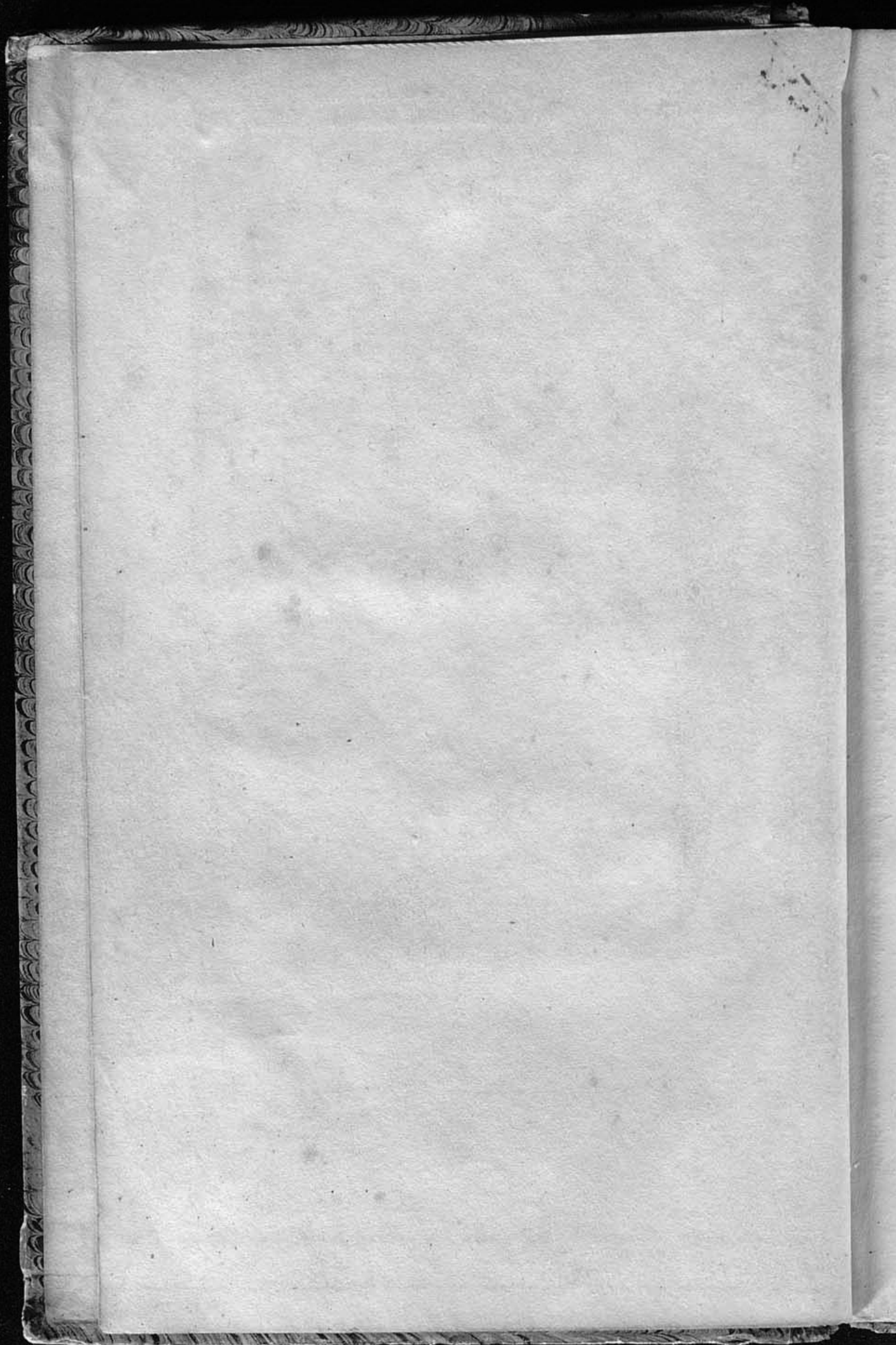


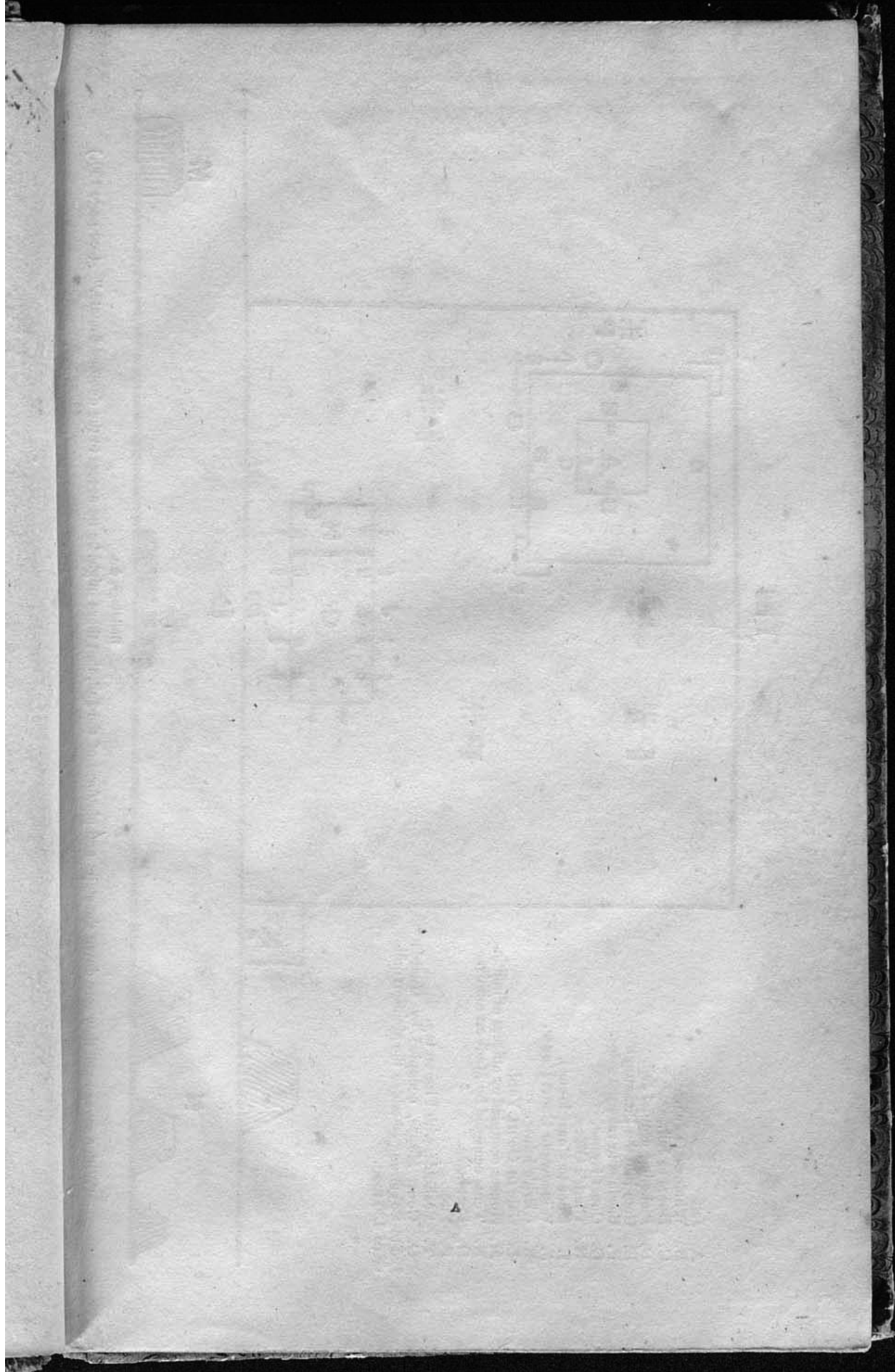


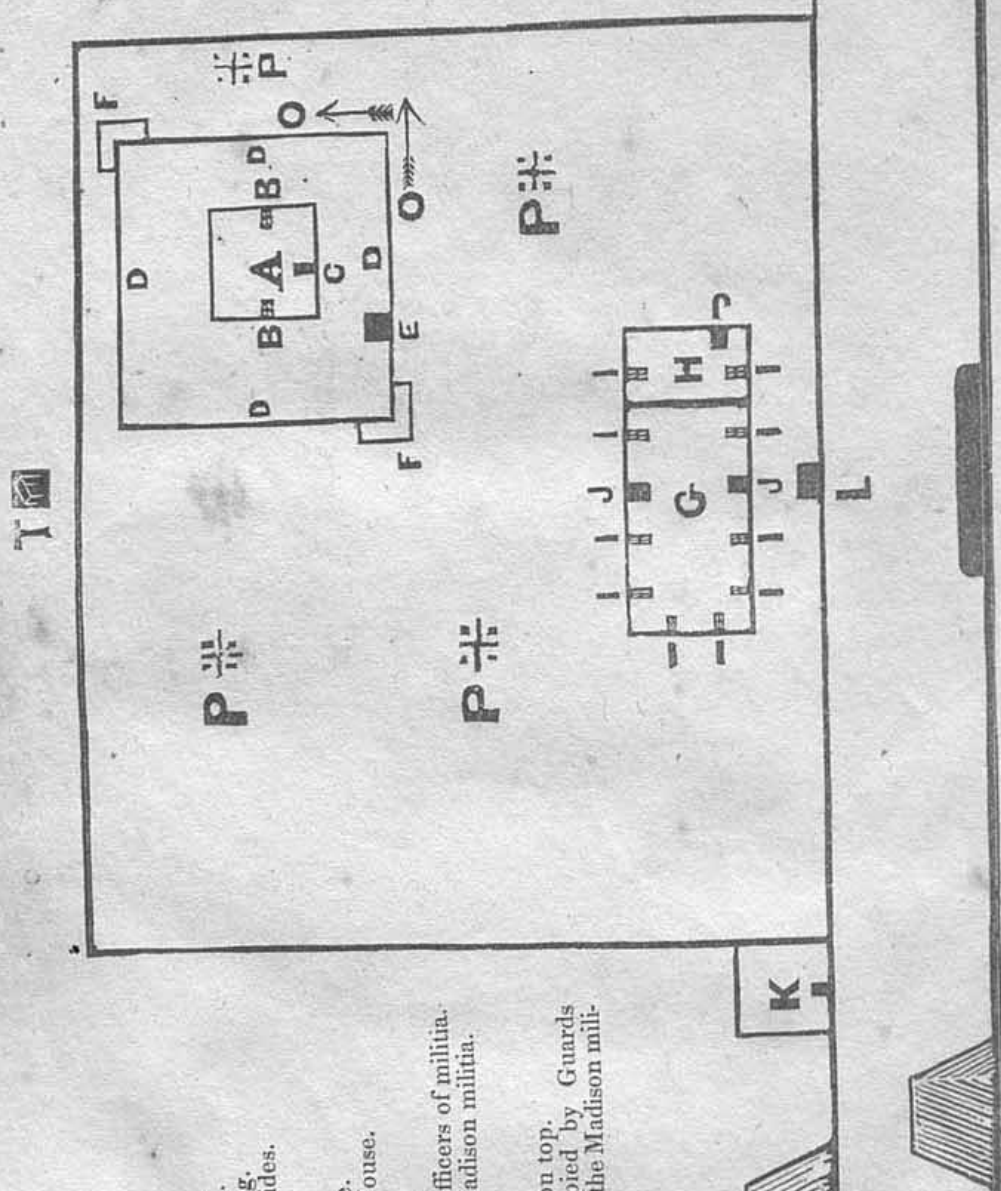


~~13~~

Joseph [unclear]
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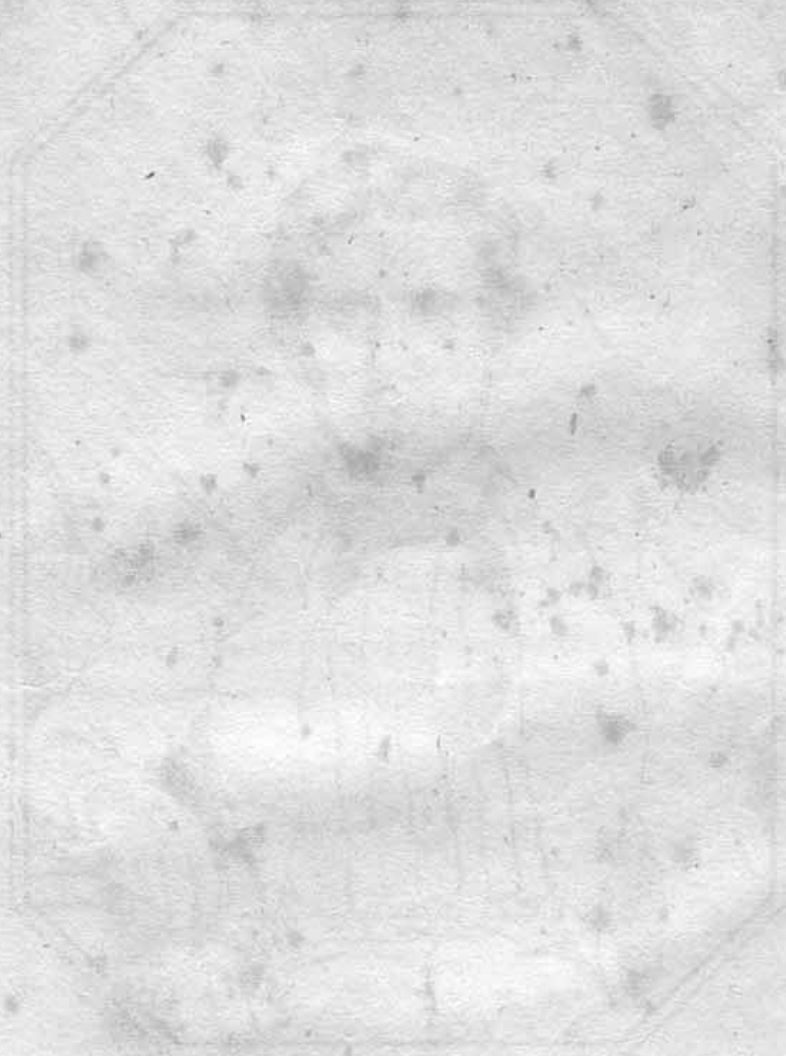
- A. Jail.
- B. Windows to Jail.
- C. Doors to Jail.
- D. Picketing around Jail.
- E. Gate into the Picketing.
- F. Bastions to rake the sides.
- G. Court House.
- H. Clerk's Office.
- I. Door to Court House.
- J. Windows to Court House.
- K. Clerk's house.
- L. Gate to Court Yard.
- M. Houses occupied by officers of militia.
- N. Tents occupied by Madison militia.
- O. Port-holes.
- P. Fires.
- T. Scaffolds, with Fire on top.
- G. Court House, occupied by Guards 125 to 235 strong—besides the Madison militia of 130 men.

Buildings, &c.

“With a savage yell they tore down the steps and platform of the Jail, that there might be no access to the doomed inmate.” (see page 135.)

Buildings, &c.

“With a savage yell they tore down the steps and platform of the Jail, that there might be no access to the doomed inmate.” (see page 135.)



ABRAHAM LINCOLN



ABNER BAKER M.D.

A Baker Jr

LIFE AND TRIAL

OF

DR. ABNER BAKER, JR.

(A MONOMANIAC,)

WHO WAS EXECUTED OCTOBER 3, 1845,

FOR THE ALLEGED MURDER OF HIS BROTHER-IN-LAW,

DANIEL BATES;

INCLUDING LETTERS AND PETITIONS IN FAVOR OF A PARDON, AND NARRATIVE OF
THE CIRCUMSTANCES ATTENDING HIS EXECUTION, ETC. ETC.

By C. W. CROZIER.

TRIAL AND EVIDENCE

By A. R. M'KEE.

LOUISVILLE, KY.

PRENTICE AND WEISSINGER, PRINTERS.

1846.

J. BAKER, JR.

OF

THE

EST

COPY RIGHT SECURED BY A. R. M'KEE.

OF

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OF

OF

OF

1881

TO THE FRIENDS OF
JUSTICE, HUMANITY, MERCY, AND TRUTH,
THROUGHOUT THE UNION,
THIS WORK
IS RESPECTFULLY INSCRIBED.

PREFACE.

FROM a sincere desire to give publicity to the truth and facts, in relation to the trial and the circumstances, attending the unfortunate execution of Dr. ABNER BAKER, this work is issued. Confident that a candid public, after giving this book an attentive perusal, will do justice, and apply censure where it is properly merited. It is the design of the author merely to give facts, without any comments on his part regarding the conduct of the authorities and rulers of this Commonwealth. I would respectfully invite the attention of every individual, not only in this Commonwealth, but throughout our extended and happy Union, to an examination of the evidence and circumstances attending this interesting and unfortunate case, believing that the destinies of our republic, and our happiness as a great family and as individuals, depend upon the administration and execution of justice and truth, uninfluenced and unbiassed by prejudice or a spirit of revenge.

Not wishing to extend these remarks to an unnecessary length, I leave the work in the hands of my respected reader.

INTRODUCTION.

IN submitting to the public this work, the Publisher believed it due to the memory of Dr. ABNER BAKER, who was hurried into eternity in a disgraceful and ignominious manner, that the facts and circumstances attending this remarkable case should be made known to the community. For this purpose a transfer of the reward offered by the Executive and the two executors was made to the printers, with the understanding that when the amount was received it should be first applied to the payment of the publication of the evidence, and that when the same amount should be realized from the sale of the book it would be donated to the Lunatic Asylum in the city of Lexington.

The Executors having refused to pay the amount offered by them until compelled by law, the Publisher trusts that, when collected, it will be applied to some public beneficence.

He anticipated in this work the publication of some other papers, which he considered would be interesting to the public. In answer to the request for certain documents, the Publisher is informed by his correspondents that "Gov. Owsley refused to let me have a copy of Gov. Jones' letter, upon the ground that it was confidential, and that probably he had *burnt it.*" Another correspondent writes, "I also asked a copy of the letters of Judge Reese and Gov. Jones, but Gov. Owsley said they were private letters, and were confidential, especially Jones'.

One of the writers of these letters to the Governor, referred to above, differs with his Excellency (as he informed the Publisher) in regard to the propriety of withholding communications of such a public nature, and would have furnished the copy desired, had it been in his possession.

We deem it but justice here to commend the independent, manly, and praiseworthy conduct of the GARRARD family, in Clay County, in desiring that justice and humanity should be

exercised towards an unfortunate lunatic. To the many eminent Jurists, Physicians, Divines, and others, who endeavored by forcible arguments and representations made to the Executive to induce him to interpose his constitutional power in behalf of the prisoner, all praise should be given.

And, although all the combined efforts of distinguished men in this Commonwealth, and in two of the adjoining States, could have no influence with the Executive in relation to this case, yet it is some source of gratification to reflect that we have men that can feel for another's woes, and who were actuated by a sense of justice and humanity to stay the execution of the wreck of a man.

It is true that there was but a bare possibility, if the Executive had interposed his constitutional power and stayed the hand of the executioner, that the mind of the prisoner could have been restored. And, although his friends might have been disappointed in this hope, and he have remained a maniac during his natural life, of no benefit to himself, to his friends, or to the community, yet the question naturally arises, is it justice? is it humane? is it lawful? is it expedient? to inflict punishment upon a lunatic?

MONOMANIA.

It would perhaps be an useless consumption of time to give cases to show that an individual may be insane upon one or more subjects, and rational upon others. We can scarcely take up a work upon Insanity, without finding numerous cases given in proof of this established fact. We may read Esquirol, Prichard, Ray, Beck, Combe and a host of others, and find case after case of monomania given, where the reasoning faculties or powers of the mind upon every subject, with the exception of the subject upon which the individual is deranged, are not only sound, but will exhibit more tact and shrewdness than men of ordinary minds. And it is also a well established fact, that the individual may be partially deranged, and this derangement unknown to his intimate friends and kindred for some length of time. Combe says—"Where, as in monomania, only one or two faculties are disordered, the rest remaining sound, the patient is at first conscious of the aberation of feeling or of thought which it produces, and employs all his powers to suppress and conceal the slight-

est appearance of its existence. Frequently he accomplishes this so successfully, that he goes on for months unsuspected, except by very close observers, and then, under some casual excitement, losing command of himself, gives full and sudden vent to delusion in an act of manifest insanity. This often happens in monomania, and, as the act itself may either be a mere explosion of folly, or harmless passion, or of unaccountable apprehension and hatred, or be a direct infraction of the laws of morality, such as the perpetration of murder without an external motive, it behoves us to be extremely on our guard against condemning as a crime, what is in truth a *symptom* of insanity; and not to add the cruelty and ignominy of condemnation to the already severe visitation of disease."

"Frequently the crime is only the first palpable sign of existing insanity, and shews the necessity of scrupulous inquiry being instituted, when an unnatural act is committed by an individual who would previously have revolted at it.

"From the same power of long suppressing the appearance of aberration in conduct and in conversation, arises the acknowledged greater difficulty of curing monomania than mania itself. The symptoms are so long concealed that the disease takes deep root before it is discovered, and even when it is found out, from the barbarous stigma attached to the name of insanity, there is often great difficulty in subjecting the patient to the necessary medical and moral treatment."

[From Beck's Medical Jurisprudence.]

Monomania.—Here the permanent delirium is confined to one object, or to a small number of them. The sufferers are pursued day and night by the same ideas and affections, and they give themselves up to these with profound ardour and devotion. They often appear reasonable, when conversing on subjects beyond the sphere of their delirium, until some external impression suddenly rouses the diseased train. The character of this form of insanity is very various, and depends on the predominant species of delusion that is present."

This description of lunatics "eat much, but sometimes they endure hunger with great obstinacy, they have frequent pains in the bowels, and costiveness is common. The pulse is full, hard and strong, and the skin warm." Probably this is a form of insanity as common as any other.

The difficulty in detecting this disease is increased by the remarkable cunning and dissimulation of which some maniacs are capable.

A few examples will illustrate this in a satisfactory manner: "A man by the name of Wood had indicted Dr. Monro, for keeping him as a prisoner, when he was sane. He underwent the most severe examination by the defendant's counsel, without exposing his complaint, but Dr. Battie having come upon the bench by me, and having desired me to ask him what was become of the *Princess*, with whom he had corresponded in cherry juice, he showed in a moment what he was. He answered there was nothing at all in that, because, having been (as every body knew), imprisoned in a high tower, and being debarred the use of ink, he had no other means of correspondence, but by writing his letters in cherry juice, and throwing them into the river which surrounded the tower, when the *Princess* received them in a boat. There existed of course, no tower, no imprisonment, no writing in cherry juice, no river, no boat, but the whole was the inveterate phantom of a morbid imagination. I immediately," continued Lord Mansfield, "directed Dr. Munro to be acquitted, but this man Wood, being a merchant in Philpot lane, and having been carried through the city on his way to the madhouse, indicted Dr. Munro over again, for the trespass and imprisonment in London, knowing that he had lost his cause by speaking of the *Princess* at Westminster. And such," said Lord Mansfield, "is the extraordinary subtlety and cunning of madmen, that when he was cross examined on the trial in London, as he had successfully been before, in order to expose his madness, all the ingenuity of the bar, and all the authority of the Court, could not make him say a single word upon that topic which had put an end to the indictment before, although he had still the same indelible impression upon his mind, as he had signified to those who were near him: but conscious that the delusion had occasioned his defeat at Westminster, he obstinately persisted in holding it back.

"This evidence at Westminster was then proved against him by the short hand writer. Lord Eldon, since he has been Lord Chancellor, has mentioned from the bench, a case which occurred to him while at the bar, illustrative of the difficulty that occurs in such cases. After repeated conferences, and much conversation with a lunatic, he was persuaded of the soundness of his understanding and prevailed on Lord Thurlow to supercede the commissior. The lunatic, however, immediately afterwards, calling on his counsel to thank him for his exertions, convinced him in five minutes, that the worst thing that he could have done for his client, was to get rid of the commissior."

LIFE
OF
DR. ABNER BAKER,

DR. ABNER BAKER, the subject of this memoir, aged thirty-two years the 23th March, 1845, was the youngest son of Capt. A. Baker, (now of Lancaster, Kentucky,) by his first wife—his present wife, the sister of Gov. R. P. Letcher, having no children. Abner Baker, sen., the father of Dr. A. Baker, resided some twenty-five years in Clay county. And, during a great part of this period, the people of the county had the character of being lawless and immoral, and indulging in every species of vice that their imaginations could suggest. Capt. Baker, from his position in society, his occupation and business, had frequent occasion to give his counsel and advice in preventing scenes of strife and contention. And, as he was Clerk of both Courts, with the aid of some of his respectable neighbors, he was enabled, in some degree, to establish law and order in that community. And he has often, in part for this purpose, invited and procured ministers of the gospel of different denominations to visit that county, that the people might be admonished of their immoralities and dissolute habits. His house was the home and the resort of ministers of every denomination who visited the county. Capt. A. Baker, the father of Dr. A. Baker, had a large family—six sons and eight daughters—all of them arrived at the age of maturity. The parents were pious, and felt the importance and duty of giving their children at an early age religious and moral instruction—the father observing the privilege and christian duty of attending and continuing regularly family worship a number of years before he made a public profession of religion. The parents of Dr. A. Baker were kind, affectionate, and exemplary in their conduct, and their children were dutiful, obedient and respectful. Few families have enjoyed more peace and harmony—none, perhaps, more kind and affectionate. The step-mother was so indulgent and remarkably affectionate, that none could discover that she was not the natural mother. No difficulties had ever occurred to mar this feeling. Many of their numerous friends and acquaintances have observed and often remarked that peaceful and kind disposition, which existed and continued between

the step-mother and children. All of the children of Capt. Baker were favored with the opportunities of receiving instruction, and their minds were reasonably improved. Four of his sons were graduates at medical institutions—three of them at Transylvania, and the youngest, (Abner,) at the Louisville Institute. Capt. A. Baker had been a practitioner of medicine also for a number of years in the county of Clay. His advice and medicine were always given without charge; and there are many persons now residing in that county, who were witnesses of his kind attentions and successful practice.

At an early age Dr. Abner Baker exhibited a kind and thoughtful disposition, and good intellect. He was affable in his manners, agreeable and familiar in his conversation, and a favorite among his youthful associates.

Having attended the common schools of the country until fourteen or fifteen years of age, he at this period was received in East Tennessee College at Knoxville,—Dr. Charles Coffin being then President of that Institution.

Of the precise time he remained in College we are not informed.

When about eighteen or twenty years of age, through the influence of a prominent friend, he obtained the appointment of Midshipman in the United States Navy. He remained at sea some twelve months, and during this time, while in the service of the ship, the vessel landed in a foreign port. Several ladies expressed a wish to visit the ship: the First Lieutenant is appointed to wait on them, and when they are about to depart this officer transfers his charge to Midshipman Baker; who, in accompanying them to their place of destination, is met by the Commander. He demands of Baker the cause of his leaving his post. Baker replies that he was on this duty by the orders of the First Lieutenant. The Commander sternly orders him back to the vessel. Baker returns, his feelings being much mortified, and relates the harsh treatment to the officers on board. Several of them determine to tender their resignation to the Commander so soon as the vessel reaches the American shore. And when Baker's resignation, among others, is received, the Commander desires an interview with him, and expresses a wish to him to withdraw it—at the same time remarking to him, that he did not wish to be considered as attempting to flatter, but he considered it his duty and but justice to tell him honestly and candidly, that if he would remain in the service he confidently believed that he would make a distinguished officer. Baker then told him that he had been brought up as a freeman, and valuing the rights that were guaranteed to every citizen of this republic, he could not consent to have his feelings mortified and disregarded, without expressing his dissatisfaction at such conduct: and then reminded him of his treatment when he was acting under the orders of the Lieutenant, in escorting the ladies to their place of destination. The Commander apologised for his conduct,—and finding Baker resolute in his intention to withdraw from the service, gave him a letter to his father, in which he regretted his leaving, and expressed his opinion in the most decided manner of his son's capacity, disposition and willingness to

acquire information, and that he confidently believed and hoped he would make a distinguished officer.

After Abner Baker had returned from the Navy, he received the appointment of Clerk of the Clay County Court, at the November Term, 1834. He was also appointed Clerk of the Circuit Court, April Term, 1835—continuing to discharge the various duties of these offices faithfully and satisfactorily, until his resignation, in 1836. And, although changeable in his occupation, he always promptly and assiduously attended to every business within his sphere of duty.

After his resignation as Clerk of the several Courts in Clay, he engages in the study of medicine—perhaps, without any design of practicing, but, probably, from the fact that medical works were always within reach—his father and three of his brothers having been practitioners in this profession.

Some twelve months or more afterwards, he engages in the mercantile business in Lancaster, Kentucky. In making his purchases, he selects goods of the highest price and of the best quality, displaying little judgment as to assortment, and which were unsuited for the market he designed them.

In a few months his goods are boxed up and forwarded to Louisville, with the intention of taking them to some southern town.—When he arrives at Louisville—about the first of September—it is suggested to him that it was rather early in the season to go south, and he is advised to go to the State of Missouri, as the prospects also for business were more favorable in that State. His goods are shipped on a boat bound for St. Louis. Remaining in that city for a day or two he directs his course to the south, and in a few days afterwards he rents a storehouse in Helena, Arkansas, and commences selling his goods at retail. In some eight or ten days, disposes of his whole stock to one individual. He then returns home and informs his friends of this circumstance. And being asked what security he had for the payment of his goods, he replied, that the individual was a perfect gentleman. He is then urged by his friends to secure this debt. He returns to Helena, and succeeded in getting a title to a tract of land in Arkansas—this being all the property his debtor now claimed. Dr. Baker, by this transaction, is now unable to meet the payment of his own debts. Some of his friends, learning his situation and difficulties, advise him to take the benefit of the Bankrupt law. This he positively refused, alleging that the claims were just, and he intended to use every industry and observe the strictest economy until every obligation was fully discharged. He disposed of the land, paying the proceeds to his creditors, and surrendering all his effects to them. He again applies himself to the study, and, shortly afterwards to the practice of medicine, with a determined and persevering spirit to acquire the means to liquidate every obligation against him. After a few years of great industry and attention in pursuing the profession of a physician, he was enabled, as an honest man, to adjust and pay, to the entire satisfaction of all his creditors, every claim against him.

