

GENTLEMEN OF THE JURY.—It was my intention to have entered at some length upon the evidence adduced, and the various incidents connected with the prolonged investigation, to which you have devoted for so many days past, your patient and attentive consideration; but the time already spent, and your anxiety to close the proceedings, induce me to confine myself to a recapitulation of some of the most prominent facts and circumstances of the enquiry, leaving the testimony at length, which must be fresh in your recollection, to be sustained by the written depositions, which will accompany you for reference, in the consideration of the verdict, which the law calls upon you to render. It is proper to observe, in the first instance, that the Inquest of the Coroner, and the judicial investigations which the Law requires him to conduct, are in no case conclusive, and that any one affected by them, either collaterally or otherwise, may deny their authority, and put them in issue, whilst at the same time it is clear, that evidence as well against the interest of the Crown, as for it, must be received; for there is no person to be condemned to death by the inquest, but only the fact to be inquired into, an inquiry truly how the death happened rather for information of the truth of the fact, as near as the Jury can ascertain it on their oaths, than for an accusation; accordingly it has been for the Coroner's Inquest to find the matter as they judge it was. I shall only add, that the Jury must in all cases consist of twelve, at the least, and that twelve must agree in the verdict.

It would appear from the testimony, that apprehensions having been entertained, that violence would be used, to interrupt a public lecture announced to be delivered by a noted individual named Gavazzi, in Zion Church, on the evening of the 9th June last, the Mayor of the City, the Honorable Charles Wilson, adopted precautionary arrangements, by bringing to the ground the municipal police force, together with a division of Her Majesty's 26th Regiment of Foot, then recently arrived in Montreal; the former were posted under their Superintendent and Officers, in the immediate vicinity of the Church, and the latter under cover and out of sight, in the Engine-house, at from 6 to 700 yards distance—the Church having been obtained for the lecture, in consequence of the previous permission granted for the use of the City Hall having been withdrawn by the Mayor, upon threats of violence, and upon remonstrances made to him, that Gavazzi would not be allowed to lecture there; it was at the same time well known throughout the city, that a similar lecture at Quebec, by the same individual, two or three days before, had been accompanied by bloodshed and tumult. On the occasion in question, the church was filled by a crowded auditory, of both sexes, and the lecture had continued without interruption for some time, when a turbulent mob collected in the street, in the immediate neighborhood; excited to violence by the applause given to the lecture within the church, endeavored to force an entrance, and with loud shouts and cries, "let us have out Gavazzi," assailed the church and the police force, with stones and missiles, and discharged fire-arms in the direction of the church; the collision between the mob and the police becoming alarming, and fears arising that the latter would be overpowered, the auditory were called upon by persons outside to defend themselves; in the interval of time between those occurrences and the posting of the military, two parties came out from the church at different periods, the first at the above call, who returned without having used fire-arms, the latter after having used them: it was in that interval that Walsh, who had been prominent among the assailants, fell mortally wounded. The evident intention of the mob was to force their entrance into the church for the purpose of committing personal violence upon Gavazzi, and if obstructed in that object, it must be apparent, that they would not have failed to assault his supporters and defenders. The troops did not take up their positions until after Walsh had been wounded and the dispersion of the assailants on the church.—The upper division was posted facing the Unitarian church, and the lower facing McGill Street. The remaining casualties which you have been called upon to investigate, occurred from the firing of these two divisions. By the firing of the lower division, M' Rae and O'Neil met their deaths; and by that of the upper, Pollock, Gillespie, Adams, McGrath, Benally, Clarke and Hutchinson.

No mob, riot, or excitement whatever, is proved to have existed in front of the upper division when they fired, nor since the troops were brought to that position; the auditory, men, women, and children were quiet, and peaceably leaving the church, and proceeding homewards, and some of Her Majesty's Officers were immediately in front of the line of fire. With respect to the lower division, one or two shots having been fired near the American church, which caused alarm, and a scattering of the people proceeding across the square, the Mayor, at that time, deemed it necessary to read the riot act, and the lower division immediately fired upon the people, and passengers in front of them.

Your investigation will necessarily, therefore, be subdivided into three branches. First, the cause or manner of the death of Walsh; secondly, the circumstances attendant upon the deaths caused by the firing of the lower division; and, thirdly, the circumstances connected with the death of the persons who suffered from the firing of the upper division.

