TRIAL

OF

MATT. F. WARD,

FOR THE MURDER OF

PROF. W. H. G. BUTLER,

BEFORE THE HARDIN CRIMINAL COURT, APRIL TERM, 1854.

REPORTED FOR THE LOUISVILLE COURIER AND LOUISVILLE DEMOCRAT, BY GEO. COLE.

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LOUISVILLE:
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TRIAL OF WARD

FOR THE

MURDER OF BUTLER.

On the second day of November, 1853, William H. G. Butler, Principal of the Louisville High School, was shot by Matt. F. Ward of the same city, while engaged within doors in the regular pursuit of his profession. Mr. Ward was arrested at his father's house, a short time afterward, and lodged in the Louisville jail. Mr. Butler died between 12 and 1 o'clock the next morning.

On the third of November, Ward was brought for examination before the Police Court, of Louisville, Hon. John Joyes, judge. A considerable number of persons, including several pupils in the High School, had been summoned as witnesses, and the court room was thronged. John A. Campbell, one of the pupils, was first introduced. He testified that Matt. F. Ward, accompanied by his two brothers, Robert and William, about 10 o'clock, entered the school room of Mr. Butler; and William Ward, the youngest, took a seat, and Matt. Ward asked for Mr. Butler. One of the scholars informed Mr. Butler that some one wanted to see him. He went into the room, and Matt. F. Ward accosted him, saying, that he had something to say, and asked which he thought the worst, the mean little puppy

that asked his brother for chestnuts, and then told on him or his brother, who gave him the nuts? Mr. Butler made some reply, the witness did not exactly know what. Ward then, in an impatient manner, said he would also ask Mr. Butler another question, and asked why he called his brother a liar; and then said Mr. Butler was a d—d liar, and immediately struck him. The witness then turned his back, and picked up the tongs, anticipating a fuss, when he heard the report of a pistol; saw Mr. Butler fall, but saw nothing more of Matt. Ward. His brother, Robert Ward, was there, however, armed with a large dirk, flourishing it about. Mr. Butler was shot in the left breast, near the heart, with a small, single barrelled pistol. Mr. Butler was a man of ordinary strength, probably stouter than Ward, and in better health. He, the witness, assisted in taking Mr. Butler away from the school room.

Doctors Thomson and *Flint*, who examined the wound of Mr. Butler, were then interrogated. Doctor Thomson said that he examined the deceased first, and stated that his death was caused by a pistol shot, the ball having passed through the left breast, penetrating the cavity, and severing the lungs. The Doctor further testified, that Mr. Butler informed him that Matt. F. Ward cursed, and then struck him, and they clenched, when he received the shot, the muzzle of the pistol sticking to his coat. The wound caused his death.

Dr. Flint examined the wound after others had attended him, and thought at first the wound was superficial, but subsequently was convinced that the ball penetrated the cavity and caused his death.

Dr. W. B. Caldwell, who probed the wound of Mr. Butler, testified to about the same as Dr. Flint, thinking

on a first examination that the ball glanced round the side, and did not see the patient afterwards. He supposed Mr. Butler's arm was elevated when the shot was fired.

Joseph Benedict, a small lad, testified that M. F. Ward and his two brothers, about 10 o'clock, entered the school room, and Matt. Ward asked for Mr. Butler, who came in from another apartment. Mr. Ward then asked him, which is the most to blame, the contemptible pup who begged his brother for chestnuts, and then told on him, or his brother, &c., &c. He then heard other words pass, next the report of a pistol, and saw Mr. Butler fall, and Robert Ward with a knife drawn.

Minor Pope testified that the Wards entered the school room, as detailed by other witnesses; that Matt. Ward called for Butler, who came to him, when Matt. Ward said, he had called to settle a matter with him, and asked the same questions as above detailed, when Mr. Butler requested him to step into another room with him, but Matt. Ward said no, that this was the place. Some further words passed, and Mr. Butler was ready to explain; but just then Ward raised his hand, and Mr. Butler stepped towards him, when Ward drew a single barrelled pistol, placed it against Mr. Butler's breast, and fired. Mr. Butler fell to the floor, and Ward left the house.

Edward Quiggly, another boy, testified that the Wards entered the school room, and Matt. Ward inquired for Mr. Butler. He came out; some words passed between them; he saw Mr. Butler put his hand on the collar of Ward, when the shot was fired. Mr. Butler fell, and exclaimed, "I am killed; oh my poor wife and child."

Professor Sturgus, one of the teachers, testified that he was in the recitation room; saw the boys congregating

at the glass door of the room which looked into the school room. He called the boys back, and just then he heard a pistol fire, and, stepping into the room, saw Mr. Butler stagger and fall, and saw some one, supposed to be Robert Ward, flourishing a large knife. He turned to Mr. Butler, who fell on a settee, and he was fearful he would die before a physician could be called, and his nearest way was through a window which stood open, and he went out for Doctor Caspari. He further stated, that Mr. Butler had whipped William Ward, a small lad, one of his pupils, the morning previous.

Henry C. Johnston, a pupil in the class, testified in regard to the whipping of William Ward, the morning previous. He stated that one of the boys had been caught eating chestnuts, contrary to the rules of the school, and Mr. Butler called him up and whipped him. It was then ascertained that William Ward had been guilty of the same offence, and had also given the witness chestnuts, after borrowing his penknife. William denied the charges, but they were proven against him, and he was whipped with a leather strap, seven or eight blows being given on his back, over his clothes. The boy then went out in a sullen mood, shaking his head.

Mr. *Gilmore*, gunsmith, of the firm of Dixon & Gilmore, testified that Matt. F. Ward came to the shop Wednesday morning about 9 o'clock, and got from him a pair of single barrelled, self-cocking pistols, which were first loaded by witness, and then handed to Ward.

Dr. Yandell testified as to the nature of the wound, and the case was submitted without any rebutting testimony. The Judge ordered that the parties, Matt. F. Ward, and Robert J. Ward, jr., be remanded to jail, to

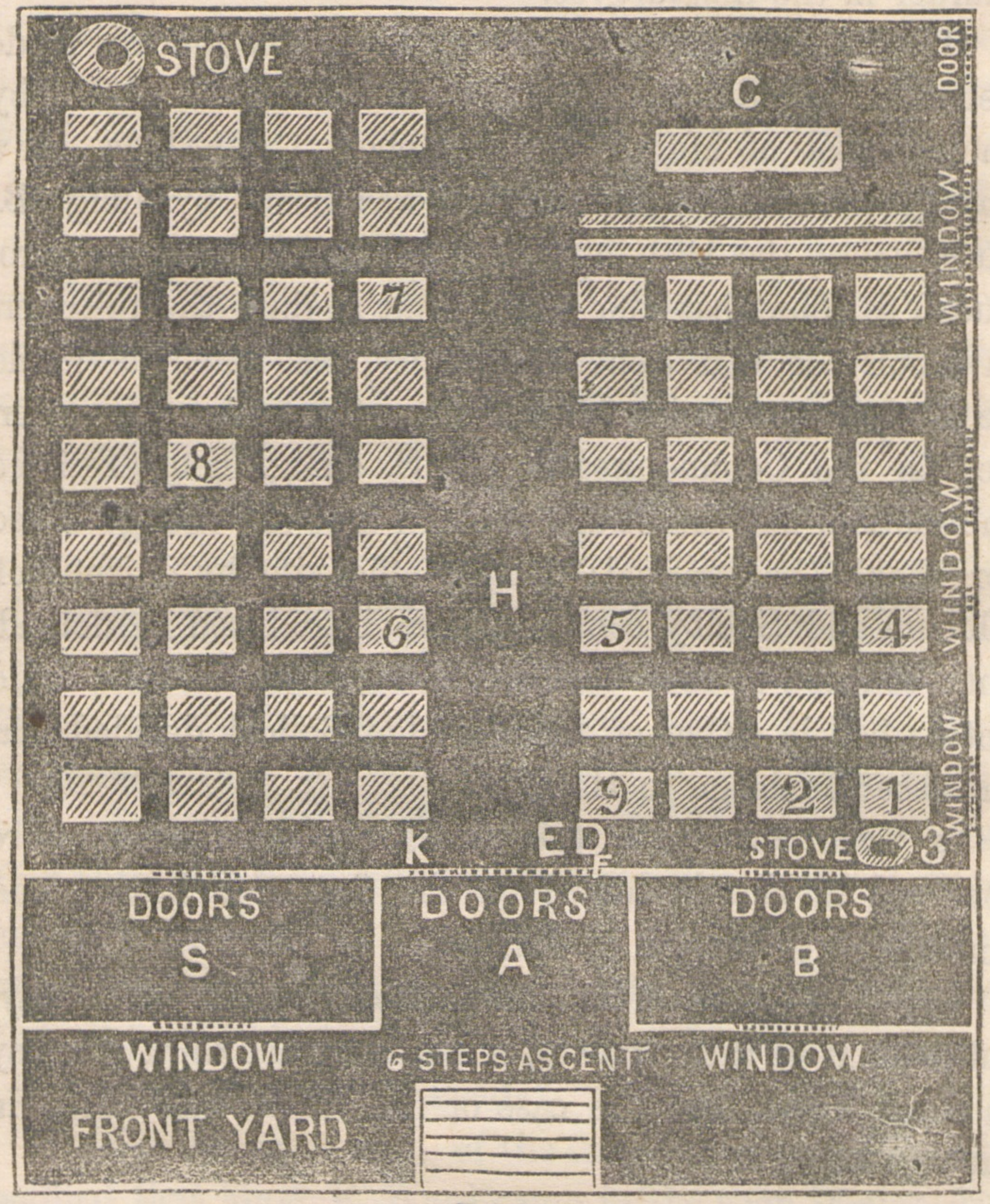
await their trial in the Circuit Court, on the charge of murder in the first degree.

On Thursday, the 15th of December, motion was made before Judge Bullock, of the Jefferson Circuit Court, by the counsel of Matt. F. and Robert J. Ward, jr., for a change of venue. This motion was heard by Judge B., on Monday, the 19th, at which time affidavits were introduced to show that the excitement against the prisoners in Louisville, and Jefferson county, was such as would be likely to prevent a fair and impartial trial. The attorney for the Commonwealth (E. S. Craig, Esq.,) resisted the motion, but the Judge decided that the change asked for should be granted; and as affidavits by citizens of Oldham and Shelby counties, were introduced by defendant's counsel, to show that a fair and impartial trial could not be had in either of them, Judge Bullock decided that the case should go to Hardin.

In accordance with this decision, the prisoners were removed to Elizabethtown on the first of February, and committed to the jail in that town.

The first term of the Circuit Court in Hardin county, subsequent to this removal, commenced the third Monday in April, 1854, and the case of the Wards was called in the afternoon.

DIAGRAM OF BUTLER'S SCHOOL ROOM.



Entrance.

CHESTNUT STREET.

A Passage between the recitation rooms into the school room.
C Teachers' desk.
////// Pupils' desks.
B Mr. Butler's recitation room
S Mr. Sturgus's recitation room
D Mr. Butler's position when shot.
E Matt. F. Ward's position when shooting.
F Position of R. J. Ward when Mr. Butler was shot.
K Point where Mr. Butler fell after being shot, from which he rose and staggered into Mr. Sturgus's room.

H Position of R. J. Ward when menacing the pupils with his bowie knife.

1 Quigley's seat.
2 Pope's seat.
3 Campbell's position.
4 Benedict's seat.
5 Crawford's seat.
6 Pirtle's seat.
7 Worthington's seat.
8 Redding's seat
9 seat.

THE TRIAL OF THE WARDS.

HARDIN CO. CIRCUIT COURT—JUDGE KINCHELOE.

THE COMMONWEALTH, *vs.* { MATT. F. WARD, and ROB. J. WARD, JR.

The indictment in the first count charges M. F. WARD and R. J. WARD, JR., with shooting, with malice aforethought, W. H. G. BUTLER, in the city of Louisville, on the second of November last, causing his death on the third of said month.

The second count charges Matt. F. Ward with the shooting, and R. J. Ward, Jr., with being accessory.

Counsel for the Prosecution.

ALFRED ALLEN, of Breckenridge, Prosecuting Attorney.
R. B. CARPENTER, Covington.
SYLVESTER HARRIS, of Elizabethtown.
T. W. GIBSON, Louisville.

Counsel present for the Defence.

Hon. JOHN J. CRITTENDEN, of Frankfort.
Hon. JOHN L. HELM, of Hardin County.
Hon. THOS. F. MARSHALL, of Woodford County.
Hon. GEO. A. CALDWELL, Louisville.
N. WOLFE, Louisville.
T. W. RILEY, Louisville.
C. G. WINTERSMITH, Elizabethtown.
J. W. HAYS, Elizabethtown.
R. B. HAYS, Elizabethtown.

FIRST DAY.

ELIZABETHTOWN, *Tuesday*, *April* 18, 1854.

The case was called at half past eight o'clock this morning.

The *Judge* instructed the Sheriff, on account of the smallness of the court-room, and the great crowd, to admit no persons within the bar except those having privilege there. This included the officers of the Court, the members of the bar, and the witnesses. All others to be excluded, without exception.

Mr. *Allen*, Prosecuting Attorney, moved that the Reporters for newspapers present, be allowed seats within the bar.

The *Judge* said he had no notice that Reporters were present, except by seeing the tables.

Mr. *Allen* said there were several.

Gov. *Helm* said he had no objection to Reporters taking notes of the evidence and speeches, but he should object to the publication of those notes till the expiration of the trial. If publication was allowed, the proceedings of to-day would appear in the Louisville papers day after to-morrow, and would tend to prevent a fair and impartial trial by inflaming the public mind.

The *Judge* then said the reporters would be admitted, on condition they would not publish their reports till the close of the trial. If they did they should be proceeded against for contempt of Court.

The Reporters were then given seats.

The defendants were then conducted into the Court, attended by their relations, who were deeply affected, weeping audibly, which produced a corresponding sensation on the prisoners, and even on the audience. Matt. F. Ward was evidently suffering severely from rheumatism, and walked with a crutch.

Mr. Crittenden, Mr. Wolfe, Mr. Caldwell, Mr. Marshall, and Mr. Carpenter, were presented to the Court, and were qualified by taking the usual oath, that they would support the constitution, and that since the formation of the new constitution, they had been engaged in no duel, either as principals, or seconds, or in any character whatever.

The counsel on both sides announced their readiness for the trial.

Mr. *Helm* asked for a severance of the parties in the trial.

The *Judge* said that it had been the practice on this circuit to allow a severance when asked; and it had also been the practice to allow the Commonwealth's Attorney to select the prisoner first to be tried, and he asked Mr Allen which prisoner he would select.

Mr. *Allen* said he should select the principal, Matt. F. Ward.

The counsel for the defence waived the reading of the indictment, and said that the defendant plead not guilty.

The Clerk then proceeded to call the Jury. Fifteen jurymen were called in succession, and promptly answered that they had formed and expressed opinions in the case, and were as promptly set aside.

In calling the remaining nine of the regular panel, five were found who had expressed no opinion, and they were admitted without a question from the counsel for the defence.

Seven men were then summoned, and one of them admitted. Then six more were summoned, and one of them admitted, one being objected to by the Defence. Then five more, and one of them admitted. Then four, and one of them admitted. Then three, and all set aside. Then three more, and all set aside. Then three more, and all them set aside also. Then three more again, and they in turn all set aside, one being objected to by the Defence. Then three more, and one of them admitted. Then two more and both admitted. This filled the panel. The names of the Jury are as follows:

Greene Walker,
T. M. Yates,
James Crutcher,
Geo. Stump,
R. McIntire,
John Young,
Thomas Thurston,
J. C. Chenowith.
Asa Buckles,
W. Eidson,
Abraham Neighbors,
Richard Pierce.

(The counsel for the prosecution asked no questions except whether the juror had formed an opinion, and objected to no man who had not. The counsel for the Defence objected to no one who would say positively he had formed no opinion. Most of those who had formed an opinion, said they had done so from rumor. Two or three said they had read the publication in the Courier. One man said he had read it, but did not believe it.)

The indictment was then read to the Jury.

The Judge then addressed them as follows:

Gentlemen — The Defendant, Matt. F. Ward, has been arraigned, and has entered a plea of not guilty, throwing himself upon God and his country for trial. You are to try him, according to your oaths, upon the indictment. If you find him guilty, you will say so, and no more. If you find him not guilty, you will say so, and no more. In case the killing shall be proved to have been done under the influence of passion, you can find the defendant guilty of manslaughter, and will say so. Should it be proved that the act was done in self-defence, it is not an act of voluntary homicide and you will find him not guilty.

Mr. *Wolfe* asked Mr. Allen for a list of the witnesses for the prosecution. Mr. *Allen* asked for a list of the witnesses for the defence in return, or he could not give one for the prosecution.

Mr. *Allen* said he presumed the object in asking for the list, was to have them all excluded but the one on the stand. He thought that he should also have a list of the witnesses for the prosecution, to make a similar motion. It was as fair on one side as the other. He asked Mr. Wolfe if he made that motion.

Mr. *Wolfe* said he certainly should make a motion to have all the witnesses for the prosecution excluded, but the one testifying.

Mr. *Allen* said he should then make a motion to have all the witnesses for the defence excluded during the whole examination. A witness for the defence might be prompted as easily by hearing the evidence for the prosecution as by hearing a witness for the defence. All he wanted was a fair and impartial examination, and he expected to get that, from the well known character of the gentlemen engaged in the defence.

Mr. *Wolfe* said he had heard such a motion as that of Mr. Allen made three times in his practice of thirteen years, and it was always promptly ruled out. The motion was founded on the principle of the universal depravity of human nature, that there was no goodness left. He hoped the Court would overrule it.

The *Judge* said the question mooted was founded in the practice of the Courts. The principle was that each witness should testify from his own personal memory, and not from the promptings of other witnesses. It was not founded in the depravity of human nature. This principle was as applicable

to the witnesses on one side as the other. He should therefore rule that the defence must furnish a list of his witnesses, and that they should be excluded. This rule would apply to the principal witnesses on each side, but would not be rigidly enforced on witnesses in minor points.

Mr. *Wolfe* said that it would take some time to make out the list; and

Mr. *Crittenden* suggested that the Court adjourn till after dinner, which was granted; and

The Court adjourned.

(The Jury were committed to the Sheriff with instructions to converse with no one on any subject, and the Sheriff was instructed to procure a room where they could eat and sleep together.)

AFTERNOON SESSION.

Mr. *Allen* stated that among the list of witnesses furnished by the defence, were the names of Mr. and Mrs. Robt. J. Ward, the parents of the defendants. There was no wish on the part of the prosecution to exclude them; neither did they wish to exclude witnesses summoned to prove character only. Such witnesses might remain in Court; but the principal witnesses must be excluded. By general consent, the physicians summoned, were permitted to remain,

The male witnesses for the prosecution were then called, and sworn, and instructed to remain outside of the Court house till called.

The male witnesses for the defence were also called, sworn, and similarly instructed.

Testimony for the Prosecution.

Edward W. Knight, called. Was present at the school room of Prof. Butler on the second day of November last. Was in Mr. Sturgus's recitation room, and saw Matt. F. Ward, Rob't J. Ward, jr., and Wm. Ward entering the gate from the street into the school house yard. This was about 10 o'clock. At about 9½ o'clock, a negro of Mr. Ward's had called and left word for the books of the Ward boys to be sent home. Had heard some threats from these boys the day previous, which

made him expect some trouble the moment he saw the Wards come into the gate. He immediately went to the door opening into the large school room; the other boys followed, but were immediately called back by Mr. Sturgus, the assistant teacher.

(A plan of the school house was here exhibited to the jury and court. The main school room was entered by a hall, on each side of which was a small recitation room, the doors of which opened into the main school room, not into the hall or passage between them. Mr. Butler's room was on the right and Mr. Sturgus' on the left of the passage.)

When I got to the recitation room door, the Wards had come in through the passage, and were in the main school room. Mr. Butler was just coming from his room. Matt. Ward said, I have a little matter to settle with you; which is the most to blame, the little contemptible puppy who begged chestnuts and then lied about it, or the boy who let him have them. Mr. Butler asked Ward to go into his room and he would explain the affair. Mr. Ward said no, here is the place to answer the question. Mr. Butler refused to answer without an explanation. Mr. Ward then said, Why did you call my brother William a liar? Mr. Butler said he was not disposed to answer the question without an explanation. Mr. Ward said, you are a d—d liar and a d—d scoundrel. Ward then made a motion as if striking at Butler, who sallied back a little. Butler then raised his right arm and moved toward Ward. Ward drew his hand from his pocket, presented a pistol to Butler's left breast and fired. Butler dropped immediately, exclaiming, Oh, my wife and child! My God! I'm dead! Matt. then drew another pistol, and Robert J. Ward drew a knife. Mr. Sturgus came out of his recitation room, and Robert said, come on, I'm ready. Mr. Sturgus retreated to his room, and soon came out again, and Robert advanced toward him with the knife, and Mr. Sturgus run back into his room and made his absence out of the window.

During the conversation between Ward and Butler, Ward spoke loud and Butler low. There was no person present except the scholars and Mr. Sturgus. The pistol seemed to stick in the wound, and Mr. Butler knocked it out after he got up. Mr. Butler stepped into Mr. Sturgus's room, and finding nobody there came out and passed out of the school room, I took his arm as he went out. Three or four of the boys went with us, Mr. Butler walked about a square, when he asked to

lay down. We took him up and carried him into Col. Harney's. Saw no man there till Dr. Thompson came. Another gentleman was there just as the Dr. came. Have seen him since, once, and should know him if I saw him again.

Cross Examined. Resides in Louisville, on Market Street. Was a student in Mr. Butler's school at the time of the affair. Don't know whether there was a class in Butler's room or not. Did not tell Dr. Caspari that at the time of the shooting I was off looking for a pair of tongs or a poker; told him I wished to have no conversation on the subject. May have answered some simple questions he asked. There were several boys in the Algebra class in Mr. Sturgus's room; can remember only one; Robert Trimble had been in the school two months. There were some forty boys in the school. When I first saw Ward his back was towards me; passed along so as to get a side view of the parties. Did not hear Mr. Butler ask Ward to come into his room. When Ward asked Butler why he called William a liar, didn't hear the reply distinctly, but heard Butler say, I am not disposed. Don't know what the rest of the sentence was. When Ward called Mr. Butler a d———d liar, then Ward's arm come down, and Butler started back as if struck. He then sprang towards Ward, and laid his right hand on Ward's shoulder firmly, but didn't crush Ward to the floor, or anything like it. Butler did not strike Ward after the shot, but fell instantly. Heard nothing about the whipping of William during the conversation.

To Mr. Wolfe. Don't know the length of the house, it is from fifty to seventy feet. Mr. Wolfe asked several questions developing nothing new. The Court decided that one lawyer was sufficient to cross-examine a young witness, and hereafter that must be the rule.

Direct Examination Resumed. Am 16 years old, never testified before. Mr. Carpenter asked several questions going over the same ground as in the first examination.

Mr. *Marshall.* I wish to know if there is any limit at which this examination is to stop. The Court had just decided one good point against our side, for which I am glad, viz.: that there should be but one lawyer in the cross-examination of one witness. I now wish another point decided. No new matter had been developed in the cross-examination, and yet the counsel for the prosecution were re-examining the witness, thus having the last lick at the Jury. The defence would have

to cross-examine again, and thus the trial would be interminable. The boy would not live long enough for them all to get through.

Mr. *Carpenter.* I am aiming for no last lick. I am disposed to conduct this case on high and honorable principles. We wish only to get the evidence fairly before the Jury, and that we intend to do.

Mr. *Marshall.* I merely wish the old rule applied. I do not suppose that the gentleman by his gratuitous boast of honorable principle means any reflection on the opposing counsel, but he might have saved his self-advertisement till he was impeached.

Mr. *Carpenter.* I meant no dishonorable reflection. The gentleman had insinuated that we are aiming at the last word, and in disclaiming, it was not my object to reflect on him.

Mr. *Marshall.* Then what was your object?

The Judge said he was very sorry to see so much excitement so early in the trial, and hoped there would be no exhibition of it hereafter. As to the point of law raised, the practice was that one direct and one cross-examination should be the limit. But if new matter was elicited, or points confused, a further examination might be had.

The witness then, in reply to Mr. Carpenter, said he thought Ward struck Butler first, because Butler stepped back.

To Mr. Wolfe. If Ward struck Butler it was with his left hand.

To Mr. Carpenter. When Butler sprang towards Ward, he only stepped forward one step. Butler's right hand was crippled. could not close or open it, the fingers being about half shut, Could not write with it. When Ward said he wanted to see Butler, Butler stepped towards his room as if asking him in.

To Mr. Caldwell. Have had no conversation with Mr. Sturgus on the subject. Heard Ward say plainly, this is the place to settle it.

Wm. W. Worthington, called. Was in the school room of Prof. Butler on 2nd of November last. Was there when the Wards came. Saw Wm. Ward come in and go to the seat he formerly occupied. Looked to the door; saw Matt. and Robert Ward there; saw Mr. Butler coming out of his room. Heard Ward ask Butler which was the most to be despised: the contemptible puppy, who begs chestnuts, and then lies about it, or my brother William? Mr. Butler said, if you will walk into the next room, I can explain the matter satisfactorily.

Matt. Ward said something like this, I did not come for an explanation. Next I heard was Matt. F. Ward say, if you will not answer that, answer this; Why did you call my brother William a liar? Butler said, I cannot answer that unless I am allowed to explain. This is all I heard of the conversation. Next I heard a slight stamping of the feet, and looked round, the pistol fired and Butler was falling. Matt. was just in the door. Soon as Butler fell I left the room, and when I returned the elder boys were taking Butler home.

Cross-examined by Mr. Marshall.—Was 18 last July; live in Louisville; am son of Samuel Worthington; father formerly lived in Mississippi. The school-room is fifty feet across. Butler spoke low; heard him say: If you will walk into this room I will explain. To Ward's second question he said: I cannot answer unless you allow me to explain. Had not told his mother he knew nothing about this; had told her he neither saw the stamping or shooting. When he was in the yard there were several boys with him; cannot tell their names; knew Mr. Allen from Mississippi. Do not remember seeing him in the yard at the time of this affair.

Mr. *Marshall.* Did not Mr. Allen shake hands with you, and did not the boys, one and all, shout out and tell Mr. Allen that Butler struck Ward first?

[Objected to by the prosecution.]

Mr. *Marshall.* I have a right to ask questions in the cross-examination to test this boy's veracity and memory. He has testified positively that he heard Mr. Butler say certain things. Now the fact involved in this question can be proved. The witness says he knows nothing about it. I have a right to ask the question to show he was so badly frightened, or was so unreliable, that no dependence could be placed on his testimony. He did not wish to use the expressions of these boys as evidence that Butler did strike Ward first. He wished to introduce it merely to test the boy's reliability, and the Court could instruct the Jury to give it credence for that purpose only.

Mr. Allen still objected to the question, and the Court ruled it out in that form.

Mr. *Marshall.* Did not Mr. Allen enter the yard and ask how this happened?

Witness. I have no recollection of it.

Mr. *Carpenter.* Have you ever attended a sabbath-school?

Witness. Not much.

Mr. *Marshall.* Do you wish to prove the boy an infidel, or that his religious education has been neglected? If so, we admit it.

Mr. *Carpenter.* This is hardly the place for theatrical performances.

Mr. *Marshall.* There are many kinds of theaters in the world, and you have acted a part on some not very enviable.

Mr. *Carpenter.* So have you.

After some further sparring, the Court directed the case to proceed.

James S. Pirtle called. Am thirteen years old; son of Judge Pirtle; was present in Butler's school-room on 2d November when the Wards came in. Matt. Ward wished to see Mr. Butler; he was sent for and came out; could not exactly remember the first of their conversation; it was something about ideas of justice. Mr. Ward asked which was the worst, the contemptible puppy, &c. Butler said if he wished an explanation he would give it. Did not hear much more till Ward said, whoever calls my brother a liar is a liar himself, and immediately heard the shot, and Butler fell. I ran behind some of the black boards; afterwards came out, and saw Robert Ward come in and pick up a pistol. Did not see Mr. Butler whip William Ward the day before, as that was done in the small room.

Cross-Examined. In conversing with Ward, Butler spoke in his ordinary tone; heard Ward ask, which is the worst, the contemptible puppy, &c.; heard Butler say, if you wish to know the circumstances, I will explain. Did not hear Ward's reply; saw Butler leaning with his arms stretched out towards Ward; did not tell a boy called Judt that Butler struck Ward; did not tell Mr. Speed that I knew nothing about this; remained in school-yard five or ten minutes after the shooting; saw two gentlemen come in and talk with the boys about it; don't know what questions they asked; don't remember any boy there except John Goddard; did not tell these gentlemen that Butler struck first.

Minor H. Pope called. Am 17 years old; son of W. H. Pope, f Louisville; was in Butler's school when the Wards called; they inquired for Mr. Butler; I went and told Butler that two gentlemen wished to see him. He came out and said, good morning Mr. Ward. Ward replied, and said, I have a matter to settle with you. Butler said, step into my room. Ward said, no sir, here is the place; answer my question; why did you call my

brother a liar? Do not remember the exact words of Butler's reply. Two or three remarks passed between them; I continued writing a German exercise; looked up again, and saw Ward have a pistol, and he fired it. Butler fell, crying, my poor wife and child. Robert run around with a knife, crying, stand off. As the pistol was fired, Butler raised his hand. Ward, when he came in, had his right hand in his pantaloons pocket, and while talking made gesticulations with his left.

Cross Examined. Occupied the third desk from the aisle; could not see Ward without turning; did not pay particular attention to what they said, as I continued writing my exercise; Ward was excited, talked in a high tone, made gesticulations with his left hand; do not know where his hat was. His right hand was in his breeches-pocket.

To Mr. Crittenden. When Ward said, I want an answer to my question in this place, I do not remember what reply Butler made. Do not remember what kind of a coat Ward had on. It might be a sack-coat buttoned clear down. His coat was a little raised as he had his hand in his breeches pocket.

To Mr. Caldwell. Ward made gesticulations only when asking questions. Butler raised his arm just as the pistol fired; do not know whether he got his hand on Ward or not. He did not press Ward back toward the door. A number of boys were in Butler's room when I called him. After the shooting, I was at the front gate with a number of boys; don't remember who they were. Did not see two gentlemen come up and inquire about the matter. Stood at the gate but a few moments, as I went for Dr. Thompson; left several boys at the gate. Butler sprang forward, motioning with one arm. Do not think I said at the examining trial, that Ward gestured with his right hand; may have said so without intending to. Never said that Butler struck Ward first.

It now being 6 o'clock, the Court adjourned.

SECOND DAY.

Wednesday, April 19th.

John A. Campbell, called. Resides about 17 miles from Frankfort. Boards in Louisville. Going to school to Mr. Sturgus. Was in Butler's school room on 2d of November. Had come out of Butler's room when the Wards came in, and sent for Butler. Butler came, and said, good morning. Matt. F. Ward said, "which do you think the worst, the contemptible puppy who begs chestnuts, and then lies, or my brother?" Did not hear Butler's reply. He spoke very low. Then I heard Matt. Ward say, Then if you will not answer that, answer this: why did you call my brother a liar? Just heard Butler say, well, Mr. Ward. Then thinking there would be a scuffle, I turned and looked for the tongs. Before I got them, the pistol was fired, and Butler fell, exclaiming, I'm shot, my wife, my child. Heard Matt. Ward call Butler a d—d liar, just before the pistol fired. Before that, saw Ward make a start or motion. Think Butler made a motion towards Ward, as Ward made the motion towards him. Saw nothing like a blow on either side. Butler's back was towards me. Assisted in taking Mr. Butler to Mr. Harney's. Five or six boys were with me. No one assisted but boys.

Cross Examined. After Butler fell, it was five minutes before we took him home. We carried him in our arms from the corner of Chestnut and Second. He had walked to that point. Carried him ninety or one hundred yards. He had walked about the same distance. Do not know whether we met anybody or not. When the pistol was fired, the boys all run out; I tried to get them back, then returned; was absent a minute. Butler had gone. Went out, come back and got my hat, saw Robert coming out with a pistol. When I came back for my hat, Butler was gone. When I came back the first time, do not know where Butler was; I staid there a minute or two, went into Sturgus's room; saw Butler stagger into Sturgus's room a minute after he was shot. Butler was not gone when I returned the first time; when I came for my hat he was. I had just come out of Butler's room, and he had called a class, or was preparing to receive another; do not know whether it was called or not; it could have gone in and I not noticed it. Did not hear

Butler's reply to Ward either time, except just, "well Mr. Ward," in a reasoning tone. Mr. Butler was several feet from me when conversing with Ward; he spoke very loud. After Butler's second reply, Ward said, you are a d—d liar. Then I expected a scuffle, and turned to get the tongs. Did not see Ward move, but heard him move his feet; could not tell whether he moved forward or back. Saw Butler make a move, twisting his body. Saw Bob standing by, and thought that if Butler whipped Matt. I would keep Bob off; I thought he would come in with a knife and I would do the best to keep him out. Of course, after Matt. called Butler a liar, I knew he would not stand that, and that there would be a scuffle. Do not know whether Butler's arm was up or not. I expected he would fight. There was a motion on the part of Butler, as if he was going to resist the insult. He might have whipped Matt. Never saw Matt. before. He looked healthy and vigorous then, not feeble as he does now.

Direct Examination Resumed. The pistol was fired just as Butler moved. I formed my expectation of a fight from what I should have done under similar circumstances. I never saw Butler fight.

Mr. *Carpenter.* Did you ever know Mr. Butler to have any trouble with anybody?

Mr. *Marshall.* I object to this. Mr. Butler's character is not in controversy. I admit he was a peaceable, amiable man, and nobody regrets his death more than the party on trial.

The *Court* said, as Mr. Marshall had asked questions drawing out this fact, the prosecution had a right to rebut its effect, but since the admission of Mr. Marshall, there was no occasion to press the question.

Mr. *Marshall* said the matter was first brought out in the direct examination; he was not responsible for its introduction.

Mr. *Carpenter* said as the fact was admitted, the question would not be pressed.

Geo. W. Crawford, called. Reside in Louisville; am Maj. Crawford's son; am 17 years old; was present in Butler's school-room when the Wards came in. Ward asked which was the worst, the little contemptible puppy who begs chestnuts and then lies about it, or my brother William? Butler said if he would walk into the next room, he would give an explanation. Ward said he wanted an answer there. Butler said that was no place, if he would come into the next room he would answer. Ward then asked, why he called his brother William a liar?

Butler said something I did not hear, Ward said something in reply I did not hear. Saw Mr. Ward advancing towards Butler, the pistol was fired. Butler with his left hand was catching at Ward's right hand, and laid his right hand on Ward's left shoulder. My back was towards the parties till I turned and saw Ward advancing towards Butler. Did not see the pistol till it was discharged. Saw no striking on either side. Had a side view of both parties. Saw Butler get up and start for Sturgus's room. I think Ward had his hat in his left hand, he was gesticulating with it.

Cross Examined. Was on the right side of the aisle as you go in. The Wards came into the room and inquired for Mr. Butler. Did not turn round. There was a class in Butler's room, or rather there were boys in there. The reason I didn't hear all the conversation was, there was some noise in the room. Did not hear the d——n lie. Heard footsteps; sounded as though one person was moving. Expected trouble when Ward advanced. Ward spoke loud, but the noise prevented my hearing. There was no clinching. Butler laid his hand on Ward's shoulder. After the shot, I went into the back yard, staid ten minutes, came back and Butler had gone home. When I was in the back yard, some boys were there. Do not remember whether any boys were in the front yard or not, did not stay there any time. Did not see two gentlemen come up to the yard and inquire what was the matter.

A. B. Zanzinger, called. Resides in Louisville, am 17 years old. Was present at Butler's school-room when this affair occurred. A servant had previously called for Vic. Ward and his books. Was in Sturgus's recitation room, and heard loud talking in the school-room. Went to the door, and was called back. Soon heard the report of a pistol, run to the door and saw Bob swinging a knife. Butler had been lifted up by the boys. Did not see Matt. F. Ward after the shot.

Cross Examined. Did not see Butler in the house after the shot. I went into Sturgus's room and jumped out of the window. Butler was not brought into Sturgus's room when I was there. After I was on the street saw the boys taking Butler home. Can't tell how long it was after the shot. Was not in the front yard any time after the shot.

Direct Examination Resumed. Was in the main school-room three or four minutes after the shooting. Did not see Butler, but understood he was near the door.

Wm. H. Fagan, called. Am 18 years old. Reside in Louisville. Am Thos. Fagan's son. Was present at the school-room, was in Sturgus's room. Heard the boys say there are the two Wards in the other room. Started to the door, came back, and soon heard the report of a pistol, run in, saw Butler on the floor, and Bob Ward swinging a knife, run back, and jumped out of the window. In three minutes saw Butler coming down the steps assisted by Knight, I took hold and helped him to Mr. Harney's, I laid him on the floor, several of the boys were assisting.

Cross Examined. Between the steps and Mr. Harney's, Butler fell, and I caught him. We carried him then all the way. I staid there till the doctors came, then went back to the school-room. Was at Harney's but a short time. Do not remember meeting any body. Some ladies stepped on to the pavement, and inquired what was the matter.

Davis M Buchner, called. Am 13 years old. Am son of Dr. Buchner. Live in Louisville in summer, and Mississippi in winter. Was present in Butler's school-room on second of November. Wards came and asked for Butler. I was in Butler's recitation room. Butler went out. Heard loud talking, heard no words, but as I went to the door, saw Matt. Ward shoot. I was in mental arithmetic class, it had been called in. I jumped out of the window, saw Mr. Butler come down the steps, aided by the boys, waited five minutes before Butler came out.

Cross Examined. Saw Ward shoot, and Butler stagger; do not know whether the pistol touched Butler or not. It was a very short pistol. Heard no scuffling Staid in the front yard till Butler came out of the house. He went out of the yard before me. I followed, and saw Mr. Sturgus going after the doctor. I went for Dr. Smith, and then went home. Butler staggered towards Sturgus's room before he fell. Do not know whether they had hold of each other or not. Did not see him fall, as soon as the pistol fired. Butler staggered and I run.

Henry C. Johnson, called. Am 15 years old, live in Louisville. Was present when this affair occured. Was in Butler's recitation room. Minor Pope came in and said Matt. Ward wanted to see Mr. Butler. Butler went out. Heard loud talking, saw Wm. Ward, and went to speak to him. Could see Mr. Butler and Ward where we stood. Saw the pistol fired, and Butler fell towards Sturgus's room. I run back

through the recitation room, and jumped out of the window. In a few minutes Butler came out, with one or two boys with him. I took hold of him, and four of us carried him to Mr. Harney's. Nobody helped us. There were some gentlemen at Col. Harney's. There was a recess of five minutes every hour.

Cross Examined. Did not see the pistol fired,—heard it. Was at the examining trial. Joined the party taking Butler home in the passage, he walked half way, and then we carried him. Did not hear a word of the conversation between the parties before the fire. They talked loud, but I was talking with William. After the pistol fired, I saw Mr. Butler on the floor. Saw Mr. Sturgus come out of his room, and Bob start towards him with the knife. Staid a minute or so after the shot before I run. Do not know when Sturgus went out. Never saw him again, till I saw him on Second Street.

Direct Examination. Did not hear the conversation between the parties, because I had an angry conversation with William Ward.

The Defence gave notice that they should call this witness again.

Joseph Benedict called. Am 14 years old; am son of Capt. D. S. Benedict, of Louisville; was present when this affair occurred. I was standing at my seat, saw Ward come in and ask for Butler. He came out and spoke very politely. Heard Matt. F. Ward ask which is the worst, the contemptible puppy who begs chestnuts and lies about it, or my brother who gave them. Did not hear Butler's reply, and heard no more of the conversation. Saw Butler put his hand on Ward's shoulder, and at the same time the pistol went off. Butler fell towards Sturgus's room. Did not see Butler strike Ward; saw his right hand on Ward's shoulder; could not see his left. Ward, while conversing with Butler, had his hand in his pocket.

