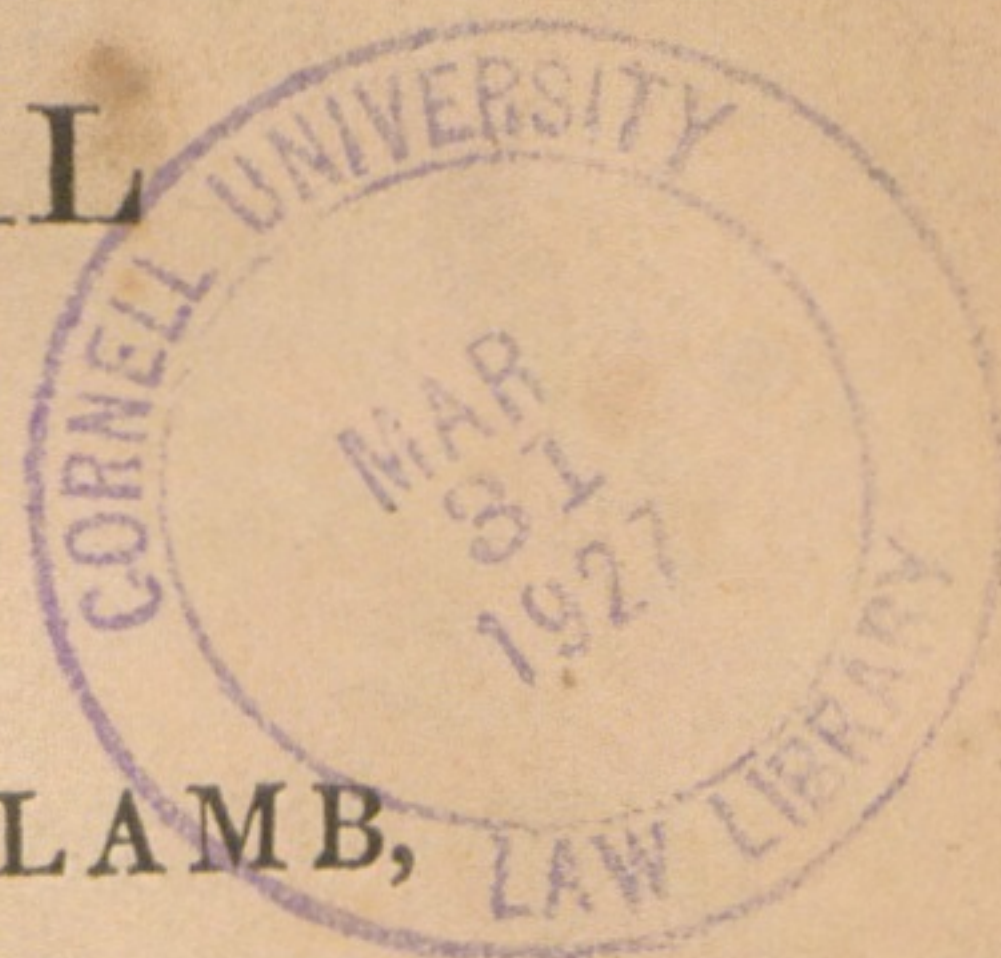


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No 12

REPORT OF THE TRIAL

OF

CAIRNS, TURNBULL, SMITH, AND LAMB,



BEFORE

THE HIGH COURT OF JUSTICIARY AT EDINBURGH,

ON MONDAY, THE 18th OF DECEMBER, 1837,

FOR THE

CRIMES OF MOBBING AND RIOTING, AND ASSAULT,
COMMITTED AT HAWICK,

ON THE

OCCASION OF THE LATE ELECTION OF A MEMBER OF PARLIAMENT
FOR THE COUNTY OF ROXBURGH.

BY ARCHIBALD SWINTON, ESQ. ADVOCATE.

EDINBURGH:

THOMAS CLARK, LAW BOOKSELLER.

1838.

THE COURT OF THE KING

IN

CHIEF JUSTICE OF THE KING AND JAMES

OF

THE HIGH COURT OF JUSTICE AT EDINBURGH

ON MOTION OF THE 15th OF DECEMBER 1871

FOR THE

CRIMES OF ROBBERY AND RIOTING AND ASSAULT

COMMITTED AT ELWICK

ON THE

COMMISSION OF THE PEACE OF THE COUNTY OF EDINBURGH

FOR THE COUNTY OF EDINBURGH

BY ARCHIBALD SMYTH AND OTHERS

EDINBURGH:

THOMAS AND SON, PRINTERS

1871

THE following Report has been prepared with the assistance of notes, taken in short-hand during the trial, by Mr Simon Macgregor. The whole Trial is reported at full length, except the legal debate on the relevancy of the Indictment, which has been greatly abridged. A full report of it will be given to the profession in another form.

5, INDIA STREET, EDINBURGH,
1st January, 1838.

REPORT &c.

MONDAY, *December 18, 1837.*

JUDGES PRESENT.—The Lord Justice-Clerk, Lord Mackenzie, and Lord Cockburn.

COUNSEL FOR THE CROWN. — The Solicitor-General, (Rutherford,) and John Shaw Stewart, Esq. Advocate-Depute. David Cleghorn, W.S. Crown Agent.

COUNSEL FOR THE PRISONERS. — James Craufurd, James Moncreiff, and John Thomson Gordon, Esquires, Advocates. Peter Crooks, W.S. Agent.

James Cairns, James Turnbull, James Smith, and Stewart Lamb, were placed at the bar, charged, along with one John Rae, with the crimes of mobbing, and rioting, and aggravated assault. The indictment, with which they had been served, was in the following terms:—

JAMES CAIRNS, stocking-maker, now or lately residing with Margaret Scott or Cairns, a widow, now or lately residing at or near to the foot of the Kirk-wynd of Hawick; JOHN RAE, needle-maker, now or lately residing in the Crescent of Hawick; JAMES TURNBULL, stocking-maker, son of, and now or lately residing with, William Turnbull, stocking-maker, now or lately residing in the Howgate of Hawick; JAMES SMITH, stocking-maker, now or lately in the employment of William Laidlaw, manufacturer in Hawick; and STEWART LAMB, stocking-maker, now or lately residing at or near the Churchyard in Hawick, in the County of Roxburgh; you are indicted and accused at the instance of John Archibald Murray, Esquire, her Majesty's Advocate, for her Majesty's interest: That albeit, by the laws of this and of every other well governed realm, Mobbing and Rioting, as also Assault, more especially when committed to the serious injury of the person, and the effusion of blood, and by a person who has been previously convicted of assault, are crimes of an heinous nature, and severely punishable: Yet true it is and of verity, that you, the said James Cairns, John Rae, and James Turnbull, are, all and each, or one or more of you, guilty of the said crime of mobbing and rioting, and of the said crime of assault, aggravated as aforesaid, or of one or other of them, actors or actor, or art and part; and you, the said James Smith and Stewart Lamb, are, both and each, or one or other of you, guilty of the said crime of mobbing and rioting, and of the said crime of assault, aggravated by being committed to the serious injury of the person, and to the effusion of blood, or of one or other of them, actors or actor, or art and part: In so far as, on the 3d day of August, 1837, or on one or other of the days of that month, or of July immediately preceding, or of September immediately following, being one of the polling days appointed for taking the votes of the electors of the county of Roxburgh for the election of a member of the Commons House of Parliament, a mob, or great number of riotous and evil-disposed persons, did assemble in the town of Hawick, in the shire of Roxburgh, being one of the polling places of said county, and did, opposite or near to the Tower Inn, then and now or lately occupied by William Brown, in front of and close to which inn the

polling booth was erected, and at various places within said town of Hawick aforesaid, conduct themselves in a violent, riotous, and tumultuous manner, to the great terror and alarm of many of the lieges, and the disturbance of the public peace; and did, with stones or other missiles, break a great number of panes of glass in the windows of said inn, and did violently assault, severely beat, and otherwise maltreat, various individuals: In particular, 1. (time above libelled,) in front of, or near to the Tower Inn aforesaid, the said mob, or great number of riotous and evil-disposed persons, did wickedly and feloniously attack and assault Richard Young, blacksmith, then and now or lately residing in the High Street of Hawick aforesaid, and did strike and kick him severely, and did tear his clothes, and did forcibly and violently drag him along towards the Slitrig River, near to the end of said inn, and did, then and there, and at or near to the Tower-dyke-side, in or near Hawick aforesaid, continue to strike and kick him severely, and did tear off from his person the greater part of his clothes; by all which the said Richard Young was much injured in his person, to the effusion of his blood, and was put into a state of great terror and alarm: (2.) Farther, (time above libelled,) in front of, or near to the Tower Inn aforesaid, the said mob, or great number of riotous and evil-disposed persons, did wickedly and feloniously attack and assault Thomas Scott, then and now or lately tenant of Little Cote, in the parish of Cavers, and shire of Roxburgh, and did violently seize hold of him, and did tear off his coat and waistcoat, or the greater part thereof, and did drag or force him down the lane or close called the Miln Port to the side of the said Slitrig River, and did then push him down the bank into said river, and did, with a stick, or some other hard substance, strike him a severe blow on the head, and did also kick him on the legs, and otherwise strike and injure him in his person; by all which outrageous conduct, the said Thomas Scott was put into a state of great terror and alarm: (3.) Farther, (time above libelled,) and in front of, or near to the Tower Inn aforesaid, the said mob, or great number of riotous and evil-disposed persons, did wickedly and feloniously attack and assault David Tully, farmer or carter, then and now or lately residing at Allars, in the parish of Hawick, and shire of Roxburgh, and did violently tear off a great part of his clothes, and did violently drag or force him to the side of the Slitrig river, at a place near to the shop situated in or near the Sand-bed in Hawick aforesaid, then and now or lately occupied by George Scott, then and now or lately gunmaker there, and did strike or scratch him on the back to the effusion of his blood, and did wickedly and feloniously force him off the bank into said river, which was then in a swollen state, and of considerable depth, and did compel him to pass through to the other side of said river; by all which the said David Tully was injured in his person to the effusion of his blood, and put into a state of great terror and alarm: (4.) Farther, (time above libelled,) in front of, and near to the Tower Inn aforesaid, the said mob, or great number of riotous and evil-disposed persons, did wickedly and feloniously attack and assault Robert Patterson, farmer or carter, then and now or lately residing in the West Port of Hawick aforesaid, and did violently seize him and drag him along, and did violently tear or cut off from his person, the whole or the greater part of his clothes, and did violently tear his hair, and did strike and kick him repeatedly and violently, and did, with a knife, or some other sharp instrument, to the prosecutor unknown, cut him severely on or near to the thigh; and the said Robert Patterson having escaped, and taken refuge in the house situated in or near Silver street in Hawick, then and now or lately occupied by Jane Riddell or Turnbull, the said mob, or greater number of riotous and evil-disposed persons, did follow him, and did violently break open the door of said house, which had been bolted or otherwise secured, and did again wickedly and feloniously assault and strike or kick the said Robert Patterson, and did threaten and intimidate him; by all which the said Robert Patterson was severely injured in his person to the effusion of blood, and was put into a state of great terror

and alarm: (5.) Farther, (time above libelled,) in front of, or near to the Tower Inn aforesaid, the said mob, or great number of riotous and evil-disposed persons, did wickedly and feloniously attack and assault William Elliot, then and now or lately tenant of Flatt, in the parish of Castleton, and shire of Roxburgh, who was then riding on a horse, away from the Tower Inn aforesaid, and did attempt violently to seize and stop his horse, and did pursue him with threats of violence; and the horse on which he rode having fallen, from some cause to the prosecutor unknown, the said mob, or great number of riotous and evil-disposed persons, did surround the said William Elliot, and did violently hold him down upon the ground, and did tear the greater part of his clothes off his person, and did beat and injure him in his person, particularly in his hand, which was severely cut; and the said William Elliot was thereby put into a state of great terror and alarm: (6.) Farther, (time above libelled,) on or near to the bridge across the Slitrig river, which is opposite, or nearly opposite to the front of the Tower Inn aforesaid, the said mob, or great number of riotous and evil-disposed persons, did wickedly and feloniously attack and assault James Oliver, then and now or lately tenant in Borthwickbrae, Burnfoot, in the parish of Robertson, and shire of Selkirk, and did throw stones and mud at him, and did surround, and violently drag or force him towards the side of the Slitrig river, at a place near to the shop in or near to the Sand-bed, Hawick aforesaid, then and now or lately occupied by George Scott, then and now or lately gunmaker there, and did violently struggle with him, and did push or force him into the river, which was then in a swollen state, and of considerable depth, and did kick him on the chin and other parts of his person; by all which the said James Oliver was injured in his person, and put into great terror and alarm: (7.) Farther, (time above libelled,) on the street of Hawick aforesaid, near to the Tower Inn aforesaid, and near to the shop, then and now or lately occupied by Thomas Henderson, then and now or lately saddler there, and between the said inn and the said shop, the said mob, or great number of riotous and evil-disposed persons, did wickedly and feloniously attack and assault Mark Turnbull, then and now or lately tenant of Spittal-mill, in the parish of Cavers aforesaid, and did surround him, and violently tear off from his person a great part of his clothes, and did strike him and kick him severely on his legs and other parts of his person; by all which he was much injured, and put into a state of great terror and alarm: And you, the said James Cairns, John Rae, James Turnbull, James Smith, and Stewart Lamb, were, all and each, or one or more of you, present at, and actively engaged in, and did aid and abet and incite the said mob in the foresaid riotous and disorderly proceedings, and in the several assaults above libelled, or one or more of them: And you the said James Cairns, John Rae, and James Turnbull, have been previously convicted of assault.

The diet having been called against John Rae, and he having failed to appear, sentence of fugitation was pronounced against him, and his bail-bond declared to be forfeited.

The prisoners, James Cairns, James Turnbull, James Smith, and Stewart Lamb, were then severally interrogated on the indictment, and pleaded not guilty.

Mr Moncreiff, as counsel for the prisoners, objected to the relevancy of the indictment, on the ground that the second charge, that of assault, was not sufficiently specific, the various assaults stated to have taken place being charged as the acts of the mob, and not of the prisoners.

The Solicitor-General and *Mr Shaw Stewart* answered, that indictments in a similar form had been sustained by the Court in various cases, and that the prisoners were charged with having been actively engaged in the proceedings of the mob, and in the several assaults charged.

Mr Craufurd replied, and stated, that in some of the cases referred to, the

mob had been stated to be actuated by a common purpose, but here there was no purpose set forth.

