

A
FULL AND AUTHENTIC
REPORT
OF THE TESTIMONY ON THE
TRIAL OF MATT. F. WARD,

CERTIFIED TO BE CORRECT BY

THOMAS D. BROWN, CLERK OF HARDIN CIRCUIT COURT;
WM. ALEXANDER, FORMER COMMONWEALTH ATTORNEY FOR THE HARDIN DISTRICT; and
JUDGE ALEX. WALKER, OF NEW ORLEANS.

WITH THE

SPEECHES

OF

Gov. CRITTENDEN, Gov. HELM, T. F. MARSHALL, Esq.,
AND
NATHANIEL WOLFE, Esq.

AND THE REPLY OF

ALFRED ALLEN, Esq., ATTORNEY FOR THE COMMONWEALTH.

Reported by A. D. RICHARDSON.

NEW YORK:
D. APPLETON & COMPANY, 346 & 348 BROADWAY.
1854.

A. S. Exploring Expeditions.

I.

PERSONAL NARRATIVE OF EXPLORATIONS AND INCIDENTS IN TEXAS, NEW MEXICO, CALIFORNIA, SONORA, AND CHIHUAHUA.

Connected with the Mexican Boundary Commission, during the years 1850, '51, '52, and '53.

By Hon. JOHN RUSSELL BARTLETT,

UNITED STATES COMMISSIONER DURING THAT PERIOD.

In 2 vols. 8vo., of nearly 600 pages each, price \$5, printed with large type and on extra fine paper, to be illustrated with nearly 100 Woodcuts, sixteen Tinted Lithographs, and a beautiful Map engraved on steel, of the extensive regions traversed.

In addition to the interest connected with the explorations of our newly acquired territories and the Mexican States adjacent, this work possesses unusual attraction from the detailed account which it contains of one of the proposed routes for a railroad from the Atlantic to the Pacific. The author traversed the country near the parallel of 33 degrees North latitude, for five hundred miles through Texas, and about three hundred miles west of the Rio Grande, in the States of Chihuahua and Sonora, near the same line. In these two States, which are now attracting the deepest interest, he made extensive journeys through their entire length, and describes with great minuteness the natural features of the country, so that, as a guide to emigrants to these States or to California, the information will be invaluable.

II.

NICARAGUA

ITS PEOPLE, SCENERY, MONUMENTS, AND THE PROPOSED INTEROCEANIC CANAL

WITH NUMEROUS ORIGINAL MAPS AND ILLUSTRATIONS.

By E. G. SQUIER,

LATE CHARGE D'AFFAIRES OF THE UNITED STATES TO THE REPUBLICS OF CENTRAL AMERICA.

2 vols. 8vo., beautifully printed, \$5; or, in 1 vol., \$4 50.

III.

THE ISTHMUS OF TEHUANTEPEC:

Being the Results of a Survey for a Railroad to connect the Atlantic and Pacific Oceans, made by the SCIENTIFIC COMMISSION, under the direction of

MAJOR J. G. BARNARD, UNITED STATES ENGINEER.

WITH A RESUME OF THE

Geology, Climate, Local Geography, Productive Industry, Fauna and Flora, of the Region.

ILLUSTRATED WITH NUMEROUS MAPS AND ENGRAVINGS.

Arranged and prepared for the Tehuantepec Railroad Company of New Orleans,

By J. J. WILLIAMS, PRIN. ASSIST. ENG.

One volume, 8vo., with Atlas separate, price \$3 50.

THE SPECTATOR ENTIRE.
THE MOST BEAUTIFUL EDITION EVER PUBLISHED.

D. APPLETON & COMPANY

HAVE JUST PUBLISHED

THE "SPECTATOR:"

WITH PREFACES, HISTORICAL AND BIOGRAPHICAL,

By **Alexander Chalmers, A. M.**

A New and Carefully Revised Edition,

Complete in six volumes, 8vo., pica type. Price in cloth, \$9; half calf extra or antique, \$15; calf extra or antique, \$20.

"It is praise enough to say of a writer, that, in a high department of literature, in which many eminent writers have distinguished themselves, he has had no equal; and this may, with strict justice be said of Addison. . . . He is entitled to be considered not only as the greatest of the English essayists, but as the forerunner of the great English novelists. His best essays approach near to absolute perfection; nor is their excellence more wonderful than their variety. His invention never seems to flag; nor is he ever under the necessity of repeating himself, or of wearing out a subject."—*Ma-caulay*.

"He was not only the ornament of his age and country, but he reflects dignity on the nature of man. He has divested vice of its meretricious ornaments, and painted religion and virtue in the modest and graceful attire which charm and elevate the heart."—*Dr. Anderson*.

"In Addison the reader will find a rich and chaste vein of humor and satire; lessons of morality and religion, divested of all austerity and gloom; criticism at once pleasing and profound; and pictures of national character and manners that must ever charm, from their vivacity and truth."—*Dr. Hurd*.

"Of Addison's numerous and well-known writings, it may be affirmed, that they rest on the solid basis of real excellence, in moral tendency as well as literary merit. Vice and folly are satirized, virtue and decorum are rendered attractive; and while polished diction and Attic wit abound, the purest ethics are inculcated."—*Maunder*.

"His glory is that of one of our greatest writers in prose. Here, with his delicate sense of propriety, his lively fancy, and, above all, his most original and exquisite humor, he was in his proper walk. He is the founder of a new school of popular writing, in which, like most other founders of schools, he is still unsurpassed by any who have attempted to imitate him. His *Spectator* gave us the first examples of a style possessing all the best qualities of a vehicle of general amusement and instruction; easy and familiar without coarseness, animated without extravagance, polished without unnatural labor, and, from its flexibility, adapted to all the variety of the gay and the serious."—*Penny Cyclopaedia*.

"To correct the vices, ridicule the follies, and dissipate the ignorance, which too generally prevailed at the commencement of the eighteenth century, were the great and noble objects the *Spectator* ever holds in view; and by enlivening morality with wit, and tempering wit with morality, not only were those objects attained in an eminent degree, but the authors conferred a lasting benefit on their country, by establishing and rendering popular a species of writing which has materially tended to cultivate the understanding, refine the taste, and augment and purify the moral feeling of successive generations."—*Chalmers*.

"He not only brought a good philological taste into fashion, but gave a pleasing elevation and popular turn to religious studies, and placed Milton upon a pedestal from which he can never be pulled down."—*Aiken*.

"It stands at the head of all works of the same kind that have since been produced, and as a miscellany of polite literature, is not surpassed by any book whatever."—*Chambers*.

"I consider the *Spectator* invaluable, as containing on the subject of religion all that the world would then bear. Had Addison or his friends attempted more, it would not have been endured. The work was a stepping-stone to truth of the highest order, and, as such, our obligations to it are great."—*John Wesley*.

APPLETON'S EDITION OF THE BRITISH POETS.

PROSPECTUS

OF A

New and Splendid Library Edition

OF THE

POPULAR POETS AND POETRY OF BRITAIN

EDITED, WITH BIOGRAPHICAL AND CRITICAL NOTICES,

BY THE REV. GEORGE GILFILLAN,

AUTHOR OF "GALLERY OF LITERARY PORTRAITS," "BARDS OF THE BIBLE," ETC.

In demy-octavo size, printed from a new pica type, on superfine paper, and neatly bound.

Price, only \$1 a volume in cloth, or \$2 50 in calf extra.

"Strangely enough, we have never had as yet any thing at all approaching a satisfactory edition of the English poets. We have had Johnson's, and Bell's, and Cooke's, and Sharpe's small sized editions—we have had the one hundred volume edition from the Chiswick press—we have had the double-columned editions of Chalmers and Anderson—and we have the, as yet, imperfect Aldine editions; but no series has hitherto given evidence that a man of cultivated taste and research directed the whole."—*Athen.*

The splendid series of books now offered to the public at such an unusually low rate of charge, will be got up with all the care and elegance which the present advanced state of the publishing art can command.

The well-known literary character and ability of the editor is sufficient guaranty for the accuracy and general elucidation of the text, while the paper, printing, and binding of the volumes will be of the highest class, forming, in these respects, a striking contrast to all existing cheap editions, in which so few efforts have been made to combine superiority in production with low prices.

Under the impression that a chronological issue of the Poets would not be so acceptable as one more diversified, it has been deemed advisable to intermix the earlier and the later Poets. Care, however, will be taken that either the author or the volumes are in themselves complete, as published; so that no purchaser discontinuing the series at any time, will be possessed of imperfect books.

The absence in the book market of any handsome uniform series of the Popular British Poets, at a moderate price, has induced the publishers to project the present edition, under the impression that, produced in superior style, deserving a place on the shelves of the best libraries, and offered at less than one half the usual selling price, it will meet that amount of patronage which an enterprise, based on such liberal terms, requires.

The series will conclude with a few volumes of fugitive pieces, and a History of British Poetry, in which selections will be given from the writings of those authors whose works do not possess sufficient interest to warrant their publication as a whole.

It is believed that this will render the present edition of the British Poets the most complete which has ever been issued, and secure for it extensive support. The series is intended to include the following authors:—

ADDISON.	COWPER.	GRAHAME.	OPIE.	SPENSER.
AKENSIDE.	CRABBE.	GRAY.	PARNELL.	SUCKLING.
ARMSTRONG.	CRASHAW.	GREEN.	PENROSE.	SURREY.
BARBAULD.	CUNNINGHAM.	HAMILTON, W.	PERCY.	SWIFT.
BEATTIE.	DAVIES.	HARRINGTON.	POPE.	TANNAHILL.
BLAIR.	DENHAM.	HERBERT.	PRIOR.	THOMSON.
BLOOMFIELD.	DONNE.	HERRICK.	QUARLES.	TICKELL.
BRUCE.	DRAYTON.	HOGG.	RAMSAY.	VAUGHAN, R.
BURNS.	DRUMMOND.	JAMES I.	ROGERS.	WALLER.
BUTLER.	DRYDEN.	JONES.	BOSCOMMON.	WARTON, J.
BYRON.	DUNBAR.	JOHNSON.	BOSS.	WARTON, T.
CAMPBELL.	DYER.	JONSON.	SACKVILLE.	WATTS.
CAREW.	FALCONER.	LEYDEN.	SCOTT, J.	WHITE, H. R.
CHATTERTON.	FERGUSON.	LLOYD.	SCOTT, S. & W.	WITHER.
CHAUCER.	FLETCHER, G.	LOGAN.	SHAKSPEARE.	WILKIE.
CHURCHILL.	GAY.	MACPHERSON.	SHELLEY.	WOLCOTE.
CLARE.	GIFFORD.	MALLETT.	SHENSTONE.	WOLFE.
COLERIDGE.	GLOVER.	MARVEL.	SMART.	WYATT.
COLLINS.	GOLDSMITH.	MILTON.	SMOLLETT.	YOUNG.
COWLEY.	GOWER.	MOORE.	SOMERVILLE.	

The following Authors are now ready :

JOHN MILTON, 2 vols.; JAMES THOMSON, 1 vol.; GEORGE HERBERT, 1 vol.
JAMES YOUNG, 1 vol.

A
FULL AND AUTHENTIC
REPORT
OF THE TESTIMONY ON THE
TRIAL OF MATT. F. WARD,

CERTIFIED TO BE CORRECT BY

THOMAS D. BROWN, CLERK OF HARDIN CIRCUIT COURT;
WM. ALEXANDER, FORMER COMMONWEALTH ATTORNEY FOR THE HARDIN DISTRICT; and
JUDGE ALEX. WALKER, OF NEW ORLEANS.

WITH THE

SPEECHES

OF

Gov. CRITTENDEN, Gov. HELM, T. F. MARSHALL, Esq.,
AND
NATHANIEL WOLFE, Esq.,

AND THE REPLY OF

ALFRED ALLEN, Esq., ATTORNEY FOR THE COMMONWEALTH.

Reported by A. D. RICHARDSON.

NEW YORK:
D. APPLETON & COMPANY, 346 & 348 BROADWAY.
1854.

This page in the original text is blank.

THE WARD TRIAL.

Hardin Circuit Court, in Session at Elizabethtown, Ky.,
Judge J. W. Kincheloe, of Breckenridge, presiding.—
Spring term, 1854.

COMMONWEALTH OF KENTUCKY *vs.* MATT. F., AND
ROBERT J. WARD, JR.

The Indictment, brought by change of *venue*, from Jefferson County, charges Matthews F. Ward with murder in the first degree, committed on William H. G. Butler, on the 2d of November, 1853, by shooting him with a pistol, the ball of which took effect in his left breast, and caused his death on the 3d of November. Robert J. Ward, Jr., is charged with aiding and abetting, in the second count, and as a principal, in the first count of the indictment.

Counsel for the State.

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

Counsel for the Defence.

HON. JOHN J. CRITTENDEN, of Frankfort (who volunteered).
HON. THOMAS F. MARSHALL, of Woodford.
HON. JOHN L. HELM, of Hardin.
HON. GEORGE A. CALDWELL, of Louisville.
NATHANIEL WOLFE, “
THOMAS W. REILEY, “
CHARLES G. WINTERSMITH, of Hardin.
JAMES W. HAYES, “
R. B. HAYES, “

FIRST DAY.

Tuesday, April 13th, 1854.

The Court convened at 8 o'clock.

After the transaction of some preliminary business the case was called.

At the suggestion of Mr. Helm, the Court made an order prohibiting the reporters, who were furnished with seats by the Court, from publication of testimony during the progress of the case, deeming such publication prejudicial to the interests of justice, and likely to interfere with a fair and impartial trial.

The Counsel on both sides who were not members of the Hardin County Bar, appeared and were duly qualified by taking the prescribed oath.

At about 9 o'clock the accused were brought into the Court room, accompanied by their friends. The elder—Mr. Matt. F. Ward—was in a very feeble and reduced condition, induced by a severe attack of neuralgia, from which he had been suffering for several months. He was unable to walk without the assistance of crutches.

The Counsel both for the Commonwealth and the Defense expressed themselves in readiness to proceed to trial.

Mr. Helm moved that the prisoners be tried separately.

The Court granted a severance, but left to the Commonwealth Attorney the privilege of deciding which of the defendants should first go to trial.

The Prosecutor desired that Matthews F. Ward, as the principal in the case, should be tried first.

The defendant entered a plea of Not Guilty.

The empanelling of the jury was then commenced. A majority of those called had formed and expressed an opinion on the case, from public rumor and newspaper reports, and were therefore incompetent to try it.

When the regular panel was exhausted, therefore, only five jurors had been selected ; and the Sheriff was directed to bring in bystanders until the full complement should be procured.

The jury was at last declared full, after fifty-one had been excused from serving, being incapacitated by the cause alluded to above.

There was but one peremptory challenge made by the counsel for defence. The others were excluded by the Court as disqualified. It consisted of the following gentlemen, who were duly empanelled and sworn :

Greene Walker,
 Thomas M. Yates,
 James Crutcher,
 George Stump,
 Raleigh McIntire,
 John Young,

Thomas Thurston,
 Isaac C. Chennoweth
 Asa Buckles,
 William Eidson,
 Abraham Neighbors,
 Richard Pierce.

The indictment was read to the Jury by the Clerk.

The Court then addressed them as follows :

GENTLEMEN: The defendant in this case 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 this indictment. If you find him Guilty, you will say so: if Not Guilty, you will thus return him to the court. In case the killing shall be proved to have been done by the defendant, under the influence of excitement and passion, you may find him guilty of manslaughter, under this indictment, and will do so. Should it appear that the killing was done in self-defence, it was not an act of voluntary manslaughter, and you will find him Not Guilty.

Mr. Wolfe gave notice of his intention to make a motion to permit no witnesses for the Commonwealth to remain in the Court-room during the progress of the trial except the one under examination.

Mr. Allen gave notice of intention to make a similar motion in regard to the witnesses for the accused. He desired to sail under equal colors here, and from the well-known reputation of the gentlemen engaged on the other side, he had no doubt that they would concur in such a wish.

Mr. Wolfe objected to the motion. He certainly desired to have the case tried in the most fair and impartial manner; but in the course of a criminal practice of fifteen years, he had heard such a motion made only three times, and in each instance it had been promptly overruled by the Court. At the present stage of the proceedings it would be impossible to furnish a complete list of the witnesses for the Defense, and some might be called, during the progress of the trial, who were not yet subpoenaed. As a further reason he remarked that it might be necessary that some one or more witnesses for the Defense, should be present during the examination of the witnesses for the Commonwealth, that they might identify them for reasons thereafter to be assigned. The motion supposed the universal depravity of the whole human race.

The Court remarked that the question was exclusively one of practice, and left to the discretion of the Court. When such orders were made, it was done to promote the ends of justice, and founded, not on

the hypothesis of the total depravity of the whole human race; but simply on the common sympathy universally existing, and to enable every witness to detail facts as they had been communicated to his own senses, and with no reference to any statements which might have been made by others. In this case the Court deemed the order necessary, and would make it; though it was not so stringent as to exclude testimony which might be made known during the progress of the trial, but of which the counsel were not yet aware.

Mr. Crittenden remarked, that there were many witnesses present who had been called simply to prove character, and were anxious to be in the room during the progress of the trial.

The Court said that the rule might be waived in regard to such witnesses.

As the procuring of a full list of the witnesses must consume considerable time, the Court took a noon recess.

Prior to adjournment, however, the Court instructed the Jury thus :

You have been empanelled and sworn, gentlemen, to try a case of peculiar importance, both to the Commonwealth and the defendant. The Court has deemed it its duty, therefore, to make such arrangements that you will not be separated during the progress of the trial. You will not, of course, converse with any one, or listen to any conversation in regard to this case, and should any person persist in addressing you upon it, you will report their names to the Court at once. Neither will you converse with any one upon any subject whatever, unless in presence of the Sheriff, or by special permission of the Court.

AFTERNOON SESSION.

On the opening of Court, Mr. Allen remarked that he observed on the list of witnesses for the defence, the names of Mr. and Mrs. Robert J. Ward (the parents of the accused). They must necessarily feel a deep interest in the progress of the trial, and the Commonwealth had no desire that the rule in regard to the exclusion of witnesses should apply to them.

All the witnesses both for the Commonwealth and the Defense, who were to be procured, were brought in and sworn collectively.

The testimony for the Commonwealth then commenced as follows :

EDWARD W. KNIGHT, *sworn*.—Was present in Prof. Butler's school-room on the 2d November, 1853; on the first entrance of Matt. F. Ward, I was in the recitation room; in the morning, about half-past nine o'clock, a negro came over to the school-room and took home all the books of Victor and William (the two younger brothers); about ten

o'clock, I saw Matt., Robert, and William come to the building; I was in Mr. Sturgus' recitation room, but went out to see what would take place; saw Matt. speak to Mr. Butler; he told him he had a little matter to settle with him; Mr. Butler said something in a low tone, which I understood to be to invite him to come into his study; Matt. said "No," and asked him which was the more to blame, the little contemptible puppy who begged chestnuts and then told a lie about it, or his brother William; Mr. Butler asked him to step into his study, but he refused again, and said if he could not answer there he did not want an answer; he then asked him why he called his brother William a liar; I then heard Matt. call Butler a d—d liar and a d—d scoundrel; Matt. appeared to be very much excited; I saw that they drew nearer together, and Butler approached Ward; do not think Butler struck him, but I observed a moment after that Butler had his hand on Matt's shoulder; Matt. drew his right hand from his pocket, while he and Butler were clinched, and drew out a pistol with it; he presented it immediately to Butler's left lung, and fired; Butler dropped immediately; Matt. then drew another pistol, and Robert drew a knife which he flourished about, and when Mr. Sturgus, one of the other teachers, came in, Robert said to him, "Come on," and approached him; Mr. Sturgus retired to his own room, but came out a moment after, when Robert chased him with the knife back into his room, and Sturgus made his absence out of the window; one or two of the other scholars and myself assisted Butler to walk away; when we had gone one square, he wished to lay down, and could not walk; we took him into Mr. Harney's residence; I had not been in school for three or four days, until the day previous, when I learned that one of the boys had been punished, and heard Victor Ward say that the matter was not over yet; hence I apprehended trouble when I saw them come in; Butler knocked the pistol from his breast, after it was fired, and went into Sturgus' recitation room; he came out a moment after, and motioned to the scholars that he was done for; the view I had of the parties, while they were struggling, was a side one; think Matt. Ward struck Butler first; Butler then stepped forward and laid his right hand on Matt's left shoulder; the school-house is situated on Chestnut street, in Louisville.

(A diagram of the school-house was produced by the counsel for the Commonwealth, and the witness went on to explain at length the positions of the parties, and of the various points spoken of.)

Witness proceeded: I did not hear Butler make any remark to Ward, except asking him to step into the office, and replying to his question, that he did not feel like answering it without giving an explanation; it was then that Ward replied by calling him a liar and a scoun-

drel ; when Butler fell, he exclaimed, " I am killed ! May God forgive me ! My poor wife and child ! " After he had fired the pistol, Ward pointed the one he drew afterwards around the school-room for a few minutes, and then left ; he walked away very deliberately ; he left the pistol he had fired on the floor ; it was a small, self-cocking pistol, with a walnut handle ; I think this is one of the same description ; Butler did not seem much agitated ; he replied in a low tone to the questions—he always spoke low ; Ward's voice was loud ; he appeared agitated after he had spoken to Butler, though not before ; I noticed by the working of his right hand, that he was very nervous at the time ; there were only three of the other pupils assisted Butler to Col. Harney's ; no one else entered the house with us I think, but I was much agitated ; after we were in the house, I noticed another gentleman there, whose name I did not know before Dr. Thomson came in ; we had laid Prof. Butler down, and he told us to set him up ; should know the gentleman were I to see him ; do not think the whole affair occupied more than ten minutes.

Cross-examined.—Reside in Louisville ; was a student in the school at the time ; when Ward came, Butler was in his recitation room, with several of the boys ; do not recollect who they were ; cannot say positively that there were any boys in there ; the recitation room is on the right hand side as one enters ; I did not testify before the examining court, as there were others to give testimony to the same effect ; testified before the Grand Jury ; when Ward called for Butler, a boy went for him ; his face was towards Butler while they conversed ; Ward's back was to me then, but I passed up a little, to get a side view of them ; I was then looking angularly at Ward's left side, and Butler's face ; when Ward entered, I observed that his right hand was in his pocket, or wrapped in his coat ; he held his hat in his left hand ; his right side was away from me, while they conversed ; never have told Dr. Casparri that while this was going on, I had gone for a pair of tongs ; have told him that as I was to testify in regard to the matter, I desired to say nothing about it ; my hand was on a desk when the pistol was fired ; all the boys in Mr. Sturgus' room rushed for the door when they saw the Wards enter ; he called us back, when I asked to be excused ; he granted the request, and I went out, while the other boys returned into the room ; those who remained there could not see the occurrence ; the class to which we belonged was one in Algebra ; can give the names of some of the boys who composed the class, and remained in the room ; Robert Trimble and William Fagan, were two of them ; just at present I cannot recollect the names of any of the others ; the class had been formed about a month ; the most of us had been in it

from the first session of the school, early in October; know all the boys who were in the school; I was near the door of the recitation room when I heard Ward ask for Butler, and I opened the door and looked out; I was there when Butler came out and the conversation commenced; there were about forty pupils in the school; with the exception of those in the recitation rooms, the boys were then in the school room; when Ward asked the questions I heard Butler reply, in a low tone, "I don't feel disposed"—this was all I heard him say; all I have related about inviting him into his study, &c., has been told me, since; I thought Ward struck Butler; thought so, because I saw Ward bring down his left hand with a gesture, and Butler fall back; Butler then sprang forward and laid his hand on his shoulder; it was not done gently; did not see Butler strike at all; I know he did not strike after he was shot; when I said they were clinched, I meant they were near together, and Butler's hand was on Ward's shoulder; did not see that Butler had beaten Ward down, nearly to the ground before the pistol was fired; did not hear Ward say to Butler that he had a little matter to settle with him; only heard him say: "I wish to see you;" could not hear the replies of Butler, he spoke so low: all that I heard from him, was: "I don't feel disposed;" the remark about the chestnuts, alluded to the punishment of William Ward, the day before; the only thing I heard Robert Ward say to Sturgus, was: "Stand off;" immediately on the report of the pistol, Sturgus came out of the recitation room into the large hall; Butler was then on the floor; this was on the north side of the room, and the settees were on the south side of it; suppose the room is not less than fifty feet deep; Sturgus had nothing in his hand when he came out of his recitation room; I did *not* hear Butler invite Ward into his recitation room, now I have thought of it more fully; did not see Sturgus in his room, when Butler went in there, after he was shot; think he had run out of the window before that time; have said he was one of the worst frightened men I ever saw.

Direct, resumed.—Am sixteen years of age; never testified before, in a court of justice; said, in my examination in chief, that I observed the Wards coming in the hall; said that I then asked to be excused and left the recitation room, and that I saw Butler come out of his room.

MR. MARSHALL.—If the Court please, I must object to this line of examination, and request that some rule may be established, limiting the extent to which gentlemen are allowed to repeat, word for word, the questions which they asked the witness on the examination in chief. Such a course, though it may give an advantage to the side which pur-

sues it, and gains the last lick, must render this case absolutely interminable.

MR. CARPENTER.—I have no desire, if the court please, to obtain any "last lick," and have simply pursued the course from a wish to save time, as I desire to recall the attention of this witness to a single point. It is my intention to seek no unfair advantage, but to conduct this case on high, professional and honorable principles.

MR. MARSHALL.—I suppose the gentleman in boasting of his highly honorable and lofty method of practice (which we have not impeached—as yet), intends to cast no imputation on other gentlemen in the case, as pursuing a contrary course?

MR. CARPENTER.—Certainly not.

MR. MARSHALL.—Ah! Then the self-advertisement of the gentleman's numerous virtues, was quite unnecessary, and given in advance of any demand for it. I renew my request to the court, as proper and necessary.

The Court remarked that the ordinary and proper course was only to question the witness on new matter brought out in the cross-examination, and to re-examine on points in regard to which he had not been so explicit as to be clearly understood.

The examination was then resumed: Prof. Butler went into the recitation room of Sturgus, after he was shot; I saw him there, but no one was with him; Sturgus had gone out of the window, the worst frightened man I ever saw; thought that Butler made a motion as if to invite Ward into his study; have heard it said since the occurrence that he invited him in, and suppose that is the manner in which I received the impression.

WILLIAM WORTHINGTON, *sworn*.—Was in the school room, on the 2d of November, when William Ward entered; he went to the seat he had formerly occupied, and I then looked around; saw Matt. and Robert Ward standing in the hall, and Mr. Butler came out of his room; heard Matt. say: "Which do you think is the more to be despised, the contemptible little puppy who begs chestnuts and then lies about it, or my brother William, who gave him the chestnuts?" think Butler replied: "If you will walk into my room I believe I can explain the matter satisfactorily;" Ward refused to go to hear the explanation; the next thing I heard was Ward asking: "Well, if you will not answer that question, will you tell me whether you called my brother a liar?" Butler replied, "I cannot answer this, unless I am allowed to explain;" I did not hear all the conversation, as Prof. Butler had often requested us not to look around when people came in, and my back was towards the door; the next thing I heard was a

slight stamping; I turned around again, just as the pistol was fired and Butler was falling; I ran out at the nearest door, and when I returned, Ward had gone, and the boys were just assisting Butler away: am eighteen years old.

Cross-examined.—Live in Louisville; my father, Samuel Worthington, resided in Mississippi before he came to L.; there was no other boy of my name in school; suppose it is about ten feet from the door of Mr. Sturgus' recitation-room to the point where Prof. Butler fell; Butler spoke in a very low voice; I heard his replies distinctly, however: did not hear the expressions d——d scoundrel or d——d liar, at all; only a few of the boys in the school-room could see into Butler's recitation-room; do not know whether there was a class in his recitation-room: saw none come out; it was into that room that Butler invited Ward to go and hear an explanation; have conversed with many people in regard to this case; have never told my mother that I knew nothing about the whole matter, except that I heard stamping and saw the pistol fired: did not see Butler after I went out; the boys scattered in every direction, after the firing; did not see any of them go, except several who went out with me in front of the house; William Fagan was with us; have talked with a gentleman named Allen, in regard to this matter: knew him then and had seen him at my father's house; do not recollect that I saw Mr. Allen at all on that day; my seat was in the seventh range from the door; suppose it was between 30 and 40 feet from the parties; the desks are so arranged that the boys sit with their backs to the door.

MR. MARSHALL.—Did you not hear the boys there one and all, inform Mr. Allen that Butler struck Ward first?

MR. CARPENTER.—We object to the method of examination.

MR. MARSHALL.—I do not ask the question that the answer may be admitted as proof that Butler *did* actually strike the first blow; but I am conducting a cross-examination, and propound it to test the memory and veracity of this witness. The testimony that he has given is of considerable magnitude. If I can show, therefore, that an important event then and there occurred, which he either does not recollect or denies here, it will show he was in such a state of mind at the time that no reliance can be placed on his account of the circumstances.

Mr. Allen replied to Capt. Marshall, objecting to the question.

THE COURT.—I understand the rule to be that questions may be asked in regard to any matter outside the one at issue, to test the recollection of the witness; but there is no rule of law by which illegal testimony can be introduced, or collateral issues proved in testing the credibility of a witness.

Mr. Marshall thereupon propounded his question in an unobjectionable form, and the witness responded that he had no recollection of seeing Mr. Allen on that day.

To Mr. Carpenter.—Attend church sometimes; have been in the Sabbath School a few times.

Mr. MARSHALL.—Does the gentleman desire to prove that his witness is an infidel, and that his religious education has been entirely neglected? If so, we readily admit it! (Laughter.)

THE COURT.—Such questions seem to be unnecessary, and I trust will be omitted in the examination.

Mr. CARPENTER.—Certainly, if they are deemed improper. And this seems to be hardly the place for the theatrical performances we have just witnessed.

Mr. MARSHALL.—There is a great variety of theatres in this world, and you have performed characters in some of them that are by no means enviable.

Mr. CARPENTER.—So have you, sir.

THE COURT.—I must insist that the gentlemen refrain from remarks of this character.

Mr. MARSHALL.—I desire to treat the Court with all due respect, but, sir, the gentleman has addressed a personal charge to me, and I felt bound to retort. He has accused me of assuming theatrical airs, which I must certainly repel. Why, sir, my manners are the most natural in the world, and have been too long worn to be thrown off at this late day. And when a personal and insulting remark is made commenting upon them, I need not say that it is offensive.

Mr. CARPENTER.—I intended no insult to Capt. Marshall—it was merely a side-bar remark.

THE COURT.—Let the Case proceed without further interruption.

JAMES S. PIRTLE, *sworn*.—Am 13 years of age; was in school on the 2d of November; saw Mr. Ward come and inquire for Mr. Butler; heard him ask which was the worst, a contemptible puppy, who begged the chestnuts and told a lie, or the one who gave them to him; Butler said he would explain the circumstances of the case, if Ward desired it; he replied he wanted his question answered; and the next thing I heard, was the expression, “Whoever calls my brother a liar—” I then heard the pistol discharged, and saw Butler fall, when I ran out; as I went in again, saw Robert Ward come back, and pick up a pistol laying on the floor, and carry it away; the first words I heard from Ward were something about “ideas of justice; and chestnuts;” my seat was the fourth in range from the door; during the conversation Ward had his hat in his left hand.

Cross-examined.—I could not hear what Mr. Butler said, during the conversation; saw that he had his arms extended; did not see Butler strike Ward; my back was towards them; remained at the school-house five or ten minutes after the shooting; talked with Mr. James Speed about testifying here,—did not tell him I knew nothing about it; told him I was summoned to testify, and thought I ought not to tell him what I knew, then; two gentlemen came to the school-house and inquired about the matter, after it was over; I did not tell the gentlemen that Butler struck Ward the first blow.

To Mr. Carpenter.—The report of the pistol was directly after the expression, “Whoever calls my brother a liar—”

*MINOR POPE, *sworn.*—Reside in Louisville; am 17 years of age; was in Prof. Butler’s school, on the 2d of November; Matt., Robert, and William Ward came to the school-house, and while William went into the school-room, Matt. inquired for Butler; I went for Butler, and told him two gentlemen wished to see him; he came out, and bade Matt. good morning; he returned the salutation, and said: “I have a matter to settle with you.” Butler replied, “Step into my room;” Ward said, “No, sir—answer my question; why did you call my brother William a liar?” Butler declined answering; some other words passed between them, while I continued an exercise I was writing; when I looked up again, Ward had a pistol, and discharged it; think he took it from his pantaloons pocket; noticed his right hand in his pocket when he entered; after Butler was shot, he exclaimed, “My poor wife and child.” They were very close together when the pistol was fired; noticed that Butler raised his hand just as the pistol was fired; observed Ward make one or two gesticulations with his left hand, during their conversation; Ward was partially between Butler and the door; my seat was in the first range, the third seat from the parties; Butler was between Ward and myself.

Cross-examined.—As I sat in the school-room, could not see the parties without turning; did not pay very particular attention to the

* NOTE.—The following is the testimony of this witness, before the Examining Court, as published in the *Louisville Courier* :—

Minor Pope testified that the Wards entered the school-room as detailed by other witnesses, that Matt. Ward called for Mr. Butler, who came to him, when Matt. Ward said he had a matter to settle with him, and asked the same questions as above, when Mr. Butler requested him to step into another room with him, but Matt. Ward said no, that 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.

conversation; Ward appeared to be somewhat excited; do not recollect in which hand Ward held his hat; do not remember what kind of a coat he had on; it might have been a sack coat buttoned entirely down; am sure his hand was in his pantaloons pocket; when Butler raised his arm, he sprang towards Ward.

MR. CALDWELL.—Did not Butler strike Ward when he sprang up on him, before the pistol was fired?

WITNESS.—I am unable to state, as the change in his position prevented me from seeing; when I went into Butler's room, and invited him out, there were eight or ten boys there; I stood outside the front gate after the occurrence, with several boys, for a short time; no gentlemen came while I was there, but I do not know what transpired after I left; think Butler raised but one of his hands when he sprang, or stepped towards Ward; I may have raised both my hands in endeavoring to show his position when I testified before the Examining Court; I saw no blow struck between the two; suppose the distance between the parties when the pistol was fired, was three or four feet.

Court adjourned.

SECOND DAY.

Wednesday, April 19th, 1854.

At half-past eight o'clock, the testimony for the Commonwealth was continued.*

JOHN A. CAMPBELL, *sworn*.—Reside on the Frankfort railroad,

* The following is the report, given in the *Courier*, of the testimony given by this witness before the Police Court on the preliminary examination:

John A. Campbell, a pupil in the school, was first introduced as a witness. He testified that M. 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 desired to see him. He went into the room, and Matt. F. Ward accosted him by saying *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 ask Mr. Butler another question; and asked why he called his brother a liar? and then said that 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. B. was a man of ordinary strength, probably stouter than Ward, and in better health. He assisted in taking Mr. Butler away from the school-room.

seventeen miles from Louisville; am now boarding in Louisville, attending school; am 20 years of age; was present in the school-room of Prof. Butler on the 2d of November; when the Wards came, William entered the school-room and Matt. inquired for Butler; when he came, they bade each other good morning; Matt. said something about a little matter to settle; I heard Ward ask, "Which is the more to blame, my brother or the contemptible little puppy who begs the chestnuts of him;" did not hear Butler's reply; then heard Ward say, "If you will not answer that question, I have another for you. Did you call my brother a liar?" The only portion of Butler's answer that I heard, was, "Well, Mr. Ward—"; Butler spoke very low; Robert Ward was standing near, and as I feared he might use some unfair weapon or something of the kind, I turned around to pick up a pair of tongs and prevent it; while I was turned, heard Ward call Butler a d—d liar; shortly after, I heard the pistol fired; suppose not more than six seconds passed between this expression and the firing of the pistol; the boys all ran out then; as soon as I looked about, saw Robert flourishing his knife; did not observe the position of Ward's hands when he entered; he seemed excited—spoke a little above his ordinary tone; did not see Butler strike Ward; do not think he struck, but he made some motion towards Ward; Butler's back was to me; I turned around to look, just as I heard the expression d—d liar; knew there would be a fight then; it was just after that, that Butler made a movement towards Ward; I assisted in taking Butler to Col. Harney's, and remained there until ten o'clock that night; the only person with me whom I recollect, was Knight; saw no one but the school-boys assist in taking him there; when Butler fell, the boys all ran out immediately; I followed them and told them to come back, but only a few of them did so.

Cross-examined.—It was about five minutes after Butler was shot that we assisted him to Col. Harney's; we carried him in our arms for the last ninety or one hundred yards; I did not assist until he fell on the corner of Second-street; suppose he walked about the same distance before he fell that we carried him afterwards; did not notice whether we met any one or not; some other boys assisted Butler to the corner where he fell, and I overtook him there; when the boys all ran out of the school-house, I put down the tongs and went to try to induce them to come back; suppose I was absent from the school-house about a minute; when I returned, Butler had gone, I think; I remained in the school-room then about a minute; before I went out first, saw Butler stagger across the entry and go into Sturgus' room; when I returned to the school-room, after going out to bring the boys in, I passed

into Butler's room, and staid there a minute; then passed into the school-room, and Butler was already gone; I belonged to the German class; it had just been dismissed, and had left Butler's room when Ward came; do not think any other class had been called in yet, but am not positive; cannot say whether there were any boys in Butler's room when Ward came; the only part of Butler's conversation I heard was, "Well, Mr. Ward—"; I was about four feet from the spot where Ward and Butler conversed; did not hear the reply, to which Ward said, "Well, if you will not answer that question, I have another for you;" as soon as the lie passed, Ward made a motion to Butler; I could not see Ward make the motion, but I heard him move; cannot tell whether he moved forward or backward; Butler's back was towards me, and between us, so that I could not see Ward distinctly; as soon as I heard the lie given, I turned around to pick up the tongs, and thus I only know that Ward made the motion by the sound on the floor; Butler then made a little, quick movement; it was not as if moving away from Ward; I thought if Butler were going to whip Matt., that Robert might interfere with a knife or something.

Mr. MARSHALL.—Well, sir, was it not your impression from what you saw then that Butler *was* about to whip Ward?

Mr. CARPENTER.—We object to the question as improper.

Mr. MARSHALL.—It will be remembered that the Commonwealth had proved by the witness that he thought there was to be a difficulty; I wish to show more particularly what he thought the nature of the trouble was to be.

Mr. GIBSON.—If his testimony on that point was improper, the gentleman should have objected to it at the time.

Mr. MARSHALL.—If the gentlemen introduce incompetent evidence, and obtain the benefit of it, I suppose they will not make us responsible for it, because we did not object.

Mr. GIBSON.—We have no desire to introduce incompetent testimony at any point.

Mr. MARSHALL.—I presume not, and once for all, to prevent future misunderstandings, I wish to state that in commenting upon the course of any gentleman present, I shall not assail his *intentions*, unless I do it plainly and explicitly.

The Court permitted the question, in view of the previous testimony given by the witness on that point during his examination in chief.

WITNESS.—It *was* my intention, when I picked up the tongs, to keep Robert off while Butler whipped Matt.; I knew, of course, that he would not stand the d—d lie; did not notice particularly in what direction Butler moved his arms when he made the motion; I do not

know whether Butler was then in an attitude to strike; Butler was a courageous man—he would not stand an insult; there was something about Butler's movement—I don't know exactly what—that induced me to believe he was going to resent the insult he had received; it was something in his position, attitude or gesture that made me believe so; Butler could have whipped Ward; it was my impression from the appearance of Matt. Ward when he came in, that he was in good health; he had no such wan, pale, feeble look as he wears now.

Direct resumed.—As soon as I heard the lie given, I turned to pick up the tongs, and then heard the pistol fired; presume I thought there was going to be a fight from my own feelings; felt as if I should fight if I had been given the lie; never saw Butler fight, or knew him to have a quarrel.

The Defense here objected to going into the general character of Butler. Mr. Marshall stated that the Defense were ready to admit at once that he was a peaceful, quiet, decorous gentleman; and remarked that no one could possibly regret his death more deeply than the parties now on trial. His questions had only elicited the fact that the deceased—to his honor be it spoken—was a brave man, who would not bear an insult—not that he was a quarrelsome one.

Mr. Carpenter remarked that as the fact was admitted, the questions would not be pressed.

GEORGE W. CRAWFORD, *sworn.*—Reside in Louisville; am 17 years of age; was in the school-room when the Wards came; Matt. asked Butler which was the worst, a contemptible little puppy who begged the chestnuts, and then lied about it, or his brother who gave them to him; Butler replied: "Walk into the next room and I will explain it to you;" Ward said: "I want an answer here, and if you will not reply to this question I have another for you; did you call my brother a liar?" I did not hear the answer, and Ward then said something more which I did not hear; when I looked around again Ward advanced towards Butler, and I noticed that Butler's right hand was on Ward's left shoulder, and Butler's left hand was catching at Ward's right arm; just then the pistol fired; my back was towards the parties when I was in my seat; Ward held his hat in his left hand and gesticulated with it; held the pistol in his right hand when he fired it; did not see the pistol until the very moment he fired; I saw no striking; my view, when I looked around, was a side one; Butler staggered towards the door of Sturgus' room and fell; he afterwards got up and started to enter the room; I did not see him enter, but I went out immediately after.

Cross-examined.—The Wards went nearly into the middle of the school-room when they inquired for Butler; he came out of his recita-

tion-room and they went back to meet him ; I did not immediately turn round to hear what was going on ; first heard Ward say something about settling a little affair or something of that kind ; I was eight or ten feet from them when they conversed ; heard Butler distinctly ask Ward to walk into the next room ; there were boys in the next room ; Butler spoke in his ordinary tone ; he said : " This is no place to answer such a question ; " I did not hear the latter portion of the conversation ; I anticipated no difficulty ; did not hear the lie given at all ; heard footsteps on the floor, which seemed to be those of one person ; Ward moved about three steps towards Butler ; Butler did not approach him ; I expected a difficulty then ; judged that Ward had a knife, from the tone of voice in which he spoke ; there was a noise in the room which prevented me from hearing the d—d lie given ; saw Butler lay his hand on Ward's shoulder, Ward's right hand was in or near his pocket ; am not positive that he held his hat in his left hand, though I think he did ; after the pistol was fired, I went into the back yard ; the most of the boys were assembled there ; some of them went back into the large room again ; suppose I staid in the yard ten minutes ; Butler had gone when I returned to the school-room ; I then went out into the front yard and walked up and down there ; did not see any gentlemen come up there and inquire what was the matter ; during the conversation I was in my seat, in the third range.

A. B. ZANZINGER, *sworn*.—Reside in Louisville ; am 17 years of age ; was present in the school-house when this affair occurred ; a servant came there that morning, I think, for Victor Ward and his books ; about 10 o'clock I was reciting in Sturgus' room ; while we were there there was very loud talking in the school-room ; Sturgus and the most of the class stepped to the door and saw Matt. Ward engaged in loud conversation with Butler ; Sturgus called us back and the recitation went on, the door being closed ; shortly after we heard a pistol discharged ; we went out immediately ; Butler had then been lifted up ; Matt. Ward had gone and Robert was flourishing a knife about the room.

Cross-examined.—Did not notice whether Butler was on the floor or not, when I went into the school-room the second time ; I jumped right out of the window, and saw the boys taking Butler up towards Col. Harney's house ; might have waited in the recitation-room two or three minutes before I jumped out of the window ; Butler was not brought into Sturgus' recitation-room while I was there, and after I got out at the window, the boys were ahead of me, taking Butler up the street ; did not see Sturgus after I went back into his room the second time ; do not know what became of him.

To Mr. Allen.—May have remained in the main school-room three or four minutes when I went in after the shooting; did not see Butler go into Sturgus' recitation-room during that time.

WILLIAM H. FAGAN, *sworn*.—Am eighteen years of age; reside in Louisville; was present when the difficulty occurred between the Wards and Butler; was in Sturgus' recitation-room; heard one of the boys say, "The Mr. Wards are there;" went to the door for a moment, and then returned; just then heard a pistol discharged; went to the door again; Matt. Ward had gone: Butler was on the floor and Robert was flourishing a knife; I jumped out of the recitation-room window and went around to the steps; in about three minutes Butler came down the steps assisted by Knight; I took hold also, and we assisted him to Col. Harney's; believe no one else took hold of him except Johnson; there were men walking along with us.

Cross-examined.—It is one square from the school house to Col. Harney's; Butler fell into my arms while we were on the way, and we then carried him in our arms; I remained at Col. Harney's until the doctors came; then returned to the school-house; suppose it was not ten minutes after we reached Col. Harney's residence, before the doctors arrived.

DAVIS M. BUCKNER, *sworn*.—Reside in Louisville in the summer, and on my father's plantation in Mississippi, in the winter; am thirteen years of age; was in Butler's recitation-room on the 2d November, when a boy came in and told him Mr. Ward desired to see him; he went out, and shortly after, hearing loud voices, I went to the door; Ward just then shot Butler, and he fell near the door of Sturgus' room; I heard none of the conversation; went back and jumped out of the window; there were five or six other boys in Butler's recitation-room when Ward came; suppose I waited out of doors five minutes before Prof. Butler came out, and was assisted to Col. Harney's.