Walsh's death was evidently caused by the fire of persons coming from the Church, and occurred, at from fifty to sixty paces distance between him and them; but whether he fell under the general fire of either of the parties, or of the person who discharged the revolver, or of him who discharged the double-barrelled gun or rifle, it will be for you to declare; the evidence on this point affords no means of identifying the slayer, but clearly relieves Mr. Esdaile and Mr. Heward from all imputation in that respect. The law as applicable to this point, may be summed up as follows:—Where homicide is committed in prevention of a forcible and atrocious crime, as, if a man attempt to rob or murder another, and be killed in the attempt, the homicide is justifiable, and the slayer shall be discharged. Where one kills another in a sudden rencounter in self-defence or in defence of his wife, child, parent, or servant, and not from any vindictive feeling, the homicide is excusable. Voluntary homicide is where on a sudden quarrel, two fight, and one is killed, or after great provocation, accompanied by some personal violence, and where, immediately on provocation being given one kills the provoker, the homicide becomes manslaughter.

But malice will in all cases be implied, if one kills another suddenly, without any, or without considerable provocation, but no provocation whatever, can render homicide justifiable, or even excusable. The instrument of homicide is always considered as govern-

ing the amount of provocation, and it must be great indeed to justify the use of a deadly weapon. In this respect it is laid down as a general rule, that no words or gestures, however opprobrious or provoking, will be considered in law to be a provocation, and sufficient to reduce homicide to manslaughter, if the killing be effected with a deadly weapon, or if the wound had been given after the party had desisted, or if an intention to do the deceased some grievous bodily harm, be otherwise manifested. It is proper to add, that if one is killed in attempting to break open a house in the day time, with intent to commit any forcible or atrocious crime, not only the party whose person or property is attacked, but his servants or other members of his family, and even strangers present at the time, are equally justified in killing his assailants; but in all these cases, whether of provocation or of attack, or of attempt to commit a forcible crime, as above stated, there must be an apparent necessity for the killing, for if resistance has ceased, or if no reasonable necessity existed for the violence used, the killing would be manslaughter at least. With reference to the casualties from the firing of the troops, it must be borne in mind as a settled rule of law, that soldiers are merely armed citizens, and may like other citizens interfere to suppress an affray or riot; and, if resisted, are justified in killing the resister; and like other citizens they are subject to the law and its punishments, for the manner in which they may conduct themselves upon such occasions. In case of any sudden riot or disturbance, any of Her Majesty's subjects, without the presence of a peace officer of any description, may arm themselves, and of course may use any ordinary means of force, to suppress such riot and disturbance. And what Her Majesty's subjects may do, they also ought to do, for the suppression of public tumult, when any exigency may require that such means be resorted to. Whatever any other class of Her Majesty's subjects may lawfully do in this particular, the military may unquestionably do also. By the common law, every description of peace officer may, and ought to do, not only all that in him lies, towards the suppression of riots, but may and ought to command all other persons to assist therein. However, it is by all means advisable to procure a justice of the peace to attend, and for the military to act under his immediate orders, when such attendance and sanction of such orders can be obtained, as it not only prevents any disposition to unnecessary violence on the part of those who act in repelling the tumult; it induces also, from the known authority of such magistrates, a more ready submission on the part of the rioters, to the measures used for that purpose; but still, in cases of great and sudden emergency, the military, as well as all other individuals, may act without their presence, or without the presence of any other peace officer, whatever. But in these and all similar cases, the necessity for the killing must be evident, and the law in this respect, is positive and distinct. In case of a riot, or a rebellious assembly, officers and others, in endeavoring to disperse the mob, are justified in killing them both by common law, and under the riot act, if the riot cannot be otherwise suppressed, and it is laid down that private persons may justify killing dangerous rioters, when they cannot otherwise suppress them, or defend themselves from them, inasmuch as any person seems to be authorized by law, to arm himself for such purpose. Upon this portion of the enquiry, it has been admitted that the military force was called out upon the requisition of the civil authority, the Mayor of the city, under the immediate orders. You will determine whether the public peace was sufficiently disturbed, by a subsisting riot, to justify the application for a military force, whether any civil means at the disposal and command of the Mayor, had been previously exhausted by him; whether notice of the employment of military force had been given by the usual proclamation for silence, as required by the statute, and the reading of the riot act by the Mayor in the presence of the people; whether reasonable time was allowed to elapse for the people to disperse; or whether circumstances of extreme necessity compelled him to bring the military into immediate collision with the people.

