

tacks having been made after the procession had gone through. The Orangemen were a strong body, and most likely they said "we'll go on; we'll force our way through, open a passage, and then give it up to the Magistrates." Well, they did so. They met the authorities and cheered them; they did not stay for revenge, but were content to leave the place and the aggressors in the hands of the authorities.

There was no organization among the Orangemen as to arming for a common purpose. Although some of them did procure arms, there was no evidence of concert, but each who armed did so for self-protection. It was a question for the jury to decide—allowing the defendants to have had arms in their hands—whether they had any intention to commit a breach of the peace, or whether they armed for self-defence. They must recollect that there is a period when men may defend themselves, and when they may arm and do so. On this occasion, previous to the approach of the Orangemen the authorities had been driven out of York Point, and there was no one there to preserve the peace. All the witnesses showed that the procession did not create terror, and if they did, not create terror and alarm, but were merely the innocent cause of another party creating terror and alarm, the defendants were not liable under the indictment.

He would next call their attention to Dalton's testimony. It was fiendish for the boys to be collecting missiles for an hour or two before the procession returned; they were thus taught in early life an illiberality of feeling which they will not like in after-life should be extended against themselves. Then let them look at the cowardly and murderous conduct of the man (Brown) who skulked by the corner with a gun, and then fired deliberately into the crowd. It would be better for that man that Providence should soon remove him from earth, rather than leave him to die by the hands of the public executioner, which will probably be his fate some time or another. Let them next reflect upon the brutal attack upon the two old men—an attack described by the witness as more than human nature could bear. It was cowardly, and those engaged in it acted more like fiends than they did like men. Then there was the attack upon Mr. Simonds. He had no thoughts of party or of creed, but rushed forward to save a man's life whom the mob were beating. Surely these people, when they saw Mr. Simonds—an elderly gentleman, with his white head—rush to the rescue, should have been brought to their senses; but no, they must beat him too! and they struck him several blows about the head, with clubs and brick-bats, cutting him severely, for endeavouring to save the life of a fellow-creature! Why, such conduct as this was inhuman, fiendish; it was such as no Roman Catholic in the world, with the feelings of a man, would attempt to justify. Then the witness Eagles and five others came up.—They were stopped, two of them were beaten, and Eagles ascribes his escape to the fact that the attention of the mob was called off by the arrival of Boon's waggon, which they immediately stoned. Why did they attack these men? They wore no Orange badges,—no red rag to irritate the bull! But even a woman was not allowed to pass,—a woman, whom almost any man will protect; they followed and hooted after her! And what has been the result? The Hon. Attorney General, and Hon. Solicitor General, with all their industry and ingenuity, had only been able to identify and convict two persons out of the hundreds who were present! Did not this prove the insufficiency of the law for protection in such cases?—He next came to the testimony of Mr. Robertson,—a stranger, and a Magistrate in another County, whose word was entitled to every credit. He saw nothing in the procession calculated to create terror and alarm.

But waiving the question of expediency, and supposing the Orangemen were weak (if weakness it be) in holding these processions, they were still innocent; and the blame should rest upon the party who commenced the attack. Let them turn to Coram's evidence. He made the men promise not to drink on that day, nor to take any notice of an insult, or anything short of that which endangered life; he refused to carry arms himself, and requested others not to arm, relying upon the law and the civil authorities. How could the jury say that men who went out with such sentiments, and under such instructions as these, went out with a common purpose to commit a breach of the peace? The witnesses all said they were not alarmed at the procession; the party in York Point could not have been alarmed, or they would not have attacked them; and the public were not alarmed or terrified, as large crowds of them were walking alongside the procession. Surely then, there was no evidence to convict the defendants. The Orangemen were obedient to the laws of the land; theirs is an institution which has been in existence 150 years, or upwards, and they merely celebrated their anniversary. They would have obeyed the Act if it had been sufficiently clear that they could understand it, as now construed by the law officers of the Crown. Or if the authorities had told them not to walk they would have obeyed them. He (Mr. Gray) thought there would be no more processions now for although he differed with the Crown Lawyers in constraining processions to be illegal under the new act, yet, that being known to be their opinion, magistrates would act upon that opinion and forbid processions, and the Orangemen would obey the authorities. It would therefore be much better now to throw oil upon the troubled waters, by acquitting the defendants. Let the jury say to them "you did not intend to do wrong, and we cannot convict you;" and let them bid the other party to go and inform their minds, elevate themselves in the scale of social life, obey the laws, and not be so ready to take offence when none is intended. He thought this investigation would do good, as information would be gained by it. He would now leave the defendants in the hands of the jury, claiming a verdict of acquittal as their right.