Cross-examined.—Butler and Ward stood very near together when the pistol was fired; think Butler was standing still; did not notice any scuffling; I was a good deal scared; after Butler had left the house, I saw Sturgus going after Dr. Caspari; Butler was ahead of Sturgus, I think; I did not return to the College; think Butler staggered forward towards Sturgus' room, after he was shot, before he fell; do not think they were more than two feet apart; did not notice whether the parties had hold of each other; I did not see Butler fall.

HENRY C. JOHNSON, *sworn*.—Reside in Louisville; am fifteen years of age; was in Butler's recitation-room on the 2d of November, about 10 o'clock, when Minor Pope came in and said two gentlemen wanted to see Prof. Butler; he went out; a few minutes after, I saw William

Ward in the school-room, and, desiring to speak with him, went out and talked with him; from the point where we stood could hear Butler and Ward in earnest conversation, but could not hear what they said; saw the pistol fired, and Butler fell towards Sturgus' room; I jumped out of the window, and in three or four minutes when I was in front of the school-house, met Knight, Fagan and Campbell taking Butler to Col. Harney's; I assisted them, holding one of his arms; no one had hold of him but the school-boys; did not look at Butler and Ward until I heard the pistol fired.

Cross-examined.—Did not see the pistol; testified on the examining trial before the Police Court; we supported Butler to the corner of Second-street; he then wanted to lay down, and said he was dying; we carried him from there to Col. Harney's; I stood about ten feet from Butler and Ward; did not hear a word that was said; could not distinguish the voices apart; after the pistol was fired, Sturgus came out of his recitation-room, and stepped towards the parties, when Robert went towards him with the knife; he went back into his room, and I saw no more of him until we were passing Second-street with Prof. Butler; Butler was still in the hall where he was shot, when I jumped out at the window; I then stood at the front gate, until I went up the steps to assist Butler; I did not see Sturgus pass out during that time; if he went out at the gate, he must have done so before I did.

Direct resumed.—My attention was not attracted to the conversation between Prof. Butler and Ward, because I was engaged in an animated conversation with William Ward, at the time; the knife which Robert flourished was a Bowie knife.

JOSEPH BENEDICT, *sworn.*—Reside in Louisville; am fourteen years old; was present at Prof. Butler's school-house when the defendant came; was standing in the main school-room; when called for, Butler came out and spoke to Ward politely; Ward asked which was the most contemptible, the little boy who begged chestnuts and then lied, or his brother William; did not hear Butler's reply—he always spoke very low; there was more conversation, but I could not hear the words; saw Butler step forward and lay his right hand on Ward's shoulder; nearly at the same instant saw the pistol flash; did not see Butler strike; was not looking at them all the time; looked about the school-room to see what the boys were doing; think Ward had his right hand near his pocket or in it; while they conversed, his back was towards me.

Cross-examined.—I had risen from my seat, and was still standing at it to go into the recitation-room and ask Prof. Butler something about my French lesson, when he came out to speak with Ward; did not hear a word that Butler said; his tone was very low; only heard the question

asked by Ward, which I have related; expected a difficulty when I saw Butler lay his hand on Ward's shoulder; I knew he would not do it for nothing; believe Butler pushed Ward back when his hand was on his shoulder; saw that Ward was bent over as he was pushed back, before the pistol was fired; Butler fell towards Sturgus' room; when I jumped out of the back window, on seeing the knife, was gone some three minutes; when I returned, Butler was gone; several of us stood at the front gate for four or five minutes; do not recollect whether two gentlemen came there and spoke with us, or not; I was so excited that I may not have noticed it; I did not tell any one there that Butler had struck first and Ward had then fired.

EDWARD QUIGLEY, *sworn*.—Am seventeen years of age; reside in Louisville; was present in the school-house when this affair occurred; was sitting about twenty steps from the door, when the Wards came in and inquired for Prof. Butler; he came out and spoke to them, and they then conversed in a very rapid manner; I was about twenty feet from them, but could hear none of the conversation; when I looked at them again, Butler had his hand on Ward's shoulder; Ward gave way a little, and was pressed back against the door; he then fired, and Butler fell; did not see Butler strike Ward.

Cross-examined.—When Butler put his hand on Ward's shoulder, suppose the parties were about eight feet from the door; he did not crush him to the ground—only towards the door; should think about five minutes passed between the time of Butler coming out, and the firing of the pistol; I went out of the window through Butler's recitation room; did not see Sturgus after the affair took place, until he came across the street with Mrs. Butler; was in the front yard for a short time afterwards; may have seen some gentlemen come up, while there; cannot say what I may have said to them; I was much excited; have no recollection of seeing them; saw one man come up, but he did not talk to me; during the conversation I was sitting in front of the first range of desks in a chair, near the wall, with my face towards the parties.

AFTERNOON SESSION.

WILLIAM R. REDDING, *sworn*.—Am 16 years old; live in Louisville; was present on the 2d of November when this affair occurred; was sitting in my seat, and saw Matt. and Robert Ward come in and stand near the door; one of the boys went for Butler, who came out and bowed to them; something was said which I did not hear, when Ward said: "I have come to see you about that affair;" Butler asked him to step into the recitation room, but he replied, "No, I want to talk

here;" other conversation ensued which I could not hear, though I caught the word "liar" once, I thought; in a few moments I heard the report of a pistol, and as I looked around, Ward was just taking his hand away from Butler's breast, and Butler fell; the scholars then retreated, and I went with them; I was not looking at the parties all the time during the conversation; did not see Butler strike at all.

Cross examined.—After the occurrence, I was in the front yard for about a minute; do not recollect seeing any gentleman come while I was there; remained about the school-house some five minutes after the affair; did not tell any one that Butler struck Ward first; saw a gathering of boys in the front yard after the occurrence.

J. J. GILLMORE, *sworn.*—Reside in Louisville; am a gunsmith; on the morning of the 2d of November last, Matt. F. Ward came into our store about 9 o'clock; he asked to look at a pistol; he took it, examined it, asked the price, and told me if I would load it he would take it; I did so; he then hesitated a moment, asked the price of the pair; I told him, and he said if I would load the other he would take the pair; I loaded the other, and he took them; he inquired for small pocket pistols; the pair I sold him were small, self-cocking ones; this pistol is one of the same kind; they are good pistols; suppose they would shoot through an inch plank, two feet from the muzzle; I loaded each of them with powder and ball, and put caps on them; they were fully prepared for use; did not observe whether he put them in his pocket; do not recollect that he said he wanted pistols that were certain, or any thing of the kind; there was some conversation that I do not remember.

Cross-examined.—Think this bore is for 220 balls to the pound, the smallest in my whole store; my largest pistols have a bore for 30 balls to the pound; loaded the pistols with buckshot—one in each pistol; I have a large establishment, and keep pistols of every description; the length of this barrel is three inches—at least they are sold for three inches; the barrel proper is not quite three—about two and a-half.

To Mr. Carpenter.—Moulds always go with the pistols—he took one, but bought no other ammunition; buck shot were as large balls as could be put into the muzzle; the pistol is of Allen's make; the bore is about one size smaller than Allen's six-barrel revolver.

To Mr. Wolfe.—I had many other sizes of pistols in my store that might have been carried in the pocket with ease; this was the smallest size I had; Colt's revolvers carry balls of which there are 150 to the pound; they are often carried in the pocket.

Mrs. MARTHA A. HARNEY, *sworn.*—Reside in Louisville, on Chestnut-street, between First and Second; on the morning of the 2d November last, between 9 and 10 o'clock, I met Mr. Matt. Ward on Third-

street, near the Post Office ; I thought he seemed to be under excitement at the time ; there was a firmness and determination in his appearance which I had never seen before ; he was not walking very rapidly : was going towards Chestnut-street ; think he had one of his hands in his pocket and the other by his side ; I returned home, about half an hour after that, having been sent for ; Prof. Butler was already there ; I found him lying on the rug in the parlor ; the house was full of people ; I did not speak to him until some three quarters of an hour after I returned ; then had a conversation with him ; when I entered the room he raised his hand to me in recognition ; I knelt by his side and begged him to be composed ; he seemed very much agitated ; I told him to be quiet, as much depended on it ; that the physicians thought it was only a flesh wound, and we hoped he would recover ; he said he could not, and I repeated the same words ; he said " No—do not be deceived—I cannot live : when I am gone, will you be kind to my poor wife and baby ? " He then desired to see Mrs. Butler ; he seemed impressed with the conviction that the wound was mortal ; I was with him until his death. I brought Mrs. Butler in at his request ; he died the same night between 12 and 1 o'clock.

Cross-examined.—Do not claim to be an acquaintance of Mr. Matt. Ward ; had once been introduced to him on the street, and had seen him once or twice since ; am the wife of Mr. Harney, the editor of the Louisville *Democrat*.

Mrs. ELIZABETH BUTLER, *sworn.*—When Mrs. Harney took me to my husband, he told me not to be deceived—that he was dying ; I told him to be calm—that the physicians thought he would recover, but that every thing depended on his being kept quiet ; he said, " No, Lizzie—don't deceive yourself—I am dying ; " he thought, until his death, that the wound was fatal.

The counsel for the Defense declined asking Mrs. Butler any question, remarking that they had no desire to inflict suffering upon her by calling her mind to the details of the unhappy occurrence.

Dr. D. D. THOMSON, *sworn.*—Reside in Louisville and practise my profession there ; shortly after 10 o'clock, on the morning of the 2d of November, was called to Col. Harney's residence to see Prof. Butler ; he was deathly pale and faint ; several boys were holding him up, and I had them place him in a recumbent position ; he asked me if he was not a dead man ; I told him I hoped not, but could not tell until I had examined the wound ; we took off his coat and tore open his shirt ; the wound was on the left side, about 1½ inches obliquely above the left nipple ; it was much burned with powder around it ; I attempted to probe it but failed to do so, being unable to follow the wound ; I then

asked him in what position he stood when he received the ball ; he replied that they were clinched, and went on to speak of the circumstances ; said Ward had come to see him, they had had a conversation in which Ward called him a d——d liar, and struck him ; that he struck back and was shot, but did not see who fired the pistol ; Dr. Caldwell came in, and assisted, but we succeeded in tracing the direction of the ball only a short distance ; the probing was very painful to him, and, desirous of causing him no more suffering than was necessary, we did not pursue it further, and gave him something to allay the pain ; some fifteen or twenty minutes after, a noise proceeded from the wound ; some one asked what it was, and Dr. Flint replied that the ball had passed into the cavity, and forced the air out through the blood, causing the noise ; Butler then said he was a dead man ; about 4 o'clock in the afternoon he seemed better, and we hoped a reaction would take place ; but he soon commenced failing again, and continued to do so until he died ; he seemed fully convinced all the time after I saw him, that he was dying ; we deemed it useless to punish him by probing further, but I took a part in the *post mortem* examination ; we found that the ball had entered between the third and fourth ribs, passed through the upper lobe of the left lung, and lodged in his backbone ; Prof. Butler was a man who would weigh about 135 or 140 pounds ; his right hand was disabled, so that it could not be straightened after his death ; there can be no doubt that the wound caused his death.

Cross-examined.—When I arrived at Col. Harney's house, several boys and some ladies were in the room with Prof. Butler ; saw Mr. Sturgis, after I had been there awhile ; recollect seeing no other man there except him ; two or three boys assisted me in stripping Prof. Butler ; think Knight was one of them ; do not recollect the names of any of the others ; after we had taken off his coat I tore his shirt open ; think Dr. Yandell came in while I was probing the wound ; Dr. Caldwell came in shortly after ; at his suggestion we attempted to probe the wound while Prof. Butler's arm was held up, thinking that his hand must have been raised while he was clinched with Ward, and supposing that we could ascertain the direction of the ball more successfully, while his arm was in the same position ; while Butler was speaking about the matter, Drs. Yandell and Caldwell were both in the room, and near enough to hear him distinctly ; I testified before the Police Court on the examining trial, that Butler either said he struck or struck back, after he received the blow ; that Ward first cursed him and then struck him.

Mr. WOLFE.—Is it customary in Louisville for young men to go armed ?

WITNESS.—I do not know.

MR. WOLFE.—Are you not armed now, sir? Did you not arm yourself before you left Louisville?

WITNESS.—I shall decline to answer unless I am directed to do so by the court.

THE COURT.—The witness is not compelled to answer the question unless he sees fit.

Direct resumed.—In our efforts to probe, did not follow the ball further than just beneath the skin; was with Butler, with the exception of two intervals, until he died.

To Mr. Wolfe.—Prof. Butler remarked, during his account of the matter, “I did not see who shot me.”

DR. L. P. YANDELL, *sworn*.—Am a practising physician in Louisville; was called in to see Prof. Butler, on the 2d of November, shortly after he was shot; he seemed to be mortally wounded; Dr. Thomson was attempting to probe the wound, and when Dr. Caldwell came in, he attempted to assist; the probes did not seem to penetrate the chest, and we then felt and expressed a hope that the wound might not be fatal; shortly after, however, I heard the blood issue from it in a manner that convinced me the ball had entered the cavity; when I asked the position he was in as he received the wound, he replied that they were clinched; that Ward called him a d——d liar or scoundrel, and raised his hand; that he (Butler) then struck Ward—they clinched, and he was immediately shot; the ball passed through a part of the left lung, where the vessels are large; it caused his death; cannot recollect the precise language of Prof. Butler, in regard to Ward raising his hand before Butler struck him; but I understood him to state the fact; Butler did not state in my hearing, that Ward had struck him at all.

DR. — MUGUET, *sworn*.—Reside in Louisville; was with Prof. Butler, after he was shot, on the 2d November; went to see him about half past 1 o'clock, and remained a short time; went again at half past 7 and remained until his death; was present at the *post mortem* examination; was well acquainted with Prof. Butler; his right hand was always disabled; he could not open or close the fingers of it.

PATRICK JOYCE, *sworn*.—Was well acquainted with William H. G. Butler; he could not open the fingers of his right hand; observed that it was impossible to straighten them after he was dead; I first knew that it was impossible for him to open his hand, from observing once in the French Assembly, that when a lady asked him to point out Cavaignac or Lamartine, he indicated the place where he sat with his arm, but his fingers were pointed in quite another direction, nearly at a right

angle; noticed that he misled the lady, for she followed, with her eye, the direction of his fingers instead of his arm.

Cross-examined.—He may have had the use of the lower joints, so that he could clinch his fist; Butler was a man of very fair strength in his arms; he was in the habit of exercising with his arms, in the gymnasium; think he was stronger than the average of young men, who frequented the gymnasium; I once crossed the ocean with him, and had an opportunity to notice that he had much more strength than I had, though I am rather weak in the arms; I have seen him show great alacrity in climbing ropes, hand over hand, and other feats of dexterity on ship-board; have also seen him suspend himself by his hands upon horizontal poles in the gymnasium, and then draw up his body, and perform many other feats I am quite incapable of.

Mrs. FRANK CARTER, *sworn.*—Reside on Chestnut-street, in Louisville, directly opposite the school-house occupied by Prof. Butler; on the 2d November, heard a noise at the school-house; inquired the cause of it, and was told that he had been shot; afterwards went to Col. Harney's, and arrived there while Dr. Thomson was probing his wound; saw him several times before he died; assisted in gloving his hands after he was dead; it was impossible to open his right hand, which was much contracted; saw no gentleman there but Dr. Thomson, when I entered.

Cross-examined.—It was 8 or 9 hours after his death that we attempted to glove his hand.

Permission was given that a witness in chief for the Commonwealth—Dr. Flint—who had not yet arrived, might be examined at a future stage of the case.

The Prosecution now rested.

The TESTIMONY FOR THE DEFENSE was then opened, as follows:—

Dr. W. B. CALDWELL, *sworn.*—Was called to see Prof. Butler, soon after he was shot; Dr. Thomson and Dr. Yandell were with him when I arrived; some other persons were present whom I do not recollect; while Dr. Thomson was in a kneeling position, attempting to probe the wound, I asked the position of Prof. Butler at the time he received the shot; Butler replied he did not know which one shot him, as they were engaged at the time; do not recollect the precise language he used, but this was the idea; shortly after I left, and saw Butler no more; the probe would not penetrate, until the arm was raised, as a man's would naturally be, when engaged in conflict; we all supposed, when I left, that the ball had not penetrated the chest, but subsequent examinations proved the opinion incorrect; was not present at the *post mortem* examination; did not hear Butler say that Ward struck him.

At this point Mr. Marshall stated to the Court, that though it would not occur in the regular order of testimony, they desired to introduce a few witnesses in regard to general character, this evening, as it was important for several of them to return to their duties in Washington, and the business of others rendered it impossible for them to remain longer.

REV. E. W. SEHON, *sworn*.—Reside in Louisville; am a minister of the Methodist Episcopal Church; have been intimately acquainted with the prisoner at the bar, and his father's family, since his boyhood; his character is that of a most amiable and peaceable young man; his health was very feeble shortly before this affair; he had been compelled by a rheumatic affection to go upon crutches, and had thrown them aside only a short time previous; Mr. Ward's character is very generally known in the community; public attention has been more particularly directed to it, on account of the publication of his letters from abroad; I had procured the publication of his Letters from Judea, in the *Christian Advocate*; his family have a pew in my church, and he was looked upon by the Church, as a young man of much promise; I married him about eleven months since.

Cross-examined.—I speak of Mr. Ward's character both from my own knowledge, and general report; have often heard his peculiar amiability spoken of; was acquainted with Prof. Butler, by character, though not personally; his character for amiability was good.

HON. J. PERKINS, *sworn*.—Reside in Louisiana; have known the prisoner for nearly ten years; in 1849 we travelled constantly together in Europe, for nearly six months; we were together in Egypt and Judea; am acquainted with his general character; he is remarkable for his amiable and peaceable disposition; he was an invalid during our tour; his condition was very feeble; in usual health he is not a man of robust power, proportionately to his size; am a member of Congress from Louisiana.

HON. WILLIAM PRESTON, *sworn*.—Have known Mr. Ward since 1838; he was a mere lad then, have had constant opportunities to know him well; he has always been a very amiable and mild young man, with tastes rather inclined towards letters; he has always been very highly esteemed by all who knew him; have seen instances in which he has shown himself a man of spirit, but of a just and honorable courage only; his *physique* is much below what his size would indicate; he has been feeble for a long time; saw him on crutches shortly previous to the occurrence, and noticed that his health seemed unusually infirm; am a member of Congress from the Louisville District.

HON. JAMES GUTHRIE, *sworn*.—Have known Mr. Ward almost from

his birth; he was a very amiable, sprightly boy, and grew up to be a man of the same character; have always been on intimate terms with his father's family; his health has been feeble for many years; I always have esteemed him as a mild, amiable gentleman, and know that to be the general estimation in which he is held; the last time I saw him, before this occurrence, he was very feeble; he made the tour to Europe on account of his infirm health, and during it wrote his "Letters from Three Continents," which have since been published, and attracted much attention.

GEORGE D. PRENTICE, *sworn*.—Have lived in the same city with Mr. Ward since his early childhood; have always known him well from general reputation, and for a few years past by intimate personal acquaintance; have found him as mild, quiet, and amiable a gentleman as I have ever known; he has been an invalid for many years, and often unable to go into the streets; have believed him to be a gentleman of spirit—one who would be prompt to resent an insult, but remarkably quiet in his disposition; on account of his attention to letters, his character has been more generally known and discussed, than that of most young men of his age; his letters were originally published in my own paper, the *Louisville Journal*, and my connection with him has been frequent and intimate; never heard but one opinion expressed in regard to his disposition; he was very feeble, shortly previous to this occurrence in November; he then walked with crutches.

ISAAC H. STURGEON, *sworn*.—Have known the defendant since 1841; he has always borne the character of a peaceable, quiet citizen, and an amiable man; resided in Louisville until 1846; then removed to St. Louis, where I now reside, and act as Assistant U. S. Treasurer; the health of Mr. Ward has always been feeble; have often met him since I left Louisville; have always looked upon him as a man in very delicate health; his frame is remarkably delicate for a man of his height; his reputation for mildness and gentleness has always been remarkably good.

Col. STEPHEN ORMSBY, *sworn*.—Have been intimately acquainted with the defendant for nearly fifteen years; have known him, both as boy and man, to be of a remarkably amiable and quiet disposition; his health has been feeble since he left college; never saw him in any places of dissipation ordinarily frequented by young men.

LARZ ANDERSON, *sworn*.—Reside in Cincinnati; have known defendant for more than twenty years; as a child he was remarkable for great sweetness and amiability of disposition, and the same has been true since he reached years of manhood; his health is very delicate, and he was very feeble, shortly prior to this difficulty.

WILLIAM TYLER, *sworn*.—Reside in Louisville; have known the defendant for fourteen years; knew him first as a schoolboy; he was one of the most peaceful and quiet boys I ever knew; he was then, and always has been, very mild, bland, and quiet, in his disposition; think I never knew a person so much celebrated for such a disposition; his health has always been feeble.

HORACE B. HILL, *sworn*.—Reside in Lexington, lived in Louisville for many years; have been intimately acquainted with defendant and his father's family for the last twenty years; his character for amiability and quietness of disposition has always been remarkably good; his habits have been rather domestic, and his health feeble.

Dr. JAMES C. JOHNSTON.—Have lived in Louisville about 65 years; have known defendant ever since he was a boy; he has always been very remarkable for his amiability of temper and courteous manners to every one; his health has been very precarious for many years; his frame is extremely delicate.

WILLIAM B. CLIFTON, *sworn*.—Reside in Louisville; have known defendant from boyhood; his character has ever been unexceptionable, as a peculiarly courteous and amiable young man.

The Court here adjourned until morning.

THIRD DAY.

Thursday, April 20th, 1854.

The Court convened at the usual hour.

The first witness this morning was the one whom the Prosecution had reserved the privilege of calling. He testified as follows:

Dr. J. B. FLINT, *sworn*.—Am a physician residing in Louisville; had known Prof. Butler some ten years at the time of his death; he had a deformity in one of his hands; it was crippled by a burn when he was young, so that the fingers were contracted; it was considerably crippled; he could not open his hand wide, and I think could not close it so as to grasp; could not double his fist exactly like other men; was called to see him on the day of him being shot, about 10 o'clock; was with him from time to time during the day until 10 o'clock that night, and attended the *post mortem* examination; the ball was then extracted from the back-bone where it was imbedded; have the ball here; while Butler lived Dr. Thomson remained with him during my absence, and I staid with him while Dr. T. was absent; did not hear Butler converse with any one I did not know, while I was in the room.

Cross-examined.—Butler could close his hand, but I do not know

how hard a blow he could strike ; he had the use of his thumb, also of his knuckles ; the range of the wound was a little upwards.

To Mr. Allen.—Think that the deformity of Prof. Butler's hand interfered more with grasping efforts than any others ; the external part of the hand was sound, so far as I remember ; know no man by the name of Barlow.

The testimony for the Defense was then resumed.

GEORGE D. PRENTICE, *recalled.*—About five hours after the difficulty with Butler, saw Matt. Ward ; my attention was called to the appearance of his face ; a portion of the cheek and the eye were unusually red and appeared swollen ; I should not have inferred that a severe blow, but some injury, had been received.

Mr. WOLFE.—Will you tell the jury whether it is the ordinary custom in Louisville to carry arms ?

Mr. CARPENTER objected to the question.

Gov. HELM remarked that they desired to prove the custom with a view to rebut and repel any presumption of malice on the part of the defendant.

Mr. CARPENTER considered the issue an outside one, and thought that if it could be shown that every man in Louisville was in the habit of bearing arms, it could be no mitigation of the circumstances in this case as already proved. A custom could not justify a breach of law.

The Court remarked that the Commonwealth had shown defendant to have procured pistols on that day ; the question now at issue was, whether this killing was done in self-defense, in the heat of passion, or maliciously. Any facts tending to show the motives of the accused were legitimate, and the question was therefore permitted.

WITNESS.—My own impression is that the proportion of those citizens who bear arms habitually, is small. Nevertheless, I believe almost every young man, if he is expecting an interview which is unpleasant and may result in collision, especially with a person of superior strength, arms himself. Have known numerous instances in which it has been done—not with a view to commit violence, but to prevent himself from being disgraced.

Cross-examined.—My impression is, that it was the left eye of the defendant which I noticed as inflamed.

Maj. T. L. ALEXANDER, *sworn.*—Am an officer in the U. S. Army ; know the defendant ; saw him about half an hour after this difficulty ; saw on his left cheek the appearance of a blow ; it was reddened, and the blow, though not a very severe one, had been sufficiently so to leave a distinct impress ; have no doubt from the appearance that there was a blow ; call Louisville my home ; as far as my personal knowledge goes, have often known arms borne on the person there ; do not

know that it is always done, but know it is usually the case when a difficulty is anticipated ; have done it myself ; as far as I have known of persons wearing arms, it has universally been done for purposes of defense, not assault.

JOHN O. BULLOCK, *sworn*.—Have known the defendant all my life, saw him within an hour after the difficulty with Prof. Butler ; one of his cheeks was much redder than the other ; my attention was not particularly called to it ; it was my belief from the appearance of his cheek at the time, that he had received a blow ; never heard the character of the defendant questioned ; he has uniformly been considered of a remarkably peaceable and quiet disposition, both as boy and man ; his companions have been much attached to him, on that account ; his health is very feeble, and has been delicate for years ; a few weeks before this difficulty, he was weighed in my presence ; he weighed 111 pounds.

Cross-examined.—Suppose an equal redness of his cheek might have been produced by some other causes besides a blow ; no one called my attention to it.

J. M. BARLOW, *sworn*.—Reside in Louisville ; am a carpenter by trade ; have been there on and off for seventeen years ; am a married man ; was born in Kentucky, Harrison county ; on the 2d of November was attending to some business on Gray-street ; on my way to and from it, I passed and repassed the Louisville High School ; when I was on Chestnut-street, met Mr. Rauson's little boy ; noticed that the boys were all out, some without their caps on, and wondered what was the cause ; the little lad told me that Matt. Ward had killed Mr. Butler ; I asked if he was dead yet, and he replied, No ; I then saw the boys taking Prof. Butler to Col. Harney's ; followed them there, but did not go in ; then returned to the school-house, and while I stood there Dr. Thomson came up ; I asked if he was going up to attend Prof. Butler ; he replied that he was, and I went with him ; we entered and found him lying on a rug in the middle of the floor in front of the fireplace ; the doctor commenced fumbling over him, and I suggested that it would be well to take off his coat ; we did so ; a young man there, whose name I did not know, assisted in taking off his coat ; while we were doing so, I asked him, " Who done this ? " He replied, " Matt. Ward did it ; " I then asked, " What for, sir ? " He said, " I had been correcting one of the boys for disobeying the regulations of the school, and they both came to the school-house ; Matt. said he had come to seek for an explanation, and in the conversation, he gave me the d—d lie ; I struck him for it, and in the fuss, he threw his right hand round against my breast and fired ; the pistol stuck in my coat, and I afterwards knocked it out."

[A diagram was here introduced, upon which the witness pointed out to the Court and Jury the relative positions of the various parties who were in the room at the time Butler made these statements to him. He then continued as follows :]

When we had got the coat off, Dr. Thomson cut open his shirts with a pair of scissors ; Drs. Yandell and Caldwell came in a moment after, and they attempted to probe the wound ; they did not succeed, however, the probe going up towards the arm-pit ; the wound was about an inch and three quarters from the left nipple ; Dr. Thomson remarked that the wound was not dangerous, and I then left ; called again at one o'clock, and Dr. Thomson told me he was very poorly ; that they had found the ball had entered the cavity of the heart ; I saw Butler no more after this ; Dr. Thomson was in the room while I was conversing with Butler ; he had not then commenced to work on Butler, as his clothes were not taken off ; Butler had on a black, half-sack coat, and a satin vest ; a black silk neckhandkerchief on his neck ; he wore a dickey.

Cross-examined.—Resided in Harrison until I was twelve years of age ; then removed to Rush county, Indiana, where I lived eight years ; have been in Louisville the most of the time since ; have lived in New Orleans two years, in St. Louis a few months, and in some other places ; followed the river three years ; when I was young my father died, and I had to shift for myself ; never saw Prof. Butler until that day ; had known Dr. Thomson by sight for two years ; am thirty-six years of age ; have talked with Mr. Mays in regard to this matter ; told him on that day that it was a most aggravated murder, or something to that effect ; told Mr. Ward himself that I was as much against him at first as any one ; I went to see Mr. Robert J. Ward six weeks after the occurrence ; have spoken to Mays and Sullivan about the matter ; asked Mr. Ward if it would do any good to have a witness who would prove that Butler struck Ward first ; he said that was the evidence they wanted ; I told him I was one who could prove it ; he asked me if I would meet him at Mr. Wolfe's office the next morning ; told him my business was such that it kept me the whole day ; he told me I should lose nothing by going ; I told him I did not wish to be understood in that way, only that I was compelled to work for my living and could not lose my time ; never told Mays or Sullivan that he told me I should be ten times repaid, or amply repaid ; it was between nine and ten o'clock when I passed the school-house that morning ; it was twenty minutes of eleven that morning when I got back to the shop ; Dr. Thomson had his case of instruments in his hand as we walked from the school-house to Col. Harney's ; he sent out for some brandy, and

gave Prof. Butler some; have never bet that Matt. Ward would be cleared here by this jury; never offered to bet Mr. Sullivan \$25 that this would be the case; I first went to see Mr. Ward of my own accord, and because I considered it a duty; have said I expected to go to California after this trial; may have told Mays and Sullivan that I had played cards in jail with Matt. Ward and Mrs. Ward for amusement.

Direct resumed.—Never bet a five cent piece on the result of this trial; only alluded to it in an expression I often use when speaking of any thing; there was an immense excitement in Louisville after the occurrence, and I participated in it; I told Mr. Ward so myself when I went to see him; heard numerous statements that it had been testified in the Police Court that Ward struck Butler first, and it was after this that I went to see Mr. Ward; knowing that Prof. Butler had made a contrary statement to me, I deemed it my duty to go and inform him of the fact; that was what prompted me to do it; within half an hour after I had left Prof. Butler, I told Mays and Sullivan, and at dinner Mr. and Mrs. Crenshaw, all that Butler had said to me; Mr. Ward never offered me a dollar, I never asked one dime, and I never had any hope, expectation or desire, of any fee or reward for my testimony here either from Mr. Ward or any one else under God's heaven. Have a brother and sister in Oregon; the former married the daughter of ex-Gov. Lane, who is now a member of Congress from that territory; my sister is the widow of his eldest son; they reside only four days' journey from California, and I designed to visit them when I went to California; recently received a letter from them urging me to do so.

After the examination of this witness, Mr. Carpenter, in personal explanation, desired leave to disclaim any intimation or insinuation of any thing derogatory to the character of Mr. Robert J. Ward. He had not the pleasure of his personal acquaintance, but knew him well by reputation for a high-toned and honorable gentleman. The Commonwealth, in pursuing their course of cross-examination, had by no means desired or expected to compromise him in the least; it had merely been done to show that the witness had been in the habit of making numerous unreasonable and untrue statements in regard to the whole matter, and was therefore unworthy of credence.

JAMES M. ALLEN, *sworn*.—Reside in Yazoo city, Mississippi, was in Louisville in November last; on the day of the accident, in the morning, I was sitting in the office of a hydropathic establishment, where I was a patient, when Mr. Sturgus entered and said: "For God ALMIGHTY's sake run for a doctor; Prof. Butler has been shot, and is killed!" He ran out, and just then Matt. and William Ward passed the door of the office; I started to Dr. Caspari's office, but saw one

of the school-boys before me, and did not go; Gudgel and myself then went towards the school-house; in the yard in front of it there were some ten or fifteen boys; went in and made some inquiries; one of the lads was Mr. Worthington's boy—the others I had frequently seen, having often exercised in the gymnasium with them; they were pupils there; I asked where Mr. Butler was; I passed up the steps and shook hands with young Worthington, and addressed the question to him; think he replied that Butler was gone; I then asked how this happened; the boys were all collected around me and seemed anxious to communicate; several of them answered my question, and Worthington, though he did not speak, nodded his head in assent.

Mr. CRITTENDEN.—What was the answer which you received?

The Prosecution objected to the question, contending that the expressions of the school-boys could not be evidence unless they were identified as the individual boys who had testified here.

The witness had understood Worthington to assent to the statements made by the other boys at the time. The Court therefore ruled the question to be legitimate.

WITNESS.—Several boys spoke at once and replied that Ward came there and cursed Butler; that Butler then struck him and Ward fired; think one of the boys said Butler took hold of Ward.

This testimony, except so far as relating to Worthington, was ruled out by the Court.

J. T. GUDGEL, *sworn*.—Accompanied Mr. Allen to the school-house after the unfortunate affray; Butler had gone, but there were fifteen or twenty boys about there; we inquired how the matter occurred; addressed the inquiry to the whole crowd of boys who were there; did not know any of the boys; five or six answered that Ward had come to demand an apology of Butler; that Butler had refused to give him an apology, and ordered him out of doors; all said that Butler had struck the first blow, and Ward had then fired; some of them said Butler had pushed Ward back and nearly thrown him down, and that as he was getting up he fired the pistol; before we reached the school-house, I met a boy whom I think to have been young Benedict; he was crying, and we asked the cause of it; he said that Ward had shot Butler; said he was present, and gave the same account of the matter I have stated; heard the boys reply to Allen's questions.

Cross-examined.—Have resided in Missouri for 20 years; I do not feel positive that Benedict was the lad I addressed, but he looks like the one.

To Mr. Crittenden.—Was not acquainted with the Wards at the time; have only met them once or twice since the occurrence.

J. J. HERSHELL, *sworn*.—On the day of the occurrence, saw Matt Ward; had a music box to repair for him, and he sent a servant for it, who took it away before it was done; I saw him conversing with a gentleman that morning outside my house, and went out to speak with him; he told me if I could get it repaired by the next Monday he would send it again; but that he must have it then, as he was about to leave for Mississippi, or some other point in the South; told him I could do it, and he sent it around again; I had kept the box for a long time, previous to this; I reside on Third-street between Market and Main, about three or four doors south of Gillmore & Dixon's gun store; think this was between 9 and 10 o'clock; he was going in the direction from Gillmore's store to his own house; the box was sent around to me immediately after the interview; did not observe any thing angry, or anxious, or agitated in his manner; it was that of a courteous, composed gentleman.

AFTERNOON SESSION

Mrs. M. A. BEATTIE, *sworn*.—Reside in Louisville; keep a millinery and fancy store; was employed in November last, in furnishing articles of clothing for Mrs. Matt. Ward, preparatory to their departure for the South; late in the afternoon of the day previous to the affray, Mr. Matt. Ward, accompanied by his wife and sister, came into my store, and made purchases; there was a cap to be made for Mrs. Ward, which they said I must have completed very soon, as they were about to leave; think they spoke of leaving in two or three days; they were busy in making preparations for going; it was my impression that they were going to Arkansas.

LAWRENCE RICHARDSON, *sworn*.—On the evening previous to this affray, I overtook defendant and his lady on the street, and he spoke of their intention to leave for his plantation in Arkansas; they were out making purchases preparatory to going, and I went into several stores with them; this was a little before dark; they spoke of going on the steamer *Belle Key*, in a very few days; the meeting was an accidental one.

Capt. PEYTON A. KEY, *sworn*.—Am the Captain of the steamer *Belle Key*; she descended the Ohio from Louisville on the Tuesday succeeding this affray; the day set for her departure was Monday, and defendant and his wife (who is my daughter) had previously engaged passage on her; they were going to Willoughby, his plantation in Arkansas.

ROBERT JOHNSON, *sworn*.—Made arrangements to descend the river

with the defendant, in November last, on the *Belle Key*; think the boat was to have started on Saturday following this affair, but did not leave until Monday or Tuesday; Mr. Ward was detained, by this occurrence, from going; the arrangements to go had been made some days before the affray; reside in Louisville; saw defendant on the day of the affray, after it was over; noticed effects of an injury on his cheek; it gave the impression of a blow having been received there; defendant's health has been very feeble for many years; he was laboring under an attack of rheumatism when this affair took place; have often seen him when he was unable to walk at all without the aid of crutches.

ROBERT J. WARD, *sworn*.—Defendant is my son; I was apprized of his intention to go to the school of Mr. Butler on the 2d of November last, and the purpose for which he went, a few minutes before he started.

Mr. Gibson objected to any statements made by the accused, to the witness, prior to him going to the school-house, being detailed. The charge here was that of wilful, deliberate murder, and the statements he made before the transaction could no more be made competent evidence, than statements which he might have made afterwards. These, of course, the gentlemen would not contend could be introduced here.

Mr. Crittenden considered it both proper and important to show for what purpose this defendant visited the school-room of Prof. Butler. It was simply this, that they desired to elicit, and nothing more.

Mr. CARPENTER was aware of no rule of law or reason by which the conversation of a defendant could be introduced as testimony in his favor. His acts spoke for themselves, and only conversations which took place during the acts themselves, and thus formed a part of the *res gestae*, could be admitted. If the witness knew of his own knowledge, the purpose of the defendant, there could be no objection to him stating it; but not from any statements made by the defendant to him.

The COURT remarked that the Commonwealth had proved defendant to have gone to the school-room of Prof. Butler. This circumstance was unexplained, and it was important to elicit his real motive in doing so. The Court was aware of no more ready method of learning his purpose, than declarations which he made at the time of going. Whether the motives there expressed were true or feigned, was a question for the jury to decide. The rule in regard to admitting declarations could not be specifically limited, but must be left in a great degree to the discretion of the Court. The Court held that declarations in regard to the intention of the accused, might be admitted, if they were confined to the time occupied in preparing for the act.

WITNESS continued: My wife and myself had taken a trip to Cin-

cinnati ; my son Robert had been visiting there, but returned with us ; we expected to reach home by the mail boat on Wednesday morning, Nov. 2d, but missed the mail boat at Cincinnati ; we then supposed we could not reach home until Thursday, but finding a boat which left the same evening, we arrived at home about 9 o'clock on Wednesday morning, very unexpectedly to the family ; after we reached my residence, I went into the dressing room, where I remained a few minutes ; I then went into my wife's room and found her and my son Matt. conversing in regard to the whipping William had received at school, on the day previous ; when I learned that he had been called a liar and whipped until his limbs were blue and blistered, I immediately sent around a servant for my son Victor and his books ; Matt. remarked that he would go to the school-house and ask an explanation and apology from Mr. Butler ; I replied that *I* would go myself ; he said that he would go, as he had concluded to the night before, as Butler was a young man and this had been done during my absence ; that he apprehended no difficulty for Mr. Butler was a gentleman, and would do what was right, by making in the presence of the school the apology a gentleman ought to make ; my son Robert was then absent, visiting an aviary I had built during his absence ; he did not hear any of this conversation ; as Matt. was going, my wife remarked to him that as he was very feeble and had already had one difficulty with Mr. Sturgus, he had better take some one with him ; just then Robert came in and he was sent with Matt., he did not know until he reached the front door where or for what they were going ; Matt. exhibited no anger or agitation, that I observed ; I assented to him going ; from sixteen years of age my son has suffered from feeble health ; has been more or less indisposed all the time ; think that for two months, up to two weeks previous to this affair, he had been compelled to use crutches, and a great part of the time unable to go up stairs ; he was very delicate at the time ; when he returned, I did not see him enter, but hearing screams from the room where he was, I entered it immediately ; his wife and mother were in great distress, and I heard him say to the former, " Would you have me beaten like a dog ? " this called my attention to his eye and cheek, and I observed they were swollen, with apparent marks of a blow ; I knew Butler well ; he was once a private teacher for twenty months in my family and was a great favorite there ; defendant was absent travelling in Europe at the time, and I think never met Butler until they both returned from Europe ; Butler was engaged to re-enter his position as private teacher in my family, had he not protracted his tour there longer than he anticipated ; from what I knew of him, apprehended no difficulty whatever.

In answer to an objection made by the Defense to a question he had

propounded to the witness, Mr. Crittenden said he wished to prove that Mr. Ward had made a special agreement with Mr. Butler that his children should not be whipped in school; if they did not behave with propriety they should be sent home and he would correct them; that this second whipping, under the circumstances, was peculiarly aggravating and would explain the cause of the excitement felt by the family.

Mr. Helm said what they would prove was that one of the boys, on a previous occasion, had been maltreated by Sturgus, the assistant teacher, and that had led to a specific arrangement with Prof. Butler, by which the condition of the boys remaining in the school was that they should not be whipped. The whipping of the boy again, and that in such a severe and unreasonable manner, by Prof. Butler himself, constituted an aggravation which accounted for and explained the necessity of some one going to demand an explanation.

The Court ruled that testimony in regard to this previous whipping was incompetent and could not be received.

The Court ruled out so much of the testimony of this witness as did not relate to the declarations of the defendant, or the state of his health.

Mrs. ROBERT J. WARD, *sworn*.—Had returned home from Cincinnati on the morning of 2d November; met my son Matt. after I reached the house, in the hall; we had some general conversation in the family, when I noticed that my son William was not at school, and further that his countenance bore a distressed expression; I asked him if he was sick, and why he was not at school; his eyes filled with tears and he said brother Matt. would tell me; Matt. then said he intended to go around to the school-house and ask an explanation of Mr Butler of his extraordinary and outrageous conduct; then he explained that Prof. Butler had whipped Willie severely, and called him a liar in the presence of the school the day before; I was much surprised, and exclaimed: "William, Butler whip William Ward, and call him a liar?" Matt. related that Willie when he entered the school-room had some nuts in his pocket, and gave some of them to several of the boys who asked for them; that he had just given all away, when Prof. Butler gave the signal for order, and the hours for study commenced; that after a short time Prof. Butler seeing the hulls on the floor inquired what boys had eaten the nuts; that one of the boys refused to tell, when Prof. B. sent into the other room for his strap, and said he would ascertain who had eaten them, and whipped the one who would not inform him; one of the boys said that Willie gave him the chestnuts after the recitation order was given; Willie said that he did not, but the boy persisted that he had; another little boy spoke up and said that Willie

gave *him* chestnuts, but that it was before the signal for order had been given; that Mr. Butler, before he whipped William—which he did very severely—had said that he was compelled to punish him, not only for giving away chestnuts, but also for lying, and that the boy who ate the chestnuts was not whipped at all; Matt. said that he had not learned these facts of the case until late the previous afternoon; that Willie when he related them to him, rolled up his pants, and showed him the marks of the whipping, saying: "Brother, I wish you would go around and see Mr. Butler about it; I don't care so much about the whipping, but I would rather die than that he should believe me, or the boys should call me a liar;" just before Matt. started, I told him to be calm, and remember that excitement made him sick; he replied: "I *am* perfectly calm; I know Mr. Butler is a just man and will do what is right; I am only going to ask a civil question and expect a civil answer;" I suggested that he had better take some one with him; he replied that there was no necessity for it—that he expected no difficulty with Mr. Butler; I then said: "You know Mr. Sturgus is your enemy and you had better take some one;" just then Robert came in and I suggested to Matt. to take him along; he rather impatiently told Robert to get his hat and come; in a few minutes they returned; when we knew what had transpired, his wife was very much excited; he asked me to beg her to be calm, and said: "Ask Anna if she would have her husband beaten like a dog; I am very feeble and had no other alternative;" I then noticed that his left cheek and eye were bruised, and swollen, and the eye was weeping.

At the conclusion of the testimony of Mrs. Ward, on being conducted to her seat, she immediately fainted away, and was removed from the Court room to the open air, where she partially revived. Her health seemed very delicate, and she was unable to appear in the Court room again during the progress of the trial.

Col. GEORGE HODGE, *sworn*.—Saw Robert Ward, the younger, in Cincinnati, I think on the day previous to this occurrence; I know that while in Cincinnati, he was in the habit of carrying a Bowie-knife; he was visiting my family in Newport, then, almost daily; sometimes he visited it by night; it is very common for strangers in Cincinnati to go armed, and sometimes seems to be a necessary precaution; the part of the city through which he passed to go to Newport is the darkest and most dangerous portion of it.

Mrs. L. P. CRENSHAW, *sworn*.—Am acquainted with J. M. Barlow; he boarded with me in Louisville, last fall; on the day of Prof. Butler's death he returned home later than usual, to dinner; I had heard that Butler was shot, and I asked him if he knew it, and he re

plied that he did ; that since the occurrence he had seen Butler, who told him that Matt. Ward had come to his school-house, and used insulting language towards him, and called him a d——d liar ; that he then struck Ward, and Ward shot him ; understood him to say that he heard the pistol when it was fired.

Cross-examined.—This is all the statement of Mr. Barlow that I recollect.

L. P. CRENSHAW, *sworn.*—On the day of this conflict Barlow told me and my wife, when he came to his dinner, that he had been to see Butler ; that Butler had said to him, while they were undressing him, in answer to his questions, that Matt. Ward had come to the school-house and used insulting language, and called him a d——d liar ; that he (Butler) then struck him, and then Ward shot *him* ; it was about three hours after the occurrence that Barlow told me this.

Dr. S. D. GROSS, *sworn.*—Live within a square and a third of the defendant, in Louisville ; know him well ; have lived in Louisville more than thirteen years, and during that time have always known him more or less intimately ; have always considered and regarded him as a mild, quiet, courteous and amiable gentleman ; never heard him spoken of as bearing any other character ; have always considered him, however, as a gentleman of spirit, who would resent an insult.

