

Chapter 15. More family documents 1856-1875 pp.329-356

Extracted from Book E, Transcript of Arguments in the House of Lords and Judgment. Page 1. 16th June 1856.

Boyse v Rossborough. Boyse v Colclough.
Counsel for Appellants Sir F.Thesiger Q.C. M.P. Mr Roll.Q.C. and Mr Cairns Q.C. M.P.
Solicitors. Messrs Gregory, Skirrow, and Rowcliffe.
Counsel for the Respondents, Mr Solicitor General, Q.C.M.P. Mr Whiteside,
Q.C.M.P.and Mr.Smythe,
Solicitors Messrs Powell and Kernaghan.

Sir F. Thesiger. My Lords, this is an appeal against certain orders and a decree by the Lord Chancellor of Ireland, in a case of Rossborough and Wife, Boyse and wife, the orders being, first an order of the 31st January 1852, directing the trial of an issue devisavit vel non, to try whether a paper writing of the 6th August 1842 was the last will and testament of Caesar Colclough, the husband of the Appellant, another order of the 30th of July 1853, altering the former order, by inserting the words "and the defendant's counsel not objecting". an order of the 18th April 1853, refusing a new trial, with costs, and an order or decree on further directions of the 19th April 1853, declaring the last Will of Caesar Colclough to be null and void, and ordering the Sheriff of Wexford to put respondents in possession of the estate, for the Master to take an account of the rents and profits which accrued six years prior to the filing of the bill, viz the 7th September 1843, and that the Appellant and her husband should pay the sum which the Master shall report to be due, and also to pay the costs, including the costs of the issue, and of the accounts directed to be taken. (The case having been argued at great length by Counsel on both sides) on July 15th 1856.

The Lord Chancellor, My Lords, I need hardly say that I do not propose to your lordships to give a decision at the present moment, or indeed to express any decided opinion upon this case- I wish rather just to point out what I consider to be the several points that are to be decided. xxxxxxxxxxxxxx Having just glanced at what all these subjects are, I can only say that the case is one involving a great number of point of great nicety and difficulty, and a very great number of authorities have been referred to, and before I can finally advice your Lordships as to the course which I think ought to be taken in this very complicated, difficult, and important case, I must request time of your lordships to look into and examine all the authorities very minutely. I therefore move on that the further consideration of this case be postponed. Order of Judgment of House of Lords, dated 13th March 1857.

After hearing counsel, as well on the 16.17, and 19 days of June last, the 3.4,7,10,11,14, and 15 days of July last, upon the Petition and appeal of TB of etc JSB of etc, his wife xxxxxx complaining of two orders of the Court of Chancery in Ireland xxxxx and praying their lordships, "to reverse the said orders of etc., and the said decree etc., or to grant to the Petitioners, such other relief in the premises, as to this House, in their Lordships great wisdom should seem meet", as also upon the joint and several answers of John Thomas Rossborough, now Colclough. and Mary Grey Wentworth Rossborough Colclough his wife, put into the said appeal, also as to Supplemental appeal. And answer, of same parties.

It is ordered and adjudged by the Lords spiritual and temporal in Parliament assembled, that the said order of the 31st January 1852,complained of in the 1st hereinbefore mentioned appeal, be, and the same is hereby affirmed, and that the said order of 18th April 1853, and the said order of the 19th April 1853, also

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respectively complained of in the 1st herein-before mentioned appeal, and the order of the said Court of the 2nd of July 1853, awaiting the said decree of the 19th April 1853 and the order of the 19th June 1854, which was complained of in the said supplemental appeal, be, and the same are hereby reversed. And it is declared, that there ought to have been a new trial of the issue, directed by the said Court of the 31st January, 1852.

And it is further declared, that the said sum of £21,961-19-10, invested by the said Appellant, Jane Stratford Boyse under an order of the said Court of Chancery in Ireland, of the 5th July 1854, in the purchase of three and one quarter per cent stock, and transferred into Court, to the credit of the said causes as directed by the said order, ought to be retained in Court, without prejudice, until the result of the new trial shall have been ascertained. And it is further ordered that the said causes be remitted back to the Court of Chancery in Ireland, to carry the said declarations into effect with such usual or special directions, as the said Court of Chancery in Ireland may deem it proper to give, for reading on the new trial the depositions taken in the said Court of Chancery in Ireland, of any witnesses who shall have died since the trial, directed by the said order of the 31st January 1852, or as any directing the new trial to take place elsewhere, than at Wexford, the admission of the judges notes of evidence where the presence of the former witnesses cannot be obtained, or any other subject whereon the said Court of Chancery may deem such directions necessary, and to proceed further in the said causes as shall be just and consistent with these declarations and this judgment.

(Signed) John Geo. Shaw Lefevre, Clerk of Parliament.

Extracted from Book. F. Defendants Brief at 2nd Trial in Wexford Appendix page 3. Decree directing new Trial of Issue

The Lord Chancellor of Ireland, May 4th, 1857.

Between John Thomas Rossborough, and Mary, Grey Wentworth Rossborough his wife plaintiffs.

Thomas Boyse and Jane Stratford Boyse, otherwise Colclough defendants, and John Thomas Rossborough, now John Thomas Rossborough Colclough and Mary Grey Wentworth Rossborough Colclough, plaintiffs.

The Rev R. Boyse. Executor of John Boyse deceased, and Jane Stratford Boyse defendant.

These causes coming on this day to be heard before the Right Honourable, the Lord High Chancellor of Ireland, for further directions on the judgment and order of the House of Lords, bearing date the 13th March 1857, in the presence of counsel learned on both sides. Upon opening a debate of the matter, and hearing decretal order etc., read, and the said judgment and order of the House of Lords read and what was alleged by the said counsel. His Lordship doeth order that the parties do proceed to a new trial at law of the issue directed by the said order of 31st January 1852. And accordingly that a writ of summons pursuant to the provisions of the Act etc., be sued out of Her Majesty's Court of Queens Bench in Ireland, according to the form of the Statute in such case made and provided, to which the defendants at law are forthwith to appear gratis, and admit all matters of form, so that the parties do proceed to a trial at law by a special jury of the County of Wexford at the next Summer Assizes, to which end, the sheriff of the said County, is forthwith to lay

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before Edward Litton Esqr, the Master in these causes, the grand panel of the said County, (here follows directions as to the jury, challenge, and issue, precisely similar to those in the order for first trial) And it is further ordered that Jane Stratford Boyse, one of the defendants in these causes, be Plaintiff at law, and that J.T. Rossborough Colclough and Mary Grey Wentworth Rossborough Colclough, his wife the plaintiffs in these causes be Defendants at law, and that the depositions and also the judge's notes of the evidence of any witnesses examined in the first of these causes, or on the former trial of the issue at Law, directed by the said order of 31st January 1852, or under the order of the Court Q.B. bearing date 24th January 1852, made in the cause of Boyse and wife, v Rossborough and wife who shall, upon the new trial hereby directed, be proved to be dead or unable to attend to be examined, may be read at such new trial. And it is further ordered that the judge before whom such new trial shall be had, do certify to this Court the verdict which shall be had upon such issue, And it is further ordered that an injunction do forthwith issue to the Sheriff of the County of Wexford, to restore to, and put the defendant Jane Stratford Boyse into possession of the several real and freehold estates of the said Caesar Colclough deceased, situate in the said County in the pleadings mentioned, and in the possession of which the said plaintiffs now are under the said decreeing order of the 19th April 1853. And it is further ordered that the plaintiffs do forthwith hand back, and deliver on oath to the said defendant Jane S Boyse, or her Attorney lawfully authorised, all deeds, documents, title deeds, papers and writing in their or either of their custody or power, relative to the said real and freehold estates of the Caesar Colclough, deceased and which were handed over or delivered to the said plaintiffs pursuant to the said decretal order. And it is further ordered (here follows orders as to the costs to be paid to said Jane Stratford Boyse) And the Court doeth reserve further directions until the return of the judge's certificate, when such further order shall be made as shall be just. (Signed) H. Sugden, A.R.

