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## TERMS.

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## SPEECH OF MR. PHILIPS.

FROM THE MANCHESTER OBSERVER.

*Fitzgerald vs Kerr.*—This was an action brought at the Mayo Assizes, Ireland, in April, against the defendant, Capt. Kerr, for criminal conversation with the plaintiff's wife. The damages were laid at twenty thousand pounds. Mr. Fitzgibbon opened the pleadings. Mr. Phillips stated the plaintiff's case in the following eloquent speech:

My lord, and you, gentlemen of the jury, You have already heard the nature of this action, and upon me devolves the serious duty of stating the circumstances in which it has originated. Well, indeed, may I call it a serious duty, whether as it affects the individuals concerned, or the community at large. It is not merely the cause of my client, but that of society, which you are about to try—it is your own question, and that of your dearest interests; it is to decide whether there is any moral obligation to be respected, any religious ordinance to be observed, any social communion to be cherished; it is, whether all the sympathies of our nature, and all the charities of our life are to be but the condition of a capricious compact, which a demoralized banditti may dissolve, just as it suits their pleasure or their appetite. Gentlemen, it has been the lot of my limited experience, to have known something of the few cases which have been gossiped by our enemies—as the pretext for our depreciation; and I can safely say, that there was scarcely one on which, when compared to this, did not shrink into insignificance. They had all some redeeming quality about them; some casual and momentary acquaintance; some taint of conjugal infidelity; some suspicion of conjugal cohabitation; some unpremeditated lapse of some youthful impulse, if not to justify, at least to apologize or to palliate. But in the case before you, the friendship is not sudden, but hereditary; the sufferer is altogether spotless; the cohabitation is an unsuspecting hospitality; & so far from having youth to mitigate, the criminal is on the very verge of existence, forcing a reluctant nature into lust, by the mere dint of artificial stimulants, & struggling to elicit a joyless flame from not even the embers, but the ashes of expiring sensuality. One circumstance can I find for consolation; & that is, that no hiring defamer can make this the cause of accusation against our country; an Irishman indeed has been the victim, and this had been the scene of the pollution, but here we stop: its perpetrators, thank Heaven, are of distant lineage; the wind of Ireland has not rocked their infancy: they have imported their crimes as an experiment on our people; meant perhaps to try how far vice may outrun civilization; how far our calumniators may have the attentions of Irish fathers, and of Irish husbands, to the national depravity. You will tell them they are fatally mistaken; you will tell a world incredulous to our merits that the parents of Ireland love their little children; that their matron's smile is the cheerfulness of innocence; that her doors are open to every guest but infamy; and that even in that fatal hour, when the clouds collected and the tempest broke on us, chastity outspread her spotless wings, and gave the household virtues a protection. When I name to you my unhappy client, I name a gentleman upon whom, here and there, I need pass no eulogium. To me, Mr. Fitzgerald is only known by his misfortunes to you, his

birth, his boyhood, and up to man's estate, his residence, have made him long familiar.

"This is his own, his native land."

And here, when I assert him warm and honorable; soirited and gentle; a man, a gentleman, and a christian, if I am wrong, I can be instantly confuted; but if I am right, you will give him the benefit of his virtues; he will be heard in this his trial hour with a commiseration and sympathy, by that morality of whose cause he is the advocate, and of whose enemy he is the victim. A younger brother, the ample estates of his family devolved upon him, and he was obliged to look for competence to the labors of a profession. Unhappily for him he chose the army; I say unhappily, because, inspring him with a soldier's chivalry, it created a too generous credulity in the soldier's honor. In the year 1811, he was quartered with his regiment in the Island of Jersey, and there he met Miss Beddome, the sister-in-law of a brother officer, a Major Mitchell of the artillery, and married her. She was of the age of 15; he of four and twenty; never was there a union of more disinterested attachment. She had no fortune, and he very little, independent of his profession. Gladly, gentlemen, would I pause here; gladly would I turn from what Mrs. Fitzgerald now is to what she then was; but I will not throw a mournful interest around her, for well I know, that in despite of all her errors, there is one amongst us who, in his sorrow's solitude, for many a future year of misery, will turn to that deluding though delusive vision, till his tears shut out the universe. He told me indeed that she was lovely; but the light that gave the gems of her beauty has vanished. Genuine levelness consists in virtue; all else is a wind and a bubble; it is in the orient dawn that ush'rs in the tempest; it is as the green and flowery turf, beneath which the earthquake slumbers. In a few months my client introduced her to his family, & here beneath the roof of his sister, Mrs. Kirwan, for some years they lived most happily. You shall hear, as well from the inmates as from the habitual visitors, that there never was a fonder, a more doting husband, and that the attachment appeared to be reciprocal. Four infant babes, the wretched orphans of their living parents; doubly orphaned by a father's sorrows and a mother's shame, looked up to them for protection. Poor little innocent unheeding children; alas! they dream not that a world's scorn shall be their sad inheritance, and misery their handmaid from the cradle. As this family increased, a separate establishment was considered necessary, and to a most romantic little cottage on the estate of his brother, and the gift of his friendship, Mr. Fitzgerald finally removed his household.

