TRIAL,

COMMONWEALTH, vs. HENRY DANIEL.

ON AN

INDICTMENT FOR MURDER.

BROUGH & ROBINSON, ENQUIRER OFFICE, CINCINNATI, OHIO.

1845.

NOTE.

In order to aid the reader in understanding the testimony in this case, it may be necessary to state that there was pending in the Montgomery Circuit Court a suit at law between Clifton R. Thomson, and Henry Daniel, defendant, on a note for $123, executed by Daniel to Wm. Z. Thomson, and assigned by him to his brother, the plaintiff. This suit had been continued for the defendant at the March and September Terms in 1844. At the March Term 1845, Daniel asked for a continuance of the case again, and filed an affidavit setting forth the grounds of his motion for a continuance. Thomson was replying to this affidavit, addressing the Court then in session, when he was shot by Daniel. It may be well also to state here that Daniel married the sister of Thomson.

The following summary of the testimony was made from notes taken at the time by Messrs. E. S. Fitch, John F. Russell, and the Attorneys for the Commonwealth.

TRIAL.

THE following is a copy of the Affidavit of DANIEL, out of which the difficulty sprung.

CLIFTON R. THOMSON,
vs.
H. DANIEL.
} *Petition and Summons.*

Your affiant the defendant would state that he married a sister of the plaintiff, that the assignor of the note is William Z. Thomson, another brother-in-law, that he came to the house of this affiant in and about the time this suit was brought and found him very unwell, and may be he was in bed; he regretted his indisposition, stayed all night, got supper and breakfast and shaved next morning with what he called a first rate razor, paid nothing, left with a hypocritical wish that this affiant might speedily recover, searched for lawyer Reid, had suit brought, perhaps, the same day, to wit: the 19th of February, 1844, and the same was executed on the 22d, Washington's birth day. *This piece of kindness and brotherly love* was done without ever asking him for the money or letting him know at any time he wanted it. At the March Term afterwards, the Court continued the suit because your affiant was not able to prepare it for trial, this was a source of disappointment to either the plaintiff or assignor. At the Fall Term the plaintiff paraded here, as large as life, demanded trial, and if it was to be continued demanded affidavit. It was then continued owing to the absence of Wm. Clark and others who had been summoned and did not attend at that Court. It was then agreed that your affiant might take the depositions of Gen. John McCalla and others; that he, Gen. John McCalla, left this State for Washington City, on the 5th of December, 1844, as informed, his going was not known by this affiant; after he was gone his son informed the defendant that he would return about the middle of February, 1845. Your affiant attended there to take his depositions and others, he being the most important witness, but he did not return as expected. He expects and verily believes he can prove by him what his services were worth in the suits mentioned in his pleas, and the taking of Richard H. Goe's deposition in the city of Louisville, and his attention to the suits against William Z. Thomson; and he verily believes he can prove his services to be worth at least $200; that said assignor charged this affiant for going to Delaware, Ohio, the sum for his expenses $73, and for a second trip the sum of $69 75 cents, and it was agreed that each was to bear his proportion of the expenses; that since your affiant gave his note he went to Delaware to take depositions in said suit, and found it did

not cost half as much as the assignor said it cost him. He went from there to Wheeling ascertained where Richard H. Goes lived, returned home, went back to Wheeling and took depositions, returned home, went to Indiana, got a witness, brought him to the city of Louisville and took his deposition and attended to the suit in the County of Jessamine at his own cost and expenses, the assignor giving no attention to it.—He William Z. Thomson had involved three or four negroes and their hire for several years amounting, as it was said, to six hundred or a thousand dollars. In addition to all this the assignor, of whom it is said he never made a mistake against himself in the settlement of account when the note was given, and was not content to take interest on all his notes and accounts, but in the addition made a mistake of ten dollars in his favor and put it in the note, as his account marked T. will show ; the account is in his own hand writing and it will show what he charged for expenses. If your affiant can have time he can, or he believes he can prove all the facts stated as far as material. He made no preparation in the suit because Gen. McCalla was absent; but, notwithstanding his evidence, if the plaintiff will admit the facts stated in this affidavit he will go to trial. Your affiant states that the suit has been finally gained in the Court of Appeals, which he believes would not have been the case had he not attended to it with due dilligence.

H. DANIEL.

The plaintiff and assignor had sufficient influence with their old, infirm and weak father, to get the greater part of his property to the exclusion of their sisters; this aught to have satisfied them without attemptiug to take what little that sister has by a fraudulent combination.

A copy: attest,

T. M. Cox, D. S.
For J. G. HAZELRIGG, Cl'k.

Leander M. Cox was then sworn, and stated that he was present in the Montgomery Court House on the 5th March last, and witnessed the killing of Clifton R. Thomson by Henry Daniel. Daniel was standing near the stove, about ten feet from where Thomson sat before and at the time the difficulty occurred. Daniel's affidavit was first handed to one of Thomson's counsel, then to Thomson himself, who read it and returned it. When the motion for a continuance came up Mr. Apperson, at the request of Daniel, read the affidavit to the Court. Thomson replied to the affidavit and endeavored to show the Court that it contained no ground for continuing the case, giving at the same time a history of the former continuances. He then remarked "moreover this affidavit contains base and contemptible slanders;" Daniel arrested him instantly saying, "don't say that again." Thomson turned his face towards Daniel who stood on his left and said, "I do repeat it;" Daniel immediately drew his pistol, took deliberate aim and fired, shooting Thomson directly through the chest in the region of the heart and lungs. When Daniel presented his pistol Thomson turned his side to him and endeavored to protect his body with his left arm, keeping his eye steadily fixed on Daniel. As soon as he was shot he turned round to the right and walked a few paces before he sunk down ; as he took those steps he put his hand to his back, there was then nothing in his hand, but soon after witness saw him put his hand to his back, he saw a pistol in it, which he thinks dropped in a chair when he sunk down ; the pistol was in his right hand; did not see from which pocket it was taken; Daniel did not change his position when he fired; his pistol was rising when he fired ; witness did not see Thomson's left hand fly up when he was shot; did not see his pistol 'till he had turned to the south; does not recollect the position of Thomson's hands at the time but thinks his right was thrown a little back; can't say whether he was knocked round by the force of the ball or turned voluntarily.

Capt. Wilkerson Turpin was sworn, and stated that he was sitting near the clerk's table not anticipating any difficulty 'till Mr. Thomson said the affidavit did not contain a shadow of ground for the continuance, but base and contemptible slanders.—Daniel then said, don't repeat that, Thomson turned towards Daniel and said, I do repeat it, making at the time a gesture with both hands, raising them up and bringing them down. Daniel instantly drew his pistol from his coat pocket in front, presented it and fired, taking deliberate aim; Thomson turned his side to Daniel and covered his body with his arm, the ball passing through the fleshy part of the arm. Witness thinks Thomson used the words "base and slanderous" but once before Daniel arrested him; does not think he put his left hand behind him after he was shot, but saw it thrown up, as he supposed, by the force of the blow; saw him put his right hand behind him after he was shot; saw it distinctly, but did not see any pistol in it then or afterwards. Thomson had on a black dress coat, Daniel had on an over-coat with pockets on the outside a little before and near the hips; the morning was rather cool. Daniel walked out of the house rather fast after he fired. Witness identified a pistol as that used by Daniel; saw that also which was said to have been in Thomson's possession; it was a six barrel revolving pistol; witness fired off the barrels; the first fired, the second snapped, the third fired; the ball passed through an inch and a quarter plank at about eight feet distance.

Newton Reid was sworn, and stated that he brought the suit for Thomson vs. Daniel; that he received the affidavit from Daniel and handed it to Thomson, who read it and returned it; that it was read to the Court by Apperson at the request of Daniel; was setting next to Thomson on his left almost touching him when he was shot; Daniel said in a very emphatic manner, "don't say that again." Thomson did not move his feet, but turned his face and body towards Daniel and repeated the words; Daniel drew his pistol, as witness thinks, from the pocket of his pantaloons and fired, moved his right foot and leaned forward when he fired. Thomson used both hands in his gesture when repeating the words; this was a common gesture with him; he used the offensive words but once before he was arrested; he wore his over-coat into the Court room, but took it off and hung it up; witness did not hear any offensive words or see any offensive acts of Thomson towards Daniel before he addressed the Court; the Court met at nine o'clock, the killing took place about ten o'clock; witness did not see Daniel sit down in the mean time; does not recollect seeing Thomson's left hand fly up; stepped to the door and called Dr. Hanna after Thomson was shot. John Daniel sat rather behind Thomson to his left, some ten or twelve feet distant and about the same distance from Henry Daniel on his right.

John B. Houston was sworn, and stated that he was standing in a position where he could see both parties distinctly. After reading the affidavit, but before he addressed the Court, Thomson remarked there was nothing in it, no ground for continuance. When he addressed the Court he commented on the previous continuances and remarked, "and now he is endeavoring to continue this case again by an affidavit filled with base and contemptible slanders;" Daniel said in a loud voice, "don't repeat that," Thomson said "I do repeat it," making a gesture with both hands, bringing them down to the table, Daniel instantly drew his pistol and fired with deliberate aim; Thomson covered his body with his arm, which flew up when struck, then turned to the right, putting his right hand to his back as he turned, as witness supposed for his handkerchief; I saw no pistol in it. Thomson did not seem excited, but more animated than usual; spoke better than common; did'nt appear to make for the door, but turned round and fell; did not have his hands in his pockets, but used them both in his gestures; did not take off his over-coat immediately on coming into Court, but, preparatory to addressing the Court; did not turn round far enough to face Daniel

again; he turned pale when Daniel presented the pistol but kept his eye fixed sternly on him. Daniel's coat was what is called a box-coat with large outside pockets, very convenient to the hands. Witness did not hear any offensive words or see any offensive acts on the part of Thomson except those used in addressing the Court.

Mr. Houston was subsequently re-examined to rebut certain statements of other witnesses, and proved that Mr. John Daniel did not come into Court that morning with C. R. Thomson and W. Z. Thomson, but came alone, entering at a different door some time after they came in. He also proved that John Daniel had said in Winchester, when speaking of his suits with Henry Daniel, that he thought he should probably be the instrument of Providence to remove H. Daniel out of this world.

Benjamin Bowen was sworn, and stated that he is the owner of the pistol with which Daniel killed Thomson; that he lent it to the son of Daniel on Tuesday afternoon preceding the killing, which took place on Wednesday morning, gave him also three balls; thinks the words "base and malicious" were used twice before Daniel arrested Thomson; thinks Thomson had his hands in his pockets while speaking; can't say whether Thomson wore an over-coat or not; saw Capt. Daniel was angry and kept my eye on him; did not see any pistol in Thomson's hand.

William Wallace was sworn, and stated that he had told Mr. Cheler he thought there would be a shooting match that morning between Henry Daniel and John Daniel; he thought so because he had heard Lewis Mason speak of H. Daniel trying to borrow his pistol. He thinks Thomson's left hand flew up when he was shot, that he used both hands in his gesture when repeating the words, and that he used the offensive words twice before Daniel stopped him.

Thornton Cox was sworn, and stated that he was sitting where he had a distinct view of both parties; that Thomson said near the close of his remarks "the affidavit contained a base and contemptible slander;" Daniel said in a loud, emphatic tone, "don't repeat that;" Thomson raised both hands and said as he brought them down, "I do repeat it;" Daniel immediately drew and fired; Thomson drawing his left arm as a shield against his body; after he was shot Thomson turned to the right and just before he took his last step drew his pistol from his left coat tail pocket with his right hand; he used but one hand in taking it out, which seemed to fall with the weight of it; he took several steps before he drew the pistol. Witness thinks the offensive words were used but once before Daniel arrested Thomson; that both of Thomson's hands were down when he was shot and that Thomson did not turn round far enough to face Daniel; he knows Thomson drew his pistol as stated because he saw it. He has had conversations with W. Z. Thomson and Thos. S. Redd, in relation to this case. W. Z. Thomson came to the office to see him in relation to it.

The prisoner's counsel objected to the witness stating the substance of the conversations.

Samuel Hanson was sworn, and stated the case of Thomson vs. Daniel was called Tuesday, about the middle of the afternoon; Daniel asked for a continuance and Thomson required an affidavit of the grounds; Daniel absented himself some time from the Court room; when he returned and was asked for his affidavit he asked indulgence 'till morning to prepare it; the next morning he brought it into Court and it was read by Mr. Thomson, who remarked it was irrelevant, no cause for a continuance. When Thomson addressed the Court he said "it contained base and contemptible slanders." Daniel stood before witness and took very steady aim; witness thought it a long time before the fire; could see the barrel but not the muzzle of the pistol. Thomson turned very pale and seemed much surprised when he was shot.—While speaking he seemed animated, not hot; he used the offensive words but once;

witness did not see Daniel draw the pistol; it was presented when first noticed.—Witness was one of Thomson's counsel and stated to him Daniel's offer to refer their suit to M. C. Johnson and J. O. Harrison; Thomson refused to accede to the proposition; witness told Daniel of his refusal and Daniel said he did'nt expect he would accede to it. Daniel seemed to be in a good humor at the time; after he had shot Thomson he left the room deliberately.

