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THE GRANT PARISH PRISONERS

Trial in the United States Circuit Court

JUDGE WOODS' CHARGE--WAITING FOR THE VERDICT.

The seventeenth day's proceeding in the trial of W. J. Cruikshank and others, charged with conspiracy and murder in Grant parish last April, opened in the United States Circuit Court yesterday by Judge Woods delivering his charge to the jury. We publish that document entire, accepting it as a page in the history of Louisiana.

J. R. Beckwith, United States attorney, for the prosecution.

R. H. Marr, W. R. Whitaker, E. J. Ellis, W. Ryan, and — Bryan, for the defense.

The United States vs. William J. Cruikshank and others.—Judge Woods charged the jury as follows:

The indictment in this case is presented jointly against ninety-eight persons. Only nine of them have been arrested and brought to the bar of the court, and are now on trial. These are William Cruikshank, John P. Hadnot, William B. Irwin, Denis Lemoine, Oscar Givens, Thomas Hickman, Alfred Lewis, Clement Penn and Prudhomme Lemoine.

The indictment is based upon the alleged violation by the prisoners at the bar and the other persons indicted of the sixth section of the act of Congress approved May 31, 1870, entitled "An act to enforce the right of citizens of the United States to vote in the several States of this Union, and for other purposes." (16 Stat., 141.)

The section reads as follows: "That if two or more persons shall band or conspire together, or go in disguise upon the public highway, or upon the premises of another, with intent to violate any provision of this act, or to injure, oppress, threaten or intimidate any citizen, with intent to prevent or hinder his free exercise and enjoyment of any right or privilege granted or secured to him by the constitution or laws of the United States, or because of his having exercised the same, such person shall be held guilty of felony, and on conviction thereof shall be fined or imprisoned, or both, at the discretion of the court," etc.

The next section of the same act declares: "That if in the act of violating any provision in either of the two preceding sections, any other felony, crime or misdemeanor shall be committed, the offender, on conviction of the violation of said sections shall be punished for the same with such punishments as are attached to the said felonies, crimes and misdemeanors by the laws of the State in which the offense may be committed."

This statute is the law of the land, and it is your duty and mine in a proper case to enforce. Its purpose is the protection of all citizens of the United States of every class and condition, in the exercise and enjoyment of their lawful and constitutional rights. Its operation is equal. Its prohibitions are directed to all persons; its penalties fall upon all offenders against its provisions of every race, condition and party. No man who takes care not to invade the constitutional or lawful rights of another can be touched by it, and it protects alike the rights of all. It applies to all parts of our country, and its provisions extend to every State and Territory in the Union.

It is a just and wholesome act, designed to promote peace and public order, to protect every citizen, whether lofty or lowly, rich or poor, learned or ignorant, in the free exercise and enjoyment of all the privileges and immunities which are granted or secured to him by the constitution and laws of his country. All classes of citizens, whether white or black, without regard to race or previous condition, are interested in its enforcement.

The offense charged is not a political offense, as that term is generally and properly understood. This is simply a prosecution against the accused for an alleged invasion of the lawful and constitutional rights of others, and you are to pass upon it, and try it just as you would an accusation of any other felony.

You will therefore dismiss entirely from your minds the idea, if such an idea has found lodgment there, that the prosecution is in the interest of any political party or faction. It is in the interest of the whole people; it is in the interest of peace, public security, and of public order. It is true that the persons who seem to have suffered from the alleged violation in this instance of law have belonged to the colored race. But it may sometime become my duty and the duty of some of you to try, under the provisions of this act, men of African descent for invading the rights of white citizens. It is your duty and mine to administer the law without regard to persons, and to do equal justice to all classes of citizens. Come, then, to the consideration of this case with minds free from prejudice and determined to render a just and true verdict, according to the law and the evidence.

Throughout your investigations there are two humane maxims of the criminal law that you should bear in mind. These are: First, that the prisoners at the bar are presumed in law to be innocent until their guilt is shown; and second, that no man should be convicted of a criminal offense until his guilt is established beyond reasonable doubt. The first rule puts the burden of proof upon the government; the accused is not called upon to offer evidence to exculpate himself until the government has made out, by proof, a prima facie case against him. Until that is done, he is to be considered an innocent man. The second rule means that the guilt of the accused must be made so clear that a reasonable man would not hesitate to act upon the proof of guilt; that the evidence should be so strong as to be inconsistent with the innocence of the accused; so strong that it can be explained on no reasonable hypothesis but that of guilt, of the accused.

The prisoners at the bar are brought to trial upon an indictment containing thirty-two counts.

The first count charges that the ninety-eight persons therein named, including the nine prisoners at the bar, on the thirteenth of April, 1873, at Grant parish, in the district of Louisiana, unlawfully and feloniously did band together with the unlawful and felonious intent and purpose one Levi Nelson and one Alexander Tillman, said Nelson and Tillman being citizens of the United States and of African descent, unlawfully and feloniously to injure, oppress threaten and intimidate, with the unlawful and felonious intent thereby the said Nelson and Tillman respectively to hinder and prevent in the free exercise and enjoyment of the right to peaceably assemble together with each other and other citizens of the United States for a peaceable and lawful purpose, the same being a right granted and secured to the said Nelson and Tillman, in common with all other good citizens of the United States, by the constitution and laws of the United States.