Dr. LEWIS L. ROGERS, *sworn.*—My father and myself have been the family physicians of defendant for more than twenty years ; his health has long been very feeble ; he had a severe attack of rheumatism, last fall ; he was so lame as to require the use of a crutch ; he was under my medical charge at the time of this occurrence ; I had visited him professionally within a week ; he is an exceedingly feeble, weak man : have always esteemed him as a man of great amiability ; that is his general character ; never heard any other character applied to him ; he is very generally known in the community, and were his disposition quarrelsome or unamiable, the fact would be well known.

DANIEL McALLISTER, *sworn.*—Have known defendant for many years ; his character is that of a peaceful, quiet, well-behaved young man ; I am a plasterer by trade, and have lived in Louisville fifty-two years.

COLEMAN DANIEL, *sworn.*—Have known defendant for twenty years ; he has always borne the character of a peaceable, amiable and polite gentleman ; am a plasterer by trade ; worked at my trade from 1808 to 1844.

Major DAVIS CARNEAL, *sworn.*—Have known defendant and been intimate with his father's family, from his infancy ; know of no young man who has borne the same reputation for gentleness and amiability of disposition.

COL. ROBERT P. RANKIN, *sworn*.—Have known defendant ever since he was born; when a child he was kind, tender and affectionate; since he has come to years of manhood, have never heard aught against him; he has owned a plantation near mine, in Arkansas, for many years, and is very generally esteemed and respected there.

JAMES LITHGOLD, *sworn*.—Reside in Louisville; am a mechanic; have known defendant for many years; he has always borne an excellent character for peaceful and amiable disposition.

JOHN STIREWALT, *sworn*.—Am an architect and engineer; have resided in Louisville since 1836; have known defendant well since he was fourteen years of age; never met a young man of a more amiable, quiet and inoffensive disposition; he has always been retired in his habits; has ever treated all with whom he has been brought into connection, kindly and courteously; have had an excellent opportunity to know his character; when boys we often went boating and fishing together, and we have always been very intimate.

JAMES SPEED, *sworn*.—Am the Mayor of Louisville; have held the office for two years; am a bricklayer by trade, and worked at it for many years; have represented Louisville twice in the Legislature, been United States Marshal for this State, and Marshal of Louisville; became acquainted with defendant when he was quite a boy, and have known him ever since; his character for amiability and gentleness is unexceptionable; never saw him in a drinking or gambling establishment; he bears as good a character as any young man in that or any other community.

Mrs. JUDGE OLDHAM, *sworn*.—Reside about three miles from Louisville; have known defendant for upwards of twenty years; his character, for peacefulness and amiability both as boy and man, has been unexceptionable and excellent.

Mrs. MAJOR GWINN, *sworn*.—Have known defendant intimately for twenty-two or twenty-three years; he has always been a kind and affectionate son and brother, and borne an excellent character for gentleness and peacefulness.

WILLIAM LOGAN, *sworn*.—Have known defendant for seventeen or eighteen years; never knew a more amiable, refined and quiet gentleman; every one looks on him in that light; he is a gentleman with whom I have always delighted to associate.

CAPT. J. W. BRANNON, *sworn*.—Am Postmaster of Louisville; have known defendant intimately for ten or fifteen years; do not know of a more courteous and amiable gentleman.

RICHARD ANDERSON, *sworn*.—Was formerly a schoolmate of the

defendant; he was always kind and gentle, and beloved by all who knew him.

ROBERT ORMSBY, *sworn*.—Have known defendant since 1837; he once lived in my mother's family; his character for mildness and gentleness is remarkable, and he is universally beloved.

CAPT. WILLIAM C. HITE, *sworn*.—Have known defendant for 13 years; he is well known and universally beloved for his mild and gentle disposition.

CAPT. Z. M. SHIRLEY, *sworn*.—Have known defendant for many years; am in the steamboating business, and have often met him in various places; he has been a mild, peaceable and polite gentleman on all occasions.

GEORGE HANCOCK, *sworn*.—Have known defendant from early boyhood; have always thought him a very amiable, mild-tempered young man; that is his general character wherever he is known.

DR. WILLIAM R. JACOBS, *sworn*.—For twenty years I have known defendant; he is one of the most amiable gentlemen I have ever met—more so than any other young man I know.

WILLIAM E. GARVIN, *sworn*.—Have known defendant since we were both children; we were schoolmates together; he was a remarkably mild and pleasant boy—beloved by all, and had no enemies; he has always sustained the same character since that time.

COLLIS ORMSBY, *sworn*.—Have known defendant for 15 years; he has always been regarded as a very estimable, amiable gentleman.

CAPT. CHARLES A. FULLER, *sworn*.—Have known defendant for about 8 years; have always found and known him to be a remarkably kind and amiable gentleman; am in the service of the United States.

CAPT. FRANK CARTER, *sworn*.—Have known defendant ever since he was a boy; have always regarded him as a mild, amiable young man; that is his general character where he is known best.

BENJAMIN R. POLLARD, *sworn*.—Have known defendant for 8 years; his character and deportment have always been excellent.

DR. EDWARD CASPARI, *sworn*.—Defendant has always borne a very good character as a peaceable, amiable gentleman.

COL. ALEXANDER P. CHURCHILL, *sworn*.—Have known defendant for 20 years; he was one of the best boys I ever knew, and as a man has ever been courteous, peaceable and frank.

J. J. KEY, *sworn*.—Have known defendant since 1831; when I first knew him I was struck with his polite, gentlemanly deportment; this has always been his character; I was Clerk of the Court in Mason county for 13 years; now reside in Cannelton.

LAWRENCE B. WHITE, *sworn*.—I am the Marshal of Louisville; ar-

rested the defendant after this circumstance ; when I heard of the affair immediately repaired in company with officer Gillmore towards Mr. Ward's residence ; met Mr. Robert J. Ward on the street ; asked him if he had heard of the affair ; said he had ; I then told him the matter must undergo a judicial investigation ; he readily assented ; said one of us had better go and see how Mr. Butler was, while the other went for Matt. ; I asked where Matt. was, and he replied that he was at home ; when I went to his house, Robert came to the door ; I asked where Matt. was, and he replied quizzically that he had "vamosed ;" but as I stood talking within the door, Matt., hearing my voice and recognizing it, came out ; told him he must submit to an arrest ; he said, "Certainly," and in a few minutes, as the weather was very inclement, put on his overcoat and went down to the jail with me ; have known him from a boy ; he has always borne a most irreproachable character.

Cross-examined.—Think it was within 15 minutes of the affray, that I first heard of it ; think if he had attempted it he might have made his escape from the town ; there was time for it.

To Mr. Crittenden.—I know of no attempt on the part of defendant to escape from jail ; never saw the slightest indication of such an intention, though I have watched him closely ; he came down here in my custody ; manifested no such desire on the way.

Capt. JAMES W. BRANNON, *recalled.*—Believe it is the general custom in purchasing pistols to have them loaded where they are bought.

Judge ALEXANDER WALKER, *sworn.*—Reside in New Orleans ; am the Editor of the *Delta* ; know the defendant intimately ; never knew a young man of a more amiable, kind and courteous disposition ; he is so regarded by all who know him.

GEORGE E. H. GRAY, *sworn.*—Was born and have always lived in Louisville ; have known defendant for 20 years ; he has always been a very amiable and quiet young man.

WILLIAM J. ROBARDS, *sworn.*—Am acquainted with defendant ; have known him 17 years ; he is a very quiet and amiable man, and has always been so esteemed ; saw him soon after this occurrence ; noticed then that his left cheek bore a mark ; it was red and inflamed.

Court adjourned until morning.

FOURTH DAY.

Friday, April 21st, 1854.

The testimony for the Defense was continued by

JOHN JUDT, *sworn.*—Was a scholar of Prof. Butler at the time of the difficulty with Mr. Ward ; James S. Pirtle was also a pupil in the

school at the time; he told me afterwards that Mr. Butler had struck Mr. Ward.

Cross-examined.—Do not recollect what time it was when he told me this; it was at the school-house, and there were several boys present; do not recollect who they were; do not recollect how long this was after Butler was shot; we were talking about the case at the time; cannot remember what I said about it, it was so long since; do not remember of Pirtle saying that Ward struck Butler first—do not think he said so; my father is a preacher; it was some months after the occurrence that Pirtle told me this; I was in the school-house while the difficulty occurred; did not see either of the parties strike, but heard the report of the pistol; don't know that I was looking exactly at them, for I saw there was trouble, and thought perhaps I might get hurt.

ROBERT ADAMS, *recalled.*

MR. WOLFE.—Will you state to the jury whether you know of instances previous to this occurrence, in which defendant had purchased pistols and had them loaded where he bought them?

The Prosecution objected to the question.

MR. WOLFE remarked that the Prosecution had endeavored to leave the impression on the mind of the jury that, the defendant having the pistols loaded before he left the establishment where he purchased them, was a remarkable occurrence, and inferred an intention to commit violence. The Defense now desired to prove that this was a general custom, and that the defendant, on former occasions, had purchased pistols there, and had them loaded,—not for any specific purpose,—but to defend himself in case of any unexpected emergency that might occur.

MR. HELM thought the fact of so much importance as showing that the defendant did not have the pistols loaded, with a mind under the influence of malice, that it should be admitted.

The COURT had no doubt of the legitimacy of any testimony going to elicit the motives that influenced the mind of the accused; but thought that the introduction of the desired testimony would open an entirely foreign issue, as the motives that influenced the mind of a man on one occasion, might not at another. The general custom might be proved, but the Court held that by the most liberal rules of law, this testimony could not be admitted.

MR. CRITTENDEN here stated that he desired to introduce Mrs. R. J. Ward, to prove a single fact as explanatory of the necessity of this defendant arming himself, if the Court deemed it admissible. This fact was, that some months prior to the occurrence of the principal fact they were now investigating, Mr. Sturgis, the assistant teacher of Prof. Butler, had become so much embittered against this defendant, that he had

left with her a threatening message against him, and desired her to deliver it. Mr. Crittenden was sure that the Court would not feel inclined to censure the accused for desiring to have every fact made known in any way connected with, or having any bearing upon, a matter in which his liberty, his life and his honor, were so deeply concerned.

The Court held, that though the fact might have an indirect bearing on the case, it was so remote that it would be incompetent testimony.

Mr. ALLEN asked the Court that, in speaking upon these points, the counsel might be confined strictly to the legal questions, and not allowed to argue the case itself.

Mr. HELM.—I am very thankful to the Prosecutor for any instruction he may give me. As I am a *young man*, I stand peculiarly in need of it!

Mr. ALLEN.—Not at all, sir; but I am well aware that we are swivels here, fighting against twenty-four pounders, and I am desirous that they may be confined as much as possible.

Mr. HELM.—Some of your swivels have been brought from so great a distance that I fear they will hardly repay first cost!

Mr. CARPENTER.—Should that be the case, it will be our misfortune, not our fault, Governor Helm!

The COURT.—I trust the case may not be impeded by such remarks. They are quite unnecessary.

Mr. HELM.—I am aware of it, but when the gentlemen talk about swivels and cannon, I think we have a right to retort.

Mr. MARSHALL.—Well, *this* seems to be grape shot! (General laughter.)

The Defense now stated that they desired to introduce as a witness, Robert J. Ward, Jr.

The Prosecution objected, on the grounds that the proposed witness was jointly indicted as a Principal, with the defendant, in this case.

Mr. Gibson cited various authorities in defense of the position.

Mr. Crittenden replied at length, contending that the testimony would be competent, and reading from a large number of authorities, on which he based his argument.

Mr. Gibson replied, after which

The COURT ruled the testimony admissible, having first reviewed the arguments offered on both sides. It seemed necessary to a fair investigation of this case, that the witness should be admitted, his credibility being a matter of fact for the jury to decide.

ROBERT J. WARD, JR., *sworn*.—On the morning of this occurrence, arrived home from Cincinnati at about 9 o'clock; after speaking with the family, went into a conservatory which had been built during

my absence ; after I had taken breakfast, returned again to the conservatory ; when I left it again, as I crossed the hall saw my brother Matt., his wife and mother, at the front door ; Matt. told me to get my hat and come with him ; at the gate he said he was going around to ask an apology of Mr. Butler for whipping William very unjustly and severely ; William was with us ; on the way Matt. told me he did not wish me to interfere either by word or action ; William said to Matt., " You know, brother, that Mr. Butler is a stronger man than you are, and Mr. Sturgus has a big stick there ;" Matt. replied : " I apprehend no difficulty ; I believe Mr. Butler to be a just man, and have always found him such ;" he then told me again not to interfere unless both Sturgus and Butler attacked him ; this was all that was said about that ; we had some conversation on other subjects ; met Lucy Stone on the way, in Bloomer costume, and we talked of that, among other matters ; when we reached the school-house William went in for his books ; and on being called for, Prof. Butler came out of his room with a lead pencil in his hand ; we bade him good morning, and he bowed, in reply ; Matt. then said : " I have called around, Mr. Butler, to have a little conversation with you ;" he replied : " Walk into my private room ;" Matt. said : " No ; the matter about which I wish to speak with you occurred here, and this is the proper place to speak of it : Mr. Butler, what are your ideas of justice—which do you think the worse, the little boy who begs chestnuts and scatters the hulls on the floor, or my brother William who gives them to him ?" Butler replied : " I will not be interrogated, sir," at the same time buttoning his coat up to his throat, and putting the pencil in his pocket ; Matt. said : " I have asked a civil question, and have a right to a civil answer ; which is the worse, the contemptible little puppy who begs chestnuts and then lies about it, or my brother William who gave them to him ?" Butler answered : " There is no such boy here ;" Matt. said : " Then that matter is settled ; I have another question to ask, You called my brother a liar, and I must have an apology for it ;" Butler answered : " I have no apology to make ;" Matt. asked : " Is your mind fully made up about that ?" He replied : " It is, I have no apology whatever to make ;" Matt. then said : " Then you must hear my opinion of you. You are a d——d scoundrel and a coward." Butler sprang forward, pushed my brother back against the door, and struck him ; am not quite positive as to the number of blows, but I saw him strike twice ; he then fired the pistol ; I did not see the pistol until he fired ; Mr. Sturgus then came out of his room and advanced a few steps ; I was excited, and thought he had something in his hand with which he was going to attack brother ; I drew my Bowie knife, and went two or three steps towards him, telling him to stand off ; he then retreated ;

when we had left the school-house, Matt. said he had forgotten the pistol, and I went back for it; the knife I wore on that occasion was one I had worn for six months constantly; at the time the pistol was fired, my brother was crushed back against the wall, in a corner, as far as he could get, and bent down; Butler then had him by the collar or cravat, and did not let go for a second, I should think, after the pistol was fired; during the conversation I was very close to the parties—within half a foot of each; when Butler pushed my brother back, it took them some four or five feet from me; I observed the whole affair very attentively.

Cross-examined.—I took no part in the transaction either by word or deed until Butler had fallen; did not go up the aisle and flourish my knife when Sturgis came in; he came three or four steps, and I stepped towards him, and told him to stand back; he then retired into his room; when I returned to get the pistol, spoke with a few of the boys to inquire where it was; did not speak with any of them, before I left the school-house first; have no recollection of flourishing my knife towards the school-boys; had been spending six weeks visiting in Cincinnati; it was about 9 o'clock in the morning when I reached the house; was in the house half an hour or less before I went into the conservatory; may have staid there some fifteen minutes when the servant summoned me to breakfast; was not more than five or ten minutes at the table; may have been in the conservatory twenty minutes after breakfast; I was going to my mother's room, when I crossed the hall and my brother spoke to me, and asked me to come with him; we went immediately to the school-house, not stopping by the way; we all bowed to Butler when we entered; my brother's hands were then by his side; noticed that he held his hat in his left hand and gesticulated with his right after we entered; when Butler sprang forward, think it was his left hand that he seized Matt. with, and the right that he struck him with; do not feel quite positive in regard to this, as I was considerably excited; I know that he struck him twice; may have struck him three times or even four; my brother put his hat on when he told Butler he must hear his opinion of him; and when Butler seized and struck him, he then first put his hand in his pocket; did not know that my brother had pistols until I saw him take that from his pocket; have carried arms since I was fourteen years of age; having always associated with men older than myself, have done so, fearing I might get into a difficulty sometimes, and need them to defend myself.

Mr. CARPENTER.—You say your brother told Butler he must have an apology.

WITNESS.—He said so; but he did not put the peculiar emphasis on the word "must" that you do.

MR. CARPENTER.—Where were your brother's hands as he entered ?

WITNESS.—By his side.

MR. CARPENTER.—On which side of him were you ?

WITNESS.—Behind him.

MR. CARPENTER.—Was the door shut ?

WITNESS.—I do not remember.

MR. CARPENTER.—If you were behind him how is it that you do not know whether the door was closed or not ?

WITNESS.—Because my brother William came in behind *me*.

ALBERT T. BIRNLEY, *sworn*.—Have been intimately acquainted with the defendant since he was a boy ; he has always been, and borne the reputation of being a mild, high-toned, courteous gentleman ; he is a man of spirit, however, and would resent an insult if offered to him.

Col. A. P. CHURCHILL, *recalled*.—On the morning of this occurrence, met Mr. and Mrs. Robert J. Ward, and their son Robert, in a hack, on their way home from the river ; spoke with them then ; suppose this was about 9 o'clock.

This closed the testimony in chief for the Defense.

Rebutting Testimony for the Commonwealth.

JAMES S. PIRTLE, *recalled*.—Saw Mr. Gudgel when he testified here yesterday ; do not remember him as being the man who came to the school-house after the occurrence ; there were two men came ; do not recognize him as one of them ; a little boy, named Davis, who is about the shape of Benedict, went away from the school-house just about the time the gentlemen came ; don't think I ever told Judt that Butler struck Ward.

JOSEPH BENEDICT, *recalled*.—Saw Mr. Gudgel here yesterday ; I am not the boy he met on the street, crying after the occurrence ; had seen Gudgel before I saw him here yesterday ; I was going towards Third-street.

GEORGE SULLIVAN, *sworn*.—On the day of this difficulty, had a conversation with J. M. Barlow ; I entered the shop while he was talking to Mays and the other hands about the affair ; he said it was the most aggravated case he had ever heard of ; that if Matt. Ward was not punished for this, there was no use in trying a man in Kentucky for murder ; he proposed to go down and take out Matt. and hang him ; suppose he was jesting ; I talked with him about it, but it died away in a day or two ; he continued to talk in the same way about the matter, until a while after, when I noticed he seemed to change ; this was after he said he had been to see Mr. Robert J. Ward ; said that he asked

Mr. W. if he wanted to find a man who could swear that Butler struck Ward first; that Mr. Ward jumped up and took him by the hand, and said it was just what they wanted, but where was the man? that he replied "I am the man;" that, after some further conversation, he told Mr. W. he was a poor man, and could not afford to lose his time to attend the trial; that Mr. W. replied he should lose nothing by it, but should be well repaid; that he (Barlow) replied to this—"I don't want you to talk any more in that way;" have heard Barlow say he would bet on the defendant being cleared; Barlow has told me that he had played cards in jail with defendant; said that when he had told Mr. Ward what he could testify to, Mr. W. invited him to wait until he called the family down, and he introduced to them, but he declined.

Cross-examined.—Mr. Mays told the attorneys for the commonwealth my name, and they subpoenaed me; he said he told a gentleman connected with the *Democrat* office what I could testify to; have talked a good deal about what I could prove, with different persons; think I first told Mr. Carpenter, that while we sat together in the *Crystal Palace*, Barlow said: "I'll just bet they clear him;" it is very common, when people in our shop wish to affirm a fact or opinion, to say they will bet on it; Barlow frequently used the expression, in conversation about other things; I was joking when I assented to the proposition to take out defendant and hang him; certainly should not have agreed to any such proposition made in earnest; I regarded it as a jest; Mr. Hughes, of the *Democrat*, furnished me with a buggy to come down here.

To *Mr. Carpenter.*—Thought, when Barlow offered to bet on the issue in our shop, he was in earnest; have lived in Louisville 24 years.

To *Mr. Wolfe.*—Was once put in the work-house in Louisville; it was many years since.

URIAH MAYS, *sworn.*—Barlow gave me an account of his visit to Mr. Ward's house; said that he asked Mr. W. if it would do him any good, to have a man who met Butler after he was shot, and who was told by him that Matt. Ward came to the school-house and called him a d—d liar; that he (Butler) then struck Ward, and Ward shot him; that Mr. Ward immediately jumped up and shook him by the hand, after he had told him he could testify to that fact; that Mr. Ward told him it was just what they wanted; that, after some other conversation, when he started to leave, he told Mr. Ward he was a poor man, and could not afford to lose his time; that Mr. Ward told him he should be repaid, and doubly repaid; Barlow said he replied, "I don't want you to talk to me in that way, Mr. Ward,—I only meant that I was a poor man, and could not afford to lose my time."

Cross-examined.—Barlow told me on the same day of the occurrence, about half an hour after, that Butler told him he had struck Ward first.

Dr. DAVID THOMSON, *recalled.*—Have no recollection of meeting Barlow, on the day of the occurrence, either in the street or in Colonel Harney's house; I did not carry my case of instruments in my hand on the way there; they were in my side-pocket; never carry them in my hand; am sure he did not suggest to me, to take off his clothes; there was no conversation with Prof. Butler, after I entered the room, until I asked him what the position of the parties was, during the affray; he said they were clinched; no other person interrogated Butler at that time but myself; do not think Barlow was in the room.

Cross-examined.—Sent out after some brandy, soon after I reached the house; Prof. Butler had a dickey and two shirts on; he drank some of the brandy; he had on a black cloth coat, with a waist to it, and pockets at the side; he wore a black silk or satin neck-handkerchief; I tore open one of his shirts, and started the other with my scissors, before I tore it.

Mr. WOLFE.—You are a member of the Presbyterian Church, I believe, Dr. Thomson?

WITNESS.—I am; have been for ten years.

Mr. WOLFE.—Are you not a teacher in the Sabbath School?

WITNESS.—I am, sir.

Mr. WOLFE.—Is it usual for members of the church to carry arms?

WITNESS.—I do not know; am not aware of any regulation in the church in regard to it.

Mr. WOLFE.—What have you done with those pistols you had on your person yesterday?

The COURT.—You are at liberty to answer the question or not, as you please.

WITNESS.—I decline answering it unless I am under legal obligation to do so.

EDWARD KNIGHT *recalled.*—If Barlow assisted in undressing Butler, or was there at all, I did not see him; saw another gentleman there, who I think was a Mr. Rupeus, it was not Barlow, I am sure; either the doctor or this Mr. Rupeus first suggested to take off Butler's coat.

Cross-examined.—Do not know precisely where this Mr. Rupeus lives, but he lives in Louisville; there were over half a dozen persons in the room at the time; Dr. Thomson took off Butler's coat, with my assistance; am not able to say whether the other gentleman assisted.

This closed the testimony for the Commonwealth.

Rebutting Testimony for the Defense.

HIRAM MCGEE *sworn*.—Am a master-carpenter in Louisville, one of the largest contractors there; Barlow has worked in my employ for two years and a half; know his general character for truth and veracity, it is as good as any other man's in Louisville.

Cross-examined.—His character has not been the subject of remark; do not know that I ever heard any one say he is a truthful man.

To Mr. Wolfe.—Never heard his veracity doubted; have known defendant for twenty years; his character for amiability is remarkably good.

ROBERT J. WARD *recalled*.—When Barlow called to see me, he said he had been told it was important to the issue of the trial of my son, to ascertain if there was a witness who could prove that, in this unfortunate affair, Butler had struck him first; I told him it was a very material point; he said he was one who could do it, and then went on to detail to me the same circumstances he has related here; he told me he was influenced simply by a sense of justice in communicating the fact; that he had been in conversation with a person on the Sunday previous, who told him this was a very important fact; there had been publications then in the *Democrat* and *Courier*, purporting to give the testimony before the Police Court, and stating that my son first struck Butler; I asked Mr. Barlow's name and business, how long he had resided in Louisville, &c.; when I asked him to meet me at Mr. Wolfe's office the next morning, he seemed reluctant, as his business was pressing; he was a man of family, and I offered to pay him for the day's work, but he positively refused to receive it; never offered or intimated any inducement to him to testify; never told him he should be doubly repaid.

JAMES S. SPEED *recalled*.—Have known Mr. Barlow for seven years; he bears an excellent moral character; never heard his veracity questioned.

L. P. CHRENSHAW *recalled*.—Have known Mr. Barlow for eleven months; has boarded with me for five months; he has always deported himself like a gentleman, and his character for truth and veracity is unquestionable; I feel it a duty to state to the jury, that as the statements of Mr. Barlow differed from the newspaper accounts of the matter, I took occasion to investigate his character, and found it unexceptionable; some thought I might have misunderstood him, but none doubted his credibility.

Cross-examined.—Dr. Thomson bears an excellent reputation wherever he is known.

This closed the testimony on both sides.

On the conclusion of the testimony, the argument on behalf of the Prosecution was opened by Mr. Carpenter, who continued to address the Jury up to nearly six o'clock in the evening, when the Court Adjourned until morning.

FIFTH DAY.

Saturday, April 22d, 1854.

The Court convened at the usual hour. After a little delay the Jury was brought in, and Mr. Carpenter continued his remarks until eleven o'clock. At that hour he concluded. The Court took a noon recess.

AFTERNOON SESSION.

The argument on behalf of the Defense was now opened by Hon. Thomas F. Marshall, who addressed the Jury as follows :

* SPEECH OF MR. MARSHALL.

This is the fifth day, Gentlemen of the Jury, since the commencement of this trial. The time has been unusually long ; but during that whole period you have given ample evidence, by your marked and profound attention, that, whatever be your decision, you are at least determined to give the prisoner at the bar a fair and impartial hearing ; and try his cause—not under the influence of any external pressure—not moved by any statements that have been made and published to create a prejudice in the minds of the people of Kentucky, and the people of the United States, against him, and interfere with the proper administration of justice by anticipating the result of this investigation,—but that you are determined to try him and to form your verdict, as you have sworn to do, according to the testimony of the case and the law of the land.

After the well-digested, well-arranged and astonishing outburst of

* NOTE.—The Reporter deems it an act of justice to the gentlemen engaged as counsel in the case, to state that on account of great exhaustion, induced by the unusually arduous and severe labors of a few days preceding, and the poor facilities for writing in the crowded court-room, he has been unable to give their able arguments as perfectly as he would otherwise have done. Their quotations from the authorities and comments thereon are also somewhat condensed, the primary object of this report being to lay before the public a full and impartial account of the evidence given. All the testimony elicited, has therefore been detailed with extraordinary fulness and precision.

eloquence which has just consumed eight hours of the precious time of this world and this Court, I preferred that you should have an opportunity to recover from its effects, whether they proved heating or cooling. Which of these results it may have induced in you, I know not; but for my own part, I must say, that never, in the whole course of my life, did any thing, in the hortatory strain, fall on me so remarkably like an iceberg, as this extended and very pious exhortation!

In appealing to you, as the representatives of a merciful God, it appeared to me that it would have been quite enough for the gentleman to consign the prisoner to an early and disgraceful grave, in the midst of all his promise and all his hopes, without intruding such a rhetorical display upon him. It appeared to me, that after recommending him to such a grave, or, in case he should escape it, to the whips and stings of conscience on all occasions and in all climes, and to every horror that a distorted imagination has been able to depict, we might at least have been left to our fate, and spared the infliction of *such* a speech and *such* an appeal. And to crown the whole, you are gravely exhorted, out of simple mercy, to rescue us from the horrible phantoms that have been conjured up, by handing us over to the hangman!

Attention has been directed to the past life of the accused, and this travelled young gentleman is graciously informed that he may commence his travels over again. But the permission is coupled with the assurance that wherever he may go—whether he shall climb the rugged Alps and wander in the regions of Polar cold, or roam through the sunny climes of Italy and France, still every opening flower shall remind him of the flowers he has left blighted at home. Should he seek the blue ocean, we are told that each white cap will remind him of the shroud of his victim, and that in the boom of every surge, he shall hear the rattle of the death shot.

Now it appears to me that it is rather out of place, rather aside from the legitimate duty of an attorney, to make such a rhetorical display for the sake of torturing the accused; and whatever force there may have been in the argument—though I can detect neither power in the arm nor point in the arrow—this extraordinary effort to torment, was, to say the least, in very bad taste. But gentlemen, I feel quite sure that we have nothing to fear on your part, from these endeavors to goad you on to find a verdict of guilty against the accused, in the absence of law and testimony to justify such a decision.

I listened to that argument patiently, and carefully; but when I heard the testimony stated in it, and compared it with the real testimony given before this Court and this Jury, I felt a good deal of surprise; and from the careful attention you have given to the statements

of every witness on the stand, I presume that you were quite as much astonished as myself. I could not reconcile the two—they seemed totally disconnected and dissimilar; but when I remembered that there was another case, outside the limits of this Court-room—that it had been progressing for the last four or five months—carried on, through the newspapers, by the parties engaged in this prosecution, I found that however unlike the case made out here, it fitted *that* case exactly.

What is it the gentleman contends for? That on the 2d of November last, with malice prepense, deliberately and in cold blood this defendant armed himself, went to the school-room of Prof. Butler, called for him, and demanded an explanation; that Butler, when he appeared, in the most mild and gentlemanly manner, offered to give the desired explanation—but that he peremptorily refused it, and then and there, without provocation, without cause, insulted him, struck him, and shot him down. This is the case, made out in the argument you have just listened to.

A tolerably bad case, I should say! And yet it is precisely the case made out by the newspapers both at home and abroad, and by precisely these statements has the public mind been maddened and infuriated against this young man, until it was utterly impossible for him to obtain a fair and impartial trial in the city where he has lived from childhood; and he was compelled to seek a point where no such wild excitement had been fomented. Under these circumstances he comes among you, a stranger; and with full confidence in your judgment and your integrity, he asks at your hands simple justice and nothing more. Yet even now, this unparalleled crusade against him is not abandoned, and the press is still engaged in all its power, to feed the fires of excitement it has lighted up. Each day's mail that arrives here, brings papers containing letters written from this place, giving the most prejudiced and distorted accounts of the progress of the trial, and recklessly denouncing the conduct and impugning the motives, alike of the prisoner at the bar, his friends, his counsel, and even this honorable Court.

As I said before, this is exactly the case made out by the newspapers; but, thanks be to God, it is not by such testimony you are sworn to examine this case, and render a just and truthful verdict.

Now let us, before we enter into an examination of the law, see if we can ascertain the real facts that have been proved in your presence. That Prof. Butler was shot, in his school-room, on the 2d of November, by this defendant, is not denied. But let us examine the case, and learn how, why, and under what circumstances this result was produced.

Twelve school-boys, the most of whom were present during the occurrence, and profess to have seen it, are the first witnesses introduced by the Commonwealth. Now in regard to their testimony, as well as much of the other testimony brought forward by the Prosecution, you must have observed a great deal of conflict. I have no desire to assail the reputation of these boys, or to make any attack on their intentions—it is not necessary to my case that I should do so. But I wish to point out, and to have you take into consideration the different circumstances under which they must have witnessed the transaction.

The first one of these, as you will recollect, was Knight. On his examination in chief, he detailed to you all the conversation that took place; but when his knowledge of the matter was sifted down to what he obtained by the means of his own senses alone, he admitted that all he actually heard from Butler was: "I don't feel disposed"—The remainder he had heard from other sources, and after the occurrence. But he states that he heard all Ward said, and from this we can readily infer what Butler must have said. First, he hears the former say: "I have a matter to settle with you." Then he thought Butler invited him to walk into his room, from the fact that he saw a motion indicating it, and Ward declined, asserting that there was the proper place for the conversation. The next thing he heard, was: "Since you refuse to answer this question, I will ask you another." Does not this show clearly that Butler must have refused to answer the one before it? Butler spoke in a very low tone of voice, and though this witness was quite near him, he was unable to hear his words, except, when asked "Why did you call my brother a liar?" he replied, "I don't feel disposed—". Still he heard enough I think to satisfy you fully that Butler refused to answer the questions of Ward, and peremptorily declined giving any explanation.

Next came Worthington. According to all plans of the room, he must have been at least fifty feet from the parties. And yet he states that he distinctly heard Butler ask Ward to step into his private room; heard the latter decline; heard some other words from Butler; and then, after turning around and resuming his studies, heard the stamping of a foot on the floor, and the firing of the pistol.

We next come to the most important of these witnesses, for he was nearer to the parties than any of the others. I allude to John A. Campbell, who, you will remember, was one of the favorite witnesses of the Prosecution. Well, he tells you that when Ward came in, he seemed perfectly calm and polite, and departed himself as a gentleman should; that it was not until the answer of Butler had been given, that his voice rose, as if he was excited. Now this witness testified that he

was within four feet of the parties, but he was unable to hear the words of Butler. Yet he heard the remark of Ward: "Since you refuse to answer this question, I shall put you another;" and whatever Butler's reply to it might have been, it was of such a nature that Ward immediately called him a liar. Then, the witness says, he turned around to pick up a pair of tongs, and keep Robert off until Butler should whip Matt. But why did he do this? Did he see Butler strike? No; but he knew from his appearance that he would strike, and something about his attitude, action, and look, convinced him that he was about to throw himself into conflict. Then he turned to arm himself, and the pistol was fired.

Minor Pope, the next witness, heard no words whatever, before Ward asked the question: "Why did you call my brother a liar?" This, in connection with his position, shows that some of the other witnesses could not have heard the early part of the conversation. But when the lie was given, he tells you that Butler immediately sprang or moved towards Ward, and laid his hands on him.

Benedict also saw the hand laid on Ward's shoulder; and testifies that it was done so violently as to bend him down, and push him back. He adds: "Then I expected a fuss; I *knew* Butler was not going to put his hand there for nothing."

Then Quigley testifies that he saw Butler push Ward back some eight feet, against the wall, before the pistol was fired. It is true, he did not see Butler strike, neither did any of these boys, and the gentlemen have therefore argued that he did *not* strike. But how can you doubt it for a moment? Dr. Thomson, their own witness, states that Butler said to him: "he struck me, and then I struck him." Professor Yandell thought from the manner in which Butler raised his hand, as he detailed the occurrence, that he designed to say, Ward raised his hand in a threatening gesture, and that then he (Butler) struck him. Dr. Caldwell asked Butler the position of the parties when the pistol was fired, and he replied: "We were engaged."

Now all this proves beyond question, that Butler *did* strike Ward, and proves it, too, exclusively by their own witnesses, leaving Barlow entirely out of the question. They were clearly engaged in conflict at the time the shot was fired, and the only inference is, that owing to excitement, their peculiar positions, or other causes, none of these boys saw the whole affair precisely as it occurred. But the two facts that they were engaged in a fight, and that Butler did strike Ward, I consider settled by their own witnesses.

One boy tells you that Ward gesticulated with his left hand during the conversation; another, that he inferred from a motion of his hand,

a downward gesture, that he struck; and a third, that Butler was grasping for the pistol when it was fired. Now how could this be, when Butler himself said that he did not even see who shot him?

I take it, therefore, gentlemen, that all this explanation of Butler attempting to wrench the pistol from Ward, is a total mistake. He had hold of him for another and quite a different purpose. How stands the case then by their own showing, without examining our testimony at all? That there was a conflict and a fight, and that there were blows struck; yet not one of these boys, on whom they place so much reliance, saw them at all; and they can therefore know nothing about the matter.

But how came the blow? All the witnesses prove that the accused, in a mild and quiet tone of voice, first asked an explanation, which Butler either refused or asked him into his private room to hear. They contend that he visited the schoolhouse intending to assassinate Prof. Butler; that he bought the pistols for that identical purpose, and went there to carry it out. Now if this was his intention—if he really designed in his heart to do murder, I ask you if he could not quite as easily, and under quite as favorable circumstances, have accompanied Butler to his private room, and done the deed there? No, gentlemen, it only proves that his declarations before he sought the schoolhouse, were truthful; that he simply desired to have the whole matter talked over there in public; to have the facts fully investigated on the very spot where, and in the presence of those before whom, the wrong, if any, had been committed.

I ask you, gentlemen, would it not be strange—would it not be passing strange—would it not be incredibly strange, if the prisoner at the bar, deliberately and without provocation, sought that schoolhouse for the mere abstract pleasure of killing Prof. Butler—his own friend, and the friend of his family? Is it reasonable, or natural?

But let us go a little further, and examine our own testimony. How came it that he went there at all? What did he tell his mother, before he left home? She has testified that they had just reached home from Cincinnati, when she observed that Willie was not at school. On her inquiring the cause, the little fellow bursts into tears, and replies: "Ask brother Matt." She does so, and the prisoner answered: "Mother, I directed him to remain. When he came from school last night, he related to me that during the day, just before a recitation order was given, he had a few chestnuts in his pocket. His companions asked for some, and he distributed them all among them. Just then the order for study was given, but one of the boys, breaking the rule, ate them after the signal, and Prof. Butler saw the hulls thrown

upon the floor. He inquired where they had been procured, and when one of the other boys refused to tell on his companion, declared that he would ascertain, and sent for his strap."

The strap, gentlemen, you are probably aware, is an instrument of refined modern torture, ordinarily used in whipping slaves. By the old system—the cowhide—a severe punishment cut and lacerated them so badly as to almost spoil their sale when sent to the lower markets. But this strap, I am told, is a vast improvement in the art of whipping negroes; and it is said that one of them may be punished by it within one inch of his life, and yet he will come out with no visible injury, and his skin will be as smooth and polished as a peeled onion! This is its effect on negroes; whether the same be true when it is applied to the backs of schoolboys, I know not.

Well, the strap was sent for, and another boy was called up, who was asked why he had been eating chestnuts. He replied, "Willie Ward gave them to me." On being asked if this was true, Willie answered that he gave him the chestnuts, but that it was before the recitation order had been given. The other boy said that it was after the order, but Willie steadily maintained that it was not. The other boy was accredited—he was disbelieved—the breaking of a rule of the school, by the former, by eating at forbidden hours, was forgiven; but this boy, fifteen years old, was publicly whipped—not for disregarding the regulations, but on a simple question of veracity, where the probabilities at least were in his favor—flogged as a common liar, in the presence of the whole school, with an instrument with which slaves are whipped! This was the account of the matter given by the accused to his mother. Do you doubt it? You noticed carefully the manner of that mother on the stand, and I am sure you do not.

"I do not so much mind the whipping, but I would rather die than be called a liar." So says this boy, to his brother; and whether his name be Ward or not, I maintain there is not to-day, a boy fifteen years of age, in the whole State of Kentucky, who would not participate in this feeling. This sentiment is not confined to the aristocracy—there is not a brother or a father in the land, be he the humblest and poorest mechanic that ever lifted the axe or shoved the plane—whose heart would not have wrung by such a tale from such a source. This emotion does not belong merely to those you have heard sneeringly called "the first families." Here in old Kentucky, the highest and the lowliest—the proudest and the humblest—all, thank God, possess the high sense of honor, that would cause them to feel such an occurrence deeply. On behalf of my country I deny that this sense of honor is confined to the Ward family. On behalf of the noble matrons of my

native land, I deny that Mrs. Robert J. Ward, is the only one among them whose heart would throb with agony under such circumstances. This pride—this noble and manly pride—is not alone the inheritance of the rich; but untarnished honor is also the birthright of the poor man's son.

Yet we are told here that "because a Ward had been insulted, the stain must be wiped out with death"—and representations have been made to induce you to believe that the cause of this unfortunate event, existed in the fact that they considered their birth higher than those with whom fortune has dealt less kindly, and their blood redder than that which flows in other veins! And these are the means—the base, unmanly, malignant means—by which a prejudice is attempted to be excited against this prisoner, and the reasons for which you, gentlemen, are asked to convict him. I have deep and abiding faith that you are above the influences of all such prejudices.

Now after hearing this account of the punishment of his brother, what did the prisoner say? Simply this: "This story has been told me, and I will go around to the school-house and ascertain of Mr. Butler, the full facts of the case. Willie has been whipped and charged with lying, in the presence of the whole school; the circumstance is a very singular one, but Mr. Butler is a gentleman, and will no doubt give me an explanation." Well, what could have been meant by explanation? Why nothing more nor less than to have the case fully investigated, and if it then appeared that the teacher had been too hasty and done the boy a wrong, to have the stain wiped from his escutcheon, and his innocence proclaimed where he had been denounced as guilty.

Was not this right? Would any brother have done less? And what ought Butler to have done? It is not my duty, gentlemen, to stir rudely the ashes of the deceased; all agree that he was an honorable gentleman—that his character was unimpeachable, and that his death is a public loss. But I put it to your candor—what ought he to have done? What would you have done? We have all been at school ourselves; we have all seen boys whipped, sometimes unjustly and sometimes cruelly. You know it is not a pleasant thing to a father's feelings, to have his son whipped till his limbs are blue and blistered, even if he deserve it—much less in a doubtful case, where there is infamy attached to the punishment.

The father was away when the act was done, and therefore the prisoner was the proper person to come for an explanation. Butler must have known his feelings, and should have investigated the case. I think he ought to have said: "I have had occasion to whip your brother. I am aware that it must excite your sensibilities, but I am ready to give

you a full, fair explanation, here, if you desire it, where the facts occurred. I will call the other boys up—they shall be examined in your presence; and if I find that I have done you or Willie a wrong, here reparation shall be made.”

The authority of a teacher is that of parent and child, not master and slave. He is for the time, the parent's representative, and ought to act with a father's feelings and a father's love. Would not a father be very careful how he denounced his son as a liar in the presence of the family? Even had he been so unfortunate, as to detect his boy, fifteen years of age, in an untruth, would he proclaim to the whole world that his son was a liar, and then, with an instrument such as are made to torture slaves, whip him in public like a dog? Would he not, otherwise privately expostulate with his erring son, and there administer to him whatever punishment he deemed proper?

If a teacher do any thing unjust and wrong, is it strange for the proper person to go and ask that it may be explained? And can you not readily see in this case, when Willie had been taken along to satisfy him that he should have a fair and impartial trial, that the explanation should be made there, in the presence of the whole school; and that, if Mr. Butler should be justified by the facts nothing more would be said, but that if he proved to have acted hastily and wrongfully, the stain should be wiped off the poor boy's character?

We know that an explanation was refused. In mild and not offensive terms, Mr. Ward made a fair and reasonable requisition. Mr. Butler met him in no such spirit; he put on the haughty to him—refused to answer—would not be interrogated. He was asked if he had fully made up his mind; he had. “Then, sir, as you will give no explanation, as you will not suffer the case to be fairly investigated, and the facts made known, you must hear my opinion of you. You have disregarded the courtesy of a gentleman; you have disgraced my brother; insulted my family, and refused all reparation; sir, you are a scoundrel and a coward.” Every thing had been refused—all satisfaction denied, and the prisoner, after having made a just demand, must pursue the course he did, or meanly skulk from the presence of this puissant pedagogue.

And the words he used were no harsher than those which had been applied to his brother. But what followed? He was seized by the collar, pushed back to the door, bent down towards the earth, beaten repeatedly in the face, and this weak, wan, rheumatic invalid, must be kicked like a dog from the very hall where his brother had been disgraced, or defend himself with such weapons as he had in his possession.

According to the testimony of Robert Ward, when the parties were engaged in conversation, the accused held his hat in his left hand and

was engaged in gesticulating with the fingers of his right. Knight relates the same fact, with the difference that he makes him gesticulate with the fingers of his left hand, while the right is in his pocket or muffled in his coat. But if this was true, where could his hat have been? Are we to suppose that when he entered the room he "squatted" like a negro and dropped the hat between his feet; or to receive the statement of Robert, that he held his hat in the left hand, with the ease and grace of a gentleman, while he gesticulated with the fingers of his right? In many particulars Robert Ward and Knight corroborate each other wonderfully, and on the only point where they disagree, the testimony of the former is perfectly clear and natural. He tells you that the prisoner held his hat in his hand until after the conflict begun. And this is corroborated by the subsequent occurrence, for, if his hand had been on the pistol from the moment of entering the school-room, is it not probable that he would have shot as soon as he was collared? But he waited until he had complied with the literal requisition of the Common Law, laid down by the earliest writers, and was forced back to the wall where he could retreat no further.

Robert tells you that they were engaged in conflict at the time, and that after the pistol was fired, when Sturgus came out, he drew a knife which he had worn for months—for he responds to every question promptly, and conceals nothing from you—and flourished it towards him, warning him either to come on or to be off.

Which of the expressions he used, it is impossible to ascertain; probably none who were present understood it perfectly. But it is very evident that Sturgus understood it "be off," and acted accordingly, for in the language of one of the witnesses, he "made his absence out of the window," about that time!

Now, the gentleman has talked very loudly about suppressing testimony, and asked with a triumphant air, why we have not introduced Willie Ward to testify for the Defense. But if they are so scrupulous in regard to omitting no evidence, why in the name of all the gods did they not introduce Sturgus himself here? He was one of their most prominent witnesses before the Police Court, and a fine figure he cut, too! Among other statements, he said that Prof. Butler fainted on a sofa, at least sixty feet from the nearest point where there was one!

Mr. GIBSON.—Is that in testimony?

Mr. MARSHALL.—It is in the newspapers. You have been prosecuting the case through them, and so I suppose you can't object to us quoting from them.

Mr. HARRIS.—I trust that the Court will confine the gentleman to

the strict line of argument, and not allow him to make statements to the jury which are not in testimony.