You will find upon these circumstances, bearing in mind that Mr. Wilson as Mayor would not be justified in transferring his civil authority to the military until it became necessary, nor before any disorder was sought to be quelled by the legal precaution of making the proclamation, which is intended to intimidate rioters and separate the innocent from the guilty, by giving due notice to all the thoughtless people who, without any malevolence, are mixed with the multitude to separate from the ill-meaning; and moreover, Mr. Wilson was under double ties, for besides the general obligations of duty and humanity, as a magistrate, a particular confidence was reposed in him as mayor of the city, which, at the peril of his life, he was bound to account for and sustain.

To justify a resource to this extreme necessity, a riot must exist, and to constitute a riot, three or more persons must be unlawfully assembled together; and to constitute this crime, it is not necessary that personal violence should have been committed; it is sufficient that there is some circumstance, either of actual force or violence, or at least of an apparent tendency thereto, naturally apt to strike a terror into the people, or even into one of Her Majesty's subjects, as the show of firearms, threatening menaces, or turbulent speeches; nor is it necessary to constitute a riot that the riot act should be read: before the proclamation can be read a riot must exist, and the effect of the proclamation will not change the character of the meeting, but will make those guilty of felony who do not disperse within an hour after the proclamation is read.

You will then find under what circumstances the military did fire and whether under the sanction of civil or military authority. It will be scarcely necessary to state that the firing without command and not for self-defence would entail the charge of murder, that the firing even by command would be equally criminal if no apparent or justifiable necessity for the act existed, and in that case the Commanding Officer is equally implicated with his men. That the firing without such necessity, even under a mistake of the command proceeding from the officer would not relieve the soldier firing, from a similar charge, and that the firing by command, whilst it might relieve the soldiers if some necessity did in fact exist would attach that criminality upon the commanding officer, unless it be shown that such necessity was real and apparent, no order from any magistrate whatever, can justify the homicides caused by the firing of the troops without necessity. Had the Mayor ordered the officer to fire upon the people when there was no just cause for so doing, such an order might subject the Mayor to the penal consequences which attend murder, but could not acquit the officer who might order

the fire, who was not bound to obey such illegal order, and who, therefore, would have acted at his peril.

With reference to the evidence adduced before you, it is marked with the incongruities and contradictions which are the usual consequences of much excitement, and of protracted investigations into its causes. It will be your duty to weigh it dispassionately, bearing in mind that no negative evidence can take away a positive proof.

I will only add that it is consistent with public interest as well as with that of the parties connected with the subject of your investigation, that a fair and strict enquiry should be made to the end, that power conferred for the preservation of the public peace should not be lightly or from any unjust motive, turned to the destruction of the people, and that whoever shall have so unjustifiably caused so cruel a loss of life, may be made an example to restrain others in similar circumstances from the like dangerous misconduct for the future.

The Foreman requested that the Jury should be furnished with the depositions, the list of soldiers handed in by Adjutant Wallace, the plans of the ground and the Coroners charge. Messrs. Devlin, Stuart, and Mack objected to the latter being given to the jury, but the coroner acceded to the request of the foreman.

The jury then retired, taking the charge and the other documents along with them.

At nine o'clock, the Jury returned into Court, after an absence of four hours and a half.

The Foreman, Mr. Mulholland, said the Jury had been unable to agree upon a verdict, but he was now prepared to hand in special returns—one signed and agreed to by 9, and another signed and agreed to by 7, and the remaining 3 had subscribed to an addition to the report signed by the 7. This was the only decision they had been able to come to in the matter. Mr. Mulholland then read the several reports as follows:—

We, the undersigned Jurors, find—

First,—That the deceased James Macrae and Thomas O'Neil came to their deaths by gunshot wounds inflicted by the fire of a certain division of Her Majesty's 26th Regiment, being one of two divisions of a detachment of 103 men of that Regiment, called out by the Hon. Chas. Wilson, Mayor of the City of Montreal, to aid the civil power, in consequence of anticipated disturbances on the 9th day of June last, on the occasion of the lecture then given by one Gavazzi, in Zion Church, in Radegonde Street in this City, which division was composed of the following officers and men, viz:—

Lieut. Finnie A. Quarty,

[Here follow the names of 49 men.]

The whole under the command of Lieut. Colonel George Hogarth, C.B.

That this division of troops fired by the order of the said Hon. Chas. Wilson, Mayor aforesaid, delivered after reading the Riot Act, by him directly to the soldiers of the said division, and not to the officer in command either of the said division, or of the detachment.