The next seven counts all charge a like banding together, and only differ from the first count and from each other in the ultimate intent with which the banding together is alleged to have been done.

The second count charges a banding together of the indicted parties with the intent to injure, oppress, threaten and intimidate Nelson and Tillman with the purpose to hinder and prevent them in the free exercise and enjoyment of their constitutional right to bear arms for a lawful purpose.

The third count charges a banding together with the intent to injure, oppress, etc., Nelson and Tillman with the purpose to deprive them respectively of their lives and liberty of person without due process of law.

The fourth count charges an intent to injure, oppress, etc., with the purpose to prevent and hinder Nelson and Tillman in the free exercise and enjoyment of the right to the full and equal benefit of all laws and proceedings enacted by the United States and the State of Louisiana for the security of their persons and property at that time enjoyed within the State of Louisiana by white citizens of the State.

The fifth count charges the intent to injure, oppress, etc, with the purpose to prevent and hinder Nelson and Tillman, on account of their African descent, in the enjoyment of their constitutional and lawful rights, privileges, immunities and protection, granted and secured to them as citizens of the United States and State of Louisiana.

The sixth count charges the intent to injure, oppress, etc, with the purpose to prevent and hinder Nelson and Tillman in the free exercise of their respective right to vote at any election to be thereafter by law held in the State of Louisiana or in the parish of Grant, said Nelson and Tillman being lawful voters.

The seventh count charges the intent to injure and oppress, etc., with the purpose to put Nelson and Tillman, severally, in great fear of bodily harm, because they, having a lawful and constitutional right so to do, had voted at an election held on the fourth day of November, 1872, and at divers other elections before that time held by the people of the State of Louisiana.

The eighth count charges an intent to injure and oppress, etc., Nelson and Tillman with the purpose to hinder and prevent them in the enjoyment of every, each, all and singular, the several rights and privileges granted and secured to them by the constitution and laws of the United States of America.

The next eight counts of the indictment, numbered from nine to sixteen inclusive, are respectively identical with the first eight counts, with this single difference: Instead of charging that the indicted persons banded together, it is charged that they did combine, conspire and confederate together with the several intents and purposes laid respectively in the first eight counts.

The eight counts numbered from seventeen to twenty-four inclusive, are identical with the first eight counts respectively, except that to each of these counts is added the averment that the indicted persons, while so feloniously banded together, and in the act of committing the felony, in these counts charged did commit the crime of willful and malicious murder upon the person of said Alexander Tillman.

The last eight counts are identical with the eight first named, except that they charge a combining and conspiring together instead of a banding together. And to each of these last eight counts is also added a charge of willful and malicious murder upon the person of said Alexander Tillman.

The reading of the law of Congress and of the indictment based upon it shows you that the gist of the offenses charged is the intent with which the criminal acts are alleged to have been done.

There can be no conviction under this indictment unless three things are shown:

1. There must be a banding or conspiring together of two or more of the accused persons named in the indictment.

2. This banding or conspiring must be with the intent to injure, oppress, threaten or intimidate Levi Nelson or Alexander Tillman.

3. This intention to injure, oppress, threaten or intimidate must be thereby to carry out one of the purposes and intents specified in the several counts of the indictment; as, for instance, as stated in the first count, the purpose to hinder and prevent Nelson and Tillman in the right peacably to assemble, or as stated in the third count, the purpose to deprive Nelson and Tillman of their lives and liberty of person without due process of law.

Unless these three points are established by the evidence, no matter how criminal the conduct of the defendants may have been, they are not guilty under this indictment. Unless the intent is proved as laid down, this court has no jurisdiction of the case, for it is the unlawful intent with which the acts charged are done that gives the court jurisdiction. The accused may be tried on another indictment, in some other court, but they can not be convicted under this indictment in this court without proof of the alleged intent.

In passing upon any controverted case it saves labor and trouble and tends to clearness and precision of judgment to ascertain what points are not disputed and what are in issue. In the case on trial there are many facts not in controversy. I proceed to state some of them, in the presence and hearing of counsel on both sides, and if I state as a conceded fact any matter that is disputed, they can correct me.

About the twenty-fifth of March, 1873, one Shaw claimed to be sheriff, and one Register judge, of the parish of Grant. Before that time Columbus C. Nash and Alphonse Cazabat, both of whom are accused by the indictment in this case, had claimed to be, the former sheriff, and the latter judge of the same parish, holding, as it seems, commissions signed by Governor H. C. Warmoth, and they had exercised the duties of their respective offices. In the month of March, 1873, application had been made to Governor William P. Kellogg, by the friends of Nash and Cazabat, for their appointment to the offices of sheriff and parish judge respectively, which appointment Governor Kellogg refused to make, and instead commissioned Shaw and Register.

On or about the twenty-fifth of March, Register, the judge, Shaw, the sheriff, and other parish officers commissioned by Governor Kellogg made an entry into the courthouse of the parish, which they found locked, by way of the window. They thus obtained and held possession of the courthouse. On the night of Monday, the thirty-first of March, Register, Shaw and others sympathizing with them, hearing rumors of an armed invasion of the courthouse for the purpose of retaking the courthouse, counseled together, and Shaw, as sheriff, deputized from fifteen to eighteen men, mostly colored, to assist, as his posse, in keeping possession of the courthouse, and to preserve the peace. These persons so deputised were served with written appointments signed by Shaw as sheriff. On the next day, Tuesday, April 1, a company of mounted white men, headed by James W. Hadnot, since deceased, and numbering from nine to fifteen, a part, if not all of them, armed with guns, came into the town of Colfax, and on the same day one or two other small armed squads also came into town. On this day no collision occurred between the men deputized by Shaw and the men who came with Hadnot and others.

