

August 1849.

Trial of Daniel Driscoll, Patrick Kearney, David Hagarty, Jeremiah McCarthy.—
(First count of indictment for riot; second for assault.)

try Market. Came through the crowd while the pushing and shoving was going on; saw the people pushing each other, but does not know who was shoving. It is possible prisoner and himself may have been separated by a man or two, between them as they made their way through the crowd, but did not lose sight of the prisoner.—
Corchray was in fear of being struck, and witness was in fear also. Does not know why they came through, being in fear, as there were other roads. Was not much in fear, and thought they would run the risk. Came through so quick there was not much time for any one to strike them. Does not think Corchray said anything, but cannot swear that he did not.

Re-examined.—Thinks Corchray could not have interferred and he not have seen it.

WILLIAM SMITH.—Is a butcher. Was going to Portland on the morning of the 12th of July, and about half a yard before he got to York Point met Corchray and Gillespie, who advised him to turn back, and the three came down to the Market House together.

Cross-examined.—Stopped in the Lower Market until the soldiers came there; does not know where prisoner and Gillespie went to after they came there.

Re-examined.—Saw a crowd at York Point; prisoner and Gillespie told him there was a row there, and persuaded him to turn back.

MATHEW GRAHAM.—Saw the prisoner Hagarty on the 12th of July; he came to witness in the morning with a piece of hoop in his hand, gave him a rap with it as a signal, and took him off and treated him. Some time afterwards prisoner came to him again, and witness then went and treated him. Some time had elapsed between the two occasions; does not know where prisoner had been in the mean time. The second treat was given shortly before the return of the procession from Portland.—Hagarty appeared as usual; he was not excited.

ROBERT KYLE.—Was passing up Dock Street on the morning of the 12th of July, when the Mayor and Messrs. Wetmore and Gilbert passed him in a great hurry; also saw prisoner Hagarty going up Dock Street. Saw the row at York Point, and saw the Mayor shoved; then saw the Mayor struck with a stone. Turned round immediately, and saw Hagarty in the direction from which the stone came, but is positive it could not have been thrown by him, as it had the appearance of having been flung from a long distance, much farther than from where Hagarty stood. Hagarty was not near the Mayor when witness saw him shoved. Saw Hagarty with his hands up. The crowd were shoving, and swaying to and fro.

Cross-examined.—The crowd was pushing on towards the Mayor and Mr. Gilbert; could not say that Hagarty did not put his hands on the Mayor.

Re-examined.—When the shoving took place people naturally put up their hands to save themselves.

Griffith Morrison, Samuel Clark, Thomas McElroy, and Patrick McLean were then severally called, and testified to the previous good character of the prisoners.

ROBERT PAYNE, ESQ.—Knows the prisoner Hagarty; is an industrious man; his general character is good, but he is apt to be a little cantankerous, on some occasions it resisted.

MR. RITCHIE then addressed the jury on behalf of the prisoners. He endeavored to make it appear that they could not be convicted under the indictment, but should have been tried under another Act, for resisting the Mayor in the execution of his duty, which would have been misdemeanor. He then went on to observe that the Orange procession was an insult to the Roman Catholic religion, and the cause of all the disturbances of the day,—that the streets were obstructed by it, and that the Mayor had a right to prevent, and should have done so,—that the arch across Mill Street was no obstruction at all, and that the Mayor was very partial in attempting to remove it,—that there were only a few boys and a drunken man at York Point when the procession came up, and that the procession ought to have obeyed that drunken man's advice, and gone by some other road,—that the man on horseback, in drawing his sword, committed the first breach of the peace on that day,—that when a volley of brickbats were thrown by the boys, it was cruel and barbarous to attempt to take their lives by firing upon them,—that it was a merciful dispensation of Providence that none of them were killed, and if any of them had been killed the Orangemen who fired must have had a heavy load on their consciences so long as they might live. He then went through with the evidence, and contended that it was not sufficient to convict the prisoners.

THE HON. ATTORNEY GENERAL replied. He took nearly the same view of the Orange procession with Mr. Ritchie, and censured it severely. He then, in an able manner, took up Mr. Ritchie's objections to the indictment, and to the evidence, and swept them away so completely that not a vestige of them remained.

HIS HONOUR JUDGE CARTER then summed up in a calm, dignified manner; his charge being decidedly against the prisoners.

The Jury retired and were out some time, when they returned with a verdict of Guilty against Hagarty, and acquitted Corchray and Hegan.

There were certain incidents connected with this trial worthy of remark. For instance, when the panel was called Mr. Francis Collins not only answered to his name, and came forward, but actually endeavoured to force himself on the Jury, by evading questions put to him by the Attorney General; although compelled at length to acknowledge that he had said "The Mayor did not get half heading enough." Passing over the atrocity of the expression—by a man, too, who carries on business as a merchant, and should be above any sympathy with low rowdies—by a freeman who was bound by his oath to assist the Mayor and other constituted authorities—passing over this act of ruffianism, what ought the community to think of that man who, having so grossly and wrongfully prejudged the case, endeavoured to thrust himself forward and take an oath "fairly and justly to try the case between Our Sovereign Lady the Queen and the prisoner at the bar, and a true verdict to give so help him God?"

