

assembly is answerable only for his own act, and not for any other. On the contrary, if an assembly be unlawful, the act of any one of the company, to the particular purpose of assembling, is chargeable on all. This is law, which no lawyer will dispute; it is a law founded in the security of the peace of society, and however little considered, by people in general, it ought now steadily to be kept in mind.

Was the assembly of the soldiers lawful?—For what did the soldiers assemble? Was the sentinel insulted and attacked? Did he call for assistance, and did the party go to assist him? Was it lawful for them so to do? Was the soldiers when thus lawfully assembled, assaulted, etc., by a great number of people assembled, etc. Was this last assembly lawful? Was any thing done by this unlawful assembly, that will, in law, justify, excuse, or extenuate the offense of killing, so as to reduce it to manslaughter? Was the killing justifiable, or rather was it justifiable self-defense? Was it excusable, or rather was it self-defense, culpable, but, through the benignity of the law, excusable? or was it felonious? if felonious, was it with or without malice?²

² The law laid down, in Foster, 261, 2, being indisputable law, not denied or controverted! and being very material in the trial, and much relied on by the prisoners, is here set down at large: "I will mention a case (says the learned Judge), which through the ignorance or lenity of juries hath been sometimes brought within the rule of accidental death. It is where a blow aimed at one person lighteth on another and killeth him. This, in a loose way of speaking, may be called accidental with regard to the person who dieth by a blow not intended against him. But the law considereth this case in a quite different light. If from circumstances it appeareth that the injury intended to A, be it by poison, blow, or any other means of death, would have amounted to murder supposing him to have been killed by it, it will amount to the same offense if B happeneth to fall by the same means. Our books say, that in this case the malice *egreditur personam*. But to speak more intelligibly, where the injury intended against A proceeded from a wicked, murderous, or mischievous motive, the party is answerable for all the consequences of the action, if death ensues from it, though it had not its effect upon the person whom he intended to destroy. The *malitia* I have already explained, the heart regardless of social duty deliberately bent upon mischief, consequently the guilt of the party is just the same in the one case as the other. On the other hand, if the blow