Thomas Grubbs was sworn, and stated that he came into Court while Thomson was speaking and stood near him, rather behind him, when he was shot. Thomson with both hands up said he repeated the words, " base and slanderous." Daniel instantly drew and fired, almost as soon as Thomson's hands were brought down; Thomson turned and walked a few paces before he fell; he had no pistol in his hand that witness saw.

E. A. Hathaway was sworn, and stated substantially as the others as to the words, shooting, &c.; thinks Daniel drew the pistol from the pocket of his pantaloons; Thomson had nothing in his hand when he put it to his back after he was shot; he appeared to put his right hand to his coat tail pocket.

James Allen was sworn, and stated that Thomson used both his hands in his gesture when repeating the offensive words; that his hands were both down when he was shot; that he had no pistol in his hand at the time, and that Daniel stepped forward and leaned towards Thomson when he shot him.

A. W. Hamilton was sworn, and stated as the others as to the words, shooting, &c.; could see both parties distinctly; Thomson used both hands in his gestures; he spoke animated, not angry, did'nt seem to be in a great passion, witness saw no pistol in Thomson's hand 'till just before he sunk down on a chair, witness stepped to him and caught him in his arms where he expired; thinks Thomson was making a gesture just before he was shot.

E. S. Fitch was sworn, and stated that Thomson raised both hands and made an emphatic gesture when he repeated the offensive words, that he put his right hand to his back as he turned round after he was shot, there was then no pistol in it, witness did not see Thomson have a pistol at all, persons intervened. When Thomson was shot his left arm jerked up.

Josiah Anderson was sworn, and stated that Thomson used both hands in making his gesture, bringing them down just before he was shot; Daniel stepped forward and fired, thinks the words were " base and corrupt slander," that Daniel stood with his back to the stove while Thomson was speaking and that Thomson repeated the words in an angry manner.

J. G. Hazelrigg was writing and did not see what passed, saw Thomson come in that morning, he pulled off his over-coat and laid it on the banister, the morning was a little cool and several persons wore over-coats, Daniel among them. Thomson looked larger than witness had thought he was; did not notice any acts of Thomson that seemed directed to Daniel.

Thomas F. Hazelrigg was near to Daniel and noticed that he seemed to have his eyes fixed on the upper part of the window, his head was rather thrown back and he continued in this position for some time; while Thomson was speaking Daniel had his hand in his pocket and seemed to be adjusting his pistol, this was before Daniel arrested Thomson, from three to five minutes; Daniel and Thomson both spoke in emphatic and rather angry tones.

Lorenzo D. Craig was in the jury box; Thomson used both hands in his gesture when repeating the words, saw him put his right hand to his back after he turned round, there was then nothing in it.

James Howard was sworn, and stated the facts as to the words shooting, &c., to be as the other witnesses have detailed; Thomson used both hands in his gestures during his speech and at the time he repeated the offensive words; he raised them both up and brought them down, did not notice his hands after he was shot, saw no pistol in his hands till about the time he sunk down.

Capt. Fox was standing near Thomson, within four feet of him, and no person between them, Thomson held a paper in his right hand and raised both hands and brought them down again as he repeated the offensive words, when shot he turned to the right and put his hand behind him, there was then no pistol in his hand, nothing between him and the witness but the bar; in addressing the Court Thomson spoke tolerably mild and used both hands in his gestures.

Levi Butler was one of the standing jury, came into Court that morning on the side where Daniel was. Daniel was standing near the stove with his hand in his coat pocket, witness offered him a chair and he declined it, Thomson used both hands in his gesture when he repeated the words, drawing them as witness thinks from his pockets, Daniel took his pistol from his coat pocket, had his hand in it when witness offered him the chair; when shot Thomson turned round to the right and had no pistol in his hand that witness saw. Thomson's hands were down when he was shot, he brought them down as he made the gesture. Witness sat near to Daniel, saw nothing in Thomson's hands.

Geo. W. Stoner was sitting back of the bar, can't say where Daniel drew his pistol from, at first his hand trembled, then became very steady, he took deliberate aim and stepping forward, fired; Thomson might have walked out of the bar before Daniel fired. Witness went with Daniel to his office, Daniel began to tell why he had killed Thomson, saying he was very sorry for it, when Capt. Turpin told him the less he said about it the better, as there was no apology for him: there was no person between witness and Thomson. Thomson used both hands in his gesture when repeating the words.

Closs T. Jones testified to the same facts with the other witnesses as to the words, the shooting, &c. Thomson used both hands when repeating the words, he had no pistol in his hand that witness saw. Daniel turned his body a little and leaned forward when he fired.

Thomas Ragan stated the facts substantially as the other witnesses, when shot Thomson turned round to the right having no pistol in his hand.

Samuel D. Everett saw both parties distinctly, Thomson used both hands in his gestures, but can't say exactly at what time; Daniel drew and shot him directly he repeated the words, witness could see Thomson distinctly but saw nothing in his hand, did'nt see his pistol 'till he saw it in the chair; could not see his hands when extended at full length before he turned round for some books on the bar; did not see Daniel draw his pistol, saw him take deliberate aim.

David Howell was not in Court, saw Daniel soon after he killed Thomson, and asked him why he did it; Daniel said he did not know, for God knew he did not intend to do it; he also made some remark about John Daniel being in Court armed, but did not commit John Daniel with it. Capt. Turpin stopped him by saying he had better not talk on the subject.

James E. Kinnard testified to the same general facts as the other witnesses, saw Thomson use both hands in his gesture when repeating the words; saw no pistol in his hands at any time.

James B. Moore testified to the same facts as to the words, shooting, &c., with the other witnesses; saw Thomson use both hands in his gesture when repeating the

words, the left hand was thrown up, as witness thought, to the wound; did'nt see him use his right hand.

The testimony on behalf of the Commonwealth was here closed and the prisoner's witnesses introduced.

L. L. Mason was present, saw Daniel looking very intently towards Thomson, turned to Thomson and he was looking very scornfully at Daniel; Daniel returned the look and put his finger to his nose: this was just after Thomson had read the affidavit and before he addressed the Court. Daniel applied to witness to borrow his pistol on Monday the first day of Court, but declined taking it when told it was out of order. Witness did not see Thomson come into Court that morning and did not know he had a pistol.

Charles Thomson saw Clifton Thomson, W. Z. Thomson and John Daniel come into Court together that morning. C. R. Thomson took off his coat ard threw it on the bar. He looked very angry at Daniel; Daniel returned the look; this was before the affidavit was read to the Court.

Joseph Irving was sworn, and stated that Thomson's left hand was thrown back after he was shot; did not see his right hand; saw no pistol in his hand; could not see lower than his waist on account of books and hats on the bar; saw no gestures by Thomson; was looking mostly at Daniel; thought Thomson's feet rather dragged on the floor as he walked after he was shot.

James J. Berry noticed Thomson particularly, not having heard him speak before, he gesticulated much, sometimes with both hands, sometimes with one, sometimes his hands were in his pockets; he seemed excited when he rose, snapping his eyes frequently, as was his habit, thinks he used both hands in his gesture when repeating the words, saw Thomson's pistol for the first time after he turned round, he raised it up, but sunk immediately; he held the pistol in his right hand, it rested on a chair; witness picked up the pistol and gave it to P. Everett.

Isaac Trimble stated that after Thomson was shot he saw a pistol in his right hand, or rather he was working his fingers as if he was getting hold of it. Witness saw the pistol as Thomson turned; he had turned as far as the corner of the bar before he saw it; did not notice Thomson's right hand at the time he was shot; did not see his pistol 'till after he was shot; he walked three or four steps before he fell: witness corroborates the others as to the words, shooting, &c.

James Casseldine corroborated the statements of other witnesses as to the words used, the shooting, &c. He stood near Thomson, before him, a little to his right, the bar, books, &c., between them; saw Daniel present his pistol, his hand was shaking; then looked at Thomson; thought himself in great danger, saw something in Thomson's hand when he was shot which he took to be a pistol; got merely a glimpse of it; might have been easily mistaken; indeed he might have readily mistaken anything for a pistol at that time; Thomson's arm was extended at full length when witness thought he saw the pistol in his hand.

Charles Wheeler saw a pistol in Thomson's hand when he was in the act of turning round; it was rather behind his back; could only see his elbow before he began to turn round.

Dr. J. Hanna was called soon after Thomson was shot; he was still gasping when witness arrived, he probably did not breathe after he was shot, he was wounded through both lobes of the lungs, as witness supposes, not having probed the wounds; he must have been soon unconscious not instantly, he might have drawn a pistol after he was shot; persons mortally wounded in the lungs can sometimes take violent exercise before death ensues; instinct would probably lead a man in such a situation

to attempt to defend himself; witness' office is about one hundred yards from Court room.

Dr. Caldwell stated that such a wound as that described would soon fill up the cavity of the lungs and cause unconsciousness, bleeding internally would hasten unconsciousness; a vacant and wild gaze would indicate unconsciousness; it might be almost instantaneous; both lobes of the lungs might be wounded and the party recover; many persons mortally wounded in the lungs have taken considerable exercise and lived some time.

Moses Grooms stated that Thomson's hands were both down when he was shot, he turned and made about three steps before he sank on a chair; could [not] see him clearly for the books, &c., on the bar.

Harrison Onar stated that Thomson used one or both hands in his gesture, can't say which, at other times had his hands in his pockets while speaking.

Dr. Hanna brought into Court two knives taken from Thomson's pockets, one, a larger one from his coat pocket, the other a small one from his vest pocket, both pocket knives, both shut when taken out, he had also a handkerchief and an apple or two in his coat pockets.

Dr. Walker stated there was a strong probability that a man wounded as Thomson was would not be able to draw a pistol, although he might be struck down by lightning or a club and recover; persons shot through the lungs too might recover.

Peter Everett identified Thomson's pistol; Thomson was in the habit of staying at the room of witness and John Daniel when in Mt. Sterling, has heard Thomson say Henry Daniel was a damned old rascal and ought to be in the penitentiary, never heard him threaten Daniel, never told Daniel of his abuse. Thomson had in his coat pockets when shot a ramrod and bullet moulds, a knife, pocket handkerchief and an apple, all the barrels of his pistol were charged, three of them did not go off, two of the balls passed through a plank an inch or more thick. W. Z. Thomson told witness he did not know his brother had a pistol; but, if the one found proved to be his he claimed it as his next friend, but made no objection to witness retaining the pistol. Witness recollects when the depositions were taken in Lexington and John Daniel went down. John Daniel and witness room together.

Mr. Hanson was called again and proved that C. R. Thomson, W. Z. Thomson, and John Daniel, came to Mount Sterling together on Sunday afternoon, the day before Court; Henry Daniel came up the same day.

Travis Daniel was sworn, and stated that he informed his uncle, Henry Daniel, in February last, that Mr. Sam'l. G. Hernden had told him (Travis,) that John Daniel was making threats against Henry Daniel and he ought to be on his guard against John; Henry Daniel replied that he was not afraid of John, but he was of Clifton Thomson, who, he said, was urged on by John, that Clifton tried to raise a difficulty with him in his office in Lexington, and that he had to leave the tavern where they stopped and go to another in order to avoid a difficulty. The reason he gave for fearing Thomson was that he had better pluck, was more desperate than John, and they were very intimate and might influence one another. Witness thinks he is not mistaken in the fact that his uncle told him all this at the same time in Owingsville, in February last, it was when they were taking depositions there.

Jas. G. Megowan came in while Thomson was speaking, his hands were sometimes in his pockets, sometimes out, his back was to witness.

Jacob Steele stated that some year or two ago, he don't recollect the time accurately, he heard John Daniel and Clifton Thomson talking about Henry Daniel, John Daniel said he was a grand old rascal and ought to have been dead long ago, Thomson said, yes, and if he ever puts himself in my way I'll kill him. This was in Peter

Everett's room; witness does nor recollect the season of the year; thinks it was winter and more than a year before Thomson was killed.

Mr. Fitzpatrick stated that he had heard Thomson abuse Daniel a good deal, calling him a perjured old rascal and other hard names; that Thomson told him in the fall of 1841, that he had driven Daniel out of a room with a pistol and would have shot him if he had not left; witness told this to Daniel and he said he left the room because he wanted no difficulty with Thomson; this took place when Thomson was in habits of great intemperance, shortly after he left Daniel's house; his abuse of Daniel was greater when he was drunk than sober; has heard him abuse Daniel after he joined the Temperance Society; never heard him threaten Daniel drunk or sober.