Cross Examined. Had seen the diagram present of the school-house before; was standing up waiting to speak to Mr. Butler; did not expect any difficulty, till I saw Butler's hand on Ward's shoulder; knew that he would not do that for nothing; I believe Butler pushed Ward back a little, Ward bent sideways. Soon as I saw Bob with his knife out, I went into the back-yard; when I came back, Butler had gone. Stood at the front gate a little while. Do not remember seeing two gentlemen come up and ask what is the matter. Did not ever say that Butler struck Ward first.

Edward Quigley called. Am 17 years old; reside in Louisville; was present when this affair occurred; saw Wards come in and ask for Butler; Butler came out; Ward commenced talking very fast; was twenty feet from them and could not understand any thing that was said; looked up and saw Butler's hand on Ward's shoulder, and Ward giving back; he was pressed back against the door; the door was open all the time. Did not see Butler strike Ward. The shot was instantaneous on Butler's laying his hand on Ward's shoulder.

Cross Examined. The parties were about eight feet from the door, when Butler laid his hand on Ward's shoulder; he did not crush him down, but only pushed him back; did not see Ward strike Butler; was not looking all the time. Ward stepped back but one step. It was not five minutes after Butler came out before the firing. I immediately went out of the window; I did not remain in the front yard. Do not recollect two gentlemen coming there and inquiring about the matter; one man came; did not tell him that Butler struck Ward first; do not know whether that man made any inquiries or not. I was a good deal excited. Do not remember hearing any of the boys tell this man that Butler struck Ward first.

Direct Examination resumed. Should not know this man if I was to see him again. Do not know Mr. Allen.

The Court here adjourned for dinner.

AFTERNOON SESSION.

William R. Redding called. Am 16 years old; reside in Louisville; was present at Butler's school-room when this affair occurred; was sitting at my seat; saw the Wards come in; they stood near the door and asked for Butler. Butler came out and spoke politely to him. Ward said something I did not hear; then he said I come to see about this matter. Mr. Butler asked him to go into the next room. Ward said no, here is the place. They then continued talking. I could only hear once in a while a word; heard Ward say liar; looked round and heard the pistol; saw Ward jirk his hand from Butler's breast, and Butler fell. I then went into the back-room, and soon came back. Did not see Butler strike Ward at all. This occurred in Louisville in this State. He showed the same position, on the diagram. of

the parties, as the others, viz: just through the door in the large school room.

Cross Examined. Soon after I came from back-room into the school-room, I went into the front yard; staid there but a short time. Saw no gentlemen come and talk with the boys there. I then went back into the school-room, and staid five minutes. Did not tell a gentleman in the front yard that Butler struck Ward first.

J. J. Gilmore called. Reside in Louisville; am a gun-smith, on Third street, between Main and Market. On 2d of November Matt. F. Ward came to our store about 9 o'clock in the morning; asked to look at a pistol; examined one, and asked the price; said if I would load it he would take it; I loaded it and handed it to him. He then asked the price of the pair; I told him. He hesitated a moment, and then said if I would load the other, he would take them both. I did so, and he paid for them both and went away. He asked for self-cocking pistols; I loaded them both with powder and ball, and put caps on them. They were good pistols; would send a ball through an inch board two feet any how. There was some conversation about the quality of the pistols, but do not remember what. (A pistol was shown, which he pronounced of the same size as he sold Ward.)

Cross Examined. The bore of this pistol is about 200 to the pound. I loaded it with a buckshot. It was the very smallest bore I had. I keep every variety of pistols and revolvers. The length of the barrel is three inches, at least they are sold for that. Had other pocket pistols, larger size.

Direct — Resumed. Mr. Ward made no other purchase that morning. Had no other pistol of same length, but of larger bore. Colt's pistols are sometimes worn in the pocket. They carry 120 to the pound.

Here the counsel for the prosecution said they wished to examine Mrs. Butler. She was in feeble health, and they wished that her friend, Mrs. Harney, also a witness, might accompany her. Permission was granted, and the ladies were brought into court. Their presence created a deep sensation through the crowded audience.

Mrs. *Martha A. Harney, sworn.* Resides on Chestnut street, between First and Second streets. Went down street about 10 o'clock, saw M. F. Ward near the post office. His appearance was unusual; he was walking up Third towards Chestnut.

His gait was more firm than usual, and excited; it was no more rapid than usual. He had one hand in his pocket, the other to his side. I returned home when sent for. I was told Mr. Butler was at my house. I found him lying on a rug in the parlor; cannot tell who was there; house was full; had a conversation with him about three quarters of an hour after I returned. When I entered the room, he raised his hand; I knelt by the rug, told him to be quiet; he was much agitated; I told him it was a flesh wound, and he would recover. He said he must die. I repeated my remark. He told me not to believe it, he must die, and asked me to always be kind to his wife and baby. He then requested me to bring Mrs. Butler into the room. He was firmly impressed with the idea that he must die. I brought his wife and child to him. I was with him till he died, between 12 and 1 o'clock that night.

Cross Examined. I had been introduced to Mr. Ward, and knew him when I saw him. Am the wife of Mr. Harney, the Editor of the Democrat.

Mrs. *Lizzie Butler, wife of Prof. W. H. G. Butler, (the deceased.)* When I first saw Mr. Butler after he was shot, he told me he must die. I had been told he would live; I told him so, and told him to keep quiet. He said he must die, and told me not to be deceived. I told him several times he would recover, but he said he must die. He expressed no other opinion.

Dr. D. D. *Thompson* called. Reside in Louisville, am a physician; saw Mr. Butler about twenty minutes past 10 o'clock on the day he was shot; started for the school room, but Butler was gone to Mr. Harney's. When I got there the boys were trying to hold him up; I told them to lay him down; he asked me if I didn't think he was a dead man? I removed his coat, tore open his shirt, found the wound an inch and a half above the left nipple, the surface all around burnt, asked his position when shot. He said Matt. Ward called me a d—d liar, struck me, I struck back, and was instantly shot; did not know who shot me. Dr. Caldwell then tried the probe, and thought he had found its direction towards the arm-pit; saw we might be deceived; stopped probing; I tried to compose him to rest; soon heard the air splurge through the wound; Butler asked, what it was; I told him; he said he was a dead man. We told him, hoped not, cases were on record of recovery of such wounds; it was twenty or thirty minutes before the air

came through the wound; he was firmly impressed with the idea that he must die, and gave directions about his wife and child. About four o'clock he revived a little, but there was no reaction, or anything like, but he sunk till twenty minutes past one, when he died. The post-mortem examination showed the ball passed between the third and fourth rib, through the left lobe of the lungs, and passed into the back bone and lodged there. The ball caused his death. He was a small man, weighing about 135 or 140. I noticed his right hand after death; the fingers were about half closed, and could not be straightened; his arm, when we were probing, was drawn back; his arm was probably thrown forward when he received the shot; that shot was the sole cause of his death.

Cross Examined. Several boys and some ladies were at Mr. Harney's when I arrived. Saw Mr. Sturgus soon after I entered. Have no recollection of seeing any other man. The boys assisted in taking off his coat. Ed. Knight was one. Dr. Yandell came in, and Dr. Caldwell soon after. Took hold of the probe and tried. He suggested the arm should be raised, so as to restore it to same position as when ball entered. It was before this that Butler spoke of his difficulty with Ward. I was kneeling down. Butler spoke loud enough for all of the physicians to hear. We were all listening to what he said. He talked all the time. I testified in examining Court that Butler said Ward had cursed him, then struck him, and I struck back. The pistols were produced, and the witness asked if it was usual for young men in Louisville to carry such pistols. He did not know.

Mr. *Wolfe.* Do you carry such pistols? The Court decided the question improper.

Direct Examination Resumed. In probing the wound we did not succeed in finding its direction.

To Mr. Wolfe. Mr. Butler said he did not know who shot him.

Dr. *L. P. Yandell,* called. Resides in Louisville. Am a physician. Was called to see Mr. Butler on the 2nd of November, about twenty minutes after receiving the wound. Found Dr. Thompson trying to probe the wound, but was unable to penetrate the cavity of the chest. The probe followed the direction of the muscle towards the arm pit. We expressed the hope that the wound was not mortal, and that he would recover. But soon the blood and air oozing from the wound convinced me

that the wound was mortal. Butler said we were clinched. Said Ward had called him a d——d liar and raised his hand to strike him; then Butler struck, they clinched and he was immediately shot. Was present at the post-mortem examination. [Gave the same account of course of ball as Dr. Thompson.] Do not remember what Butler said distinctly about Ward raising his hand. Do not remember Butler's saying he did not know who shot him.

Prof. *Muguet*, called. Resides in Louisville. Was with Butler after he was shot, about half-past one, and then at half-past seven, and staid till he died. Gave the same account as others about the entrance and course of the ball. Butler could not open or close his right hand.

Patrick Joyce, called. Knew Butler well. He could not bend the middle joint of his fingers on his right hand; could not straighten any of them; had noticed it often when he was living, and after his death.

Cross Examined. He might bend the joint where his fingers joined the hand. Mr. Butler had considerable power in his arms; was in the habit of exercising in the gymnasium at the school, and performing feats of strength; had seen him perform feats on board ship which I could not perform. These feats were performed by the arms and hands, and were fair performances among gymnastic men. He was better than the average at such performances. Had seen him on only two occasions at such performances.

Mrs. *Frank Carter*, *sworn*. Reside in Louisville, on Chestnut, directly opposite Butler's school-room. Saw him ten or fifteen minutes after he was shot, at Mr. Harney's. There were several ladies there and Dr. Thompson; staid there till noon, and then went away, and returned and staid two or three hours. Assisted in gloving his hands after his death; right hand was stiff, and it was several hours after his death; found no extra-ordinary trouble in getting a glove on the left hand.

Here the State closed their testimony.

Testimony for the Defence.

Dr. W. B. Caldwell. Was called to see Mr. Butler soon after he was shot; found Dr. Thompson and Dr. Yandell with him; I asked Butler if he knew the position of the body when he was shot? he said he did not see who shot him, as he and Matt. were engaged; I suggested the propriety of raising his arm; I do not recollect the precise language Butler used; when the arm was raised, the muscle was loosened, so that the probe entered farther, but did not enter the cavity; we all supposed the ball had not entered the cavity, but were mistaken.

Rev. E. W. Sehon, sworn. Am a minister of the Methodist Episcopal Church, in Louisville; had known Matt. F. Ward eight years; the family were numbered in my pastoral connection; I knew Matt. F. Ward as a most amiable and peaceable character. His health at the time of this sad occurrence, was very feeble; he had been using crutches for some time, and had but just laid them aside when this happened; his disease was rheumatism, and having suffered from that myself, I often brought him remedies. It would also be wrong for me, on this occasion, not to say, that as a consequence of the spirit and disposition manifested by Mr. Ward in his letters, he has often been the subject of serious and hopeful conversations. From Mr. Ward's having traveled in Europe, published books, &c., his character was oftener spoken of than is usual of young men; hence I had heard him spoken of, often.

Cross Examined. I have heard it often said that Ward was of the most amiable character. Mr. Butler, the deceased, I was not particularly acquainted with; have heard him spoken of in high terms, but with his brother, my very worthy friend, Noble Butler, I have been long intimately acquainted.

Mr. *Marshall* objected to any examination into Mr. Butler's character, as it was not questioned at all.

Hon. *J. Perkins sworn.* Resides in Louisiana. Had known Mr. Ward for ten years, traveled with him in Europe, was with him six months every day, on that journey; he was remarkable for amiability and peaceable disposition His health was bad, he traveled to benefit it. He is the feeblest man for his height I

ever saw. In health he is naturally feeble. Am a member of Congress from Louisiana.

Hon. *W. Preston, sworn.* Have known Mr. Ward since 1838; was a mere lad at the time; I was intimate in his father's family. He had made a favorable impression on me as a mild peaceable lad. He was much accustomed to literary pursuits. Since his return from College, I knew him as a man of amiable and refined manners, a man of spirit, but of secluded habits. His physique is more feeble than his appearance would indicate, rather inclined to pulmonary disease.

Hon. *James Guthrie, Secretary of the Treasury.* Had known Mr. Ward from his infancy, lived in my neighborhood. I knew him as he was growing up; he was an amiable sprightly boy, and grew up to be a man of the same character; after finishing his education, his health became more delicate and he traveled in the eastern continent for his health. He published his letters from abroad, and they have attracted much attention. He was regarded as a mild, amiable man. Have seen him but twice for a year, and his health was extremely delicate.

Geo. D. Prentice, sworn. Have known Mr. Ward and lived in the same city with him since his early childhood; had known him as an intimate friend. Had always supposed there was but one opinion about him as a mild, quiet and amiable young gentleman. He was as much so as any man I ever knew. He was not in the habit of seeking the society of gentlemen, rather sought the company of ladies. He was a man of spirit, quick to resent an injury, but still amiable and kind. From his character as a writer, he was often spoken of, much more so than young men in general: there was but one opinion respecting his amiability in the community. His health had been very feeble for some time previous to this occurrence, and he had used crutches.

Mr. *J. H. Sturgeon.* Knew Mr. Ward since 1841. He had during that time borne the character of a peaceable quiet man. I am assistant Treasurer of United States at St. Louis. Since I have been in St. Louis in 1846, I have seen Mr. Ward often; when he returned from College, his health was delicate. Had never seen so small limbs on a man of his height. His health has always been delicate, and is now quite so.

Col. Stephen Ormsby. Had known Mr. Ward 15 years, reside nine miles from Louisville. His character for amiability and mildness was always good. Had heard his college acquaintances in

Cambridge, Massachusetts, speak of him in the highest terms. Had never seen him in Louisville at places where young men are apt to go.

Mr. *Allen.* You don't go to such places yourself, Colonel?

Col Ormsby. Yes I do.

Mr. *Larz. Anderson.* Live in Cincinnati. Known Matt. Ward twenty years. As a child, he was more remarkable for sweetness and amiability of disposition, than any one I ever knew; as a man, he has always borne a good character, for peace and quiet; his health has been very feeble; saw him shortly before this difficulty, and he had his crutches with him.

Mr. *Wm. Tyler*, sworn. Had known Mr. Ward fourteen years; known him as a school-boy. He was one of the most quiet, peaceable, bland, and mild boys I ever knew; he had no difficulties with other boys; he was never in boisterous plays; he has borne the same character as a man.

Mr. *Horace B. Hill.* Reside in Lexington. Had been intimately acquainted with Mr. Ward, nineteen or twenty years; when I resided in Louisville, he lived near; since I lived in Maysville and Lexington ten years, have seen him often. For amiability, kindness and mildness, his character was as good as any boy I ever knew. His health has always been feeble.

Dr. *J. C. Johnson.* Resided in Louisville for sixty-five years; have known Matt. Ward since he was a boy; he was always remarkable for amiability of character; his conduct always remarkable for uprightness and quietness.

W. L. Clifton. Known Matt. Ward seven or eight years; his character for mildness, urbanity and peaceableness is unexceptionable.

Here the Court adjourned.

THIRD DAY.

Thursday, *April* 20, 1854.

The Prosecution here asked leave to introduce Dr. Flint, which was granted.

Dr. *J. B. Flint*, sworn. Reside in Louisville; am physician; knew Prof. Butler for ten years. He had a deformity in one of his hands, caused by a burn in infancy. He wished me to operate for its relief. Did so, but with very little effect. He could not open his hand wide, nor entirely close it; could not double his fist as men generally can. Saw him the day he was shot, from time to time, through the day; attended the post mortem examination. The ball entered between the third and fourth rib, passed through the lung, and was embedded in one of the vertebræ. He had the ball in his possession. (It was here exhibited, a common buck-shot.) Saw Butler about ten o'clock, A. M. I or Dr. Thompson was with him nearly all the time; knew most of the persons in the room; did not hear Butler talk with any stranger; do not know Mr. Barlow.

Cross Examined. The external part of the hand was sound, the inside muscles were contracted. He could nearly close it; could strike with it; don't know how hard. Could make his fingers touch the inside of his palm.

[Here the Defence resumed their testimony.]

George D. Prentice recalled. Saw Matt. F. Ward five hours after the difficulty. My attention was called to his face and eye, which were reddened and slightly colored. I should not infer a severe blow, but one sufficient to cause injury.

Mr. *Wolfe.* Is it the custom to carry arms in Louisville?

Objected to by Prosecution.

Mr. *Helm.* We wish, by showing the custom, to remove the implication of malice aforethought. In cities it was usual to carry arms, especially in large cities, as in Cincinnati.

Mr. *Carpenter.* The custom of a wrong cannot be introduced as legal evidence to justify wrong. There were many wrong customs which it was the object of law to break up. The custom of shooting persons was too common, and could not be introduced to justify the deed. Besides, this defendant had been proved to be a most amiable, peaceful man, and this custom could not be

plead in his case. If every man in Louisville carried arms, it was no justification.

The *Court* said the State had proved the prisoner purchased a pistol that day. No motive for that act had been proved. The question in this case was, with what motive the shooting had been done. If the Defence could show that it was the custom to carry arms in Louisville, it might remove the imputation of malicious motive. Then the carrying arms for defence was not illegal. The question might be asked.

Mr. *Prentice* then said it was his impression that the portion of citizens who bore arms habitually, was small, quite small; yet young men anticipating a difficulty with persons of superior strength, would carry arms to protect themselves; not to commit murder, but to prevent disgrace.

Cross Examined. The redness was under the left eye; did not notice it till his attention was called to it by defendant.

Maj. *T. L. Alexander*, sworn. Am an officer of U. S. Army; saw Matt. Ward half an hour after the shooting; saw on his left cheek the appearance of a blow; it was red. It could not have been a severe blow, but still left its impress. Had been in Louisville often; it was his home, though he was away much. As to carrying arms in Louisville, his knowledge was limited. Did not know it was a general custom. It was done when a person expected difficulty with a stronger person; generally worn for defence, not for attack.

John O. Bullock called. Have known Ward all his life; saw him an hour after the difficulty. One of his cheeks was redder than the other; should imagine it was the result of a blow; believed so at the time. His character for peaceableness, amiability, &c., was never questioned. His health has always been feeble. It was a subject of talk between him and me, which weighed the least, a short time before the affair. We were weighed; he weighed 111 pounds, and I, 113½.

Cross Examined. The redness might have been caused by rubbing with a coarse towel; I noticed it without having my attention called to it.

Mr. *J. M. Barlow*, called. Am a carpenter in Louisville; have a wife and child; been there regularly five years; on and off seventeen years; was born and raised in Cynthiana, Harrison county, Ky. Went on second of November to Capt. De Hart's to measure some work, came back, and abreast Rawson's house met his little boy; saw several boys in the street; Rawson's

boy told me, Matt. Ward had killed Professor Butler; I looked down and saw two boys leading a man; it was Butler; I followed to Harney's house, asked if any one had gone for a doctor, they said they had; I went to the school-house, saw Doctor Thompson, went with him to Harney's house; saw Butler lying on the rug; a young man there and myself took off his coat and vest; I asked Mr. Butler the following plain questions, and received the following plain answers: — Mr. Butler, who did this? He replied, Matt. F. Ward; I asked, what did he do it for? He said, for correcting one of the boys in school; Matt. F. Ward came to the school-house this morning, and asked for an explanation; he gave me the d—n lie, and I hit him (or as he was a learned man, I suppose he said struck) him for it; and in the fuss, Ward threw his right hand against my breast, and shot me; the pistol stuck in my coat, and I pulled it out. Heard no more that he said. Dr. Thompson and the other physicians, Caldwell and Yandell, proceeded with the examinations; the probe run along outside of the ribs; Dr. Caldwell said it was a flesh wound, and I left; I came back at noon; Dr. Thompson said he was worse, that the ball had entered the cavity; I saw him no more.

(Witness produced a map showing the position of Harney's house, and of Butler and the Doctors in there, when he was in, also the position of school-house, and surrounding houses; this he explained to Jury and counsel.)

Cross Examined. Lived in Cynthiana till twelve years of age; then father removed to Rush county, Indiana, lived there eight years; there father died; lived most of the time since in Louisville; had been in many places, New Orleans, and St. Louis; am thirty-six years old; know Dr. Thompson by sight; met him at the school house; he had his case of instruments in his hand; had talked with Mr. Mays that day, or soon after; I said it was the most aggravated murder I ever heard of, or words to that effect. Had not said if Matt. Ward was not hung, it was no use to try to hang a rich man's son in Louisville. Told Mr. Mays a month and a half after, that on the evening before, I went to R. J. Ward's, that a servant came with a silver waiter for my card; said I had no card. That I wanted to see R. J. Ward on a particular subject; that Mr. Ward came down and we went into the parlor; I asked him if it would do him any good to find a witness that would prove that Butler struck Ward first? Mr. Ward said that was just what they wanted; I said I was that man. Mr. Ward asked me to meet him at Mr. Wolfe's office next morning. I told him my

business kept me the whole day; he said I should lose nothing; I said I did not wish to be understood that way, but I was compelled to work for my living. Never told Mays or Sullivan that I should be amply repaid; had said I had played cards in jail with Matt. and Bob Ward; he played cards there with them and the turnkey; also with Mrs. Matt. Ward; did tell Mays and Sullivan that Butler said, that Matt. Ward gave me the d—n lie; I struck him and he shot me; had not been betting on the result of this trial. If I have, it was in jesting way; no one asked me to go to R. J. Ward's.

Direct Examination Resumed. Had not bet a five-cent-piece on this trial; had found no person who wanted to bet, except for conversation. There was a great excitement in Louisville at the time of Ward's arrest.

Mr. *Wolfe.* Had not this excitement been increased by the publications in the Courier and Democrat?

Objected to by the Counsel for the Commonwealth, and ruled out by the Court, who said they could prove the excitement, but not the cause that produced it.

Witness. There was a great excitement. Did not see the newspaper reports of the trial. It was a month and a half after the occurrence, before I had this conversation with Mr. Ward. Had heard that the testimony at the examining trial tended to show that Ward struck Butler first, and knowing the contrary from the dying speech of Butler, went to R. J. Ward's and offered my testimony to contradict that impression.

To Mr. Carpenter. Had expressed the opinion that this was an aggravated case till I had the conversation with Ward, or till near that time. Had said I was going to California as soon as this trial was over.

To Mr. Wolfe. Mr. Ward never offered me a cent, never promised me anything, and I never expect a cent from him or any of the family, or any one else.

Mr. *Allen* said no charge had been made against Mr. R. J. Ward, Sen., and none was intended. He was an honorable, high toned gentlemen.

Mr. *Wolfe* said, with warmth, that the effect of the questions asked, was to affect Mr. Ward's character.

Mr. *Carpenter* and Mr. *Allen* disclaimed any such intention. Their object was to impeach the witness, and prove no such intimacy as he had boasted of with the Ward family ever existed. The examination then proceeded.

To Mr. Wolfe. Had some relations in Oregon I was going to see; they had married into Gen. Lane's family.

J. M. Allen, called. My home is in Yazoo City, Miss. Was in Louisville November last. On the day of this occurrence was sitting in office of Hydropathic Institution, of which I was a patient. Mr. Sturgus entered the door, and said something in a loud tone, and then said, "run for a doctor, for Butler's shot, and perhaps killed!" I went to the door with two or three others, saw Matt. F. and R. J. Ward pass by; started for a doctor, saw the boys going for one; went around to the school-house, met a boy ten years old, crying; passed on to the school-house; in the front yard there were twelve or fifteen boys; I knew Mr. Worthington's son; had seen the others, but cannot identify any; met them often at the gymnasium. Asked where Mr. Butler was; shook hands with young Worthington, and asked whether Butler was there.

Gov. *Crittenden.* What reply did you receive?

Witness. They said Mr. Butler had gone; I asked how this happened.

Gov. *Crittenden.* What answer did you receive from Worthington?

Answer. He nodded his head at same time when the others answered; he assented to the answers of the others.

Gov. *Crittenden.* What answer did the others make?

Mr. *Allen objected.* In making this inquiry, the object must be to contradict the evidence of the boys; to do this, it must be proved they were the same boys who had testified in Court; this had not been done, only as respects Worthington, and he had made no definite answer; testimony could not be impeached on the wholesale principle.

After some explanation, the Court permitted the question to be asked.

Witness. Several of the boys spoke up at once, and said, Ward came there and cursed Butler; Butler struck him, and Ward shot Butler.

The Court said the evidence was admitted only so far as it affected the testimony of young Worthington, and was not evidence respecting the occurrence.

Mr. *Helm* said, they had proved most of the boys, if not all, present at the time. Some of them remembered these gentlemen coming up. This was a part of the *res gestæ*. He refered to the case of Lord Gordon, when the shouts of the mob were

admitted as evidence. The question of identity was for the jury. The prisoner must not be deprived of a very important witness, because that witness could not identify a school boy.

The Court said, the evidence was admissible only as impeaching the testimony of the boys. To that end the boys must be proved to be present. The cries of the boys was not a part of the *res gestæ*.

J. G. Gudgel, called. Was in company with Mr. Allen at his visit to the school house; Butler had been removed; fifteen or twenty boys were in the yard and on the steps; I inquired what had happened, of a small boy I met near the school house; at the school house asked the same question; the answer given by five or six was, that Ward came to ask an explanation; Butler ordered him out of the house; Ward still asked for an explanation; Butler then struck him, as some said; others said Butler pushed him down, or partly down, and as he raised, he fired; they all said Butler struck first; saw Mr. Allen talking with a boy.

Here young *Benedict* and *Pirtle* were called. Witness thought Benedict was the one he met outside of the gate, but could not tell positively.

Witness then was permitted to relate what questions he asked Benedict. He said Benedict said Ward had shot Butler; that Ward had asked for an explanation; Butler had ordered him out of the house, and struck him, and Ward shot him; at the school house, some said he was knocked clear down; some said he would have fallen if Butler had not had hold of him.

Cross Examined. Have resided in Missouri twenty years; am staying at Water-cure in Louisville; cannot say that Benedict was the one he met; should not have recognized him if he had met him in Louisville; can remember countenances well; had not seen Benedict since; cannot identify any other boy; the boys said Ward *demanded* an apology; Butler told him to leave; the boys were much excited.

Mr. *Allen* asked the Judge to charge the jury that this evidence could only be received as affecting Benedict's testimony, and not as proof that the affair of shooting happened in this way. The Judge said the jury should be thus charged.

Mr. *J. J. Hirschbuhl*, sworn. Saw Matt. Ward the day this affair happened; I had a music box to fix for him, and he sent for it before it was done; I saw him soon after standing on the street, talking with another man; I talked with him, and

agreed to fix the box by next Monday; he said he would send it up, if I could do it by next Monday, as he must then start for his plantation on the Mississippi.

Objected to as irrelevant.

Mr. *Crittenden* said, by proving Mr. Ward's intention, on that morning, of going to Mississippi so soon, the inference would be that he had no criminal intentions.

To Mr. *Wolfe.* Witness lived on Third street, between Market and Main, three doors from Gilmore. Mr. Ward was coming from Main, going from Gilmore's store to his own house.

Mr. *Allen*, in reply to Mr. Crittenden, said he could see no relevancy of the evidence to the case; a person could not manufacture evidence for himself.

Mr. *Crittenden.* How is it to be proved that a man intends to go on a journey? It might be important to prove such intention; it might be done by just such testimony as was now offered. Mr. Ward intended to go to New Orleans on the next Monday; this fact it was essential to prove; it could be proved by this witness; it might be important in this light: It had been proved that Ward had bought a pair of pistols on that day; if it was inferred that he was just starting on a long journey, it might be inferred by the jury that he purchased the pistols as a part of the preparation.

Mr. *Wolfe.* We maintain the admissibility of this evidence for another reason. The charge was, that Ward had done this act maliciously; Mrs. Harney was introduced yesterday to represent Mr. Ward's manner as excited; he wished to rebut that testimony by this witness, showing that his mind was at ease, and he engaged in preparing for a journey.

Mr. *Helm* said they wished to prove, by a series of acts, that Mr. Ward was engaged in making purchases and preparing for his trip, and was not harboring malicious purposes.

The Judge said, the best way to prove a man's state of mind, was to state his acts; in that light the testimony was proper.

Witness said the box was sent back immediately; nothing angry or excited in Mr. Ward's manner.

Cross Examined. Had spoken with Ward before; the box came back in about fifteen minutes; do not know who Ward was talking with when I spoke to him.

The Court here adjourned for dinner.

AFTERNOON SESSION.

Mrs. *J. A. Beattie*, sworn. Keep a Fancy and Millinery store in Louisville; was employed last fall in furnishing Mrs. M. F. Ward with clothing for her journey; the day previous to this affair Mr. and Mrs. Ward and sister were in my store making purchases for their trip to Arkansas. Do not remember as they said what their object was. Engaged to make a cap and have it ready in a short time, because they wanted it before they left; understood they were going to leave in a few days.

Mr. *Lawrence Richardson*, called. The evening previous to this affair, Matt. F. Ward and wife told me of their intention to go South. They were looking for a pair of gloves to match a traveling dress; went to several stores with them. They spoke of going on the Belle Key if there was sufficient water; it was just before dark. The meeting was accidental.

Cross Examined. Mr. Ward said he was going to his plantation in Arkansas.

Capt. Peyton Key, sworn. Was the captain of the Belle Key, she went down the Ohio last November; Mr. and Mrs. Ward had engaged passage on board. Mrs. Ward is my daughter. The boat was to start on the Monday after this affair. They were going to Helena, Arkansas, where Mr. Ward's plantation is.

Robert Johnson, sworn. Made arrangements to go down the river last November, with Mr. and Mrs. Ward. Think the boat was to start on the Saturday after this event, but did not go till the next Monday or Tuesday. The arrangement was made before the occurrence. Saw Ward just after this occurrence. Saw marks of a blow on his cheek, or evidences of an injury, it might have been produced by any hard push or knock. Matt. F. Ward is a cousin of mine. His health has been very feeble; often used crutches. Had laid aside his crutches but a short time before this event, did not use them at this time.

Mr. *Robert J. Ward, Sr.*, sworn. (Father of the prisoner.) Was apprised of the intention of my son to visit the school of Mr. Butler, on the 2nd of November last.

Mr. *Crittenden.* What was his object?

The counsel for the Commonwealth objected, as tending to introduce the statements of the prisoner.

Mr. *Crittenden* thought the answer ought to be heard, before objection could be made. He wished to show the jury why Ward went to the school house on that day.

The *Judge* said if it was not the intention to draw out the statements of the prisoner, it might be answered.

Mr. *Crittenden* said it might do that, but statements of the prisoner had been admitted.

The *Judge* said he should like to hear the question discussed.

Mr. *Gibson* said, the objection was simply this, the statements of the prisoner could not be admitted. If intending to commit murder, he might previously make many assertions declaring his peaceable intentions.

Mr. *Carpenter* said, the simple rule was that a prisoner could not manufacture his own testimony for himself. The expressions made at the time were a part of the *res gestæ* and admissible; but the statements of the day previous, or the week previous, cannot be admitted. The facts of the act must explain themselves. If a man used a weapon he is supposed to intend to produce the effect naturally resulting from this use. He cannot explain his intention by previous statements.

The *Judge* said the motive for which the prisoner went to the school-house characterized the act, and ought to be proved by evidence. The Jury must decide whether the statements were feigned, or real. Declarations could be admitted to prove intention, if they were made at the time of preparing to perform the act. If the motive of the prisoner in going could be explained, he certainly ought to have the benefit of the explanation. The question might be answered.

Mr. *Allen* read several authorities tending to establish the contrary opinion.

The *Judge* said they were Massachusetts decisions, founded on Massachusetts statutes. He read the general principle laid down by Greenleaf, and said the statements might be given if confined to the time of preperation.

Mr. *Ward* said his wife and himself had been to Cincinnati; Robert was with them, he had been visiting there. Expected to be home on Wednesday, but missing the boat we expected to be detained until Thursday, but got down on an evening boat, and reached home at nine o'clock on Wednesday. Went home to breakfast; it was after nine o'clock before I reacned my residence; went into my dressing room, and after shaving, came into my wife's room; I found my wife and Matt. con

versing on the subject of William's whipping; my son, Matt., said he was going round to see Mr. Butler, and ask for an apology; I had previously sent a man for my son Victor and his books; I proposed to go myself; no, said Matt., I will go; Mr. Butler is a gentleman, and will make in the presence of the school the apology that a gentleman ought to make. I consented to his going. Robert was out; as Matt. was going out, his mother remarked, you are very feeble, you have had one difficulty with Mr. Sturgus, hadn't you better take somebody with you? Just then Bob came in, and started with Matt., not knowing, till he got to the outside door, where he was going. Mr. Ward was going on to relate a previous difficulty with Mr. Butler, when

The *Judge* said it was incompetent.

Mr. *Crittenden* said he wished to prove that Mr. Ward had agreed with Butler that his children should not be whipped; if they did not behave they were to be sent home; that this subsequent whipping, under these circumstances, was peculiarly aggravating, and would explain the cause of the excitement felt by the family.

Mr. *Helm* said what they wanted to prove was, that one of the boys had been maltreated by Mr. Sturgus, and that had led to an arrangement by which the condition on which the boys should remain in the school was, they should not be whipped; and the whipping of the boy again, and such an unreasonable whipping as he did receive, and from the Principal himself, constituted an aggravation which accounted for and explained the cause of some one going and demanding an explanation.

The *Judge* decided that as the Court of Appeals had decided that previous insults could not be plead in justification of subsequent attacks for insults, the testimony was inadmissable.

Mr. *Ward.* Matt.'s health has been very feeble for some time. When Matt. returned from the school-house I was out of the school-room; I heard his mother scream; I run in, saw Matt. put his hand to his face, and say, would you have me beaten like a dog? This called my attention to the blow on his face; it was swollen. Knew Butler well; he had been a private teacher in my family for twenty months, and he was a favorite there. Matt. was then in Europe, and I gave Mr. Butler letters to Matt. there, but they did not meet. Had Mr. Butler returned in season, he would have continued my private teacher, but he was absent so long that I entered my boys in school. Knowing

Mr. Butler well, I had no expectation of any trouble between them in the least.

The *Court* ruled out so much of this testimony of Mr. Ward as did not relate to the statements of his son, or his health.

Mrs. *Robert J. Ward*, (mother of Matt. F Ward,) sworn. Knew the object of Matt.'s visit to Butler's school-room; when we arrived from Cincinnati, met the family; saw my son William was not at school, and saw his sad expression of face; asked the cause. He said my brother will tell you. Yes, said Matt., I was just going round to ask Mr. Butler the cause of his treatment of William. He then said that Mr. Butler, the day previous, had whipped William and called him a *liar*. I said what, William Butler whip Willie Ward and call him a *liar!* He answered, yes. The day before, Willie had bought some chestnuts, and taking out his handkerchief, some of them came out; the boys asked for them and he gave to several. They eat the nuts and threw the shells behind the seat. Mr. Butler asked who eat them. One refused to tell. Mr. Butler sent for his strap, and asked each one in succession. They said Willie Ward gave them, and there was a dispute between Willie and one of the boys, whether Willie gave them before or after the class was called to order. Butler then hauled Willie out on the floor and said, I shall have to whip you for giving chestnuts, and for lying. Willie had said he did not care so much about the whipping, as about being called a liar.

When Matt. was going out, I followed him to the door, and told him to be calm. He said he was calm. Just as he was going out, Robert came in, and at my request, Matt. consented for Bob to go with him, and told him impatiently to get his cap. I told Robert that Matt. was going to see Mr. Butler; take care they don't get excited. Before Matt. went out, I told Matt., you know Mr. Sturgus is your enemy. He said, never mind that. When they returned I noticed the mark on Matt.'s cheek. It was red under the eye.

Mr. *Crittenden*. State how you know Mr. Sturgus was his enemy.

Objected to; objection overruled by the Court, but the Counsel for the defence did not pursue the matter.

(Mrs. Ward fainted as soon as she got to her seat, causing quite an excitement in Court. She was soon carried out.)

Col. *George Hodge*, sworn. Saw Robert J Ward, Jr., in Cincinnati the day before this occurrence. He carried a large bowie

knife while in Cincinnati; often came across the river to see my family there. It is not uncommon for strangers to carry arms there, as the ferry to Newport was in the worst lighted and the most infested with rogues of any part.

Mrs. *L. P. Crenshaw.* Know Barlow, the carpenter; he boarded with us. At the time of this affair, Barlow came in later than usual. I, woman-like, having heard of it, asked immediately about the affair. He said he heard the report of the pistol, saw Mr. Butler, and asked how it happened. Butler said, Matt. Ward came to my room, used insulting language, called me a d—d liar; I struck him, and he shot me. Witness heard no more of the conversation.

Mr. *L. P. Crenshaw.* Reside in Louisville; know Mr. Barlow; he boarded at my house last fall, at the time of this conflict; I learned of the occurrence shortly after it happened; when I went to dinner, Barlow said he had been to see Butler; said Butler had said, while they were undressing him, that Matt. Ward had come to the school, used insulting language, called me a d—d liar; I struck him, and he shot me; Barlow related this between 12½ and 1 o'clock. Witness is a nephew of Judge Crenshaw, of the Court of Appeals.

Dr. *S. D. Gross.* Am acquainted with M. F. Ward; live near him; have practiced in the family; know Matt. Ward's health only from report; have known the Wards about thirteen years; know Matt. F. Ward's character; always understood he was a mild, amiable, peaceable man; never heard of his being engaged in any quarrel; regarded him as a gentleman who would resent an insult.

Dr. *Lewis L. Rogers.* Been the physician in Ward's family for many years; Matt. F. Ward has been in feeble health for several years; had the rheumatism bad last fall; saw him with a crutch; visited him several times in October; he was under my charge at the time of this occurrence; he was very feeble; muscular system much reduced; always esteemed him as of a very amiable deportment; never heard of his being engaged in any quarrel; by his publications he was widely known, as a literary character, much spoken of, and had his character been vicious, it would have been widely circulated.

Mr. *Daniel McAlister.* Have known Matt. Ward for a number of years; have heard nothing against his character as a peaceable, quiet, well disposed man; have been a plasterer in Louisville.

Cross Examined. Am a plasterer now; quit the business about ten years ago; have accumulated a fortune and retired. (Jocosely said.)

Mr. *Coleman Daniel.* Knew Mr. Ward; never heard anything against him till this occurrence; am a plasterer in Louisville; worked at the business, and made others work.

Cross Examined. I did not quit the business—the business quit me about ten years ago; have been about as successful as Mr. McAlister; an industrious mechanic, who attends to his business can always do well.

Maj. *Davis Carneal.* Knew M. F. Ward from his infancy; knew no young man who bore so good a character; had a son who associated with him; always considered him safe while in Ward's company.

Col. *Rankin.* Knew Matt. Ward ever since he was born; while a child he was kind, tender and affectionate; since he came to manhood, have heard naught against him; he owns a plantation near me in the south, and he is universally respected.

Mr. *James S. Lithgow.* Am a manufacturer in Louisville; known Matt. Ward for ten or twelve years; always looked upon as a quiet, peaceable, well disposed man.

John Stirewolt. Have lived in Louisville fifteen years; am an architect and engineer; known Matt. Ward since 1838; was intimate with him five or six years; his character as an amiable, mild and quiet man was never disputed; he never engaged in any quarrels in school; had no disposition to form acquaintance; was very retired in his habits; since that time have not seen him so often; belonged to a boat club got up for his benefit.

Mr. *James S. Speed*, sworn. Am Mayor of Louisville; been so for two years; been in all public situations, from hod carrier up; have been United States Marshal of this State; have known Matt. F. Ward twenty years; his character has been entirely unexceptionable; as chief of police, witness had never seen Ward in a grocery or gambling establishment, or out a sky larking.

Mr. *Judge Oldham*, sworn. Reside three miles from Louisville; have known Matt. Ward twenty-two or three years; his character has been unexceptionable; never knew him in any quarrel either as boy or man.

Mrs. *Maj. Gwynn.* Know Matt. Ward; always heard him spoken of as a peaceable, quiet, amiable man; he has always been kind as a son and a brother.

Mr. *Wm. Logan*, sworn. Have known Ward seventeen or eighteen years; a more amiable, kind and affable man I never knew; everybody looks on him in that light; had opportunity to know him well.