Extracted from Wexford Independent, July 11th, 15th, and 18th 1857.

Great Colclough Will Case. Boyse v Rossborough. (Colclough).

This interesting and important case, in which a fee simple property of nearly Ten Thousand a year is involved came on for hearing in one Nisi Prius Court on Thursday (9th inst.) From an early hour the doors of the Court House were surrounded by an anxious crowd seeking admittance, and when they were thrown open, the body of the Court became densely filled within a few minutes, seats were especially erected for the accommodation of Ladies by direction of the High Sheriff, and such other arrangements entered into, as were calculated to afford satisfaction to the general public. At half past ten o'clock, the Right Honourable Baron Greene took his seat on the Bench, when the following Gentlemen were sworn on the Jury, viz, Peter Roe, Ballinclare, John Walsh, Walshfield, John Nunn, Silverspring, James C. Moore, Forthside, Edward Sally Flood, Kyle, Henry Braddle Croker, Beanfield, George Smith, Buckstown, Thomas Davis, Enniscorthy, Joshua S, Davis, Enniscorthy, Harry Alcock, Wilton, J.G. Keoghen, Enniscorthy, and W.R.Farmer, Bloomfield, Esquires. Mr. Hassard opened the pleadings. Mr Christian, Solicitor General stated the case. He said, My Lord and Gentlemen of the Jury, in this case Mrs. Jane Stratford Boyse is Plaintiff, and the issue you are

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empannelled to try by order of the Lord Chancellor, is whether a certain paper writing, is or is not the will and testament of the late Caesar Colclough. xxxxx (Mr Christian having concluded his address, witnesses were examined and letters read in support of the Plaintiffs case, and on the fifth day, Mr Whiteside opened for the Defendants, and concluded on the sixth day, (Tuesday), having in the course of his address, read several letters between Caesar Colclough (the Chief Justice) and Caesar of Tintern (the testator) which correspondence had been found subsequent to the first trial in an old press in the Abbey (when undergoing repairs) by Richard Gill of Tintern, and the present writer and which letters etc., had remained undisturbed since they were placed there by the testator many years previously, and which had such an effect upon the minds of counsel for the plaintiff, that when Mr Whiteside was proceeding to examine the Defendants first witness, Mr. Brewster (for the plaintiff) proposed a compromise, and which was subsequently agreed to by counsel for the defendants.)

“At this period Mr Brewster sent up a note to the Judge when his Lordship left the bench, and a rumour immediately pervaded the Court, that the case was likely to be amicably adjusted. Baron Greene remained away for about half a hour, and when he resumed his seat, Mr. Brewster rose amid breathless silence and said “I am happy to announce to your Lordship, that this case is settled to the satisfaction of both parties. My client consenting to a verdict for the defendant, with an immediate right of possession. Baron Greene was glad that this long litigated case was finally settled to the satisfaction of both parties, besides it will relieve the Court and the jury from a tedious and troublesome investigation. As regarded himself, however, it was nothing and it was on public grounds he offered them his congratulations on the issue, which had been so unexpectedly and agreeable arrived at.”

Counsel for the plaintiff, The Solicitor General Mr. Brewster, Q.C. Mr. Lawson Q.C. Mr. Thomas Harris, Agent, Ambrose Sullivan.

For defendants, Mr. Whiteside Q.C. Mr. Mc Donough, Q.C. Mr. Napier, Q.C. Mr. Rolleston Q.C. Mr. Lynch, Q.C. Mr. Armstrong, Q.C. Mr. Walsh, Q.C. Mr. W. Ryan Agents, Messrs. Powell and Kernaghan.

The present Writer much regrets that space will not permit of a verbatim copy of Mr. Whiteside’s magnificent address to the Jury. But a few extracts here and there may not be uninteresting. It should be here stated that under the compromise agreed to, the defendants obtained peaceful possession of the Estates, and the Plaintiffs were allowed to retain the mense rates, viz. £21,961-19-10.

Mr. Whiteside, xxxxx “I am certain that you will not say that your verdict is to be founded on the mass of dead papers, which for the past half hour has been heaped on your table, but on the sworn evidence of living witnesses. The question is not to be carried by bundles of dead papers, but by the oral testimony of living men, and that the question is, is the Will, bearing date 6th August 1842, the genuine document emanating from him in his sound mind and capacity to make it, or the act merely of him when with a palsied hand, and incapable mind, he signed it? This case was tried before a jury of 12 Gentlemen in that jury box, who were I am sure, now that I am addressing you, as I had the honor to address them, fully competent to understand the case, and they found a verdict for my client. The trial was presided over by a judge esteemed by all who knew him, Chief Justice Penefather, the jury gave a verdict for my client and the verdict was approved by the Lord Chancellor of Ireland.

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It is quite true that the case went before the House of Lords, & that house of Lords as it is theoretically called, decreed a new trial, but that house of Lords, I can assure you, really consisted of only one lord, and that when he was making use of the words "My Lords", he was like Dean Swift when he had no congregation to preach to, he addressed them as his "dearly Beloved Roger." Well the House of Lords gave a new trial, and gave the opposite side the full benefit of the circumstances. The Solicitor General commenced his statement by a history of the Duffry family, and vented his sarcasm against them in no small degree, but perhaps it would be remembered that at the last trial there was one of that family examined, a man of gentlemanly appearance, of gentlemanly demeanour, of unshaken veracity, but alas! he cannot now be produced before you, for he is gone but though the lady who now seeks to retain possession of this property was within reach and hearing of his words, she never dared to confront him as he sat a witness on that table, nor to impeach one word he said. The Solicitor General has made a case I do not envy him, he has told you that Caesar Colclough was a gloomy Atheist, he did not tell you that the member of the Duffry family who was examined on the last trial was such a man, or that he was not to be believed, and now that he is gone, I only ask of you to believe that man dead, whom you believed when living. What is the character given of this testator, this Caesar Colclough, but that he was a gloomy Atheist, one who had hated throughout his life all the members of his family, imparted that hatred to his wife, the partner of his bosom, and neither loving God nor man, he died the death of a dog, passing as he presumed, into utter annihilation. Contempt and hatred for his family were shewn to be the abiding feeling of the testator. xxxxxxxx

Well while he was abroad he hears of the mismanagement of his estates, but is there one scrap of evidence to shew that the Duffry family, received one shilling of his rents, or mismanaged any of his affairs, or that there were one word of difference or cause of disagreement between them and the testator? xxxxxxxxxxxx

That foundations of the Plaintiff's case was a miserable pretext for this eternal hatred which the testator was said to have entertained for his kinsmen! Counsel read a number of letters to shew that there was a resumption of friendly relations between the testator and Caesar Colclough (the Chief Justice) and commented on the Will of 1794 to shew that Caesar Colclough the father of his client, had never been benefited by it, He maintained that the old quarrel had been exploded, and that no such feeling as was stated, was entertained by the testator for Caesar Colclough the barrister. xxxxxxxxxxxx

'The case of the Plaintiff was that on the death of John, Lady Colclough wrote to her son to ask him to leave the estate to Bagnal Colclough and cut off the Duffry family. He (counsel) had been asked, was there a regular conspiracy in regard to the making of a Will. Nothing could be more accurate than the forms, but when they concealed a fraud the law would set aside the instrument as worthless!