In the year 1838, Dr. Baker visited Louisville, Ky., and attended the Lectures in the Medical Institute of that City. And at the close of his second session, in the year 1839, received a diploma, acquitting himself with honor and credit. While Dr. Baker attended the Medical Lectures, he was distinguished for his excellence and for the acuteness of his intellect, which was improved by the emulation of his fellow-students, united to an indefatigable and persevering zeal in acquiring knowledge and general information on his part, and having high and exalted notions of honor was never known to stoop to a mean or dishonorable act. Possessing these qualities and disposition, he soon gained the esteem and admiration of all his acquaintances, and being solicited to permit his name to be used as a candidate for the office of Vice President in the Medical Society; he was chosen by the decisive vote of his fellow-students as a reward to merit and favor. We have an opportunity of examining the records of this Society, through the kindness of the present Secretary, and have observed the many important committees upon which Dr. A. Baker officiated. We noticed the letter of the committee addressed to Mrs. Eberle, Feb. 12, 1838, widow of Dr. John Eberle, Professor of the Theory and Practice of Medicine in the Transylvania University in 1837. "The members of the Medical Society of Louisville, having heard with deep regret of the demise of Dr. John Eberle, &c., appointed Dr. A. Baker, with two others, to address a letter of 'condolence to the family of the deceased.'"

At this period of his life, in 1838 and '39, Dr. A. Baker exhibited that predisposition to insanity, which eventually resulted in producing the unfortunate death of his own brother-in-law, his patron and friend. His unnatural conduct and abrupt deportment while a student, were often remarked, and occasioned frequent conversations among his friends and acquaintances, as to the probable cause. While attending the Lectures, one of his fellow-students was standing near him, in the Hall of the Louisville Medical Institute, and not aware of having committed any offence, is suddenly and abruptly abused by him, and his life threatened if he attempts to look at his head again, (suspecting him for looking at a grey lock of hair in front of his head.) At this time he resided with the writer, and frequently at a late hour in the night would alarm the family by crying out that some persons were in the house. We would light a candle, and followed by Dr. Baker, who was armed with the tongs or shovel, would examine every apartment, even to the garret, and he would, after this, still insist that there were persons in the house, as he heard them whispering. After this, Dr. Baker engages in the practice of medicine in Knoxville, Tennessee, is highly spoken of as a successful and scientific practitioner, and is esteemed for his urbanity of manners, with the exception of an occasional exhibition of his strange conduct and unnatural deportment.

Shortly afterwards, he changes his location to Clay county, Kentucky. And is received by the citizens of that county with marked attention, and is universally respected by his acquaintances for his

kind and affable disposition, and is esteemed one of the most scientific and skillful physicians in the country. He had the talent not possessed by every successful practitioner of communicating and explaining the nature and cause of the disease in the human system, in a lucid and forcible manner, and hence he was considered a man of strong mind, as will appear from the evidence upon the trial.

He possessed a capacious mind, well improved in the science of letters, medicine, and surgery, with the various branches connected with his profession. He was successful in his practice, popular in his profession, temperate in his habits, and beloved as a man. He was generous, hospitable, firm, and high minded, incapable of a low or mean act. Whatever he did, or designed to do, was done manly and in the light of day. His prospects were fair and flattering. But unfortunately that predisposition to a deranged state of mind, discovered some five or six years previous, at this period is augmented and increased. This morbid derangement of the brain, changes his true character and disposition, and under its influence and state of mind he forms a matrimonial connection with Miss Susan White, daughter of James White, of Clay county, Kentucky, without a charge against her chastity and virtue, except by Dr. A. Baker himself. By this marriage Dr. Baker forms a connection with a family whose associates, character, and disposition, are entirely different from his manner of life. His father, receiving intelligence of this matrimonial connection, is confirmed in the opinion already expressed to some of his children, and to Abner himself, that he is deranged.

After Dr. Baker's acquittal by the Examining Court, while in Cuba, he had his daguerreotype likeness taken, purchased a fine *crimson* silk velvet cap with filigree tassals, and procured the making of several fine *linen cambric* shirts, (now in possession of his brother, s) although well supplied with those of more suitable material, Irish linen and cotton. For subsequent events in the history of his life, the publisher refers the reader to an examination of this work.

ERRATA.

Pages 61 and 64 read "Moors."

*" 62, 2d paragraph, 15th line, read "as to be able when,"
&c. "to perceive."*

Page 65, 2d paragraph, 5th line, read "flaccidity."

" 66, 2d " 10th " " "suspension."

" 67, 1st " last " " "prostration."

" 72, 3d " 10th " " "punish."

TRIAL OF DR. ABNER BAKER,
FOR THE ALLEGED
MURDER OF HIS BROTHER-IN-LAW, DAN'L BATES,
BEFORE THE EXAMINING COURT.

THE evidence before the Court, including the following certificates and letters, were forwarded to Governor Owsley, Oct. 12th, 1844, some three months preceding the date of the Proclamation. The limits of this work will not permit the publication of this evidence. After the Court had decided upon the case, they expressed an opinion that it would be unsafe for Dr. Baker to go at large. His two brothers, Dr. Wm. J. Baker and Dr. Hervey Baker, agreed to take him, under their especial care and charge, to their residence in Knoxville, Tennessee, where they would place him under medical treatment; and at the same time expressing a hope that in due course of time his mind would be restored.

We will merely observe here, that there were several witnesses examined in behalf of the prisoner before the Magistrates, whose evidence does not appear before the trial. One of them—Gen. Hugh White, the grandfather of Dr. Baker's wife—testifies, that when he heard of Dr. Baker's conduct towards his wife and Mr. Bates, after the first difficulty with Mr. Bates, he *then pronounced him deranged*. We should like to publish the whole of the evidence before the examining Court, but as it would increase the size of this book beyond its contemplated limit, and perhaps weary the mind of the reader, we will refer him to a synopsis of the evidence in the following letters to the Governor.

"We, the undersigned, Justices of the Peace for the county of Clay and State of Kentucky, constituting the Court before whom Abner Baker, jr., was this day tried upon the charge of the murder of Daniel Bates, of the county aforesaid, after hearing the evidence in the case, and being satisfied as to the law, give it as our judgment that the prisoner is not guilty of the charge alleged, and that the said Abner Baker should be set at liberty.

THEO. T. GARRARD, J. P.
J. GILBERT, J. P."

Sept. 24th, 1844.

MT. VERNON, Oct. 7, 1844.

I state that I was one of the counsel employed on the defence of Dr. A. Baker, charged with killing D. Bates, Esq. The accused was tried and fully discharged on Tuesday, 24th Sept. last, by Theophilus Garrard and J. Gilbert, Justices of Clay County, on the grounds of insanity. The investigation was full and fair, so far as I know or believe. There were many witnesses examined on the part of the prosecution and for the accused. There being no prosecuting counsel in attendance, the Justices interrogated the witnesses on the part of the Commonwealth, and did it too with considerable ability, and I have no doubt with fidelity to the Commonwealth. Good order was preserved and great patience exercised by the Court. There was nothing relied on in the defence but the fact of insanity, which was, I think, abundantly proven to exist at the time of the killing, and for some considerable period before, and existing and increasing up to the time of trial. I have, myself, no doubt of the insanity of the accused, nor do I suppose that any unprejudiced person, who heard the trial, can have any doubt on the subject. The Court considered the accused incapable of crime; but to guard against mischief when he was discharged, he was placed by the Court in the possession of relatives, who promised to guard him home to Tennessee, and place him under medical treatment: and on the next day after the trial, the brothers of the accused, Drs. William and Hervey Baker, in company with others, left with the accused for Knoxville, Tenn.

J. A. MOORE.

MT. VERNON, Oct. 7th, 1844.

Dear Sir:—On the other half of this sheet, you have a short statement in relation to the trial of your son. I have not heard the investigation assailed by the other party, and I do not suppose it will be done publicly; and until it is done, all that we need to show is a fair judicial investigation. If you wish the evidence, you had better have it copied from the records of the Court, certified by them. All I have heard from the other party since I saw you is, that they intend to prefer an indictment, and have Abner brought to trial in the Circuit Court. This I heard from a gentleman from Richmond the other day, who heard it spoken of there. If he is indicted, let us meet it. I fear not the result. Respectfully,

J. A. MOORE.

WALNUT FLAT, Oct. 8th, 1844.

DEAR SIR:—I was one of the counsel of Dr. Baker, in the prosecution against him for killing Daniel Bates, and at the request of the father of Dr. B., I have consented to communicate to you such an outline of the case as will enable you to understand its true character, as well as that of the trial before the examining Court, which resulted in his acquittal.

The intercourse I had with Dr. Baker, whilst attending his trial, satisfied me, beyond a doubt, that he was laboring under monomania as regarded his wife and Daniel Bates, and several other persons; and he was equally under the belief that Bates intended to kill him on sight, and went armed for that purpose; and the testimony was perfectly clear and satisfactory, that for some time before, and at the time Bates was shot, the insane delusion of Baker existed in as great a degree, and with all the developments so obvious at his trial. Baker surrendered himself to a Justice of the Peace the morning after Bates was shot, claiming the protection of the law, and relying that what he had done was justifiable, and he was kept under guard until his trial. It was proven that Bates himself, a few days before he was shot—in a conversation with other persons on the subject of a difficulty that had occurred between him and Baker, a short time before, at his (Bates') own house—stated that Baker was deranged. In short, I am of opinion that no impartial tribunal could have done otherwise than discharge Baker, from the evidence and all the circumstances attending the case.

In regard to the Court that tried Baker, no doubt can exist of its perfect impartiality, and there was no material circumstance belonging to the case that the Court did not examine into. In fact, I felt that the Court was disposed to go into extremes in their vigilance for the Commonwealth.

We regretted very much that the gentlemen engaged on the side of the prosecution declined attending the trial. One of the members of the Court was of their selection, and we understood that no objection was made to the other member before the Court was organized. The case was removed to the court-house to accommodate the gentlemen, and every effort made use of to get them to attend, but they refused. We would have agreed upon other impartial Justices to try the case, but no other terms were offered save an unconditional surrender of the prisoner to a designated officer, who we understood was opposed to the prisoner, and who was to select the Court to try him. These terms of course were inadmissible. The case was then adjourned to the Seminary, a commodious building in the neighborhood, more convenient for the parties and witnesses, where the trial took place the next day, and the gentlemen of the opposition were invited to attend, if not as prosecutors as spectators, but they declined. It was not pretended by any person, to my knowledge, that either member of the Court had expressed any opinion of the case and I feel assured that no opinion was expressed by either of them until it was expressed upon the *evidence of the case*. And if the

decision is not satisfactory to the great body of that community, I am greatly deceived.

A note was made at the trial, of the leading facts proven on the part of the Commonwealth, which I suppose will be laid before you, and if I mistake not those facts very fully shadow forth Baker's insane delusion; and when the evidence on the part of the defence was examined, there were no grounds for reasonable doubt in the case.

The record will show you that the process regularly issued, was executed and returned before the Court that tried the case, and in all respects, in my opinion, the trial and acquittal was fair, full, and legal. Respectfully, your ob't serv't, J. KINCAID.

ONE THOUSAND DOLLARS REWARD.

\$150 REWARD.

A PROCLAMATION BY THE GOVERNOR OF KENTUCKY.

WHEREAS, information has been communicated to me, that Daniel Bates, of Clay county, in this State, was murdered on the 13th September, 1844, by one ABNER BAKER, and that said Baker has fled from justice, and is now running at large:

Therefore, by virtue of the power in me vested, as Governor of Kentucky, I hereby offer a reward of ONE HUNDRED AND FIFTY DOLLARS for the arrest of the said Abner Baker, and the delivery of his body to the jailer of Clay county.



In testimony whereof, I have hereunto set my hand, and caused the seal of the Commonwealth to be affixed, at Frankfort, January 26th, 1845.

WILLIAM OWSLEY.

By the Governor.

BEN. HARDIN, *Secretary of State.*

DESCRIPTION.

ABNER BAKER is, by profession, a Doctor, about 30 years of age, 5 feet 9 inches high, straight and slender, and weighs about 130 pounds; fair hair, blue eyes, and has a gold plug in one of his upper foreteeth, with a grey spot on the front part of his head, which may possibly be dyed.

\$850 REWARD.

UPON the production of the receipt of the jailer of Clay county, Kentucky, for the delivery of the above named Abner Baker into his custody, we will give, in addition to the above reward, the sum of EIGHT HUNDRED AND FIFTY DOLLARS.

February 4, 1845. DAVID V. WALKER, } *Ex'rs of Dan'l*
 GEORGE STIVERS, } *Bates, deceased*
 N. Y. Courier and Enquirer, Charleston Mercury, and N. O. Picayune, will insert to amount of \$2 50 each, and send accounts to this office.

In consequence of the foregoing Proclamation, as father of the unfortunate young man denounced as a *murderer* and fugitive from justice, I feel that it is my duty to publish the following facts, for the purpose of rescuing from unmerited peril and reproach, my absent and persecuted son.

1st. It has been judicially decided that my said son, Dr. A. Baker, jr., was not the *murderer* of D. Bates: for, though he may have killed him, yet he was fully and fairly tried by an examining Court, and was acquitted and *discharged* upon abundant proof of his *insanity of mind at the time of the homicide*.

2d. Dr. A. Baker, jr., is not a "*fugitive*" from justice; for after his judicial discharge as above, two of his brothers, physicians of Knoxville, Tenn., took him publicly to their residence, with the hope of restoring the health of his mind and body, both greatly impaired. And after he had been under their prescribed regimen and tutelar care for more than two months they being of opinion that his *mind* was so far improved as to enable him to travel, and that a temporary residence in a more mild and genial clime, might ensure the cure of the physical maladies with which he was deeply afflicted, he left the United States under their professional counsel, but with the determination of returning home in the event of a satisfactory restoration to a sound state of body and of mind.

Where my doomed son now is, I know not—but I anxiously hope for his return, and confidently expect it, as soon as a permanent restoration of health will allow, without any fear or apprehension of the result. The record of his acquittal was deposited with the Governor more than a month before the date of his proclamation.

A. BAKER, SR.

February 11, 1845.

☞ N. Y. Courier and Enquirer, Charleston Mercury, and N. O. Picayune will insert to amount of \$2, and charge accounts to this office. Send a copy containing advertisement to this office.

Shortly after the publication of the proclamation, the father and brothers of Dr. A. Baker, unwilling that he should be stigmatized as a fugitive from justice, and being confident that he would be honorably acquitted before any enlightened and unprejudiced tribunal, have him brought back for further trial.

The father, knowing the strong prejudices and calumnies that have been circulated against his son in Clay county, intended to make application to the Legislature for a change of venue. But the brothers, not aware of the extent of this excitement in Clay, and having no apprehension or fear of a trial, bring him back and surrender him to the proper authorities in that county, without the knowledge or consent of the parent.

A special term of Court was ordered on the 7th of July, 1845, by Judge QUARLES.

THE TRIAL
OF
ABNER BAKER, M. D.,

FOR
KILLING DANIEL BATES,

IN CLAY COUNTY, IN SEPTEMBER, 1844.

ON Monday, the 7th day of July, according to previous appointment, the Hon. TUNSTEL QUARLES, Judge of the 15th Judicial District, opened Court, in the Court-house at Manchester, Clay county, Kentucky, for the trial of Dr. ABNER BAKER, on the following indictment: [For the indictment, see APPENDIX.]

The accused was brought to the bar in custody, &c., and plead "NOT GUILTY," and the attorney for the Commonwealth joined issue.

The Commonwealth was represented by William H. Moore, Prosecuting Attorney; Col. W. H. Caperton, Silas Woodson, and — Caldwell.

The accused by Hon. George Robertson, John Kincaid, John Moore, William Garrard, James Hays, and — Einsworth.

A *venire facias* having issued to the Sheriff of Clay county, he returned a panel to the Court; and, thereupon, the counsel for the accused moved the Court to set aside the whole panel of the Jury, upon the ground that George Stivers, Deputy for Alexander White, Sheriff of Clay county, had summoned the whole panel, and that he was one of the executors of Daniel Bates, dec'd, and had joined in offering a reward for the accused—which motion the Court sustained.

And thereupon, Anderson B. Clark and Job Allen were chosen Elissors, and appointed and directed to return a panel by the next morning, 9 o'clock.

TUESDAY MORNING, 8th July, 1845.

Court met according to adjournment. The Elissors returned a panel of twenty-four names, out of which nine Jurors were chosen, and Court adjourned.

TRIAL OF DR. ABNER BAKER.

WEDNESDAY MORNING, July 9th.

Court met, and the names of several persons were returned by the Elissors, out of whom two Jurors were chosen, and others directed to be summoned, and Court adjourned.

THURSDAY MORNING, July 10th.

Court met, and the names of several persons returned, from among whom a Juror was chosen.

The names of the Jurors were as follows:—Wm. Graham, Thomas Cook, Adinarian Baher, Wm. H. Allen, Wm. B. Allen, Brisin Bishop, Zadoc Ponder, Julius Robertson, Abraham Carter, Lamona Halcum, Wm. Bishop, and Henry Henley.

The witnesses in behalf of the Commonwealth were then called into Court.

JOHN GIBSON was called to the stand. sworn, and stated—That he was riding along with his sister, near Daniel Bates' furnace. Saw Dr. Abner Baker draw a pistol and fire. That at the time the pistol fired, witness did not see Bates. Witness was 50 or 60 yards from the furnace. That he did not think it was Baker before he shot, but thought it was Baker when he shot. That it happened in Clay county, at Mr. Bates' saltworks. That he heard but one report of a gun. That Baker rode up to the furnace, got off his horse, made a few steps on the side of the furnace and fired. He then walked back toward his horse. His horse started, ran off, and Baker started after him walking. That witness did not see Bates until after he was shot. He was shot in the side rather back. Does not recollect which side of the backbone. When Bates was shot, the cooper shop was between witness and Bates, and intercepted his view. Witness saw a chair sitting on the side of the furnace, where he supposed Bates sat. Bates did not bleed. A negro was lifting him when witness reached the spot, and had him very nearly straight, Bates said that he thought Baker had done it. Baker shot with a pistol. When Baker fired, the point of the pistol was in the direction of where witness found Bates. Baker's horse left him. He did not see Baker after he got around the furnace, and does not know where he went. Witness was with Bates once or twice on the night after he was shot, and supposes he died of the wound.

Cross-examined. States that Mr. Bates had a pistol in his pocket when he was taken to the house.

JOSEPH COLEMAN sworn and examined, states—That he met Dr. Abner Baker in the road about 50 or 60 yards above Bates' furnace, a few moments before Bates was killed. Baker asked witness if Bates was at the furnace. He told him he was. He asked if any person was with him. Witness told him no, only a few negroes. Baker asked if Bates had his gun. Witness told him no. Witness stopped immediately after he met Baker, and heard the report of the pistol. Saw Baker go over toward Horse creek. He did not run. He walked toward his horse. Did not see Baker shoot, and did not see his pistol. Witness saw Bates after he was shot, and heard him say that he knew Baker had shot him. Bates also said that he did not

see Baker until after he was shot. Witness states that Bates was sitting with his back to Baker when he was shot. That Bates was shot on the left side of the backbone. Supposes that it was 15 or 16 steps from where Baker stood to where Bates sat when he was shot.

Cross Examination declined by defendant's counsel.

JAMES WHITE sworn, states—That he saw Daniel Bates after he was shot. That he was shot on the left side, rather back. Saw that Bates was dying. That he conversed with him, and Bates was conscious of his approaching dissolution. Told witness that Dr. Baker shot him, and that he did it without provocation on his part. Bates did not tell witness that he saw Baker after he was shot. That Bates was shot on the 13th Sept., 1844, and died on the morning of the 14th.

Cross Examined, states—That Bates as a dying declaration said, that the charges that Dr. Baker had made against him and Mrs. Dr. Baker, were false and unfounded, and protested in the most solemn manner that he and Mrs. Baker were innocent. Witness is the father of the wife of Dr. Baker. Dr. Baker has charged his wife with unchastity, &c., and communicated those charges to witness. The circumstances represented by Baker to be facts, were intrinsically incredible; and witness expressed himself to Baker that he was either deranged, or one of the greatest scoundrels in the world. Witness did, when first advised by Baker of his charges against his wife, tell Baker that he was deranged. Mrs. Baker was eight years old when she went to Richmond to go to school. She remained there some three or four years. Dr. Baker and witness' daughter had been married about three months before they separated. When Baker shot Bates, he (Baker) did not go to the house of witness, he went to Hugh L. White's, and staid part of the night. Hugh L. White's residence is about a half a mile distant from where Bates was killed.

Commonwealth resumed.—States, that after Baker returned from a visit to his friends at Lancaster, witness thinks it was about the 1st of August, he called at the house of Daniel Bates, where Baker and his wife were, for the purpose of seeing his daughter. That Baker called witness up stairs to him. They being then alone, Baker appeared very much confused. Witness asked him what was the matter. He replied a great deal was the matter, and went on to tell him that his wife had violated his bed, was unchaste, and had been so to a great extent, and showed a certificate or certificates signed and written by Susan. (Baker's wife,) acknowledging her guilt. Baker then proposed to witness that if he would furnish him with money he would leave the country with Susan, and go to Missouri, or some new country, and try and live with her. Several sums were proposed by him. Witness recollects that \$1000 was proposed. Baker went out of the room, and witness sent for Susan. He asked her about the certificates, and how it was that she gave them. She said she was *obliged* to give them. Baker returned to the room, and witness told him that if he believed his daughter was the woman he

represented her to be, that he could not live with her alone upon an island. Baker said if he would furnish money, (he proposed several sums,) that he would go with Susan to Missouri. He abused Daniel Bates to witness all that day. He said that Bates was the blackest hearted man that ever lived; that he was a great rascal, &c. Witness does not recollect how long Baker lived in Clay; he however lived here for some time. Witness considered Baker a man of sound mind, or he would not have let him marry his daughter. Thinks Baker was sane up to the time of shooting Bates. Witness was familiar with Baker, and thinks he would have noticed any derangement. Baker was a physician, and was practising medicine through the country.

Miss GIBSON called and sworn, states—That she was, in company with her brother, near Daniel Bates' furnace. That she saw Dr. Baker shoot with a pistol. She saw the pistol in Baker's hand when it fired. She did not see Bates. Baker's horse got away from him, and he ran after the horse.

JAMES WHITE called and cross examined by defendant's counsel, states—That when witness was at Bates' on the occasion referred to by him when first called, Baker told him that his (Baker's wife,) had had intercourse with Sam'l Chastine, Daniel Bates, Mat. Adams, Dougherty White, Frank White, and the Rev. Mr. Brown, of Richmond. Mat. Adams married an aunt of Baker's wife. Dougherty and Franklin White are her uncles. That the wife of Baker was in the fourteenth year of her age when she left Richmond. Baker stated that she had commenced her intercourse with men when she was very young. That she was seduced by Brown, &c. Stated that Bates had come to his bed at night and lay with his wife. Witness would not think Baker was deranged, if he believed in monomania. States that previous to the marriage of Baker with witness' daughter, Baker was in the habit of seeing his daughter at neighbors' houses—that is, when he heard of her being at other places than the house of witness, he would go to see her. That Baker never came to house of witness to see Susan. That witness saw Baker and his daughter at Frank White's, upon one occasion. That he, in Baker's presence, told his daughter that he did not permit her to keep Baker's company, and that she must leave and go home. That witness told Baker the reason why he had so instructed his daughter was on account of his conduct towards her. That she was young and inexperienced; and that witness was not satisfied of the honorable and gentlemanly intentions of him, (Baker.) The parties separated, and Baker a few days afterwards went to Lancaster. That Baker shortly afterwards returned to Clay, and wrote a letter to witness asking for his daughter in marriage. Baker afterwards stated to witness that Daniel Bates at first was in favor of the match between him and Susan, but from some cause had become violently against it. That Bates had misrepresented him to witness; that he had slandered him and attempted to throw every obstacle in the way of his marriage; that he was a black hearted man. After Baker married, he and his wife

lived at Daniel Bates' house until they separated. Witness advised Baker to leave there.

Cross Examined by Defendant's counsel, states—That when Baker told witness that Daniel Bates came to his bed, that he got in the bed. Baker did not speak to witness of the age of his wife when she first commenced illicit intercourse with Mr. Brown, but showed a little writing, signed by her, which did. Witness has heard Baker threaten to kill Bates. He threatened it on the day he told him about the conduct of his wife, and on the next day—this was between three and seven weeks before he did kill him.

JOSIAH DAVIS sworn, states—That he was with Daniel Bates before he died, and heard his dying declarations. Bates considered the wound mortal from the time he was shot. Bates was lying in the entry of the house near his furnace. He said that he was killed—that Dr. Baker had done it. Witness examined the wound. Bates said he was certainly killed. Witness replied he hoped not. Bates asked the size of the wound, which witness described to him as small. He complained very much of his bowels, and was in great agony. Retained his senses until he died. Bates said that he had not done any thing to Baker to cause him to kill him. He said he was sitting with his back to the road when he was shot, that he looked over his shoulder and saw Baker going from him after he was shot. Witness never heard Baker directly threaten to kill Bates, but heard him say that Bates was a black hearted rascal, and that he ought to kill him, but that he would do it publicly. This declaration of Baker's was before his marriage. Baker told witness about his intended marriage, and showed him a letter to James White explaining his intentions. He, (Baker) said he would marry Susan White, but that they would not live together long. Witness always thought Baker was a man of strong capacity. Considers his mind sound and strong. He was an active and efficient physician in this county, and was the family physician of Daniel Bates. James White is considered as wealthy as any person in this county. Witness never heard Dr. Baker say that Bates had never given him as much as he expected. Bates was remarkably kind to Baker.

Cross Examined.—Baker stated to witness that several persons had combined to break off the match between himself and Susan White. Daniel Bates was one. Walker and others. Bates said in the presence of witness, after he was shot, that Baker was jealous of him, but that there was no foundation for it. He said he never had given Baker any cause whatever for shooting him. Bates spoke to witness of Baker's jealousy before he was shot, and of the first difficulty between him and Baker. Baker frequently told witness (before his marriage) that Bates' negroes were prepared to kill him, (Baker.) He stated that Bates did not treat his sister (Bates' wife) well. That Bates would go into the room where Mrs. Bates was, after every body had gone to bed; and would wave his bowie knife over her head; and that he (Baker) stayed there to protect his sister. He also said

that he believed that Bates would have killed Mrs. Bates, but his heart failed him.

Resumed by Commonwealth's counsel.—Witness heard Bates say that the cause of Baker's shooting him was, that he did not get his (Bates') funds quite fast enough; that Baker wanted them faster than he was willing to give them to him.

Cross Examined.—After the first difficulty between Bates and Baker, the former said to witness, that he did not think that Baker believed the tales he told. Witness lived about Bates', and it seemed that all was peace and quietness, and that Bates and his wife lived in harmony.

Mr. POTTER sworn, states—That he was with Daniel Bates after he was shot. That Bates thought the wound was mortal. Bates said, "Potter, Ab. Baker has killed me, and I want him prosecuted." That he was innocent of the charges Baker made against him. Witness was not present when Bates died.

Cross Examined, states—That upon one occasion, Baker called upon witness for a horse for Miss Rhoda Murphy to ride up to Bates'. Baker said he thought Bates was going deranged. That he had heard from his sister that Bates and his negroes were going to kill him that night. Said he intended to get weapons, and had got weapons from Theophilus Garrard to defend himself. He seemed anxious that Rhoda Murphy should go to Bates'. Baker appeared very fond of his wife, and witness thought Baker neglected his business on account of his wife, and witness told Baker he would give him a short time to get *sober*, and then he must go to business. Witness does not know that he saw any thing strange in Baker's conduct in company.

Resumed by Commonwealth.—Witness has never discovered any particular change in Baker. He is the same Ab. Baker. Thinks that he is as good a physician as any.

Cross Examined.—Witness knows nothing about monomania.

Mr. MILLER sworn, states—That he saw Mr. Bates before he died. He seemed confident that he would die. He was in great misery; spoke occasionally, and died a little before day. He said he had to die without a cause. Witness considers Dr. Baker a man of good mind, and after his first impressions were removed thought he was a good physician.

Cross Examined.—Witness heard Baker say, previous to the shooting, that there was a combination by Bates and his negroes to kill him. Spoke of the fears he entertained for his life, and of some displeasure being in Bates' family.

AMBROSE JARVIS sworn, states—That he heard of the killing, and in the morning after Bates was shot, he went down to Mr. Bates. He there learned that Baker was at Hugh White's. He went over to White's, and found a crowd there. Baker requested to talk with David Walker. Walker refused to talk with him, and Baker said he did not care a d—d. Witness was one of the guard appointed over Baker and heard Baker say that if he got justice, he would not

be hurt for it. Baker also said that he got bewildered or bothered, and came down the hill near the house in which Bates was, that he heard Bates groan, and heard persons talking in the house. He heard Baker say to David Walker, (after Walker had said to him, that he had murdered his uncle,) that he ought to have killed him some time before. Baker got on a horse behind Mr. Garrard, and rode off. Baker did not tell witness, that when he came back to the house in which Bates was, that he stayed there until Bates died; Baker said he got bothered after he shot Bates.

Cross Examined.—Witness understood Baker to say that he aimed to go to James White's, and got bothered and fell in at Hugh White's; does not recollect that Baker fixed any time when he ought to have killed Bates, when talking to David Walker.

