

taken up and hanged? Every one of them? It cannot be so. The opinion has been prevalent, that any man, and any number of men, might, if he or they choose, carry arms, providing there was no tumultuous gathering, and no illegal intent or object in view. Suppose the assembling to be that of a New Year's gathering, to shoot at a goose, or at a target? Suppose a volunteer company, or a collection of lads out target-shooting? Fifty cases may be supposed of similar bearing.

But such is not this case. These parties were summoned by the Queen's writ to attend and poll their votes at an election. There was no assemblage of armed men, "consisting of ten persons at least," on this occasion, excepting after the assault and murderous attack of the navvies. Kenty says, "on the morning of the election, while I was shaving, Peverel came in and told me somebody wanted to see me; I found *four* or *five* men outside; they asked me if they could put their horses and waggons up in my barn—others came—I was asked to put some things in my house—I was told by Augustus Robinson that they were fire arms; I said what are you going to do with these guns—Robinson said we have brought them to *protect ourselves going home*. They would have to pass a place called Shanty Town on their way home. I told them I didn't think it was prudent to leave them in the waggon, they had better go into the house. I didn't know the guns were coming there."

This is all we have in the case as to the history of the collection of fire-arms. None of them were armed, although arms were brought by Robinson, one of those then there. These guns were left about a quarter of a mile from the polling place, and if intended for the object professed, "to protect themselves going home," were deposited in just the *right* place to serve that object. But if brought to be used at the election, were left in just the *wrong* place to be of use.

Let us apply the law as laid down by the learned Judge to the case of George Gray. This man had left White's for home; he is set upon by the navvies and cruelly beaten; he escapes, retreats, is pressed closely by his pursuers, wrenches a gun from the hands of some person, he knows not who, and in the effort it goes off accidentally; he is then overpowered, and again beaten, and left all but dead. In the meantime, in another part of the field, Hurley is killed. And now, from the law as propounded, legitimately is deduced this *monstrous conclusion*, that not only is the slayer of Hurley guilty of a homicide, (if retreating, manslaughter—if not retreating, murder,) but Gray, too, as one of the "armed men" is guilty also of *murder*! Not only so,—but Stewart, who interfered to preserve the peace, having come with Peverel and Robinson who brought the arms to Kenty's, if that be the "assembling" referred to, he is guilty of *murder*; and Robinson, who for aught that appears went home, for he is not seen or heard of again that day, he is guilty of *murder*, and so is Peverel, and so is Taylor, that is, if the slayer committed that offence,—they being the four parties who came with the guns.

There can be no doubt, that the learned Judge has laid down his proposition too broadly, and without sufficient qualification. In the administration of