When the testator returned to this County, he was received on the most affectionate terms by Caesar Colclough, the barrister, and their early intercourse was resumed. It was for the interest of his client that this second trial had taken place. When Mrs. Colclough (Boyse) was put into possession of Tintern Abbey, she sent Mr. Powell Haughton to take up the family pictures, and everything which this lady had a right to – he forgot, however, to look into an old cupboard where, since the last trial, a bundle of old papers was found, ticketed and labelled, a correspondence between

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the Chief Justice and Caesar Colclough. From this they would see whether the immortal hatred subsisted between these men that they were called upon to believe. The Chief Justice had returned from his situation abroad, to which he had been promoted for his merits by the Whigs, who for once patronised a man for his merit. The Solicitor General had asked what the terms were in which, on his return from France, Caesar Colclough lived with his family. He joined issue with him on that. They flocked round him, and desired that he be first man of the first family in this County. xxxxxxxxxxxx

What led to the severance of the friendship originally existing, are they going to make not only an ingrate of the unfortunate man, but a hypocrite too? We will tell you how his mind became poisoned, and who poisoned it. xxxxxxxxxxxx

Have we not I ask you, demolished by the letters produced, the evidence of hatred which it was wanted to impress on you? xxxxxxxxxxxxxxxxxxxx

He (Mr. Whiteside) had now disposed of the case of the family hatred in reference to Sarsfield Colclough, and he would now shew what were the sentiments of the testator towards Dudley, his other cousin, who was described by Mrs Boyse as the particular object of animosity of the testator. xxxxxxxxxx

It was beyond doubt from the papers and history of this family, that the person he most liked was Dudley – they were school fellows, were in College together, and were in the habit of passing six months of the year in each other's society. xxxx He would ask them to remember the Will of 1824 in which the testator settled the estates on the descendants of Dudley. (Mr Whiteside then read a letter of the 14th March 1820 written by the testator to Dudley marked "private and confidential" and subscribed "your affectionate relative and friend", and in the body of the letter he told him that the representation of the County was destined for his family). That letter was worth a bushel of irrelevant letters and documents, which had been flung into the case. To talk of the hatred that the testator entertained after this letter would be to talk nonsense. xxxxxx

There was nothing to justify the alleged abuse of Sarsfield Colclough, and if Caesar Colclough did blacken the character of Sarsfield, they would have to ask themselves, from whence did he derive the false information which induced him to calumniate his cousin. xxxxxxxxxx

Mr. Williamson would depose that Mrs. Colclough said to him, that she would take care that Mr.Colclough's family should not benefit to the value of a shilling by Mr. Colclough. That was conclusive of her intention, and the question was, how were her intentions effected. xxxxxxxxxxxx

Counsel commented on the evidence of Mrs Boyse who would, he said, have pursued a wiser course if she had remained content with the money, and submitted to the last trial. He next alluded to the death bed scene observing that the close of the testator's life is as singular a picture of a dying man, as ever was drawn, feebly drawn by a Counsel in a Court of Justice. We have heard that woman that stood with him in the room where he was dying, and who moistened his dying lips to the last, and she will swear to you, that straining over him in the bed, she heard him say, "I wish I had my own with me". That was the exclamation of omnipotent nature proceeding from the dying man in the last sad moments of his existence, when hypocrisy was over, when deception was in vain, when the feeling and emotions of the soul as they exist, appear in their strength. It was not the language of hypocrisy,

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for hypocrisy was of no avail. Whatever might be his faith in God, whatever his belief in a further state, he proved that he possessed the feelings and affections of a man when the perishing things of this life were vanishing from his view, and the next was opening upon him. Whether to him it was dark and gloomy or shewed the bright habitation of the spirits of the just, made perfect yet, Gentlemen of the Jury, he pays his tribute to the omnipotence of nature, and in his dying words he has proved the truth of my case, and the falsehood of that which has been represented to you by the plaintiff. As he murmured these last accents the plaintiff stated that he said no such thing that it was for his monchoir he asked. The witness will prove what he said, and if that be so, I ask you had Hogarth ever such a picture to describe to you? The wife lies on the sofa, the faithful domestic attends her master, and when you have her evidence, I ask you what will you think of the case? I ask you to trace it out from the beginning, trace the history of that gentleman from the first moment of his chequered life - trace it until he returns to this Country - trace him in Parliament – trace him carried out of Ireland – trace him in Cheltenham - trace the conduct pursued towards him and those I represent - in every part of this case, and when you have heard the forceable arguments that will be urged on behalf of this lady in reply, and heard his Lordship's address you in a language of the law, and the spirit of the Constitution, and when you review the evidence you have heard, I ask you to lay your hands on your hearts, and give that verdict, which your sense of justice, your obligation to answer what the conscience you respect and your sense of what is due to truth and what the justice of the Country requires you to give. xxxxxxxxxx
With submission, if it is against my client, it is one to which she must defer - if in her favour she will receive it with joy and satisfaction, rejoicing that she has been able to set right the memory of her parent, which she loves better than the estate, that she vindicated his honor and established his character. She has shewn, whatever becomes of the estate, that it would be no great damage to the State, if this property descended to the children of Caesar Colclough the Chief Justice. He was a Gentleman, a man of honor, and a scholar. That is no reason why he should have the estate, unless the justice of the case is in favour of such a verdict. If you feel you can give her your verdict, you may be well assured that, after such a trial as this, there will be no more comments, such as have hitherto been made, on trials in this Country. The only comment that will be made, will be a respectful tribute of admiration to the patience, the ability, the truth, and the judgment with which it has been tried by the Judge and the Jury. To you I leave the case, deeply regretting my inability to put it before you in all its truthfulness. I have done the best I could, your duty remains, and whatever be your decision, it will be consistent with your conscientious opinion, and one therefore to which we shall bow with respect and satisfaction. (loud cheers).

**Copied from Book G. Brief in Patrick Sarsfield Colclough v Jane Thomas
Rossborough Colclough. Appendix, page 120.**

Final Decree in causes of Rossborough v Boyse and Colclough v Boyse.

Lord Chancellor,

Tuesday 10 November 1857.