That the said soldiers fired the aforesaid shots without any order from either the officer in command of the detachment or the divisions; that there was no riot or disturbance to justify or render necessary the giving of the said order or firing; and the said James Macrae and Thomas O'Neil at the time of the infliction of the wounds aforesaid whereof they died were in the Queen's peace.

Second,—That the deceased James Pollock, Peter Gillespie, Crosby Hanson Clarke, James Hutchinson, Daniel McGrath, William Benally, and Charles Austin Adams, came to their deaths by gunshot wounds inflicted by the other or upper division of the said detachment of the said Regiment on the said 9th June last past, composed of the following officers and men, viz:—

Captain Charles Cameron; Lieut. Richard Clute.

[Here follow the names of 54 men.]

The whole under the command of Lieut. Col. George Hogarth, C.B.; that this last named division of troops was stationed in rear of the first or lower division at the distance of 37 military paces, back to back, and either from hearing the order of the Hon. Chas. Wilson, which order the Jury find was not limited to any one division, or section of the aforesaid troops, or in consequence of hearing the fire of the first named division, the last named division of soldiers fired without any orders from the officers, either in command of the detachment, or of the division which they composed; that there was no riot or disturbance whatever to justify or render necessary the said order or firing, and the aforesaid James Pollock, Peter Gillespie, Crosby Hanson Clarke, James Hutchinson, Daniel McGrath, William Benally, and Charles Austin Adams, at the time of the infliction of the gunshot wounds aforesaid which caused their deaths, were in the Queen's peace.

Thirdly,—That both the said order of the said Hon. Chas. Wilson, delivered to the soldiers, and the firing of the soldiers without orders, were unnecessary, culpable, and unjustifiable.

Fourthly,—That the deceased James Walsh came to his death by wounds inflicted either by a pistol or other fire arms discharged by one of a number of persons to the Jurors unknown, who were endeavoring to disperse a mob assembled in the vicinity of Zion Church including among others the said deceased James Walsh, which mob had previously overpowered the Police Force of the city, brought out for the preservation of the peace on the occasion in question, and whose object it was to attack the said Gavazzi, or the audience within Zion Church. The Jury further state that the Police Force of the city, as well from insufficiency of numbers, as general incompetency, were not only entirely inadequate to the protection of the city on the occasion in question, but is so for every emergency.

Fifthly,—That the Jury, nevertheless, strongly reprobate the practice of individuals carrying arms under their supposed necessity, and would urgently call on the authorities to take the promptest means for the establishment of an efficient Police Force, adequate to the maintenance of the public peace on all occasions.

Sixthly,—The Jurors desire farther to express their regret that any body of Her Majesty's troops should be found so wanting in discipline, as to fire without the lawful order of their officers; and they farther express their regret that any circumstances of assumed urgency should have induced the officer in command to have departed from the ordinary practice of directing the soldiers to load in the presence of those on whom it was intended to fire, and that the soldiers had not been instructed, previous to their coming on the ground, as to how they should act in such an emergency.

Lastly,—The Jurors cannot omit finding that, in the course of their investigations, evidence of the most conflicting and irreconcilable character was given, which, however desirous they have been to attribute to the mere erroneous impressions of witnesses, the Jurors cannot conceal, has painfully impressed them as wil-

ful and culpable perversions of truth, so injurious and dangerous in their consequences to society, that they desire to direct the special attention of the authorities to the depositions of the Hon. Charles Wilson, Michael Renaud, Louis Lacroix, J. B. Simard, and Charles Schiller.

Given under our hand at the Court House of Montreal this eleventh day of July, One Thousand Eight Hundred and Fifty Three.

(Signed)

HENRY MULHOLLAND, Foreman,
W. A. TOWNSEND,
CALVIN P. LADD,
ROBERT ANDERSON,
BERNEZER C. TUTTLE,
WILLIAM C. EVANS,
THOMAS JENKIN,
ALFRED SAVAGE,
J. W. HALDIMAND.