On Wednesday, the second of April, a small body of white men, mounted and armed, approached Colfax and were met a short distance from the town by a body of armed men, most of them colored. Shots were exchanged between these two bodies of men. No one was hurt, and the white men rode off.

These proceedings alarmed the colored people, and many came to Colfax for refuge, and with them a number of women and children. Many, perhaps a majority of the men who collected in the town, came armed.

On Saturday, April 5, a band of armed white men, fifteen in number, as claimed to be shown by the prosecution, and three in number, as indicated by an item of evidence introduced by the defense, approached the house of one Jesse McKinney, a colored man, three miles from Colfax, on the Darrow, and found him engaged in making a fence around his lot. One of the band of white men fired upon him, shot him through the head and killed him. His wife, assisted by another woman, got his body into a wagon and carried it to the house of her stepfather, and there left it and took refuge at the Mirebeau plantation. No evidence in the case explains the motive which led to this deed.

This homicide increased the alarm of the colored people who flocked into Colfax. Reports were circulated through the parish of threats made by the colored people against the whites. Most of the white families in or near Colfax, and many in more distant parts of the parish, removed from their homes and sought places of safety.

On Monday, April 7, the parish court was opened and adjourned by Register as judge and Shaw as sheriff. After this the alarm seemed somewhat to subside, and many of the colored people left Colfax and returned to their homes.

An armed body of colored men, however, still held possession of Colfax and the courthouse, and obstructed ingress to the town and courthouse, and the whites maintained some sort of an armed organization outside.

On Saturday, the twelfth of April, the colored men at Colfax threw up a small earthwork in front of and in the vicinity of the courthouse. At this time and on the next morning the number of colored men in the town is variously estimated at from 100 to 300, more than half of whom were armed with guns. On the morning of Easter Sunday, April 13, a body of mounted and armed white men, variously estimated at from 150 to 700, approached Colfax from above. When in the vicinity they asked for a conference with the colored people, which was granted and took place—Columbus C. Nash speaking for the white men, and Levin Allen, a colored man, for his side. Nash demanded that the colored men should give up their arms and yield possession of the courthouse. This demand was not acceded to by the colored men, and thirty minutes were given them to remove their women and children. The colored men took refuge behind their earthwork near the courthouse, and at about ten, eleven or twelve o'clock, as variously stated by the witnesses, the firing began. The white men had a small piece of artillery mounted on wheels, which, with their small arms, was used against the colored men, who responded with their shotguns and Enfield rifles; of the latter they had about a dozen. A change in the position of their gun made by the white men gave them an enfilading fire on the blacks, which demoralized them, and their line broke. A portion of them, leaving their arms, fled down the Red river in the direction of a strip of woods, at Cuny's Point, and were followed by mounted and armed whites, by whom many of them were overtaken and shot to death. The others, sixty or seventy in number, took refuge in the courthouse. This was surrounded by the white men and the small gun was brought to bear upon it, one of its shots going in one of the windows and out of the other. A rambling fire of small arms was kept up by the whites upon the windows of the courthouse, which was occasionally responded to by the blacks inside, without damage, however, to either party. The whites, after keeping up for a short time an unavailing fire upon the courthouse, by approaching it upon a side which had no openings for windows or doors, set fire to the building by a torch applied to the roof. The roof was soon in flames, and the occupants of the building became alarmed. One held out the leaf of a book and the other tore off his shirt sleeve and hung it upon a stick as a sign of capitulation, and shouted that they surrendered. They were ordered to drop their arms. At this point there is a matter of dispute between the prosecution and defense. James P. Hadnot and one Harris, on the part of the whites, approached the courthouse and, as claimed by the defense, had a white flag upon a pole. As they came near the door they fell, both mortally wounded. The defense insists that while bearing the white flag they were shot from the courthouse. The prosecution and its witnesses say that when Hadnot was approaching, the blacks, having thrown down their arms, started to come out from the burning courthouse and were met by a volley of shots from the whites, which, besides killing many of the colored men, struck down Hadnot and Harris. However, this may be, a number of unarmed blacks who came out from the courthouse were shot dead, and others were wounded. Among the killed was Alexander Tillman, one of the colored men named in the indictment. Most of those who were not killed were taken prisoners. Fifteen or sixteen of the blacks had lifted the boards and taken refuge under the floor of the courthouse. They were all captured. About thirty-seven men were taken prisoners. The number is not definitely fixed. They were kept under guard until dark. They were then led out two by two and shot. Most of the men were shot to death. A few were wounded, not mortally, and by pretending to be dead, were afterward during the night able to make their escape. Among them was the Levi Nelson named in the indictment.

The dead bodies of the negroes killed in this affair were left unburied until Tuesday, April 15, when they were buried by a deputy marshal and an officer of the militia from New Orleans. These persons found fifty-nine dead bodies. They showed pistol shot wounds, the great majority in the head and most of them in the back of the head. In addition to the fifty-nine dead bodies found, some charred remains of dead bodies were discovered near the courthouse. Six dead bodies were found under a warehouse, all shot in the head, but one or two which were shot in the breast.