These causes coming on this present day to be heard before the Rt. Hon. the Lord High Chancellor of Ireland for further directions, and as to the matter of costs reserved by the decretal order, bearing date 31st January 1852, and on the Judges

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Certificate of the new trial of the issue directed in these causes, in the presence of Counsel learned on both sides, upon opening and debate of the matter, and hearing the decretal order made in these causes (as above) the decretal order bearing date the 4th May 1857, the consent bearing date 14th of July 1857, as also the certificate of the Rt Hon. Baron Greene, bearing date 12th September 1857, read, and what was alleged by the said Counsel, and it appearing by the verdict of the jury that the paper writing in the pleadings mentioned bearing date 6th August, 1842, is not the last Will of Caesar Colclough, deceased, in the pleadings named, the Court, by consent of the parties, doth declare, that the same hath not or ought not to have any effect as a devise of the real and freehold estates of the said Caesar Colclough in Ireland, in the pleadings mentioned, or any part thereof, and it is ordered and decreed that the said defendant, Jane Stratford Boyse, do deliver on oath, all deeds, muniments of title, and other documents relating to the said real and freehold estates in Ireland, in her power or possession, and also deliver up possession of the said real and freehold estates in the County of Wexford, in the pleadings mentioned, to the plaintiffs, and it is further ordered, that the plaintiffs be quieted in the possession thereof against the defendant, Jane Stratford Boyse, and all persons claiming under her, saving however, and without prejudice, to the jointure of £500, secured to the defendant, and other the rights of said defendant, in respect of the said real and freehold estates in the County of Wexford, under and by virtue of the marriage settlement, bearing date 13th November, 1818, in the pleadings mentioned, and saving and without prejudice as aforesaid.

And it is further ordered that the said defendant, Jane Stratford Boyse (she by her Counsel so consenting and undertaking) do execute at the expense of the plaintiffs, a proper deed or deeds of release or releases in respect of the said real and freehold estates, such deed or deeds to be settled and approved of by David Lynch, Esqr. on the part of the plaintiffs, and by James Anthony Lawson, Esqr, on the part of the said defendant. And it is further ordered that the plaintiffs, and the said defendant Jane Stratford Boyse respectively, do abide their own costs of this suit, and also the costs of law incurred in reference to the same. Signed 3rd February, 1858.

Powell and Kernaghan, Solicitors, H Sugden, A.R

**Copied from original letter from Mrs Rossborough Colclough to the present writer.
New Park, July 9th 1859.**

My dear Beauchamp,

I was in hopes as commandant, pro tem of the Garrison, you would have dropped me a line to say how you are getting on, and if you are provided with all you require - you know there are plenty of all sorts of live stock, so that you need never want a roast shoulder, a fat duck, or a plump chicken. Do take care of yourself that I may find you did credit to the old Abbey. We had your Duncannon brother redcoats, up all the way, the day we came. My husband was in high chat with your friend, and told him you had intended going to see him, they were sorry to leave. We saw a great many persons at the Levee. I hope when you heard from Georges Street, all there were well. Our children are busy with their daily Governess, or would join my Husband and myself in kind love, Believe me my dear Beauchamp, your affectionate cousin,

Mary G.W.R Colclough.

Addressed. B.C. Esqr, Tintern Abbey, Kinnagh, New Ross.

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Extracted from Book G. defendants Brief in Colclough (Patrick Sarsfield Colclough) V Colclough,(John Thomas Rossborough Colclough) Appendix, page 1.

Court of Exchequer. Summons and plaint in Ejectment.

Patrick Sarsfield Colclough, of Dorset Street, in the County of the City of Dublin, Esqr, and others, plaintiffs.

John Thomas Rossborough, calling himself, John Thomas Rossborough Colclough, and Mary Grey Wentworth calling herself Mary Grey Wentworth Rossborough Colclough, his wife and others, Defendants.

County of Wexford,

Victoria, by the grace of God, etc., and so forth, to the said John Thomas Rossborough calling himself J.T.R.Colclough, and M.G.W. Rossborough calling herself M.G.W.R. Colclough, his wife, the defendants, have been summoned to answer the complaint of Patrick Sarsfield Colclough (and others) the plaintiffs, who complain that the plaintiffs, or some one of them, on the 1st February 1855, became, and were are still entitled to the quiet and peaceable possession of all that and those, the Mansion House and offices known as Tintern Abbey, together with the portion of the Manor of Tintern surrounding or adjacent to said house, as now in the actual possession of the defendants in the title hereof named, or one of them, containing about 1,400 acres or thereabouts, be the same more or less, all which said lands and premises are situate in the Barony of Shelburne in the County of Wexford, and the defendants wrongfully assumed the possession thereof, and still withhold the same from the plaintiffs. And therefore the plaintiffs pray judgment against the said defendants to recover the possession of said lands and premises, and compensation in damages for the loss of the mesne rates and profits of the said premises, while the possession thereof was withheld from the said plaintiffs, to the amount of £80,000 sterling. Therefore the defendants are hereby required to appear in the said Court within 12 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, Dublin, dated 17th June, 1862.

Lawrence Mooney, attorney for the plaintiffs.

From the same, Appendix page 2.

Defendants Plea. Wednesday 26th Nov (June) 1862.

The said John Thomas Rossborough Colclough and Mary Grey Wentworth Rossborough Colclough, two of the defendants, appear and take defence for all the premises in the summons and plaint mentioned, and say that the plaintiffs are not entitled to the possession of them, but the said possession belongs to the said John Thomas Rossborough Colclough and Mary Grey Wentworth Rossborough Colclough, as of right therefore they defend the action and so forth.

William Ryan.

Henry Philip Woodrooffe, Attorney for the defendants.

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From the same, Appendix, page 3.

Therefore let the Jury try, Whether the plaintiff was entitled to the possession of the said lands, or any part of them, on said day, or at any time subsequent to such day, and before the commencement of the Action, and whether the plaintiff is entitled to any, and what damages, for loss of mense rates and profits,!

**Extracted from Book G. Defendants Brief,
prepared in 1863 for the trial of this cause, in Wexford, page 1.**

Statement of Defendants Case. xxxxxxxxxxxxxxxxxxxxxxxx

Four writs of summons and plaint in ejectment have issued at suit of the plaintiffs against the defendants, one to recover the Manor, House and Demesne of Tintern Abbey, the second to recover the general lands forming the Tintern Estate, situated in the County Wexford, the third to recover that portion of the Estate situated in County Carlow, the fourth to recover the lands of Ballydorough, in the County of Wexford, of which the defendants are not in possession, but in the first instance the plaintiffs are only to try one of these actions as to the lands comprised in the summons and plaint. xxxxxxxxxxxxxxxx

The Plaintiff, Patrick Sarsfield Colclough, is the heir male of the late Caesar Colclough of Tintern Abbey, and of the late Sir Vesey Colclough, who was father of Caesar, and the defendant Mrs Rossborough Colclough, is the heiress at law of same parties, and as such heiress at law of said Caesar Colclough and of Sir Vesey Colclough, and also as heiress at law of her father, Chief Justice Caesar Colclough, who was devisee of Sir Vesey Colclough, as hereafter mentioned, is in possession of and claims to be owner of the estates in question. The Plaintiff Patrick Sarsfield Colclough, and defendant Mary Grey Wentworth Rossborough Colclough, are respectively the heir male and heiress at law of Adam Colclough formerly of Duffry Hall, who was the common ancestor of both. The defendants have no certain knowledge of the grounds on which the plaintiff rests his claim. xxxxxxxxxx

There is no reasonable doubt but that the plaintiff has instituted these proceedings to extort money from defendants, nevertheless it being incumbent on defendants to defend their title, they state that title as follows (here follows reference to deeds, documents, etc., all of which have already been copied in this Book).