D. C. Wickliffe stated that he saw H. Daniel at the Bruen House the last week in February last, and knowing that he had always stopped at the Phœnix Hotel prior to that time, asked him why he had left the other house; Daniel replied that he did not like to be with that "damned set, Clif. Thomson, John Daniel and John Brennan;" he gave no other reason and did not speak of any indignity they offered him. Witness has frequently seen John Daniel and C. R. Thomson together and frequently separate when in Lexington.

Charles Daniel stated that Thomson told him in 1843, that he would be glad to see his sister, (Mrs. Daniel,) but he would not go to the damned old rascal's house.

Peter Everett was recalled, and stated that John Daniel and C. R. Thomsen were very intimate; that he did not know of their intimacy 'till after Thomson left Mount Sterling; that John took a room with witness in 1841, in consequence of a quarrel with H. Daniel, with whom he lived before; that John has threatened Henry Daniel in his presence more than once, and said if H. Daniel succeeded in their suit he would kill him. John lived with Henry Daniel many years and bought goods on his account for his own use; witness does not know that H. Daniel ever restrained John from buying what he wanted, and whether he was able to pay or did pay for what he got on his uncle's account; his father was a man of property. John borrowed witness' pistol at one time, and tried to do so again, but witness refused; does not know what he wanted with it; has heard John say Henry Daniel had committed perjury and forgery both to keep him out of his property.

Sam'l. G. Herndon has heard John Daniel say he would take H. Daniel's life if he did not leave the place, (about which they were at law,) in the year 1845, heard him say so twice and told Travis Daniel of it. John gave as a reason for killing H. Daniel, that he was withholding from him property which he had paid for and that H. Daniel had inserted in a Bill of Sale, after it was signed and delivered to him by John, an obligation to pay two thousand dollars, or thereabouts, before possession was to be given of the property. Witness stated that John Daniel had lived in H. Daniel's house more than twenty years, had bought goods on his uncle's account and worn fine clothes.

Madison C. Johnson stated that the pistol said to have been in Thomson's possession was his; that he lent it and balls, ramrod, &c., to Thomson the week preceding the Montgomery Court; does not know whether it was loaded or not; Thomson gave no reason for wishing to borrow it; John Daniel and H. Daniel were in Lexington that week; does not consider the pistol a good one, very uncertain; that used by Daniel was more dangerous; John Daniel and C. R. Thomson were intimate. Witness is well acquainted with Daniel and was very intimate with Thomson, was present in Thomson's office when he and Daniel were taking depositions, nothing unpleasant occurred; Thomson came to witness several times during the taking and urged him to take the depositions for him as he wished to have no difficulty with Daniel; witness' office and Thomson's were in the same house; witness has never heard Thom-

son threaten Daniel unless a remark he made two or three years ago could be so construed. Thomson had employed witness to bring a suit against Daniel to cancel the contract by which Daniel had become possessed of Thomson's farm, or in case of failure, for the recovery of the payments of purchase money then due, witness advised Thomson that he probably could not succeed in canceling the contract by reason of lapse of time and other circumstances; Thomson then remarked that "Daniel should never live on his place again;" this remark of Thomson's was never communicated to Daniel or any other person 'till after Thomson's death. Witness prosecuted Thomson's suit against Daniel and obtained a decree for about eight hundred dollars; witness was then asked if in the prosecution of this suit Daniel had not set up a fraudulent receipt which purported to be for a settlement up to 1839, when, in fact, it was only up to 1837, and whether the Court had not decreed accordingly; but the prisoner's counsel objected to the question, and the objection was sustained. Witness was intimate with Thomson from his youth up, and believes him to have been incapable of doing any thing otherwise than in a fair and honorable manner; never saw any thing unpleasant occur between Thomson and Daniel during the progress of their suit. Thomson lived in Daniel's family while he resided in Fayette.

Dr. Mills stated that he had not known a case where a person was shot through the lungs and recovered; though many such cases were reported in the medical books; a negro had been shot through the lungs in Winchester and afterwards ran 150 yards; it would depend on circumstances, or whether any of the large blood vessels were severed, how long it would be before consciousness or life would cease, a pistol might be drawn by a person so wounded as to die in a few minutes.

Dr. Waters stated that as a general rule consciousness does not cease immediately after a wound through the lungs, the length of time it would continue would depend on whether the large blood vessels about the heart were severed or not and other circumstances; a person so wounded may run, or walk, or fight afterwards in some cases; the lungs extend up to the collar bone; Thomson is said to have been shot a good deal lower down by the witnesses, and, of course, was not shot through the upper portion of the lungs. A person so wounded might endeavor to carry out the previous purpose of the mind after consciousness ceased.

William Williams stated that he was in the seat said by Chas. Wheeler to have been occupied by him when he saw the pistol in Thomson's hand; Wheeler took the position occupied by Thomson at the time and the witness could not see Wheeler's right hand as he represented he had seen Thomson's unless he leaned and looked round a part that stood in the way.

Jas. J. Berry was recalled, and stated that he went to the door twice to call Dr. Hanna before he came, that it must have been three minutes after Thomson was shot. before the Doctor got to him.

Jas. K. Thomson proved that the knife found in Thomson's pocket was presented to him by W. S. Scott, of Bourbon, some time before, when he made a temperance speech at North Middletown.

J. W. Moore stated that he did not warn Thomson against Daniel on the morning he was killed, that he conversed with him shortly after breakfast and urged him to keep down excitement in relation to the suit, believing him to be of an impetuous disposition; Thomson said he wished to have no difficulty with Daniel; he wished to get at him in a more tangible form; witness did not tell Mr. Howard or Mr. Everett, or any one else that he warned Thomson against Daniel, did not know of Daniel's preparations against Thomson unless he might have been present when Daniel tried to borrow Mason's pistol; did not hear Thomson threaten Daniel; does not recollect telling John Daniel the pistol was prepared for him, not for Thomson.

John Brennan stated that Henry Daniel, John Daniel and Clif. R. Thomson, were all at his house the last week in February last taking depositions; that H. Daniel had always stopped at his house when in Lexington prior to that time; that he left on that occasion and went to another tavern without giving any notice or assigning any reason; witness did not know of his leaving until he heard of it some hours afterwards; witness gave his deposition at the time and neither saw nor heard of any one insulting Daniel or offending him in any way; knows of no reasen for his leaving; Daniel gave none to him. Thomson and John Daniel both lived in the family of H. Daniel while he resided in Fayette; J. Daniel may not have lived there all the time.

G. L. Portlethwaite stated that several years ago H. Daniel told him the best way would be to buy a barrel of whiskey for Thomson and let him drink himself to death; that some time afterwards Daniel told him he had bought the whiskey and Thomson in a frolic had left the cock turned and the whiskey had nearly all run out; Thomson was very intemperate before and while he lived with Daniel, he came to Mount Sterling with Daniel.

John J. Thomson stated that H. Daniel staid all night with him in December last on his return from Lexington, that in the course of conversation he spoke very hard against C. R. Thomson and J. Daniel, saying among other things that he believed they would swindle him out of every thing he was worth by swearing for each other; that John Daniel had charged him $200 for overseeing for him in Fayette, and Thomson had sworn his services were worth that sum, when he had done nothing but trim a few trees; Thomson had lived with Daniel in Fayette, also John Daniel a part of the time.

William Z. Thomson stated that he came to Mount Sterling with C. R. Thomson and John Daniel on the day preceding the March Court; that he has no knowledge and does not believe in any combination between John Daniel and C. R. Thomson against H. Daniel, heard no intimations from them of any such thing, that he was not armed himself and had never carried concealed weapons in his life; that he did not know that either his brother or John Daniel was armed and was entirely surprised by the catastrophe, that he never heard his brother threaten Daniel in his life; that on this occasion his brother had an unusual flow of hilarity, John Daniel at one time seemed depressed, on being chided for it, he replied that he was thirking of certain depositions which H. Daniel had taken in their suit and he was afraid he should be compelled to an act which he should regret all his life, witness understood him to allude to some violence to H. Daniel and told him, he ought to run all around the house before he would strike his uncle; C. R Thomson concurred in this statement; witness slept with his brother two or three nights preceding his death and had no suspicion of his having arms about him, therefore, he remarked, that he did not believe the pistol found where his brother fell was his, but that he believed it was thrown there for effect; at the same time he stated to Mr. Everett who had the pistol that he desired it should be kept for him in case it proved to be his brothers; witness and his brother came to Court House that morning together; John Daniel did not come with them; he was left at his room and was not seen by witness when he came into Court, witness noticed John Daniel sitting back of the car some ten or twelve feet from C. R. Thomson and about the same distance from Daniel.

The prisoner's counsel objected to the witness' stating any thing in relation to the truth or falsehood of the statements in the affidavit of the accused; and the Court sustained the objection.

John Daniel stated that there was no combination or understanding between him and C. R. Thomson that they would joint'y or severally do any injury to H. Daniel; that he did not anticipate any difficulty between Thomson and Daniel in the Court

House and was wholly surprised by the catastrophe that occurred, that he did not know or believe that Thomson was armed; that he was not armed himself and had no reason whatever to believe that Thomson would attack Daniel at any time; that he has no recollection of any such conversation as that spoken of by Mr. Steele, and in fact, never heard Thomson threaten Daniel in his life, unless the repetition of some remarks in a deposition might be so considered; Thomson was giving his deposition between H. Daniel and witness; Daniel asked him if he had not threatened his life; Thomson then went on to detail in his deposition the circumstances of a quarrel between himself and the prisoner, in which Daniel said to Thomson, "I'll send you to the Lunatic Asylum," and Thomson replied, "I'll send you to hell;" this was at a time, some four or five years ago, when Thomson was in habits of great intemperance; witness had been very intimate with C. R. Thomson for twenty five years; had gone to school with him several years when a youth and lived some years in H. Daniel's family with him; is not aware that the intimacy increased after Thomson left H. Daniel's house; Thomson lived in Daniel's family in Fayette and for a short time after he returned to Mount Sterling; he and Daniel quarreled and he left Daniel's house in the spring or summer of 1840; Thomson left Daniel's house before witness did; Thomson did not join the Temperance Society 'till after he left Mount Sterling, which was in 1841; witness did not go to the Court House on that morning in company with W. Z. Thomson and C. R. Thomson; parted from them at his room and went to Court House some time after; sat at the back part of the bar some distance from either H. Daniel or C. R. Thomson. The depositions taken at Brennan's were taken the Friday before our March Court, those taken at Owingsville were taken the week preceding those at Lexington; witness did not see or hear anything calculated to offend or insult Daniel at Brennan's, which might be supposed to have driven him from that hotel; witness lived in the family of H. Daniel some twenty years.

The witness was then asked under what circumstances and with what view he had made threats, if any, against the life or person of his uncle, and whether or not he had been the recipient of his uncle's bounty while he lived in his house or had rendered a full equivalent for all he had ever received at his hands.

The questions were objected to by the prisoner's counsel and ruled out by the Court.

Speech of Hon. M. T. Thomson.

GENTLEMEN OF THE JURY:—

Before I proceed to the argument of the case on trial before you I beg leave to notice briefly two or three reports which I understand, are in circulation in this community in relation to myself and the friends of the deceased, Mr. Thomson. I have been informed that it is reported among the crowd of persons attending to witness this trial, that, in case your verdict should acquit the prisoner at the bar, it is the purpose of one of the brothers of the deceased, to inflict summary vengeance on the accused, by taking his life; that I am induced to take an active part in the prosecution, by the hope or promise of large pecuniary remuneration for my exertions; and that threats of personal violence have been made against myself for the purpose, it is supposed, of intimidating me from the faithful discharge of the duties of the station I have voluntarily assumed. In relation to the first report, I am authorised to say, that it is wholly groundless and false; and I take upon myself to say, not only for

the brothers of the deceased, but for his friends and relatives generally, that they are incapable of perpetrating the deed of blood imputed to them. We have not been reared in that school of morals ; we are a law-abiding people, and would scorn to commit so heinous a crime. No stain of the kind has ever tarnished our good name, and I trust in God, never will. And I take occasion to declare to the public, and to the prisoner at the bar himself, that in case your verdict should acquit him of the crime of murder, for which he is on trial before you, he need not apprehend any personal injury from the friends of his unfortunate victim. No, gentlemen, vengeance is not our object. We have thought it to be our duty, to do all that we could, lawfully, honorably and conscientiously do, to accomplish the ends of justice, and the laws in this case, but nothing more. We have not been disposed to assume the prerogatives of the Almighty Governor of the Universe, who has said in the sacred scriptures, "Vengeance is mine, I will repay." To Him then, who is the searcher of all hearts, whose knowledge is omniscience, and whose judgment is unerring, be the task of retributive justice ; to us attaches only the duty of endeavoring to see the laws faithfully administered, and of vindicating the good name of our deeply lamented friend.