Mr. PAYNE sworn, states that he saw Dr. Abner Baker on the road from this place to Knoxville, after the first difficulty between Bates and himself; that Baker came to his house in the afternoon, and wanted his horse shod; witness discovered he was in distress. He told witness that he and Bates had a difficulty. That he fled to Garrards, because he thought Bates and his negroes would kill him. That he was going away to avoid further difficulties. That he was going to Knoxville. He purchased a circingle from witness, at fifty cents. During his conversation with witness, he said that Bates was a rascal, &c. Witness thought Baker was in great distress. Baker said to witness, that he had left the damned rascal without injuring him, but he hoped he had left friends behind him, who would avenge his cause. He further said that Bates kept a band of lawless men and negroes about him. That he had left all his business behind, to avoid a difficulty.

BENJAMIN EVE, sworn—states that Dr. Baker came to his house in Barboursville, on the morning of the day that Bates was killed, on his way to Clay county. That he arrived at his house about breakfast time. That he called for a room in which to dress himself. That he called for breakfast, told the boy who took his horse not to feed him immediately, but in a short time give him oats. After eating his breakfast, called for his horse after first saying and desiring his horse to have corn. He enquired of witness what had been said about his leaving Clay. Remarked that Bates was a d—d hollow hearted son of a bitch. Witness told Baker that Bates had sold a negro boy called Harry Love. Baker replied that he was glad of it. That Bates might have hired him to kill him (Baker). Witness observed nothing unusual in Dr. Baker when he stopped at his house. He had on a box-coat. Witness looked at him a moment or two when he rode up to his house, before he recognized him.

Cross Examined.—Baker ordered corn for his horse, and went off in about five minutes afterwards. He was much reduced. Baker expressed gratification when witness told him that Bates had sold Henry Love, and said that Bates might have got the slave Henry to kill him.

Mrs. AMELIA WHITE sworn, states—That Dr. Baker stopped at her house on his way to Manchester, and said that if he had not come

back to clear up the old scrape, that Bates would have crowed over him for ten years. Witness remarked that Bates would not live that long, and Baker replied—no, not one—that Bates had threatened to kill him, Baker.

Mr. PAYNE was called by the Counsel for Defendant, states—That Baker called at his house, as detailed by him in his testimony before given, and he was very much distressed, as much so, apparently, as any man he ever saw, and witness wanted him to stay with him, that he might palliate his distress. Baker appeared very restless.

Examined by Commonwealth's Counsel, states—That Bates and witness were unfriendly, but does not know that Baker knew it.

Mr. FARRIS, called by Commonwealth, being sworn, states—That he saw Baker on his return from Knoxville, on the day Bates was killed. Witness rode with Baker from White's to Chasteen's furnace—distance about two miles. Baker asked witness if he had heard anything said in relation to him, or about him and his difficulties. Witness replied that he had only heard rumors in the country. Asked if witness had seen Bates. He told Baker he had. He asked witness if he had seen Bates with a gun. He replied that he had.—Asked if he had heard any threats from Bates against him. Told him that he had heard none. He requested witness to see his wife, and tell her to come to Miller's the next day. He asked witness to loan him a gun, and said he wanted to be on equal terms with Bates. Witness advised Baker not to go to Manchester until night. He replied that he came to settle his business and intended to do so or die. That he would not sneak about the country. When Baker commenced talking about Bates, he looked scared. Supposes he looked like any other man excited.

Cross Examined by Defendant.—Believes that Baker told him, that he (Baker), had heard that Bates had made some threats. Witness saw Bates with his gun at Bates' stable, as witness went from the election. Recollects of telling Baker that if he was in his place, he would not go to Manchester till night. Baker said that Bates was frequently about his (Bates') stable with his gun, and that he, Baker, wanted a gun to be upon equal terms with him.

RENJAMIN OHLER sworn, states—That he saw Dr. Baker in Barbourville, on his return from Knoxville, on the morning of the day Bates was killed. That he would not have known Baker, if Judge Ballenger had not spoken to Baker and called his name. Baker said he was going to Clay. Witness did not discover anything wrong in him.

Cross Examined.—Witness thinks it is probable he had seen Baker before, but if he had met him in the road he probably would not have known him. That if he ever saw Baker before, he does not know it.

Mr. C. WATKINS sworn, states—That Baker stayed at his house the night before witness understood that Bates was killed. That he came there about sun-down. Witness was not at the house when Baker arrived. When witness got to the house he found Baker's

horse unhitched. Hitched his horse. Thought he knew Baker. Asked his name. He told his name to witness. Said that his horse was lame, and could not get farther that night, and wished to stay all night. Before going to bed, Baker talked about Squire Bates. Said that Bates was a black hearted man, &c. That he, Baker, was going to Clay county to settle his business. When he was going to bed, he handed witness his watch to hang up, and told him he wished to make an early start. Baker was very restless during the night, and was awake when witness got up. He called for his horse a little after light. He forgot his watch, and so had witness, but witness thought of it, and after handing his watch to him, witness said, "Dr., you had better not go to Clay, somebody will kill you." He said they were too big cowards, except Bates, and that he, (Bates,) would only slip up on a man and kill him. Witness never saw him before. He seemed to be a very restless man.

Judge FRANK BALLENGER sworn, states—That he saw Dr. Baker on his horse, riding from Eve's tavern, in Barbourville, towards a store at which witness was. He stepped out on the street and shook hands with him. Told Baker he was riding a fine horse. He said yes, but that he had lamed him coming over the mountains. Told witness, upon enquiry, that he was going to Clay. Nothing was said about the political canvass in Tennessee. Witness knew Baker for twenty years. Was on intimate terms with Daniel Bates and family and Dr. Baker. Perceived no difference in Dr. Baker's mind, and never heard anything said about his mind in the family. The Defendant did not cross examine.

Mr. R. M. COBB sworn, states—That Dr. Baker stopped at his house on the day that Bates was killed. Witness understood from Baker that he was from Knoxville. Baker told witness that he wished to talk privately with him. They went to a lumber house in his yard. Baker asked witness what was going on in and about Manchester, and what was said about his leaving. Witness thinks he said to Baker, that he never had heard any of the parties say anything about it; and as well as witness recollects, Baker seemed to want to know if any one wanted to kill him. Witness told Baker that a neighbor woman had told his (witness's) wife, that Bates had said, that if he (Baker) ever came down, he would kill him. Baker told witness a long tale in relation to his wife and Mr. Bates. He said that James White had come to Frank White's, and took Susan off, when he was courting her. He told witness that Daniel Bates said to him, (Baker,) when he (Baker) was trying to get his wife, that he, (Bates), was in favor of it, and that he would help to get her off. That since, Bates had become opposed to the match, but that he (Baker), got matters arranged and married her. That his wife had treated him badly, and that Bates and his wife had treated him badly. That Bates had come into the room where he and his wife were, and trod on her foot for a sign, &c. That some man in Lancaster came into the room where he and his wife were, to have intercourse with her. That he had fixed to kill the man, but never saw him go away.

Witness asked Baker how the man got away. Baker replied that he slipped down by the window, as he supposed, and crawled away. Witness interrogated him a little, and when they got through the conversation, Baker said he wanted to shoot off his pistols. Witness went with him, and he shot off a pistol which shot five times, and two others. Witness thinks he re-loaded all of them. He asked witness for a rifle gun. Witness told him that he had none. Witness was alarmed at his coming to Manchester. Baker said he intended to settle his business. Witness advised him to wait until night. Baker seemed to think that if he could get to Manchester, he would be safe; and that if it was known that he was on the road, he might be waylaid and killed. He seemed to think that Bates would not kill him, but would have him waylaid and killed. He said that the reason Bates had sold Henry Love, was, that the negro would not agree to kill him, (Baker). Baker left the house of witness about one o'clock. Witness did not think about his being deranged. Has been intimate with him.

Cross Examined by Defendant's Counsel.—Witness thought it somewhat singular that a man should think, that another man would come into the room where he and his wife were for the purpose of illicit intercourse; and also thought it singular, that Bates should act as Baker said he had, and would not suppose that a reasonable man would entertain such notions. Baker seemed to be in earnest when detailing his wrongs, and was very restless and uneasy. Witness was also uneasy at seeing Baker going down to Manchester, and thought that death might ensue one way or other. Baker was apprehensive of being assassinated, and he seemed very earnest in what he said. Witness thought his Lancaster tale unreasonable, and thinks, if Baker had tried to deceive witness, he could have told a more plausible tale. Dr. Baker is a temperate man, and always has been.

SAMUEL BLACK sworn, states—That he was at Mr. R. M. Cobb's when Dr. Baker took his dinner there, and heard very little conversation from him. Witness heard Mr. Cobb inquire of Baker in relation to the whig meeting at Cumberland Gap. He spoke sensibly upon the subjects he conversed about. Perceived nothing wrong about his intellect. Appeared as smart as common. Heard him make no threats.

Not cross examined by defendant's counsel.

Mrs. AMBROSE COBB sworn, and states—That she saw Dr. Baker the evening Bates was murdered. He stopped at her house and inquired of a servant girl if there was a gun there; and after ascertaining from the girl that there was, he jumped off his horse, and came in haste to get the gun. He got the gun into his hands, and said he wanted it a few moments. Witness told him he should not have it, and took hold upon the gun. Baker let it go, and witness placed it back in the rack.

Cross Examined.—Witness lives below R. M. Cobb's. Witness told Baker that the gun did not belong to her husband; that it belonged to a Mr. Brogans. Baker asked where he was, and witness

told him that Mr. Brogans was at the furnace. Baker said he had not time to wait for his return, and offered witness ten dollars for the gun three hours.

RHODA COX sworn, states—That she lives four miles below Ambrose Cobb's, on the creek. That on the day Bates was killed. Dr. Baker passed her father's and rode up to the fence where she and her father were at work. Her father asked Baker if he was going to James Whites'. Baker replied that he was going to town, and said, that he had heard that Bates had threatened his life. Her father said he reckoned not. Baker said that Bates was a black hearted man; and that if Bates did not kill him that night he never would. Father asked Baker about his brothers, and where they were. And Baker said they were in gun-shot of him.

DEFENDANT'S WITNESSES.

JOHN MORRIS sworn, states—That he saw Dr. Baker about one mile below Cobb's on the day Bates was shot. That he [witness] was building a bridge above John Cane's furnace. Witness was in camp. Baker rode up and spoke. Baker told witness that he wished to speak to him, and rode down the road about thirty steps. They there sat down upon some beech roots, and Baker said, "John Morris, I want to ask the truth of you, and I want you to give it to me." I told him I would. He then asked witness what had been said in his absence by James White and others. Witness told him that he had not heard James White speak harshly of him. That Col. Hibbard told witness that he [Baker] had intimated to Bates, that he ought to kill witness. Bates said he could not kill John Morris, but said, "Baker, you can have him killed." Baker said to witness that no such conversation had passed between himself and Bates; but told witness that he heard Bates say, that *he* and others were d—n—ed rogues and rascals. About this time Alexander White came up. The usual salutations passed, &c., and he rode on. Witness advised Baker not to come down the creek to Manchester, but to take another route to town, which witness described. Baker said he had business, and would go to town and attend to it. Witness told Baker that Mr. Hibbard had said to him, that he saw Bates with his gun, and that Hibbard asked Bates if he was carrying his gun again. That Bates replied, that he understood that Baker had said he would kill him; and that he wanted to be prepared to kill Baker as soon as Baker could kill him. Witness does not know that, at the time of the conversation with Baker, he had an opinion about his mind. Thinks he discovered something in his eye that was unnatural. Witness went up to Cobb's that evening, and asked the crowd what they thought of Dr. Baker. Does not recollect of his expressing himself that Baker was deranged. Dr. Baker occasionally took a dram, but was very moderate. Never knew him to be disguised by liquor.

Cross Examined by Commonwealth's Attorney.—Witness saw nothing that shewed anything unnatural during the conversation had with Baker. There is a difference in the appearance of a man's eye when excited and when not.

Resumed by Defendant.—Baker had a very peculiar, wild, glaring look. The only change witness saw in him was in his eyes.

Mrs. SALLY BAKER sworn, states—That Abner Baker was a small boy when she married the father of Abner. That witness discovered in the last two or three months before his marriage a great change in him. The change was the subject of private conversation in the family. Witness first discovered the change in the spring, 18—. Abner Baker was very notionate. At one time he determined with witness and her husband to go to Knoxville. This was in April, 1844. And started on the same day, and had his trunk started. He changed his purpose in a very short time, and went back to Clay. He was at his father's in April, and again in June or July. The last time he brought his wife. When he came with his wife, he remained in his room the greater part of the time, and seemed indisposed to see company. And his conduct and conversation was singularly strange, and she believed him deranged.

Cross Examined by Commonwealth's Attorney.—He visited several of his friends, and witness never apprised them of his strange conduct, or her belief of his derangement. She first discovered that something was the matter in the spring of 1844.

Defendant's.—It would have been impossible for a lady about the house of witness to have had an abortion without the knowledge of witness. And she believes no such thing occurred with Mrs. Abner Baker while there.

[She also stated, that, during that visit, Abner manifested a belief that she and the girls kept a disorderly house, and received young men late at night.*]

Mrs. ELIZABETH B. McKEE sworn, states—That Abner Baker and his wife were in Lancaster on a visit in July, 1844. That she invited him, his wife and sisters to take tea with her. That she noticed when her son [Bob McKee] came in to supper, a change came over Baker. After supper his conduct was unusual and very strange, and his look wild. He paced the floor backwards and forwards—cursed and swore—wished himself in hell. Witness told Baker he ought to be ashamed of himself. Baker whispered something to his wife, and she shed tears. Witness was so much mortified at Baker's conduct that she cried. After they started home witness remarked to one of Baker's sisters, and in her own family repeatedly, that Baker was deranged; that she would rather risk her chance with her own son, who was then in the Asylum in Lexington, than with Abner Baker.

Cross Examined.—She did not tell the father of Abner Baker

* NOTE. This was not in the copy before the Governor, but was testified by witness.

that she thought his son Abner was deranged for about three weeks afterwards.

Resumed.—Witness has a son in the Asylum at Lexington. She could not make her own sons believe in his derangement for a long time. She took him about with her, and risked her own life, that her neighbor's and friends might discover it.

Mrs. POTTER sworn, states—That on a Sunday evening, after Baker's marriage, Baker walked across the floor and cursed a great deal. Baker's wife had been to church, and witness knew of no cause for the excitement. Baker's sister [Mrs. Polly Bates] was very much affected at his conduct, and left the room and went up stairs.

Cross Examined.—Witness always considered Dr. Baker a man of good mind until that time. He looked strange several times after that. He still continued to attend to his business. States that preaching was at the Court House. Several persons went with Mrs. Baker. Witness was in company.

Resumed.—States, that it was more his manner than anything else that convinced witness that Baker was deranged.

Miss HARRIET BAKER sworn, states—That she went from Clay county to her home, near Lancaster, with Dr. Baker and his wife. That she discovered his derangement, and feared to go with him to Lancaster. His wife on the road was sometimes in tears. He was capricious on the road, sometimes wishing to return to Clay, and offered her a negro to go back. His conduct was similar in Lancaster. He was very affectionate and loving towards his wife, and would kiss her sometimes while riding along.

Cross Examined.—There was no other person along than Baker, his wife, and witness. She did not mention his conduct, or her belief of his derangement, to her father, but mentioned it to Mrs. Polly Bates. Dr. Baker and his wife left her father's with no other in company, when they returned home.

Miss ALMIRA BAKER sworn, states—That when Dr. Baker visited her father with his wife, his conduct was not like it had been. He would walk the floor frequently, and seemed very much distressed. His conduct was strange, and his wife was frequently in tears. He would complain of persons being in his room at night. On one occasion she found him in the room in which the girls slept. He was standing by the window. He asked witness who slept in that room. She told him that she and her other sisters had slept there, on account of their regular sleeping room being newly plastered.—He looked very strange and incredulous.

Cross Examined.—Witness was with Baker every evening he went out visiting. Thinks that it was quite visible that his mind was wrong. In the spring previous to his marriage it was noticed in the family that his conduct was strange.

Defendant.—The conduct of Baker's wife was lady-like and unexceptionable.

Dr. HARVEY BAKER sworn, states—That he had not heard from his brother [Abner Baker] for six or eight months before he came to

Knoxville. He came there about the 1st of August, 1844. Witness was on his farm about ten miles in the country. Received a note from his brother, requesting him to call on him the next day. Witness did so. Abner Baker met witness with tears in his eyes, shook hands—his hands were icy cold. Inquired for his wife. He turned off, made no answer—went out of the dining room, into the sitting room. It was whispered to witness, that his brother had parted with his wife. Witness followed into the sitting room. He requested witness to go up stairs with him. Did so. He went into a room, closed the door, got two chairs, set them about the middle of the room, requested witness to take one, and he took the other, and placed his feet on the rounds of the chair occupied by witness. He began by saying, You asked about my wife. She is the d—dest whore living. Told me that her uncles had criminal intercourse with her. That the Rev. Mr. Brown, of Richmond, was her seducer, at the age of nine or ten years. That he kept her all the time she went to school to him, or until her *courses* commenced. Told of several other girls seduced by Brown, and the manner in which his wife was seduced. Said that Brown had a little room adjoining the school. That he got his wife to combing his hair. That Brown would lay his head in her lap while she was combing his hair. That he would feel her bosom, and continued feeling downward. That he worked with her until he succeeded. He told witness that his wife had told him the signs used by Brown when he wanted one of the girls to come to his room. That Brown would place his right hand on the right side of his head, and rub the hair back. He would then place his right hand on the left cheek, and draw it over his mouth and chin.

Baker also told witness, that Daniel Bates came into his room and had intercourse with her more than once. That Bates squeezed her foot, and got her out of bed, and cohabited with her in the room. That Bates made a negro woman stand over him with a Bowie knife, while Bates had his wife on the floor. That Bates had been trying to take his life, through his negroes, for a year or two before. Told witness of receiving a note from Polly Bates (he was in Manchester) telling him not to come home. He suspected something; mounted his horse; rode up to Bates'. Polly Bates motioned her handkerchief towards him to go back, as he approached the house. He went straight forward. Met Polly. She told him that Bates was up stairs with all his guns. That he had sent out for all his negroes, and he was to be killed that night. He turned, went to the door, and spoke loudly to the boy, to take his horse and feed him. The boy did so. He followed. (The stable being in the direction of town.) When he got to the gate—some hundred yards from the house—he mounted his horse and went to town. That he borrowed a horse in town for Miss Rhoda Murphy, and urged her to go up to Bates' and see what was going on, and treat Mr. Bates very friendly.

That he [Baker] had remained at Daniel Bates during the last two years, to protect Polly Bates, who was in constant danger of being killed by Bates. That she would not consent for him to leave there.

He said that Daniel Bates and his own wife [Susan] had combined to kill him by poison. That he took some toddy, made by Susan for him, without solicitation. That the little he took, which was only a sup, flew into his head, and swelled up his head, until it felt as large as a bushel; and if he had drank as much as usual, it would have blowed him to hell in five minutes.

¶ That Bates and Susan had given money to Sibert to kill him. That when they killed him, Bates would introduce some low fellow into Polly Bates' room, who was to be caught there to her disgrace, and she drove away; and that Susan [his wife] was or would be kept there for Bates' own use.

Abner Baker said, when he first mentioned Bates' name to witness, that Bates was one of the d—dest black hearted scoundrels that ever lived, and that he would kill him. That he had ruined his happiness, and had been trying to take his life for a year or two.

Abner Baker told witness, that he had suspected his wife early after their marriage. That he made an examination, and found her womb enlarged; and he knew that she had been pregnant before he married her, or had been often before. He asked her with whom she had intercourse previous to her marriage; and she told him, Mr. Brown, her uncles, [the Whites,] and a number of others. That he told Susan to write to her father and state her guilt to him; and that he would probably afford them help to get away from Clay. That it was impossible for them to live in that community happily—which Susan did. That he had shown these letters to James White, and told him the character of his daughter, and that he would leave her. That Susan was sent for, and denied all except Brown and Frank White. That James White remarked that it was impossible for him to live with her, unless he could forgive her—and was going on to tell what property he had laid off for her, when he stopped him and observed, that he had not married her property, but if he could only say she was a virtuous woman, he would give up what he had, and work for bread with his hands. That he found out that Bates was having intercourse with Susan. He had suspected it before. Had seen Bates showing his p—nis and winking at her. That he was preparing to leave and Susan told him that if he would pull off his clothes and go to bed, she would tell him all about it, which he agreed to do. He pulled off his coat. She slipped out of the room. He went out after, and found her and Polly Bates lying on a bed in another room, and Polly Bates crying. He took his wife by the hand and led her back to her room, and asked her what Bates had done to her. She replied that his sister had advised her not to tell him, for if she did that he would kill Daniel Bates and leave her. His clothes were packed to leave next morning. He insisted on her telling. She promised that if he would not leave her she would do so—and then told him that Bates had intercourse with her twice. He then rushed down stairs to kill him. He told of his visit to Lancaster with his wife. Was asked by witness "why, in the devil, did you carry such a woman to your fa-

ther's?" Answered that Daniel Bates was keeping Harriet Baker, his sister, and that he went to get her away. That she was with child by Bates. Witness disputed with him, and he showed a great deal of excitement. Told that his mother would open the door for Bob McKee to come into the room to his wife, and of his hearing him go out at the window. That his wife had an abortion at Lancaster, produced by pressing her abdomen. That during the sickness produced by the abortion, Bob McKee had intercourse with her, he knew, because he saw where he had wiped his p-nis on her chemise. Said that he had fixed a day to start home, and that his horses were lamed; and when he came to find out, the negro man had lamed them to detain him for the purpose of using his wife. He appeared greatly distressed; was watchful and restless; his general health bad. Would not sit about the door with the family as night approached. His bowels were costive, stomach irritable, mucous membrane covering his mouth and fauces red and much swollen. Witness received a letter from his father, in which he stated that Abner was deranged. That rumor said that he had taken off two of James White's negroes; and that he and John White were arranging to get a divorce upon the ground of his derangement. Witness showed the letter to Abner. He became very much excited, and said he would go to Kentucky and get a divorce on the true ground, that was her guilt. That the negroes he was charged with running off, were sent out to kill him. That he was in more danger there than in Manchester. Witness states that he (Baker) went to bed early one night and was very restless. Witness was writing at the window. Abner got out of his bed in the same room, and came to where witness was writing. He took up the candle and blew it out; then drew up the curtain and made water—making no reply to the inquiry, "what did you blow out the candle for?"—and returned to his bed. He determined to go to Kentucky to attend to his divorce, and settle his business. He said that he would get James White and Susan to give him an acknowledgment of the facts, which they would do: on the presentation of which he could get a divorce without any trouble. He declined going the usual route, because he said he believed there were negroes placed on that road by White and Bates to assassinate him. He would use the most indecorous language in witness' family in relating his difficulties. Upon several occasions, he sat at a window which commanded a view of a friend's house across the street. He was frequently at the window, and his motives were suspected. He was told that the lady he was looking at so often, and watching so closely, was a friend's wife, and that if he had any designs upon her he must abandon them; that it would ruin the families of both parties. He said that she was one of the girls whose name Susan had given him as being seduced by Mr. Brown; and that he was trying the signs upon her, and that she understood them. Witness thought his

tales very strange but never thought of his derangement—thought his wife was the subject of nymphomania, and that in his troubled and excited state of mind he had imagined and related some things untrue. Witness was opposed to his going to Clay county for fear of a difficulty; and extorted a promise from him that he would have none.

Cross Examined, states—That witness did tell Dr. A. Baker that he might take a partnership with *him* in the practice of medicine; to settle his business and send his medicines to Knox. Witness was doing little or nothing at the practice—he was engaged in attending his farm. Abner Baker rode the horse of witness to Clay. His horse was very poor and unable to go a journey. He rode witness' horse most of the time he was in Knox. Could not say that Dr. Baker was deranged, or that witness thought him deranged until after Bates was killed. He always believed Abner a man of undoubted veracity. Never had caught him in a falsehood, and could not say that what he related to him was all false; and witness did believe most of them, upon the ground that his wife was a nymphomaniac. After Bates was killed, witness came to Clay—found him very much excited. He told witness that Polly Bates was in danger of being poisoned—that he had written her a note to that effect. He wanted witness to go and see her. Gave witness a list of questions to ask her and get her to answer. Witness did go and found that she knew nothing about them. Witness heard from every one that Susan (Abner's wife) was of good character and a virtuous woman. Witness was unable to account for his conduct. Got hold of some authorities upon the subject of derangement, and found that it was consistent for a monomaniac to reason as well on every subject as usual, with the exception, sometimes, of the subject on which they are deranged—and grant their premises, and they reasoned well upon that also. Witness came clearly to the conclusion that Abner was deranged—that he was a monomaniac—and that his actions and conduct was explicable on that ground alone. Witness, after reading various authorities upon the subject, is confirmed in the opinion that he was and is deranged.* States that Abner Baker started to Havana before any indictment was found. That he left Charleston to go to Havana without friends. That he had been gone from the last of October, until the latter part of May. He returned home up the Tennessee river, &c. &c. That as soon as the proclamation was made, and indictment found, several letters were written to him urging his return. States, upon interrogation by Defendant's counsel, that when he showed Abner the letter from his father, that he said his father was a d—d old fool, and the greatest enemy he ever had on earth.

* While witness was deposing, the Hon. T. QUARLES, Judge of the Clay Circuit Court, asked whether such a disease as *monomania* was known and recognised in medical authority. Witness answered certainly, that *monomania* was well known and recognised, both in law and medicine. The Court rejoined, (in the hearing of the Jury,) that he had only made the inquiry as to medicine—he claimed to know something of the law himself.

Capt. ABNER BAKER sworn, states—That in the spring of 1839 or '40, he discovered symptoms in his son Abner varying from his ordinary conduct, which led witness to suspect that his mind was irregular. He became suspicious, and apprehended united efforts against him. He became fearful his moral character had undergone a great change. Witness reflected upon his condition until he had an apprehension that the symptoms were an index of insanity. Abner left home. When he returned from the Medical Lectures at Louisville, witness gave him a young horse. He was fearful to go near him. He wanted to leave, and his horse had to be broken for him to ride away. After his horse was broke, the little negro boys rode him, yet Abner still feared him. He rode the horse to Clay, under great apprehension, and disposed of him at a sacrifice. He did not return for some time. When he returned, witness discovered the same unusual state of mind, and mentioned it in his family. Abner again left, went to Knox, and then returned to Clay. He afterwards came to visit witness, and witness inquired of him in regard to his location. He said he had a notion of settling in Clay. Witness advised him not to settle there, and gave him several reasons why he should not. He intimated that inducements had been held out to him by Daniel Bates to locate in Clay; and said he thought that he would try and stay in Clay. After he had lived about one year in Clay, he visited witness again, and witness advised him to leave. He said his business was such that he could not. He stayed about another year, and promised witness to wind up his business and leave. He did not leave after the second year, and witness reminded him of his promise. He excused himself by saying that Mrs. Bates would not permit him to leave, or was not willing that he should leave—that she was afraid of losing her life—and told witness that Bates had walked the floor with his bowie knife and charged Mrs. Bates with having told (Abner Baker) of some ill treatment she had received from him, (Bates.) Witness told Abner that if Bates had done so, that Bates was deranged, and witness told Abner that *he* (Baker) was deranged. He replied, "deranged, the devil!" and parted with him. That Abner was at the house of witness Christmas previous to the killing of Bates, and he still noticed the change in him. He came again in April, 1844—still noticed the change. Mr. Woodward was at his house also. Witness saw Woodward in the morning. They set together on the styles, or steps at the gate. Conversed with Woodward, and related to him what Baker had said to him, (this was in April.) Witness told Woodward, that he had observed a change in Abner since 1839 or '40, and had come to the conclusion that he was deranged. Woodward said that it was also his opinion. Abner left, and witness saw him no more until after his marriage. Witness went to Knoxville, and on his return learned that Abner had married. During his stay in April he never mentioned his intention to marry. Looked for Abner in Knoxville, until witness and his family left there. When witness reached Barbour's-

ville, he got a letter from Daniel Bates inviting him and his family to come by Clay and see him—and he also stated that Abner was in Clay. After witness arrived at home and had been there some two or three weeks, Abner came to the house of witness with his wife. He met them at the door. Abner introduced his wife to witness, and he treated her as he did others of his daughters. He and his wife were conducted to a private room. They remained in their room the greater part of two days. They excused themselves, on account of fatigue, &c. On the third day, Abner came down, and witness approached him, and said, "my son, what did you come for?" He replied, to pay us a visit. Witness said to him "you have been here three days, and we have not had ten minutes of you and your wife's company. Why do you not come down with your wife, and spend the day with the family?" He said he desired living retired. Several ladies called to see Mrs. Abner Baker. She did not come down. Witness believed the fault was in Abner. Afterwards ladies frequently called. She came down sometimes, and at other times she did not. Abner and his wife were regularly invited to their meals. Susan often came in when the meal was half over, wiping her eyes. Witness told his wife to visit the room in which Abner and Susan stayed, frequently, and learn what was the matter. His wife reported often that Susan was in tears, which induced witness to talk to Abner. Witness asked Abner what was the matter. That his conduct made Susan unhappy. That he was maltreating her, and that he was the only son he ever raised who had done so. That his conduct would bring reproach upon the family, and that he must do better. He replied, "by G-d. I have no wife!" He charged her with inconstancy. Witness told him, that it was *not the truth*. He replied, "untrue, the devil!" And such was his conduct, during the remainder of his stay at the house of witness. He was there altogether about two weeks. He fixed upon one or two days to leave, but did not. He at length left, and witness saw him no more until after Bates was killed. He went to Clay, found his son Abner in confinement and under guard, and his mind in a deranged state. The conduct of Mrs. Baker was unexceptionable during her stay at the house of witness.

