

W. Bull

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### THE ST. JOHN TRIALS.

[REPORTED EXCLUSIVELY FOR THE CARLETON SENTINEL.]

ST. JOHN CIRCUIT COURT.

Friday and Saturday, August the 17th and 18th.

(Continued from our last.)

MR. GRAY, for the Defence, then contended that there was no case to go to the Jury. The indictment charged defendants with having assembled to disturb the peace with arms, &c., and with creating terror and alarm, in the parish of Portland. That assumed first that terror and alarm had been created by the assembling of those men, and secondly that it was in the parish of Portland. He therefore contended that it was necessary for the prosecutors to show that the procession had created terror and alarm, and in Portland. The breach of the peace took place in the City of St. John, and not in the Parish of Portland. He also contended that the "common purpose" did not come within the meaning of the Statute, for although the Orangemen did intend to pass along the street, the evidence showed that they did not intend to commit any breach of the peace.

(His Honour, the Judge, overruled these objections.)

ROBERTSON BAYARD, ESQ., then addressed the Jury to the following effect. He said the Statute was worded so vaguely that it acted as a trap upon the community,—it had misled the people, as no one could understand it. (The learned Counsel here compared the indictment with the Act.) A statute like this was calculated to make people think they were acting legally when they were not—according to the construction put upon the Act by the law officers of the Crown. This Act originated in the House of Assembly, of which the Attorney General is a member, and if he wished to put a stop to these processions he should have had the courage and the manliness to place an Act upon the Statute Book expressly forbidding them, in terms no one could misunderstand, and not seek to put a stop to them by an Act so vague and uncertain as this. He would ask the jury if they thought this Act so clear that men could know when they were breaking the law? But he contended that these processions are legal. Acts have been passed for their suppression in England and Ireland; that proved their legality under the Common Law, for if they were illegal under that law why pass special Acts to suppress them? If they were illegal under the Common Law, those special Acts would have been declaratory,—not a new law, but merely explaining the old one. In that case they could not have been passed for a certain number of years, and then be allowed to expire; they would have been perpetual. But that was not done, and when it was thought necessary to prohibit processions in England and Ireland, they were obliged to do so by Statute, as the Common Law did not prohibit them. The Solicitor General had read authorities from the Common Law, and applied them to this case; but he had read mere extracts from the cases quoted, whereas he read the charges in full he could not have applied it to the present case.—He (Mr. Bayard) would quote the same authorities, but he should read more than the Solicitor General had thought proper to read, and then it would be found that it would not apply. (Reads) "If a man assembles his friends, and arms them, to go to a certain market to defend him, he anticipating an attack in consequence of a threat, it is held to be unlawful." This, he contended, did not apply to the present case. In that case there was a threat—a challenge—which, by the parties arming themselves and going there, they accepted; but here there had been no threat—no challenge; the Orange party did not anticipate an attack; they had gone over to Indiantown, and had an undoubted right to return. It might be said that they had better returned another way; that was a question of expediency, with which the Jury had nothing to do; it was not for them to decide upon questions of expediency, but upon the rights of the subject; and the people in procession had a right to return by the same way in which they had gone over. Supposing there had been no other road, must they have stopped in Indiantown, because a lawless mob awaited to attack them on their return? The law never contemplated anything so absurd; and if they had a right to return if there had been but one road, they had a right to return that way though there were five hundred roads.—Another quotation had been made from the authorities to the effect that a person may take one armed man with him for protection, but may not take two. That law did not apply to this case, for here all those who armed did so to protect themselves; there was no general combination among them, and no evidence to support such a supposition. (The learned Counsel then quoted from a charge delivered by Baron Alderson, to the effect that the people have a right to meet and discuss public grievances.) Now if the people have a right to hold political meetings, and a right to meet to complain of their rulers, surely a portion of the people have a right to meet quietly and celebrate a certain anniversary, which can concern no one but themselves. He had no doubt every juror would join him in saying "Thank God that we have the right to meet, as British subjects, so long as we do so quietly, orderly, and without creating terror or alarm." Even if the procession had been illegal under this patched-up Act, he contended that it was so vague that every one was ignorant of the construction that was now sought to be put upon it,—that there was no intention to break the law, and that if the law was broken it was done through ignorance, and the parties ought not to be convicted, as they imagined they were simply enjoying their rights as British subjects. But he wished the jurors to ask their own consciences whether this procession was such a meeting, and under such circumstances, as must necessarily endanger the public peace. He would ask them in the language of the law, "was it a meeting of such a nature, that the intentions and purposes were in point of law criminal, and all this knowingly on the part of those who met?" In a case already referred to, Baron Alderson had told the jury that it was for them to take into consideration the hour at which the meeting was held, the manner in which it was conducted, and the language made use of, and whether any reasonable man had cause to be alarmed for himself, his family, or his property. He (Mr. Bayard) would join the Solicitor General in expressing his regret that these breaches of the peace should take place, but the Solicitor General's utopian ideas of universal peace and love could not yet be realized. The influence had not yet come, and appeared to be far distant, and the jury could not punish the defendants because they did not possess the same feelings of universal love as the Solicitor General did. They

must render a verdict according to law, and he was quite sure they would not give way to the York Point rabble, and pronounce that unlawful which the highest authorities in the Empire consider legal. Those who attacked the procession could not properly be called the Roman Catholic party; they were a disgrace to the name; and if the jury were to convict the defendants they would be placing a York Point mob above all law. There was a regular organization at York Point on the 12th of July, to assault indiscriminately all Protestants who might pass, and if the Crown Lawyers should attempt to show that they were incited by the procession, it was easy to prove that it was not so by the number of persons who were attacked before the procession came up, and that a set of lawless ruffians attacked Protestants indiscriminately. It was now for the Jury to say whether or not they would set this mob above the law, and whether, if they themselves should be attacked by that mob, they would suffer themselves to be shot down like dogs, and make no resistance.