The next extraordinary circumstance to which we will advert is the placing of Dever on the Jury. In such cases it is usual for the Clerk of the Court to read the panel, requesting the Jurors in Court to answer to their names. He then commences the list again, calling them to the book to be sworn; but as some of those who were at first absent, may have entered the Court in the interim, each juror is again called in his turn. Now in this instance, after the jury were sworn and had taken their seats, Mr. Ritchie, one of the prisoners' Counsel, alleged (with what truth we know not) that Dever's name had been omitted in the call to the book, and that as his name stood on the list before Mr. Potheby's, the prisoners had a right to demand that he be placed on the Jury. The Attorney General yielded the point, and it was done, which was tantamount to the prisoners selecting a favourite juror. And whom did they select, and what was the result?

We must next advert to certain gratuitous expressions that fell from Mr. Ritchie in closing the defence. In such cases of course a Counsel is allowed great latitude, but on this occasion Mr. Ritchie gave vent to his spleen by wilfully and malignantly slandering the Orangemen, when he knew that what he stated was false, and that, whether true or false, it could not possibly affect his clients. Because some of the witnesses swore that shots were fired from the procession when it was first attacked at York Point, Mr. Ritchie said they ought to have taken the drunken man's advice, and gone another way! and then rates them soundly for their cruelty in firing upon the "innocent boys," representing it as "a special interposition of God's providence," &c., that none of them was killed, and expatiated upon the horrors of conscience the Orangemen must have experienced, &c., if Providence had not thus interposed. Now what will our readers think of this deliberate slanderer, who thus takes the name of God in vain, when they are told that one of the witnesses (William Smith) thus swore:—"I think the Orangemen generally fired over the heads of their opponents, or that their pistols were charged with powder only, as I saw one man put the muzzle of his pistol close to another person and fire, and the man did not fall,"—what will our readers think of Mr. Ritchie, when informed that he had this deposition before him at the moment he gave vent to his slander? And is not this deposition corroborated by the fact that a great many shots were fired at a crowd, by persons within a few feet of them, and not a man was wounded?—It is unnecessary to enlarge upon this subject. We have placed the facts, as sworn to by Mr. Smith, alongside Mr. Ritchie's malignant slander, and are quite willing to let them go before the public together.

The learned SOLICITOR GENERAL opened the case, by explaining the indictment. There were two counts, the first charging the prisoners with having been concerned in a general riot at York Point on the 12th of July, and the second charging them with having on that day assaulted Alexander Boon.—The prisoners were defended by Messrs. Ritchie, J. Campbell, and DeLarty.

ALEXANDER BOON.—Drives a steamboat waggon. On the morning in question was returning to the city from Indiantown for the third time; it was nearly 12 o'clock. As he came up York Point hill observed a crowd at Halliday's corner, but had no idea they would attack him; on getting up to them heard some person say "you shan't go thro' here," and was immediately assailed by a shower of missiles. One stone, or brickbat struck him over the nose and cut him, but the wound was not very bad; turned his horses as quickly as possible down North Street, towards Gerow's slip, and turned into South Street; at first supposed the passage was clear there, but saw people running across the burnt district, and from behind the buildings, who pelted brickbats at him; whipped his horses and drove through as fast as possible, and does not recollect getting a blow while in that street, although he might have got his arm hurt there, it being severely hurt, but at what particular time he does not know. On crossing Union Street found a crowd there, who also assailed him; was there struck by a missile a severe blow in the forehead, and knocked back in the waggon, partially stunned, and thereby checked the speed of the horses, as he still held fast of the reins. As he recovered and rose to his feet saw a man run past him and seize the reins; struck at the horse with the whip and made him spring, by which one of the horses fell, and the other appeared to be standing over him; had his son, a lad, in the waggon with him, and when first attacked commanded him to lay down to avoid the missiles; at this time, as the shower of missiles was still kept up, and being apprehensive for his life, ordered his son to jump out, and they both jumped out and ran. The horses must have got up very soon, for he had run but a little way on Nelson Street before they passed him; they ran to King Street and were there caught. The wounds he received were but flesh wounds, and did not injure him very seriously; supposes he got his arm hurt in defending his head. Was pursuing his ordinary business, and had given offence to no one.

Cross-examined by Mr. Ritchie.—Passed the procession coming down through Portland; had no difficulty in driving past it. On arriving at York Point expected the crowd would open and allow him to pass. The street was full of people; had not the slightest idea how many were there; does not want to guess how many; cannot say if there were more than two dozen ran across the ruins, but there was quite enough to pelt him. Does not know of more than one man following him around the corner into Nelson Street. There were more people in the street than usual from Portland to York Point. Was knocked down on entering Union Street, and therefore cannot speak as to the numbers of the crowd there.