Cross Examined.—States, that he made the discovery of Abner Baker's derangement the spring after his last course of lectures—date not recollected; but thinks it was in 1839 or 1840. That he was firmly convinced of his derangement up to the time he saw him in Clay. Witness did not write to his children in Clay that Abner was deranged. Cant say that he was or not suitable company for his wife when he left the house of witness with no other in company.

Defence. Abner Baker's moral departure from the rules of witness' family led him to suspect a change. States that he is the only one of six sons who ever swore before him, and that he did not do it until his derangement.

Mr. SIDNEY PEARL sworn, states—That he lives on a road frequently traveled from Manchester to Lancaster. Dr. Baker usually

traveled the road on which witness resides, and usually called at witness' house. That he and his wife stayed all night there on their return from Lancaster. Witness noticed an unusual excitement and extravagant course of conduct on the part of Dr. Baker. He was very restless and would not converse; would jump up out of his chair and pace the floor. It was Dr. Baker's habit to sleep late in the morning. Witness found him up very early pacing the floor. He looked like he was just recovering from a severe spell of sickness; had a haggard expression of countenance. Witness talked about it in the family (after he left.) Believed he was deranged. Has known him since 1836, and has seen him frequently since 1841, up to the time he stayed all night with his wife at house of witness. While Dr. Baker was at witness' house, some of the family wanted medicine, and refused to call on him for it. He had given medicine previously in the family. Witness heard of the separation in a few days afterwards.

Cross Examined by Commonwealth.—Witness came to the conclusion that Dr. Baker was deranged, more from his conduct and expression of countenance than any thing else. When he was drawn into conversation, or spoke while at the house of witness, he spoke rationally. He has been the family physician, and witness never suspected his derangement before.

Mr. JACKSON sworn, states—That he has been acquainted with Dr. Abner Baker for some time. Saw him at the same time spoken of by Mr Pearl. Witness had a bad case of sickness in his family. He talked with Dr. Baker about it. He asked a few questions about the case, and gave no advice. He would then jump up and pace the floor. This occurred at witness' house. Baker had attended two cases at his house before. His appearance was different from what it had been. He would jump up, throw his head back—and witness saw a greater change in his eyes than any thing else.—When Baker and his wife left the house of witness, he and his wife went to the stiles, and after Dr. Baker and his wife started, witness' wife asked him what he thought. He replied that he did not know what to think. That it was not Dr. Baker. His wife replied that he was deranged. Witness then said his mind seemed unbalanced in some way.

Cross Examined by Commonwealth.—States that Baker stayed at the house of witness about three hours. Witness' child was sick and was under treatment of Drs. Lively and Young. Did not ask Dr. Baker to administer medicine, but wanted his opinion on the case, and could not get it. Witness does not know whether Drs. Young and Lively are regular bred physicians or not.

JAMES DUNCAN sworn, states—That, in July, Dr. Abner Baker was in Lancaster. Found him at one of the law offices and had some conversation with him. Asked how his family was, and told him that he would like to see his wife. Baker made no reply. Witness started off, but went back, and asked Baker to come and see him, and bring his wife with him. Witness thought that Baker was insulted with him, and asked Baker if he was. He said not. Said

that he had no wife; was unusually excited. Had known Baker for some time. Witness told some individuals that Baker was crazy; but would scarcely permit himself to believe that he was crazy.— This occurred when Baker and his wife were in Lancaster.

Cross Examined by Commonwealth.—Witness never noticed any aberrations of mind, except upon the occasion referred to. When he was at Lancaster before, he said he intended to come there and live.

ALEXANDER R. MCKEE sworn, states—That he has known Dr. Abner Baker for a long time. That in April previous to his marriage, he found him laying on a pallet up stair at his father's in Lancaster. That he went up and lay by his side. After some conversation he detailed a difficulty he had with James White, which is correctly detailed by James White in his testimony, with the exception that Baker told witness that the difficulty was settled before he left Clay. Baker said to witness that he came to Lancaster that all excitement might pass over. That Bates was at one time in favor of the match between Baker and Susan White; but was then opposed to it. That Bates was the d—dest, blackest hearted scoundrel that ever lived. Witness told him, he thought he was mistaken. He said to witness, You dont know him. That Bates wanted to kill him; and said, upon one occasion, he came home on Sunday; that Bates was up stairs at a window with his gun; that he (Baker) marched boldly up, and went into the back yard, where Bates had all his negroes from the negro quarters—some of whom had not been there for years—and said, "What in hell are you doing here." And they all scattered, &c.

States, upon cross examination, that Baker was always an excitable and suspicious man; that he was often afraid that Bates would suspect him wrongfully. His suspicious character grew upon him. Witness was surprised to hear of his marriage. Baker made the impression on the mind of witness, that he did not want to marry any person. Witness is not positive, but thinks that Baker said he did not want to marry Susan White.

THOMAS W. POPE sworn, states—That he lives on the road from Manchester to Lancaster. That, in July, 1844 Abner Baker, his wife and sister came to his house, on their way to Lancaster. That Baker and wife were invited to a room, while witness attended to their baggage. After attending to their baggage, horses, &c., witness returned to his wife's apartment. His (witness') wife asked him what was the matter with Dr. Baker. She asked if he drank. He replied he did not know. His wife said that something was the matter. Witness told her to say nothing; and witness made several attempts, but could get nothing out of Baker. After a short time, he told his wife (Susan) to get some whiskey out of a bottle in his saddle bags, and that some toddy might be made for his wife and sister. He would not drink it. Witness asked what was the matter. Baker paced the room at night; was restless and discontented; and left next mornnig. After remaining at Lancaster some time, he returned with his wife; called for a bed, and laid down. Very little conversa-

tion passed. He was not disposed to talk. Witness thought he was tired, and by morning he would be more cheerful. The morning came—it was dark and cloudy. Baker called for his horses. Witness' wife asked him to stay all day. He said he would go home, if it rained him in pieces. Baker's conduct reminded him of what Baker had told him two years before, in the month of June; when he stayed with witness and told him of combinations against him—said that negroes were posted about to destroy him—said he was poisoned in Toddy with poison vine. Witness told his own wife of his conduct, and thought Baker was mistaken about being poisoned, &c. Witness saw him once or twice afterwards, but had but little conversation with him.

The Commonwealth did not cross examine.

Mr. McGEE sworn, states—That he had a conversation with Daniel Bates, in London, at the Laurel Court, in the month of September, 1844. That Bates told him of Dr. Abner Baker's treatment to him, and said that he would not take such treatment from any man without taking his scalp, unless he thought the man was deranged.

Cross Examined.—States that he took a seat by Daniel Bates, and was talking to him about selling lime for salt, and one word brought on another until Bates detailed the matter before stated by him. Witness had not seen Daniel Bates very often, but could not be mistaken in the man.

Col. DANIEL GARRARD sworn, states—That he knows nothing preceding the falling out between Bates and Baker. Dr. Baker was always a very suspicious man in little games of cards, where witness and Baker were playing. Baker would always shuffle the cards over again, fearing that they might be put up upon him. On account of a difficulty with Bates and the family of witness, there was no intercourse between Baker and witness' family. Baker was at the house of witness but once, and that was the only time since he located in Clay. Witness heard of the first difficulty between Bates and Baker on Saturday before the election in August, 1844. Witness heard that Baker was an executor of the Will of Daniel Bates, and wanted to kill Bates to get the funds into his hands. Witness said to his wife, that Baker must be the greatest scoundrel, or the most unprincipled scoundrel in the world. Witness was informed of the killing; observed to his sons, that they ought to go up and see about it. They refused. Witness then said he would go; and did go. When witness went up, he found Bates in the house near the furnace. Bates said to him, Col. Garrard, you are not a friend of mine, have Abner Baker taken. Bates told his negro man (Pompey) to pursue Baker and kill him. Pompey had two guns. He told Pompey a second time to pursue Baker and kill him, and he should have his freedom; and said, if it cost all—\$10,000—and sometimes he said all his property, that he must be brought to trial. When Bates' son came in, Bates told him, if Baker was not killed, that when he became a man he must kill him. Bates said he had a Will at home, and he wanted it destroyed—and desired that the law should be his Will. On

the next morning, Dr. Reid came by the house of witness, and told witness that Dr. Baker wanted to see him. He refused to go, and desired his son Theophilus not to go; but he and his brother did go. Theophilus and Dr. Baker returned together. When they entered the passage Baker shook hands with witness. His eyes looked strange. Pulled off his over coat; pulled out his pistols and Bowie knife, and gave himself and his weapons to Theophilus. A guard was summoned by Theophilus—afterwards additional guards were appointed. Some wished to take him and put him in jail. Theophilus refused to give him up. Baker said they wanted to get him to butcher him, in order to get rid of the effect of what he had told upon them. Baker told witness all the rumors about his wife—and told him over and over the same things with great minuteness. Witness heard a case tried in Frankfort, when he was quite a boy, and heard Dr. Brown say he had never known a man deranged on one subject alone, except Don Quixotte, and did not believe in any such derangement as monomania.—Witness had no doubt of Dr. Baker's derangement, and had come to the conclusion from reading and examining medical authorities upon the subject, in connection with the circumstances developed in Baker's case. Witness heard Baker say, on the first trial, that he would rather be hung, than that the plea of insanity should be relied upon; and said he would plead justification, if Mrs. Bates would testify—and that he was justifiable. He was very suspicious. When a candle was lighted, and placed in his room, he would draw the curtains down. Montgomery Bledsoe came to be one of the guard, and witness told him to go away. Witness told Baker that Bledsoe was one of the guard, and he became very much enraged. Bledsoe was one suspected for wanting to kill him. Dr. Baker said he had done his duty in killing Daniel Bates; and he was perfectly satisfied, and said Bates was at the head of a combination against him to take his life.

Cross Examined by Commonwealth, states—That Abner Baker is remarkably suspicious. Never heard or suspected him of insanity, and would not have been convinced that he was insane, had it not been for the works he had read upon the subject of insanity. Baker was an intelligent man, and witness before he read any thing upon the subject, looked for outbreaks in a deranged man. Witness noticed his suspicious character in playing cards, for more than twelve months before he killed Bates. On one occasion, he was engaged in a game of cards at Cole's tavern, and Baker's conduct was very extraordinary.

Resumed by Defendant's Counsel.—When Baker came from Lancaster, witness asked Baker about the vote of the district, between Owsley and Butler. He set down all the counties, with a view of making a calculation. He made no calculation, but went off about thirty steps, and asked witness where Theophilus was; asked how he was, and made no explanation to witness whatever.

Resumed by Commonwealth's Attorney, states—That Dr. Baker administered medicine to some one of witnesses family after his un-

accountable conduct when he was at the house of witness. After he killed Bates, he seemed to anticipate a trial, and said he wanted Mrs. Bates to come and tell the truth, and if she would, he would go clear; and a few days since, witness heard Abner Baker say that Jas. White would testify to things that witness had no idea he would.

THEOPHILUS GARRARD SWORN, states—That on the day the vote was to be taken in Owsley county, in relation to the location of the county seat, Dr. Abner Baker asked him to go to his shop. He went. Baker wanted to borrow a pistol. Witness replied that he could not loan him a pistol; that Baker was not his friend, and he therefore could not loan him a pistol. Baker said that Daniel Bates was a rascal, and was attempting his life, and that he wanted the pistol to kill Bates. He said that his sister, Polly Bates, had written him a note not to come home that evening. That Bates had his guns, negroes, &c., and interded to kill him. That he jumped on his horse and rode up to Bates'. He saw no one. His sister waved her handkerchief, and he asked his sister the meaning of the note she had written. She asked Baker why he came. That Bates had all the guns carried up stairs, and that Pomp was on the road between Bates' house and town to kill him, (Baker.) He said he told the boy to take his horse. The boy started to the stable. He followed, and got on his horse and went to town, and said he wanted a pistol to defend his life. That he would not kill Bates unless in self-defence. Witness then loaned Baker a pistol. Witness heard of Dr. Baker's marriage, and that he was going with his wife to live at Bates'. Witness remarked that it was a *d—d* strange place to take his wife to, after what had passed. Saw Baker once or twice afterwards. Witness states that Miss Gilson rode up to where he was, and said Bates was killed. Witness' father said, let us go up. Witness replied that it was a family difficulty, and let them settle it. Dr. Reid came down and said that Abner Baker was at Hugh White's, and wanted to see them. Father did not want to go. Witness said he was going, and awakened his brother William, then went to James Garrard's, and reached White's about sunrise. Witness went into the room where Baker was. His coat and pantaloons were hanging upon a chair. Baker was talking to his brother, William Garrard. He said all he wanted was a fair trial, and he would have no difficulty. He said he wanted to see James White. Baker or some other person proposed to go away from Hugh White's, and arrangements were made to go to Col. Garrard's. William was to go to James White's, and started, and returned in company with several, among whom was James White. Witness discovered on the mantelpiece in the room where Baker was, an empty pistol, a loaded one and a bowie knife. Baker put his bowie knife on, and when the persons rode up, Baker asked what they had come for. Gilbert came in. Baker asked Gilbert what he came for. Gilbert said he came to take him. Abner replied he had given himself up to Theophilus Garrard. This was the first witness knew of his giving himself up. David Walker came, and Baker said to him, that he wanted a conversation. Wit-

ness thinks he said a private conversation. Walker said if he had any thing to say, he could say it publicly. Baker said if he did not want to talk with him, he did not care a d—n. David Walker told witness that Abner Baker had killed his uncle unjustly, and he did not want him to take him away. Afterwards witness took Baker to Col. Garrard's. Baker gave up his arms without solicitation. After being at Col. Garrard's a short time, Mr. Waggoner came in and shook hands, and said Baker was his prisoner. Baker replied that he was in the hands of the magistrate. Witness then became excited, and said they should not take him. Baker then said they should not, unless they took him dead. Dr. Baker told witness, that the Rev. Mr. Brown, of Richmond, had a room adjoining the school room in which he sat. That he would call Susan in to comb his hair. That he would feel her titties. That he laid her on a carpet, and in attempting to have intercourse with her, she screamed. Brown jumped up, and afterwards succeeded. And that he continued to cohabit with her until her courses came on, and then desisted. Baker also told witness, that a certain gentleman (witness does not wish to mention his name), was writing in his own porch, before Susan (the wife of Abner Baker), was married. Susan was there with the toothache. She went up stairs and laid on a bed in a passage or entry above. The gentleman went up, commenced by laying his hand on her bosom. She did not resent it. He then proceeded lower and lower, and at length told her to lay farther over. She did so. He then got in bed and had intercourse with her, without difficulty. Abner Baker told witness that a negro crawled up to the window, got in, and had intercourse with his wife, and when he slept with her, she filled him full of seed ticks, which she had gotten off of the negro. And he held out his hand to witness, as if he had one in his hand. He said that when he and his wife were in Lancaster, she went to the necessary at his father's and had an abortion. And said that his mother opened the door for Bob McKee to have intercourse with his wife at night. Witness was at the Lunatic Asylum, in Lexington, and saw the inmates, and did not then believe that a man could be deranged upon one subject, and not upon all. Witness was told by Mrs. Dr. Reid, that Dr. Reid said that Dr. Baker was deranged, and had been in that condition for twelve months. Witness said d—n his derangement. Witness had a conversation with Mr. Woodcock, the clerk of Clay, and attorney Einsworth, and they said that the best ground of Abner Baker's defence was derangement, and witness said then that it was a fashionable way of defence. Witness has since read upon the subject a little, and heard some conversation, and now has no doubt that Abner Baker is a monomaniac. Baker said to witness, that he thought he had done no more than he ought to have done. States that he slept with Dr. Baker every night while he stayed at his (witness's) father's. Baker slept very soundly, except one night, and that night Mr. Crawford, one of the guard, was very particular, and set up in a chair, and would occasionally make a noise by moving the chair.

JAMES GARRARD sworn, states—That one or two days after the election for the location of the county seat in Owsley county, his brother, Theophilus Garrard, called on him for a pistol. Witness remarked that it was not at home, and asked Theophilus if any thing was the matter. He replied, nothing. That after the first difficulty between Bates and Dr. Baker, witness told Frank White of what he had heard. Said he would see Jennings Ballenger and learn what the difficulty was about. Did see Ballenger. Learned it was about Baker's wife, and heard nothing more until Bates was killed. On the morning after Bates was killed, witness was getting ready to go over to White's, where he understood Dr. Baker was. Pomp, the slave of Daniel Bates, came along by his house with a gun. Witness told Pomp to behave himself, and he said he would. Witness went over to see Baker, and Baker said to him, that it was a hard case, that a man was to be deprived of his rights and be compelled to leave his country. He said he must leave Hugh White's, on account of the sickness of White's family. Prepared to go to witness' father's. Saw the company with guns ride up to White's. Said he did not wish to be shot down like a dog. James White got off his horse, walked eight or twelve steps towards home, raised his gun at one of his own negroes, and told him to go home. Witness told him not to shoot—to send the negro off. David Walker came up. Baker said he wanted a conversation with him. Witness thinks he said a private conversation. Walker said, talk it there. Baker replied that if he did not want to talk with him, he did not care a d—n. Walker asked where were we going with Dr. Baker. Replied that they were going to witness' father's. Walker asked, for what. Told him that he could not stay at White's—the family were all sick, and that he had to go somewhere. After Baker was taken to Col. Garrard's, David Walker, and witness thinks James White came up about 10 o'clock, and wanted additional guards. Witness told Walker that he was a magistrate, and to appoint one, that there were three gentlemen present, and William White and A. Jarvis were taken. Dr. Baker was dissatisfied with White, but witness told him that he (witness) had made choice of him. Dr. Baker stated to witness that the Rev. Mr. Brown had commenced on his wife with his fingers. That Susan (Baker's wife) was sent into a room to awake her uncle Dor, and that he pulled her to bed and had intercourse with her. That in the parlor at Mr. Chastine's, Addison White sat in Susan's lap and had intercourse with her. He proposed to witness, a short time after he was placed under guard, to go to his wife, (Susan,) and that she would do any thing to save his life; and that she could give him a clue to a combination against him for the purpose of killing him. Witness told him it was improper under existing circumstances. Witness asked Baker to release him from sitting upon his trial, and upon another contingency he released him; and witness intended at one time to talk with Susan, with James White's permission. Thinks it was Sunday evening, that Waggoner intended to take Abner Baker from witness' father's. Witness

had started home. Met Jennings Ballinger and others in the creek. Ballinger asked witness if he thought Baker could be taken. Witness thought, and told Ballinger, that where he was was the best place. Ballinger wanted him to go to jail—and said it was a desperate case and required desperate means; and that Baker could sue if wrongfully imprisoned. Witness had no doubt of Baker's insanity in telling his tales. That witness at one time felt doubtful as to Mrs. Baker's chastity, from the fact that she had given certificates, and that James White did not kill Baker. Witness is fully convinced that Baker honestly believes what he has stated about his wife, and all the tales he told. And witness is caused to disbelieve his tales from the manner of his telling them, and that he cannot believe a woman in the world would act in the manner he charges her with acting.

Mr. WOODWARD SWORN, states—That he first knew of Dr. Baker's hostility to Daniel Bates on the 25th February, 1844, when witness returned from Clark. Baker took him into the orchard at Bates', and said he had something to tell him. He looked earnest and enjoined secrecy. Remarkd that Bates was the blackest hearted man living, and said Bates maltreated his wife. Told witness that Bates and a negro woman intended to take Mrs. Bates' life, and that there was a conspiracy to take his life. Witness said very little to Dr. Baker. Spoke of a difficulty between himself and Bates and of the note written by his sister, Mrs. Bates, to him. Baker talked occasionally of Bates' treatment to him, and said that Bates "knows, G-d d—n him, he ought to die, and I ought to kill him"—"they intend to kill me, but I shall kill some of them before they kill me." Witness told him that he thought he was mistaken, and frequently related Bates' conversations. Baker said that Bates suspected witness, and was deceiving him. On one occasion Baker asked witness if any thing should occur could Mrs. Bates be evidence. Witness told him he thought not. Witness happened up stairs at Bates' house. Baker pointed out four or five muskets, and said Bates had put them there to assassinate him. On another occasion, Baker took witness to the window where Bates' boots were, and where there was a gun, and said that Bates had been there to kill him, but his heart failed him. He pointed out on the barrel of the gun some finger prints which were observable. Witness avoided Baker. From the time Baker came back from Lancaster until he married James White's daughter, he did not talk much about it. The day after the difficulty between James White and Baker at Frank White's, witness and Baker started to Lancaster together. Nothing extraordinary occurred, more than occurs with travelers generally. After being at Lancaster a short time, Capt. Baker took witness out and talked about the difficulties between Bates and Baker. Witness described Bates' actions, carrying weapons, &c., and being sometimes engrossed in thought; and Capt. Baker remarked that Bates was deranged. Capt. Baker thought Abner was in danger, and he rather credited Abner's statements. Witness stayed at Capt. Baker's about three hours. Went

to Danville. On his return met Dougherty White, who told him Baker was married; asked to whom, and was told to Susan White. Heard nothing afterwards, except that he found out from Daniel Bates that he had not been guilty of some things that he (Baker) had charged him with. On several occasions Baker seemed very fearful, and thought Bates would kill him; and he said that Bates knew that he ought to die. Witness saw nothing in Mr. Bates' conduct going to show that Baker's tales were true. Bates treated his own wife kindly. Witness thinks that on the 25th July Baker came home to Bates' with his wife. He and witness went up stairs. Baker called for water and washed. Seemed more social. Sibert remarked that Baker was going to be Ab. Baker again, and be sociable. He had been quite unsociable. After a while Baker remarked to witness that he had told him a great deal, and wanted to tell him more. He then told witness that his wife was the basest woman in the world. He then produced letters, which he said she (Susan) had written. Talked a great deal. He told witness that Daniel Bates had been intimate with her. That Sydney Pearl had used her as he came along; and he charged others with having used her. Witness told him that, if he believed his tales, he could not live with her, and advised him to go to Knoxville or to his father's. Witness left next day for a treat. When he came back to Bates', Baker talked a great deal, and said White had offered to give him money. On the morning Baker attempted to kill Bates, witness and Baker looked over Baker's books, arranged them, made extensions, &c., and witness helped to fix his clothes in his saddle-bags. Baker called witness up stairs—beckoned to him—and said to witness that he ought to kill the d—d old rascal before he left. Witness told him he must be deranged. Witness walked down stairs and out on the porch; had one foot on the steps. Bates was setting in or near the door. Saw Baker walk toward the door where Bates was sitting. Got sight of Baker's pistol just before it was levelled at Bates. Jumped and caught Baker. He said let him go—he would kill the old rascal. Bates run out and called for his gun, bullets, &c. Pomp was called upon to bring the gun. Baker went up stairs—got a gun—Bates came around, and Baker saw him—Baker said “you G—d d—d rascal, I will kill you, if it takes fifty years.” Bates then had his gun and told him to come down. Bates then went down near the horse troughs in the lot before the house. He placed one negro on one side with a gun, and the other not far distant, and told them if they saw Baker attempt to shoot, to shoot first. Pomp stood near his master. Before Dr. Baker attempted to shoot Bates, Mrs. Bates called witness and told him not to leave until Abner left. Pomp told witness that Dr. Baker had snapped a gun at him. He went to the house and found Baker gone. Bates sent for Potter, Davis, &c.; they came. Baker sent over a note for his horse. Bates told witness to take him—but that he ought not to let him have him, and to see Baker out of the country; that he did not want to hurt him, nor did he himself wish to be hurt. Baker told witness that his wife was the

smartest woman that ever lived: that she would lay her ear on his breast and ascertain when he was asleep. Witness asked Baker how he managed to get her to write the certificates, and to learn how she had acted. He said he wrung himself around her. Baker told Bates, when they had the first difficulty, that he had communication with his wife. Bates called Susan and she denied it, and said that Dr. Baker had forced her to give certificates. The conduct of Mrs. Abner Baker was unexceptionable while she was at Bates'. Dr. Baker remarked to witness that he had discovered Bates talking with his wife at the door, and thought there was something wrong in it. Witness saw no more until Bates was killed. Witness saw Bates one half hour after he was shot, and concurs with other witnesses as to the statements made by Bates, and as to his condition. The day after Dr. Baker left, Bates and witness traveled up Horse creek together. Talked on different subjects. The will of Bates was named in the course of conversation. Dr. Baker remarked to witness in conversation that there was a talk between him and Bates in relation to going into business; and made the impression on witness that Bates had made the proposition; and said to witness, that if he (witness) expected any thing from Bates, that he would be deceived: that Bates had no confidence in witness.

Cross Examined by Commonwealth's counsel, states—That he has been intimately acquainted with Dr. Baker, for two years, and saw him occasionally until 1841 or '42. That when witness was in Garrard county he had a conversation with Capt. Baker, who inquired about Daniel Bates and family, and seemed to be impressed with the idea that Bates was treating his (Capt. Baker's) daughter badly. Witness told Baker that he had some idea of leaving Bates, and Capt. Baker said that he had better leave. Witness thinks that Capt. Baker said that Bates was deranged. Thinks that (witness) did not say Dr. Baker was deranged. On another occasion, when in company with Capt. Baker, and after the difficulty between Dan'l Bates and Baker, thinks that he gave in to the idea that Dr. Baker was deranged. David Walker and witness agreed that they would give in to that idea to relieve the old man in regard to the conduct of Dr. Baker; and in the presence of Capt. Baker, encouraged or gave in to the idea that Abner was deranged. At the August term of the Garrard Circuit, witness was in Lancaster, and Capt. Abner Baker told him that Dr. A Baker was morally deranged. Witness has friends deranged upon one subject, and they are totally unfit for business on those subjects, or any thing that comes within the influence of those subjects; and on those subjects on which they are deranged, are disqualified to conduct themselves in a way they would were they clear of the derangement. Witness never heard Baker talk so extraordinarily as he did on February a year ago. Baker had a strong desire that Bates should put the debts he had against different individuals in a train of collection, when witness and Baker spoke of taking the Sheriff's place. Bates said in a conversation with witness that Abner Baker was an executor in a will he made. This was after

the first difficulty between Bates and Baker. Witness does not recollect what Baker said when Susan (the wife of Baker) remarked that Baker had forced the certificates she had given. After Dr. Baker was married, Daniel Bates furnished witness with money to buy for Baker some glassware, china, &c. Bates requested witness to inquire of Dr. Baker whether he was going to housekeeping or not. That if he (Bates) should make the inquiry, Baker might think he wanted him to leave his house. Witness told Dr. Baker what Bates said about buying glassware, china, &c., and Baker said that Bates was trying to deceive witness—that he thought he was d—d smart. Witness thought that Dr. Baker never had much respect for female virtue. He was a very suspicious man, and has very little confidence in any person.

Resumed by Defendant's counsel.—Dr. Baker's suspicions were strongly marked. Thinks that in August he saw a letter written by Capt. Baker to his son William, in Knoxville, Tennessee, in which he said that his son Abner was deranged. This was all before the killing. In August witness had one conversation with Capt. Baker, and the other in April before.

By Commonwealth's counsel.—Dan'l Bates went armed from the time of the difficulty between the Garrards and Bates—that is, he went armed after witness became acquainted with him, and after the difficulty aforesaid.

Miss RHODA MURPHY sworn, states—That before the first difficulty between Bates and Dr. Baker, the latter came down and asked her to go up to Daniel Bates' and stay all night. She asked what he wanted her to go for—he did not tell. She went and saw nothing unusual. Witnesses tried to make excuses not to go. He said that she must go now or never. When she got to Bates', found every thing calm, and stayed there till Monday; she went there on Saturday, and saw nothing out of the way the whole time. Baker told witness that he wanted her to treat Bates kind and friendly, but did not disclose his object.

By Commonwealth's counsel.—Dr. Baker came up on Sunday morning. Does not know whether he stayed all the time or not. He was there on Sunday.

COMMONWEALTH'S WITNESSES INTRODUCED.

FRANK WHITE SWORN, states—That he never heard Dr. Baker threaten Daniel Bates only on conditions. Dr. Baker was at the house of witness, upon one occasion, and they were talking upon the subject of scrapes, and witness spoke of Squire Bates in friendly terms. Doctor Baker said that Bates had maltreated him, and that he was not a gentleman. Witness told Baker he thought he was mistaken—that he had heard Bates speak well of him. Baker said he had good authority for what he said; that his sister Polly Bates (wife of Daniel Bates) was his authority that Bates did not like him. Said that he went to town, and while there Polly Bates

wrote him a note not to come home, that if he did, that Bates would kill him. That he got on his horse and rode up there. When he arrived, Bates was up stairs with his gun. That his sister waved a handkerchief toward him. That Bates came down laughing, and he said to witness if the d—n rascal treated him in that way again, he would kill him. After Dr. Baker married, witness said to him that he thought he was in a good way to do well; that Bates was his friend, and James White, his father-in-law. Baker said he would arrange his business and settle here. He also said that there was a rumor in the county about his courtship, and if he found out who started it, there would be hard times. Baker said that Bates had promised what he would do. That he did not believe he would fulfil his promises, but he would see how it would turn out. Witness was talking to Baker about settling himself. Baker said that Bates had promised him a home. Witness can't say that he thought Baker was deranged. On one occasion, Baker and witness were partners in a game of cards. He had been drinking a little. Witness saw him losing money. Told him he was a Doctor, and made his money easy. That witness had to work hard for his, and wanted to draw out. Witness thought it was the liquor that caused Dr. Baker to bet so freely. Witness did withdraw, and on the next morning Dr. Baker did not know that he had withdrawn from the partnership. Baker contended they were partners in the losses of the night, and witness called upon others and proved his withdrawal. Dr. Baker was very friendly with witness. He was getting a good practice. His standing was fair, and his prospects to get all the business, flattering. He was liked by nearly every body. After Baker returned from Garrard's, he showed witness a pistol, which he said killed Bledsoe's brother-in-law, and that he in a few weeks would kill all his enemies, and then he would give witness a pistol. This was said in jest. He seemed satisfied with his wife, and she with him. Does not recollect that he heard Baker speak of a will made by Daniel Bates.