Here gentlemen, in this sequestered residence, blest with the woman whom he loved, the children he adored, with a sister's society, a brother's counsel, and a character that turned acquaintance into friendship, he enjoyed delights of which humanity I fear is not allowed a permanence. The human mind perhaps cannot imagine a lot of purer or more perfect happiness. It was a scene on which ambition in its lauded hour might look with envy; compared with which the vulgar glories of the world are vanity—a spot of such serene and hallowed solitude, that the heart must have been stormy & the spirit turbid, which its charmed silence did not soothe into contentment. Yet, even here, hell's emissary entered—yet even hence the present god was banished—its streams were poisoned, and its paths laid desolate—and its blossoms, blooming with celestial life, were withered into garlands, for the tempest! How shall I describe the hero of this triumph? Is there a language that has words of fire to parch whatever thy light on? Is there a phrase so potently calamitous that its kindness freezes and its blessings curse?

But no—it, or must see him, go to my poor client, whose beating heart he crosses like a deceiver; go to his dead father's sepulchre—the troubled spirit of that friend will shriek his malediction—go to the orphan's cradle, without a mother's foot to rock, or a sire's arm to shield—its wordless cries will pierce you with his character; or, hear from the poor and impotent narration of his practices; hear how as a father he murdered confidence; how as a guest he violated hospitality; how as a soldier he embraced pollution; how as a man he rushed to the perpetration, not merely of a love, but an unnatural enjoyment, over every human bliss, and holy sacrament, and then say whether it is mortal tongue to epitomize the practices into a characteristic epithet! He is, you know, gentlemen, an officer of dragoons, and about twenty years ago was in that capacity quartered in this country. His own manners, imposing beyond description, and the habitual hospitality of Ireland to the military, rendered his society universally solicited. He was in every house, and welcomed every where—or was there a board more bountifully spread for him, or any courtesy more warily extended, than that which he received from the family at Oaklands. Old Mr. Fitzgerald was then master of his hereditary mansion, his eldest son just verging upon manhood, and my client but a school boy. The acquaintance gradually grew into intimacy, the intimacy ripened into friendship, and the day that saw the regiment depart, was to his generous host a day of grief and tribulation. Year after year of separation followed. Capt. Kerr escaped the vicissitudes of climate and fate of warfare; and when after a tedious interval, the chances of service again brought to Mayo, he found that time had not been indolent. His ancient friend was in a better world, his old acquaintance in his father's place, and the schoolboy Charles a husband and a parent in the little cottage of which you have heard already. A family affliction had estranged Col. Fitzgerald from his paternal residence. It was by mere chance while attending the assizes duty, he recognized in one of the officers of the garrison the friend with whom his youth had been familiar. You may easily guess the gratification he experienced; a gratification mingled with no other regret than that it was soon to vanish. He was about to dissipate by foreign travel the melancholy which preyed on him, and could not receive his friend with personal hospitality. Surprized and delighted, however, he gave him in a luckless hour a letter of courtesy to my client, requesting from him and his brother-in-law, Mr. Kirwan, every attention in their power to bestow. And now, gentlemen, before I introduce him to the scene of his criminality, you shall have even the faint unfinished sketch which has been given me of his character. Capt. Kerr of the Royals is very near sixty; he is a native of Scotland, he has been all his life a military officer; in other words, to the advantage of experience and the polish of travel, he adds what Lord Bacon calls that "left handed wisdom," with which the thrifty genius of the Tweed has been said to fortify her children.

Never, I am told, did there emigrate even from Scotland, a man of more ability, or of more cunning; one whose address was more capable of inspiring confidence, or whose arts were better calculated to all suspicion: years have given him the caution of age, without extinguishing the sensibilities of youth; nature made him romantic, nativity made him frugal, and half a century has now matured him into a perfect model of thrifty sentiment and amorous senility! I shall not depict the darker shades with which time has soiled his portrait; has been deformed: if they are true, may God forgive him; his own heart can alone sup-

ply the pencil with a tint black enough to do them justice. His first visit to Oaklands was in company with a Major Brown, and he at once assumed the air of one rather renewing than commenting an acquaintance; themes of other days were started; the happy scenes in which a parent's image mingled were all spread out before a kind eye; and which, too soon, their visitor departed, he left not behind him the memory of a stranger. He was as one whose death has been untruly rumored; a long lost and recovered acquaintance, dear for his own deserts, and dearer for the memory with which he was associated.

