

against him and be confronted by his witnesses, but we are told that these gentlemen have been convicted of riot, and committed to jail, without the intervention of the grand jury. This differs with other cases. Persons were summoned by the Sheriff to be sworn in as a *posse comitatus*, and it cannot be an unlawful assemblage when they come there to obey the law.

Mr. Schley then reviewed the law defining what constituted a rout and riot. There must be something to cause terror and consternation and a tumultuous assemblage, to constitute a riot. There was no evidence that there were any such proceedings at the Sheriff's office. In the case of Mr. Young, he was arrested without oath or warrant. He was arrested upon the evidence of Fuller, which related only to Mr. Valiant. What Mr. Valiant said to Fuller did not implicate Mr. Young, although Fuller said Mr. Valiant used the word "we." The concert of action between the two must be shown before the statement of one can be given in evidence against the other. The demand made by them does not imply that they intended to take any but legal measures to obtain their office.

Judge Bartol said—My inquiry is simply as a magistrate to determine the question of probable cause. The Commissioners have issued a proclamation addressed to the police force, which paper was not objected to.

Mr. Schley.—There was nothing in the paper to show that the Commissioners did not proceed by *mandamus*. I do not think that the Governor authorized them to take the office by the *posse comitatus*. I hope that when your honor decides this case, as I trust you will in favor of the new appointees, that the ex-Commissioners will gracefully retire from office. I hope that there will be good and true men surrounding them, who will so advise them, and that in an hour afterwards, they will come forward and say, "We surrender the office." I look forward with a strong hope, now that the election is over, that they will yield up the office, without the necessity of a *mandamus* or a *quo warranto*. There was no evidence to authorize the arrest of Mr. Young. He and the Sheriff were arrested without law, upon no oath or affirmation, and I rely upon the same principles of civil liberty in both cases.

Mr. Schley then reviewed the proceedings under which the Commissioners were arrested, and asked, "Is there no limitation upon the power of a court to commit a man for one offence and try him for another?" The opposite counsel say the commitment used on Saturday to keep the peace is finality. But on Monday an amended order of commitment is issued, charging them with conspiracy. One commitment requires them to keep the peace by desisting from any attempt to exercise the duties of their office. That is one of