Defendant.—Witness thinks that Dr. Baker told him that he was, upon one occasion, riding by James Garrard's, and that a negro boy came out and caught his horse's bridle, (the boy was a very saucy negro.) Baker also said that when the negro caught the bridle, he, Baker, had no weapons. That when he came back, he had procured some, and would have shot the negro if he had come out. He said that another negro of Garrard's (George), sat in the bushes close by him, or was in the bushes, and was waylaying him.

Commonwealth's.—At the time spoken of by Baker in regard to the negro taking hold of his bridle, &c., there was a good deal of bad feeling between Garrard and Bates' family.

OLIVER P. VAUGHN sworn, states—That he has known Dr. Baker for about eight years. Has been tolerably intimate with him. Witness lives near Lancaster. So far as witness knew Baker, he looked upon Baker as being a man of good intellect. Witness has been upon intimate terms with the family. Never heard Dr. Baker's insanity spoken of until after the unfortunate occurrence between

Baker and Bates. Witness saw Dr. Baker in Lancaster, in the spring of 1844, but did not converse with him. Saw nothing unusual in him. [Not cross examined.]

ROBERT SOPER sworn, states—That he has known Dr. Baker a smart while. Thought him to be a tolerable smart man. Witness lives in Lancaster, and never heard Baker's derangement mentioned, until after Bates was killed. When Baker was in Lancaster, before he shot Bates, witness was in his company on the street. Saw him at a distance several times. Did not see any unusual excitement about him. Witness spoke to him, and he returned the salutation.

Cross Examined by Defendant's Counsel.—Witness saw Dr. Baker but once. Spoke to him, and he to witness. Paid no particular attention to him.

JAMES A. BEASLY sworn, states—That in the fall of the year 1844, witness saw Dr. William Baker and Dr. Abner Baker, in Greenville, South Carolina. Witness and the Bakers' stopped at different taverns. Witness went down to another tavern, saw Dr. Abner Baker and recognised him. They spoke, shook hands, &c. After talking together a while, Dr. Abner Baker asked witness to take a walk with him. He did so. He asked witness if he had heard of the killing of Bates. Told witness he was deceived in the woman he had married, and spoke of gentlemen who had been intimate with her. Named the Rev. Mr. Brown and others. He also told witness that he had a difficulty with Bates. That he went to Knoxville, and left his business in the hands of some man in Clay. That he went back to Clay to attend to it. That he did not intend to kill Bates when he went down, but that Bates saw him about the same time he (Baker) saw Bates, and that he shot Bates for fear he would be shot. He told witness of the trial before magistrates, and the plea of insanity. That he was a smarter man than those who tried him, and that he was too proud a man ever to look through a prison wall. That he would have no fears if justice could be done him. That Mrs. Bates and his wife knew many things that the world could not know. Dr. Baker seemed excited, but not more so than a man would under such circumstances. Baker asked witness if he thought he was deranged. Witness replied, he thought not. He asked witness if he thought he was justifiable in killing Bates. Witness told him from the circumstances as detailed by Baker, he thought he was

Cross Examined.—Dr. Baker named Mr. Bates as one man who had intercourse with his wife. That Bates came to his bed. That Mrs. Bates knew it. Witness knows the Rev. Mr. Brown, of Richmond, as a preacher and a school teacher. He is a man of unblemished character, and is liberally patronized as a teacher. Dr. Baker said that Mr. Brown commenced the seduction of his wife, at ten or twelve years of age, and operated upon her in the same way as detailed by Mr. James Garrard in his testimony. He seemed to be pleased when witness told him he was justifiable, and not deranged. Baker was talking to witness in the dark. Witness understands that he now thinks he has got more sense than any body else. He also

mentioned one of his wife's uncles as having had intercourse with her. Said that his wife had commenced at an early age. That she was diseased, and would not be satisfied. Told about the certificates given by his wife. Said he did not force them. That James White had offered a compromise by money, but that he scorned such offers, and would not live with his daughter, because she was not virtuous.

Col. HIBBARD sworn, states--That he has been acquainted with Dr. A. Baker since he was born. That he was occasionally absent from Clay county, but would return. Witness was sick last fall, and Dr. Baker attended on him during the spell of sickness, and was a sane man, in his opinion. His sickness was a year before Dr. Baker was married. Witness was not about Bates' when Dr. Baker was married. Never heard him say any thing about his wife. Never saw Baker after he made the first attempt on Bates' life. Looked upon Baker as sane, after the first difficulty between him and Bates. Witness heard Capt. Baker, the father of Abner Baker, say, at the August Court in Garrard, 1844, that he was deranged, and he (witness) said that he must be deranged. Witness thought it strange that Baker wanted to kill Bates. Walker told witness that he and Mr. Woodward had agreed to tell Capt. Baker that Abner was deranged, in order to ease his mind upon the subject of his conduct toward Bates.

Cross Examined by Defendant's Counsel.—The conversation between witness and Capt. Baker was had before Bates was killed. After Dr. Baker married, witness saw him very little. Heard nothing of Baker's charges against his wife, of illicit intercourse, until after Baker came back from Lancaster. Did not hear Baker speak of Bates.

Resumed by Commonwealth, states—That Dr. Abner Baker was kindly treated by Bates. All was friendly and kind. Bates talked to witness about Dr. Baker as a physician. Asked witness' opinion about him as such. Told Bates he thought him a good Doctor. Bates remarked to witness that if he (witness) thought so, he wanted him to speak kindly and well of Baker as a physician.

Cross Examined by Defendant's Counsel.—After the first difficulty between Bates and Baker, witness saw Bates on the bank of the creek with a gun. Witness said to Bates, "are you carrying your gun again?" He said yes. That Dr. Baker had made an attack upon him when he was not on his guard, and that if it had not been for Woodward, he (Baker) would have killed him. That Baker had then gone to Tennessee. That he did not know when he might see him again, and wanted to be as ready to kill Baker, as Baker was to kill him. Witness enquired the reason of the difficulty. Bates said that some time before or after Baker's marriage, Baker wanted to go into business, and wanted Bates to advance some three or four thousand dollars to purchase merchandize. Bates thought the sum was too large, and did not seem willing to let him have the money, and there was a seeming coldness afterwards. Bates seemed to think that was the only cause.

DEFENDANT'S WITNESSES.

GUSTAVUS P. QUARRIER sworn, states—That Dr. Baker called to see witness some time before he was married. He had visited a neighbor's child that was sick; upon his return witness was in his office at the saw mill. Witness asked Baker if the child was sick. He said it was a little sick, and told him to go up and give the child medicine. Witness supposed that it was the next day that Baker wanted him to go up. Baker said, Yes, he could go up and give the child medicine as well as any person. Said he had given the child an expectorant. Baker had left a dose of medicine at the house, but did not tell witness that he had left it. Witness thought the case was extremely dangerous. Witness asked Dr. Baker to go home with him. This was about twelve or one o'clock in the day. He said no, he would not go; he was going to get married. That people did not believe it. Laid his hand on the bannister, and then rode off. Witness remarked to his wife, that Dr. Baker's conduct was singular. Witness had been very intimate with him. He seemed to be under great excitement. His excitement seemed to be produced from mentioning that he was going to get married.

Cross Examined by Counsel for the Commonwealth.—Witness thought Baker's excitement was very strange. He appeared to be in a good humor. He told his family that there was something remarkable in Dr. Baker. Witness remarked to Baker, that getting married would put new springs in him; and witness thinks the remark was the cause of the excitement.

COMMONWEALTH'S WITNESSES.

HIRAM HIBBARD sworn, states—That he has known Dr. Abner Baker for some time. That he did not see him within a month before he killed Daniel Bates. That he heard nothing of his insanity until after Bates was killed. Witness was one of the guard over Dr. Baker, and states that he heard William Baker and Harvey Baker talking together near the jail—they were talking about Mrs. Bates, and they said that, to save Abner, they would sink the reputation of Mrs. Bates. William Baker told witness that he was mistaken; and witness replied that he might have been. He always looked upon Abner Baker as being of sound mind.

Cross Examined by Defendant's Counsel.—States that he was reading a novel at the time he heard the conversation between William and Harvey Baker. Cant say that he was paying particular attention at that time. That Abner Baker talks like a reasonable man, and witness has seen nothing to destroy his belief that he was of sound mind. Witness states, that he did say to William Baker that he would talk to Mrs. Bates. He said this when he was attacked by William Baker in the Court House; but witness was pressed to say what he did to William Baker; but if he had seen Mrs. Bates he

would have told her precisely the same that he has detailed before the Court.

The Commonwealth again introduced WILLIAM WOODWARD, to prove Dr. Baker's hand writing, and that he had received a letter from him, which was introduced and read as follows:

"POGUE'S, KNOX CO. AUG'T.

"MR. JAMES Y. WOODWARD,

"Sir—I am truly glad, on reflection, that I did not give up those papers; and I hope you will take especial care of them for me. I am satisfied that the time will come when those papers will be of great use to me. The Whites must put me down in order to sustain Susan; and Bates must aid them in order to sustain himself.

"Yours truly,

A. BAKER.

"P. S. On the receipt of this write and let me know what has transpired since I left."

DEFENDANT'S WITNESSES.

JO. COLEMAN called and sworn, states—That he spoke to Daniel Bates just before he was killed; and Bates threatened Baker, and said, if Baker came back, he intended to kill him. I do not know that he was armed.

Cross Examined by Commonwealth's Counsel.—Bates told witness that the reason he would kill Baker was, that Baker wanted to take his life before he left. That he knew Baker would kill him, and that he would kill Baker.

Resumed by Defendant.—Bates said he looked for Baker in about two weeks.

By Commonwealth.—Witness saw Abner Baker in New Orleans some time in May last. Witness took it to be him, and aimed to go to him, and he walked off. Witness is not certain it was Baker, but thought it was.

MR. REDMAN sworn by Commonwealth.—Witness saw Baker as he returned from Knoxville the last time, but paid little attention to what was said. Baker, however, said that he went on to Clay to settle his business. That Mr. Cobb and Mr. Morris told him that Bates had threatened his life. That he was afraid he would be killed before he got to Manchester. That he got to Bates' furnace, and got off his horse, stepped a few paces, and shot Bates. That he went up the creek, then came around to the house, and heard Bates groan. Then went over the creek and up the bald hill, by Gen. White's, and went to Hugh White's. Baker asked witness, when witness was guarding him at Col. Garrard's, before the first trial, if he knew any one who would be a good witness for him. That if he did, he (Baker) had as much money as any person.

FRANK WHITE again called by Commonwealth.—States, that Daniel Bates told him, that he was glad that Baker had left the county. Witness told Bates that Dr. Baker said, that he (Bates) was afraid of him, and that he just kept him (Baker) at his house,

to protect him from the Garrards and others. And witness then related to Bates, that witness had been at St. Louis, and seen Dempsey White; and that White was with witness a great deal, and witness had confidence in him as a friend; and that he afterwards learned he was a robber, &c. Bates then remarked, that he had had confidence in Dr. Baker, and that the d—d fellow could have led him out like a horse to grass, and killed him. Bates then leaned over a barrel and cried like a child.

Dr. REID called by the Commonwealth and sworn.—Thinks that a person partially deranged can distinguish right from wrong. Supposes that a person who can lay all his plans for carrying out anything desired, to be accomplished—would not be laboring under insanity.

Cross Examined by Defendant.—States that there is such a thing as monomania. That in the sphere of the particular derangement, the subject could not distinguish between right and wrong. Witness has not expressed the opinion that Dr. Baker was insane, but has been of the opinion that Dr. Baker was laboring under illusions of mind in regard to his wife.

Resumed by Commonwealth.—Has known Dr. Baker several years. Seen him frequently. He was in the habit of talking wildly. Has wild views on some subjects. Witness understood there was a difficulty or fuss between James White and Dr. Baker. Saw Baker afterwards, and thought he talked more extravagantly than he did before. Heard no allegations of his insanity. Witness could not have picked Dr. Baker out as an insane person in the Court House.

Examined by Defendant.—Witness said that Dr. Baker was a deranged man upon the subject of his wife. Witness has not heard the evidence. The defendant's counsel supposed a case, as follows:—Suppose Dr. Baker had told you that his wife had connection with men since she was nine years of age; that Mr. Brown had connection with her at that age; that Mr. Brown had also had connection with most of his school girls; that his wife had connection with Daniel Bates, and with a negroe, what would be your opinion of his mind? Witness states, that he would certainly pronounce him deranged upon that subject. Dr. Baker always had a quick eye. Witness has paid no particular attention to the subject of monomania, and is not a particular observer of the phenomenon of insanity; but would conform to his own ideas of insanity, in preference to some or many works on the subject. May be particular insanity, or general insanity. Witness had read elaborate treatises on the subject of insanity, but gives very little credence to Spurzheim. Never read Esquirel, Ray, and others, not heard by reporter. States that one or more faculties may be deranged, and the others seemingly good. Thinks that Baker is irrational and insane upon the subject of his wife, from what he has heard of his conduct, &c.

Commonwealth resumed.—The counsel for the Commonwealth supposed a case, as follows:—Suppose Baker said that he would marry, and leave his wife, or not live with his wife; and took ingenious steps to kill Bates, and to avoid being hurt himself—would you

think him deranged? Witness replied, Cant say; but stated that Baker was deranged certainly upon the subject of his wife.—Here the counsel for the Commonwealth supposed a case, as follows:—If a man were to say that he intended to marry, and that he and his wife would not live together—After marriage he separated from his wife, and took ingenious steps to kill a man; and so conducted himself as to avoid all danger of being himself killed—would you say that he was deranged? Witness stated, that he would consider him smart, and not deranged. Witness further stated, that insane persons sometimes have lucid intervals; and in such lucid intervals, they are like other men—not deranged.

Defendant.—The counsel for the defendant said to witness—Suppose the facts to exist in proof, as I have related to you in my first proposition or supposition, what would you say of Baker's mind?—Witness supposes that he was laboring under mental derangement after he was married.

By Commonwealth's Counsel.—States that highway robbers and murderers commit irrational acts.

DEFENCE,

THOMAS ELEY sworn, states—That he heard Hiram Hibbard detail his testimony. That witness heard a conversation between Dr. William Baker and Hibbard. Dr. William Baker came into the Court House where Hibbard was, walked several times across the room; stepped up to Hibbard and told him that he was mistaken about what he (Hibbard) had told was said between him (William) and Harvey Baker. And Hibbard said he might have been mistaken, and if he was, he would go and talk to Mrs. Polly Bates and tell her about it. Harvey Baker said to Hibbard that, in justice to his brother and sister he ought to go and talk to Mrs. Bates upon the subject.

Commonwealth.—Dr. William Baker came into the Court House as before detailed, and when Harvey came in William Baker threatened Hibbard, and observed, that if Hibbard said what he understood he had, that he would knock his head off in a minute. Witness saw no weapons. Hibbard yielded to Baker's importunities, and then said that he might have been mistaken. Witness understood William Baker to swear.

Dr. HARVEY BAKER again called, states—That he and his brother William had a conversation near the jail; but recollects no such conversation as that detailed by Hiram Hibbard. Such an idea was foreign from his feelings. States that Polly Bates had made some statements, or certain statements, and afterwards denied them; and witness and his brother William were apprehensive that if she was introduced as a witness, she might injure herself; and it was that fear of her injury, about which witness and William Baker were talking at the time Hibbard said he heard certain statements. Abner Baker has been importuning his counsel to have Polly Bates sworn. Hib-

hard stated, when asked by his brother William, that he might have been mistaken. William Baker did not swear when talking to Hibbard in the Court House.

Cross Examined by Commonwealth.—Witness understood that his brother William, and Abner Baker, called upon Waddy Thompson for a letter of introduction for Abner, to some person in Havana. Abner left Knoxville in open day. Witness advised him to go for the benefit of his health, and witness wished him to be kept quiet. He sailed from the United States before any indictment was found against him. Witness had no apprehensions of another trial. As soon as the Governor's proclamation was made, witness wrote Abner a letter and advised him to come home and stand his trial.

Defence.—It was deemed important that Abner should spend the winter in the South, and witness thought it would be advantageous to his health and mind to be among strangers. Just before he left Knoxville, witness told him that he ought to leave some word for his father. He did not seem to like it, but said he would do so before he left. Just before he started, witness again reminded him of his father, and he promised to leave some word for, or to write to him. He told witness to write to him when he returned. Witness discovered a change for the better in Abner's health and mind. In this particular, he spoke in kind terms of his father. He was evidently much improved in health when he returned from Havana. He is now enraged at his counsel and witness, and will scarcely speak to witness, and thin's that Polly Bates will clear him.

Commonwealth's Counsel.—Witness thought that there might probably be a prosecution. Understood that there was a bad state of feeling in Clay county against Abner. As soon as witness saw the proclamation, wrote several letters to Abner to come and stand a trial.

ARMSTED ADAMS sworn, states—He was at the house of Daniel Bates after the first difficulty between Bates and Baker, and heard Bates say that Baker had left for Tennessee, and that he intended to kill him whenever he saw him. This was about two weeks after the first difficulty.

Cross Examined by Commonwealth.—Witness never saw Baker afterwards. Bates said that Baker had attempted to kill him, and that if he came back he would kill him.

J. L. ADAMS sworn, states—That he saw Dr. Abner Baker in April, 1844, and saw nothing to induce him to believe that he was deranged. His conduct at Mrs. McKee's was told to him, and witness then said he was deranged upon a particular subject. Witness knows Wm. McKee. He has been in the Asylum in Lexington for some time. Previous to his going there, he passed about and done business. Witness has been a student of medicine, and thinks that if there is such a thing as monomania, Dr. Baker is certainly deranged upon the subject of his wife.

Cross Examined by Commonwealth.—Witness made up his opinion in regard to Baker's mind, from his conduct to his wife. Has known him a long time. Never was intimate with him.

COMMONWEALTH'S WITNESSES.

CAMPBELL SMITH sworn, states—That he saw Baker at Massie Cobb's on the day Bates was killed. Baker told witness to tell Morris to be about the camp when he come down. Baker came along after a while and called for Morris. Witness was sent to Squire White's after a broadaxe. Baker overtook him by Jo. Cox's and asked witness if any body had passed. Told him no. He then said to witness, if any body does, say nothing about seeing me, for if Bates' negroes know it, they will waylay me in the woods and kill me. He then passed on. Met several others. Witness was in sight of him several times, but he conversed with witness no more.

Mr. A. D. CLARK sworn, states—That Hiram Hibbard is a man of truth. Never heard it doubted until to-day.

The counsel for the prisoner say they do not assail Mr. Hibbard's character.

DEFENDANT'S WITNESS.

GEORGE W. SMITH sworn, states—That he saw Dr. Baker frequently in Lancaster, when he was there with his wife. Saw something singular in his manner and looks; and said in his family that something was the matter. He had a wild, glaring look. Witness had been acquainted with him some 8 or 10 years, and saw something unnatural in him.

I was one of the counsel of Abner Baker on his trial. I heard all the facts as they were stated by the witnesses. I have heard the foregoing evidence, as made out by Alex. R. McKee, read, and I am confident that it is in substance as it came out on the trial.

July 24th, 1845.

J. HAYS.

I heard all, or nearly all, the testimony as it came out on the trial of Dr. Baker for the murder of Daniel Bates. I have heard read, and have examined, the foregoing evidence, as made out by Alex. R. McKee, and I am confident that it is substantially correct.

July 24th, 1845.

THEO. L. GARRARD.

Dr. WILLIAM RICHARDSON, sworn on behalf of the Defendant, states—That he has been a practising physician since 1806—that he practised 32 years of the time in Lexington and vicinity. That he is a graduate of no school; received an honorary degree from the surgeons and physicians of New York. He is now one of the professors in the medical department of Transylvania University, and has been since 1815. He commenced with the institution. That

he has studied the department of insanity in the same manner that he studied other branches in medicine. Has studied it for 30 years, and during that time had extensive observation in private practice, and in the asylum at Lexington. There are very few cases ever seen that are general mania; in almost all cases some of the powers of the mind are left. There are some cases however, where the mind is all gone—the subject loses the identity of their own person, their name, &c. &c. In ancient times the opinion prevailed that the moon had an influence or governed the mind, but that doctrine has long since been exploded. Medical men think that madness cannot exist without disease of the brain, any more than disease can exist in the stomach, and the individual be in good health. In madness, and in every form of it, the brain is involved. The brain in front and at the back part of the head perform different functions: in the front lies the intellectual organs, and at the back the animal. It is the case sometimes that insane persons reason with more power than sane persons. Witness has investigated a case as follows:

In the year 1823 or '24, Mr. Cuthbert Bullitt, son of Gov. Bullitt, married Dr. Willett's daughter. He was a lawyer and a man of great accomplishments—had ample fortune. His wife was an accomplished lady. They settled on a farm shortly after their marriage; he grew jealous, and charged her with inconstancy. She kept it from her friends for some time; she then told it to her father. Her father talked to Bullitt, and argued, and *protested* that she was innocent. Bullitt would give insufficient reasons for his jealousy. He still persecuted her with it. At length an investigation was had, a trustee appointed, and he sent to the hospital. Witness was called on to attend him. He saw Bullitt the day after he was put in the hospital. He sat in the parlor and talked *rationaly* about friends, sisters, &c. Witness ventured to ask for Dr. Willett—a change came over him—he made some remark about his wife; he then went on with his charges against her, and became perfectly furious. Witness subjected him to the ordinary treatment. He would not make known his difficulties to every one. Witness directed that he should be brought to Lexington. When Bullitt came to town, which he did often, he walked the streets—supped with witness frequently—and his (witness') family never knew he was deranged. He remained in the institution several months—went home—and now lives with his wife in harmony and quiet. There was no doubt entertained by his friends and others of his insanity.

Witness has visited, conversed with, and examined Dr. Baker, and has no doubt of his insanity. His pulse, his temperature, the hang of the muscles of his face, and his eye, give strong and indisputable evidence of his insanity. He formed his opinion from examination, and from hearing the testimony adduced on the trial. That he has not, in all his practice for 30 years, seen a better and more interestingly developed case of monomania. That the position he sits in, is a strong indication of the disease, and that he (witness) could have picked him out of the crowd in the courthouse as a *monomaniac*.

Cross Examined, states—That it is difficult to define insanity. If you undertake to define it like Gall, you might have the world deranged.

[The witness here gave a definition which was not correctly understood by the reporter.]

The Counsel then asked witness—If he did not come to Clay county, before he heard the testimony, to swear that Baker was deranged? Witness answered, that he was told before he left home, that Dr. Baker had killed his brother-in-law, Mr. Bates, last fall—that the plea of insanity was to be relied on in his defence, upon the ground of his treatment to his wife, &c. That he heard in Lexington, from a medical gentleman (who attended the trial, and was a witness before the examining Court,) a detailed account of the transaction; and he then entertained the belief, that if the facts were as represented to him, that Baker was of unsound mind; and he came to Clay to hear the testimony, and apply the facts to his knowledge of insane persons—and if he then believed that Baker was deranged, to swear it, if called upon. That he found, upon hearing the testimony, that all had not been told him, and he is clearly of opinion, since hearing the testimony, that Baker is a monomaniac.

Question by Commonwealth's counsel. Doctor, is or not derangement becoming much more common in this country?

Answer. It is.

Question. Can you tell us why it is so, Doctor?

Answer. There are many, very many, causes. The very genius of our government tends to produce insanity.

Question. Doctor, do you believe that a free and liberal government like ours tends to produce derangement?

Answer. I certainly do.

The above is written out from notes taken by me of Dr. Richardson's testimony, (which is correct as far as it goes,) and was not in the copy laid before the Governor, but is in substance that which was laid before the medical gentlemen, who gave opinions in this case. The reason this was not before the Governor is, that I understood Dr. Richardson's testimony would be written out by himself, and accompany the testimony to be handed him.

The following is a copy of Dr. Richardson's testimony, laid before Governor Owsley:

Dr. WILLIAM H. RICHARDSON, in answer to interrogatories, testified that he had been a practising physician for 39 years. Had been ever since 1817, a professor in the Medical School of Transylvania, and had often visited and examined the Lunatic Asylum at Lexington, and had acquired an extensive knowledge, theoretical and practical, of the phenomena of insanity in its various forms and degrees. He had within the last two or three days, visited, examined, and conversed with the accused (Dr. A. Baker) in the jail. He found his physical condition and appearance evidently those of a deranged

man. His pulse, his temperature, the hang of the muscles of his face, the expression of his eye, his tongue, and his whole appearance and bearing were clearly marked as just such as invariably accompany and follow *monomania* or intellectual insanity on one or more subjects, whilst there is apparent sanity on all others. And these physical signs when, as in this case, they are well developed, he considers infallible. Moreover, in his conversation, Dr. Baker, when on the subject of Daniel Bates or his own wife, was furious, wild, incoherent and erratic, and seemed to believe, and asserted with a conviction apparently intuitive, facts that seemed to the witness not only very incredible but impossible. And when on those subjects, his eyes became singularly red and excited and obviously maniacal. From this interview alone, the witness could not doubt that Dr. Baker is insane on the subject just alluded to—and he doubts not that he is even more than a monomaniac, he thinks that he is running into general insanity.

The witness also testified that he had heard all the testimony which had been given for the Commonwealth and for the accused, and on that alone, and even on that of the Commonwealth, he did not doubt that Dr. Baker was, when he killed Daniel Bates, insane in respect to Bates and his own wife; nor that the killing of Bates was the direct offspring of that unsoundness, and was the result of a morbid delusion so strong and stultifying as to render him unconscious of doing any moral or legal wrong in that act.

He testified that *monomania*, in its various and almost infinite forms, is the most prevalent kind of mental derangement. That it proceeds from some physical derangement operating on the brain, so as to pervert or distort its functions and impress wrong or delusive images or imaginations, which cannot be discredited by the subject any more than true impressions and images can be discredited or disbelieved by a person perfectly sane in body and mind. This species of insanity, either moral or intellectual, and generally both, is most frequently that which is exhibited in lunatic asylums—and it is of such a character as generally to elude the observation of unskillful persons, and often to deceive the most learned and experienced observer.

He considers this case of Baker one of the best, if not the very best, defined, and clear cases of particular insanity he has ever seen or read of. And he considers a person who is insane on one subject, as totally insane in effect as to all ideas and acts within the range, sphere, or influence of that particular derangement.

JUDGE ROBERTSON'S ADDRESS.

The wreck of God's image now before you, under trial for murder, entered the threshold of manhood, with hopeful prospects of a long, useful, and honorable life. Richly blessed with personal graces and mental gifts, he cast his lot among you, and commenced his professional career, as you all know, under a clear sky, beaming with gilded promises. But how deceitful often are the brightest hopes of men. Already he, whose young horizon was so recently bright and promising trembles on the precipice of a yawning gulf, under a black cloud that hangs portentous over his destiny. Doomed to the greatest of earthly calamities—an eclipse of mind—and, as a consequence of that tremendous misfortune, doomed to be the blind instrument of a brother's death—he is now also doomed to an ordeal rare, if not unexampled, in a land of justice, liberty, and law.

The man he killed, influenced on his death-bed by a strange spirit of revenge, bequeathed \$10,000 to insure his conviction and execution, promised freedom to a slave on condition that he would slay him, and as a legacy to his own infant son, charged him to see that his victim should certainly fall by the hand of vengeance. Although he was tried and acquitted by an examining Court on the ground of insanity, and was then sent by his friends to a southern climate for the improvement of his health, yet the Governor of Kentucky, at the instance of some of the kindred of the deceased, issued a proclamation advertising him as a fugitive from justice, and the prosecutors offered a high reward out of this legacy of \$10,000 for his apprehension. As soon as his honorable father saw that proclamation, he brought his unfortunate son to the jail of your county, in which he has ever since been most uncomfortably imprisoned, at the peril of his life. But here he is, voluntarily surrendered for trial in the midst of a high and pervading excitement against him, produced, we know not how, in the county of his numerous, wealthy, and influential prosecutors—relatives of the deceased, *and one of them the husband of a sister of the accused.* And to such an extent have this excitement and prejudice run that it is not now possible to be sure of a sober and impartial trial; for you know that even each of you avowed on examination, that you had formed an opinion as to his guilt, and we all behold armed men wherever we turn our eyes.

Yet, confident that the law and the facts ought to insure his acquittal, his friends determined to hazard a trial even here and now—believing that no honest and enlightened jury can, after a full hearing, feel authorized to find him guilty of murder, as charged.

But the legacy of blood must do its full work—and as one of its fruits, we behold the appalling spectacle of four able counsel all zealously seeking, in the name of the Commonwealth, the life of the accused. Apprehensive that the official organ—though known to be faithful and competent—might not exert a moral influence sufficient to insure the object of the legacy, the prosecutors have employed the celebrated gentleman of Madison—not still sure of their victim, they also employed the eloquent gentleman of Knox—and, “to make assurance doubly sure,” they have added to this formidable array the shrewd and dexterous gentleman of Laurel. Having already the prepossessions of the county of trial, they have thus secured, as far as they could, the combined influence also of Madison, Knox, and Laurel. And you have seen this four-horse team pulling, as for their own lives, the heavy load of this prosecution, and, at every up-hill step of the hired three, you might have heard the whip of the \$10,000 crack over their heads.