Gentlemen, of the strongest reason for believing that even at this point the embryo of his baseness was engendering—that even then, when his buried friend stood as it were enthroned before him in the person of his offspring, the poison seed was sown, within the shade of whose calamitous maturity nothing of humanity could prosper. I cannot toll through the romantic cant with which the hypocrite beguiled this credulous and unconscious family, but the concluding sentence of a visit is too remarkable to be omitted. "It is," said he awaking out of a reverie of admiration. "It is all a paradise; there (pointing to my client,) there is Adam—she (his future victim) she is Eve—and that (turning to Major Brown,) that is the devil!" Perhaps he might have been more felicitous in the last exemplification. This of course seemed but a jest, and raised the laugh that was intended. But it was "pison in jest," it was an "Iago prelude," of which inferior crime could not fancy the conclusion.—Remember it, and you will find that, jocular as it was, it had its meaning—that it was not, as it purported, the jocularity of innocence, but of that murderous and savage nature that prompts the Indian to his odious gambol round the captive he has destined to the sacrifice.—The intimacy thus commenced was, on the part of the defendant, strictly cultivated. His visits were frequent—his attentions indefatigable—his apparent interest beyond doubt, beyond description. You may have heard, my lord, that there is a class of persons who often create their consequence in a family by contriving to become master of its secrets. An adept in this art, beyond all rivalry, was Capt. Kerr.—Not only did he discover all that had reality, but he fabricated whatever advanced his purposes, and the confidence he acquired was beyond all suspicion from the sincerity he assumed and the recollection he excited. Who could doubt the man who writhed in agony at every word, and gave with his tears a crocodile attestation to the veracity of his invention! From the very outset of this most natural though ill-omened introduction, his only object was discord and disunion, and in the accomplishment he was but too successful. How could he be otherwise? He seized the tenderest passions of the human heart, and ruled them with worse than wizard despotism. Mrs. Fitzgerald was young and beautiful; her husband affectionate and devoted; he thirsted for the possession of the one; he determined on his enjoyment, even through the perdition of the other. The scheme by which he effected this; a scheme of more deliberate atrocity perhaps you never heard! Parts of it I can relate, but there are crimes remaining, to which even if our law annexed a name, I could not degrade myself into the pollution of alluding. The commencement of his plan was a most ostentatious affection for every branch of the Fitzgerald family. The welfare of my client; his seclusion at Oaklands; the consequent loss of fortune and of fame, were all the subjects of his minute solicitude. It was a pity forsooth that such talents and such virtues should defraud the world of their exercise; he would write to Gen. Hope to advance him; he would resign to him his own paymastership; in short,

there was no personal, no pecuniary sacrifices which he was not eager to make, out of the prodigality of his friendship! The young, open, warm hearted Fitzgerald, was caught by this hypocrisy: the sun itself was dark and desultory compared with the steady splendor of the modern Fabricius. It followed, gentlemen, as a matter of course, that he was allowed an almost unbounded confidence in the family. His friendly intercourse with Mrs. Kirwan, his equally friendly intercourse with Mrs. Fitzgerald, the husband of neither had an idea of misinterpreting. In the mean time the temper of Mrs. Fitzgerald became perceptibly embittered; the children, about whom she had ever been affectionately solicitous, were now neglected; the ornamenting of the cottage, a favorite object also, was totally relinquished; nor was this the worst of it. She became estranged from her husband; peevish to Mrs. Kirwan; her manner evincing constant agitation, and her mind visibly maddened by some powerful though mysterious agency. Of this change, as well he might, Capt. Kerr officiously proclaimed himself the discoverer; with mournful affectation he obtruded his interference, volunteering the admonitions he had tendered necessary. You can have no idea of the dextrous duplicity with which he acted. To the unfortunate Mrs. Fitzgerald he held up the allurements with which vice conceals and decorates its deformity; her beauty, her talents, the triumphs that awaited her in the world of London, the injustice of concealment in her present solitude, were the alternate topics of his smooth-tongued iniquity, till at length exciting her vanity, and extinguishing her reason by spells and drugs & accursed incantations, he juggled away her innocence and her virtue? To the afflicted Mrs. Kirwan, he was all affliction, weeping over the propensities he affected to discover in his wretched victim, detailing atrocities he had himself created, defaming and degrading the guilty dupe of his artifices, and counselling the instant separation which was to afford him at once impunity and enjoyment. Trusted by all parties, he was true to none. Every day maligning Mrs. Fitzgerald to the rest of the family, when it came to her ears, he coaxed her into the belief that it was quite necessary he should appear her enemy, that their secret love might be the less suspected! Imposing on Mrs. Kirwan the fabricated tale of Mrs. Fitzgerald's infamy, he petrified her virtuous mind beyond the possibility of explanation! With Captain Fitzgerald he mourned over his woes, enjoining silence when he was studiously augmenting them. To Col. Fitzgerald he wrote letters of condolence and commiseration, even while the pen of his guilty correspondent was wet with his sister-in-law's wet! Do I overstate his treachery? Attend not to me; listen to his own letters; the most conclusive illustrations of his cruelty and his guilt. Thus, gentlemen, he writes to Col. Fitzgerald, apprising him of the result of his introduction. "I have been much with your family and friends; it is unnecessary for me to say how happy they have made me; I must have been very miserable but for their society; I have been received like a brother, and owe gratitude for life to every soul of them. They have taught me of what materials an Irishman's heart is made; but alas! I have barely a knowledge to offer." Now judge what those acknowledgements were, by this extract from his letter to Mrs. Fitzgerald, "Your conduct is so guided by excessive passion, that it is impossible for me to trust you. I think the woman you sent means to betray us both, and nothing on earth can make me think the contrary; but rest assured I shall act with that caution which will make me impenetrable. I would wish to make you really happy, and if you cannot be as respectable as you have been, to approach it as near as possible.