As for the report in relation to myself, it is equally unfounded as the other. I have not engaged in this case from any hope or expectation of fee or reward from any person whatever, but solely from a sense of duty. A sacred, an indispensable duty to a deceased friend. I am the voluntary council for the commonwealth, not because the commonwealth is weak or feebly represented, as gentlemen on the other side would insinuate, (for I freely declare, that the prosecution would be more ably conducted by the gentleman whose duty it is to conduct it, than by myself,) but because I am impelled to the course I have adopted, by the high obligations of relationship and friendship. The deceased was not my brother by blood, not by consanguinity, but by affinity. He was more than a brother, in all that gives beauty and holiness and strength to fraternal ties. In our early boyhood we fed at the same board, slept in the same bed, went to the same school, participated in the same pastimes and cares, and gamboled together in the innocence of our hearts, on the green fields of our native Kentucky. As manhood approached, we entered the same University, pursued the same studies, graduated in the same class, and contended for the same honors. Entering next on the active theatre of life, we made choice of the same profession, and set out together, on what we hoped to be, a career of respectability, of usefulness, and of fame. Alas, that that career, to him, should be so short—that he should be cut off by the hand of violence in the full vigor of health and intellect, full of life, and hope, and energy, the ornament of the social circle, the faithful public servant, the idol of his friends. Throughout our acquaintance and association for a period of more than thirty years, nothing occurred to marr the friendship of our early youth ; but it grew with our growth, and strengthened with our strength. My near kinsman by blood, more nearly allied to me by marriage, and still more nearly, by the strong ties of mutual affection, he was, next to those whom we regard as part of ourselves—the nearest friend I had on earth. Need I any motives of *gain* then to induce me to take part in this prosecution ? Could I, or could the near relatives of the deceased, do less than contribute all that we honorably and lawfully can, towards the punishment of what we deem an atrocious murder ? Are we expected to stand coldly by, and see the guilty go unpunished ? Is human philosophy capable of this, or does christian forbearance make it a duty ? He must indeed, be more or less than man, who could so far forget the obligations of duty towards the name and fame of a murdered friend.

We are not insensible to the eloquent and touching picture which the opposite

counsel have drawn of the awful consequences of conviction to the accused, his wife, his son, his family and friends. We are fully sensible of the dreadful consequences which would certainly follow, particularly to his wife and son, in whose veins flows our blood, and we sympathize deeply with them in their afflictions ; for, whatever may be the event of this trial, they are rendered most wretched. They have seen a much loved brother and uncle, slain by a husband and father ; and their hearts must ever bleed at the remembrance. Conviction or acquittal cannot heal their wounded spirits. Eternal grief must ever rankle in their hearts, planted their by a husband's and a father's hand. These things were duly considered by the friends of the deceased, before they determined to appear here against the prisoner at the bar, but an imperious sense of duty overruled the suggestions of sympathy, and constrained them to adopt the course they have taken. However awful the consequences may be to some in whom they take a deep interest, they yet feel that they are under an unavoidable obligation to endeavor by all lawful and honorable means, to bring to condign punishment the perpetrator of so great a crime. The consequences of conviction and punishment, will be terrible indeed, not less so, perhaps, to the innocent, than the guilty ; but these are the legitimate fruits of crime. Let them rest, where divine and human laws both concur in saying they ought, *on the head of the* GUILTY ONE.

As for the threats of personal violence, which I understand have been made against myself, I have but little to say. The object is supposed to be intimidation, and the authors will have learned how much they have made, when I shall have discharged the duties voluntarily assumed by me, in this cause. If any persons doubt that I would properly deport myself, in case of violence being offered to my person, they will perhaps get more satisfactory information than any I could give, by making the experiment.

Before I proceed to the examination of the testimony given in this case, or the arguments of counsel for the accused, I desire to call the attention of the jury, to some striking circumstances which have characterized this trial. One of these, is the treatment which Mr. John Daniel has received at the hands of his uncle, the prisoner at the bar, and his counsel. A stranger coming into court, and hearing either the evidence detailed by the witness for the defence, or the speeches of counsel on the same side, would have very readily come to the conclusion that John Daniel was on trial for the murder of his uncle. The burden of the testimony given on that side, seemed to be for the purpose of satisfying the jury, that he bad borne malice to the prisoner, that he had threatened to take his life, and that the accused had really procured weapons for the purpose of defending himself against an apprehended attack from his nephew. And in order to aggravate the enormity of the crime imputed to him, and to manufacture a victim, on whom the fury of the public indignation may be glutted to the utmost, without remorse, it is attempted to be proven by irrelavant testimony, and asserted in argument without reserve, that the prisoner at the bar, had been the benefactor of John Daniel, that he had taken him into his family, in his youth and poverty, had clothed, and fed, and sheltered, and educated him, as an act of charity ; (even the fine quality of his clothes is commented on for the purpose of adding additional coloring to the disgusting picture,) and that the nephew, who had received all these benefactions at the hands of his uncle, without recompense or return on his part, had conspired with another to take the life of that uncle, because he would not permit himself to be swindled by his nephew out of a valuable property. Such is the gross, damning accusation that is made by the uncle and his counsel, against an individual not a party to this trial, not allowed to defend his reputation against such cruel assaults, and not even permitted to avail himself of the privilege

of the greatest criminal, that of pleading not guilty to the charge. But on what grounds are these grave charges made? The most frivolous in the world; not a shadow of evidence was introduced, going to establish them. On the contrary, when Mr. Daniel himself was introduced as a witness and requested to state whether or not he had been the recipient of all those acts of kindness; whether or not he had made suitable and satisfactory remuneration for all he had ever received from his uncle, whether his uncle had not deeply wronged him, instead of acting the part of a protector and benefactor, and under what circumstances and with what view he had made threats against the life of his uncle, his mouth is sealed by the very hands that have cast these odious imputations on his good name, and he is told that he shall not answer, because the evidence would be irrelevant. He is debarred by those who have thus injured him, from the privilege of exculpating himself, either by his own testimony, or that of others. What language ought I to employ properly to characterize this conduct? Who is John Daniel that he is thus to be made the scapegoat for other men's sins. I have known him intimately from his youth to the present time, for at least 25 years, and I have always regarded him as an amiable, upright and honorable gentleman. I believe this is the estimation in which he is held by this community. Is an honorable man's good name to be thus taken from him? I repeat again, what language could I employ, strong enough to characterize properly such treatment? I have had some experience in the transactions of courts of justice, aud have read accounts of what were deemed the most tyranical tribunals recorded in history, but I have not seen or read of a case of such flagrant injustice as this is; and I can only compare it to some of the worst acts said to have been perpetrated by the Spanish Inquisition. But why has this been done—why has so gross and atrocious an injury been perpetrated against the good name of an innocent and unoffending man? The answer is plain. It is for the purpose of manufacturing by indirection, an apology for the crime of murder; for the purpose of destroying the good name, and blackening the character of John Daniel, by irrelevant and ex parte testimony, and then appropriating his baseness, his enmities, and his threats, to Clifton R. Thomson, as an excuse for taking the life of the latter; for the purpose of making John Daniel a demon, and then showing that the prisoner at the bar had only slain a co-conspirator of the devil. This is the unholy purpose for which a great wrong has been done, and I may add, that the resort to such means of defence, should satisfy you that the prisoner at the bar has no just or honorable or lawful excuse for the crime he has committed. If he could have been defended on honorable or fair grounds, such disreputable means would not have been resorted to.

But on what grounds is this charge of conspiracy made? Why, forsooth, John Daniel and Clifton Thomson had both quarrelled with the accused, had both sued him, had both denounced him as a forger. perjurer, and swindler, had given mutual depositions in their suits with him, John Daniel had threatened his life, under what circumstances or conditions we know not, and the two *were frequently together*, when both happened to be in the same town, that they were actually together the week before in Lexington, and came to Mt. Sterling in company with each other the day before court. These are the overwhelming circumstances, which convict the two of a conspiracy to take the life of the accused, in the estimation of gentlemen on the other side; but which really amount to nothing unexplained, and become absolutely ridiculous, as a foundation for the charge of conspiracy, when it is stated, as was proven, that they had been intimate friends from their boyhood, that they had lived together for years in the family of the accused, and consequently had a knowledge of each other's transactions with him, that they had been in Lexington, taking depositions the week before court, that John Daniel was not armed, did not come into

court with Thomson on the morning of the murder, did not set near him or the prisoner at the time, and actually took no part in the affair, although present, and witnessing all that passed. These facts were all proven, and overthrew conclusively the baseless charge of conspiracy, on which the defence in this case mainly relies.

But gentlemen are not satisfied with destroying the character of John Daniel, as far as they were able, by charges of base ingratitude, fraud, perjury, and purposed murder; but they must needs travel out of the testimeny to blacken the fame of Clifton Thomson also. He too had been fed, and clothed, and sheltered by the benevolent prisoner at the bar, and had requited all these acts of kindness with base ingratitude, slanderous denunciations, and intended murder. According to the gentleman who first addressed you on the part of the defence, (R. Wickliffe, sen'r.) he was taken out of the cold, and made warm, when no other friend was willing to perform the kind office, and was clothed and fed, and cared for by the prisoner at the bar, not only as became a brother-in-law, but as became a father. And it is insinuated, if not directly asserted, that all this was done through the charitable and friendly feelings of the accused, without the hope or expectation of reward. In the first place, I have to remark on these statements, that they are untrue; for Thomson inherited ample means from his father to support him reputably, and, if he had not, scores of friends would have gladly made their house his home; and in the second place I have to remark, that no evidence has been given in this case, going to warrant the assertions and insinuations alluded to. They are the pure baseless figments of the imaginations of counsel, nothing more. Yet, as such, they are entitled to and shall receive proper notice. Gentlemen of the jury, you cannot fail to remember the evidence on this subject—that no proof was adduced, sustaining the statements I have alluded to; and that when I proposed to prove their falsity by Maj. Johnson, the counsel on the other side objected and ruled the testimony out as irrelevant. They make insinuations and assertions injuriously affecting the character of the dead, setting forth that he had been the recipient of many acts of kindness and friendship on the part of the accused, and had made return only of ingratitude and wrong; and when we propose to show that these statements are wholly gratuitous and untrue—that the kindness which he received at the hands of the prisoner, was only such as vultures give to lambs, then, forsooth, gentlemen discover very suddenly that the evidence is irrelevant, and ought not to go to the jury. We proposed to show, and could have shown, by unimpeachable testimony, that the prisoner at the bar had taken advantage of the intemperate habits of the deceased, had stripped him of his entire patrimony for a consideration wholly inadequate, and had then withheld payment, and attempted to defraud him out of a large portion of the sum agreed to be paid, by setting up a false receipt, purporting to show a settlement up to 1839, when in fact, it was a settlement up to 1837 only.

Mr. T. was here interrupted by R. Wickliffe, sen'r., who stated to the court, that the matters treated of by Mr. T. were not in evidence before the jury, and ought not to be made the basis of comments in the argument of the case, and moved the court to direct Mr. T. to proceed accordingly.

Mr. T. replied, that he had, on several occasions mistaken the practice in this court, seeing its rules were so different from those he was accustomed to; but he could hardly suppose it possible that those rules should allow counsel on one side to make whatever statements they pleased, and refuse the same privilege to counsel on the other side. The gentleman, (Mr. W.) had, in the course of his speech, constantly made statements not in evidence, had detailed to the jury all that he thought or believed, and all that the prisoner *said* or *thought*, affecting his case, and had gone out of his way and out of the evidence to make insinuations and cast imputations

on the good name of the deceased, and he now rises to prevent me from repelling those imputations. Sir, said Mr. T. to the court, if such a practice can obtain here, I must be allowed to say, that this trial is worse than a Spanish Inquisition.

The court then refused the motion of Mr. W. directing Mr. T. to proceed, saying, it must be left to the good sense of the jury, to discriminate between what was in evidence, and what was not.

Mr. T. then proceeded to say, that he alluded to these things, not because they were in evidence, or because he desired to influence the verdict by them, but for the purpose of indignantly repelling what he deemed to be calumnies on the memory of his deceased friend. When the foundation for them was being laid in the evidence, he had attempted to repel them by counter testimony, but the prisoner's counsel objected, and the evidence was excluded. I proposed to prove, as you recollect, by Maj. Madison C. Johnson, then on the witnesses' stand, that he had brought suit in the Fayette circuit court, in favor of C. R. Thomson, and against the accused, for cancelling the contract by which Daniel had become possessed of Thomson's land, on the ground of fraud, or in case of failure therein, for the recovery of the remainder of the purchase money; that in the progress of the case, Daniel had set up a false receipt, claiming a settlement up to 1839 instead of 1837, the 7 having been apparently altered to a 9; that the court so directed, and rendered a decree in favor of Thomson for about the sum of eight hundred dollars, which was still unpaid, at the time of Thomson's death.

Mr. R. N. Wickliffe here interrupted Mr. T. and moved the court to confine him to the evidence in the case. The court overruled the motion, and directed Mr. T. to proceed as before.

Mr. T. then repeated that he made these statements for the purpose of repelling what he deemed calumnies against his friend, not for the purpose of influencing the jury. He was aware they were not in proof; but the proof had been tendered, and ruled out by the prisoner's counsel. They were susceptible of the most ample and satisfactory proof, as would have been made apparent, if gentlemen had let the evidence come out.