We do not complain that the Commonwealth is represented by extra counsel—nor do we object to the unusual number. But we do rightfully complain that the hired supernumeraries have argued this case—not soberly and solemnly on the law and the testimony—but, by leaving the field of legitimate argument, and, by assumption and declaration, struggling to inflame your passions and deceive your judgment. It is a melancholy truth that, in some respects, they have all argued as if they were speaking to earn contingent fees and please their clients, instead of faithfully and candidly representing the Commonwealth. And, thus seeing money in one scale and blood in the other, we have cause to fear that the money will outweigh the blood, and that our cause may sink under the weight of a combination unsurpassed in activity and wealth.

The gentleman from Madison, who opened the argument, devoted at least one hour to the irrelevant purpose of proving the alarming prevalence of crime and immunity, and the importance of convicting and hanging "*one of the ruffle-shirt gentry,*" and especially "*a Doctor or a Lawyer.*" Was he then representing the Commonwealth? Does she desire unjust conviction by *such* appeals? And when the law and the facts require conviction, is it ever necessary and proper for her to make the demagogue's harangue? The guilty should be punished, and I know that too many have escaped. But it is the art of lawyers, chiefly, and not so much the ignorance or compassion of juries, that has paralyzed the criminal law. And my friend from Madison must allow me to remind him that no criminal advocate within his range of practice has been more instrumental than himself in preventing the condign punishment of the guilty. And I am not sure that his resort, in this instance, to his accustomed arts in the defence of criminals, may not do for the Commonwealth what he has so often done against her—produce an unjust verdict. I am for upholding and enforcing the law. But does not this gentleman know that the law is made for the protection of the innocent even more than for the punishment of the guilty? We too invoke the law—and in its name, and under its panoply, we ask for an acquittal; for we feel that nothing but God or the law can save the accused from the powers of destruction that are combined against him. It is not mercy so much as money that has effected the escape of criminals, and thereby encouraged crime. And the only danger now is, that money may produce the opposite result—the condemnation of a guiltless man. And does the gentleman, suddenly changing from the advocate to the prosecutor, expect to restore the law he has so much helped to paralyze, by hanging an insane man, one that is scarcely the shadow of a man? And why does he so wish? Why now shall insanity be hung? And why has guilty sanity so often escaped the gallows through the gentleman's influence? "*The love of money is the root of all evil!*" It is this, more than any thing else, that saves the guilty—and it is this, too, that the accused in this case has most to fear.

The same counsel, not being able to meet fairly the conclusive testimony of Dr. Richardson, assumed that he is himself rather insane on the subjects of phrenology and mesmerism—and told you that these "*Lexington Doctors,*" one of whom was brought here "*to enlighten and astonish ignorant mountaineers,*" could look at you and through you, and feel your pulse and your head, and "*then tell you all you are, and all you think and feel.*" Is this a grave argument of our just mother, the Commonwealth? Was there any testimony which could give even color to these improper assertions? I know that Dr. Richardson has no faith in mesmerism, and but little in phrenology. And, though he is a Lexington Doctor, I presume that truth from his lips will be as true in the moun-

tains as in his own city. But he is "*an enemy to free government,*" said the gentleman. And what if he be? Does this impair the force of his evidence, or tend to prove the guilt of the accused? I will tell the accuser that Dr. Richardson is as devoted to the free institutions of his country as he himself, and was risking his life in the Northwestern Army, in the year 1813, when we were both at home learning or practising law. But such a course of argument as this should be answered in a manner more light and ludicrous, and I will, in that way, give it and much else like it the finishing blow by an appropriate anecdote. When the steam locomotives first began to run from Lexington to Frankfort, a little curly-headed and horned animal with a bobbed tail, while grazing on the poor lands near the latter place, seeing a car approaching him with its accustomed force and velocity, and thinking that this great "*Lexington*" machine was no greater or better than himself—though only a scrub of the Franklin hills—fixed himself in the track and, drawing himself up for battle, gave it a triumphant butt as it approached him; and, as might have been expected, he was thrown several rods and effectually "*used up;*" at the sight of which a venerable gentleman exclaimed, that he admired the animal's courage, but thought very badly of his discretion. Now, whoever has the temerity to butt against this Lexington Doctor and ridicule the facts and the law on which we rely, should remember the doom of the short-tailed bull. On this subject let the counsel take this *coup de grace*.

But the gentleman from *Knox*, after pouring on you floods of his eloquence, endeavored to alarm you by telling you that, like *Hannibal*, young Bates had made, to his deceased father, a solemn pledge to avenge his wrongs—and that, as *Hannibal* had sworn that he would destroy Rome, this youth had asseverated that he would kill the prisoner at the bar—thereby intimating that *you ought to hang him, to prevent his being shot!* And does this too come from the mouth of the Commonwealth? It is not only extraneous but signally unlucky. Let it be remembered that, after the battle of *Cannæ*, *Hannibal* was compelled to desert Italy—*Scipio* carried the war into *Africa*, vanquished him at *Zama*, drove him to inglorious exile and death, and destroyed *Carthage*—and that, years afterwards, *Caius Marius* of Rome sat, a hopeless exile, on its melancholy ruins. We desire peace. We appeal to the law. There have been war and bloodshed enough. But if the menaced crusade against the life of the accused shall be lawlessly waged, then, too, the war may be carried into *Africa*, and a proud *Carthage*, instead of devoted *Rome*, may fall never to rise.

The gentleman from *Laurel* also has gone out of the way to excite and deceive you. He has read to you the Mosaic law on homicide, and shown you that, by that law, the manslayer could legally escape the avenger of blood only by fleeing safely to "*a city of refuge.*" And does he wish you to understand that such is the law here? If it be, the accused has reached a city of refuge. His country is that city, and you are that country and that refuge. And if you will determine his doom from the law and the testimony alone, we feel that he is safe, and fear not the avenger of blood.

Instead of arguing the question of insanity, the same counsel has also endeavored to ridicule the insane expression of the prisoner's countenance, and said that it showed only the mark of *Cain*. This idle assertion is contradicted by the unanswerable facts—and therefore those facts have been answered only in this unauthorised manner. And, in reference to all these *unusual* efforts made by the three hired counsel, I must be permitted to warn them that, in my opinion, if the prisoner shall be hung, their hands will be dyed with his blood.

But, gentlemen, I am sorry that I felt it my duty thus to notice fragments of the great mass of extraneous matter that has been thrown into the argument of this case by the triumvirate counsel of the prosecutors. I know that all such irrelevant arguments indicate the want of any that are better; and therefore ought to operate for us rather than against us. But lest you might be improperly affected by them, duty to my client required that I should take some preliminary notice of them. *They shew the spirit of the prosecution.* I will now proceed to those facts and to that law, according to which you are sworn to decide this case: and I will not again depart from them.

Our chief defence is insanity—though we would not despair of his acquittal of the charge of murder on the ground of aggravated provocation and strong necessity of self-defence.

The Commonwealth herself has proved that the accused, *antecedently to his marriage*, often declared that Daniel Bates had maltreated his own wife (the sister of the accused) by lying, every night for nearly a year, on the floor in her bed room with a negro wench, and frequently going to his wife's bed and drawing a bowie knife across her throat and threatening to kill her—that she invoked his (her said brother's) protection, and entreated him to remain at their house to save her life—that Bates, understanding this, became, therefore, very hostile to him, had conspired with his slaves to take his life, and had, in fact, attempted his assassination. And it appears that, on one occasion, the accused, when in the town of Manchester, received a note from his said sister warning him not to return to their house that evening, because, as she wrote, her husband was prepared with guns to shoot him from an upper room as he would approach the house. The Commonwealth having introduced these facts, they are legitimate evidence, which you have both a legal and moral right to believe. If they be false, the prisoner's belief in them is evidence of his insanity: and if they be true, they must operate powerfully in his favor. The fact, that he was undoubtedly insane, *afterwards*, as to his own wife and the imputed connexion of Bates and others with her, cannot destroy the credibility of these facts as to Bates' conduct to his own wife and his determination to assassinate the accused; for a person insane on one subject may know the truth on another. Besides, there is intrinsic evidence of the truth of all that the accused said and seemed to believe respecting Bates' treatment to his wife and himself—or he was undoubtedly insane on that subject also; for, if there was no ground for his belief of them, *there is no adequate or even rational motive for his great hostility to Bates, and his suspicions of his designs on his life, before his marriage.* Then, not only have you a right to accredit them, but in charity and justice, you ought to believe them, as there is no proof of their impossibility or even great incredibility. *There is no disproof of any one of them.*

Moreover, on the day of the catastrophe and before the accused had reached the fatal spot, he was told by several persons whom he met on the road, that, since he left Kentucky, Bates had declared that, if he should ever return, he would shoot him on first sight—that he and his slaves carried guns for that purpose—and that he was then at his furnace on the only road the accused could travel to Manchester, the place of his destination—and *some of those informants urged him not to pass the furnace until night.* Being resolved, however, not to leave the highway or hide himself and steal along in the dark, he endeavored to procure a gun, so as to have some chance of defence against the guns of Bates and his slaves; but failing in this defensive object, he went on with no other weapon than one of the smallest of pocket pistols. Now these simple and undeniable facts, forbid

the presumption that the accused, before he heard them, intended (*if he were then sane*) to shoot Bates when and where he did—for, as a rational man, he could not have hoped that he could be able, alone as he was, to succeed in killing him at the furnace with a small pistol and at a distance of 18 yards. But as a sane man, hearing what he had, he must have apprehended that, in passing the furnace, Bates must see him before he could escape the range of his gun, and, so seeing, would shoot him, unless he could, on a forlorn hope, accidentally shoot Bates first with his pistol, and thus *possibly* save his own life. If he were rational, had he not abundant cause for such apprehension?—and did he not thus reason, think, and act to save himself from destruction? If so, the law read on the other side acquits him. Was he guilty of cold blooded murder? Who could hang him on such facts?

But the fact that the accused incurred so much unnecessary peril, and acted with so much temerity is strong evidence of his insanity. And it is not only probable, but almost certain, that had he been perfectly rational and self-poised, he would not have passed the furnace as and when he did, or that he would not have shot Bates then, if ever—although we maintain that he had a right to pass the highway in daylight, and to defend himself. Upon the facts as proved, is not this case one of justification or of very strong mitigation, even if the prisoner had been as sane as you? But he was insane, and this we will now endeavor to prove.

Both the mind and the body of man are, in the ultimate sense, incomprehensible. We know that our being is of a two-fold character: physical and mental. We know also that the physical element of our nature is material and mortal, and we believe that that which is rational and moral is immaterial and immortal. And consequently, man is the subject of two distinct sciences—physiology, or the phenomena of animal life—and psychology, or the phenomena of the spirit or soul. Vitality, whether vegetable or animal, we cannot understand. The material organization, which produces and sustains physical life, or is produced and sustained by it, we may well comprehend. But being so constituted as not to be able to understand any ultimate truth, element, or principle, but only their phenomenal developments or results, we can know no more of the principle of life than of that of gravitation or electricity. We do, however, know that animal life depends on physical health—and that derangement of the body, whether organic or functional, is unsoundness or disease. So also we all know that life, even of the lowest grade in the scale of animal existence, feels, perceives, remembers, and is self-conscious, and consequently, it is not easy to discriminate the essential difference, except in degree, between the mind of a man and that which we may denominate the mind of a horse. The distinctive difference, as generally recognised, is that between reason and instinct. The beaver, the bee, and even the caterpillar, and every living creature, possesses the faculty of adapting the means of existence and enjoyment to the ends of that existence and enjoyment. The silk-worm knows, and finds, and feeds on, the mulberry leaf, and the calf and the child alike know, and find, and suck, as soon as born, the mother's pap. This adaptive and conservative power, common to men and brutes, may be called the understanding; and the health and perfection of this depend necessarily on the soundness and perfection of the physical organism. But man possesses a higher faculty—a power both moral and intellectual—a capacity to know all his moral relations and obligations and to ascertain, by analysis or induction, abstract truth, mathematical truth, ultimate truth. It is this that ennobles his nature and elevates him far above all other animated beings. This ennobling

attribute we may, for the purpose of contradistinction, call reason. Many enlightened minds believe that the understanding or instinct of sound animal life is the offspring of organic matter, and is, therefore, material and perishable; and that the reason, peculiar to man, is alone immaterial, and is, of course, indivisible and immortal.

But it is not necessary here either to detain or confuse you by speculative reasonings on metaphysics, or by elaborated theories either phrenological, physiological, or psychological. Every person knows that the mind of man—understanding, reason, and all—as long as that mind co-exists with the body, is affected by the condition of the body: the theory of dreams, the influence of sickness, of infancy and of old age, on the mind, are alone sufficient to prove that reason itself, however ethereal and pure, is dependant on the perfection and soundness of the physical organs, through the instrumentality of which it acts and is acted on in the entire drama of earthly existence. All that is external is communicated to the mind by the material organs of sense. These are the heralds of the mind: and we are so constituted as not to be able to discredit the testimony of our senses. Consequently, sensible facts are, and must be, as much accredited as intuitive or self-evident truths:—and, when the mind reasons or acts from these premises, its deductions or its acts are inevitably wrong whenever the premises are wrong. The brain, which is the centre of the nervous system, is the seat and throne of the mind. If the reason be immaterial and immortal *it* cannot be unsound: but still, as it acts through the ministry of the brain, it must be either obscured, eclipsed, or dethroned by any unsoundness or disorganization of the brain. Whenever the brain is unsound it will, to some extent, present to the mind, false and delusive images, which the reason necessarily believes to be true, and of the falsehood of which no proof or argument can convince it—because it must believe that which the senses communicate. When any organ fails to perform its proper function, it is said to be unsound; and, consequently, when physical unsoundness is the cause of false sensations, images, or impressions, which delude the reason or pervert its action, the mind, dependant as it is on the body, is, to the extent of the delusion, said to be—and certainly, for all practical purposes, must be admitted to be—unsound. And this is intellectual insanity. It proceeds necessarily from physical disease or derangement—and is therefore nothing more nor less than *the morbid imagination of a fact which does not exist—for the supposed existence of which there is no evidence that could possibly operate on a sound mind—and of the non-existence of which no proof can convince the reason.* If, for example, the brain or organ of vision be so diseased as to present to the mind an object as red which in truth is green, or imprint on the retina images of objects which do not exist, the mind is inevitably deceived, and, reasoning correctly from these facts and premises, impels erroneous belief and wrong action. And thus, while the reason is sound and the reasoning correct, the conclusion is false, because the foundation is deceptive—the very source of thought impure—the premises imaginary and not real. And not only is the source of the delusion physical, but as long as the morbid cause exists, it will be impossible to undeceive the mind, because what we feel, or see, or hear, no extrinsic argument or proof can convince us that we do not feel, nor see, nor hear. And we must reason and act as if what thus only seems to us, be, as it appears to us to be, undoubtedly true. If, when your wife stands before you, a morbid condition of the brain, superinduced by some moral or physical cause, imprint on your mind the vivid impression of a tigress, a fiend, or a demon, no argument could convince you that it is your wife you behold, nor prevent you from

acting as you would if indeed the object were what it seems to you to be. Your reason, however clear and true, drives you nevertheless to false conclusions and erroneous conduct, because, assuming false premises to be true, it makes correct deductions from them; and the delusion is not in the faculty or process of reasoning, but in the imagination of a false fact the necessary offspring of an unsound condition of the sensorium. These delusive images, all produced by some physical derangement, are either *illusions* of the senses as to external objects, or *hallucinations* which arise from the internal feelings or emotions of a distempered body. Thus, from our own observation, as well as from authentic books, we know that, while the subject of *delirium tremens* imagines that he sees furies, hobgoblins, ghosts, and demons—another victim of delusion feels that his legs are glass, or, though a male, that he is in the family way—another that he sees a robber escape from his room through a key hole—another that he saw a stranger to his bed defile it in the illicit embraces of his faithful and affectionate wife—and another imagines conspiracies to ruin him and plots to assassinate him by his nearest and best friends—another believes that he is the saviour of the world—another, like Hadfield, that his own destruction is a necessary offering to the peace and happiness of mankind—another, like the great reformer, Luther, imagining that he is beset by the devil incarnate, therefore throws his inkstand at his black majesty, and thus drives him from his presence—and another yet, feels like the great Pascal, the author of the famous provincial letters, who, while elaborating a beautiful solution of the cycloid curve, had himself tied in his arm chair, lest he might fall into a deep abyss which he imagined he saw yawning beneath his feet. Such illusions of the senses and hallucinations of the internal feelings are almost infinite in kind, as well as in degree. And, whenever they exist, their delusive influence on the reason and the conduct of their victim, within the sphere of their operation, is as irresistible as it is certain. In each of these instances the delusion results from partial excitement or derangement of the brain, and in each there is, at least, particular insanity of mind, or *monomania*, which is insanity on some one subject only, and which, as to that subject and every thing connected with it, may be as *entire* and incapacitating as universal insanity or a total eclipse of the mind would be as to all subjects. Insanity of mind, like that of the body, may be partial either in the extent of its prevalence or in its degree of intensity. And although the Court has intimated and the counsel engaged for the Commonwealth has said that there is no such thing as *monomania*, I am prepared to prove it by argument and an appeal to observation, and to show also that there is not a treatise extant on insanity, or on medical jurisprudence, which does not recognise and define it. I know that the vulgar notion of insanity supposes fury and total deprivation of reason, and I know, too, that it is not easy to convince the popular mind that a person is insane who can reason well on most subjects, or even on any subject. But both science and law recognise particular insanity while the victim of it may be apparently sane and rational on all other subjects than that in respect to which there is insane delusion. And this mental derangement which is partial in the extent of its sphere is, in its various kinds, the most prevalent form of insanity intellectual or moral. It fills the lunatic asylums—and there is not one of them in which a majority of the patients do not belong to that class, in one form or another. It is no new thing, therefore: and I am surprised to hear any who profess a knowledge of jurisprudence speak of it in a spirit of incredibility and ridicule.

A few quotations will impregnably establish all we have said or shall ask you to believe on this interesting subject. *Esquirol* was superintendant, for 40 years, of the lunatic asylum, at *Charonton* in *France*. He was an eminent medical philosopher—devoted extraordinary attention to mental unsoundness in all its various forms—and his elaborate and learned treatise on insanity is, therefore, not only entitled intrinsically to unusual respect, but is referred to as a standard authority by medical and legal men. *Ray's* "*Medical Jurisprudence*" is also entitled to great respect—because it is an American production of extraordinary ability, and is devoted altogether to the single subject of the medico-legal character and effects of insanity. On these two books, therefore, I shall chiefly draw.

And here let me premise that modern writers on insanity, and even many jurists, recognise a morbid derangement of the moral faculties as distinct from that of the intellectual. How far any such merely moral insanity may exist without some intellectual derangement also I do not pretend to know. But I do not doubt that, as our moral and intellectual natures are indissolubly associated and intertwined, moral derangement is the necessary consequence of intellectual insanity, and is co-extensive with it. For example, when the mind of *Hadfield*, in consequence of some morbid derangement of his brain, labored under the insane delusion that he must offer himself a sacrifice to the welfare of his race, and, being opposed to suicide, therefore determined to assassinate his sovereign, *George III.*, as the certain precursor of his own execution for murder and treason, I doubt not that his moral nature was also so far deranged as to induce him to believe that, though murder was a crime, yet, in that particular case, he would be guilty of no violation of the law of God or of man—or the delusion must have been so overwhelming as to have destroyed all moral resistance. And such was the argument of his counsel and must have been the opinion of the jury who acquitted him. How far moral insanity, if there be such a thing alone—such as—*pyromania*, or an irresistible passion for incendiarism—or *erotomania*, or an insane propensity for sexual intercourse—or *kleptomania*, or an overwhelming temptation to steal—should exculpate its victim, I am not prepared to say: That it should excuse a criminal act in any case without any proof or presumption of intellectual delusion also I cannot venture to assert. But I do maintain that, whenever there is any such moral insanity, it is either the parent or the offspring of an associate intellectual insanity also. Mental unsoundness is, in my judgment, a two-headed monster—feeding at the same time on the intellectual and moral man.

Esquirol, (p. 21,) defines mental insanity to be—"a cerebral affection, ordinarily chronic, and without fever—characterised by disorders of sensibility, understanding, intelligence, and will.

On the same page he makes the following quotation from *Conolly*:—"Insanity is the impairment of one or more of the faculties of the mind, accompanied with or inducing a defect of the comparing faculties"—and from *Prichard* the following: "Insanity is a chronic disease manifested by deviations from the healthy and natural state of the mind, such deviations consisting either in a moral perversion or a disorder of the feelings, affections, and habits of the individual, or in intellectual derangement, which last is sometimes partial, namely, in *monomania*, affecting the understanding only in particular modes of thought; or general and accompanied with excitement, viz: in *mania* or *raving madness*"—and then *Esquirol* himself concludes as follows: "In general it is regarded as a disorder of the system by which the sound and healthy exercise of the mental faculties is impeded or disturbed. That every case of mental derangement, from the

first moment of its existence, can be perceived, and referred with accuracy and precision to one or another of these definitions, just as in science every fact may be referred back to its principle, is not, by those at all conversant with the subject, supposed to be in all, or perhaps in any case, possible. Who can tell when health ends and disease begins? When disease is found to have shed its blighting influence over the system, is it possible, after establishing this fact, to decide what amount or kind is necessary to occasion aberration of mind, and when this amount and quality is developed? When developed, does it, at once, manifest its baleful influence upon the brain, by producing insanity, or does it rather brood over the delicate organ of the mind and gradually fulfil its dread commission? When again the mind begins to totter and reason to sit insecurely upon her throne, do the friends and acquaintances of the unhappy sufferer recognise these first monitions? Or do they not rather behold—if indeed they observe any thing—a simple change of habit, slightly perverted moral feelings, or trifling eccentricities of character.

“Now it is conceived to be quite possible, not to say probable, that even during this early stage of insanity, before the friends or immediate associates of the patient are aware of its existence, or before it becomes developed to a degree that brings it clearly within the limits of any of the above definitions, that a source of excitement, fear, apprehension, or mental disturbance of some sort, shall so operate upon the mind, through the medium of its diseased organ the brain, as to lead the person so afflicted, now to the commission of suicide, now to homicide, or other acts of a grossly immoral and highly criminal character. Experience also justifies the belief that these results may follow in the train of excitement occurring from ordinary intercourse with society, and equally from the perverted thoughts and emotions of the individual—thoughts and emotions, too, which he may never have expressed, or merely hinted at in conversation with his friends.”

Ray (p 139) says:—“Insanity observes the same pathological laws as other diseases”—“it arises from a morbid affection of organic matter, and is just as much, and no more, an event of special Providence as other diseases”—“it follows the same course of incubation, development, and termination in cure or death, as other diseases—sometimes lying dormant for months or even years, obscure to others and perhaps unsuspected by the patient himself—at others suddenly breaking out with no premonition of its approach”—“just as consumption, for instance, sometimes begins its ravages so slowly and insidiously as to be perceptible only to the most practical observer for years together, while, in another class of patients, it proceeds from the beginning with a progress as rapid as it is painfully manifest. But its presence no one thinks of denying in the former case, merely because its victim enjoys a certain degree of health and activity, though it would be no greater error than to deny the existence of insanity while the operations of the mind are not so deeply disturbed as to be perceptible to the casual observer.”

On page 142 the same author says: “Madness is not indicated so much by any particular extravagance of thought or feeling as by a well marked change of character or departure from the ordinary habits of thinking, feeling, and acting, without an adequate external cause.” And on p. (?) “It is the prolonged departure, without an adequate external cause, from the state of feeling and modes of thinking usual to the individual when in health, that is the true feature of disorder in mind.”

Speaking of some of the characteristics of insanity, *Esquirol* says: “The insane often entertain an aversion towards persons who were pre-

viously dear to them. They insult, misuse, and fly from them. It is a result, however, of their distrust, jealousy, and fear." (page 26.) "The insane man becomes timid and suspicious. He fears every one that he approaches, and his suspicions extend to those who were most dear to him. The conviction that every one is endeavoring to *torment and slander him*, to render him miserable, and to ruin him, in body and estate, put the finishing stroke to his moral perversion," (page 74.) "We would remark that the insane conceive a dislike and aversion to certain individuals, without any motive, and nothing induces them to change their views. The object of this hatred is usually the person who, before their illness, *enjoyed their love*." (page 75.) "Thus a mother believes she is abandoned by her husband, and desires to slay her children to preserve them from a like misfortune. A vine-dresser slays his children in order to send them to Heaven. A lady gets the idea that her husband wishes to shoot her, escapes from her chateau, and throws herself into a well." (page 208. Mrs. A. entertains the belief that men enter her chamber during the night; on being shown that this is impossible, she replies they pass through the lock." (page 24.) On page 214, he says: "Disappointed affection, *jealousy*, fear, &c., are the passions which produce the greatest number of lypemaniacs, (that is, melancholy monomaniacs,) particularly in youth."

Jealousy, as we might, from its force and character, presume, is more frequently, than other passions, the cause or consequence of partial insanity. For illustration, we will quote from *Esquirol* some cases of that kind in the asylum at *Charinton*: M. P., who was an officer under Napoleon and an affectionate husband, became a monomaniac in consequence chiefly of the downfall of his leader, and, after the last abdication, "takes up a frightful aversion to *his wife and her family, who were previously the objects of his strongest regard*.. Nothing removes his dislike. He deserts his adopted family." "I have often spoken to him of his wife and family, in order to recall his former affection. They wished, says he, to deny the faith; they are the enemies of God and I renounce them. (page 96.) M. D., 40 years old and after he had been some time in the asylum, "*believes he sees a patient of the house violate his wife*. In a furious passion he throws himself upon the innocent object of his wrath, and injures him most seriously." (page 103.)

M., at the age of 27, was married to a beautiful woman, both amiable and wealthy." "He is jealous"—"a change in his character is perceptible. He is quarrelsome, too exacting, overbearing, uneasy, restless, and unjust towards his relatives." "He conceived an opinion that the food at the eating house at which he was accustomed to dine, had been poisoned. He indulged in violent fits of passion *against his father-in-law, who lavished upon him every attention*—he *quarreled with his wife, notwithstanding the affection she entertained for him*. He visits the houses of his acquaintances, complaining that he is poisoned in the family of his father-in-law, but immediately makes the same complaint when living with them." "He throws himself into the hands of the police, *lodges an accusation against his father-in-law, and accuses his wife of exercising an undue influence over him*." "His physiognomy is changeful, his eyes red and projecting, and his step haughty. He is polite towards all, familiar with none." "I cannot close this account without remarking that, from being a hypochondriac at first, then a lypemaniac, fearing poison, he became a monomaniac." (page 324-'25.

Esquirol makes the following classification of the various kinds of insanity:

"1. *Lypemania*.—Delirium with respect to one or a small number of objects, with predominance of a sorrowful and depressing passion.

"2. *Monomania*, in which the delirium is limited to one or a small number of objects, with excitement and predominance of a gay and expansive passion.

"3. *Mania*, in which the delirium extends to all kinds of objects, and is accompanied by excitement.

"4. *Dementia*, in which the insensate utter folly, because the organs of thought have lost their energy and the strength requisite to fulfil their functions.

"5. *Imbecility*, or *Idiocy*, in which the conformation of the organs has never been such that those who are thus afflicted could reason correctly."

Perhaps a different and more comprehensive nomenclature, leaving out *lypemania* and including both types of particular insanity under the title *monomania*, would be more scientific, as well as simple and intelligible. And we shall so treat the subject.

"*Monomania* and *lypemania* are chronic cerebral affections unattended by fever and characterised by a partial lesion of the intelligence, affections, or will. At one time the intellectual disorder is confined to a single object, or a limited number of objects. The patients seize upon a false principle which they pursue without deviating from logical reasonings, and from which they deduce legitimate consequences which modify their affections and the acts of their will. Aside from this partial delirium they think, reason, and act like other men. Illusions, hallucinations, vicious associations of ideas, false and strange convictions, are the basis of this delirium, which I would denominate *intellectual monomania*. At another, monomaniacs are not deprived of the use of their reason, but their affections and dispositions are perverted." "It is this which authors have called *reasoning mania*, but which I would name *affective monomania*. In a third class of cases a lesion of the *will* exists. The patient is drawn away from his accustomed course to the commission of acts to which neither reason nor sentiment determines, which conscience rebukes, and which *will* has no longer the power to restrain." (*Esquirol*, 320.)

On page 200 the same author says: "*Monomania* is, of all maladies, that which presents to the observer phenomena the most strange and varied, and which offers for our consideration subjects the most numerous and profound. It embraces all the mysterious anomalies of sensibility, all the phenomena of the human understanding, all the consequences of the perversion of our natural inclinations, and all the errors of our passions."

"The more the understanding is developed and the more active the brain becomes, the more is monomania to be feared." "Monomania is essentially a disease of the sensibility. It reposes altogether on the affections." "This malady presents all the signs which characterise the passions. The delirium of monomaniacs is exclusive, fixed, and permanent, like the ideas of a passionate man."

In illustration of the delusions and passions accompanying monomania, the same author, on pages 364-'65, says: "A father immolates his son on a funeral pile in obedience to the voice of an angel, who commanded him to imitate the sacrifice of Abraham." "Another slays an infant in order to make it an angel." *Prohaska* slays his wife and two children *because he believes that an officer pays his addresses to the former*." "A mother is compelled to decapitate that one of her children whom she loves with the greatest tenderness." Can we reconcile reason with the murder of that being most dear." "We can understand this phenomenon only by admitting the suspension, temporarily, of all understanding, all moral sensibility and volition."