Lord Mackenzie.—The charge of assault being combined with the mobbing, cannot form any objection. In considering the relevancy we must suppose that the Prosecutor has proved the whole of what is set forth in the indictment. I cannot doubt that if this is done, the prisoners must be found guilty both of the mobbing, and rioting, and of the assault. It might be that persons charged with mobbing were not guilty of particular assaults. It may happen that a mob commits murder or fire-raising, and a person may be guilty of mobbing by having been present, although he may not be liable for these other acts which may have been done without his knowledge. But that is not the case here. The prisoners are charged as having been not only present in the mob, but actively engaged in their riotous proceedings, and in the several assaults charged. I can have no doubt, therefore, that the indictment is relevant.

Lord Cockburn.—I have been entirely of the same opinion from the first moment I heard the objection stated. It may be true that the prisoners cannot be convicted of assault, unless it is proved that there was a mob; but they may be found guilty of mobbing and rioting, and yet not guilty of assault. The crimes are charged in the fairest possible way for the prisoners. I hold it to be quite certain that a person may be guilty of mobbing by mere presence in a mob, without doing any thing. But he may be the very soul of the mob, without doing much. A word, a nod, a wink may have the effect of exciting the mob, and be the cause of all the mischief that follows. Ought the indictment against a party in such circumstances to bear that he was guilty of fire-raising or any similar crime—by what? by a word, a nod, a wink. These things do not constitute a specific offence in the individual. The proper charge against him is, that, by doing certain things, he was guilty of all that took place. On principle, therefore, this is the correct way of charging crimes done during a mob.

The Lord Justice-Clerk expressed his concurrence. I pay no regard, observed his Lordship, to the statement that there is no purpose set forth in this indictment, although I think there is a sufficient indication of the occasion on which these riotous proceedings took place.

The objections were accordingly repelled, and the indictment found relevant to infer the pains of law.

The prisoners being again interrogated on the indictment, severally repeated their plea of not guilty.

The jury were then balloted for, and after a great number of challenges on the part of the prisoners, the following were sworn to try the case :—

- John Douglas, fishing-tackle manufacturer, Princes' Street, Edinburgh.
- George M'Farlane, merchant, Linlithgow.
- David Calder, grocer and spirit-dealer, Canongate.
- John Brash, secretary North British Insurance Company, Hanover Street, Edinburgh.
- 5 John Wyse Mackie, baker and confectioner, Hanover Street, Edinburgh.
- John Belshes Bird, portrait engraver, Frederick Street, Edinburgh.
- James Hume, innkeeper, Grassmarket, Edinburgh.
- Robert Wallace, grocer, Deanhaugh Street, County of Edinburgh.
- William Brown, grocer, Linton, County of Haddington.
- 10 Andrew Cowie, confectioner, Dalkeith.
- John Peterkin, engraver, East Arthur Place, Edinburgh.
- Thomas Hunter, residing St Patrick Square, Edinburgh.
- George White, painter, West Register Place, Edinburgh.
- Thomas Crawford, baker, Kirkgate, Leith.
- 15 Alexander Chalmers, clerk, Frithfield Cottage, Leith.

The following evidence was then adduced on the part of the prosecution:—

RICHARD YOUNG, blacksmith, residing in High Street of Hawick. (*Examined by Mr Stewart.*) I was in Hawick on the polling days at last election, being Thursday the 3d, and Friday the 4th of August. I am an elector for the county. I voted on the 3d. The polling booth was in front of the Tower Inn. There is a large open space there. I voted between two and three o'clock I think. There were a great number of persons round the booth when I went in. They were doing nothing that I saw. I entered by the west end, being the end nearest the door of the inn. I remained some time in the booth, perhaps about twenty minutes. I went out at the same door at which I had entered. There was another door at the other end, intended for voters going out; but the crowd was immense round that door, and I was afraid to go out that way. They were naming me, and calling to send me out. When I got out, I attempted to go to the front door of the Tower Inn. I was caught by the tails of my coat, and pulled backwards in amongst the crowd. They commenced tearing the clothes off my back, and the cry was, "Throw him over the bridge." There was then a great crowd round me. I do not know where they came from. The river Slitrig runs near the west end of the inn. There is just a road between the inn and the river. The Old Bridge over the river is near the end of the inn; and the New Bridge is opposite the front of the inn. They took me towards the Old Bridge. Just at the end of the bridge, some one from behind seized my neckcloth, which was drawn so tight as nearly to strangle me. I untied it. Some of the crowd cried, "Will he ever go and vote for the Tories again?" They brought me up the road, called the Tower Dyke-side, between the inn and the river. I was struck there on the head and body, and kicked on the legs and feet. They were hard blows. My coat was entirely torn to pieces; and my waistcoat, linen shirt, flannel shirt, and breeches were all torn off, nothing being left except the buttoned part at the knees of the breeches. There was blood on my neck, from scratches I think. I do not think these scratches were caused in pulling off my clothes. I could not say how long I was in the hands of the crowd. I was assisted by James Scott, skinner. Before he came to my assistance, I had been, perhaps, twenty minutes in the hands of the crowd. When I got hold of him, I kept myself up. I was some time longer in the hands of the crowd. At last I got into Alexander Mair's house. The prisoner Lamb was in the crowd, and struck me in the body. It was just at that time that I saw him in the crowd. Part of my clothes had then been torn off. I was sore all over the body with the great pressure. And after I went home, my legs swelled from the kicks. I went to bed about four o'clock, in consequence of what had been done to me. My legs were black the next day, in consequence of the kicks.

By the Court.—There was no other person in the crowd whom I can name.

Cross-examined by Mr Craufurd for the prisoners.—I saw Bailie Goodfellow in the booth. He was at that time a bailie of Hawick. He said nothing to me about giving me protection. I asked him to see me into the Tower Inn, and he said "Stop a little," but he never said he would give me any protection. I understood him to mean that I was to wait for him. He went out of the east door of the booth. I waited a quarter of an hour, or perhaps not so much; but he never came back. He was going in and out of the booth. When I saw he was not likely to come, I asked protection from the other magistrate who was in the booth, Bailie Peter Wilson: he said, "Stop a little." I waited for some time, but did not speak to him again. I did not tell him when I was going away.

By the Court.—There were some in the crowd who took my part, and tried to prevent my being injured. James Scott was one of them. I cannot name any others.

By the Solicitor-General.—The Tower Inn is very near the door of the booth. And I thought when I left the booth that I could get into the inn without being caught by the mob.

JAMES SCOTT, skinner, residing in Teviot Crescent, Hawick. (*Examined by Mr Stewart.*) I was in Hawick on the first polling day at the late election. I saw Richard Young, after leaving the polling booth, going into the Tower Inn. He had got up a step or two of the door, when he was caught and pulled back by the crowd. The crowd carried him off towards the Old Bridge. There were a good many people round him. They cried, "Put him over the bridge;" and others cried, "Take him along the Tower Dyke-side, and put him into the water." The crowd had been standing just round the door of the polling booth, not far from it. They rushed round him. They took him towards the Old Bridge. His clothes were all torn off him. I went and stood upon the wall between the road and the river, expecting to see them put him over the bridge. It is a high bridge, more than ten feet high. There is a deep pool of water below the bridge. The crowd came up the Tower Dyke-side, bringing Young with them. They were making a shouting noise, but I cannot say what they said. I remained on the wall till the crowd was almost past, and then I went up behind the crowd. I went into Mair's house. I did not go near Young in the crowd. I did not try to keep him up. I saw him struck twice upon the head with fists. His neckcloth was off when he passed me. I was not nearer him than twenty or thirty yards when I followed the crowd. He was then much agitated. When I saw him in Mair's, his clothes were all torn off. He said he was very sore, particularly mentioning his legs. I saw the prisoner Cairns in the crowd. He struck Young on the head with his fist. This was as the crowd passed me in the Tower Dyke-side.

By the Court.—I saw another person of the same name and trade as myself, one James Scott, a skinner, assisting Young, also Mr Elliot of Wolflee. The prisoner Cairns struck both the blows which Young received on the head. It appeared to me a dangerous mob. I believed from what I saw that they would throw Young over the bridge. But I did not see him lifted off the ground to be thrown over. He was nearly three quarters of an hour in the hands of the mob. He was very "frightened like."

MICHAEL WHYTE, stocking-maker, in the Loan of Hawick. (*Examined by Mr Stewart.*) I was in Hawick on the first polling day at the late election. I saw Richard Young in the hands of a mob in the Tower Dyke-side. I went forward to endeavour to assist him. I saw the prisoners Cairns and Lamb in the crowd that was surrounding Young. I did not see what they were doing, as my whole attention was taken up in saving myself and rescuing the man. I got close up to Young, and assisted him into Alexander Mair's door. I took William Turnbull to be assisting me, so was James Scott.

By the Court.—The crowd and bustle were so great, that I felt for the man, and did what I could to rescue him. I was afraid for myself, there was a great crush. There was a crowd, but I cannot say how many people. I saw Young struck on the head. I cannot say by whom, or at what place exactly.

Cross-examined by Mr Moncreiff for the prisoners.—I do not recollect seeing Walter Wilson, skinner, in the crowd. When I first saw Young in the hands of the crowd, he was in front of the Waulk Mill, which adjoins the Old Bridge. I do not recollect whether they were then going towards the Old Bridge, or coming from it. I was in the crowd when they left the Old Bridge, and came along the Tower Dyke-side. I was then near Young, and I believe I remained near him all the time in the Tower Dyke-side.

THOMAS SCOTT, tenant of Little Cote, in the parish of Cavers. (*Examined by Mr Stewart.*) I went into Hawick about seven o'clock in the morning of the first polling day. I voted between nine and ten o'clock. I entered the booth by the west end. I remained a very short time in the booth,

and came out at the east end. There was a railing round the booth. When I went out, there were a great number of persons outside of the railing. I tried to get over the railing; but was directed to the gateway. When I went forward there, I was seized at the very gate by persons outside the railing. I was held there for a little time. Afterwards I was moved away by the crowd; and my clothes were partly torn off. Most part of my coat was torn off. The two arms and the front of one side were alone left. My hat was knocked off. The front half of my waistcoat was torn away. I was kicked on the legs, and struck once on the head. When I was coming out of the booth they cried, "Little Cote, you must take it." I cannot say but that I was a little agitated at the time. They pushed me across the street, down by the Mill port, which leads down to the river, opposite the east end of the Tower Inn. They went down there with me, and pushed me down a precipice into the water. There was then very little water at that side of the river, but more on the other side. I got a blow on the back of my head, as they pushed me down the precipice. I think it was given me with a stick. It swelled. What I call a precipice was a sloping declivity. It might be three, four, or five feet high. I was pushed into the water. I cannot remember whether I fell. I got to a sandbank in the middle. Walter Purdon, tobacconist, Andrew Andison, flesher, and one Watson, came and helped me out, and took me up the place I had been forced down. They took me into Purdon's shop. The crowd pursued us to the door; but it was not then so large as it had been. In going into the door I was seized from behind. They tried to pull me back, but I succeeded in getting into the house. There was a good deal of noise and clamour at this time. I remained at Purdon's till about eleven or twelve at night. I was afraid of coming out again. I saw, through the course of the day, a great number of symptoms of disturbance, and that was what alarmed me. I saw others treated just as I had been, and their clothes torn off their backs by the mob. I saw Mr Mark Turnbull of Spittal Mill so treated. I was not well for some time afterwards from what had happened. My legs became black after a day or two, particularly one of them. I lost a knife, snuff-box, and handkerchief, which had been in the pockets of my coat and waistcoat. I never recovered them. I could not identify any person whom I saw in the crowd, the crowd was so great and so close upon me.

Cross-Examined by Mr Craufurd for the prisoners — When I left the booth I said I would put myself at their mercy, and see what they would do, or something to that purpose.

Mr Craufurd.—Did you say, "Let us see what you'll do lads?"

The Witness. — Something to that purpose. I said I would put myself in their mercy. I do not recollect the exact words I used. I cannot remember if I fell when pushed down the bank. I was in the water. I walked through it. I know William Goodfellow, baker. I do not remember seeing his face in the crowd.

WILLIAM GOODFELLOW, baker in Hawick. (*Examined by Mr Stewart.*) I was in Hawick on the first polling day at the late election. I saw Mr Scott of Little Cote at the east end of the polling booth, coming out of the paling. There was a great crowd there. I saw him carried away by the crowd. I saw his coat torn. They took him across the street, and towards the water. I went with them. I was close beside Mr Scott the whole time trying to assist him. I was forced along with him by the crowd. I do not recollect any thing the crowd called out. There was no great noise among the crowd. I left Mr Scott at the foot of the Mill-port. I did not see him get any blows. I cannot say whether I saw his waistcoat torn. I saw the prisoner Cairns in the crowd, about ten yards distant from the paling at the polling booth. He was then three or four yards off me, and I was then close to Mr Scott. He was pushing in the direction of Mr Scott. I could not say any thing else that he was doing.

Cross-examined by Mr Craufurd for the prisoners. — I was not acting as a constable. I was merely looking on. I do not remember seeing any other Hawick persons looking on. I did not see Walter Wilson, skinner. The bank where I left Mr Scott is about four feet from the water. It is sloping, but not very steep. I do not know the breadth of the water there. It is not the main stream. There is generally no water between the bank and the sandbank. There had been rain, and on that day I should think the rivulet was a yard broad, and a foot or a foot and a half deep. I saw no stick used against Mr Scott; and I should think none was used, because in going down the Mill-port Mr Scott fell, and I fell over the top of him, and we were both allowed to get up. From the booth to the bottom of the Mill-port will be forty or fifty yards. It is not my opinion that the crowd intended any serious injury to Mr Scott or to me.

The Lord Justice-Clerk. — Is it no injury to tear a man's coat? Is that quite a usual thing?

The Witness. — Not except at elections. I mean that I did not anticipate serious injury to his person.

WALTER PURDON, tobacconist in High Street of Hawick. — (*Examined by Mr Stewart.*) — My house and shop are at the head of the Mill-port. On the first polling day I heard that Mr Scott had been carried down the Mill-port. I went down and found him standing in a small feeder which comes off from the main water. There was a great crowd close upon him. I went down to him, and with the assistance of some other men pulled him away through the crowd, and took him into my house, which is about thirty yards distant. We had a struggle to get him there. The crowd tried to prevent us a good deal. I did not hear them say any thing. A good deal of Mr Scott's clothes were off. He complained of being hurt. He said that a man had struck him severely on the leg, and that some one had also struck him on the head, which was a little swelled. He remained in my house till eleven at night. I did not know any one in the crowd except himself, and one who assisted us.

Cross-examined by Mr Craufurd for the prisoners. — William Watson, son of Mr Watson the quaker, was the person who helped us.

By the Court. — It was a great crowd. They were behaving themselves in a riotous and disorderly manner.

By the Solicitor-General. — It was to protect Scott, and because I thought he required protection, that I went to his assistance.