But, Gentlemen of the Jury, I desire now to call your attention to another most striking and startling proposition, which has been made in the argument of this case, and which must characterize it as one of the most remarkable cases recorded in the annals of our criminal jurisprudence. It is no less than a proposition to you to commit the infamous crime of perjury, if need be, in order to acquit the prisoner at the bar. You doubtless recollect the course of argument which was followed by the gentleman who last addressed you on the part of the defence, Mr. R. N. Wickliffe. He commented at length on the fact, that the rules of this court submit the questions of law as well as of fact to the jury, and heartily approved the policy of such a practice. In order to give force to his views, and to show the wisdom of such a course, he commented with deserved severity on certain tyrannical acts of lord Jeffries in England, and labored hard to show that it would be very unsafe in this country to allow judges to instruct juries as to the law in criminal cases. Having satisfied you that you are the judges of the law and the fact both, and that this is the only safe course in a free country like ours, he next proceeds to tell you, that you "must weigh the decisions and reject them," that "you have a law in your own hearts," which is paramount to all other law, and by that you are to be governed. If the decisions of the courts do not suit you, if the adjudication of the criminal code by the ablest and purest jurists for centuries past do not conform to your judgments of the law, set them aside, says the gentleman, and consult the standard of the law which you find in your own hearts. Be governed by that, it is the

only true guide, the only infallible rule. Gentlemen, strip this proposition of the thin disguises in which the eloquent and learned gentleman has so beautifully garnished it, and what is it ? Nothing more nor less than a plain proposition to you to disregard your oaths—to commit the foul and ignominious crime of perjury. You have been sworn upon the holy Evangelists of Almighty God, that you will diligently enquire, and a *true* verdict render, between the Commonwealth and the prisoner at the bar, according to the *law* and the evidence. And what is the law ? It is that which has been established by legislative enactment, and judicial decision. The human heart has nothing to do with it, and the gentleman does you infinite wrong, when he advises you to appeal to so fallible a standard. The law is fixed, certain ; and you are to ascertain it and be governed by it, not to *make* it. You are sworn to make your verdict conform to the law as it is, not as your excited sympaties might induce you to wish it. This is all that is meant, when you are told that you are the judges of the law as well as the fact. But, gentlemen, are you prepared to make this sacrifice ? Are you prepared to disregard your oaths, in order to acquit the accused ? Are you willing to incur the heavy legal penalty of perjury—to take upon yourselves the deep moral infamy of the crime, and to make yourselves the objects of deserved public odium and hissing scorn ? I hope not ; and yet it has come to this: you must either convict the prisoner at the bar of the great crime with which he stands charged, or you must listen to the insidious appeal which the gentleman has made, and acquit him. If he could be acquitted according to the law, as it has been settled by the statesmen and jurists of the land, you would never have been told to set up a new and unheard of standard in your own hearts. If the law, as laid down in the books, had been in the prisoner's favor, it would have been read to you as the very essence of justice, truth and wisdom ; as worthy of all reverence and respect. But it is against him, plain, palpable, unescapable ; therefore you are told to enact in your own hearts a new code. Will you do it ? Some of you said you were the friends of the accused, and I doubt not the eloquent appeals of his counsel have excited the sympathies of all of you in his behalf ; but I trust that the sacrifice which is demanded of you, is too great for even your friendship, and that you will render a verdict according to the law as it is, and not as you might wish it to be.

Having disposed of these preliminary matters, let us now proceed, gentlemen of the jury, to an examination of the evidence given in this case, and of the arguments of counsel for the defence. And here I would remark in the first place, that there is no dispute as to the fact of the killing ; the foul deed was perpetrated here, in this hall of justice, in the presence of this court, and of scores of reputable witnesses. But, gentlemen on the other side insist, that this deed was not *maliciously* done; and, therefore, it is not murder. They undertake to define legal malice, and say that it means "*without lawful excuse.*" Although not regarding this as the most correct definition of the term, I am yet willing to take it as correct, for the occasion. If this deed of blood had a *lawful excuse*, I certainly am willing that the prisoner shall go unpunished.

But let us look a little into the evidence, and see what proofs there are of malice, on the part of the accused, towards his victim. I think I shall be able to show, from the proof in the cause, the most indubitable evidence of malice: and that of the deepest and blackest dye. In the first place, you find from the prisoner's own affidavit, that he has borne a grudge towards both William and Clifton Thomson ever since the publication of their father's will in the summer of 1832. He accuses them directly of having influenced their " old, infirm, and weak father" to give the greater portion of his property to them, to the exclusion of his wife and their other sisters. This accusation is made in terms and under circumstances which evince a great

deal of rancor and malice towards the parties accused, and is doubtless the foundation of that deep-rooted ill-will that resulted in the sad catastrophe.

In the next place, it appears from the evidence of Captain Postlethwaite, that a year or two afterwards, he is adopting and executing a deliberate system by which the death of his victim may be accomplished ; that of furnishing a constant supply of whiskey to an inebriate, whose habits at the time utterly forbade the idea of resisting the temptation. And this is done for the avowed purpose of causing his death,—avowed openly and repeatedly by the accused. Here is an instance of that fraternal love and paternal protection, of which gentlemen on the other side have spoken so eloquently ; and, I may add, it is of a piece with his general conduct towards his victim, running through eleven years, and terminating in his murder.

Another evidence that the accused bore malice towards the deceased, is the fact, that there were two strangely litigated suits pending between them, in the course of the prosecution of which, much feeling had been evinced, and many angry denunciations uttered on both sides. Thomson had, on divers occasions accused Daniel of perjury and forgery both, and in the prosecution of his chancery suit in the Fayette Circuit Court, had satisfied the court that Daniel did set up on oath a false and fraudulent receipt, and obtained a decree against him accordingly. These facts were well calculated to excite, and did doubtless rouse into fury, the pre-existing malice which the accused bore towards his future victim. He writhed under the exposure and determined to have his revenge in the blood of his adversary.

But there is still other evidence of malice. It is in proof before you that Henry Daniel, J. Daniel, and C. R. Thomson were at Brennan's Hotel in Lexington, the week before the Mt. Sterling court, taking depositions, and that H. Daniel left that hotel without any known cause. He had always stopped with Mr. Brennan, and the circumstance excited remark. On being asked by Mr. D. C. Wickliffe why he had left B's hotel, he replied he was not willing to stay at the same house with that "damned set, Clif. Thomson, John Daniel, and John Brennan." Mr. Brennan tells you that nothing occurred at his house calculated to offend the prisoner—that he did not know Daniel had left for some hours afterwards—that C. R. Thomson and John Daniel demeaned themselves as gentlemen during the taking of the depositions, and that during the whole time, nothing was done by either of the three, to which exception could be taken by the accused. And yet he leaves the House because he is not willing to stay with men he hates so much. This act goes farther to establish malice than any mere declarations, and there cannot be a doubt that he had then formed in his heart the deliberate purpose of murder. In connection with this act, and this declaration of enmity must be considered his statements to Mr. John J. Thomson. Sometime during the last winter, the prisoner stayed all night with Mr. Thomson, and during the evening spoke much and abusively of Clifton Thomson and John Daniel. Among other things he said they were mutually "swearing for each other in their suits with him, and he believed they would swindle him out of all he was worth ;" thus indirectly accusing them of perjury and swindling.

But the crowning and conclusive evidence of malice, is to be found in the affidavit which the accused filed in the suit at law, in the Montgomery circuit court, between C. R. Thomson and himself. This affidavit was made and filed for the purpose of a continuance of the cause ; and of course should not contain any matter not pertinent to that question. Yet it is filled with foul and degrading imputions towards W. Z. Thomson and C. R. Thomson, not at all pertinent to the question of continuance, and calculated and intended only to excite and insult the parties against whom it was directed. The character of the paper is such that the court should have fined its author for the contempt shown by its introduction, and should indignantly

have ordered that it should not soil the archives of its proceedings. Why was this insulting and irrelavent matter put in the affidavit? Why did he travel out of his way to insult so grossly a man with whom he was at open enmity and of whom he professed to be afraid? Such conduct could not possibly be without a strong motive and his subsequent act must elucidate that motive. The affidavit is the most remarkable paper of the kind ever presented to a court of justice, containing more low, petty, mean insinuations, and evincing more hatred, ill-will, and malice, than any similar document that ever came under my notice. Why I ask again was such a paper, so irrelevant, so insulting and uncalled for, drawn up, sworn to, and presented to the court? The offensive matter it contained had no relevancy to the question before the court, and could only serve to prejudice any honorable and impartial judge against the motion. The motive is plain, and considering his previous and subsequent conduct, cannot possibly be mistaken. The design was (and the scheme was a deep laid and well considered one) to provoke Thomson to reply to the affidavit, by throwing back its insulting imputations upon their author, and then to take his life for daring to pronounce those imputations false and slanderous. A quarrel is brought on designedly, by the use of the most insulting and degrading language, and when the insult is repelled in a becoming manner, the aggressor takes the life of the man he has thus provoked and injured. But look a little further at the evidence of design, of premeditation, which the proof in this case has established; and premeditation and design constitute the very essence of malice. Mr. Lewis Mason proves that on Monday the first day of the court the prisoner applied to him for the loan of his pistol, but did not take it because it was out of order, and he wanted one that would do execution. On the next day in the afternoon the suit between Thomson and Daniel was called, and Daniel asked for a continuance. Thomson required that an affidavit of the grounds on which the motion was made should be presented to the court. This he had a right to do. Daniel did not make his affidavit at once and present it to the court, as was his duty, but left the court room and was absent an hour or more. When called by order of the judge and asked for his affidavit, he requests to be indulged till morning for its preparation, and the indulgence is granted him. Connect these circumstances, in point of time, with the facts proven by Mr. Bowen, and you will readily see the motive for the delay. It is proven by Mr. Bowen that Daniel's son borrowed of him the pistol with which Thomson was killed, on Tuesday afternoon, the same afternoon that the suit was called, and Daniel absented himself from the court room. The inference is irresistible, that he left the court room for the purpose of borrowing the pistol, that he was called back before he obtained it, and that he asked for further time, in order to see that his weapons were carefully charged, and to prepare his insulting farrago, with which he well knew he could call out angry denunciations from his intended victim. His subsequent conduct goes to confirm all this beyond a doubt. Before the meeting of the court next morning the pistol is obtained and fatally charged, the foul and loathsome affidavit is concocted, with which he knows he can provoke insulting recriminations, which he is prepared to punish with death. Daniel comes into court the next morning with a box overcoat on, having large outside pockets on the hips, takes a position near the stove, where there was an open space, looks abstracted, continues to stand up nearly an hour, refusing a seat when offered to him, and keeping his hand in his pocket. The affidavit is handed to Thomson, and read by him. He remarks to his lawyer that he will reply to it himself. He does so, and after commenting on the grounds of continuance, remarks that it contains also base and malicious slanders. Before he uses this or other insulting language, Daniel is observed by Mr. Hazelrigg to adjust his pistol in his pocket, as he supposes. Daniel says, "don't repeat that again;" Thomson turns

towards Daniel, making an emphatic gesture, and says, "I do repeat it." Daniel instantly draws his pistol, takes deliberate aim, and fires. Can it be possible for human credulity to believe there was not design, premeditation, *malice* in all this? Why did he attempt to borrow Lewis Mason's pistol on Monday, the day on which the suit was expected to come on? Why leave the court on Tuesday, and ask for indulgence till next morning, but to perfect his preparations for the bloody deed? Why so wantonly, and grossly insult a man, whom, of all others, he should have treated respectfully, if his object had been peace? Why did he continue to stand for such a length of time in an unusual place, where he was disembarrassed by benches or chairs, refusing to sit, when invited, and keeping his hand on his weapon, adjusting it in his pocket, before offensive language was used, and firing it instantly after that language was repeated, as he well knew it would be. The conviction forces itself on the mind, with irresistable power, that the prisoner at the bar bore deep, deadly malice towards his victim, and that he had laid a most artful plan by which to accomplish his death. No other conclusion can possibly be drawn from the facts proven in the case. It is a case of irresistible conviction to any impartial mind. In connection with this part of the subject it will be recollected by the jury that no evidence was introduced, going to show that Daniel had any reason to apprehend an attack from Thomson. The pretended threats on the part of Thomson, of which I shall speak hereafter, were made years before, and the parties had met repeatedly in the meantime and transacted business together, without Thomson's insulting Daniel, offering him any violence, or any thing unpleasant occurring. This is the concurrent testimony of all the witnesses, who speak of having seen them together; indeed, Maj. Johnson testifies that on one occasion Thomson entreated him several times to continue in the room, and take the depositions between them, because he wished to avoid any difficulty with Daniel. The counsel on the part of the defence, were so sensible of this, that Thomson had given Daniel no cause even to arm himself, that they introduced proof, to show that he had procured arms for the purpose of defending himself against an attack from John Daniel. Suppose for a moment that Daniel had not drawn his pistol, will any one pretend to believe that Thomson would have drawn and shot Daniel? Do the counsel for the defence pretend to take any such ground? Not at all. No man who has heard the evidence can possibly believe that Daniel was in any danger from Thompson. He was merely repelling by words a gross insult put upon him in the presence of the court. He evinced no purpose, by word or deed, to offer any violence to the man who had insulted him. No, gentlemen, the premeditated insults contained in the affidavit were placed there for no other purpose than to provoke insulting recriminations, which might be pleaded as an apology for the crime the prisoner had already perpetrated in his heart.