On page 162, *Ray* says: "The most simple form of this disorder (monomania) is that in which the patient has imbibed some single notion contradictory to common sense and to his own experience, and which seems, and sometimes no doubt really is, dependant on errors of sensation. Thus, thousands have believed their legs were made of glass—or that snakes, fish, or eels had taken up their abode in their stomach or bowels. In many such cases the hallucination is excited and maintained by impressions propagated from diseased parts the presence of which has been revealed by dissection after death." And, on page 167, the same author says: "In the simplest form of monomania, the understanding appears to be, and probably is, perfectly sound on all subjects *but those connected with the hallucination.*" If we would follow these people to the privacy of their own dwellings, narrowly observe their intercourse with their friends and neighbors, and converse with them on the subjects nearest to their thoughts, we should generally detect some perversity of feeling or action altogether foreign to their ordinary character." "It is a fact *that must never be forgotten*, that the phenomena of insanity *do not lie on the surface, any more than those of other diseases, but can be discovered only by means of close and patient examination.*"

The foregoing views of insanity, and of monomania especially, are corroborated by the concurrent testimony of every respectable writer on either medical jurisprudence or insanity—and most fully and emphatically by *Elliotson*, by *Prichard*, by *Beck*, by *Taylor*, and by *Guy*, all standard authors on those interesting subjects—and more particular references to whose writings—although I have one of them before me, would be an useless consumption of our time. And let me here guard you against any delusion from oblique intimations, already made and probably to be repeated in the concluding argument for the Commonwealth, that these are all "*doctor's books*," and not therefore to be regarded as authority in a criminal trial. How does the Lawyer, the Juror, or the Judge, become well acquainted with the true doctrines of insanity unless he shall be instructed by the learning and experience of eminent medical philosophers who have devoted their lives to the observation and study of it? And from what source do we and must we derive most of our knowledge of the law on subjects peculiarly medical? Necessarily and confessedly from works on medical jurisprudence, which are, in fact, law books—being the best and most approved treatises on so much of civil and criminal jurisprudence as is connected with and depends on medical science. And I aver, without fear of contradiction from any candid and intelligent source, that the books, from which I have read to you copious quotations, are the very best and most authentic on the subjects on which they are respectively written. Had they not been both admissible and credible on this trial, the Judge would not have allowed me to read them to you. There is no higher or better authority on the subject we are considering. I shall therefore yet draw on them or on one of them copiously in another portion of the argument. And I am quite sure that the Commonwealth will not attempt to evade the force of these books, otherwise than by repeating that they are "*doctor's books*." But not only are they intrinsically authoritative, but they are, for all the purposes of this case, conclusively fortified by judicial recognitions in both civil and criminal trials. In 1794, James Hadfield was acquitted by a *British Jury*, in England's Royal Court, on the ground of monomania alone. Although he was indicted for treason in shooting at his sovereign, and was admitted to be perfectly rational on most subjects, the Jury found a verdict of not guilty, only because they believed that he labored under insane delusion on one subject which led him to attempt to

kill his king; and that verdict has, so far as I know or believe, been approved by all enlightened jurists, and has been recognized as a leading authority ever since.

Subsequently *Lord Oxford* was acquitted on an indictment for murder on the ground of monomania alone, there being no doubt that he was rational and sane on all subjects unconnected with the homicide. In 1835, *Lawrence* was acquitted by an *American* jury for shooting at *President Jackson*; and his acquittal was on the sole ground of monomania as to the President; and on that trial, the court recognized *Hadfield's* case as establishing the true legal doctrine. In Kentucky the Court of Appeals set aside *Morris' will* on the ground that the testator, though rational on all other subjects, was believed to have been insane in the conviction, without cause, that a brother, whom he pretermitted, had attempted to poison him. And, more recently, one of the ablest judges on England's Bench, in the celebrated case of *Dew v. Clark*, set aside a will on the single ground that the testator, who was a physician, was a monomaniac as to his only child, (an amiable and beautiful daughter,) whom, from her birth, he charged with being possessed of the Devil, and being born as a judicial curse, to degrade his name and destroy his happiness; and whom, therefore, he not only neglected in his will but had invariably persecuted and abused with a cruelty more than savage. And the cases of a similar kind, in England and America, and in which, whether civil or criminal, the doctrine of *Hadfield's* case has been judicially recognized, are too numerous to justify even a reference to their titles on this occasion. We may therefore conclude, without hazard, that the legal, as well as actual existence of *monomania*, and its disabling and exculpatory influences, are recognized and established by that very law by which you are bound to try this case.

There is then, beyond doubt, such a thing in law and in fact, as insanity on one or a few subjects, while, in all other respects, the same mind is apparently sound and rational. And this is technically called *monomania*, which is indeed the most prevalent form of insanity, as all lunatic asylums will prove. Go into any one of these receptacles of the insane and you will, as already suggested, see a large majority of the unhappy tenants who reason well and manifest intelligence and self-possession on many, perhaps most subjects, and some you will be sure to see, whose infirmity you will not be able to detect without a clue from the keeper or some acquaintance who had ascertained the particular subject of insane delusion. But comparatively few among the insane are totally so: few are so far deranged as to appear to the casual observer *mad men*, or what is vulgarly considered *crazy men*. But still, insanity even on one subject only, may, to the whole extent of its sphere of operations, be as complete and stultifying as total derangement on all subjects.

You may now also perceive that *intellectual* insanity proceeds from some morbid excitement or derangement of the brain, or from some disturbance of the physical health, or of some one or more of the five senses operating on the brain, in consequence of which false and

delusive images or ideas are communicated to the mind, which are necessarily accredited as true, and from which, reasoning correctly from false premises or imaginary facts, it deduces erroneous conclusions, with intuitive certainty of their truth. You may understand also that partial insanity, whether limited in degree or in the extent of its range, is, like other chronic diseases, latent and insidious in its incipient stages, frequently slow in its progress, always discoverable first by the nearest friends and associates of the afflicted subject, and rarely suspected or admitted to exist by strangers or others whose intercourse with the victim is only occasional or transient. You may presume too, as is undoubtedly true, that all insanity of mind is accompanied and indicated by certain physical signs—in the countenance, the temperature, the pulse, the hang of the muscles, and the general expression, which none but those intimately acquainted with its phenomena can rightly interpret, but which are, to the skilful and experienced few, as infallible as the external symptoms of any other internal malady. And hence you must feel the great and controlling force of the opinions of enlightened medical men on all questions of insanity: and, you should not be ignorant of the fact, that the law gives to such opinions peculiar credit and decisive effect, just as it does to the opinions of jurists on questions of law, or to those of artists on questions of art.

And, gentlemen, you cannot, I trust, now fail to perceive that *intellectual* insanity is not any unsoundness of the reasoning faculty or derangement of the mind itself, psychologically or spiritually considered, nor erroneous reasoning only, nor violent passion *merely as such*, but is a morbid delusion of the senses, the feelings, or the imagination, which furnish the material on which the reason acts. As the serene and unchanged sun of heaven reflects, from a deranged atmosphere, unreal and often distorted images, and even such as the beautiful *fata morganni* in the Bay of Naples, so the mind of man operating through a diseased brain or the false suggestions of unsound senses, presents delusive objects or imaginary facts which have no existence elsewhere than in a diseased brain or morbid imagination. The cause is physical, the effect mental. It is delusion—delusion of a diseased brain or unsound senses. Man is so constituted as to be fitly adapted to the material and moral world around him. He is so organized physically as when his organs are all perfect and sound, he perceives external objects as they are, and so constituted morally, as to be able, by his reason, to deduce true and right conclusions from existing facts, and to conform his acts to the will of God and the laws of his country. And, when in this perfect condition of constitutional harmony and adaptation he is, in the legal sense, sane, and is responsible for his conduct; for being possessed of all the faculties necessary for perceiving the truth and of doing his duty,—for the proper exercise of those powers he should, as a moral and accountable being, be responsible to God and his country; and whatever the degree of his intelligence may be, he is legally sane.

But let this harmony be disturbed, and this organic adaptation be dislocated, and then, the mind being perverted and the reason deluded by causes which can neither be eluded nor controlled, erroneous judgment and moral deviation are as unavoidable as the laws of nature—the man is so far out of his element—not as he was made, and therefore, to that extent, unsound or insane; and consequently responsibility ceases as far as the reason of it ceases. If a man's vision is so far deranged as to present objects which do not exist, or to exhibit in a distorted or false aspect, such as do exist, he is, in that respect, insane; and, as, by a fundamental law of his constitution, he *must* believe what he sees, and *will* act according to that belief, he cannot be reasonably responsible for the effects of the optical illusion. Nor, for the same reason, can he be responsible for the natural consequences of a delusion which is the necessary offspring of false images or imaginations produced by a disorganized or diseased brain.—And this, therefore, is an illustration of legal insanity, which is defined by Erskine, in *Hadfield's case*, to be *delusion*. But this is too comprehensive. All delusion is not insanity; for errors of judgment or of conduct arising only from a bias of interest, sympathy or education, or from a mere want of proper consideration, or from enthusiasm, or from violent passion, are the common fruit of sound, as well as of unsound minds, and are not, therefore, proofs of insanity. When a man is actuated by a rational motive arising from facts actually existing, then, however excessive or exceptionable his conduct may be, or however burning the enthusiasm or violent the passion that impels him he *may* not be, in the legal or scientific sense, insane. He is not deceived by false images—there is no delusion of the senses or the brain; the facts on which he reasons and acts, do actually exist, however insufficient they may be for influencing a sober and rational mind, and therefore, having the power to make right deductions from them and to control passion by reason, he may not be insane, and might be responsible. But when his motive arises from a mere chimera of a disordered brain, or the morbid imagination of a fact or of evidence of a fact, when there is neither such fact nor any evidence of it,—then his reason *cannot* undeceive him, his judgment *must* be wrong, and he is, consequently, insane and, so far, irresponsible. The sacrifice of *Desdemona* by her devoted husband *Othello* was the effect of passion, and not of disease. His reason acted on facts which existed and were communicated to him by *Iago*; and, in both ethics and law, he was responsible for drawing wrong inferences from those facts, and for permitting his passions to subjugate his reason. He was not therefore insane, in the technical sense, and was a murderer. But, had there been no such facts, nor any evidence of them, and had he only imagined them, or had he, for example, *only imagined*, that he saw a paramour of *Desdemona*, night after night, enter his room and defile his bed in *his own presence*, and *escape through the window or the key-hole to avoid his own drawn sword*,—then he was undoubtedly insane, and his homicide would have been excusable *as the natural offspring of a disordered mind*. This is the kind of delusion which

is meant when insanity is said to be delusion: it is, I repeat, a delusion resulting, not merely from false reasoning, but from imaginary facts, the images of which are so vividly imprinted on the mind by some distempered organ as to force the belief of their truth and baffle all external proof of their falsehood. And this too is the conception of intellectual insanity recognized in the cases of *Hadfield*, and *Lord Oxford*, and *Dew v. Clark* in England, and *Morris' will*, and *Lawrence* in our own country, and in many other leading cases both in England and America.

From the foregoing considerations and authorities, we feel authorized to conclude, that *intellectual insanity is delusion unavoidably resulting from some unhealthy or deranged condition of the physical man, which necessarily produces false impressions and emotions, and consequently perverts the reason from a mentor of truth into an inexorable guide to strange and perilous error.*

And tried by this definition, the facts proved in this case, as we confidently believe, shew, beyond a rational doubt, that, when he shot his brother-in-law, *Dr. Baker* was of unsound mind—laboring, especially and certainly, under insane delusion as to him and his own wife, and, to that extent, *totally insane.*

But here I feel it to be my duty to admonish you to be careful to discriminate between legal insanity, and the ordinary delusions of a sound mind arising only from passion or false or imperfect reasoning, and also to understand clearly that, in such a case as this, public justice and security require that the plea of insanity should be maintained, not only by satisfactory proof of delusion, but by *affirmative or intrinsic* proof that the source of the delusion was a disordered or excited brain producing the honest conviction of the existence of facts which did not exist, and for the assumed existence of which there was no evidence that could have operated on the belief of rational mind. In the case of *Morris' will*, had there been no other evidence of the testator's insanity than the simple fact that he said his brother had attempted to poison him, the will ought to have been established—because that fact alone was neither sufficient proof of the sincerity of the testator's declarations, nor of the non-existence of any rational ground for believing what he declared—and, in the absence of other evidence, the fact that there had been an attempt to poison him would have been intrinsically less improbable than that of his insanity. But it was proved affirmatively, not only that he had no rational ground for his charge, but that it sprang from an insane conception when he had been in the delirium of a severe and protracted fever. So, too, had the only evidence of *Dr. Baker's* insanity been the fact that he had said that *Daniel Bates* was a ferocious husband and secretly meditated his ruin because he was protecting his sister, and also that he (*Bates*) had illicit intercourse with his (*Baker's*) wife, I would candidly admit that the plea of insanity is not sustained. But if, as we contend, we have indisputably proved that *Dr. Baker* believed what we have shewn that there was no evidence to support, and, moreover, that which was intrinsically improbable and even, to

some extent, impossible, then, without the testimony as to his physical appearance and condition, but more conclusively in connexion with it, we shall, with undoubting confidence, insist, not only that our plea is incontrovertibly maintained, but that a stronger and clearer case of partial insanity than this is not recorded in any adjudged case on earth.

With such qualifications and cautions, there can be no danger of an unjust acquittal on a false plea of insanity—without them, the guilty will often be acquitted on the ground of simulated insanity or of a misconception of its true character, and the innocent insensate may, as often, be unjustly convicted. But we feel sure that a proper application of the true doctrines of science and of law to the facts proved on this trial, will ensure the acquittal of the accused. If there be any wisdom in experience, truth in science, or certainty in knowledge, there are two classes of facts in this case, either of which must be sufficient to prove Dr. Baker's insanity now and when he shot Bates, and both of which united, present as conclusive a defence as ever was established in a case of acquittal on the ground of insane delusion.

First. His physical appearance and condition were, at the time of the shooting, and yet are just such as, according to all instructive experience, derived from observation, from tradition, or from books—indicate *monomania*—quick and excited pulse, a peculiar temperature, a wild expression, a restless and jealous temper, a singular placidity and hang of the muscles of the face, and, when particular topics are touched, an indescribable stare of the eyes and enlargement and apparent electrification of the pupils, and incoherence of speech, vehemence of temper, and total absorption of feeling. These and other nameless badges of partial insanity are not always marked nor generally understood or rightly interpreted by unskillful and casual observers—but they are soon noticed with concern by intimate associates, and are deemed infallible symptoms of mental derangement by all who are well acquainted with the true character and signs of such insanity. Dr. Richardson testified that an examination of the accused in the prison convinced him that he is an insane man, and not only did he detail to you all the evidences just enumerated, but others have proved that Dr. Baker's condition, bodily and mental, is now rather better than it was when Bates was shot. And who, I ask each and all of you in full confidence, has closely observed the prisoner during this whole trial without feeling that he is now the victim of insane excitement and delusion? Not even one, I am sure.

The first class of facts alone ought therefore to be deemed satisfactory proof of Dr. Baker's insanity when he killed his brother-in-law. Second. But the other class of proofs is even more irrefutable and conclusive. If Dr. Baker believed the charges he made against his wife and his mother and sisters, and others—all of whose characters are spotless and exalted—he was certainly insane; because there was no evidence to excite, in a sound mind, even a suspicion of the truth of any one of the facts charged, and most of them were so exceedingly

incredible and even morally impossible as to make it infinitely more difficult to believe their truth than his derangement. Not one fact has been proved which could tend, in the slightest degree, to authorize a rational man, however jealous, to believe any one of those charges. This is admitted by all the counsel for the commonwealth.

Nor can there be a rational doubt that Dr. Baker honestly believed that every charge was true. This is demonstrated by the frequency and almost constancy of his reiteration of those charges, the circumstantiality and identity of all his statements, his peculiarly earnest and excited manner whenever he made them, and especially also by the conclusive fact that, if he labored under no insane delusion, there was no imaginable motive for his unaccountable conduct in making such outrageous charges, or for his unparalleled cruelty to his wife. The imputation of a desire to get a portion of Bates' estate, or of revenge for Bates' delicate evasion, or rather suspicion, of Baker's proposal to unite with him in a certain small adventure, is perfectly gratuitous and absurd. Possessing, in an eminent degree, the confidence and friendship of his brother-in-law, and enjoying without stint, his hospitality and bounty, Dr. Baker had every motive that could influence a rational, prudent, or grateful man, for continuing to cultivate their friendly and confidential relations, and had every reason to expect, as a consequence, the increased munificence of Bates. But, by hostility to Bates, and especially by effecting his death, Dr. Baker ostracised himself, cut off all possibility of ever enjoying his bounty, his aid, or any portion of his large estate. *This itself would prove insanity, if his charges against Bates were all false.* It would be equally ridiculous to suppose that, as a rational man, Dr. Baker married his wife for the purpose of sacrificing her, or that he meditated her sacrifice as a clumsy device for extorting money from her wealthy and honorable father. His communication to that father, and his proposition to remove to Missouri on the condition of an advance of a comparatively small sum, are only corroborative evidences of his insanity. And certainly no rational man, desiring to enjoy the liberality of a father-in-law, would have acted as he did. Such a course was sure to defeat such an end. If he ever suggested to Davis, before marriage, that he did not expect to live long with his wife, (and of this there may be much doubt,) he meant only that, as, in his opinion, Bates was conspiring with others to prevent the union, and was maliciously plotting his assassination, he would in the event of a marriage, effect a separation either by his death or by intrigue and calumny. This is evident from all the circumstances.

It cannot be believed that any respectable man perfectly sane could have conducted himself as Dr. Baker did. Such a monster—such a devil incarnate does not exist among men. If he knew that all he published was false, no other than a purely diabolical motive could have impelled him. It cannot be believed that any man, of his character, education, family, hopes, prospects, and associations, could have, all at once, become such a demon. And what could a rational man have expected from such a monstrous course, but the most destructive

consequences to himself and to all whom, as a human being, he must have loved? He could therefore have had no rational motive for the simulation of insanity; and if he had, he could not, as a man of sound mind, have acted, and talked, and looked as, for a long time he did, and even yet does, habitually. Moreover, had even this been possible, and could it be believed that he was so mysteriously bent on mischief and ruin as to determine on the destruction of his wife and his brother-in-law and to feign insanity for screening himself from punishment, there can be no doubt that he neither could nor would have done as he did. By making others believe that he was insane he would have defeated the imputed purpose of blasting his wife and Bates; for not only was the incredibility of his charges against them the proof of his insanity, but the conviction of that insanity would rescue them from injury. And, besides, had he intended to counterfeit the appearance and conduct of an insane man, he would have attempted those of a maniac or madman, which all who saw him would have understood as insanity, and he would not have conversed and acted rationally on general subjects and occasions—*nor would he have charged Bates with impregnating his (Baker's) own young sister, nor his mother and sisters with keeping a house of prostitution.* Nor, if his object had been to induce a belief of his wife's guilt and Bates' alleged misconduct, would he have implicated *so many and such other persons*, or have told so many tales that no rational being would or could believe: For instance, he would have made a general charge of illicit intercourse between Bates and his wife, which might have been accredited, or at least have created such suspicion as to effect his mischievous end,—but he surely would not have said, as he often did, that this concourse was on his own bed, and in his own presence—nor that his young wife had prostituted herself to the embraces of her uncle, an ugly negro, and her own reputable and devoted father—nor that her preceptor, who was and is a minister of the gospel, of as pure a character as any that lives, had seduced her when she was only nine years old, and had also seduced a majority of his female pupils, and kept a *harem*—nor would he have publicly tried the signals (ascribed by him to that teacher), on a respectable lady who had been educated by him, nor have declared, as he foolishly did, that she understood them perfectly and responded to them favorably. No, no! Such could not have been the conduct of a sane devil, (if such a monster can exist in human form,) who wished to impress the conviction that his wife was foul and faithless. Had such been his purpose, such devices would have ensured its prostration.

But he still insists that he can prove every charge, and would rather be shot than acquitted on the plea of insanity, which he indignantly denies. Then I feel authorized to conclude that Dr. Baker believed all he said concerning his wife and Bates. And could any rational man have so believed? Is it possible for a sane man to doubt either that Dr. Baker believed all he charged, or that such belief is conclusive proof of an insane delusion? In addition to the absurd

and monstrous charges just alluded to, he repeatedly said that, when on a visit to his father's, his mother, after he and his wife had retired to bed in an upper room, was in the habit of opening the door of their chamber to let in to his wife another man, and whom he compelled, one night, to escape through the window, by drawing his pistol on him; and also that, during that same visit to his father's, a negro man had lamed his (the Doctor's), horse for the purpose of compelling him to prolong his stay, so that this black man might continue to enjoy the embraces of his (the Doctor's) wife! I might remind you of many other facts conducing strongly to the same conclusion of insanity; but the few and more prominent, which have just been grouped together, stand out in such bold relief as to leave no ground for a doubt of the truth and necessity of that conclusion.

If the accused was or is sane, who on earth was ever a lunatic? In him we have found, not a few equivocal signs of insanity, but every badge known or described by those conversant with the subject. This is, therefore, a perfect case: In every point and lineament of the monomaniac it is well defined and complete. This I affirm on the clear and indisputable facts, on the authority of the books, and on the undoubting and concurrent opinions of all the medical men who have testified in this case.

The opinions of common men, of common observation, on a question of insanity, are entitled to but little, if any influence. Such is the doctrine of reason and of the highest judicial authority in Kentucky and elsewhere. But both the same sources of authority unite in giving great and, generally, decisive effect to the opinions of enlightened medical men on that subject. And do you not perceive the reason of this distinction? On a question of partial insanity of mind, ordinary men in an ordinary condition, are not competent judges any more than they are competent to decide the most difficult questions of abstruse law. So far as such witnesses may be concerned, in such cases, the facts proved, and not their opinions, must form the basis of the jury's decision. But, on a question of sanity or insanity of body or of mind, the opinions of eminent physicians and of medical philosophers must be regarded as very persuasive, if not controlling. On this point we will read, from *Ray*, the following forcible remarks: "As the conclusions of the jury relative to the existence of insanity, must necessarily be based on the testimony offered by the parties, it is a subject of the utmost importance, by whom and in what manner this testimony shall be given. If the decision of this point were purely a matter of facts, the only duty of the jury would be to see that they were sufficient for the purpose and produced from authentic sources. But on the contrary, it is a matter of inference to be drawn from certain *data*, and this is a duty for which our juries, as at present constituted, are manifestly unfit."—"Such however is made their business, and, in the performance of it there is but one alternative for them to follow—either to receive, with *the utmost deference*, the opinions of those who have a professional acquaintance with the subject, or to slight them altogether, and rely solely on their own

judgment of the facts." "It is perhaps of little consequence who testifies to a simple *fact*—that it requires only eyes to see or ears to hear; but it is all very different with the delivery of *opinions* that are to shape the final decision. As this requires the exercise of judgment, as well as observation there ought to be some kind of qualification, on the part of those who render such opinions, not required of those who testify to mere facts." (page 57.) And again from page 59 as follows: "An enlightened and conscientious jury, when required to decide in a case of doubtful insanity, which is to determine the weal or woe of a fellow being, fully alive to the delicacy and responsibility of their situation, and of their own incompetency unaided by the counsels of others, will be satisfied with *nothing less than the opinions of those who have possessed unusual opportunities for studying the character and conduct of the insane, and have the qualities of mind necessary to enable them to profit by their observations.* If they are obliged to decide on professional subjects, it would seem but just and the dictate of common sense, that they should have the benefit of the best professional advice."

The suggestions, therefore, of a few common men on the side of the Commonwealth, that, in an occasional view transiently taken of Dr. Baker, they did not perceive that he was insane, are entitled to no effect whatever—1st, because they were incompetent judges; 2d, because their opportunities were insufficient; and 3d, because the accused is admitted to have been apparently rational on the common subjects on which they happened to hear him speak.

But the opinions of many of our unprofessional witnesses are entitled to influence—1st, because they were intimate associates, and father, and mother, and brother, and sisters, who had extraordinary opportunities of finding out the truth; and 2dly, because they also testified to facts which sustain their opinions. And, so far as opinions can operate, we have, what is yet much more satisfactory, the concurrent and unhesitating opinions of the three medical gentlemen who have testified before you, two of them at the instance of the accused and the other at that of the Commonwealth. *Dr. Hervey Baker* has told you that he had no doubt of his brother's insanity when he shot Bates; and he has also told you facts which prove, beyond a doubt, that this opinion is right. It is true he said that, for some time, he was perplexed between the deduction of his brother's insanity and the presumption that his wife might have been afflicted with *nymphomania*—but that, as soon as he had read an approved treatise on insanity, and learned the facts correctly, which he had never previously done, he came to the clear and fixed conclusion that his brother was a *monomaniac*. *Dr. Richardson* is eminently qualified to judge. His long experience, his peculiar position for more than 25 years, and his extensive observation of insanity in all its forms during that time, entitle his opinions in this case to very great respect. He has testified that his examination of the accused would alone have convinced him of his present insanity; and, for this opinion, he has given you all the reasons you will find in the most approved books as

signs of insanity. He also heard the testimony given by other witnesses and said peremptorily that, on the facts proved by those witnesses, he could feel no doubt that *Dr. Baker*, when he killed *Bates*, was insane as to him and his own wife, at least; and that the killing was the offspring of that insane delusion. He moreover, gave you many strong reasons for his conclusions, and emphatically affirmed that he had never seen or read of a clearer or better defined case of particular insanity than that of the prisoner when, before and since, he shot *Bates*. The other professional witness, your own physician, *Dr. Reid*, who was introduced by the Commonwealth, had not heard the other witnesses; but, on a hypothetical statement of the prominent facts as proved, (and which was admitted to be true,) he said that the prisoner was "*undoubtedly insane*" when he killed *Bates*, and was, in his opinion, "*undoubtedly*" irresponsible for that insane act.

And, gentlemen, why has no physician been brought to testify that the facts do not prove insanity? Have not the numerous, wealthy, and vigilant prosecutors, long known that the accused would be defended on the plea of insanity? The only answer is, that they could not find a respectable physician in Kentucky who would not have concurred, as their witness, *Dr. Reid*, did, with *Dr. Richardson*. And I am confident that no honest and enlightened physician in America would venture to express any other opinion on the facts than that so firmly, clearly, and imposingly given by *Dr. Richardson*.

But we have been asked why the prisoner was not placed by his friends in a lunatic asylum? The question is irrelevant; because the omission to confine him in an asylum cannot impair the force of the facts conducing to prove his insanity. Nevertheless, the answer is: 1st, because his friends did not apprehend any mischief—2d, because they were advised that a winter's residence in *Cuba*, far from the disturbing scenes and associations, might restore his physical health and, with it, his mental sanity—and 3d, they apprehended that, were they, before a final trial, to attempt to send him to the asylum, the act would be ascribed to a disposition to elude a trial by false means. But there can be no doubt that his father, mother, and sisters, and others at *Lancaster*, discovered, and conversed with each other about, his derangement *before he killed Bates*—and the letter written, before that event, by his father, to his sons at *Knoxville*, proves that *he* was of opinion that his son *Abner* was then insane.

You should not here forget that no fact is proved by the prosecution inconsistent with the evidences of insanity established by the defence. The fact that the accused manifested some skill and self-possession when he shot *Bates* is not at all inconsistent with the existence of insane delusion as proved. *All lunatics and all suicides manifest similar sagacity and dexterity on similar occasions: and, if this should disprove insanity at the moment of killing, no man would ever have been acquitted on the ground of derangement, nor should ever plead insanity on an indictment for murder:*

and then, too, Hadfield, and Lord Oxford, and Lawrence, and a host of others were acquitted illegally; for in all those cases, the homicide was skilfully executed or attempted.

Now, gentlemen, considering the true nature and signs of intellectual insanity, general or particular, as established by experience and improved science—considering the physical appearance and condition of the accused—considering the facts proved as to his conduct and his conversations—and considering the medical opinions of all the professional witnesses and the great respect to which these alone would be entitled—can any one of you, all sworn to decide this case according to the law and the testimony, allow yourself to doubt that the accused, when he killed his brother-in-law, (*which act itself, without any rational motive, is strong evidence of insanity,*) labored under an insane delusion as to said Bates and his own wife? May we not now reiterate that a clearer stronger case of *monomania* cannot be found on record? *Can there be a doubt that the prisoner imagined strange facts that did not exist, for the supposed existence of which there was no evidence whatever, and of the falsehood of which no arguments or proofs could have convinced him?* Did not a morbid brain impress all these false and delusive images on his mind: and did he not, therefore, believe them all to be true, *as firmly as a man of sound mind would be bound to believe the testimony of his own senses?* Then, in fact and in law, he was insane and this branch of his defence is satisfactorily sustained.

The three employed counsel, who have argued this case, have not discussed the facts, as proved, nor attempted to reconcile them with the assumption of the prisoner's perfect sanity—nor has any one of them ventured to deny that he was and yet is partially insane, otherwise than by insinuating that there is no other insanity than that which is general; and thus virtually conceding that if there be such insanity as *monomania*, the accused was a *monomaniac* on the subject of his wife and Bates. But nevertheless they all have argued that, admitting this insane delusion, the accused, being apparently rational on other subjects, should be presumed to have known right from wrong, and to have been conscious, therefore, that he was violating the law in killing Bates. And, if he should be found guilty, I feel confident that the verdict will be the consequence of error on this point.

It is important now, therefore, to endeavor to understand the doctrine of the law which should govern this case.

The first of the feed counsel for the prosecution, who opened the argument did not *touch the law*. He dealt chiefly in appeals to your passions and prejudices and drew largely on his own convenient imagination for facts, as well as arguments: the second, though he glanced at some law, was equally fanciful and pathetic. But the third, whom I succeed, read copiously from *Blackstone* the common law of homicide which no lawyer controverts, and from the *Bible* also several chapters on the same subject, and not one word of which, as he finally admitted, had any legitimate application to your present duty.

Why you were detained with so much superfluous reading from Blackstone cannot be imagined, unless the object was to make you believe that it is all pertinent and against the prisoner. But the purpose of introducing the *Bible* cannot be mistaken: and it is matter of regret that this holy book should be perverted and prostituted to any such unholy end as that of hanging a man who is entitled to an acquittal by the local law of the land—the *only law by which you can try him*. Does the counsel suppose that he can delude you into the belief that you can administer the *Mosaic law of God*? I trust that you will undeceive him, and let him know that the accused can be sacrificed by your verdict on no other altar than that of human law. Responsibility to *God* must be enforced by *God*.

