

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.

Trial of Squire Manks, George McKelvey, Daniel Dunham, and John Munford, for an unlawful assemblage and affray.

The Indictment was as follows: 1st., That George McKelvey, John Munford, Daniel Dunham, and Squire Manks, "with divers other evil-disposed persons to the number of two hundred and more, to the Jurors aforesaid unknown, on the twelfth day of July in the thirteenth year of the reign of our Sovereign Lady Victoria, with force and arms, to wit, with guns, pistols, swords, bayonets, sticks, and other offensive weapons, at the Parish of Portland in the County of St. John, unlawfully did assemble and gather together with intent, with force and violence and without lawful authority, to disturb the peace of our said Lady the Queen; and being so unlawfully assembled did then and there remain and continue armed as aforesaid for the space of an hour or more, with intent with force and violence and without lawful authority, as aforesaid, the peace of our said Lady the Queen to disturb, as aforesaid, to the great terror and alarm of the quiet and peaceable subjects of our said Lady the Queen, in contempt of our said Lady the Queen and her laws, to the evil example of all others in the like case offending against the form of the Act of the General Assembly of the Province of New Brunswick in such case made and provided, and against the peace of our said Lady the Queen, her Crown and dignity."

2nd., That "with divers other evil-disposed persons to the number of two hundred and more, to the Jurors aforesaid unknown, on the 12th day of July in the year aforesaid, with force and arms, to wit, with guns, pistols, swords, bayonets, sticks, and other offensive weapons, at the Parish of Portland aforesaid, having then and there assembled together, did then and there unlawfully continue together for the space of an hour and more with intent violently and tumultuously and without lawful authority to disturb the peace of our said Lady the Queen, to the great disturbance, terror and alarm of the quiet and peaceable subjects of our said Lady the Queen, in contempt of our said Lady the Queen."

3rd., That &c., "in the year aforesaid, with force and arms, at the Parish of Portland aforesaid in the County aforesaid, then and there in a certain public street and highway there situate, unlawfully did make an affray, by then and there carrying divers dangerous and unusual weapons, to wit, guns, pistols, swords, and bayonets, along and through such public street and highway, to the great terror and alarm of the quiet and peaceable subjects of our said Lady the Queen, and contempt of our said Lady the Queen and her laws, to the evil example of all others in the like case offending."

His Honour the SOLICITOR GENERAL, in opening the prosecution, stated that it was his impression, when first he heard of these processions, that any number of persons unarmed, and not obstructing the streets, might walk in procession in any street or public highway; but they could not do so armed, knowing as they did the feelings of other people, and that carrying arms would be likely to irritate them. If Orangemen would turn out to have processions, they must do so without arms, otherwise they would be liable to prosecution for unlawful assemblage. He, as one of the Crown Lawyers had never been asked his opinion upon the subject, and the Magistrates seemed to be ignorant that those assemblages were illegal. (His Honor here quoted from the common law, showing that where a man was threatened with an attack at a market, and procured and armed assistants and went to the spot, it was held to be an unlawful assemblage. A man might, if he thought it necessary, procure armed assistance to defend him in his own house, as his house is his castle, but he had no right to go out any where with armed assistance for his defence, as it was considered that he was not obliged to go where danger existed.) That was a decision under the common law, and it applied to the case under consideration. (a) The gathering was for the purpose of parading themselves, for which there was no necessity; and when the Orangemen walk in procession armed, although it might be for self-defence, it became an unlawful assembly. If they apprehended a general attack, they knew that tumults and a breach of the peace would occur; and if they had not apprehended an attack they would not have armed. It was an unlawful assemblage, and thus walking armed was the first breach of the peace. Of course the other party had no right to attack them; that was also a breach of the peace, under another form, and was a higher offence. It seemed from the long hostility which have existed between the parties that circumstances were likely to arise which would lead to a conflict. The Orangemen were keeping alive the remembrance of a triumph gained a long time ago, by King William over James the second. It was setting one part of Her Majesty's subjects against the other. Such assemblages are dangerous, and cannot be tolerated in a country governed by law. The special Act of the Legislature which passed last session declares that any assembly which, according to the opinion of rational and firm men, is likely to cause terror and alarm in the minds of the public, is a riotous assembly. Now who or what were the public upon this occasion? There were three distinct parties,—the Orangemen who were walking in procession, a certain part of the Roman Catholics who opposed them, and other people who were not interested; and this last-named party he considered was the public. It was without any doubt unlawful to attempt to force a passage through a place where a mob had collected, and injuries were likely to be received. In this case the procession was attacked in the morning, but went through York Point to Portland; there they gathered more fire arms, and carried them openly, and resolved to return back the same way they went, although they could not but expect to be attacked again. They may excuse themselves by saying "we would have done no harm if we were not attacked," but they had determined to do harm if they were attacked. (The learned gentleman then read an extract from a Newspaper, from which it appeared that at the late assizes for the County of Down, in Ireland, the Judge had declared armed processions to be illegal.)

MESSRS. GRAY AND BAYARD (Counsel for Defendants).—"What paper is that?"

HON. SOLICITOR GENERAL.—"The London Times."

COUNSEL FOR DEFENCE.—"That is no authority, we object to newspaper statements being read to the Jury as law."