But, gentlemen on the other side insist that the accused could not have borne malice towards his victim, because on the morning of the fatal affair he offered to refer the matter in dispute to the arbitration of disinterested gentlemen, and thus showed a desire for peace. In reply to this it may be remarked, that Thomson considered the proposition as much the same as if Daniel had proposed to leave to arbitration, whether his coat should be his own or Daniels; and besides, it is apparent that the proposal was made not in sincerity but for the purpose of deception. If his purposes had been honorable and pacific he would never have brought into court the foul and disgusting affidavit. Indeed, after the introduction of that paper no man of pride would listen to any terms of compromise, and Daniel was so sensible of this that he remarked to Mr. Harrison "he did not expect his proposition to be acceded to." This remark shows that the proposal of arbitration was only a part of that deep scheme of deception and crime which I have already exposed. The counsel for the

defence take the ground, too, that the facts set forth in the affidavit are to be taken as true, because they are not shown to be false, and therefore, Thomson, in saying that the affidavit was false and slanderous, directly accused Daniel of perjury in the presence of the court and the assembled spectators. This plea, if true, would be no answer to the indictment,—no justification of the crime for which the prisoner is on trial. But the plea is wholly false and untenable. The commonwealth introduced the affidavit as a proof of malice, not to admit or deny the facts stated in it. In point of fact it is wholly immaterial to the issue of this trial whether they be true or false. In either case the prisoner may be guilty or innocent of the crime with which he stands charged. But the presumption of law, is, if the rule applies at all, that the statements of the affidavit are false. They are all affirmative in their character, and the law places the "onus probandi"—the burden of proof—on the party *affirming them.* Has any proof been offered here to show that the statements of that paper are true ? None whatever. Then they are to be regarded as false. Indeed they not only offer no proof to sustain those allegations, but when we propose to show that they are false, objection is instantly made by the elder Mr. Wickliffe, and the testimony is ruled out as irrelevant. After all this the gentleman stands up before this jury and this respectable audience and makes an argument that those statements are to be taken as true—statements made by his client, which should have been proven by him, but were not ; and which we proposed to show were false, but were prevented by the gentleman himself. You marvel, gentlemen, that any one, particularly one of the eminence of the gentleman for ingenuity and talents, should place himself in such an attitude before a respectable audience; but the fact only goes to prove the desperate expedients which must be resorted to in desperate cases. It is easy, however, to show from the papers themselves that the defence set up in the affidavit was a mere pretence. The substance of the defence is, that W. Z. Thomson, the assignor of the note, owed the defendant, Daniel, an account for fees and expenses in certain suits against the said Wm. Z., and that this account should be set off against the plaintiff's demand. At the time of filing this affidavit Daniel files also an account of Wm. Z. Thomson against himself for his (Thomson's) expenses in attending to the same suits, which Daniel agrees to pay and executes his note for; thus showing conclusively that he was bound to pay the expenses of those suits, and that the pretended account which he set up against W. Z. Thomson had, in point of fact, no foundation whatever. The suits alluded to were brought for their freedom, by certain negroes, sold by Daniel to Thomson. Daniel had warranted the title in his bill of sale, and of course, was bound to defray the expense of these suits. He was entirely sensible of this, and had given Thomson his note for a portion of his (Thomson's) expenses in attending to the same suits. Yet the pretended off-set which he sets up in his affidavit is an account against Thomson for his fees and expenses in these suits. This explains very clearly why gentlemen were unwilling to investigate the truth or falsehood of the facts stated in the affidavit.

But gentlemen ask, why did Clifton R. Thomson argue the question of continuance himself, instead of his two lawyers, who were in court, and both able and willing to represent him? I answer, because he and his brother were both most grossly insulted in the affidavit; because he was purposely provoked to do so by the false, irrelevant and offensive language of that paper,—language that was used for no other object than to excite and provoke recrimination. And when I speak of the affidavit, I allude to the whole paper, that which was crossed, as well as that which was not, for it is idle to attempt a distinction between the different parts, the one being just as legible as the other, and the whole having been read by Thomson. He had shown a wish to avoid any altercation with Daniel, by employing counsel, and no doubt

would have left the entire management of the case to them, but for the gross insult put upon him in the presence of the court. Daniel knew him too well to believe he would tamely submit to such language, and had prepared himself to punish with death, any offensive words that might be used in reply. This was his evident purpose. The occasion, the place, the previous preparations, his conduct during the morning, standing up in an open space, and keeping his pistol in his hand, the opprobrious language of the affidavit, his sudden arrest of Thompson, his instantaneous drawing of the pistol, and firing with deliberate aim, all go to show beyond a doubt, a premeditated design to provoke a difficulty, and take Thomson's life before he was aware of his danger, or prepared to defend himself. Daniel had pretended to be afraid of Thomson, had said to Travis Daniel, when warned to be on his guard as to John Daniel, that he did not regard John as at all dangerous, but that John was urging on Clif. Thomson, who was a much more dangerous man, and he was really afraid of him. Can this be true, and is it not merely a cover for the crime he had already committed in his heart? What right had he to fear Thomson? None whatever. They had quarrelled and separated, it is true, more than four years before; Thomson had denounced him to his face and elsewhere, as a perjurer and swindler, and if that should have any weight, had driven him from his office with a pistol; but all this took place years before the fatal rencontre; the parties had repeatedly met and transacted business together since the quarrel, nothing unpleasant had occurred on these occasions; Thomson had offered no insult or violence; he had succeeded in his suit with Daniel, and obtained a decree for what was due him, and according to the evidence of Maj. Johnson he had manifested a sincere desire to avoid a difficulty with the prisoner. Besides, no proof has been introduced here establishing threats, or any purpose of violence on the part of Thomson, within less than two years preceding his death.

Again, if Daniel had been afraid of Thomson, as he alleged, the laws afford him an ample remedy. But he declined to avail himself, not only of the protection of the laws, but also of the means of personal defence; for it appears that he was unarmed as late as the evening preceding the fatal affair. I think gentlemen tax our credulity a little two highly, when they ask us to believe that a man is really in fear for his life from a deadly foe, who neither seeks the ample protection which the law affords him, nor provides himself with the necessary weapons to defend his person from violence, and that he remains in this fearing and defenceless state, for three or four years without making a single effort to relieve himself. All this, I think, must satisfy you, gentlemen, and every impartial person, that the alleged fear of the accused was feigned, as a cover for the crime that he meditated, and that he provoked the difficulty with the foul purpose of *malicious* murder in his heart. But gentlemen say, that Thomson *scowled* on Daniel during the morning, before the motion of a continuance of the suit came up, and this is urged as an apology for the accused. The statement is made on the testimony of Mr. Lewis Mason, but I think that testimony properly considered should weigh against the prisoner, not in his favor. Mr. Mason stated that he noticed Captain Daniel looking towards Thomson in a peculiar manner, he turned to Thomson, and he was returning Daniel's look with scorn upon his countenance. Daniel looked at him some time, and *putting his finger to his nose*, turned away. So it was Daniel whose scornful looks were first noticed, and no doubt they were added to the insults of the affidavit, for the purpose of making a difficulty certain. But suppose T. did scowl on Daniel. I think he had ample cause in the affidavit, and there is little doubt Daniel returned the scowl with interest; for I should like to see the man who can outscowl him.

As I think I have shown to you conclusively, gentlemen of the jury, that the ne-

cessary ingredients of *malice* is to be found in this case, I shall proceed to an examination of the facts connected with the killing, as detailed by the witnesses. As to the fact of the killing, there is no dispute. It is but too true that the deceased was slain by the accused in the presence of this honorable court, and the assembled multitude. As to the facts connected with the killing, the testimony is in the main, clear and conclusive. There are, it is true, some slight discrepancies, but these only go to show the absence of collusion, and the general truthfulness and impartiality of the witnesses. If the witnesses had all sworn to precisely the same facts, we should have been led to distrust them. As they have differed in relation to many immaterial points, we are led to believe they have candidly and honestly detailed the circumstances as presented to their minds at the time. But it seems to Mr. Apperson that there is a wonderful conflict of testimony in the case ; not a single conflict indeed, but half a score of conflicts. I was much amused at the manner in which he treated this part of the subject. He got up a conflict in one place as to the precise position occupied by the accused, when he fired, and observed that the witnesses differed a few inches and feet as to his exact location. He then showed another conflict of testimony, as to whether Daniel left the house hastily or deliberately, after he fired, and showed that some thought one thing and some another. The next conflict to which he called your attention, was, as to whether Thomson's left arm was thrown up after he was shot or not, some witnesses deposing that it was, and others saying they did not notice the fact. But the great fight of all was among the Doctors. They regularly devoured each other. They were asked how long it would be before consciousness would cease in a man mortally wounded in the lungs. Some said instantaneously ; others said it would take *some* time. Certain it is, they demonstrated the truth of the old adage, that "Doctors will differ." But what does all this signify ? What do all the discrepancies pointed out by Mr. Apperson, amount to ? Nothing in the world; and I am at a loss to conjecture why the gentleman experded so much labor on these immaterial discrepancies, unless it was with the view of making the witnesses perform for each other the wonderful feat said to have been performed by the "Kilkenny cats," who ate each other up, but the tails. The object of the gentlemen in commenting at such length on immaterial and natural discrepancies in the testimony, was to make the impression on your minds, that the opposition of the testimony was so great in all the important points, that it should neutralize itself, that nothing at all was satisfactorily proven, and that therefore you ought to acquit the prisoner at the bar. But I trust the gentleman was far from succeeding in his attempts. For I declare in all candor, that I have never seen so many witnesses depose in any case, where there was less discrepancy, less reason to doubt the general fairness and truthfulness of the evidence, or more satisfactory proof of the main facts on which the issue of the case must rest.

What are the facts as detailed by the witnesses ? Thomson was addressing the court, commenting on the grounds presented in Daniel's affidavit for the continuance of the suit at law between them. Having shown as he thought, that there was no valid grounds for the continuance asked for, he remarked, "moreover, this affidavit contains base and contemptible slanders." At these words, Daniel arrested him, saying, "don't say that again ;" Thomson turned to the left, facing Daniel, and making an emphatic gesture with *both* hands, said, "I do repeat it, it contains base and contemptible slanders." Daniel instantly drew his pistol, presented it, took deliberate aim, and fired, shooting Thomson directly through the chest, into the region of the heart and lungs. Up to this point there is not the slightest discrepancy in the proof, except that three or four witnesses out of forty or fifty, think that Thomson used the words base and contemptible slanders twice before he was arrested, while

the others think he used them but once. The testimony goes on to show, that after he was shot, Thomson turned round to the right, and walked three, four, or five paces before he sunk down. As he sunk, he endeavored to support himself, by putting the end of his pistol, which he then held in his right hand, on the bottom of a chair. Nine of the witnesses depose, that *after he was shot*, they saw him put his right hand to his back, they saw his hand distinctly as he threw it behind him, and there was then *nothing* in it. Soon after this, just before he began to sink, several of them saw the pistol in his right hand, but did not see him take it from his pocket. One of the witnesses, Mr. Thornton Cox, states that he saw Thomson take the pistol from his left coat-tail pocket, with his right hand just before he took his last step. He was in a position where he had a clear view of Thomson, and thinks he cannot be mistaken as to the fact of seeing the pistol drawn as stated. In corroboration of this evidence, twenty of the witnesses depose that Thomson used *both* his hands at the time of repeating the offensive words, making an emphatic gesture by raising them up and bringing them down again, as he uttered the words ; and that they did not see a pistol in his hands till just before he sunk down, some of them indeed, not seeing the pistol at all. The only testimony introduced in this case, going to conflict at all with that just detailed, is the evidence of James Casseldine, Isaac Trimble, and Chas. Wheeler ; and their testimony, when examined, will be found to fall very far short of answering the purposes of the defence. Mr. Casseldine is the principal witness, and what does he prove ? He came into court, and stood near Thomson, who was speaking at the time, Daniel arrested him in a loud voice, Thomson repeated the words, Daniel presented the pistol, and witness turned his attention to Thomson ; at the moment when Thomson was shot he thought he saw a pistol in Thomson's right hand, he would not say it was a pistol, but he thought it was, it might have been something else, he got merely a glimpse of it, and might have been easily mistaken, in fact he might have mistaken any thing for a pistol just then, for he considered himself in great danger. On being cross-examined, he stated that Thomson's arm was extended at full length, when he thought he saw the pistol in his hand. This last statement shows conclusively that Mr. Casseldine was mistaken, for Thomson's hand could not have been seen by him when extended at full length, on account of the bar and books on it, that obstructed his view. But suppose he could have seen Thomson's hand distinctly, could such doubting and hesitating testimony as he gave set aside the positive evidence of nine witnesses, as respectable as Mr. Casseldine, who testify that they saw Thomson put his *empty* hand to his back, after he was shot, and of Mr. Cox who saw him draw the pistol from his pocket, just before he sunk down. It is absurd to set up such a pretension, particularly when Mr. Casseldine is the only witness out of perhaps one hundred, who witnessed the affair, that pretends to have seen any such thing. I do not doubt that Mr. C. states candidly what he believes, but I suppose the truth to be, that he was so much alarmed at the danger in which he says he thought he was placed, that he did not have any clear views of any thing that took place. In fact, I doubt not, that images of drawn pistols have been disturbing his dreams ever since he saw the fatal occurrence. So much for Mr. Casseldine.