Extracted from Newspaper reports May the 2nd and 3rd 1864.

Court of Exchequer, Saturday.

Before the Chief Baron, and Barons Fitzgerald and Hughes.

Colclough v Colclough

Mr. Sergeant Sullivan, with whom was Mr. O'Hagan, moved on behalf of the plaintiff, Patrick Sarsfield Colclough, to enlarge the rule for non suit. The action was brought to recover possession of the Tintern Abbey Estates in the County of Wexford, which the plaintiff claims as heir. The case went down for trial at the last Wexford Assizes. On the morning fixed for the trial, an application was made for a postponement on behalf of the plaintiff, but the learned Judge, Mr. Justice O'Brien, refused the motion with costs. A rule to nonsuit the plaintiff if he did not proceed to trial at the last Assizes had been obtained in 1863. It therefore became necessary to make the present application to enlarge that rule in order to enable the plaintiff to go to trial at the next Assizes. xxxxxxxxxxxxxx

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Mr. Brewster Q.C. was heard on behalf of the defendant against the motion, and Mr. J.E. Walsh followed on the same side. The Court reserved judgment (which was eventually given for the plaintiff).

Extracted from "Wexford Independent", Saturday 25th Feby, 1865.

Wexford Spring Assizes, Record Court, Thursday 23rd Feby, 1865.

The Right Honourable Baron Hughes took his seat on the Bench at 10 o'Clock this morning, Colclough v Colclough.

The following Special jury were sworn in to try this case. John Whitney (foreman), John Goodall, Harry Goodison, Clement Archer, Mathew Kinch, William Gibson, Richard F. Borbridge, John G Hatton, Henry Braddell Croker, Montifort Westropp Dawson, Peter Rowe, and Luke Whitney,

Mr. Joseph J. Green opened the pleadings, (stating that the plaintiffs in this case, were Patrick Sarsfield Colclough and others, and the defendants were John T.R. Colclough, and Mary G.W.R. Colclough his wife, and that the action was one of ejectment on the title to recover Tintern Abbey Estates).

Mr. Hemphill Q.C. then said- My Lord and Gentlemen, xxxxxxxxx

But I am sure, with you whom I address, if I and my learned colleagues can prove to you the justice of the plaintiffs' claim, neither the exquisite tact and genius of Mr. Brewster, nor the overwhelming eloquence of Mr. Whiteside will avail with you. I

now feel obliged to go into the history of this ancient family. **(Counsel's history and pedigree of that family is so very inaccurate, that there would be no use in entering it here).** You have all heard of Tintern Abbey, of its broad appanages, and

that it formerly was a religious house, which shares the fate of many similar establishments in the reign of Elizabeth. She gave it to Sir Anthony Colclough who was then in this Country. It will now behove to run through the history of the family, for it will appear by facts I have to state, that there was an extraordinary anxiety in this family to transmit those Estates in the lineal male line (this feeling may account for the fact that even the most legally learned members of the family appears to have considered the male heir, was as a matter of course, heir at law.) xxxxx

There was a weakness which seemed to have governed the young people of this family, as well as others, marrying at will or pleasure, all pleasing themselves. I cannot say how it was that this propensity originated, whether it was from the old vigour of an ancient family, or from that of youth- we find that Vesey eloped with a young lady, a Miss Grogan, and they were married. They went off to Portpatrick, a short way to that Court of Hymen Gretnagreen. xxxxxxxxxxxxx

The offspring of that Scotch marriage leads to the question now before the Courts, and the facts are in many passages stranger than story. That son died, some 20 years ago, with whose widow, the present defendant had so much and so well known litigation. xxxxxxxxxxxxx

The Counsel would perhaps tell them that the blood of the Colclough's was ever warm, and led to the fatal termination of John's life. xxxxxxxxxxxxxxxxx

I do not wish in any way to disparage the lady who is the wife of the defendant in this case, for even, if I did attempt to do so, I am sure it would have no effect on this Court, nor on the Gentlemen I have the honor to address. xxxxxxxxxxxxx

The burial place of the Colclough (Duffry Hall) family is, I believe Templeshambo, and there is a singular absence of any records of the family on the tombstones and mural

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inscriptions. We can, however, produce a class of evidence which is equally admissible, and no less persuasive, the testimony of declarations made by the deceased members of the family. If the jury believe such evidence comes from pure sources, and not exaggerated, it may be regarded as reliable, for this reason that the statements of families about what concerns them closely may be regarded as true. x
If you gentleman, are convinced that Patrick Sarsfield Colclough is the heir at law, you will I am sure, as you are bound to do give a verdict in his favour utterly regardless of consequences. xxxxxxxxxxxx

Your verdict will not be swayed by the eloquence of the bar, but by the weight of the evidence- I feel confident that you will give your verdict in favour of my client, truth is powerful and will prevail, and justice is omnipotent. I leave the case in your hands. Witnesses having been examined in support of the plaintiffs' Case (which was, in a few words, that the elder sons of Adam Colclough, viz. Chief Justice Caesar Colclough and the Rev. Dudley Colclough were born out of wedlock, that Sarsfield was born after his parents marriage, and that the plaintiff, being Sarsfield's son, was heir at law).

Mr. Brewster Q.C. addressed the Court (it is much to be regretted that space will not permit a verbatim Copy of Counsel's exhaustive and convincing statement for the defendants case.) xxxxxxxxxxxx

My learned friend on the other side, referred to 1719, as to the legitimacy to the heirship of the property of Tintern Abbey. He says that his client is the only one, and according to what Mr. Mooney, the Solicitor for the plaintiff, has set forth for you, would any one think that that Gentleman was going to bring any thing else, anything hostile to the interests of the family of his client. He sets forth for instruction of Counsel that the ancestors of my client carried away a lady, and that they lived for years in concubinage, until just before the birth of the father of Patrick Colclough, just 18 years after the time the father and mother had eloped. xxxxxx

At that time it should be remembered that the Irish penal laws were in force. She, the wife of Mr. Colclough was a Roman Catholic it was said. Mr. Fitzpatrick has told you so. How he came by that knowledge I know not – he got many certain lectures, and they must, as we may suppose, have been given whilst he was asleep. I must call on you gentlemen to make up your minds about the marriage which took place, or is said to have taken place 119 years ago, the children of which were universally acknowledged as holding rank and credits, and I now ask, can a jury of the County of Wexford, tell your lordships to the contrary? Oh, but Mr Fitzpatrick tells you that one man a Colclough, was married to a Miss Byrne, a Roman Catholic – was only married by a Popish Priest, and that not until as far back from the elopement as the year 1773. The second cardinal point is, whether Chief Justice Colclough was living with a woman, described in Madam Gaultier's evidence as a servant maid, and that Mrs Rossborough Colclough was a low woman, that no body would know. He would dispel this imputation by the most indisputable testimony. xxxxxx

