1866, in answer to my letter to him of that date, the ten copies of letters of mine to him, which are referred to in the schedule to this, my answer, and are in my custody and possession, and no paper or document, ever the property of the said John Norton, was ever destroyed by me, or by anyone else, to my knowledge or belief, and, save as aforesaid, I have not, nor has any member of my family, to my knowledge or belief, in his or her possession, custody, or procurement, any document, letter, or paper, once the property of the said John Norton; and the two documents above referred to are a letter of Mrs. Eiffe, plaintiff's mother, and a letter of Mercer and Company, referred to therein, dated 26th May, 1865, and which my said son informs me the said John Norton handed to him and desired him to take particular care of.

44. I say that the Defendant, William Lyons, was about at one time to institute

proceedings to set aside the deed of annuity to my son, inasmuch as Messrs. Nunn and Jones, solicitors, by letter dated the 6th day of May, 1867, apprised my solicitor, that they were instructed by said William Lyons to institute such proceedings on his part, and I refer to said letter, marked No. 25, produced and shown to me at the time of swearing this my answer, and on which I have endorsed my name; and I charge and verily believe that the Bill in this cause would never have been filed but that my eldest son, who is a solicitor of this honourable Court, was employed and instructed by said John Norton, to have the bill of costs furnished to him by said William Lyons, and which the said John Norton stated to me contained, as he considered, many unfair and unjust charges that ought never to have been made against him, taxed under the order of this Court, and which taxation was followed up accordingly, and was attended by me as counsel for said John Norton, and by Mr. Ryan as counsel for said William Lyons, and the principal objections to which were supported by the affidavit of said John Norton, hereinbefore referred to, and I say it is wholly and utterly false, as alleged in the 41st paragraph of the Bill, that, during the transactions referred to therein, or at any other time, I possessed myself of numerous or of any deeds, papers, or documents, the property of said Captain Norton, I never possessed myself of a single deed, paper, or document belonging to him, but such documents as were sent to me by him, and by Defendant Lyons, in the manner, and under the circumstances hereinbefore mentioned. And I positively say that the annuity secured by the deed of the 19th February, 1864, belongs to, and is the property of my said son exclusively, and that no part whatever of said annuity is kept or retained by me for my own use.

45. I am well acquainted with James Whitley named in the 30th Interrogatory, and I knew him to be an intimate friend of said John Norton. I have read a copy of the letter, dated the 9th November, 1863, furnished to me in this cause, and purporting to have been written by him to said John Norton, and I believe the purport, object, and allusions contained therein to be a piece of pleasant banter on the part of said James Whitley, without any serious meaning or object whatever; and I have since laid a copy of said letter before the said James Whitley for his interpretation thereof, and he assured me that it was written purely as a joke, and with no other object, and that he was well aware at the time that said John Norton had given up all idea of my daughter.

46. My daughter is at present residing with me at my residence, 106 Pembroke-road, Dublin, and has been always residing with me, except when occasionally absent on visits with friends.

47. I positively say that the said John Norton never at any time, or upon any occasion during my acquaintance with him, expressed himself to me or to any one to my knowledge or belief, dissatisfied with the mode of my treatment of him, nor had he any grounds for so expressing himself, and he never to my knowledge stated his intention of taking legal proceedings against me; on the contrary, he continued to the last day I saw him on kind, cordial, and friendly terms with me and my family, and never in any instance expressed to any of us any other sentiments.

48. I say that the said John Norton frequently stated to me that he was very much annoyed at the repeated applications made to him by the Plaintiff and his mother for money; and that the said John Norton did not on any occasion, when speaking of the Plaintiff to me, manifest any degree of affection or regard towards him; and I am informed by my son, and believe that the said John Norton, during the time of my son's residence with him, never

introduced the Plaintiff to any visitor who came to the house ; but, on the contrary, appeared to think it not worth his while to do so ; and I am also informed by my said son, and believe that on the invitation of said John Norton the Plaintiff very seldom took a meal in the house.

49. Save as aforesaid, I am unable to set forth as to my knowledge, remembrance, information or belief anything further in answer to the said Interrogatories ; and I submit that by reason of the said acquiescence, as well as of the said John Norton in his lifetime, as of the said William Lyons and the Plaintiff, since the decease of said John Norton, and also upon the several other grounds hereinbefore relied on, the Plaintiff is not entitled to the relief sought by the said Bill, or any part thereof, and that the said deed of the 19th February, 1864, should not be declared fraudulent and void, or decreed to be delivered up or cancelled, but that the same should be declared to be a valid instrument, and that the Plaintiff should be ordered to pay my costs of this suit ; and I submit and respectfully insist that the Plaintiff should give proof of the several allegations in his Bill which are not admitted by this my answer.

EDMUND MEARES KELLY.

E. SULLIVAN.

JAMES MORAN, Solicitor for said Defendant,

Osborne Hilliard,

13, Lower Ormond-quay, Dublin.

Sworn before me this day of January, 1868, at my
Chambers, Four Courts, Inn's-quay, in the County of
the City of Dublin.

No. 1.

Schedule of Correspondence referred to in foregoing Answer.

No.	Name of Writer.	Nature and Character.
1	Letter of Osborne Hilliard to John Norton, dated 23rd March, 1864,	As to Insertion of Letter in Newspaper and Stock-broker's Accounts.
2	Same to same, 3rd May, 1864,	On first-mentioned subject.
3	Same to same, 6th May, 1864,	As to Loan to a third party.
4	Same to same, 9th May, 1864,	On same subject.
5	Same to same, 16th May, 1864,	Same subject, and enclosing bill to secure above Loan.
6	Same to same, 17th May, 1864,	Suggesting compliment to Editor.
7	Same to same, 18th May, 1864,	Same subjects as Nos. 1 and 3.
8	Same to same, 19th May, 1864,	Same subject as No. 3.
9	Same to same, 2nd June, 1864,	Like.
10	Same to same, 18th July, 1864,	Like.
11	Memorandum of John Norton,	As to a Statement made by Mr. Thomas.
12	Copy Letter of John Norton to Defendant, Lyons, 14th April, 1866,	As to his Agreement with said Defendant with reference to his Land Agency.
13	Memorandum of John Norton, dated 18th April, 1866,	As to interview between him and Defendant, Lyons, as to Costs in <i>Metcalf v. Norton</i> .
14	Letter of Defendant, Lyons, to Captain Norton, dated 13th Nov., 1866,	As to Taxation of his Costs.
15	Same to same, 19th November, 1866,	On same subject.
16	Copy Letter of Captain Norton to said Defendant, 20th November, 1866,	Like.

No. 2.

Schedule of Payments of Sum Lent to Third Party.

1864.

June 3rd, by cash paid to Captain Norton, by cheque on bank, ... £50 0 0

November 27th, by cash paid Captain Norton, ... 50 0 0

1865.

February 24th, by do. do. ... 5 0 0

March 23rd, by do. do. ... 5 0 0

May 17th, by do. do. ... 20 0 0

August 24th, by do. do. ... 10 0 0

1866.

April 18th, by do. do. ... 5 0 0

May 6th, by do. do. ... 10 0 0

£155 0 0

No. 55.

Robert J. Berkeley examined by Mr. Macdonogh.—(Instructions produced) These are in the handwriting of Osborne Hilliard. The endorsement is in his handwriting also. I cannot be certain whether these instructions were laid before me or not, but I think they were; I believe they were. (Another document produced) This is in my handwriting. That cheque was given to me for two guineas, and I returned it. The date of the cheque is correct according to the best of my recollection. I think these instructions were handed to me in court, and the cheque came to me on that evening in a letter from Osborne Hilliard. I would not have taken the instructions unless I had been informed by him that Cullen was the solicitor in the matter. I had no communication with Cullen, but I communicated entirely with Osborne Hilliard. No solicitor spoke to me on the subject, or laid any papers before me except those instructions. (Draft G produced) This is all in my handwriting, with the exception of filling up a few blanks of names. The parcels are not filled up. I cannot say whether the alterations were made by me or not. I have no recollection of the alterations being made. I told Osborne Hilliard that Norton being a very aged man, and having no relative, ought to be represented by a perfectly distinct solicitor. I told him that before I prepared the first draft.

Direct
examination
of Mr.
Berkeley.

Supp. 32. 106, 121
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Did you write any opinion to that effect? I think I did; but I certainly told Mr Hilliard that he should tell Norton to have an independent solicitor.

Do you generally write your opinion on such subjects? I generally do, but I have no recollection of that fact—perhaps as Hilliard was a barrister I did not. I told him so more than once. (Draft I produced) No part of this is in my handwriting; I believe it to be Osborne Hilliard's. I don't think I ever saw the draft before. (Draft K produced) This rider is in my handwriting, the residue is in Osborne Hilliard's writing, except a few alterations by myself, and the last page is mine. I think I had no written instructions with that draft; any oral instructions were from Osborne Hilliard. I could not tell at what time this was before me. I never saw a copy approved by Captain Norton.

Were the second instructions given to you after the 20th of November? I do not know, but think it must have been. My reason for saying so is—I told Hilliard he should see by what tenures the lands were held, and he afterwards told me he had read the will by which they were devised, and that he found that Norton was tenant for life, but he had some small property to which he was absolutely entitled, and also to a perpetual annuity of £70. I said under those circumstances, it would be prudent to have that annuity comprised in the annuity for his son, and he had the original draft then altered for that purpose. I don't think that could have been done in one or two days. It was afterwards, he told me, he discovered Norton was tenant for life. He said he had read the will. It was certainly after his telling me of the perpetual annuity, as an auxiliary fund, that the second draft was sent.

I am my date

107.

Did you ask had he attended to your directions about an independent solicitor? I cannot recollect. I frequently said to him when I met him. I am perfectly certain when he gave me the instructions, I told him so. He told me Norton was a very old man. I don't recollect him telling me he was deaf. I think there was no other draft prepared by me. I don't recollect ever seeing the engrossed deed. I think I had no communication with him afterwards about this.

Explain the recital—John Norton is seized in fee-simple, &c.?

In my draft there is a blank left for the denominations.

28th

Cross-examination of Mr. Berkeley.

Cross-examined by Mr. Sullivan.—When the instructions were laid before me no draft deed was sent.

It was entirely of my own framing. I returned the cheque, because I knew Mr. Hilliard before, and he was a member of the bar. With respect to the alterations in the draft, the substituted writing is Osborne Hilliard's in the first line, but the next line is mine. The original part struck out are in mine. The altered words, "as hereinafter mentioned," are mine. The rest are Osborne Hilliard's. In page 2 of the draft all the alteration is mine. With regard to that, I sent Osborne Hilliard the draft as it stood, and he brought it back to me, saying that he did not wish to bind Norton by these minute particulars, but to state generally as if his own son.

The marginal observation is in my own handwriting. This was altered in the way I mentioned. I think these passages were struck out by myself from the way in which they are done.

Letter of 28th November, 1863.—I never saw that letter, but Osborne Hilliard told me that he had written to Norton in accordance with my advice, I asked him whether he had taken steps to have an independent solicitor, and he said he had done so. I never spoke to Captain Norton. If I had written about it at all it is most likely I would have written it on the instructions. It was the first time I ever omitted doing such. The alterations on the second page of the draft in my handwriting are from "Hath given, &c.," to "That is to say," "To Hold same, &c.," to Norton, "No fee was ever after given to to me."

Re-examination of Mr. Berkeley.

Re-examined by Mr. Macdonogh.—I think I wrote a letter to him returning the fee. I am sure I did not mention in that letter anything about procuring an independent solicitor.

Did you return the draft with the letter? No, I think not, I kept the draft and read it together with Hilliard the next day. This is my impression—it was at that reading in the library the alterations in the draft was made.

No. 56.

Direct examination of Dr. Whistler.

Doctor Whistler examined by Mr. Richey.—I reside at Bray. I knew Captain Norton since more than 5 years before his death. I was constantly in the habit of meeting him, talking to him, and attending him when ill.

On his last illness did he direct you to make any communication to O'Brien Hilliard? Yes, two or three days before his death, and on several occasions since; Mr. Treacy was present on some of those occasions. I made a communication to O'Brien Hilliard before Mr. Treacy; that communication was that Captain Norton had on several occasions mentioned to me his desire that O'Brien Hilliard should leave his house. It was a delicate subject to mix myself up in, but I told Treacy, and seeing Norton's state, I did not wish any longer to delay making it. O'Brien Hilliard said I have no objection if you think it necessary for me to go, but there are a few things of mine here which I can get again. After that he went in to Captain Norton and I followed him. He said well Captain, I am going away, and will drop in to see you next Sunday. Captain Norton said "all right," "all right," "very well," and O'Brien went away shortly afterwards. I had frequent opportunities of observing Captain Norton's disposition. His habits were concentrated on two topics; first on his projectiles and second an extraordinary liability to fall in love. He conversed with me frequently on the first.

Did this eccentricity frequently show itself in any acts? In firing his projectiles off before ladies on the shore, and telling them they should have Cupid's arrows for their

protection. He told me he had made inventions, and that his demands in respect of them were ignored by the government. He read letters in complimentary terms received by him from general officers relative to his inventions.

Cross examined by Mr. Hemphill—When I conveyed this message, O'Brien Hilliard made no objection. No nurse-tender attended him. I spoke to the woman of the house about it, but he disliked having any woman about him. There was a man got the day before he died who came from town to attend him. Cross-examination of Dr. Whistler.

Was it O'Brien's room he occupied? No, for he never went to bed—I thought him quite capable of making a will, otherwise I would not have executed it.

By the Court—Was there any change in his mental condition from the time you first knew him? Only that he became daily more susceptible, and made himself more ridiculous falling in love. He told me he was going to give £50 to building the church in Bray in compliment to a lady. In the end of 1863 and beginning of 1864 what was the state of his intellect? It would have been extremely easy to have taken advantage of him.

In 1863 and 1864 would he have been capable of understanding a deed of annuity charging £100 a year on his property for a particular person? I think he would have known perfectly well that he was giving £100 a year away: the subjects I mentioned are only two on which I could give an opinion as to his eccentricity.

From all your acquaintance with him you say that all that time he was easily led and imposed on, but at the same time he was capable of understanding what he was doing? Exactly so—I gave the £50 cheque to the Rev. Mr. Scott for the building fund. It was afterwards paid. The lady was a handsome young widow.

No. 57.

Witnesses for the Defendant, 13th November, 1868.

Thomas Quill, examined by Mr. Kelly.—I am the manager of the National Bank at Kingstown. I knew Captain Norton first in 1862, and off and on for three or four years. He kept an account in the bank. The practice of the bank is to get the accounts certified half-yearly by the parties, and to sign the bank books. Norton closed his account with the bank in 1866. Direct examination of Thomas Quill.

What did you think of him as a man of business and intelligence? He was a keen, shrewd, intelligent man. 40

Do you think that even if one shilling were astray in his account he would discover it? Yes.