Capt. *J. W. Brannin*, sworn. Am postmaster in Louisville; have known Ward for ten years; he is one of the most gentle and amiable men in Louisville.

Mr. *Richard Anderson*, sworn. Had been a schoolmate with Ward; he was a great favorite for his kindness and gentleness; was beloved by all who knew him.

Mr. *Robert J. Ormsby*, sworn. Have lived in Louisville since 1830; had known Matt. Ward since 1838; he is very mild and peaceable, beloved by all who knew him; he has lived in my mother's family.

Mr. *Wm. C. Hite*. Live in Louisville; known Ward thirteen years; he is kind peaceable and universally beloved by all who know him.

Capt. *Z. M. Shirley*. Reside in Louisville; knew Ward ever since he was a boy; had seen him in New Orleans and on board of my boat; had heard him spoken of at Helena, Ark., where he owns a farm; he was generally beloved for his mild, lovely, peaceable, and amiable manners.

Col. *George Hancock*, sworn. Had known Matt. Ward twenty years; had always thought him an amiable, good tempered young man; he was always so spoken of by his acquaintance.

Dr. *W. R. Jacob*, sworn. Had known Ward for twenty years; we were boys together. He was a man of peace, more so than any man I know of in community.

Mr. *W. E. Garvin*, sworn. Had known Matt. Ward ever since we were children; was a remarkably pleasant boy at school; mild, peaceable, gentle, beloved by all who knew him, and had no enemies; has always borne that character.

Mr. *Collier Ormsby*, sworn. Had known Matt. Ward for twelve or fifteen years. He has always been a peaceable, amiable, and kind gentleman; so regarded by the community.

Capt. *C. A. Fuller*, sworn. Have known Matt. Ward eight years; he was a high-toned, amiable gentleman; so regarded by the community. I am in the U. S. service, employed on the improvement of western rivers.

Capt. *F. Carter*, sworn. Have known Ward twelve or fifteen years; always regarded him as a kind, generous man, as much so as any man I ever knew.

Mr. *B. R. Pollard*, sworn. Known Ward eight years; he bears an amiable character; so spoken of by the whole community.

Dr. *E. Caspari*, sworn. Had known Ward for some time. Since I have known him he has borne the character of an amiable gentleman, mild, quiet and courteous.

Col. *Churchill*, sworn. Knew Matt. Ward twenty years; as a boy he was one of the best I ever knew; as a man he was kind, courteous, and gentle.

Mr. *J. J. Key*, sworn. Knew Ward since December, 1839. When I first became acquainted with him I was struck with the difference between him and most of the young men I knew. His general character is very good. I have lived in Maysville; been clerk of the court there fourteen years; reside now in Cannelton.

Mr. *L. B. White*, sworn. Am Marshal of Louisville; arrested Matt. Ward. He surrendered himself peaceably; made no resistance.

Mr. *Allen* objected to this, as proving matters not disputed. The presumption was that a prisoner surrendered, unless proof was offered of resistance.

The *Court* permitted the examination to proceed.

Witness. Heard of this affair, and went to arrest Ward, Gilmore was with me; met his father, told him the matter would have to be investigated. He asked one of us to go and see how Butler was. I went to the door of his house. Robert came to the door and said Matt. had vamosed. Matt. soon came forward. I told him he would have to submit to an arrest. He said, certainly. Asked me to wait till his father come. I did so, and he accompanied me soon to the jail. Knew Ward well; he was a most estimable man. Often visited him in jail.

Mr. *Crittenden.* Did he ever attempt to escape?

The *Court* ruled the question as out of order.

Cross Examined. Arrested him between ten and eleven o'clock. Sufficient time had elapsed for Ward to have escaped from town if he had wished. Heard of the occurrence fifteen minutes after it transpired. Ward lives half a mile or three quarters from the river. Saw no boys round when I had got to Ward's house.

Mr. *Crittenden* then asked leave to put his question, which was granted.

Witness. Never saw any indication of a desire to escape, and it was his business to look out for such indications.

Cross Examined. He was well guarded on the journey to this place. There were two prisoners, and three to guard them.

Mr. *J. O. Bullock* called. Did not know as it was the custom for persons buying pistols to have them loaded, only from his own practice.

Capt. *Brannon.* Know nothing further than Mr. Bullock, who has just testified.

Col. *G. Hodge.* Had always seen pistols loaded when purchased, in order to show the purchaser how to load them.

Judge *Walker*, sworn. Live in New Orleans; knew Ward well. Never knew a man more gentle and kind; he was so to a fault. This was his general reputation in New Orleans.

Mr. *George Grey*, sworn. Knew Ward since 1836. As far as I know or have heard, he was a very amiable, kind and quiet man; always bore that character.

Mr. *W. J. Robards*, sworn. Had known Ward seventeen years; he was always quiet and gentle in disposition. Saw him just after this occurrence; noticed the mark on his face.

Mr. *James Key*, sworn. Could not tell whether it was the general custom to have pistols loaded when bought, or not.

Mr. *Robert Adams*, sworn. Have frequently known it to be the case that pistols were loaded when purchased, especially when requested.

Mr. *Logan*, recalled. Did not know what the custom in this matter was.

Mr. *Caldwell* here stated that the Defence had closed their testimony, but as it was near night, and they wished an opportunity to consult, he would ask the Court to adjourn till morning.

The Court then adjourned.

FOURTH DAY.

Friday, April 21st.

Mr. *Wolfe* stated that the defence wished to call some more witnesses.

John Judt, sworn. Was a scholar of Butler at the time of this difficulty. Know J. S. Pirtle. Had conversed with him about this matter. Pirtle told me that Butler struck Ward first; did not say he saw it; he might have heard it; I don't know how he knew it.

Cross Examined. Pirtle told me this in the school house. I now go to school in Shelbyville; I was in the big school room when he told me; I was there when Butler was shot. There were several boys with me. Did not hear the other boys say anything about it; do not remember the other boys said anything. Don't remember that Pirtle said Ward struck Butler first. Am son of Mr. Judt a preacher. Pirtle is as good a boy as any; I am certain Pirtle told me this. Don't think he saw it; told me he did not see it; said nothing but that Butler struck Ward first. We were talking together; do not remember any other remark. Dr. Caspari talked with me first about this case, he came to our house. Mr. Wolfe talked with me, I went to see him; my father told me to go and see Mr. Wolfe. When Pirtle told me Butler struck Ward, it was some months after the occurrence. Pirtle said Ward and Butler were talking together, and Butler struck Ward. Was in the side room when the difficulty occurred. Saw Butler and Ward talking. Did not see Butler strike Ward. Heard the pistol, was not looking on at the time; was fearful I might get hurt.

R. W. Adams, called.

Mr. *Wolfe.* Did you ever know Matt. F. Ward to purchase pistols and have them loaded at different times before this occurrence?

Objected to by prosecution.

The *Court* thought it was taking rather a wide range.

Mr. *Wolfe* said the prosecution yesterday tried to exclude all testimony showing the custom of having pistols loaded when purchased. The defence wished to show that the defendant had purchased pistols at different times and have them loaded, and that this was done, not for an attack, but living as he did, partly

in Louisville and partly in the South, he purchased them for self-defence.

Mr. *Helm* said they had proved for Ward a character for peace and quiet unsurpassed by any ever tested in a Court House. The prosecution might seize hold of this, and contend that if such a man purchased pistols, it was for a special and malicious purpose. To prevent this, the defence wished to show that he had purchased pistols before, when commencing a journey, and had them loaded; and there was nothing unusual in this particular instance of purchasing.

The *Court* said it was willing to admit everything explaining the motives of the prisoner at the time of this difficulty, but the most liberal construction would not admit this now offered.

Mr. *Allen* said the gentleman had been arguring the case, he hoped the court would instruct them to omit their pleas till the proper time.

Mr. *Helm* said such *young men* as himself and Mr. Crittenden stood in need of instruction.

Mr. *Allen.* We feel that we are mere swivels arrayed against twenty-four pounders, and we wish their range properly limited.

Mr. *Helm.* Some of your swivels will hardly pay the cost of transportation here.

Mr. *Carpenter.* The presence of these swivels seems to trouble you much.

The *Court* called the gentlemen to order. There was enough to do without spending time in these remarks.

Mr. *Helm.* I know it. But when the gentleman talks of cannon and swivels, we have a right to retort.

Mr. *Marshall.* This seems like *grape shot.* (Laughter.)

Mr. *Crittenden* said he wished to prove by Mrs. R. J. Ward, that in a conversation that occurred a month or two before this transaction, Mr. Sturgus, the assistant teacher, had become so excited against Matt. F. Ward, as to leave a hostile and threatening letter with the mother, and requested her to deliver it to the son. If this could be admitted, he would have Mrs. Ward, though feeble, brought into court. The defendant was entitled to all proper testimony, in a case where his life, liberty, and honor, were concerned.

Mr. *Allen* said he would not argue this question, as he presumed the Judge would not admit it. But he had noticed this fact: that when the defence wished to get a statement before

the jury, they would get it there in their pleas, if they could not by the witness.

The *Judge* thought the relation of the occurrence referred to, to the transaction on trial, was too remote to be admitted.

Mr. *Crittenden* then said the defence wished to introduce R. J. Ward, Jr., as a witness.

Mr. *Gibson* objected; this person being impleaded with the defendant. He read the following authorities in support of his objection: — The People *vs.* Bill, 10 John. Rep. 95; Campbell *vs.* Com., 2 Virg. cases 319; State *vs.* Alexander, 2 Rep. Court, Ct. Ct. ca. 171; State *vs.* Carr, Coxe, 1; State *vs.* Shaw, 1 Root, 134; Jenn *vs.* Leach, Addis, 352; State *vs.* Calvin, R. M. Chase, 151, 169; Rex *vs.* Rowland, Ky. & Mood, N. P. Rep. 901; People *vs.* Williams, 19 Wend. 377; State *vs.* Blannerhassett, Walker's Rep. 7, 16, 17; State *vs.* Mills, 2 Dev. 420; State *vs.* Mooney, 1 Yerg. 431.

Mr. *Crittenden* said the defence were no strangers to these authorities. But it was a general rule, admitted and established by all the books, that if the indictments were separate, persons indicted for the same crime could be witnesses for each other. Now, the fact that they were impleaded in the same indictment, made no difference in principle; and if a person could be admitted in the one case, he ought in the other. The fact that their names were on the same piece of paper, instead of different pieces, ought not to exclude the witness. Such a construction would be a poor commentary on the common law. But there were higher and older authorities than the gentleman read, which were on the other side, and which, he contended, placed the question of admitting the witness, on the simple ground of his moral competency, and not on a mere matter of being jointly indicted. He also referred to two cases decided in this State, which supported his view, and said, here are two *American* authorities, yea, what is more, two *Kentucky* authorities, showing how *Kentuckians* had decided the point. There were some crimes which it required more than one person to commit, as a riot. In such cases, there was a community of guilt, and whether the criminals were indicted separately or jointly, they could not be witnesses for each other. But where the crime could be committed by one, this reason for excluding another impleaded for the same crime, did not exist. He commented severely on the opinion of Lord Ellenborough, that the jury would be imposed on by an accomplice, and vindicated the ability of the jury to discriminate between truth and error.

Mr. *Wintersmith* read from Russell on Crime, in support of the motion of the defence — that a witness could not be excluded because he stood in the same relation as the criminal.

Mr. *Gibson* said this was the first time in his experience that a motion was deliberately made to throw aside all the books, all authorities, all precedents, and trust to the mere personal opinion of the Judge. As the gentleman had sneered at English authorities, and referred to Kentucky authorities, he would give him a Kentucky authority, one not spoiled by being put in a book. He referred to the case of the two Kelleys, tried in Hart county, where the Judge refused such a motion. There was also another objection to this admission. R. J. Ward, jr., was indicted as an accessory, and his testimony might acquit the principal, and of course acquit himself.

Mr. *Riley* referred the Court to a case in this county, where an accomplice had been admitted as evidence.

The *Judge* said the majority of Kentucky decisions was in favor of the admission of the witness. The weight of English authorities was against it, but they had been much modified by practice, without legislative authorities, and were originally founded on technicalities. The object of a trial was to ascertain the guilt or innocence of the prisoner, and all evidence not directly inadmissible ought to be admitted. The practice was different in different states, but Kentucky decisions were in favor of the admission. The credibility of the witness must be left to the Jury. He was competent as far as his admission was concerned.

Robt. J. Ward, jr., sworn. I arrived in Louisville, on the morning of this occurrence, with my parents, on board the Pike. We reached home about nine o'clock, A. M.; after greeting the family, and staying in the house some little time, I went back to see the conservatory in the garden; staid there about fifteen minutes, was then called to breakfast; was at the table only five or ten minutes, then went back to the conservatory; staid there perhaps twenty minutes, then came into the house, and as I was going to mother's room, saw mother and Matt. standing in the front door. Matt. told me to get my hat; I got it and started; at the gate, Matt. said he was going to ask an apology of Mr. Butler for whipping William. William said Butler is a stouter man than you, and Sturgus has a big stick. Matt. said he apprehended no difficulty, that Butler was a gentleman. He asked me not to interfere unless Butler and Sturgus both

attacked him at once. We conversed on different subjects as we went along; met Lucy Stone in bloomer costume, spoke of that. On entering the school room, Matt. asked for Butler; he came. Matt. remarked, I wish to have a talk with you. Butler said, come into my private room. Matt. said, no; here is the place; Mr. Butler nodded; Matt. said, what are your ideas of justice? which is the worst, the boy who begs chestnuts, and throws the shells on the floor, and lies about it, or my brother, who gives them to him? Mr. Butler said he would not be interrogated, putting his pencil in his pocket, and buttoning up his coat. Matt. repeated the question; Butler said, there is no such boy here; Matt. said, that settles that matter; you called my brother a liar, and for that I must have an apology; Butler said he had no apology to make. Is your mind made up? said Matt.; Butler said it was; then, said Matt., you must hear my opinion of you; you are a d—d scoundrel and coward; Butler then struck Matt. twice, and pushed him back against the door; Matt. drew his pistol and fired; Butler held his hand on him for a moment; as the pistol fired, Sturgus came to the door; I drew my knife, and told him to stand back. We all three, Matt., William, and myself, went out to the gate; Willliam said —

Mr. *Carpenter*, promptly. Stop, sir, stop.

The witness appeared as if he was going on, and Mr. Carpenter repeated, stop.

Mr. *Marshall*, to witness. Keep cool; don't be offended at the manner of the counsel; we will attend to that.

Mr. *Carpenter*. Well, we will.

Mr. *Marshall*. Yes! we will.

Mr. *Carpenter*. Certainly, we will.

Mr. *Marshall*. Damned, if we don't.

Examination continued. To Mr. Wolfe. Matt. was pushed back to a glass partition in the door. Witness here pointed out on a diagram the position of all the parties; said he was a spectator of the whole occurrence.

Cross Examination. Mr. Carpenter asked if he was not also an actor; Witness said he was not an actor in the killing of Mr. Butler; drew his knife when Sturgus came; did not go up the aisle in the school-room, am certain of that; made no gestures towards the boys with his knife. When in Cincinnati, staid at Broadway house. As we entered the school-house, Matt.'s hands were by his side; after entering he held his hat

in his left hand, gesticulating with his right; did not shut the door as we went in; Butler's manner was rather stiff, not as cordial as usual. Butler might have struck more than twice; Matt. did not put his hand in his pocket till Butler seized him. Have carried weapons since I was fourteen years old; sometimes pistols, sometimes a knife.

Col. *A. R. Churchill*, recalled. Saw Ward's family in a hack the morning of their arrival from Cincinnati, between 9 and 10 o'clock; Robt. J. was with them.

A. T. Burnly, sworn. Had known M. F. Ward ever since he was a boy, intimately; always considered him very amiable, not quarrelsome at all; remarkably mild, quiet, peaceable, courteous. He had all the necessary courage to resent an injury; he was a high-toned gentleman.

Here the defence closed their testimony in chief.

Rebutting Testimony for the Prosecution.

Jas. S. Pirtle, recalled. Saw Gudgell who testified here yesterday; do not remember seeing him at the front yard the day of this occurrence; saw two men there; there was a boy who had just left, named Davis; he was crying; do not remember telling the boy Judt that Butler struck Ward first.

Joseph Benedict, recalled. Did not meet Gudgell on the street just after this occurrence; went in a different direction before these men came; have seen Gudgell since; had no conversation with him that day; did not have on a blue round-about and white hat that day; did not have a blue roundabout yesterday.

George Sullivan, sworn. On the day of this occurrence had a conversation with J. M. Barlow; heard him say that it was the most aggravated case he had ever heard of — that if Matt. Ward was not punished for this, it was no use trying a rich man's son in Kentucky; heard him propose to go and take Matt. out of jail and hang him; he might have been jesting; not long after he talked different; said he had been to Mr. Ward's, a servant came with a waiter for his card: Barlow said he wanted to see Mr. Ward; Ward came and asked him to come into the parlor. That he said he asked Mr. Ward, if it would do him any good to find a man that would prove that

Butler struck Matt. first. That Mr. Ward said, that's just what we want. Where is the man? that Barlow said he told Ward, I am the man. That Mr. Ward jumped, caught his hand, and shook him nearly to pieces, said he was very glad to see him, offered to call the family down and introduce him. He told Ward he was a poor man, and could not afford to lose his time to attend the trial, and Ward told him he should be paid tenfold. The next Sunday after the city election, heard him say he meant to come to Elizabethtown; I asked how the case would go; he offered to bet Ward would be cleared; had heard him bet on other occasions in the shop.

Cross Examined. The young man, Mays, who was in the shop, told the State's attorney that I knew what Barlow said; Mays told somebody connected with the Democrat office; I have talked with Mr. Harney and Mr. Carpenter; had told Carpenter of Barlow's offering to bet; I was jesting when I offered to go to the jail; do not know whether Barlow was or not; Hughes, of the Democrat office, furnished me with a buggy to come here; I paid my expenses myself; have been in the work house in Louisville.

To Mr. *Carpenter*. Have been a carpenter ten or twelve years; was in the work house a long time ago; have lived in Louisville twenty-four or twenty-five years.

Uriah Mays, called. Had heard J. M. Barlow say that he went to the house of R. J. Ward, and asked Mr. Ward if it would do any good to prove that Butler struck Matt. first; that Ward said that 's just what he wanted, and that Barlow said he was the man that could do it; that Mr. Ward jumped and shook him, and said he was glad to see him, and wanted to introduce him to the family,— that he told Ward that he was a poor man, and Ward told him he should be paid tenfold if he would prove what he had said. Heard him say it was the most aggravated murder he ever heard of. Never heard of Barlow's betting.

Cross Examined. Nothing new elicited.

Dr. Thompson, recalled. Do not remember seeing Barlow at Harney's the day of the shooting; never carry my instruments in my hand; there were a number in the room, might be some there I did not see; the school boys assisted in taking off his coat, nobody else. If Barlow had offered to assist in taking off his coat, and had proposed it, I should certainly remember it; do not allow a person to interfere when I have charge of a patient, without knowing who he is; did not hear Butler say

that he struck Ward first; he said Ward came there, called him a d—n liar; and struck him, and he struck back.

Cross Examined. Butler had on a coat, I think, with a waist, had on a black silk neck cloth, and dickey, tied around with strings; I tore open his shirt, and cut his flannel with my scissors. I am a member of church.

Mr. *Wolfe.* Is it proper for a church member to carry arms, and do you carry them.

The court told witness not to answer this question unless he wished. Witness declined answering.

E. W. Knight, called. Did not see Barlow at Harney's. I helped Thompson take off Butler's coat. There was a man there, but it was not Barlow. Dr. Thompson first suggested taking off Butler's coat. The man that was there spoke about giving air. There was quite a number of men there, half a dozen or so. I saw the same man in the afternoon, and walked along the street with him. Think it was Mr. Rupeas.

Here the prosecution rested their testimony.

The defence called the following witnesses:

Hiram McGehee. Know Mr. Barlow; he has worked for me. I am a carpenter, one of the largest contractors in Louisville. I know Barlow's general character. It is as good for truth and veracity as any man.

Cross-Examined. Never heard any man say that Barlow was a man of truth, or of untruth. His character had never been a subject of discussion.

R. J. Ward, sr., called. Some time after 2nd of November Barlow called at my house and said he understood that it was important to have it proved that Butler struck Ward first. I told him it was very important to have such a man. He said he was that man, said he was present when Butler was undressed, and reported what Butler said, same as he has testified in Court. I was glad to see him, and asked him to meet me at Mr. Wolfe's office next morning. He said he was busily engaged in finishing some buildings, and did not know as he could. I offered to pay for the day's work.

J. S. Speed. Know Mr. Barlow, have known him seven years. He is an honest, industrious, hard-working man.

Mr. *L. P. Crenshaw.* Have known Barlow nine or ten months. Know his character; it is good; never heard aught against his moral character. Have made inquiries respecting

his character, and were informed by all that he was an honorable, upright man.

Col. *J. S. Speed.* Dr. Thomson is considered a gentleman by all who know him in Louisville, an honest, honorable, upright man.

Here the testimony on both sides closed. The Court adjourned for dinner.

AFTERNOON SESSION.

SPEECH OF R. B. CARPENTER, ESQ.

Gentlemen of the Jury:—I approach the opening argument in this important case, under embarrassing circumstances. I am a stranger in Hardin county. Not an eye in the jury box, or in the multitude here assembled beams on me the light of recognition; not a face known to me; not a familiar countenance.

Against me are arrayed counsel eminent for their learning, talents, and genius, known and appreciated, not only in this county, but throughout the State and the Union. The position of prosecutor is one I have never occupied before by employment, and one I do not covet, but I shrink not from it, when the cause of justice and the welfare of the community demand it. The true calling of the jurist is to mete out exact justice to all, and it is difficult to discern the justness of the proposition that an attorney may be retained to defend any man, however criminal, but must, in no case, prosecute one, however guilty. If we look to the practice of the most eminent members of the Bar, including such names as Webster, Clay, and Wright, we find they pursued a very different course. I engaged in this cause from a high sense of duty to the public, and a desire to lend the aid of my feeble talents to bring down upon the prisoner (if guilty) the merited punishment of his great crime; and I gladly share whatever of odium there may be attached to those assisting in this prosecution. I have taken no steps in this case that were not imperatively demanded by my convictions of duty. Because engaged in it, I do not feel called upon to ask for a conviction unwarranted by the law and the facts. Weak as I am, I appear before you as the advocate of a million of the people of this Commonwealth, and ask you to hear me for my cause. Man is

ephemeral, truth is eternal; no matter who speaks it, it is truth still, ever enduring and immortal as its Author. Let my remarks have no effect upon you except so far as they accord with the law and the testimony; and if consistent with these, you can acquit the prisoner, it will give me unfeigned pleasure.

Allusions have been made to the great, and almost unparalleled excitement existing in the city of Louisville, in regard to this occurrence. It has been said that certain newspapers are responsible for all this unusual agitation. I have as yet heard no one pretend to deny the *truth* of the facts charged, and if nothing but a simple narration of the facts as they occurred, has been given, why so much complaint? On as bright a day as dawned in the year 1853, in the face of seventy thousand people, without any just provocation or cause, the prisoner entered the house of the deceased, insulted and killed him. Is it remarkable that excitement followed an act of this character? Do gentlemen expect murder to stalk abroad at noon-day, and a free press and a free people to be silent? Is not this a case well calculated to arouse the just indignation of an intelligent community?

But however natural and proper those ebullitions of the public feeling, then and there, you, gentlemen, are not to give the slightest weight to them, either as tending to show the guilt of the prisoner, or as diverting your minds from the proper issue. I beseech you, gentlemen, as you regard the solemn oath you have taken, the majesty of the law, the well being of mankind and humanity, to lay aside all prejudice — banish from your minds every extraneous influence, forget everything seen and heard before you entered your box, and with minds as free from the stain of previous opinion as virgin paper, receive impressions from the facts alone. Justice, when she holds the balances, turns her head to avoid seeing who is in either scale; so you, gentlemen, must turn from all but the facts, remembering you are in the Holy of Holies, the sanctuary of justice. You have a great and painful duty to perform, and for its performance you are responsible to the law, your country, and your God.

This is a most extraordinary trial. You and I have never known such an one before. It is extraordinary that such a man so formed to be loved, admired, and cherished, so mild and unassuming in his manners, so averse to combat and bloodshed, so intellectually great, should have found any human being

malicious enough to take his life. It is most extraordinary that such a man as the prisoner, should have killed his former friend and family benefactor. It is extraordinary in the manner in which the defence has been conducted — the number and character of the counsel — the great multitude of witnesses — some being brought from the Halls of Congress and the Cabinet, to testify to the former good character of the prisoner, a fact, which if true, an honest mechanic, or his father's gardener, all unknown to fame as they are, would have proved more satisfactorily — for men are best known by their treatment of inferiors.

Doubts have been thrown upon every thing; and you would almost believe from the sceptical manner in which the counsel have interrogated witnesses, that the lamented Butler was yet alive, and that this was some tragedy enacted for the benefit of the audience; and from the querulous and peevish tone of complaint indulged in, you would suppose that some of the counsel for the State had committed some *great* crime, and were on trial instead of the prisoner. All that wealth, talent, and influence could do to acquit the prisoner has been done, and it is a source of gratification that it is so; for if the *facts* now call "trumpet tongued" for conviction, and you respond like honest men to that call, you will be sustained by the reflection that every facility has been afforded the prisoner to prove his innocence.

In addition to what has been done by the friends of the accused, American law always benignant and merciful, as expounded on this trial by a most kind-hearted Judge, has allowed the most ample and latitudinarian range of testimony in favor of the prisoner, including statements made by him before the commission of the act, tending to rebut the proof of malice; and the evidence of his brother, who is included in the same indictment, for being present, aiding, assisting, and abetting in the murder. Not a single fact favorable to the defence, which transpired from the day before the killing to some hours after, has been hidden. Every expression, every act, has been laid before you, just as he chose they should appear. The law presumes the prisoner innocent, and you are to place yourselves upon this presumption, and recede only when driven from it by the testimony.

In the early history of society every man was his own avenger. Nature had conferred on him strength to punish wrong and defend right. As the duties and relations of men

became better understood, it was found necessary for each individual to surrender some natural rights to society, and receive in return adequate protection for life, liberty, and property. This is necessary, not only to avoid anarchy and bloodshed, but to secure the certainty of punishment for crime; whether the offender be high or low, rich or poor, this is peculiarly the genius of American law. It protects all, it cast sits broad *ægis* over the president in his chair, and the humble laborer upon the streets, none so high as to escape merited punishment, none so low, as to be beneath its protection. It protects the innocent by punishing the guilty. Yet we find some who still shed blood for blood, and why? Because justice is sometimes bought, and juries shamefully fail to discharge their high duties. It is by such failures that reproach is cast upon our laws; and if the glorious flag of our happy country shall ever cease to wave in triumph over the fairest land of earth, and be trailed in the dust of anarchy, the cause will be found in the non-execution of the laws. Greece and Rome fell, when the people became untrue to themselves, and failed to execute justice, and this country can, if she will profit by their sad but instructive example. It is not the degree, but the swiftness and certainty of retribution that causes evil doers to tremble. The law has taken the prisoner from his high position in society, and placed him at this bar for trial, surrounding him with all its safeguards; let us now inquire whether he is innocent or guilty, if innocent, acquit him; if guilty, "let justice be done, though the heavens fall." The prisoner is charged with the murder of W. H. G. Butler, in the city of Louisville, on the second day of November, 1853. That Butler was killed, there can be no doubt, and it is not denied that the killing was done by the prisoner, and the only question for your consideration is, was the killing malicious?

If there exists in your minds a *reasonable* doubt of the malicious intent, you cannot find the prisoner guilty of murder as charged in the indictment. Such is the law. But such doubt must appear in the case as shown by the whole testimony. If from the evidence, acts, looks and appearances, of the witnesses the doubt exists, the prisoner must be acquitted on that charge. What is a reasonable doubt? It is a doubt, under all the evidence, of the prisoner's guilt. To illustrate the nature of such a doubt: on taking your seat as jurors, you were sworn upon the Holy Bible, to well and truly try the issue before you, and by

that oath recognized the existence of the Deity as revealed in the Bible. Have you never had a doubt as to the existence of such a Being? Has the sky of your mind ever been unclouded, so that you could gaze with the bright eye of belief upon the unveiled throne of Divinity? No; you have had doubts, but were they reasonable, founded on the evidence? Had you, in connection with your doubts, communed with the calm, still hour of night, with no companion save silence, the winds, and stars; the rosy dawn, the rising of the majestic sun, the waking of a world; earth, sea, and sky all glittering on the gladdened vision of stirring and delighted mankind; had you observed the decline of day, the lengthened shadows, the setting of the sun, the rise of the silvery moon, and the sparkling stars; each ray of light, as it proceeded from them to you, illumining the soul;—or had you viewed through the telescope the belts and rings of old planets and newly discovered ones,—resolved the nebula into splendid systems of glorious suns with their circles of flame: had you listened to the "small, still voice" of the sighing zephyr, beheld the opening flower, the tinted shell, the butterfly's wing, the majestic mountain: had you stood upon the brink of the mighty Mississippi, and watched its liquid wave roll ever on, towards old ocean, no mean emblem of eternal power! Or gazed with wonder and awe upon the great falls of Niagara gliding over the rapids, under the rainbows ever singing God, God, God. The land and ocean, storm and tempest, all proclaim that "The whole earth is full of his glory." If you look within your own minds you find still clearer manifestations of almighty wisdom and power than elsewhere in the universe. The mind so strong and yet so weak, so intelligent, comprehensive, and grasping, with all its mysterious operations, plunging now into the bowels of earth, now exploring and analyzing its surface; then leaving it, and holding converse with the heavens; listening to the "music of the spheres," again descending to the abodes of men, tracing effect to cause, following all the meanderings of passion and will, exclaims in the fullness of its admiration, "There is a God for I am fearfully and wonderfully made." It cannot be denied that the evidence is full, ample, and complete, and no reasonable doubt can hover around the mind.

With these general principles to govern us in our investigation, let us examine the law as applicable to this case.

(Mr. Carpenter then cited the following authorities. Roscoe's

Crim. Ev. pages 718, 719, 711, 725, 727, 728, 729, 733, 765, 766. Wharton American Crim. law, 368, 385, 393. Rapell on Crimes, 530. Waterman's Archibald, 226, 230, and note, and from them adduced the following legal propositions:)

1. The malice necessary to constitute the crime of murder is not confined to the intention to take the life of the deceased, but includes an intent to do any *unlawful act*, which may probably end in depriving the party of life.

2. If an action unlawful in itself be done with the intention of mischief, and death ensue, it is murder.

3. When death issues from sudden passion upon reasonable provocation, it is manslaughter. If without such provocation, or if the blood has time to cool, it is murder.

4. When the provocation is sought by the prisoner it cannot furnish any defence against the charge of murder.

5. If a prisoner uses a weapon that was likely *as used* to produce death, the law presumes he used it with the intention of killing.

These propositions contain the law, gentlemen, as laid down by the most eminent jurists of this country and Great Britain. What are the facts? The witnesses for the prosecution, on motion of the prisoner, were separated, neither hearing the testimony of the other. The facts as to Ward's visit to the house of the deceased, and the murder, are proved by young men from eleven to nineteen years of age, all of whom reside in Louisville, and are members of the most respectable families in the city. They are all unimpeached, and unimpeachable. Though separated, they have all, without exception, related the same facts, differing only as their relative position to the parties in the school room enabled them to see and hear, more or less of what transpired.

(Mr. Carpenter here exhibited the diagram of the school room, showing the relative position of each witness, as detailed in the examination.)

The youthful mind is fresh and pure, averse to falsehood and dissimulation, and always disposed to speak the truth. The pure waters of truthfulness and sincerity, well up, naturally, from the untroubled fountains of their hearts. How unfortunate, that men so soon forget these early impressions, and pass through life in masquerade. Of all testimony, that of these young men, trained up at the feet of their deceased teacher, who loved and adored truth and hated falsehood, is the most reliable. The

facts, as related by them, all corroborating each, and each in in turn strengthening all, are unanswerable. It is as though an angel had dipped his pencil in a beam of light issuing from the eternal Throne, and cast this murder upon the canvas with such startling correctness, that while you gaze, you know the prisoner set for the picture. Efforts were made by the learned counsel to impeach, indirectly, these young men, by asking them, did you not tell Dr. Caspari and others that Butler struck Ward first? But when the Doctor, and others referred to, came upon the stand, a contradiction was not even attempted.

If the counsel desired to impeach the witnesses, why did they not call respectable citizens from Louisville? This would have been fair, open, manly.

These young men prove, that about half past nine o'clock, A. M., on the second day of November, 1853, a servant of Robert J. Ward, sen., came to the school room of Prof. Butler after Victor Ward, a younger brother of the prisoner, and his books. They also prove that William Ward, the brother who had been moderately chastised the day before in school, for telling a falsehood, came in about a half hour later, walked up the aisle, took his accustomed seat, and turned round and *walked towards the door*. It is further proved, that the prisoner and Robert J. Ward, jr., then entered, and inquired for Prof. Butler, who was at that time absent from the main building, hearing a class in his recitation room; and that the prisoner on his entrance, seemed excited, had his hand in his pocket during the entire conversation which ensued, and kept it there until he drew forth the pistol and fired.

It is proved that in answer to the previous inquiry, that Minor Pope went to the recitation room, and called Prof. Butler, who came out, and with all his usual urbanity, said pleasantly, "good morning, Mr. Ward;" and that the prisoner's reply was stiff and scornful, and that he then in angry manner, commenced gesticulating with his *left* hand, and said in a loud tone, "I have a matter to settle with you;" that Prof. Butler then politely invited him to walk into his recitation room, and he would explain everything to his entire satisfaction; that the the prisoner refused, saying that he did not come for an explanation, that that was the place to settle it; that the prisoner then asked the deceased whieh was the worst, the contemptible little pup who begged chestnuts and then lied about them, or his brother who gave them to him; that the deceased then

remarked, he could not answer unless first allowed to explain, and that the prisoner again refused to hear an explanation, and asked why he called his brother a liar; and without waiting for a reply, said to the deceased, "You are a damned liar and scoundrel, and followed the offensive words by a blow with his left hand; that Prof. Butler then caught hold of the collar of the prisoner with his right hand, and attempted to seize Ward's right with his left, to prevent his using weapons; and that the prisoner drew the pistol, pressing it so closely against the breast of the deceased that it remained for some time in the orifice caused by its discharge, and was taken from thence and thrown upon the floor by the deceased himself; that Prof. Butler then staggered forward towards the recitation room of Mr. Sturgus and fell, saying, "I'm killed! my poor wife and child."

It was also proved, that during the whole conversation, the prisoner stood but a few feet from the door, between it and the deceased, which was open, enabling him to retreat at any time, if he desired. But there is another witness, who, from the cold grave, gives an account of the horrible transaction. That his statements were made under the full belief that he was a dying man, is proved by Mrs. Butler, who with a heroism worthy of a Spartan wife and mother, testified in regard to this subject, while it wrung blood from her young heart; Prof. Butler, standing on the very verge of time, the cold waters of the river of death even then laving his feet; at that solemn hour, when the memory regains all its former losses, and the mind-sky becomes clear, illumined by eternal light, declared that the prisoner insulted, cursed and struck him before he gave him a single blow.

It is thus clearly shown that the prisoner went to the school room, violated all the rules of common decency, insulted and killed Prof. Butler without the slightest legal provocation. Look at the cause. His brother, William Ward, had been punished for a violation, not only of the rules of the school, but of morality and honesty. There was no reason why he should not be punished. On the contrary, it was the duty of his teacher to correct him, and had he failed, he would have been highly culpable. But the first cause of this murder lies far back of the punishment inflicted. It is to be found in the education of the prisoner. Belonging to a wealthy, aristocratic and fashionable family, he had been taught that he and his brothers were formed of better clay than ordinary men, had gentle blood in their

veins, were not answerable to the same laws, social or municipal. Family and wealth are to be highly prized, as conferring many advantages; chiefly the opportunity of relieving want, alleviating distress, comforting the afflicted, assisting merit, promoting paternal regard and brotherly kindness. It is for purposes like these they are desirable objects. When they become petty tyrants to inferiors, engines of gross oppression, they only serve with honest and independent people, to show more conspicuously the meanness of their possessor. The prisoner had evidently taken a different view of the matter; *his* brother had been whipped, and as under the Mosaic law there could be no remission of sins without the shedding of blood, so it required, in his estimation, the life-blood of the deceased to wash away a *Ward's* disgrace. How many crimes are the offspring of those monster parents, Vanity and Selfishness. Wm. Ward had the day before told the prisoner of the occurrences at school, and with his breast rankling with hate, mortified vanity and revenge, he prepares himself for the fatal visit by going to the gun store of Dickson & Gilmore, half or three quarters of a mile out of his direct road, and first buying a single self-cocking pistol, and as he was about leaving purchasing another, and requiring them both to be loaded, ready for use, putting them in his pocket and starting on his mission of death. These pistols were purchased between nine and ten o'clock; the prisoner arrived at the school room a few minutes after ten. Why did he go from his father's house down for the pistols, instead of going directly to Prof. Butler's, which was but a square, unless he expected a difficulty, and desired to use the pistols as he did use them? What other reason can be given for his conduct? Nothing explains intentions like acts; they reveal the secret motives of the heart. It is also proved by Mrs. Harney, whose lucid manner of delivery and readiness of perception show her quite competent to judge, that when on his way from the gun store, he looked resolute, excited and decided. The question then recurs, with what intention did the prisoner go to see Prof. Butler? For an explanation? Certainly not; for he remarked while there, he did not come for explanations. If the object of his visit was pacific, why arm himself? why send for the youngest brother and his books? why send William back? or why take Robert with him? He bought the pair of pistols so as to have one to intimidate the boys of the school, if they should attempt to interpose, as is shown by his conduct, as proved after the shoot-

ing, in drawing out his other pistol and pointing it at the boys, in a bullying, threatening manner. Perhaps if young Pirtle, a lad of eleven years old, had attempted any assistance, he would have shot him. Will it be contended that the prisoner, knowing as he did that Prof. Butler was unarmed, averse to quarrel, peaceable and kind in a remarkable degree, was so cowardly as to be afraid to talk for a few moments, without his hand resting upon his pistol? I will not do him such gross injustice. He held his pistol firmly in his grasp, using at the time coarse and abusive language, such as he knew would be most likely to produce a blow, on purpose to bring about the difficulty, and thus have a pretext to kill, if Prof. Butler refused to submit to the degradation heaped upon him in the presence of his pupils. He used language that he well knew no man in Kentucky could submit to without loss of character, and if he refused to submit, he was to be shot down like a beast. But it seems that the prisoner defends himself upon the ground that the deceased struck him! How arrogant and self-conceited! What was there about his person so immaculate, as to exempt him from a blow, in return for his insulting language, to a man who, in all the aspects of human greatness and goodness, was as far above him as the heavens are above the earth? Had the deceased forcibly ejected him from his premises, and severely punished him, it would have been the very best treatment he deserved. It was quite evident from the low, vile language employed, that all the baser passions of his nature had been aroused. "A man's house is his castle," and the law throws around it the mantle of its protection in a special and unusual degree, and this case illustrates the reason of this especial legal solicitude. The deceased, without ever dreaming of any difficulty, was quietly instructing his school, unarmed and unprepared. What an example for those young men? what a precedent for them? and what a damning and outrageous precedent would be a verdict of acquittal? If such a man, for such a crime, is to go unwhipped of justice, burn your Constitution and Statute Laws, hurl down the judge from his bench, go forth forever from a profaned and corrupt jury box, and let the angel of justice proclaim from her temple, as did the angel of the Holy Sanctuary of Israel, I will arise and go home, to return no more; and let all traces of civilization vanish like a shadow, and Kentucky become what she was when the primeval forests covered her, the dark and bloody ground. If Ward had a right to kill the deceased,

for the injary received, most assuredly the brothers of the deceased would have the right to kill him, and where would it end? Butler refused to make an apology or explanation upon the *demand* of the prisoner, and did right; whatever might have been his error, he would have shown himself quite unworthy of his high position and character, had he stooped to comply with such a bullying requisition. He chose wisely to preserve his dignity and honor, and lose his life; for of what value is it without them.