Mr. MARSHALL.—I may desire to quote from the Bible, or to draw some illustration from it, before I get through; but I am not aware that *it* has been offered in testimony. (Laughter.)

The COURT.—It is difficult to draw the precise line of legal argument, but I trust the gentlemen will confine themselves to it as much as possible.

Mr. MARSHALL.—I will endeavor to do so, for I desire to reason this case fairly and with propriety. I will withdraw what I said in regard to the testimony before the Police Court, but I thought it proper to reply to the taunt that had been cast upon us.

I was saying, gentlemen, that Robert Ward, in his testimony, perfectly agrees with the other witnesses, except on a few points which, as they state them, seem doubtful and strange, but which, by his version of them, are made perfectly clear and probable. In answer to the first question of Ward, he states Butler replied that he would not be interrogated, and at the same time buttoned up his coat and put his pencil in his pocket, as if preparing for conflict. Now, Campbell, who did not hear that reply, says that when Ward spoke again, his voice was raised as if in irritation. Would it not naturally be so? When the question was asked again, he still refused to answer, and Knight, who heard none of his previous words, speaks of hearing him say, "I don't feel disposed." Another fragment of the conversation heard by Campbell, and which perfectly corroborates Robert Ward's account of it, was: "Since you refuse to explain, I have another question for you; why did you call my brother a liar?" In regard to the blows, another point on which he differs from all the other boys, Robert is sustained by every witness to whom Butler made dying statements.

The next point on which they disagree, is this: the boys say he ran half way up the aisle, after the shot, flourishing his knife; which he denies, and says he stood his ground. Well, do they want to prove that he was dastardly enough, with the knife in his hand, to retreat from Sturgus? It must be remembered, too, that they have this very boy indicted here for murder, and that where he differs, on this point, it is certainly not in his own favor. But his account of the matter is undoubtedly the correct one. He went towards Sturgus, flourishing the knife and telling him to be off. Sturgus saw him, and he *was* off—it was *presto vido* with him! I have asked why Sturgus, after being subpoenaed, did not appear as a witness here; but I asked it only in scorn. We know the reason well—they dared not introduce him. And yet, corroborated as Robert Ward is, by the school-boys, by reason and pro-

bability, and even by the dying statements of Butler himself, the Prosecution, not content with laying at his door the charge of murder, with attempting to consign him to condign punishment, and involve both him and his elder brother in one common ruin, must arraign him here, and in addition to all else, charge him with the base and dastardly crime of perjury.

It is true, that he has really added very little to our cause. We had other testimony for nearly every fact he has proven; and he has merely given us, in one connected narrative, link by link, a full account of the transaction, of which we had before partial details from various sources. But I have owed it to his character and his honor, thus to go through his testimony, and repel the foul charge that has been brought against him. He may be precocious, he may carry Bowie knives, but manhood, courage, truth and honesty are all indelibly stamped upon his forehead. Ah, this old English rule, of bringing a witness face to face with the jury, is an admirable thing! You may judge with certainty by a man's eye, his voice, his manner, and a thousand other things, whether he is telling you the truth. There are many circumstances under which a lie reads quite as well, and sometimes a good deal better, and smoother, and fairer than the truth; but it is not so here. You noted the straightforward and clear manner in which he gave his testimony; and I must say, that never, in the whole course of my life, have I seen a witness more fully corroborated, or heard one testify with a greater air of truthfulness.

But Barlow!—what a pean of triumph the gentleman sung when *he* took the stand! And on his cross-examination, when by insinuation and innuendo, he endeavored to leave the impression on your minds, that he had been suborned and perjured, I thought my ear detected a low chuckle outside the bar—the first indication that has reached me of the communication of that wild excitement and unreflecting prejudice against the prisoner, which has been fomented elsewhere, to this locality.

Yet how did the gentleman succeed in attempting to discredit this witness? He asked him: "Did you not say, on the same day of this occurrence, that it was a most aggravated murder?" "I did." "Did you not say, that if this prisoner was not hung, there was no use in attempting to hang any man for murder, in Kentucky?" "I said something to that effect." "Were you not much excited at the time?" "I was." And because these admissions are readily and frankly made, the gentleman contends, in his argument, that the witness must have testified falsely on his examination in chief. He speaks of seeing Butler, after he was shot, at the residence of Col. Harney, and goes on to

describe minutely his position, and every article of his clothing. He asked Butler how it happened, and Butler briefly related the circumstances to him. But in the cross-examination, the gentleman asks him: "Did you not say at first, that Butler told you he was shot immediately on striking Ward?" He replies: "No, sir, I never said so; I have always said that he told me he was shot during the scuffle." The examiner immediately denounces this as a lie; but was it a lie, Mr. Carpenter? Drs. Thomson, Yandell and Caldwell all say, that Butler told them they were clenched; the schoolboys also, all agree that they were clenched and engaged and grappling; but when Barlow states it, and is fully corroborated by your own witnesses, he is denounced as a liar, because he did not name the conversation to Mr. Robert J. Ward immediately after it occurred.

But what is his account of it? It had appeared in testimony before the Police Court, had been published, and was bearing with most terrific force on the case, that this defendant struck the first blow; that he had gone to the schoolhouse, refused an explanation, and insulted, cursed, struck and shot down an unoffending and unresisting man. Barlow had heard this, and he knew that whatever the guilt of the prisoner at the bar, this statement was not correct; and he felt it his duty to inform him and his friends of the fact. And within an hour after the transaction itself, while he still participated in the violent excitement that prevailed, he saw Mrs. Crenshaw and her husband, and made to them precisely the statements that he has made here on the witness-stand. The same facts he detailed still sooner after they had transpired, to Mays, the very witness brought here by the Prosecution, for the purpose of impeaching him.

And what is the next serious charge brought against him? Why, that afterwards he, he, the carpenter—and I had always been taught to consider one *Carpenter* as good as another, and cannot see the superiority of the one who has been brought here, all the distance from Campbell county, to build the gallows of this prisoner, over the one who appeared to testify on his behalf—but that this poor carpenter, during some of those long and weary evenings of winter, when the defendant from his lonely cell could, perhaps, hear from without, cries for his blood as merciless as those of the Cuban bloodhound on the track of its victim, was invited in to soothe the tedium of those weary hours, by joining in a game of cards. "And, therefore," cries the Carpenter from Campbell county, "Matt. Ward must be a murderer, and this witness a perjured man."

Why, I had thought, that when a man was honest and honorable, even though he were a carpenter, he might be a gentleman, and was good

enough to associate with any man. But notice the ingenuity, the infernal ingenuity, that has been exhibited here. They say: "Robert J. Ward is an aristocratic gentleman—he is better than others—and this son of his, who is now on trial, is also a travelled, accomplished and exclusive gentleman, and considers himself better than other men." Thus they would play upon that low, mean, contemptible prejudice, which some men feel against those who possess the advantages of education and wealth, and with which envy has so much to do; and thus would they influence you in your decision. And when they themselves introduce testimony, which proves that this defendant is no such haughty proudling as they have painted him here; they do not draw the natural and reasonable deduction, but begin to talk of corruption and bribery. They do not interpret it as an indication that he is ready to take any poor man by the hand, but the counsel tells you with an innuendo, that there *are* poor men who will do any thing to win a single smile from the rich. That may be the case with the Carpenters where he hails from—New Hampshire, I believe—but it is utterly false here. Such ideas never originated here; here there are but two classes—gentlemen and slaves—and the sentiments he has uttered, are a slander upon the people of Kentucky. Poor and proud, is the Kentuckian's motto, and the poorer the prouder. When fortune smiles upon him, he may, perhaps, suffer an insult without resenting it; but when he is poor, beware how you impugn his integrity, by offering him a bribe, for you do it at your peril.

As I said, I had thought that a man might be poor and humble, and yet be a gentleman. I had been taught to believe that

"The wealth is but the guinea's stamp,—
The man's a man for a' that."

And if this gentleman thought when he learned that this young man had converted an enemy into a friend, he had discovered a rare instance, he was much mistaken. I am told that no gentleman in his parlor ever attracted more notice or received more attention, than this young man, driven from his own home to seek justice at the hands of the free and noble yeomanry of Hardin county. Again and again have your kind-hearted people visited him in his narrow cell, and when they have seen no such huge, brawny ruffian, as they had expected; when, instead of looking on a countenance indicating a bad, reckless and malicious heart, they have gazed on that wan, delicate, pale, suffering young brow, the tears have wet their eyes, and no one has met him without being convinced that he is a gentleman to be esteemed and loved. And if it was a crime for Barlow to be corrupted from an enemy into a friend,

half the citizens of Hardin county are infected with the same corruption. He seems to possess some wonderful alchemy by which all who see him are thus converted!

I have shown you how unfair and unnatural the deduction of Mr. Carpenter in regard to the character of the testimony of Barlow. But he is sustained, not only by the great and overpowering fact that within half an hour of leaving Prof. Butler he gave precisely the same account of the conversation he has given here; but he is also corroborated in other material points. Gudgel and Allen were on the spot within from three to five minutes of the time when the pistol was fired, and saw young Worthington there, with the other scholars. And when they asked what had happened, the boys answered then and there, Worthington assenting, giving the same account of the matter that Barlow says was given to him by Prof. Butler. He is also corroborated fully, as to the nature of Butler's statements, by Drs. Yandell and Caldwell. He seems to be sustained in every point. Under the circumstances, had he come up here to testify to an important fact, without being corroborated by any one, the case might be different; but as it is, he stands before you perfectly unimpaired and unimpeached.

I think, gentlemen, that we have now arrived at the facts of the case, which are these: That on the 1st of November, in the Louisville High School, William Ward, a boy fifteen years of age, was charged by the Principal, Mr. Butler, with lying, and for that—not for any breach of discipline, whipped in the presence of the whole school; that he went home and related the occurrence to his brother, his parents both being absent at the time; that his books were sent for, and that brother, in feeble health, thought it right to go around to the school-room of Prof. Butler, investigate the case and ask an explanation; that Robert went with him at the request of his mother—not because she apprehended difficulty with Butler, but, as she knew the enmity of Sturgus, the prudent apprehensions of a mother's heart, suggested the remote possibility of some collision with *him*; that the prisoner went to the school-house, called for Mr. Butler, and in a mild and gentlemanly manner, asked an explanation, which was haughtily refused; that all explanation and satisfaction were totally denied, and that this feeble man, as he had been insulted and a member of his family outraged, simply charges Butler with the same dishonor he had imputed to his brother; that he was then seized, struck, pushed back into a corner and bent towards the ground, when he fired the shot which unfortunately proved fatal. These are the facts.

Now, what of this relative strength of the men? You have seen how much stress they have laid upon the fact that Butler's hand was

contracted by a burn, in early life. Now, we have proved that this accident merely brought his hand into precisely the same position any man's hand is in when he doubles his fist; and one of their own witnesses, Mr. Joyce, speaks of his extraordinary feats of strength, and the facility and ease with which he could climb ropes, and perform other difficult manœuvres on shipboard. Yet they would have you believe that this man, who could raise his body on a rope ladder, hand over hand, with such remarkable ease, could not clench his fist and strike a blow. That the man who performed such feats in the gymnasium, was utterly powerless in his right hand. But Campbell thought he *could* strike, and picked up the tongs to keep off Robert while he should have an opportunity to do so.

The defendant has been delicate and feeble from his early childhood. One of the witnesses testified that his wife might easily manage him physically, and another that about this time he weighed only 110 pounds. And when he went around to seek an explanation of a man he knew well, to relieve the feelings of his younger brother, and refused to take any one with him until he was pressed to do so, they would have you infer that he went to bully and to injure Prof. Butler. You cannot believe it.

Gentlemen, according to law in Kentucky, according to your own sense of right; I put it to you as peaceable and law-abiding citizens, if this be murder—deliberate, malicious, cold-blooded murder? That is the first question you are called upon to decide.

I understand that in this country I have some rights with which I am armed by God and Nature, and which the law sustains me in defending by force so far as it may be necessary for my protection. These rights are called by the best of early writers on law, Blackstone, Absolute Rights, and are reduced by him to three primary or principal articles: the right of personal security, the right of personal liberty, and the right of private property.

Of the first, he says:

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

Here, then, I have guaranteed the right of my personal security. No man has a right to invade it. Though the law protects it, it is not derived from law,—it is bestowed on me by nature—is inherent and inviolable. No man has a right to blacken my reputation, to injure my person, or to restrain, stop, let or hinder me in any way, except by legal warrant for doing so.

Now what of the great law of Self Defense? I will read from the same writer, on that point, and the Redress of private Wrongs:

“The defense of one’s self, or the mutual and reciprocal defense 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 to whom he bears a near connexion), 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 of the law is by no means an adequate remedy for injuries accompanied with force, since it is impossible to say to what wanton lengths 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-defense, 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 defense and prevention, for then the defender would himself become an aggressor.”

As you have heard, we are told here that this right is not derived from the law of England, but from the law of sensation—the law of Nature. It is the law of all animate Nature, and, upon a more enlarged and liberal view, of all Nature, both animate and inanimate. In this strange and wonderful system of antagonisms, it is an all-pervading principle. Every thing in the wide bounds of Nature seems to have its enemy, and is provided with the necessary and appropriate means of defense.

In animate Nature this is always true. Every animal, from the noblest to the meanest, has its natural enemy, and each is provided with its own proper and peculiar weapon to fight against it. Even the serpent—the lowest in the whole range of animal life—the first tempter of our race—all cursed and blasted and blighted as he is—his head bruised and ground in the dust by the falling heel—between whom and man God has planted a bitter and undying enmity—even he has the power of self-defense; the ALMIGHTY has not deprived him of that, but has left him his venom and his fang. And the viper—the lowly reptile you tread beneath your feet—is not unprotected, but he turns upon you

and exercises that right of self-defense with which Nature has provided him.

But what does this right mean, and how far does it extend? It confers upon me the privilege of beating off any injury or infringement upon those inherent rights with which God and Nature have provided me. It gives me the right to exercise any means, to use any amount of force that may be necessary to repel such attacks. No man has a right to take my life; I may defend it and preserve it at any cost. But this is not all; a man's rights are not confined merely to the preservation of his life. He has others, many others, guaranteed by Nature, that are nearer and dearer, and which it is his privilege and his duty to protect. Without these, life itself could have no charms; and had I no other right than the simple one of existence, I would raise my own wild hand and throw back my life in the face of Heaven, as a gift unworthy of possession!

I maintain that I have as much right to defend my personal liberty as my life; but the force to be used is only that necessary to repel the attack, and to prevent injury. Were this defendant to attack me, and attempt to chastise me, I would have no right to take his life, because he is an invalid, and so far inferior to me in physical strength, that I have no reason to apprehend any serious injury. But with a man of more powerful frame than myself, the case would be different. He has no right to attack me; I have a right to defend myself, and I may use just the amount of force necessary to do so. If I choose, I may strike him with my fist. That would show a great deal of game; but if he were stronger than I, it would certainly tend to exasperate him, and render my chastisement six times as severe as it would otherwise have been. Perchance I may be able to seize a bludgeon, with which I can fell him to the earth, and thus protect myself. But if no such means are at hand, will any man, will any Kentuckian, tell me that I must stand and be beaten like a dog, at his discretion? Certainly not. I may repel him and defend myself in any way I can, and if nothing else will prove effectual, I have a perfect right to cut his throat from ear to ear. I may use any amount of force whatever that is necessary; and this, as I understand it, is the law on the subject, as construed, applied and executed, throughout the land. I ask you to look at the facts in this case, and apply the law to them.

I have defended many cases of felonious homicide, though I have never before appeared in a court in Hardin county. But I must say that I was much gratified at the manner in which this jury was formed, and the implicit reliance manifested by the accused, in the justice of his cause, and in your honor and integrity. To him, as to me, you are all

perfect strangers; but as the jury was made up, not a single man was rejected, who thought that his mind was unprejudiced, and that he could try the case fairly and impartially. The law gave him the right to twenty peremptory challenges, yet only one was made; and never, in the whole course of my experience, have I seen a prisoner throw himself into the arms of strangers with such perfect and child-like confidence of his innocence, and in the result of an investigation by the first men who gave assurance of their belief that they could fairly try his cause.

I believe the law I have laid down is so plain, and applies so directly to the facts, that it must appeal to every man before me. And by it, I would ask, was the act for which the prisoner at the bar is arraigned, murder? Was it any thing like murder? or can it by any possibility even be construed manslaughter? In many cases, according to the old English law, the life of a man on trial may depend on the most nice and subtle distinctions; but there is no occasion for such uncertainty here. When a man is driven back until he comes to some obstacle which he cannot pass, and as his adversary continues to press upon him, and he has no retreat, if he slay his opponent, then, according to all law and all reason, it is neither murder nor manslaughter, but homicide in self-defense.

In this case, one of the parties was relatively a strong, active man. The other was an invalid, seeking the interview to relieve the injured feelings of a younger brother—with no intention or expectation of a quarrel. And when the explanation and reparation which he had a right to demand, were steadily refused, he took the only satisfaction which remained in his power, by denouncing his adversary as that brother had been denounced before. Then he was attacked—pushed back against the wall, pressed down towards the earth, beaten in the face. Under such circumstances, this poor, feeble, fainting, falling invalid, shoots his adversary, and the wound unfortunately proves fatal.

Should he die for this? Does this act make it necessary for that young prisoner to be stricken from the roll of living men? Does it render him unfit to live, and a dangerous member of human society?

But if you think to mitigate his punishment, will you immure him within the walls of a Penitentiary? Will you cut those flowing locks—will you shave that classic head—will you snatch him from the bosom of his loving family—tear him from the arms of his girl-wife and rudely sunder every tie that makes life dear? Will you do this and call it mercy?

As the representatives of a just and merciful God, if you feel it

your solemn duty to punish him, oh let him die ! Talk not of mercy, while you inflict upon him a curse for which there can be no human parallel, a punishment to which death is nothing in comparison. No, no, if you talk of mercy, show that mercy the Prosecutor spoke of this morning—the mercy of the grave. Oh give him liberty or give him death ! But the Prosecutor seemed greatly afraid of mercy, and again and again he enjoined it upon you to show none. He thought that perhaps the ALMIGHTY might possess some, but of even that he seemed to be doubtful, and he charged you to beware that not a single feather should fall from the wings of the dove, to contaminate this jury box by its presence.

For the sad event that has occurred, we feel regret—deep, lasting, bitter. If that day's act could be recalled, no man on earth would do so much to reverse it, as the prisoner at the bar. We sympathize deeply with the afflicted family and lament the occurrence that bereaved them. But we have felt, and we feel now, no such stings of conscience as have been described here. We have thrown ourselves for trial upon God our Creator, and upon you, our country ; and we have said Not Guilty, to this indictment, because we are not guilty of the crimes it charges. The awful consequences of a verdict such as it is in your power to render, appal us with horror—but mingled with that horror there is no remorse—there are no stings of conscience. Not Guilty, we say, living ; Not Guilty, we say, dying, and Not Guilty, we will ever say.

You have heard the character of this defendant proved—and such a character ! Did you ever know it surpassed ? Could there be one more mild, more gentle, more peaceful, and more universally beloved ? Men of all professions and occupations—of every position in life—have testified to the fact that this was true alike of the boy and the man.

As he grew to manhood, perhaps from too close attention to study, his health failed, and he went abroad to regain it. And whatever your decision shall be, he has left behind a monument that will ever place his name high among men of intelligence and of letters. I allude to this volume ; I suppose I may not read from it, for the gentlemen might object that it had not been offered in evidence ; but it shows how my unhappy client has spent his time. And I owe him much for the gratification I have experienced, as I have followed him in his wanderings, on hallowed and on classic ground. I have been with him down the beautiful Rhine, within the ancient walls of Aix-La-Chapelle, up the Sluggish Nile, and on Mount Sinai's rugged brow ; and oh, if I were permitted to read to you the thoughts and feelings that there swelled

his breast, you would realize what a heart you are entreated to crush—what a light of genius you are asked to extinguish for ever.

It were pitiful that he should die so young—now in the full flush of his early manhood—one so loved in the social circle—one looked upon so hopefully by the church—one who has proved himself so glorious a genius and so fit to lead the young men of America—it were a pity that he should die, even by the unrelenting hand of disease, and when surrounded by all that he loves on earth. But to be cut off thus—in such a cause—to be sacrificed in response to such a wild, insatiate cry for blood as has been raised by this Prosecution—oh, it were pitiful, it were marvellously pitiful!

I have pleaded this case only by the law and the facts; but were I compelled to ask mercy, was there ever a case in which it could be shown with more propriety? Yet I do not ask you to pardon—there is no occasion for that. I ask you to do your duty, to examine the case carefully, to see if you discover the elements of murder there, and then tell us if you can say that this young man shall die—shall die a felon's death? I know you cannot.

When I found that there were twelve men here in Hardin, ready to try this stranger justly and fairly—twelve men untouched by the shafts of malice that have been hurled at his youthful bosom—then good omens cheered my heart. And when the facts of this case are fully made known, when the black clouds that have enveloped it are all dispersed by the bright Sun of Truth, I am sure that the verdict of acquittal which I anticipate at your hands, will receive the universal commendation of a great and manly people.

I have spoken long, gentlemen, and perhaps have wearied you. I need not have consumed so much time, for I feel confident that the cause of my client is safe in your hands. I know that others are to follow me, the latchet of whose shoes I am not worthy to unloose; and if I have left any chasm in the argument of this case, I am sure they will fill it up. I thank you gentlemen and take my leave.

At the conclusion of Mr. Marshall's argument, the Court adjourned.

SIXTH DAY.

Monday, April 24th, 1854.

The Court convened as usual.

The argument was continued by Mr. Harris, for the Prosecution, who addressed the Jury for between two and three hours.

He was followed by the Honorable John L. Helm, who spoke as follows:

SPEECH OF GOVERNOR HELM.

GENTLEMEN OF THE JURY :—

I have often addressed you in the jury box and from the rostrum ; on the stump and in the muster field. You are all aware that in the discussion of any subject in which I feel a deep interest, my manner is usually excited and earnest, but on this occasion I speak under great disadvantage, having been confined to my bed by illness almost constantly for the last two months ; and only hoping that I may be sustained and that you may bear with me, until I can discharge the solemn duty I owe to my client.

I feel, perhaps, more deeply interested in this case than I ever have felt in any other in which I have been engaged. I feel thus from the nature of the ties that bind me to the family of this defendant. Many years ago, when I first entered the political field, I met his father in the Councils of the State ; and again and again have I associated with other members of the family there. And as in the beginning of my humble political career, these men took me by the hand and gave me their aid and support, I have ever felt grateful to them ; and now, that an event has unfortunately occurred by which I hope to be enabled to do something, so far as my poor ability goes, to cancel the debt, you cannot wonder that my deepest sympathies are enlisted.

The gentleman who preceded me has alluded to outside influences—to the fact that this prisoner was driven from his own home, to seek justice here. It is true that from the moment the event occurred for which he is now on trial, distorted and prejudiced accounts of it were given to the public ; and, accompanied by articles of the most inflammatory character, were spread upon the wings of the wind by the newspaper press. Therefore, this excited feeling was caused, and therefore, the prisoner asked only what the law gives—that he might be tried in an unbiassed and unprejudiced community. There were other counties, in that circuit, much nearer Louisville than this, and no one expected this would be selected. But that judge, perhaps willing to rid himself of the perplexity and responsibility of such an exciting trial, on his own motion removed the *venue* here, to the great surprise alike of the prisoner and all his counsel. But now that his cause is brought before you, he only asks at your hands a fair and impartial trial.

Another circumstance alluded to, was the position of Mr. Ward. He has been held up to you as the possessor of great wealth, and repeatedly called a *millionnaire*, to invoke an improper and unmanly feeling against him. Now, though there is nothing whatever in evidence on this point, I feel it my duty to correct the impression that has been

left on your minds. Mr. Ward is the possessor of no such princely fortune as you have been led to believe, and the property of the family consists of one house and lot in Louisville, a partnership in a commission store in New Orleans, and, by the mother of the accused, the plantation in Arkansas owned by him, with, perhaps, a few slaves.

The Counsel for Defense have been alluded to. I did not think, after importing a man from the vicinity of Cincinnati, in addition to the other counsel retained, to assist the officer of the State, and to make an eight hour speech to this jury, we should hear any remarks on that point, from the Prosecution. The truth is, the accused expected, and it was currently reported, that some of the most distinguished lawyers in the land had been engaged to conduct the Prosecution. It was said, at different times, that Rufus Choate of Massachusetts, Thomas Corwin of Ohio, John Bell of Tennessee, and other counsel of equal ability and power, had been retained. It was, therefore, determined, and whether properly or not, you can judge, that men of talent and reputation should be employed in the Defense, and that Greek should be met by Greek.

I have spoken of the excitement that existed and still exists in regard to this case. I do not wonder at it—I do not condemn it. When I read the first accounts of the transaction that appeared in the newspapers—very different accounts, gentlemen, from the facts that have been elicited before you—I was excited and exasperated, and I cannot blame the masses that their feelings were aroused, for it only shows that their hearts are right, and naturally revolt at scenes of outrage and of wrong. But when a man is brought to the jury box for trial, those who would endeavor to excite a feeling against him, either because he is rich or because he is poor, ought to hang their heads in shame. Who of you, gentlemen, is not striving to obtain a little of this world's goods; and what can you think of those, who, when a man is charged with crime, because, by honorable means, he has succeeded in amassing property enough to support him in ease, would say: "Never mind the justice of the case—never mind whether he be guilty or not—he is rich, and let us hang him?" As the first gentleman who addressed you in this case remarked, "So long as we are true to ourselves, our country will be safe, and the tree of liberty will continue fresh and green." But those who would excite such prejudices and build up such distinctions as these, are recreant to justice and to patriotism. Here, thank God, all men are equal, and in the exercise of their civil and constitutional rights, no one is above another.

Complaints have been made that this defendant has been living in luxury and splendor, in jail here, while others have suffered from having their absolute wants neglected. That others have suffered,

there is no doubt. But after the accused was removed to this place, I visited him in jail, and found him suffering from a severe attack of neuralgia and inflammatory rheumatism—the same disease that had recently confined me to my bed, and notwithstanding all precautions, had racked my limbs with a thrill of pain, at every blast that swept over the hills. I went, hoping at least to keep this man alive until he could throw back the foul charges that have been heaped upon him—show their falsity—and vindicate his conduct, as he humbly hopes he can, in the eyes of this jury, and the people of this country. I visited him, and I had a partition and a stove put up in his cell, that his disease might not be aggravated by the inclemency of the weather; and for these precautions, his own money paid, so that no wrong has been done the State.

Is it a part of your wish that men should be punished to the death before they are tried? Even if this accused was provided with the simple necessities of life, if that mother wished to go and lay her tender hand on his aching head, if that wife would seek his lonely cell, and soothe and cheer him by the light of her presence and her love, was it wrong? Who, with a heart not glutted with blood could object to it?

I know that the prisoner has much to contend with outside of this prosecution; but, gentlemen, yours is a proud position. You are placed, by the law, a firm shield before him, to protect him from all unjust and improper attacks. With no aim but to learn the truth and to do justice, I feel confident that you will stand like a rock in the midst of the ocean, unmoved by the fury of the wild waves that dash madly against it, only to be broken in pieces. We only ask that you will perform your duty, and that justice may be done, though the heavens fall.

But the gentleman tells you you have no right to retain a single particle of mercy. This is the first time in my life I have heard such a sentiment gravely announced by a man acquainted with the books.

“To err is human—to forgive, divine.”

He has alluded to the first murderer. But did not GOD in mercy hear even *his* prayer, and place a mark upon his forehead that none might slay him? And when a woman was arraigned on a high charge before the SAVIOR of the world, when none was so guiltless that he might cast the first stone at her, then there was mercy from on high, and He sent her away with the kind injunction to go and sin no more. In the good Book, we read that we are to do justice and mercy; and shall we come to this jury box with our hearts steeled against the prisoner at the bar

—as if vengeance were our purpose—and join our voices in the wild murmur, “ Let him die, let him die ? ”

The most rash acts have been performed in the midst of such excitements. We read in Ancient History, of the banishment of Aristides, by his own people from their borders, on a charge of defalcation : but when the public mind grew calm, and reason resumed its sway, they examined more carefully the evidence on which they so hastily acted ; they recalled that banished man and made him their treasurer and their ruler. Even the Father of your Country, who bared his noble bosom to the sword in defense of your liberties, did not escape the shafts of calumny ; and you remember that the REDEEMER of the world, was spit upon and rebuked and buffeted, and put to death, in obedience to the wild cry : “ Crucify him, crucify him, whether he be guilty or not.”

But you, gentlemen, I firmly believe, will not allow yourselves to be influenced improperly. Come, then, give me your ears to hear and your judgment to understand, and let us reason for a while together. I have no desire to appeal to your sympathies ; but I have an abiding conviction that when you hear the law expounded and the facts of this case applied, you will have no alternative but to acquit the prisoner. But I will not follow the example of others and say that if you do not find as I believe, and as I direct, you must, therefore, be guilty of the vile crime of perjury.

In the feeble state of my health, I shall not endeavor to do any thing more than discuss the case in plain, familiar language, which you can all understand, with no attempt at rhetorical display. And I do it with but the single purpose of rescuing my client from the fate which impends over him, if it may be done consistently with justice and honor.

I am ready to meet the gentlemen in regard to what they have said of mercy. The law makes it your duty to hear a case fairly, and where the evidence is such as to justify the act for which a prisoner is arraigned, or to satisfy you of his innocence beyond a reasonable doubt, to return a verdict of acquittal. It is an old maxim of law, that it were better for one hundred guilty men to escape than for one innocent man to be punished ; and I lay it down as another proposition not to be controverted, that in criminal cases, where your mind is in a state of oscillation, and you are compelled to weigh carefully and consider nicely before you can come to a satisfactory conclusion, that very fact implies doubt on your part, and you are bound to acquit.

The gentleman has read to you that where a man is killed and there was no malice expressed, the law considers it implied. But if

their own testimony has been such as to deny that implication, it must at least raise a doubt in your minds, and all doubts inure to the benefit of the prisoner. I contend the Prosecution have brought proof to deny that presumption of malice. They have shown that the parties met politely; that the manner of the prisoner was mild, bland and gentlemanly, and that in the conversation hot words were given—a scuffle ensued, and blows were struck, even according to their witnesses the first being struck by the deceased. Does not this effectually disprove the implication of malice?

Malice is a necessary ingredient of murder, and if you doubt that it existed, you must fall back on manslaughter. If you then doubt whether the act for which this prisoner is on trial, was manslaughter or justifiable homicide, you must acquit him; for to give him the benefit of every reasonable doubt is emphatically a part of the duty you are sworn to perform.

It is my rule before examining the testimony of a case, first to read the law applying to it, that I may afterwards present the facts, and show the bearing of the law upon them. And on this occasion the first point for us to ascertain, is, what constitutes murder. In Russell on Crime, Vol. i., P. 482, it is defined as

“The killing of any man, under the king’s peace, with malice aforethought, either express or implied by law.”

Malice, you will observe, is a necessary and very important ingredient of the crime; let us, therefore, look a little further, that we may fully understand in what it consists. It is very clearly defined, in McNally’s Evidence, Pps. 378, 379, from which I will read you an extract. Russell, P. 482, also speaks of it as follows:

“It should, however, be observed that when the law makes use of the term ‘malice aforethought,’ as descriptive of the crime of murder, it is not to be understood merely in the sense of a principle of malevolence to particulars; but as meaning that the fact has been attended with such circumstances as are the ordinary symptoms of a wicked, depraved and malignant spirit, a heart regardless of social duty and deliberately bent on mischief.”

The heart, you will observe, is here looked upon as the great motive power that prompts men to commit a crime and do a wrong. This is an important fact for you to bear in mind in this case; for I think we have clearly proven by the testimony as to his character and disposition from infancy—his proverbially gentle and unoffending nature, and numerous circumstances surrounding the case, that this prisoner could not have been prompted by “a heart bent on mischief, and regardless of social duty, and a wicked, depraved and malignant spirit.” If you are con-

vinced that he was not prompted thus, it is your duty to acquit him of the charge of murder.

The difference between malice express and implied, and the circumstances under which it may be implied, are pointed out in Russell, P. 482. It may be either expressed or implied from certain reasons, but this implication is merely an inference—only a presumption, and if I am able to meet it with facts that combat and destroy that presumption, of course it can have no effect.

With a view to fasten upon your minds the distinctions between murder, manslaughter and justifiable homicide, I will read you a few cases. (The principal cases cited by Gov. Helm on these points, were from Wharton, Pps. 224, 234, 235; and Russell, 513, 514, 515.)

It must be remembered that we have no written law in Kentucky relating to these points, and that the authorities from which I have been reading are English authorities. Many of these old books, being compiled from various sources, collecting here one maxim of law and there another, contain many inconsistencies and contradictions; and moreover, their tenor is much more stringent than the decisions which usually are and always have been made in the United States.

As an illustration of this, when in this case we made a motion for a separate trial, His Honor remarked that according to the rules of British law it was doubtful whether it could be granted. But the custom to grant a severance when desired has prevailed so long in Kentucky that it is the rule and the law as propounded here, and among the counsel of high character and ability who were present, not one ventured to deny or object to the proposition.

And if the gentlemen design in this prosecution to rely on the rigid and stringent rules of British law, we can readily show you how much that law has been liberalized and ameliorated here. They read from the books that a man when attacked must retreat to the wall, and that his life must be in imminent danger before the law would justify him in killing his adversary. But I can point out to you American authorities and decisions, showing that he is justified in taking the life of his opponent, not only where his own life is in danger; but where he is in danger of great bodily harm, or has reasonable grounds to apprehend that he is in such danger. This is an important fact; it is right and proper that we should come home to our own manner of modifying and administering the laws, and so His Honor decided.

But gentlemen, I think we now fully understand what is meant by malice; and let us proceed to the testimony of the case. Let us first endeavor to ascertain the motive. How do we find this defendant—how had his mind and heart been engaged, when he visited the school room

of Prof. Butler? He has been employed, with his young wife, in making preparation to depart, in a few days, for his plantation in Arkansas.— He had been making purchases with that view, and their passages by steamboat were already engaged. Now if the heart and mind seemed engrossed by proper and natural subjects, it is reasonable to presume that they were engaged on nothing foreign and wrong. Two witnesses who saw him—the one on the evening previous and the other on the very morning of this transaction, tell you that he was engaged in ordinary business and that they noticed in his appearance nothing different from his usual bland, quiet and courteous manner. This certainly would seem to indicate a mind free from malice, and I appeal to your sense of reason whether it would naturally have been the case, if he were cherishing the intention to do an act which must result in the death of a man who had resided in his father's family for two years—a man with whom he never had a single word of difficulty but whom he esteemed as a gentleman and loved as a social friend.

Up to this time, there can be no presumption of malice; on the contrary, every thing indicates quite another state of mind. But, while his father and mother were both away, Willie returned from school, and said to him: "See how I have been whipped; but I don't so much mind the sting of the lash, as being called a liar in the presence of the whole school. I would rather have died than that." Then what did the prisoner do? In all the examples the gentlemen have read here, from first to last, the stimulating cause of the homicide was brought home to the man himself. But this defendant had no grievance of his own to redress; he had not been insulted—he had not been struck.

What said the little boy to him? "Brother, I wish you would go around to the school-house, and have this explained." And, just at this point, let us stop to inquire who that brother was. The gentleman who opened the case for the Prosecution has objected to our course in bringing, among others, men who hold high rank in public life, to show his disposition and previous life; and asks triumphantly why we did not produce Tom, Dick and Harry, from the city of Louisville, to prove his character. But I ask you, gentlemen, if we have not established it beyond the shadow of a doubt, and that, too, by witnesses of all ages, circumstances and positions in life? We have traced him from the time when he prattled, an infant in his mother's arms, through the trying days of boyhood and youth,—in school,—in college,—amid the temptations that surround young manhood,—in the social circle, and in travels on foreign shores,—and, under all these circumstances, we find him ever the warm, faithful and affectionate brother and son, friend and schoolmate,—and, in after years, still the same kind, frank,

and genial gentleman. Free from the vices of youth and of manhood, wherever he has gone, he has left behind the same impress, by the mildness and gentleness of his demeanor—the kindness and warmth of his heart.

This is the man whose little brother, in the absence of his father, besought him to go and ask an explanation, and of whom you are to judge whether he was actuated by bad and malicious motives, when he complied with the request. But they contend that he bought the pistol for the very purpose of shooting Professor Butler. I reply, that unless the manner in which he used it afterwards was unlawful and wrong, and sufficient to produce conviction, the fact of the purchase can have no bearing upon the case. Every doubt must be in his favor; the fact of his procuring arms was not remarkable, for we have shown that he was about to leave, in a few days, on a long journey to his plantation in the South.

Well, he bought the pistol, and what next? Three doors above, we find him making arrangements, in an interview not sought by himself, for the repair of a little musical box, to while away some of her winter hours, and afford pleasure to his young wife in her new Southern home. The circumstance may seem a trivial one, but I think, as it shows how the heart and mind of the prisoner were occupied, it will give us some indication whether they were under the influence of malice and malignity, or not.

We have seen what took the prisoner to the school-house; you have heard his declarations both on the way and before he left home, and you are able to determine his motives, as far as we may judge of human motives from human actions. "But," say the gentlemen, "he had his pistol in his pocket, and, therefore, he *must* have gone with a heart bent on mischief." Did you notice, gentlemen, the confusion of one of their own witnesses on the stand—Dr. Thomson—when asked if he had any weapons on *his* person? You know the only natural inference to be drawn from his manner, and his refusal to answer the question, unless compelled to do so, as well as I. And even my friend who preceded me, and was so horror-struck at the idea of a weapon in the possession of this prisoner, according to the best of my recollection, was in such condition during the whole of the last political campaign, that if a little boy had chanced to approach too near his person, with a lighted stick, he would have been sure to *go off* at once!

"But," ask the gentlemen, "why have you not proved that it was the previous habit of the accused to arm himself, when about to travel?" They must be afflicted with very poor memories, or they would recollect that we *did* attempt to prove that very fact, but were prevented by their own objection. "That," said they, "is not evidence," and it was

ruled out by the Court. Then they triumphantly turn around and ask : " Why didn't you show the fact ? "

They will read you authorities to show that, because a pistol is a deadly weapon, the law will presume malice in this case. Now, I will repel that assertion by this fact. In the store where the prisoner procured it, there was a great variety of instruments, of all kinds. But he chose the least weapon in the whole establishment—one that, in nine cases out of ten, would not produce death. The law that the gentlemen will read you, refers to the old English pistol,—not to mere pop-guns such as this. The weapon has been produced here, and you can judge for yourselves of its deadliness. The circumstances under which it was used—the contiguity of the parties at the time—remember, were brought on by the deceased himself, and not by the prisoner at the bar ; he could not avoid it.

Now, if he intended to produce death, why did he not procure a weapon that was sure to do so ? If it were vengeance and death only that he sought, he knew of the event the night previous, and why did he not go, under the cover of darkness, at that still hour, call out Professor Butler and take his life, when he might have had an opportunity to make good his escape ?

But, admitting, for the sake of argument, the proposition of the State, that he procured the pistol to be used on that occasion, even then, I combat the presumption of malice. I ask you again, is it probable that a man with such a disposition, possessing so many of the elements of a man of honor and a gentleman, would go with a deliberate intention to shed the blood of a man he respected and loved ?

He had not been insulted ; he merely wished to set his little brother right. You will remember that, before he left the house, his mother insisted on Robert going with him, reminding him, as a reason, of the enmity of Sturgus. He was aware of that enmity before ; and it may be that he had thought of it, and reasoned with himself thus : " I am going to perform a sacred, social duty which I owe my brother ; he has been whipped and denounced as a liar ; and, in the presence of the school,—in the presence of those very witnesses who saw his disgrace,—I am going to have the matter investigated and explained, and to learn whether he was really wronged. But I am weak, feeble, utterly unable to defend myself in case of any difficulty. I know there is a man there who is my enemy ; the sympathies of his pupils must be with him, also, and, as, *per* possibility, in the performance of this duty, some difficulty may ensue with *him*, I will take this little thing along to frighten the boys and keep off Sturgus." Now, I appeal to your candor, gentlemen, if it is not more reasonable,—more consistent with the character of the

prisoner,—than whom no man, living or dead, ever proved a better,—more consistent with the circumstances and the occasion, than the inference that he procured the weapon with a malicious intent to take the life of the deceased.

If then you believe that he obtained the weapon but for the purpose of self-defense, and only used it when in danger of great bodily harm, according to both reason and law, his act was justifiable homicide.

As I have said, they will read from authorities to convince you that the use of a deadly weapon leaves a necessary inference of malice. I contend that it does not. Russell, pp. 482, note, says :

“Presumption of malicious intent *may* arise from the nature of the weapon used in the perpetration of the deed.”

This is the phraseology of American law—that of the British law is, *must*. You will perceive in this another exemplification of the fact that the old English law, as administered here, is materially liberalized and modified. And even here in our own State, I contend that this necessary presumption of malice, in cases of shooting, is totally disproved. In our Revised Statutes, pp. 264, the law reads as follows :

“If any person shall, in a sudden affray, in sudden heat and passion, without previous malice, and not in self-defence, shoot and wound another person with a gun or other instrument loaded, etc., whereof the party doth not die,” etc. ; then proceeds to fix the punishment by fine and imprisonment in county jail. Now by the law of Kentucky, I contend that the question is settled that a shooting may take place in the absence of malice expressed or implied.

But Russell, pp. 520, note, says :

“No provocation, however grievous, will excuse the crime of murder, when from the weapons or the manner of the assault, an intent to kill or to do some great bodily harm was manifest ;” and the Prosecution argue that an intent to kill may be inferred here. And here I bring you back to the question whether it was the intention of this prisoner to take the life of the deceased. If you are satisfied that he bought that pistol intending to use it offensively and to take away life, you are to return a verdict accordingly ; but if you believe from the facts of the case that he bought it but for purposes of self-defense, and only used it in the last extremity, when he was absolutely forced to do so, it will be your imperative duty to acquit him.

Suppose you, sir, were told that the character of your daughter had been defamed, and you determined to go and seek an explanation and retraction from the person making such statements, in the presence only of those who had heard him utter them. You might know his character and disposition, from previous acquaintance, and they might be such as

would lead you to believe that you had been misinformed in regard to his language, and that he would readily be able to give a satisfactory explanation. Yet, in view of the remote possibility of collision and danger, the man you sought being far superior to you physically, if you armed yourself before the interview, would you not do it purely for the purpose of self-defense, and with a heart harboring no malice?

That such were the motives which actuated this prisoner, there can be no reasonable doubt. The explanation he sought was proper, to relieve the feelings of his little brother. The time was proper—it was right that the explanation should be made then, in the presence of the whole school. And the place was proper; the school-room is not, as the gentleman would have you believe, a man's own house and therefore his castle; but it is a public place where he performs his ordinary duties and transacts his legitimate business. And I think you are fully convinced that the prisoner sought the school-house only for the purpose of investigating the case and obtaining a proper explanation.

Another fact. When he formed the intention to visit the school-house, Robert was in Cincinnati, and he was then going, unaccompanied by any one except his brother Willie, who as the party most nearly concerned, desired to be on the spot when the explanation was made and to confront all that should be brought against him. He did not ask Robert to go; he did not even consent that he should go, until his mother insisted on it so earnestly that he complied to gratify her feelings. If Robert J. Ward, jr., is such a dangerous young man as the gentlemen would make out here, this only shows that the prisoner wished to avoid all possibility of collision and difficulty.

If a man contemplated a murder, would he be likely, in broad daylight, to seek a point where he could be seen and heard by fifty witnesses, and there do the deed? Would any man in his senses take such a course? Gentlemen, it is opposed to every principle of reason—the presumption is perfectly absurd.

Look at the subsequent conduct of the accused. We are told that, The wicked flee when no man pursueth; but the innocent is bold as a lion. You have heard of the anxiety he felt for the condition of the wounded man; how, the moment he heard the voice of the officer at his father's door, he immediately came out and promptly surrendered himself up, to await the proper judicial investigation of the affair. Had he intended to commit murder, it is reasonable to suppose that he would have taken at least some of the ordinary precautions for escape. But every circumstance of the case—the character of the man—his disposition—his acts both before and after the affray, and the harmonious re-

lations of the parties—all tend to refute triumphantly, any presumption of malice.

Here the Court took a noon recess.

AFTERNOON SESSION.

On the opening of Court, Governor Helm resumed his argument :

Gentlemen, I have been requested to correct a statement which you have heard, that Marshal White went with this accused to Col. Harney's residence, to ascertain the condition of Prof. Butler. Such was not the case. When Mr. Robert J. Ward met the City Marshal and an assistant officer on the street, he suggested that one of them should go and learn how Mr. Butler was, while the other went to his house to arrest the prisoner at the bar. Mr. White, however, knew the prisoner well, and from his knowledge of his character and disposition, had an abiding and firm conviction that he would make no attempt to leave the city. Hence he first went to the residence of Col. Harney, to inquire after Mr. Butler, and then repaired to Mr. Ward's house, where he found Matt., as you have already been informed.

