

liege subjects as set forth in the several indictments, which have been read to you. The persons slain, those indictments set forth, as "being in the peace of God, and our lord the king," at the time of the mortal wounds given.

To these indictments, the prisoners have severally pleaded not guilty, and for their trial have put themselves on God and their country, which country you are: and by their pleas, thus severally pleaded, they are to stand, or fall, according to the evidence which shall respectively apply to them.

By their plea of not guilty, they throw the burden of proof, as to the fact of killing, upon the crown; but, upon that being proved, the matter they allege to justify, excuse, or extenuate, must be adduced by them, and supported by legal evidence. The truth of the facts they may thus allege, it is your sole and undoubted province to determine; but upon the supposition that those facts shall appear to your satisfaction, in the manner we allege, the grand question then to be determined will be, whether such matters, so proved, do, in law, extenuate, excuse, or justify. The decision of this question belongs to another department, namely, the court. This is law, so well known, and acknowledged, that I shall not now detain you by a recital of authorities, but only refer you to Foster's Crown Law, where this point is treated with precision, and fixed beyond controversy. It may not be amiss, however, to assure you, that as certain as the cognizance of facts is within your jurisdiction, so certain does the law, resulting from these facts, in cases of the present kind, seem to reside solely in the court; unless cases, where juries, under direction of the court, give general verdicts, may be denominated exceptions.

In the case now before us, it will not be contested, that five persons were unfortunately killed, at the time the indictments charge; and this case will naturally enough divide itself into three main divisions of inquiry.

First. Whether any homicide was committed?

Secondly. By whom was it committed?