Cross-examined by Mr. Ritchie.—I know him as a customer of the bank, principally. I have written letters to him. I think I would remember his writing. (Documents produced). I think this is his. I would not like to swear positively. I have no doubt I wrote this letter. Cross-examination of Thomas Quill

Did Captain Norton ask you to discount a bill for him? There was no verbal application. Was a bill discounted for him? No I think not. I knew him as a customer and as an acquaintance which arose out of his custom at the bank.

No. 58.

Osborne Hilliard, examined by Mr. Kelly.—I am a barrister, I first became acquainted with Captain Norton about August, 1863. He then resided at Bray at the hotel. He told me he had made discoveries in projectiles and guns, and that he conceived he had claims on the government on that ground. I knew him until his death. Direct examination of Osborne Hilliard.

State what was his character? I always considered him a most shrewd, clever man, and a very suspicious man.

When first did you learn the fact that he had proposed for your daughter? On the evening of the 30th September, 1863—her age was about 19.

How was the fact communicated to you? My wife showed me a letter which Captain Norton had that day handed to my daughter.

Was any step taken by you? Yes, I wrote a letter to Norton on the 2nd October. I took a copy of that letter at the time. I posted the letter myself in the General Post Office, Dublin, directed to Captain Norton, at his address in Bray. (Copy produced objected to and admitted). This is a true copy of the letter I sent to Captain Norton.

Was that proposal in any respect approved by you? I never consented to her marriage with Norton. I never desired that the celebration of marriage should, in consequence of her age, be postponed for any period. I never had a word with Norton on the subject of his marriage with, or on the subject of his proposal to my daughter.

How often annually did Norton visit at your house? About a dozen times in a year. He never dined at my house without a previous invitation—he dined at my house about three or four times in a year. I never availed myself of my intimacy with Norton for the purpose of inducing him to spend large sums of money on my family. I never, in any shape, gave my approbation to my daughter carrying on a correspondence with Norton of any nature. (Witness negatived in terms, paragraph 10 of Bill) The only presents I ever heard of his making to my family were a gun, archery bow, and pistol. I was not aware of it at the time.

As to the Bill for the coat? I understood latterly that one of my sons was employed by Norton in cleaning a gun, and in doing so he spoiled his coat, whereupon Norton got him another.

Did he give anything else? He gave O'Brien a piano whilst he was living with him. That remained at Norton's house after his death. There was one or two guns given I believe. I only heard of those things afterwards—I knew nothing of it at the time. Previous to the execution of the deed of the 19th February, 1864, I was never employed by Norton for any purpose, either as a professional adviser or as a friend. All my acts done for him were done subsequent to the execution of the deed.

What was the first transaction in which you were engaged as a friend of Captain Norton? It was his telling me he thought there was some mistake in a London broker's account, which he asked me to look at for him. This was, I think, in February, 1864.

Did you do anything with reference to that? He sent me a copy of the broker's account, and I felt it a matter I could not understand, and did nothing myself except asking a friend was there any mistake in it.

What was your next transaction with him? In April or May, 1864, he asked me to assist in writing some letter to a newspaper. (Letter produced). This is in Norton's handwriting.

Were the letters and papers mentioned in that document sent to you? No; a copy of an account was all that I got sent to me.

What was the next transaction? I think in May, 1864, he asked me to speak to an editor of a newspaper to have some letter of his published in the papers. I did so. He gave me a statement, partly written by himself, of the heads of his claims. I made one or two corrections in it and handed it back to him.

*Her about
preparing the deed
for Norton.*

What was the next thing you did in his behalf? I introduced him to an M.P. at his own request.

Who was the M.P.? Mr. M'Donogh.

Did the M.P. say anything about advocating his claims? He said if he were satisfied it was a correct claim he would bring it before the house, and at his request I sent Mr. M'Donogh some books of his on projectiles. (Witness negatived in terms, paragraph 11 of Bill). He never treated me as a relative or as a member of the family.

Were you engaged for him in reference to a Bill of Costs? Yes, he spoke to me about the Bill of Costs in *Metcalf v. Norton*. I think that was in the beginning of 1866. It was a couple of years after the execution of the deed. I was never engaged on his behalf as counsel, except on the taxation of these costs. I was never counsel in the cause. The cause was in 1865; Mr. Ryan was counsel or Mr. Lyons on the taxation of the costs. My son was the solicitor, and he instructed me.

Who was the solicitor for Norton in the cause? He told me Mr. Lyons. In May, 1864, I remember Norton mentioned to me the name of a gentleman, then in Berlin, who would have some influence in getting his inventions adopted by the Prussian Government. That gentleman's name was The O'Gorman Mahon.

In 1864 do you remember having been consulted by Norton with reference to a proposed loan of money to any person? I remember his calling one day to visit at my house and saying that Mr. Green had asked him to lend £500 to an M.P., and that he (Norton) agreed to lend the money, and had written Green a letter that he would do so, and that in fact he had appointed to come into Dublin to give an order for the money, but that he had received a letter from Green stating he would meet him anywhere but at the Friendly Brothers' House. The M.P.'s name I understood was Green.

Did Norton make any observation on it himself to you? He told me when he received the letter objecting to meet him at the Friendly Brothers' House that that filled his mind with suspicion. He had never previously consulted me as to the application to him by Green, and merely mentioned his suspicion. I said if he had such a suspicion it would not be wise to lend the money under the circumstances. This was subsequent to the execution of the deed. He asked me a mere passing remark, whether a tenant was bound to pay rent outside the statute of limitations. This was in the same year. I said that he was bound in honour to pay, but that he could not make him—this was after the deed. In 1865 he mentioned that he had been imposed on in advancing two sums of £5 each to a gentleman, and asked me to have my wife and me joined to exclude that gentleman from visiting a house we knew at Blackrock; at his request (after the execution of the deed) I called with him on Mr. Malley, of Sackville Street, who was, he said, anxious to promote the erection of a pier at Bray, and had some influence with the press. He asked me to introduce him to Malley as he was a very clever man, and had influence with one journal in particular. I introduced him, and after the execution of the deed I called on Sir John Gray (that was about the same time, 1864) to get him to notice Norton's claims on Government about these projectiles. A letter was published in the *Mail* through Mr. Malley's influence. I never obtained various sums of money (witness negatived in terms paragraph 15 of Bill) except £150. I did not obtain £10 for any purpose. On reading the article in the *Mail*, inserted under Malley's influence, I suggested to Norton that he ought to pay a compliment to the editor. He wrote in reply, saying, that he had no funds to enable him to do so. I received £150 from Norton in this way. Norton mentioned to me The O'Gorman Mahon, in Berlin, who had, as he supposed, some influence with the local government to get

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some of his inventions adopted, and asked me to oblige him by writing to The O'Gorman Mahon. He (Norton) told me he knew O'Gorman Mahon well, and that he was the right sort of a fellow. I said I would write to O'Gorman Mahon. I was intimately acquainted with O'Gorman Mahon, and at that time I had a letter from him on the subject of money. I had also a communication from O'Gorman Mahon's wife on a similar subject. I, in consequence applied to Norton about the money. I said it was a good opportunity to put O'Gorman Mahon under a compliment to him if the £150 which was then required by him or his wife, was advanced for a short time. Captain Norton said he would be very glad to do it, and gave a cheque to me for the £150. The day I got it I at once sent it to Madame O'Gorman Mahon, In consequence of two letters I had received at the time I sent my bill to Norton for £196, saying if he placed it in bank he would be paid his money at once, and that he would not have to wait for me to receive it under the power of attorney I had. He said he would do so. He did not send me the additional £46, but wrote a letter afterwards dated the 10th of May, 1864. I never applied one farthing of that money to my own use. The £46 was in fact also required by the O'Gorman Mahon. I repaid that every shilling and £5 interest on it. I paid £10 to my son Vandeleur on behalf of Captain Norton, and by his direction to pay the Chancery fund on the costs—this altogether made £155.

Tuesday, 17th November, 1868.

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Witness stated that he wished to correct his evidence of the day before in one circumstance, that about Green and the £500 loan for an M.P. That occurred in January, 1864. Captain Norton spoke to me in the early part of that month. It was a casual conversation in which he said he had an escape of lending £500 to an M.P., who objected to meet him at the Friendly Brothers' house. I said I would not lend money under such circumstances myself, and he said he would not do so. He asked me then to write to Green to say that he would have nothing more to say to it, which I agreed to do—that was all I had to say to it. Captain Norton said at that time that he had declined to lend the £500 in consequence of his suspicions—that he had made up his mind to decline doing so. As to the £150 for O'Gorman Mahon I treated it, as it passed through my hands, as a debt due to myself, that is to say—I sent him my bill for the purpose of raising this money as if it were a debt of my own. Captain Norton told me that most honorably settled it, and sent me a letter from himself to Lyons. I never induced Norton to send out a son of mine to Paris for any purpose. (Witness negatived paragraph 15 of Bill in terms of paragraph 27 of his Answer) I first discovered that my son was sent by Norton to Paris sometime in September or October, 1864. I was then at Versailles, and was greatly surprised to see my son coming into the hotel where I was. I had no previous intimation of it. I never stated to Norton, or lead him to believe that I had friends in France through whose intervention, &c. (witness followed the terms of paragraph 27 of his Answer) I never told him I could procure a patent in Prussia—not a word of the kind. It is untrue I proposed to John Norton that my son should reside with him as a companion or otherwise; such a proposition was never made by me.

State the circumstances which proceeded the execution of the deed between you and Norton? In October, 1863, after Norton's proposal was declined by me, Norton requested me to allow O'Brien to go on a visit to him at Bray. That was about the 10th or 13th October. I consented to his going while he was on the visit during that month, about the 20th to the 25th October. About a fortnight after going Norton called on me at my house and professed the greatest attachment to my son. He told me he was most anxious to adopt

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him as his own son, if Mrs. Hilliard and I consented, and that he would settle a handsome provision on him. He was then at Goldsmith Terrace. I was quite surprised at this. He repeated it two or three times, and I said I would consider it. I did not then adopt it. The next communication was in the early part of November; I should think the first week. He visited at my house, and expressed himself so much pleased with my son, and said he hoped I had considered the matter we had been speaking of. About the middle of November Norton called and repeated his great attachment to O'Brien, and his desire to adopt him, and pressed me very much on the subject, and said he would settle £100 a year on him for ever if I consented. His manner seemed to me so very earnest that I felt satisfied he was quite sincere in his feeling, and then I stated to him that I felt, from what he had said, that there was a strong feeling of attachment, and that being so I would not stand in the crossway, and I then, for the first time, consented. He then begged me to have any deed prepared that was necessary. He handed me on that occasion a printed rental of his lands. He took it out of his pocket. (document produced and identified). On getting it I read it over in his presence, and observed it contained no information as to how he held the lands, but I said I supposed I need not trouble him on that subject as his agent would give all necessary information. I knew he had an agent named Lyons, but I had never seen him. He said he would be very happy to send me a letter of introduction to him, and that he would give the information. He gave me that letter of introduction. The following day I received from my son, De Vere, who had been dining with him, the letter of the 23rd of November, 1863. I never delivered that letter to Lyons. Norton called on me on the 24th November, and stated that he wished me not to present that letter; that he did not like to have anything to say to Lyons on the subject, as he intended changing him as his agent; he did not like him. He said if I had the deed prepared and sent to himself he would take care that all was right (this was on the 24th), and that he would do everything to have the annuity well secured, and begged me to have that done as soon as possible. I said to him I wish you could send O'Brien into me the next day (O'Brien was not with him on the 24th), as I wished to ascertain the feeling on the subject before I went to the trouble of preparing the deed. O'Brien came into town the next day. I spoke to him on the subject fully. After that I prepared short instructions for Mr. Berkeley to prepare a draft of such deed as he might consider necessary to carry out Norton's wishes.

(Instructions F) I sent these instructions, with my cheque for £2 2s., to Mr. Berkeley. (Mr. Berkeley's draft produced and identified) Mr. Berkeley handed me this draft in the library on the 28th of November. When he handed it to me he desired that a distinct solicitor should be employed by Norton on the subject, and I told him I would at once communicate that advice to Norton. I then made a copy of the draft settled by Mr. Berkeley. (Copy draft I produced and identified) I sent that by post the same day to Captain Norton, with a letter (copy letter of 28th November, 1863, No. 16 K K produced and identified). I next saw that copy draft on the 30th November. Norton on that day returned me the draft. I am not quite certain how, but I received it back on the 30th. Looking at the memorandum in the fold I say I received it back from him that day in person. The words commencing "the above fully meets my wishes," were on the bottom of the draft when he returned it, and they are in Norton's handwriting. There is a marginal statement also in the second paper in my writing. I put that on about the 9th of December. Norton called on me on the 1st of December, and referring to the draft deed asked me would I wish him to allow O'Brien a weekly sum for pocket money. I said I would not at all wish him, fearing it might lead to extravagance, and on the

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following day I wrote him a letter. (Copy letter 2nd December, 1863, exhibit M produced) I sent him a letter of which this is a copy. He said on the 1st of December they were getting on very well together, and liked each other more every day. This was before what he said about the pocket money. I received a reply from Norton to my letter about the 9th of December (Letter produced and identified). He brought in December, very soon after, a deed of annuity to himself granted by his brother. He said, referring to my letter, that his brother had some years ago settled an annuity on himself, chargeable on the lands of Molinam, and that no matter how he held the lands that would be a sufficient security to meet the annuity, and that he had, at any rate, sufficient lands in England to secure it. It was before he gave me the deed I made the marginal note. He told me to include that in the deed on that day he handed me the deed. I reminded him of Mr. Berkeley's advice to name an independent solicitor, and he said he would do so; that it was quite right he should have a solicitor. He mentioned the name of O'Beirne, and stated that Mr. Robert Lyle had been his solicitor some years ago, but that he had a difference with him, and that he had had very little occasion for a solicitor since that time. His land agent, Lyons, was a solicitor, but as he had already told me he did not wish to have anything to say to him, as he intended to remove him from being his agent. He said whilst Lyle was acting as his solicitor O'Beirne was opposed to him in resisting some claim which he, Norton, made against a tenant of his named Baggot, and that O'Beirne shewed himself a very clever man of business on that occasion, and that he would ask O'Beirne to approve of the deed for him, and that if I sent him the deed he would take it himself to O'Beirne and see that all was right. I afterwards made a further copy of the draft, which was approved of by Norton, and I sent it to Mr. Berkeley with the draft so approved by Norton, and with Norton's approval at foot, and also with the annuity deed of 1827.