But Mr. Trimble is relied on to make out a case of mutual combat. What was his testimony ? He states, that just *after* Thomson was shot, he saw a pistol in his hand, or rather he saw his fingers working, as if he was trying to get a pistol, did not see Thomson's right hand when he was shot, but saw the pistol soon after, as T. was turning round he had got as far as the corner of the bar before the pistol was seen by him ; witness stood some little distance from Thomson on his right hand, and did not see him put his hand behind his back. Now all this goes simply to confirm the

testimony given in the nine witnesses before spoken of, and does not at all sustain Mr. Casseldine's phantasies or militate with the general drift of the evidence in the case. This will be abundantly plain to you, when you reflect that the witness says he did not see the pistol till Thomson had commenced turning, and got as far as the corner of the bar, that Thomson turned to the right and of course turned his back from the witness, who stood on his right and who of course could not see Thomson's right hand again till he had turned three fourths around. This must be very apparent to every one who will reflect on the position of the parties, and the statements of the witness, and shows conclusively that Mr. Trimble did not see the pistol till about the time the other witnesses saw it. The testimony of Mr. Charles Wheeler is about to the same effect, and tends to corroborate that given in on the part of the Commonwealth. He says that "as Thomson was in the *act of turning*, he saw the pistol in his hand, it was rather behind his back, he could only see Thomson's elbow before he began to turn. Witness sat on an elevated seat about twenty-five feet from Thomson on his left hand." The position of the parties in this case again shows that Thomson must have faced to the right about before the witness could have seen his right hand. But the witness went and occupied the position which he thought Thomson occupied when he saw the pistol, and this was very near where T. stood before he moved at all. Unfortunately for the witness, a gentleman was occupying the very seat which the witness said he had occupied at the time of the fatal occurrence, and this gentleman could not see the witness when he had taken the position said to have been occupied by Thomson when the witness saw the pistol in his hand. A large post intervened and obstructed the view. This fact shows that Thomson was just where the other witnesses swear he was when the pistol was first seen in his hand. This is the substance of all the testimony tending in the least to show that Thomson had drawn his pistol at the time or before he was shot, and when compared with the evidence of the nine witnesses, who saw him put his empty hand to his back after he was shot, and with the testimony of Mr. Thornton Cox, who saw him draw his weapon just before he sunk down, this testimony of Messrs. Casseldine, Trimble, and Wheeler, cannot be regarded as sufficient to raise even a doubt of the correctness of their account of the transaction. I know that it was attempted to be shown by the testimony of several gentlemen of the medical profession, that a man shot as Thomson was, could have neither the consciousness nor strength to put his hand in his pocket and draw his pistol, but as I remarked before, the "Doctors differ" very much on this point; and I think the facts, that he walked from three to five steps, that he attempted to support himself with his pistol on the bottom of a chair, and that he lived from three to five minutes after he was shot, ought to satisfy every one of the absurdity of such an idea. The testimony of the same gentlemen, too, established the fact that persons mortally wounded in the lungs were sometimes able to continue a fight, and even vanquish an adversary, before their strength would fail, or death ensue; and that persons wounded in the lungs sometimes recovered from the injury and suffered very little inconvenience from it.

But it seems that gentlemen on the other side, notwithstanding the overwhelming weight of evidence to the contrary, feel constrained to take the ground that Thomson had drawn his pistol before he was shot, and that therefore it was a fair fight between two men who had quarrelled and were mutually ready for deadly hostilities. Messrs. R. Wickliffe, senr. and Apperson, both take this ground, and both assume the office of actors as well as advocates, and attempt to show you by personal exhibition, how Thomson was not only ready, but in the very act of firing when he received Daniel's shot. Now I must be allowed to say for the senior Mr. Wickliffe, that he is a remarkable gentleman in many respects, remarkable for his youthful appearance,

for his eminence as a lawyer and statesman, and for his general success in the world, yet I feel constrained to say, from the exhibition he has made in this case, he is the most indifferent duellist I have seen practice. You observed how he laid the pistol across the lower part of his abdomen, tucked his arm against his left side, and threw his eyes over his left shoulder, in a very firm manner. He was then ready to fire, and if he had unfortunately done so, would most certainly have killed himself. I have heard of many modes of fighting duels, some shooting across the breast, and some elevating the pistol at the hip, in addition to the ordinary mode of extending the right arm, but I do suppose, that since the bloody code of the duello first found favor among mankind, no instance of a man's laying his pistol across the lower part of his abdomen and firing in that position ever occurred. The gentleman is entitled to the honor of the discovery, and the glory of being the first actor of the new mode. Take it all together, the idea and the acting, it was rich, the most farcical exhibition I have seen in a court of justice for many a day. It told well too on the audienee, for the merriment was universal. It seems, however, that it was not calculated to have a great run, in theatrical phrase, for it was repeated again the next morning by the gentleman's colleague, Mr. Apperson, and proved to be decidedly flat. No one laughed, or showed the least signs of merriment. I much doubt whether this farce will ever be acted again. But to be serious, (if one could be serious on so ludicrous a topic) the gentlemen both forgot that if Thomson had fired as they represented him in the act of doing, he must have killed several of his friends whose heads were directly in the supposed range of his pistol between him and Daniel, and it would have taken all of the six barrels about which gentlemen talk so much, to clear the space so that he might fire effectively at his adversary. Really the idea is so absurd in all its phases, that I am amazed that gentlemen of such eminence as advocates should have urged it before a jury. Just consider it for one moment. They first assume that the twelve witnesses who swear that Thomson did not draw his pistol till after he was shot and was turning round, were either mistaken or swear falsely, and that Mr. Casseldine's vague and hesitating opinion was correct; they then take it for granted that Casseldine himself was mistaken when he said that Thomson's arm was extended at full length, and make Thomson present his pistol in a manner that no mortal man ever adopted since arms were invented, in order that he may shoot half a dozen innocent gentlemen through the head, because they sit between him and his adversary. Could the imagination of man, almost infinitely inventive as it is, suggest an idea more repugnant to human credulity ? And yet this is about the best defence the case is capable of. If the prisoner's cause were susceptible of any better defence, you may rest assured that the very able counsel by whom he is represented, would lay it before you in all its most imposing force. The inference which you may legitimately draw from the fact, that so lame and impotent a defence has been set up by such able and learned counsel, is, that the conduct of the prisoner is wholly and utterly indefensible; that he is indeed guilty, as charged in the indictment, of the crime of murder.

But the gentleman who first addressed you on the part of the defence, (R. Wickliffe, sen'r.) thought that he could make something out of the fact that Thomson was armed with a six barrel revolving pistol, and two pocket knives, the one a small penknife, and the other a common pocket knife, with a single blade, three or four inches long; and he gave you a most learned dissertation on the use, manufacture, and improvements of modern fire arms by Colt and others, and threw a flood of light on the manners and customs of a class of our citizens whom he has pleased to designate by the flattering title of "*fashionable bucks.*" He told you there was a class of men in Lexington and all large towns, who follow no business, who live by their wits, and

whose principal amusement is practising the use of these revolving pistols, (which they use after the manner represented to you by him) shooting each other, and cutting each other's throats, and smoking cigars. They wear iron or steel shirts for the purpose of protecting their own bodies, and if a tailor or other mechanic duns one of them for a bill, he instantly draws his revolver, presents it to the tailor, and demands a receipt for the bill, which is at once granted. According to the account of the gentleman, there is quite a numerous class of these "fashionable bucks" in his own city and all large towns, who pay their debts in this way, and follow the genteel amusements before mentioned. And these pistols he says were made for their benefit, and are chiefly used by them. He tells you who they are ; assassins, gamblers, blacklegs, loafers, dandies, and nightwatchmen. Altogether, he draws a most gloomy picture of public morals in the city of his residence, from which I should be almost led to suspect some misunderstanding between him and his late constituents. I must be allowed to say, that I am pretty well acquainted in the city of Lexington, and I know no such people residing there as he describes. I think he does his neighbors great injustice, merely for the purpose of creating a prejudice in your minds against a weapon now very common among all classes of persons, who feel under any necessity of carrying arms. Mr. Thomson felt this necessity, because he knew the deadly enmity of the prisoner towards himself, and there cannot be a doubt that he provided this weapon for the purpose of defending himself in case of attack. He had both a legal and moral right to do so, and he made no illegal or immoral use of it. If his object had been to attack Daniel, he would have done so in Lexington the week before court, or on some former occasion, when a suitable opportunity presented itself. For you will recollect that the quarrel between the parties had then subsisted more than four years, and nothing offensive had occurred for a long time. On the contrary, Thomson had manifested on every occasion when they met, no disposition to insult the accused or provoke a rencountre.

But gentlemen of the jury, there is still another ground of defence taken by counsel on the opposite side, which I propose to examine: I mean the ground of justification, which is taken in consequence of threats alleged to have been made by Thomson against the life of Daniel. Mr. Jacob Steel is the only witness who speaks of having heard Mr. Thomson utter any threats. His testimony was to this effect: some year or two ago he heard John Daniel and Clifton Thomson talking about Henry Daniel, and one of them said he was a grand old rascal, and ought to have been dead long ago ; the other said yes, and if he ever puts himself in my way, I will kill him. On being asked which of them said he would kill him, he answered Mr. Thomson. Now, I suppose Mr. Steel has just substituted Mr. Daniel's remark for Mr. Thomson's, because it is proven that Mr. Daniel had threatened the prisoner on several occasions, and there is no proof that Mr. T. ever did, except on this occasion. Again, Mr. John Daniel states, that he does not recollect any such conversation as that detailed by Mr. Steel, and he is very certain that he never heard Mr. Thomson threaten the prisoner's life on any occasion. Besides, Mr. Steel states that he never repeated this conversation to the accused, and he does not recollect that he did to any one else. The threat, too, if it may be regarded as such, was contingent. "If Daniel ever put himself in his way," is the condition on which the threat was made to depend. Daniel must *cross his path* in an improper manner before he thinks of offering violence. It shows very clearly he intended Daniel should be the aggressor. And so it turned out. Daniel gave the insult; Thomson would not.

Mr. Fitzpatrick is another witness who was introduced to prove threats, but failed entirely to do so. On the contrary, he never heard Thomson, *drunk or sober*, utter any thing like a threat against Daniel's life. He spoke very hard of Daniel, his

swindling and perjury, and said he would have killed him on one occasion, if he had not left the room. This was in the fall of 1841, when Mr. T. was in habits of great intemperance. The witness communicated to Daniel what Thomson said, but spoke of no threats, and must have made the impression that none were used, because he would be most apt to make threats at such a time, if he ever made them at all. This failure to make them when he was excited by drink, and applying the most disgraceful epithets to Daniel, is conclusive proof that he never made them on any occasion. Maj. Johnson's testimony is quoted too as tending to prove the alleged threats, but must wholly fail to do so, even if the declaration made to him by Mr. Thomson should be regarded as a threat, because he, Maj. Johnson swears that he never repeated it to Capt. Daniel, or any other person until after Mr. Thomson's death. Of course it could be no motive to Daniel for taking Thomson's life, as it was necessarily wholly unknown to him. But Mr. Travis Daniel is also brought forward as a witness to prove threats, or rather a *state of fear* on the part of the accused, which is supposed to be induced by threats. He is allowed to detail to the jury, not what Mr. Thomson said, but what Mr. S. G. Herndon said, and Harry Daniel said. One would suppose that under rules of evidence, by which a party was allowed to prove his own statements, he certainly would be able to make out his case, but even the prisoner at the bar did not pretend to his nephew when speaking of this very subject, that he had ever heard of Thomson's making any threats against his life. He says to his nephew, when warned by him to be on his guard against John Daniel, that he is not afraid of John, but he is afraid of Clif. Thomson, who is a much more dangerous man, and who, he thinks, is urged on by John. He gives no reason for this except the intimacy of John and Clifton. If he had ever heard or believed that Mr. Thomson had made threats against his life, this was the occasion of all others when he would have stated the fact, but he is silent on that subject and does not even allude to such a topic. This occurred within ten or twelve days preceding Thomson's death, and the fact must put a complete extinquisher on the hopes of the accused so far as they rest on the alleged threats. Mr. Travis Daniel, however, goes on to detail other conversation of his uncle on the same occasion; but like many another witness, proves too much. He states, most unfortunately I think, that his uncle told him in Owingsville, on the occasion of taking depositions there, of certain occurrences, which in reality did not take place in the city of Lexington until a week afterwards. He is asked if he is not mistaken? He insists that he is not. Now I hope he will excuse both you and me for declining to believe at least this portion of his evidence. In connection with this subject, allow me, gentlemen, to repeat what I have before stated, that the prisoner at the bar could not have had any apprehension of injury from Mr. Thomson by reason of threats or otherwise, first, because he did not avail himself of the ample protection which the shield of the law afforded him, and secondly, because he did not provide himself with the weapons necessary to protect his person from violence, until the evening preceding the fatal occurrence. These facts show conclusively that he had not been laboring under *fear* of Mr. Thomson for any cause whatever, and that he had provided his weapon for purposes of offence, not defence.

