

irrelevant, I did not shut out, from fear of prejudicing the prisoner's defence, cannot but have suggested the great social and political evils which result from riot and tumult at elections. That every elector should possess, and preserve inviolate, a right to the free exercise of his franchise, deeply concerns our happiness and prosperity as a people. Every good subject is bound to use all legal and constitutional means to uphold it; but it never can be promoted by a recourse to violence, nor by allowing any private man, or body of private men, to constitute themselves judges of the means by which it is to be maintained. If men can use fire-arms to protect them in the exercise of the right in question, who can guarantee to the community the safe and lawful use of these? The occasion, necessarily, excites the passions: an obstruction to the right, not very serious, perhaps, occurs—the gun is levelled—the trigger drawn—the fatal bullet is propelled into the midst of the assembled multitude—and innocent blood is shed. And, here, let me warn you, gentlemen, not to permit that natural indignation which you must feel at the lawless outrages which were committed at the election in question, to efface in your minds distinctions between right and wrong, between reason and prejudice. When you calmly weigh the testimony in this cause, you will find that, though savage brutality was practised by lawless men, in overpowering numbers against individuals, under the influence of vindictive feelings, for real or imagined insults, any organized, systematic attempt to prevent polling at the hustings, at the Grand Lake, is contradicted by the evidence. Hustling and jostling, and crowding and rude words, such as too commonly occur on such occasions, there were, undoubtedly; but there is entirely wanting the proof of any one elector being prevented from recording his vote. Until the armed men appeared in the neighborhood of the polling booth, the evidence presents not the semblance of anything like a general personal conflict, between the two political parties. The personal outrages that did occur before the general conflict, are to be deplored, and the offenders, if brought to justice, and convicted, deserve the most severe punishment. But that punishment must follow upon regular convictions, and must not be administered by the rash hands of an excited body of armed men. The same evidence that has been given on this trial would have brought these men first referred to, to judgment. Cruel violence was practised, *after the death of Hurley*, upon the fallen of the armed party, but *that* cannot and ought not, in the slightest degree, to influence your verdict. *That* violence does not even give a character to the previous acts, for the death of the deceased, as might have been anticipated, excited in the breasts of his party that terrible feeling of vengeance to which that violence must be referred.

I will now, gentlemen, point out to you the law that is to govern your verdict, and which it is my solemn duty to declare. To make it appear the more plainly, I shall put the evidence, where it is contradictory, in that aspect which is the most favorable to the prisoner. Even if the armed party with which he was associated, consisting at least of ten persons, had provided themselves with loaded fire-arms, and assembled together thus armed, *for the sole and real purpose of protecting each other, in the peaceful exercise of the*

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