The only white men injured from the beginning of these troubles to their close were Hadnot and Harris. The courthouse and its contents were entirely consumed.

There is no evidence that any one in the crowd of whites bore any lawful warrant for the arrest of any of the blacks. There is no evidence that either Nash or Cazabat after the affair ever demanded their offices, to which they had set up claim, but Register continued to act as parish judge, and Shaw as sheriff.

These are facts in this case as I understand them to be admitted.

If these facts are conceded, or if you find them upon the evidence to be true, your range of inquiry will be much narrowed.

Now turn your attention to the points already stated necessary to be proven to establish this indictment.

First, the prosecution must show a banding or conspiring together of two or more. Of course unless two are shown to be guilty there can be no conviction; but if the proof shows that one or more of the prisoners on trial banded or conspried with one or more of the other parties included in the indictment, and not on trial, or with one or more of the others on trial, that would be sufficient proof of conspiracy.

To conspire is for two or more persons to agree together to do an unlawful act. The evidence in proof of a conspiracy will generally, from the nature of the case, be circumstantial. Though the common design is the essence of the charge, it is not necessary to prove that the defendants came together and actually agreed, in terms, to have that design and to pursue it by common means. If it be proved that the prisoners pursued, by their acts the same object, often by the same means, one performing one part and another another part of the same, so as to complete it, with a view to the attainment of the same object, you will be justified in the conclusion that they were engaged in a conspiracy to effect that object.

If the prisoners conspired together, with the intent laid in the indictment, that completes the offense charged in the first sixteen counts, even though the conspiracy was followed by no act to carry it into effect.

To band is defined to be "to associate, to unite." Thus we read in the acts of the Apostles that "certain of the Jews banded together." Their purpose was to kill Paul.

Now, if the gathering together of these armed white men was not accidental, but designed, and if they had in view a common purpose, or if having come together accidentally, they engaged by express argument or tacit understanding in a common enterprise, this would be such a banding together as is meant in the statute and in the indictment.

Every banding together includes and implies a conspiracy. I do not mean a conspiracy for an evil purpose, but a union of minds for some common end.

So that upon the conceded facts you can have little difficulty in passing upon the question of the banding and conspiring of certain white men upon the occasion named in the indictment.

The real controversy between the prosecution and defense is touching the purpose and intent of this banding and conspiring.

The prosecutor says it was with the several intents laid in this indictment, or some of them. The defense says that it was for a lawful and laudable purpose, and not with the intents laid in the indictment, or any of them. Here, then, gentlemen, is the turning point in this case, and to this you should give the most careful scrutiny. For unless the prosecution has satified you that the purpose of the banding together was that laid in the several counts of this indictment, or some of them, there can be no conviction in this case, and you should return a general verdict of not guilty.

No different intent is laid in the last twenty-four counts of the indictment than is alleged in the first eight counts. Take, then, those first eight counts, and consider them carefully, with a view to ascertain whether the intent laid in these counts, or any of them is sustained by the proof. The intent laid in the first count is to injure, oppress, threaten and intimidate Levi Nelson and Alexander Tillman, with the purpose to hinder and prevent their free exercise of the right peaceably to assemble.

The right of peaceable assembly is one of the rights secured by the constitution and laws of the United States. If citizens come together for a lawful and peaceable purpose, their assembling is within the meaning of the constitution. The fact that they assemble with arms, provided these arms are to be used not for aggression, but for their protection, does not make the assemblage any the less a peaceable one.

If you find that the assemblage at Colfax on the thirteenth of April last, Levi Nelson and Alexander Tillman constituting a part thereof, was for a peaceful and lawful purpose, notwithstanding the members of the assembly were armed, if their arms were merely for protection, and the persons against whom the indictment is presented combined to injure, oppress, threaten or intimidate Nelson and Tillman with the purpose to prevent their peaceable assembling, or to break up a peaceable assembly of which they were members; or if the intent was so to intimidate Nelson and Tillman that they would fear to unite with this fellow-citizens in peaceable assemblies on future occasions, then you would be justified in the conclusion that the intent laid in this count is true.

If on the other hand the meeting of colored people at Colfax on the thirteenth of April was not a lawful and peaceable assembly, and if you should find that the banding together charged in the indictment was not for the purpose of so oppressing and intimidating Nelson Tillman as to present their freely jioning in future peaceable assemblies, then you should find that the intent laid in this count is not proven, and no matter what you may decide as to other counts, your verdict should be not guilty in the ninth, seventeenth and twenty-fifth counts, all of which charge the same intent.

Next consider the intent of the banding and conspiring laid in the second count, which is alleged to be to intimidate, etc., Nelson and Tillman, with the purpose to prevent their exercise of the right to keep and bear arms for a lawful purpose.

The right to bear arms is also a right secured by the constitution and laws of the United States. Every citizen of the United States has the right to bear arms, provided it is done for a lawful purpose and in a lawful manner. A man who carries his arms openly, and for his own protection, or for any other lawful purpose, has as clear a right to do so as to carry his own watch or wear his own hat. If the meeting at Colfax on April 13, of which Nelson and Tillman formed a part, was assembled, and was bearing arms for its own protection, and the banding charged in the indictment was with the intent to intimidate Nelson and Tillman so as to prevent their bearing arms on that occasion, or if the purpose of the banding together was so to intimidate them as to prevent or hinder them from lawfully bearing arms in the future, then the intent charged in this count is made out. If this intent is not established to your satisfaction then your duty is to return a verdict of not guilty upon the second count, and also the tenth, eighteenth and twenty sixth counts, which charge the same intent.