DAVID TULLY, farmer or carter at Allars, in the parish of Hawick. (*Examined by Mr Stewart.*) I am an elector for the county of Roxburgh. I voted about twelve o'clock on the first polling day. I left the booth immediately afterwards, by the east end. A mob attacked me. I then went round the booth to the west end, where I leaped over the paling, and was attacked there also. They tore all my clothes off except my breeches. I lost my coat, waistcoat, shirt, and hat. I received many blows and kicks on different parts of my body. The crowd took me down towards the water. They went along the New Bridge, and down a lane a little below it, past the corner of George Scott, gunmaker's house. This lane is nearly opposite the Mill-port, which is on the other side of the water. The mob were meaning to throw me into the water. I got some help — got out of their grips, and jumped into the water. The voice of the crowd was to throw me in. I had been forced along the whole way against my will. The place I jumped down, was a built up breast, fully five feet high. The full body of the river was running just below. The water was three feet deep or better. It runs rapidly there. I fell, on jumping into the water, and was wet over the head. I waded out at the opposite side, and got into a house. I was considerably hurt by the blows and kicks — chiefly on the legs. I felt the effects of the injuries for three weeks or more. My legs were discoloured, but did not bleed. My back was bleeding. This was

caused by scratching. I was not much hurt about the head. My hair was not much pulled. I cannot identify any of the persons who were in the crowd.

Cross-examined by Mr Craufurd for the prisoners — William Clerk, mason, and William Turnbull, hosier, and others, whom I do not know, assisted me.

By the Court. — These persons came to my assistance while I was suffering injuries, and did what they could to ward off other injuries; but notwithstanding all they did, I met with what I have described. I remember no other expression of the crowd, except "Put him into the water." I felt myself obliged to jump in, in order to avoid the risk of being thrown in. No opposition was made to my getting out of the water.

FRANCIS BALLANTYNE, merchant in Hawick. (*Examined by Mr Stewart.*) My house is at the end of the New Bridge. The windows look out upon the Slitrig. On the first polling day, I saw Mr Tully with a great crowd around him in the lane behind my house. I saw him go into the water. The crowd were close to him. He lighted on his feet in the water, and afterwards tumbled, and went over the head. He waded through and went into a house on the opposite side. I know none of the persons who were in the crowd. I was at a window, two stories above the crowd, looking down upon them. I saw Mr Scott, of Little Cote, brought to the water at the opposite side, at the foot of the Mill-port. I did not know till afterwards that it was he. I did not see him struck; but I saw a piece of railing torn from the side of the stair. This was at the time the crowd was very dense round Mr Scott. I did not observe whether it was a woman or a man who tore off this piece of railing. I never saw it again. I think the railing was entire before. Mr Tully's clothes were off.

Cross-examined by Mr Craufurd for the prisoners.—I did not see Mr Scott go into the water, as I was at some distance.

ROBERT PATTERSON, farmer or carter in the West Port of Hawick. (*Examined by Mr Stewart.*) I voted at Hawick about three o'clock on the first polling day. After doing so, I left the booth by the east door, and ran round the booth to the west side, intending to go into the inn. I ran because I was afraid of being taken hold of. There were a great number of people about the booth. I made for the door of the inn, and was within the door a few inches, when I was seized by the back of the neck, wheeled round, and carried to the end of the Old Bridge by a multitude of people. They were making a great noise, crying, "Kill him out, the b——r." They struck me, I cannot say how often, on the head. I was obliged to hold down my head for protection, and it was hauled up again. I was kicked on the back of the legs, and stripped quite naked, except my shoes, stockings, and neckcloth. There was a small "*scaur*" on my thigh, caused by the kicking with iron shoes, or I do not know how. It did not bleed. I got out of their hands, and ran home-wards. The crowd followed me. I ran into Walter Brown, stocking maker's, house, and got into George Turnbull's end of the house. Turnbull's wife was there at the time, and his mother came in. Her maiden name was Jane Riddell.

Mr Craufurd, for the prisoners, objected to any farther evidence being given of what took place in the house in question, on the ground that it is stated in the indictment to be a house occupied by Jane Riddell or Turnbull, whereas it is now proved to be George Turnbull's house.

The Witness. (*Examined by Mr Craufurd.*) I do not know if George Turnbull's mother lives constantly there. I do not know if she has another house in the same land.

Mr Craufurd (to the Court.) — I cannot stop the evidence of this witness; but I shall be entitled afterwards to ask your Lordships to strike it out.

The Witness, (his examination having been resumed by Mr Stewart.) Turnbull's house is not above twenty yards from the Old Bridge. John Hardie helped me in, and held to the door. The mob followed to the door.

Hardie desired me to get under the bed. I did so. The crowd came in immediately afterwards and filled the room. One of them held up the screen of the bed and discovered me, and struck me, saying, "Here he is." I came out from under the bed. I sat some time by the bedside, and there the prisoner Smith bade me take an oath. I could not tell what the words were, but I remember his making me swear. I was knocked stupid and senseless.

Mr Craufurd. — I am prepared to prove that the house in which this took place, is not occupied by Jane Riddell or Turnbull, as is stated in the indictment. Is this evidence to go to the Jury in the face of that averment?

The Lord Justice-Clerk. — We cannot refuse the evidence at present.

Lord Cockburn. — The Prosecutor is not obliged to prove, by this witness, how the house in question was occupied. He may be going to bring other evidence on that point.

Mr Stewart (to the witness.) — What were the terms of the oath, which the prisoner Smith bade you take?

Lord Mackenzie objected to the question being put. There is no indication in the indictment of any intention to charge the prisoners, or any of them, with administering illegal oaths.

Lord Cockburn. — The administering a forced oath is not one of the ordinary acts of a mob. If it was intended to prove such a crime against the prisoners, it ought to have been set forth.

The Lord Justice Clerk. — It is better not to press the question.

The Witness (examined by the Solicitor-General.) — I saw nothing that Smith was doing to me in the house; but he made me swear. It was not he who found me below the bed.

By Mr Stewart. — The crowd forced open the door. I was not threatened by the crowd in the house, but I had been mangled before, and I was frightened. I cannot say how long I was in the house, but as soon as I could borrow a coat and a shirt, I got out of a window, and ran home by a back way. I was hurt on the left side of the head, and "haughs," and lay in bed for half the next day, when I got up, but could scarcely walk, I was so stiff and "all sore" on the left side of my head. I saw John Rae on the street when the crowd first seized me.

Cross-examined by Mr Craufurd for the prisoners. — Rae struck me at least twice severely on the right side of the head, and I became confused after that. I saw the prisoner Smith do nothing in the house, except about the swearing. I do not remember what the oath was.

Lord Justice-Clerk. — After an objection has been sustained against going into any evidence about this oath, I do not understand questions being asked about it for the prisoners.

Lord Mackenzie. — If the prisoners wish it brought out, there can be no objection.

Mr Craufurd. — I did not object to the question. On the contrary, I am most anxious that all about the oath should be proved. (To the witness.) Was the oath any thing about the witches of Denholm?

The Witness. — No, nothing.

The Lord Justice-Clerk. — I think now we must have this matter fully investigated. It may come in under the charge of intimidation in the indictment.

The Solicitor-General (to the Witness.) — Was it a serious oath?

The Witness. — I daresay the man meant no ill. I could not tell the meaning of the oath. I think it certainly must have been meant as a joke. I could not tell the words, I was so insensible. I remember nothing except that Smith said, they were to make me swear that I would not vote again.

JANE RIDDELL OF TURNBULL, residing in Silver Street, Hawick. (*Examined by Mr Stewart.*) I was in my son's house when Robert Patterson came in. My house is below my son's. They are in the same tenement, but are separate houses. Patterson was not in my house at all.

The Solicitor-General argued that the *locus*, at the commencement of the assault, being properly described in the indictment, he was not precluded, by the mistake which had occurred in regard to this house, from proving the whole of what was in reality a continuous assault.

The Lord Justice Clerk.—That might have done very well, if you had not specified the particular house into which Patterson was pursued. “An adjoining house” would have been quite enough.

Lord Cockburn.—You mislead the pannel by stating a wrong house.

Lord Mackenzie.—I think it is a nice enough objection.

The Solicitor-General proposed to ask the witness if she saw Lamb in her son's house, and argued, that although, after the opinion indicated by the Court, no substantive offence committed in that house could be proved, still it was competent to prove who were in the mob at any period.

Lord Cockburn.—You might as well prove what took place in the minister's house, or any where else.

Lord Mackenzie.—I think it would be competent to prove that the mob followed Patterson into any house.

The Lord Justice-Clerk having concurred with Lord Cockburn, the question was found incompetent, and the witness removed.

MARGARET BROWN OF ANDERSON, wife of Walter Brown, stocking-maker. (*Examined by Mr Stewart*.) My house is in the same flat as George Turnbull's. I saw Robert Patterson come up the stair. A number of persons followed soon afterwards; I cannot say who, I was so much put about. The only person who made a disturbance in the stair was Archibald Harkness, Patterson's sister's son. I know all the prisoners. I saw Lamb and Cairns in the street a good while after Patterson was in the house. They were doing nothing. There was then a great crowd about the doors making a noise. Cairns and Lamb were among the crowd. The crowd stayed a good while. They dispersed when Patterson got out of the window.

Cross-examined by Mr Craufurd for the prisoners. I saw Bailie Goodfellow in the street afterwards. I did not see Walter Wilson or Bailie Wilson.

WALTER WILSON, skinner, residing in Teviot Crescent, Hawick. (*Examined by Mr Stewart*.) I was in Hawick on the first polling day. I saw several crowds. I saw one assaulting Richard Young. I did not see any of the prisoners in that crowd except Cairns. I saw Patterson carried off by a crowd towards the Old Bridge. I know no one who was in that crowd except Bailie Goodfellow, my brother, I think, and a young gentleman, Mr Gilbert Elliot. They were there for the purpose of preventing mischief. I saw Cairns at various times that day, but in no other disturbance except that against Young. There was a crowd all about the polling booth the whole day. They were looking after the election, apparently taking a great interest. They were stationary, but there were frequently crowds moving in different directions from them. In the course of the day, I thought the prisoners, Cairns and Lamb, appeared active. They were moving about, sometimes in crowds and sometimes not. On the night before, I had a long conversation with Cairns. I asked him to assist in keeping the peace next day. He said he had refused to be a constable, though he had been offered five shillings. He said he had not worked for a shilling for a week before. I said the peace would have to be kept at all hazards; and since Bailie Goodfellow had got the sole authority to call in the military, I had no doubt it would be done without the slightest hesitation if necessary. I said farther, that we would all support Bailie Goodfellow, as it was our duty as well as our interest to do so, and that he or I might be shot. He said he did not care, he was willing. The object of this conversation was to persuade him to assist in keeping the peace. I saw him during the whole of the next day, but do not recollect his being in any of the disturbances, except in that against Young. He might be there to keep the peace for any thing I know.

Cross-examined by Mr Craufurd for the prisoners. — There were several persons in the crowd who were not constables who tried to keep the peace. Bailie Goodfellow was very active in trying to keep the peace. William Scott, tobacconist, seemed also to be so. Mr Elliot of Wolflee, and all the gentlemen, were active. Every respectable person was active in trying to keep the peace, and there were a number of respectable persons in the crowd who were not constables.

JOHN HARDIE, stocking-maker in Hawick. (*Examined by Mr Stewart.*) I saw Robert Patterson in Hawick on the first polling-day, at the west end of the Old Bridge. There were a great quantity of women and boys round him, and a quantity of men too. I went up to him to protect him. The crowd were crying "Tory," and spitting upon him, and the like of that, but doing nothing more that I saw. He had his trowsers on; but his coat, waistcoat, and part of his shirt were off. I did not see them taken off. I helped him along the Old Bridge, and into Mrs Brown's or Anderson's. Nothing more was done to him as we went along, any farther than spitting on him, and such as that. They were crying out Tory, and such as that. I do not know any person who was in the crowd. I know the prisoner Smith. I do not know if he was in the crowd. I conveyed Patterson into George Turnbull's room, and held the door a considerable time, and then let it open. As I was going down the stair, there was a great crowd of people, from the head of the stair to the door. I never saw Smith in the crowd. I never saw him that day except in George Turnbull's room.

WILLIAM ELLIOT, tenant of Flatt, in the parish of Castletown. (*Examined by Mr Stewart.*) I voted at Hawick on the first day of the poll. After doing so I went into the Tower Inn. I left the inn again about six in the evening on horseback, meaning to go home. I came out of the archway of the stables, and rode up the Tower Dyke-side. When I came out of the inn the crowd followed me. They followed me round the corner of the inn. I did not hear much of what they said. They were making a noise, but I cannot mention the expressions. I rode sometimes quick and sometimes slow, as I could keep my horse in. I could not manage the horse at last. The crowd tried to get hold of the bridle. I got nearly to the Crescent, which is about two hundred yards from the inn. My horse fell there. I cannot say what made it fall. The people were round about me, and before and behind. When I fell I was stunned. The people came round me. My clothes were nearly all taken off. The whole of my coat and waistcoat, and most part of my trowsers and shirt, were torn off. I got some injuries, a stroke on the left temple and on the right eye. I had other injuries on different parts of the body. My left leg was sorely lamed. My left side and other parts had black marks. The horse fell to the right side. I cannot say that I felt the blows at the time. I became insensible, and I think it was from the blow on the temple. My left hand was cut above the upper joint of the fore-finger. I suffered a good deal from this cut, and the blow on the temple and leg, and was visited by Mr Binnie, a surgeon at Castletown. I could not identify any of the persons who were in the crowd. There seemed to be a great crowd. It was not large when I first came out. When I came to my recollection I was in Alexander Mair's house.

Cross-examined by Mr Craufurd for the prisoners. — I voted about twelve or one o'clock. I dined at the Tower Inn. I had not much drink, and was quite sober when I left the inn. I came out of the archway at a walk, or it might be between a walk and a trot. I was certainly not galloping. I was keeping my horse back. It is rather a spirited horse when any one takes hold of it. I could not manage it at last. I had a stick. I cannot say, in the hurry in which I was, if my stick was at my side. I was not flourishing it to do any harm to any one in the crowd, but only to manage my horse. I cannot say how I was carrying it when I came out of the arch. It was either at my side or across the horse's

neck, so far as I can remember. No one touched me before I came out of the archway. If the bridle and the stick were both in one hand, the stick might be in the other. I was not flourishing it when I came out of the archway.

By the Court.—I never flourished it at any one.