GEORGE MASON.—Was at York Point on the 12th of July; saw the Steamboat Waggon when it came up; thinks it was about half past eleven, a.m. Did not know at the time whose waggon it was. Previous to this saw a number of men and boys collecting brickbats, and laying them in piles on the sides of the street. As the waggon came up they set up a shout, and fired a shower of brickbats at it. Just then saw the prisoner Driscoll run past him with a brickbat in each hand; after he had passed witness saw him throw a brickbat in the direction of the waggon; did not see the missile strike the waggon. Did not notice any person in the waggon; supposed they had all got out. Saw the horses turn down North Street. Left and saw no more of it. Supposed the crowd from one to two hundred. Whoever was in the waggon could have given no offence before they were attacked.

Cross-examined by Mr. Ritchie.—Went to York Point to see the procession come over the bridge. Knew Driscoll before. Was standing near Spillane's new building when Driscoll passed him. Thinks the brickbat he saw Driscoll throw could not have reached the waggon, the distance being too great. Driscoll was in liquor. There was a crowd betwixt him and the waggon, and thinks the brickbat probably fell among the crowd and was quite as apt to strike some person standing there as it was the waggon. Does not think there were more than 200 persons present. Thinks the crowd followed the waggon down North Street; saw some of those who were throwing missiles run across the burnt district towards Smith Street; there was still a good part of the crowd left in Mill Street. Does not think the people who ran across were in time to meet the waggon, as the ground was broken, and the horses at full speed. Thinks it must have been another set of people who attacked the waggon in Smith and Union Streets. Saw the first shower of brickbats fall on the waggon, but can't say whether any person was struck. Did not see Driscoll till after that had happened. Had been in York Point about ten minutes. Did not see Driscoll until after the first volley of brickbats had been fired at the waggon. At that time the head of the procession was coming over Portland Bridge. There might have been one half of the crowd remaining after the others ran across the burnt district. Lost sight of Driscoll after he threw the brickbat; did not see him run across. Did not see the other prisoners present.

Re-examined.—The blocks are very narrow. Thinks a person standing in Drury Lane could hurl missiles into Smith Street.

ARCHBOLD BOWES.—Went to York Point on the 12th of July after the procession had gone through to Portland. The green arch was standing across Mill Street, and a crowd of people near it. Went up on Rankin's new building, and stopped there for some time. The crowd was moving to and fro, heard a shout, and then saw a waggon passing Smith Street, and people throwing brick-bats at it. As the waggon reached Union Street saw the driver struck and knocked down. The crowd were running down Union Street. Does not know either of the prisoners. On a former examination swore against John McCarthy not Jeremiah McCarthy.

Cross Examined.—The horses were at great speed in Smith Street. Saw men running across the ruins, perhaps a dozen of them.

JOSEPH MERCER.—Was at York point on the 12th July; was going towards Portland through Smith Street. Saw Mr. Boon in his waggon, turning the corner of North Street, and entering Smith Street; saw a man run out from the rear of a building in Drury Lane, towards Smith Street, with a stone, or brick-bat, in his hand, and throw it at the waggon. That man was the prisoner Hagarty. Saw others running towards Smith Street at the same time; supposed they were working in a building on the west side of Drury Lane as he saw Hagarty and others at work there about an hour afterwards. Hagarty was foremost when they were running; he stood on the bank, which is quite high, and threw in the direction of the waggon. Does not know if the missile struck Boon. Prisoner was near enough to have flung over the waggon, but the horses were going very fast. Saw no one in the waggon but Boon, and does not think the missile hit him. There was a great crowd in Union Street at the time, and the people appeared excited.

Cross examined by Mr. Ritchie.—Did not know Hagarty previously. He appeared to be dressed in working apparel. Saw him afterwards at work in Drury Lane, and thinks he is a carpenter. Can't say whether he saw Hagarty on the waggon first. Hagarty was not near Raymond's corner, and could not have been there when the waggon passed: he was standing on the bank when the shout was raised in Union Street. Did not see Boon struck in crossing Union Street. Thinks from the countenance of Hagarty at the time that he did not strike Boon—he looked disappointed. Saw him then turn back towards the building he had come from.

WILLIAM HOWE.—Was at York Point on the 12th July, after the procession had passed the first time; stood on Rankin's new building. Saw Boon's waggon coming over Portland Bridge. As the waggon was coming up to the corner a shout was raised, and a shower of missiles flung at it. The waggon then turned down North Street, and from thence through Smith Street; the horses were going very fast.—There were crowds of people in Mill street and in Union Street, as the waggon crossed Union Street saw the prisoner Kearney throw a stone, or brickbat, at it; he was quite near enough to strike it; there were groups of people in Union Street, and Kearney was among them; immediately after Kearney had flung the missile saw Boon fall. Kearney then ran down towards Raymond's store, and afterwards turned