

offered for my labours. I have been accustomed to regard the Law as a common parent whom we should all obey: if I have observed, as I believe I have, the duty of a child towards that parent, I must confess that I do not now receive the treatment which is due to a dutiful child. But I stand here unawed in the presence of Magistrates and Lawyers, because I am conscious of my innocence, and because I know, Gentlemen of the Jury, that, as honest men, it is not in your power to convict me of crime. I felt certain, as I do still, that the outrage complained of was not committed by the friends of Mr. Coles. On the night of the procession, I expressed my wish that a close watch should be kept to discover the real perpetrators of the outrage,—and had these been discovered, I think I should be found to be right in my suspicions. I do not, gentlemen, understand the law that makes a man who may be 50 or 100 yards distant from those who commit a breach of the peace as guilty as those who perpetrate it. As respects the present case, I have done nothing to incur the reproach of my conscience, or the penalty of the law; and if I am to be punished for doing nothing, I shall not, perhaps, be inclined to trouble myself so much in the way of peace-making for the time to come. It has been given in evidence, and will, no doubt, be corroborated by the witnesses for the defence, that I endeavoured to prevent the windows being broken; and I feel full confidence in your honesty when I say that I know you will give this fact your most earnest consideration.

The evidence for the Traversers was then entered into. The first witness called was—

*William Crabb*—examined by Mr. Young.—The people began to assemble at the end of the town near my house as early as five or six o'clock in the evening on the last day of the Election, they were joking and talking about the election; saw nothing and heard nothing to induce me to think a riot would ensue; two waggons were drawn up—one for Mr. Coles and his friends, the other for the musicians, the waggon with the musicians taking the lead, halted at Mr. Coles' house for the sole purpose of cheering, no one had any thing to drink whatever, the procession went up to Mr. Haviland's, round a back street to Hobbs's corner—did not pass Davis's—then to Government House, did not see Capt. Swabey till after it left there, did not hear of windows being broken till arrived at McGill's, was standing on his platform, some one passed me in a hurry and slipped through the crowd like an eel, heard him say I have done that, meaning that he had broken the windows, I said to a friend with me I was certain he was not one of Coles' friends, did not know the man, he passed so quick and seemed afraid of being discovered, do not believe the crowd knew anything of it; heard a general murmuring as of disapprobation from the carriage, a halt took place at Mr. Coles' father's; Mr. Coles wanted the people to draw him home, but they were determined to take him further, and went on directly. When the stones were thrown at Duncan's the bulk of the crowd and the carriage were as far as Birnie's establishment a-head, and could not have heard the breaking of the glass. Was in Mr. Coles' house afterwards, and heard the gentlemen who had been in the carriage expressing their sorrow at what had happened; all said it could not have been done by any friends of the cause. Did not in the slightest degree think there was any premeditation.

Cross-examined by the Solicitor General.—I am a well-wisher of Mr. Coles, have known him many years, did hear Welsh's or Davis's windows broken, the carriage was just the same at Welch's as at Davis's, if it stopped it was for so short a time it was scarcely discernible, heard a pistol fire in the main street, do not know where about or by whom, the crowd occupied the whole breadth of the street, and the carriage was in the middle of it. Do not know if there was a pistol discharged near McGill's. Do not think Mr. Coles or any of his friends could have got out of the carriage had they been inclined, as they were in the midst of the crowd; do not think an attempt to do so would have been unattended with risk, as the men drawing the carriage would do as they pleased with it.—(By Mr. Young)—Saw persons round the carriage that did not belong to Mr. Coles's party.

*Angus McKinnon* examined.—Do not know who broke McGill's windows; was within a yard of the carriage; as soon as Mr. Coles knew of it he said it was no friend of his. Did not see Clark in the carriage; I disapproved of the breaking windows, and so did those in the carriage, when they halted at old Mr. Coles, I heard Mr. Coles say 'take me home, I want to go home,' some one answered, 'you have not been down this street,' and I did not pay much more attention.—(By the Solicitor General)—Mr. Coles said they were none of his friends that broke windows; did not hear Capt. Swabey speak, but he might have spoken, there was a noise in the carriage.

*William Koughan* examined. Do not think those in the carriage could hear Welsh's windows broken as I did not and was very near to it. Do not believe the carriage stopped there, heard a pane of glass break at Davis's, the carriage then was nearly up to Dempsey's, heard the window break at McGill's, the carriage then was as far as Stamper's, it stopped near there; heard Mr. Mooney speaking, he seemed much annoyed; did not hear any one else speak; did not know Chappell's windows were broken till next day; do not believe there was any previous thought of making a riot; spoke to many in the crowd who disapproved of the stone throwing, and those were all of Coles' party.

