



CANADA MILITARY GAZETTE.

OTTAWA, TUESDAY, MARCH 17, 1857.

TROOPS CALLED OUT IN AID OF THE CIVIL POWER.

In continuation of this subject we publish to-day some extracts from the charge delivered by the Lord Chief Justice Tyndall, at the trial of the Bristol rioters. These will be found of high interest to all military men, coming from such an authority.

The Lord Chief Justice, on that occasion, after stating that it was unnecessary to consider whether the acts of outrage and rapine (which were the offences to be tried) were caused by the riotous proceedings which occurred at an earlier period of the same day, or whether wicked and designing persons, taking advantage of the state of excitement in which the people already were, availed themselves of it to effect their own purposes of destruction and plunder, observed to the Grand Jury: "It might be safely concluded, that if the excitement which led to the defiance of the law at the earlier part of the day had never existed, the weightier crimes, subsequently committed by the populace, would not have taken place; and that it is precisely for this reason, that the law of England has at all times held in the greatest abhorrence riotous and tumultuary assemblages of the people."

"No man," said the Lord Chief Justice, "can foresee at the commencement what course they will take, or what consequence will ensue, though cases may occur in which the object of such assemblages is at first defined and moderate, they rapidly enlarge their powers of mischief, and from the natural effect of the excitement and ferment inseparable from the collection of multitudes in one mass, the original design is quickly lost sight of, and men hurry on to the commission of crimes, which at their first meeting, they never contemplated. The beginning of tumult is like the letting out of water; if not stopped at first, it becomes difficult to do so afterwards; it rises and increases until it overwhelms the fairest, and most valuable works of man."

"It has been well said," observed the Lord Chief Justice, "that the use of the Law consists, first, in preserving men's persons from death, and violence; next, in securing to them the free enjoyment of their property. And although every single act of violence, and each individual breach of the law, tends to counteract and destroy this its primary use and object, yet do general risings and tumultuary meetings of the people in a more especial and particular manner produce this effect,—not only removing all security both from the person and property of men, but for the time pulling down the law itself, and daring to usurp its place. The law of England has accordingly, in proportion to the danger which it attaches to riotous and disorderly meetings of the people, made ample provisions for

preventing such offences, and for the prompt and effectual suppression of them when they desire."

POWER AND DUTY OF THE SUBJECT.—In the first place, by the common law, every private person may lawfully endeavor, of his own authority and without any warrant or sanction of the magistrate to suppress a riot by every means in his power. He may disperse or assist in dispersing those who are assembled; he may stay those who are assembled; he may stay those who are engaged in it from executing their purpose; he may stop and prevent others whom he shall see coming up, from joining the rest, and not only has he the authority, but it is his bounden duty, as a good subject to the King to perform this to the utmost of his ability. "If the occasion demands immediate action, and no opportunity is given for procuring the advice or sanction of a Magistrate, it is the duty of every subject to act for himself, and upon his own responsibility, in suppressing a riotous and tumultuous assembly; and he may be assured that whatever is honestly done by him in the execution of that object, will be supported and justified by the common law."

In stating the obligation imposed by the law on every subject of the realm, the Lord Chief Justice observed, "The law acknowledges no distinction in this respect between the soldier and the private individual. The soldier is still a citizen, lying under the same obligation, and invested with the same authority to preserve the peace of the King, as any other subject. If the one is bound to attend the call of the civil Magistrate so also is the other, if the one may interfere for that purpose when the occasion demands it, without the requisition of the Magistrate, so may the other also; if the one may employ arms for that purpose, when arms are necessary, the soldier may do the same." Undoubtedly the same exercise of discretion which requires the private subject to act in subordination to, and in aid of, the Magistrate, rather than upon his own authority before recourse is had to arms, ought to operate in a still stronger degree with a military force. But where the danger is pressing and immediate, where a felony has actually been committed or cannot otherwise be prevented, and from the circumstances of the case, no opportunity is offered of obtaining a requisition from the proper authorities, the military subjects of the King, like his civil subjects, not only may, but are bound to do their utmost of their own authority, to prevent the perpetration of outrage, to put down riot, and tumult, and to preserve the lives and property of the people.

DUTY OF CIVIL OFFICERS.—"Still further, by the common law, not only is each private subject bound to exert himself to the utmost, but every sheriff, constable, and other peace officer, is called upon to do all that in them lies for the suppression of riot; and each has authority to command all other subjects of the King to assist them in that undertaking." "By an early statute, which is still in force, any two justices, together with the sheriff, or under-sheriff of the county, if need be, may arrest any rioters, and shall arrest them."

DUTY OF PERSONS TO AID MAGISTRATES.—"It is not left to the choice or the will of the subject, as some have erroneously supposed, to attend or not, to the call of the magistrate, as they think proper; but every man is bound when called upon, under pain of fine and imprisonment, to

field a ready and implicit obedience to the call of the magistrate, and to do his utmost in assisting him to suppress any tumultuous assembly. Magistrates have full power to command assistance by way of precaution; the act of the 1st and 2nd, Wm. IV., cap. 41, having invested the magistrate with that power in direct and express terms, when tumult, riot, or felony, is only likely to take place, or may reasonably be apprehended.

Again, that this call of the magistrate is compulsory, and not left to the choice of the party to obey or not, appears from the express enactment in the last mentioned act, that if he disobeys, unless legally exempted, he is liable to the penalties and punishments therein specified."

It is a fit thing for both magistrates and military officers to warn all peacefully disposed people to separate themselves from all parties engaged in breaches of the peace, and go to their homes. Idle people will out of curiosity hang about the skirts of a riotous mob, impeding the action of the soldiery, and endangering their own lives. It is as well that these idle people should know that when a bullet once leaves the muzzle of a musket, no one can tell where will be the precise end of the career of the missile. A musket ball is diverted from its course by the slightest obstruction, and turned in a direction perfectly divergent from that in which it was intended to go—thus have many thoughtless, though perfectly innocent, persons been slain.

1. It is also well to know what constitutes an unlawful meeting?

2. What is the liability of persons joining in it?

1. "An assembly of a great number of persons, which from its general appearances and accompanying circumstances, is calculated to excite terror, alarm, and consternation, is generally criminal and unlawful."—So laid down by Mr. Justice Bayley, in the trial of Hunt, York Spring Assizes, 1826.

2. "All persons who, form an assembly of this kind disregarding its probable effect, and the alarm and consternation that are likely to ensue, and all who give countenance, and support to it, are criminal parties."—So laid down by Mr. Justice Holroyd, Lancaster Spring Assizes, 1822.

This subject is now concluded, and we have the pleasure to know that the two first articles were highly approved by several of the officers of the Active Force. We know that no officers who follow the simple rules laid down can possibly go wrong.

OTTAWA VOLUNTEER COMPANIES.

On Thursday last the different Companies of the Active force belonging to this City, were inspected by Colonel Macdougall, the Inspecting Field Officer of Militia, for Canada West. The gallant Colonel arrived by the morning train from Prescott, and was received by the Volunteers, who were drawn up in line facing the Station, the Gunners of the Field Battery on the right, Captain Patterson's Company of the Rifles in the centre, and Captain Turgeon's on the left. The command of the whole was taken by Major Turner, of the Field Battery. All the Field Battery were not turned out, as they were not to be formally inspected; enough only were ordered under arms, to pay respect to the gallant Field officer, and to man the guns of the Battery for Shot Practise in the afternoon. The gun detachments were under the command of