WALTER SCOTT, innkeeper in New Castletown. (*Examined by Mr Stewart.*) I saw Mr Elliot of Flatt in the Tower Inn on the evening of the first polling day. He consulted me about going away. I said at first that I thought it would not be advisable that he should go. There had been a disturbance before. He asked me to go out and see. I went and found the crowd diminished; and then said, I thought he might go. In going down the archway, he went between a walk and a trot. He had a stick. I think he was striking his horse with it. He was doing nothing out of the way with it. When he came out, there was a cry of "hie, hie, hie." Before he got to the west end of the inn, there was a great crowd at him. They seemed to be gripping at the horse. I followed him, and heard a shout that they had got him. I ran round, and found a large crowd opposite Alexander Mair's house. I forced my way into the crowd, and found Mr Elliot lying over a stone wall about a yard high. He had his stockings and shoes on. His flannel shirt was about his neck; and his trowsers hanging about his feet; and all the rest of his clothes gone. He was insensible at first, and did not know me. He was holding on by the bottom of the wall. There was blood about him. One of his hands was very ill cut. I am not sure if there was blood coming from any other part. I took him into Mair's house. When I came up to the crowd, I said, "For the love of God, spare the man's life." At first they stood back, and I thought I was going to get him in quietly. But they cried, "He was not half done;" and "yoked" on him again. They were tearing to keep him out; and I and two others were trying to take him in. We got him in. I did not know any of the persons who were in the crowd. I am not a Hawick man. I cannot identify any of the prisoners as having been there.

Cross-examined by Mr Craufurd for the prisoners.—I went into Mair's. Dr Blythe of Hawick was sent for. Mr Elliot went home that night.

JAMES OLIVER, tenant in Borthwick Brae, Burn Foot. (*Examined by Mr Stewart.*)—I voted at Hawick on the first polling day. After doing so, I returned to the Tower Inn, and remained there till the afternoon. After the poll closed, between four and five o'clock, I think, I went out, and returned to the inn. I went out again about seven, and went over the New Bridge. There were a great number of persons about the inn. I was followed by a great crowd, and stones were thrown at me. A great many windows of the inn had been broken before that. I had attempted to go out before, and been driven back by stones. The persons who followed me began to rush upon me when about twenty or thirty yards from the inn door. I crossed the New Bridge, and went towards Scott the gunsmith's shop. The crowd followed me. I got to the corner of Scott's house, where an alley leads down to the water. The crowd closed upon me there. Some of those who were present wished them to let me away; others said, "Swear him, and let him go." One man kicked me, and another pricked me several times with a pin, or something sharp. I made an attempt to get into Scott's shop, but was prevented; and when I refused to swear, they cried, "Take him to the water." I have, since that, seen several persons who were in the crowd molesting me. The prisoner Cairns was one who insisted upon my swearing. I was taken by the crowd to the water. I struggled hard—made all the resistance I could; but they forced me down, and into the water. There was a sloping bank of stones at the edge of the water. I got upon it first. This is about eighteen inches below where the crowd were standing. I tried to get hold of some one to pull him into the water with me. One of them kicked me on the chin. William Clark, a constable, came forward then. He came exactly above where I was standing. They pushed him down above me, and we both fell into the water. The mob appeared at this time much infuriated. The treatment I met with

was calculated to alarm me. I think the prisoner Turnbull is the one I tried to get hold of. I recognized him in the market the week following, and had then no doubt that he was the man. That person was the one who kicked me in the face. I had laid hold of his collar before that, and he was among those who pushed me into the water. My face was a good deal hurt by the kick; it swelled considerably. I fell forward in the water, and was quite wet. I got out at the other side. There was a crowd of people there also. I was a good deal afraid of them; but some persons came forward and prevented them from injuring me.

WILLIAM CLARK, mason at Harden Cottage. (*Examined by Mr Stewart.*) I acted as a constable at Hawick during the election. I saw Mr Oliver of Borthwick Brae on the top of the Slitrig Bridge on the evening of the first day's polling. There were some boys following him. The crowd increased as he went on. I followed. Opposite Scott's, I saw him standing with his back to the wall, and the crowd close round about him. I do not recollect what they were saying. I was not far from him, but not close. He was pushed round into the close, and down to the foot of it. I was pushed down along with them; I was pushed into the river too. Some of the crowd fell over some wood in the close, and so did I, which delayed me. When I got down, Mr Oliver was standing on a bank at the edge of the water. We were both pushed in together. I saw a foot come from his face as if it had kicked him. His hands were then stretched out. I do not think I would know any of the persons who were in the crowd. I did not see any of the prisoners there to my knowledge. I am not acquainted with the young people of Hawick. I have seen Cairns before. I never saw him till the day of the election.

WILLIAM SCOTT, tobacconist in High Street of Hawick. (*Examined by Mr Stewart.*)—I was in Hawick on the afternoon of the first polling day. I saw Mr Oliver of Borthwick Brae taken down towards the water. I followed to assist him. I spoke to the prisoner Cairns. He had hold of one side of Mr Oliver's coat, and I of the other. I asked him to let him go. He was pulling him on the opposite side away from me. He said something to the effect that he must go through the mill. It had got the name of Tully's Mill before that; I suppose, from Mr Tully having been ducked there. Either Cairns, or the crowd behind him, pushed Mr Oliver down the close. I saw no one else, that I can recollect, taking part against Mr Oliver. I do not recollect seeing any of the other prisoners there.

MARK TURNBULL, tenant of Spittal Mill. (*Examined by Mr Stewart.*) I voted at Hawick on the first polling day, between ten and eleven o'clock. I left the booth by the east end. There was then a great crowd there. As soon as I got outside the paling, I was seized by the crowd. They first knocked off my hat, and then tore off my coat, waistcoat, braces, neckcloth, and shirt, and stripped me naked except my breeches. They "*skelped*" me on the naked back with their open hands, and bore me along till I was out of the crowd. I was severely kicked on the back of the legs. They cried, "D—n the b—r! bring him down. Will you ever come to vote that way again?" These words were repeated very often. At last, when I was nearly out of the crowd, one of them gave me a push on the back, saying, "D—n him, let him go; he will not come and vote that way again." I got into Mr Henderson's shop, and afterwards went home. I was taken ill that night from the agitation. I felt the effect of the kicks for some days.

Cross-examined by Mr Craufurd for the prisoners—I was at St James's Fair at Kelso, not the next day, but the day after. It is nine or ten miles to Kelso. I rode there and back.

JOHN WILSON, sheriff-officer in Hawick. (*Examined by Mr Stewart.*) I was at Hawick during the polling. On the first day there was a great crowd round the polling booth. It was a noisy and riotous crowd of eight or nine hundred persons or upwards. I was about the polling booth the whole day;

I was inside of the rails. I heard the noise, and saw the commotion when persons were carried off by the crowd. This occurred frequently in the early part of the day, and at both sides of the polling booth. I had little opportunity to see persons in the crowd at the time of the commotions, but I saw the prisoners Cairns and Lamb particularly active in the crowd. I saw neither of the other two prisoners there that day.

ANGUS SUTHERLAND, sheriff-officer in Hawick. (*Examined by Mr Stewart.*) On the first polling day I was stationed at the Tower Inn door. There was a considerable disturbance among the crowd. I saw them on different occasions when carrying off individuals. I saw windows broken in the Tower Inn by stones from the crowd. This continued mostly through the whole day. I observed the prisoner Turnbull particularly active. I saw all the prisoners that day. Cairns was frequently in a disorderly state, taking an active part in the proceedings of the crowd. He interfered with the constables, broke their ranks, and would not be put away. When James Oliver was carried towards the water, I saw Turnbull amongst the foremost. I saw Mr Oliver pushed in. There was a great crowd round him, and struggling; and I saw Turnbull kick at him with his foot after he was in the water. There were a great many windows in the inn broken, on the front, back, and west end; very few were left whole. I saw Lamb in the crowd. I cannot say he was doing any thing particular. I do not think I saw Smith in the crowd, but I saw him that day.

JAMES BINNIE, surgeon at New Castletown. (*Examined by Mr Stewart.*) I saw Mr Elliot of Flatt the day after he came home from the election, about six o'clock in the morning. I examined his injuries, and made the report libelled on.

The report was then read, stating that the witness examined Mr Elliot, and found his left hand cut an inch long and deep, metacarpal bone broke. A severe blow on the left temple, which was very much swelled, and painful; the left brow discoloured, the left eye considerably blood-shot; the right eye and cheek very much discoloured, and the eye bloodshot; right side of the cheek discoloured, and very painful, and still continuing painful; discoloration on many different parts of the body, legs, and arms, and general soreness over the body.

JAMES STEVENSON, writer, Jedburgh, proved that the previous convictions libelled on referred to the prisoners Cairns and Turnbull.

The convictions were for the crime of assault obtained before the Sheriff Court of Roxburghshire, that against Cairns on the 27th May, 1836; and those against Turnbull on the 7th December, 1835, and the 22d April, 1836.

The declaration of the prisoner, James Turnbull, was then read as follows:

At Jedburgh, the 22d day of August, 1837,

In presence of William Oliver Rutherford, Esquire, of Edgerston, Sheriff of Roxburghshire, compeared James Turnbull, stocking-maker, son of, and residing with, William Turnbull, stocking-maker, in the Howgate of Hawick, who, being judicially examined, Declares that he is twenty-three years of age. That he has been out of employment for the last three weeks. That the declarant was upon the Tower Know, near the polling booth, on the first and second polling days at Hawick for the election of a Member of Parliament for the county, which lately took place. Interrogated if the declarant was present and saw Mr Scott, tenant in Little Cote, taken from the polling booth across the street, and down the Mill-port, to the water of Slitrig, Declares, that he will not answer the question. Interrogated if the declarant was one of the said crowd, and assisted in stripping the clothes off Mr Scott, and forcing him into the water, Declares that he will not answer the question. Interrogated

if the declarant was in the crowd which carried off Richard Young, blacksmith, and Robert Patterson, carter, both in Hawick, from the polling booth on the first day of the poll, and afterwards aided and assisted the crowd in maltreating both or either of these individuals, Declares that he will not answer the question. Interrogated if the declarant formed part of the crowd which carried off James Oliver, farmer, Borthwick Brae, Burnfoot, to the water of Slitrig, and if the declarant did near the side of the said water kick or otherwise injure the said James Oliver, Declares that he will not answer the question, or any other question touching the present investigation.

(Signed)

JAMES TURNBULL.

WILL. OLIVER RUTHERFURD.

The Solicitor-General.—That closes the case for the Crown.

Mr Craufurd intimated that he had no exculpatory evidence to offer on the part of the prisoners.

The Solicitor-General then addressed the Jury nearly as follows:—My Lord Justice-Clerk, and gentlemen of the Jury—It is now my duty to address you in this case on the part of the prosecution; and although the evidence has occupied a considerable time, I shall not detain you long with the observations I think it necessary to make in demanding at your hands—what I think I cannot fail to obtain—a verdict against three of these prisoners. I say against three of these prisoners, because I may state at once, to relieve you of any embarrassment, that I think there is no case made out against the prisoner Smith. There was, you will recollect, in one part of the evidence, a statement that in the house of Turnbull, Smith appeared to be actively concerned in the mob; but that evidence we are considered as not entitled to have led, in consequence of the error in the indictment as to the occupation of the house; and you will therefore let it be blotted entirely from your recollection: and in desiring you to do so, I admit at once that there is no case made out against Smith. But in regard to the other three prisoners the case stands in quite a different position; and I think I shall satisfy you in the course of the few observations I have to make, that I must have a verdict of guilty against them. The charge which these men are this day to answer for is, first, mobbing and rioting upon the occasion stated in this indictment; and, secondly, assault committed on various persons by the mob, and by them as forming part of the mob, and being actively engaged in it. Against two of the prisoners (Cairns and Turnbull) there is also the aggravation stated, that they have been previously convicted of assault. But putting aside these previous convictions, it is for you now to judge whether these charges of mobbing and rioting, and of assault, have been made out against these three prisoners. It has been proved that they formed part of the mob, and were among the rioters; and in several of the cases—I do not say in all the cases, but in several of them—they were clearly guilty of the assaults charged. In regard to the mobbing and rioting, their participation in that crime covers the whole that the mob did. The assaults we may perhaps require to bring home more particularly to individuals, but I think there is no doubt of the prisoners being found guilty of some of those assaults. Before proceeding to investigate the evidence, I may say, that it is almost unnecessary for me, addressing gentlemen of so much respectability, to utter a single word to bring to your minds, and strongly, the aggravated nature of the offence charged. Mobbing and rioting at any time, and under any circumstances, is a very serious offence by the laws of this country. It is impossible to look at such a crime without feeling it to be one of a very heinous and aggravated nature; but when it consists not merely in demonstrations of threats and violence which may alarm even persons of constant mind, but is farther accompanied with actual violence to the person, with such scenes of degrading assault as those which you have heard proved,—when such assaults are attended with the effusion of blood, with the

humiliating circumstance of persons being stripped naked, and exhibited in that state to the eyes of the people, — when you have mobbing and rioting accompanied with such assaults as these, and that continued systematically, and during the course of a whole day, from morning till evening, — then, I say, if this be not considered as a serious offence, we may just as well shut the doors of this court altogether. I will go one step farther, for although it could be stated here as a proper aggravation of the charges of mobbing and rioting and assault, that these crimes were committed on the day of an election, and at the place of the election; yet I do say that that is exactly one of those circumstances, which deeply mark the character of the offence, and aggravate it in the highest degree. I care not on what side of politics a person may vote — I care not what his political opinions may be; it is of the last consequence that every man should come to the poll free and unembarrassed, and not under the influence of intimidation, or in danger of his life. It is essential for the freedom of election that this should be the case, — a proposition which I think no man who pretends to be a good citizen, and to have the welfare of the country at heart, can for a moment deny. And when we find that freedom of election has been interrupted by such a demonstration of violence as here took place, by assaults on the persons of electors to the effusion of their blood, by tearing off the clothes of the parties assaulted, and exhibiting them as the victims of popular fury and enmity in the degraded state in which these parties were exhibited, — when we find this done by a mob taking possession of the streets of the town, occupying a place which, of all others, should be the most sacred, the place where the constitutional right of the franchise is exercised, — it is an aggravation of the crimes of mobbing and rioting and assault, which, though not legally called so, it is for you most seriously to consider, and which will convince you that in applying your minds diligently to inquire how far the charges in this indictment are made out against the prisoners, you are engaged in no frivolous matter. The most important trust is now delegated to you by the constitution, and you are, therefore, to deal with this offence in the most serious way. There is no occasion on which the crimes of mobbing and rioting and assault, and such means of carrying these crimes into effect as were used here, can be so heinous, or so intolerable in the eyes of the law, as upon the occasion of exercising the franchise. I hate, and you hate every thing which directly or indirectly interferes with the exercise of such a right, and that interference never can assume a more dangerous form, than when you find it in the hands of a mob. They carry on their disgraceful proceedings in a sacred place, — I call it sacred, because the function to be exercised there is sacred, — disturbing the election, and interfering with the freedom of electors. I care not on what side of politics the mob may be. They use violence to influence the course of the elections — I care not, I repeat, on what side; and although one or two expressions have escaped some of the witnesses, which may have led you to see the political professions of the rioters, that is a matter of no importance whatever. We have not laid before you, nor asked a single question as to the particular side on which any of those electors, whose liberty was interfered with, voted. I want to bring the case before you free from all extraneous considerations, but still as a case deeply involving the freedom of election. I only want you to divest yourselves of any feelings of this kind, that an election is to be a scene of Saturnalia, — that election crowds or mobs are to do what they please, short, I presume, of murder, and that they are on all occasions to be treated with leniency by the law and by juries, although their acts amount to mobbing and rioting, accompanied with assaults of a most dangerous and degrading character.