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(Documents sent to Mr. Berkeley identified). I afterwards got it back with alterations by Mr. Berkeley, including the annuity on Molinam, as a collateral security, and also a personal covenant by Norton to pay the annuity. I made no further suggestion to Berkeley, save what appears thereon, as to the alterations. After it was returned to me by Berkeley I had a copy made from the draft, as altered, which I gave to Captain Norton. That must have been about the 12th or 14th of December—about the middle of December. (Copy produced) I did not see this again until it was brought to me by O'Beirne, who brought it to me in February, 1864. It was then altered from what I had given to Norton by the memorandum of approval of O'Beirne written at foot, on the part of Captain Norton, dated 18th February, 1864. *the p. cert. in his
His handwriting*

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How long had Norton the instrument until you saw it with O'Beirne? From December until the 18th of February. In the interval I wrote a letter to Captain Norton. I cannot fix the date. I certainly wrote. I posted that letter myself in the General Post Office. I cannot remember the substance of that letter. After I got the draft from O'Beirne I sent it to a scrivener, and had it engrossed, and sent the draft and engrossment to O'Beirne. The deed was executed on the 19th of February, 1864. At the execution of the deed Captain Norton, O'Beirne, I myself, and my three sons, Vandeleur, De Vere, and O'Brien were present. I did not make the appointment with O'Beirne to be there. O'Beirne read the deed aloud to Captain Norton, who said, after each clause being read by O'Beirne, "all right." The memorandum was also read, and signed by Captain Norton. The memorandum of comparison and approval, made by O'Beirne in the fold of the deed, was on the deed when O'Beirne entered my house. He brought the deed with him, and he told Norton that he had carefully compared the draft and engrossment, and had written the memorandum in the fold. Vandeleur had nothing to

do with the preparation of the deed. He only made a copy of the draft I sent to O'Beirne. He was not then a solicitor, nor until May, 1864. He was apprenticed to Mr. James Moran. Captain Norton was never at any time received nor treated by me as the accepted suitor of my daughter. (Witness negatived in terms paragraph 16 of Bill). Such a thing never occurred. None of the female members of my family were present at the execution of the deed. It was the voluntary and deliberate act of Norton. I never took any steps to have the execution of it completed further than I have stated. I postponed it for three months, fearing my son might change his mind. He never afterwards expressed any dissatisfaction with the execution of the deed, or any intention to set it aside or declared void. On the contrary he repeatedly expressed to me the great happiness and comfort he derived from the society of my son, and of that arrangement with him. O'Brien can play the piano very nicely indeed. Captain Norton and O'Beirne appeared to me to know each other well. I was not the medium of introduction between them. Norton told me he knew O'Beirne before I knew him (Norton). I never interfered with or influenced O'Beirne, with reference to his part in this transaction. From the time of Norton's proposal for my daughter to his death, the subject was never mentioned by him to me. He never referred to it, nor ever even mentioned that he had made the proposal. (Witness negatived paragraph 27 of the Bill). That is a most absolute falsehood. I was on most friendly terms with him down to the Sunday before his death, which was the last time I saw him. I and Mrs. Hilliard and a friend went down to Bray to pay him a visit. He received us in a most kind, warm, and friendly manner. We lunched with him. There was a levee announced a few days after that, and Norton said he would go to it (he was sitting in the reading-room of the Bray Club, and we sent down from him, and he came up-stairs to us), and I said if he came to our house I would give him a bed. He said he was very much obliged, and would avail himself of it. He said he would come in the following day. To my knowledge he never expressed a desire to break off communication with us. It is untrue, as alleged in paragraph 28 of the Bill, that he was unable to remove O'Brien, or break off communication, or attempt to do so. My son came in to us on the evening of the 1st, and Norton died on the 3rd. O'Brien returned to Norton's house on the Sunday following, and then Norton was dead—an interval of only two days elapsed. I never heard of O'Brien's removal, or of any reason for it. To my own knowledge O'Brien never surreptitiously possessed himself of and carried away papers, as stated in paragraph 28 of the Bill. It is an utter falsehood. Paragraph 29 of the Bill is perfectly untrue, that Norton was abjectly subject to and in terror of me and my family. (Letters of 20th January, 1865, produced) I stated to Norton that having already executed the office of executor, I found it interfered too much with my professional business, and begged he would excuse me. He said he was sorry for it. I have not, nor has any of my family any paper or document belonging to Norton, except some relating to the taxation of the costs of *Metcalf v. Norton*, and the deed of annuity of *Molinam*. My son got those papers about May, 1866. I think there were eight letters included in the receipt of mine to Captain Norton.

Cross-examined by Mr. Macdonogh—Fix the precise day when you first became acquainted with Norton? I think August, 1863. I have no doubt it was 1863. It might not have been in September. I think it was early in August the introduction took place at Captain Whitley's, in Kingstown. Mrs. Hilliard and my daughter were present, and were also introduced. Captain Whitley's sister was there too. I next met Norton some week or ten days after at Captain Whitley's. I am not quite certain I dined there that day, but some members

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*although it has
signed on the
drawing room
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Hilliard.

of my family did. My first introduction to him was in the middle of the day. I met them some day between the second interview and the 30th of September, in Kingstown—I think at Captain Whitley's. That was not at dinner. The proposal reached my knowledge on the night of the 30th of September.

Did you ever swear that you immediately and peremptorily refused that proposal? I did. (Proposal read) I understood no alternative in the proposal? I understood that if the proposal were declined, he would not wish to break off acquaintance with my family. It is not my habit to keep copies of my letters, except on important subjects. At the time of the preparation of my answer, I had the copy of my letter before, I suppose, my solicitor put it before counsel. I did not lodge the copy. I was not called on to lodge it. I meant that as an absolute refusal, but wished to be in terms of extreme politeness to him, as he was a very old gentleman.

Was not the declining of the proposal rested on her youth and unexperience? I do not mean that I wished to continue the acquaintance except in a polite way. How soon after did he dine at your house? It think about the middle of October. (Question repeated). I cannot call to memory. I know he called about the middle of October and asked my son to go on a visit to him. I withdrew my former answer. I don't think he dined at my house until Christmas. I won't swear he did not dine at my house in October. He was living at the International Hotel when I formed acquaintance with him in August. De Vere went to him on a visit on, I imagine, about the 8th or 10th of October. I can't say the exact day. p. 140
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Where did De Vere go on the visit; was it to Goldsmith Terrace? I can't say. I did not know of his ordering a coat for De Vere at Allen's. The reason was that De Vere spoiled his own in cleaning a gun. I can't say whether he had dined at my house before De Vere went on the visit. Captain Norton called on me about the middle of October, and requested me to allow O'Brien to go on a visit to him. I rather think it was to Goldsmith Terrace that O'Brien went, but I don't know it myself. The lower part of the house in Goldsmith Terrace was occupied by the Bray Club. I don't know the precise time he went to Goldsmith Terrace. After O'Brien first went to him did he continue with him up to Christmas? I think so. I think Norton dined with me in November. I can't say how often. I can't say what time in November the ladies were present. I don't know whether my daughter was present or not. I rather think she had left town. I can't swear she was not present. It was certainly not after dinner he first talked of adopting O'Brien. It was in the middle of the day. The first proposal to adopt was in the middle of October. It was about the 15th or the 16th of October. It was after De Vere came back from the visit that the proposal to adopt took place. It was about the 8th or 10th of October that the invitation to O'Brien to go on a visit took place. It was in my own house in town the proposal to adopt was made. No third person was present at that time. p. 58. 106

How often did he dine with you in November? I rather think only once, about the 9th or 10th. I heard Mr. Berkeley examined. (Instructions produced) These are the veritable instructions laid before him. I felt warranted in laying them before him without the intervention of any solicitor. At Captain Norton's request I undertook to have it done. From first to last no solicitor interfered, as mine—Mr. Berkeley—was the person who carried out the instructions which stated Norton's wishes. Mr. Berkeley did not prepare it under my instructions. I desired he should carry out those instructions. The whole of them is my sole act. My son handed me the letter of 23rd of November, which is in Norton's handwriting. On the 112
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evening of that day De Vere dined with Captain Norton and O'Brien that day. It was in the envelope. I don't know whether the envelope was gummed or not. I read it that night. It came to me open. It was in the envelope, and the envelope was open. When he first talked of adopting O'Brien, he said he would make a handsome provision for him if Mrs. Hilliard and I consented. Then he handed me the rental. I observed that it contained no information, and he then promised me the letter. When was that? It was, I think, the day before the 23rd. I can't exactly name the day, but it was the previous interview. I knew Lyons was then his agent. Captain Norton, on the 24th, requested me not to send it. It was early in the day, about half-past 11 or 12 o'clock. He said he intended to remove Lyons, and did not wish to have anything to say to him in consequence of that intention. I expressed no surprise. The letter never reached Lyons.

When did you go up to read the will of Norton's brother? I am not sure the exact date. I think it was in November. I read the will in order to become acquainted with his property.

Would it greatly surprise you to hear that at that time Lyons was discharging important professional business for Norton. It would not.

When Mr. Berkeley gave you the first draft did it contain a personal covenant binding the personal representatives of Captain Norton? I don't see any personal covenant in that. The recital in Mr. Berkeley's writing was put in by him.

Was there not in it a covenant originally charging the assets? Not when I got it from Mr. Berkeley; he struck it out. Is that document in the condition in which you received it from Mr. Berkeley? When Berkeley had settled that draft originally, before returning it to me, there was a provision in it about educating the boy, and I said I did not wish to go into those details. He made those alterations himself.

Did you hear Mr. Berkeley say he sent you the draft, and that you came to him the next morning and said you did not want a covenant binding him personally? No such thing. That was struck out by Berkeley himself, and he did not speak to me about it. I have not the least recollection of Mr. Berkeley saying one word to me about such a covenant. I gave him no instructions about the frame of the draft, except that I did not wish to be too minute. The only words written by me are "making such provision." I did not suggest to Mr. Berkeley to take out the covenant binding his assets, real and personal. It was not my suggestion.

Did he hand it to you in the library after the alteration? I wrote "making such provision," and he added "as hereinafter mentioned," &c., he then handed it back to me. Mr. Berkeley said at that time Norton ought to be represented by an independent and distinct solicitor. I sent the copy very soon after, and posted it before post hour early in the day on the 28th—I should say before 2 o'clock. I saw Mr. Berkeley in the library when I went in.

Did Mr. Berkeley not first prepare the draft to charge the real and personal estate? I don't tell you so.

Did you say you were no party to these alterations in the draft? It was certainly not I that first suggested to him to take out this recital and covenant. The copy of the first draft is in my handwriting, I wrote out the whole myself and posted it. I think I wrote it in the library. I posted it early in the day. It was about 2 o'clock I think. I did not post it in the library post. I wrote a letter accompanying, dated the 28th of November, 1863. When I received this back from Captain Norton it was approved by a memorandum from Captain Norton without any solicitor. The words "£100" in the document are in my handwriting. I don't think it is in a different ink.

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Were those words in it when you sent it to Norton? Undoubtedly. I got back the draft from Captain Norton on the 30th, at my house in Gardiner-street. Was it in the interval between the 28th of November and the 2nd of December that you read the will? I don't think so, I rather think it was after the 2nd of December. Refers to letter. I say now I read the will on the 2nd of December.

Where is Norton's letter which you received; letter "this evening," in your letter? I gave it to a Mr. Costelloe, a gentleman who emigrated to Australia, to enable him to make enquiries about Norton's Australian property. This was in accordance with Norton's wishes. This is the only draft Norton himself signed this approval of. I gave him my opinion of that will. I then received a letter from him of the 9th of December. The lands mentioned by him were to be included in the deed of annuity.

Had you any conversation about £250 a year chargeable as a jointure? Never; Captain Norton was upwards of 70.

What did you think of that letter when you got it? I thought it a very proper letter.

What did you think of the reference to poison? That referred to many years previously, when he had a serious falling out with Mr. Arthur Barlow; it had nothing to say to my business. I don't think after that letter it would have been necessary to make him go to his own solicitor. I did no business for him January, 1864. On the 6th of January, 1864, I received a letter from Mr. Green; I thought it rather an intrusive thing of Mr. Green to write to me. (Letter read).

Had you not read a former letter from Green, or what is the meaning of the words in this letter? At that time I had money to lend, and I employed Magan as a solicitor to look out for some person as a security. Magan wrote to me asking me to call, and Green was there as an agent of Mr. Dargan, and asked if $4\frac{1}{2}$ per cent. would be received by trustees. I said £5 would only be received. It had nothing to do with Captain Norton's affairs. I never knew Mr. Green before Captain Norton called on me to mention a sort of escape he had had of lending to Green. He then said Green would come to bother him, and asked me to write and stop him, which I did to oblige him. The letter I wrote was not an answer to Green in answer to a letter to myself.

Had Norton spoken to you in relation to the documents referred to in the letter of the 19th of February, 1866, to Luke Eiffe.

You got some papers? I got some papers about a share-broker's account. I knew nothing about my sons going about them. I am not able to tell whose hand gave me the papers. My son never told me he had borne that letter to Luke Eiffe. Captain Norton only said he had received some paper from a broker. He only asked me to look at it, and I could make nothing of it. I have stated all circumstances with Norton prior to the 9th of December.

When did you write the marginal observation on the draft? I think on the 9th of December, in Gardiner-street—I think he did not dine with me that day. Did you explain to Norton the legal effect of the personal covenant? I told him his personal covenant to pay would be most satisfactory, even without any reference to those contingencies in his brother's will.

Did you explain to him what the effect of his personal covenant would be? I explained to him that it would be most satisfactory.

see letter 9th Dec.

Did you know yourself what the effect of his personal covenant would be? Perfectly, and so did Norton.

Did you explain to him the effect of binding himself by a personal covenant? I did not explain any legal effect; but he said there was ample property to bind post mortem, and I thought he understood it. I believe Norton thoroughly understood his assets would be perfectly bound by that covenant. I included the annuity at his own request.

What instructions did Mr. Berkeley get to make the draft? I gave him that draft with Norton's directions, to bind himself out of property in England, and also out of the annuity on Molinam. I wrote those instructions from Norton's words. 35.

Did not you solely give instructions for the draft to include a personal covenant? They were Norton's instructions.

Did O'Beirne dine at your house in company with Norton, before you sent that draft. He might have. Did he in November? I could not say—he might have—I rather think he did—before the execution of the deed of February, 1864. He did dine with him at my house before that some time. The whole endorsement is in my writing, except the approval and fee, £2 2s. 0d., which is in that of O'Beirne's. 33. etc.

