

SUPREME COURT.

THE QUEEN vs. THE HON. GEORGE COLES AND OTHERS.

TRIAL CONCLUDED.

THE HON. CHARLES YOUNG, Queen's Counsel (who had received a licence from the Lieutenant Governor to act for the Traversers in this case)—then rose and said:—

May it please Your Lordship, and Gentlemen of the Jury, I appear as Counsel for the Hon. G. Coles, the Hon. W. Swabey, Edward Whelan, Esq., Mr. Walsh, and Mr. McMullen. In a case of so much excitement as this it well becomes you to remember the solemn obligation of the oath that you have taken, and to divest your minds of all that you might have heard elsewhere. The duty of Jurors is most important, and I must urge you to fulfil it, in its strictest sense. That duty will, in this case, be most easily performed; as I trust I will convince you before I have concluded, that the Crown Officers have signally failed in establishing a case against the Traversers. We all know where political bias would lead the mind when it is uncontrolled; but now, that you are solemnly sworn to give a verdict according to the evidence, I feel satisfied that you will acquit your consciences, and do justice to my clients. This I firmly believe, because I am personally acquainted with the most, if not all of you. It is justice that I require from your hands this day, and justice and right demand from you a verdict of acquittal. I wish you, gentlemen, to give such a verdict as will satisfy your own minds, and enable you to look back with pleasure upon the part that you have been called upon to take in this extraordinary transaction—in this uncommon and singular prosecution. From the evidence that has been adduced, even on the part of the Crown, I would with confidence ask your verdict in favour of my clients; but when you shall hear the testimony that shall this day be brought forward in the defence, I feel convinced that you will not have the shadow of the shade of a doubt in acquitting my clients. I will not for one moment presume, that the flimsy evidence brought here against the Traversers will induce you to convict them. I coincide with my learned friend, Mr. Lawson, in most of the statements that he has made, when addressing you, and I would ask you to give them all the consideration that they justly merit. Now, let us for a moment inquire into the object of this Prosecution. I believe it has been instituted principally to crush Mr. Coles, and to crush him for what? Because he has had the courage and the hardihood to expose certain abuses that existed in the Government of this Colony! How great would be the rejoicing of a certain clique, if they could not only crush him, but also drive him from the community! But they will not—they cannot succeed, as your verdict this day will assuredly unfold to them. Even were it possible that you did convict them of this alleged Riot, still my hon. friend Mr. Coles, and my hon. and gallant friend Capt. Swabey, and the other Traversers would retire from this Court with their fair fame untarnished, and their reputation unspotted. No guilt of an intention to commit a breach of the peace could be personally attached to them, and each will continue to hold his station in society, just the same as if this Prosecution had never taken place. My learned friend, the Solicitor General, has exercised great candor, and I willingly give him credit for it, and freely admit that I expected nothing less from him. He stated to you that this was a remarkable case—remarkable! from the high standing and respectability of the parties arraigned. It is remarkable indeed! And a case which shall be known only to have been prosecuted in the Courts of Prince Edward Island. Such a case, so trifling in its character, so flimsy in its nature, I will venture to say, has never been brought before any of Her Majesty's Courts either in Great Britain or in any other of Her Majesty's Colonies. Such a case will only be found to have been tried in the Records of the Supreme Court of Prince Edward Island. But I blame not the Crown Officers—they are only acting in the discharge of their duty. I blame a body of men who dared, on such flimsy evidence as has been adduced, to place the Traversers on their trial for such a grave and serious charge as that for which they stand indicted. Enough of this, however, for the present. These matters will, probably, be mooted and amply discussed in another place, where a remedy can only be applied. When we read of Elections taking place in England, far more serious disturbances are there depicted than can be pretended to have occurred here. Brick-bat after brick-bat has been hurled, broken head after broken head has taken place, window after window has been smashed, and yet you might search column after column of the Newspapers in vain for the trial of the parties. With the Election, all has passed away. But remember, I do not stand here to advocate violence—no! I deprecate such proceedings, and if I thought that these Traversers were really guilty of riot, disturbance and tumult, I would be the last Member of this Bar to advocate their cause. I think, however, you will find that they did all in their power to prevent injury, and to preserve the peace, and I believe that the parties who instigated these proceedings against my clients, will find themselves disappointed by the result of this trial. The learned Solicitor General wonders that the Traversers should have mixed themselves up in such an affair as this—that they had not a greater regard for their own characters, than to be found thus associated. How could

