

all that party will by law be chargeable with each mortal stroke given by either of them, as though they all had in fact given it.

It is said, that while they were at the custom-house, before they fired, some of them attempted with their bayonets to stab every one they could come at, without any reason at all for so doing. Such conduct to be sure can neither be justified nor excused. But as the time was so very short, and some of the witnesses declare the people were crowding upon the soldiers and that they were moving their guns backwards and forwards, crying, "stand off," "stand off," without moving from their station, you will consider whether this may not be what other witnesses call an attempt to stab the people. But, be that as it may, if the party was a lawful assembly before, this not being the act of the whole would not make it unlawful. The counsel for the crown insist, that the firing upon the people was an unlawful act, in disturbance of the peace, and as the party fired so near together, it must be supposed they previously agreed to do it; that agreement made them an unlawful assembly, if they were not so before, and being so when they fired, all are chargeable with the killing by any one or more of them. However just this reasoning may be, where there is no apparent cause for their firing, yet it will not hold good where there is. If each of the party had been at the same instant so assaulted as that it would have justified his killing the assailant in defense of his own life, and thereupon each of them had at the same instant fired upon and killed the person that assaulted him, surely it would not have been evidence of a previous agreement to fire, or prove them to be an unlawful assembly; nor would it have been evidence of such agreement, if the attack was not such as would justify the firing and killing, though it was such an assault as would alleviate the offense and reduce it to manslaughter, since there would be as apparent a cause of the firing in one case as in the other, and though not so good a cause, yet such an one as the law in condescension to human frailty greatly regards. You will therefore carefully consider what the several witnesses have sworn