When were the words M. K. Cullen put on? When I sent the deed to O'Beirne, I wrote to M. K. Cullen. I was executor to Cullen's father, and he was my solicitor, and I intended to have it carried out, engrossed and perfected by him. I sent to him to call on me. He did not do so, and I sent it to a scrivener, as I was anxious to get it finished for Captain Norton. It never went through Cullen's office. I had no authority from Cullen, but I felt sure that I had only to mention it to him to receive his authority. I never did mention it. I never mentioned it to Norton that if O'Brien had died I would have got the £100 a year, or if O'Brien went away and not remain with Norton, he would have the £100 a year. There is nothing in the deed binding me that O'Brien should continue with Norton. Norton was not very deaf, he could hear perfectly on one side. I think Mr. Berkeley's advice was correct, and I told him so. Did Mr. Berkeley over and over again remind you that Norton ought to have an independent solicitor—he said it the second time, and I wrote I had written to Norton, and he said he was glad of it. The draft was sent to Norton with Berkeley's advice. Was not the whole, except the engrossment, consummated between Berkeley, yourself and Norton? No, not until Norton had got it approved by his solicitor. Did you swear or say you never approved or settled a draft of the deed, &c., as in the 31st paragraph of the answer? I did—I wrote it. It is true, that is to say I never approved of it on the part of Captain Norton. I caused the draft to be settled by Mr. Berkeley. It is true, that I never settled the draft. See. Sonoran v. Berkeley 91.92 128.

Was the draft prepared under your directions not in its form? In substance it was, at my instance. I don't remember Norton's having been at a levee and drawing room. In January, 1864, he was at a drawing-room with the ladies of my family. He dined with me, and dressed in military uniform at my house that day. He did not go with them, he went by himself, but met us there. p. 31. etc.

Was he at a drawing-room with your family in January, 1864? I don't know that there was a drawing-room in 1864.

In February, 1864? I don't know whether it was in 1864 or not—I can't say the year—he went on some occasion.

Was he at Patrick's Ball with you? No, I heard he was not admitted, not wearing the usual dress.

Was it not because he carried the bows and arrows? I never heard of such a thing.

How many years are you acquainted with O'Beirne? 15 years.

Were you not his counsel in 1862, before whom a deed was laid in relation to which a cause Petition was filed for the purpose of impeaching it. I cannot answer without seeing the deed. I had settled some deed for O'Beirne. I have no recollection of settling a deed that was impeached.

Did you hear of the cause Petition of Bernard Kelly v. O'Beirne. I heard of some dispute between them, but I heard nothing of the cause Petition. I was counsel for O'Beirne off and on for some years—the precise time Norton informed me he had employed O'Beirne as as his solicitor was December, 1863. He told me in December, 1863, that he knew O'Beirne was an intelligent man, and that he would go to him. He told me in 1864 that he had employed him.

That was early in February? I cannot swear to exact date.

Who was the scrivener? I gave it to a clerk who was in the habit of copying drafts of mine, to have it engrossed by a scrivener. The clerk's name was O'Donoughue. It was the business of the party getting the deed to have it engrossed. After it returned from O'Beirne approved I sent it to the scrivener. I invited Norton to stay and dine with me on the day of execution of the deed. I had given him no previous invitation. He signed it in my drawing-room, about four o'clock in the afternoon. We all dined with the ladies. O'Beirne read the deed aloud, each clause through, and explained the nature of it, and Norton said "all right, all right." O'Beirne did not call attention to the lands, of which he was only tenant for life.

Did he explain the effect of the personal covenant as binding the assets? Yes, he said it would at all times provide for the payment of the annuity against his assets. Norton said, "all right; I know that." O'Beirne did not tell him that if O'Brien died that night, I would have an annuity for ever. It took about three-quarters of an hour to read it. He was not deaf, only so on one side, and often heard me when I spoke in a low voice. A letter from Norton to O'Beirne, of the 16th of February, 1864, was showed to me. It is not lodged. I saw part of it in 1867. I saw it all since. I saw it last at the beginning of the hearing.

Re-examined by Mr. Kelly—My daughter left my house after the proposal of the 30th of September, 1863, for a visit, and stayed fully six weeks away, and for every subsequent year she was away for four or five months. She went to the County Kildare.

Was there any conversation about the deed when O'Beirne and Norton dined together in your house, in November, 1863—not a word? Not a word. They dined as ordinary guests.

No. 59.

1st November, 1868.

Direct examination of J. A. Keating.

J. A. Keating, examined by Mr. Hemphill—I live at Rockfield, Co. Kildare. I was acquainted with Captain Norton from the year 1861. I was on habits of intimacy with him until his death. I frequently visited him in 1863, and was in the habit of dining with him. I recollect meeting O'Brien Hilliard in October, 1863, at Norton's. That was not the first

occasion I saw him. He came of a message first from Norton. It was the second time I saw him in Norton's house. It was about the 20th, a little more than the middle of the month. Norton introduced O'Brien Hilliard to me as his adopted son. I had, up to his death, been in the habit of dining with Norton on an average about twelve times a year. I met O'Brien Hilliard when I dined there. The last time I dined with Norton was in January, 1867, not more than one month before his death. Captain Norton always treated O'Brien Hilliard as if he was his son. He did not appear in the least as if he were in a state of terror or submission to him. I met Eiffe three times with Norton—never at dinner—in the autumn of 1865. I recollect going out from town and calling on Norton, and he told me he had sent O'Brien Hilliard to Paris (this was in September, 1865). He said he had sent him over about fog-signals, and that he was getting on very well there.

What was Norton's capacity for business? He was one of the most shrewd and knowing men you could meet. I had frequent opportunities of observing him. This observation applies to the whole period of my acquaintance. I should say he went to Goldsmith Terrace in the latter end of October. He had lodgings in two different houses. It was in the end of October he went to Hubbard's, the confectioner's, the lodgings over the shop. He had been living before in the International Hotel and in Kingstown. He had two rooms and a small closet, a bed-room, sitting-room, and closet. He never conversed with me about Miss Hilliard. I don't recollect that he ever mentioned her name. He might have mentioned it in speaking of the family, but never singly.

Did he ever talk to you on any other love affair? He did, in the spring of 1864. He spoke only of one. He asked me had I met her, I said no. He said I ought to have seen her as she was at the Castle. He said she was very pretty and would make a nice wife. He was not very deaf. Sometimes he was very sharp indeed. I had no difficulty in conversing with him in the day time.

Cross-examined by Mr. Macdonogh.—I am unmarried. I could not borrow money easily from Norton. I tried and failed. I frequently saw Norton at the Esplanade at Bray, and with a long bow. I saw him in the exhibition with a bow and one of his invention arrows. Am perfectly certain of the time, October, 1863.

Cross-examination of Mr. Keating.

When you saw Norton and O'Brien Hilliard together? I am quite certain, but it was the end of October. I was at Patrick's Ball but not at the Drawingroom in 1864. I danced with Miss Hilliard at Patrick's Ball. I was introduced to her that day, and never knew her before. I had first met O'Brien Hilliard on Queensboro' Road with my sister, and he stopped me to give me a message from Captain Norton. I did not know him then. It was at the lodgings over the confectioner's I was introduced to O'Brien Hilliard. The house is a good one; the rooms are fair; the bedrooms opened off the drawingroom. The rooms he had at the club were better than the others. I think it was about 1865 he removed to the club. I think it was there he spoke to me about O'Brien Hilliard being in Paris.

Did you notice he was deaf in either ear? No; but I remarked he was more so at sometimes than others. If I were speaking to O'Brien Hilliard across the room he would sometimes join in. I noticed no eccentricities in him. He talked a good deal about ladies. He was eccentric on no other subject. I noticed no eccentricity in speaking of projectiles. He frequently complained of Government's conduct to him. Sometimes he would abuse them more strongly than others.

He never proposed to adopt you? Never. I never proposed it to him or thought of it. Our tastes were similar. I understood his inventions, and he liked talking to me. I frequently spent the evening with him. He generally fell asleep after dinner. I knew Miss Hilliard from Patrick's Ball, 1864, and the family, I may say, from the same date. The letter of October, 1866, is my letter. I never before that asked him for money for myself. I never asked him for favours for myself, but for the Archery Club, of which I was a member.

Re-examined
by Mr.
Hemphill.

Re-examined by Mr. Hemphill.—He wrote me an answer to my letter, saying he was short of funds, otherwise he would have lent it. I am not, nor ever was, a suitor of Miss Hilliard's. I know something of gunnery, and he was not at all deficient in capacity as regards those subjects. I say his demands on Government were perfectly just. He certainly invented the chilled shot.

Direct exami-
nation of
William Shaw

William Shaw, examined by Mr. Palles.—I knew the late Captain Norton first in the year 1862 and until a fortnight before his death. I saw him generally once or twice a week at Captain Whitley's, who is uncle of my wife. I dined with Norton on one occasion, and have dined in company with him at other people's. He has dined with me in the end of 1863. He told me he had proposed for Miss Hilliard, but that it was declined. At the time of this conversation I am not sure where he lived. I met O'Brien Hilliard at Norton's house when I dined there. I knew O'Brien Hilliard before I knew Captain Norton. Norton on two or three occasions spoke to me of having adopted O'Brien Hilliard, and that he had provided for him, that he was a fine lad and of great use to him, and he was sure they would get on well together. He stated he had settled £100 a year on him after his post-mortem—that was a usual expression of his—he told me he had executed a deed, and had settled this £100 a year on him. Those conversations were in the years 1863 or 1864. He said O'Brien Hilliard was useful to him in writing; he said he was useful as his secretary and as a companion. After the proposal to Miss Hilliard he said he had written to a young lady's father. It was within six months after telling me of his proposal for Miss Hilliard. He said he had written to her father proposing for her, and he mentioned the name to me, and said he was refused; that he had received a letter on another occasion previous to the proposal to Miss Hilliard. He spoke of another lady. He never spoke in terms of dissatisfaction of O'Brien Hilliard, but on the contrary, expressed himself much pleased with him. Captain Norton never appeared to me to be in terror of, or under submission to O'Brien Hilliard; but on the contrary, I considered O'Brien Hilliard most attentive to him, and in every way to humour and please him. He spoke to me of O'Brien Hilliard on nearly every occasion we met, and always spoke of having adopted and provided for him. The last time I met him, Norton, I dined at Captain Whitley's with him. Captain Norton came in there one day and produced a letter received from O'Brien Hilliard from Paris, and stated that he was about to send him some money. He said he had gone to Paris about the fog signals. Captain Norton was a most intelligent, shrewd man. He had a hobby about those guns. I remember the time when he could not afford a lady a good word. I considered him shrewd in many matters. I often heard him speak of his inventions, and he spoke rationally and seriously; he spoke also of the claims on government. I don't think his conduct strange; he thought he might get redress through the press. I never observed anything in his conduct from which I should think him weak-minded. He was a little deaf; he was deaf when he did not like to hear. He has heard me speaking in an ordinary voice. He was a most conversable man.

Cross examined by Mr. Macdonogh.—It was in the end of 1862 he spoke of ladies, as if he was enamoured of them. Sometime in 1863 he proposed for a lady, and she refused him, that was the first time I knew of anything of that kind—it was in the Summer, he was then about 75 or 76 years of age. He saw a titled lady in Bray, and he became enamoured, and sought an interview. He told me he had written to Lady Guillamore; that was at Captain Whitley's. Some of the lady's family were present at Captain Whitley's. Before dinner, he said he had proposed for Lady Guillamore (he originated the subject himself), that he had written to her, and that she had declined his offer; and he stated something about giving a subscription to some building. When he came in he sat down, and began to talk about his affairs, and gunnery, archery, &c., and then about Lady Guillamore. I believe he read the letter to me which he had written. (Memorandum produced). I think he also read the other document. (Memorandum 2 produced). He took the refusal very calmly. The only ladies he spoke of were Lady Guillamore, Miss Hilliard, and the other lady. Captain Whitley and he were old brother officers. The Hilliard's were acquainted with Captain Whitley. It was soon after the letter of the 29th August, 1863, that Lady Guillamore's refusal occurred. It was in September he proposed for Miss Hilliard. To the best of my recollection he did not shew me the letter to Miss Hilliard. He was in the habit of reading letters at Captain Whitley's. I remember his saying that he was about taking lodgings in Goldsmith Terrace, because he considered the hotel too expensive. I don't recollect his saying anything about his intended wife; he would be likely to refuse to enter into an improvident transaction, he was so shrewd, so far as his own objects were concerned, he spared no expense, but otherwise he would not give 21s. for £1. When he first took it into his head to adopt the boy he spoke of it, and after he had executed the deed he spoke of it, and in the end of 1863, after the marriage was broken off, he had taken a fancy to the boy, and wished to adopt him, and after an interval of about six or eight months he said he had given O'Brien Hilliard £100 a year. I did not think it extraordinary, as I thought it very natural for him to wish to have a companion with him. He did not tell me, in 1863 he had executed a deed when he spoke of adopting the boy, he said he was going to provide for him, and that a deed was to be executed. He did not tell me that Osborne Hilliard was engaged in preparing a deed for him in 1863, but that such a deed was to be executed. I know O'Beirne. I dined very often at Osborne Hilliard's; my intimacy with Hilliard's family commenced about seven or eight years ago. I did not know Hilliard when with Cullen, the attorney, in 1863, I dined with—I think I met O'Beirne there.

Cross-examination of William Shaw.

Was it in November, 1863? I could not say.

Was it after the time you heard of the intention to adopt? I could not say positively—I could not fix the time. I don't think I met O'Beirne more than once at dinner. I and my family dined there by invitation, and O'Beirne had come in after dinner. I repeatedly met O'Beirne at Hilliard's house in 1863. It may have been 1864. I don't think I ever met O'Beirne at Hilliard's house in Gardiner-street. To the best of my knowledge and belief I never did. Osborne Hilliard deposed that he removed from Gardiner-street to Gloucester-street, in March, 1864.

Cross-examination continued.—I never met O'Beirne at dinner at Hilliard's, except in Gloucester-street. I did not meet Norton at Hilliard's in Gardiner street. I did in Gloucester-street on one occasion. O'Beirne had dined with me, and I with him. My acquaintance with him commenced from the time I had met him at Hilliards.

Re-examina-
tion of Mr.
Shaw.

Re-examined by Mr. Palles.—If this document (2nd draft) were sent by post to Captain Norton would he be able to understand it? I think he would. I don't think he would have written that approval at foot if he did not understand it. I am an Insurance agent.

To Mr. Macdonogh through the court.—Do you understand that document yourself? I do.

How long is that annuity to last for? For ever. I believe it is an annuity on the lands for ever—it appears to me simple.

Could you sue the person himself for that annuity? My impression is you should go to the lands for it.

No. 61.

Direct Ex-
amination of
Henry
O'Beirne.