And for this, one of the most respectable and honorable officers of the city of Louisville, is represented to you as conniving at the escape of a prisoner, because he was the son of a rich man! How much reliance is to be placed on such representations, you, gentlemen, can judge. Mr. White has been honored with the trust of the people because he is a faithful and zealous officer, and a high-toned and honorable gentleman. He knew there was not the least danger of any attempt to absent himself on the part of the prisoner—he knew that he was a man, who acting only as he deemed right and proper, would never fly, having no guilty conscience to accuse him. The result proved that he *did* know the accused, whatever the gentleman may say. And is not this alone, a commentary on the character of this prisoner, which you have no right to overlook? He is no desperate ruffian—no midnight assassin, but one, who, though he may have committed one unfortunate act, still retains in his bosom the proudest elements of a man and a gentleman, in all the relations of life.

My friend, Mr. Harris, thinks that inasmuch as I alluded to him before dinner, as a sort of walking arsenal, I ought to do him justice by saying that he never carried arms except when he had just occasion to do so. I presume that this is the case. I have confidence that he never carried a weapon in his life for any other than a defensive purpose, to be used only when absolutely necessary; and this, gentlemen, I also contend is equally true of my client. My friend has also made allusion to

a scene in his juvenile experience. He tells you that he was once whipped at school; and that when he returned home and told his mother, she whipped him again, and then sent him back to the teacher, with instructions to punish him once more. Well, he has endeavored to impress the fact upon your minds, that a mother knows her son, and understands every point in his character, better than any other person on earth; and I have no doubt that in this case the general principle was true, and that *his* mother, knowing what was best for him, and what he really deserved, acted accordingly. [Laughter.]

As he has related an episode in his personal history, I might give you an incident in my humble experience. I once went to school to a teacher who has since occupied distinguished positions in life, but who was a cruel and hard-hearted man. I have seen him lay eighty-seven lashes on the back of a pupil, and there was not a dry eye in the whole school-house. On one occasion, during the absence of my father, in punishing me, he inflicted such a wound on my face, that when I unfortunately took cold in it, my jaw was swollen to twice its usual size, and I was compelled to carry my head on one shoulder for weeks. When my father returned, he learned of the occurrence, though I did not tell him of it, and he sought that teacher, and would have drubbed him soundly for his brutal conduct, had he not been prevented by his friends. There has been of late, a great change of public sentiment, on the subject of whipping; and it has been abolished, not only in the English and American navies, but also in all well regulated schools. The world is beginning to learn that the sway of love is more potent than brute force.

The gentleman may talk of universal principles, but there is no principle in nature more universal, than the law that kindred blood will stand by kindred blood. Go into the forest, and even the lowest vermin in the range of animate creation, will resent an insult offered to their kindred blood. The hen, the pheasant, and the gentle partridge, the wildest bird in our woods, will flutter around their offspring to protect them from impending danger, and punish any insult that may be given them. And I have somewhere read of an incident, in which the sluggish and stupid pelican, when she saw her nest robbed, and her young taken rudely away before her eyes, while she had no power to protect them, with her beak tore out her own bleeding heart, in agony and despair.

I ask you if there can be a higher sentiment than that, which, when the father is insulted, or the child is outraged, prompts the son or brother to resent it? Our feelings and our passions come from on high, and no human law can repeal the laws of the ALMIGHTY. As well

might you command the waves of the ocean to cease their turmoil—the broad leaves to fall no more at the approach of the frost—the buds not to swell, and the flowers not to unfold in the warm breath of Spring, as to attempt, by any verdict that you can render, to blot out from the human heart, this kindred sympathy and kindred love. As long as man lives, the principle will exist, and it is right that it should be so. Would you have us dead, and inanimate to every generous pulsation of the human heart—callous as marble—Ishmaelites on earth, with our hands against our brother, and every man's hand against us? It cannot be; blood will cleave to blood.

What then has this man done? He sought to perform an act of justice, and he asked the explanation which was his due, in the very mildest form. The gentlemen will tell you that he ought not to have taken a weapon with him, but I contend that in his weakened and enfeebled state—an invalid, weighing only 110 pounds—it was perfectly legitimate and proper under such circumstances, for him to be prepared to ward off any other and deeper injury that might be done him. I ask you, when you go to your room, to consider his character, his antecedents, his conversation—all the circumstances, and then inquire if it is probable he sought that school-house, intending to commit a murder, in the presence of fifty witnesses. I feel an abiding conviction, from all the proofs in the case, that he no more intended to use that weapon offensively, than I now intend to draw a weapon from my pocket, and plunge it into the heart of some man in this jury box.

But they say he brought on the difficulty. Let us look at the facts. In the eyes of the law, words can justify no assault. He went for an explanation; he asked it in a gentlemanly way; that was the proper place for it; in the recitation room it would not have answered the purpose, for the boy might still have been proclaimed, and believed, by his companions, a liar. It was not until all explanation was refused, that Ward used offensive words, and even had he done it before, remember that they cannot justify an assault. What could he do? No investigation, no redress, no justification of the act—was there any other course left than the one he pursued, when he applied the opprobrious epithets to his adversary?

It is true that Butler was an unexceptionable man—a very good man, if you please; but we are trying another good man. And after Butler had lived in the family so long—when he knew all its members to be his friends—after he had inflicted wounds deeper than those of the flesh—a stain upon the character and the honor, was not an explanation due—would it not have been a simple act of justice

The prisoner did not assault him—did not waylay him, as he would

have been likely to do, had he only sought vengeance and blood—but he went on his errand of duty to his little brother, with the frankness of his nature, with the frankness of a man, directly to Mr. Butler; in a mild and courteous manner, as one gentleman always treats another, he asked the explanation which was twice so haughtily refused. Then offensive language was used; he was attacked, and the result was produced which has brought us here. Can you believe, when he determined to perform a high and sacred duty, and simply place his little brother right, if he had been wronged, that his heart was under the influence of malignity and malice? Such extremes cannot exist in our nature—they are at war with reason and common sense.

It is said that if a man brings on an assault by giving just provocation, he is not justified in repelling it. Now, that you may see what acts the law regards as evidence of intention to provoke an assault, I will read you the case of Richard Mason, from Russell, vol. i. pp. 220.

After relating the circumstances, the author says :

“ In the foregoing case it will be observed, that the blows with the cudgel were a provocation sought by the prisoner, to give occasion and pretence to the dreadful vengeance which he meditated; and it should be observed that where the provocation is sought by the party killing, and *in order to afford him a pretence for wreaking his malice*, it will in no case be of any avail.”

Do the facts indicate that the provocation was sought here for any such purpose? The only satisfaction left the prisoner, after all explanation and justice were refused, was that of hurling back precisely the same insult that had been offered to his brother, and thus making the one offset the other. When this produced a collision, his acts did not indicate that he had given provocation that a pretext might be offered for wreaking vengeance, for he only used the weapon as a last and direful resort, in a case where there was no other alternative.

Another case in point, which will show how far manslaughter goes, is that of Luttrell, reported in Russell, pp. 515.

Having disposed of the charges of murder and manslaughter, by citing the law and applying it to the facts, I will now take up this case as one of justifiable homicide. There are some instances in which the line separating it from manslaughter is hard to draw; but according to my humble conviction, there will be no such difficulty here. This seems to me beyond the shadow of a doubt. I believe it as clear a case as ever was made out, of a man killing in defense of his own life. Yet should any doubts linger in your minds, whether the act for which my client is now on trial was manslaughter or justifiable homicide, it will be your duty to acquit.

In regard to the circumstances that render homicide excusable, Russell tells us, pp. 514, Note, "Among equals the general rule is that words are not, but blows *are* a sufficient provocation." And in Wharton, pp. 256, we read :

"There may be cases sometimes occurring, though very rare and of dangerous application, where a man, in case of personal conflict, may kill his assailant, without retreating to the wall. The assault may have been so severe as not to allow him to yield a step, without manifest danger of his life, or enormous bodily harm ; and then in his defense, if there be no other way of saving his life, he may kill his assailant instantly."

You see, gentlemen, that there are instances in which a man is justified in killing his adversary, even without retreating to the wall. But such was not the case here. The prisoner, at the time he shot, *had* retreated to the wall, and if he was then in danger of receiving great bodily harm, he was justifiable in killing his opponent.

In Russell, pp. 661, Note, we find the principle laid down that,

"Where upon the trial of an indictment for murder, the prisoner attempts to justify the homicide on the ground that it was committed in self defense, he must show to the satisfaction of the jury that he was in imminent danger, either of death or some great bodily harm."

This is the old Common Law of England—but here it has been modified and ameliorated. In the case of the State of Tennessee *vs.* Granger, (V. Yerger, Tennessee Reports,) the principle was established that when in case of conflict, a man believes, and has ground to believe, that he is in danger of great bodily harm, he is justified in killing, whether he really was in such danger or not. His right to defend himself cannot be abridged, and if he has good reason to apprehend great danger, from the facts by which he is surrounded, the homicide is justifiable.

At the outset of arranging my proof, I wish to say that I do not purpose to attack the school-boys, who have been introduced by the Commonwealth. I have kind feelings towards all of them ; I believe them utterly incapable of stating a falsehood, knowing it to be such. But our object in bringing Mr. Allen and Mr. Gudgel to the stand, was to show that before the occurrence, from the rule of school, which prohibited turning around in the seats ; and after it, by the unusual excitement and consternation which prevailed, by the drilling to which they have been subjected, and by reading every day publications of what they were expected to state—the impressions now on their minds are many of them incorrect. We desired to prove that then, while the occurrence was fresh in their memories, and before any improper influ-

ence had been exercised upon them, they gave quite a different account of it. While we impute no improper motives to the boys, can any one doubt for a moment that these gentlemen saw them at the school-house, asked how the affair had happened, and were answered as they have related on the stand? That the boys do not distinctly remember them, is not surprising; for you must have observed that few if any of them were able to recollect what boys were present at the time, and by whom Butler was assisted to Col. Harney's. There are many other particulars, in regard to which their memories are conflicting and imperfect, and I am sure, gentlemen, you are not capable of taking the life of a man on such testimony as this. We pursued the course we did in regard to these boys, merely to show that they could not give a perfect and credible statement, and detail the affair as it took place.

All the facts of the case are important as throwing light upon it. If you believe this prisoner guilty as charged, I do not ask you to acquit him. But if you believe that he only performed a justifiable act, it is your solemn duty before God and your country, to rescue him from a dishonorable grave. Appeals have been made to your feelings. We sympathize deeply with the unhappy lady you saw on the witness stand; and were I able to reverse the occurrence that has bereaved her, it would be the happiest and proudest act of my life. But the dead are gone, and it is your duty to see that you do the living no wrong.

The most bitter anathemas have been hurled at our witness, Robert J. Ward, Jr. You have been told that he stood here a prejudiced and impeached witness, testifying on his own behalf, and that the halter was even now impending over him. He is not on trial here, but I must say that I consider his detention and confinement without warrant of law, and a wanton restraint on his liberties. Before they can make him criminal, they must prove that he knew it was the prisoner's purpose in visiting the school-house, to perform an unlawful act; and according to all the books, they must show that he aided and abetted *the fact* committed. I put it to your candor, gentlemen, whether he did any thing of the kind. It is not consistent with law, to believe a witness unworthy of credit, when he states nothing contrary to reason, and is corroborated as to all the principal facts.

In reviewing the testimony, I will begin with that of this witness, for he was present, saw all the facts, and gives a perfect and connected account of the transaction. Other witnesses give us broken accounts and disconnected circumstances, but he fills all the chasms they leave, and gives a perfect and rational history of the whole matter. In almost every particular, too, he is corroborated in a wonderful manner by the witnesses for the Prosecution. He states that they entered the

school-house, Matt first, he second, and Willie last; that Willie went to his seat, while they remained standing; that Matt. sent for Prof. Butler, who came out, and they exchanged salutations. On these facts he is so perfectly sustained by all the other witnesses, that none of them are questioned. He tells you, however, that while the conversation was going on, Matt. had his hat in his left hand, and was gesticulating with the fingers of his right. They have attempted to controvert this, and show that his right hand was in his pocket during the whole time; but at least two of the other boys agree with Robert, that Matt. held his hat in his left hand. He goes on to relate that the prisoner said: "Mr. Butler, I have called to have a little conversation with you;" and in substance, almost every one of the school-boys testifies to the same thing. True, some of them understood the expression to be, "a little business," and others, "a little matter to settle;" but they all agree perfectly as to the idea expressed.

The first question which the witness relates, as asked by the prisoner of the deceased, is, "What are your own ideas of justice; which do you think the worse," etc. Now Pirtle, who was unable to hear all the conversation, tells you that he caught the fragment, "ideas of justice." The boys have all testified to hearing the words "little contemptible puppy;" and Robert tells you that they were used by the accused, when he asked his question the second time. The witness also tells you that he asked, "Why did you call my brother a liar?" Now Worthington testifies that he understood him to inquire: "Did you call my brother a liar?" and others make statements to the same effect, though there may be a slight variance in the language. Robert tells you that an explanation was asked and refused; and Knight, as you will remember, states that he heard Butler make use of the language, "I don't feel disposed—" though he did not hear the connection.

And so in every point Robert Ward is so perfectly and clearly corroborated by the witnesses for the Prosecution, that we have every reason to believe he has given a faithful and perfect history of the whole transaction. He heard some things which the others did not, but he was nearer to the parties than any other witness, and in his account of the conversation, the chasms and fissures that they have left, are completely filled up. Worthington, it is true, states that to the question asked of him, Butler replied he would not answer unless he could be permitted to explain; and Robert relates nothing of the kind. Now I wish to say nothing in disparagement of Worthington; but you must bear the fact in mind that he was further from the parties than any other boy who testified here—the distance could not have been

less than thirty or forty feet. Now how is it, if Butler did use the language, that none of their witnesses, several of whom were within from three to ten feet of the spot, heard a single word of it? And under such circumstances I would ask if the witness who relates this, utterly uncorroborated, is more worthy of your credence than Robert Ward, Jr., who is sustained by every one of the school boys who appeared on the stand?

It is a matter of considerable importance in this case, to ascertain who struck the first blow. They have endeavored to prove that it was done by the prisoner, but with what success, you have seen. Their first witness on that point, is Knight; and he, as you will remember, *thought* it was struck by Ward, because when his hand was up, he saw it come down with a gesture, and noticed that the distance between them increased. Not to recall your attention to the fact that when this witness first appeared on the stand he detailed all the conversation which took place between Butler and the accused, and then afterwards on cross-examination admitted that he only heard a few desultory sentences; but merely in view of the uncertainty and incoherency of his testimony on this identical point, I would ask if you feel justified in taking the life of a man on such testimony as this?

Their next witness as to this, is Dr. Thomson. Now, I will not imitate the example of some of the counsel for the State in regard to our witnesses, and because he is contradicted, charge him with perjury. He is a member of the Church, seems to be a gentleman, and I presume he is one. I certainly shall not attempt to impeach him, even though he did refuse to state, while giving his testimony, whether he had weapons on his person. But what does he state? That Butler told him Matt. Ward had come to the school-house and cursed and struck him, that he struck back and was shot. Now you will bear in mind here that this destroys one of their own assumptions, and clearly proves that Butler *did* strike Ward, leaving only to be ascertained the isolated fact, who struck first.

Professor Yandell, another gentleman of equal respectability and equal character, was on the other side of the wounded man at the moment when this identical statement was made; and he tells you that Butler raised his hand, in representing the conflict after the lie had passed, in such a manner as to lead the witness to believe he wished to convey the impression that Ward had raised *his* hand in a threatening gesture, and that then he (Butler) had struck him. Now here are two gentlemen, equally credible, and of equal respectability, both witnesses for the Prosecution, and I confront the one with the other, and ask if they have not signally failed to prove that the prisoner struck the first

blow? On all such equivocal and unsatisfactory testimony, I conceive it your duty to acquit.

As I said before, the first blow cuts an important figure in this case. If it came from the prisoner at the bar, it must be considered a material circumstance against him. But, on the other hand, if Butler struck first, and committed the first assault, and that assault of a severe and violent character, it must tend to exonerate and justify the accused. I humbly conceive we have corroborated Robert Ward on so many material points that you can entertain no doubt of his credibility; and he positively swears that before the shot was fired, Butler seized the prisoner, collared him, run him back to the wall, and was beating him in the face.

A violent assault is equal to a blow. Pirtle tells you that he saw Butler's hands on Ward's shoulders; Pope, that Butler sprang towards him; Campbell, that he saw something in his manner or movement which convinced him there would be a rencounter; Crawford, that while Butler's right hand was on Ward's shoulder, with his left he seemed to be grasping as if for the pistol; Benedict, that Butler had hold of him and pressed him back, and Quigley, that he pressed him back eight or ten feet against the wall and bent him down. This proves conclusively, I think, by their own witnesses, not only that there was a conflict, but that, in the very language of the law, the prisoner was "driven back to the wall."

The hypothesis that Butler was grasping for the pistol, is completely refuted by the physicians, who state that Butler told them he did not even see who shot him. Let the whole scene appear before you. Here is the prisoner, struggling with a man of twice his power, pressed back against the wall, struck in the face, beaten down towards the earth; the stoutest boy in school is just seizing a pair of tongs, as he says to keep off Robert, but we all know that Robert had done nothing, and the accused must have supposed that he intended to take a part in the rencounter. With that occurrence before him there, pressed down, confined and beaten as he was—however manly and honorable the purpose for which he visited that school-house—in the name of high Heaven I ask you, gentlemen, if he had not good reason to apprehend great bodily harm? If you believe he had, it is your duty to acquit him.

We have produced many witnesses here,—witnesses of the highest respectability and the most unquestionable integrity—to show, in addition to all the other proof on the subject, that from the appearance of his countenance, alone, after the occurrence, it was evident the prisoner had been struck. All the presumptions of malice in this case vanish, even before the Commonwealth's own witnesses; and it must be borne in mind

that the very contiguity of the parties,—the only fact which caused the fatal result of the shot, was brought about by Butler himself, by the violence of his assault.

I now come to this man Barlow; and it will require but little time to show how signally their attempt to impeach him has failed. He has testified that he saw Butler at Col. Harney's, after the event, and that in answer to his questions he gave him the clear and reasonable account of it, which he has narrated to you. And how do they attempt to avoid the statement? By contending that Barlow was not at the residence of Col. Harney at all. So they bring Dr. Thomson, who testifies that he did not see him; but tells you that he was busily engaged in his professional duties. Next they introduce Knight, and ask him: "Do you know Barlow?" "Yes." "Did you see him at Col. Harney's?" "No, I did not see *him*, but I saw another gentleman there, besides the physicians; I know him, his name is Rupeus and he resides in Louisville." Now does it not seem a little singular, gentlemen, that this Mr. Rupeus, who resides in Louisville, the only person present whose mind was unoccupied, and therefore the only one who could impeach Barlow successfully, was not brought here and placed upon the stand? It is not even a question of veracity between Barlow and Dr. Thomson, for the former is corroborated clearly both by our witness Dr. Caldwell, and by their own, Prof. Yandell.

But in cross-examination, the gentlemen triumphantly tell you, they have shown by this witness the evidence of his own infamy. And how? It is true, they asked him if he had not said this to one man and that to another; and some of the statements he frankly admitted that he had made; yet others he emphatically denied; and they never contradicted him on a single one of the points. And the very men they bring here to impeach him—Mays and Sullivan—testify that within half an hour of this transaction, he met them in the workshop, and while he still participated in the excitement, and his most hostile feelings were enlisted against this prisoner, he told them precisely the same story he has sworn to here. Was there any motive *then* for him to make false representations? Mrs. Crenshaw, too—you noticed the lady on the stand, and saw that truth beamed from every lineament of her fine countenance—testifies that within two hours after, he gave her the same account of it, with the exception, she does not remember that he spoke of the scuffle. But we have established the fact, that the parties were clenched, and there was a scuffle, so that is immaterial. Mr. Crenshaw proves the same fact in reference to Barlow—that he made the identical statement to him at the same time. And you will remember, too, that this is the very witness, who, as they contend, was then so much exasperated against this

defendant, that he proposed to tear him from the jail by force, and lynch him.

"Ah, but," says the gentleman, "you are a poor man—a mechanic—and you went to the house of a wealthy gentleman. Yes, you went, and you told him a fact of the utmost interest—one that might save his son from disgrace, from degradation, and perhaps from the gallows." Not is there a single poor man in old Kentucky to-day, who, being in possession of such a fact, and learning its importance, would conceal it, because the fellow-being whose fate it might determine, chanced to be rich? God save me from a wretch so lost to every sense of propriety, so recreant to every principle of honor! I would sooner trust myself to the tender mercies of a hyena than in his hands.

"But he played cards in jail, with this accused. A mechanic sat down to an innocent, social game, with a man nominally rich, and therefore he *must be* perjured." Gentlemen, it is either too late or too early, in this community, from such a circumstance to conclude that one who has done this must be a toady or a perjured man. All that this man did was, when he learned that a fact of which he was possessed, might have an important bearing on the guilt or innocence of this prisoner, he went as duty told him, and made it known at once. He stands before you as a man of honor, of integrity and of credibility; and never, in the whole course of my experience, have I seen a witness, when an attempt to impeach him was made, so triumphantly sustained and vindicated.

The case, gentlemen, is with you. I have endeavored to consider it in all its bearings, so far as my feeble condition would permit. I have only sought to explain fairly, both the law and the facts. And now, what are you called upon to do? Will you consign this prisoner—this unfortunate, but noble specimen of young manhood, for the fatal deed of a single hour, to a dark and dishonorable grave? Or, if not, will you inflict upon him that other, but equally terrible punishment? Have you the heart, as he now stands, that fearful, insidious disease preying upon him, with one foot on earth, and the other trembling on the brink of eternity, to make him an outcast from the world, and confine him in a felon's prison?

It would be only to lay him on a couch of suffering and disgrace, from which he would never rise again. It would be only to banish him, during the short remnant of his life, from that kind mother, who, with anxious care and fondness, has ever watched over him, the pride of her heart, and the pledge of her first love; from that gentle, devoted young wife, who is bound to him by ties no less mysterious and vital than those which unite the Siamese twins, and the parting of which must lay them side by side, in one early grave.

In the name of that wife, in the name of that mother, in the name of simple justice and of common humanity, I ask you to give him back to life!

At the conclusion of the argument of Gov. Helm, Mr. Gibson, on behalf of the Prosecution, addressed the jury until six o'clock.

Court adjourned.

SEVENTH DAY.

Tuesday, April 25th, 1854.

At 8 o'clock the Court convened.

Mr. Gibson resumed his argument, and continued to speak until half past ten.

When he had concluded, Mr. Wolfe stated that before the case proceeded further, he desired to call the attention of the Court to a fact which had just come under his notice. It would be remembered that the conditions on which the Court had furnished reporters with seats within the bar, were, that no testimony should be published by them until the conclusion of the trial. He held in his hand a copy of a newspaper, whose reporter had accepted the courtesy of the Court, thereby giving a tacit promise to regard the injunction, but which, nevertheless contained a report of the testimony which had been elicited during several days of this investigation. He alluded to the *Louisville Courier*, and desired to know what action the Court would take on the subject.

The Court remarked that this was the first intimation it had received of the fact; but that it would hold the matter under consideration until the afternoon session. In the mean time the argument might proceed.

SPEECH OF MR. WOLFE.

Mr. Wolfe said:

GENTLEMEN OF THE JURY:—This cause has been so amply, and I may add, so ably discussed on the part of the accused—the ground has been so fully explored by the two gentlemen who preceded me, that but little is left for me to say. And I shall not attempt to disguise from you the embarrassment I feel, knowing as I do the distinguished character and ability of the counsel with whom I am associated. Under such circumstances, it almost seems like presumption to hope that you can be influenced by any thing coming from so humble an individual as myself; but knowing as you do the great disparity between us, I trust you may receive what I shall have to say, with that allowance which is due me.

I presume for myself no power to afford you an intellectual treat—to regale you with

“A feast of reason and a flow of soul;”

but I do claim some degree of ability to discriminate whether statements are testimony or not, whether propositions are law, or not, and during the short time I shall occupy in attempting to do so, I must ask your kind indulgence.

I congratulate myself, gentlemen, that this trial takes place in a section where I see in the jury box only faces indicating hearts in a fit condition for the duties and amenities of social life; and under the sway of no blind prejudice or unmanly bias. I congratulate myself that we are in a community where no improper influence has been brought to bear against this prisoner; that no men, with hearts black and bloodless, only able to communicate the fire by which they consume and are consumed, have *here* succeeded, by the most foul and reckless misrepresentations, in deceiving and exasperating the public mind, until they have excited to the last degree, the feelings of a misled and infuriated populace against him.

I thank God that this Court room—this temple of justice—is closed against all such influences, and that in this jury box, none of the wild cries of those who seek the young blood of this accused, can reach your ears. You may think that I use strong language towards some men in the city where I reside; but if you know all the circumstances—if you are aware of the false and wilfully distorted reports they have sent forth through the newspapers—denouncing the act for which my client is now on trial, as a cold-blooded, premeditated, and unmitigated murder—a diabolical outrage, unparalleled in the annals of crime,—and exhausting the vocabulary for vile epithets to apply to him and his conduct, you must feel that it is deserved. And you cannot wonder at the prejudice they have fulminated against this young man, and the wild fires of passion and excitement they have lighted up through our whole country, until it was impossible for him to obtain there that fair and impartial trial, which is guaranteed him by the benignant genius of American Law. Therefore has he come to seek it in Hardin county.

I congratulate myself that the cause of my client is so just we may rest it safely upon the law and the evidence, without calling to our aid the newspaper press, or any other improper and illegitimate influence. In the midst of those denunciations and attacks, he has uttered no word of reply, but has remained silent in his prison, with no desire to induce a prejudgment of his case, or excite improperly the public sympathies on his behalf. He has waited patiently for this investigation, uttering no murmur at the extraordinary persecution he has undergone, but with a firm conviction that at the proper time, as the laws of his country provide, he could establish his innocence to your satisfaction. Thus he comes before a jury of your country, gentlemen, and I am much mista-

ken in its character, if you shall refuse to dispense to him that justice which the constitution of the United States and the constitution of your own State, guarantees to every man.

I shall not attempt to follow the counsel for the Prosecution in a minute detail and review of their argument; for it is quite unnecessary, and would consume too much of your time. But I must say that during a criminal practice of fifteen years—a portion of which has been in an official capacity—I have never before seen such a course pursued as that adopted by the Prosecution in this case. I would be distinctly understood, that I make no such allusion to the officer who represents the Commonwealth in his legitimate capacity; for I believe no more honorable gentleman exists in this or any other State. But I refer to those who, not under the responsibilities of an official oath, have made such extraordinary appeals here, and such unparalleled attempts to excite unhallowed passions against the accused. Yet these men would have you believe that in appearing here and pursuing this line of conduct, they are actuated only by a sense of justice.

One of these assistant prosecutors, who has endeavored to impress it upon you that he is under the influence of no other or less worthy motive, has proclaimed here a sentiment that must thrill every man before me with horror; for it is shocking alike to every principle of religion and every feeling of humanity. He has told you that were the training of the child of Prof. Butler confided to his hands, the first word he would teach him, should be vengeance, and the second, blood. That he would instil into his infant mind no other feeling so deeply as that of revenge, and would train him up, to make it the great business of his life to follow, like a bloodhound the track of the accused, and never to rest, until he had found him and shed his blood!

Gentlemen, how were you impressed with such a sentiment, here in this temple of justice, in this holy place? The announcement of it must be sufficient to convince you that this prosecution is not conducted from any sense of justice, but from mere vindictiveness alone. I will venture to say that such an appeal is wholly unparalleled in the annals of criminal jurisprudence. How illy does it comport with the old maxim of law that all men are considered innocent until proved guilty; and the ejaculation, when a prisoner is confronted with the jury, "God grant you a safe deliverance!"

A great deal has been said about the unfairness manifested on our side, but I call your attention to this, as a specimen of the spirit evinced through this whole prosecution. You are asked to convict this man whether he be guilty or not, or threatened that the son of the deceased shall pursue him, until he has imbrued his hands in his blood!

When such sentiments are promulgated, I cannot believe them the result of calm, sober reflection,—they can have been uttered only in the excitement of the moment. But do they not show, that if the bosom of him who avows them is not black with such vindictiveness, his head must be weak enough to render him the tool of those who cherish it—not men who in my opinion bear no resemblance to any of God's creatures except the very Cuban bloodhound of which he has spoken, and which is provided by nature, with the bloody instinct to track its victim, and to slay it.

After all that has been said about our unfairness, I maintain that never in the world was there a more unfair and distorted statement of testimony made to a jury, than that you have heard from the counsel for the Prosecution. As I detail the testimony, should I make any error or misstatement, I am sure that your intelligence and your recollection will correct me at once.

I appear before you, gentlemen, as a counsel for the accused; it is my duty and my pleasure to do so. The charge against him is that of murder, committed in killing William H. G. Butler; and to this charge he pleads Not Guilty. Let us first take a general survey of the case, that we may see what aspect it presents.

On the day named in this indictment, the accused sought the school-room of Prof. Butler, according to his own language, "to seek an explanation of his extraordinary conduct." But what was that conduct? A little brother had been called a liar and severely whipped, in the presence of the whole school. The counsel for the Commonwealth who first addressed you, has uttered a sentiment almost as shocking as the one to which I have just alluded. He tells you that the father was the only person to whom that explanation was due—that the brother had no right to demand it. From what section of the country could he have come, where he learned such a sentiment? I know not and I care not; but if there be a spot on earth where the holy ties that bind brothers, heart to heart, are not recognized, and if he really entertains such a belief, he should be exiled there. According to this doctrine, a brother must stand by and see his little brother insulted, injured and maltreated to any degree, with no right to interfere and protect him. The gentleman may tell you that is Common Law, but if it was the law in earlier times, it is certainly repugnant to every sentiment of our nature.

The little brother of the accused had been whipped. You have not seen that brother—he has not been brought before you during the progress of this trial; but he is a bright and beautiful boy—there is not one in your own family whom you love more dearly, or who deserves it more, for a kind disposition or an open, noble heart. He had been pub-

lily whipped and called a liar—a punishment to which in his estimation death were preferable—and he appealed to his elder brother to have his character vindicated.

Gentlemen, I deny the right of the teacher to whip the child. This may seem like high ground, but I believe it is right and can be sustained. It is true that the parent delegates a portion of his authority to the teacher; but it is only authority to give moral instruction. Modern sentiment totally discards this right to flog, by the teacher. He may use proper corrective influences whenever they are necessary; but he has no right to scourge the pupil as barbarians scourge their slaves. I repeat it, that so far as my own feelings go, I am opposed to whipping children. I have two little boys—as bright and beautiful, I believe, as Kentucky has produced. So far as my influence goes, I have always ordered that they should not be whipped at school. If they do wrong, I believe the parent is the only proper person to discriminate as to the nature and extent of the punishment which should be administered.

Even if we go back to Greece—that glorious old Republic, whose light will continue to shine through the historic page, to the latest ages of time—we shall find that this brutal practice—this relic of barbarianism was ignored in their schools. Chastisement was then believed, as it really is, the father's prerogative. As so many incidents on this subject have been related by the gentlemen, perhaps I may be permitted to allude to one. Plutarch, in his celebrated Lives of distinguished men, tells us of one of his tutors named Amoneus, who, when one of the boys under his charge had done something wrong, took his own son and whipped him in their presence, to reprove them, and to show what he would have done, had the laws of his country allowed it.

Is whipping permitted in the colleges of our country? Certainly not; and you must remember this was a high school, where many of the pupils were very far advanced. Not a high school, as you have been invidiously told, because of the position in life of those who patronize it, for it is open to all who are able to pay the expense of tuition—but so called, from the nature of the branches taught there. A few years since, a student in the University of Virginia, while being punished by one of the teachers, retaliated, and met force by force; and when the matter was investigated, the faculty sustained the pupil and not the professor, on the grounds that he had no right to inflict physical punishment.

The brave seamen of our navy were once scourged for every trivial offense; but Congress has abolished the barbarous practice, as debasing and degrading to the character of a free man. In the British navy the same is true; and throughout this whole country there is a settled

sentiment against this punishment. It should and it must soon cease every where.

But notwithstanding this sentiment, the child had been flogged; and, as we have a right to infer from the testimony of the mother, for the first time. Now, as the other gentlemen, in their argument, travelled out of the record, I presume I may be allowed to do so. We desired to go into the cause and merits of this whipping; we called a man to produce the register of the school here, to know the ordinary deportment of this boy; but the man did not show himself, though his track has been seen more than once during this trial. I allude to Sturgus—but of this, more hereafter.

Not only has this whipping been described to you, but it has been shown to be the motive which induced the prisoner to seek the school-house of Prof. Butler. His purpose was to obtain an explanation of, or redress for a deep and damning insult that had been offered to his brother—that little brother who appealed to him for protection. Was this wrong? The explanation he sought, was of the cause of that teacher's conduct, in whipping and insulting the child. Does not this appeal to you as proper and right? Is there a heart in Kentucky, when one bound to it by such ties, had been outraged, that would not have demanded redress?

He sought this explanation; but how was he received? He asked it in a proper, gentlemanly manner; was it granted? No; it was promptly and peremptorily refused. You have it in evidence, that Prof. Butler was intimately acquainted with Mr. Ward; that he had for a long time resided in his family, and been the preceptor of his children. This whipping was inflicted twenty-four hours before the explanation was sought—the distance from the school-house to Mr. Ward's residence was not great; and I appeal to you, if under the circumstances, it was not the duty of Butler himself to go around voluntarily and make an explanation?

Just at this point, I wish to allude to the testimony of a single witness—Mrs. Harney. I do not stand here to impeach her. I have no doubt of her being a lady of the highest respectability and truthfulness. But does it not strike you as a little remarkable, that in a thronged city of seventy thousand people, at a busy hour of the day, in one of its most crowded thoroughfares, as she met a gentleman whom she had seen only once or twice before, she should have scrutinized him so closely as to observe that his hands were in his pocket, and that he wore a firmer look than usual? Ah, gentlemen, there is a key to this! Butler was an inmate of her family; he knew that what he had done was wrong—that he had a right to expect it would excite the feelings

of the family, and he had undoubtedly apprised her of the fact. If this were not the case, could there be any reason on earth for her observing so closely, the conduct of a gentleman who was almost a perfect stranger to her ?

Such is a general view of the case ; now let us look more minutely at the ground on which we stand. I argue that we are able to vindicate ourselves on the ground of self-defense. You, gentlemen, all recognize the great principle—coeval with our existence—not derived from the laws of society, but inherent, and far above them all—the principle of self-defense. Were we deprived of this, there would be no other right worth having ; the most responsible and important duties of life could not be performed. And when a man is brought into a position of danger, where his life is imperilled, or he has reason to apprehend great bodily harm, he is bound by his duty to God and society, to exercise the right which Nature has bestowed upon him, and defend himself, even to taking the life of his adversary.

It is true that government professes to extend protection to the citizen, and that the citizen on his part, is expected to support and submit to the government. It is true that there are legal tribunals to be appealed to when a wrong is done ; but these tribunals and these laws do not propose to furnish you with protection, when your life and limbs are in immediate and imminent danger. There would then be no time to appeal to them, and therefore society guarantees to every man, on such occasions, the right to protect himself. But I need not have reminded you of these truths ; they are so well established, that every man in the country is aware of them.

Before we go further, however, let me call your attention to one or two points, alluded to by the counsel on the other side. They contend that where a man procures a deadly weapon, and afterwards becoming involved in a struggle, makes use of it by killing his adversary, it is a correct inference, that he procured it for that very purpose. I deny the assumption *in toto* ; and during this discussion, I desire you to keep entirely separate the two facts they would thus connect. A man has a right to carry arms ; I am aware of nothing in the laws of God or man, prohibiting it. The Constitution of Kentucky and our Bill of Rights guarantee it. The Legislature once passed an act forbidding it, but it was decided unconstitutional, and overruled by our highest tribunal, the Court of Appeals. I contend, that if I see proper, I have a legal right to arm myself from the crown of my head to the sole of my feet.

When this right is guaranteed to a man, and he procures weapons legally, it is absurd to infer that he obtains them with intention to do

an unlawful act. As an illustration: "Suppose you are about to go on a journey to Louisville, with a large sum of money in your possession. Knowing the character of the road, that it is infested with robbers, you take the precaution to arm yourself before you start. On the way you meet a robber, who attacks you and would deprive you of your property; you resist and slay him. You have a perfect right to do so and protect yourself; and will the fact that you obtained weapons before you met him, indicate any improper or unlawful intention on your part?"

Again: Suppose from threats that have been made, or some other cause, you believe you have reason to apprehend an attack from some enemy. You procure arms that you may defend yourself against him; but before you meet, or he makes any attempt to harm you, you become involved in contact with some other man, with whom no previous trouble had ever occurred. If he attack you, and you slay him during the affray, even if your conduct is blamable you cannot be indicted for murder, because you procured arms not with malicious intent, but for the legitimate purpose of defending yourself.

Even if you procure weapons for an unlawful purpose, to fight a duel for instance, and on the way to the field, being attacked, you defend yourself by slaying your adversary, the act is a justifiable one. Your conduct in procuring arms for the purpose you did, was unlawful; but does that make it unlawful for you to use them in your own defense?

My object is to show that when a man arms himself for a general purpose, there is no rule of law by which it can be converted into a special one; that if he does obtain weapons and uses them lawfully afterwards, the procuring of them was no crime. If Mr. Ward procured pistols before the conflict, and during the conflict unfortunately slew Mr. Butler—I say unfortunately, not that I deem the act a guilty one, but because the loss of human life under any circumstances must cause a pang of regret to the hearts that are left behind—if during the catastrophe, he acted only according to law, the fact of his procuring the pistols cannot make an act unlawful which was otherwise justifiable and proper.

Before I proceed in the discussion of this case, I desire to lay down a few principles of law * for your government in considering it. In regard to the amount of evidence necessary to convince a jury of the guilt of a prisoner, it is a well established principle that the evidence must exclude every other conceivable hypothesis except the one of his guilt. If room is left for the existence of any other belief, the

* The legal references of Mr. Wolfe did not differ materially from those made by the other gentlemen for the Defense. As their reiteration could be of little interest to the general reader, it has been deemed best to omit them.

evidence is insufficient. In this case, before you can convict, the hypothesis that the accused killed the deceased in self-defense, must of course be totally excluded.

The proof must be sufficient to satisfy the minds and consciences of the jury beyond a reasonable doubt, of the guilt of the prisoner. To be convinced beyond a reasonable doubt, the assurance must be so great, that you would not hesitate to act upon it, in matters of the highest concern to your own interest. Such is the law in regard to the amount of proof required.

Now, gentlemen, you have it in proof that Ward went to the school-room of Butler to obtain an explanation; that Butler steadily and persistently refused the explanation which was due; that in default of receiving it, Ward denounced Butler as you have heard, whereupon Butler seized him and assaulted him in such a manner, that, as we contend, he had reason to apprehend great bodily harm; and that, therefore, he is not responsible for the death of Butler.

One of the gentlemen for the Prosecution admits he does not believe that the accused sought the school-room determined to kill Butler at all hazards, and thus refutes their own presumption of malice. Again, he tells you that Ward had reason to expect a blow, after using the language he did—that no man in Kentucky would receive such language without giving a blow; and yet he reads law to you to show that no language whatever will justify an assault. It seems to me that he sets at defiance even his own landmarks.

It has been told you, in triumphant tones, that a man's house is his castle; that Butler was in his house, and therefore Ward had no right to go there. The general principle is a correct one; the law makes my house my castle, and not even my best friend has a right to cross its threshold without my permission. But this rule only extends to the sanctity of the private dwelling; and by no correct reasoning can it be carried further. It is true that I have no right to enter your house without your consent, but there is a tavern across the street: I have just as much right to enter that as the owner has, and he has no right to expel me.

But even if a man enters your private dwelling unbidden, you have no right to expel him, except in the manner prescribed by law. If you attempt to put him out by force, without having first used gentle means, and are killed during the conflict, the act will not be murder. I may seek your house for money you owe me, I may go to buy produce, or on any other legitimate errand; and have you a right, because you see fit to take umbrage at something I say or do, to seize me by the nape of

the neck, and kick me, like a dog, from your threshold? By no means; you have no right to resort to violence, until I resist.

I maintain, that in this case, Ward had a perfect right to seek the school house, for the transaction of any legitimate business; that the errand on which he went, was proper, and that when Butler attacked him, he violated the principles of law, and made it right and justifiable for Ward to resist. I maintain that the accused did not cause the difficulty; that his character, habits, and the circumstances of the case, all preclude the possibility of it.

I maintain that there was no deliberate purpose on his part, to kill, or to do any great bodily harm. The law states that such intention is to be inferred where the prisoner makes declarations of intent to kill, deliberately and advisedly denounces vengeance, declares that he will have the blood of his adversary, or makes direct preparation for the conflict. Is there any proof of such a state of facts here? I have shown, remember, that unless the accused acted unlawfully during the conflict, the fact of him procuring weapons previous to it, can be in no way connected with, and have no bearing upon the case.

The law says that the man attacked must be driven to the wall, before he is justified in taking the life of his adversary. It is in proof that the prisoner *was* driven to the wall. They have read law to show that no words whatever can justify a blow; and even according to this, their own law, though I believe it is contrary to the law of God, Butler was the first aggressor. By this law, Ward might have stood and cursed him all the day, and he would have had no right to resent it.

Here the Court adjourned for noon recess.

AFTERNOON SESSION.

On the re-opening of Court, the Judge made a few remarks in regard to the subject to which his attention was called in the morning—the publication of testimony contrary to the order of Court. He observed that the character of that order had been misrepresented; in making it, he explicitly made the distinction, and applied it only to those reporters who accepted the courtesies of the Court, by taking seats provided for them, inside the bar. Upon other reporters he had attempted to lay no injunction whatever. The reporter for the *Courier*, who was present, (Mr. George W. Cole,) he had every reason to believe, was a highly honorable gentleman. He had at first accepted a seat, under the order of the Court; but since this testimony had been published, the Judge had received a note from him, resigning his seat, and stating that when he took it, he did so in good faith, assenting to the order; and that when

he delivered his reports to an agent of the paper, who was now present, he had given them under the express condition that the order of the Court should be respected, and that they should not be published until the case was concluded. That agent for the paper, had also stated to the Court, that he forwarded the reports to the office, with precisely similar instructions. As an act of justice to the proprietors, perhaps it was right for him to state, however, that the copies which had reached town were only stray ones, the regular bundle having been withheld, as it was presumed that the publication should exert no influence in the community where the trial was progressing. A similar case might never again occur in the State of Kentucky, and the Court thought it best to take no further steps in regard to the matter.

The discussion of the case then proceeded, Mr. Wolfe resuming his argument :

GENTLEMEN OF THE JURY :—I endeavored in the argument which I submitted to you before the adjournment of Court, to inform your minds in regard to a few of the principles of law applicable to the case, while considering the question of murder. I desired you to understand them as fully as possible, because it is on the law and the facts that we wish to try this case. And, while I utterly repudiate and deprecate the idea that you should disown one of the noblest sentiments of our nature, that you should lay aside all compassion, and all mercy, forget that you are fathers, and forget that you are men, I stand here, with the proud consciousness that my client has nothing to fear at your hands, if you consider his cause upon the law and the evidence.

According to the definitions of the books, murder contains three elements; there must be a killing; a reasonable being must be killed, and the act must be done in malice, either express or implied. You have heard murder fully explained; that malice is an essential ingredient, and that if a man kill another with no provocation, or a very slight one, it is murder. But why? Simply because in such cases malice is implied by law.

All these principles of law that relate to the crime of murder are to be taken separately, and you must remember that self-defense, whenever it is proven, outweighs the crime. You have been told by some of the authorities that if a man be in fault, and his fault cause the difficulty between him and his fellow man, in which the latter is killed, it is murder; but this is to be taken with great caution. You have also heard it read from high authorities that when A. meets B. with no malice in his heart; an affray ensues, and A. being driven back to the wall, kills B., he is justified in the eye of the law, if he does it in self-defense. On this point the law is perfectly clear.

But they contend that if you have been in fault at all, when you are attacked you must not avail yourself of the right of self-defense, which is guaranteed to every man alike by the laws of nature and of human society. Does this seem reasonable? Suppose a man assails you in your absence, or defames the character of your wife or daughter. You seek him, or inadvertently meet him, and denounce him as a scoundrel and a villain. If he attack you then, have you no right to defend yourself, and resent the insult? Is this law, in Kentucky, and in this Union? I deny it.

It has been said here, that in case of assault, where your life is not in danger, you must seek redress only in courts of justice. If a man meets you in the public street and lays the cowhide over your back till he has no strength left, your life may not be in danger. But must you therefore wait and seek justice by bringing suit against him for assault and battery? Is such the law here? Why, they gainsay the very proposition of law they lay down in this case, by admitting that when the lie is given, he who gives it must expect a blow!

As I said before, we plant ourselves here on the great principle of self-defense—that principle without which we cannot discharge the duties we owe to ourselves, to society, and to God. The law defines self-defense as that principle by which a man may protect himself against an assault. An assault, remember, does not necessarily include a battery; there are circumstances under which the raising of the hand is an assault. The law justifies a man, in the case of a sudden brawl, in killing the man who assaults him, after he has retreated to the wall or some other impediment, and is in danger of losing his life, or receiving some great bodily harm. This is the grand principle, and any contrary law could never be enforced or administered; it would be execrated and spit upon, as contrary to every principle of our nature, and to the laws of God himself.