*Henry Charlton* examined.—Was in the midst of the crowd in the main street, heard a glass break at McGill's; shortly after the carriage stopped, heard Mr. Coles say, 'for God sake do not do any harm,' some other in the carriage answered 'it is none of your friends,' and cried shame! shame! (By Mr. Mooney)—heard several in the carriage speak beside Mr. Coles, and thought one was Captain Swabey.

Cross-examined by the Solicitor General.—Was only two or three feet from the carriage, can almost swear it was Captain Swabey who cried out shame! shame! I will swear he spoke.

*George Foster* examined.—Joined the procession at first and continued with it to the last; did not hear Davis's or Welsh's windows break, nor do not believe those in the carriage could hear from the continual noise made; I had been a long way from the carriage—come up to it at McGill's, heard some persons in it crying out shame; heard the windows break at Duncan's, and Mr. Mooney said if he knew who it was he would punish him, even if it was his own brother; do not believe it was done by any of Mr. Coles' party, they were too overjoyed to do it; the crowd was not composed exclusively of one party; spoke to several of Mr. Coles' friends, who all disapproved of the outrage; was at Mr. Coles' house after the charring was over, Mr. Coles was very hoarse from his exertions on the hustings, but distinctly heard him and the other gentlemen express their disapprobation and regret for what had happened.

Cross-examined by the Solicitor General.—Did not hear a pistol fired at all, heard a gun discharged before they went round; I will swear I did not fire off neither the one nor the other, the carriage stopped a short time near McGill's; not certain that I distinguished Mr. Mooney's voice in the carriage more than others; there was a general murmuring going on in it.

*Henry Fould* examined.—Was at Welsh's, heard the windows break, the carriage had passed on; do not believe the breaking of the glass could be heard in the carriage, around which the greatest noise prevailed, it stopped near McGill's, thought the reason for which was, it had not been predetermined whether the procession should continue up Queen Street or across the square, heard Captain Swabey and Mr. Coles express their disapprobation at the breaking of windows, when the procession reached old Mr. Coles, it halted and Mr. Coles requested to be taken home, but the people said he had not been down that street, and persisted in going; did not hear any glass break at Duncan's, heard something; the carriage was considerably in advance at this time; believe quite the reverse of their being any concerted plan or agreement in the crowd; I begged of Mr. Walsh (one of the Traversers) to assist me in finding out who the depredaters were, I had my suspicions at the time as to the perpetrators of the mischief.

*Benjamin Chappell* examined.—Saw a boy throw a stone at his aunt's windows; another boy was pointed out as having thrown stones, made up to him when he ran off; heard his name was Stanley, and that he was a Shoemaker. [Mr. Lawson asked the witness if he stated that fact before the Grand Jury. The Solicitor General objected to the question, and observed that the learned gentleman himself knew it was improper.]

*John Blake* examined.—Assisted in drawing the carriage; heard Mr. Mooney speak to the people after Duncan's windows were broken, and heard Mr. Coles say he did not want such work as that; Mr. Coles was obliged to go where we wished, it was against his will that he went down Prince Street. Captain Swabey was handed into the carriage subsequently to its having passed Davis's. Had seen Elections in Ireland; knew the member there was never his own master till the day after he was chaired.

Cross-examined by the Solicitor General.—Was sure Captain Swabey was not in the carriage till after it passed McGill's. [The learned gentleman remarked to the Court that the witness was mistaken on that point.]

*W. Swabey, jun., Esq.*, examined.—Was on horseback on the evening in question; when Duncan's window was assailed the carriage had passed on; saw a boy throw a stone at Mrs. Chappell's window, endeavoured to secure him, but in so doing nearly rode over a man, and while engaged in apologising to him, the boy escaped; the crowd did not approve of the breaking of windows, and said it was a shame; there must have been opponents of Mr. Coles amongst the assemblage, as a dead cat was thrown at witness and struck him on the head, opposite Mr. Coles' door.

Cross-examined.—Is positive those around him disapproved; was not near the carriage, could not therefore testify as to those in it.

*Donald Nicholson* examined.—Was near Captain Swabey's house, saw him, and said, here comes the procession, he said, we will go up and meet it; we did so, and as soon as he was recognized the people placed him in the carriage, (but not by the side of Mr. Coles); this was opposite Mr. Henry Palmer's house.

[At this stage of the proceedings it became too dark for us to take notes, several other witnesses were examined, when the Court adjourned till eleven o'clock next day.]

FRIDAY.

