

*privilege of voting, from violence threatened by or apprehended from their opponents, at the hustings*—and here I am putting a case which the facts, so far as they respect the purpose, do not warrant—still, their thus assembling was, in itself, a crime, and, if death ensued from the use of the guns by either of them, when thus assembled, and whilst acting in the prosecution of their common purpose,—every individual of the party present would be guilty of the crime of murder. It is quite necessary that you should understand that every tumultuous gathering of large bodies of men, especially with fire-arms, as it has an obvious tendency to excite alarm, and disturb the peace, is unlawful. If I am about to proceed to a market in the exercise of my calling, if it be such, and I have reason to apprehend violence on my way, I have, still, no right to proceed there with a concourse of men for my protection, especially of armed men. The laws for the preservation of the peace, and for personal protection, if appealed to, are deemed adequate to my protection; and I have no right, whilst seeking to prevent a breach of the peace, on the one hand, to do an act the probable effect of which will be a violation of it, on the other. Moreover, and that which I am about to announce has a particular application in this case, the law does not permit a combination of several men to be formed, for the purpose of avenging an injury done to one of them, or even of preventing an injury, or the invasion of a right, threatened to either of them; much less will it do so, if such combination be armed with deadly weapons. It is entirely opposed to the principles by which the public peace is preserved, in all countries where British institutions and laws prevail. If the acts of combining and arming were lawful in the particular electoral district in question, they are lawful throughout the province. Contemplate, then, the terrific results that would ensue, if such acts be resorted to, at pleasure, in every contested district, at some future general election. We shall be thrown back upon the barbarities of savage life!

The prisoner, gentlemen, but for one incident in this case, would, unquestionably, in the eye of the law, be guilty of the crime of murder, and must have been convicted of it, had he been charged with that offence. The incident to which I allude,—and most gladly do I seize upon it,—is the fact of the assault of the deceased upon the prisoner, when, according to the testimony of even the witnesses for the Crown, the former rushed upon the latter, immediately previous to the fatal shot, and endeavored forcibly to arrest his gun from him. I must add, with very deep regret, that I am unable to put to you this case more favorably for the prisoner, than by instructing you, that, if you believe that *that* or some other assault of the deceased under the circumstances proved, so excited the passions of the prisoner, at the moment, as to deprive him of the control of his reason, when he drew the trigger—you may, in view of the infirmities of our common nature, consider the homicide as reduced from that higher crime, which, otherwise, the law would have presumed, to the inferior crime of manslaughter, with which the indictment charges the prisoner, and of which, I am bound to say, the law and the evidence, *in any view of the facts in proof*, constrain you to find him guilty.

A legal justification of the fatal act, although it has been set up, is entirely