Henry O'Beirne examined by Mr. Hemphill—I am a solicitor since 1845. I was acquainted with Captain Norton. I was also acquainted with Osborne Hilliard since some time after I went to live in Gloucester-street in 1851. I became acquainted with Norton, 1860. I was introduced to him by a client of mine, Mr. Boggett—it was in reference to a matter of a claim by Norton against him. He was a tenant of Captain Norton's brother. From that time I was in the habit of meeting Captain Norton occasionally. I think I visited him at Bray. I am sure I was in his lodgings over the confectioner's shop, on one occasion—I can't fix the date—I forget whether any one was with me. I met Norton at Hilliard's house in 1863. I knew the other members of Hilliard's family. I sat next to Norton at dinner at Hilliard's. I can't tell the month. It was before he had adopted O'Brien Hilliard. He was praising the Hilliard family, and said he had taken a great fancy to O'Brien, and that it was his intention to provide for him, and said he intended getting him educated and brought up to some scientific profession. I think I met Norton at dinner some where; I think at Mr. Shaw's, who lives at Rathmines. He told me he had bought a piano for O'Brien Hilliard, and had adopted him with the consent of his parents. That he had him living with him—that he played the piano very well, and he was a great service to him. Before the execution of the deed I met Norton at every public place I went to. (Letter 16th February, 1864 OO, produced. This was the first communication I received from Captain Norton in reference to that deed. I never had any previous communication with Osborne Hilliard in reference to it. Norton called on me the very day I received that letter—I think it came by post. I could not find the envelope He spoke to me about the deed. He brought me this draft of the deed—draft MM. He told me his intention was to settle £100 a year on O'Brien Hilliard, to commence after his post mortem. I asked him as to his power, as I always understood he was bound up by his brother, and I asked him where was the annuity deed of 1827, and he said Osborne Hilliard had it, and referred me to him for it—he appeared to be quite capable of understanding it—he understood it perfectly well, and only wanted it legally carried out. He appeared to know what he wanted to do, and had promised; and I was to see he did not do more than he said. He told me his proposition to the Hilliard family was that he was to settle £100 a year on O'Brien Hilliard after his death, and I was to see it was legally carried out. The substance was this—he was to settle a £100 a year for ever on O'Brien Hilliard. After his death, I read the draft over to Norton, and explained it to him. I next called on Osborne Hilliard. It might be on that or the following day I saw Osborne Hilliard, who produced to me the original deed of 1827. He told me the draft was settled by Mr. Berkeley, and that Captain Norton had a copy before him, and had approved of it. He showed me this draft (I). I then saw that the annuity deed was properly recited in the draft sent to me, and marked my approval and gave it to Osborne Hilliard. The engrossment was sent to me the 18th or 19th, with the draft,

*Now, was it that
this draft was
produced by H.*

*where can you
find it did he
get this info
see p. 134*

and I compared them. I put a memorandum of comparison on it on the 19th February, 1864, in my own office, and sent them back to Hilliard. Captain Norton called at my office on the 19th, and said he was to be at Hilliard's about 4 o'clock, and wished me to attend then. I attended accordingly—it was in the dining-room—there were present Captain Norton, Osborne Hilliard, Vandeleur Hilliard, and O'Brien Hilliard. I read over the deed to Captain Norton, and said there is the deed in accordance with the draft, and it settles £100 a year for ever on O'Brien Hilliard, and he said it is all right, that is what I want; a memorial was executed on the same occasion. Norton certainly appeared to me to understand the effect of the deed. No pressure or inducement was held out to Captain Norton to execute the deed—it certainly was his voluntary act. I acted through the transaction as Captain Norton's solicitor. It was for that purpose I was retained by Norton. I gave him the benefit of my independent professional assistance, according to the best of my judgment, honestly and faithfully. I met Captain Norton very often after the execution of the deed. He never after adverted to O'Brien Hilliard to my recollection. He never after spoke of the deed. I heard him refer to all the family, but never heard he proposed for Miss Hilliard from him or any one else.

Cross-examined by Mr. Macdonogh—I had never been professionally engaged with Norton until the 16th February, 1864. I was not aware that Lyons had been his attorney. Hilliard never told me that Lyons was his attorney or land agent to my recollection. I could not fix the date of when I was at Captain Norton's lodgings. (What brought you there?) Norton told me he would be happy to see me down there, and I think I was there with some friends of his, and went in and took a glass of wine there; that might have been in 1864. I can't say it was not in Osborne Hilliard's house that Norton said he would be glad to see me. I sat next him at dinner. In 1863 he told me it was his intention to adopt O'Brien Hilliard, if his parents consented, and I remarked upon his age and said, it would be necessary to have him educated. I can't say where next I met him; the ladies were present at Hilliard's dinner party. I think it was not in the early part of October, 1863; I think it was more like the summer season; it was before he adopted O'Brien Hilliard. (Answer to Interrogatory, paragraph 2, read).

Cross-examination of Mr. O'Beirne.

Was it at the close of the year 1863, at Rathmines? That is another occasion, when he told me he had O'Brien Hilliard living with him, and that he had purchased a piano for him. (My answer is true—he told me at Hilliard's house first).

Was it at the dinner party he asked you to come out to see him? I can't tell who was the friend; I can't say.

Was it any of the Hilliard family? I can't say. How long before the day you dined in company with Norton, at Hilliard's house, had you dined with Hilliard? I can't say; I don't think I dined in Captain Norton's company at Hilliard's house, more than two or three times. I was once, when first we became acquainted, rather intimate with the family of Hilliard, in 1861. Our acquaintance ceased altogether in 1862. The difference arose in a Chancery case of Abbot v. O'Beirne, in which Osborne Hilliard was my counsel. I was one of the defendants. He was my counsel in Kelly v. O'Beirne. The deed in that case had been submitted to him; it was prepared by Messrs. Billing and Company; it was the subject matter of that suit, and it was submitted by me to Osborne Hilliard, as counsel for O'Beirne and Kelly. I was the O'Beirne. The draft of that deed was submitted to Osborne Hilliard in 1859. It was a conveyance to a purchaser. Osborne Hilliard was never my

33 counsel in *Kelly v. O'Beirne*. In *Abbot v. O'Beirne*, I was not the sole defendant. Hilliard prepared my answer in that cause; he was my counsel in preparing my answer. I think that was in 1860. The letter of the 16th February came in an envelope by post. I could not tell when I got it. I think I got it on the 17th. This is the draft I got from Norton; there was then no solicitor's name of Cullen upon it, if there had been I would have sent it back to the solicitor; the name Michael K. Cullen was not on it. I never got the £2 2s. marked on it. I have no cost book; I draw costs from the documents. I am sure this draft was either sent to me with that letter, or handed to me by Captain Norton; if handed to me, it was on the 17th. The substance of what he saw was that he (Norton) had proposed and agreed to settle a £100 a-year on O'Brien Hilliard, and that it was not to be payable until after Norton's death, and that it was to be settled by this deed. I read over this draft, and told him this, of course accorded to his wish, and asked him what about the title—because he was bound up by his brother's will. I first looked over the draft myself, and then explained it to him. I can't say I read every word of it; I read the recitals and other parts of it. I can't say what tone I read it in, but there were some voices Norton could hear perfectly well. I can't say I read every word of it to him. I explained to him the nature of the deed, and what was in it.

Did you make a single alteration in the draft? No.

Did you understand by that deed there was nothing obligatory on O'Brien Hilliard continuing to live with Captain Norton? I say there is no covenant in it for that; it is not always my habit to send deeds to counsel to advise.

Did you understand that if O'Brien Hilliard went away from Captain Norton in ten days, that the £100 a-year could be enforced? If the consideration for the deed were to fail, the redress could be made. I know the further covenants for the boy continuing to serve usually inserted in apprentice deeds. I heard that Norton was bound up by his brother's will. I inferred he was tenant for life. I did not know anything about his property. I do not distinguish in the deed the property held for life or in fee. I never gave it to Hilliard until I approved of it; it came back to me with the engrossment. I knew there was no attorney employed in the case. I have no recollection of seeing Cullen's name on it. I saw the other draft; Hilliard showed it to me. I had not read it all through; I saw that Captain Norton had approved of it. I will not swear I read it all. 132

Was it your duty to have read it? I don't think so.

Would this carry out the intention which Norton expressed to you? No; it does not as far as I see.

Was that a life annuity or a perpetual annuity? It might be argued, I never saw that until it was approved of by Norton. He produced to me another draft which he called Mr. Berkeley's. I might have known Mr. Berkeley's writing. I did not read this or compare it with the draft I brought to his office that day. I did not compare the draft sent to me with counsel's draft (Draft MM). I thought the words heirs and assigns conferred a perpetual annuity. I said that the recital in the draft deed corresponded with the deed of annuity; that was my principal object in coming there. I think I left the draft with Osborne Hilliard, after approving it; that was on the 18th. The £100 a-year appears to be written all through on an erasure. My attention was never called to this. The deed is accordant with my instructions; I had no suspicion in the matter.

Is there any covenant in Norton's approved draft binding his executors? I don't find any such.

Did you explain that the effect of the draft sent to you would be to impound his assets? I told him it bound his property, his heirs and executors, and everything he left after him. He was an educated man. I suggested no alteration, or to lay it before counsel, but told him its effects and what it would do. That was on the 17th, in my office, before we went to Hilliard's. After getting back the engrossment I compared it with the draft. I can't tell who compared it with me. It was not with myself; I had another person. I can't tell who that was; some person read over the draft, and I held this. My primary object in calling on Hilliard was to see the annuity deed, and that it was rightly recited. He showed it to me and told me a draft was settled by Mr. Berkeley, and a draft approved by Captain Norton, and I did not bother myself with any of these. I assumed that Hilliard would not send me a draft different from that settled by counsel.

Did you explain the deed to Norton on the 19th? I read over the engrossment to him. I said it was an accurate deed, compared by myself. I told him the effect of the deed again on the 19th, but did not so particularly as on the 17th.

Was any copy of that deed left with you for your client? My impression was that I had a copy of it, and I searched, but could not get it. I can't swear whether I did or did not get a copy of it. I have no day book. I keep a diary, and could find no entry of a copy of the deed there.

Do you now believe you got a copy? I have no belief on the subject. I was paid nothing on foot of this transaction, but I ought to have been.

Osborne Hilliard proves letter of 16th February, 1863.

No. 62

Martha Bonham, examined by Mr. Hemphill.—I am the sister of Captain Whitley, and reside with him. I was acquainted with Captain Norton for between five and six years before his death. He visited at Captain Whitley's, and dined there occasionally; it was my house, and Captain Whitley lived with me. The intimacy with Captain Norton continued till about a fortnight before his death. He first met the Hilliards in 1863, at my house. I met the Hilliards first in the summer of 1863. In 1863, in the summer season, he was introduced to the Hilliards, who were staying at Kingstown. Captain Norton told me he admired Miss Hilliard very much, and intended to propose for her. That was in a day or two after being introduced to her. He afterwards told me he had proposed for her and was refused. That was about a week after. He regretted the being refused exceedingly. He never spoke to me of her again. Subsequently, he said he admired O'Brien Hilliard very much, and would wish to adopt him; that was shortly after he was introduced. After that he said O'Brien Hilliard was quite efficient for everything that he wished; that he was delighted to have such a young man about him—that he intended, as he adopted him, to settle £100 a-year on him. This was about a week or a month after Miss Hilliard refusing him. I never had any conversation with Captain Norton on business. He appeared perfectly intelligent on all matters that we conversed upon.

Direct examination of
Martha
Bonham

63.

O'Brien Osborne Hilliard, examined by Mr. Hemphill.—I was acquainted with the late Captain Norton, and lived with him for some time before his death. I first went to live with him on a visit, towards the end of October, 1863. I should say my sister was at my father's then. Captain Norton often spoke to me whilst I was on a visit with him. My first visit to him was in October, 1863, in the rooms over Hubbard's shop. He said he wished me to live with him, and that he would make a provision for me as a gentleman after his post mortem—

Direct examination of
O'Brien
Osborne
Hilliard.

*all held in the 17th
was read the recited*

*This is quite contrary
to his statement.*

no one of my family was present then. I came back to town for a couple of days; that was about a week after I had gone to him. I went to my father's with the intention of returning. I have no recollection of telling my father what Norton had said. Norton frequently after my returning said he would wish me to live with him, and that he would treat me as a gentleman, and make provision for me after his post mortem. He never mentioned my sister's name to me. He never specified any particular work that I was to do. I used to correspond for him, and do any other business he might have. I was present the day the deed was executed, that was at Osborne Hilliard's house, in Gardiner Street; my father, Mr. O'Beirne, and my two brothers were also present. Captain Norton had the deed read out to him by O'Beirne, and approved of it, and signed it. After that I continued to live with Norton as a son; he treated me as a son, being always affectionate. There was never any coolness between us up to his death. I did not keep him in terror. He never expressed to me his desire to break off connection with me, or intimate his desire that I should leave his house. I left his house on Thursday; he did not make me leave, for when I went in to bid him good-bye, he said he would like to try the experiment, but that I should come back on Sunday. I took all my own things, except a piano and gun case—Captain Norton gave me those. I took away no papers except my own. I took away none of Captain Norton's papers except a bill of Eiffe's, on Mercer and Company, and letter of Mrs. Eiffe's, of which I was not aware until I found them sometime after the execution of the deed.

Did he ever speak to you about the deed? A day or two after he said he was glad he had it over, that we were all right there. He never said anything about setting it aside. I went to Paris in 1865. Norton sent me to have some of his inventions brought out there, if possible, particularly one of fog signals. He seemed very well pleased after with what I had done. (Exhibit O produced). I went to Mr. Lyons with a letter in January, 1864. He gave me £10 to pay some newspaper bills, in Dublin, which Captain Norton owed, I paid some of it in bills, and brought the remainder back to Norton. Neither I nor my father got any portion of that money. I did not see Eiffe often there; he and Captain Norton were friendly, not very intimate. Norton was able to, and always did attend to business. I paid the greater part of his tradesmen's bills, and he paid some. I never perceived any want of intelligence in him. I generally wrote the cheques, and he signed them. I very seldom saw Lyons there—I have seen him there.

Cross-examination of
O'Brien
Osborne
Hilliard.

Cross-examined by Mr. Macdonogh.—I should say I saw Lyons there about three times. Captain Norton and he were talking when the case of Metcalf v. Norton was going on. Lyons brought some papers there. I knew Lyons was his solicitor in that cause. I don't recollect writing on a slate on the subject of going to Paris. I don't swear that it is not here. I will swear that I did not sponge it out.

Was he deaf? He was occasionally hard of hearing, but not deaf; you had merely to sit on a chair beside him; you had to raise your voice a little above the usual pitch. I first became acquainted with him in the end of October, 1863. My father and mother had been acquainted with him, and my brother De Vere had been on a visit with him. I went out to see him when my brother was with him. That was the first time I became acquainted with him. I had not heard a word about the proposal of marriage. I remained there that night, and my brother too; it was No. 9, Goldsmith-terrace, the confectioner's. I don't recollect what brought me out; my father or my mother did not send me out. I dare say it was my brother being there. I cannot say whether I came in next day or not; I would not fix a date

139 at all. Captain Norton and I had never met till then. My brother may have been there a week. I did not hear of the proposal of marriage until about three or four months after it was made. De Vere went up to town the day after I went down, and I stayed for about a week. It was not during that time he proposed to adopt me. I took no clothes with me. I came into town for a couple of days to get my clothes,

How soon after your return did he speak of adopting you? I could not say; he proposed to adopt me after a week or fortnight, or within a month after I went there. Secondly, I may have told my father the first day I was in town after he mentioned it to me. Mr. Hubbard knows when I went there. I was quite willing from the first to adopt the proposal. I was not surprised at the proposal, but rather pleased.