*Matthew May* examined.—Held a conversation with Theophilus Chappell on the Wednesday before the Election, there was a great quantity of hand-bills against Coles lying in the shop, which he was going to send into the country, and I jokingly said, 'you will catch it for that,' we often joked one another. I meant nothing serious,

nor was it taken as such by him, he observing that he was sure I would not hurt a hair on his head. I heard the people say before the procession commenced, that they would groan at the houses of opponents, I begged them not to do so; they persisted, but added they would do nothing more. As soon as damage was done I felt determined to find out who were the guilty persons, and told those around me to look out, I collared one man that threw a stone, and did not believe he belonged to Coles' party. Do not think there was any of his friends who approved of the mischief; quite the contrary.

This closed the case.

THE ATTORNEY GENERAL, on rising to close the case on the part of the Crown, commenced by assuring the Jury that it was not his intention to inflict upon them a long speech in the present stage of the proceeding, as the case had already extended over so long a period of time, and as he was satisfied from the attention they had paid to the evidence adduced on both sides, that it would be unnecessary on his part,—and then went on to say that he perfectly agreed with his learned friends who had preceded him, that at the period when the prosecution was instituted, political excitement prevailed to no ordinary extent—party feeling ran high, and possibly that if the prosecution had not been instituted before the parties concerned had had time to cool, the court and the Jury would not have been troubled with it. But that with motives, parties, or feelings, the Jury had nothing to do,—their simple duty was to well and truly weigh the evidence they had heard, and fearlessly to give their verdict according to that evidence, and in accordance with the honest dictates of their own consciences. That one of the learned Counsel for the Traversers would wish the Jury to infer from his reasoning, and from what he stated to be his opinion of the law bearing upon the case, that if the Jury believed from the evidence that there existed no preconcerted plan between the parties charged on this indictment to do the acts complained of—that such acts would not in themselves constitute a riot in law, and that the Traversers must be acquitted on that ground alone, even if there was nothing else in their favor. That he differed entirely with the learned Counsel for the Traversers on this exposition of the law, for that in his opinion, parties might in the eye of the law be guilty of a riot, and would not be excused by the propriety of their original design; that if he erred in this, his Lordship, when he charged them, would set him right, because it was from the court alone that the Jury were bound to take the law, and not from the counsel on either side. That he did not stand there to contend that there was any proof before them of any premeditated riot; he and his learned friend the Solicitor General thought better of the parties: they had no doubt but that they assembled together for a harmless and lawful purpose; but, on the part of the Crown, they alleged that the Traversers were bound to have used more energetic means to repress the disorder, or to have left the carriage, and separated themselves immediately from the crowd of persons there assembled, when they found the lengths to which they were proceeding in the commission of the outrages detailed by the witnesses,—and that there was no evidence to satisfy the Jury, that they could not have done this without risk of personal safety, setting aside the inference that maybe fairly drawn that the rank and position of the traversers in relation to the crowd was such as to have given them sufficient influence with them, if exercised, to repress the riot complained of; and that an acquiescence, or seeming acquiescence, would make them as guilty in law as the actual perpetrators; and that this was the main point for the consideration of the Jury under the evidence. That they would also have to consider under this indictment whether the parties assembled together on the night in question with whom the Traversers were, and of which the Jury could not entertain a doubt, because their own witnesses clearly established the fact, acted in so violent and tumultuous a manner as to afford reasonable grounds for fear and apprehension in the minds of the peaceably disposed inhabitants of the Town; because if this was the fact, the Traversers would be guilty of the affray alleged against them, and this they, on the part of the Crown, thought the Jury could have little doubt of. That he could assure the Jury that they, the Counsel for the Crown, wished the case to come honestly and fairly before them; that they felt they had an important duty to perform, and that in discharging it, they had endeavoured to do so free of all bias or political feeling, one way or the other; and trusted that they had succeeded; and that they hoped the Jury would also divest themselves of any such feelings if they entertained any. That they felt the case to be an important one, as it might be looked to as a precedent on future occasions under similar circumstances in this community; this investigation would of itself tend to shew all persons what risks they run by not adopting a decided line of conduct when other parties in whose company they chance to be give way to such disorders as occurred on the night in question. That he could not close without adverting to the case of Mr. Mooney, one of the Traversers, who had himself addressed them, with whose manly and unadorned eloquence he must confess himself much struck, and which to his mind carried more conviction than the more polished periods of his learned friends, the Counsel for the other Traversers. It was in evidence before them that Mr. Mooney did use energetic language to the persons in the crowd, evincing his strong disapprobation of their acts, and had to this extent at all events,