For the present I pass over the third, fourth, fifth and eighth counts, and call your attention to the sixth and seventh. The first of these counts charges that the intent of the banding and conspiring was to so intimidate and oppress Nelson and Tillman as to hinder them in the free exercise of their right to vote at elections to be held in the future, and the seventh count charges an intent to intimidate Nelson and Tillman, and to injure and oppress them because they had voted at the election held on the fourth day of November, 1872.

You will consider whether the intent laid in these counts has been proven to your satisfaction. If it has, then there will be other matters for your consideration under these counts. If it has not, it will be your duty to return a verdict of not guilty on the sixth and seventh counts, and also on the fourteenth, fifteenth, twenty-second, twenty-third, thirtieth and thirty-first counts, which charge the same intent.

I now call your attention to the third, fourth, fifth and eighth counts. I class them together because there is general resemblance between them. Take them in their order.

The third count charges the intent of the alleged banding to have been to injure, oppress, threaten and intimidate Nelson and Tillman, with the purpose to deprive them of their respective lives and liberty of person without due process of law.

It has been hinted to you by counsel for defense that the offense charged in this count is not within the jurisdiction of this court to try. I say to you, gentlemen, that the offense described in this, as well as in the other counts of the indictment, is within its jurisdiction. The court has the right and power to try every count in this indictment.

You will observe that this count does not charge an intent to deprive Nelson and Tillman of their lives and liberty of person merely, but to do so *without due process of law*.

The fifth amendment to the constitution of the United States declares that no person shall be held to answer for a capital or otherwise infamous crime unless upon presentment and indictment of a grand jury, nor be deprived of life, liberty or property without due process of law.

The fourteenth amendment to the constitution of the United States declares that all persons born and naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law.

The constitution of the State of Louisiana, arcticle six, title one, declares that prosecutions shall be by indictment or information; that the accused shall be entitled to a speedy public trial by an impartial jury of the parish in which the offense may have been committed, and have the right to be heard by himself or counsel.

Section sixteen of the act of Congress approved May 31, 1870, entitled an act to enforce the rights of citizens of the United States to vote in the several States of this Union, and for other purposes (16 Stat., 144), declares: "That all persons within the jurisdiction of the United States shall have the same right in every State and Territory to the full and equal benefit of all laws and proceedings for the security of person and property as is enjoyed by white citizens."

These provisions of constitutional and statute law show that the right of due process of law where the life or liberty of a citizen of the United States and of the State of Louisiana are involved is secured by the constitution and laws of the United States.

Now, under this third count, it is claimed by the United States that the indicted persons banded and conspired to deprive Tillman and Nelson of their lives and liberty without due process of law. That there was a purpose to kill both, which was actually carried out in the case of Tillman, and which was attempted to be carried out in the case of Nelson, because they were charged with or supposed by the conspirators to have been guilty of a violation of law.

If you find that the crowd of white men who surrounded the Colfax courthouse on the thirteenth of April entertained a common purpose to put Nelson and Tillman to death for an alleged violation of law by them, and took measures to carry out that common purpose, I say to you that every man who joined in that purpose, whether actually engaged or not, is guilty under the third count of this indictment. If Tillman and Nelson had broken the law in taking armed possession of the courthouse in Colfax, in arresting citizens in the highway, in robbing houses in the neighborhood, in obstructing citizens in their access to the public buildings, in joining in a riot or riotous assemblage, in firing upon and killing Hadnot and Harris, or by their complicity in this last act, or if they were charged or suspected of these offenses, or any other infraction of the laws of the State, before they could be punished for them they were entitled to due process of law. They were entitled to a public trial by an impartial jury of the parish; to the right of being heard in their defense by themselves or their counsel, and to the right of meeting the witnesses against them face to face. And if there was a common intent among the indicted persons to hinder and prevent the enjoyment by Nelson and Tillman of these rights by slaying them, then I say to you that those persons are guilty under this count. The intent may be and ought to be interred from their acts. If the natural result of the conduct of the indicted persons in killing Tillman and attempting to kill Nelson was to deprive Nelson and Tillman of their constitutional and lawful right to a fair and impartial jury trial, then you are justified in holding that such was their intent. If the indicted persons, believing or supposing or suspecting Tillman and Nelson to be guilty of a public offense, took the administration of the law into their own hands and slew them, or attempted to slay them, thus depriving them or attempting to deprive them of a trial according to the law of the land, then all persons who banded together with that intent are guilty under the third count of the indictment.

It is not necessary that this intent should have been originally entertained by the alleged conspirators. It need not have existed before the thirteenth of April. It need not have existed before the surrender of the courthouse. If after that event and after the shooting of Hadnot and Tillman the common purpose was entertained by the crowd of men around the courthouse to put Tillman and Nelson to death for their supposed or actual violation of the law, and that common purpose was evinced by acts, that is sufficient, and every man among the alleged conspirators entertaining that purpose or in any way aiding or assisting in carrying it out is guilty under the third count, is guilty under the eleventh count, and if in the prosecution of that purpose murder has been committed is guilty under the nineteenth and under the twenty-seventh counts, all these four counts charging the same intent.