It was sworn on the other side that Mrs. Byrne vented a volume of Blasphemy and cursing on her daughter, Miss Byrne. Can this be credited? If a formal marriage according to the law was necessary, could she not have got them married? Why at the very time they speak of the young couple they were actually living with Caesar Colclough. Is there one of you on that jury would allow your children to enter a house where a young couple were living in a state of open contumacy and illicit

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intercourse? It is preposterous, and the whole story is fabricated to trump up their wretched case. xxxx

Colonel Caesar contracted a second marriage with a lady named Henrietta Vesey. She was the mother of Adam, and not only survived the running away of the young couple, but she was at that time living with her husband, living at Duffry Hall when the young couple came home. She received these 'fugitives' and continued to show them every countenance and favour. xxxxxxx

The third son was Adam, the grandfather of the present plaintiff, and likewise the grandfather of my client here. Having shewn you that Caesar was seized in fee of the estate, there is no question that if the father of my client was the eldest son of Adam then my client must be Caesar's heir. My learned friend on the other side has talked of the blood of the Colcloughs, why they are all of the blood of the Colcloughs. Everyone knows that the daughter of an eldest son, is entitled before a younger son, or the son of a younger son. Now that the proofs of my clients heirship, which I shall offer to you, are not the talk of two old women, not what may have been told to a gentleman in the course of a curtain lecture, or what that gentleman may have dreamed after undergoing such an infliction. They are indisputable proofs, founded upon documentary evidence that Adam Colclough and Mary Anne Byrne were lawfully married, that Caesar Colclough is third eldest son, and their eldest legitimate son from the hour of his birth. It will not be evidence in the sense of talk. It will be founded on documents and matters so clear and precise and so important, as were never before laid before a jury. For I venture to think that there is a Providential hand sometimes in such matters, and if ever we could calculate on such, I think you will by and by agree with me that in this instance it has been made visible for the protection of my client, and for the confusion of those who have sought him to extort a compromise from him, under the most wretched pretences. Remember, the theory is, and the statement was repeated and gone over again and again, and is mixed up with the whole case, the theory is that Miss Byrne was a strict Roman Catholic when she married, that she remained so for many years after her marriage with Adam Colclough, and that only previous to the birth of her third son, Sarsfield, she turned Protestant and was married by a Protestant parson, and it is added as a warning to all who would desert their faith in old age that she did not die in her bed, but in the hall of the house, that this was a judgment on her for deserting the Roman Catholic religion! xxxxxxxxx

It is plain that Mr Adam Colclough was paying his attention to Miss Byrne, with the full sanction of his family and of hers. I think I have evidence irrefragible on this point. And the Colcloughs being Protestants - strong Protestants I might say, they were no doubt determined that everything should be properly done, so that the marriage should be a legal one, and its offspring legitimate, that it should be above all doubt or difficulty. Now I admit that this young lady did go to Ross about this time, but not to be married by a Popish Priest, she went to receive the sacrament according to the form of the Established Church, and at the hands of the Bishop of the diocese (Mr. Brewster here read from a copy of the registry kept for the purpose, a certificate of the licence of the marriage, a certificate of the Administration of the Sacrament under the hand and seal of the Bishop of the diocese, and various other documents, detailing the legal steps taken by Mary Anne Byrne prior to her marriage for the Abjuration of Romanism).

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The certificate for her marriage licence, I believe Mr. Felix Fitzpatrick, happy Felix, has read. And you are to take away from my client, notwithstanding this 9 or 10 thousand a year, on the ground that Miss Byrne was a Roman Catholic when she married. xxxxxxxxxxxxxxx

Mr Patrick Sarsfield Colclough will go out of Court not the possessor of these estates, but he will at least have the satisfaction of knowing that his grandmother was an honest woman. I believe there was a time in that gentleman's life where he would not have permitted any one to dare say that his grandmother played the strumpet, he would not have been satisfied with less than the blood of the man who should have dared to do so. When he was a young man, a proud young man, such would have been his conduct. But misery makes us acquainted with stranger bedfellows, and his present vicissitudes have made him the dupe and the victim of all those who are dissatisfied with the Mr. Rosborough Colclough and his wife. Mr. Patrick Colclough never instructed his counsel in this action. No, no, he could not do such a thing! That came from some other quarter. For unless he himself were a bastard he would willingly stand up and hear all that was said of the hot blood of the ladies of his family. xxxxxxxxxxxxxxx

Mr. Hemphill- As statements have been made on one side, my lord, I did not wish to interrupt Mr. Brewster sooner! but from the documents which Mr. Brewster has read, which I assume to be genuine, I have instructions from my client to proceed no further. We will therefore agree to a nonsuit.

Mr Brewster-not a non suit, certainly.

His Lordship- When a man makes a charge which he afterwards discovers to be unfounded, the only reparation he can make is to withdraw it. I think you should withdraw and allow the jury to record a verdict in favour of the defendant.

Mr. Brewster- I am not surprised that Patrick Sarsfield Colclough withdraws the case, I knew him when he was a fine gallant fellow, and I tried disserve him from those who urged on this case but without effect. I think, however, he has not lost the best points in his character yet. He has behaved like a Colclough, and he will not repeat it.

Mr. Tandy, my lord, on behalf of my client, Patrick Sarsfield Colclough, I must say that long before this period, when he heard the statements made by Mr. Brewster, he urged that the case be withdrawn.

His Lordship - though the statement of Mr. Tandy needs no confirmation, I will say that I observed in the course of the hearing of the case, that Mr Patrick Sarsfield Colclough was anxious to have it withdrawn.

The jury then returned a verdict for the defendant, with six pence costs, which was followed by demonstrations of applause in Court.

Counsel for the Plaintiff: Mr. Hemphill Q.C. Mr. Tandy, and Mr. Joseph J. Green.

Solicitor: Mr. Lawrence Mooney.

For the defendants: Mr. Brewster, Q.C. (special); Mr. Whiteside, Q.C. (special);

Mr. J.E. Walsh, Q.C.; Mr. Ryan and Mr. Nunn.

Solicitors, Messrs. Kernaghan and Saunders.

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**From original letter, Mrs Rossborough Colclough to the present writer (BHC)
Tintern Abbey, March 9th, 1865.**

My Dear Beauchamp,

Your kind letter of congratulations I thank you for. A just providence has put a stop to our long persecution, and as you rightly say that the rightful owner now sits down in peaceful possession. We cannot but feel supreme contempt for the means, the brutal means tried to deprive us of our right, but we have come through an unparalleled fiery furnace, and our children after us are safe from all torments of law for ever. The children and ourselves join in kind love, and I remain my dear Beauchamp, your affectionate cousin,

Mary G.W.R. Colclough,

Addressed, Captain Colclough, Wexford.

**From original letter, John T.R. Colclough to the present writer (BHC)
Tintern Abbey, Kinnagh, New Ross, October, 7th 1865.**

My dear Beauchamp,

I shall be so delighted at your coming to take a shot at the partridge. Be good enough to prevail upon our juvenile friend Beatty to accompany you. What has become of Mary? Pray give my best remembrance, ever your faithful relative,

John T.R. Colclough,

Address Captain B.H. Colclough, Wexford.