Through tenderness to human life, the law only allows the man who is assaulted, to slay his adversary, after he has retreated to the wall or some other impediment. The prisoner at the bar strictly complied with this injunction and only took life when reduced to the last alternative. "And this," says the author from which I have just been reading, "is a doctrine of universal justice, as well as of municipal law."

I am sure that I may here leave this point, for I believe every man in this jury box understands the principle I have laid down, that where, in case of extremity, there is danger that a man's life may be taken, or his person mutilated or enormously injured, he is justified in using whatever adventitious aids he can procure, in protecting himself, and if necessary, in taking the life of his adversary.

An important point in this case is the comparative strength of the parties. Where one was so unusually weak and feeble it became more necessary for him to make use of these adventitious aids, than it would otherwise have been.

If we turn from English to American authorities, we may see how the law is administered here on this subject. In the case of Selfridge in Massachusetts, many years ago, charged with murder, the principle was decided, and has since been universally recognized as law, that it is not necessary for a man really to be in danger of death or great bodily harm; but that if he has reasonable grounds to apprehend such danger, he is justified in killing his adversary, whether it existed or not.

To illustrate: Suppose a man is very hostile to you; and has made threats to do you bodily harm, and you know it. You see him point a gun at you, as if about to shoot. Now, it may be that the gun is empty, and that he only makes the movement to excite your fears; but you are justified in slaying him the moment you see it. This is in accordance with common sense, as well as with law; you have good reason to apprehend danger. How absurd the other principle, which would compel you to go up to that gun, examine it, and ascertain how many fingers of charge it contained, before you could take any measures to protect yourself.

In the case of Granger in Tennessee, this principle was also established, and it is one that must appeal to reason and humanity. The cruelty with which the law was administered in former times, shows that the world was in a degraded condition, and that human rights were not properly appreciated. There was a time, when there were no less than 140 offenses, punishable with death. In those days, if a man broke down a mound in a graveyard, or disturbed a fish-pond, it must cost him his life. But now, those rigid rules have been ameliorated by a more genial and civilized code, which goes a bowshot further than these musty old English books, and places a higher value on human life; it is the American doctrine of self-defense.

The gentlemen have alluded to cases not recorded in the books, and as they have furnished the precedent, I will relate a few. Near Boston, in this State, Stout was tried for the murder of Bullock. During a political campaign, the former, who was a Democrat, set up a flag, which Bullock pulled down. Stout would have shot him at the time, but his friends held his arm. Bullock went to a grocery where he spent the day; and when he was returning home at night, he stopped at the house of Stout and called for whiskey. Stout refused to give him any, and ordered him to leave the house; he would not obey, and Stout

took his gun and shot him. He believed from the previous conduct of Bullock, that he had come there to do him bodily harm; he was weak and small, Bullock was a large, strong man, and, therefore, the homicide was held to be justifiable.

In the Jefferson circuit, a few years ago, Coon was tried for the murder of Shaeffer. The latter had insulted Coon's wife, and Coon went to obtain redress. He told Shaeffer of the insult, whereupon he raised his arm, as Coon thought to strike him, though it afterwards appeared that his hand only contained a small piece of wood. Coon then plunged a file into him, and it immediately proved fatal, yet the jury sustained his conduct.

The case of Owen, charged with the murder of Haire, caused so much excitement in Louisville, a few years ago, that it was necessary to obtain a change of *venue* to secure a fair trial. The parties slept in the same bed; in the morning Haire missed some money, and accused Owen of taking it. Owen asked an explanation; it was refused, and he prepared himself with a pistol before they met again. Haire, I believe, also had a pistol, but Owen shot him, and was acquitted on the ground that he had a right to obtain redress for the injury done his character.

Five or six years ago Louisville was boiling over with excitement, and some prisoners were in danger of losing their lives while going from the Court House to the jail. They sought a change of *venue*, obtained it, and were tried and acquitted. I allude to the Wilkinsons from Mississippi. One of them was on his way to be married to a young lady in Bardstown; and while they were in Louisville they went to the shop of a tailor, on business, and became involved in some trouble with him. The tailor and his friends afterwards came around to the Galt House, where they were stopping, and assaulted them. In the *melee* three of the assaulting party were killed, yet the prisoners were acquitted, for it was believed by them that they were in danger of great bodily harm.

These, gentlemen, are Kentucky cases; and, as well as the ones in Massachusetts and Tennessee to which I have alluded, appeal to reason, and support the principle that it is not necessary for a man's life to be in extreme danger; but that if he has good cause to believe it in peril, or to apprehend great bodily harm, he is justified in taking the life of his opponent.

I have now, as I apprehend, in a tedious manner, endeavored to show the law as applied to this case; I have cited the authorities to point out the difference between murder, manslaughter and justifiable homicide, and I plant myself on the fact that we are sustained

here by the principle of self-defense—that great principle which is recognized and respected, by every citizen of Kentucky, and every citizen of the United States.

I will now refer to the testimony which has been adduced; but first permit me to allude to the gentlemen who have spoken on behalf of the Prosecution. I do it with no disrespect; but if we would seek a parallel for their course I know of no place where we would be likely to find it, unless we go back to the celebrated case of the Kilkenny cats. If they do not bear a remarkable resemblance to those famous animals, in view of the fact that they have completely eaten each other up, I am very much mistaken.

The gentleman who spoke yesterday, Mr. Harris, joins in the anathemas that have been hurled at the devoted head of our witness Barlow; and, following the example of the great Ajax Telamon of this Prosecution, who denounced him as a liar at an early stage of his testimony, assures you that he does not believe a word he uttered; that Barlow never saw Butler, but obtained all his information in regard to the case from the school-boys. Now the Herculean effort of Mr. Carpenter's speech was to prove that Barlow did not visit the school-house at all; that he never saw the boys, and that those boys never gave any one the account of the transaction which Barlow has detailed here. We perfectly agree with the gentleman on one point—that this witness *did not* obtain his knowledge of the affair from the school-boys, though we contend that they gave a history of it, in general terms, similar to that which he received, to two of our other witnesses, Allen and Gudgel. I only allude to the fact to show one of the many discrepancies between the counsel for the Prosecution themselves.

The gentleman has given you a Scriptural illustration, comparing himself to David, who, as he tells you, went out to fight against the Philistines, armed only with a shepherd's sling and seven smooth stones.—Now we, I presume, according to his comparison, are the Philistines; but the gentleman seems to be rather unfortunate in his Biblical recollections. He must remember it was against Goliath that young David went; and that it was Samson who fought with the Philistines, slaying three thousand of them in one day, and that, too, with the jaw-bone of an ass. And I can only express a devout hope that I am not to meet with a similar melancholy fate, and be ruthlessly slaughtered here, by the same dangerous weapon! (Prolonged laughter.)

In speaking of the testimony of the school-boys I would not be misunderstood. I allude to them in no disrespect, for I know them well; their character is above suspicion, and they are sons of the first and the best families in our city. I honestly believe that there is not a single

one of them capable of a wilful misstatement of facts; but, gentlemen, there is a power behind the throne, which is greater than the throne. There is a man by the name of Sturgus, who, though a superintendent in the school, though he was present, on the ground at the time, is not here. His testimony, it would seem, must have had some pertinence and some importance; but though he was subpoenaed to be present, he has not dared to darken these doors. I contend that he has infused ideas into the minds of these boys, during his intercourse with them, that have given an impression calculated to confuse and mislead their recollection. I contend such misrepresentations have been so often made to them, as to render it impossible, however good their intentions and unimpeachable their integrity, for them to appear before you and give a correct, faithful history of the occurrence. And this man Sturgus—he who gives so exalted an idea of his courage by stating that when he saw his friend killed he made his way out of the nearest window—who, when he reached Dr. Caspari's office, instead of asking them to send for a physician, might far more appropriately have said:

"I am the rider of the wind,
The stirrer of the storm,
The hurricane I left behind,
Is yet with lightning warm;"

for if he had not kept in advance of the lightning on his flight, it was only because nature neglected to provide him with the ability to do so—this man, I must believe, has instilled into the minds of the school-boys ideas not consonant to their calm judgment, and their unaided recollection.

Knight, Campbell, Benedict and Quigley, were the only pupils who were facing the parties, and saw the transaction. The fact is an important one, for they corroborate to a great extent our witness, Robert Ward, who has been so violently and unreasonably assailed. Now the testimony of Knight as to the conduct of Butler, is contradicted by all three of the others. Campbell tells you that when he heard the lie given, he knew from the character of Butler there would be a difficulty, and, intending that Butler might have the advantage of Matt. Ward and whip him, he turned around to pick up the tongs and keep off Robert. Contemporaneously with this movement, and while his back was to the parties, the shot was fired. But what did Quigley see? I maintain that he saw a great deal. He testifies that he saw this prisoner pressed up against the wall by the deceased; and Benedict corroborates him, adding that he was bent down towards the earth by Butler's grasp, or giving that idea, if not expressing it in the same words.—

These, you should remember, are the statements of two witnesses for the Commonwealth, who stood with their faces towards the parties and saw the whole transaction. Campbell, it is true, has involved himself in the statement that Butler moved towards Ward; but he confesses that his back was turned, and that he only judged this was the case from a noise on the floor. Therefore Knight is the only witness who can be said to contradict Benedict and Quigley, in these important statements, at all. I ask you, gentlemen, as I stand here in this temple of justice, with a full view of my responsibilities as a man and a lawyer, if I have not stated their testimony fairly?

Worthington, it would seem, from the history he gives of it, heard every word of the conversation, except when the lie was given; yet does not this look a little singular, when he was at least twenty or thirty feet from the parties, and Pope, Campbell, Pirtle and Knight, who were much nearer, the latter being within four feet, only heard broken portions of it? I certainly do not charge him with wilful misstatements, but, gentlemen, you know what boys are; you know that in such a school there is always a leader, some juvenile Ajax, whose words, when he speaks, are echoed by all, and whose statements are adopted, impressed upon the mind, and believed to be true. On this principle I account for the inconsistencies of the school-boys.

But we have enough from them to show the general facts, that Matt. Ward and his brothers visited the school-house, Willie being the last to enter; that Matt. called for Butler, who came out; that Matt. approached him, bade him good morning, and he bowed; and that when Matt. desired a "little conversation" or "an explanation," he invited him into his private room. The latter fact, you will remember, was first positively stated by Knight, though, on the cross-examination, he admitted to the Court and Jury he did not hear a single word of it, but that he had since received the impression. He spoke as confidently as any of the witnesses; yet he did not intend to tell a lie—he did not wish to perjure himself, and the statement only shows the fact I am contending for, that there is a power behind the throne greater than the throne. It is said that even men may repeat anything, however absurd, until they really believe it; and so with these boys. What they have stated, they honestly believe.

One point, in the testimony of young Pirtle, is so remarkable that I would call your attention to it. He tells you that he caught the words, "ideas of justice," early in the conversation. Now what does Robert Ward say? That the first question asked by the prisoner, was, "Mr. Butler, what are your ideas of justice?" And so this young man whom they have attempted to impeach here, is corroborated from first to last. You

must know, from the facts that have come before you, that he is detained in jail unjustly, and when the gentleman said that he stood, even now, with the halter around his neck, he made a proposition alike insulting to reason and to law. A man who does not know the law better than to believe this, should study it long by the midnight lamp, before he appears to practice in a court of justice. I deny the statement that if Matt. Ward is acquitted, Robert must escape, *ipso facto*; it is not law.

In a few particulars Robert Ward is contradicted. For instance, he tells you that the prisoner held his hat in his left hand and gesticulated with the right, while some of the boys state, that from the first, his right hand was in his pocket or muffled in his coat. Now these boys were engaged in their studies; when the parties met, they apprehended no difficulty, and I ask you if it is not a remarkable fact that they should notice the position of a gentleman's hands, when he entered the school-house and appeared as gentlemen ordinarily do? Can you recollect whether your own hands were in your pocket or not, when you came to that jury box an hour ago? Can you remember how mine were disposed, when I rose to address you? And yet they testify thus minutely in regard to so trivial a fact which transpired months ago, under no circumstances likely to cause extraordinary scrutiny. And this is only a part and parcel of the scheme of that power behind the throne, and its confederates, who are determined to be glutted in the blood of this interesting and innocent young man.

They ask why William Ward was not introduced, and tell you that he saw the whole transaction. Now their recollection is very strange—they remember a great deal of testimony that I think never was given, and they seem to have forgotten a great deal that certainly was given.—You must recollect it as appearing in proof that during the conversation between the parties Willie was so earnestly engaged with young Johnston, that they did not hear a word of it. It is easy to perceive therefore that Willie could give no testimony in regard to it: yet because he is not introduced here we are charged with suppressing testimony, and you are told that you must believe Robert Ward a perjured witness.

I return to them, and ask why Sturgus was not introduced. If I were allowed to do so, I would explain that he appeared as a witness in the examining Court, and there made such statements that he is ashamed to appear and give testimony in the case again. And Dr. Caldwell—after they had subpoenaed him and brought him here, why did they neglect to call *him* to the stand, and compel us to introduce him? A witness so important and so intelligent, could not have been left out by accident—the secret lies in the fact that he fully corroborates Barlow. Yet the

gentlemen talk to us about suppressing testimony, when this is the manner in which their whole case has been conducted, from first to last. As I said before, I do not bring aught against the honorable representative of the State: but I allude to these emissaries of blood—these men who profess to act from patriotic motives, when they are in reality only ministers of the vengeance of others, and the shekels of silver may be heard to rattle in their pockets.

It is true that Robert Ward has been in jail for six months, but it is equally true, that in order to be an aider and abettor of the crime charged in this indictment, he must have *known* the object and intention of the prisoner to be murder, even if such were his intention, which the testimony utterly precludes and which I utterly deny. Suppose I meet you in the street and without telling you my purpose take you with me to an enemy and kill him before your eyes. Can you be justly charged with aiding, abetting and countenancing the act? Assuredly not; yet in this case, and on such grounds, when his brother's life is in danger, they would have excluded Robert Ward from testifying because his name is in the indictment. But thanks be to God, it was before a judge who not only possessed too little hardness of heart, but too good an understanding of the law, to make such a ruling.

It has been related to you, that when the parents returned from Cincinnati, the mother was told by the prisoner, that her little boy, the darling of her heart, had been whipped and called a liar, in the presence of the school. I know not what others may think; but I have six children, and I will never allow one of them even to call another a liar. Can you wonder at the feelings of a parent's heart, when told that his child—the noble boy, his pride and his love—over whom he watched fearfully in sickness through the long vigils of the silent night, and in whom he hopes to live again, when he sleeps beneath the sods of the valley—has been publicly injured and disgraced? I endeavor to teach my children to love one another, and when they err, I take them apart and kindly tell them of their fault—do not attempt to disgrace and degrade them in the presence of the family. Thus I hope they learn to regard their father as a friend in whom they may confide—an adviser on whom they can rely, and his house a refuge and a home, in all their childish sorrows.

You have heard the circumstance under which it was done, and I ask you if there was any thing wrong in the act of this prisoner, when he went to seek an explanation? Even admitting that he armed himself with the pistols, he knew that Sturgus, who was his enemy, was much larger and stronger than himself, and as Willie expressed it, had "a big stick around there," and had he not the same right to take precautions for self-protection that any other man has?

Look at the manner in which it was decided that Robert should accompany the prisoner. He knew that he was weak,—utterly unable to sustain himself in conflict—yet he apprehended no difficulty, and it was not until his mother had repeatedly urged it upon him, that, to gratify her, he *impatiently* told Robert to get his hat and come. On the way, he assured him that he expected no difficulty, whatever,—that he had always found Butler to be a just man and believed he would do what was right: therefore, he cautioned Robert not to interfere by word or deed. But Willie spoke up and reminded him of the stick, and *then* he repeated the injunction not to interfere, with the proviso, unless both Sturgus and Butler should attack him at once. And what does the conversation on the way indicate? Robert tells you that they met Lucy Stone in Bloomer costume—one of these singular women who would exchange places with men and assume the breeches, as the first step thereto—and that their conversation turned to the singularity of her dress. Does this denote a heart bent on mischief and filled with malignity towards a fellow-man? On the contrary, does it not comport perfectly with the previous declarations of the prisoner, that he apprehended no difficulty whatever?

When Ward saluted him, Robert tells you that Butler bowed rather stiffly; and in answer to the questions that were put to him, he replied haughtily: “I will not be interrogated, sir.” And when he utterly refused an explanation, Matt. told him that for calling his brother a liar he must have an apology. The gentlemen have spoken as if the whole case hung on this point, and have denounced it as the language of the master to the slave; but you know the term “must” is used very frequently in cases where a wish merely is expressed—no imperious demand made; and Robert assures you that in this instance no particular stress was laid upon it.

Then, when all explanation and apology were at last denied, he availed himself of the only satisfaction left, and denounced Butler as a scoundrel and a coward. Even according to their own version of it, that the language he used was, a liar and a scoundrel, how is the case altered? His little brother had been called a liar, and his heart was still bleeding from the injury and disgrace. There was no other way to vindicate him; every peaceful expedient had been tried, and there was no other alternative. But the moment this is done, Butler springs at him, seizes him, forces him back to the wall, and strikes him twice or more in the face; and then he fires the shot. In the language of the decisions I have alluded to, had he not good reason to apprehend that “great bodily harm” would be inflicted?

We have proved satisfactorily, by witnesses of the most honorable character, that even after the pistols were purchased, the prisoner was

making preparations to leave, on the following Monday, for his plantation in Arkansas. We have offered this proof to show that his mind was engrossed; and contending that it could not have been so, had he then been under the influence of a heart bent on mischief, and contemplating such a diabolical act as the one that is laid to his charge.

Butler was shot; was taken to Col. Harney's residence, and there laid on the floor, in front of the fire-place. Dr. Thomson was sent for, and came to attend him. And here I must call your attention to a single fact. The counsel on the other side have contended that Matt. Ward must be considered guilty, because he purchased the pistols before he visited the school-house. But when Dr. Thomson was brought to the stand, I asked the question whether he now had pistols on his person, and I think with all due respect to the Court, though I submitted readily to its ruling, that the question was legitimate, and should have been pressed. There is no law against wearing arms, nor can the admission that he does so, disgrace a witness. But the Court decided that he need not answer it; and then I thought the witness grew up nearly as large as Satan is represented by Milton, when the angels oppose his entrance into the gates of Paradise. I contend that this sustains my position that arms may be worn, with no violation of law, or intent to do an unlawful act. Dr. Thomson is a member of the church, and a teacher in the Sabbath school; yet I infer, from his refusal to answer, that he carries weapons.

Mr. ALLEN.—If the Court please, I wish to inquire whether that is a legal inference?

The COURT.—It is not.

Mr. WOLFE.—True, but it is a *rational* inference. I consider the act neither unlawful nor disgraceful; in the British courts it would be a penal offense, but in this country the law is different. And this witness, who, as I contend, we have a right to presume wore arms himself here, takes the stand, as if he would say:—

“Dispel these, clouds, the light of Heaven restore;
Teach me to see, and Ajax asks no more.”

Well, Dr. Thomson comes here, and he makes a very strong statement. I believe him to be a gentleman of honor, but I also believe that his feelings are so deeply interested in this case that they may have warped his judgment and his recollection. He tells you that Butler, in giving an account of the occurrence, said Ward came to the school-house, and cursed him and struck him; that he struck back, and was shot. We contend that this was not the nature of the statement made by Butler. It is contradicted by several witnesses, and among others, Barlow, on

whose devoted head so much excited feeling and virtuous indignation have been vented by the counsel for the prosecution. Now, I maintain that Barlow is a good man—as good as Dr. Thomson, or any body else. It may be that among the ruffle-shirted young men who promenaded the streets of Louisville, with canes in their hands and an M. D. attached to their names, a poor carpenter, who shoves the plane at \$1 25 per day, is not considered so respectable as they; but you, I am sure, wholly repudiate all such sentiments. Who is this Barlow? He is an honest mechanic, who works steadily at his business, and who has proved as good a character here as any man could desire. And we have shown that he stated precisely the same facts he has detailed to you, to various persons, within an hour after the event occurred. Where could he have learned them then, if his statement be not correct?

Another witness for the Prosecution, Dr. Yandell, who was with the deceased, in company with Dr. Thomson, and on the other side of him when he made the statement, tells you that Butler said, while they were engaged—engaged, as I contend, in that very scuffle, of which Barlow, and Quigley, and Benedict, and Robert Ward, have all spoken—he struck Ward, and Ward shot him. And on being asked: “Did he say that Ward struck him at all?” the witness replied, “I did not hear him.” He thought from the manner in which Butler raised his hand, he meant to indicate that Ward made a threatening gesture; but did not hear him say he struck at all. Dr. Caldwell also states emphatically that Butler told him when he was given the lie, he struck the prisoner for it. Now, here are two gentlemen of the most undoubted respectability and most honorable positions in life—gentlemen whose integrity is above all question—and yet they corroborate Barlow, and contradict Dr. Thomson. Are you prepared to discredit them?

But Barlow testifies that Dr. Thomson carried his case of instruments in his hand from the school-house to Col. Harney’s; and the Doctor tells you that he did not, that he never does it. And Mr. Carpenter assures you that Dr. Thomson is no quack—no charlatan, who must advertise himself by exhibiting the instruments of his profession, as he walks the public streets. Are you to suppose that in such a case a physician would stop to consider so trivial a matter? Are you to suppose that when a dying man is in need of his services, Dr. Thomson must pause and carefully adjust his case of instruments in his pocket, and button his coat over them, that they may not be seen, before he goes into the street, lest he should be considered a quack and a charlatan? Then how is Barlow discredited? I appeal to you if he is not fully corroborated, and if he did not prove here, by reliable witnesses, a better character—I speak only of his reputation for truth and veracity,

not of general character—than even Dr. Thomson himself? If my recollection is perfect, five or six witnesses testified to this for him, while only one or two gave the same testimony in regard to Dr. Thomson. And has not all this insult and traduction of Barlow been utterly unjust and without cause?

Then, gentlemen, how stands the case? This accused—this wan and feeble man—this invalid, who, though five feet ten inches in height, weighs only 110 pounds—with the sanction of his family, went around to the school-room of Professor Butler, to ask an explanation, which was justly his due. The man he visited was far his superior in strength, and though they have argued that one of his hands was disabled, we have shown that he possessed extraordinary muscular power, and that there was no reason to prevent him from striking a heavy blow. A dispute occurred—the explanation was refused—all apology and satisfaction were denied, and he then took the only redress in his power, by denouncing Butler as his little brother had been denounced before. Then he was attacked, pressed back against the wall, struck and bent down, as you have heard, and he fired the fatal shot.

They tell you he must have visited the school-house to do a diabolical deed—with a heart bent on mischief and vengeance. His disposition utterly precludes the idea. We have brought here men that you respect and esteem—men you have honored by your confidence and support, and they all prove it wholly at variance with his character. Men have flocked here from all parts of the Union—the farmer has left his plough,—the mechanic his workshop—the lawyer has left his office—the doctor and the editor theirs—the soldier has come from his post, and the statesman from the halls of legislation—all to tell you that this young man is incapable of such a deed as they ascribe to him.

One taunt that has been made here, fills me with horror. The gentleman speaks of the visit of this accused to the holy mountain where the will of God was first revealed to man, and advises him to go back and see if in the decalogue he there read, there be a command to do no murder. Now, gentlemen, I will read to you from this volume, what he wrote from that sacred mountain, to the mother from whom his earliest impressions were received, and you shall judge whether it is the emanation of a heart capable of such a fiendish and wicked act as the one that is laid to his charge. He says:

“I stand upon the summit of Mount Sinai. What endless food for memory and association in the thought! To trace the course of Moses up to the sacred mountain—to visit the scene where our Lord deigned to hold converse with his servant—to feel yourself on Mount Sinai, upon which rests all that is earliest learned in childhood, and most dearly prized by man, is worth

a lifetime's weary pilgrimage. I forgot fatigue, anxiety, and all the weariness of the desert. I could only remember that I was upon Mount Sinai. Go there, if you would feel as you never felt before. Go read, as I have done, the decalogue upon the very spot where Moses received it from the hands of the Almighty. Enter the cleft in the rock into which Moses fled as the glory of the Lord passed by. Remember that fearfully sublime scene, when there were thunderings and lightnings and a thick cloud upon the mount; when Moses brought forth the people out of the camp to meet with God, and the Lord descended upon the smoking mountain in fire; when the voice of a trumpet sounded long, and waxed louder and louder as Moses spake, and God answered him with a voice—and tell me if memory treasures another emotion like this.

“I have wandered with delight over the battle-field of Wagram, where Napoleon brought to his feet the most powerful monarch of the world. Leipsic had a melancholy charm for me, as the spot where Fortune united with allied Europe to put down her petted favorite. I felt a deep interest in gazing upon the plain of Waterloo, where that gigantic power expired, which had toppled kings from their thrones and made emperors tremble. These, thrillingly interesting as they were, are but scenes in the destiny of a man. Great as he was, he was but mortal. But mount Sinai is hallowed by the presence of God himself—it is the first scene connected with the salvation of man through the intervention of his Maker.

“After toiling to the highest peak of Mount Sinai, a mile and a half above the level of the sea, I gazed on every side upon wide-spread desolation. Far as the eye could reach, there was but a succession of sandy valleys, and dark, bleak mountains. It is a spot divinely chosen for the delivery of those two graven tables, which, for so many centuries, have formed the basis of all law, human and divine. Apart from every other nation, so far removed from all the vices and follies of men, He brought them to Mount Sinai to hold communion with his chosen people, through His prophet. There was nothing in the surrounding scenes to distract their thoughts, or to harden their hearts against His counsels; no idolatrous neighbors to lead them astray; no worldly pleasures to amuse; no beauties of nature to attract. Bleak and desolate, Mount Sinai seems a spot made for an interview like that between the Almighty and Moses. The vast solitude by which it is surrounded had prepared the hearts of the people, by its immensity, for the reception of the solemn charge about to be given them. In a desert waste so boundless, they had experienced a sense of their own littleness, and been bowed before the power of the Lord. All in the holy mountain itself is silent, barren, and desolate. Not a sound was heard; no living thing was seen; no verdure decked the granite crags of the mountain—all seemed to have been blasted by that dazzling halo, upon which no man could look and live; and the rocks, which were scathed by the sacred lightnings of God, appear freed from nature's laws, and refuse to yield, like common earth, the refreshing beauties of vegetation.

“The ten commandments have never seemed so impressive as when I read them amidst the rugged scene of their production. Their simple elo-

quence and powerful brevity were in accordance with the unadorned grandeur of all around. Stripped of the worldly ornaments of elocution, like those towering rocks that bear no flowers, they startle us into admiration by their very boldness. Their elevated tone and imposing diction soar above all rules of rhetoric, as the gloomy majesty of the mountain scorns the soft beauties of foliage and flowers. Surely nothing less than divine eloquence could condense into three hundred and twenty words the laws by which empires are governed and nations saved. Their brevity is beauty—their eloquence is the absence of all show.

“It was the evening of the eleventh day from Cairo, after a long and fatiguing march, that our caravan entered the immense valley in which the hosts of Israel encamped before the mount. The sun was hidden from view, but his parting rays still played about the highest peak of Sinai. Never shall I forget the feelings with which I looked for the first time upon the sacred mountain, thus illuminated by the rays of declining day. All else around was dark; deep shadows enveloped mountains and valley; but a gleam of light, like the Christian’s hope, still rested upon the summit of Mount Sinai. The heart that could gaze unmoved upon a scene like this must be callous indeed. With me every feeling was hushed into awe; I almost feared to advance. There was something so terrifically grand in the history and appearance of the mountain, that I felt transfixed to the spot; something in its frowning aspect seemed to forbid nearer approach; I felt my own unworthiness to do more than look upon it from afar off.”

Permit me, gentlemen, to read you one more extract from his “*Letters from three Continents.*” The letter is written from that scene of the deepest interest to man the world has ever known—the Mount of Calvary:

“A man’s deep emotions on visiting the church of the Holy Sepulchre are chilled, not smothered, by the glare and glitter of the tasteless ornaments and images that load the hallowed spots within. I turned at once to Calvary, and mounted the steps where our fainting Saviour toiled up the rocky hill, when, turning to the women that bewailed and lamented him, he said, in mournful forgetfulness of his own sufferings—‘Daughters of Jerusalem, weep not for me, but weep for yourselves and for your children.’ ‘For behold, the days are coming in which they shall say, Blessed are the barren, and the wombs that never bare, and the paps which never gave suck.’ I stood upon the spot where our Lord was nailed to the cross—the rock in which the cross was planted was before me; and amidst the gloom and silence of the dimly-lighted chapel I could almost imagine the fearful scene of the crucifixion, when ‘the sun was darkened, and the vail of the temple rent in the midst.’ I could almost see the two malefactors that were crucified with him, ‘on either side one, and Jesus in the midst.’ I could hear the hootings and revilings of the enraged multitude, and that beautiful sentiment of forgiving meekness—‘Father, forgive them; they not know what they do.’ I could see the crowds of

women that had followed him from Galilee, 'beholding afar off,' and witness the fierce determination of the soldiers. I could hear that cry of mortal agony—'My God! my God! why hast thou forsaken me?' And all was over. What could be more impressive than such recollections in such a place?

"My heart was softened even to weakness, and I could almost have wept; for that religious fervor, which even the most worldly may feel on Calvary, was blended in my heart with the feeling of earth most akin to heaven—a son's devotion to his mother. The Bible, from which I read the mournful story of the cross and passion, was her parting gift. It flooded my heart with hallowed associations—thoughts of her and of heaven were blended in my soul, and purified each other. It recalled the never-to-be-forgotten instructions of my early childhood, when, leaning upon her lap, I heard from her loved lips explanations of the holy events of which I now read, upon the very spot where they occurred. It recalled the recollections of later days, when, side by side, we sat in the village church—the exquisite music of those simple hymns, that we sang from the same book, seemed again to swell upon my ears, and I was a child in feeling once more. And, whatever may have been my course since, those early impressions of piety have never been effaced, and the religious associations connected with those blissful days of innocence I now found had not died, but only slumbered, and but required a sacred spot like this to start into life, linked with a mother's holy name."

Gentlemen, it is impossible that a heart like that of the prisoner, depicted in these lines, is capable of entertaining malice. His devotion to his fellow men, his devotion to his mother, his devotion to his God, all, all forbid the idea that he is capable of entertaining malice against any human creature. The act with which he is charged was the result of dire necessity, it was not an act of wilfulness.

Gentlemen, the fate of my client will soon be committed to your hands. What a responsibility will then rest upon you. Life or death is involved in the issue. What inexpressible joy a verdict for life will bring with it! This beautiful world will to him as well as to those who are bound to him by such tender ties present scenes of happiness and gladness. But oh what gloom, what sadness, what misery would a verdict of death bring with it! That young and beautiful wife, the partner of his former joys, the participator of his woes, to know that her husband is to be assigned to an ignominious grave! That mother whose life has been a life of devotion to him to have her heart riven by sorrow that can never be subdued—that family and wide and extended circle of friends, of which he is the rose and pride, to be crushed down for ever—I cannot anticipate such a result. The evidence will not warrant such a verdict, and such an one will not, cannot be rendered by you.

The achievements of this young man in the field of literature are part and parcel of the greatness of Kentucky. The emanations of his

mind have added fresh glory to the history of our State, which the patriotic devotion of his ancestry had already rendered so illustrious.

Shame not the history of our State with the pronouncement of guilty because neither justice, law, nor humanity demand such a result. I have done.

On the conclusion of Mr. Wolfe's argument the Court adjourned.

EIGHTH DAY.

Wednesday, April 26, 1854.

The Court convened as usual.

After the calling of the jury, the closing argument for the Defense was made by Hon. John J. Crittenden.

SPEECH OF MR. CRITTENDEN.

GENTLEMEN OF THE JURY:—I agree with the counsel who have spoken on behalf of the Prosecution, as to the importance of this case. Its magnitude can scarcely be overrated. The State has an interest in it. It is not a desire for vengeance; the State seeks no vengeance against its own citizens. But its interest is a paternal one, like that of a father in the midst of his family. Its interest is, that its laws may be administered, and that its citizens shall receive from that administration a just and merciful protection.

The defendant has an interest in it. He has every thing at stake—his life, his liberty, his character, and the feelings and sympathies of those who by ties of friendship or of nature are associated and allied with him. All these are at stake; and you are the men who have been selected to arbitrate and decide this mighty issue.

Gentlemen, we have all cause to rejoice that we live under a government, which guarantees to every man the right of trial by jury. Without it, no freeman can be touched in life or liberty. For ages this right has been the inheritance of our race. Our progenitors established it in the old world; and our fathers have struggled for it, as a thing indispensable to the security of their lives and their liberties.

You may wonder why it is they have been thus solicitous to preserve this right of trial by jury. You may inquire why they have not rather left it to the courts to try men who are charged with crime. The judges on the bench are usually able and honest men—men of superior wisdom to those who ordinarily compose a jury; men with greater knowledge of law, and men of undoubted integrity.

It is not so much from any distrust of the judges, or fears that they

might be swayed improperly, that this right has been preserved; but from a deeper and wiser motive. It is not because the people are equally learned with them, but because they are less learned. It is because the law desires no man to be molested in his life or liberty until the popular sanction has been given to his sentence, and his cause pronounced upon by a jury of his peers. The Court is expected to render all necessary assistance in stating the law; but his cause, in passing through the minds and hearts of his equals who are trying it, will be divested of all nice technicalities and subtle analogies, and decided on its simple merits, and according to the dictates of reason.

The life of a man should be taken on no other judgment. You may lay down the law like a problem in Euclid; you may take one fact here and another there; connect this principle and that proposition, and then from one to the other reason plausibly and even logically that a man should receive sentence of death. But it was to avoid all this that this glorious right has been kept inviolate. It was to bring the accused face to face with his accusers, and to suffer only a jury of his equals, with their warm hearts and honest minds, to pronounce upon a cause involving his life or his liberty. This, gentlemen, as I understand it, is the object of jury trials. Were cases left to the judgment of the Courts, a man's destiny might depend on some subtle and difficult question of law, but now it is different. When you consider a case, it is divested of all such questions, and appeals to you as able to judge of the facts—as familiar with the passions and motives of men—as those who will rest it on its simple merits alone, and will only condemn for reasons that are sure, and solid, and satisfactory to your own understandings.

You are a jury of Kentuckians; and I have too much respect for you, too much respect for myself, in this important case, to deal with you by means of entreaty or flattery. But I may say that I have confidence in you, and that I look forward with sanguine hopes to the verdict you are to render. I expect you to do your duty manfully and firmly; and I expect you to do it, notwithstanding all that has been said to the contrary, mercifully. I expect you to do it on principles compatible with public security, and it is my duty to show you that you may acquit the prisoner at the bar on such principles.

The accused is before you in a house of Kentucky justice, and all vengeance must cease to pursue him, at this threshold. This is his sanctuary—here the sway of the law is potent. Here the voice of justice—justice tempered with mercy—is heard—that voice which falls in sounds of terror on the guilty heart; but whispers in songs of seraphs, peace and joy to the innocent.

The case, gentlemen, is one that demands all your attention. Thus

far it has engrossed it; for I never have had the honor of addressing a jury in any case, who have given, during its whole progress, evidence of more patient and unwearied attention. I am consoled by the belief that you know the evidence as well or better than I do; and I only ask that you will weigh it carefully in all its bearings and influence, making the proper discriminations, earnestly striving to ascertain the real motive of this accused; and then render that verdict which is demanded by your oaths and the laws of your land.

I will first proceed to an examination of the evidence, and will then endeavor to bring to your attention the law I believe applicable to it. And I hope to satisfy you that the law when applied to the facts, entitles the defendant to a verdict of acquittal—a verdict which, under all the circumstances of the case, would cause Mercy herself to rejoice.

What then is the case, briefly stated? William Ward, a boy of fifteen years, and a scholar in the Louisville High School, returns home during the absence of his parents, and informs his elder brother that he has been unjustly and severely whipped, by Mr. Butler, the Principal. "And though I could have borne that, brother," he says, "I could not well bear to be called a liar, before the whole school—my companions and my equals. I wish you would go and see Mr. Butler about it." It is four o'clock in the evening when he gives his brother information of the chastisement he deemed so cruel and unjust, accompanied by such an appeal. That brother—the prisoner at the bar—determines to go around at once, and ask an explanation; but supposing the school to be dismissed and the teacher not present at that hour, he concludes to wait until the following morning. Then the parents have reached home, but as the occurrence took place during their absence, he obtains the consent of the father to go around and ascertain the reason of it. He goes, and in a conflict in which he becomes involved, the death of Mr. Butler ensues. This is a general view of the case; but it is necessary for us to examine it more particularly.

The purpose for which he went to the school-house was undoubtedly a lawful one. If a child is whipped, particularly when the chastisement is so severe as to leave marks upon the limbs, I ask if it is not only lawful, but in fact a paternal duty, to go and inquire the cause and learn why such punishment was administered? Certainly it is. And it is equally lawful and proper for the brother to go, especially when, as in this case, he has the consent and sanction of the father. The accused then stood in the place of the father, and had the paternal right to go on the errand that took him to the school-house. This point I consider settled.

Why, then, are we to infer a malicious and wicked motive on his part, for doing that which is clearly lawful, and justifiable and proper?

The correct presumption would certainly be, that the motive was as good and lawful as the act itself. It is contended that he went with malice ; but you have heard the testimony on this point—you have heard that of Mrs. Robert J. Ward—given in a tone and manner that must have carried conviction to your hearts ; and you know what inducements and reasons there were for the defendant to seek an interview with Prof. Butler. You have heard that the parents had just returned from Cincinnati, when the watchful eye of the mother observed Willie at home, and she asked why he was not at school. The little fellow, still mortified at the memory of his own shame, burst into tears, and replied : “ Brother Matt. will tell you.” And that brother did tell her, adding : “ I designed to have gone around to seek an explanation last night, but the hour was so late that the school was not in session ; so I postponed it until this morning.” When the father proposed that *he* should go, the accused replied : “ This occurred while you were away, and I was here ; and I think, father, you ought to let me go.” And, in fact, during the absence of the father, the accused was the head of the family.

It was decided that he should go ; and then Mrs. Ward indulged in one of those maternal anxieties and apprehensions, that so often rise in the heart of the mother. He endeavored to quiet them, but when he was at the door, she suggested that Robert should go with him. He had made no request of the kind ; he was not desirous of the company or assistance of his brother ; but on the contrary, when it was urged upon him, replied : “ I apprehend no difficulty ; Mr. Butler is a gentleman ; and as I only ask what justice demands, I am sure he will do all I desire.” Gentlemen, I think this is no unimportant fact in tracing the motives of the prisoner. Even, at last, when he submitted to the proposition that his brother should go, it was with impatience. He was reminded that Sturgus was his enemy, yet he went, knowing the justice of his intentions, and fearing neither Sturgus nor any one else ; only acceding to the request of his mother to quiet her own apprehensions.

This, I think, is a fair statement of the case. I desire to learn, why and wherefore he went to the school-house, and what were the motives that actuated him. And, I think, every circumstance speaks out, that there was no wickedness in his heart ; that he not only went to do what was proper and lawful, but to perform a duty that devolved upon him. Did Mr. Robert Ward apprehend difficulty ? Certainly not ; he knew Butler—knew the object and feelings of the accused ; he swears to you that if he had even conjectured difficulty might ensue, he would have gone himself. And that mother—can you believe that when she parted with him at the door, she thought she was sending her son on an errand

of blood, a mission of revenge? The idea is too horrible to contemplate. Neither the father nor mother expected the least difficulty with Butler, though the prudent apprehensions of the latter suggested that there might possibly be some interference on the part of Sturgus. But Ward and Butler were friends—they had mutual respect for each other.

Well, they left the house—Willie going along to get his books, and Robert, at the instance of his mother. What was the conversation on the way? It may tend to throw some light on the question at issue. The testimony of Robert Ward, gentlemen, may require hereafter more attention than I can give it at this point. But for the present, it is sufficient to state that he did not know that his brother was armed, and that he had not the least expectation of difficulty. On the way, Matt. tells him—it was not all detailed here, but this was evidently the burden of the conversation: "I am going to seek explanation and apology for an injury done to brother Willie. I did not want you with me; you are young and hasty; you do not know the circumstances of the case, and you might act indiscreetly. I apprehend no difficulty—Butler is a gentleman and will do what is right; and I desire you not to have a word to say." It was as much as to say, "I would you were at home, Robert, but now you are here, do not interfere by word or deed." But little Willie, who has heard this injunction, says: "Ah, brother, but Mr. Sturgus is there!"—not Butler, but Sturgus—"and you know he has a big stick!" Matt. replies: "Why, I shall have nothing to do with Sturgus—my application is to Butler." Then he turns to Robert, and adds: "If, however, Sturgus and Butler both attack me, you may interfere." He conjectured the possibility of this only to soothe the feelings of the little boy. He had already made Robert passive; but listening to the suggestion, must excite his anxious and brotherly apprehension; therefore he said: "If such a thing does occur—which I do not expect—you *may* keep off Sturgus."

Does this look like an intention to commit murder? On the contrary, do not all these circumstances go to exclude the idea of any hostile feeling, any malignant purpose, or any design to attack, or do an unlawful act, on the part of the accused? Further, to prove that there is no possibility of malice, we have shown you how he had been making preparations for several days, and even on that very morning, to depart for his plantation in Arkansas. His mind was not bent on mischief, but engaged in a legitimate and proper channel. All the facts go to negative the presumption of malice, or of any wicked purpose.

But he had been told, and he knew before, that Sturgus was his enemy. He knew that by some remote possibility the visit might lead to a colli-

sion and combat with him. He was very weak—utterly unable to resist any attack that might be made upon him; and therefore it was right for him to arm himself. Is it to be inferred, because a man purchases a pistol, and puts it in his pocket, that he intends to commit murder, unless it is indicated by some subsequent act? You are often in town, perhaps, and if you purchase a rifle there, will that fact subject you to any suspicion? But in town the procuring of pistols is neither more remarkable nor more improper. It is true that when he buys pistols, a man *may* do it with an intention to commit murder; yet when he does an act which may be accounted for lawfully in a thousand ways, but by a possibility may be improper and unlawful, is it right for us to conclude that he must be actuated by the worst possible motives that can be conjectured? In such a case, we would be accusing spirits indeed. What would be the condition of human society—what the relations of man to man, were this doctrine carried out?

A man may arm himself for a case of probable danger; he may do it with view to no specific occurrence, and he may do it in self-defense. Who can object to it? The Constitution guarantees to every man the right to bear arms. No law takes it away, and none ever can. The right of self-defense is an inherent one, given by God, to man. It is our own natural right, and as Blackstone says, no human legislation can ever take it from us. But how nugatory and vain you render this right, if, when in pursuance of the laws of his country, a man arms himself for any possible contingency, and remote danger, you impute to him unlawful motives, and subject him to every sort of imputation of murderous intent.

This precaution on the part of my client, indicated no intention of violence. It may have indicated a purpose to defend himself in case of attack; but nothing more. Will you cast aside the thousand other natural constructions, and adhere to that irrational and unsupported one, which makes him criminal? That were alike unreasonable and inhuman. But take all the circumstances, and weigh them carefully, and you will see the motive as clearly as you see the act itself; and you will see no design to take life, or to violate the laws of the land.

Then what was the remainder of the conversation on the way? They met a young lady in Bloomer costume, and talked of the peculiar nature and fashion of that dress. What a subject for the conversation of a man within a few steps of the point where he intends to commit a malicious and cold-blooded murder!

One of the gentlemen who addressed you for the Prosecution, announced, in the course of his argument, his disbelief that the accused purchased the pistols with the design to commit murder, or went to the

school-house for that purpose. If he did not, he had no criminal intentions. But within half an hour after, the gentleman, becoming more deeply engaged, says, with violent gesticulations: "Ward purchased those pistols with the intent to murder Butler." Thus he assumes contrary positions, and as both of these declarations are made by the same author, I suppose I have a right to receive which I please. I will choose the one, then, that I believe takes the only reasonable and truthful ground—that he had no such intent. But I will go no further on this point. I think it is fully established, that the purpose for which my client visited the school-house, was a proper and lawful one. So far, then, we find no offense; when he entered the door he was free from all malice and all criminality. Did any thing occur there which made him a murderer? This is the next question for you to consider.