The law under which this prosecution is carried on was framed for the express purpose of punishing just such acts as these. No man or body of men has the right thus to take into their hands the summary administration of what they may suppose to be justice. One of the dearest rights of the citizen is the right to due process of law, and no body of men can band or conspire together with intent to injure or oppress the citizen, for the purpose of depriving him of this right, without falling under the ban of this law of Congress.

You must dismiss from your minds any idea that a state of war existed at Colfax on April 13, or that martial law was then and there in force. The civil, and not martial law, prevailed, which knows no such thing as truces or flags of truce. If Tillman and Nelson had any complicity in firing upon and killing Hadnot and Harris while bearing a white flag, they may have been guilty of murder; but they were not guilty of firing upon a flag of truce, for the civil law knows no such offense.

Having considered and passed upon the third count, you will next turn your attention to the fourth count. This lays the intent of the banding and conspiring to have been to injure and oppress Tillman and Nelson with a view to prevent their free exercise and enjoyment of their right to the equal benefit of all laws enacted by the United States and the State of Louisiana for the security of their persons and property, and enjoyed by white citizens of the State of Louisiana.

Gentlemen, I need only say in reference to this count, that the same facts which would justify a verdict of guilty under the third count would sustain a verdict of guilty under this. If you find a banding together of the indicted persons for the purpose of oppressing Tillman and Nelson, with the intent to deprive them, by slaying them, of the right to a fair and impartial jury trial for some offense committed, or supposed to have been committed by them against the law, then such persons are guilty—and you should so find by your verdict. Further, if you find that the intent of the conspirators was to prevent the enjoyment by Tillman and Nelson of the equal benefit of any other provisions of the constitution and laws than those securing due process of law, you would be authorized to convict them under this count.

The intent laid in the fifth count is similar to that in the fourth, and with the addition that the injury which it was the purpose of the alleged conspirators to inflict on Nelson and Tillman was, it is alleged, on account of their African descent. The facts which would sustain the fourth count would sustain this with proof of the additional fact charged, namely, that the moving cause of the intent was the descent of Nelson and Tillman from the African race.

The eighth count is very broad, and charges an intent to prevent and hinder Tillman and Nelson in the enjoyment of all the rights and privileges granted and secured to them by the constitution and laws of the United State. If you find a banding together with this intent, you should return a verdict of guilty under this count against the persons shown to have been so banded.

The proof which would justify a verdict of guilty under the fourth, fifth and eighth counts would authorize the same verdict under the twelfth, thirteenth and sixteenth counts, and if, in the prosecution of the banding or conspiracy charged in those counts, Alexander Tillman was murdered, then the additional proof of the fact would authorize verdicts of guilty on the twentieth, twenty-first, twenty-fourth, twenty-eighth, twenty-ninth and thirty-second counts.

The names of Alexander Tillman and Levi Nelson are used in this court as the persons against whom the unlawful attempt was leveled. It is not necessary to prove, or for you to find, that the alleged conspirators had a particular intent directed against these men specially. If the intent applied to the crowd of colored men, and Tillman and Nelson formed a part of that crowd, that is sufficient to sustain the indictment, even though the names and persons of Tillman and Nelson were unknown to the conspirators.

Nelson and Tillman are described in the indictment as being in the peace of the State of Louisiana and of the United States. This means, gentlemen, that they had not forfeited their lives to the State or the United States that they were not public enemies, and that although they may have been guilty of crime, they were still under the protection of the law and retained their constitutional and lawful rights. It does not mean that they were not engaged in a breach of the peace or in the commission of an unlawful act.

If you shall find the banding and conspiracy to be proved, with the intent laid in the indictment or in any of the counts, then it will be your duty to consider further whether the prisoners now on trial, or any of them, are guilty. For though you might be of opinion that the offenses charged had been committed by others of the ninety eight included in the indictment, yet it is necessary for you to decide upon the evidence whether these nine prisoners at the bar, or any of them, are guilty. Did they take a part in the banding and conspiring charged in the indictment?

I recommend to you to take the case of each and consider it separately and decide upon it.

The defense claims that even conceding that others are guilty, yet the persons on trial had no art or part in the offense charged, and to prove this much testimony has been introduced to show that they were not present on the thirteenth of April, or on other occasions when armed bands of the conspirators are charged to have assembled.

It is only necessary for the prosecution to show a banding or conspiring with the intent laid in the indictment. When that is done the offense is complete, without any acts done in furtherance of the conspiracy. Acts in furtherance of the common design are generally shown to prove the conspiracy, and they are legitimate for that purpose, and may be sufficient to establish the conspiracy, and often, in fact usually, are with direct proof of the conspiracy.

The defense claims that Clement Penn is not guilty, because he never banded or conspired with the intent laid in the indictment. Evidence has been adduced to show that during a part of the thirteenth of April he was on the opposite side of the Red river from Colfax; that he only crossed the river after the fight was over, and then not to take any part in the unlawful acts of the conspirators, but for a lawful purpose. On the other hand, it is claimed by the United States that he was an actor in the dread scenes of that day, both during and after the conflict. There is much and conflicting testimony on this point, and you must decide what you will believe. If you find he was one of those who banded or conspired with the intent laid in the indictment, you should find him guilty.