It is in proof, that the rules of the school prescribed a recess of five minutes at the expiration of every hour, and at half past ten, a recess of half an hour. The prisoner went there between the ten and half past ten recess, so as to find the boys engaged at their desks, and to enable him to do his dark work without any interruption from them; another fact, which, if taken separately, would be far from conclusive, but standing in the relation it does to the other facts, pointsunerringly tomalice aforethought. If it had been recess, and the large boys all at liberty to stand around their teacher, his designs might have been thwarted, or in the scuffle, some of the young men belonging to families moving in the same social circle with the Wards might have been killed, and that would have been, in his estimation, a very different thing from killing a mere school teacher. But it is not necessary to constitute the crime that he should have intended to kill him when he went there; and the length of time intervening between the formation of that determination is altogether immaterial. It is enough that he went there to degrade; that he refused all explanations, and demanded apologies which he well knew would not, could not, and ought not to be given.

Here, gentlemen, is a chain of evidence as unbroken as human testimony can make; "not a tie will break, not a link will start," a bulwark sufficient to resist the ingenuity of the whole phalanx of the defence; a mighty rock, against whose base the waves of the ocean of eloquence will dash, only to fall back defeated, as if in the very weakness of weeping tears. How does the defence try to extricate itself from this circle of truthful flame that surrounds it. By introducing many witnesses who are persons of distinction, and it is expected their very presence will act like a charm upon you — by introducing Rob't J. Ward, jr., who was an accomplice in this work of death, and by refusing to introduce young William Ward, who went with

them, and therefore knew more of their intentions than any one else. William Ward was sworn as a witness, why was he not examined? He went from his father's to the school-house with the prisoner, heard his conversation, knew the object and purpose of his visit better than any one disinterested, and the true intentions of the prisoner would have been disclosed. But they did not introduce him, because they dare not, as he would doubtless have proved the guilty intention. As much is often revealed by what a party withholds as what is advanced. Half the truth is invariably a falsehood. If William's evidence would have been favorable to the prisoner would the defence have overlooked it? They have ransacked the Union, for a Secretary of the Treasury, members of Congress, Judges, &c., to prove the unimportant point in this case of good character, and now, when he is permitted to prove his own declarations on the way, he is afraid to do so. The inference is irresistible, when it is remembered that from what had been told William, he looked round on taking his seat to the door as though he expected a difficulty.

The defence then introduced the man Barlow. It is always unpleasant to attack any one when it is known he cannot defend himself, but he has voluntarily placed himself in this most unenviable position; and justice to the memory of the deceased, and the history of this case require that he should be held up to this jury and the world, as an object of withering scorn. It is not necessary to charge Robert J. Ward with bribing this villain to account for his perjury, although it is highly probable that he expected to be paid for his infamy. There are men in society, or rather in the sewers of society, who reptile-like move and live in its excressences and slime, who think they have achieved the very highest enjoyment, known to their low groveling hearts, if they can obtain a single smile from the rich and powerful, and who only breathe freely when they inhale the air of *toadyism*.

This witness belongs to that class; he is content to be a tool and a villain to prejudice his soul, and sell heaven itself, for the sake of saying he has been at the house of Robert J. Ward, a millionaire — been invited into the parlor and kindly treated. He is decidedly of a lower grade of animal than the ordinary villain who receives so much money for a given amount of false swearing. He testifies that on his return from Gray street, that the first he heard of the shooting, some small boys gave him the information, that he then passed down Chestnut street

to his carpenter's shop, left some tools and returned, overtaking Dr. Thomson, who had been called to Col. Harney's, talked with the doctor, who had his case of instruments in his left hand, and went with him to see Professor Butler; that he suggested the necessity of taking off portions of the deceased's clothes, and then asked him how the difficulty happened; that Professor Butler told him that the prisoner came to the house and insulted him, and he then struck Ward, and immediately received the shot.

On the cross-examination he was forced to admit that he related the facts to Mays and Sullivan on the day of the killing, and told them that it was the most aggravated murder he ever heard of — that the Wards would get what they deserved — that they had been getting down for some time, and could not get much lower — and if Matt. was not hung there was no use in talking about justice in Kentucky — that he offered to be one of a party to go to the jail and take him out and hang him without a trial. It was proved that he continued in this mood until about the time he went to Ward's house. All at once he becomes suddenly changed, and thinks the prisoner persecuted, sympathizes with the afflicted parents, and proclaims the joyful tidings that he will prove him innocent. This is unaccountable upon any other supposition than his determination to commit perjury.

What, this man so vindictive and malicious towards the family, so suddenly become their well-wisher and friend! Had Ward known of his previous conduct, would he not as an honorable man have spurned and driven him from his house? Barlow stated that he had been in the jail and played cards with Mrs. M. F. Ward against the prisoner and Robert J. Ward, Jr. Mr. Prentice testified that the prisoner was always very reserved with gentlemen, seeking almost exclusively the society of ladies; and it is very singular that he should thus cast off all his antipathies to male companionhip, and introduce his young and interesting wife to a low bred, illiterate, and unprincipled sycophant. The prisoner is proved to be a man of intelligence, and, doubtless, knows a villain's face, and cultivated the acquaintance of this man to subserve his own purposes. Then it is proved he offered to bet on the result of this trial, and perhaps did, and that he had said Ward promised to remunerate him amply for coming down to this trial. Did you not observe, gentlemen, his conscience stricken manner when he was asked if he had not said so, the

flush of face — the striking of both hands upon his head? "Guilt makes cowards of us all." He was a day laborer in a coarse garb, but the change in his opinion about the prisoner's guilt produced a corresponding change in his costume, and he is now as you see a second Count D'Orsay, wearing upon his person the price of his crime.

His whole statement, from beginning to end, is a sheer fabrication. Dr. Thomson says Barlow was not there; that he saw nothing and heard nothing of it; that he neither spoke to this witness, or met, or walked with him; that he carried *no* case of instruments in his hand, and contradicts him in every essential particular, and in this he is corroborated by Mrs. Harney, Mr. Harney, and others. The defence undertake to sustain this witness by Mrs. Crenshaw, who says that a few hours after the killing, the witness came to her house, where he boarded, and told her that he was present at the shooting and heard the discharge of the pistol, thus directly contradicting the statement he made here. Gentlemen, from the statements, manner, and appearance of this witness, you cannot believe a word he has uttered.

Robert J. Ward, Jr. is also a witness for the defence. It is not intended to controvert the decision of the court that he is competent, but the relation he sustains to the prisoner, as relative and accomplice, show that he is not credible. The proof shows clearly that he was present, aiding and abetting the prisoner. He is now a witness for his brother, whose acquittal would now prevent this witness from even being tried. The inducement to add perjury to murder was very strong, and his virtue was altogether too weak to withstand it. On the one hand was truth and death, on the other perjury and liberty. His manner upon the stand was very much unlike a truthful witness. He was ready, willing, and swift, and with a swaggering air boasted that he had carried arms since he was fourteen years of age. His whole appearance and manner indicate that he is an abandoned, profligate, and dangerous young man; not dangerous with those who are prepared, but with boys unarmed, and unsuspecting men.

Can you believe that the witness told the truth when he said Prof. Butler struck his brother twice? All the witnesses for the State contradict him. Butler, on his dying bed, said he was first struck; and as if to strike from him the last plank of corroboration, Barlow makes a very different statement. The prisoner could not have been twice struck, because but a single

mark was found upon his person, and that so slight that none of the witnesses recognized it until it was shown them by the prisoner. If Prof. Butler had struck twice before he was killed, would not some of the many young men have seen the blows? But many things he stated are most undoubtedly true, as he is sustained by others, as the statements operate against him, but he was not aware of that, and show the criminal intention with which the prisoner visited the school. He says that on the way there the prisoner told him not to interfere, unless both the teachers assailed him. This shows that he expected a fight, and went there to provoke it.

Then the manner of the conversation between Butler and Ward, as he gives it, shows that he was determined to provoke a quarrel, and in this he is corroborated by the school boys. This truth, developed by a witness telling an untruth, is like a ray of light — it brightens whatever was before obscure. He says Ward told Butler, "You called my brother a liar, for that I *must* have an apology." He *demands* an apology, and he knew Butler would not yield to his insolence. It is contrary to the impulses of the human heart. It was asked, to make Butler commence a quarrel. Then Ward, on receiving an affirmative answer, remarked to Butler, "Is your mind made up? Then hear what I have to say of you — you are a d — d scoundrel and a coward." And the State proves that he struck Butler a blow. Now if he had chosen to wilfully and deliberately murder Butler, could he have taken a more sure way to accomplish it than this witness proves was taken? Every act tends towards that result.

He differs from the other witnesses in this: he says Butler came out stiffly; all the others say he was particularly polite. Is he true and every man a liar? I am sorry to be obliged thus to characterize the witness, but duty requires it. Again, he did not observe which hand Butler struck with. Here it was convenient to forget. And then he says Ward put on his hat, just as he gave the lie to Butler, and in this he is corroborated by the other boys. One thing he does remember, that Ward gesticulated with his right hand. Of course he would not forget so important an item.

At the bedside of Butler were Drs. Thomson, Caldwell and Yandell. Thomson was there first, and heard portions of Butler's statements before Caldwell and Yandell arrived. He asked the question, and was in a better position than the others

to hear the answer. Dr. Caldwell remembers Butler said that he did not see who shot him. Dr. Thomson says so. Caldwell understood they were engaged at the time; Thomson's testimony imports the same. If anything was required to confirm Thomson it is furnished by the defence itself. Yandell says Butler raised his hand to show Ward's motion, but does not know whether he meant by that that Ward did or was about to strike, but he supposes Butler did strike first. Now from the proof, if Butler had not been shot, and this was an action of trespass, brought by Ward against him for an assault, could he recover damages? But Ward was the trespasser; he was the wrong-doer. The testimony of Thomson, in this respect, is confirmed by Caldwell and Yandell, substantially. As respects the wound, there is no material difference in the testimony. From the suggestion about raising the arm, an attempt has been made to show the arm was in a striking position; but when raised in that way, the probe did not follow the ball. The position of the muscles, as shown by the wound, shows that Butler was grasping at the right hand of Ward, as is proved at the time.

Their next witness is Mr. Allen, of Miss., introduced to impeach these boys. There were a thousand men in Louisville who knew these boys, and could testify to their character. Yet it is a singular fact, that of all the witnesses summoned by the defence from Louisville, not one question is asked them about their veracity; but an unknown man from Miss., confirmed by only one man, and he equally unknown, and by him only in some particulars, is called for that purpose. And now, must all these young men of Louisville be swept down, — must their reputations be blasted, that this prisoner may live and flourish, and upon such testimony? But they disavow such an attempt. They have manifested the willingness, but are afraid to strike the blow. They do it by inuendo. But suppose you believe all Allen says. He does not identify a single boy, as saying anything there, contradicting his testimony here. He says he saw young Worthington there, shook hands with him, and asked about the matter, and several boys answered several questions, and to some of their answers Worthington nodded assent; to which, the witness does not know. There is no evidence that a single boy who answered Mr. Allen, has been on the stand as a witness.

Mr. Gudgel is next introduced, and how do these witnesses confirm each other? Two men walking together ought to agree. Allen says the boy said that Ward cursed Butler, and

Butler struck him, and Ward shot. Gudgel says that the boys said that Ward came for an apology, and Butler ordered him out of the house; Ward refused to go, and Butler undertook to put him out, and Ward shot him. They disagree with each other more than with the boys. He testifies, too, that some of the boys said Butler knocked Ward down. Allen heard no such thing, young Robert Ward swore there was no such thing, all the boys testified the same, and there was no motive for the boys to say so, and therefore it was not said. Gudgel is contradicted by this fact, and also fails in his attempt to identify Benedict, after boasting of his memory of countenances.

Hirschbuhl is brought in to testify about the music box, and show that Ward was engaged in making arrangements for a trip south. Admit that the witness sought the conversation, still the statements are none the less Ward's, and grant their truth, they only confirm his guilt. To say nothing of the discrepancy of the statements,—some that he was going to Arkansas, and some to Mississippi,—the design might be to commit the crime, and then, because he was a Ward, go where he pleased. But it was probably true that he meant to go, that such was his plan, and that he was making preparations, and had been for weeks; but do you suppose he would be stupid enough to go and tell that he expected a difficulty with Butler, and therefore was not going to Arkansas? This is simply ridiculous. It was the time of year at which he usually went south, and he would not neglect preparations on account of his anticipated difficulty with Butler.

That Butler struck Ward, is attempted to be proved by the red spot on Ward's face. It was so slight, that George D. Prentice and others did not see it until Ward mentioned it. Was such a wound a sufficient provocation for the killing? Grant that there was a spot, could not a man that could murder produce such a spot on his face? There were no marks or mark of blows elsewhere. If there had been, they would be proved.

Now we come to the testimony of the father himself. There is no doubt of its truth. Matt. made the statements. But they are the prisoner's statements still, made after his preparations were completed, and he was ready to go. Might they not all be made with a view to introduce them as evidence? If an explanation was all that was wanted, he would not have objected to his father's going. The true reason was, he

expected a difficulty, was prepared for it, and sought it. His statement that Butler was a gentleman, and there would be no difficulty, was all a *ruse*. Why all this preparation? why tell Bob not to interfere unless Butler and Sturgus both attacked him? Because he expected a fight, and could manage one easily. If an explanation or apology was the object of the visit, the prisoner had *no right to go*. Robert J. Ward was the father, had placed the boy in school, and Prof. Butler was responsible to him alone, and not to the prisoner. Here, then, you have, in the fact of the refusal of prisoner to allow his father to make the visit, and the reasons he gave why he should go, another proof of the willful, premeditated and malicious character of this murder.

Mrs. R. J. Ward's testimony is to the same effect. Her statements about what her son said of the severity of the whipping, is to be taken only as his expressions, not as any proof that such was the fact. The strongest point that can be taken in his behalf is, that they believed the statement. All the others say they expected no difficulty, but the watchful eye of a mother penetrated through every disguise, and she expected a difficulty, else why send Robert? She knew her son, his temper, his family pride, and therefore she sends Robert, who, she knows, is always armed. His mother notices his disguised excitement, and says, Be calm; and he answers, I am calm, — showing his determination to do the deed.

Col. Hodge, and others, are next introduced to prove the custom of having pistols loaded when purchased. One witness testifies that pistols are loaded when purchased, if the request is made. The prisoner requested his loaded, showing that he meant to use them, and he did most efficiently.

The Marshal of Louisville, L. B. White, is next examined. He hears that a man has been shot, goes to arrest Ward, meets the father, tells him his object, and then goes to see how Butler is, — thus giving Ward an opportunity to escape, — and says that he could certainly have escaped in that time. This may be the efficiency of the Louisville Police. But he knew well there was no escape from the people of Louisville. They were on the alert, and that was impossible; and if he could, he would not have attempted it. He would sooner run the risk of this trial, with all its array of counsel, and witnesses, and money, than be an outcast on the face of the earth, ever fleeing from the pursuit of justice, with no hope of rest or refuge.

One fact developed by White's testimony is in perfect keeping with the heartlessness of the whole case. Robert came to the door, when White went to arrest the prisoner, and "quizically said, Matt. has *vamosed.*" There is a volume in that expression. It shows his estimation of the value of human life. He has just heard the dying exclamation, "My poor wife, my poor child," and he is now jesting about it! He is the young man one would expect to carry a bowie-knife, and use it too.

But a police officer is brought here to testify that Ward never made an attempt to escape from jail. Now, I have heard that when a prisoner wanted to escape, he told the police of it, and secured their co-operation, but I never believed it. If he regards it as a compliment to be thus made the depository of all heir intentions, I cannot help it; but I do not think Ward would have told White, even if he did design escaping. No, he would never have told him, whatever he might have told to the turnkey, with whom he and Barlow so innocently played cards.

The last proof on the part of the defence, is that respecting the former good character of the prisoner.

[Here Mr. Carpenter read the law on that point, as laid down by Chief Justice Shaw, and showed that, in a crime of an atrocious nature, when men are actuated by different motives from those generally governing mankind, a good character is no palliation, especially when the crime is positively proved. It is only when doubts exist in regard to the facts, that character may be brought in to decide the doubt.]

This is not the first time that a man of good character has killed another. The law is made for such men as well as others, and he that offends in one point, is guilty of a violation of the whole law. No matter what position that one has previously occupied, if guilty he must fall. If the prisoner had killed a dozen men before, it could not be produced as testimony against him on this trial; and if guilty of this one sin alone, his former purity is no justification. Instances have occurred in this State, where men, charged with murder, have proved, by a large number of witnesses of every variety of position, previous good character, and this was argued in their defence.

The case of Dr. Webster, who killed Parkman, is too recent to need more than a brief notice. Webster had sustained a character above reproach, was the associate of the most intellectual and refined men of Boston, had devoted his life to scientific

pursuits, had shut himself up in the great temple of science, a constant worshiper at her shrine. Yet he was found guilty; and, to the everlasting credit of Massachusetts be it said, the law was magnified.

If men like these were thus punished, what shall be done with the prisoner? The time was when murder did not defy public opinion by holding its revels in the blaze of day, but sought the concealment of night. Webster decoyed and murdered Parkman in secret; others have followed and killed unsuspecting travelers, unseen by human eye. But the prisoner, on account of his position, scorns all such opportunities, walks along a public street, stalks into a public school, and shoots down the teacher, defying public opinion as well as law. And, now, every doubt being swept away, the proof positive and abundant, can character avail to even reduce this offence to manslaughter?

But, it is said, this is an unusual case, and there must have been great provocation. So is every murder an unusual case. It has not yet taken a place among common crimes. The wonder is, that any man can commit the deed. If the bare thought intrudes itself into my heart, the natural exclamation is, "Get behind me, Satan." Yet unusual as the crime is, it is not so much so as it ought to be. You can hardly take up a newspaper that does not contain an account of some "horrible murder." And such notices will become more frequent, unless juries do their duty. But, grant that this is an unusual case, is it more so than the first murder of which we have any account? What provocation had the meek and quiet shepherd offered Cain? None; save the spotless purity of his character, which by its moral light revealed to his own fierce and restless spirit its guilt. The facts proved by the witnesses as to character, show the prisoner far more guilty than ordinary criminals. Born to wealth and high position in society; never knowing the wants, and inconveniences, and temptations attendant upon poverty; with every opportunity to inform his mind, and study the relations he sustained to the human family, that this his native land could afford; enlarging his views and storing his mind by foreign travel, into countries where the associations that cluster around their very names, teach lessons of "Peace on Earth and good will to men." Knowing his victim as his father's friend and favorite; knowing his defenceless condition; how could aught but the Demon of Murder actuate the prisoner? Had he been poor lone and forsaken, enduring for long years the coldness

neglect, taunts and scorn of the rich and the proud, till his soul, by such constant irritation, became infected with the murderous poison — charity might have found, in the cruel tyranny and scorn of the world, something in mitigation of the crime. But, stript of even this poor pretext, he stands before you in all the naked deformity of a willful murderer. But you are asked for mercy. It is only the merciful who can claim the boon; and, if it is to be given, it belongs to the Executive Department of the Government, not the Judicial. What is mercy but the grave? Can you tear from his heart remorse that, like a worm, makes its hourly meals from its best blood? Can you blot from his memory all traces of this horrible deed? There is no rest for him but in repentance and the grave. He is the murderer of one of the most estimable of men, — one of those who seem sent by heaven for models in all the relations of life; one whose conscience was clean; whose conduct with all was "without fear and without reproach;" whose heart, in its kindness and child-like simplicity was ever fresh and young, resisting alike the plough of time and the seductive vices of the world. For such a deed there can be no cessation of torment. The prisoner may again travel abroad, but a guilty conscience will be his constant companion. He may regain health, and mingle in the conflict of life, but he will find there no balm for the wounded and guilty heart. He may seek the field of battle and glory, but above the din of arms, the roaring of cannon, the shrieks of the dying and groans of the wounded, conscience shall thunder in his ears "my wife — my poor child!" If he join his boon companions, and seek in the foaming bowl to drown all memory of the past, he shall find the sparkling wine changed into the blood of his victim. If he leaves the land of his birth and his crime, and finds a home upon the ocean, in every white cap he shall behold a winding sheet; and in every breaking surge hear a death-groan. Let him revisit fair, beautiful, and lovely Italy — the land of bright skies, soft music, fragrant flowers, and splendid paintings, and the blue vault above will only remind him of the domestic heaven he has destroyed; the music, of the sweet voice he has hushed; the flowers of the dear little blossom he has deprived of its parent stem; and the paintings shall be but so many portraits of his guilt. Wherever he may roam — by land or sea, he shall behold a thousand multiplied images of the corpse of the deceased, reflected from the mirror of his own guilty imagination.

Conscience has bound the very corpse to the prisoner with the deathless chain of memory, and when he lies down, it shall be the last watcher hovering around his couch, seeming to hurry his spirit to its account and reward. Gentlemen, he may escape the law; you may acquit; but he cannot escape this unchanging presence. Heaven has wisely ordained that when all other punishment fails for a crime like this, conscience, with her ten thousand scorpion stings, shall lash and lacerate the offender until, in all the dreadful agony of his soul, he shall exclaim, "my punishment is greater than I can bear."

Gentlemen, during this long and tedious trial the prisoner has been attended by his wife, whose tears and sobs have been the most eloquent advocates for the defence. We have all felt and appreciated their potency. I am glad she was here, as it affords another proof of the undying love, and unalterable devotion of woman. She hovers like a guardian angel around the prisoner, though he is blighted and fallen.

"Around the dear ruin each wish of heart
Will entwine itself verdantly still."

She was but a fragile, weak woman, who may have been considered by the prisoner in the day of his pride and prosperity almost an incumbrance or a toy to sport with; but in this hour of peril and danger suddenly becomes stronger than a strong man. He is not wholly wretched, for heaven in spite of crime has left him still this one jewel above price.

When the pitiless storm of misfortune bursts in all its fury upon man's devoted head, drenching him with grief and sorrow, she is seen through his tears as the bright bow, promising in the future green fields, sunny slopes, fragrant flowers, and clear skies.

When he is blasted by the lightning of crime, and becomes an object of scorn and detestation to the world, oh! then she is the only support — the only source from whence he can expect sympathy and love — his comforter, life and hope; and all attraction towards the world having ceased, by the great law of her nature she clings to him through life, and to him alone.

This spectacle of woman's devotion, as exemplified in the conduct of the prisoner's wife, should nerve you to protect the sex by punishing the guilty. One hundred thousand mothers in Kentucky, stretch forth their hands and implore the protection of a just verdict for their fathers, husbands and sons. They

supplicate you to save them from the sad and melancholy fate of Mrs. Butler and her orphan girl. You saw her upon this stand; you remember that pale, sweet and despairing face. The soft, balmy air of spring again surrounds us, the birds carol in the groves and woo their mates with the sweetest music, the green grass is re-carpeting the earth, the flowers are opening their delicate leaves, and all nature has been resurrected to a new and glorious life; but all is dark, dreary, lone and wintry to her; it is the blast of November, not the warm and genial breath of May that fans her marble brow. Even as she looks into the deep heaven of the fathomless blue eyes of her darling babe, the recollection of those eyes that never had for her but the expression of kindness, will rush upon the brain, thus making the dear pledge of their fidelity and love, an instrument to wring her heart. These remarks are addressed to you, as tending to show more clearly the prisoners guilt; not to influence your passions, nor excite your prejudices, but to show the responsibility of your position, and the necessity, if you would avoid such scenes hereafter, of discharging your duty now; for if you fail, you know not how soon this fearful chalice may be presented to your own lips, and you compelled to drink the draught, death, though it may be "There is hope of a tree if it be cut down, that it will sprout; but if a man die shall he live again?" The prisoner may be saved if convicted, but what power shall raise the dead?

It is a fearful thing to violate the law, and become subject to its penalties. Yet, if by a false sympathy, and false ideas of philanthropy, you neglect your duty, you violate your oaths, and not only subject yourselves to the penalty of human laws, but you fall into the hands of the living God. Life is short, and vanishes away, and we shall soon be laid in the cold and quiet grave. When you approach that time, and your heart most remembers what it most wishes to forget; — when the mind becomes clear as it approaches the brightness of its Creator's presence, will it not be sweet to remember that in this case, when so much has been done to thwart your judgments, you yielded not, but discarding prejudice, fear, and favor, marched boldly forward in the line of duty? My duty is now done, yours is yet to be discharged.

NOTE.—The report of the foregoing speech of Mr. Carpenter is published without his revision, and appears more discursive than if he had personally prepared it for the press.

Afternoon Session.

MR. MARSHALL'S ARGUMENT.

GENTLEMEN OF THE JURY: — This is the fifth day since this trial commenced. During that time you have given the most ample evidence, by your patient and profound attention to the evidence and the discussions, that you at least are determined to give the prisoner a fair and impartial trial. You have showed that you at least are not under the influence of prejudice — that you have not believed the numerous partial and discolored statements that have been published and scattered through the country to create a feeling of hostility to the prisoner. You are uncommitted, unbiased, impartial.

After the prepared, well digested, well arranged burst of eloquence, to which you listened this morning, from the attorney for the prosecution, consuming eight hours of the precious time of this world and this court, I thought it best you should have a little time for reflection, whether the effect of that burst was warming or cooling. It was something like an exhortation, but never did anything of the hortatory strain fall on my soul so like an iceberg as did this burst of rhetoric. It would have been enough to have consigned the prisoner to his lot, without intruding such a scene upon his feelings. It would have been enough to have left us to our fate, to have consigned us to our early and disgraceful grave, to the stings of conscience, without inflicting on us such a speech. In the latter part, he besought you to commit the prisoner to the grave out of mercy — to deliver us from the stings of conscience by consigning us to the hangman. Allusion has been made to his past journey, and he has been told to commence his travels over again, a wanderer on the face of the earth, with guilt his eternal companion. If he cast himself on the ocean, every white-cap would remind him of the shroud, and every breaking surge, of the death rattle of his victim. If he visited France, or Italy, every opening flower would only remind him of the flower he had left blighted behind him.

In all this, he traveled out of the path of an attorney to torment the prisoner. But he failed. There was neither power in the arm, nor point in the arrow. It has fallen harmless. But the attempt was unjustifiable — it was out of taste. What-

ever may be the law and the evidence, I felt there was no necessity to goad you to find a conviction in this case.

In listening to the gentleman's speech, I was astonished; I could not imagine what he was discussing; I could not reconcile his statements with the evidence on trial. But soon I remembered. There is another case out of court, which has been argued in certain newspapers for the last six months — a case supported by fabricated and distorted testimony. I compared his speech with that, and it fitted exactly.

What is the charge in the case the gentleman has been advocating? It is, that Matt. F. Ward, on the 2nd of November last, without provocation, armed himself for that special purpose, went to Butler's school room, asked for Butler, asked Butler an insulting question, would not receive an explanation, then called him a d—d liar, then struck him, then shot him, all without provocation, without Butler's saying a single aggravating word, and resenting neither the curse nor the blow, — a tolerably bad case, I confess. Yet this is the case made out in the papers — it is the case they are now discussing. The press is engaged in it with all its power, scattering its distorted and false statements all over the country, by every mail. That is the case the gentleman has been arguing, but, thanks to God, it is not the case you are to try. Before we enter into an examination of the law, let us look into the facts. It is not denied that Butler was shot, and that Matt. F. Ward shot him. But how? why? under what circumstances? — that is the question.

Twelve boys have been introduced as witnesses, who were present, and most of whom saw the transaction. In regard to their testimony, there is a good deal of conflict. I do not assail their characters, that is unnecessary. The conflict arises from the peculiar circumstances under which they saw, and the attendant confusion.

The first witness is Knight. In his direct examination he testifies to Butler's saying this and that; but on cross examination, he says he only heard three words, "I'm not disposed." But he heard all that Matt. said. What is the first remark of Matt. to Butler? I have come to settle a matter with you. Knight sees Butler make a motion, from which he infers Butler asked Matt. into the next room; Matt. says, here is the place; Butler's answer is not heard; Matt. then says, since you will not answer that, &c. This shows that Butler had refused to

answer. Butler's answer to this last question is not heard. Then Matt. says, why did you call my brother a liar; Butler says, I am not disposed——— the remainder not heard. This shows that Butler refused an explanation.

Worthington is next examined. He is fifty feet off, yet hears what Butler says. Butler asks Ward to go into the next room; Ward, no, here is the place where the thing happened; Ward says something; Butler refuses; Witness turns his back, hears stamping, then the shot.

Next, Campbell testifies. When Ward first came in, he was calm and polite. It was not until Butler answered that Ward's blood arose. Witness is within four feet; didn't hear what Butler said; hears Ward say, since you won't answer that, I will ask another; don't hear Butler's answer to that; Ward then cursed him; witness then knew there would be a fight, and turns to arm himself to keep off Bob, till Butler could whip Matt.; didn't see Butler strike Matt., but knew he would; knows he would whip Matt. if Bob was kept off; sees something in Butler's actions that convinced him there would be a fuss.

Minor Pope is next. He hears nothing till Matt. says, Why did you call my brother a liar? And when the lie passed, then Butler sprang at Ward and grasped him; and then the shot was fired.

Benedict says he saw Butler lay his hand so violently on Matt. that he bent backwards. Knew that Butler would not lay his hand on Matt. for nothing.

Quiggly did n't see Butler strike, but saw him push him back eight feet to the door.

Now, gentlemen argue that Butler did not strike Ward; but Dr. Thomson says Butler said, Ward struck me first, I struck him, and then he shot. Dr. Yandell says Butler said, Ward raised his hand, and Dr. Yandell thinks, in a threatening manner, and I struck him. Dr. Caldwell says Butler said, We were engaged in conflict at the time. The boys say Butler did not strike him, and yet Butler says he did.

This proves that Butler did strike Ward, and that they were in conflict at the time. The boys were so excited they knew nothing about it. This is settled by their own witnesses. Knight says Ward gesticulated with his left hand, his right hand being under his coat; Butler settled back, and thinks Matt. struck him. Another says Butler was catching at Ward's right hand to prevent his shooting. Butler contradicts this, for

he did not know who shot him. I take it that it is a total mistake that Butler tried to get the pistol. It is evident, by their own showing, that these twelve boys knew nothing about the conflict.

Matt. made a mild demand for an explanation. Butler asked him to go into a private room. If he wanted to assassinate Butler, why did he not go into the private room and do it? The true construction is, he wanted the matter explained in presence of the school-boys, without concealment or disguise.

Now, to know what the provocation is, we must look farther. He did not kill Butler for the mere pleasure of killing; there must be some other reason. What was it? How came he to go there? We have been permitted to show by his mother what he said about his motive. On her return from Cincinnati she finds William at home; asks him the reason. He says, ask Matt. Matt. says that on the day before, just before the class was called to order, William gave some chestnuts to another boy; the boy ate them, and threw the hulls on the floor. Butler asks for his strap. A fashionable instrument, this broad strap; a vast improvement in the art of whipping negroes; can whip a negro nearly to death with them, without breaking the skin, and he is left as smooth as a peeled onion. The whip is brought, and the boy called up. Who gave you those chestnuts? William Ward. Did you do it, William? Yes, but not in recitation time. Yes, you did, says the other boy. The other boy's word is taken, and William is flogged — not for giving the chestnuts, but as a common liar! Publicly flogged as a common liar by an instrument used in whipping slaves! Now, do you believe that in making this statement, Matt. Ward was making testimony for himself? Never. William had told him this story, and told him he did not mind the whipping, but he had rather die than be called a common liar. And thus feels every boy in Louisville. Kentucky spirit is not confined to the Ward family. The poor man's child feels it as much as the rich man's. I deny that the sense of honor is confined to the Ward family. It is not peculiarly an aristocratic virtue. The statement that all this happened because a Ward had been whipped is one of the low means used to create a prejudice.

Matt. further says, as we prove by his mother, "I know Butler to be a gentleman. I will go and have the matter explained, looked into, and examined. Butler has acted hastily

I will go and have this stain wiped off." Was there anything wrong in all this? Wa'n't it all right? And what ought Butler to have done? I would not willingly disturb the ashes of the dead. He was an honorable gentleman, and his death a public loss. But, what would you have done? I have been to many schools, and seen boys whipped severely and unjustly. It is not agreeable to a father, and makes an older brother feel unpleasant, especially when whipped on an infamous charge. It was Matt.'s duty to go, and he goes and speaks mildly; and not until an explanation is refused, is his temper aroused. I know what I would have done had I been in Butler's place. I would have said, Mr. Ward, I had occasion to whip William. I will explain it. I will summon the boys here, and you shall hear the testimony yourself; and if I have done wrong, I will make the necessary explanation. The school-teacher has something of the parent's power, and ought to have a parent's love. Wm. Ward is fifteen years old. If a father had detected a son of that age in a falsehood, would he have proclaimed it publicly, and whipped his boy in public like a dog? He would do it privately, and with a parent's tenderness. Then if Butler had done what a father would not have done, was it not right for Matt. to seek an explanation? Certainly, and he sought it where the disgrace occurred. There is nothing wrong so far. Butler says, I will give you no explanation. "Why did you call the boy a liar?" Butler would not explain that either. He put on the haughty to him. He then said, "You are a scoundrel and a coward; you have disgraced my family; you have refused an explanation; and now you are a scoundrel and a coward yourself." What else could he have done? He either must have skulked from the presence of this puissant pedagogue, or returned the insult. He uses these words. Then he is seized, pushed back, driven back to the door, a poor, emaciated, bed-ridden, neuralgic, rheumatic invalid as he is, and he must be kicked out into the street, or do what he did.

We next come to the testimony of R. J. Ward, jr. He says Matt. entered and took off his hat, holding his hat in his right hand at first, and then put it on his head. Knight thinks it was in his left hand, but still he was gesticulating with that hand. Where was the hat? Had he laid on the floor, nigger fashion? Bob's statement explains it all. He held it in his right a part of the time, and then put it on. Bob and Knight agree in many things, and disagree only where Bob's statement is necessary

for explanation. The shooting is explained the same way. If his hand was on his pistol, he would have fired before he did. Quiggly says he was pushed back as far as he could be. This coincides with Bob's statement. Bob says Matt. drew his pistol and fired. Sturgus come. Bob told him to stand off, as he says, to come on, as the boy says; I do not care which. Sturgus understood it to be off, for never was a man off quicker. And, by the way, why is not Sturgus here? Talk of our keeping William back, why do they keep Sturgus back? He cut a pretty figure in the police court, with Butler fainting on a settee in his room, when there was not a settee within fifty feet.

Mr. *Gibson.* Is that in evidence here?

Mr. *Marshall.* It is in the papers where the case has been prosecuted for the last six months, where this man has been persecuted, and where they are even now trying your honor.

The *Judge.* I do not like to have that referred to. It might affect my impartiality.

Mr. *Harris.* I understand the gentleman. He speaks to the Jury, when he addresses the Judge.

Mr. *Marshall.* If you understand yourself when you come to speak, half as well as you do me, you will do well.

Mr. *Gibson.* The papers are not in evidence and the gentleman has no right to quote them.

Mr. *Marshall.* I may want to quote from the Bible, and it is not in evidence. Can I not have the privilege?

The *Judge.* This matter is not properly in evidence, and the gentleman better not refer to it.

Mr. *Marshall* then continued: Bob is further confirmed by the testimony. He says Matt. asked the chestnut question. So do the boys. Bob says, Butler puts his pencil in his pocket, buttons up his coat, and says he will not be interrogated. Campbell says, Butler appeared to make a motion, and so throughout the whole testimony. Bob is confirmed by different boys. His testimony explains what theirs leaves dark, and is confirmed by Butler's dying words. He tells a plain, straight forward story, hit or miss, for or against himself. When Sturgus came, he says he drew his knife and told him to be off, and off he was. It was *presto vido* and he is off. Bob also says he did not go up the aisle. The prosecution were making out that he retreated. He says he did not. His testimony bears all the marks of truth, and is confirmed in every particular. After all this, Mr. Carpenter says he is perjured. Not content with building a

gallows and placing him on it, for what is indeed a crime, but a gallant one, one which many a brave man sometimes commits, this Carpenter goes farther, and charges him with the dastardly crime of perjury. There is no marks of perjury about him. He made a bold, off-hand, gallant statement of the whole offence. The Commonwealth had proved beforehand all he testified ; he added but little to our case. But since a charge of perjury has been made against him, it was my duty to make this defence of his character. This trial by juries, and having witnesses face to face, is a glorious institution. The eye, the countenance, every look and gesture, all speak in confirmation or contradiction of the words. Never have I examined a witness who has been sus tained by all these more completely than Bob.

The next witness is Barlow. What a joyful note Carpenter struck when he came to this man's testimony, and I thought I heard a low chuckle run through the crowd, showing the only trace of prejudice that I have seen in the place. He would insinuate perjury. He asks exultingly, Didn't you say this was an aggravated murder? Didn't you say it was no use trying a a rich man's son in Kentucky, if Ward was not punished? The object is to prove that he has lied in pretending to give Butler's dying words. He testified that he, in Harney's house, asked Butler how it happened; that Butler said Ward came there, called me a liar, I struck him, and he shot me. This is a lie, says Carpenter.

But how is he confirmed? Dr. Caldwell says Butler said they were engaged; another witness says they were clenched; the boys say Butler sprang forward. They all confirm Barlow. But they say he is a liar, because he went and offered his testimony to Ward. Hear his explanation. In the police court it was proved that Ward struck Butler first. This was published all over the country, and was prejudicing the whole community against Ward. Barlow knew this was not true, and felt it his duty to go and tell the father of the prisoner the circumstance. But the question is, had Butler told him this? Two hours after the occurrence, he relates the same story to Mrs. Crenshaw. You remember her, with a voice clear as a bell, and soft as a lute. He told Mays the same story in the carpenter-shop half an hour after he heard it. But he went to the jail and played cards with the prisoner. And what if, on some cold winter evenings, when the prisoner was in his lonely cell, listening to the shout of the mob seeking for his blood like Cuban blood-

hounds, this witness did help him while away a weary hour in some pleasant amusement. But Matt. Ward associate with such a man! Now I had thought that a carpenter might be a gentleman. But here they beg the question, and mark the ingenuity, the *infernal* ingenuity of the process. R. J. Ward is a rich gentleman, and his son Matt. is a traveled, literary, refined man, and that low, mean, hellish hatred which some feel towards this class, is played upon to influence the jury, and they are told that the very fact that a mechanic is admitted to their company is proof that he is suborned.

This lawyer Carpenter came, I believe, from New Hampshire, but Barlow was born in Kentucky, where there are but two classes of people, gentlemen and slaves; and every man not a slave is a gentleman. Carpenter has brought with him notions not congenial to our soil Poor and proud is the motto in Kentucky, and the poorer the prouder. If a man is rich, you can take some liberty with him; but if he is poor, keep clear of him, insult him with no bribe. I thought the gentleman lay in the heart itself, and that wealth was but the guinea's stamp. It is by no means strange that Barlow changed his opinion of Matt. Ward in forming his acquaintance. Since I have been here, I have learned that the noble, free, substantial farmers of Hardin have visited him in great numbers in his prison, and when, instead of finding the burly ruffian they imagined, they saw this pale, emaciated, neuralgic, rheumatic invalid, and in conversation have found him intelligent and refined, they have gone away in tears. There must be some powerful alchymy in his presence that thus turns all to friends. If becoming his friend is proof of subornation, it is not confined to Barlow, but half of the citizens of Hardin county have participated in the crime.

But Barlow is confirmed by Allen and Gudgel. Allen heard the shot, and they immediately went and asked the boys how it happened. The boys tell them just what Barlow says Butler told him. His story is also confirmed by his own acts. Barlow stands unimpeached, surrounded with every badge of truth. There is nothing strange in the cards — nothing strange in becoming the friend of Ward, after forming his acquaintance.