You have heard the testimony as to what transpired at the school-house. No one was there, except Matt., Robert, and the pupils. Willie was in the room, but so engaged, that he knew nothing of the interview. To prove the nature of that interview, thirteen boys have been introduced here by the Commonwealth. Now, gentlemen, before I say a word as to the testimony of these pupils, I wish to have my position clearly understood. The counsel on the other side, with a triumphant air, have come forward and volunteered a defense of the truthfulness and veracity of these boys. But their services have been in advance of any occasion for them—they have only defended what is not attacked at all. Not one of the counsel for the Defense has ever intended, or sought to impeach the character of these witnesses. It may be asked, then, what circumstances justify us in the ground we assume, as to their testimony? It must be remembered they are but a set of boys, and that they are testifying in regard to a circumstance in which their teacher was killed. They must have been under the influence of excitement and fright. The time which the accused spent in the school-room was at most, not more than five or ten minutes. When he entered, they were engaged in their studies, and it was contrary to an explicit regulation of the school, to turn around and look up, when strangers came in. And when, so unexpectedly, like a flame from the earth, this fearful occurrence broke out in the stillness of that school-room, what must have been the panic of these boys! You can imagine as well as I. It would have startled men—the calmest and firmest in this jury box, or this Court room. Benedict, I think, gives a very just idea of the condition of all of them. He says: "I was so much frightened, that I couldn't think of any thing, or see any thing hardly." And whatever the gentlemen may contend, I believe this was the state of all the boys in the room. They may have seen Butler and Ward during the

conversation in the early part of the interview; but this was all they saw clearly. One fact alone is sufficient to diminish the weight of their testimony. Not one of them heard all the conversation perfectly. Though one or two are confident that they did, they are contradicted by the others, who heard words and sentences which never reached their ears. No two of them give the same account of it; but on the contrary, there is much inconsistency and contradiction. It is evident that no one of them saw all the acts, or heard all the conversation that passed; and this, in addition to the general panic that agitated their minds, and confused their recollections, renders it impossible for them to give a fair and perfect history of the occurrence.

“Ah,” say the gentlemen, “but the panic was all after the firing of the pistol. Before this, up to the very moment when it took place, they can remember distinctly all that occurred.” Is this rational? Is it according to the philosophy of the human mind? Was not the whole mind agitated and stirred, so that the things both immediately preceding and immediately succeeding, were thrown into one mass of chaotic confusion? There is no other reasonable inference from the facts. Here, then, a parcel of school-boys are brought up under these circumstances, to testify in a case of life and death—to testify in regard to a conversation partly heard and acts partly seen. It becomes important that you should know with just how much confidence and with just how much allowance to receive their testimony. Suppose an affray were to occur here now, in this crowded Court-room, and the life of one of the parties to be suddenly taken. How many of the men who were present and witnessed it, could give a correct and faithful account of the occurrence five minutes after it transpired? You know the character of the human mind, and you know that very few could do it. Transfer it in your minds, then, to the presence only of a parcel of frightened school-boys; and after months have passed, do you believe they are capable of giving a full history of the affair, detailing all the events in the precise order in which they occurred, and even descending to the minutiae of the position of the hands? The mind, and particularly the youthful mind, under such circumstances is in a state of chaos, and the memory and the imagination combine, until it is impossible to unravel the tangled web and come at the simple truth. I believe these boys to be intelligent, and honest, and high-minded, and incapable of any intentional misrepresentation. But I believe at the same time that they are incapable of narrating the simple, uncolored circumstances of the case, and of giving testimony on which the life of a man ought to depend.

Another thing: these boys, from 11 to 18 years of age, since the occurrence of the principal fact we are investigating, have been the scho-

lars, and under the tuition and training of Mr. Sturgus. With all their natural sympathies on the side of their teacher—with all these other circumstances tending to give their minds a bias, they have been from that day to this under the authority and instruction of Sturgus, the enemy of Mr. Ward—the pursuer of this prisoner. You, who understand the affairs of men, will see the impossibility of a fair and faithful narration of the event from them, under such circumstances. You well understand how this man—they not knowing it—by a word properly thrown in, or a statement repeated until they were familiar with it and received it without question, may have exercised great influence and control over the feelings and recollection of these boys. He is their teacher and guardian—they are under his charge, and though he was sworn here as a witness for the Commonwealth, he was not introduced upon the stand. Put all these facts together—and it is your business where the facts are not all known, but a few of potent character are established, to infer the others—weigh them carefully in your own minds; and then judge for yourselves if the probabilities in regard to the character of the testimony of these boys are not all in favor of the assumption I have made.

Now let us examine the testimony. After the able manner in which it has already been reviewed and considered, it would consume too much of your time to enter into a minute repetition of its details; but I think I may safely say that from beginning to end, no two of these witnesses have perfectly agreed; that their statements contain numerous discrepancies and contradictions; that the account of no one of them is probable and satisfactory, and that they all show, from their disjointed nature, they only contain portions and fragments of the facts that occurred.

If there be any one thing in which there is more concurrence than on other points, it is in the statement that when the parties had exchanged salutations, Ward immediately asked: "Which is the more to blame?" etc. Now, would not this be a most extraordinary manner for one gentleman to commence a conversation with another? But four or five of them agree on this point, and if you receive their testimony, you must conclude there was no other introduction of the subject, but that these were the first words uttered by the prisoner. Is it reasonable? Does not the very awkwardness of the question, asked in such a manner, indicate a chasm here—something which did not reach their ears—some preliminary, if not for the sake of ordinary courtesy, at least to give a comprehensible explanation of the business? And what says Robert Ward on this point? He tells you that Matt. first informed Butler he desired some conversation with him; and after declining to enter the

private room, giving as a reason that the event of which he wished to speak had occurred there, went on to inquire what were his ideas of justice, and *then* propounded the question mentioned, which in that connection came naturally enough. Thus in the very commencement, Robert Ward gives you the only natural and satisfactory account of the conversation; and this fact alone is sufficient to show you the fragmentary character of the information possessed by the other boys. I know Robert stands here in a position which, by the law, exposes him to imputation; and it is your duty to weigh his testimony carefully, and not to receive it, unless you perceive in it intrinsic indications of truth, or it is corroborated by other witnesses of whose veracity you can entertain no doubt. In this case, we call the witnesses of our enemy to corroborate him, and contend that even by them, he is so fully sustained as to be entitled to your belief.

One of the largest of these boys, and one who heard more of the conversation than any other witness who deposed for the Commonwealth, was Worthington. Yet he did not hear Ward make use of the term "liar" at all, and thus he corroborates the statements of Robert. Again, Robert tells you that the accused introduced the conversation in a natural and reasonable manner, by asking, "Mr. Butler, what are your ideas of justice?" Now, how is it that of these thirteen boys, twelve leave this entirely out in their history of the conversation? How is it that, if their opportunities for hearing and seeing were as good, and their recollections as perfect as you are asked to believe, they all disclaim any knowledge of this language? But let us turn for a moment to the testimony of little Pirtle, who frankly confesses he did not hear all that was said, and who was one of the finest and most intelligent boys in the whole school. He tells you that the first words he heard from the accused were something about "ideas of justice" and chestnuts. You must observe that the connection of subjects is a very singular one—one that would not be likely to be suggested to the mind of a school-boy or any one else, unless he had distinctly heard it. The minuteness with which this trivial point is recollected, seems to give it more weight, and to indicate in no unimportant degree the truthfulness of the testimony given you by Robert Ward.

Crawford corroborates him by the fact that he did not hear the lie given. Benedict states that when interrogating Butler, Matt. asked, "Which is the worse, the *boy*?" etc., though all the other scholars state that he used the term "puppy." Now Robert tells you that when he asked the question the first time, he did so in the words detailed by Benedict; but that when no answer was given, he repeated it in some irritation, and then changed the phraseology to "the contemptible little

puppy." Though the particular may seem trivial, yet I think all these minute facts combined will enable you to form a correct opinion as to the general character of his testimony.

Quigley confirms him. He tells you that Ward was forced back by Butler, before the pistol was fired, against the wall and the door. Is not this a corroboration on a most important point? And he further says in corroboration, that when Sturgus came out of his room Robert told him to stand back—not that he told him to come on, as related by some of the other boys. The statement of Quigley as to the condition to which Butler had reduced Ward, agrees exactly with that of Robert, word for word.

Campbell, however, contradicts Quigley in regard to the language used by Robert to Sturgus; and there are other contradictions between the boys on various points. I might pursue the subject further, but I believe it is unnecessary. I think I have demonstrated that but little reliance can be placed on the testimony of these school-boys—because they do not agree—because of their numerous contradictions—because however pure their minds may be, it comes to you through all these circumstances of diminished credit, combined with the fact that they have been so long under the care of Sturgus, the enemy of Ward—and by that enmity, as I verily believe, the cause of the unfortunate event which occurred.

Let us look at the testimony of Robert Ward; and after what has been shown you, I think it is not asking or saying too much to claim that this is the only testimony which has brought order out of disorder—given the only connected and reasonable account of the whole affair,—a consistent history of the events that transpired—natural in their course, and leading directly to the results that actually occurred.

You have been told that according to the testimony of this witness, the accused told Butler he desired a *private* conversation with him; but no such word was used, as your own recollection of his language will readily assure you. It was a public investigation he desired, and when invited into the recitation room, he declined, saying, "No, Mr. Butler, the occurrence of which I wish to speak, transpired here, and this is the proper place to talk of it." Could there be any thing more natural or more proper than this? There the boy was whipped—there he had been called a liar—and there were all his companions who had witnessed the whole transaction.

Butler might have said, "Here are the boys; they witnessed the occurrence, they know all the facts of it, and they shall be called up and the truth of the matter ascertained, to your satisfaction." What was it they wished to ascertain? Merely whether Willie gave the chestnuts

before or after the recitation order. If before, he had done no wrong and deserved no punishment; if after, he had violated the regulations of the school and was culpable. So upon that fact the whole question depended. What remained then for Butler to do, but to call up the boys, investigate the matter thoroughly, and, if he had done wrong, make that atonement which was due the injured feelings of the little boy? Would not a father have done the same? If in a moment of unreflecting haste and anger, he had whipped his son and called him a liar, and the boy had afterwards come to him, asserting that he had done him a wrong, and desiring him to examine the evidence carefully and satisfy himself that this was the case—would he not have done it? With an overflow of paternal feeling and love, would he not readily go into the investigation, and gladly learn that even though he had acted hastily and wrong, his opinion of his son was unjust and incorrect?

If the request had been preferred to a stranger, even he should have acceded to it as an act of simple justice. And in view of the paternal relations of the teacher—in view too, of the intimate and friendly relations of this teacher—when the proper person came to ask it, there should have been no assumption of dignity—no buttoning of the coat and haughty refusal to be interrogated. Would it not have been more in accordance with reason and justice—more in accordance with the real character of the excellent Mr. Butler, even if the question was propounded in a manner not exactly agreeable to his feelings—to have replied, “I will gladly do as you desire, and if I prove to have been in the wrong, no man living shall be more prompt to make the necessary atonement.”

Suppose he did see a little irritation in the manner of Mr. Ward, and suppose the method of propounding the question was not exactly compatible with his taste and feelings,—as a good man, as a just man, as a prudent man, ought he not to have said: “I see you are irritated, I know your feelings are aroused, but let us fairly examine the case, and then, if we find I have been in error, I shall be proud to repair the wrong I have done.” Would that have misbecome Prof. Butler? Would it have impaired in any degree the proper and healthful discipline of the school? Not according to my conception of the matter.

But unfortunately he did not take this course. When his attention is first called to the matter, he buttons up his coat and replies: “I am not to be interrogated, sir.” Ward insists upon it: “Mr. Butler, I ask a civil question, and I expect a civil answer: Which is the worse, the contemptible little puppy who begs chestnuts and then lies about it, or my brother William who gives them to him?” There may be some objection, perhaps, to the language used here—the phraseology of the

first question was better, but an answer was refused to it, and repeating it in a stronger form does not increase the criminality of Mr. Ward. He is assured that no such boy is there. "Then that matter is settled; but why did you call my brother a liar? For that, I must have an apology." As if to say: "I have a just right to an apology—under the circumstances, it is my due." "I have no apology to make." "Is your mind made up on that point?" "It is; I have no apology whatever to make." "Then you must hear my opinion of you—you are a scoundrel and a coward."

And here let us pause for a moment to examine the relative position of the parties at this point. The accused had gone to the school-house, for an explanation which was his due; it was utterly refused him, and thus that question was closed. He had then sought an apology; but that was denied him in terms equally emphatic, and that matter also was settled by the reiterated assurance that no apology whatever would be made. Then he used the language he did; and there, as I apprehend, the demonstration closed on the part of Ward; that was all he intended. He felt that his brother had been abused, insulted and outraged, and when all other redress was superciliously denied, he took the only satisfaction that was left him, by applying these terms to Butler. Do the circumstances indicate that he intended to follow it up further? I think not, in the natural course of events. He had retaliated; and there the matter must conclude—there he would have left it to rest forever.

The next step was taken by Butler. They tell you he was an amiable gentleman, and there is no doubt of the fact; but they tell you also that he was a man of spirit. The facts show that he commenced the combat. Ward had reached a point where there was nothing more for him to do. But he was seized by Butler, whose hand grasped his collar or cravat—crushed back against the wall—bent down towards the earth—struck twice in the face to the certain knowledge of the only witness who saw the whole transaction; and then, but not till then, he fired the pistol to free himself from his assailant. This account of the transaction is perfectly corroborated by Quigley as well as related by Robert Ward. Do you not believe it? Do you not see how it would occur in the reasonable and natural order of things? Even their own witnesses tell you that they *knew* Butler would not take such language—that when they heard it applied to him they expected a difficulty.

This is the case proved by a portion of the testimony, and I think fully established by the better portion of it. I believe, then, we have clearly settled it, that the first assault was made by Butler—that he promptly and fiercely pursued it until he had placed this defend-

ant in a position where he had good reason to apprehend the most serious bodily harm—in a position of extreme suffering and extreme danger.

Again : does any one doubt that this was a sudden and casual affray, unexpected by either of the parties, five minutes before it occurred? After some conversation, in which it is true harsh language was used—but it is a settled principle that no language whatever can justify an assault—Ward was suddenly assaulted and attacked; and then, at a time when he was in great peril and suffering, he fired the shot—fired it, as we contend, in self-defense. The only means of protection he used, were the pistol; it is not in proof that he struck a single blow. You see his form—and you can perceive there the most palpable indications of the truth of what you have been told by so many witnesses—his extreme weakness and delicacy. Do you think it probable that one with such a form—in so feeble a condition—would engage hand to hand in conflict with a man of ordinary strength? And according to the testimony of Mr. Joyce you will remember that Mr. Butler was a man of unusual muscular power in the arms.

The only pretense of a blow from the prisoner, is founded on the testimony of one of the boys who saw him bring his left hand down with a gesture, and thought he struck, because he then saw Butler move from him. I do not speak of this to impair the testimony of the boy, but merely to show you another indication of the existence of those circumstances and influences that render it impossible for these school-boys to give a faithful and perfect account of the transaction. Can you believe for a moment that a man in the physical condition of this prisoner, in his sober senses, would attempt to combat with any one? Even with his right hand it would be the most perfect folly for him to attempt to give a blow that would injure a child—and do you believe that with his left, he could give one that would cause a man in his full strength and vigor, to fall back? It is utterly impossible. And with this fanciful exception, not one of those thirteen boys saw a blow given on either side. That there were blows cannot be doubted. Butler himself stated it distinctly to every one with whom he conversed in regard to the affray, before his death. And on such conflicting and uncorroborated testimony as this, you are asked to take the life of a fellow being.

Gentlemen, I think I have stated the case fairly. I have certainly endeavored to do so. I have spoken of the testimony as it was given, according to the best of my recollection, and I believe it clearly establishes the fact that this prisoner was reduced to a condition where it was right and lawful for him to avail himself of any means of defense and protection that were within his reach.

Now, what is the law that applies to the case? I shall not trouble you with much of it, and I will endeavor only to call your attention to that which is strictly applicable. Many cases have been cited for your consideration, some of them involving nice distinctions and subtle questions of law, in regard to which even lawyers and judges have hardly been able to satisfy themselves. Is it to be expected, then, that from sources such as these, you must reason and analyze, and deduce the law it is your duty to act upon in a case of such magnitude as this? I think not. I think no conscientious man will desire to do it; and I am quite sure that you prefer to know something of the simple principles on which this great crime of murder is founded, and the circumstances and elements that go to make up its different degrees.

I contend that according to all principles of law, the facts which have been developed in this case, prove the act for which the prisoner at the bar is arraigned, to be neither murder nor manslaughter, but justifiable homicide. Though the words of the law may not be known to every man, yet the statutes thereof are written in his heart. You know what malicious killing is—what killing in the heat of blood is, and what killing in self-defense is, and your own judgments, as well as your hearts, tell you that there is a wide difference between them. In morals and in law, the criminality of men's conduct depend on the circumstances under which they act, and the motives by which they are actuated.

There is nothing more simple than the principle of Common Law, on the crime of murder. Malice is the essential ingredient. It may be caused by some difficulty and grudge, but it must be indicated in that wicked state of mind—that distempered and depraved condition of heart—which show them to be bent on mischief. When a man kills another, under such circumstances and from such instigation, that is murder. But had this accused any such grudge or malice towards Prof. Butler? None; if he had ill-feeling towards any one, it was towards Sturgus, his enemy; for Butler he had no sentiments but those of friendship and respect. In his own language, he had always found him "a gentleman and a just man." The act cannot be murder

But manslaughter—this is another gradation of the crime. When in an unpremeditated difficulty, without malice aforethought, in the heat of passion, one man kills another, it is called manslaughter. The crime is not so aggravated as that of murder, as the malice does not exist; yet it is not excusable, for the heat of passion is no justification for trifling with human life. But the law, making allowance for the weakness and infirmities of our nature, considers this an extenuation, and reduces the offense to manslaughter. Where parties are engaged

in combat on equal terms, and there being no occasion to resort to such means, for self-defense and protection, one kills the other, he is guilty of this crime.

But where a man in sudden affray is beaten or assaulted in such a manner as to peril his life, or place him in danger of great bodily harm, when there is no other way of escape, he has a right to kill his adversary, and the law calls it justifiable homicide—killing in self-defense. The law is very tender of human life, and therefore homicide, even in self-defense, is spoken of by the English authorities as “excusable rather than justifiable.” And thus the definition of it given by Lord Bacon, is, “a blameable necessity.” Yet though blameable, it is a necessity, and it excuses and acquits the party. It is described as “that whereby in a sudden broil, or quarrel, a man may protect himself from assaults or the like, by killing the one who assaults him.” But it must not be used as a cloak for a revengeful and wicked heart, for we are explicitly told that we may “not exercise it, but in cases where sudden and violent suffering would be caused by waiting for the intervention of the law.”

Language cannot be plainer than that of this distinguished author, Judge Blackstone. “And this,” he says, “is the doctrine of universal justice, as well as municipal law.” It is another principle equally well established, that except in cases of extraordinary violence, where it cannot be done without subjecting him to enormous peril, a man must “retreat to the wall,” or to some other impediment which he cannot pass, before he may take the life of his adversary.

Gentlemen, I shall trouble you with but few more extracts from this or any other author. You see in what justifiable homicide consists—you see that you have a right to kill when you cannot otherwise escape death, or severe bodily harm; but that you must exercise this right only in a case of extremity—only in sudden affray—only when subjected to a condition where you can no longer defend yourself but by killing. It is not every blow that necessarily gives the right to take life; if the person be not injured, the blows not severe, and the parties not unequal in physical strength, or the one who is assaulted may retreat without further harm, the homicide is not justifiable.

Cases have been read to you that if a man provoke a contest himself, for the sake of obtaining a pretext to carry out the malignant and wicked purpose of his heart, and during it, kill his opponent, it is not excusable, but is murder. I think you readily perceive, however, that this principle is totally inapplicable here. If A pursue B with malice, seeking an opportunity to kill, and provoking a quarrel that he may do so, carries out his purpose, the act is murder. Mr. Gibson read to you yesterday a case of this kind; but here the defendant sought no quarrel,

—no combat—no difficulty—he sought a reconciliation. With what propriety then do the gentlemen attempt to confound in your minds, cases where men are seeking to exercise the malice of a wicked and revengeful heart, with such an one as this ! They have no connection whatever.

It is a well-established principle (Wharton's American Criminal Law, p. 311), that "no words will amount to an assault;" and (do. 313), that "no words will justify an assault." Mr. Ward had made no assault; it is true he applied opprobrious words, but they neither constituted nor justified one. The gentlemen have told you here, and their own witnesses have testified to it, that Mr. Butler was a man of courage, who would not receive such language without giving a blow in return. I do not complain of them for showing that he was a man of spirit; but I do contend that they have no reason to look to the law for any justification of his conduct. He had no right under the circumstances to take redress into his own hands—the principle is laid down in so many words. He was first in fault—he made the first assault—Ward was forced back until he could retreat no further—in the literal language of the law he had "been driven to the wall;" and there, pressed back, and bent down and beaten in the face by his adversary, he shot him.

Now, gentlemen, have I not brought this case, not only within the principles, but within the exact words of the law relating to justifiable homicide? And I have not done it by relying on subtleties and technicalities, but I have proved it on the natural and eternal principles of Self-Defense.

We are told that where there is any other probable mode of escape, without losing life or receiving serious injury, a man is not justifiable in killing. True; but I am not aware that any such possibility existed here. The prisoner was confined, and beaten as you have heard—Campbell was just taking the tongs, to give his assistance if necessary, and Sturgus also was in motion. I will say no more about the extreme debility and feebleness of the accused, for you know it, and can perceive it. You also know—notwithstanding the assumption of the Prosecution—that Butler was a man of more than ordinary muscular power; that he had been for years in the habit of practising, both in the gymnasium and out of it, those exercises that tend as directly to devolve and strengthen the muscles of the arm, as the habitual wielding of the blacksmith's hammer.

The many excellent qualities of the deceased, and his virtuous character, I freely admit—I deplore his death. The ill-fated circumstances that led to it are all before you. That death has been the effect of circumstances—unfortunate circumstances—but without any premeditation or malice on the part of the accused. The same circumstances which

show that his hand inflicted the fatal blow, show, from the nature and suddenness of the occasion, that there was none of that malice or wickedness which alone could make it a crime. His character too pleads like an angel's voice, against such an imputation upon him.

In his state of feebleness or irritation, he may have naturally over-rated the violence and injury with which he was threatened, and the necessity of protecting and defending himself by shooting the deceased.—But surely a man, in such a condition, is not to be sacrificed for a misjudgment of the exact degree of the necessity which warrants him in such a defense.

You will make all just and humane allowances on this subject. You, sitting here in quiet, solemn consideration, must yourselves feel some difficulty in deciding the exact degree of violence with which he was threatened, and the lawful extent of the defense which it justified. How then are you to expect him to decide those questions, in the strife and passion of the moment?

The decision in Tennessee, to which your attention has been called, establishes the principle that if a man, from good reasons, *believes* his life or his person to be in danger, he has the right to kill. He must act upon the instant, or not at all—in the heat of passion and conflict, and when his means for observation are limited. The real question here is, whether Matt. Ward, in his feeble and reduced condition, did not apprehend, and that from good reasons, that he was in danger? If he did, there was no guilt—no criminality, and he deserves an acquittal.

The gentlemen for the Prosecution have spoken of the declarations of Mr. Butler, on his dying bed. Now the inquiries of Dr. Thomson, were made for the purpose of ascertaining a medical fact. He desired to learn what was the position of Butler when he received the shot; and Butler replied to him that they were clinched. The arm of Prof. Butler was raised, and it was then found that the probe followed the wound, at least for a short distance, when before it did not penetrate at all. This demonstrates anatomically, naturally, necessarily, that Butler and Ward must have been engaged in combat when the fatal event occurred. Why was the hand of Butler raised, if he was not engaged in a struggle? This is the legitimate inference from the testimony given by Dr. Thomson.

But Barlow was present at the same time, and while Dr. Thomson was engaged in taking out his instruments and preparing to attend to his professional duties, he, with a curiosity perfectly natural, inquired how this had happened. A man had been shot down, under peculiar circumstances, and it was not strange that Barlow should follow him to Col. Harney's residence, and ask how it had been brought about. But—

ler replied : " He gave me the lie and I struck him for it ; then he shot me." According to this, Butler admitted that he struck the first blow. It is true he was provoked by the language used ; but you have been reminded that neither those nor any other words justify a blow.

But the counsel for the Commonwealth contend that Butler could never have made those statements, simply because Dr. Thomson did not hear them. The Doctor himself, however, has told you that there were five or six persons in the room ; and you can judge for yourselves whether a physician under such circumstances, when his mind was engaged with his professional duties, would be likely to recollect very accurately. Barlow states that he was there ; and he *was* there. He has minutely described the position and clothing of Butler, spoken of the brandy sent for by the physician ; and by relating many other facts trivial in themselves, has demonstrated beyond a doubt, that he was present. The conversation Butler held with him was in answer to a direct question to ascertain the history of the occurrence ; his reply to Dr. Thomson was to state the scientific fact of the position of his hand.

Well, Barlow has been spoken of in strong terms here—he has been terribly denounced, and if any words could justify an assault, the language that has been applied to him would certainly do so. But it cannot ; lawyers as well as other men, have their own peculiar privileges, and I am sure I have no desire to see them diminished. Of the course of the counsel for the Prosecution, I admire the most that of Mr. Gibson. Mr. Carpenter's abuse of this witness seemed to be spontaneous—he rejoiced at an opportunity to exercise the peculiar talent he possesses for that style of argument. But Mr. Gibson tells you that he considers it out of place—that he will not indulge in it—and maintaining that the witness is perfectly annihilated, magnanimously informs us that he will not trample on the dead !

I never saw this Barlow before—but how does he appear to you ? What impression has this man left whom the lawyers—not the law—not the Court—but a few lawyers, have so earnestly attempted to degrade in your estimation—have cast a ban upon, and excommunicated so peremptorily from the society of all good men ? I care very little for his testimony—we had other evidence sufficient to establish the facts he has proved ; but I believe all these attacks to be gratuitous and unjust. He may, in some respects have acted foolishly,—he may have been imprudent, but we have every reason to believe that he is not dishonest. Within half an hour after it occurred, he told Mays and Sullivan of his visit to Col. Harney's and the conversation with Butler ; and soon after this he related the same fact to Mr. and Mrs. Crenshaw. Yet Mr. Carpenter tells you that he fabricated the story because he

was fascinated with the idea of associating in a wealthy and aristocratic family,—because he sought to obtain a view of the interior of the house of Mr. Robert J. Ward. How do they reconcile this with the fact that he then made the same statements which he has made here, to three witnesses of the highest intelligence and respectability? He stands confirmed, as far as a witness can be confirmed; and if any stain has been cast upon him here, it has only been done by the lawyers who have made him the subject of their abuse. He has proved the most unexceptionable character, by the Mayor of Louisville and other gentlemen who are above imputation; in the eye of the law and of his fellow-citizens he is perfectly credible, and so far as any testimony he has given in this case is concerned, he may be relied on by you as safely as any other witness who has testified in it.

These statements of Butler to which Barlow has deposed, accord perfectly with the testimony of Robert Ward. You could expect no details from a man under such circumstances and in such a situation as Butler,—he only gave a general description of the occurrence; but Robert has given you the details. And Prof. Yandell, who was present at the same time, does not tell you, like Dr. Thomson, that Ward came to the school-house, cursed him, struck him, and shot him; but gives quite another account of his statements. He speaks of him raising his hand, as he thought, to indicate that the accused had elevated *his* in a threatening manner; but you all know how common the habit of raising the hand in conversation, is with some men. Dr. Thomson, it seems, heard no word of those statements which were made to Prof. Yandell; and the discrepancy between them is not surprising, for as they were engaged at that moment, the cause of the occurrence was a matter of secondary importance,—not one of peculiar interest to them.

Here, gentlemen, I beg leave to recur for a moment to a circumstance which I must confess has surprised me. It was the general evidence of the school-boys that Ward entered the house with his right hand in his pocket, and gesticulated with the fingers of his left. Is it not wonderful that a fact so immaterial—so little likely to attract attention—as the circumstance that a gentleman had his hand in his pocket, and which of the hands he had there, should be remembered with so much accuracy by so many of these witnesses, so long after its occurrence? But you perceive that it has been made a matter of considerable magnitude here. No doubt Sturgus thought it was important to show that the right hand was on the pistol all the time, as if in a sort of conspiracy with it, to act jointly at precisely the proper moment; and rather than destroy this hypothesis, they would have you believe that if the accused struck a blow, it was with his left hand. Now, you can

readily perceive why they would like to keep the right hand of Matt. Ward on that pistol during the whole time; and I have no doubt that these boys have ever and anon heard the statement made in so many conversations, held for the purpose of assisting their memories, that they are now convinced the hand really was in that position, and that they saw it there.

Again, they contend that Butler struck, if he struck at all, with the left hand, and therefore that the blows could have inflicted no injury. Now, if his right hand had been so long and so utterly crippled, as they have attempted to show, it must certainly have been a non-combatant, and the left hand must have learned, years before, to perform all the offices of the right. Thus their presumption is effectually destroyed.

You have been sitting here, gentlemen, for eight days. Can you tell whether your hands were in your pocket when you came in this morning, or on any other morning? Can you tell the position of the hands of any of the counsel, as they rose up to address you, face to face? As you have been seated at home, in your own house, and visitors have entered, can you recollect the position of their hands? Yet a fact so trivial and unimportant at the time—one which could then be of no possible interest—for no difficulty was apprehended until Butler had collared Ward—is related with this minuteness! I would suppose that not another human being in the form of a man ever entered that school-room, in regard to whom so many boys can recollect distinctly the position of his hands. Whether the hand was in his breeches or his coat pocket is not a matter of so much importance, and therefore not remembered so well! Gentlemen, you must be convinced that the recollection of such a fact, under such circumstances, is utterly impossible.

And he gesticulated, they say, with his left. Why should he not let the right hand do the right hand's work?—why should it be kept on that pistol? The idea is absurd. All the circumstances show that he at first exhibited no difficulty. Who believes this? Who does not know that, however unconscious of it the boys may be, this is the work of a strained imagination, supplying the place of a strained memory?

Sturgis, as you have heard, had administered a whipping to the boy on a former occasion, the facts of which we desired to introduce here, but we were not allowed to do so. Is it not probable that, instigated by his enmity toward the Wards, when he heard of this punishment, he advised Butler to refuse all explanation and investigation? The circumstances of the case—the position of Butler and Ward—their friendly relations—the just and reasonable demand that was

made--all show the refusal to have been inconsistent with his character and his heart. Is it not a rational inference, then, that he may have been prompted by the sinister, subterranean motives of another man, who desired to minister to his own anger and ill feeling? I think it was not like Butler, when he was asked such a question, by a man he knew so well, and esteemed so highly, to button up his coat and answer haughtily: "I am not to be interrogated, sir." But it *was* like Sturgus.

Gentlemen, I am consuming much of your time, but I believe the case is clearly comprehended by you. I think I have made up the facts and made out the law. I think you are satisfied that the pistol was not fired, so far as we can judge, until there was no other way of rescue for the prisoner, from the peril of his life, or of great bodily harm. I think you understand the principle that the law holds all such bloodshed justifiable—though blamable, yet excusable. This, then, is the condition in which the prisoner stands; and upon these plain facts and these great principles, I think I may base my argument.

But there are other points in this case to which I feel it my duty to refer. Notwithstanding the circumstances we have made out, this young man has been persecuted and denounced from the first, as one of the vilest of men, and of murderers. He has been held up to the world as the perpetrator of a deliberate and diabolical outrage—an act of fiendish malignity, for which there was no particle of mitigation. For months and months he has been thus pursued, with misrepresentations and revilings. This version of his case has been spread upon the wings of the wind, through the columns of the press. Now, it matters not in effect whether these publications were made from the basest of motives, or in all sincerity and truth, by those who were deceived by his persecutors—they *were* made. These rumors have gone abroad, anticipating the result of this trial; but you see how little his real case is like the one that has been represented to the world.

His only refuge is in your verdict. Through all this persecution and these revilings he has passed; now, thank God, he waits the decision of your calm judgment. I said his persecution was over; but through those associated in the prosecution of this case with my friend, Mr. Allen, it all seems to have been concentrated here. The first of them, Mr. Carpenter, was eloquent in denunciation of the prisoner. What necessity was there for this? It is his duty to convict, upon the law and the testimony; but what right has he to turn from you to the accused, and assure him if you do not feel warranted by the facts of the case in finding him guilty, he will be pursued, through all time, by some horrible monster the speaker's own imagination has conjured up! What unsoli-

cited and perfect insolence to prosecute a man, and in case the prosecution cannot be sustained, to threaten him with a fate as cruel as any verdict you can bring. Is this practising law according to its spirit? Is it necessary, when a prisoner is in the custody of the law, his hands and his tongue tied, for a prosecutor to feed his little vengeance in such a manner as this? Sir, it is intolerable—it was never equalled!

Let us come to a later instance, from our brother and our friend, Mr. Gibson. Was such language ever heard before? Should a man when on trial for his life be denounced as a damned villain, and his act as a damnable crime? Is not this a singular, an improper course to pursue towards an unfortunate prisoner? Is it not alike cruel to him and disrespectful to the jury? Your duty, gentlemen, is too responsible to suffer you to think of the subject in such terms. There is no congruity between your solemn thoughts, and such language as this; and I have no fears that you will allow it to influence them.

My friend, Mr. Gibson, is a man of great impulses, and when not excited, of generous impulses. In an early stage of his argument he tells you, more in accordance with the facts, more in accordance with the love of justice existing in his own manly heart, that he believes the accused sought the school-house of Prof. Butler without an intention to do violence. But afterwards, when his feelings are more excited, when his impulses are brought up to the prosecuting point, he declared in tones that vibrated through this court room, his belief that he went there to play the part of an Italian assassin. Is not this a little inconsistent? At one time he tells you he shall be glad to see it done, if you can find any satisfactory grounds for his acquittal; and again, that if you do acquit him, he shall believe all the tales he has ever heard, that justice has fled from the borders of old Kentucky. Furthermore, he would have the bereaved mother train the child of the deceased, to follow the track of this prisoner, like a bloodhound, and never rest until his hands were red with his blood!

What, would he have that mother, with her heart softened by premature sorrows, instil into the tender mind of the child such horrible instincts as these? Did he really mean this? I am sure he did not; and I only allude to the fact to show with what fierceness and ardor this prosecution has been pursued. It has been carried on with a precipitancy and passion, that would not even allow its conductors to keep within the bounds of propriety or consistency.

I now remember another of those flights of Mr. Carpenter, to which, as it involves something more than mere words, I would call your attention. Not satisfied with urging you to do it, in pursuance of what he deems your duty to yourselves and to society, the gentleman asks you

to convict this man that it may be an event of joyful remembrance to you when you appear before your MAKER. He assures you it will be a great solace and consolation to recollect, that when a fellow man was brought before you and his fate consigned to your hands, you convicted him.

He would have you tell the JUDGE of quick and dead, when you stand at His tribunal, how manfully you performed your duty, by sending your fellow man to the gallows! He apprehends that it will go a great way to insure your acquittal there and your entrance to the regions of eternal bliss, if you are able to state that you regarded no extenuating plea—took no cognizance of the passions and infirmities of our common nature—showed no mercy, but sternly pronounced his irrevocable doom. I understand that it would be more likely to send you in a contrary direction. I understand that a lack of all compassion during life will hardly be a recommendation there. I understand that your own plea will then be for mercy; none, we are taught, can find salvation without it—none can be saved on their merits. But according to Mr. Carpenter's idea, you are to rely there—not upon that mercy for which we all hope, but on your own merits in convicting Matt. Ward! Don't you think the gentleman rather failed in the argumentative portion of his point? It seems to me he would have done better to take you somewhere else for trial.

I have somewhere heard or read a story from one of those transcendental German writers, which tells us that when the ALMIGHTY designed to create man, the various angels of his attributes came in their order before Him and spoke of his purpose. Truth said: "Create him not, Father. He will deny the right—deny his obligations to Thee—and deny the sacred and inviolate truth—therefore create him not." Justice said: "Create him not, Father. He will fill the world with injustice and wrong—he will desecrate Thy holy temple—do deeds of violence and of blood, and in the very first generation he will wantonly slay his brother—therefore create him not." But gentle Mercy knelt by the throne and whispered: "Create him, Father. I will be with him in all his wanderings—I will follow his wayward steps—and by the lessons he shall learn from the experience of his own errors, I will bring him back to Thee." "And thus," concludes the writer, "learn, oh man, mercy to thy fellow man, if thou wouldst bring him back to thee and to God."

Gentlemen, these lawyers have endeavored to induce you to believe that it is a duty you owe even to Mercy herself to convict this prisoner. That you have nothing to do with mercy—that there is a Governor somewhere, a good, kind-hearted man, who may exercise it if he chooses—but that you have no right to show mercy. And pray, what are you? Yes-

terday you were but men—just men, kind men, and merciful men. To-morrow, when you have left this jury-box, you will be the same again; but according to the ideas that have been advanced, you must divest yourself of this attribute when you enter here, and become men of stone—mere mathematical jurors, with no more feelings and sympathies than if you were marble statues. Is this the right of trial by jury? Is this the principle our fathers contended for, fought for, died for? If it be, I can only say, it is not worth the struggles that have been made for it.

It is a merciful law, gentlemen, you are called upon to administer. I desire to see you do your duty. I desire that the law should be obeyed and enforced; but in the matter of the facts you have the exclusive right to judge. I agree with the gentlemen, that you have no right to show mercy where the facts will not warrant it; but it is your duty alone to consider these facts, put them together, and upon them found your verdict. In examining these facts, may not one judge of them more kindly, and hence ascribe better motives than another? The consideration of the facts and the causes that produced them, is the proper place for mercy to be applied. The law says the murderer shall be punished; but it is your province to ascertain what constitutes the murderer.

You have a solemn duty to perform, and I want you to perform it. I want you to perform it like men—like honest men. I ask your sober judgment on the case, but it is right for that judgment to be tempered with mercy. It is according to the principles of law, one of whose maxims tells you it were better for one hundred guilty men to escape than for an innocent one to be punished. Is not here your commission for mercy? It is alike your honest minds and your warm hearts that constitute you the glorious tribunal you are—that make this jury of peers one of the noblest institutions of our country and our age. But the gentlemen would make you a set of legal logicians—calculators, who are to come to your conclusion by the same steps a shop-keeper takes to ascertain the quantity of coffee he has sold by the pound. That may be a jury in name, but it is in nothing else.

But I wish to call your attention to another fact that figures in this case. Mr. Carpenter, with more adroitness than Mr. Gibson, but with less scrupulousness, has attempted to create a prejudice against this prisoner, by speaking of his family as aristocratic—as believing themselves better than ordinary mortals. I suppose I feel no personal offense at this, for I have always belonged to that class usually called poor men. But in this country, no man can be above a freeman, and we are truthfully told that “poor and content is rich enough.”

Do you not see the object of all this, when the gentleman speaks, in his peculiar tone, of “Ward House,” and tells you that “a Ward had

insulted—a Ward had been whipped, and therefore the stain must be wiped out with blood?" Do you not detect the low, unjust, un-republican attempt to create a prejudice against this prisoner? What right have they to do this? The charge is personally an outrage upon him—the assumption is false. And we all know that before our laws, every man, whether he come from the cabin or parlor—whether he be rich or poor—holds the same position, has the same rights and the same liabilities with all other men. Why then attempt to excite this low, vulgar feeling towards Mr. Ward?—why seek thus to prejudice your minds against him and his? I am sure that if the gentleman expected any response to such low, envious sentiments, in your hearts, he made a grave mistake. There may be those who hate all men they are unable to imitate; but you, I presume, are willing to see all your countrymen enjoy any position they have honorably obtained, in whatever manner they please.

In conclusion, gentlemen, I beg leave to call your attention to an important consideration, bearing on the whole case, and affording a key, I think, to the heart of this young man. I allude to his general character and disposition through life. I need not recall your attention to what we have shown it; it is all perfect in your recollection. I have no occasion to exaggerate; he has shown, in the clearest and most conclusive manner, a character of which you or I, or any man living, might be proud. As in boyhood, so in manhood. His riper years only exhibited to the world the amiable, and lovely, and genial traits of the boy, more illustriously developed in the man.

I am one of those who believe in blood, and in consistency of character. Show me a man that for twenty or thirty years has been kind and honest and faithful in all the relations of life, and it will require a great deal of evidence to induce me to believe him guilty in any instance of a gross and outrageous wrong. You have seen the character of this man, from his earliest boyhood—so kind, so gentle, so amiable—ever the same, at school and at college, in the city or in the country, among friends or strangers, at home or in foreign lands. There was no affected superiority. You see how many mechanics and artisans have been his constant associates and friends. With health impaired, and with literary habits—never seen in drinking saloons or gaming houses—his associations with men of all classes—he has ever been the same mild, frank and unoffending gentleman, respecting the rights of others and only maintaining his own. This is the man you are called upon to convict. His act was an unfortunate one, but it was one he was compelled to do. And though he has been misrepresented and reviled and wronged, I trust it will be your happy privilege by a verdict of acquittal, to vindicate his character

in the eyes of all good men, and restore him to that family whose peace, happiness and honor are at stake on your verdict. Your decision must cover them with sorrow and shame, or restore them to happiness that shall send up to Heaven, on your behalf, the warmest gratitude of full and overflowing hearts.

Gentlemen, my task is done; the decision of this case—the fate of this prisoner, is in your hands. Guilty or innocent—life or death—whether the captive shall joyfully go free, or be consigned to a disgraceful and ignominious death—all depend on a few words from you. Is there any thing in this world more like Omnipotence—more like the power of the ETERNAL, than that you now possess?

Yes, you are to decide; and as I leave the case with you, I implore you to consider it well and mercifully before you pronounce a verdict of guilty—a verdict which is to cut asunder all the tender cords that bind heart to heart, and to consign this young man, in the flower of his days and in the midst of his hopes, to shame and to death. Such a verdict must often come up in your recollections—must live for ever in your minds.

And in after days, when the wild voice of clamor that now fills the air, is hushed—when memory shall review this busy scene, should her accusing voice tell you you have dealt hardly with a brother's life,—that you have sent him to death, when you have a doubt, whether it is not your duty to restore him to life—O, what a moment that must be—how like a cancer, will that remembrance prey upon your hearts!

But if, on the other hand, having rendered a contrary verdict, you feel that there should have been a conviction,—*that* sentiment will be easily satisfied; you will say: “If I erred, it was on the side of mercy; thank God, I incurred no hazard by condemning a man I thought innocent.” How different the memory from that which may come in any calm moment, by day or by night, knocking at the door of your hearts, and reminding you that in a case where you were doubtful, by your verdict you sent an innocent man to disgrace and to death.

Oh, gentlemen, pronounce no such, I beseech you, but on the most certain, clear and solid grounds. If you err, for your own sake, as well as his, keep on the side of humanity, and save him from so dishonorable a fate—preserve yourselves from so bitter a memory. It will not do then, to plead to your consciences any subtle technicalities and nice logic—such cunning of the mind will never satisfy the heart of an honest man. The case must be one that speaks for itself—that requires no reasoning—that without argument appeals to the understanding and strikes conviction into the very heart. Unless it does this, you abuse yourselves—abuse your own consciences, and irrevocably wrong your

fellow man by pronouncing him guilty. It is life—it is blood with which you are to deal ; and beware that you peril not your own peace.

I am no advocate, gentlemen, of any criminal licentiousness—I desire that society may be protected, that the laws of my country may be obeyed or enforced. Any other state of things, I should deplore ; but I have examined this case, I think, carefully and calmly ; I see much to regret—much that I wish had never happened—but I see no evil intentions and motives—no wicked malignity, and therefore, no murder—no felony.

There is another consideration of which we should not be unmindful. We are all conscious of the infirmities of our nature—we are all subject to them. The law makes an allowance for such infirmities. The AUTHOR of our being has been pleased to fashion us out of great and mighty elements, which make us but a little lower than the angels ; but he has mingled in our composition weakness and passions. Will He punish us for frailties which nature has stamped upon us, or for their necessary results ? The distinction between these, and acts that proceed from a wicked and malignant heart, is founded on eternal justice ; and in the words of the Psalmist, “ He knoweth our frame—he remembereth that we are dust.” Shall not the rule He has established, be good enough for us to judge by ?

Gentlemen, the case is closed. Again I ask you to consider it well, before you pronounce a verdict which shall consign this prisoner to a grave of ignominy and dishonor. These are no idle words you have heard so often. This is your fellow citizen—a youth of promise—the rose of his family—the possessor of all kind and virtuous and manly qualities. It is the blood of a Kentuckian you are called upon to shed. The blood that flows in his veins, has come down from those noble pioneers who laid the foundations for the greatness and glory of our State—it is the blood of a race who have never spared it, when demanded by their country’s cause. It is his fate you are to decide. I excite no poor, unmanly sympathy—I appeal to no low, grovelling spirit. He is a man—you are men—and I only want that sympathy which man can give to man.

I will not detain you longer. But you know, and it is right you should, the terrible suspense in which some of these hearts must beat, during your absence. It is proper for you to consider this, for in such a case, all the feelings of the mind and heart, should sit in council together. Your duty is yet to be done ; perform it as you are ready to answer for it, here and hereafter. Perform it calmly and dispassionately, remembering that vengeance can give no satisfaction to any human being. But if you exercise it in this case, it will spread black

midnight and despair over many aching hearts. May the God of all mercy be with you in your deliberations, assist you in the performance of your duty, and teach you to judge your fellow-being as you hope to be judged hereafter.

Another word, gentlemen, and I have done. My services in this case were volunteered. I had hardly expected that so unimportant a fact could excite attention or subject me to reproach. What, shall all the friends of this young man be driven from him at such an hour? I had known him from his boyhood—I had known his family from mine. And if, in the recollections of the past—in the memory of our early intercourse—in the ties that bound us together, I thought there was sufficient cause to render it proper, whose business is it? Whom does it concern, but my client and myself? I *am* a volunteer—I offered my services—they were accepted, and I have given them in this feeble way.