THE ATTORNEY GENERAL commenced his address by deprecating party spirit. He said it was unfortunate that it existed so generally, and in such a violent degree in this City and County,—he had even seen symptoms of it in this Court. Some years ago in this Province all was kindness and good-will towards each other, but within a few years this party spirit had sprung up. (j) The Orangemen set prominently forward that they are slow to take offence, and will give no offence, and yet these same men take offence at a public officer because he dares to discharge his duty. (k) The Attorney General then hinted at an attempt made to intimidate him, and added "little do they know me if by acts of personal hostility, attacks in print, &c., they expect to drive me from my duty." He wished the jury to observe that we have a law, which must be carried out. That law would be explained to them by the Judge, and they were bound to act upon it as they receive it from him. It would be for them then to say whether or not the charge against the defendants had been proved. It was still his opinion that the procession—no matter with what intentions they first went out, or how innocent they were up to a certain period—did at the time selected for the procession form an unlawful assemblage. Allusion had been made to a letter of instructions sent to one of the local Magistrates. (l) He admitted that he and his learned friend (the Solicitor General) did instruct the magistrates how to proceed; he considered it their duty to do so, and he did not regret it. He was surprised on this, as he had been on former occasions since the opening of this court, at the small number of persons brought up for trial; out of the hundreds who were in the procession they had only been able to bring four to trial. Was it possible that there was a disinclination on both sides to come forward and give evidence? It looked suspicious. Was there any one, public or private, who feared to come forward in consequence of the power of any organized body? Did the magistrates skulk from their duty from the same cause? If any magistrate feared the face of clay, in the execution of his duty, he was not fit to hold the commission. It was a fearful state of society. Do they call themselves Roman Catholics who committed the disgraceful attacks at York Point? Did they talk of religion? They would find their superiors in the most savage Islands of the South Sea!

The Learned Counsel on the other side had stated that the Orange Institution had been in existence 150 years. He begged to correct him. It dates its origin from December, 1795, and the two years which followed were the blackest on the page of Irish History. Unheard-of cruelties were practised by the Orangemen against the Roman Catholics, and that is the reason why Orange processions give offence. (m) If the Roman Catholics would take his advice, and stay away, there would be no excitement, and in time the Orange association would die away. The Orangemen have a right to walk quietly, but as they know their processions give offence they would do better to stay at home and enjoy themselves in their Lodge Room. He admitted that in the present case the Orangemen did not go out to hurt any one, unless they were first attacked, but he had yet to learn that any good ever came from processions, or from the Orange combination either; he had seen the evil of it

in its breaking up the common relations of life betwixt neighbours. He hoped Orangemen would think of it, and break up the association. (n) He admitted that defendants if let alone would not have harmed any one, but he did not agree with the learned Counsel on the other side that they were not liable for the transactions of the day. The special act under which defendants were indicted, was merely explanatory of the Common Law; it pointed out in plain terms what constituted an unlawful assemblage. He admitted there was nothing in the appearance of the procession to create terror and alarm; he admitted that they would have attacked no one had they been left alone; but contended that it was an illegal assembly from the moment they left the police office in Portland, on their return to St. John. He was surprised at one expression the opposing Counsel had let drop, that it would be better for Brown, who fired the first shot to be put out of the way, than suffered to remain, and be made a public example of on the scaffold. No doubt that expression found many a response. (Mr. Gray,—“I deny having made use of the expression; I said, it were better that Providence removed him.”)—From the time the procession left the police office in Portland, it was their common purpose to return through York Point, to force a passage, and to put down all opposition. (The Attorney General, then adverted to the evidence, and launched forth in a bitter tirade against Mr. George Anderson for saying “we came here to make (keep) peace.”) But perhaps some of the jury would say they had a right to clear York Point, as there was a violent rabble there, and that the mob had not suffered enough? If one juror thought this he would caution him, for the thought was dangerous. Evidently the intention of the Orangemen was thus: they thought “we are strong enough, and we'll take the law into our own hands.” But they should have complained of the first attack to the authorities, and the rabble would have been put down, and the procession protected. (o) The appearance of the procession did not create alarm—that he admitted—but it was the common purpose to force through York Point, where they would be opposed, that created the alarm. He regretted that the institution was ever established in this country. Two years ago, when the destroying angel was stalking over Ireland, and when the people of other countries were pouring in their contributions to aid the starving millions, the Orange Society, which had been transplanted from Ireland, was sedulously extended in this country, and had caused strife, and bloodshed, and misery. (p) Arms should never be used in defence of religion; they were uncalled for, and that religion which could not stand without arms could not be good. (q) The Bible inculcated love, and the same spirit now evinced by the Orangemen, was rebuked by the Saviour when Peter drew his sword and cut off the High Priest's servant's ear. (The Attorney General concluded his address by a long address upon Christian forbearance and love, and declared that he entertained no feelings of hostility against any party.) (r).