Did not Dr. Whistler and Captain Treacy state to you that Captain Norton desired you to leave the house? Never.

Did Dr. Whistler say he had been desired by Captain Norton to intimate his wish to you on that occasion? No, but Dr. Whistler said that as he wanted a bed for a nurse whom he was to get from the workhouse I was to come into town for a few days. I did not hear Dr. Whistler and Mr. Treacy examined, but I read their evidence in the paper. It was perfectly untrue, the papers of Mrs. Eiffe came to me by Captain Norton's desire that I should take care of them. I never told him any stories about Mrs. Eiffe. I told him a story about Mrs. Eiffe being afraid of being poisoned. I wont swear that was in 1865. I told him nothing else of Mrs. Eiffe. I told him the other story about being poisoned by pickles, merely as a joke; after that matter of the pickles she did not come there as often as before the story was. Mrs. Eiffe had spoken to me about a bottle of pickles she had opened, and she said she was afraid to eat them, and he would, but until her son came home to have them analyzed, and then she referred to Captain Norton's being always afraid of being poisoned, and that was what put her on the alert. I could not say whether this was in 1865 or not. (Document produced). This is my handwriting. I wrote it on the evening of the day; I told the Captain on the next day. It was by Norton's directions I wrote it.

What is the latter subject of it? I don't understand it at all. This is extracts from Mr.^s Eiffe's letters.

To whom? I to Captain Norton. I dare say this was extracted from the letters of Mr.^s Eiffe by the direction of Captain Norton.

To whom were those letters? To Captain Norton I suppose. I had the documents before me when I was making the extracts. The Captain read out some of the extracts to me. I never understood the allusions of the latter part of the letter. The words between brackets are those which you affirmed, and the words not within brackets are what she says the words within brackets are those I told the Captain he was apprehensive of poison more than other men. He had the idea that his brother had been poisoned. It was some time after I went down to him that I learned of this apprehension. He asked me where I had been, and I told him of this conversation with Mrs. Eiffe. I saw he was annoyed by it with Mrs. Eiffe. I heard of his letter to my father, asking him to be his executor a long time after it was written.

What is the meaning of the last three lines which you wrote? It is the extract from a letter of Mrs. Eiffe. I don't understand it at all. That is the letter Mrs. Eiffe wrote. I never did understand it myself. I went to Paris, and lived some part of the time at No. 38, Rue De Berrie. That was the house in which Madame O'Gorman Mahon lived. (Letter of 19th October, 1864 read). I understood they should be paid a compliment.

pp 42.47.138

Who told you that? Madame O'Gorman Mahon. I did not hope to get money from Norton for that purpose. I never thought of getting money from the Captain. Madame O'Gorman Mahon introduced me to a gentleman who introduced me to Count De Grehan, who introduced me to a chief of the railway. I was on a visit with Madame O'Gorman Mahon, and her guest for some time. (Letter 5th September). That was a Rendezvous. When I first went to Paris, I stopped at a hotel, and then I went to Madame, and then a friend came to her, and I had to go to lodgings. I did not know that Norton had made his will I was not within hearing of any observations made by him about it. With reference to the playful letter written by my sister to Captain Norton. He was intimate with our family as a friend. Norton did not go into the drawingroom, at the Castle, in April, 1864. His military dress was generally left in my father's house—1865 was the time the dress was sent in. It was then bought from a tailor in Abbey-street and sent home to Gloucester-street. I came into town that evening with Captain Norton. I did not go to the drawingroom; Norton went by himself. Madame O'Gorman Mahon is of high position in Parisian society. I wrote this memorandum by Norton's authority; the first half purports to be Mrs. Eiffé's version of the affair; this is taken from Norton's dictation, then, in parenthesis, my version is given; the last half is an extract from Mrs. Eiffé's letter. She wrote to Norton to explain the affair of the pickles; I knew nothing about it except writing it down at Norton's dictation.

Did you at any time see any letter from Captain Norton to your father, in reference to Miss Hilliard's proposal? Yes, it was a letter from my father to Captain Norton, declining the proposal; that was about three months after the occurrence; I saw it among Norton's papers in a drawer, and that was the first I heard of the proposal; I read the letter at the time, (Copy letter of 2nd October, 1864 produced.) This is the same as the letter I read; I often had to search through the drawer for papers. I left that letter just where I got it; I never saw it but once.

To Mr. Macdonogh.—I was not told to read it.

No. 64.

Friday, 20th November, 1868.

Direct examination of
Vandeleur O.
Hilliard

Vandeleur Osborne Hilliard, examined by Mr. Hemphill.—I am the eldest son of Osborne Hilliard; I was sworn in a Solicitor in May, 1864; I had nothing to say to the preparation of the deed of 19th February, draft M.M. This copy was made by me; I made a copy of the original deed after it was executed.

What became of it? O'Beirne got it; I was present at the execution of the deed; what passed then was, O'Beirne read out the original deed aloud, and explained each part of it as he went along to Captain Norton; I am an attesting witness to the deed; Norton said "all right, all right—that's what I wish." He appeared to me perfectly capable of understanding the deed; I had before that met Norton at my father's house; I never observed any peculiarity or incapacity about him; none of the ladies were present when the deed was executed; it was about 4 o'clock in the day; Norton never spoke to me on the subject of the deed; I brought the deed to the Registry Office, and registered it; my name was not to it when I registered it; I don't believe I ever saw this deed again from the time I registered it to the end of May, 1867; it was on my return from France in May, 1867.

Between the first and last time you saw Norton at your father's house was he the accepted suitor of your sister? I never knew him as such; he never gave me any indication of it.

Cross-examination of

Cross examined by Mr. Walsh.—I certified the folios in the deed which is necessary for registering it. Is it not the universal practice to have a Solicitor's name endorsed on the said

deed to see to whom it should be given back from the Registry Office? I believe it is generally done. When this deed went to be registered there was no Solicitor's name endorsed on it; I did not put my name on it; I made the copy from the original by my father's directions; that was very soon afterwards; I gave the copy to my father; I did not see it after that; it was not given to O'Beirne to my knowledge, but according to my belief; I may have seen it in Court here; I will not positively swear I ever saw it again; I will not swear that I have not seen it in Court; I don't believe it has been in Court, but it might; Norton dined at my father's between the latter end of 1863 and the beginning of 1864; I can't say how often; I can't say whether I saw him frequently or not after his proposal and before the execution of the deed; my brother was on a visit with Captain Norton, but I could not fix the time; I can't state who got back the deed from the Registry Office; I believe I did; Cullen's name was not on it, nor was mine.

Vandeleur
Osborne
Hilliard.

No. 65.

De Vere Osborne Hilliard, examined by Mr. Kelly.—I was present at the execution of the deed, I believe, of an annuity to my brother.

Direct examination of De Vere Osborne Hilliard.

Cross examined by Mr. Ritchie.—I went on a visit to Norton in the middle of October, 1863, at number 9, Goldsmith Terrace; Norton asked me to go; he was then in my father's house; to the best of my belief I think it was about 3 o'clock; he was paying a visit, and asked me to go out and he would show me his guns; I don't think any of the ladies were in the house then; I think I went the next day, and stayed three days; O'Brien Hilliard was (not) asked by Norton to come out to see me, and I went into town the next day after with Captain Norton; I did not return that day with Captain Norton; I could not say what was the interval to the time when O'Brien returned.

Cross-examination of De Vere Osborne Hilliard.

By the Court.—O'Brien went out and stayed that night; we three went into town; O'Brien did not go back that day I believe.

137 Re-examined by Mr. Kelly.—I had no conversation with Captain Norton about O'Brien whilst I was on a visit with Norton. I had whilst O'Brien was there I think in November. Norton came in one day in November and said he and O'Brien were getting on very well together; that he (Norton) had taken a great fancy to him, and intended to ask my father and mother to allow O'Brien to live with him altogether, and that he would provide for him. I think that was about the beginning of November; it was in our house in Gardiner-street; no one but myself was present.

Re-examination of De Vere Hilliard.

See p. 58

No. 66.

Z. C. O. Hilliard, examined by Mr. Sullivan.—I am the only daughter of Osborne Hilliard. I first knew Captain Norton in the autumn of 1863—I think about the beginning of September. I first met him at Captain Whitley's in Kingstown, who was a friend of ours. One afternoon Captain Norton called to pay us a visit and handed me a letter, and asked me to read it, to consult my father and mother, and to let him know the result in a few days. This was in Gardiner-street. I was not aware of the contents of it, and was much surprised at it. I did not open it till he had left. I then opened it, and read it—at least I read the first part of it, and handed it to my mother. I never entertained the proposal in that letter for one moment. I never lead Captain Norton to think I entertained it. I think my mother mentioned it that evening to my father; it was decided at once to decline it. I was aware that there should be a polite refusal; it was agreed on the same evening between my father, mother and myself. I went on a visit to the country to avoid meeting Captain Norton again. It was I think about

Direct examination of Miss Z. C. O. Hilliard.

a week after, for I stayed away about five or six weeks; I had no opportunity of seeing Norton in the meantime. It is not true that I got directions from my father to keep up correspondence with Captain Norton; there is not the slightest color of a foundation for that statement. I met Captain Norton some months afterwards; that proposal was never renewed, nor was the subject of marriage ever spoken of between me and Captain Norton. Except the two letters produced from me to him, I never wrote any others but invitations to dine, and another time I wrote to say that brother was ill and could not go to him. He never wrote to me except in answer to invitations. Miss Riddick was a great friend of ours. The Bazaar was a long time afterwards. It is not true that Captain Norton was, after February, 1864, treated as an accepted suitor of mine; there is not the slightest foundation for that statement. I was not present at the execution of the deed.

Cross-examination of
Miss Hilliard.

Cross examined by Mr. Walsh.—It was before Christmas I returned, but I cannot remember when. Captain Norton did not dine at my father's for a long time after my return. I don't recollect his dining there in November with O'Brien. p. 124

When did you first hear of O'Brien's adoption? After my return from the country. Captain Norton dined there the day the deed was signed; I don't recollect his dining there before that. I was at both the first and second drawingrooms in 1864, and also at Patrick's Ball; I did not see Captain Norton at either of them; I have seen Captain Norton at a Drawingroom, perhaps in 1865; I don't remember his dining and dressing for the Drawingroom at my father's house; I know his Regimentals were once left at my father's house; he did not go to the Drawingroom to my knowledge at all in 1864; I don't think my father could have stated he dined at his house in 1864, and went to the Drawingroom; I don't remember it; I wrote invitations to Captain Norton by my mother's directions; I only wrote the one in the style of that produced; I don't know that Captain Norton's uniform was sent by M'Comas, or by whom it was sent.

Were you not very intimate with Captain Norton when you wrote to him in this style? No, not very intimate.

Why did you write in this style? Just because I did not wish to sit down and write a formal letter to him. I knew nothing about the deed; I heard there was such a thing signed, but that was all; I may have heard it that day—perhaps not till then; I may have heard there was a provision for my brother, but I don't remember having heard of it until the day that was executed. Captain Norton continued occasionally, but very seldom, visiting at the house; I did not meet him very often; I never walked in Mountjoy-square with him; I walked down Sackville-street with him and O'Brien; I was once in his house; it might have been in 1865; it was certainly not in 1864; it was not by my mother's directions that I wrote that letter, beginning Quartermaster-General; I wrote it all from myself.

By the Court—I never saw Captain Norton in uniform until I saw him at the Drawingroom; I saw him in uniform there; I don't remember seeing him at my father's house that night.

Is it a likely thing to forget? I don't recollect seeing him in uniform at my father's house; it might escape my recollection, because he might have gone away before I saw him; it was not the first year of our acquaintance he went to the Drawingroom, therefore it was not in 1864; I am quite clear that it was not in 1864 that he dined and dressed at my father's.

No. 67.

Caroline Hilliard, examined by Mr. Hemphill—I am the wife of Osborne Hilliard. I recollect meeting Captain Norton in 1863. That was my first acquaintance with him. It was at Captain Whitley's, at Kingstown, at a dinner party, in the beginning of September. I was introduced to him. Then I lived at Lower Gardiner Street. He called on me after a few days, perhaps a week, and paid a morning visit. My daughter was present on one occasion, about a week or ten days after we met him. It was in the beginning of September that we met him. My daughter was at that party. On one occasion Captain Norton paid us a visit, and handed her a letter as he was leaving the room. I had previously exchanged very few words with him. He had not spoken to me on the subject of the letter. My daughter showed me the letter or proposal dated the 30th September. She never entertained that proposition for one moment, neither did her father nor I. Some days after there was an answer written, which I read and said: Osborne Hilliard, take it out to post it. It was Osborne Hilliard wrote it. After that answer was sent none of us gave any encouragement to Captain Norton to continue as a suitor. He never thought of it himself. I never directed my daughter to keep up any correspondence with Norton as a suitor. It was after the proposal that De Vere went on a visit to Norton, and after that O'Brien went. When O'Brien was there some days Norton came to visit and said that he admired the lad, that he was intelligent, and liked his guns, &c., and that he (Norton) would like to keep him on living with him, and said something to me about adopting him as his own son. I at first did not like it, but the boy liked him and his inventions so much that I yielded. Osborne Hilliard was not present when Captain Norton spoke to me of it first. It was about a fortnight or three weeks after the proposition was mentioned it was acceded to by us. Captain Norton afterwards praised him on all occasions. He said, before he executed the deed, he would provide handsomely for him after his post mortem, but not what he would do. It was about a fortnight or three weeks after the time I mentioned, that he first said so. He never spoke to me in his life about my daughter being married to him. He came to my house more frequently after O'Brien had been adopted by him. I don't think he ever dined more than twice in my house until after the 19th February; certainly not more than three times. I was not present at the execution of the deed. He did not come up to the drawingroom after dinner on that day. He was not at the Castle drawingroom in 1864; if he were I should have seen him, for I was at the Castle drawingroom. I recollect his dressing at my house in 1865. Was the first drawingroom he went to to my knowledge. The first time I have ever seen him there after the 19th of February, I did not see very much of him, and never dined at his house but once. That was in the autumn of 1865. I think I saw him a few days before his death. Osborne Hilliard and a friend were with me. It was at his own house. He was on most affectionate terms with O'Brien that day. He was ill, and O'Brien was giving him drinks. I never on any occasion saw O'Brien exercising any terror over him. They were most affectionate, like a father and a very good son. Captain Norton never mentioned the terms of the deed, but said he would provide for him.

Cross-examined by Mr. Macdonogh—I could not fix the date of my introduction to Captain Norton. It was about the commencement of September. Mr. Shaw was there too.

Direct examination of Mrs. Caroline Hilliard.
Cross-examination of Mrs. Hilliard.