Conceding that he remained on the opposite side of the river until the fight was over, yet if he then crossed and found what had been done and approved of it, and assented to it, and, with a gun in his hands, guarded for a while the prisoners which were afterward shot, then he is guilty, even though be returned across the river before any further acts of violence were done. But if he had no hand in the conspiracy previous to April 13 in any way; if he remained on that day on the opposite side of the river, and then, supposing the affair to be over, crossed without the purpose of joining in or aiding it, and returned without so doing, then you should find him not guilty.

The same defense, substantially, is set up for William Cruikshank. It is admitted that he was in Colfax on the thirteenth of April, but it is claimed that he reached there only after the fight and for the purpose of recovering some stolen property, and that he did not at that time or at any other time take any part in the conspiracy. It is claimed on the other hand by the prosecution that he was early in the conspiracy, as early as the seventh of April, when Calhoun was arrested, and that he was an active participant in the scenes in Colfax on April 13. These disputed facts you must settle from the testimony. If, however, you find that Cruikshank did go to Colfax on the thirteenth of April, even though he went to recover his lost property, and after he reached there, comprehending the purpose of the conspirators, remained there, giving them the encouragement by his active participation or by his words of approval, even though he committed no act of violence himself, he is guilty, and you should so find him.

Two others of the prisoners, it is not denied, were present at Colfax during the whole or the greater part of Easter Sunday. These are William B. Irwin and John P. Hadnot. The prosecution claims to have shown that they joined the conspiracy early in April, and that on Easter Sunday they formed a part of the company of white men who attacked the courthouse, killed and wounded the negroes who had taken refuge there, and afterward put to death the prisoners. If you find this to be true, you will not hesitate to return a verdict of guilty against both. It matters not whether personally they fired a gun or struck a blow. If they were present, comprehended the common design, and gave it their approbation and encouragment, that is sufficient to fix upon them the guilt of conspirators.

This rule applies to the cases of all of the prisoners on trial who are admitted to have been present in Colfax on April 13—to Penn, Cruikshank, Irwin and Hadnot.

It is specially claimed for Irwin that he was in attendance in Colfax in pursuance of a demand upon him by Nash to accompany him as a part of his posse comitatus. It is not claimed that Nash held any warrant to arrest any person in Colfax. It is admitted that his purpose was to retake the courthouse, and that this was what Irwin was called upon to assist in doing. I say to you, gentlemen, that under the admitted facts in the case this demand of Nash upon Irwin is no defense to this indictment or any count of it. If the intent charged in the indictment is proved, no summons or demand from Nash could excuse the acts of the alleged conspirators or any of them.

Here is a dispute between certain persons touching the possession of the parish offices. There is a peaceable way of settling such disputes. They can not lawfully be decided by wager of battle. And he who appeals to violence to settle such a question, and all who aid and assist in such appeal, are violators of the law.

For four other of the prisoners on trial, namely, Oscar Givens, Dennis Lemoine, Prudhomme Lemoine and William Hickman, the defense is set up that they never at any time banded or conspired as charged in the indictment, and that they were not present in Colfax on the thirteenth of April. The prosecution claims that they were early in the conspiracy, and that they were all more or less prominent actors in the scenes of Easter Sunday. It is not necessary, in order to establish the guilt of these parties to show that they were actually present in Colfax on the thirteenth of April. If the prosecution has satisfied you that at any time during the month of April they banded or conspired with the intent laid in the indictment or any of its counts, they are as much guilty as if they were prominent and conspicuous actors to the end. If they joined the conspiracy at any time before its alleged object had been accomplished, they are as much guilty as if they had been its original instigators.

There is a conflict in the testimony in regard to the presence of these prisoners in Colfax on Easter Sunday. You must endeavor to reconcile this testimony, if possible, without imputing perjury to either side. If this can not be done, then it is for you to determine which side of this controversy you will believe.

Consider the proof offered in the case of each one of these last named prisoners to connect him with the conspiracy, and the proof offered to exculpate him. If you are satisfied by the proof that they or either of them at any time banded or conspired with the intent laid in the indictment, or in any of its counts, you should return a verdict of guilty upon those counts which you shall find proven. If you are not so satisfied, you should return them not guilty.

The prosecution submits to you the case of Alfred Lewis—claiming, however, that the proof of an alibi submitted by him fails to establish that defense. Be this as it may you would not be justified in finding him guilty if the proof for the prosecution leaves your minds in doubt as to his guilt. For he is not bound to prove an alibi or any other defense until the United States has made out a prima facie case of guilt against him. You will look into the evidence in his case, and if you are satisfied that his guilt is not established you will return a verdict of not guilty. But if, looking at all the evidence in his case, your minds are clear in the conviction that he is guilty it will be your duty to say so.

Having thus gone through with the case of each prisoner on trial, if you shall find that there was no banding or conspiring with the intent laid in the indictment or any of its counts, or if you shall be of opinion that there was such banding or conspiring with the intent charged, but shall not be clearly satisfied that the prisoners on trial, or some of them, were engaged in the banding and conspiring, then you will return a general verdict of not guilty. But if you shall find any of the prisoners guilty under any of the first sixteen counts of the indictment, then it will be your duty to consider whether, in the prosecution of their unlawful design, Alexander Tillman was murdered, as charged in each of the last sixteen counts of the indictment.

Murder in Louisiana is murder as defined at common law; and murder as defined by the common law is where a person of sound memory and discretion unlawfully killeth a reasonable creature in being, and under the peace of the State, with malice aforethought, express or implied.