To detain you longer on these points would be paying you a bad compliment; for I think no man of honour can entertain an opinion different from that which I have expressed on this subject. I shall, therefore, come at once to the evidence. And the first question for your consideration regards the character of the mob in the course of that day, the 3d of August, being the first of the

polling days at the last election for the county of Roxburgh. In the indictment there are seven different charges. These charges extend over the whole day, from the morning about ten o'clock, down till a late hour in the evening. You see from the evidence of the sheriff-officers that there was considerable excitement in Hawick that day; and although the polling booth was very well protected, having a railing round it, and was near the door of the Tower Inn, yet there, where the votes were given, there was a considerable assemblage of people, evidently for no good or fair purpose, but for the purpose of tumult and disorder, and in order to carry by means of violence and intimidation certain views of their own. You will find that all the seven cases of violence were committed against gentlemen who voted at the election. The second assault charged, which is the first in point of time, was that upon Thomas Scott. You can have no doubt that the circumstances there charged are true, because they are not only proved by Mr Scott himself, but by the witnesses Goodfellow and Purdon. It is proved that Scott got out of the polling booth at the proper door of exit, and was shortly afterwards in the hands of the mob; that he was severely treated, dragged across the street, and forced or pushed into a part of the river. He lost, in the meantime, his coat and waistcoat; he was kicked and struck; and at last, with a good deal of difficulty, got into Purdon's house. And what is a material circumstance, he lost property, — his handkerchief, knife, and snuff-box. So reckless was the mob, and so little regard did they shew to what they were doing, that these articles were taken away with his clothes, and never restored to him. I do not say that there was robbery committed; but he lost his clothes and property, and was with difficulty rescued from the hands of the mob, and got into Purdon's house, and so much was he alarmed with the state of matters, that he waited there till eleven o'clock, before he had courage to go home.

The next assault was a still more formidable one, — the assault on Richard Young. He found the mob in such a state, and so violent, that after giving his vote he could not venture out at the east door, the proper door of exit. One of the magistrates told him to wait, and he did wait. At last, he did venture out at the west door of the polling booth, which being close to the Tower Inn, he imagined he might escape by getting into the inn. He almost got within the door, when he was violently pulled back by the mob, and he remained in their hands, he thinks, about twenty minutes; but another witness who saw him, and who was more cool, says he was about three quarters of an hour in their hands. He was threatened to be thrown over the bridge, which might have been attended with great danger to his life, the bridge being about ten feet in height. He was in the hands of the mob, who were uttering savage cries, till he was taken to that bridge. They did not attempt that violence which they had threatened, but they brought him back, gave him severe blows, and tore off his clothes; both his shirts were taken off, and his breeches were torn off from the knees upwards — every thing except the mere fastening at the knees. With difficulty he got into Mair's house at last.

Then the third case is that of David Tully. He, too, was struck and kicked, and had nearly all his clothes torn off, and was finally forced into the Water of Slitrig; and that was considered so great an achievement, that during the rest of that day the scene of the exploit was called Tully's Mill.

The next assault is that on Richard Patterson. He was violently seized by the neck, stripped absolutely and entirely naked, with the exception of his shoes and stockings, and very much scratched. He also received violent blows on the head, from which he did not recover for several days. I do not follow him into the house of Turnbull, for there my evidence ends. Every thing was stripped off him except his stockings and shoes. Independently of the severity of the blows, he was severely kicked upon the legs, and did not recover for days. There was blood upon him, — not, indeed, caused by a sharp instrument, or by deep wounds, but he was scratched on the surface of his skin till blood came. But independently of all that, consider for a moment how serious

an assault this is — how intolerable to any man of feeling to think of his being subjected to it. I can hardly conceive circumstances of greater atrocity in a mob. It is impossible to contemplate it without feelings of anger and detestation. Blows would hurt the feelings much less ; and you have not only blows, but, in addition, those most degrading and intolerable circumstances which have been detailed to you.

Then you will remember the assault on William Elliot of Flatt. He had given his vote in an early part of the day. He made his escape into the Tower Inn ; and with great discretion and good sense, was unwilling to go out immediately, not wishing to expose himself unnecessarily to the rage of the mob. He remained for a long time in the inn ; and, before leaving it to go home, consulted with his friend Mr Scott whether it was safe for him to go. Mr Scott went out to see ; and at last, about six o'clock, he thought that he might go. Accordingly, he got on his horse. You heard how he left the inn ; that he came out of the stable court of the inn with his horse between a walk and a trot. He had a stick in his hand, only for the purpose of managing his horse ; and in answer to the many questions put to him by my learned friend on the other side, as to how he carried his stick, he told you he was not flourishing it, but merely using it for the purpose of managing his horse. But he had scarcely got out of the yard when he was discovered, and there was the immediate cry, " Hie, hie, hie." The crowd closed upon him, impeded his way, and at last he and his horse came down ; and after he was on the ground, Mr Elliot was most severely injured, and was picked up in a state of insensibility. He was struck on the temple, and ascribes his insensibility to this blow. He was struck on the left eye, which was extremely discoloured. He is found by Walter Scott on the wall, hardly able to speak. Scott called on the mob not to go on to murder the man. They at first fell back, but they began their violence again ; such was their temper, such their fury, that they cried that he had not got enough yet — that he was not half done — and again began to attack him.

I do not detain you with the case of Oliver, though that too is distinctly proved. Every one of these seven cases of assault, with the exception of that on Mark Turnbull, have been proved by two witnesses at least, and some of them by three. And I ask you, before you come to consider to what extent the prisoners were concerned in this mob, to look generally at the character of the mob itself. It was plainly one mob, from morning till night, and intended for one purpose,—an attack on the electors who had voted in the polling booth. All those seven gentlemen so attacked were electors, and all of them had voted. You have here not so many separate riots or mobs. You have a tumultuous assemblage of people, met on the first polling day ; and their object, during the whole of this day, being to attack and punish electors who were not in their interest. I do not care on what side of politics they were. We might have proved this if necessary ; but I wanted to disembarass the case of all such extraneous circumstances ; and I ask a verdict from you which will prove that such things are not to be tolerated in this country, for, if suffered to exist, they would be ruinous to the constitution. You have these various assaults, and this mobbing and rioting proved by the most unexceptionable witnesses, of all kinds and descriptions, whose evidence refers to the proceedings of the whole day, from ten in the morning till after six or seven o'clock at night. You have one mob, attacking one particular set of persons, seizing hold of them if they could, when they left the polling booth ; and it is against those electors, in all these instances, that you find their fury manifested. You have them acting in concert for one common purpose, attacking and assaulting those persons, tearing their clothes off their backs, kicking them violently, to the serious injury of their persons, beating them about the head, stripping them naked, and forcing them into the water. And have you not, in the parties who perpetrated such acts as these, a mob of a very bad character, committing crimes of a most serious and offensive nature ?

Such being the character of the mob, it is for you to consider next what is the evidence against the particular prisoners. First, in regard to Cairns, I shall pray you to recollect how much evidence there is against him. James Scott expressly swears that he saw Cairns strike Young twice ; and he was in a good position to see this, because he was on the top of a wall when they took Young down to the bank, and afterwards, when they brought him along the Tower Dyke-side. And Michael Whyte corroborates him, for he says he saw Cairns in that part of the mob. In regard, therefore, to this particular charge against Cairns, you have it not only proved that he was in the mob, but that he was taking an active part in the violence perpetrated against Mr Young. Then William Goodfellow swears that he saw Cairns in the mob when Thomas Scott was seized. Walter Wilson saw him active in the disturbance when Richard Young was carried away. The same witness mentions the conversation which he had with him the night before, when he had endeavoured to persuade Cairns to take a part in keeping the peace ; but he refused, and used the expression that he did not care even if he were shot. This is sworn to by Walter Wilson. James Oliver says that Cairns was active in the mob when he was taken to the water ; and William Scott, tobacconist, says, that when he went to the rescue of Oliver, the person actually making the assault was Cairns, who had Oliver in his hand, and refused to quit his hold, and said he must go through Tully's Mill. Then you have James Wilson, and Angus Sutherland, sheriff officers, both of whom identified Cairns, and said that, during the whole day he seemed active and stirring in the mob. If you are satisfied with me that there was one mob here during the whole day—that there was a complete identity of purpose—that these assaults were not disconnected, but were really the acts of one mob,— then, it having been proved that Cairns was active in the mob, he must be considered as guilty, not merely of mobbing and rioting, but of all the assaults charged. Looking at the difficulty which exists in identifying every individual, in every particular assault, the wonder is that we have so much proof against him. I say that he (Cairns) is proved to have been a leader in the mob ; and I do not ask you too much, when I ask you to say that he is guilty of all the assaults. But in regard to the first, second, and sixth charges, he is proved to have been not only in the mob, but actively engaged in perpetrating the assaults. Even in regard to the assault on Patterson, although we cannot trace him into the house for the reason you heard mentioned, yet he is proved to have been at the door among the mob remaining outside. In regard, therefore, to Cairns, you cannot have the least doubt that his hand was the assaulting hand on the persons of Young, Oliver, and Thomas Scott. Besides which, having been present in the mob throughout the whole day, from morning till night, he is chargeable with the whole offences libelled.

Then, with respect to Stewart Lamb, Young swears that he struck him on his body ; and Whyte swears in corroboration, that he saw Lamb actively engaged in the crowd that committed the assault on Young. He is also proved, by the evidence of Wilson, the constable, to have been active in the crowd at different places ; and he is seen also at the door of the house into which Patterson escapes.

In regard to Turnbull there is less evidence, but unfortunately for him, and fortunately for you who have an important duty to discharge, the evidence is also clear against him. Mr Oliver, of Borthwick-Brae, when taken to the water and forced in by the mob, swears that Turnbull was one of the parties who were guilty of violence against him. He said he had not known him before ; but when shewn him in the market place, five or six days afterwards, he then identified him. Mr Oliver replied to the questions put to him here, like one who feels that he is giving important evidence, and does not wish to exaggerate ; but at the same time, he said he had no doubt in his own mind that Turnbull was the party with whom he had the encounter ; and he is corroborated by the evidence of Angus Sutherland, who knows Turnbull, and not only says

that he was one of the mob who carried Oliver away violently, but that he saw him kick at Oliver with his foot.

You see, then, how the case stands in regard to all these three prisoners. In regard to Smith, I do not seek any verdict against him. In regard to Cairns, we have his general participation in the mob sworn to by four or five witnesses; and he is farther proved to have been an active party in the first, second, and sixth charges. When we have got persons so deeply involved in the mobbing and rioting, as not only Cairns, but Lamb, and also Turnbull, are proved to have been, not merely by being present in the mob, but by being proved to have put forward their hands and assisted in the assaults, and the evidence being that the mob generally was guilty of various assaults, you would not go too far if you were to find the prisoners guilty of all the charges in the indictment. But, at all events, if you have any hesitation as to this, you have assaults proved, in which they were evidently and directly engaged, being themselves the assaulters and perpetrators. You have Turnbull so engaged in the case of Oliver; Cairns in the first, second, and sixth charges; and Lamb also, particularly in the case of Young. In these circumstances, without detaining you longer, there is, I submit, evidence against these three prisoners, to justify a verdict in the terms of the indictment.

Mr Craufurd.—May it please your Lordship—Gentlemen of the jury, it is now my duty to address a few observations to you on the part of the prisoners, and I will endeavour to trespass on your patience as shortly as possible; but I must go briefly over the evidence, and I shall request your attention to the circumstances of this case, in an order rather different from that taken by the Solicitor-General. The charge in this indictment is that the prisoners have been guilty of mobbing and rioting, and of assault. Evidence has been led with the view of bringing home the commission of certain acts of violence to the prisoners at the bar; and some evidence has also been led of a more general nature, with the intention of proving injuries received by certain individuals, and connecting the prisoners with these injuries. Now, as part of the evidence is direct, and part of it indirect, I think it not only more conducive to the laying of the case distinctly before you, but more fair to the prisoners, and better adapted for the ends of justice, to begin with the direct evidence. I shall, therefore, in the first place, attempt to point out to you what is the direct evidence against the prisoners at the bar; and then proceed to meet the observations of the public prosecutor, as to the inferences to be drawn from their presence in the crowd on the occasion referred to.

The indictment charges a number of acts as assaults committed by the prisoners. And the Solicitor-General has gone the length of telling you that sufficient evidence has been led to justify you in convicting these prisoners, with the exception of Smith, of all the assaults charged. I shall go over the cases very briefly, and I shall begin with the case of Young. The indictment sets forth that the mob “did wickedly and feloniously attack and assault Richard Young, &c. and did strike and kick him severely, and did tear his clothes, and did forcibly and violently drag him along towards the river, &c. and did continue to strike and kick him severely, and did tear off from his person the greater part of his clothes, by all which he was much injured in his person to the effusion of his blood, and was put into a state of great terror and alarm.” This is a most serious charge as stated. Is it serious as proved? I am not justifying the prisoners, if it be true that they are guilty of the charges here laid against them. But what does Young tell us? He does not say that he was seriously injured. He tells us that he most unnecessarily left the polling booth, and put himself out in the middle of the crowd, after having been desired by two magistrates to stay where he was. Why did he leave the polling booth? If he had remained there he would have been safe. But he burned for the conflict. Out he would go, and out he went; and then he is surrounded by certain individuals. Where is the proof that any of the prisoners

assaulted him? He tells you, indeed, that Lamb struck him. He does not say that he was struck by Cairns, but by Lamb. But Michael Whyte says that he was beside Young all the time — that he saw him struck; but that he did not see either Cairns or Lamb strike him. Then James Scott says he saw him struck, but not by Lamb. Young tells you that he was much agitated. You have the evidence of this much agitated man contrasted with the evidence of Scott, who was looking on coolly, and who did not see Lamb strike him; and you have the evidence of Whyte, who was attending close to Young, aiding and assisting him; and he tells you that he did not see either Cairns or Lamb strike him. If the evidence against Lamb is to rest on that of Young alone, it is the testimony of one witness to prove the crime of assault, and that witness one who is proved to have been much agitated. Yet this is the only direct evidence against the prisoner Lamb.