Did Norton then say anything about his love affair with lady Guillamore. Not to me. I heard of it first from Mrs. Bonham. I could not say when I heard it. She told it to me laughingly. I had not heard of his tendency towards young ladies up to that time. I don't believe he had any such tendency. I heard this—that he had no such tendency, from Captain

Whitley. I can't say when. He had not told me before the 30th day of September. I never spoke to him on the subject at all before that. It is very probable it was in conversation relative to proposals for my daughter. (Letter produced) I never saw this letter before. My husband told me that there had been a letter, I think he told me, this spring. We had a dinner party on the 9th of November, at which the Whitleys and Captain Norton were. I cannot remember whether my daughter was present or whether we had a dance after or not. I cannot say whether O'Beirne was there or not. It is possible that O'Beirne was at some of these dinners. I next met Captain Norton, after we first met, visiting sometime in September at my house. I don't think he ever called at my house until the 13th of September. He may have, but I don't think I ever received him there till then. I found no inconvenience in making him hear what I said.

Had he requested to be allowed to visit you, it is possible he may have asked leave to visit Mrs. Bonham's. When did you hear of Lady Guillamore's proposal? Within three months of my knowing him. He sat a good while on the 30th day of September. My daughter met him twice at Captain Whitley's, between the first dinner party and the 30th September. I saw him hand her the letter. She read it first and handed it to me. I thought him much too old for my daughter. I thought it was great presumption on his part to propose for her. I knew he had a handsome annuity to settle. I heard it sometime after from Captain Whitley. After a week or a fortnight after he proposed I heard the annuity was something over £200 a-year.

How soon after that did you invite him to dinner? The 9th of November was the first time he was ever asked to my house to the best of my recollection. Extreme presumption would be a ground for discontinuing the acquaintance of a person on that head. I did desire that the acquaintance should continue. (Comic note showed) This is my daughter's writing. I dare say I saw it before it was sent, and laughed at it. The other young lady, Miss Riddick, was present. This was to get O'Brien's permission to come in that it was written. It was not always easy to get his permission, as he felt lonely without O'Brien. I was accessory to it.

When did he open the subject of getting the boy? Some time in October. About the end of October or beginning of November. I was at first disinclined. It was mentioned in my own house. I communicated it to Osborne Hilliard. I acquiesced in it about a fortnight or three weeks. Unless I entertained the subject Norton would not have been asked to my house. He then came in a different character to my house—the adopted father of my child, instead of a suitor. It would not be pleasant that the intimacy should continue otherwise. If he had not proposed to adopt O'Brien he would not have been so intimate. I would not have asked him to dinner. His uniform was at my house after his death. His sword and his medal were there. The latter was particularly in my charge. They were given into my charge in 1865. I don't know of his having had a dress at M'Comas's in 1864. I knew it was bought at M'Comas's. I know nothing about his uniform in 1864. He asked me to give my son first in the end of October or beginning of November, 1863. It was about a week or ten days after the 9th of November that I assented. I had not formally acquiesced. Before the 9th of November I entertained the subject. (Memorandum of Captain Norton produced). I never saw either of those or heard of them before. I heard, I think, in the end of November that my husband was getting the deed prepared. O'Beirne did not stay to dine with us on the 19th February, 1864. Captain Norton went away immediately after dinner. He never slept

in my house before that; he did in 1865, when I moved to Gloucester Street, on the occasion of his going to the Castle. I was at the drawingroom in January, 1864.

No. 68.

Frederick Kirkpatrick, M.D., examined by Mr. Kelly—I first became acquainted with Captain Norton about the year 1847. I was in the habit of meeting him very frequently for about ten years, and dining in his company the time. I met him frequently. It was from 1847 to 1857. I was in the habit of meeting him at that time at the Friendly Brothers' Club House at his own lodgings where I attended him, and he has been a guest at my own house. I met him a short time before his death—a few months, I believe. I never attended him him professionally after 1850. I received a small cheque from him in November, 1862, for my attendance. I met him a few times occasionally in the street, between that period and the time of his death. I cannot fix the time. I had the opportunity of forming an opinion on his character as a man of business, and of his mental capacity. His mental capacity was very good between 1847 and 1857. He was a shrewd man on all points, and under no delusion whatever. After that period I observed no change. I conversed with him on several occasions. I observed latterly that his subject of conversation changed from Minnie bullets, and rifles, and shells, and gunnery, to spears, and archery, and ladies. He succeeded in convincing me that he had a claim to priority in these inventions in gunnery. This was before 1857. I think he would understand the nature of an annuity deed if placed before him. I don't think he would be induced to sign such a deed by influence on the head of these inventions. He was a hard man about money.

Direct examination of
Frederick
Kirkpatrick,
M.D.

Cross-examined by Mr. Macdonogh—I think I saw him in 1863. I did not see him in 1862, as I was surprised by getting a cheque for services rendered so long before—it was for £5. I am sure it was some months after November, 1862, that I saw him. I met him in Kildare Street, and he spoke of the cheque, and of archery, and throwing the spear. In my previous acquaintance with him he was a perfect bore on the subject of his projectiles. He always talked of himself and his own pursuits. When one got him off the subject of himself he was an intelligent, well-educated man.

Cross-examination of Dr.
Kirkpatrick.

Were you astonished when you found he had given up his old subjects? No, I was amused. He only spoke in commendation of a girl on the north side of the city, and again of another on the south side, and asked me did I know them, and passed on. He was a little deaf. In the former times I don't recollect that he talked of ladies. He asked me afterwards to go see his archery at Bray. I am sure I met him in 1865, or a short time before his death. A clever person, saying he would get something from Government for him, might be able to get money from him. I think if he would give money for anything he would for that.

Suppose you heard that in August, 1863, Norton wrote a proposal to Lady Guillamore, and that at the same time he handed her over £50 for building a church, don't you think the passion to be married had a strong influence over him? I think he would have become a very foolish old gentleman. If the newly awakened passion were played on, he would be likely to give his money as much as for the projectiles. When I said before that a clever person, saying that he would get something from Government, might be able to get money from him, I meant that it would require very strong evidence to get his money. I can give no medical opinion as I did not meet him for some time.

Examination
of Dr. Kirk-
patrick by the
Court.

By the Court—My intercourse with Norton ceased from 1857 to 1863. I met him again in 1863. From that to the time of his death our intercourse was merely casual, speaking for a few minutes when we met in the street. I was not in medical attendance on him. I had no opportunity of forming a judgment, as a medical man, on his being easily led. I did not observe any change in him from what I had at first known him.

In those conversations had you any opportunity of giving any opinion, as a medical man, in reference to a change in his mind as to whether he would be more easily led by other persons? I had not from the short conversations I had with him. Would his proposing for a young lady after a short acquaintance have induced you to think he had become changed in his mind? I would think so if he proposed after two or three days' acquaintance.

Would you, if you heard he had proposed for Lady Guillamore? I think that would have me think unfavourably of his intellect. Would you think so if immediately after he had proposed for another lady? I would.

No. 69.

21st November, 1868.

Direct exami-
nation of
Thomas
Matthews.

Thomas Matthews, examined by Mr. Kelly—I knew Captain Norton for three or four years before he died. I formed his acquaintance at Osborne Hilliard's. I had frequent opportunities of forming a judgment as to his character and habits. I met him, I think, four or five times at dinner at Hilliard's. I don't think he was a man who could be induced by representations as to forwarding his inventions, to grant an annuity of £100 a-year for ever. He was capable of understanding such a deed if placed before him. If he read it he was perfectly capable of understanding it. I thought him very sharp and wide-awake to make money, if he could, by his invention. The Sunday before his death I drove Osborne and Mrs. Hilliard to see him at Bray. I saw O'Brien Hilliard there when I went in first. Norton was not in the room, and was sent for down stairs, and he came up. He told O'Brien Hilliard to order lunch for us. I thought he treated O'Brien most affectionately. He asked him several questions.

Did he write so and so, &c.? I had often seen Norton and O'Brien Hilliard together before, three or four times. I thought he appeared to treat the boy in a very affectionate manner. I don't think he would be easily induced to give away his property.

Cross-exami-
nation of
Thomas
Matthews.

Cross-examined by Mr. Walsh—I saw Norton more frequently than four times. I dined in his company four or five times. I had very many conversations with him. I met him shortly before he died in Kingstown. I met him several times in Gloucester Street at Hilliard's. I met him in Gardiner Street. I don't know whether I dined with him in Gardiner Street. I dined with him in Gloucester Street in 1865 or 1866; I could not exactly say which. I always resided in Dublin. I am a friend of Osborne Hilliard's. I know him a long time. I know O'Beirne 20 years. He and Osborne Hilliard were very intimate. They had some difference. I don't know what it was. It was about two years ago. I believe they made it up. I heard what the cause was; I believe it hinged on professional business. I often met O'Beirne at dinner there. I heard that O'Beirne owed him a sum of money for fees, and he did not pay him.

No. 70.

"Lower Gardiner Street, October 2nd, 1863.

"MY DEAR SIR.—We feel, I assure you, both honored and complimented by the very
"high distinction offered to our dear child by your letter of the 30th ult., which any lady
"might be well proud of; but considering her extreme youth and inexperience, we feel that
"she would not be capable of assuming the responsibility of wedded life, and such is her
"own decided conviction. She entertains, however, a most grateful sense of the honour you
"have done her; and permit me to say, that regarding you as we all do as a high-minded,
"accomplished gentleman, we shall be always most happy to see you, and trust that the inti-
"macy which has commenced may long continue between us. Wishing you sincerely every
"every happiness, and that you may long be spared to enjoy it, I remain my dear sir, with
"kindest regards from all my family, most truly yours,

Letter from
Osborne
Hilliard to
Captain Nor-
ton, marked
"AA."

"OSBORNE HILLIARD."

"Captain Norton."

No. 71.

No. 6,278.

"Dublin, 3rd June, 1864.

"Pay Captain Norton, or order, Fifty Pounds.

"£50."

"OSBORNE HILLIARD."

Copy cheque
drawn by
Osborne Hil-
liard in favour
of Captain
Norton, dated
3rd June,
1864, marked
"BB."

Endorsed by John Norton and O'Brien O. Hilliard, marked paid, National Bank, Kings-
town.

No. 72.

"9, Goldsmith Terrace, Bray, June 3rd, 1864.

"MY DEAR SIR.—I thank you for the cheque for fifty pounds; it will set me right again
"with the National Bank, Kingstown. I can wait to the end of this month for the remaining
"one hundred pounds, and will return you your bank book by a safe hand (the O'Brien) to-
"morrow. I have been confined with an inflamed foot from wearing a tight boot, but shall be
"all right again in a few days.

Receipt of
Captain Nor-
ton for £50,
marked "CC."

"Faithfully yours,

"Osborne Hilliard, Esq., &c., &c.

"J. NORTON."

Stamp.

No. 73.

No. A35,880.

"Dublin, February 24, 1865.

"The National Bank.—Pay Captain Norton, or order, Five Pounds.

"£5."

"OSBORNE HILLIARD."

Endorsed by J. Norton and M. Weatherup.

Cheque drawn
by Osborne
Hilliard in
favour of Cap-
tain Norton,
marked
"DD."

No. 74.

"12, Goldsmith Terrace, Bray, March 23rd, 1865.

"Received from Osborne Hilliard, Esq., the sum of £5, on account of £50.

"JOHN NORTON."

Captain Nor-
ton's receipt
for £5, marked
"EE."

Cheque drawn
by Osborne
Hilliard in
favour of Cap-
tain Norton,
marked "FF."

No. 75.

"Dublin, May 17, 1865.

No. A35463.

"The National Bank.—Pay Captain Norton, or bearer, Twenty Pounds.

"£20."

"OSBORNE HILLIARD."

Endorsed by O'Brien Osborne Hilliard for Captain Norton, and paid by the bank.

"12, Goldsmith Terrace, Bray, May 17, 1865.

"Received from Osborne Hilliard, the sum of Twenty Pounds, on account of Forty-five.

"JOHN NORTON."

"Balance due £25."

No. 76.

"August 24th, 1865.

Captain Nor-
ton's receipt
for £10,
marked
"GG."

"Received from Osborne Hilliard, the sum of Ten Pounds, on account of Twenty-five.

"£10."

"J. NORTON."

Stamp.

No. 77.

"August 18, 1866.

Cheque by
Osborne Hil-
liard in favour
of Captain
Norton,
marked
"HH."

"Royal Bank.—Please pay Captain Norton, or bearer, Five Pounds.

"£5."

"OSBORNE HILLIARD."

Endorsed by J. Norton, and paid by the Bank.—August 21, 1866.

Total gross rent of Sanbucton £ 110 per annum.

" " " Rathfriland 234

Subject to head rent & annual fee £ 100 per annum
see also pp. 50 & 54.