I think we have now got at the correct facts in the case. William Ward, fifteen years of age, on the 1st of last November, is severely flogged by Prof. Butler, and flogged too in the public school, and called a liar. He goes home and tells his brother. His books are sent for and removed. Matt. Ward, in feeble,

delicate health, goes to ask for an explanation, taking William with him, and Bob. at his mother's request; not anticipating a difficulty with Butler, but on account of Sturgus. He goes to the school-house and politely and mildly asks an explanation. This is refused, haughtily refused. All satisfaction is denied; that then he charges Butler with the same crime Butler charged his brother with. Then Butler collared him, bent him, bore him back to the door, and then, and not till then, Matt. fired.

Next, as to the relative strength of these men. It has been shown that Butler's hand was contracted. This did not prevent his striking. Patrick Joyce says he was remarkable for his strength in his arms; that on ship-board he could climb a rope, hand over hand, sailor-like; that he could perform feats in a gymnasium requiring great strength in his arms. Yet they say he could not strike; but Campbell knew he would strike, and could whip Matt. Matt. F. Ward, feeble and attenuated, with muscles shrunk and stiffened, a man whom even his wife could whip, as has been testified; — could such a man go there to assassinate Butler? As Kentuckians, interpreting criminal law as Kentuckians do, I ask you, is this cold-blooded, premeditated, deliberate murder?

Having got a correct statement of the facts, as derived from the evidence, let us apply the law to them, and see if it is not clearly a case of self-defence. I read the following quotations from Blackstone, on personal security, and the redress of private wrongs.

"The right of personal security consists in a person's legal and uninterrupted enjoyment of his life, his limbs, his body, and his reputation.

"Both the life and limbs of a man are of such high value in the estimation of the law of England, that it pardons even homicide, if committed *se defendo*, or in order to preserve them. For whatever is done by a man to save either life or members, is looked upon as done upon the highest necessity and compulsion.

"Besides, those limbs and members that may be necessary to a man in order to defend himself, or annoy his enemy, the rest of his person is also entitled, by the same natural rights, to security from the corporeal insults of menaces, assaults, beating, and wounding, though such insults amount not to the destruction of life or member.

"Next to personal security, the law of England regards, asserts, and promises, the personal liberty of individuals. This personal liberty consists in the power of locomotion, of changing situation as inclination may direct, without imprisonment or restraint, by due course of law.

"The defence of one's self, or the mutual and reciprocal defence of such as stand in the relations of husband and wife, parent and child, master and servant. In these cases, if the party himself, or any of these his relatives be forcibly attacked, in his person or property, it is lawful for him to repel force

by force, and the breach of the peace which follows, is chargeable only upon him who began the affray. For the law in this case respects the passions of the human mind, and (when external violence is offered to a man himself, or to those whom he bears a near connection) makes it lawful for him to do himself that immediate justice to which he is prompted by nature, and which no prudential motives are strong enough to restrain. It considers that the future process is by no means an adequate remedy for injuries accompanied with force, since it is impossible to say to what greater length of rapine or cruelty outrages of this sort might be carried, unless it were permitted a man immediately to oppose one violence with another. Self defence, therefore, as it is justly called the primary law of nature, so it is not, neither can it be, in fact, taken away by the law of society. In the English law, particularly, it is held an excuse for breaches of the peace, nay, even for homicide itself; but care must be taken that the resistance does not exceed the bounds of mere defence, and preservation, for then the defender would himself be the aggressor."

Such then is the law of self-defence. It is the first law of nature, and pervades all its departments, animate and inanimate. Everything seems to have its natural enemy, and is furnished with its peculiar means of defence. The bark of the tree, the rind of the fruit, and the cuticle of the vegetable, are all means of defence. And so in the animate world, every animal has its weapons for protection. Even to the serpent, that cursed, blasted creature, sentenced to crawl on its belly, and lick the dust, even to that creature, God left his venom and fang, when he pronounced his curse.

This right of self defence carries with it all the means necessary for its exercise. It must be used cautiously, but it gives me the right to beat, maim, or kill my opponent, not only to save my own life, but to save a limb, or any serious injury, whether it be actual or apparent. That life is not worth possessing that I have not the right to defend. If I had not this right, I would raise my own arm, take my own life, and hurl it back into the face of high heaven — a despised and worthless gift.

As to the amount of force I have a right to use, necessity is the only measure. If Matt. Ward should undertake to whip me, and I should kill him, I should be guilty of murder, for I could hold him with one hand. But there are other men that might undertake to beat me. Suppose a stout man should attack me, I strike him, and he would lick me five times worse. If I had a bludgeon, I might use it; but I have none. Must I stand and be beaten? Will any *Kentucky* man tell me to stand that? No; If I had no other weapon, I would out with my knife and cut his throat from ear to ear. The right of self-defence is nugatory, unless it carries with it all the means

necessary for its exercise. Read your old musty law books! This is the criminal law in Kentucky; so acknowledged, and so administered. I have defended many criminals in my life, and this is the law wherever I have practiced.

Now take this law and apply it to this case. The law as I have declared it is the law of the land. Apply this law to the facts as I have adduced them from the evidence, and see if this can be called a crime of murder; and if it is not murder, it is not anything. The difference between murder and manslaughter is very slight, as shown by the books. When a man is driven as far as he can be, and then slays his adversary, it is self-defence. In this instance one of these men was powerful, very powerful, weighing one hundred and thirty-five pounds. I have seen such whip men of twice their weight. The other is a feeble invalid, in no condition to fight, goes expecting to ask a civil question and receive a civil answer, is refused an explanation, resents it in words, is seized, bent, pushed back, and at last, fainting and falling, he rids himself of his adversary, fires his pistol, and most unfortunately, the shot is fatal.

Has he shown himself, by this act, unfit to live, to hold a place among his fellow beings? Or, coming down to the next grade of crime, will you for this act, send him to the penitentiary? Will you tear him from his girl-wife? Will you shave those classic locks? Will you sentence him to a confinement, to which there is, to a man of high and noble impulses, no equal in the category of human punishment, and only paralleled in the other world by the prison house of devils and damned spirits? No: as his friend, knowing his feelings, I ask you, rather than do this, tear away his life. In his name I ask, give me liberty or give me death. If you call that mercy, give the mercy that Carpenter spoke of, — the mercy of the grave. Death in any form is preferable.

But Mr. Carpenter told you, you had nothing to do with mercy, and that if you had, you could not mitigate the stings of conscience. We can bear all the stings of conscience this deed inflicts, but we do feel deep, lasting, pungent regret. We would do any thing to recall the deed. We feel every sympathy for the family of the deceased. But the stings of conscience we feel not, for we are conscious of no crime. We fling ourselves on our country and our God for trial. Not guilty, we say now, not guilty, we say living, not guilty, we say dying.

The deep and damning effects of one kind of verdict, we look upon with horror.

Evidence has been introduced to prove the good character of the prisoner. Senators, members of Congress and of the Cabinet, mechanics of every class, officers and preachers, have all testified to the meekness and kindness of his disposition. He traveled abroad, poor fellow, for his health, and here is a book ("Letters from Three Continents,") that shows how he spent his time, and what were his reflections on the various spots he visited. It is not in evidence, and I cannot read from it; but I thank him for this contribution to our literature. In imagination, I have followed him in his travels, and with him passed down the Rhine, crossed the Alps, gone down the Danube, passed the Golden Horn — stood with him at Stamboul, gone up the Nile, crossed the Desert, and stood with him on Sinai, where God gave the law to Moses. Could I read you his reflections there, you would see that he was of too high and pure feeling to harbor malice to a fellow being.

It is a pity that he should die so young — his country has looked on him hopefully — but that he should die after the fashion sought by the prosecution, is awful. I ask you not to pardon, I ask you not to relax the rigor of the law, but I do ask you to administer justice tempered with mercy. Look at the evidence, and answer me if that young man should die, and die a felon. It cannot be. I believe in omens — knowing the efforts made to prejudice the public mind, and finding a jury could so readily be panelled, I felt there must be an acquittal. Such a verdict will be looked for, and such a verdict will be vindicated by the whole country, when the testimony is published.

But I have talked till I have wearied you and exhausted myself. There are those to follow me, the latchet of whose shoes I am not worthy to unloose, and they will supply all my deficiencies.

[Monday and Tuesday, the sixth and seventh days of the trial, were occupied by Messrs. Harris and Gibson, for the prosecution, and Messrs. Wolfe and Helm, for the defence.

SPEECH OF MR. GIBSON.

Mr. GIBSON addressed the Jury as follows:

Gentlemen of the Jury. — It has, perhaps, never been the province of a jury in Kentucky, to sit upon a cause of so much importance as the one now upon trial. The position of the prisoner in society; the troops of friends that have thronged around him, seemingly determined to rescue him from the consequences of his crime, if human ingenuity, backed by *all* the appliances that wealth has at command, can effect their purpose; the array of counsel, eighteen I believe in number, though only nine of them are present in court, and among them names long distinguished in the history of this commonwealth; the host of witnesses on the part of the defence, including a cabinet officer, two members of Congress, and a score of names scarcely less distinguished — all called *ostensibly* to prove a fact not disputed — the previous good character of the prisoner; the wide spread celebrity that has been given through the press to the cause itself — and the deep enormity of the offence with which the prisoner stands charged; all these give to this trial an interest, such as perhaps no other trial in the west ever possessed.

I feel that I am not merely addressing you, but that I have for an audience millions of freemen, who are watching with breathless interest the result of this trial, and who will hereafter sit in judgment upon your verdict, whatever it may be. There sit the reporters whose pens will send to every State, and county, and town in the whole country, the facts as they have been detailed in evidence before you, and the arguments of counsel to which you have listened, and have yet to listen. The nation will be as well prepared to pass judgment on the case as you now are; and it behooves you, as you value your reputation as men, that you should decide this cause according to the law and the testimony — unaffected by the strong appeals that have been made, and will doubtless hereafter be made, to your sympathies, and unawed by the array of wealth, and talent, and celebrity that has been brought here to fright you from the path of duty.

The learned counsel who has just concluded his very able, very ingenious, and he will permit me to add in all kindness, very

sophistical argument in behalf of the prisoner, attempts to account for the appearance of so distinguished an array of counsel, by telling us that the prisoner's friends had learned that the cause was to be prosecuted by Mr. Corwin, of Ohio, and Choate, of Massachusetts. I can sympathize deeply with the learned gentlemen in being disappointed of

> "That stern joy that warriors feel
> In foemen worthy of their steel."

But in the mean time, we will try, at least, to give them employment enough to keep their weapons from rusting in the scabbard.

You have heard much in the course of this argument about newspaper publications, and the excitement under which the public mind of Louisville has been laboring in regard to this case. This has been spoken of as if it was criminal in the peaceful and law-abiding citizens of that city, to recoil with horror at the perpetration of such a crime in their midst; — as if it was a monstrous outrage that the newspapers should dare to publish the facts as they were proved on the examining trial, for that is all that is pretended to be charged upon them. It would be strange indeed, gentlemen, if such a man as William H. G. Butler could be shot down, at the post of duty, for no other offence than having faithfully discharged his duty — and while the long line of mourning friends and relatives were bearing him to his grave — while the shrieks of his maniac widow were ringing in their ears — the seventy thousand citizens of that city, to most of whom he was personally known as one of the noblest and gentlest of our race, should have remained as calm and unmoved, as though it had been a strange dog shot down in the streets. The horror with which the deed was viewed owed not its birth to newspaper publications. Never did the excitement in that city run higher than at the examining trial, amid the crowd which thronged every avenue to the police court; and that was before the publications were made. But that those publications were the truth, and nothing but the truth, you have abundant evidence in the fact that, though the same witnesses were brought here, and sworn before you, whose testimony was published in the newspapers, no pretence is made by the defence, that they have in the slightest particular deviated here from the statements made there. It only amounts then to this, that the citizens of Louisville have human hearts within their bosoms —

that they are not stocks and stones, but men — and that there are at least two newspapers there that have independence enough to do that, where a wealthy criminal is concerned, that all newspapers do every day, when any poor friendless wretch steals a horse or passes a counterfeit bill. If it is wrong to publish the details of crime, why has no wise Legislator introduced a bill prohibiting such publications? How many voters, think ye, such a law would receive in any legislative body of freemen? or what man, after voting for it, would ever dare again to look into the honest faces of his constituents.

We are told too, that so fierce had become the excitement in Louisville, that this prisoner was forced to come to Hardin county for justice. This is a matter gentlemen, that I should have considered it improper for me to allude to, if it had not been thrown in for effect by Mr. Marshall. Does it not strike you as strange — passing strange — that this young gentleman who is so endeared to every body in Louisville, by his amiable, gentle, kind, and conciliating disposition, as sworn to by a host of witnesses. This gentleman, with whom, or of whom Brother Sehon has had such "hopeful conversations," is it not strange I say, that he should have to fly from the spot of his birth — from the home where he was so surrounded by these numerous, and wealthy, and influential friends, to avoid injustice.

But these are considerations that should have no influence with you — certainly the fact that the neighbors and acquaintances of the prisoner, with whom and among whom he has lived all his life, believe him guilty, can furnish no testimony of his innocence; and yet, the information of that fact has been volunteered before you by his counsel, as though they thought it matter entitled to weight in his favor.

With what holy horror they would have raised their hands if we had gravely told you that every body in Louisville believed the prisoner guilty. It is a consideration gentlemen, which should have no weight with you in arriving at a conclusion of his guilt, but if it should so influence your minds, he will at least have his own counsel to thank for it.

You have already heard something, and will doubtless hear more before the argument closes, about the employment of private prosecutors, and perhaps, I had as well dispose of that subject before entering upon the merits of the cause as developed in the testimony. It is, however, rather a matter personal to the counsel employed, than one having any legitimate bearing

upon the issue which you are sworn to try. As a general rule I would decline an employment to prosecute — I would certainly never be employed in any case where my convictions of the guilt of the prisoner were not so strong and clear as to leave no shadow of doubt upon my mind. That guilt, too, must be something more than a mere legal guilt — a guilt presenting no extenuating circumstances outside of a legal defence. But on the other hand, there are cases, which every consideration of professional pride and duty, forbid a lawyer to decline. The circumstances of this case are peculiar. The prisoner is not alone upon his trial — the fair fame and memory of William H. G. Butler is involved in the issue.

Had he done aught to deserve the death he received at the hands of the prisoner? Above all, did he die with a lie upon his lips? A verdict of acquittal in this case must answer these questions in the affirmative; and his surviving relatives would be recreant to his memory, if they neglected any means necessary and proper to secure a fair and impartial trial of this case. If it be right for them to employ counsel, it cannot be wrong for counsel to accept the employment. And if from the unheard of array of counsel for the defence, and the untiring efforts of the numerous and wealthy friends of the prisoner, the relatives of his victim have reason, as they conceive they have, to fear, that guilt may escape punishment: surely every consideration of duty to the dead — to his stricken widow and helpless babe, would dictate — that to some extent these efforts on the part of the prisoner's friends, should be met with corresponding efforts on the part of those, whose sacred duty it is to guard the memory of him who can no longer protect his own fair fame from reproach.

Had this have been the "brave and manly crime" that Mr. Marshall has pronounced it. Had the prisoner met the deceased in fair and open fight, warned and armed, I would never have consented to appear in the prosecution. Had he done this, or had he offered him one of the pistols he wore, and thus placed his victim on a footing of equality with himself, he could at least have stood up before a jury of his countrymen and said, I placed my own life upon the issue — I played boldly for the stake, and I won; murderer though I may be in law, it was no coward deed. Such a man no considerations could induce me to prosecute.

But when the assassination has no one redeeming feature

about it, either in the causes which led to it, or in the manner of its perpetration; when the victim is an unarmed and unsuspecting man, and that man a cripple, deprived even of the ordinary means of defence common to all; and withal, one of the most peaceful, amiable, and gentle of men. When such a man has been so ruthlessly stricken down, for having faithfully and honorably discharged his duty, and I am appealed to on behalf of his heart-broken widow and mourning brothers; when even the wail of his helpless babe seems to cry for justice for its father's blood, I should despise myself if any considerations could for a moment cause me to shrink from what I consider the path of duty.

Before entering upon an analysis of the testimony in the cause, permit me, gentlemen, to call your attention to a few plain and incontrovertible principles of law, upon which, as I conceive, this case must rest.

I lay down these principles under the eye of the Court, and shall read you ample authorities sustaining them.

First. If a man seeks a fight, by giving a gross insult or striking a blow to bring it on, and in the fight kills his adversary, with a deadly weapon previously prepared, when his own life is in no danger, he is guilty of murder, no matter who struck the first blow.

Second. If a man provokes a fight, and in the fight is overmatched, and kills his adversary, it will be manslaughter, even if his own life is in danger.

Third. Unless the defendant had no other means of saving his life, or his person from great bodily harm, he has been guilty of manslaughter, even though there is no evidence of premeditated malice.

Mr. G. read numerous authorities in support of the principles laid down, and proceeded as follows:

These are the principles which I conceive must govern you in the verdict you will render, after applying them to the facts developed in the testimony. In commenting upon the testimony, I propose to consider it in two aspects.

First. The case as confessed on the part of the prisoner and admitted in argument by his counsel.

Second. The facts as they are presented by the whole evidence in the cause, as well that of the Commonwealth as that of the defence.

I set out, then, with the assertion, that taking the facts just

as the defence claim them to be, in every particular, and applying the law to them, the prisoner is guilty of murder, if you shall think his life was in no danger, and guilty of manslaughter, if his life was in danger at the moment he fired.

To sustain this position of law and fact, I assume the facts to be as shown from the testimony of the defence, coupled with the testimony of Gilmore, that is not controverted. 1st. That ill feeling toward the deceased existed in the breast of the prisoner as early as the day before the murder. 2d. That in consequence of that ill feeling, and with a view to an anticipated difficulty, the prisoner, within less than two hours before he shot the deceased, purchased a pair of pistols, had them loaded at the shop, and carried them with him, concealed, to the place where he met the deceased. 3d. That he went there so armed, intending to provoke a fight with Butler, and in that fight to kill his adversary. 4th. That on meeting Butler in the school room, he did everything that man could do, to provoke a fight, and when stricken, and unhurt, and before he had tested their relative strength, shot Butler with one of the pistols previously prepared. 5th. That there existed no necessity for the act at the moment when it was committed.

These facts I propose to establish from the evidence produced on the part of the defence, coupled with the uncontroverted testimony of Gilmore. If I should succeed in establishing the whole of the five propositions, an application of the law I have read, to them, pronounces this prisoner guilty of murder. If, however, on the last proposition you should differ with me, and believe that his life was in danger, then, the first four propositions being true, he is guilty of manslaughter.

My first proposition is, that ill-feeling existed in the bosom of the deceased towards the prisoner, and that the difficulty did not arise upon a sudden quarrel. It is hardly necessary to labor this point. His statements to his father and mother, and his conversation with his brother on the way to the school-house, abundantly establish the fact, and if further evidence is wanting it is conclusively furnished by his conduct and language towards Butler in the school-room. Certainly there was nothing said or done by Butler during the interview, to call for or account for, the abuse and insults which were heaped upon him by the prisoner; and we are forced irresistibly to the conclusion, that they were the result of personal ill-feeling. If this proposition is not established, then human testimony can establish nothing.

My second proposition is, that with this feeling rankling in his bosom, and just before he went to the school-room, he armed himself with deadly weapons, with a view to the interview. The purchase of the pistols is not disputed, but we are told in explanation of the act, that it is customary to carry weapons in Louisville — that the prisoner was going south, and last and strangest of all, that he purchased the smallest pistols in the shop — mere "pop-guns," as the counsel call them: playthings, fit only for children to amuse themselves with, and that consequently he could not have intended them for the fatal purpose they accomplished. Let us examine separately these three different, and as I shall show utterly inconsistent, explanations: Has a general custom of carrying weapons in Louisville been proved? For the honor and credit of that city I am proud to say, that the reverse has been established. Mr. Prentice tells you that the persons who *habitually* — mark the word — who habitually carry arms there, are few in number, but that persons *expecting a difficulty* usually arm themselves. He adds that he has known persons arm themselves without any intention of committing murder; but it would perhaps be difficult for him to explain how he could possibly know with what intention the arms were worn. I submit to you gentlemen that the custom as proved, so far from showing that these pistols were not purchased with a view to the use afterwards made of them, furnishes very strong evidence, from which to draw just the opposite conclusion.

But he was going south. He was to be a traveler on steamboats, exposed to robbers; he was going to Arkansas, somewhat celebrated in times past for deeds of daring violence and desperate combats. But let me ask you, if such a pistol as that exhibited in evidence, is the weapon a man would select to defend himself from the bowie knife or the revolver of a desperado? Of what use would it be in a street fight? The best shot in the state could not be certain of hitting a man with it at six feet distance. No, gentlemen, it is fit for no such use — it was purchased for no such use. It is emphatically *an assassin's weapon;* easily concealed, it is fit only for the purpose to which it was applied in this case — to be placed against the breast of an unsuspecting man, and fired with deadly effect. But with an utter recklessness of all consistency, counsel tell us that this weapon, that they say he had purchased to defend himself amid the dangers of southern travel, and from the bears and panthers of Arkansas, is utterly inefficent — a mere plaything, a pop-gun,

that never was meant to execute any deadly purpose. If he thought it so harmless, why did he buy it? If he deemed it not deadly enough to slay the peaceful cripple in his school-room, could he at the same time think it sufficient to defend him against the armed desperado, or the midnight robber? Their own arguments recoil upon them. The peaceable and quiet disposition of the prisoner — the fact that it is only usual to carry weapons in Louisville *when a difficulty is expected* — the nature of the weapon itself, just suited to the use made of it, and useless for all other purposes — all prove that the weapons were purchased to kill Butler with, and for no other purpose.

But there are other facts connected with the purchase worthy of being noticed in this connection — *he purchased no ammunition*. If he had bought the pistols to take south with him, he would have needed powder, ball and caps, as much as he needed the weapons themselves. There is no man of his age and intelligence in the west, who does know that a pistol to be at all reliable, must be discharged and reloaded at least once in every ten or twelve days. But he purchased no ammunition — he did not need it, for the purposes he had in view. He first buys one pistol, and has it loaded, when he takes out the money to pay for it, he pauses, hesitates, and inquires the price of the pair — can you not read his thoughts, gentlemen, during that moment of deliberation. He had prepared himself for Butler, but Bob was not yet back from Cincinnati with his bowie-knife; perhaps Sturgus might be there, or some of those little boys roused at the sight of their beloved teacher's blood might become dangerous — he might have to shoot little Pirtle or Benedict — and so the second pistol was purchased and loaded; and so armed he starts upon his mission of blood. There is no room for a shadow of doubt on this point — the pistols were bought with a view to the intended interview with Butler and for no other purpose. Thus far our way is clear. Ill-feeling towards the deceased exists — an interview is expected — and the pistols were bought and loaded with a view to the interview.

I come now to the third proposition, that I seek to establish: *That the prisoner sought the deceased, with deadly weapons concealed upon his person, intending to provoke a fight, and in such fight kill his adversary.* To prove this I call to the stand the father, the mother, and the brother, and accomplice of the prisoner. Their own witnesses, sworn by them, and whose testimony *they* will not dispute. That the prisoner sought the

deceased, and that he wore deadly weapons concealed upon his person is not controverted by his counsel. Did he expect a difficulty, and did he intend to provoke it? Why say to his father, I am a *young* man, and it is proper that I should go, if he did not expect a difficulty — why those admonitions of his mother to be calm — why did he say to his brother as they went to the school room, "don't interfere by word or *action*, unless they both attack me?" There is but one answer to all these questions. He went there expecting a difficulty. Suppose a stranger had been walking behind them on the street, and heard the remark, what would he have inferred? most certainly that the speaker was expecting an attack. The preparations that he had made — his conversation with his father — the injunctions of his mother, and his own conversations on the way, are of themselves sufficient to establish the fact — but if to them we add the ill feeling he entertained toward the deceased, and the whole scope of his words and manner after he entered the school room, the evidence becomes wholly irresistible. But did he intend to provoke the difficulty himself? I say there is nothing clearer from the testimony, than that such were his intentions. He had enmity towards Butler, but there is no pretence that Butler cherished any unkind feelings towards him. Then *he* had a motive to provoke a fight, *Butler* had none; and men never act without motives. Butler was a "just man and a gentleman," the prisoner himself said to his father. Surely he could not expect an attack from such a man unless he provoked it. But I have shown that he did expect an attack, and therefore he must have intended to provoke. Men's intentions can only be safely judged of by their actions, and judging the prisoner's intentions on this head by his actions after he entered the school-room, no doubt can exist in any rational mind that he went to the school-room, armed with weapons prepared for the difficulty, he was intending to bring on. But did he intend killing his adversary? For what other purpose were the pistols purchased? Did he intend to frighten Butler with his weapons? If so, why hide them till the very moment of their use? Did he intend only to wound or cripple him? If so, why aim at his heart. Were they purchased to be used only as a last resort, when all other means of escape or defence had failed? No; for he used them at the very outset of the encounter, before he was himself more injured than he might have been by "the rubbing of a coarse towel"

according to one of his own witnesses; and before he had tested the relative strength of himself and his victim. Did he intend to fight Butler a fair fight, and were his intentions changed after he found himself engaged? If so, why had he the pistols there, and knowing he was not the equal of Butler in strength, why tell Bob not to interfere, if he did not intend to use his pistols? Is it likely that he went there intending to take a whipping from Butler? certainly not. But he knew Butler could whip him, and yet he directs Bob not to interfere. The inference is irresistible, that he intended to do just what he did do — shoot down his victim the very moment, the difficulty provoked by himself commenced. Have I not thus far, gentlemen, truly represented the facts, and are not the conclusions I have drawn from them, clear and unassailable? The existence of the grudge, the preparation to avenge it — the going to seek the victim armed with deadly weapons, the intention to provoke a difficulty, and in the melee to kill his adversary, are, it seems to me, as clearly deducible from the facts proved by the defence themselves, as intentions ever can be deducible from deeds.

My fourth proposition is, that on meeting Butler in the school room, Ward did every thing that man could do to provoke a fight; and when by his goading insults he had succeeded in so doing, while yet unhurt himself, and in no danger of life, or even bodily harm, he shot his adversary. And bear in mind, gentlemen, that I am now looking only to the prisoner's own testimony to support me in the positions I am endeavoring to establish.

What says the prisoner on entering the room, Bob being the witness? — "I want to have some *private* conversation with you." Was the public school room, in the presence of forty boys, an appropriate place for *private* conversation? No; and Mr. Butler promptly requested him to walk into his private room. This Ward refused to do, and proceeded, in the presence of the whole school, to ask a question which was in itself an insult. Mr. Butler declines being interrogated? The question is repeated in a still more insulting form: — "Which is the meanest, the contemptible pup who begged chestnuts of my brother and then lied about it, or my brother who gave them to him?" Mr. Butler answers: "There is no such boy in my school." Can a milder and, at the same time, more appropriate answer be conceived. Then comes the next question, or rather, demand: — "You have called my brother a liar, and *must*

apologize?" Must! Was Butler a slave that Ward should address him in the language of a master? Is life so dear that it is worth purchasing at the price of submission to an imperious demand like this? And who is the prisoner at the bar, that he should thus lord it over one his equal in everything but wealth? Were William Butler brother of mine, I would rather — a thousand times rather — that he were sleeping in his bloody grave, with no stain upon his fair name, than have him living and dishonored by submission, such as was demanded of him there. He gave the only answer he could give without dishonor: "I have no apology to make." Now, mark the deliberation which indicates a settled malice: — "Then you must hear what I have to say to you: you are a d — d scoundrel and a coward." Did man ever use such language in Kentucky, and not expect to be struck? Did Ward not expect it? Had he not prepared himself for that moment. Bob says he was struck twice and pushed back against the door; which same door, he admits a moment afterwards, was open; and then the deed was done — a widow and an orphan was made — a young man in the first flush of manhood, just entering upon life's battle, with all life's hopes before him, was shot down like a dog, without the remotest chance being given him to defend his life. Two pistols in the assassin's hands, and if by a miracle he should be able to escape them and get the better of his antagonist, there stood the brother, with the murderous bowie knife, ready to stab him in the back if necessary. He had no chance — none, none, none! Their plans were too well laid — too coolly carried out — to leave him the shadow of a chance for life.

I have, I think, thus shown that he carried out, coolly and deliberately, the intentions with which he came to the school room; that he deliberately provoked the encounter, and as deliberately shot his antagonist as soon as the affray commenced, without waiting till he was overpowered.

I come now to the last point which I proposed to establish, and upon which turns the question whether he is guilty of murder or manslaughter. *If he was in danger of life or great bodily harm at the moment of firing, he is guilty only of manslaughter, notwithstanding he provoked the difficulty; if no such danger existed, he is guilty of* MURDER.

Was he in danger of his life, or even of great bodily harm? Butler had no weapon with which to inflict either, and well the prisoner knew it. And was not his brother at hand to interfere

and save him? No, gentlemen, he was in no danger, and *no man knew that better than he did himself.* He knew Butler's nature well; knew him to be a man who would not "needlessly set his foot upon a worm." What marks of violence upon his person attest the force of the blows he had received? Was it the *towel mark* upon his cheek, that no witness ever saw or noticed until it was pointed out to him by the prisoner? If it was the effect of a blow, it must have been such a blow as a lover would inflict upon his ladylove with a rose. Look at that skin, more fair and delicate and effeminate than that of half the females of the country, and tell me, then, if it could possibly have been more than a mere touch that produced an effect so slight? But his mother tells us, his eye was watering. Let us in charity, gentlemen, hope that he was shedding a single tear over the writhing and anguished victim he had just left weltering in his blood; that one thought of the happy little home he had broken up forever — one half-formed regret for the widowed heart and orphaned babe his hand had just made — were struggling for existence in his heart, even while enjoying his proud triumph of having slain an unarmed and defenceless cripple, *without having incurred the slightest danger himself.* Danger! He was in no more danger than if he had lain behind a log in the woods, and shot his victim in the back as he passed — and he knew it. And if there was no danger, then the deed is murder — cold-blooded, deliberate, calculating, *safe* murder.

I have thus shown you, gentlemen, from the confessed case on the part of the prisoner — from the very facts set up by the defence themselves, that ill feeling existed in the breast of the prisoner toward the deceased; that intending to have a hostile interview with the deceased, he armed himself with deadly weapons, procured for the particular occasion — that so armed he went to the school-room of the deceased, intending to provoke a fight, and in the fight to shoot his victim; — that he carried out with marked deliberation the intention thus formed — that he did provoke a fight, and, as soon as it commenced, before he was worsted or overpowered; before he had tested the relative strength of himself and his adversary, and when he was in no danger; his armed brother near, and no other enemy in sight, he shot the man whom he went there determined to shoot, in the event he would not submit to be disgraced in the presence of his whole school.

Apply the law, as I have read it to you, to these facts, and

if you are honest men, understanding the value of the oath you have taken, his guilt will be as clear to your minds, as though God's own hand had written upon his brow the verdict that he stamped on Cain's.

I have thus far, gentlemen, kept out of view the evidence on the part of the Commonwealth. I have taken the case just as the defence claim it to exist, and I think I have shown you that the prisoner stands before you *guilty, by confession.*

Let us now look at the overwhelming mass of testimony on the part of the Commonwealth — testimony that sweeps away even the broken reeds upon which the defence has sought to lean, and exhibits this crime in naked deformity before you. Before entering upon an analysis of the evidence adduced on the part of the Commonwealth, let us for a moment glance at the nature, character and position of the witnesses by whom we have proved our case. They are boys; honest, manly, open-hearted boys, whose countenances alone would win them credit in a land of strangers. Boys, old enough to see and understand and remember facts, but too young to have been contaminated by intercourse with the world; too honest to speak falsehood, too guileless to conceal the truth, no traces of concert in their stories, and yet no contradictions. The man who would doubt their truth, under all the circumstances, ought to be forbidden by law ever to be a father.

Look, gentlemen, upon this map (exhibiting a diagram) and note the position of each boy, and compare it with the story that he tells, and you will perceive that each one saw, just what he might have been expected to see from his position, and that not one of them relates any part of the transaction that he could not have seen, situated as he was relatively to the parties. You have been told by learned counsel, however, that it is something very strange that some of the boys nearest to the parties did not hear the conversation, while others farther off detail it at length. I can see nothing in this, gentlemen, not easily explained by the ordinary every day experience of our lives. Did you never sit with a book or a newspaper in your hand, while conversation was going on around you, so that though you heard the sound, you heeded not the sense of what you heard? Have you never gone to church when you had something that was anxiously occupying your mind, and sat the sermon through, and when you went home, had no more remembrance of text or sermon, than if you had been asleep in the woods? These boys

were engaged on their various tasks; — some reading, some cyphering, some writing; and it is one of the circumstances that stamps their evidence with the unmistakable marks of truth, that, while some heard the whole conversation, some heard only detached sentences, and others none of it, there is yet no *contradiction* among them in any essential particular. Their evidence is in accordance with the nature of their position, and the pursuits they were engaged in for the moment, and for that reason, if no other existed, it would be entitled to your fullest confidence.

Never, perhaps, did attempts to impeach witnesses encounter more signal failure. So hopelessly has it failed, that counsel, with a boldness that in a better cause would be worthy of admiration, now deny that they have attempted to impeach them at all. I will never complain of attempts to impeach a witness, where any ground exists to base the attempt upon. But to attempt to confuse a witness, by intimating to him that he has told a different story out of court, and asking him if he has not told this or that man such and such a story, when the counsel know that they have no evidence that he has, would be a most unfair course toward a *man* of good character. It certainly acquires no additional merit from being practiced on boys. Do you not remember that young Knight was asked if he had not told Dr. Caspari a different story from the one he told here upon the witness stand. The counsel who asked the question, must have known whether Dr. Caspari would swear that he had, and yet, when Caspari was on the stand, afterward, as their witness, they never mention Knight's name to him. So they ask Worthington if he had not told his mother something different from his statement here. He denies it, and yet they do not attempt to contradict him. They ask Minor Pope if he had not made a different statement at the examining trial. They *knew* that he had not, for the minutes of that examination were before them when they asked the question, and if he had done so, they would have proved it before they closed their case. Again, they attempt to impeach Benedict, by some man whose name I can't pronounce, who tells you in a kind of oracular style, that if he once sees and speaks to a man, he never forgets him, and in the next breath admits that he cannot recognize a single one of the boys he saw at the door. He tells you he met a boy in the street, crying, and going up Chestnut street, who said Butler struck first, and that he thinks he has seen the boy

here, with a black roundabout and white hat on. Benedict was brought in, and he says he thinks he is the boy. But Benedict has no black roundabout on, and has not had one on since he has been here. Besides, Benedict went *down* Chestnut street, and could not possibly have been the boy this witness met. They ask Worthington if he did not tell Mr. Allen, at the school house door, that Butler struck first? He says he has no recollection of seeing Allen there, and is very sure he never made any such statement. They call Mr. Allen to the stand, a very cautious and honest witness, with the air and manners of a gentleman, and what does he say: that he went to the door and shook hands with Worthington; that he asked if Butler had gone; the boys said he had; that he then asked the particulars, and received divers statements from different boys; and that to some one of the answers to some one of his questions given by the other boys, he thinks Worthington nodded assent, but to what answer it was, he is utterly unable to tell. So much for the attempt to impeach Worthington. It needs no comment. And little Pirtle, with his honest, open, manly countenance, with truth written all over it, could not escape them; they bring a little boy named Judt, who says Pirtle told him that Butler struck first. Now Pirtle has never pretended to know anything about the striking, for he was not looking at them, and if he ever did say anything to Judt about it, he was only telling what he had heard. But Pirtle says he never told Judt so, and I am satisfied that the little boy, Judt, is mistaken, and has confounded some of the numerous conversations he has most likely had with other boys on the subject, and has erroneously got the impression that it was Pirtle who told him so. And yet, after all these efforts, gentlemen tell us they are not attempting to impeach the boys, and affect a virtuous indignation, that we should defend those, whom they say, are not attacked. If they say they *have not* impeached them, I most cordially concur with them, but when they deny the attempt, they will pardon me if I differ in opinion with them, as to what constitutes an attempt to impeach a witness.

But the testimony of the boys stands not alone. It is corroborated by the dying declarations of the victim. Butler himself, standing upon the very portals of the grave; knowing that in a few short hours he must stand in the presence of his God; when all earthly hope had deserted him — hope! man's earliest, last and truest friend, hope, that gilds the darkest

cloud that lowers upon life's future—that lights up the gloomiest path that humanity is destined to tread, — that stands by our cradle in infancy, plays with us in boyhood, sustains us in the stern conflicts of manhood, sits with us by the fireside through the wintry hours of age, and when life's battle is over, gilds even the grave with its glorious sunlight — hope had deserted him. All earthly feelings were dead within that fainting heart — All! no, not all, not all. Love, undying love, immortal as the soul itself, still lived and reigned supreme. No thought of himself, no expression of the deep agony that was writhing his frame, no word of anger or reproach for his slayer — "my poor wife, my poor child." Those words, at such a moment speak the character of the man, in language more impressive and convincing than would have been the testimony of an entire cabinet and congress. Can it be possible, that such a man, at such a moment, with no motive to falsehood, could have spoken untruly? Will you give the weight of a feather to the testimony of a thousand such witnesses as Bob Ward, swearing the halter from around his own neck, and contradicted by a host of other witnesses. Will you weigh it all against the declaration of that dying man? You will not, you cannot, you dare not. If you have human hearts within your bosoms, they would revolt at the bare thought of such treason to humanity. If you are men, living, breathing men, with souls to be saved or damned, reasoning like other men, you will be forced to believe the statements made by Butler, whether you will or no; you cannot doubt their truth. Let us then, calmly and dispassionately examine the testimony as to those statements, and compare and anyalize it, and see if we can arrive at a certain conclusion as to what the statement really was. Dr. Thomson says, and I give his statement in his own language from my notes, "I asked him what their position was — he said they were clinched — that they had had some conversation — that Ward called him a d—d scoundrel and struck him, and he struck back, and he received a shot, but did not see who shot him." Yandell and Caldwell were both present at the time the declaration was made, but neither of them seem to have any very definite recollection of the language used by Butler. Thomson asked the question, and it is natural to suppose he would remember the answer. The other two were engaged in an examination of the wound, with their thoughts directed to it, and not to the conversation of their patient. It is natural that

they should have no connected recollection of it; and such we find to be the case. Dr. Thomson, the man most likely to remember it distinctly, does so remember it. Yandell, and Caldwell, who were not likely to have a clear and distinct memory of the words, or even of their general import, tell you themselves that they have not; Caldwell tells you he cannot give the words Butler used, that the idea he expressed was that he and Ward were engaged at the moment of the shot. This is certainly in exact accordance with Thomson's statement. He tells you further that Butler said he did not see who shot him. Thus both Thomson and Caldwell contradict Barlow, who says Butler said that "Ward threw his hand around and shot him." Yandell says that Butler said that Ward raised his hand, and commenced an attack, or something like that, he could not say positively what. Just such a recollection as might be impressed upon an inattentive listener by the very language that Thomson has detailed; and not only is there no conflict between the physicians, but Thomson is most clearly confirmed by the other two, to the extent that their recollection goes.

But, Barlow! Barlow, they say, contradicts them, and at the same time is confirmed by them all. Very kind, indeed, in Drs. Thomson, Yandell and Caldwell to confirm Barlow, at the same time that Barlow is contradicting them; and to most men the two things would seem rather inconsistent, not to say impossible. But according to Barlow's own showing, neither Yandell nor Caldwell were in the room. Can you believe then, on Barlow's evidence, that the dying Butler made two different and contradictory statements about the transaction, within five minutes of each other? Yet you are forced to believe it, if you do not reject Barlow's testimony altogether. I have no desire to rake this man up from the depths of infamy to which the scathing analysis of his testimony, by my associate counsel, has consigned him. Nor should I have alluded to him, but for the bold assertion of my friend, Gov. Helm, that he had been confirmed by Yandell and Caldwell. I will try, and if possible, avoid even the mention of his name hereafter. Let the dead rest. But we are told by counsel that Butler's declaration contradicts the boys; that Butler admits that he did strike Ward after being himself stricken, while not one of the boys remember anything of the kind. As much stress has been laid upon this point by the counsel who preceded me, it may perhaps

be worthy of a moment's examination here. My belief is that the laying his right hand on Ward's shoulder, is the act which Butler spoke of as a blow. To some extent it may be regarded as a blow, though given with the open hand. It would perhaps be very difficult to define the exact boundaries between a push and a blow; and I think the fair inference is, that Butler has designated as a blow, the same act that the boys have described in other language. But, suppose I am mistaken in this. What more natural and easy than that the boys might see the first blow, and yet fail utterly to see who struck the second? If you ever witnessed a fight, (and I think I may safely take it for granted that you have,) you know well that it is easy for you to remember every thing up to the first blow; but after that every thing is confused, and no man can keep the run of the fight. The astonishment of the boys at seeing their teacher stricken, would naturally confuse and alarm them, and it is perfectly natural that they should not have observed the events that followed close upon the heels of that blow.