James Scott tells you that Cairns struck Young. But if there is any man who has shewn symptoms of loving mobbing and rioting, it is James Scott himself. He tells you that he got on the top of the bridge to see Young thrown into the river. If there is one man more than another who is to blame in these proceedings, it is the cold-blooded spectator, who, not having the nerve to put his hand to a bad deed, has the cruelty to get upon the bridge to see the crowd throw a poor man into the water. There is no proof that there was any intention in the mob to throw Young into the river. No man lifted him off his feet. There was no desire to throw him over the bridge into the water. The crowd evinced no such disposition. But you have James Scott exhibiting a deep interest to have the merriment and the sport of seeing him thrown over the bridge into the river. If you put the evidence of this man out of view, there is no proof of any of the prisoners having touched Young, or attempted to take his clothes off. If it be proved that any of them did so, I cannot say a word in exculpation of such conduct. But is there a single witness to prove that they did so? Did Young say so? No, he did not pretend to say it. Young makes a statement against Lamb, in which he is not corroborated; Scott makes a statement against Cairns, in which he is not corroborated; and you have only one witness against either of them.

The next case is that of the assault on Thomas Scott. Is there any evidence against the prisoners in that case? Scott leaves the polling booth trying to get over the paling. He is told that was not the way to come out. He comes out at the gate, and what does he say? He says, "Let me see what you will do, lads." This is the commencement. Then he is seized, hustled, and jostled; but he does not tell you that any one of the prisoners touched him, or put forth a hand to him. I am now merely speaking of the direct evidence; I shall come to the question of inference by and by. There is no attempt at direct evidence in regard to this assault. But Scott does give other evidence, which is of great consequence. The injury to him was extremely trifling, with the exception of pulling off his clothes. William Goodfellow tells you, as indicating a total absence on the part of those who followed Scott to do him any injury, that, in going down the Mill-port, they fell, and they were allowed to rise again without being struck; and that no sticks were used. Scott says, he felt a blow with a stick, he thinks, but he did not see it; but Goodfellow saw no sticks, and he was close beside Scott. Then what happens to Scott when he gets down to the river? He tells you he was thrown down the precipice; but it appears that this precipice is merely a sloping bank, three feet high down to the river. And what is this river? It is a burn a yard broad. And this is an assault—what every school-boy inflicts upon his companions every Saturday afternoon. Why, he might step across the river, and place a foot on each side of it if he liked. The river that he is made to cross is not even the Slitrig itself, but only one of its tributary streams. It is stated in corroboration by Purdon, that he saw some one break a stick from a railing; but he also added that he

did not see a blow struck. The railing may have been broken by some one catching it to prevent him from falling; and there is no reason whatever to say that it was used against Scott. In regard to the assault upon him, there is no proof whatever that any one of the prisoners laid a finger upon him. There is no proof of their touching him, either in the way of taking off his clothes, striking, or otherwise injuring him.

Then you have the case of Tully; and this was judiciously passed over lightly by the learned prosecutor. He does not pretend to tell you that any one of the prisoners were identified with this charge. There is no witness who saw the prisoners within twenty yards of Tully. It is not proved that any one of them were near him. How, then, are you to convict them of assault? Was it ever heard of, that a jury was asked to convict a man of assault, when there is no evidence to shew that he was within twenty yards of the party assaulted? I am not justifying the conduct of the crowd, but I am speaking solely to the first part of the case. I therefore throw aside the case of assault, in regard to Tully, by saying that you cannot look at it as a case against the prisoners, for there is not the slightest proof that any one of them touched him, or was near him.

The next case is that of Patterson. It is proved that both Cairns and Lamb were on the street at the time Patterson was assaulted; but it is not proved that either Cairns or Lamb (Turnbull was not there) ever touched a hair of his head, or a seam of his garment. There *was* a person who touched him. Patterson swore he was hurt; and it is fortunate for the ends of justice that the party who struck him has been sworn to. That person was John Rae, who was originally indicted along with these prisoners, but who, conscious of his guilt, has not made his appearance, and has consequently been outlawed. This man struck Patterson repeatedly and severely on the head. You have no vestige of evidence that any of the prisoners ever touched him at all; and Patterson says, that, with the exception of Rae, he saw none of them on that occasion. In regard to the assault on Patterson, therefore, you have not a vestige or shadow of direct evidence, that any of these three prisoners touched him.

Then you have the assault on William Elliot. Not a human being ventures to hint that any of these prisoners were near him. Walter Scott does not pretend to tell you so. No witness ventures to say so. Mr Elliot was more injured than any of the rest, but he was the only person who had the misfortune to suffer from other causes than from the rioters. It was much safer to trust to the hands of the rioters than to a runaway pony. There is no proof that any body struck him. Walter Scott saw no one strike him; and Elliot himself was in such a state of insensibility, that he cannot say whether he was struck or not. You have it proved that the first person of the medical profession who saw him was Mr Blyth of Hawick. The Crown Counsel knew that he was the first medical man who saw him, and who therefore could have proved the state in which he was, immediately after he was out of the hands of the mob,—but they have not called him as a witness. They go out of their way to get a doctor—twenty miles off, and the certificate they get from him is characteristic of the case, of the author of the certificate, and of the manner in which the production of the certificate of the best witness was avoided. But Mr Elliot cannot tell that any of the injuries which were inflicted upon him were inflicted by the prisoners. They might have been produced by falling from his horse. If you take the whole of the evidence together, you have no identification of the prisoners as being near him. There is no proof of any thing but a fall from his horse, and the injuries he may have received in consequence.

Then we have the case of James Oliver. He was attacked late in the evening after having voted in the morning; and it is not pretended that he was severely hurt. Being asked to identify any of the prisoners, he says that

he thinks Turnbull was the person whom he saw standing on the bank, whom he had attempted to pull into the water, and who, in consequence, kicked him. Oliver did not swear positively to this—he speaks of it merely as a matter of recollection. Admitting, however, that Turnbull is proved to have kicked him, is that under the circumstances of the case an assault? If Turnbull had previously struck him, or assisted in dragging him to the river side, then there might be a case of assault against him; but the only evidence is, that he tried to kick Oliver, when Oliver tried to pull him into the river; and, perhaps, any of you would have done the same. Oliver has not sworn that Turnbull touched him till he got to the banks of the river—till he attempted to lay hands on him; and when Oliver turns round and endeavours to get hold of this unoffending man, will you convict him of assault because he kicked at him in self-defence?

In regard to the share which Cairns is alleged to have had in the assault on Oliver, there is no proof by Oliver himself that Cairns was more than among the crowd. Then comes another witness, William Scott, who said that he had hold of Oliver on the one side, and that Cairns had hold of him on the other. It does not appear that Cairns was pulling his clothes off; because, if so, Scott must have at once seen this; and the same observation applies to the striking. You have therefore Scott within a foot and a half of Cairns, on the other side of Oliver, and he says he did not see Cairns strike him. You have the striking negatived by Scott—you have the tearing the clothes off negatived by Scott, in so far as Cairns was concerned,—and how can you find Cairns guilty of assault, for doing on the one side what Scott did on the other?

The only remaining case is that of Mark Turnbull, and the only witness is Mark Turnbull himself; and therefore, looking at the case as one of assault, you cannot consider his evidence as worthy of any consideration.

Having thus disposed of the direct evidence against the prisoners, I come now to consider the question, how far their guilt is to be inferred from their presence in the crowd. It is proved that all the prisoners were in the crowd that day. I believe I am stating the law correctly, when I say, that it is of the greatest consequence, in judging of any party's guilt of an offence, to be proved from their mere presence in the crowd, that you take into consideration this question, whether the accused ought to have been there or not. If the presence of the parties be justifiable, you cannot draw any inference of guilt from such presence. Still less if their presence be praiseworthy or laudable, can you deduce a vestige of proof against them from their being present. Now, I say, upon the broadest principles of constitutional law, that it was right that these prisoners should be there. The essence of elections is, that they should be public. It is the intention of the law, that from the moment the writ comes down, the whole proceedings shall be as much as possible conducted in public. It is the spirit of the constitution that the public shall assemble, and a numerous crowd of people be present. Why do not the electors now meet, as once they did, in small rooms? The meaning of the nomination on the hustings is, that the people shall be there; and then you have an open show of hands,—is that not a proof that the intention of the law is, that the people shall be there? Then the poll takes place; and the theory is, that throughout the whole proceedings, all should be public, though, for convenience, the people must be kept out of the polling booth. Then the declaration of the successful candidate is made in public. So far is it, therefore, from being a ground of suspicion against the prisoners that they were in the crowd, supposing they committed no violence,—their presence was justifiable and laudable; they were there exercising an unquestionable privilege and undoubted right. Then it is said they were noisy. They had a right to be noisy, if they did not break the peace. This is the very intention of an open election. It is most desirable that the expression of public opinion on such

an occasion shall be unrestrained. So far is it from affording ground of suspicion against the prisoners that they were noisy, that I say it was right that, as good citizens, they should be present, and that, being present, they were entitled to shout if they pleased, till their lungs were hoarse, for or against any party of whom they approved or disapproved. A great deal was well said by the Solicitor-General on the great danger of interference with the elective franchise. I coincide most heartily with every word he uttered. It is the principle and essence of an elective constitution, that the franchise should be entirely free. It is most desirable, on grounds of public morality, as well as of constitutional law, to repress, by every possible means, every thing that has a tendency to interfere with the freedom of election ; and all good citizens will desire to see such interference repressed. But although violence is greatly to be deprecated, and every interference with the exercise of the franchise to be put down, still, even in this view, the demonstration of public opinion on such an occasion does good, and ought not to be prevented. There are thousands of occasions on which conflicts arise between the voters' conscientious desire to discharge their duty, and their interest. There are thousands of inducements which might lead them to sacrifice their opinions to their own interests, and those of their families. Now, the counteracting agency which the constitution provides against this — the antidote for the poison — is the expression of public opinion, provided it be not accompanied with violence ; and many a man has been so checked in mid career, brought back to a sense of duty, and prevented from violating his principles, by the thought that he would be hissed and hooted if he went against what were known to be his genuine opinions. If ever it shall be possible to place a voter in a situation where he cannot be assailed by temptations to violate his duty, then he will require no check. But I know of no other check at present than the expression of public opinion on such an occasion. I maintain, therefore, that you can draw no inference from the prisoners having been present in the large crowd, and from their cheering, and being noisy and vociferous, and active and stirring in the crowd ; for in all these they are justifiably and laudably engaged. It is your duty to check violence whenever it occurs, but you are to do nothing that will check public opinion.

I go a little farther. I tell you there is no inference of guilt from their being in the small mobs. If it be proved that they were guilty of maltreating voters, pulling off their clothes, and beating them, then assuredly they deserve to be punished, and it is your duty and province on such proof to convict them. But before doing so, you will look to the evidence. It is to be borne in mind, that there were a great number of persons present in the small mobs, who had no intention of doing harm. It must have struck you, that throughout the whole of these proceedings, there is not a man attacked, but who has a protector in the crowd. You have it proved that, independently of constables and magistrates, there were a great number of respectable citizens present, cheering, I doubt not, when cheering was right, and hissing and hooting, when hissing and hooting were right ; and are you with this fact before your eyes, that these respectable citizens were in the great crowd, were active in the great crowd, and were also present in the small crowds — are you to hold that the fact of presence in any one of these crowds, is a ground of fair inference against the prisoners, that they were assaulting, or mobbing and rioting ? You have Bailie Goodfellow in the crowd, James Scott the skinner, William Scott the tobacconist, Clark the mason, Turnbull the hosier, Whyte the stocking-maker, — you have Ballantyne, Purdon, and young Wilson the quaker, — you have a host of other people all in the crowd, one here, and another there, protecting these parties ; and the parties attacked tell you there were others in the crowd anxious that they should not be hurt, and willing to protect them. Then I ask you, were there not many there who had no wish to break the peace, but on the other hand to preserve it ? This being the case, if you have

no good reason to infer the guilt of the prisoners in any of the particular assaults or acts of violence charged, what is there that can justify you in returning a verdict against them from the mere fact of their presence in the crowd? The public prosecutor has assumed that the mob had a common purpose, and that all the people who were attacked, were attacked in consequence of the way in which they had voted. But it is not proved that all these parties had voted on one side. You may have a mob here in favour of one candidate, and another mob there in favour of another, each hustling away their own opponents. How then can this be held to have been one mob? Half of these voters may have voted for Elliot, and the other half for Scott, for any thing that we can tell. It is also deserving of notice, that nobody was attacked till after he had voted. You would have thought that if they had wished to prevent the electors from voting, they would have attacked them first. Yet they all go in to vote. It does not appear that any one of them was prevented from exercising his franchise. Even supposing the whole that is alleged in this case to be true — take it as a case of riot, — so far from being an aggravated case of riot—an atrocious mob—it is the most paltry and pitiful case of riot, that ever so much work was made of. If it had occurred in Westminster, no jury in England would have convicted the prisoners. Cart loads of cabbages are there thrown at candidates on the hustings, and laughed at; ten consecutive cats are thrown at the first men in England, and laughed at. The fact is, that if you want to have free elections, you must not muzzle the people altogether. It is not to be seriously regretted that there should be a vociferous manifestation of public opinion at elections. The words of Mr Pitt were, that the practical definition of the House of Commons in this country is, that it shall be “an assembly freely elected, between whom and the mass of the people there was the closest union and most perfect sympathy.” This was the opinion of one by no means prejudiced in favour of popular rights. But if the expression of public feeling on the occasion of elections is to be repressed, instead of this consummation so devoutly to be wished, the House of Commons will become an assembly with which the great mass of the people have no concern, and in the election of which they take no interest.

The Lord Justice-Clerk. — Gentlemen of the jury, — Notwithstanding the very confident tone in which the learned counsel for the prisoners has addressed you, and notwithstanding the attempt which he has made to persuade fifteen gentlemen, sworn to perform one of the most important duties that can be committed to individuals, that you have this day been occupied with one of the most insignificant and trifling cases that ever was presented to a jury, I feel it my sacred duty to set out with stating to you that it appears to me, and to my brothers on the bench, to be a case of a most grave and serious nature, deserving the most deliberate consideration, and which the public prosecutor has only done his duty in bringing before you this day.