**Copied from Newspaper report, 18th July 1867.
Court of Probate, Thursday, before Judge Keating.**

In re. the goods of Sarsfield B.H.Colclough-

Mr. H. Fitzgibbon, on the part of Marguerite Henrietta Colclough, moved that letters of Administration to the goods of Sarsfield Byrne Hartpool Colclough, presumed to be deceased, should be granted to his client, M.H.Colclough who with her sister was the sole surviving next of kin of the party supposed to be dead. His decease, Counsel said, was to be presumed, from the fact that in May 1858, when 18 years of age, and about to be apprenticed to an Attorney, he left this Country without the knowledge of his family and went to Liverpool. He remained at the Hotel of a Mr Mathews for a few days, and with members of Mr. Mathews family visited a friend. He made an appointment with that friend to visit Kirkdale Gaol, but did not keep it, and he was never since heard of. His father Mr.Patrick Sarsfield Colclough, now deceased, went over to Liverpool and employed detective officers to trace his son, but failed to find him, and it is believed he never left Liverpool, but died there. The young man, if now alive, would be 27 years of age. He was entitled to £250, vested in trustees for him, and the appellant believed that if her brother were not dead he would have claimed the money long ago. Several affidavits, deposing to the visit of the young man to Liverpool, to the efforts made to discover him and to the belief of his death, were read by Counsel.

Judge Keating- His father is dead? Mr.Fitzgibbon-Yes.

Judge Keating- Has administration been taken out to father?. Mr.Keating No.

Judge Keating- Let applicant have administration to her father in the first instance, and when that is obtained, she can administer to her brother.

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Extracted from original letter, Captain B. Colclough, 2/19th to present writer.
Bangalore, Madras Presidency, April 5th, 1868.

My dear Beauchamp,

Your very kind letter of sympathy for my great sorrow, reached me a few days ago. Xxxxxx The sudden death of my dearly loved wife was indeed a great blow to me. Xxxxxxxx I am glad you knew her and liked her. Xxxxx The Regiment having been divided for upwards of four years into wings, has given me a great deal of extra work since we got together here, as the detached wing had got very slack in many ways. Xxxxxxxx I was gazetted Brevet Captain out here last year. Xxxxxxxx I am very content as I am, the Adjutancy suits me, and I like the continued work. Dear Beauchamp I am sorry that any separation in feelings has accrued between us – it was my fault, but let bygones be bygones, and for the future let us be good friends and affectionate cousins. Months ago, I named you as a guardian in my Will to my darling child in case of my death. I am sure you will accept the trust Beauchamp if you are required to do so.

Your affectionate cousin, B. Colclough.

Addressed: Capt. Beauchamp Colclough, Wexford Militia, Wexford, Ireland

Vice Chancellor's Court, June 22nd 1869. Colclough (Anne) v Colclough (B.H.)

This was a suit in the nature of an ejectment bill, in which the plaintiff sought to recover possession of certain denominations of land in the County of Westmeath. The question raised, turned upon the construction of a Will made by Sarah McCarty. A receiver had some time ago been appointed over a tenants interest in a portion of the lands and an application was made to one of the defendants for a portion of the money as head rent. The plaintiff resisted the application, but the Master of the Rolls decided that the defendant was entitled to the rent. His Lordship now delivered judgment, and said he did not think that a decision given in that indirect way ought to bind him with regard to the construction to be put upon the will, as to the title to the lands. Having read the various clauses of the Will, His Lordship said that the question turned upon whether an estate life was given to Beauchamp Colclough under the limitations of the Will, with remainder to his children in fee, or quasi fee, in the several lands, or, whether Beauchamp Colclough as the defendant contended, took an estate tail in the lands. His Lordship decided with the plaintiff, that Beauchamp Colclough took only an estate for life in the different denominations, and that his children took estates in fee and quasi fee. The plaintiff was, therefore entitled to an eighth of all the lands, and the other representatives of the children were entitled to an eighth each. The plaintiff was entitled to an account of rents against the defendant.

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Wexford Constitution, August 21st, 1869.

Funeral of John Thomas Rossborough Colclough, Esq., D. L., J.P.

On Saturday last the remains of this greatly lamented gentleman left the Dublin family residence, Newpark, for Tintern Abbey. Xxx The train was met at Enniscorthy by a large body of the Colclough tenantry, deeply deploring the ever kind, considerate landlord, the courteous tender-hearted gentleman, and the generous friend they and the poor of the County Wexford had lost. A considerable number of the carriages of the leading gentry also marked the respect of the upper classes for this truly worthy member of their order. As the sad procession neared the old Abbey of Tintern, the deceased's County Wexford residence, the road was covered for miles by a long train of carriages, and well dressed and well mounted tenant farmers, their appearance and demeanour most striking and creditable. Xxxxxx The remains lay in the Abbey residence awaiting interment till Monday, and to the sorrowing friends, on the intervening Sunday, it was most gratifying as well as consolatory to witness the affectionate regret manifested by the people coming great distances to pay their sad tribute of regret to the departed. Xxxxx On Monday, vast numbers of the resident gentry and crowds of tenant farmers formed one of the longest assemblies we have ever witnessed on such occasion. When the funeral left the Abbey at 12 o'clock, the effect of the solemn procession as it wound through the beautiful grounds of Tintern, was eminently striking and imposing. The order, solemnity and decorum of that vast concourse of people, as they proceeded by the St Kearns road to the parish Church, will long be remembered by many a mourner present, a perfect moving sea of white scarfs and hat bands extended for miles, nor was the outward badge of woe the only grief manifested; on many a rugged face, marks of heart felt sorrow could be traced; genuine tears, shed by many who followed him whom they so justly mourned to his last resting place. The Parish church was draped in black and within its walls the beautiful burial service of the church was read with feeling by the Rev. F. H. Thomas of Carysfort Church Blackrock, the attached personal friend of the deceased. Xxxx The vast assembly then proceeded to the Colclough Vault in the Old Abbey Church Yard when the Rev. R. Weldon Incumbent of Tintern, read with much solemnity the remaining portion of the burial service. When the coffin was laid in the tomb beautiful flowers were placed on its lid, the tender and touching tribute of the devoted, bereaved wife and daughters. The flowers will fade and perish, not so the endearing love of those who twined those simple emblems of affection in memoriam.

The chief mourners were John Rossborough Esqr., Captain (B.H.) Colclough, David S. Sherrard Esqr., M.B. and Jacob Powell Esqr.,

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Court of Appeal in Chancery Yesterday, November 22nd 1869, before the Lord Chancellor, and the Lord Justice of Appeal. Colclough (Anne) v Colclough (B.H.)

This was an appeal from a decree of the Vice Chancellor. The facts are as follows, Sarah McCarty, late of St. Andrews Street, Dublin, was at her death seized of lands in Westmeath and Dublin, in quasi fee, and also seized in fee simple of a freehold estate in Dublin. She died in 1797 having left amongst the bequests her estates to Beauchamp Colclough for life, and after his death to his issue, share and share alike as tenants in common or if he should die, leaving only one child, then to such child. Beauchamp Colclough died in 1847, leaving several children, (having had issue several children) The plaintiff is the widow of John Colclough, one of those children, who by his Will dated 22 June 1849, devises all his estates to her for her own use and benefit. The question turned on the construction of the Will of Sarah Mc Carty, the plaintiff contending that the children of Beauchamp Colclough, became entitled on his death share and share alike as tenants in common to the estates and freehold premises etc., and she claims as devise of John Colclough one of the children. The defendants contend that under the terms of the Will, Beauchamp Colclough, took an estate tail, and quasi tail, on the lands, and the principal defendant claims as issue in tail. The Vice Chancellor, having decided in favour of the plaintiff, the present appeal was brought.