they help being present, I would ask? Was not Mr. Coles the successful Candidate? And did not his friends assemble for the purpose of doing him honor? Is there any law to prevent Her Majesty's subjects from meeting for such a purpose? None! It has hitherto been the custom in this Island to chair the successful Candidate, and the chairing has always been attended with those marks of rejoicing—such as the playing of music, the waving of banners and flags, the firing of guns or pistols, and the deafening cheers of the assembled multitude. All this is innocent in itself. But should the crowd go further, and by a premeditated plan, or preconcerted scheme, injure the property of their opponent, assault their persons, and excite terror and alarm throughout the community, they would then bring themselves within the pale of the law, and would deservedly be punished. No evidence of this kind, however, has been adduced, nor can be adduced against my clients, to shew that there was any preconcerted plan to commit a breach of the peace against any party, to assault any person, or to injure the property of any individual. The only assault that has been proved, and the only blood that has been spilt, is the slight scratch given to a fair lady's delicate hand. And this, not even alleged to have been done by any of the Traversers. Where, then, is the terror and alarm, as alleged by this Indictment? My defence will not be as the learned Solicitor General asserts, that it is a mere election affair; but it will be on the broad ground, that there was no riot committed, no AFFRAY took place, and no ASSAULT perpetrated by my clients, even in the strictest and most comprehensive sense of these legal terms. Let us look at the facts, and apply the law to them, and them to the law. [Here the learned Counsel entered at great length into the facts, and lucidly commented upon the law in relation to them—as laid down in Chitty, Russell, Roscoe and others. He then commented upon the evidence of Mr. Theophilus Chappell, the only Witness who attempted to prove premeditation.] And, continued the learned Counsel, how feeble is his testimony to prove preconcert. His own acts shewed that he did not believe it. Let us turn to his evidence and to his actions. He says that from a conversation he had held with Matthew May two days previously, he believed his house would be assaulted. Mark! he does not attempt to connect May with any of the Traversers. Now, are his actions such as would prove that he was alarmed? The moment he hears the sound of music floating upon the evening breeze, he calls the females in the house to witness the joyous scene. They all repair to the front windows, and there look out at the procession as it passes along the street. So soon as it has disappeared, he hastened to put on his clothes, and runs up towards Mr. Coles' residence—the very scene of action. Is this the conduct of a man terrified and alarmed? Mrs. Reid, his sister, who lives in the house with him, has testified, that although he told them the same day, what May had said, yet on the day of the procession, he had never mentioned the subject, nor expressed any apprehension. How different his conduct would have been had he thought his house would have been assaulted, or that there was a preconcerted plan to commit a riot that evening? He would have kept the females in the back part of the house, he would have shewn no light in the front, and he would have remained quietly in his house, where he would have been safe if a riot had been determined on. It is not by such paltry and unsupported testimony as this that my clients will be convicted by you of an intention to commit a riot. My learned friend, the Solicitor General, then gravely stated that if persons, however exalted their station, or however respectable their characters, allowed their feelings to get the better of their judgment, and to cause them to do an unlawful act, they should be punished. This is a doctrine to which I most willingly subscribe, as the laws of the British Empire are impartial in their nature. They are for all conditions of men—they have been framed for the guidance of the rich as well as the poor, and all are bound to obey them—from the Queen in Her Royal Palace, to the Peasant in his lowly cottage. This is one of the brightest glories of the British Empire, and never may it become dimmed! The learned Solicitor General had thus far in his opening, treated the case with candor and moderation. He then indulged in one of those bursts of eloquence for which he is celebrated, and gave such a vivid, graphic and awful description of the violence that had been committed by my clients, that if it had been so proven, we might have thrown up our briefs, and thrown our clients into your arms, pleading mercy for them. He descanted upon breaking windows, as if scarcely a house in the town had been left with a whole pane of glass. House after house, he said, was assaulted, window after window was broken. Doors, he said, were smashed in, showers of stones were thrown, and persons were put in great bodily fear—and all in the dead stillness of night. Now facts are stubborn things, and let us examine into them as proved. First as to the windows—three panes of glass were broken at Chappell's, one pane, and two disfigured at Duncan's, one pane at my friend Mr. Welsh's, one pane at my valiant friend, Mr. Davis', and three panes at McGill's—in all, nine panes of glass broken, and two disfigured. As to doors being smashed in, this is merely an imaginative touch of the learned Solicitor General, as no evidence has been brought to prove it. As to showers of stones being thrown, only one witness proved to a volley, and on cross-examination, the volley dwindled down to five or six; and as to persons being put in bodily fear, there was no evidence of anything of