You know enough of this case to be aware that, in this indictment, the prisoners are charged with two distinct crimes,—first, mobbing and rioting, which is a well known crime in the law of Scotland; and, secondly, assault. You had an opportunity of hearing the decision of the Court that both these charges were relevantly laid, and I have to state to you that that decision is consonant with the principle and practice of the Court; and I have lying before me an indictment tried at the last circuit at Inverness, the structure of which is very similar to that which we have now under our consideration. Mobbing and rioting have been charged directly against the pannels, and then certain acts of violence set forth as done by the mob, and in which the pannels are stated to have been actively engaged. Now, that there was on this occasion a riotous and tumultuous assemblage in the town of Hawick, which appears to have commenced about nine o'clock in the morning, and to have continued down to at least seven o'clock in the evening, and that, having through the day diverged

to various parts of the town, they committed the different acts set forth in the indictment, there cannot be the slightest doubt. That this was a tumultuous assemblage, to the terror and alarm of the lieges, and to the breach of her Majesty's peace, has been completely proved; and it is impossible, if you have paid the slightest regard to what has been stated by the witnesses, that you can bring your minds to believe that the acts committed were of so trifling a nature as they have been represented to be. I speak here of the direct proof you have, that from the beginning to the end of that day's proceedings, the mob assembled in front of the Tower Inn—the principal inn of Hawick—and conducted themselves in such a manner, that there was hardly a single pane of glass left entire in the windows of that house.

But when you come to consider the violence actually inflicted on the different individuals who were assaulted, can you for a moment assent to what you have been told, that what was done here is so trivial and insignificant as to be utterly undeserving of attention? You have heard the evidence as to the assaults committed upon these parties, as to their clothes having been torn from off their persons, to their severe injury, stripping them almost stark naked, and then forcing some of them down to the water of Slitrig, into which they were pursued with extreme violence. It is extremely convenient for the learned gentleman to treat the case in the way he did; but you will agree with me, gentlemen, that if he had been there, and treated in the same way in which these able-bodied borderers were treated, that he would probably have been of a very different opinion as to the injuries sustained. Apart from all considerations of a general nature, I have to tell you that the law is quite clear on the subject of mobbing and rioting. Persons who are clearly proved to be in the mob—not accidentally present—not present to keep the peace, (which, as one of the witnesses said, must be kept at all hazards,) but actually witnessing the acts of the tumultuous assemblage, are held by law to be guilty of those proceedings. It was well and satisfactorily observed on a former occasion by my brother on my left, (Lord Cockburn,) that when persons are present on an occasion of this description, when acts of violence are committed before their eyes, if they remain there except for the purpose of helping others out of the violence of the mob, they are guilty of those acts of violence; and in order to be safe on such occasions, they must either assist to keep the peace, or go home to their own houses. It is proved in this case that Bailie Goodfellow, and other respectable citizens of Hawick, had gone into the crowd to endeavour to prevent violence, but in vain. All their efforts to preserve the peace were set at nought, and you will hold it just to be a proof of the magnitude of that mob, and the aggravated nature of its proceedings, that it set the authorities entirely at defiance. But it is not on the general views laid before you, either from the bench or from the bar, that you are to rest your verdict in this case. You are to look to the charges, and to the evidence in support of those charges, and, after doing so, I think you can have no difficulty as to what your verdict ought to be.

The first assault charged is that on Richard Young. He was kicked on the legs, and there was blood on the back part of his neck. He swears to the whole of his clothes being torn off; and he tells you that the person who struck him on the body was the prisoner Lamb. The next witness is James Scott. He took his position on the dyke, to see that done, which he had heard threatened to be done to Young. I do not think that it is an act to discredit the truth of his statement, that he got on to the dyke to see this done. He told you of the determination of the mob, and the statement he had heard from them that they would throw Young over the bridge; and he went to see if they would carry their purpose into execution. You will observe, too, that he says "the mob created terror and alarm," the description given of it in the indictment; and he says farther, "it was dangerous in my eyes." This witness swears positively that he saw the prisoner Cairns strike Young twice on the

head; and Young swears that Lamb struck him on the body, and not on the head. The third witness, Michael Whyte, corroborates the preceding witnesses. He saw Cairns and Lamb in the crowd going up the Dyke-side, when this man was assaulted. He saw nothing as to what they were doing, because his attention was taken up in saving himself and rescuing the man. Here is a third witness swearing to the material fact that Young was struck on the head, though he could not tell by whom. Then we have the evidence of Walter Wilson; and that, gentlemen, is the evidence as to the first charge, that of the assault upon Young, committed by that crowd in which Cairns and Lamb are proved to have been.

The second assault is that on Thomas Scott, who details a good deal of what is represented to you as the innocent proceedings of the mob towards himself. You will observe, too, that it was said that the assault on Turnbull rested on the testimony of a single witness. But this witness (Thomas Scott) swears that he saw others subjected to similar treatment to that which he met with himself; and specially states he saw Turnbull so treated. He saw the assault on Turnbull; and you have Turnbull giving a minute account of that assault. You have, therefore, two witnesses to it. Scott's evidence as to the assault on Turnbull is just as good as his evidence as to the assault on himself. This man having his property taken away, affords another proof of the violence of the mob. And you have the continuance of these violent proceedings, more or less violent at different times, from nine o'clock in the morning till seven o'clock in the evening. [His Lordship then read the evidence of William Goodfellow, Walter Purdon, David Tully, and Francis Ballantyne, without particular comment.]

Then comes the evidence of Robert Patterson, which clearly establishes the assault against him, down to that point at which the evidence was found incompetent, because the house in which Patterson had taken refuge was not the house occupied by Jane Riddell, or Turnbull, as set forth in the indictment, but by her son. In regard to this assault, too, you have the evidence of Margaret Brown, or Anderson. Then comes that of Walter Wilson, skinner, who tells you of a most remarkable conversation which he had the night before these proceedings with the prisoner Cairns, apparently the leader in this mobbing and rioting. He takes a prominent part in this tumultuous assemblage, after having been not only solemnly warned against such proceedings, but requested to come forward, and be active and co-operative in preserving the peace. He was fully aware that Bailie Goodfellow had received power to call in the military, and that the peace must be kept at all hazards. He was warned of all this; and more, that he might be shot. What is his answer? He expresses no intention whatever of coming forward to keep the peace,—he says he did not care whether he was shot or not, he was willing. You will consider of what importance this is, in regard to the charges made against him in this indictment. You find him expressing a determination to disregard consequences; "he did not care, he was willing" to be shot. You, gentlemen, are the judges of the weight that is due to this testimony. But it appears to me to be of a most important and decisive nature, and such as seldom occurs in cases of this kind. You have the consequences of the proceedings brought under his consideration the previous evening—you have him warned and asked to assist in preserving the peace, and you have the answer he made. I have another observation on this evidence. You have this man most distinctly and emphatically proved to have been asked, along with other respectable individuals, to assist in preserving the peace of the town, and rescuing it from the disgrace that attaches to places where riots are committed. You have witnesses swearing that various persons did go into that crowd to preserve the peace; and you have the real evidence that their efforts were vain and fruitless; that this tumultuous assemblage set these efforts at defiance; and instead of their succeeding in preserving the peace, that it was violated again and again. The

windows of the Tower Inn continued to be demolished down to the last period of the riot. This will satisfy you what the character of the mob was ; and instead of being an ordinary ebullition of sudden political excitement, you have the deliberate purpose of an individual evinced the night before, and carried into execution,—leaving you no doubt whatever that the crowd assembled there, was met for no laudable purpose ; that the parties composing it assembled not to exercise their rights as British subjects, to give a shout and a cheer now and then ; but with the deliberate purpose of violating the rights of individuals, and committing the grossest outrages on their persons. The attempt, by cross interrogatory, to prove that many respectable persons were in the crowd, and yet that all these acts of violence were committed, instead of supporting the case of the prisoners, is one of the strongest circumstances of evidence against them.

Then you have the evidence of John Hardie, also, in regard to the assault on Patterson. What Hardie seemed to think an offence of a trifling nature, spitting on an individual, is an assault. And there occurred, not long ago, a case of a person who brought a civil action against an individual for spitting upon him, and the Jury returned a verdict in his favour, with damages to the amount of £ 40. So that this offence, which this witness seemed to think as a matter of no consequence, is an assault in the eye of the law.

Then comes the evidence of William Elliot. It was said that he suffered no violence at all from the mob. But he swears he got a severe stroke on the temple, which rendered him insensible. This insensibility was not occasioned by the falling of his horse. He was cut on the eye, and on different parts of his body. He was hurt on the left side, and you will observe that his horse fell on the right side. Farther, the testimony of Walter Scott proves to you that he was in the hands of the mob, and that it was from them that these injuries were sustained. This witness tells you that when he went up to where the crowd were surrounding Elliot, he found him lying over a stone wall about a yard high in the condition which he described,—that he cried to the crowd for the love of God to spare the man's life, — that the crowd fell back a little, but afterwards yoked upon him again, crying that he was not half done. He swears to the words he used, “for God's sake spare the man's life.” Does not this shew that the witness was thoroughly impressed with the conviction that Elliot was in the hands of the mob, and in a dangerous and alarming position. Nor did they get quietly into Mair's house — for the crowd yoked on him again. Judge, therefore, whether this is not the fullest corroboration of the evidence of Elliot himself, as to the injury he received on that occasion. Some observations were made as to the prosecutor not bringing a certain medical person in Hawick, to give the best evidence as to the injuries which Elliot sustained. But although Mr Blyth has not been called, you have a witness who saw Mr Elliot the next day when he had returned home, and who, I presume, was his ordinary medical attendant ; and he describes, —perhaps not in the phraseology of a highly educated man, but certainly sufficiently clearly,—what the injuries were which Elliot had received. I submit to you that there is nothing in the observation that this Dr Blyth was not a witness in this case. But his being called into Mair's house proves the conviction of the persons present, of the magnitude of the injuries Elliot had received.

The next assault charged is that upon James Oliver. We have this witness swearing that the crowd got him into their hands, and wanted to make him take an oath, which must have been an unlawful oath ; and because he refused to take this oath, they forced him down to the water. This witness says that Cairns was the man who insisted upon his swearing. He tells you that he was forced into the water, and when standing on the brink, or on a stone at the water's edge, he attempted to disengage himself the best way he

could, or resolved, at least, if he was to be maltreated, that others should be treated in the same way; and he states distinctly to you that he tried to get hold of one of the crowd to pull him into the water along with him; but so far is this from forming any justification to the mob for the treatment which he received at their hands, that he might have defended himself to the utmost, let the consequences be to his assailants what they might. You have his evidence fully corroborated by that of William Clark and of William Scott.

Then comes the assault upon Mark Turnbull, the last charged. No doubt the injuries which he received did not hinder him from riding nine or ten miles, the second day after, and back again; but he describes that he was kicked, and his clothes torn from him, all except his breeches; and you will recollect that another witness (Thomas Scott) says that this man had been treated in the same way that he had been treated himself; and therefore you have two witnesses to this assault upon Turnbull. (His Lordship then read the evidence of John Wilson and Angus Sutherland.)

These, gentlemen, are the proceedings of this crowd, who, we have been told, merely came to do what they had a right to do during the election. The sheriff-officer, Sutherland, tells us that this crowd continued to throw stones and break the Tower Inn windows the whole day. I do emphatically say to you to take pen, ink, and paper, and state in stronger terms, if you can, a case of interference in the riot by this man Cairns, than those employed by this witness. He was disorderly — he interfered with the constables who were keeping the crowd off, and would not be put away — he broke the ranks of the constables, who were placed in the situation in which they were placed, for no other purpose than to preserve the peace. If they are interfered with, — if their ranks are broken, I say to you that it is a most unequivocal demonstration of determined rioting and mobbing, on the part of the individuals so acting.

I have thus brought the whole evidence before you. The only declaration of these prisoners which has been read to you is that of Turnbull; and to every question of an important nature, calculated to shew where he was, and what he was doing at different times that day, he declines to give any answer. There is no evidence brought in exculpation, either by him or by either of the other prisoners. There were a variety of individuals who went into the crowd for a laudable purpose. This was proved out of the mouths of the witnesses; but not one of those individuals has been called by the pannels, either to contradict any part of the proof on the part of the Crown, or to give any palliation of the conduct of these prisoners, or to satisfy you that they also were there for any innocent or laudable purpose, and not for the purpose of taking a part in these riots. Not a vestige of evidence has been brought in their favour. That there is complete proof of assaults having been committed on all the individuals stated in the indictment, is a proposition too clear to require a single word from me. These assaults have been proved; and besides the prisoners being shewn to have been participant in and active promoters of the whole proceedings of the mob, some at least of the acts of violence charged are proved to have been actually inflicted by their hands. The prosecutor, therefore, is in a situation to avail himself of the fact, that the assault on those seven individuals is aggravated, in the case of two of these prisoners, by a previous conviction of that crime.

This, gentlemen, is the case in which your verdict is required; and having stated to you the whole amount of the evidence, leaving you to draw from it your own conclusion, I bring to a close the long address with which I have thought it necessary to trouble you. I am quite confident that you will feel it to be your duty to look to that evidence, and to that evidence alone, and pay no regard to any general declarations as to the right of the people to shew their feelings and attachments at elections. I coincide most completely in the statement, that the peace of the country must be preserved at all hazards.

An election crowd are not entitled to commit assaults — they are not entitled to tear the clothes from off the backs of electors — they are not entitled to keep possession of a town, I may say, in defiance of its magistrates, and in defiance of the efforts of all its loyal and peaceful inhabitants to preserve the peace. These are proceedings which the law of this, and of every well regulated country, can never tolerate. It remains with you now to return your verdict on the evidence brought forward by her Majesty's Solicitor-General, in support of those charges of mobbing and rioting, and assault, which he has thought it his duty to his country and to his sovereign to bring before you.

The Jury retired; and, after an absence of about twenty minutes, returned a verdict in the following terms: —

“The Jury, by a majority, find James Cairns guilty of the first and sixth charges of assault as libelled, and guilty of mobbing and rioting as libelled. And, by a majority, find Stewart Lamb and James Turnbull guilty of mobbing and rioting as libelled, and find James Smith not guilty.”

The Lord Justice-Clerk.—Gentlemen of the Jury,—We return you our best thanks; and I have to state to you that you have expressed your verdict in very clear and distinct terms. I now relieve you. I agree with you in your verdict so far as you have gone.

The Solicitor-General having moved for judgment — *the Lord Justice-Clerk* proposed that the sentence of the Court should be delayed till the following day.

The Court then adjourned.