The undersigned Jurors, sworn on view of the bodies of James Pollock, Peter Gillespie, Crosby Hanson Clarke, James Hutchinson, James Walsh, James Macrae, Daniel McGrath, William Benally, Charles Austin Adams, and Thomas O'Neil, for the purpose of enquiring and reporting us to the cause of the death of the above named deceased, after having heard the evidence produced at the Inquest, began on the 10th day of June last past, and thence continued up to this date, before the Coroner of the District of Montreal, in the Court House, in the city of Montreal, are of opinion—

First,—That the said James Walsh came to his death from the effect of a gun shot wound received in his body, and fired by a person unknown on the evening of Thursday the 9th day of June last past, on the Haymarket Square in the said city; and, 2nd, that the said Jas. Pollock, Peter Gillespie, Crosby Hanson Clarke, James Hutchinson, James Macrae, Daniel McGrath, William Benally, Charles Austin Adams, and Thomas O'Neil also came to their death from the effects of gun shot wounds received in their bodies, heads and limbs, and fired by the troops who had been called and stationed in two divisions, described at the Inquest as "upper" and "lower" divisions, on the said evening of the 9th June last past, in the Haymarket Square, in order to quell any riots which might occur in consequence of a lecture being at the time delivered in Zion Church by one Gavazzi. Said gunshots so fired by the said troops and which caused the death of the last named persons appear to the Jurors to have been discharged in consequence of military words of command uttered by a person unknown, other than Col. Hogarth, Captain Cameron, Lieut. Quarty, or other officer in command of the said troops immediately before the time the said fire took place. The discharge of the military is the more to be regretted inasmuch as, though the Mayor may have been justified in reading the Riot Act at the time he did it, in consequence of an assemblage of persons, who were conducting themselves in a riotous and threatening manner, and discharging fire-arms at a certain distance from the troops, that it was nevertheless unnecessary to have recourse to such discharge by the military to disperse a mob which only threatens at the time the lives of those concerned in it; and that such assemblage could have been easily dispersed by other means without perhaps any sacrifice of lives; more particularly as there was not at the time in any place near where the troops were stationed any riot or tumultuous assemblage. Although the undersigned Jurors do not reprobate the military with having acted against the rules of military discipline, they nevertheless think it their duty to express themselves strongly against the precipitation with which the various orders and consequent movements are made by the military on like occasions, and would earnestly recommend that if unfortunately the services of the military should again be required for any similar purpose, the intervals between such different orders should be made long enough to admit of an opportunity to persons likely to be exposed to the fire of the troops to get safely out of reach.

In conclusion the undersigned Jurors cannot refrain from suggesting that it would be desirable in future to rely rather on an armed police, than on the military for the suppression of dangerous riots.

Montreal Court House, 11th July, 1853.

(Signed),

J. BELLE,
JAMES MCGOWAN,
J. B. BEAUDRY,
AMABLE LAFAMME,
LOUIS RENAUD,
THOMAS CONWAY,
NEIL DOHERTY.

The undersigned Jurors concur in the foregoing report, with the exception of the last paragraph therein contained, respecting an armed Police.

(Signed),

AMABLE PREVOST,
F. X. BRAZEAU,
J. A. LABADIE.

The Coroner then discharged the Jury, remarking that, notwithstanding their inability to agree upon a verdict, he was sure the whole country would feel satisfied that the manner in which they had devoted their time and attention to this long protracted investigation was in the highest degree creditable to them, and that they had acted conscientiously in the performance of the duty which had been assigned them.

Married.

At Kempville, on the 30th ult., by the Rev. Mr. Farley, Mr. Tobin, of Osgood, to Miss Maria McSweeney, eldest daughter of Peter McSweeney, Esq., J. P., Township of South Gower. At Cornwall, on the 3rd inst., by the Rev. J. F. Cannon, P. P., Peter A. Macdougall, Esq., M. D., to Flora Angell, only daughter of Angus McDonnell, Esq., of Her Majesty's Customs.

Died.

In this city, on Monday, the 11th instant, after a few weeks illness, Mr. John Mullin, Grocer, aged 32 years, a native of the county Tyrone, Ireland. Mr. Mullin had been 12 years a resident of this city, during which time he enjoyed the respect and esteem of a numerous circle of friends and acquaintances.—May his soul rest in peace.

At Peterboro, on the 26th ult., in the 71st year of his age the Rev. John Butler, for many years Roman Catholic Priest of that Town.

At Quebec, on the 12th inst., Walter Muir, infant son of Wm. B. Lindsay, Jr., Advocate, aged 8 months.

FOUND.

ABOUT the middle of June, on the road between the River and the Mills on the Bank of the Canal, a Pocket Book, containing a sum of Money, and some scraps of Manuscript.—The book was picked up, and handed over to the Rev. Mr. McCullagh, of the Seminary, by an Irish boy, and can be had by its owner upon making application, and establishing his right to the property in question. If no claimant appears within a month, the contents of the pocket book will be devoted to purposes of charity.