This leads me naturally to another point made by the defence. Counsel tell us that these boys were too much alarmed and excited to notice accurately, and remember correctly, the occurrences they witnessed. When did that excitement and alarm begin? Not until the shot was fired; up to that moment they were neither alarmed or excited. There had been nothing to alarm, nothing to excite them; and all their testimony having any bearing upon the case, relates to facts occurring before the shot, when they were entirely cool and collected — so much so that some of them paid no attention to the conversation till the words "d — d liar" and "scoundrel," attracted their attention. This ground of objection then to the reliability of their testimony, has no foundation in the facts of the case. We know that alarm and excitement renders us less likely to be accurate observers of events; but it never wipes out the memory of facts observed and noted in cooler and calmer moments. It accounts for Worthington's not remembering to have seen Allen come to the door. It might account for many discrepancies and contradictions occurring in the testimony, as to the facts *after* the shooting, if any such discrepancies existed; but it cannot throw any cloud of doubt upon their relation of events that occurred in their presence, and before either alarm or excitement had disturbed their minds.

Having thus briefly disposed of the attempts made to impeach

the testimony of these boys, let us see what facts are proven, who proved by, and what opportunity the witness who proves the fact had of witnessing what he swears to.

When the Wards entered, Matt. said to Butler, "I have a matter to settle with you." This is proved by Knight, Pope, Campbell, Crawford, and Redding, and in it they contradict Bob, while not one of the boys give the same statement about it that Bob does. This, I suppose, is one of the points in which counsel say that Bob is confirmed by the other boys. A strange sort of confirmation.

The next thing that Ward said, was the question relative to the chestnuts. This is proved by every boy who heard any thing of the conversation. They all agree that it was asked *but once*, and that the word "contemptible" was used. Bob says it was asked twice, and denies that the word contemptible was used. This, I suppose, is another "*confirmation*."

Butler, in reply to the question, said if Ward would go into his room with him, he would give him a satisfactory explanation. Worthington, Pirtle, Pope, Crawford, and Redding, all swear to this. Bob. says that the answer was, "There is no such boy in my school." Another *confirmation* of Bob, I suppose, though not another soul in the house but himself heard any such words. And here let me pause to make a single remark. From the first opening of the testimony, the defence seemed extremely anxious to establish that there were no boys in Butler's room. We of the prosecution were somewhat mystified by this. We could not imagine what conclusion they proposed to draw from it, if it should prove to be so, unless that they would gravely ask you to believe that Butler wanted to lure the Wards in there and murder them both. But Mr. Marshall clears up the mystery. He says that if the prisoner had gone to the school-room intending to murder Butler, then he would have accepted his invitation, and done the deed in the privacy of that room, where there were none to bear testimony against him. Unfortunately for this very novel position, the facts show that there was a class in the room. Besides, we do not contend or believe that Ward went there with the fixed design of murdering Butler *at all events*. His fixed purpose was that Butler should either degrade himself by making a cowardly apology at his imperious command, or refusing to do this, that he, Ward, would insult and strike him. If he bore all this without resentment, in the presence of his school, then he would leave him a life, no longer

worth preserving; if he dared to resent either insult or blow, then his purpose was to slay him. That is the view we take of his intentions; and his refusal to go into the room is at once accounted for; the whole school would not be witnesses of their teacher's degradation.

All the boys testify that Ward refused to go into the room, and Worthington swears he said "he did not come for an explanation."

I come now to a most important fact — Knight, Benedict, Pope, and Crawford, all swear that Ward had his right hand in his pocket when he entered the room, and kept it there 'till he drew the pistol and fired. Another *confirmation* of Bob you will perceive, who swears he did not have it in his pocket either when he came in or during the conversation. Look now gentlemen, at the positions on the diagram of these four boys, and you will see that each one of them could have readily seen the fact he testifies to. Knight noticed it from the window in Sturgus's room as he entered the gate, and having been as he tells you, told by young Victor Ward, that Matt. was coming round to "give Butler hell," he hastened into the large room and saw the prisoner enter with his hand still in his pocket. But we are told that it is very unlikely that these boys should have noticed the position of his hands. I cannot see it in that light; the position of his hands was an extraordinary one; his coat drawn up to let his hand in his pocket; and it kept there all the time of the conversation, was an incident likely to attract the attention of any one. If we add to this the fact that the boys from their knowledge of what Victor had said, from the fact that half an hour before a servant had been sent for Victor and his books, and from all the attendant circumstances were expecting a difficulty, you will perceive that there is nothing extraordinary in their having noticed the position of the prisoner's right hand on entering the room.

But to return to the order of events from which I have digressed to notice this fact relative to the position of the prisoner's right hand. I have shown that the prisoner entered — his right hand in his pocket — that his first words were, "I have a matter to settle with you;" and followed it up by an insulting question — that he was invited by Butler to walk into a private room to listen to an explanation but declined, saying "he did not come for an explanation."

I now proceed with events in their order. The next question

propounded by the prisoner was, "Why did you call my brother a liar?" This is proved by Knight, Worthington, Pope, and Crawford; Bob states it entirely different, which is *confirmation* number, five I believe.

Worthington proves Butler's reply: "I cannot answer unless I am allowed to explain." But these gentlemen who *say* they have made no attempt to impeach these boys, say that it is very strange, indeed, that Worthington should have heard so much of the conversation while he was so far off, and that others who were nearer did not hear it; and by way of making it still stranger, they very coolly double the distance at which he really was. Mr. Marshall tells you that he was forty feet distant. Look at the diagram, gentlemen, just seven benches separated him from the parties, and these benches are three feet apart; he was not at the utmost more than twenty-five feet distant, certainly near enough to have heard even low tones of conversation if he was paying attention, while those who were nearer, though they doubtless heard, heeded not, and consequently do not remember. He swears positively that he both heard and noticed — gentlemen say they do not mean to impeach his veracity, and therefore, of course they must believe him.

And when this mild — too mild by far — answer was given, what next? "You are a d——d liar and scoundrel!" This is proved by Knight, Campbell, and Redding. Bob not willing to agree with any body about any thing, substitutes the word 'coward" instead of "scoundrel." That this insulting language was immediately followed by a blow, is proved by Knight, and by the dying declarations of Butler.

That there was a scuffle, and that Butler had his crippled hand on Ward's shoulder when he was shot, and that he was some four or five feet from the door at the time, is conclusively proved by Knight, Pirtle, Crawford, Benedict and Quigley. It is true that Quigley at first said Ward was pushed back to, or towards the door, but he afterwards stated that he did not see Butler step forward, and that Ward only stepped back one step, and was four or five feet from the door when he shot. And here comes in another fact, proved only by Crawford, who was the only witness in a fair position to notice it. When Butler had his right hand on Ward's shoulder, he was grasping with his left for Ward's right hand. Look at the map again, gentlemen, and you will at once perceive why it was this incident was not noticed by any of the other boys. Crawford was just in the position to

observe it, the others were not. But we are told that this is inconsistent with Butler's statement — that he did not see who shot him. I suppose, then, that gentlemen abandon Barlow to his fate, for Barlow says Butler did see who shot him. I hope they will permit me to congratulate them upon having buried their dead out of their sight. But there is no inconsistency; Butler may have seen his hand in his pocket, and suspecting that it grasped a weapon, may have, and doubtless did, try to grasp his arm, and yet not have seen the weapon when it was drawn. He did not see it; he said he did not, and I would believe William Butler's dying words, though an angel should contradict them.

I have thus gone through with events, in their order, up to the commission of the fatal deed. I have shown the malicious intentions with which the prisoner visited the school-room; his refusal to listen to all explanation; the insult followed by a blow, and when that was resented by a push with the open hand, (for it was nothing more,) the cold-blooded, planned, and calculated murder of Butler.

Let us now, gentlemen, look at some other facts. When the fatal shot was fired; when his victim was writhing in anguish upon the floor before him; his dying thoughts wandering far away to the loved wife and little one at home, what next? Any expression of regret from the prisoner? Any indication of that remorse that would have rolled like an avalanche over his soul, if the act had been unpremeditated and sudden? None, none, none! He coolly drew another pistol, and points at the boys — prepared to shoot little Pirtle, or Benedict, if they should approach too near, I suppose; — while Bob, drawing his bowie-knife, walks up the aisle, menacing the little boys at their seats. He denies this, but it is proven by Knight, Johnson, and Benedict. If no other evidence of premeditation were to be found in this case, it seems to me that the prisoner's conduct the moment after he fired; the absence of all expression of regret or sorrow, together with the conduct of his brother and accomplice, furnish the strongest indications that the act had been coolly planned, and the plan deliberately executed.

I have now gone over the testimony in the two aspects in which I proposed to consider it. I have first taken the case as confessed by the defence; placed it upon their own testimony, and I think, shown most clearly, the guilt of the prisoner of murder, or, at the very least, of manslaughter. Then passing

to the testimony for the Commonwealth, I have, by such an array of unimpeached and unimpeachable testimony, as can but seldom be brought to establish any case in court; proved most conclusively the malice; the preparation to kill, and the killing without excuse or palliation, and in pursuance of previously formed intentions. For such a deed the law has but one name, and that name is — murder.

And to meet this array of testimony — to break the links of the chain that binds this prisoner and this crime together—what facts outside of the current of events have been put in proof by the defence? The attempt to prove a custom of wearing arms in Louisville, I have already noticed. Instead of rebutting the presumptions arising from the fact of his purchasing the pistols, the limited custom, *as proved*, only adds to their strength.

Another fact from which the counsel, in the utter dearth of every reasonable ground of defence, try to argue a doubt as to the malice, is, that the prisoner was making preparations to go South with his family. I do not question the fact, but for my life I cannot see how it breaks the force of the presumptions as to the prisoner's intentions, deducible from his words and acts. The intention to go to Arkansas, was formed before the malice had its birth. Is it likely he would go around and tell his friends, "I am going to kill Butler, and therefore I must give up my trip to Arkansas?" Whatever else he may be, the prisoner is not a fool. Does any one suppose that he killed Butler with the intention of going to jail, or with the expectation that bail would be refused? It never occurred to him that his trip to Arkansas would be interrupted for only killing a school-master. But as I have said before, his determination to kill was only a contingent one, and he doubtless supposed that Butler would abase himself before him, though he was prepared to slay him if he did not. These considerations, it appears to me, deprive the fact of his intended journey to Arkansas of all importance in the cause.

But we are told that there existed great disparity of strength between the prisoner and the deceased, and if one, who had not heard the evidence, should listen to the learned counsel on this point, they would certainly come to the conclusion that Butler was a modern Hercules. Strip it of all the ornaments with which gentlemen's imagination have enveloped this branch of the testimony, and what does it amount to? Butler was a young man of "fair strength," weighing one hundred and thirty

pounds, or thereabouts; with a right hand so crippled that he could neither close nor open it. Accustomed to gymnastic exercises, he had acquired that sleight which indicates practice, not strength, and could do things with his arms which the witness Joyes could not do, he being, as he tells you, uncommonly weak in the arms. Does this show that great disparity of strength, that would place Ward in danger of life or limb from a conflict with Butler? The assertion is too absurd for argument. It is but a straw caught at by a drowning man.

But, the whipping; that terrible whipping! Mr. Marshall grew frantic over it; and Gov. Helm, after devoting half an hour to it in the morning, came back again to it after dinner with renewed appetite. And all this, about a fact that is not in testimony; that you only hear of through a double hearsay: Matt. Ward's telling his mother what the boy Will had told him. The court admitted the testimony for the purpose, not of proving that there had been a whipping, but of showing the motive which Matt. said actuated him in going to the school-house; and yet counsel argue before you as if it was a proved fact that the boy had been whipped. You will remember, gentlemen, that when we offered to prove all about the whipping, we were stopped by the court. We were prepared to prove by the most abundant testimony, that the boy had violated the rules of the school and then denied the fact, and that for this double offence he was punished by a few light blows with a small leather strap. But, as I have before remarked, this testimony was excluded by the court, upon the ground that it had nothing to do with the case; and yet a large portion of the time of the two gentlemen who have spoken for the defence, has been devoted to this fact, a fact not proved before you, and having no bearing upon the case if it was even in evidence. It proves neither justification, excuse, or palliation, for the act, in law or morals, in this land or in any other land, where law reigns or order has any pretensions to existence. Possibly in the unwritten code of the Camanches some precedent for such a defence might be found, but no where else.

An attempt was made to get in testimony that there was an agreement, not to whip the Ward boys. We were prepared to prove the contrary had it been necessary. Gentlemen well knew the testimony to be inadmissible, but they expected the offer of it, to have its effect upon you. It has just about as much to do with the case, as the book written by the prisoner,

which Mr. Marshall flourished before you, and even threatened to read to you, that you might as he had done, travel in fancy with the prisoner from the Danube to Mount Sinai. It is greatly to be regretted, gentlemen, that amid all the pious associations called up by a visit to that consecrated spot, the prisoner had not remembered at least one of the commands there given by God to man — "Thou shalt not kill." If our young men are sent abroad to visit the spot where the ten commandments were first promulgated, only that they may come home prepared to sin through the whole decalogue in regular order, I can only echo the wish once expressed by Jefferson, "Would that the Atlantic were a broad impassable gulf of fire."

I come now to the great sheet anchor of the defence, moored to which they hope safely to ride out the storm. Character, character, character, nothing but character: as though the history of our race was not darkened with the crimes of saints, and model men. As though the most common conclusion to an account of a desperate murder now-a-days, was not the stereotyped announcement that the perpetrator had hitherto borne a most amiable character. Byron, the greatest judge of the human heart since Shakspeare, describes a remorseless pirate as being

> "As mild a mannered man,
> As ever scuttled ship, or cut a throat."

And in a note says that Ali Pacha was the mildest mannered man he ever knew. In such a case as this, gentlemen, character is not entitled to the slightest consideration. Where the evidence is circumstantial, and the prisoner denies that he did the deed at all, there good character may come in to give preponderance in favor of the prisoner. But here, the case as proved by his own brother, as confessed by the defence, shows that his life has been one long scene of hypocrisy, got up to deceive his friends into the belief that he was kind, and gentle, and amiable. The gross insult offered by him to the deceased, is fully as inconsistent with his character as *proved* here, as would be deliberate murder itself. Mark the argument, gentlemen, for I do not wish to labor it. The proof of character if it proves any thing, would prove that he could not have acted and talked as Bob says, and as his counsel admit he did — but as in proving that, it proves too much, it proves nothing.

We have been asked in triumph by Mr. Marshall did ever

man prove such a character before? Has he forgotten the story of Eugene Aram and his crime, upon which Bulwer's celebrated novel was founded? Is not the recollection of the trial and execution of Prof. Webster at Boston, yet fresh in the minds of every reading man? And Colt of New York, who cheated the gallows by committing suicide in prison: Did not each of these men show by testimony an unexceptionable character? and yet they were guilty. They, too, with all the dark and sinister passions necessary to make a murderer, rankling in their bosoms, had through life managed to conceal from their friends their true character. For sixty long years had Webster borne concealed in his bosom the sentiments and feelings, and instincts of a murderer, and his most intimate friends had never dreamed of it, till the occasion called them into action.

The character and the opportunities the prisoner has had, the want of all inducement to crime — born and raised in the lap of luxury and wealth — no wish ungratified — no desire unsated — no means of improvement spared; these but add, if it were possible, a deeper shade to his crime — surely better things might have been expected of him. Had it been some gaunt child of poverty and crime, born and reared amid the purlieus of Five Points, taught vice and crime from his cradle, reared in ignorance, and taught from boyhood that his life was to be one long war with his species — had such a one committed the crime, there might have been some palliation for him, and yet, you would have hung him with as little hesitation as you would shoot an ownerless dog that had killed your sheep. Whatever you may do with this prisoner, you *know* you would have hung a poor friendless, homeless devil, such as I have described. No long array of the great and the wealthy of the land, would have crowded around him to shield him from the consequences of his crime. No eighteen lawyers would have been found pleading for him. And yet — and yet — before God's all-seeing eye, he would be more excusable than is this prisoner. He could plead his ignorance — his mind early warped to wrong — his fearful temptations — his Ishmaelitish fate — all these would plead trumpet-tongued for mercy. But this prisoner cannot even urge in palliation the infirmities of his temper, for his counsel have taken care to prove that he was so gentle and amiable, that it is utterly impossible he could ever have got in a passion with any one or at any one.

I have now, gentlemen, gone over the testimony in the order proposed. I have first placed the case upon the prisoner's own testimony, and shown you that he stands before you a murderer by confession. I have next reduced to order, and placed before you the evidence on the part of the Commonwealth; placing events in the order of their occurrence, and adducing the testimony by which each event was proved, until the weight of proof is strong and clear and convincing enough, to convict the holiest angel that ministers at God's right hand, were he on trial. With such testimony before you, with the memory of your oath that is registered in heaven, and the sense that you must feel of your obligations to society, you cannot say that the prisoner is guiltless, unless you are willing to take his crime upon your own souls, and bear through life a load of infamy, that will shadow the hearthstones of your children when you are in your graves.

Will you go home to your neighbors and tell them that you have done a deed, the effect of which will be to license murder in this Commonwealth? That will make the path of safety sure and plain for the assassin; that will destroy all confidence in the laws, and drive the most peaceful to the habitual wearing of arms for their protection; that will, in course of time, convert Kentucky into one wide battle-field, and substitute the revolver and bowie-knife for the adjudication of your courts? License such deeds as this by your verdict, and those strong ties of kindred, of which my friend, Gov. Helm, discoursed so eloquently, will supply the place of law, and, like the Indian mother, the widow of the slain will train up her child to hunt down the murderer of his father. If there be no redress by law for outrages so monstrous as this; if it indeed be true that the law sanctions them, let us at least know the fact. Were sister of mine so widowed by the assassin's hand, and no law existed to punish the murderer, I would counsel her to train up her babe to the high and holy duty that the law was recreant to — the duty of avenging innocent blood. The first word she taught him to lisp should be vengeance; and when his arm had grown strong and his heart bold, she should take him to his father's grave, tell him the story of a father's murder, place him on the trail of his father's assassin, and bid him hunt him through every avenue of life, as the blood-hound hunts his prey, until he had performed that duty in which the law had failed — the duty of punishing the murderer. Such will, such must be, the result, if

juries in cases like this shall fail to do their duty, and their whole duty.

It were cowardice more base than words can characterize, in you, to shrink from discharging that duty in this case, that you *know* you would perform, were this some poor and friendless man on trial. I desire to create no feeling against this prisoner on account of his wealth or position in society; all that I ask is, that they shall not shield him from consequences that would most certainly follow did he occupy a humbler sphere in life. It is all folly to talk of justification, or even palliation. You *know* there is none; his counsel know it; his friends know it; he himself knows it; and if this crime is sanctioned by your verdict, it will be through influences that lie deeper than the surface of this cause.

I will now, gentlemen, refer briefly to some of the points made by Mr. Marshall, and if there shall be neither order or regularity in this portion of my remarks, you will please attribute it to the fact that the power of reducing chaos to order, is reserved to Omnipotence alone. It was in keeping, gentlemen, with this whole case, that this prisoner should, through his counsel, insult the memory and trample on the grave of his victim. Not satisfied with the innocent blood he had shed; his vengeance not sated with the life of his victim and the anguish of his broken-hearted widow; his counsel here, in the face of God and the country, insults the memory of the dead and wrings the hearts of the living, by an expression, conveying more bitter contempt and insult, under the circumstances, than could have been embraced in any other two words of our language. Mr. Marshall speaks of the murdered man as "*the puissant pedagogue.*" Oh, was it not in keeping with the act he was defending? A mere schoolmaster; nothing more. What right had he to live if Mr. Ward thought it proper to kill him. "This world was made for Cæsar."

Mr. Marshall devoted a considerable portion of his speech to impressing upon you the enormity of the offence committed by Butler in charging Will. Ward with lying. What will he say then for his client, whose first words on coming into the school room, were to denounce as a contemptible pup and liar, a little boy some twelve years old, who belonged to the school, and over whom he stood not in the relation of teacher? If it was right for Matt. Ward to shoot Butler down like a wolf for what he had done, will it not be equally right for that boy's brother

to shoot Ward if you should acquit him? Suppose you turn Ward loose to-morrow, and that boy's brother should come to him when he is alone, and maimed and crippled as he now is, and say to him, "you have called my brother a liar and a pup, and you *must* apologize?" Mr. Ward would decline, the brother should insult and strike him, and then if Ward dared to raise a hand to defend himself, shoot him down. What jury would dare to convict him, after Ward had been acquitted? And where would all this end? I answer, in barbarism.

Mr. Marshall tells you that the boy who ate the chestnuts did not get whipped. I would like to know where he finds this in the evidence. No witness has stated it here; none dare state it, for the truth is he was whipped; and it was after he was whipped that Butler learned that little Ward was equally guilty, and that, to that guilt he added the further offence of denying it. How could he avoid punishing him then, when he had just punished the other boy? All this is outside of the record. I have not myself traveled out of the testimony, except when it became necessary to follow gentlemen on the other side in their excursions of fancy.

Mr. Marshall tells you that it cannot be that he had his hand upon his pistol or he would have shot sooner. Good God! how much expedition would he expect? more than one witness tells you, that the last words of the insult he gave, were almost mingled with the report of the pistol. One witness says "no time" intervened; another, that "it was not more than five or six seconds between the giving of the insult and the shot;" yet Mr. Marshall is not satisfied with this. So bloodthirsty does he consider his client, that he thinks if he had had his hand upon the weapon of death he could not have refrained from using it, the moment he laid his eyes upon his victim.

But we are asked, why we have sworn Sturgus as a witness and not examined him, as though there was something strange and mysterious in it. Sturgus knew nothing of the killing, and was not summoned here to testify against this prisoner, but against his brother who is not on trial. I hope the gentlemen's minds are easy now on the subject, and that no visions of Sturgus and his big stick will hereafter disturb their dreams or impair their digestion. In return, I hope gentlemen will permit me to remind them of a similar interrogatory propounded to them by my associate counsel, but in relation to which they have thus far maintained a dignified silence. *Why was William*

Ward sworn and not examined? Were they afraid to trust the artlessness of childhood on that stand? There is an old adage, gentlemen, that children and fools speak the truth — and like most old adages it has its foundation in human experience. I must be permitted to say that I admire their sagacity in keeping him from the stand. You, gentlemen, will draw your own inferences.

Mr. Marshall tells you as matter of complaint, that when Barlow was undergoing the ordeal of cross-examination, a "low chuckle" ran around the court-house among the audience. I noticed, gentlemen, the fact; I differ only in the name by which I would call it, and the feeling to which I would attribute it. There is a feeling, thank God, in the great human heart of the masses that revolts with horror at the exhibition of palpable, unblushing, and unmistakable perjury, and that feeling will find vent, no matter in what presence the crowd may find themselves. You may chain the limbs and seal the mouth, and yet the heart will find some means of utterance — and all who hear will understand the meaning. It was no "chuckle" of rejoicing that broke from the honest lips and hearts of this audience, as they listened to a story that damned itself in the very telling. It was an irrepressible outbreak of honest indignation. I am sorry that gentlemen's nerves were so shocked by it; but I hope that with proper care and attention they will in due time recover from the effects of that "chuckle."

Mr. Marshall expended a vast amount of indignation upon the bare thought that it was possible for a man born in Kentucky to be bought or bribed to commit perjury. And yet, gentlemen, such things have happened again, and again, and again. We do not however believe or intimate that Barlow was bought by Robt. J. Ward, sr. If I thought so, be assured, gentlemen, I should not hesitate to say it; but believing otherwise, I will not do injustice to a gentleman whom I believe incapable of such an act. But, that Barlow offered himself for sale, no man can doubt. He denies that he said to Mr. Ward that "he was a poor man and could not afford to lose his time." But we prove that he told May & Sullivan that he did say so; and, above all, Mr. Ward himself swears that he did. That he expects *compensation* enough to take him to California from some one, I have no doubt. I wish California joy of her intended citizen; and I will give him one little piece of advice, and not charge him a copper for it. By all means let him

change his name before he goes there. He will find the name of Barlow more inconvenient there than a blanket coat in August.

Mr. Marshall travels out of the record again to tell you, that never before has man been so visited and caressed in Hardin county, as has the prisoner in the lonely cells of his prison, and that he had made half the county his friends already. Well, gentlemen, if by making them his friends, he means that they are convinced of his innocence, I have only to say that those same friends keep very close at home, and do n't come near the court-house. Outside of some half-dozen friends of the prisoner in town, I have yet to hear of the first man, woman, or child, who has attended this trial, who hesitates a moment in his opinion of the guilt of the prisoner. This is all out of the record, gentlemen, I admit, and should have no weight with you; but when the other side attempt to create the impression that everybody outside of that jury-box is waiting impatiently for a verdict of acquittal, I have a right to tell you what my observation has taught me as to public sentiment in the county. But, as to these visits at the jail: I, too, have heard something about them, and the manner in which they were brought about; but I will not dwell on the subject. What has it to do with this case, or the guilt or innocence of the prisoner? Less than nothing. It only proves, if true, what every body knew before, that the people of Hardin county have warm and generous hearts; that they were willing to try and forget for a time the husband's guilt, that they might pay a passing tribute of admiration to the fond devotion of the wife, and strew, with a few fading flowers, the dark and thorny path his crime has destined her innocent feet to tread.

I have done with Mr. Marshall's argument. It reminded me of a brilliant piece of fire works, with here a rocket darting up to heaven, and losing itself from sight in the far void; and there a revolving wheel, or Roman candle, challenging the wonder of the listening crowd, and lacking but one merit — applicability to the case. A few words for my friend, Gov. Helm, and I have done. Most of the positions assumed by him, and calling for a reply, I have already noticed at the appropriate stage of my argument, with which they had connection.

The Governor tells us in the outset of the argument that he himself was wonderfully excited against the Wards when he first heard of this transaction. I thank him for his candor. I had heard something of that "excitement;" for it was not a

light hid under a bushel. What change has come over the spirit of his dream? He does not tell you that the facts as he first heard them are different from those in proof. Ah, gentlemen, there are a certain kind of spectacles, that have the wonderful property of making all things look just as the wearer wishes them to look; and that which was a weazel before, becomes "very like a whale," when looked at through their golden rims.

The Governor tells you that never before in his life has he heard it asserted as law, that a jury are bound to judge of facts without being influenced by feelings of compassion. He promised to show by abundance of authorities that such was not your duty, but he has cited but one case, that of Cain, as reported by Moses, in I believe 2d of Genesis. I have not the case in court, gentlemen, but have some recollection of the facts. The punishment of Cain, was by an *ex post facto* law, and in our day would be unconstitutional. He had never been forbidden to murder—he violated no law, and there was reason why mercy should be extended to him. But there is another answer to it — he was tried by the only tribunal on the universe, in which can safely be trusted the attributes of both justice and mercy at the same time. His trier was God himself, not a jury of weak and erring mortals. The laws have vested the right to extend mercy in another tribunal. It is with justice alone that you have to deal.

But the Governor asks why it was if Ward intended to kill Butler he did not shoot him in the dark. I am afraid he has not altogether gotten rid of that first "*excitement*," and that he has a worse opinion of his client's heart than even we of the prosecution have. But I have already stated more than once that we do not charge a fixed purpose to kill at all events. We charge a purpose to degrade by insults and blows, and a purpose to murder if those insults or blows were resented. You will perceive at once that such a purpose could not be carried out in the dark.

But the strangest argument I have yet heard in this, and I might say with safety in any other cause, is this: That because the act is proved to have been committed in the presence of forty witnesses, you are to disbelieve the statements of all those present, because forsooth it is improbable that the prisoner would do such a deed where he would be overwhelmed with the testimony of so many witnesses. In other words, the more

testimony you have of a fact the less are you to believe. If one witness swears to it, all right, you may believe; if two attest it, you must begin to doubt; if a dozen swear to it, of course it must be false. I have no comments to make upon a position so extraordinary. The Governor makes it matter of complaint, that while we have crucified Barlow, we have made no assault upon the distinguished array of gentlemen who have come here to testify to the prisoner's character. I can assure counsel that if there had been anything in the conduct or testimony of any one of those gentlemen that in my opinion called for animadversion, it would have afforded me infinite pleasure to have done them justice. But I must beg to be excused from violating my own feelings of right and propriety merely to gratify counsel on the other side, and give them an opportunity of defending their witnesses. I have assailed the motives of the defence in bringing those witnesses here. I have told you that though the ostensible object was to prove character — the real object was to overawe you with the majesty of great names. But for this, the witnesses themselves, can in no way be held responsible. When requested by Mr. Ward as an act of friendship to him, to come here and testify in behalf of his son, it was their duty as gentlemen to do so, without inquiry into the motives of the request. I hold these gentlemen not only blameless in this, but I am free to say that a refusal on their part to come, might in a certain event, have been matter of life-long regret to them. I desire to notice one authority quoted by Gov. Helm this morning; that Tennessee case in which it is asserted that the cowardice of the murderer is a justification of the crime. I will not stop to comment upon the consequences that would result to society from the recognition by courts, of a doctrine so monstrous. It is enough to show that it has no applicability to this case. Surely, gentlemen, after having proved that their client is a "man of spirit" will not now take shelter behind that Tennessee case, and allege that he was a coward, and therefore justifiable. I have characterized this act itself as a most cowardly assassination; but I do not mean by that to charge that the prisoner is a coward: the proof is otherwise, and the very fact that he proved to be a brave man, and acted so different in this from the way in which a brave man should act, proves conclusively the most deep seated, cool and calculating malice. When a brave man forgets his nature, and his pride, and stoops to an act of cowardice, it shows some

feeling at work in his heart, stronger than pride, and fiercer in its coolness than is anger in its heat.

But we are told by the Governor, that Matt. saw Campbell coming with the tongs. If so, why did he not shoot Campbell. But Campbell and the governor don't exactly agree about this. Campbell says he had turned round to get the tongs, but *had not got them* when the shot was fired. It is a small matter, but it is just as well to have it right.

Perhaps, however, the richest expression that has fallen from the Governor's lips in the whole course of his long and able argument, was that in which he spoke of the "*clear* statement of Barlow." It was clear, gentlemen; so transparent, that not a boy in the house but could see through it. Why I would have been willing to bet any reasonable sum, that if the fellow's pockets had been searched when he left the stand, that story written out at length would have been found upon him. I have been practising law some fifteen or more years, and never in all my life have I seen a case of more palpable self-convicted perjury than was exhibited in the "clear" story of that witness.

I have but a few more words, gentlemen, and then the case so far as I am concerned will be with you.

Never before in Kentucky have a jury had such awful weight of responsibility resting upon them. The high position of the accused — the measurless enormity of the act, even the very spot selected for its commission, all add to the interest it has excited, all add to the responsibilities devolved upon you. The example of crime has been set before, and in the very presence of a crowd of boys, and youth, and the example of punishment should follow close upon its heels, that while the memory of the bloody deed haunts them through life, they will not also carry with that memory, the still sadder one of the powerlessness of the law to protect life or avenge murder.

Gentlemen, my duty is done; yours yet lies before you. My earnest prayer is, that you may be so enabled to discharge that duty, that this prisoner will have nothing to fear but from his guilt, nothing to hope but from his innocence.

ABSTRACT OF MR. WOLFE'S SPEECH.

[On rising Mr. Wolfe called the attention of the court to the fact that the Louisville Courier had published the testimony in full, contrary to the order of the Court. The Judge said he would take the matter under advisement. Mr. Wolfe then proceeded with his speech.]

Gentlemen of the Jury: — This case has been so amply and so ably discussed, that there is little ground left for me to occupy. Under these circumstances, you must be sensible of the embarrassment I feel. I know the ability of the gentlemen connected with me in the defence, and the great disparity between myself and them. You will certainly, therefore, extend to me the indulgence that I am compelled to ask. I do not claim the ability to spread before you "a feast of reason and a flow of soul." But I do claim some knowledge of what is evidence and what is not, what is law and what is not, and for that I ask your attention.

Gentlemen of the Jury, I congratulate myself that my client has been removed to this place, where I see nothing but the works of social order, peace, and quiet. I congratulate myself that he is removed from the scenes enacted by those men, who are capable only of kindling the fires of prejudice and poisoning community. I am now here among the peaceable citizens of Hardin county, before a jury neither partial for nor prejudiced against the prisoner, and that he is free from the influence of those who have pursued his steps with blood-hound avidity. This is strong language to use towards a city in which I dwell, but not too strong. When you see the language they have used towards this interesting and innocent young man, calling him a cold-blooded murderer; when you realize the fiery excitement they have kindled in that community, you will not be surprised that we have availed ourselves of the benignant law of our country, and have removed the trial to this place. I again congratulate myself that I am here in Hardin county.

And while this exciting course has been pursued by his enemies, what has been his situation and his conduct? Broken

down by disease, immured in a gloomy prison; not one word has he uttered to prejudice the public mind in his favor; but he has patiently waited justice at the tribunal of his country 'till it should come. He has waited in quiet submission for your verdict, and I am much mistaken if he does not receive that justice that the constitution guarantees to every man.

I shall feel called upon to follow the course marked out by the prosecution; and here I must say, that in my whole professional experience I have never witnessed such proceedings. I impute nothing unfair to the honorable attorney for the Commonwealth. I allude to those of his associates who do not act under the compulsion of an official oath — who are brought here to wreak vengeance, not to seek justice. They would have you believe that the counsel for the defence look at this case through the unhallowed medium of gold — that pecuniary motives alone influence them. They would thus strip the prisoner of every protection, and in their zeal for his conviction, would pursue him with a blood-hound instinct given by the God of nature. They would induce you to believe that they come here to have justice administered, and yet in their course, they violate every principle of humanity and religion. They have told you that if you acquitted the prisoner, it would be the duty of the widow of the deceased, to train up her infant child for vengeance — to put him on the track of the prisoner, with a charge to pursue him, 'till he terminated his existence! Those that utter such sentiments are weak enough to be the willing instruments of those whose vindictiveness could not be more marked, were they devils let loose from hell. Gracious heaven, how did you receive this sentiment? The utterance of such sentiments convince me that their course is not prompted by a sense of justice, but by a mere vindictiveness. How does such a sentiment comport with the principle of law, that every man is supposed to be innocent 'till proved guilty, or with the ejaculation, God grant you a safe deliverance? I will show you that such sentiments, if right anywhere, have no application to this case. You understand that I appear as counsel for the accused, and if I make an error, your intelligence will readily correct.

The charge is, that the prisoner killed Butler feloniously. The plea is, not guilty, the act being done in self-defence. We admit Butler fell in his school-room by the hand of Ward.

Let us glance at the evidence. Ward presents himself in the school-room, and demands an explanation for extraordinary

conduct on the part of Butler. He had whipped Ward's brother and called him a liar. It is said, if an explanation was needed, the father should have gone. From what section of the Union could the utterer of such an idea come? If there is anywhere in this Union a section where kindred between brother and brother is not recognized, from such a section he must have come. Ward presents himself in this situation. His brother had been whipped; called a liar; a term which the prosecution have said is used only to provoke a quarrel. And here, I deny the right of a teacher to whip a child. The parent imparts to the teacher some of his authority, but not that authority. Solomon, when he speaks of the rod, means only some corrective impulses. So far as I am concerned I am opposed to this whipping. I have two as beautiful and talented boys as any in Kentucky, and I have told their teachers never to correct them. Why should a child be scourged? Whipping is not allowed in our colleges, and has been abolished in our navy. It is inconsistent with a spirit of boldness and bravery. It is condemned by the sentiment of the age. And yet, against all these facts, this boy was whipped. We had a right to infer that it was the first whipping he had ever received. Notice had been given the assistant teacher to produce the register, and show that this boy had not even been admonished.

[This was objected to as not in evidence, and Mr. Wolfe proceeded.]

I know it is not strictly legal, but other gentlemen have set the example. But we have shown the boy was whipped, and shown it as the motive why Ward goes to the school-house. He goes there to redress a deep and damning insult offered his brother, who had appealed to him for redress. He goes to ask an explanation of the whipping and the reason for it. Is there a heart in Kentucky that recognizes the principle that a brother has not the right to demand an apology for an insult offered a brother? Butler should have come and made an explanation. It is in proof that he had been an inmate of Ward's family; that Ward's house was near, and the whipping early in the day. But he did not come, and Matt. goes, as he should, for the explanation.

But here let me refer to Mrs. Harney. She is a lady, honorable and truthful, but her testimony is extraordinary. On

a public street, thronged, crowded, it is extraordinary she should have noticed that a gentleman had his hand in his pantaloons' pocket. But this furnishes a key to the whole. Butler was an inmate in her family; he had told her what he had done; this led her to narrowly observe the conduct of the man, and this was why Butler assumed a lofty air and refused an apology. The ground on which we shall plant ourselves is self-defence. You recognize the principle. It is not granted by society — it exists in it, and without it men would not discharge their duties. It is coeval with our existence, and no law can deprive us of it. A man in peril of life or bodily harm, is bound, in justice to him self and society, to defend himself, even to taking life. For any breach of the mutual relations of society, we may resort to courts of justice, but not in case of sudden attack.

Before I proceed further with the defence, I lay down these two points,

1. If a man carry arms for a lawful purpose, and while thus armed, commit a deed which, in certain circumstances, is criminal, the simple fact that he is armed, cannot be construed against him.

Thus, if you trade at Louisville, a city filled with strangers, and arm yourself to protect yourself against evil disposed persons there, and while on your journey there, be attacked, and in self-defence kill your opponent, the simple fact that you were armed, cannot be of itself proof of malice, since every one has the right to carry arms.

2 If you arm yourself for an illegal purpose, and then in self-defence take life, the illegality of the first act cannot connect itself with the latter.

Thus, if you procure weapons to fight a duel, and on your way shoot a robber, the fact that you carried arms for an illegal purpose, cannot be construed against you on the charge of shooting the robber.

I care not, then, for what purpose Ward armed himself, unless for the express purpose of killing Butler. If he acted in self-defence in that act, the fact that he was armed, is of no weight against him.

[Mr. Wolfe quoted legal authorities to maintain the same legal points as those made by Messrs. Marshall and Crittenden.]

The Court here adjourned for dinner.

AFTERNOON SESSION.

[When the Court met after dinner, the Judge said he had conversed with the Reporter and with the Agent of the Courier, and they had convinced him they had only furnished reports on condition they should not be published till after the close of the trial; as there was no wrong doer here, and the Publisher had withheld the papers from the vicinity of the Court, he should let the matter pass.]

Mr. Wolfe then resumed:

Gentlemen of the Jury: — While I throw off the idea that you are to discard all regard of the social relations of life, and that you are to be forgetful of mercy, yet I ask you on the law and the facts to acquit the prisoner.

You have heard the definition of murder read from the books. It must be attended with malice. You have been told that if a man seeks provocation, that provocation is no excuse. Yet the law is, that if A moves towards B and strikes him, and B attack A, and drive him to the wall, and then A kill B, he is justified, though he provoked the attack. There is not a man that would not justify killing in such a case.

You have been told that a man is not justified in killing unless in danger of death, or great bodily injury. I deny it. Suppose a man should commence beating you; must you let him beat till he is exhausted, because you are not in fear of great injury?

The books say that a man may protect himself from *assault* by taking life; *assault*, mere shaking fists. It is the assault, not the battery only, that justifies killing. But it is said the assaulted person must retreat to the wall. Well, we contend that the prisoner had retreated to the wall. The great point is the relative strength of the parties.