On the following day, (Tuesday, December 19,) the prisoners, James Cairns, James Turnbull, and Stewart Lamb, having been again placed at the bar,

Lord Mackenzie proposed sentence in the following terms: — My Lords, by the verdict of the jury, all the three prisoners at the bar are convicted of the crime of mobbing and rioting; and one of them, James Cairns, is convicted not only of that crime, but also of the additional crime of assault in two different instances. The punishment which it is our duty to inflict on the prisoners must bear reference to this distinction. In the first place, it must be applicable to the two prisoners, Turnbull and Lamb, who have been convicted of mobbing and rioting, and then, in addition, it must be applicable to the prisoner Cairns, who has been found guilty of the farther crime of assault. I certainly feel obliged to agree with the opinion which your lordship expressed last night in your charge to the jury, that this is a serious case. It is utterly impossible for any party, taking what view of it he may, to regard it in any other light, than as a serious case in every respect. It is serious, because it was a disturbance of the peace of the grossest description. The mob seems to have taken possession of the town, to have overpowered the authorities, and to have rendered the zealous interposition of some, probably of all of the magistrates of no effect, and we cannot doubt that this state of things excited the utmost alarm in the minds of the lieges. In reference to the design of these proceedings, to the occasion on which they took place, to the purpose for which they were got up,—in this light I also view the case as one of a very serious description. Some attempt was made to represent the riot as of a trifling description; but no eloquence, no ingenuity, could sustain such a view of the case. It was a mob evidently intended to have the effect of controlling the right of free election of a member of Parliament. This I can never consider otherwise than as a most dangerous species of crime. It is of vital consequence to our constitution, that the representatives of the people shall be freely chosen. There may be many things done against the freedom of election, many things done improperly, many things done criminally, and many things which ought to be restrained; but it is evident to common sense, that of all the dangers to the freedom of election, none can be so great as that of the

application of unlawful force to the persons of the electors on the very occasion of giving their votes. If men, when they come forward to exercise their franchise, are to feel themselves delivered up to violence at the discretion of lawless and furious persons, there is an end to all freedom of election. It would be a jest to talk of a constitution founded on the representative system, if such things as these were allowed to go on, or were not to be checked by the strong arm of the law. They could have no other effect than to overthrow the constitution altogether. It is said, indeed, that, in a neighbouring country, liberties are taken in this respect at elections. It may be that many things are done there, which are not correct or proper, or agreeable to good manners, and which, nevertheless, it may not always be expedient to follow out to their full consequences; but that any thing similar to what has existed in this case is there tolerated, I have not the most distant conception. Did any of us ever hear that at Westminster, or any where else, the place of giving the suffrage was beset by a mob—that men, when returning from giving their suffrages, were taken prisoners by that mob, and treated as the voters of the county of Roxburgh have been proved in this case to have been? Was a case ever heard of, where voters were laid hold of, in the streets of Westminster, beaten, and stripped naked, and thrown into the adjoining river, without the parties in such outrages being visited with condign punishment? If such was the practice in England, it would be a miracle that under a constitution where such practices were tolerated, that kingdom should have attained so flourishing and so powerful a condition. I am not aware that the law has ever there been so relaxed, as to allow such practices as have been here proved to have taken place. For this reason alone, therefore, I think that this is a grave case. What was done was evidently done for the purpose of controlling the freedom of election, for the polling booth was taken possession of; the mob were not in the polling booth, but they surrounded it, and the moment the electors came out, after giving their votes, they were subjected to the treatment which we have heard proved. If the purpose, therefore, is taken into consideration, and the means by which it was carried into effect, it certainly renders the case any thing but a light one. I am most anxious to do justice to the prisoners; I do not wish to view their case with more severity than is absolutely necessary. I am willing and anxious to admit in favour of this mob all that can be admitted; and I believe it to be true that they had no intention of acting without some measure. I believe they had no design against the lives of the electors, or any design to inflict on them enormous bodily injury; and I say this, because I do not see that life has been destroyed, or that enormous bodily injury was inflicted; and because I see too well, that if they had intended either, there was nothing to prevent them effecting their purposes; for they had got possession of the town—the legal force was overpowered—they had the bodies of these men in their power, and might have done any thing to them that they pleased. I am willing to suppose that they did not intend to carry their violence any farther than they actually did. But, still, what was done here was very far from what can be received with any thing approaching to levity. Seven different persons who had done no wrong whatever,—who had given no offence whatever to any living being,—who had exercised their franchise legally and rightfully,—are immediately laid hold of by a violent mob, beaten, shoved along the street, thrown into the water, and subjected to all the dangers resulting from such an immersion. But what, in my opinion, is much the worst feature in the whole of this case is, that their clothes were torn off from them, and they were exposed in that degrading condition of nudity, on the public streets of the town. I must say that what has been stated and proved against these prisoners, I have heard with deep regret. I should have thought that there was not a town in Scotland, or in civilized Europe, where it was possible to have persuaded a numerous assemblage of the people, no, not the

least respectable among them, to have acted in this way ; laying hold on decent people, stripping them naked, and driving them along the streets of their native town, and immersing them in a river. Acts of such cruelty—of such revolting indecency—I should have thought impossible to be caused by any excitement that could be applied to Scotsmen. I am sorry to say that the proof to the contrary is now too clear ; and I am afraid that when we speak again of the high character of our population, foreigners will be apt to point to this case, as justly calculated to moderate our national vanity. I do consider this matter in a very serious light indeed ; and every man must consider it in the same way, who puts to himself the question, what he would feel, or what his friends would feel, if treated in a similar manner. What would be the ordinary feelings,—I do not say of gentlemen, but of respectable men,—at the idea of being stripped naked, driven in this condition through the streets of their native town, and treated as those seven individuals were ? Many men would consider such treatment worse than death, and would resist it to the death ; and there is no man who is not degraded below the level of humanity — certainly below that of civilized humanity — who would not feel it as a most wretched calamity. And yet it is true that this mob, in execution of their purpose of interfering with the freedom of election, inflicted those great evils upon a variety of individuals. With more or less violence, they so treated seven different persons. It is impossible that we can visit such a crime with any other than a serious punishment. I do not wish to go beyond what is reasonable. I look on the case calmly, and am willing to take as low a punishment as can have the effect of preventing such riotous proceedings in future, and checking in these men, and the many others who shared their guilt, the supposition that they can, with safety to themselves, continue to commit such disgusting outrages. With regard, therefore, to the two prisoners, Turnbull and Lamb, I propose that they shall be imprisoned in the jail of this city for the term of one year. With regard to the other prisoner, Cairns, he has been convicted not only of mobbing and rioting, and thus proved to have shared in the guilt of the whole mob along with the other prisoners, but he has been proved to be the agent in two of the assaults, and those amongst the worst that were committed ; he put forth his own hand to them, and inflicted personal violence, and that after having been previously convicted of another charge of assault. He cannot say, therefore, that he was tempted into this crime merely by any feeling of political excitement, however miserable such an excuse would be—he cannot say it was passion which tempted him, insufficient as that is as a palliation, for he was an assaulter before, and ought to have held his passions in restraint, — but he comes before us as the principal agent in two assaults, again committing crimes similar to those for which he had been previously punished. As to him, therefore, I propose that he shall suffer the punishment of imprisonment for eighteen months.

Lord Cockburn, — I concur entirely in the proposed sentence, by which two of these prisoners are to be imprisoned in the jail of this city for one year ; and the other, who has been found guilty of mobbing and rioting, and assault for the second time, for the term of eighteen months. And whatever else may be said or thought of this sentence, I am perfectly satisfied in my own mind, that nothing can be justly said or thought against it on the score of over severity. On the contrary, my opinion is, that the administration of the law would have permitted us, without any imputation of impropriety, to have gone a great deal farther ; for I consider this a very serious case indeed, not merely from the violence of the mob, and the assaults which were committed, but particularly from the occasion on which these offences were perpetrated. The chief aggravation of this case, in my eyes, in place of being any palliation of it — its chief atrocity, in my eyes — arises from the circumstance that the crimes were committed in the midst of an election — committed not merely in the midst of an election, but for election purposes — for the purpose of obstructing

the freedom of election. I do not know if there are many people who have a stronger sympathy than I have, with the formation and expression of popular political opinion, and I do not know that there are many, who are disposed to look even on the excesses that attend political excitement, with a greater degree of indulgence and tolerance. All vociferation, which we heard something of—all exulting show by banners, convocations, or otherwise—all expression by each party of its own sentiments—all exultation, and all verbal defiance and ridicule of the enemy,—all these are the natural adherents, and are part of the uses of elections. But it is just because I am a friend to popular election, and grateful for the possession of the existing law, that I must, even independently of the place where I sit, be a determined enemy to all election violence. I know not what that freedom of election is, which consists in this, that when I give my honest vote according to my own opinion, I may be turned out on the streets of my native city, in the degrading plight alluded to—a situation so degrading, that there are thousands of men—perhaps a majority of mankind—who would take the lives of their assailants, and willingly lose their own, rather than submit to it. That freedom of election is not the freedom of election that is meant by the law and constitution of our country. We were told that such scenes were not uncommon in popular England. I do not admit that to be the fact. But it will be recollected that the scenes that did disgrace the popular elections of England were so extraordinary, and lasted for such a time, that, even independently of the recent change of the law, it amounted almost to an absolute certainty, that some minor changes would have been introduced, both to shorten the periods of election in that country, and multiply the places where votes were given, in order to put an end to them. But we have nothing to do with what has taken place, or may take place, in another country. We are in the beginning of a new system in Scotland, and I am anxious to see it begun rightly. I am anxious to see the law enforced from the very first, that the people may not be betrayed into the intolerable thought, that elections are to be the occasions selected for popular outrage and personal violence. I do trust that this case will make an impression, not only on the minds of the prisoners, but that it will go forth to the minds of all electors throughout all the elections of the country, so that every man disposed to mobbing and rioting, and such scenes as these, shall know that we never shall have a public prosecutor by whom such things shall be overlooked, that we never shall have a Court that will not administer justice, and probably never have juries that will not remember their oaths, but that all will resolutely set their faces to protect freedom of election, by repressing those outrages by which that freedom is destroyed. I thought it right to state those views; but it is not necessary that I should enlarge upon them more. Trusting that the example will not be lost, I go into the proposal for a punishment, which, if I believed that such a case was to occur again, I should consider blameably lenient.

The Lord Justice-Clerk. — Having had occasion, in addressing the jury, to express very fully the opinion which I entertain, as to the very serious nature of the case which was submitted to their determination, I do not feel it necessary for me to enlarge on that topic at present, more especially after I have had the satisfaction of hearing your Lordships, in so clear, so able, and so impressive a manner, state the views you entertain of this case, which I find to be in entire accordance with my own. I feel it my duty, however, to say, that I most entirely concur with both your Lordships, as to the views you have taken in regard to the supposed motives that influenced this outrageous and tumultuous assembly that took place in the town of Hawick. I do entirely agree with your Lordships, that, instead of those proceedings being, by any possibility, to be considered as a mere indication of that feeling of freedom which ought to characterize, and which has characterized the inhabitants of this kingdom, these proceedings were directed against and manifestly intended

to have the most positive interference with the freedom of election. They were measures not only of a most disgraceful and indecent nature, *quoad* the individuals assaulted, but the proceedings themselves were manifestly intended to have an influence on the freedom of that election; because the evidence in the case establishes this, that these proceedings commenced so early as the hour of nine o'clock on the morning of the first day of polling, and were continued down to the hour of seven o'clock in the evening, long after the polling had closed for that day. Having exhibited such hostility, for what purpose could these proceedings be resorted to, but for the purpose of deterring all decent and honourable electors from taking any farther proceedings in the election at that time, and to impress on them the feeling that they could only do so, by the risk of encountering similar treatment to that which had been exhibited in the course of the first day? They were, therefore, in my opinion, a direct and manifest interference with the freedom of election. I concur with your Lordships also, in thinking that this case is most important in all its bearings. It will demonstratively prove, that proceedings of this description cannot, and never shall, escape the cognizance of the public prosecutor; who has, on this occasion, in the most manly, able, and conscientious manner, discharged his duty to the public, by bringing the prisoners to this bar; and who has conducted the case in a manner which, I am sure, must have afforded to your Lordships, as it has done to me, the most entire satisfaction. The jury also, notwithstanding the ingenuity of the learned counsel for the prisoners, have faithfully performed their duty; and in doing so, have rendered a most important service to their country. I do entirely concur with the proposed punishment, and with the observations of my learned brother on my left hand, (Lord Cockburn,) that if any man attempt to find fault with this sentence, it cannot be on the ground of its severity.

James Cairns, James Turnbull, and Stewart Lamb,—in addressing to you the few observations which I have now to make, I have no wish to say any thing on the nature and magnitude of the crimes of which you have been guilty. You have had an opportunity of hearing the opinions of the whole Court on that subject, and I shall say nothing more upon this point; but I feel it to be my duty to notice the situation in which you, James Cairns, particularly stand; for it was proved, in the most satisfactory manner, that you had, the day previous to these most outrageous proceedings, been warned as to the consequences of conduct such as you have been guilty of. Whether the advice given to you was suggested by the knowledge that you had been guilty previously of the crime of assault, or by some discovery of your intentions, I know not; but we have it proved that you were warned against taking part in any such proceedings. Notwithstanding that advice, you persisted, as we must now presume, in your determination to take the active part that is proved against you. From the beginning to the end your conduct was most disgracefully violent. It is impossible that a person thus warned, who was previously convicted of the crime of assault—who knew well that it was a breach of the peace, which would render him amenable to the laws of his country,—it is impossible that he can be viewed in any other light, than as being guilty of a most daring offence. You are, therefore, sentenced to eighteen months imprisonment in the jail of this city. You two also, James Turnbull, and Stewart Lamb, have been convicted of mobbing and rioting, which crime includes and covers the whole of those seven assaults on the electors,—a jury has convicted you of this crime, and you, therefore, share in these disgraceful proceedings. Your imprisonment will be for the limited period of twelve calendar months. During the time of your imprisonment, I hope all of you will reflect seriously on your past misconduct, that you will form resolutions of for ever abstaining from similar proceedings in time to come; because if you do not, and are again convicted of any similar offence, you may rest assured that although we have in this

instance awarded against you a lenient punishment, yet on another occasion the sentence of this Court will be one which will remove you from the country,—that country on which you have brought such disgrace. I do hope the result of the proceedings in this case will have a salutary effect on the country at large — that Scotland will no more be disgraced by such scenes — that electors and non-electors will be taught, that if they take part in such proceedings, the arm of the law is sufficient to reach them, and effectually to repress such crimes.

Mr Craufurd.—My Lords, the prisoners request that I should communicate to your Lordships their extreme sorrow for the offences of which they have been guilty, and their grateful thanks for the leniency of the sentence which your Lordships have pronounced against them.

The Lord Justice-Clerk. — The Court have heard your communication with great satisfaction.

The Court then adjourned.

EDINBURGH:

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