(Witnesses were then called for the defence.)

NATHANIEL S. ADAMS.—On the 12th of July, walked down Portland Street looking at the procession, in the morning. They halted on the bridge, and witness ran a over to the city. Saw the attack made on Coram in attempting to pass under the arch. The horse was struck in the head, and when he turned up Union Street a shower of brickbats was fired after him. After this part of the procession had gone through, witness saw the people at York Point collecting brick-bats and fire-arms. Went over to Indiantown and told some persons in the procession what was going on at York Point. Came back to York Point again, and was at the foot of the hill when Boon's waggon was attacked; saw one man struck; he fell out of the waggon and was knocked down five or six times. The procession was perfectly peaceable. Saw two men run up to York Point with guns in their hands; their names are Hugh McGowan and Charles McCawley; they were running up the hill, ahead of the procession, apparently with the intention of joining the mob. The procession halted a short time at the foot of the hill; they then advanced, and witness saw two men come out from behind a building and fire upon them. It is not the spirit of the Orange Society to insult any one.

Cross-examined by the Attorney General.—Is an Orangeman, but has not belonged to any Lodge for three years past. It is not the spirit of Orangism to insult any one. Does not know that any Orangemen insult public officers for doing their duty.—Thought the procession would be attacked no matter which way they returned, and he told Coram so.

HON. CHARLES SIMONDS.—Saw the procession in the city on the morning of the 12th of July; they were proceeding along peaceably and orderly. Witness was in the city to attend an arbitration. Adjourned between eleven and twelve o'clock, and then set out on his return to Portland. Came to the arch at the head of Mill Street, and passed under it; had proceeded some thirty or forty feet beyond it when he heard a shot in the direction of the corner of Mill and North Streets. Just then he saw the heads of the procession, as they were coming up the hill. Then heard other shots, which he thinks were fired from the east side of Mill Street. The procession came on at a quick pace, and a running fire on both sides was kept up while they were going through; there appeared to be no order in the firing from the procession, but every one fired at random; there was nothing like organization displayed in the firing. The procession was attacked from every direction. Some of the Orangemen advanced and pulled down the arch. The procession had nearly all passed, when witness turned and followed them back to the end of Dock Street; saw a man there lying on his back, while the brick-bats were being fired upon him as thick as hail. Thought the man would be murdered immediately, and ran forward to save him. Saw a man in the act of striking him with a club, and thought the blow would kill him; parried it off with his stick, and immediately received a heavy blow in the back part of his head, which he supposes was from a brick-bat.—The man with the club then struck him (witness) a violent blow on the forehead, which cut through his hat, and cut him to the bone. The blow from behind felled him to his knees, but he regained his feet, and still held on to his stick. Thinks that if he had fallen to the ground he would have been murdered. While this was passing the man whom they had been beating got off, or some friend had taken him away. Witness with some difficulty managed to retire to the side-walk, when the attack upon him was discontinued. At this time shots were being fired from the houses. Witness was badly cut; he received five or six wounds simultaneously.—It was the most brutal and atrocious mob he ever saw; he had never conceived that there could be such villains upon earth. Did not think the Orangemen would have interfered with any one if they had not been attacked. The man with the club was well dressed, but the other rioters were a rough-looking set. Does not know the name of the man with the club, but would know him if he met him again; and hopes to meet him some day. The procession was so quiet and orderly in the morning that witness did not anticipate any disturbance. There has been disturbances in Portland very frequently on the 12th of July, and on other occasions, before the establishment of a police force. Supposed the intention of the Orangemen was merely to make a display, and not to interfere with any one.

Cross-examined.—Saw the Portland Orangemen collecting at their Lodge Room in the morning. Does not know the man whom he saw lying on his back at York Point. Does not know to what party the man belonged, or what his religion is; would despise himself if he had stopped to enquire, when he saw the man's life in danger.

THOMAS R. ROBERTSON, ESQ.—Is a Magistrate and resides in Fredericton. Saw the procession on the morning of the 12th of July, as the two bodies met at the foot of the hill beyond York Point. Those coming from the city appeared as though they had met with an unfriendly reception. There was nothing in the procession to excite terror. Was not alarmed, as he had no idea that the procession would attack any one. It was a mere pageant, and perfectly harmless. Was at Mr. Jordan's lumber yard, at the foot of Mill Street, when the waggon was attacked; saw several persons attacked about the same time; saw one man in a labourer's clothes coming down Mill Street; he was attacked by a shower of brick-bats. He was a stout man, and ran for some time, but was at length knocked down, and shamefully beaten.—When the procession returned from Indiantown he saw them fired on, was then standing outside the lumber yard; heard the balls whistle over his head, and then retreated into the lumber yard, under shelter from the fire. Saw a sword carried