Let us see how the law is administered in our own country. The case of Suffridge for killing Austin, in Massachusetts, is a case in point. Before this decision, the stringent law had been held, that unless a person was in actual danger, he was not justified in killing. But this decision justifies killing when the party believed he was in danger, though the danger was not real. Other decisions have established the point that, when a man, from fear, alarm, or cowardice, kills his opponent, it is self-defence. This shows how far the doctrine of self-defence has

been carried in this country. The principles of the common law read by the prosecution were laid by men who do not know as much of human rights as we know. They were laid when cutting a tree, breaking a monument, or injuring a fish-pond, was punished with death.

The case of Stout for killing Bullock, of Coons for killing Shaffer, of Owen for killing Hare, and of the Wilkinsons for killing three men in the Galt House, were all cited as cases showing that a man need not wait till his life was in danger, but might protect himself when he believed he was in danger.

Having thus explained murder, manslaughter and self-defence, I now plant myself on the law of self-defence, and demand an acquittal of the prisoner and a justification of Kentucky precedents.

Now I come to the testimony. Here, if there ever was any foundation for the story of the Kilkenny cats, it is fairly exemplified by the counsel for the prosecution. One rejects one portion, and another, another portion, till it is all gone. Mr. Harris said the prosecution were like the youthful David going against the Philistines. I suppose he would intimate that we are the Philistines. Now I believe that it was not David, but Sampson, that went against the Philistines, and he slew them with the jaw-bone of an ass. I hope that I shall not fall by that same weapon.

Ward is charged with murder. The school boys are brought here to prove it. We have no desire to impeach them. But there is a power behind the throne greater than the throne itself. That power is Sturgus. He is superintendent of the school. He has had all the opportunity of infusing prejudice into these boys. He had not the courage to stand by his friend; he flew out of the window and run. He might have exclaimed:

I am the rider of the wind,
The stirrer of the storm,
The hurricane I left behind,
Is still with lightning warm.

It is he who has been infusing prejudice into these boys.

Only four of these boys had their faces toward the parties, viz. Knight, Campbell, Benedict and Quigley. Quigley says Ward was pushed back to the door. Campbell did not see this, but heard a scuffling on the floor, and says it was Ward's feet. How did he know? Worthington, afar off, hears every thing, and Pope, close by, does not hear. Pirtle did not hear. It is

remarkable Worthington should have heard. But thus it is at school; some boy is cock of the walk; he crows, and all the little chanticleers crow after him.

There is enough of this testimony to prove that the Wards came to the school house; that William came in last, and might have shut the door after him; that Matt. asked for Butler; that Butler came; Matt. says, Good morning; Butler bows; Matt. asks a question; Butler invites him into the next room. All this Knight says he heard; but, on cross examination, it turns out that he heard none of it. He did not mean to tell a falsehood, but he had heard this so often that he believed it was the truth. I allude to this to show the influence of Sturgus over them. Pirtle heard something about ideas of justice. Bob says Matt. asked, What are your ideas of justice? Pirtle did not hear much, or see much; he heard the pistol and saw Butler's hand on Ward's shoulder.

Again, there is a mass of contradiction in their testimony. One says, Matt.'s hat was in his left hand; another, that his right hand was in his pocket. It is remarkable they should have noticed these little things, engaged as they were in their studies. It is all attributable to that great power behind the throne, and his confederates.

But, we are asked, why is not William introduced as a witness? Their memory must be very short, or they would have remembered that Johnson had him engaged in conversation, and he saw none of this occurrence. And yet we are charged with suppressing testimony. I ask, why was not Sturgus introduced? Were I permitted to answer, I would say they brought him as a witness, but were ashamed to offer him. Dr. Caldwell is also summoned as a witness, and not examined by them. Why? Because he sustained Barlow.

The prosecution have stated that Bob testified with the halter around his neck; and that, if Matt. escaped, he would escape also. It is not so, and such is not the law. To have been an aider and abettor, he must have known the object. Suppose I expect a difficulty, put a pistol in my pocket, ask you to go as witness for another object, meet my opponent and shoot him; you are indicted for the same offence, though you know nothing of my object, and was with me for another purpose. Such is Bob's case, and yet an attempt has been made to exclude his testimony! But the learned Judge has admitted it.

Mr. and Mrs. Ward arrive at home from Cincinnati; find

William at home; ask the reason; he points to Matt.; Matt. tells the story of the whipping and the lie; what, says Mrs. Ward, Willie Ward called a liar! Now, gentlemen, I have six children. I never allow them to call each other liars; never call them so myself. What! call that child a liar, that you have watched over in sickness? — Disgrace him in his own estimation? I would not reprove a child in the presence of the rest. That is the relation I sustain to my children, and they love me for it. This is the relation Mr. Ward sustained to his children — that Matt. sustained to his brother. And when his brother was called a liar, he went to ask an explanation, and he did go. Suppose I admit he armed himself with pistols for this object; he had a right to arm himself, and he had a reason to arm himself. Sturgus, his enemy, was there. Bob goes with him — how came this? His mother requests it, and Matt. reluctantly consents. On the way, Matt. tells the cause of his going, and tells Bob not to interfere. They met Lucy Stone — a woman who has forgot she is a woman. They talk about her. Does this show a heart bent on mischief? They enter the school. Butler appears stiff. Matt. asks the question, Which is the worst, &c. What is Butler's reply? It is indicated by the testimony of Mrs. Harney. Butler knew he had done wrong. Matt. repeats the question. Butler refuses. Matt. then says, That question is settled; you have called my brother a liar, for that I must have an apology. Butler refuses. Then, says Matt., you are a d — d scoundrel and coward. What follows? Butler seized him, pushed him back, struck him twice, pushed him to the wall, and then Matt. fires. This, in accordance with the decisions in Tennessee and Massachusetts, was strictly in self-defence.

That there was no malice in his intentions is shown by his occupations that morning. The little affair about the music box, unsought by himself, shows that his thoughts were on his journey South. The testimony of the milliner who was furnishing Mrs. Ward with clothing; the testimony of the steamboat captain with whom he had engaged his passage; all show the same thing — that he was preparing to start, and therefore could not be occupied with malicious intentions.

That this was done in self-defence is also proved by Butler's dying words. He is taken to Harney's house, and Dr. Thomson sent for. You have seen him here. I asked him, if he had pistols? It was not illegal to carry pistols. It was not degra-

ding. He ought to have answered the question. But he swelled proudly up, and declined to answer. The inference is that he was armed. Suppose he should shoot a man here, would the fact that he was armed, be evidence of malice on his part? But, he was sent for, and hastens there. He interrogates Butler about the occurrence. Already are his feelings enlisted, and his judgment biased. He understands Butler to say, Ward come there, used insulting language, struck me, I struck back, and was instantly shot. I hold this is all false.

Barlow is brought here, and his character is shown to be good. He says he met Thomson, and went with him to Harney's; helped there to undress Butler. He says that Butler said, Ward came into my school, used insulting language, I struck him, and in the fuss he shot me. Now they say Barlow heard no such thing. Who is Barlow? He is a carpenter in Louisville, works for $1 25 per day. He told the same story the very day of this occurrence, at the carpenter shop, and at his boarding-house. How did he know all this? It is said the boys told him. If they did, it confirms Allen and Gudgell.

Dr. Yandell says that Butler said, Ward insulted me, raised his hand, I struck him. Here is Barlow and Yandell on one side, and Thomson on the other.

Dr. Caldwell says Butler said they were engaged. This is the same engagement that Barlow called a scuffle, and Quigley refers to.

Here, then, is the true state of the case. A young man, in feeble health, asks an explanation, is refused, a fight follows, and Butler is killed. Butler was his superior in strength, could climb ropes and poles, and perform gymnastic feats; did not give the least redress, not even the most civil reply. All this shows it is a case of self-defence, and this is also confirmed by the direction of the wound. To rebut the presumption of murder, we have shown not only an absence of malice, but shown a character for peace and quiet unsurpassed by any.

As the counsel for the prosecution has tauntingly told the prisoner to revisit Sinai, to see if he could not find there a broken fragment of the tables containing the command, Thou shalt not kill, I will read the prisoner's letter from that mount, to show his feelings while on that renowned spot.

[Mr. Wolfe here read from "Letters from three Continents" the description of Sinai and Calvary, and concluded by affirming that the author of such sentiments could not harbor malice.]

WEDNESDAY MORNING, April 26.

MR. CRITTENDEN'S SPEECH.

Gentlemen of the Jury: I agree with the counsel for the prosecution as to the importance of this case. It cannot be overrated. The State has an interest in it; not that it seeks vengeance, but rather a paternal interest, such as a father would feel. It desires that its law should be impartially administered, and its citizens mercifully protected. The defendant has a deep interest in it; his character, liberty, and life, are at stake. The feelings and sympathies of all allied to him are at stake. On all these interests, you are the arbiters selected to decide.

We all rejoice that we live where the right of trial by jury is guaranteed. Without the intervention of a jury, no prisoner can be touched in life or liberty. For ages, this trial by jury has been the inheritance of our race. For ages, our forefathers struggled hard to obtain it. Why should we continue to preserve it? Why not agree to refer the decision of these matters to the bench? The Judges are enlightened, honorable, full of integrity, why not refer the question to them? It is not because they would be swayed improperly, but for deeper and wider reasons. It is not because the Jury are equally learned with the Judge, but because they are less learned. It is because they are the equals of the prisoner under the law, and the law must pass through them before it can reach the prisoner. In that passage it is divested of all technicalities which might influence the decision of the Judge. The Jury pass over all mere technicalities, and reach the substance of the case. The Judge would lay down the law like a problem in Euclid, and by taking a scrap of law here, and a scrap there, might sentence a man to death on a mere technicality. It was to avoid all this, that the prisoner is tried by a jury of his equals. If the Judge were to err, it would be on technicalities; you go over these to the substance, and condemn only for sure and valid cause.

You are a Jury of Kentucky. I have too much respect for you and myself, to deal with you on mere entreaty or flattery. I make no appeals to a womanly feeling, or rather an unmanly feeling, but I have confidence in you. I expect you to do your duty with fidelity, but mercifully, on principles compatible with public security and public law. It is my duty to see that you can do so, and acquit the prisoner.

This is a temple of Kentucky justice. It is your sanctuary. Here law is heard, here justice is administered; carrying terror to wicked hearts, but songs of peace to all others.

It will require all your attention; we have seen nothing like it before. It will demand all your energies to weigh well the evidence, make proper discrimination on all conflicting points, both of law and evidence, and make a proper application of them.

I shall now proceed to examine the evidence, shall then call your attention to the law, and shall then show that the evidence, under the law properly applied, will justify a verdict of acquittal.

What then is the evidence? You have heard it over and over again. It would be hardly pardonable in me to recount it. My examination will be brief and general, not minute. What it is I will briefly state.

Wm. Ward, aged fifteen years, a scholar in Mr. Butler's school, comes home on the evening of Nov. 1st, and tells his elder brother, the prisoner, that he has been severely and unjustly whipped, that he did not mind the whipping, but he could not bear to be called a liar. This was at 4 oclock, P. M. The brother said he would go and ask Mr. Butler for an explanation. He intended to go that evening, but supposing that the school would be dismissed, and Mr. Butler be away, he concluded to wait till morning, and he accordingly waits. In the morning, the father and mother return home from Cincinnati. The subject is talked over, and the father consents that this elder brother go and inquire into the affair. He goes, and upon reaching the school-house, an altercation ensues, resulting in the death of Butler.

But let us examine the matter more closely. The object of his going was a lawful one. If a child has been whipped severely, is it not lawful to inquire why the punishment has been inflicted? Certainly it is. It would have been lawful for the father to have gone, and equally lawful for the brother, if sanctioned by the father. Why then infer a wicked and mali-

cious motive for doing what the law allows and reason requires? There should be no inquiry about the motive for doing a lawful act.

But it is said he went with malice. Now you have heard Mrs. Ward's testimony, and through that know Matt.'s (the prisoner's) intentions. On her returning from Cincinnati, she finds her son William at home. She asks him, why are you not at school? William feels mortified — is unwilling to tell the story of his own shame, and says, ask Matt. Matt. tells the story of the whipping, and says, I intended to go last evening, and ask an explanation, and I am going this morning. The father hears it and offers to go himself; but Matt. says I think I should go. Matt. is allowed to go. But the mother feels a little maternal solicitude. He endeavors to quiet her. She requests that Bob, a younger brother, aged 19, may go with him. Matt. had not asked this; had said he expected no difficulty; that Butler was a gentleman and would do right. But Bob. goes, at the mother's request. This is an important point. Matt. had started and got to the door. The mother says, you know Sturgus is your enemy; you have reason to expect a difficulty with him, and Matt. then consents for Bob. to go. Is not this a fair explanation? It shows with what feelings he went. Every circumstance shows the absence of all malice. The father anticipated no difficulty; saw no excitement; knew Butler was a friend to them all; and if he had had the remotest conception of difficulty, he would not have consented to Matt.'s going, but have gone himself. Did the mother think she was sending her son on a mission of death? The idea is horrible. She only feared remotely Sturgus; but between Butler and Matt. she knew there was respect and friendship. The conversation on the way shows all absence of evil intention. William is going for his books — Bob. at his mother's suggestion; and what is their conversation? Bob didn't know his brother was armed; didn't know the difficulty, and was told of it on the way. Matt. as much as tells Bob, — I didn't want you to go; I wish you were at home; but as you are here, have nothing to do, nothing to say; you are hasty and do not understand the object. But William says, Sturgus is there, and is stouter than you, and has a big stick. Matt. says, I have nothing to do with Sturgus, but Bob, if Butler and Sturgus both attack me, you may keep Sturgus off. He admits the possibility of an attack, and therefore consents that Bob may interfere in a certain contingency. Is there any thing like malice in this? No, it is impossible that any

conversation should more effectually exclude all ideas of evil intention.

But it is said that he bought pistols on that very morning. Now we have shown he had been making preparations for a journey south; that his mind, instead of being bent on mischief, was occupied in preparing for his journey, and the inference is plain that these pistols were purchased as a part of this preparation. But the pistols were purchased, and why? Matt. had been told and knew that Sturgus, the assistant teacher, was his enemy. It was barely possible that this visit might lead to difficulty: he had no strength, was very feeble. The bare possibility of a difficulty was a sufficient reason why he should buy pistols. In the country it is not common to carry pistols, but in cities it is. If a man in the country purchases a gun, do his neighbors expect he is going to kill somebody? A man may buy pistols for murder to be sure, but if an act can be accounted for by a thousand good motives, shall a malicious purpose be respected? What relations will exist in society, if the worst possible construction is put on every act? He might buy the pistols for self-defence. This is constitutional right, a natural right, a right given by our Creator, and which no human legislation can take away. How nugatory and vain this right, if I choose to buy pistols for self-defence, and then, in some possible combination, use them, and am then charged with murder. If the act is in itself susceptible of a criminal construction, will you adopt this construction, and throw away the thousand good motives? But reason and humanity warrant no such construction. Taking the conversation in the family together, you see the true object of carrying the pistols, and the remainder of the conversation on the way shows the absence of all malice. They meet Lucy Stone in her Bloomer dress, and it affords a subject for light conversation common among young men. What a conversation for a man about to commit murder! How inconsistent with a malicious motive. I take it then there was no intention of committing murder, and I conclude that the purpose of going was lawful and pacific, and that the prisoner, when he entered the school-house, was free from all criminality.

Now is there anything occurring after he entered that marks him a murderer? There are none present there but the Wards, the teachers, and the scholars. William is not a witness. To prove the occurrence, Butler's scholars are brought here as witnesses. I wish to explain in what light I regard their

testimony. The Prosecution have assumed their defence, as if they expected us to assault them. They are not assaulted. This is a cheap advocacy, to defend when no one assaults. But I have a right to say, they are nothing but school boys, summoned in a case where their teacher was a participant; were badly frightened; that Matt. was there but five minutes; and that they had been told not to look around when persons were in. Then imagine the panic when this affair occurred. Men would be startled; then, how much more so these boys. Benedict says he could think of nothing — could see nothing. This is a fair sample of their excitement. It is a fact they saw the transactions but partially; that they only occasionally saw Ward and Butler; that they were attending to their lessons. This statement is sufficient to determine the weight to be given to their testimony. None of them saw the whole or heard the whole; a great agitation followed which confused in their minds all they had previously seen. But you have been told they were calm till the pistol fired, and that the confusion following only confused them as to the acts following. Is the human mind so constructed that the confusion reaches back only to its cause, and leaves all behind that clear and unmixed? No, the confusion covers the whole transaction; that is the natural result. Here, then, are a parcel of frightened school boys brought to testify in a case of life and death, with minds confused, and each, even if calm, knowing only a patch here and there of the whole history. In such circumstances can their testimony decide that important point in this case, who struck the first blow? In the course of your lives, you have seen a fight in your own court yard; you have watched it as it progressed from words to gestures, and to blows; and can you swear who struck first. Now, transfer the case to the school house, and ask these boys, inattentive, otherwise engaged, who struck first, and who next; and try to make out a connected history by a fragment from one and a fragment from another. The boys are innocent, honorable, intend to tell nothing but the truth; but their minds are confused, and they cannot give a consistent history of the whole. Boys from eleven to nineteen years of age, they were not in a condition to give a correct narrative in a case of life and death.

Another thing is important to be considered. These boys have been under the tuition of Sturgus. It is natural to infer they are disposed to view everything in favor of their master

With all these prepossessions, — being under the tuition of Sturgus, the cause of all this difficulty, the hot pursuer in this case, — they are brought here under his special care. Do you suppose it unreasonable, the boys being unconsciously already too partial, that Sturgus, without their knowing it, should direct their attention to particular parts of the evidence, and make it occupy an undue weight on their minds. He is the enemy of the prisoner, summoned here as a witness, but for some reason not examined; the teacher of these boys, and their companion and guardian to this place. Put all these things together, infer other probable facts, and you will see the great probability of his having exercised a great influence over the boys.

Now we come to their testimony. No two agree; in some particular facts some agree; but there are remarkable discrepancies, contradictions, patches here and there. If they agree in anything it is in this: they say Matt.'s first words to Butler were, "which do you think the worst, the contemptible puppy who begs chestnuts and then lies about it, or my brother who gives them to him?" Now is not this an extraordinary commencement to a conversation? Do you think such a course probable; is it not rather awkward and singular? Now take Bob's testimony. The boys admit they did not hear all. Some preliminary conversation is wanting. Bob supplies it. According to his testimony, Matt. says, "Mr. Butler, I wish to have a conversation with you." Mr. Butler says, come into the next room. Matt. says, no; the difficulty happened here. Then the question of Matt. comes in naturally, "What are your ideas of justice, the boy who begs the chestnuts," &c. Pirtle's testimony sustains this. Bob's testimony connects in a consistent whole, their disjointed statements, their fragmentary sort of talk. He stands here, I admit, in a position which entitles you to discredit his statement, unless you find evidences of its veracity. The boys must be appealed to, to confirm his testimony. Thirteen scholars have testified, all varying in their testimony. Knight says Butler seized Ward by the shoulder. Campbell says he clinched him. Bob confirms them. Worthington says he did not hear Matt. call Butler a d—d liar. Bob did not hear it. Several pretend that they heard that expression, but Worthington, who heard more than all the others, did not hear it. Bob says, Matt. asked, "What are your ideas of justice," &c. Twelve out of thirteen of the boys omit this expression entirely, yet little Pirtle says he heard

something about ideas of justice, and chestnuts, but didn't hear the rest. This is a singular confirmation of Bob. Crawford didn't hear the d—d lie. Benedict says Matt. asked the question about the *boy* who begs chestnuts. Others say that Matt. said, the *puppy* who begs, &c. Bob confirms them all, and says the question was twice repeated, and that once Matt. said *boy*, and the next time *puppy*. Again, Quiggly confirms Bob in his statement that Matt. was pushed back to the door. Quiggly also confirms him in his statement that he told Sturgus to stand off. Campbell says he told him, come on, thus giving a challenge. It is not necessary to pursue this testimony farther. But little reliance can be placed on the testimony of these frightened school boys, partial as they were to the deceased, and having been since under the tuition of Sturgus. Their testimony, properly weighed, confirms Bob.

Now take Bob's testimony. It is his testimony that makes order out of confusion, gives a consistent view of the whole matter, contains nothing unreasonable, and makes all the occurrences natural and conformable to the operations of the human mind. Stronger confirmation of its truth cannot be furnished.

Next, what are the facts in the school house. Matt. says, I wish a conversation with you. He did not say a private conversation, as the prosecution say, for he did not want a private conversation. Butler asked him into his private room; Matt. says, "no, I want it here; here the difficulty occurred." Is not this perfectly natural? What should Butler have said? He knew the trouble and its cause. He should have said, "Well, let us call up the boys, and inquire into the facts." William had given some chestnuts to the boys the day before, and the only question was, whether he gave them before or after the class was called to order. If given before, as William insists, it was no offence; if given after, he has told the falsehood for which he was punished. The only question was about the time. Butler ought to have re-investigated the matter. He stood in the relation of a father, and ought to have shown a father's feelings. There ought to have been no buttoning up of coats, no standing on official dignity. If the questions were not politely asked, he ought to have granted the request. Suppose he did see Matt. irritated, he ought to have said, if I have done wrong, I will correct; let us examine the facts; here is the proper place. But he refuses, buttons up his coat and says, "I am not to be interrogated." Matt. says, "I have asked

a civil question," and then he repeats the chestnut question, saying puppy instead of boy. This shows a little irritation, I admit. Butler says, no such boy here. Matt. says, "you called my brother a liar; for that I must have an apology." Butler refused. Matt. says, is your mind made up? Butler, it is. Then, says Matt. hear what I have to say: you are a d—d scoundrel and a coward.

Now, let us stop at this stage of the case. Matt. had gone for an explanation, was refused, and then had returned the insult. That closed the matter on the part of Matt. Ward. That was the satisfaction he intended to take. Was it probable he would follow this up by a blow? That was not the way such things were done. It was for Butler to act next. Matt. had done. Butler had refused an explanation; what should Matt. now do, shoot him? No, he had taken his satisfaction, and would leave the matter forever. The next step is on the part of Butler. He was an amiable gentleman, but a brave man, it is said. Campbell knew he would resent the insult, and Bob tells what was done. Butler struck him once, twice, pressed him back to the wall, crushed him down. Then, and not till then, Matt. fired. This is Bob's statement; Quiggly confirms it, and don't you see it must be so? Matt. had finished; Butler commenced the attack. Campbell expected he would strike. Quiggly says he did strike. Bob says he had pushed him back. This is the testimony as proved by the witnesses, as confirmed by Butler's dying words. Butler had him in a position of extreme danger, where he feared great bodily harm.

Does not this show this sad occurrence to be the result of a sudden affray? There was no malice on either side. Ward went for a legal purpose. After some conversation not warranting an assault, Butler assaulted him. Ward made no assault at all. Who says he struck a blow? Would he strike after such an expression as he had just made to Butler? You see the delicacy of his frame, would he fight? Butler was above the common size. Only show of a blow from Ward is, one of the boys saw him gesticulating, and thinks he struck. Would he strike, in his feeble condition? It would be ridiculous, in his state of health. He did not strike. None of the thirteen boys say he struck. But Butler did strike. Quiggly says he struck; Bob says he struck. Butler had reduced him to a position where he was justified in shooting, as I shall show by the law.

What is the law applicable to this case? I shall read but little. I shall not confuse you by reading a mass of decisions. It will not satisfy your consciences hereafter, that, in a case somewhat similar, the jury found a verdict of guilty. These various decisions are founded on abstract principles on which judges differ; they are based on nice discriminations which confound lawyers. You will prefer to know something of the simple principles on which the law in this case is founded.

I shall contend that the case made by the evidence is neither murder nor manslaughter, but homicide in self-defence.

Murder is the killing of any person with malice aforethought. Now, you know the difference between a wicked, malicious killing, and killing in a sudden quarrel. In point of law and morals, the intention characterizes the act. Malice is a necessary ingredient of murder, and what is malice? It is that depraved and wicked state of mind which develops the ordinary symptoms of a wicked, depraved and malignant spirit, and shows a heart regardless of social virtue and deliberately bent on mischief. This is enough to show that this crime is not murder. Ward had no grudge or malice towards Butler, but all the evidence shows a different state of mind. There was no malice, and consequently no murder.

Next, is it manslaughter? This is killing, without malice, and in the heat of passion. You see how the law graduates these crimes according to the intention. In manslaughter, the law allows passion to be pleaded as a modification. If two persons are in conflict, on equal terms, and one in the heat of passion kills another, that is manslaughter.

But when a party is beaten or assaulted, and placed where life is in danger, or great bodily harm feared, and then he kills his assailant, the law calls that excusable homicide.

[For a definition of these crimes, Mr. Crittenden read from 4th Blackstone, 138 (151), 143 (191), 147 (195). On the right of self-defence, Blackstone 2 (3). For definition of malice aforethought, Russell, 482. After commenting on these points of law, and illustrating them, he proceeded.]

The counsel for the prosecution who have preceded me, have referred to cases where the party killing sought the difficulty. But these cases have no application here. Ward sought no contest; he sought an explanation. He made no assault on

Butler. He had said all he wished, and stopped. It was the natural end. If renewed at all, it was renewed by Butler. Ward had made no assault up to this time. The words he had used did not amount to an assault, or justify an assault. [See Wharton's Crim. Law, 311, 313.] Ward had made no assault, opprobrious as were the words he used; and these words will not justify making an assault. Redress from abusive words must be sought in a course of justice. Butler, in striking, made the first assault, and it was illegal. He set the laws of his country at defiance by resisting, by assault, words which are not an assault. Ward did not flee, for he could not flee. He was pushed to the wall, and crushed to the earth.

Have I not brought the case within the limits of the principles of self-defence? Was there any probable escape? Campbell had got the tongs, Sturgus was around, Butler was the stoutest. Ward was no combatant, especially with a gymnastic like Butler. For Butler, with his fist hardened, its joints stiffened, with his strength cultivated and increased by exercise, was superior to Ward. Under the circumstances, what might Ward apprehend? You may have some difficulty in determining the actual danger, but that is not the question. What did Ward think of the actual danger? He had not a moment to weigh probabilities and decide; he had to determine in a moment. Did he shoot in malice, or in apprehension of great bodily harm? In Tennessee, it has been decided that if a person believed himself in danger from an assailant, though he was mistaken in so believing, and under this belief should take the life of his assailant, he is justified. If Ward believed himself in danger, there is no guilt, no criminality, and he deserves a verdict of acquittal.

I have spoken before about Butler's dying declarations. He was asked about the position of his arms when he received the shot. It appears he had his hands elevated, for when his arms were raised, the probe entered. It went wrong afterward, but whether that was the fault of the doctors or the probe, I cannot tell. This fact shows anatomical proof they were raised. According to Dr. Caldwell, Butler said they were engaged. Why engaged if not in a contest? Dr. Thompson says that Butler said Ward struck me, and I struck him. Here then Butler admits he had struck Ward. They were then engaged in a conflict. Thompson inquired for an anatomical reason. Barlow had inquired before, and asked particularly how it hap-

pened, and Butler said, Ward cursed me, I struck him, and he shot me. It appears from this testimony of Barlow, that Butler struck first, and was provoked thereto by words, which are not a legal provocation. But the counsel for the prosecution say this could not be, that Dr. Thompson says he was not there. But Thompson was busy, was attending to his patient, could not see all in the room. Barlow was not so occupied, and he so describes the condition of Butler, his dress, &c., as to prove he was there. The Doctor asked for an anatomical purpose, and Butler answered for that purpose.

Barlow has been assailed, and if words could be any justification for assault, I think Barlow would be justified. Carpenter found a feast in attacking this humble carpenter; his eloquence flowed out naturally. Now how does he appear to you? If he is degraded, it is the lawyers, not the law, that has degraded him. I care but little about Barlow's testimony, and it has but little weight. He has acted imprudently, but I think not dishonestly. The same story he told here, he told Mays and Sullivan, and to Mr. and Mrs. Crenshaw, the day of the occurrence. Yet he is said to have framed the story to get entrance to Ward's house. He is confirmed by the facts and by the testimony of others, bears a good character, and if he has lost it, has lost it since he came here. His testimony is confirmed by the testimony of Bob; Butler dealt in general terms; Bob gives the particulars. The doctors only listened for anatomical reasons, Barlow for the answer to his question.

Let us now look back over the testimony. The boys all say that Matt. Ward came into the school room with his hands in his pocket. It is singular that such a little circumstance should have been noticed by the boys. But Sturgus no doubt thought it important. The prosecution keep Matt.'s hand on his pistol all the time, and they allow Butler to use only his right. The object is easy to discern. Matt. must be shown to harbor murder in his heart, and Butler's right hand is crippled. The matter has been talked over before the boys till they have believed the fact. If Butler's hand was so crippled, would he not have acquired the use of his right? You have been here eight or ten days; can you tell how I carried my hands, or how any man carried them, on entering this room? The boys must have been mistaken. They had been told not to look at strangers; there was no excitement to attract their attention,—no difficulty till Butler seized Ward; how came they to notice his

hands? I would suppose no other man ever entered that school, the position of whose hands the boys can all describe. This little matter is rather below the level of observation. It is impossible they should have all noticed it. A strong imagination has supplied the place of a strong memory. The boys have been trained, influenced unconsciously. Sturgus was sore towards the Ward family. He and Butler had probably conversed about the matter, and he had told Butler to stand boldly, and make no apology. Such a supposition is not improbable. Butler was controlled by this bad adviser, and thus refused to explain. If the whole truth could be told, this would be found to be the fact.

I have now gone through the facts in the case, and have shown the pistol was not fired till the prisoner was in danger of great bodily injury; and from the law, I have shown that killing in such case was excusable homicide. I think I have made out these facts and this law. Here I might rest the case, but there are some things it is my duty to refer to.

This young man, the prisoner, has been pursued and prosecuted as no one has before him. The act for which he has been arrested, has been spoken of as a cold-blooded murder, without provocation and without palliation. For months and months, these revilings have been spread over the country on the wings of the wind. It does not affect the case that this has been done in sincerity and truth, or not. His trial has been anticipated by the press. He has borne it all, and his only refuge is in the jury. You see how little is the case before you like the one presented in the papers. Through these he has now passed, and stands before you for your verdict.

In addition to this persecution before the trial, the counsel for the prosecution have, during its continuance, exhibited unusual vindictiveness against the prisoner. Mr. Carpenter was eloquent in abusive and denunciatory language. Why was this? In seeking to convict, what business had he to turn upon and torment the prisoner? What an insolence of the bar to the accused! Is this administering the law in the spirit of the law? Is not this a merciless course? Your duty is too responsible to be thus trifled with; it has no congruity with such language. After all other admonitions to discharge your duty were exhausted, he took a sublimer flight. He transfers you, in imagination, to the bar of your Creator, and endeavors to make you believe that it will be a great solace to you in that trying

day, to remember that you have convicted the prisoner! What a consolation! what a plea! When you stand begging for mercy, to tell your Creator that you had no mercy on a fellow-being! What do you think would be the effect of such a plea at a bar where the governing principle is,— to him that showeth mercy will mercy be shown? Your plea will then be for mercy, and your argument will be that you showed mercy to others. Carpenter tries to convince you that your best plea will be, that you convicted Matt. Ward here. Do not you think he failed?

I remember reading in some German fable, that when God had designed to create Man, he summoned his attributes, Truth, Justice, and Mercy, and asked their advice. "Create him not," said Truth, "he will deny the truth, and fill the earth with falsehood." "Create him not," said Justice, "he will fill the earth with blood, and the first-born of the race will slay his brother." "Create him, create him," said Mercy, "I will follow him in all his wanderings, and by his experience of the evil consequences of his actions, I will bring him back to justice and to truth. The moral of the fable was, "Learn, O man, to be merciful to thy fellow-beings." That moral I impress on you.

But you have been told you can show no mercy; that that belongs to the Executive, not to you. Pray who are you? A few days since, you were merciful men, full of the common sympathies of humanity. As such you were brought to that box. But now you are told to divest yourselves of all mercy, to set there mere mathematical calculations, cold as a block of stones, mere judges of naked fact and law. Is this the blessed right of trial by jury, for which our fathers fought?

You are to administer the law in mercy. Of the fact you have the exclusive right to judge. The law is fixed; you must take it as it is; but of the facts, you are the sole judges. Now, cannot one judge of the facts more rigorously or more mercifully than another? You can put a merciful construction on the circumstances. In this, there is ample and legal ground for mercy to act. Now apply this principle to this case. Why did Matt. Ward go to the school house? The accusing spirit will say, to commit murder; deliberate, predetermined murder. The merciful spirit will say, he went with no such intentions. In deciding this dispute, you have a duty to discharge; discharge it like merciful men. The law is full of mercy. Its principle is, that it is better for ten guilty men to escape, than that one innocent man should suffer. The application of this principle

is enjoined upon you. It is this that makes the jury the glory of our country, the proud boast of our institutions. The prosecution would make you cold calculators; they would have you brush all dust from the scales of mercy; to put this naked fact in one scale, and that scrap of law in the other. Is this the sole duty of a jury?

Again, the prosecution have attempted to excite a prejudice against the family of the prisoner, and you have been told that they are aristocratic, seclusive. I am not apt to take offence at such designations, myself. I belong to the poor class. No one class in this country is foolish enough to claim superiority over another. Am I to be envious because one man is more prosperous, pecuniarily, than myself? Are not you pursuing wealth yourselves? Then what is the object of these remarks from opposing counsel, when they talk about Ward's wealth, his splendid mansion, &c. Don't you see the unjust, the contemptible object they have in view? What right have they to raise a feeling of anger in one class against another? As affects the public, we are in law all one. Why then attempt to rouse the shadow of the contrary, to get up a low, contemptible feeling against the prisoner? This is all out of the case. If they expect to raise a low, envious feeling in your hearts, they have mistaken the men. There is a class who might be thus influenced,— a class who have no merit in themselves, and therefore despise it in others. You are not afraid that any class will claim a civil superiority over you.

I now come to a consideration which penetrates every feature of this case, and it explains it all,— this is the prisoner's general character. I cannot go over all the witnesses. The amiability and gentleness of his character, from boy to man, is conclusively proved. Such a character any of us might be proud of. I am one who believe a great deal in the blood of men, and the characteristics of men. I believe in the honesty of an honest man. If a man for twenty years has pursued an upright, honest course, a little deviation, in a single instance, can be overlooked. His general character is the key that opens and explains the particular act. The general character of the prisoner, as a mild, amiable, courteous gentleman, has been satisfactorily established. You see how many mechanics have been his friends. In feeble health, of a literary turn of mind, avoiding all drinking saloons and broils, he may appear exclusive to some. This is all the result of his health. But his intimates, as few

as they were, were of all classes. He was a courteous gentleman, respecting the rights of others, and insisting on his own.

It would be a hard duty for you to convict such a man. But it will not be your duty. It will be your happy lot to restore him to society, and send a thrill of happiness through a whole family. Your lot is surely one to be envied.

My task is nearly done. The fate of the prisoner is in your hands. It is for you to say whether the captive shall go free from his bonds, or whether he shall be consigned to disgrace and death. What power under this bright sky is more like omnipotence than that which you possess — the power of life or death. Are you not awed with the majesty the law has conferred? You are not like marble statues, but are humane men, and as such will frame the verdict you must pronounce.

The memory of a verdict consigning a man just commencing life, with all the hopes and expectations of the prisoner — a verdict that shall cut all the cords that bind him to society, and send him to an early grave, will often come up in your recollection, and cannot be forgotten. And when that clamor that has filled the air for several months shall have died away, and you shall think you have dealt hard with a brother's life, and you remember there was a doubt in your mind about the case, what a moment that will be! The thought will remain a cancer in your hearts. But should you acquit, and subsequent developments show that you ought not to have done so, the matter is easily fixed. The prisoner has not entirely escaped. He is left to Heaven and the future. You can say, I did not take on my soul the task of pronouncing a verdict of guilty in a doubtful case. But if you find you ought to have dealt mercifully, and did not, that thought will be the corroding cancer of your lives.

Pronounce no such verdict, but on the most solid ground. Keep on the safe side of your oaths, and on the safe ground of humanity. Have that sure and solid ground, and save yourselves, and save the prisoner from a dishonorable grave. It will not satisfy you in after years that your verdict was justified by some nice distinctions in law. You must believe this man is a murderer, not by some nice legal point, but by undoubted evidence that requires no argument. If you try to make out a case by picking up a scrap here and there, you are wrong at the start. You must have a case that decides itself. The moment you try to make out a case, my life and yours is in danger. When you have returned to your homes, then subtle distinctions

will all have been forgotten, the man is hung, and you cannot tell why. If legal logic is to be the foundation of your verdict of guilty, give it up at once. The law makes you the shedders of blood; have substantial, durable ground for your action.

I am no advocate for a reckless or a technical disregard of law. I wish the laws of my country obeyed, or their penalties enforced. I have looked at this case calmly; have seen many things I wish were different, but I see no malicious motives, no murder, no felony. You are not to dispense with law, but I contend you cannot discharge your duties under the law, without a verdict of acquittal. I am not contending for the law as it is administered, but as it is reasonably interpreted.

There is another consideration of which you are not to be unmindful. We are all conscious of the infirmities of our nature. The law makes allowance for these infirmities; our Creator makes an allowance. He has constituted us with weakness, will he punish us for acts resulting purely from this weakness? An All-Seeing Judge will make distinction between malicious purposes and natural infirmities. He knoweth our frame, He remembereth we are but dust. He will judge us —as I ask you to judge this testimony—in mercy. With such judgment, there can be no verdict but acquittal.

The case is now closed. I turn it over to your hands. Consider it well and mercifully before you pronounce a verdict—a verdict which shall assign this man to life or death. This is no figure of rhetoric. Life or death is in your hands, and as you pronounce, so must it be done—so may it be done.

Remember, it is the blood of a Kentuckian you are trying. That is something in my estimation. He is of a race that never spared its blood when his country demanded. They were pioneers in the settlement of this State. This is a small matter in the eye of the law, but it is something in the eyes of those who are to take upon themselves the responsibility of this man's life.

You must know the agonizing feeling of this family. You know the interest they feel in the matter. You are fathers, and know a father's feeling. You have kindred, and know the corresponding feeling.

Your duty is an awful one. You can spread dismay and dread all around you. But such a result will not satisfy those who are pursuing this prisoner. They will turn their backs upon you as soon as their object is accomplished.

But it has been announced that I am a volunteer in this case. It is true, I have volunteered, and whose business is it? Has the spirit of persecution gone so far against this man as to drive from his side all counsel, and deprive him of the right to defend himself? I have known him from his boyhood; have known his family from my boyhood, and have felt a friendship for them. Under these feelings I have volunteered, and with feebleness have assisted in this case.

If, after a candid consideration of the case, you have a reasonable doubt, the prisoner is entitled to the benefit of it. When you have given a reasonable and merciful examination to the facts, and then feel a doubt, that is a reasonable doubt, and you are bound to extend it to the prisoner.

I have occupied much time, and left a thousand things unsaid, which you will readily supply.

AFTERNOON SESSION.

SPEECH OF MR. A. ALLEN.

Gentlemen of the Jury:—In consequence of illness and debility, I shall not detain you as long as those who have preceded me. The law and the facts have been gone over, and repeated again and again. I have every confidence in your intelligence and watchfulness, and doubt not you are as well posted up in the testimony as the lawyers. But let me assure you, that your entertainment has passed. I am exhausted, and speak to an exhausted jury. I follow one of our most talented and eloquent men in one of his ablest efforts. While you accept that, you will not reject a feebler effort.

Before entering upon this case, I wish to make a few personal remarks. The circumstances attending this case have produced a great excitement throughout not only Kentucky but the Union. There has been much speculation about the verdict you would pronounce; also, about the course I should pursue. I have been pronounced both the enemy and the friend of the prisoner. The fact is, I am neither. I have never met him half a dozen times in my life. But, were he either friend or enemy, I think

I could administer the law as it requires, and march up to the line of duty, even if my steps crushed my heart's strongest impulses. I appear before you as the agent of no man. I am not hired, but appear in the discharge of an official duty. As to the manner I should discharge that duty, I have received no hint from the friends or enemies of the deceased.