If you shall find the facts that Tillman, after he had laid down his arms and had left the courthouse, and was endeavoring to leave the scene, was purposely shot and killed by the alleged conspirators, you would be justified in the conclusion that the crime of murder was committed upon his person. The law presumes that if one of the alleged conspirators discharged at Tillman a deadly weapon, and he was thereby shot and killed, that the person so firing intended to do what naturally resulted from his act. The killing to be murder must have been done with malice aforethought. "This is not so properly spite or malevolence to the deceased in particular as any evil design in general--the dictate of a wicked, depraved and malignant heart—a purpose to do a wicked act, and it may be either express or implied in law. Express malice is where one with a sedate, deliberate mind and formed design doth kill another. So in many cases where no malice is expressed the law will imply it as when a man willfully poisons another. In such a deliberate act the law presumes malice, though no particular enmity can be proved." Blackstone's Com., Book 4, p. 198.

"There is no particular period of time during which it is necessary that malice should have existed or the party should have contemplated the homicide. If for example, the intent to kill or do other great bodily harm is executed, the instant it springs into the mind the offense is as truly murder as it it had dwelt there for a long period." 2 Bishop's Crim. Law, sec. 677.

Under these instructions you will determine whether in the act of prosecuting the unlawful banding together and conspiracy, charged in the indictment, Alexander Tillman was murdered by one or more of the alleged conspirators. If you so find, then those of the prisoners at the bar whom you shall find guilty under any of the first sixteen counts, you ought to find guilty under corresponding counts charging a like intent in the last sixteen counts. If you find that no murder was committed upon the person of Tillman, then there can be no conviction under the last sixteen counts or either of them.

I add this qualification, that if you should find that any of the prisoners at the bar joined the conspiracy for the first time after the killing of Tillman, you ought not to find such persons guilty upon the capital counts.

You may acquit all the prisoners on trial on all the counts, or find them guilty on all the counts. You may find a part guilty and a part not guilty, according as you may determine. If you shall find any of the prisoners guilty, upon any of the last sixteen counts, it is your right to return a verdict against them on such counts "without capital punishment."

Gentlemen of the jury, the case is now committed to your hands. It is one of magnitude to both the prosecution and defense. On your verdict may depend the peace and order of the State; on it does depend the liberties and lives of the prisoners at the bar. Give it your best deliberations. Though you may be convinced that a most atrocious and and appalling crime was committed at Colfax on Easter Sunday last, though you may believe that white men engaged in that terrible affair left the neighborhood on that Sunday night with hands red with the blood of helpless prisoners, that alone is not a ground for a verdict of guilty. You must be clearly satisfied that the precise crimes described in this indictment, or in some of its counts, were committed by one or more of the prisoners at the bar. If you are not so convinced, you should acquit. On the other hand, if you are persuaded by the evidence that the prisoners, or any of them, banded or conspired with the intent laid in this indictment, or in any of its counts, I trust you will have the courage, I trust there is enough good and lawful manhood among you to say so by a verdict of guilty. And I pray God to lead you to a true and just conclusion.

The courtroom was literally jammed with people, among them quite a number of ladies.

Attorney General Field was present, seeming greatly interested in the proceedings.

Judge Woods and the court officers remained in their offices late last night, and did not retire until they felt certain that a verdict would not be rendered before to-day's session.

After the jury retired last evening several of the members stood at the window on Decatur street, and as it was possible that some person might communicate with them, Officer Boylson was detailed and sworn in by Judge Woods to guard that section.

At two o'clock this morning our reporter made a reconnoisance, finding the jury room in total darkness, and obtained a report that all the jurymen had retired for the night, not having signified that there was any likelihood that a verdict could be or would be sent in, whereupon Judge Woods, clerks and the marshals left the building.

Waiting for the verdict was then the order, and it is quite probable that a decision will be made to-day.

St. Louis Globe Relief Fund.

The following letter was received yesterday by Governor Kellogg, and the amount transmitted was promptly placed in the hands of Mrs. Fry:

GLOBE OFFICE,
St. Louis, March 11, 1874.

To His Excellency Governor Kellogg:

Inclosed please find draft for $505 20, being the remainder of the fund collected of the *Globe* office for the benefit of Mrs. Captain Fry, making, with the sum of $500 already sent you and receipted for, $1005 20. It ought have been sent sooner, but I was unwilling to abandon the hope of making it larger, and I had seen in the newspapers a statement that Mrs. Fry was temporarily absent from New Orleans.

If you will have the goodness to forward this sum as you forwarded the last, you will greatly oblige,

Very respectfully yours,
WILLIAM McKEE.

Blackmail.

Suit was begun in the circuit court a few days since by Thomas Ratcliffe, of Louisiana, against Alfred W. Ellett, for $5900. Plaintiff says that in March, 1861, he was the owner of 200 bales of cotton, which was at Bouduvant landing, Tensas parish, Louisiana; that the defendant Ellett was an officer in the United States army, attached to the "Marine Brigade," operating on the Mississippi river, and had the command of a large number of steamers; that he was desirous of getting his cotton to New Orleans, but there was no organized civil government; Ellett refused him permission to ship his cotton unless plaintiff paid him $5000, and threatened to prevent its removal, and plaintiff was forced to, and did pay him the $5000. He now brings suit to recover the amount thus forced from him by said Ellett.—*St. Louis Times.*