

Second. Whether they, or either of them were killed by the prisoners, or either of them? And if they were, then,

Third. Whether such killing was justifiable, excusable or felonious? And if the latter,

Fourth. Whether it was manslaughter or murder?

As to the first, you have not only the coroner's inquest, but the testimony of so many witnesses, that the five persons were shot and thereby mortally wounded in the night of the fifth of March last, and that some of them died instantly, and the rest in a few days after, that you doubtless will be satisfied they were all killed. And the same evidence must, I think, also convince you that they were all killed by the party of soldiers that were at the custom-house that night, or by some of them.

Whether the prisoners were there, will therefore be your next inquiry; for if either of them was not, he must be acquitted. The law does not in this case make the testimony of two witnesses necessary for the jury to settle a fact upon; if one swears it, and upon his testimony you believe it, that is sufficient evidence for you to find the fact. But if you are satisfied upon the evidence, that all the prisoners were there, yet as each prisoner is severally charged with having killed these five persons, and by his plea has denied the charge, you must be fully satisfied upon the evidence given you, with regard to each prisoner, that he in particular did in fact, or in consideration of law, kill one or more of these persons that were slain, or he must be acquitted.

The way therefore to determine this will be for you to name some one of the prisoners, and then consider whether it appears upon the evidence in the case, that he did in fact kill Maverick; and, then, whether upon the evidence it appears he in fact killed Gray? And so inquire in the same manner, whether he did in fact kill either of the other three persons? And having noted how it appears upon the evidence with regard to him, you must then proceed in like manner with each of the other prisoners; and if upon a full consideration of the evidence in the case, you should be in doubt, as to any