HON. SOLICITOR GENERAL.—"I would not take the Times as authority on political matters, but it is generally good authority on law affairs. However, I will read the extract and let it go for what it is worth." After having read the extract the learned gentleman observed that he was sorry the Magistrates of St. John did not know at the time the procession took place that it was illegal. (b) There were two parties engaged, and both were wrong; one in taunting and irritating, and the other in attacking.—They might say to one "why not forbear?" and to the other "why not let them walk?" But it was impossible to instil proper feelings into the minds of ignorant, bigoted, and uneducated men, who have bitter remembrances. It would be well if all parties would exercise christian forbearance, and be kind to each other. He regarded it as unfortunate that Irishmen had brought their party-differences with them to this country. It was also unfortunate that these processions had originated here in consequence of the weakness of the administration of the law. The laws against riots, and breaches of the peace, had been wretchedly administered in this Province, and people had, in consequence, joined one or other of those parties, thinking it necessary to do so in order to support the law. Those who had done so had acted under a delusion and a snare. It were far better not to join, and thus be in a position to act, upon occasion, as special constables, to assist the Magistrates in quelling riots. The fate of their own country should be a lesson to Irishmen, and teach them, wherever they are, to live in peace with each other. Irishmen were like the poor unfortunate Poles, who had surrendered and given themselves up to the despotism of a neighboring country by quarrelling among themselves. (c) (The learned gentleman concluded his address by referring more particularly to the offence with which the defendants were charged, and the evidence he was prepared to offer.)

JACOB ALLEN, Esq.,—Is Police Magistrate in Portland. Saw the procession on the 12th July passing through Portland, on its way to Indiantown. The men were walking along quietly. Came over to the City after he had seen the procession, and in York Point saw a green arch across Mill Street, and heard that the Mayor had been beaten. Was sent for by the Mayor, and went to his office. The High Sheriff was there, and advised the Mayor to call out all the Magistrates, and let each take his share of the responsibility. The Mayor requested him (witness) to meet the procession on its return, and to request the leader, or leaders, not to return through York Point, but to go around by the way of Portland valley. Returned through York Point, and saw an immense crowd standing there. Met the procession near St. Luke's Church, in Portland; saw a man at its head on horseback, wearing a scarlet cloak, and having a drawn sword in his hand; called him aside, and delivered the message from the Mayor. Had seen Squire Manks in the procession before, but did not see him at that time. (Here the learned Counsel for the defence took an objection to any evidence showing the procession to be illegal, unless it was proved that the defendants were present at the moment the observations were made.) Did not know the horseman at the time, but had since ascertained that it was Mr. Joseph Coram. At first Coram seemed inclined to act according to the Mayor's request, but some one in the procession, does not know whom, said "we had better go through York Point." Witness advised them to go round by the valley, as there might be bloodshed in York Point, and added, "I feel it to be my duty, as Police Magistrate, to warn you of the consequences if you go through." The numbers of the procession had been very much augmented since it had gone through Portland first; there were also more bands and banners. Part of the procession, he thinks, were walking four deep, and part two deep; they were walking very orderly on, coming from Indiantown; some had swords; saw one or two swords drawn; saw some carrying muskets; they were old and rusty-looking. Supposed the procession contained from 250 to 300 people. Heard one band playing the Battle of the Boyne; did not like that, because it is a party-time.—After the interview with Coram the procession passed on, but made a halt opposite the Police Office. Witness then drove back in his waggon to the Police Office, and at the door saw Squire Manks; told him he wished to see Messrs. Coram and Anderson in the Office; Manks told them, and they came in, and Manks came in with them.—Witness again delivered the Mayor's message. Manks had a small piece of fire-arms in his hand; does not know exactly what it was, but it looked larger than a pistol.—Thinks Manks remained in the office while he delivered the Mayor's message, but is not positive. (Here Counsel for the defence again objected to anything being taken as evidence when there was no proof that either of the prisoners was present.) Mr. Anderson replied "you need not be alarmed; we have come here to make peace." Witness replied, "there is no necessity for that, for there has never been a more peaceable community than in Portland for the last eighteen months, since the establishment of a police force." Witness once more, as Police Magistrate, cautioned them, and said "if you will march, go round by the valley, as I am afraid lives will be lost if you go through York Point." Anderson replied, "we are not come here to be driven back." Coram and Anderson both had swords in their hands; Anderson showed his; the edge of it was bruised by parrying, as he said, a stone which had been flung at him. He said "that is the way I have been treated already." Coram and Anderson then headed the procession, and it passed on; witness followed in his waggon, at the head of his armed police. All was peace as they walked through Portland. Before witness arrived at Gleeson's corner he heard shots in the direction of York Point; at first a few scattered reports, and then volleys; in a few minutes probably five hundred were fired. By the time he reached the bridge it was nearly all over. Was for driving on to the scene of the firing, but his friends stopped him, saying he would endanger his own life by going. The Mayor soon came over, at the head of a Company of Soldiers; he read the proclamation, and the streets were soon cleared. Drove over to York Point; saw one man lying dead, and heard of another; also heard that Colonel Simonds had been badly beaten. Went up to King's Square, and there saw the Orangemen re-organizing to continue the procession. Met Mr. Simonds, and took him to Dr. Bayard's to have his head dressed. In the afternoon saw a party of Orangemen again walking through Portland, on their return to Indiantown. Did not recognize any one of the defendants when looking at the body in King's Square.

Cross-examined by Mr. Gray.—Saw nothing on the banners calculated to give offence to any one. One of them represented the Queen. The people in the procession were quiet and very orderly; as they passed one could hardly hear them speak. Did not conceive how they could frighten or alarm any one, nor why any person should be offended at the exhibition. Does not recollect having seen swords drawn in Masonic processions, but has been told the swords are badges of office, and believed so. Thinks