The gentleman who last addressed you on the part of the defence, (Mr. R. N. Wickliffe,) supposed the case of two men mutually armed, and ready for deadly hostilities: they meet accidentally, a quarrel ensues, and one kills the other. He endeavors to assimilate this case to the one supposed, and says that a jury would be bound to acquit under such circumstances. Whilst I am willing to admit that this is the most plausible view of the case taken by the defendant's counsel, I must beg leave to differ from the learned gentleman as to the conclusion. In the case supposed, the law would still make the party killing guilty of manslaughter. But is this a case similar

to that supposed ? I think not. The parties were both armed, it is true, and so far ready for conflict; but Thomson had no reason to apprehend an attack, particularly at that time and place. He was taken wholly by surprise, and slain before he had time even to attempt to draw a weapon. Too brave to retreat, or even to dodge, all that he could do was to protect his vitals as well as he could, by his arm, turn his side to his foe, and look him steadily in the eye; assassinate me sir, if you will. And assassinate him he did. In order to give any sort of plausibility to the gentleman's illustration, the conflict which takes place must be what is commonly called a *fair fight*. In this case the conduct of the prisoner shows that he intended to give his adversary no chance whatever, that he intended to take his life without running any risk of losing his own. All his arrangements were planned with this view and carried into execution with a fatal certainty of success. But suppose a case parallel to that on trial. Two men have quarreled and been enemies for years, they mutually hate and bear malice towards each other, they carry arms in apprehension of an attack, each from the other. One of them grows tired of this state of armed neutrality, and determines to bring the quarrel to an issue. He prepares himself well, gives no notice to his adversary, insults him the first time he meets him, at an unusual time and place, and shoots him down as soon as he retorts the insulting language, giving him no chance to defend himself further than to cover his body with his arm. Will the gentleman, able and ingenius as he is, attempt to maintain that this is not murder ? I think not. It is plain, palpable, deliberate murder; yet the case supposed is more favorable to the party killing than that made out for the accused by evidence in this cause.

Gentlemen of the jury, you are called on to acquit the accused because of the high character he at one time maintained, because of his gallantry during the last war, and of the high stations he has filled in the civil service of his country. It is true that he has received at the hands of his fellow-citizens many tokens of public confidence, but this is only an additional reason why he should be held to a strict account for his conduct. If the law-makers do not obey the laws, the people may be expected to follow their example. If the recipients of public favor and confidence betray the trust reposed in them, and show themselves capable of the blackest crimes, let the heaviest penalties of the law fall upon all such for the disgrace which they have brought on the name of the people. Do gentlemen consider the enormity of the proposition they are making to you? You are to acquit the prisoner at the bar because of the high station he has filled, the honors he has received from the hands of the people. Has it come to this, that the great, the rich, the powerful, are to be allowed to perpetrate the grossest crimes with impunity, while the humble, the poor, the weak, are to be punished with the utmost rigor of the law? Shall the prisoner at the bar go unwhipt of justice, because at one time he was popular, and now has strong friends to stand by him in his hour of trial, whilst any common man, whilst any one of you gentlemen, would be hung by the neck like a dog for the same crime? Listen not to the insidious, the *fatal* appeal. Beneath and beyond it, lie mischiefs unutterable to you, to society, to your country. Already is it said and believed by many that the law is too weak for the powerful, the great; that *money* will enable any criminal, however great, to escape. Give not your countenance to the growing opinion. Administer the law in its purity, so far as you are concerned, alike to the high and low, the humble and the great. Give no sanction by your example to the monstrous doctrine, that the laws are made to restrain one portion of the community, to be broken by another. Whenever this comes to be the received opinion, whenever the mass of our citizens shall come to the conclusion that this is the ordinary course of the administration of justice, then indeed your criminal code is brought into

disrepute, your entire system of public polity is brought into contempt, and your boasted institutions of liberty are spurned and overthrown by the hands of those for whose benefit their founders claimed to erect them. Those who love our glorious institutions most would be the first to seek refuge in some other form of government, under which they might hope that justice would be administered alike to all. Gentlemen of the jury, the keeping of the laws is for the time being entrusted to your hands. It is a sacred deposite; keep it pure, return it as you received it, undefiled. By your verdict, you are to license crime, or give assurance of security to the timid, the weak, the defenceless. If the prisoner at the bar be acquitted, all men are licensed to give rein to their bad passions, and wreak their vengeance on their enemies, supposed or real. By finding a verdict according to the law and the evidence in the case, you will, so far as your example can go, give assurance to all of the equal administration of justice, and rebuke that spirit of disaffection, which says that the laws are made for the humble only, while the great are permitted to go unpunished. Listen not to the eloquent appeals of gentlemen, by which they endeavor to excite your sympathies, and lead your judgments captive. They invoke your attention to the wife, the son, the family, the friends of the accused, to himself and his awful doom in case of conviction, and draw a sad and dreadful picture of the awful consequences of punishment. These considerations should have restrained the prisoner from the commission of the crime. They attach to others, not to you. They are out of place in the jury-box. It is your duty to find the truth, not to consult your feelings. The past high character, the former services, the afflicted family, the tarnished name of the accused, have naught to do with your verdict. The Commonwealth asks you a single question:—*Is he guilty?* Answer on your oaths, answer it truly; disregard the insulting appeal to look to your own hearts for a new law, by which you would commit the ignominious crime of perjury, stifle those sympathies of your nature, which conflict with your duty, to the laws, to society, to your own consciences. This is all that the Commonwealth asks of you, all that the prisoner at the bar has a right to expect of you, and all that the friends of his unfortunate victim desire. To me it is plain, that the prisoner is guilty of murder, murder in the first degree, cold-blooded, deliberate, deep, black, damning murder. I can see no ray of hope for the accused, no possible way of escape from the terrible sentence of conviction. If however, you gentlemen, occupying as you do, a more dispassionate position than myself, can entertain a *reasonable* doubt of his guilt, in the name of God acquit him.

Gentleman of the jury, the case is with you. I have performed my duty, at least what I deemed a sacred and indispensable duty. My friend was slain, murdered, as I conceived, in cold blood. Could I do less than use all honorable and lawful measures to bring the guilty to condign punishment? He must indeed be more or less than man, who could practice such forbearance. Having performed my duty, the rest is with you. Whatever may be your verdict, the friends of the murdered Thomson must ever mourn his untimely end. They had witnessed his early promise of usefulness, of talents and of fame, and their hearts were made glad by the assurance of a man, whose career would be honorable alike to him and them. These early hopes, so fondly, and apparently so justly cherished, were destined to a sad and premature disappointment. The fell demon of intemperence came and conquered. The brightest prospect was at once overcast. The most cultivated mind, the clearest intellect, the most upright morals, the noblest aspirations of our nature were all a sacrifice and a ruin. He was lost, almost hopelessly lost, to the hopes of his friends, to all the high and useful purposes of his being. But the spirit of a good angel came, and he was rescued. The Temperance Reformation spread its benign influence over the land, and he became one of its earliest proselytes, one of its most ar-

dent and eloquent advocates. He was himself again. We saw him a second time on the high road to respectability, to usefulness, to an honorable fame. With an unclouded intellect, with renewed strength, with higher and purer aspirations, with unimpaired vigor, health and hopes, he enters anew the career of his youth. He is winning his way steadily, up its difficult heights. The hopes of his friends are revived, confirmed. In the midst of their gratulation, almost at the outset of his new career, he is cut off; slain, causelessly slain by the hand of his brother. He now lies in his cold grave; there lie also our perished hopes. May the Almighty, in his goodness, judge alike the living and the dead with mercy.

APPENDIX.

The following facts will serve to elucidate certain things alluded to during the progress of the late trial of H. Daniel for the murder of C. R. Thomson. Extract from the last Will and Testiment of Clifton Thomson, deceased:

"WHEREAS, I became security for my son-in-law, Henry Daniel, to Nancy Tanoy, for the sum of —— dollars, on the 1st of April, 1826; therefore, having paid —— dollars of the same, it is my wish that my Executors settle so much with interest at 6 per cent from the 19th of May, 1830."

On the 14th day of November, 1818, Wm. Z. Thomson, (brother of C. R. Thomson) bought of H. Daniel two little negroes, (twins) 5 years old, for which he paid said Daniel $755. One of these children was a girl, who, growing up, had in 1836 one living child, thus increasing the number to three; meantime that portion of the same family of negroes retained by Daniel, had increased till they numbered some half a dozen in the year 1836, in the latter part of which year they all united with their mother at their head, in a suit for their freedom. This suit was pending about eight years in the Circuit Court and Court of appeals together, during all which time Wm. Z. Thomson had in regular attendance able and efficient counsel, while Daniel had none; so that Thomson in defending his own suit, defended that of Daniel also, although he was not bound to defend even his own suit, holding as he did, a warranty of title from Daniel. During the pendency of said suits Thomson went twice to the town of Delaware in the State of Ohio, to attend to the taking of depositions, the expenses of which Daniel agreed to pay, though he now states each was to pay his proportion. In proof however, that I am right, I refer to a paper which he filed in the suit between him and C. R. Thomson marked A. which is a statement of the several items I exhibited against him, among which will be found two items, being my expenses to Ohio, on the two occasions alluded to.

It was during the March term of the Fayette Circuit Court, 1836, that H. Daniel bought of Wm. Z. Thomson a tract of land, for which he agreed to pay the sum of $13,000—one-third in hand, the remainder in one and two years. This land Daniel had in his possession about one year, cutting and selling timber and fire-wood as rapidly as he could devise ways and means to effect, as well as cultivating that part which was cleared, nor did he ever pay so much as one dollar of the purchase money. In the fall of 1833, H. Daniel purchased of C. R. Thomson a farm containing 197 acres or thereabouts. C. R. Thomson was at that time, and had been for some years before a confirmed *inebriate*, and was easily imposed on by any one who would be at any pains to do so. The consideration for which this farm was purchased, was an annuity of $200, till the whole sum paid should amount to $3,000, unless Thomson should

die, in which event all future payments were to cease. (This farm has since rented for $600 per ann., as I am credibly informed.) This consideration, paltry as it was, soon became troublesome to H. Daniel, who finally refused all further payments, and turned out upon the world the unfortunate victim of his fraud, destitute of the means of support. Abandoned and destitute, he sought the home of his brother, the writer of these lines, to whom he made known in part his griefs and his wants. Not a great while after this, there began to move upon this community the spirit of "*Teetotalism*," nor was it long before C. R. Thomson not only became a member, by signing a pledge of total abstinence, but devoted himself most zealously in propagating its doctrines, and urging its claims upon his cotemporaries. Finding himself again upon his feet as a sober man, he awoke as from a dream to a sense of the past, and having taken the best legal advice within his reach, he determined to overhaul the doings of his former pretended friend, H. Daniel. This was a searching operation, which as it progressed, developed the dark transactions of the said Daniel more and still more; meantime C. R. Thomson being destitute of means of support, and his brother Wm. Z. Thomson having taken upon himself the duty of supplying his wants, gave him the benefit of a note he held on H. Daniel for $123, which had then been due some years. All the foregoing facts are susceptible of the most irrefragable proof, such as would satisfy the most sceptical mind.

I have thought it due to the memory of my deceased brother, to place before the community the foregoing facts and documents, to disabuse the public mind of a thousand and one fabulous reports which have been got up for effect. I will blame no one for coming to a different conclusion from me, but for myself, I must declare as my firm belief, that the murder of C. R. Thomson by H. Daniel, was the result of deep, dark, malignant malice, long cherished by said Daniel against Thomson's family in general, and himself especially. In conclusion, I will only say, that H. Daniel has done me much evil; the Lord Jehovah will reward him for all his works.

WILLIAM Z. THOMSON.