HIS HONOUR, JUDGE CARTER, then charged the Jury as follows:—“The first point to be considered, is whether the defendants, or any of them, belonged to a party, if three or more, who with some common object in view, tending to a breach of the peace, intended to carry out that object with force and violence, or under any circumstances calculated to create alarm in the neighborhood. If this appears, they are guilty under the first Count of the Indictment.

“Secondly, whether the defendants, or any of them, in company with two or more openly carried dangerous and unusual weapons in a public place, under circumstances calculated to create alarm in the neighborhood. If so, they are guilty of an affray, as charged in the third Count.

“Supposing such points to be established, the next thing to be considered is this:—have they been justified or explained so as to make that lawful, which unexplained is unlawful. It appears that the defendants formed part of an Orange procession, which on the 12th of July, a notorious day (and as regards public alarm the day may be as material circumstance) assembled in St. John and marched in large numbers, with badges and banners and bands of music, through Portland to Indiantown; that so far they were not openly armed and did nothing to disturb the public peace. Up to this point I would not say such assembly was unlawful. But if the same body are at Indiantown joined by others, and the whole form a procession to return to St. John, and having heard they are likely to meet with opposition, many of them provided themselves with loaded fire-arms, which they openly carry, the case assumes new features. Are not such things necessarily calculated to create alarm among those who are pursuing their ordinary avocations in the vicinity, and that not with timid and weak persons, but with men of undoubted firmness and courage. Many a man of undoubted courage, who would not hesitate to risk his life in a cause which would justify exposure, would hesitate about exposing himself to be shot down in the street by a stray bullet, from parties who were fighting about the colour of a ribbon. Such alarm would be no imputation on his courage; the reverse I think, would be an imputation on his sense. But it is said that the arming themselves with these weapons was not for the purpose of using them unless when attacked by others—that the carrying and using them was by way of precaution and self-defence—that having reason to believe an attack was meditated, they prepared for it by arming, and being attacked, used their arms in defence. Now this, if calculated (as it naturally would be) to cause alarm in the neighborhood, I unhesitatingly pronounce, in my opinion, to be contrary to law. When a large body of men are seen parading the streets armed in this way, how are the public to know their object? and if that object be known to be as has been stated, is it not the more likely to cause alarm? We should always bear in mind, that the great object of all laws is the public good—the preservation of the public peace. There are many cases where the rights of individuals are postponed for this object, in which a man may not obtain his undoubted rights, when by so doing he disturbs the public peace. A man may have an undisputed right to a house, or to land, which is in possession of another, but he may not arm himself and his friends and take forcible possession; and why? Not because the law denies his right to house or land, but because he must recover by the force of the law, and not his own. Again, a man may by force if necessary defend his own person, and his own house, but he may not combine with others, a party to protect a party, because by such a proceeding the public peace is likely to be disturbed, public alarm excited, and the peaceable part of society prevented from living in security and quiet. If an individual or a body of men have reasonable ground to suspect an attack, they can appeal to the Officers of justice to protect them in their necessary and lawful doings—put themselves under the constituted authorities—be directed by, and act in aid of them. No body of men can band together for purposes which must lead to a breach of the peace, even in the very act of what they call self-defence. Those means, which used on their own authority would be illegal, would be legal when used in assisting the constituted authorities and under their direction. If this plea be allowed, the other party might arm themselves under the same plea, serious conflicts might take place, and yet, unless the actual hand which caused an injury were discovered, no party could be punished. Such a state of things cannot be. It must be contrary to all principles of law and public policy.”

His Honour then recapitulated the evidence; the jury retired, and after about half an hour's absence returned into Court with a verdict of Not Guilty. The verdict was received with great applause, in a crowded Court Room. As soon as the defendants were discharged, one of them (Square Manks) rose and said, “Gentlemen of the Jury, we thank you for having done us justice.”

[The notes and remarks on the above trial will appear in our next.]

MILITIA GENERAL ORDERS.

FREDERICTON, 10th Sept. 1849.

His Excellency the Leutenant Governor has been pleased to make the following Promotions, &c:—

1st Battalion Carleton County Militia.

TO BE CAPTAINS.—Lieuts. Elijah Briggs, vice Lindsay, retired with rank. Joseph Burpe, of a new Company. TO BE LIEUTENANTS.—Unattached Lieutenant James S. Segee; Ens. Thomas Lindsay, vice Briggs, promoted; Charles Clark, vice Burpe promoted; Calvin McKeen, vice Duff, who declines serving. TO BE ENSIGNS.—Joseph Connell, Gent.; Arthur McArthur, Gent., vice Lindsay; John Barnett, Gent., vice Clark; Silas Lydurney, Gent., vice Atkinson; Robert Atkinson, Gent., vice Carvell; John Porter, Gent., vice M. Bride; John Watson, Gent., vice Hillman; George Briggs, Gent., vice Smith; John T. Allan, Gent., vice M. Bride.