Court of Appeal in Chancery, February 2nd, 1870. Before the Lord Chancellor (O' Hagan) and the Lord Justice (Christians). Their Lordships delivered judgment in the following case, which was agreed last term, and stood over.

Anne Colclough v Beauchamp Henry Colclough.

This was an appeal brought by the defendant B.H.C., from an order pronounced by the Vice Chancellor, granting the relief sought by the bill. The bill was filed by Mrs. Anne Colclough, praying that the trusts of the Will of the late Miss McCarty, in respect to certain property, which consisted chiefly of the lands of Monganstown in the County of Westmeath and some houses in Dublin, should be carried into execution. The question raised, turned upon the construction of the Will, namely, whether an estate for life was given to B.C. under the limitations of the Will, with remainder to his children in fee or quasi fee, in the several lands or whether B.C. as the defendant contended, took an estate tail in the lands, or in quasi tail. The Vice Chancellor decided that B.C. took a life interest only in the different denominations of land, and that his children took estates, in fee and quasi fee, and therefore the plaintiff was entitled to a share of the lands, and was entitled to an account of the rents as against the defendant, and from that decision the defendant appealed.

The Lord Chancellor delivered judgment, reversing the decision of the Vice Chancellor, except as regarded certain property at Kinnegad, and dismissing the bill as to the rest of the relief sought. The Lord Justice of Appeal concurred in the reversal of the Vice Chancellor's decision as to the lands of MoNganstown, but declined to express any opinion as to the correctness of the Vice Chancellor's decision in relation to the premises in Kinnegad, his lordship considering that the questions involved had not been sufficiently argued.

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Messrs. Walsh Q.C. and Richey were in support of the appeal.

Messrs. Ormsby Q.C. Gamble Q.C. and Gerrard, Contra.

See Judgment in full in "Irish Law Reports".

Extracted from original letter, Mrs J.T.R.C. to the present writer.

My dear Beauchamp,

February 14th 1870.

I congratulate you on having done with law. Your anxieties being at an end is a great blessing for you, and I hope you may live long to enjoy what you have been proved to be entitled to. Xxxx Each day proves to us by the snapping asunder of our dear earthly ties, that this is not our abiding city. Louisa and her sisters join in kind love. Your affectionate cousin. Mary Grey Wentworth, Rossborough, Colclough. Captain Colclough. Wexford.

Extracted from original letter, Captain Beauchamp Colclough to the present writer

Stoke Road, Gasport, February 9th 1874.

My dear B,

xxx May your shadow never grow less my dear old fellow xxxx thank you sincerely for your kind wishes for my dear Jenny, we were most anxious about her for many days last month xxx we have had a most anxious time of it. Beechy is now laid up with a bad cold. I hope it will be soon better, but with children one never knows what a cold may end in, measles and all sorts of things xxxx Nelly is quite well so far, a jolly wee girl, as bonny a child as you could wish to see, though I say it xxxx You see there is no inducement now to remain on soldiering as the value of your Commission does not increase – if I remained on for the next fifty years, I would never get a farthing more than I got the other day- the value of a Captain's Commission £1800, and £400 over regulation making a total of £2200; out of this sum they have retained £98 to pay the passage of an Officer to replace me in India, and I have invested £500 in a Brewery business here xxxx anything is better than soldiering xxx I could not with safety take Jenny and the chicks to India, and if I had remained on in the 2/19th, we would have been separated for the next four years xxxx Of course it was a great grief to me leaving the service and my dear old regiment. As you are the head of the family, Jenny desires me to send likenesses of the bairns, both are very good. She would be much obliged if you would kindly send her one of yours; as you are the head of the house of Colclough, we ought to have one.

With love and best wishes, ever your affectionate cousin, B.Colclough.
Major B.H. Colclough, Rathgar, Dublin.

Extracted from the original letter, MrsJ.T.R.C. to the present writer

Tintern Abbey, March 4th, 1875.

My dear Beauchamp,

I must begin by congratulating you on the upward steps you have ascended to in your Regiment. I think you are now as elevated in Military rank as any of our name were. As I have unfortunately momentarily mislaid your letters, you may not have a reply to your numerous queries. My brother never breathed, so was not

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baptised- he was born I believe in the year 1807, about a year after my parents' arrival abroad. Caesar he would doubtless have been called after his good and gifted father, so high up on the family tree, and the name of Edward would have been added in honor of his father's illustrious friend, the Duke of Kent. I do not think any of my numerous aunts were married- I always heard of them as dying young. One I heard was to have been married to a Grogan of Johnstown. If the Catherine Colclough, buried at Templeshanbo in 1828, had been one of them, I surely would have known it, or heard it from either my Uncle Dudley or Sarsfield's family with whom we had such constant and intimate intercourse. The Francis Colclough I know nothing about. Sir B. Burke, I am aware, was preparing a pedigree of my beloved husband's family, and I believe their Rank was as high if not higher than ours, as they descended from Dukes. (I forgot at this moment our descent from the Plantagenets). I know nothing more that I can inform you of everything relating to my personal family, is matter of legal and historic record as my beloved husband left no stone unturned, and now blessed be God, tho not enjoying his earthly inheritance, he is the possessor of that inheritance which passes not away. I am sure you must be greatly busy with all the arranging of your book. Susie and hers left us yesterday week, Louisa and Bill are away for a few days, so May and I keep garrison. She joins in kind love, and believe me your affectionate cousin,

Mary G.W.R. Colclough.

Lieut. Colonel Colclough, 34 Grosvenor Road, Rathgar, Dublin.

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Newspaper report, April 1875.

Judicial Committee of the Privy Council.

The Judicial Committee of the Privy Council sat yesterday to hear applications for vesting burial grounds situated in private parks or demesnes, under the provisions of the 26th section of the Irish Church Act, 1869. The Right Hon Lord O' Hagan presided. The others members of the Committee present were, The Right Hon Sir F. Shaw, The Right Hon H.E. Chatterton, and The Right Hon William Brooke. Tintern Abbey.

Mr. Matheson, (instructed by Mr. L.W. Corcoran) applied for an order vesting, subject to existing rights of sepulture, the burial grounds of Tintern Abbey, County Wexford, in Mrs Colclough, the owner in fee, who derived under a grant from Queen Elizabeth. Richard Gill, a stout, hale old man, deposed that he knew Tintern Abbey since 1799, and from that time down to 1813 when it was unroofed, it was used as the Parish Church. It was within the demesne, and the burial ground was still used. Application granted.

Note: The Church here alluded to is not Tintern Abbey (which was converted into a dwelling house by Sir Thomas Colclough about the year 1600) but a Chapel which he built within the Demesne, and which continues to be used as the family burial place.