I thank you kindly for your attention, during my long and uninteresting discourse. I only ask that you will examine this case carefully and impartially, for in your justice and your understanding, I have deep and abiding confidence.

The conclusion of Mr. Crittenden's argument elicited lively applause from the listeners with which the room was crowded. It was promptly checked, however, by the Court, with the request that no such demonstrations should be repeated.

Court took a noon recess.

AFTERNOON SESSION.

The closing argument in the case was now delivered by Alfred Allen, Esq., the Commonwealth Attorney.

SPEECH OF MR. ALLEN.

GENTLEMEN OF THE JURY: In consequence of the severe indisposition under which I have labored during the whole progress of this trial, I shall be unable to address you as long as the counsel who have been before me. But, indeed, were my condition otherwise, I should not deem it necessary. I believe that one third of the time some of them have occupied, will be quite sufficient to make out my case. All the grounds have been gone over so many times—every point has been so thoroughly canvassed, that to do it again would be like a thrice told tale. And, indeed, from the careful attention you have evinced, I am

induced to believe that you know more of the testimony which has been elicited, than any lawyer who is engaged in the case.

It would seem unnecessary for me to remind you that my position is a very embarrassing one. I appear before you, when we are both much exhausted by ten days' attendance in this confined and crowded Court room. I follow one of the ablest speakers in Kentucky, and, indeed, in the whole Union, after he has made one of the greatest speeches of his whole life—perhaps *the* greatest; for I am unable to comprehend how any man could make two such speeches in the course of an ordinary lifetime.

Yet, gentlemen, even under these circumstances, I do not feel compelled to ask your attention. My experience in criminal trials perhaps, has been considerably extended for a man of my age; but I can honestly say that I have never seen a jury in any case manifest such patient attention, and exhibit so little levity and carelessness as you have done. It indicates to my mind that you appreciate fully the position both of the State and the prisoner at the bar; and that while you receive so readily the great lights which have shone upon the case, you will not reject the feeble glimmer of the one that is yet to come, and which to the best of my ability, shall only be thrown upon the law and the testimony.

It may be necessary before entering into a consideration of the case, for me to make a few personal remarks. The event which it is our duty to investigate, has caused great excitement, not only in every part of our broad Commonwealth, but through this whole Union of States. Men are every where looking anxiously forward to the result of this trial, and there is not a little speculation as to the verdict you shall render.

There has been some speculation also, as to the course I would be likely to pursue. Some have thought from a fancied enmity to this accused, that I should consider it my duty to hunt him down with the ferocity of a bloodhound; and others have believed from a fancied friendship, that I would neglect the solemn obligations my position imposes upon me. Neither of these is the case. My acquaintance with him extends only to some half dozen of the ordinary salutations of courtesy. But were he the bitterest enemy I had in the world, if I were prosecuting him—which I do not believe I could then be induced to do—I should certainly endeavor only to do him justice—simply to perform my duty. And were he my best and warmest friend, I trust I would not shrink from that duty, even though it compelled me to tread rudely on the dearest affections of my heart.

My position is different from that of any of the other counsel. I

am here as the instrument of no man's purposes ; but I am the agent of the Commonwealth, and I shall endeavor to go just as far and no farther, than the law and the testimony will warrant.

It has always been my custom, before proceeding to the argument of a case, to endeavor to clothe the prisoner, in the eye of the jury with that protection which is guaranteed to all men, by the mild and benignant spirit of our laws. It is the duty of the Commonwealth to take upon herself the whole burden of establishing his guilt, and it is your duty, gentlemen, to construe all reasonable doubts in his favor. You have heard this principle laid down in the vague and general terms of "*all doubts*;" but had the gentlemen read a little further from the old Irish authority he quoted, in the very next sentence he would have found it qualified so as to read "*all reasonable doubts*."

It is impossible that juries should act on positive certainties. All information you can obtain in regard to the commission of any crime, upon which you are to decide, must be from those who witnessed it; and if one hundred men will swear positively to the same fact you must even then have some doubt. It is true, you may believe it, and will then have good reason to do so; but the very term belief always implies doubt; knowledge—that no doubt exists. But, if in this case or in any other case, we prove the facts claimed, by good and competent witnesses, it is your duty to convict, even though some doubt may exist, for it cannot come within the bounds of a reasonable doubt.

I once argued, gentlemen in this court room, on a different occasion, that where a killing has been committed by a prisoner, the presumption of his malice by the law is so strong that upon this fact alone it is the duty of the jury to convict, unless the malice be clearly disproved by the testimony. It is true that the position was overruled; and I submitted to it, as I shall ever cordially accede to any decision of this Court; for I believe there sits upon that bench a better lawyer not only than myself, but than any of those who appear as counsel in this case. Yet I do contend, and I am fully sustained in it, that in cases where a killing is proved or admitted, it requires more evidence to rebut this presumption of the law, of the malice of the accused, than it would have done, to prove the actual fact of the killing, itself, when it was not known.

In examining this case, I will be compelled to review the positions of the gentlemen who have spoken for the Defense, and to do it from meagre and hasty notes taken during their arguments. I trust you will bear with me therefore, if I do it with but little order, and pardon me if I occasionally jump with a good deal of precipitancy from one point to another.

The first great bugbear that has shocked the nerves of the lawyers

for the Defense, seems to be the publications of the newspaper press in regard to this case. They tell you that the most extraordinary efforts have been made through this source, to inflame and excite the public mind against the prisoner at the bar. Now it would only be necessary for me to contradict this assumption, for there is not a single word of it in proof; and all the reason you have to believe it is from their statements alone, to which my denial would be a fair offset. But as the gentlemen have complained so bitterly of publications against this accused, I would ask if there have not been two parties—if there have not been publications equally strong in his favor? What has been the course of the *Louisville Journal*, of the *New York Herald*, and even of the *Register*, which is published here in your midst? Shall I say that the publications in those journals have tended to excite the public mind in his favor or defeat the ends of justice by causing an improper sympathy on his behalf? I certainly do not; though I think I might, with the same propriety with which they have contended, that a contrary effect has been produced by the papers pursuing a different course. And the gentlemen have signally failed in making their point, as the history of the trial has shown. I have never seen a jury found so easily, to try any murder case. And though they speak to you of the influence of letters now being published, written from this place, and of a character tending to influence the public mind, you have nothing whatever to do with the fact. Gentlemen, the public are not trying this case; but no man engaged in it has made more efforts than myself to keep such publications out of your reach and to preserve you from all external and illegitimate influences.— And you certainly could not now have known of the appearance of any such letters, had not the fact been injudiciously alluded to by the gentlemen themselves.

Mr. Marshall represents it to you as an outrage and an insult of the grossest nature, that a brother of this accused had been called a liar, in the presence of the school, by the teacher who possessed the right to exercise all needful authority over him, and who stood, for the time, *in loco parentis*. And yet, notwithstanding what he deems the enormity of this conduct even from the teacher to the child, the prisoner at the bar, in the presence of the very same school, denounced a man—one over whom he had no authority, but who was his equal—in the more aggravated terms of “a d—d liar and a d—d scoundrel.” Are you able to comprehend how the language used by the teacher was so deep an outrage, while that applied to him was so perfectly proper, gentlemanly and honorable as they contend?

They have admitted the pure and spotless character of Prof. Butler. They have acknowledged that he was a good man—a just man—a pious

man—and do you believe that he ever brought such a charge against his pupil unless he believed it to be true? And if with the honest conviction of his heart, that he was only uttering the simple truth, he made the statement, was it a sufficient justification for seeking him, insulting him, and then taking his life? If it were, I am at a loss to know what will not hereafter be a sufficient excuse in the State of Kentucky for shedding human blood.

You have been told that the boy was unjustly and severely whipped. There is not a word of proof that such was the case, before you. When some statements were made tending to show it, we desired to go into the whole cause and the nature of the punishment; but we were not allowed to do so, and the Court ruled out all the testimony they offered in regard to it. Yet they thus succeeded in getting the statement before you, though it could not be evidence, and this was in perfect consistency with the course they have steadily pursued from the beginning of the case to the present time.

The gentleman says we have charged wealth, position and influence, upon Mr. Robert J. Ward, for the purpose of exciting an unjust prejudice and a fiendish malignity against the prisoner. Now I am not competent to judge of the motives of the gentlemen who are associated with me in the case, but I presume they are actuated by the same motives that influence me. I presume that they speak of the wealth, social position and family influence of Mr. Ward—all of which have been honorably acquired—to show you that by these means, which have given them such an imposing array of counsel, enabled them to enlist the services of fifteen or twenty of the most able lawyers, the very pick of the Kentucky bar—to bring witnesses from every section of the country—and to neglect no proper and legitimate means that could be brought to their aid—the prisoner has been enabled to present his cause to you in the most favorable light.

I feel sure that I shall not intentionally utter a word to injure the feelings of the accused; and should I do it inadvertently in the heat of debate, I now apologize for it. The feelings of a prisoner I always respect, and I would scorn to say one word to a fettered man, that I would not utter in his presence were he unbound, and free as air. I will therefore strive to use no unfair words—none that are harsher than my duty compels me to use. I may be forced to say some things that are unpleasant and distasteful to him, yet I will at least attempt to do it decorously.

But, speaking of Mr. Marshall, the fun of his speech, if I may use the term, is in the law he has laid down for your consideration. He tells you—I will repeat it, to show you how differently a sentence

sounds from the lips of an orator and from the mouth of a plain man like myself—that “a man has a right to shoot a “feller,” if a “feller” tries to whip him.” Another principle he contends for is, that if, in conflict, a man be driven back to the wall or some other obstacle, he may strike, stab, or shoot, or kill his adversary in any way—no matter who begun the conflict, or gave the provocation. In what authority he finds these original principles laid down, I am at a loss to know; I suppose, however, they are a part of that glorious, unwritten Kentucky law, to which allusion has been made in this case—that law which has never been contaminated by coming in contact with the printer’s ink!

They say this is the law of reason; but you are aware how essentially man’s ideas of reason differ. No, gentlemen; you are sworn to try this case and to form your verdict, according to the written laws of your country, expounded by this Court and applied to the testimony by your own understanding.

Examine for a moment the proposition that I have alluded to. You, Mr. Young, are, I believe, the largest and strongest man in this jury box. Now suppose I seek to provoke you—insult you—perhaps throw the lie in your teeth. You are a more powerful man than I am—you do not wish to harm me—but take me in your grasp, and run me back against the wall. If I then take your life, will your conduct screen me? The idea is perfectly absurd—I need not dwell on it further.

Governor Helm sets out with the proposition that a man with as good character as the defendant, cannot have had the wicked and depraved heart that is necessary to the commission of a murder. I wish to argue this case with fairness and candor; and I admit freely that I never in my life heard a better character proved, and I never expect to. But the human heart—who can know it? We are told by the volume of inspiration that it is “deceitful above all things and desperately wicked.” And however good the character of this accused may be, that fact alone cannot overbalance the clear and conclusive testimony of the case. Character is only to be taken into consideration, for the benefit of a prisoner, in doubtful cases, where the mind of the juror is otherwise left in uncertainty by conflicting or imperfect testimony.

One of my associates has alluded to the great case of Webster. When on trial he proved a good character—nearly as good as that shown by the prisoner at the bar. He proved it by ministers of the gospel as well as ministers of the law—and by men of almost every calling and position in life. Yet he was convicted; and before his execution he fully confessed, not only that he committed the murder to escape the payment of a small sum of money, but that after he had done the deed, he deliberately cut in pieces the body of his victim, and burned it!

But they ask: "Where was the indication of any malice on the part of this accused—why did he go to the school-house of Prof. Butler?" He went, gentlemen, in accordance with a principle, which, it is to be regretted, is not confined to him or his family, but is fearfully gaining ground among the young men in Kentucky. It is a doctrine that has caused more widows and orphans in the land than any other—a doctrine which, if you look at a man in a way he does not like, authorizes him to shoot you down—if you speak to a lady acquaintance in a manner he deems too familiar—or if you inadvertently tread upon his toe in the theatre—compels you to make the most abject apology, or to atone for the act with your blood.

It is called the Code of Honor; and the worst feature of this bloody code is, that it constitutes every man the judge and avenger of his own wrongs. It was this principle that actuated the accused—this motive that caused the awful deed. It was this that induced him, when, as he thought, a member of his family had been insulted, to go and disgrace the teacher, or take his own redress. And, as I have already shown, the insult was only a fancied one; it is the duty of the teacher, when the boy is guilty of any crime, to punish him for it and inform him of it. It is just as necessary for boys to be punished when they do wrong, as for men, when *they* do.

Mr. Wolfe has spoken upon this subject, and has told you that he enjoins it upon teachers not to whip his children. Now if I may be permitted to speak of a matter that does not concern me, I must say that I think by such a course he does both his children and their instructor a wrong. Wholesome discipline is necessary and proper for the young; it is right that it should always be exercised. The gentleman has alluded to me in very flattering terms; he has spoken of me as a good man—a fair man—a just man. I hope I may live long to enjoy the character he has ascribed to me; but I must tell him that if I deserve any portion of it, I attribute it mostly to the fact of the many pretty severe floggings I received when I was a schoolboy! (Laughter.)

Notwithstanding all that has been said to the contrary, I maintain that Matt. Ward had no right to interfere in the matter between the teacher and the boy, after his father had returned home. The parent's authority in such cases cannot be delegated; and even if it could, how did Butler know that the prisoner was clothed with any such authority? Had he his commission in his pocket? No; it was the duty of the father, if any one, to investigate the matter. Had he done it, his cooler blood would never have led him to such a deed, and these fearful scenes would never have been brought before you. But the prisoner insisted

that he was a young man, and therefore *he* was the proper person to obtain redress.

"But," says Governor Helm, "he took the smallest pistol in the whole store—a mere pop-gun—therefore he could not have intended to take life." But you must remember that the size of the weapon only rendered it the more easily concealed—that it was a self-cocking pistol—perfectly adapted to a close fight. And Mr. Gillmore who sold it, informs you that this "pop gun," as the gentleman calls it, would send a ball through an inch plank! Does this, or does the result which it produced in the fatal occurrence, indicate that it was not a deadly weapon? He wished to conceal it; he was not a braggadocio—he did not go through the streets of Louisville, flourishing weapons about—but he procured one, and quietly concealed it until the time when he thought it necessary for him to use it. He made no attempt to frighten Sturgus, or the boys, with it—the purpose for which they would have you believe he procured it—and I maintain we have a right to infer that he chose it as exactly the weapon to be used in a close encounter, if Butler should overpower him.

You are told by Mr. Wolfe—and I dislike to differ from him—that never, in the course of his life, has he seen such conduct as that manifested by my associates. Now, if there has been any thing unfair or unusual in their course, I have not seen it; but this, gentlemen, is a matter for you to settle. And it is also a question for you to decide, whether you will perform your duty by considering simply the facts that are before you, or suffer your attention to be diverted from them to an outside issue, by such invectives as these.

Again: he tells you that my associates are not actuated by any patriotic motives; but that the shekels of silver are even now rattling in their pockets. And what, I would ask, brought all these lawyers for the Defense here? Are we to infer that no clink of the coin is to be heard from *their* pockets—that they are not brought here by a fee? I had thought that a lawyer might take a fee to prosecute a case, and yet be an honorable man. As evidence that honorable men *have* done it, I may cite my friends, Mr. Wolfe and Gov. Helm, who have both been in precisely the same position now occupied by my associates. A majority of the members of the bar consider it right to accept a fee whenever it is tendered to them, and to do the best they can for the side of the case on which they are engaged, in accordance with the law and the testimony.

And if no assistance had been obtained, what would have been the case here? Would you have a man of common intellect, feeble, worn down, physically unfit to appear in a Court-room at all—stand up, and

contend against fifteen of the most distinguished lawyers of our State—the choice of the whole Kentucky bar? Would such odds have been calculated to promote the ends of justice? On our side, we have no distinguished names, but I believe we have only gentlemen, and gentlemen who have conducted the case fairly. Whether they have done so or not, is the only inquiry—if they have, they have done their duty. All the lawyers in the case, except Governor Crittenden and myself, are retained, and are to be paid for their services.

They say, gentlemen, that the right of self-defense is a sacred one—that it has been conferred upon us by our nature and our CREATOR, and cannot be taken away by human legislation. I cordially agree with them, that the right is a high—a holy—an inestimable one. I believe that all should enjoy it and be protected in it. But you should be very careful not to permit men, under the color of self-defense, to commit an outrage—to take measures that must call out an attack—and then, to kill their adversary. I regard this right as highly as any man who has lauded it in your presence; but gentlemen, as you hold it dear—as you would preserve it sacred and inviolate—beware that you do not suffer it to be trifled with.

Mr. Wolfe puts a strong case to you. He asks, if a man has slandered your family, in a peculiar and most aggravated manner, if you have not a right under the laws of this land, to go to him, and revile him and curse him; and then, if he attempts to chastise you for it, to shoot him? I promptly answer, No. If he slander you, the law gives you your remedy, by an action for slander, and does not authorize you to become the judge of your own wrongs. If he slander your family, the same is still true. The law recognizes no right to exercise violence on the part of the citizen, except in case of self-defense.

Shall a man be permitted to go, in such a case—and with no impartial investigation—without even inquiring the particulars—provoke the man he believes has wronged him, to an assault, and then coolly shoot him down? If you have a right to do it under such circumstances, you may carry the principle out, and in the same manner take the life of the fellow you detect in robbing your water-melon patch, or the man you fancy looks awry at you in a public assembly. It will not do, gentlemen; this “unwritten law” cannot be made practical—it is incompatible with the government of a people—with peace and security for human life.

Under this sort of law, Mr. Wolfe has quoted several cases—unreported cases—those cases that have never been spoiled by being recorded in books! I have no other knowledge of them; but from the known honor and integrity of the gentleman, I have no doubt he has stated

them correctly. And I can only say, that if, under such circumstances, juries brought in verdicts of acquittal—they were contrary to law; in direct violation of their oaths, and tending to increase bloodshed and murder throughout the land. This is evident from the simple fact that, as I believe, Mr. Wolfe himself was the Prosecutor in nearly or quite all those cases; and if the prisoners had not been guilty as charged in the indictment, do you not believe that he would have performed his official duty, and entered a *nolle prosequi* at once? And if a jury up in Jefferson, or in some other part of the State, violated their obligations and responsibilities—proved recreant to their oaths and the laws of the land—is that any good reason why you should do the same?

But they make a great onslaught upon these boys. They all gravely assure you that they have no intention or desire of impeaching them—and then go on to say that they must have received false impressions from Mr. Sturgus. What evidence is there of this? Sturgus is not in the case—he has not appeared here? How do you even know that he testified before the Examining Court? There is no testimony to show it. How do you know he is a bad man? I never heard a word against him—I never heard his character impugned—yet they would have you believe him a man who has deliberately corrupted and poisoned the youth committed to his charge. They speak of him as a bloodhound—one who has vindictively pursued this prisoner. I do not know him personally, but it seems to me from their own testimony he must be as tame a man as I ever saw—hardly likely to pursue any one to the death. According to the best of my knowledge, were you to see him, you would look on no such dreadful monster as you have been led to believe. But you would see a young, mild-looking man, about thirty-five years of age, and from his physical condition, evidently bearing a quiet and easy conscience. Had Robert been put on trial, he would have been called; we had no such fear to produce him on the stand, as they have represented; but you can readily perceive from the testimony before you, that he knew nothing of the acts of this accused.

Governor Crittenden tells you he believes in blood. So do I; and I know these young men—I know their antecedents and their ancestry,—I know they are of all grades in life; but many of their fathers hold high places, and are not only distinguished for rare abilities, but for possessing all the social and manly virtues. Do you believe the children of such parents have come here to perjure themselves? Though the gentlemen admit their universal good character, they stab that character a moment after, by stating that they consider them boys who can be taught to believe and testify to what is false.

There has been an attack made upon Quigley, or rather a disagree-

ment between the counsel as to the nature of his testimony. Since this has occurred, I have referred to my own notes—taken as the testimony was given, for me to argue the case upon, and therefore with no reason to misrepresent—and according to them, the gentlemen are both partly right and partly wrong. According to Robert Ward, Butler pressed the accused back, eight or ten feet, against the wall and door. But Quigley says he pressed him against the ceiling or the door, adding, “the door, I suppose;” and that the distance was not more than one or two steps. This statement shows that neither of the gentlemen understood him perfectly; the distance between the two doors—and it is very evident that they allude to different doors—is about eight feet; and thus Quigley comes within just eight feet of sustaining Robert Ward. He speaks of the prisoner being pushed back and bent over, but he does not tell you that he was rendered unable to retreat by any obstacle whatever.

The gentlemen do not seem to understand the position in which Robert Ward appears here. They have had a great deal to say about attacks made on him by the Prosecution; but he has not been assailed. No gratuitous attack has been made on him; but he was brought here for the purpose of assailing our witnesses—to discredit these thirteen school-boys—and we have only defended them. And taking all the circumstances, gentlemen, do you feel justified, when he is contradicted by so many witnesses, in receiving his statements in preference to theirs? It is a matter for you to decide, and has an important bearing on the case. You know how he stands here—that if his brother is acquitted, it will be the duty of the Prosecutor to enter a *nolle prosequi* in his case at once. He is testifying for himself as well as for a beloved brother, and for the honor of his family, and has he no reason to be discredited? I ask you, gentlemen, which testimony will you take—his, or young Quigley’s, when they are so contradictory? I ask you, what must be, in view of all the circumstances, your inference as to the character of Robert Ward’s testimony? I ask this with no desire to injure the feelings of any one—I apply no epithets—but I appeal to your candor and your reason.

Mr. CRITTENDEN.—Will the gentleman permit me to say a word?

Mr. ALLEN.—With pleasure.

Mr. CRITTENDEN.—I have full confidence in the fairness of Mr. Allen; but I think I have a perfect recollection of the testimony of Quigley. On the original examination he spoke of defendant as pressed back to the wall or door, and it is my impression that he said the distance was about eight feet. I would not have interrupted the gentleman in his remarks, but this is the closing argument, and we have no opportunity

to reply; and I presume my friend concurs with me in the desire that the jury may have the testimony detailed to them precisely as it was given.

Mr. ALLEN.—Certainly. I have no recollection of any such language from Quigley as Gov. Crittenden has alluded to, but of this, gentlemen, you are to judge. But they have contended that the testimony of Knight cannot be truthful. They charge him—not openly, but by implication—with corruption and perjury, because at first he related the whole conversation between Butler and Ward, but when questioned on the subject, promptly admitted that he had heard the greater portion of it from the boys, afterwards. Well, what does this show? Merely that in the simplicity of a boy's heart he supposed he was to give you all the information he had in regard to the matter, from whatever sources it had been derived. He did not know the rule in regard to testifying in Courts of justice, and therefore stated that which the boys had told him; but when he learned his error, he immediately took it all back. Had he been a perjured witness, think you he would have exhibited this candor? Would he not, on the contrary, have clung with persevering tenacity to his first statements? Do you believe he is corrupt?

Mr. CRITTENDEN.—If I may be permitted to explain again, I would say—as I thought I had already done with sufficient clearness—that we impute no dishonesty, no perjury, no corruption to these boys. We only believe that they have been misled.

Mr. ALLEN.—Well, then, they are not corrupt, but simple, and——

Mr. CRITTENDEN.—No, no—not that; but in their confused ideas on the subject, words adroitly thrown in may have mingled with their recollections, so that, though they would by no means make a wilful misstatement, it is impossible for them to give a correct and perfect history of the affair. I am sure that the jury comprehend me, and I will leave the point with them.

Mr. ALLEN.—Well, then, I understand that the gentleman believes them all boys of undoubted truth; but that they cannot now recollect what they saw at the time. Now I presume the counsel for Defense have the testimony given by them before the examining Court, and if it had differed from that which has been given here, it would certainly have been produced. I think the best evidence that they speak the truth, is to be found in the very fact that they differ in some particulars. Is it not in accordance with reason, that when, as you see by this map, they were scattered in various portions of the room, they should not, from their different positions all see the matter in the same light? One boy saw one thing; another did *not* see it, but observed some circumstance that escaped the attention of the first. Yet their testimony, all

put together, makes a perfect piece of patch-work, complete in all its points.

I was going on to say that Robert Ward is contradicted on several material points. First, as to the prisoner being pressed back; and again as to the blows which he states were given. The hand was laid on his shoulder, perhaps roughly, and no doubt poor Butler, on his dying bed, being a man of peace, and knowing that he had resented a wrong and an insult, construed the act into a blow. That was probably the manner in which he understood it. Robert is contradicted on still another point. He states that he never went up the aisle, flourishing his knife, and the boys assert positively that he did. They also directly contradict him in regard to the position of the right hand of the prisoner, during the conversation; he asserts that it was by his side—they, that it was in his pocket. Now the question is, whether, after all these contradictions, you will receive the testimony of Robert, who appears before you under such circumstances of diminished credit, or these thirteen boys, who all agree as to the material facts, and whose characters even the gentlemen themselves have not attempted to impeach.

They ask why the school-boys should have noticed the position of a gentleman's hand, so minutely. I will tell you, gentlemen: You have heard that Victor Ward had told them Matt. was coming around to see Butler and to give him hell; and when they saw him enter the school-house, it was natural that they should watch him closely, to learn how he was going to carry out such an intention.

The COURT.—That is not before the jury, Mr. Allen. I believe one of the witnesses began to make some such statement; but it was ruled out at the time.

Mr. ALLEN.—I beg pardon, I was not aware of it; but I will make no further allusion to it.

But not content with making these assaults upon the boys, the gentlemen attack Dr. Thomson, and contend that *he* cannot be credited. They do not deny that his character is unimpeachable; when we offered to prove the fact, they immediately admitted it; and I was sorry, afterwards, to hear Mr. Wolfe make the remark he did, in regard to the number of witnesses who testified on this point, and the number who testified to the character of Barlow. And notwithstanding that Dr. Thomson is above suspicion or imputation, they contend that because he is contradicted by this Barlow he must be discredited.

Now I presume there is not a man in the jury-box who places the least reliance on one statement Barlow has made. He has clearly shown his own infamy; and though they have made so anxious an attempt to resurrect him, after he had killed himself, and enjoyed the

pleasure of listening to so eloquent a funeral sermon, from brother Carpenter, it was of no avail. He is contradicted by Mr. Ward in regard to shaking him by the hand, and on various other points. And his conversation, from the first question he propounded to Mr. Robert J. Ward was, to say the least, very remarkable. I would not, for my right hand, state that he is bribed, for we have no evidence of it, nor do I believe it. But I do believe that he expected some reward, founding such hope on the the well-known kindness and generosity of Mr. Ward. I will freely and honestly say, however, that I believe no such expectations will ever be realized, for I have too much respect for the character of Mr. Ward, to cherish the idea for a moment.

But which of these men will you believe—Dr. Thomson or Barlow? They tell you that the former is contradicted by our witness, Prof. Yandell. But this gentleman tells you that Butler left the *impression* on his mind, by his words and gestures, that when Ward raised his hand in a threatening gesture, he struck him; while Dr. Thomson states he distinctly told *him* that Ward did strike him. The only difference between the two is; one understood that Ward raised his hand in attack—the other that he raised it and attacked. The former is not positive as to the language used, and the latter is. Can this be construed into a contradiction? Instead of conflicting, they certainly sustain each other; yet you are asked to discredit them both, because they are contradicted by ——— Barlow!

Governor Crittenden has informed you that no words on the part of Ward could justify an assault from Butler. I agree with him, perfectly; yet if Matt. used the words he did for the purpose of provoking an assault, the fact of that assault does not mitigate his offense—it does not even reduce the crime to manslaughter. Though the law does not justify Butler, it still holds the prisoner responsible for his act.

He also speaks of the object of trial by jury, as being that no man shall be deprived of his life or liberty by any of the nice subtleties of law; but only by the verdict of a jury, who shall pronounce upon his cause, after it has passed through their warm and ardent hearts and honest minds. I coincide with him, that this great right is the bulwark of our institutions; but surely the position is not a correct one that the jury, instead of being guided by the law and the testimony, must follow the impulses of their own kind hearts. I apprehend that this is hardly the doctrine to talk to this jury. I expect that they will keep their oaths "to justly try and true deliverance make;" and that, too, upon the law and the facts. I contend that your hearts have nothing to do with the matter. If it could be done, it *would* be right that for the

time, you should take them out, and erect in their places altars of stone. He asks if you would turn yourselves into marble? I reply, it would be more in accordance with your duty, than to exercise that pity of which he has spoken. There is no such thing in your oaths. Your only guides that are there indicated, are, the law and the facts—the law, as expounded by His Honor, and which I shall read you presently, and the facts, as applied to that law. All these appeals to your feelings are out of place, and creating a false issue. I believe, gentlemen, that I appreciate the sorrow of those who are present, as deeply as any one else; my heart bleeds for the prisoner at the bar, and for the friends that surround him. But life has its unpleasant, as well as its agreeable duties, and if we acknowledge the obligations of these we have no right to shrink from the performance of those. It is for you to render such a verdict as your calm judgment dictates, even if it should be necessary to crucify your own feelings before you can do so.

And I believe, gentlemen, that you *will* do your duty, undismayed by the horrible pictures that have been conjured up before you—not deterred by the fear of those stings of conscience of which you have been told, if you convict the prisoner at the bar, and in after time learn that you have condemned an innocent man. It is only your duty you are asked to perform; and whatever developments may be made in the future, you will have the proud consciousness, through all coming time, that you acted in all sincerity and honesty, according to the light you had; and that human wisdom can do no more. Should you feel that you have erred, you will be buoyed up by the remembrance that you acted conscientiously. But if you acquit him wrongfully—if you suffer your feelings to be played upon, until you disregard your duty, you will regret to your dying hour, the wrong you have done to yourselves, to your country, and to those who are to come after you.

I intend to take up the testimony, and to show you by the law and the facts that the witnesses for the Defense are entirely uncorroborated. It is one of their assumptions that the accused bought the pistols because he was about to travel. I admit they have proved satisfactorily, his intention to leave in a few days, for his plantation in the South; but was it not a little singular that, if he made the purchase to protect himself in any emergency during that journey, he should have done it on that identical morning, just after he had heard the story of his brother, and just before he sought the school-house? I contend that you have a right to conclude from the time, the kind of pistols he selected, and the manner of using them afterwards, that he bought them to use, if necessary, in the approaching interview. I acknowledge these are but inferen-

ces, and that facts would be more satisfactory ; but it is your duty to draw the rational inferences, from proved or admitted facts.

Again : they have proved that he expressed to his father and mother no fears of any trouble. Now this may be construed in two ways—either that he expected the interview to be a peaceable one, or that he intended it should result in a collision, but, knowing how he was armed, really apprehended no trouble—felt perfect confidence that, protected as he was, he was not in the least danger. Yet I will not claim that the latter was true ; I do not believe it in view of the character he has established here. But I believe that he practised a pious fraud upon his parents, that he might be enabled to have the interview on which he was determined, to obtain redress for the insult he thought had been offered to the family honor. And what young man, when apprehending difficulty, would inform his father and mother of the fact ? They would be the two last persons in the world to be taken into his confidence under such circumstances.

But Mrs. Ward, just before he left the house, told him to be calm ; and, as Mr. Carpenter truthfully remarked—there is no eye on earth so keen to detect it, when any trouble is preying on the mind—any excitement on the feelings—as the quick eye of the mother. I take it that she observed some unwonted indication of excitement, or she would not have given the caution. He replied : “ I *am* calm,” and I believe he was ; I believe he was disposed to carry out all his plans, whatever they were, calmly and deliberately. He told Robert not to interfere, unless both attacked him ; and that alone would be sufficient to put him on his guard, and to show that the prisoner did not expect the interview to be a pacific one. He certainly could not have expected Sturgus to interfere in a peaceful conversation—he would never attack him—they themselves have proved that he was a man to flee out of the nearest window at the approach of any danger, before the firing of the first gun.

He anticipated trouble. It is reasonable to infer that with his ideas of right and wrong, he believed there might arise a contingency in which he would take the life of Professor Butler. And we contend that malice was founded on that contingency, just as fatally as if he had been determined to kill at all hazards. Why did he not go into the private room ? He did not want the explanation and apology, unless in the presence of the whole school, where it must inevitably destroy the influence and reputation of the teacher. Butler very properly refused to answer the first question ; it was an attack upon the character of one of his pupils, and a reflection upon his own justice. He was bound by his position to protect the boy who was thus assailed—to protect his own character, when thus aspersed. It is evident that the object of the visit

was to insult and degrade Butler in the presence of the pupils, and if he refused to be thus degraded—if he would not submit to such insult, to take his life.

But, being called a d—d liar and a d—d scoundrel, they endeavor to prove that Butler then struck the accused, and they offer that as a justification of the homicide. Suppose he did strike him? I acknowledge that it was not a lawful act; but every man would expect it. The use of such language, in our good old Commonwealth, operates like a trumpet call to battle—every man who utters it, knows that he will be struck. And it will not do for the prisoner to plead in his defense a breach of law superinduced by his own provocation; he can take no advantage here of the illegal act of a dead man, which he himself caused.

The propositions which I shall attempt to prove by law, applied to these facts, are :

- I That the act of the prisoner was not justifiable homicide
- II. That it was not manslaughter; and
- III. That it was murder.

To be justifiable, this killing must have been done in self-defense—no provocation can justify or excuse it. (Reference, Wharton, pp. 368, and Waterman's Archbold, pp. 216). We all know that Butler was slain—that his young life was taken by the hand of this defendant. But do we know that when he took it, he was defending himself? I contend that we are forced, from all the circumstances, to believe he was not.

A man must be without fault, before he may kill an assailant; there can be no extenuation of his offense, if the provocation was of his own seeking. (Wharton, 369, 373). What then is the position of this accused, according to the state of facts they contend for, as proved by Robert J. Ward? The assault, if there was one, was clearly superinduced by the act of the prisoner, and he cannot take advantage of his own wrong.

* According to all authorities, a mere assault will not justify him; if without fault, he must have cause to believe that his assailant had a design upon his life, or must have been in danger of enormous bodily harm. (Wharton, 393, 395, Roscoe, 733.) It is not enough, as you have been told, for him to have believed that he was in such peril—the peril must actually have existed; and notwithstanding all that has been said here about the "principle universally established," I have been assured that the decision in the case, in Tennessee, of the Commonwealth vs. Granger, has been overruled in that State, by the Superior Court; and I

maintain that you may look through all the law books, without finding a single parallel for it.

But here there was nothing of the kind ; Ward knew that Butler neither intended to take his life, nor to do him great bodily harm. The most violent intentions he could possibly entertain, were to inflict chastisement. There had been no menaces against his life ; Robert was close at hand, ready to assist him the moment he was called upon ; no weapons had been drawn upon him ; and this defendant had no right to anticipate the danger which by law justifies homicide—he never did anticipate any such danger. A man must retreat to some obstacle which he cannot pass (Wharton, 386) ; here, the door was open, and near by, and there was nothing to prevent egress through it. Gentlemen, is this killing in self-defense ?

I contend that this act was murder—not manslaughter—because it is the presumption of the law that it was done with malice. (Archbold, 124, 316). That presumption is sustained by the fact that the defendant entered into the conflict armed. (Wharton, 369, 374). The antecedent preparations indicate the existence of malice (do., 276) ; and when this is once established, the malice is presumed to exist, during the whole time occupied by the transaction (do., 360, 361). The facts that the pistols were procured ; that they were taken to the school-house and used immediately after, are plain indications of a malicious heart. No sudden passion—no heat of blood seems to have existed, which is necessary to reduce the offense to manslaughter (do., 368), but all the circumstances show cool and calculating deliberation.

Gentlemen, I have neither the time nor the strength, to go on making all the quotations I had hoped to make. But I believe you fully understand the law which applies, and if I have mis-stated it on any point, I am sure that His Honor will not neglect to correct it, in his charge.

I have thus endeavored to argue upon the testimony of the defendant ; and to show that, by that alone his guilt is established. But I cannot consent, in a case where the State has so many and so good witnesses, to throw out all their testimony. We contend that you may rely on our witnesses ; we contend you are bound, corroborated as they are, to receive the testimony of these thirteen school-boys in preference to that of Robert Ward. You know his position here—you know the motives that must exist in his mind ; but the boys have no interest whatever in the case, directly or indirectly. If their feelings are enlisted, they are only feelings of affection and respect for the memory of their late teacher—feelings that speak loudly for his justice, his equity and his honor. No

man in this room—no man in this jury box, I believe, can doubt the truth of the statements they have made.

Even Allen and Gudgel, who were brought here for that purpose, do not invalidate their testimony—they have failed to injure their recollection, or cast a shade upon their characters. All they prove is that they went to the school-house, saw and conversed with some boys, none of whom they can name, except Worthington; and that at some point in the conversation he nodded his head in acquiescence to something that was said—when, or what, they do not know. Surely you are not to discredit Worthington on such loose statements as these. The attempt to contradict another of the boys—Benedict—by Mr. Gudgel, also signally failed. We contend that this case may be tried on the testimony of these boys, and that they render it clear and apparent to every mind, that Ward, from no point of view, acted in self-defense; that there was no actual necessity for taking life, on his part; but that he was carrying out a quarrel which he himself had provoked.

These boys are disputed only by Barlow, and at this stage of the case, I think it is hardly necessary for me to enter into a discussion of *his* credibility. You have been told here, with a good deal of propriety, that he has been a dead man for the last four or five days; and, gentlemen, I am not a buzzard, to pick the putrid flesh from the bones of the dead—I am no hyena, to desecrate the grave of the late Mr. Barlow. Since his decease, they have been applying the galvanic battery, in the vain hope of restoring him to life; and when he moved once or twice they sent up a mighty shout of triumph—but it proved in the end, to be only a convulsive shock—a mere muscular contraction; his remains do not contain one faint spark of vitality. *Requiescat in pace.* They are filled with horror that we have presumed to attack this man, Barlow; and yet they modestly turn and ask you to discredit all the witnesses for the Commonwealth.

Now, gentlemen, I ask you to reverse, in imagination, the positions of the parties in this case, and then consider it upon the testimony we have offered. Suppose that during the occurrence, Butler had killed Ward at precisely the same moment when Ward killed Butler, and that Butler was now on trial for his life—what would be your verdict? There can be no justification for two parties to take life in the same quarrel—they cannot both be right. The facts are established that Ward had bought the pistols just before leaving home; that he was so much agitated and excited as to attract the attention of a lady, on the street, who was almost a perfect stranger to him; that a conversation took place between him and his parents, in which he insisted on going to settle the matter, as he was a young man; that he went to the school-

house, accompanied by his brother, also armed; that he there made the imperative and degrading demands you have heard; and when they were refused, denounced him as a d——d liar and a d——d scoundrel, and struck him. Suppose that just at this point, Butler had taken the life of Ward, and was now on trial before you, would you not be bound to acquit him? Most certainly; and the acquittal of Butler in that case, amounts to the conviction of Ward in this—and can by no means be construed in any other manner.

Gentlemen, I would probably have addressed you much longer, but my weak and enfeebled constitution will not permit it. I think I have argued the case fairly. I believe I have done my duty, according to the best of my humble ability. Those who are associated with me, have canvassed nearly every point, before I rose to address you. I have endeavored to argue simply on the facts and the law, stating the facts from the testimony you have heard, and referring to the authorities for the principles of law I have laid down. I have used no harsh language—I have said nothing against the prisoner, which my duty has not compelled me to say.

You are not, gentlemen, to be governed by your feelings, as you have been asked, in this case; but you are to discard all sympathies, and to administer the law under the proof. You have no right to be influenced by your sympathies on either side; but I have made no appeals to your feelings; I have drawn no harrowing pictures—I have not sought to describe the condition of the wife of the murdered man. You saw her here—that living monument of grief—that impersonation of woe. You observed her heroic attempt to abstain from every manifestation of grief, and how, when the fountain of tears refused to be closed, when the lip *would* quiver with anguish, the veil was drawn at once, to conceal it from your notice. And why? It was that no passion and no feeling, might be excited on your part; and in this respect I have imitated her noble example.

Gentlemen, it is for you to decide between this Commonwealth and the prisoner at the bar. It is your duty to consider the case, irrespective of position, and without regard to feeling. Cast aside, then, excitements of every kind; and administer the law as your positions and your oaths require.

What extraordinary claims, I ask, has he upon your mercy? What right has he to demand that you shall discard all the testimony, and be governed by your sympathies for him? Every shield of the law is thrown around him: by the affluence of his friends he has been enabled to lay before you every circumstance that could operate in his favor, and

to secure, for the management of his cause, the greatest array of able and distinguished counsel that Kentucky has ever seen.

I have known a case in which mercy might be shown with propriety. It was one in which a poor Dutch boy was arraigned for larceny. He was perfectly helpless—unacquainted with our language—a stranger on our shores—with no resources and no friends; and when he was absolutely suffering from the inclemency of the weather, he stole a coat, worth five or six dollars, to shield him from the winter's blast. There was an instance for the exercise of clemency and mercy.

But here, where a man is surrounded by friends, and has had every aid that wealth, position, and influence could afford, to present his cause in the most favorable light,—with what propriety do they make such appeals? Remember the public happiness requires an example to prevent the occurrence of these bloody scenes; and that justice, like death,

———“Loves a shining mark,
A signal blow, that while it executes, alarms,
And frightens thousands with a single stroke.”

Remember the mercy he has shown, and say to him that the cars of the angel are closed against him for ever.

Take the case, gentlemen; consider it well, and do your duty like true men.

When Mr. Allen had concluded his argument, the Court addressed the Jury as follows:—

CHARGE OF THE COURT.

GENTLEMEN OF THE JURY: The cause, to which you have with commendable patience given your attention for 9 days past, is at length submitted to you for your decision. But 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 argument of counsel to influence in any degree your verdict in the cause. You are constitutional judges of the fact. The usual course of practice in criminal cases, in this district—that of reading and discussing the law before the jury by the counsel—having been adopted in this case, will relieve 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 offense murder. Malice, express or implied, is an essential ingredient of this crime; there can be no murder without it. 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 indicate that acts were malicious or otherwise. These judicial decisions are properly to be regarded as illustrations of the legal idea of malice. In some of them the distinction between the two classes of cases is almost imperceptible; and in understanding those cases properly, you will have to bear in mind the definition 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 the 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 shall in your opinion justify such a verdict. The distinction between murder and manslaughter has been explained to you at large. The grand distinction is: in murder, the act is prompted by malice; in manslaughter it is perpetrated in sudden heat of passion, without malice. If from the evidence you believe the killing in this case was done—not in self-defense—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-defense, the law excuses it, and it will be your duty to find the prisoner at the bar 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 manslaughter; or whether in self-defense, which the law excuses: and to the proper solution of these questions I urge upon you in your retirement a calm, patient, and impartial investigation of the facts proven in the case. If upon such investigation you have reasonable—not fanciful or imaginary—doubts whether the act was murder or manslaughter, you ought to bring in your verdict for the less heinous offense. And if there be such doubts, as to whether the act was manslaughter or in self-defense, it will be your duty to acquit the prisoner. Some facts, not before you as proof, have been occasionally alluded to by counsel on either side—such as the supposed causes of a change of *venue*—newspaper publications on the subject of the prosecution, etc.—but these should

not, and I presume will not, have the slightest influence on your minds. You will now, gentlemen, retire to your room, and under the sanction of the oath you have taken, calmly and impartially consult and deliberate together—and return your verdict, according to law and the testimony in the cause.

The Jury now took the case, and retired to make up their verdict, on the eighth day of the trial, at about 5 o'clock, P. M.

Court Adjourned.

NINTH DAY.

Thursday, April 27th, 1854.

The Court convened at the usual hour and proceeded to the transaction of some of the other regular business of the term.

At about 9 o'clock, word was received from the jury, stating that they had found a verdict.

The prisoner was immediately brought in, and after he had reached the Court room, the jury, under the charge of the Sheriff, came from their room and were conducted to their seats.

By this time intelligence that they had come to a decision, had spread so rapidly that the Court room was densely crowded with people, and the oppressive silence that prevailed, indicated the deep interest that was felt.

The COURT.—Gentlemen of the jury, have you agreed upon a verdict?

The JURY.—We have

The COURT.—What say you, gentlemen, do you find the prisoner, Matt. F. Ward, guilty or not guilty of Murder, as charged in the indictment?

The JURY.—*Not Guilty.*

The COURT.—Do you find him guilty of Manslaughter, as charged?

The JURY.—NOT GUILTY.*

This announcement was followed by an outburst of applause, from the spectators outside the bar; but the demonstration was promptly checked by the Court.

* They afterwards stated that when they entered their room, to make up their verdict, eleven were in favor of acquittal. The twelfth was in doubt, caused by what he understood to be a portion of the testimony of Quigley. When he was convinced, however, that his memory had been imperfect or erroneous on that point, he coincided with his associates.

The prisoner was borne from the room by his friends, in a fainting condition; the verdict was recorded by the Clerk, and the jury were discharged.

The Commonwealth Attorney entered a *nolle prosequi* in the case of Robert J. Ward, Jr., and he was immediately discharged from custody.

THE END.