1859. RENTAL of the Estate of JOHN NORTON, Esq., in the Counties of Meath and Dublin.

Denominations.	Tenants' Names.	Contents, Statute Measure.	Date of Lease.	Yearly Rent reserved by Lease.		Yearly Rent received by A. Barlow.		Gale Day.	Tenants' Tenure.	Observations.	
		A. R. P.		£	s. d.	£	s. d.				
COUNTY MEATH.											
1 Donoughmore	Reps. of John Fitzsimons	158 0 11	21st March, 1859	224 0 0	0 0	224 0 0	0 0	25 Mar & 29 Sept	31 years from 29th Sept., 1848	No. 6.—This rent was returned to A. Barlow as £93 5s. 6d., which amount has always been received by him.	
2 Donoughmore	Charlotte Fitzsimons	115 1 33	28th Jan. 1854	142 10 0	0 0	142 10 0	0 0	do.	31 years from 29th Sept., 1849		
3 Donoughmore	Christopher Wogan	113 3 3	1st August, 1854	165 0 0	0 0	165 0 0	0 0	do.	31 years from 25th March, 1854		
4 Donoughmore, and part of Great Bullstown	Michael Moyles	161 2 7	28th Feb. 1854	150 0 0	0 0	150 0 0	0 0	do.	31 years from 29th Sept., 1852		
5 Great Bullstown	Hugh Derlin	57 2 15	22nd Nov. 1851	60 0 0	0 0	60 0 0	0 0	do.	31 years from 25th Sept., 1851	No. 11.—This rent was returned to A. Barlow as £93 5s. 6d., which amount has always been received by him.	
6 Dardistown	Reps. of John Fitzsimons	113 1 22	20th March, 1824	98 10 3	9 6	93 5 6	0 0	do.	3 lives from 20th March, 1824		
7 Dardistown	Charlotte Fitzsimons	19 1 30	28th Feb. 1854	12 0 0	0 0	12 0 0	0 0	do.	31 years from 29th Sept., 1853		
8 Greenogue	Matthew Duffy	"	No lease	"	"	14 0 0	0 0	do.	do.		
9 Greenogue	Martin Kelly	"	No lease	"	"	11 0 0	0 0	do.	Life of said Patrick Kennedy, or 31 years from 29th Sept., 1853.	No. 12.—Lease not in A. Barlow's possession. It is believed to be nearly expired.	
10 Raystown	Patrick Kennedy	149 0 0	28th Feb. 1854	184 0 0	0 0	184 0 0	0 0	do.	For life of John McGawley, son of lessee, or 61 years from 1st May, 1830.		
11 Molinam	James McGawley	303 2 11	20th May, 1830	330 2 4	0 0	345 11 2	0 0	1st May & 1st Nov	For life of John McGawley, son of lessee, or 61 years from 1st May, 1830.		
COUNTY DUBLIN.											
12 Cappog	Representatives of A. Rorke	"	"	"	"	177 0 2	0 0	25 Mar. & 29 Sept	..	No. 14.—Reduced to £62 2s. 7d. during Captain Norton's pleasure.	
13 Cappog	Michael Metcalfe	72 2 11	12th Nov. 1852	182 10 0	0 0	182 10 0	0 0	1st May & 1st Nov	From 29th September, 1829, for the term of 3 lives or 31 years		
14 Rathland	James Kavanagh, No. 1	18 2 11	9th Feb. 1827	68 15 6	0 0	62 2 7	0 0	..	For 31 years, from 25th March, 1829, and life of Lessee, which ever should longest last.		
15 Rathland	Do.	6 2 7	1st May, 1829	28 0 0	0 0	20 2 1	0 0	..	For 31 years, from 7th May, 1847		
16 Rathland	Do.	8 2 7	7th May, 1847	30 0 0	0 0	25 7 0	0 0	..	For 31 years from 25th March, 1815.	No. 16.—Like to £25 7s. No. 17.—Like to £33 12s 1d	
17 Rathland	Do.	8 2 7	30th March, 1815	46 3 1	0 0	33 12 1	0 0	..	For 31 years from 25th March, 1815.		
18 Rathland	C. B. Johnston, Esq.	"	"	"	"	57 15 0	0 0	..	..		
19 Rathland	Reps. of M. Mowlan, No. 1	4 0 17	11th April, 1829	18 0 0	0 0	..	..	March and Sept.	For 31 years from 25th March, 1829, and one life, whichever should longest last.		
20 Rathland	Do.	5 2 27	14th Dec. 1831	21 0 0	0 0	32 3 4	0 0	do.	Like and like, from 29th Sept., 1831.	No. 19 Reduced to £32 3s. 4d. No. 20	
21 Rathland	James Carroll	6 0 31	10th Oct. 1831	23 0 0	0 0	18 15 10	0 0	do.	For one life, or 31 years, from 29th September, 1831.		No. 21.—Like to £18 15s. 10d.
						£1989 14 9					

No. 79.

"Lower Gardiner-street, Saturday, 28th November, 1863.

Letter of
Osborne
Hilliard to
Captain Norton,
marked
"KK."

"MY DEAR SIR,—In accordance with the desire which you expressed to me at our last interview, I requested Mr. Berkeley, Q.C., to prepare the draft of a short deed to carry out your wishes respecting the O'Brien, and I enclose you a copy of it for your perusal. p p 79-125

"Mr. Berkeley considers it necessary to have the draft approved of by a Solicitor on your part, and when this is done we can complete the matter whenever you please.

"Yours sincerely,

Captain Norton.

"OSBORNE HILLIARD."

No. 80.

Copy Deed of
Annuity
issuing out of
lands of
Molinam,
Co. Meath,
marked "LL."

THIS INDENTURE made the 18th day of May, in the year of our Lord, 1827, between Robert Norton, of the City of Dublin, Esquire, Barrister-at-Law, of the one part, and John Norton, Esquire, Captain in His Majesty's 34th Regiment, only brother of the said Robert Norton, of the other part. Witnesseth that for and in consideration of the natural love and affection which the said Robert Norton hath and beareth for and towards his said brother, the said John Norton, and for and in consideration of the sum of five shillings to him, the said Robert Norton, in hand, well and truly paid by the said John Norton, at and immediately before the enrolling and delivery of these presents, the receipt whereof he doth hereby acknowledge, and for divers other good and valuable causes and considerations him thereunto especially moving, he, the said Robert Norton hath given, granted, and confirmed, and by these presents doth give, grant, and confirm unto the said John Norton, and unto his heirs and assigns, during the continuance of the interest of the said Robert Norton, his heirs and assigns, in the lands of Molinam, barony of Ratoath, parish of Ratoath, and county of Meath, which he holds from the representatives of the late Gorges Lowther, of Kilrue, Esquire, in said county of Meath, by lease of lives renewable for ever, and renewals thereof, one annuity, yearly rent-charge, or sum of £70 late Irish currency, making the sum of £64 12s. 4d. sterling, lawful money of Great Britain, to be yearly issuing, payable, received, and taken by and out of All That and Those the said lands of Molinam, in the barony of Ratoath, parish of Ratoath, and county of Meath, whereof Mr. James McAuley is tenant: To have and to hold, receive, take, and enjoy the said annuity, yearly rent-charge, or sum of £64 12s. 4d. sterling, and every part thereof, unto the said John Norton, his heirs and assigns, for and during the term of the three lives now inserted in a certain renewal of the lease of said lands of Molinam to the said Robert Norton, and for and during the life and lives of all said other cestui qui vies who shall hereafter be added to the time and term of the said lease, and the renewals thereof, pursuant to the clause of perpetual renewal contained in said original lease, and its renewals, the said annuity to be paid and payable unto the said John Norton, his heirs and assigns, by two even and equal half-yearly payments, on every 1st day of May and 1st day of November, in every year, over and above all taxes, charges, deductions, impositions, and outgoings whatsoever, ordinary or extraordinary, charged or to be charged by Act of Parliament, or otherwise howsoever, the first payment thereof to begin and to be made on the 1st day of November next; and in case the said annuity, yearly rent-charge, or sum of £64 12s. 4d. sterling, or any part thereof, shall be behind or unpaid by the space of 21 days next after any of the said days, whereon the same is hereby made payable as aforesaid. Then and as often as it shall so happen it shall and may be lawful to

and for the said John Norton, his heirs and assigns, from time to time into the said lands and premises, or any part thereof, to enter and distrain, and the distress and distresses, then and there had and found, to take and drive, carry away, and impound, to detain and keep, and thereof to sell and dispose according to law, until he the said John Norton, his heirs and assigns, of and for the said annuity yearly rent-charge, or sum of £64 12s. 4d. sterling, and all arrears thereof, and all such costs, charges, and expenses, as he or they shall or may be put to or sustain, for or on account of distraining for the same, and the non-payment thereof shall be fully contented, satisfied, and paid. And the said Robert Norton doth hereby for himself, his heirs, executors, administrators, and assigns, covenant, promise, grant, undertake, and agree to and with the said John Norton, his heirs, executors, administrators, and assigns, that he the said Robert Norton, his heirs, executors, administrators, and assigns, shall and will, from time to time, during the said term, well and truly pay or cause to be paid unto the said John Norton, his heirs and assigns, the said annuity yearly rent-charge or sum of £64 12s. 4d., at the days and times and in the manner and form hereinbefore mentioned, for the payment of the same, and that free and clear of and from all taxes, charges, out-goings and deductions whatsoever. IN WITNESS whereof the parties aforesaid have hereunto set their hands and seals the day and year first above written.

ROBERT NORTON (Seal).

JOHN NORTON (Seal).

Signed, sealed, and delivered in presence of

JAS. CAMPBELL.

M. ENRAGHT.

Received from the within named John Norton, the sum of Five Shillings sterling, being the consideration money within mentioned, to be paid to me by him. Witness my hand the day and year first within written. 5s.

ROBERT NORTON.

No. 81.

THIS INDENTURE made the day of , 1864, between John Norton, of Bray, in the County of Wicklow, Esquire, late Captain in Her Majesty's 34th Regiment, of the one part, and Osborne Hilliard, of Lower Gardiner-street, in the City of Dublin, Esquire, barrister-at-law, of the other part. Whereas the said John Norton is now seized and possessed of an estate in fee simple, or of some other good and sufficient estate, of and in the several lands hereinafter particularly mentioned. And is also seized and possessed of a perpetual annuity or rent-charge for the sum of £64 12s. 4d., charged upon the lands of Molinam, situate in the Barony of Ratoath and County of Meath, under the provisions of a certain deed, bearing date the 18th day of May, 1827. And whereas the said John Norton is now advanced in years, and childless, and has contracted an attachment for O'Brien Osborne Hilliard, third son of the said Osborne Hilliard, now aged about 15 years, and has requested the said O'Brien Osborne Hilliard to reside constantly with him, the said John Norton. And in order to induce the said Osborne Hilliard to consent thereto, he, the said John Norton, has offered to adopt the said O'Brien Osborne Hilliard as his own child, and to provide for him in manner hereinafter mentioned. And whereas the said Osborne Hilliard has consented to the said request of the said John Norton, upon the terms of the said John Norton making such

Draft Deed of Annuity to O'Brien Osborne Hilliard, marked "MM."

provision for the said O'Brien Osborne Hilliard, as hereinafter particularly stated. Now this indenture witnesseth that in consideration of the said Osborne Hilliard allowing and sanctioning the said O'Brien Osborne Hilliard residing constantly and permanently with the said John Norton, and in consideration of his, the said O'Brien Osborne Hilliard, leaving his father's house and going to reside with the said John Norton, he the said John Norton, doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree with the said Osborne Hilliard that he, the said John Norton, will provide suitable maintainance, clothing and lodging for the said O'Brien Osborne Hilliard, during the term of the joint lives of them, the said John Norton and O'Brien Osborne Hilliard, in the same manner and of the same description as if the said O'Brien Osborne Hilliard were the son of the said John Norton. And this indenture further witnesseth that for the considerations aforesaid, he the said John Norton hath given, granted, and confirmed, and by these presents doth give, grant and confirm unto the said Osborne Hilliard, his heirs and assigns, one annuity yearly rent-charge, or sum of £100 per annum, to be yearly issuing, payable and taken out of, and to be charged upon all his the said John Norton's estate and interest in the lands and premises following, that is to say, the lands of Donoughmore, Donoghmore and part of Great Bullstown, Dardistown, Greenouge Raystown and Molinam, situate in the Barony of Rathoath and County of Meath. And also the lands of Cappog and Rathland, situate in the Barony of Castleknock and County of Dublin. TO HOLD the same to the use of the said Osborne Hilliard, his heirs and assigns—the said annuity to commence on the day after the day of the death of the said John Norton, and to continue during the whole estate and interest of the said John Norton in said lands, and each and every of them the same, to be payable by half-yearly payments upon each and every 1st day of May and 1st day of November—the 1st payment thereof to be made upon whichever of said days shall first happen after the death of the said John Norton. And in case the annuity or yearly rent-charge of £100 per annum, or any part thereof should at any time after the same became payable, remain unpaid for the space of 21 days next after any gale or gales thereof shall become due, it shall be lawful for the said Osborne Hilliard, his heirs and assigns, from time to time, into the said lands or any part thereof to enter, and the distress and distresses found therein, to take, drive and carry away, and the same to sell and dispose of according to law, in the same manner as in distresses between landlord and tenant, until the said Osborne Hilliard, his heirs or assigns, of and from the said annuity or yearly charge of one hundred pounds, and all arrears thereof, and all costs and charges incident thereto, or to the non-payment thereof, shall be fully repaid, satisfied and contented. And this Indenture further witnesseth, that by way of collateral and additional security towards payment of said annuity of £100 per annum, and not as a further or additional charge upon said lands, the said John Norton doth hereby grant, convey, assign and set over unto the said Osborne Hilliard, his heirs, all that and those the hereinbefore recited perpetual annuity of £64 12s. 4d. charged upon the said lands of Molinam by deed bearing date the 18th day of May, 1827, and each and every part thereof. To have and to hold, receive and take the same and each and every part thereof to and to the use of the said Osborne Hilliard, his heirs and assigns, from day after the death of the said John Norton, for and during the entire continuance of the said annuity, so charged as aforesaid. And the said John Norton doth hereby for himself, his heirs, executors, administrators, and assigns, covenant and agree with the said Osborne Hilliard, his heirs and assigns, that the heirs, executors, administrators or assigns of him, the said John Norton, or some

or one of them, shall and will, well and truly pay, content and satisfy the said annuity of one hundred pounds a year, and each and every part thereof, upon the days and at the times in that behalf hereinbefore limited, free and clear of all taxes, charges and impositions whatsoever, except income-tax.

No. 82.

"Rockfield, Athy, 18th October, 1866.

Letter from
John A.
Keatinge to
Captain Nor-
ton, marked
"NN."

"DEAR CAPTAIN NORTON,—You ever having granted any request I asked of you induces me now to ask a greater one than I have yet done. My brother James is leaving home for America by next Monday's packet, and as he will most likely be away for years, if not for all his life, I should much like to give him some useful and lasting keepsake on his departure. For want of funds at present I am unable to do so, as my late archery stay in Dublin was very expensive. Would you, therefore, kindly assist me by lending me £25, which I will repay on the 1st of January next. I sincerely hope you will not think badly of my asking you to assist me in this matter, for I would not have done so but that the demands on my father are now very heavy, as outfits, &c., run away with large sums, and the time being so limited I am unable to wait till January. Should you think favorably of my request, I shall send you a stamped acknowledgment of the debt, which I hope surely to pay by the 1st of the coming year.

"Believe me, yours sincerely, obedient, obliged and grateful,

"J. ARTHUR KEATING.

No. 83.

"9, Goldsmith Terrace, Bray, February 16th, 1864.

Letter from
Captain Nor-
ton to Henry
O'Beirne,
marked "OO,"
so in original.

"H. O'Beirne, Esq.

"DEAR SIR,—As Mr. Hilliard, for regularity and legal strictness, to have the draft of the deed by which I am to settle One Hundred a year, after my post-mortem, on O'Brien Hilliard, his heirs, &c., approved of by a Solicitor on my part, you will oblige me by seeing that it is well secured, and approving of it on my behalf.

"I am, yours truly,

"JOHN NORTON."

*Hilliards, Whittys Shaws & O'Beirne & Matthews are all
friends of old standing. 141. 132. 131*

In the House of Lords.

ON APPEAL FROM THE COURT OF CHANCERY
IN IRELAND.

OSBORNE HILLIARD

Appellant,

LUKE EIFFE

Respondent.

Joint Appendix

TO THE

CASE OF APPELLANT & RESPONDENT.

E. T. LEWIS,

1 Albany Court Yard, Piccadilly,

SOLICITOR FOR APPELLANT.

WOODROOFFE & PLASKETT,

1, New Square, Lincoln's Inn, London, W.C.,

SOLICITOR FOR THE RESPONDENT.

JOHN WARREN, Law Printer, 20 Fownes's Street, Dublin.