the kind—except of the foolish alarm of two or three nervous women. So that the learned Sol. General's grand flourish of trumpets dwindles down, by his own evidence, into a tiny and very feeble note. The Traversers are all exceedingly sorry that any damage, however trifling, should have been committed, and we will bring witnesses who will clearly prove that they endeavoured to prevent it, and to discover the perpetrators. My learned friend, the Sol. General, then proceeds to individualise the Traversers, and he says, that Mr. Coles, from his position, must have had the power to stop these violent proceedings, and that Captain Swabey, as a Magistrate, should have interfered. Let us again look at the facts. [Here the learned gentleman described minutely, the order of procession, the manner in which it was conducted, the triumphal Car drawn by men, continually moving in the darkness of the night, the Traversers not knowing that a pane of glass was broken until they heard McGill's, that they then remonstrated, that persons in the crowd cried "it is not your party, Mr. Coles, it is done by others to bring disgrace upon you;" that Mr. Coles exerted himself to preserve order, that Captain Swabey cried out, "shame! shame!"—that the other Traversers manifested their disapprobation, that the crowd were displeased and tried to discover the delinquents, and that no second assault was made upon any house, that Mr. Coles endeavoured to induce his friends to take him home, and that he was over-ruled.] And, continued Mr. Young, they held Mr. Coles in such admiration, that they could not bring their minds to part with him—fulfilling the language of the poet, when he exclaimed—

"When kindred minds do meet,
How fast the hours fly on apace,
And rush into oblivion—ne'er to be recalled,
But e'er to be remembered."

I would here call your attention to one circumstance: Some of the witnesses who are now politically opposed to Mr. Coles, have testified that in his former election, they were his warm supporters. Why this change in their opinion! From whence does it proceed? Is it because Mr. Coles has become a friend to the people, and has put himself in opposition to a party who have carried on the Government of this Island for their own aggrandisement, and not for the benefit of the country? This is merely another instance of the evanescence of popular favor. A man may be on the mountain-top today applauded and beloved; and to-morrow may be in the valley, despised and disliked. Such is man, ever changeable as the wind, and no reliance can ever be placed upon him.

That as to his gallant friend Capt. Swabey, he had maintained too high a character in fighting for his country during the Peninsular war; in conducting himself as an active Magistrate in this community, and as a private gentleman since he entered it, to have it sullied by such trifling testimony as has been adduced against him. The learned Solicitor General even admits that his feelings would revolt at being a participator in such tumultuous proceedings. And no single act of violence nor of assault can be brought against any of the other Traversers. The insignificant party that opposes Mr. Coles may try and try in vain to stain his reputation, and to brand him as a rioter. Had they succeeded in the election, and had Mr. McCallum been chaired, and had the houses of Mr. Coles, Captain Swabey or that of the Examiner been assaulted, there would have been no prosecution against them instituted—no, Mr. Coles and his party would despise such a measure. They consider these to be the acts of little minds, and worthy of the contempt of upright persons. I feel that my clients have an honest Jury to try their cause, and it is with a firm reliance that we will expect you to give us justice. The great mass of the community are looking with anxiety for the result of this day's proceedings, and public opinion is excited, as this crowded Court House well testifies. But you are not to be bound by public opinion—you are to go by the evidence, and I can with confidence ask you for a verdict of "Not Guilty" for each and all of my clients.

[Here the learned Counsel entered at large into the evidence that would be brought for the defence, and said that Mr. Mooney would address them on his own behalf, and he hoped they would hear him patiently, and give his statements that consideration that they deserved. He then wound up his address, which was nearly two hours in length, by an appeal to them on behalf of his clients, which appeal was not made in vain, as the verdict fully testifies.]

R. MOONEY, ESQ. next rose and spoke to the following effect:—May it please your Lordship and Gentlemen of the Jury—My innocence of the crime of which I am accused is so clear, according to the dictates of my conscience, that I felt it unnecessary to employ counsel to conduct my defence. I am now, gentlemen, more than forty years of age, and I can honestly boast that during the whole of that time I have never been obliged to appeal to a Jury for a vindication of my character. Peace has been my motto, and peace my practice through life. Too early and too deeply I imbibed the principle, to forget or disregard it now—a principle alike applicable to politics as to morals, namely, that he who commits a crime gives strength to his enemies. I have always not only been peaceably disposed myself, but I have upon all occasions used my utmost endeavours to prevent a disturbance of the peace by others; and this prosecution is the reward that is