My first duty, as Attorney for the Commonwealth, is to lay down the shield of the law in favor of the prisoner. He must be presumed innocent until he is proved guilty, by such testimony as admits of no reasonable doubt. And here, permit me to say, that I differ from Mr. Crittenden in the definition of a reasonable doubt. You may doubt the truth of a witness, his means of knowing that whereof he testifies, &c., but having admitted that, you cannot entertain a reasonable doubt of the fact that testimony establishes. Indeed, it is impossible the Jury should have certain knowledge of the guilt of the prisoner. You must attain that through the information of others. If a hundred men swear to a certain fact, and you believe them there is still a doubt. There is a difference between belief and knowledge. Is the doubt still lingering a reasonable one? Though the law does not presume that every killing is necessarily malicious, yet the fact of the killing be established, it requires less evidence to establish the malice than to establish the killing.

I shall now examine the various positions of the counsel for the defence.

The first great bug-bear is, the public Press has inflamed the public mind; that the Louisville Courier and Democrat have poisoned public opinion all over the country. This I deny; but if the charge were true, other papers have not been silent. The Elizabethtown Register and New York Herald have contained articles in favor of the prisoner, what was their object — to influence the public mind in favor of the prisoner? I have the same right to make this assertion that they have to make theirs. But both classes of papers have failed. Never was there a jury so easily obtained; showing them in what has been called the Commonwealth of Hardin, public opinion has not been poisoned. But it is said that since this trial commenced, inflammatory letters have appeared in those papers, calculated to excite the public. The public are not trying this case, and those letters are excluded from the Jury.

Mr. Marshall took the position that Ward had a right to attack Butler, because Butler had called his brother William a

liar. And yet, if this is so great a crime in a teacher, who stands in the place of a parent, what shall we think of Ward himself, who goes into the school-house, and calls Butler himself a d—n liar. How much worse is Ward than Butler? Besides, the character of Butler is admitted as being good, pious, and honest. Then he believed the truth of what he uttered. Yet, Matt. calls him a liar. No provocation can excuse such words to such a man. As to the whipping of William, we have not been permitted to show its justice or its extent.

Again, Mr. Marshall states that we charged Ward with wealth, to excite your prejudice. We have shown that, from his position, wealth, and influence, he was able to present his case in its strongest light, and to procure counsel and witnesses. That is all the object we have had in referring to his wealth. In the heat of argument, we cannot always be particular in our expressions, and may say something to hurt the prisoner's feeling. It is necessary to say disagreeable things, but I shall try to use decorous language.

Mr. Marshall has laid down the law, and just to show you how his law sounds, divested of its elegant expressions, I will give it in common language, and it is thus: A man has a right to shoot a fellow, if a fellow tries to whip him. That is it, in plain language. Further, he says if a man is pushed back by another to an obstacle, he may shoot, stab, strike his opponent, no matter who begun the scuffle, or who is in fault. This is a part of the glorious Kentucky law, as yet unsoiled by printer's ink. What is to be the effect of this law? You and I think differently about a proposition. The common law and the statutes should decide the matter. But we refer it to the Kentucky law. You are young and stout, I am weak; I slap you, you run me back, I pop you, because I am run to the wall. It is not necessary to dwell longer on this law, or on Mr. Marshall.

Gov. Helm tells us that a man of good character like the prisoner, could not have intended murder. A better character than the prisoner has proved, I never heard, yet the human heart, who can judge it? This good character is no proof against guilt. Character only goes to make clear what is doubtful. Dr. Webster, of Boston, proved by ministers, lawyers, and doctors, as good a character as that of the prisoner, yet he committed murder and confessed the crime.

But it is asked, what was the motive of Ward to go to the school-house? A code has obtained in Kentucky, not confined

to Louisville, but extending throughout the State. It is called the code of honor. If you look in a particular way towards a person, approach a woman supposing her to be an acquaintance, and she is not; tread on another's foot, they are legitimate causes for this code. It contains this peculiar feature, that a man is judge of his own wrongs. Under this code Ward thought an injury had been offered to his family, and he goes to force an apology, and if Butler refuses, he is prepared to take his life. From this code, this difficulty arose. Butler was unwilling to explain. The words he used to the little boy were not an insult, because he stood in the place of a father. It was his duty to punish crime in the boy, and tell him of it. Boys should be punished as well as men, and this case shows the importance of children being whipped. Mr. Wolfe says he has given injunctions that his children should not be whipped. It is a pity that such commands should be given. I am conscious that I owe much to the numerous floggings I received, and perhaps to these the fact should be attributed that I stand here an advocate, not a prisoner.

It is said Matt. Ward had a right to go, because he had been delegated. The father had no power to delegate his authority. Besides, Butler did not know he was delegated. Had the father gone, he would have stepped into the private room, and received the explanation. But Matt. insists that he is the one to go; he was young and his father old, as if his father could not talk as well as he, about the difficulty.

Gov. Helm says he had a choice of pistols when he purchased, and got the smallest, that therefore there was no murderous intent. He got a pistol competent, easily concealed, handy for use, a good shooter, and a self-cocker. Ward was not a bragadocia, did'nt want big pistols to flourish about, kept his weapons concealed till time to use them. We have a right to infer that he anticipated a close fight. Butler was a peaceman, there would be no duel. For a close encounter, this was the right kind of pistols.

But Mr. Wolfe says he never saw anything like the course pursued by the prosecution. Now it is for you to judge whether they have acted fairly or not. But they are brought here, he says, by the rattle of shekels of silver. Every lawyer takes a fee, and does the best he can. There has been no unfairness on the part of the prosecution; but I might retort the charge on the defence. What could the Commonwealth have done in this

case, if not assisted? An ordinary man, rich, opposed by fifteen or eighteen lawyers, the pick of the Kentucky bar, what could he have done alone? There are no distinguished men on the part of the prosecution, and if they have quoted the law correctly, there is no matter for explanation.

The right of self-defence has been referred to. It is the right of nature, cannot be taken away, an inestimable right that all should enjoy. But still under pretence of self-defence, one should not go, draw out an attack, and then kill. Be careful not to permit such an instance to go unpunished. This right of self defence should not be thus trifled with. But Mr. Wolfe says, if a person slander you or your family, and you go to him, curse him, and he attack you, cannot you kill him? I answer, no. If a person slander you, you have redress in the law. That is the remedy, full and ample. It punishes him, and restores your character; no violence is recognized by law, except in self-defence. But further; under this code, when a man is judge in his own case, goes, takes the law in his hand, curses, and then shoots, if he can do it in one case, he can in another. The principle won't do, gentlemen, for the government of a great nation.

But there has been an awful assault, made on the witnesses in this case, especially on the boys. It is said they have told only what they heard. Severe remarks have been made about Sturgus. He is an estimable man, not very brave, rather inclined to retire from danger. They say he has corrupted the boys so that they have come down, and told what they have heard. Mr. Crittenden says he believes much in blood. So do I. The parents of these boys are respectable, and many of them distinguished by high positions in society. Yet it is said they have let Sturgus influence their boys so that they asserted a falsehood. Yet you know nothing of Sturgus. He was brought down as a witness in this case, and would have appeared, had Bob been on trial. He knows nothing of this case. When necessary we shall produce him, and he will show Bob's connection with the matter.

Much stress has been laid on Quiggly's testimony, and on his statement that Butler pushed Ward back. There is a dispute between the counsel respecting his testimony. I have taken notes of his testimony; and, in his direct examination, he says, Butler pushed Ward back to the door; but, in his cross examination, he said, Ward stepped back but one step. This

does not support Bob. Benedict says Ward leaned back. There is a mistake about the position Bob sustains in this matter. We do not assail him; he assails the boys. But take all their statements. If you choose to set aside the thirteen boys and take Bob, it is your privilege. You know his situation. If Matt. is acquitted, Bob goes free. He stands as a witness swearing for family honor, for a brother's life, and for his own. The boys have no interest, are respectable, and when they and Bob differ, which will you believe?

But they say Knight cannot be believed, because he withdrew some things on cross examination which he stated in the direct. But this is on evidence. On his direct examination he stated all he knew; on his cross examination he was told to state only what he heard. If he had been trained to a story, he would have stuck to it, like a Grayson county tick.

Mr. *Crittenden* said he had not accused the boys of being trained, but of being unconsciously so influenced as to believe things had occurred differently from the reality.

Mr. *Allen*. Then it is admitted they are not suborned; that they are only simple.

Mr. *Crittenden* again explained.

Mr. *Allen*. The boys are admitted, then, to be honest and reputable; but they have been influenced by Sturgus. Now, the defence knew what these boys testified in the Police Court; and, if they had testified differently here, the defence could and would have shown it. The little differences in their statements showed they had not been trained, and confirmed their veracity. Differently situated, in different parts of the room, they saw the transaction in different lights, and tell it just as they saw it. Their testimony makes out a perfect whole, complete in all its parts.

The boys contradict Bob about the running back and the striking. The boys swear positively they saw nothing about a blow, but merely laying the hands on the shoulder. They contradict him about his going up the aisle, menacing the boys and frightening them. They contradict him about the position of the parties. The question is, whom will you believe, the boys of acknowledged good character, or Bob, barely admitted as a witness?

But, Mr. Crittenden says the boys were too particular about

Ward's right hand. I will tell you how they came to notice that. William Ward had said, Matt. would be there in the morning and give Butler hell. The boys wanted to see what his preparation was for giving him hell.

Again, the defence say that Dr. Thomson cannot be relied on, because his testimony conflicts with Barlow's. Yet when we offered to prove his good character, they admitted it at once; though Mr. Wolfe afterwards asserted that they brought several witnesses to prove Barlow's character, and we but one to prove Thomson's. This was ungenerous, after admitting Thomson's character, and thus precluding us from bringing witnesses to establish it. But Barlow is contradicted by old Mr. Ward, by Thomson, and by Knight. This man Barlow is the one who killed himself by his testimony, and Carpenter preached his funeral sermon on Friday last. His conversion was remarkable. One day he proposed to head a mob to take the prisoner from jail and hang him; the next day he is his fast friend. What caused this conversion? I will not say he was bribed; but it is highly probable he expected something, and most likely he expected more than he will ever get. And, now, which of the two, Thomson or Barlow, will you take? Yandell does not contradict Thomson. His impression is, that Butler indicated that Ward cursed him, and then raised his hand to strike him. Thomson had asked the question and was listening to the answer, and Yandell was not so particular. Barlow says the conversation took place before Caldwell and Yandell came. Thomson and Knight say that it occurred afterwards.

Mr. Crittenden says that no words used by Ward could justify Butler in striking him. Yet, if Ward used these words for the purpose of inducing an attack, he is not justified in shooting. The attack does not even reduce the crime from murder to manslaughter.

Mr. Crittenden has told you that the object of trial by jury is a merciful one; that the Judge understanding the law and bound by it, might condemn, were the jury, actuated by the impulses of warm and generous hearts, might acquit. But you are sworn to decide by the law and the evidence. I would say to you, that your hearts are not to try this case, but your judgment. Pluck out your hearts if possible, and change yourselves into pillars of stone. In what part of your oath did you swear to be merciful? It is the law as recorded in the books

that is to guide you, not that glorious, unwritten, *Kentucky* law, of which you have heard so much. I feel and realize the position of all the parties in this case. It is melancholy, and your duty may be unpleasant. But life is full of unpleasant duties; it is not strewn with roses. In the discharge of my official duties I am sometimes called to prosecute warm, personal friends, but I have to march up to the line of duty, and I expect you to do the same. If you should decide that the prisoner is innocent of the crime, and form that decision from the law and the evidence, you can say you acted honestly, and in the discharge of your duty, though you should ascertain hereafter that you were mistaken in the fact. But should you decide from mere humane feelings, and let a guilty prisoner loose, you would condemn yourselves as having inflicted a grievous wrong on society.

I will now take up the evidence for the defence, and the evidence of the prosecution not contradicted by the defence, and shown from that, that you are bound to convict.

It is proved and undisputed, that the prisoner bought the pistols on the morning of this occurrence. But his counsel say he was intending to go on a journey south. But why are the pistols bought at this particular time? It has been proved and is undisputed, that he had formed the determination to call on Butler. Is it not a fair inference that he bought them as preparatory to that call? The main fact being established, it requires less proof to establish the subordinate facts. His main intention that morning was to call on Butler, and he bought these pistols, and had them loaded. Is not his intention plainly inferable? But they say he told his father and mother that he feared no trouble. Now this may mean, that he as a brave man, did not fear trouble however great its probability. But grant that he meant he did not expect any trouble. If he really had expected trouble, would he have told his father and mother of it? Would he not have practiced a little pious fraud? Certainly he would. If he expected a fight or a duel, he would have concealed it as long as he could. But the discerning eyes of his mother pierces through all his disguises. She sees he is excited, and tells him to be calm. But he still tells her, that he is calm. He goes off, taking Bob with him, telling him on the way not to interfere unless Sturgus did. This shows his mission was not one of peace. Did he expect Sturgus would interfere in a civil conversation? He expected trouble: his visit was

not a friendly one. Sturgus, as the evidence has shown, was not a man to attack any body. Ward had undertaken to do a certain thing, and he knew that might lead to trouble. In that trouble, brought about by himself, he knew angry and malicious feeling might be excited. And malice formed on a contingency is as fatal to the prisoner, as if he had harbored it in his bosom for months.

His abrupt remark to Butler at the school house,—that he wanted a conversation with him,—indicates no peaceable feeling. Butler asks him into a private room. Ward refuses. He did not want an explanation unless in the presence of the school, and an explanation that would satisfy him, would degrade Butler, and ruin him in his profession. He then asks: which is the worst, the contemptible puppy who begs chestnuts and then lies about it, or my brother who gives them to him? This is a charge against Butler and against the boy, too. He was bound to protect his own character and the boy's too. Butler says there is no such boy there. All this transpired in the presence of the school. It shows that Ward went there to put an assault on Butler, and degrade him, and thus ruin him, and if Butler resisted, then he would shoot him. Ward asks again, why did you call my brother a liar? Butler refused to answer this insolent question. Ward asks, is your mind made up? Butler says, it is. Ward then says, you are a d—d scoundrel and a coward. The defence say that Butler then struck him. Admit it; what else could he do? Insulted in his own school, in his own house, what should he do? Ward knew what was coming. Throughout this Commonwealth, such words are always considered the trumpet call to battle. They are only used when a blow is meant to be invoked. Practically, they are the commencement of the quarrel. No matter who struck the first blow. Ward, after using these words, cannot rely on the illegality of the blow, to screen his subsequent conduct. To support this, let us examine the law.

Mr. Allen here read authorities to show that the act, as shown by the evidence, was not excusable homicide. He quoted Wharton, 368, 385, 380, 393, 395; Roscoe, 733; Waterman's Archbold, 226, and from these concluded that no man has a right to slay for a trespass to property, or a mere assault on his person. There must be an apparent design to take life, or do enormous bodily harm.

He then read the following, to show that the act was murder,

not manslaughter: Archbold, 320, 124, 316; Wharton, 276, 360, 361, 368, 369, 373, 379, 389, 394. In reading these authorities, he commented on them, and showed they reduced the killing from murder to manslaughter, only when done in sudden passion, or great provocation, and then continued,

What is the provocation in this case? Bob says, Butler had pushed Matt. back to the wall. Admit this, and the killing is not then justifiable, as he brought on the attack. There was no necessity to kill Butler to save life or limb. He must have retreated as far as he could, and been without fault himself. He had no cause to believe that he was in great danger of bodily harm, and if he did believe so, there was no good ground for the belief. Ward knew Butler would not hurt him; that he was a man of peace. Besides, Bob was there, armed, to protect him. There were no menaces against his life; there was no danger of bodily harm, and he was not without fault himself. The presumption of the law is, it was done with malice, and this presumption is strengthened by the purchase of the pistols, his excited manner in going to the school, and his manner while there.

Thus far I have examined the case as presented by the evidence for the defence. But I cannot consent that it shall be thus tried. With so many good witnesses of our own, I insist on their testimony being received.

No one doubts a single portion of the testimony of the boys. They are not contradicted. Allen and Gudgel do not contradict them. Allen only testifies that Worthington nodded assent to something, he cannot tell what. All that can be made of it is, that Worthington does not remember any such conversation. Gudgel thought he recognized Benedict as the boy he met in the alley, but it has been shown he was mistaken. The boys are fully confirmed, and their testimony shows the excited manner of Ward, his insulting remarks; it shows that he was not struck until he struck; that he was not pushed back, but just leaned back, and that there was no necessity for him to kill Butler, to save life or limb, or prevent any bodily harm. Their testimony is confirmed by Thomson, and as for Barlow, let him rest in peace; I am no turkey-buzzard, and shall not disturb his carcass. He killed himself by his own testimony, and though the defence have applied a strong galvanic battery to his remains, they have produced but a few awkward contortions, bearing no resemblance to those of life. He is past resurrection — let him alone.

Now let us suppose the facts were just as they have been proved, up to the time of shooting, and at that identical moment that Butler had killed Ward, instead of Ward killing Butler, and that Butler was now on trial for the act. We have shown Ward's intention to make the call, his purchase of the pistols, his excited manner, his insisting on going instead of his father, his manner in the school room, his insulting questions, his calling Butler a d—d scoundred, his drawing a pistol, and just then suppose Butler shot him, and was now on trial before you. You would be bound by the law and the evidence to acquit Butler. There cannot be two justifications for the same deed, and if you would acquit Butler, you must convict Ward.

And now, gentlemen of the jury, I must close. I have argued the case fairly, and so have my associates. We have made no fierce accusations against the prisoner, nor against any of the witnesses, not warranted by the facts. You must discard all appeals to your feelings. I have made no appeals. You have looked on that monument of grief, the widow of the deceased, and have seen the great effort she made to control her grief. I have imitated her example. I have presented the case as it is. You must try it by the law and the evidence, and decide whether the prisoner is guilty of murder, or whether he is guilty of manslaughter, or whether he is innocent. Cast away all excitement, and administer the law under your oath.

Your merciful feelings have been appealed to. What claims has the prisoner on you for mercy? He is surrounded by friends, rich and influential. He has had the benefit of all the counsel, and all the witnesses he wished. I have seen a case where a jury might administer mercy. A poor Dutch boy, ragged, cold, freezing, stole a coat to preserve life; was arrested; a stranger to the country and the language, without friends or relatives, dependant on the court for his counsel, he presented a case for a merciful construction of the facts. The case before you is entirely different. The prisoner has powerful friends, and has brought a host of witnesses. The mercy he showed to others is his only claim for mercy.

CHARGE OF THE JUDGE.

Gentlemen of the Jury: — The cause for which you have for nine days listened with such commendable patience, is at length submitted to you. Before you retire to your room, I conceive it to be my duty to direct your attention to the issues made in the progress of the trial, and to caution you against permitting certain matters which have been casually alluded to in the arguments of counsel, to influence, in any degree, your verdict in the cause. The usual practice, in criminal cases in this district, of reading and discussing the law before the jury by the counsel, having been adopted in this case, relieves the Court of the necessity, and to some extent, renders it improper to enter into a discussion of the various principles of law, applicable either directly or indirectly to the facts proved in the case. The killing not being controverted, it will be your duty to determine whether it was perpetrated under such circumstances, with such malice as to constitute the offence murder. Malice, express or implied, is an essential ingredient of this crime, and without it there can be no murder. Malice has been defined and explained to you, and numerous cases have been read where a certain state of facts have been determined by Courts of Justice to be malicious, or otherwise. These judicial decisions are properly to be regarded as illustrations of the legal idea of malice, and in some of them the distinction between the two classes of cases is almost imperceptible. In understanding these cases properly, you will have to bear in mind the distinction of malice, so as to make a just application of the principles of the law to the present case. If you find the killing to have been done maliciously, as charged in the indictment, you will return your verdict, Guilty.

Although you may believe from the evidence that the killing was not done maliciously, yet under the indictment in this case, you may find the prisoner guilty of manslaughter — if the facts proved in the case will, in your opinion, justify such a verdict.

The distinction between murder and manslaughter has been explained to you at large. The general distinction is — In murder the act is prompted by malice — in manslaughter, it is perpetrated in the sudden heat of passion, without malice. If from the evidence, you believe the killing in this case was done, not in self-defence, but in sudden heat of passion, without

malice, the crime is manslaughter; and in such case, you will have to determine the length of time the prisoner shall be confined in the jail and penitentiary of this State — a period not less than two, nor more than ten years.

If you believe from the evidence that the act was done in self-defence, the law excuses it, and it will be your duty to find the prisoner not guilty, and you will return your verdict accordingly.

Thus, three distinct propositions are submitted for your consideration, viz: whether the act was done maliciously, and therefore a murder; whether, in sudden heat of passion, without malice, which constitutes man-slaughter; — or whether in self defence, which the law excuses. And to the proper solution of these questions, I urge upon you a calm, patient, and impartial investigation of the facts proven in the case. If, upon such investigation, you have a reasonable doubt whether the act was murder, or manslaughter, you will bring in your verdict for the less heinous offence; and if there be such doubt, whether it be manslaughter, or done in self-defence, you will acquit the prisoner. Some facts not before you in proof, have been occasionally alluded to by counsel on either side, such as the supposed cases, change of venue, newspaper publications, &c.; but these ought not, and I presume will not, have the slightest influence on your mind. You will now, gentlemen, retire to your room, and under the sanction of the oath you have taken, calmly, impartially consult and deliberate together, and return your verdict according to the law and testimony in the case.

VERDICT OF THE JURY.

The case was committed to the Jury about 5 o'clock, P. M., on Wednesday, and on Thursday morning about 9 o'clock, they returned a verdict of NOT GUILTY, as charged in the indictment.

The prisoner was immediately discharged, and a *nolle prosequi* entered in the case of Robert J. Ward, Jr., impleaded in the same indictment, and he was released from the jail.

PUBLIC MEETING.

THE news of this verdict was received in the city of Louisville, as it has since been throughout the state of Kentucky, and over the entire Union, with the greatest indignation. In Louisville, especially, where it was published on the morning of Friday, April 28th, the excitement immediately produced was intense. But little business was done on that day or the next. All men seemed to think that an indelible stain had been fixed upon the fair fame of the state, by the mockery of a trial that had been had, and the iniquitous verdict that had been rendered; and the oldest, most substantial, and most respected citizens, demanded a public meeting, that the city of Louisville might cleanse itself of the disgrace that would otherwise rest upon it. In the newspapers of Saturday morning, appeared the following:

NOTICE — A meeting of the citizens of Louisville, favorable to the erection of a monument to the memory of the late lamented PROFESSOR BUTLER, is requested at the Court-house, on Saturday evening, April 29th, at early gas light.

Pursuant to this call, the largest and most respectable assemblage that has ever convened in the city, gathered within and around the court house at an early hour in the evening. The number present has been variously estimated at from eight to twelve thousand. The west room in the second story of the building was filled at a very early hour. Several old, universally known, and generally esteemed citizens had been requested to act as officers, but the press was so great that the principal of them could not effect an entrance to join those who were earlier in their attendance. Some delay in effecting the organization was thus induced, and during its continuance, Sherrod Williams, on request, addressed the meeting. Mr. W. fully recognized the justice of the indignant feeling that had moved, as it were, a whole community, and expressed his own deep sympathy with it,

but deprecated violence against person or property, and besought people to content themselves with a warm and decided expression of their sentiments with reference to the crime that had been committed, and the mockery of a trial that had been had of its guilty perpetrator. Mr. Williams was listened to with the most respectful attention; but the crowd outside, which was continually augmented by fresh arrivals, became impatient to know what was going on within. It was therefore agreed to go below; but when most of those who were up stairs had got down, any thing like a satisfactory organization there was found to be impossible. It was therefore proclaimed that the regular meeting would organize above, and that after resolutions should be reported and passed, they would be sent down for ratification. On returning to the large room above, Gen. Thomas Strange was chosen President, and Mr. George Anderson, Secretary. Gen. S. made a brief but appropriate and forcible address on taking the chair, at the close of which, on motion, John H. Harney, Theodore S. Bell, Bland Ballard, W. D. Gallagher, W. T. Haggin, Edgar Needham, and A. G. Munn, were appointed a committee to draft resolutions. While this committee was absent, the Rev. J. H. Heywood was requested to address the meeting, which he did with his accustomed beauty and effectiveness. Upon the return of the committee, Bland Ballard read the subjoined resolutions, which were received with the most decided approbation, and carried by a unanimous vote of the assemblage:

"The citizens of Louisville assembled in public meeting for the purpose of giving expression to their opinions respecting the trial and the verdict of the jury in the case of the Commonwealth *vs.* Matt. F. Ward, recently tried in the Hardin County Circuit Court, do submit to the public at large, but more especially to the citizens of the Commonwealth of Kentucky, the following resolutions as expressive of their views of the matters herein referred to:

"1. *Resolved*, That the verdict of the jury, recently rendered in the Hardin County Circuit Court, by which Matt. F. Ward was declared innocent of any crime in the killing of William H. G. Butler, is in opposition to all the evidence in the case, contrary to our ideas of public justice, and subversive of the fundamental

principles of personal security, guaranteed to us by the Constitution of the State.

"2. *Resolved,* That the criminal laws of this Commonwealth should be so administered that every citizen may feel secure from insult, injury, and violence, both in person and in occupation; and that the omnipotent power of public opinion should at once be so directed as to discountenance and condemn all attempts to thwart the ends of public justice, and to cause the practical realization that man-slaying is in fact the highest crime known to society.

"3. *Resolved,* That the published evidence given on the trial of Matt. F. Ward, shows, beyond all question, that a most estimable citizen, and a most amiable, moral and peaceable man, has been wantonly and cruelly killed, while in the performance of his regular and responsible duties as a teacher of youth; and notwithstanding the verdict of a corrupt and venal jury, the deliberate judgment of the heart and conscience of this community pronounces that killing to be murder.

"4. *Resolved,* That the charge of vindictiveness and cruelty preferred against the citizens of Louisville, by a portion of the counsel for the defence of Ward, is a vile and unmerited slander; and we proclaim that each and every imputation cast upon our esteemed fellow citizen, Dr. D. D. Thomson, and our neighbors' children, the pupils in Prof. Butler's school, is utterly groundless and unjustifiable.

"5. *Resolved,* That the public press of this Commonwealth should be so conducted as to be recognized as the conservator of the public morals, and that a failure of any portion of the press to rebuke and condemn an atrocious crime against society, tends to debauch the public virtue and to destroy the public morals.

"6. *Resolved,* That in the death of Wm. H. G. Butler, his family have lost a most devoted, affectionate, faithful son, brother, husband and father — the cause of education, a most accomplished friend and advocate, one whose talents and acquirements placed him in the front of his useful and honorable profession — and that society has lost one of its purest and best members, whose life is unspotted by a single blemish — as gentle and noble a spirit as ever breathed.

"7. *Resolved,* That in token of our respect and affection for, and as an evidence of our appreciation of W. H. G. Butler, we will at once take measures for erecting a monument to his memory, and to present to his widow a substantial token of our regard for her.

"8. *Resolved,* That we regret and condemn every manifestation of disorder, and we exhort all good citizens, by their reverence for law, by their own self-respect, and by their love of the virtues of him whose loss we deplore, to abstain from violence to persons or property, and from every disregard of law and order — remembering that society cannot exist without order, and that he whom we

revered when on earth, was incapable of meditating harm to any one, and that every wrong committed will wound his pure and lovely spirit."

So soon as the resolutions were passed, the committe retired with them to the crowd below, where they were read by Sherrod Williams, and carried with equal unanimity. After the committee left the meeting above, resolutions were moved and carried, requesting the *two Wards* to leave the city, inviting Nat. Wolfe to resign his seat in the State Senate and follow them, and requesting John J. Crittenden to resign his place in the Senate of the United States, to which he was elected by the Legislature of Kentucky last winter.

By a portion of the immense crowd outside, another meeting was organized, by which another series of resolutions was passed, equally condemnatory in their tone with those passed by the regular meeting in the Court House, as to the trial and the verdict, and much more sweeping in their references to individuals who had rendered themselves obnoxious in different ways, by their connection with the trial, several of whom were singled out by name, for public censure.

By a large number of persons in the Court House yard, after the regular meeting in the west room had adjourned, effigies were hung up and burned, of Matt. F. Ward, Barlow, (the false witness,) the members of the Hardin county jury, and a number of other persons, who, by their acts, had subjected themselves to the deep displeasure of the people of Louisville.

Earlier in the evening, a crowd of men and boys gathered in front, and at one side of the private residence of Robert J. Ward, doing considerable damage to the conservatory with stones, and with the same missiles breaking some of the front windows. While this was going on, effigies of Matt. and young Robert Ward, were strung up in front of the door. These were afterwards set on fire, when some person unknown, caught one of them up and threw it against the front door, which was thus set on fire. The alarm was at once given; several engines were soon upon the spot, and after encountering a somewhat

decided but by no means stubborn opposition from the men and boys near the house, the flames were extinguished.

As the closing sheets of this Report go to press, a week has passed since these occurrences took place. No one pretends to defend or excuse the lawless depredations committed upon the private residence of Robert J. Ward; every good man condemns them as wrong, uncalled for, and reprehensible; but the heart of the whole city beats with one pulse, and nobly responds to the manly, decided and conservative tone of the series of resolutions embodied in this closing narrative, as passed by the meeting of citizens held in the Court House.

APPENDIX.

THE witnesses whose testimony is published below, were in regular attendance at the trial in Elizabethtown, but their evidence being objected to by the defence, and not insisted upon by the prosecution, was not admitted. Its truth has in each case been properly and solemnly sworn to.

LOUISVILLE, May 1, 1854,

Statement of Prof. Sturgus.

I think it was in May or June of last year, I corrected William Ward, the same whose punishment led to the murder of my associate, Wm. H. G. Butler. I took him by the coat-collar, shook him, and boxed his jaws. Mr. Butler and I were requested by Mrs. Ward to call and see her about it. Mrs. Ward was very much excited, not at what I had done, but at what William had said I done. She demanded what I meant by treating *a Ward* in that manner; said she sent her children to Mr. Butler, that she knew him to be a gentleman, and that if they needed correction, she expected him to do it, for he would do it in a gentlemanly way; with much more of the same kind. Her language was a full authorization of Mr. Butler, to correct her sons when he deemed it proper.

After Mrs. Ward heard my statement of the facts, she became calm, appeared perfectly satisfied, expressed her regret for the violent language she had used, and that our acquaintance had begun in so unpleasant a manner, and treated me with the greatest courtesy throughout the rest of the interview. Almost the first remark I made, in reply to an intimation of withdrawing her sons from the school, was, that we would be very glad if she would withdraw them both, as it would probably save us the trouble of dismissing them.

During the latter part of the interview Mrs. Ward requested us to let her know if the boys misbehaved or neglected their studies at any time, and she would correct them. We replied in a general way that we would be glad to have such co-operation from the parents of all our pupils, but I remarked distinctly that she was aware that there were offences that could not be dealt with thus, but must be punished on the spot for the sake of discipline; to this she made no objection.

Matt. F. Ward came in not very long after we went, and I was

introduced to him by Mr. Butler. He gave me to understand that he had intended, as soon as he heard of his brother's punishment, to call and inflict personal violence ; that I was an older man than he had supposed, and that *that* alone prevented his taking such a course. He was called away by some one in a few moments. I left no threatening message for him with Mrs. Ward. I said nothing whatever of the kind. Mr. Butler and myself agreed that we would no longer be troubled in this way, but would dismiss the boys on the first case of misconduct. And as he explained to me the day before he was murdered, it was only the peculiar circumstances that led him to do otherwise.

M. STURGUS.

Algernon D. Fisher, nearly fifteen, son of Dr. W. P. Fisher. In the morning William Ward brought some chestnuts into the class, and divided them among some of the boys during recitation. About fifteen minutes after he had given some chestnuts to some of the other boys, I saw him borrow Henry Johnston's knife. After Henry had handed him the knife, William Ward took three or four chestnuts out of his pocket, and with the knife he borrowed from Johnston, he made one or two holes in each of the three or four nuts, and handed them to me. I looked at them to see if they were good ; for I thought he was playing a trick on me. I ate them, and threw the hulls on the floor. About ten minutes afterwards recitation was over, and Mr. Butler got up and looked under me and found hulls. He asked me if I had eaten any nuts, I told him "yes, sir." He then asked me if I had brought them to the class. I told him that I had not. He then asked me if they had been given to me in the class. I told him they had. He then asked me who had given them to me. I told him I didn't like to tell on the boys ; but he told me he would have order in the class, and I must tell him. He then sent a boy for the strap. I then told him that William Ward had given them to me. He then said he would whip me for eating them. I then told Mr. Butler after I was whipped, that if he thought I was the only boy that ate nuts, look under Johnston and William Ward, which he did, and found hulls under them. He inquired into it, and after asking Henry Johnston if he had eaten any, Henry told him he had. He then asked Henry if William Ward had given them to him too. Henry told him yes, that he had. He then asked William if that was true. William told him he had given them to me before class commenced. Then Henry Johnston and I spoke, and told Mr. Butler that William Ward gave them to us in the class. William

Ward denied it, and after it had been proven on him again, Mr. Butler took hold of William and said, "William, I will whip you for telling a falsehood." Then after William was whipped, he took up his hat and walked out of school, shaking his head. This is all I know about the whipping.

Question. Was the whipping severe? Just such a one as I got, which I did not consider severe.

A. D. FISHER.

John B. Goddard, son of the late F. E. Goddard, fourteen years of age: — About a month before the punishment of William Ward, for eating nuts and telling a falsehood, occurred, William and Victor Ward brought a great many nuts to school, and eat them during class. Mr. Butler, after class, asked them about it, and they denied it. After school that evening, Mr. Butler called up several boys who had seen them eat the nuts, and proved that they had been eating them. Mr. Butler told them that he would excuse them that time, but if the like happened again, he would punish the offender by whipping him. It did occur again, and Mr. Butler did his duty, and stood up to what he had said. It was in French class that this whipping occurred; this class came directly after recess. William Ward came in with his pockets full of chestnuts, as I afterwards found. About the middle of the class, William Ward asked me for my pencil, which I lent him; he then asked Henry C. Johnston, who was on the other side of him, for his knife to sharpen the pencil; Johnston lent it to him. When he gave me back my pencil, he gave me some chestnuts with it. I put them into my pocket, and did not eat any. I observed him cutting a hole in a chestnut, which he handed to Algernon D. Fisher, the boy who sat before him, and requested him to put some cinnamon drops in the hole he had made in the chestnut. A. D. Fisher, instead of doing so, took the chestnut and eat it. This he did twice; and then William Ward commenced quarreling with him. Mr. Butler noticed it, and told them to stop talking. After class, Mr. Butler wished to know who had been talking and eating nuts; as he could see the shells on the floor. He first asked, who had brought them into class. William Ward said he had; but had not touched one since recess: for what he gave away was during recess. Mr. Butler asked Fisher if he had eaten any nuts during class. Fisher said he had, and that he got them from William Ward. Mr. Butler asked him at what time did he get them. Fisher said, in class. He then asked Johnston and myself, and we both said the same. Mr. Butler then punished Fisher for talking

and eating nuts. He then turned to William Ward, and told him, that there were several witnesses against him, and he must punish him, as he told him he would do it if ever it occurred again. Mr. Butler then led him several paces out on the floor. I was sitting directly behind him. Mr. Butler struck him about six blows, not very hard, and not one above a few inches over the knee-joint — most of them below, for I could hear the strap strike William Ward's boots. William Ward went out of the room shaking his head, saying it was a d — d mean trick.

JOHN B. GODDARD.

Henry C. Johnston, son of G. J. Johnston, fifteen years of age last December: — It was about ten o'clock, or a little after, during the French class, William Ward had some chestnuts in the class, and he and Al. Fisher had some difficulty about it — I do n't know what that was. Mr. Butler spoke to them, and told them not to make so much noise, or something of the kind; but William Ward still continued to talk to Fisher about it. Mr. Butler spoke to them again; and after the class was through, he asked Al. Fisher to know what they were talking about. Fisher told him that it was about chestnuts. Mr. B. then asked him, if he did not know it was against the rules of the school to eat chestnuts in school hours. Fisher told him he knew it. Mr. B. then sent into Mr. Sturgus's room for the strap. He gave him some five or six licks on the legs. Al. Fisher then told him he was not the only one that had been eating chestnuts. Mr. B. asked him what other boy had been eating them. F. told him that William Ward and I had. Mr. B. asked me about it, and I told him I did not know it was against the rules of the school. I had just started to school a short time before. He told me I was not to blame, as I did n't know the rule. He then asked William Ward about it, and he denied it, and said he had n't been eating them at all. Mr. B. asked me if I had seen William eating them. I told him I had lent him my knife to cut them with, and that he, after having cut some three or four of them, handed back my knife with some chestnuts. Mr. B. then took hold of William Ward's arm, and told him that he had told him a lie, and he would have to whip him for it. He whipped him about as he had whipped Al. Fisher. William Ward went out of the room shaking his head. He did n't appear to be hurt any, but insulted.

HENRY C. JOHNSTON.

Joseph Benedict, fourteen years of age, son of D. S. Benedict: —I saw William Ward whipped. He received about the same sort of whipping that Al. Fisher received, which was not severe.

J. BENEDICT.

Alonzo C. Rawson, will be fourteen years of age on the first of June; son of Alonzo Rawson, of the firm of Rawson, Bacon & Co.:—I saw William Ward give chestnuts in the class to Al. Fisher. Mr. Butler saw Fisher eating them, and whipped Al. Fisher for it. Al. Fisher said he had n't eaten all the chestnuts, that he had just eaten two. Mr. Butler asked the rest of the boys if they had eaten any chestnuts. All, except Henry Johnston, said they had n't, and he was a new scholar. Mr. Butler asked them if they had seen William Ward eat any. Henry Johnston and John Goddard said they had. He whipped William Ward. *Q.* Was the whipping severe? *A.* No, sir. *Q.* Did you hear William Ward say he had n't given chestnuts to any one during recitation? *A.* Yes, sir.

STATE OF KENTUCKY,
JEFFERSON COUNTY. } *ss.*

This day the foregoing statements of M. Sturgus, A. D. Fisher, John B. Goddard, Henry C. Johnston, Joseph Benedict, and Alonzo C. Rawson, were subscribed and sworn to before me, a Justice of the Peace of said County. Given under my hand May 4, 1854.

G. J. JOHNSTON, *J. P. of J. C.*

Statement of Prof. Bliss.

NEW ALBANY, May 8, 1854.

Some years since, when I was conducting the Louisville Collegiate Institute, I had occasion to punish William Ward, who was then one of my pupils, for telling a *lie*. On the following morning, while I was engaged with my first class of boys, a young man in company apparently with Robert, William, and Victor Ward, entered the school-room, and approaching within speaking distance, asked if this was Mr. Bliss. I replied in the affirmative. He said, "Then I would like to speak with you at the door." I immediately left my class and started with him to the door. But the keen anxiety depicted in the countenances of the younger lads, who were in company when he entered, aroused my suspicions that the young man was an older brother, and I accordingly halted at the threshhold of the door, and inquired what was wanting, when he replied, "If you will come out here, sir, I will show you." I asked if his name was Ward. He replied that it was, and wanted to know why I had whipped his brother William the day before. I told him if he would come in I would settle the matter with him. He cursed me, calling me a "d——d rascal and coward" for not coming out. Believing he was armed, I attempted to shut the door, which was somewhat hindered by a thrust of his foot against it. After I had succeeded in closing it, I heard two or three kicks against it, when a volley of imprecations and oaths followed, and Ward left my house, accompanied by a young man who had been waiting at the gate during this interview.

JOSIAH BLISS.

—

Subscribed and sworn to before me this 8th day of May, 1854.

J. C. JOCELYN, *J. P.*

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Philosophies.
Chemistries.
Speakers.
Spellers.
Music Books.
Domestic Economies.

All the above with thousands of other works too numerous to mention laid in with a view to suit country trade.