The only portions of the extensive readings in behalf of the Commonwealth which is applicable to this case is so much of the legal definition of murder as requires, as indispensable to temporal punishment, that the manslayer shall be of *sound mind*, and declares that, if he had discretion enough to know that he was doing wrong, and a sufficient degree of moral power to avoid it, he should be criminally responsible.

Our criminal code, whose end is, not retribution or revenge, but prevention and security only, intends that the example of punishment shall effect this end, and consequently, as example could not deter those who have not the capacity of knowing their duty or the power to perform it, the law will not punish for an act springing from insane delusion, and which the actor had not the rational power to avoid. A voluntary abuse of free will, by a rational creature, is the foundation of all guilt, moral or legal. When the will is either perverted, or overwhelmed by unavoidable delusion, the blind agent is not responsible to any forum, human or divine. To perish for an act which was the offspring of such a deluded will would be inconsistent with humanity, justice, and public policy. No punishment, however certain or sanguinary, could prevent the recurrence of similar acts under similar circumstances. Consequently, judicial punishment, in such a case, would be judicial murder—and therefore the punitive sanctions of our law are addressed to those only who have the intellectual power to perceive right and the moral power to abstain from wrong. Hence an idiot is not punishable for any act and, for the same reason, a lunatic, when deranged on all subjects, should not be liable to punishment for any act done during the prevalence of the general insanity. A very large majority of lunatics, however, are only partially insane; and to this comprehensive class, belongs the *monomaniac*.

But, *within the sphere of the derangement*, whether general or only partial in its extent, is not the unfortunate victim of delusion as insane in the one class of cases as in the other—in other words, if a man be insane on one subject only, is not his insanity *within the whole circumscribed range of that subject*, as total as it would have been had he been equally insane on all subjects? And, if, then, a *monomaniac*, acting under the influence of his insane delusion, kill

a fellow being, as to whom he is deranged, is he more guilty than he would have been had his insanity been general? As to every thing within the insane zone, may not the mind be unhinged, and, for all rational purposes, powerless? And should it be predicated of a man in this condition that, because, beyond the circle of eclipse, he enjoys, in some degree, the light of reason and the blessing of moral power, therefore he shall be *presumed* to have the benefit of a reflected light, or of some dim twilight to guide his steps through the delusive labyrinth of intellectual darkness also? We insist that this presumption is authorized by neither reason nor justice, philosophy nor law.

Ever since the acquittal of Hadfield in 1794, the jurists of England and America have recognized the doctrine that a person, doing an act under the influence of insane delusion and who was, in consequence of derangement, unconscious of doing wrong or was impelled by an irresistible motive, is not subject to legal punishment for such inevitable conduct. But, whether an act done within the range of partial insanity and under its influence should be *presumed* to have been impelled by irresistible impulse, or been committed without a full consciousness of its being wrong, is a question which may not have been authoritatively settled in England with satisfactory precision or undoubted certainty. We are satisfied, however, that a careful analysis of the adjudged cases and of the elementary discussions on this subject should result in a conviction that such is the presumption of reason, and ought to be, and is, that also of the law.

The scientific and eminent jurist Evans, in his *Annotations to Pothier on obligations*, recognises what we consider the true rule in the following perspicuous and precise terms—"I cannot but think that a mental disorder operating on partial subjects, should, *with regard to those subjects*, be attended with the same effects as a total deprivation of reason, and that, on the other hand, such a partial disorder, operating only upon particular subjects, should not, in its legal effects, have an influence more extensive than the subjects to which it applies; and that every question should be reduced to the point, whether the act under consideration proceeded from a mind *fully* capable, *in respect of that act*, of exercising *free, sound, and discriminating judgment*; but, in case the infirmity is established to exist, the tendency of it to direct or fetter the operations of the mind should be, in general, regarded as *sufficient presumptive evidence*, without requiring a direct and positive proof of its actual existence."

The only doubt we feel concerning this view is, whether it may not be too vague and even not altogether accurate in the concession that an act on one subject cannot be presumed to have been influenced by insanity on another subject; for, there may be doubt whether a mind insane on some subjects can be perfectly sane on any other subject, and still more doubt whether insane delusion on one point only may not exercise a controlling influence over all the operations of the mind and emotions of the heart. We admit, however, that this general qualification suggested by Mr. Evans has been judicially re-

cognised and established as being true both in our civil and criminal jurisprudence. But what reasonable objection can be made to his rule in any other respect? If the law—*assuming* that a person admitted to be insane on one subject only is perfectly rational and free to act as he ought on all other subjects—therefore, *presumes* that there is equal consciousness of right and wrong and ability to pursue the right and avoid the wrong in all the *monomaniac's* conduct within the scope and influence of the particular insanity—then the plea of insanity could be no available defence to any but idiots or those lunatics who are totally insane on all subjects! It could be no defence to those whose insanity is partial either in degree or extent: None to a vast majority of the occupants of our mad-houses: None whatever to any except such as will never need it; for it is not probable that an idiot will ever be indicted for murder, and we should not presume that a lunatic, totally deranged on all subjects and, while in that state, committing a homicide or other breach of the penal law, will ever be prosecuted as a criminal. But we know that particular insanity is a legal defence in criminal prosecutions, and that it has been successfully pleaded in many cases. And it can have been thus successful on one hypothesis only—and that is, that, when it has been proved that the act charged as a crime was done within the range and under the influence of monomania, the law presumes, *prima facie*, that it was done involuntarily or without a consciousness of criminality—for, if the existence and potential exercise of reason generally, should legally imply the capacity to exert it conservatively on the subject of particular derangement, then, certainly there could be no proof of facts sufficient to shew that it could not, and therefore ought not, to have been preventively exerted in every case and on all occasions unaccompanied by actual duress. To shew that reason on some subjects does not imply *effectual* reason on the particular subject of insanity, Ray says—“No one will be bold enough to affirm that a certain idea cannot possibly be connected with a certain other idea in a healthy state of mind, least of all when it is disordered by disease, so that the existence of partial insanity once established, it is for no human tribunal to arbitrarily circumscribe the circle of its diseased operations.” p. 253. If there be such insane delusion on a particular subject as to imagine the existence of things which have no semblance of real existence, is not the mind *totally* insane on that subject? And if so, would it not be unphilosophical to presume an unfettered will on that subject, or a perfect consciousness of the moral and legal character or consequences of any act excited by that insanity? Such a presumption would be, moreover, absurd; because it would presuppose the nonexistence, (partially at least,) of insanity. Besides, when an act of violence—homicide, for instance,—results solely and directly from an insane delusion respecting the person killed, would it not be unreasonable to presume that there was no moral delusion also, or that, in the act of killing, the agent enjoyed moral freedom and well knew that he was doing wrong and ought to be punished? Would it not rather be more reasonable to presume

that, under the influence of the derangement and in the tumult of passions kindled by it, he was impelled by overwhelming delusion, or conscientiously and firmly believed that he was the rightful avenger of his own wrongs, and that the mode resorted to was a proper and legal act? On this question, Ray, p. 260, says—"Each delusion alike was the offspring of the same derangement, and it is unjust and unphilosophical to regard one with indifference as the hallucination of a madman, and be moved with horror at the other and visit it with the utmost terrors of the law, as the act of a brutal murderer." Again on p. 259, he says—"Now though such a person may not be governed by any blind irresistible impulse, yet to judge his acts by the standard of sanity, and attribute the same legal consequences as to those of sane men, would be clearly unjust, because their real tendency is not and cannot be perceived by him. Not that his abstract notions of the nature of crime are at all altered, for they are not, but the real character of his acts being misconceived, he does not associate them with their ordinary moral relations. No fear of punishment restrains him from committing criminal acts, for he is totally unconscious of violating any penal laws, and therefore the great end of punishment, the prevention of crime, is wholly lost in his case." And again, on p. 255-6, speaking of homicide produced by monomania, he says—"It must not be overlooked that, in cases like the latter, the insanity manifests itself, not only in the fancied injury, but in the disproportionate punishment which he inflicts upon the offender, and it is absurd to consider one manifestation as a delusion and the other a crime." This appears to be sound logic and good law. And, in this case, the act of killing Bates—if there was no rational motive or actual provocation—was, alone, strong evidence of insane delusion, as much as to the moral and legal character of the act, as it could be as to the imaginary cause and end of it. The fact that the accused appeared to be rational on some subjects, may be sufficient to show that he knew right and wrong, and had moral ability to abstain from wrong, within the scope of those subjects; but it ought not therefore to be deemed sufficient proof of his possessing such reason and moral sense and power as to objects or acts within the range of his insanity. He doubtless knew that murder was criminal—but should not be presumed to have known that the killing of Bates, as to whom he was insane, would be murder, or, in any sense, a criminal act.

Considering this palpable distinction between a consciousness of right and wrong generally and in the special case as to which there is insanity, Ray, p. 33-4, says—"The purest minds cannot express greater horror and loathing of various crimes than madmen often do, and from precisely the same causes. Their abstract conceptions of crime, not being perverted by the influence of disease, present its hideous outlines as strongly defined as they ever were in the healthiest condition; and the disapprobation they express at the sight arises from sincere and honest convictions. The particular criminal act however becomes divorced in their minds from

its relations to crime in the abstract, and being regarded only in connexion with some favorite object, which it may help to obtain, and which they see no reason to refrain from pursuing, is evinced, in fact, as of a highly laudable and meritorious nature. Herein then consists their insanity—not in preferring vice to virtue, in applauding crime and ridiculing virtue—but in being unable to discern the identity of nature between a particular crime and all other crimes, whereby they are led to approve what, in general terms, they have already condemned.”—Again, on p. 41, he says—“The existence of the illusion is obvious and cannot be mistaken, but what may be the views of the maniac respecting the moral character of the criminal acts which he commits under its influence can never be exactly known; and therefore they ought not to be made the criterion of responsibility. But it is known that one of the most striking and characteristic effects of insanity in the mental operations, is to destroy the relation between end and means—between the object in view and the course necessary to pursue in order to obtain it. It was in accordance with these views that Lord Erskine pronounced delusion to be the true test of such insanity as exempts from punishment, and that the correctness of the principle was recognised by the Court.”

Providence has wisely harmonized our intellectual and moral faculties so that whenever we are able to perceive the truth, we generally have the moral power to act in conformity to it; and, therefore, we are culpable if we do not so act; and, for the same reason, when, in consequence of intellectual derangement, we are unable to perceive the truth, or, instead of it, imagine that which is false or has no real existence or foundation, our moral power is, or should be presumed to be, to the same extent, perverted or paralyzed; and, therefore, not being, in that respect, free and rational moral agents, we are irresponsible for the acts of our diseased minds.

But if it be not universally or even generally true that moral derangement or inability accompanies intellectual insanity, still there can be no doubt that the moral power of the monomaniac is not always, if ever, able to control the volcanic eruptions frequently produced by the insane delusions of a disordered intellect. On this subject we will again read from Ray, p. 261, the following appropriate suggestions:—“Amid the rapid and tumultuous succession of feelings that rush into his mind, the reflective powers are paralyzed, and his movements are solely the result of a blind, automatic impulse with which the reason has as little to do as with the movements of a new-born infant. That the notions of right and wrong (may) continue unimpaired under these circumstances proves only the partial operation of the disease; but in the internal struggle that takes place between the affective (moral) and intellectual powers, the former have the advantage of being raised to their maximum of energy by the excitement of disease, which, on the other hand, rather tends to diminish the activity of the latter. We have seen that generally after the fatal act has been accomplished and the violence of the

paroxysm subsided, the monomaniac has gone and delivered himself into the hands of justice." Again, on p. 262:—"The real point at issue is, whether the fear of punishment or even the consciousness of wrong-doing, destroys the supposition of insanity—and this is settled by the well-known fact that the inmates of lunatic asylums, after having committed some reprehensible acts, will often persist in denying their agency in them in order to avoid the reprimand or punishment which they know would follow their conviction." And again, p. 263:—"We have an immense mass of cases related by men of unquestionable competency and veracity, where people are irresistibly impelled to the commission of criminal acts while fully conscious of their nature and consequences; and the force of these facts must be overcome by something more than angry declamation against visionary theories and ill-judged humanity. They are not fictions invented by medical men (as was rather broadly charged upon them in some of the late trials in France) for the purpose of puzzling juries, defeating the ends of justice, but plain unvarnished facts as they occurred in nature; and to set them aside without a thorough investigation, as unworthy of influencing our decisions, indicates any thing rather than that spirit of sober and indefatigable inquiry which should characterise the science of jurisprudence. We need have no fear that the truth on this subject will not finally prevail, but the interests of humanity require that this event should take place speedily." And lastly, on p. 265:—"The criminal act, for which its subject is called to an account, is the result of strong and sudden impulse, opposed to his natural habits, and generally preceded or followed by some derangement of the healthy action of the brain or other organ. Where is the similarity between this man who, with a character for probity, and in a fit of melancholy, is irresistibly hurried to the commission of a horrible deed, and those wretches who, hardened by a life of crime, commit their enormities with perfect deliberation and consciousness of their nature?"

I will read no more on this subject from elementary books, but, for confirmation of all I have read to you from Ray, I refer to every modern work on insanity and medical jurisprudence, and particularly to Prichard, Esquirol, Beck, and Guy—between all of whom and Ray there is a substantial coincidence.

And adjudged cases are still more authoritatively confirmatory of the same just and consistent doctrines. In Hadfield's case, the only enquiry was, whether he was led by intellectual delusion to shoot at his sovereign, and, on this ground alone, he was acquitted by the jury with the approval of the presiding judge, without enquiring whether the alledged insanity being established, the prisoner should be presumed, nevertheless, to have known right from wrong generally, or even in that particular instance. And will any one of the prosecuting counsel deny that this is a leading case which has been approved by the most learned jurists?"

On an indictment for murder, as already suggested, Lord Orford was acquitted on proof of monomania or insane delusion as to acts

of hostility supposed to have been committed against him by the person whom he killed. In that case Lord Lyndhurst told the jury that they ought to acquit the prisoner if satisfied "that he did not know, when he committed the act, what the effect of it, if fatal, would be with reference to the crime of murder"—5th Carrington and Payne 168. There was no other circumstance tending to show a consciousness of wrong in the particular act (to which the instruction restricted the enquiry) than the simple fact of the insane delusion just mentioned. Yet a British jury very wisely presumed, from that insanity alone, an unconsciousness of wrong or the want of a rational free will; and their verdict has been approved without question, so far as I know or believe. Nor, as I believe, has any person, since the trial of Hadfield, been hung in England for murder, by an impartial tribunal, when there was satisfactory proof that the homicide was committed under the influence of monomania. In all such cases (and they have been various and numerous) there were either verdicts of not guilty or royal pardons. The doctrine recognized in Hadfield's case has never been overruled or disregarded in England; and the principle of that case is, that "a person is not criminally responsible for an act done under the influence of insane delusion."

The last of the prosecuting counsel who addressed you, read, from Notes to Starkie on Evidence, some loose dicta of one or two nisi prius judges, which he seems to interpret as importing that a general knowledge of good and evil might be sufficient to impart legal criminality to a homicide committed under the influence of insane delusion on a particular subject. But this construction is totally gratuitous. A full and perfect consciousness of wrong in the particular act is what was intended, as the history of this matter and the instruction in the case of Orford will clearly prove. The same judicial history will prove also that the practical doctrine, without deviation since 1794, has been that homicide committed under the influence of particular insanity, is not criminal, and that such insanity alone authorises the presumption, *prima facie* at least, that the act was done without a consciousness of its illegality, or without moral power to abstain from it. And we have a right to presume that both the theory and practice are the same in our own Union.

In 1835 Lawrence was indicted and tried in the District of Columbia for maliciously shooting at President Jackson. His plea was insane delusion as to the President only: and, on proof of facts conducing to sustain that plea, the Court instructed the Jury to regulate their verdict by the principles of the case of Hadfield; and the Jury returned a verdict of not guilty, which has been approved as right.

In 1836, Theodore Wilson, who was tried for killing his wife when in a paroxysm of particular insanity, was acquitted in New York—the Court having instructed the Jury to acquit if they believed that the prisoner, when he committed the fatal act, was "not of sound memory and discretion."

And the Legislature of New York, for the purpose, as we presume, of recognising and conclusively settling the principle that an act

done under the influence of insanity shall not be deemed criminal, has enacted that "no act done by a person in a state of insanity can be punished as an offence." This might be literally too comprehensive. But, as just intimated, we should understand it as meaning that an act influenced by insanity should not be punished. And, thus understood, does this statute do more than echo the announcement of the common law—that a homicide resulting from unsoundness of mind is not murder, or, more literally in the language of that law, that the murderer is a person of "sound mind" who slays his fellow creature without legal authority or excuse. When insane delusion prompts the person so afflicted to take the life of the object of delusion, is not the homicidal act that of an insane being? Is the manslayer, as to that act, "a person of sound mind?" And, consequently, being, as he must be admitted to be, of unsound mind, can he be deemed guilty of murder, if tried by this acknowledged common law itself? Surely, on that particular, subject he should not be presumed to have had as much discretion and self-control as an infant 7 years old.

But the counsel, who last addressed you on behalf of the Commonwealth, seemed to think that, by "a person of sound mind," the law intends one whose mind is perfectly sound in all respects? After what I have already said, a further answer to this would be superfluous. He appears to think also, however, that the doctrine of Hadfield's case is overruled by other cases, or so much shaken as not to be entitled to much respect: and he has alluded to the cases of Earl Ferrers and of Bellingham in support of that allegation. But this, too, is altogether a mistake. The case of Ferrers was decided before that of Hadfield; and cannot, therefore, have overruled or shaken it. Besides, Earl Ferrers was not insane, according to my conception of insanity; because all the facts which incited him to the killing, for which he was indicted, actually existed as he understood them to exist, and were not the mere figments of a diseased imagination—and, consequently, it was vindictive passion, and not insane delusion, that instigated him. So Lord Erskine himself argued in Hadfield's case; and by that argument he illustrated the difference between furious passion and intellectual delusion or insanity; and therefore insisted, as I reiterate, that Earl Ferrers was guilty of murder. But, in the same argument he distinctly admitted and successfully urged in behalf of Hadfield that, had the facts been imaginery, and not real, then the Earl was so far insane—and that, the homicide being the offspring of that insane delusion, he was not legally guilty. Nor is there reason to infer that the jury considered Earl Ferrers as insane. That case, then, when fully and rightly considered, tends to strengthen, rather than to weaken, the leading principle recognised and defined in the case of Hadfield.

The case of *Bellingham*, who was hung for the assassination of the British Premier, *Percival*, is entitled to no respect or influence for any purpose; because the prisoner was tried, condemned, and executed within one week after he shot *Mr. Percival*, and was refused

time to send across the British Channel for witnesses to prove that he was insane. He was hurried to sacrifice in a whirlwind of excitement and political alarm—and the report of the trial furnishes no reason for presuming that the jury believed that he was insane—indeed the facts, *as proved*, when tested by our definition of legal insanity, might conduce to the conclusion that his delusion was in his deductions from existing facts rather than in the morbid imagination of non-existent facts—in the process rather than in the source of his reasoning. And if this had been his actual condition, he was not, in the technical sense, an insane man. There is certainly nothing in the report of the case indicating that he was convicted *as a monomaniac* on the ground, nevertheless, that he had a *general* knowledge of right and wrong, or because the law should *presume* a consciousness of wrong in the particular act done unless the contrary had been clearly proved—and which, however true it may have been, would have been impossible in any other way than by proof of his particular insanity and of the fact that it led to the homicide.

Besides, after this conviction, the *monomaniac*, who attempted to assassinate the *Queen*, was acquitted *without any extrinsic evidence of his unconsciousness of doing wrong*.

In March, 1843, a British jury, under the instructions of *Ch. Jas. Findal*, acquitted *McNaghten* on an indictment for murder in killing *Drummond* under the influence of an insane delusion while he was rational on other subjects. And, in June succeeding, the twelve Judges of England, gave a written opinion on the following abstract question propounded by the House of Lords:—"What is the law respecting alleged crimes committed by persons affected with insane delusion in respect to one or more particular subjects or persons; as, for instance, where, at the time of the commission of the alleged crime, the accused *knew he was acting contrary to law*, but did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury or of producing some supposed public benefit?" The Judges hesitated to express an opinion, because, as they very prudently said, every case should be decided on its own peculiar facts, and because also—in assuming that the person, though laboring under an insane delusion, *knew that he was doing wrong*, but did it, nevertheless, to *revenge* some supposed wrong—the question virtually answered itself, and shewed that the act was not *an insane act*. But they answered the question; and their answer, of course, was, that, *on the facts propounded, if they could exist consistently with physiological truth*, the accused would not be legally excusable. But they did not intimate that insane delusion on a particular subject should be *presumed* to be accompanied with a perfect freedom of will or consciousness of wrong in submitting to the influence of the delusion: but, as I think they clearly intimated the contrary. They say that, if the accused labored under *no other unsoundness, or defect of mind, or will, or reason*, than an insane delusion as to a particular fact—an imagined injury, for example—then he should be tried *just*

as a rational man should be, conceding the imagined fact to be true. This is all very clear, and as reasonable as it is clear. But does it imply that monomania is to be *presumed, until the contrary be proved*, to be thus restricted in the range of its influence? Certainly not. It only means that if, as assumed in the propounded case, the accused did, in fact, know that he was doing wrong, and (as should have been added) had the moral power to avoid it, he should be tried on the concession of the truth of the fact his morbid imagination had assumed to exist, and his peculiar delusion should entitle him to no greater indulgence. And, on that point, the Chief Justice, speaking for himself and ten of his associates, said "he is nevertheless punishable according to the nature of the crime committed, *if he knew*, at the time of committing such crime, that he was acting contrary to law." Now, if a general knowledge of right and wrong imply a consciousness of wrong in the particular instance of insane delusion also, why did the Judges say "*if he knew that—he was acting contrary to law?*" They moreover say that the consciousness of wrong must be "*in respect to the very act with which he is charged.*"

In this case, therefore, we find nothing against the position we are endeavoring to maintain, nor, in any degree, inconsistent with the judicial practice ever since Hadfield's trial; but much in confirmation of it. And the sustained verdict and judgment of acquittal in the case of *McNaghten*, as late as 1843—is itself a powerful confirmation.

I now feel authorised to repeat that there is no precedent in the criminal jurisprudence of England since 1794 which unsettles the principle then settled in the memorable case of *Hadfield*, and that, on the contrary, that case has been made authoritative there and in the United States also by repeated practical and judicial recognitions. Nor can there be any doubt that the principle of that case is as we have explained it to be—that is, that a homicide which is the offspring of an insane delusion on a particular subject is *prima facie*, not murder; *because the law presumes that it was done without legal malice.* The verdict in that case was doubtless the result of the argument, which insisted on the principle just stated; and to prove this to you, I will read only a fragment of that argument, by Lord Erskine. It is that portion of it in which he animadverted on the acquittal of the unfortunate woman who killed Mr. Errington for deserting her after cohabiting with her for years in a blessed concubinage. After arguing that *delusion as to facts*, for the supposed existence of which there was *no evidence*, was insanity—he illustrated this conception by insisting that, as this discarded woman acted on *existing facts* and not on such as were the phantasms of a morbid brain, she was not insane—and also by then urging the following considerations:—"But let me suppose (*which would liken it to the case before you.*) that she had never cohabited with Mr. Errington, that she never had children by him, and, consequently, that he neither had *nor could possibly have deserted or injured her.* Let me

suppose, in short, that she had never seen him in her life, but that her resentment had been founded on the morbid delusion that Mr. Erington, who had never seen her, had been the author of all her wrongs and sorrows; and that, under that diseased impression, she had shot him. If that had been the case, gentlemen, she would have been acquitted upon the opening, and no Judge would have sat to try such a cause: the act itself would have been excessively characteristic of madness, because, being founded upon nothing existing, it could not have proceeded from malice, which the law requires to be charged and proved, in every case of murder, as the foundation of the conviction."

Baron Hume, in his commentaries on the criminal laws of Scotland—vol. 1, p. 36—after vindicating, with great power and on conclusive precedents and reasons, the doctrine we are now maintaining, concludes in the following words—"and, though the person may have that vestige of reason which may enable him to answer *in general* that murder is a crime, yet if he cannot distinguish a friend from an enemy, or a benefit from an injury, but conceives every thing about him to be the reverse of what it really is, and mistakes the ideas of his fancy in that respect, for realities—those remains of intellect are of no sort of service to him, in the government of his actions, in enabling him to form a judgment as to what is right or wrong on any particular occasion."

In all such cases acts done within the sphere and under the influence of insane delusion are not to be assumed to be voluntary, in the rational and responsible sense. There is certainly a volition, and a demonstration of it: but it may be, and generally is, an animal will, impelled by the storms of passion without the guidance of right reason's compass, or the helm of moral sense. So far as the delusion extends, he is the mere automaton of it. And this was forcibly illustrated by a criminal trial in France described by Georget—in which, under a jargon of incongruous instructions, such as the Commonwealth's counsel now vindicate, the jury found specially that the accused acted voluntarily and with premeditation, but that he was insane at the time of thus acting! And, on that finding, he was discharged. And what does this prove? Why, that the Judge, who, notwithstanding his silly instructions, was compelled to discharge him, was of the opinion that the accused had acted voluntarily and premeditatedly just as the tiger does when he devours the innocent and unoffending babe—from mere brute passion or appetite, and without reason or sound moral sentiment. The tiger knows what he does, is actuated by motive, and his act is voluntary, and, if you please, premeditated—but still the knowledge, the volition, the motive, and the forethought are those only of an irrational, and, therefore, irresponsible beast of the forest. So, precisely, the lunatic, when acting under the dominion of his insanity, knows what he does, is influenced by some motive, may act as freely as any mere animal ever can act, and may also have predetermined to act—but still, as to all these matters—being deprived of the preserving light

of reason or of the restraining influence of moral power, he is not, in these respects, what God made him, a rational and therefore accountable man, but a madman or mere animal, and, therefore, not an accountable being. So the French Judge decided; so every honest and intelligent Judge would decide on the same special verdict, and such are the premeditation and voluntary action of mental insanity.

And of all the causes or effects of monomania, JEALOUSY is the most certain, the most common, and the most infuriating and ungovernable. It is a lawless monster—deaf to the voice of reason, led astray by delusion, and tortured with sleepless, hopeless, reckless, agony. Thompson's description of it is as true as it is beautiful, when, after portraying the anxious bliss of virtuous and confiding love, he says:

"These are the charming agonies of love—
But should JEALOUSY its venom once diffuse,
It is then delightful misery no more;
But agony unmixed, incessant gall, corroding
Every thought, and blasting all love's paradise—
Ye fairy prospects, then, ye beds of roses, and ye
Bowers of joy, farewell. Ye gleanings of
Departed peace, shine out your last."

If such be the effects of jealousy on the heart of a sound man, what law can prescribe rational bounds to its destructive power when it is the monstrous offspring of a mind in ruins? Who shall then say that it has a moral sense or a ray of reason—or can imagine that it can be guided by the one or made to crouch before the power of the other? No—like the Blind Giant, it strikes in the dark, is as dangerous to friends as to foes—and no law, nor fear, can stay its Briarian hands.

When the infuriate jealousy of an insane man impels him to the destruction of the victim of his delusion, without any rational motive or actual wrong, should not our reason, as well as charity, ascribe the deed, altogether, to insanity, and believe that, had the destroyer been perfectly sound and rational, he would have revolted at the thought of such a motiveless and horrid act, or never would have had even a dreaming thought of it? Was it not an act of insanity? And can any act of insanity be punished by the criminal code of this or any other just and enlightened land?

Now, gentlemen, I think that I have a right to conclude that reason, and policy, and justice, and elementary books, and adjudged cases all concur in establishing the legal position for which I am contending—that is, if you are satisfied that the accused in this case was, when he killed Bates, insane as to him, and that the killing was the offspring of that insanity, the law must acquit him on this indictment.

And can one of you doubt that the killing of Bates was either justifiable or was the insane act of a deranged mind? The act itself proves it; because, if his charges were false, there was no rational motive for his hostility to Bates—no other probable or imaginable

reason than his insane conviction that Bates had, before and immediately after his (Baker's) marriage, plotted his assassination, outrageously maltreated his sister, (the wife of Bates,) and basely defiled his nuptial bed, and ruined his conjugal peace, happiness, and honor. It is demonstrated also by the simple fact that he was thus insane as to his wife, and Bates' connexion with her, and that, whilst so deranged, he shot him. Would it be possible for you to believe that, had he never been thus irrational or deluded, he would have been, without cause, so violently inimical to his brother-in-law, or would, in the first instance, if ever, have thought of taking his life; and thus bringing on himself infamy and ruin—on his sister widowhood—her children orphanage—and all his kindred such multiform and hopeless sorrow?

That he was insane when he shot Bates there can be no rational doubt. While at Knoxville, whither he had gone—while on his return—and on the road during the day of the homicide, and even just before it occurred—all the insane delusions which had previously agitated him seemed to haunt his mind with as much force and vividness as ever. This is abundantly proved by various witnesses; and moreover there is intrinsic proof of it—for the physical condition, which produced those delusions, still continued without any essential amelioration; and had he been perfectly sane, after what he heard of Bates' threats to shoot him on sight and of his preparations to do so, he would not have attempted to pass his furnace in daylight and especially without any other defensive armor than a small pocket pistol, with a ball but little larger than a common buck-shot—nor would he have intimated to Mrs. White on the way his determination to take Bates' life for his conduct to his self and wife. The reckless and almost hopeless act of passing, as he did, and of shooting, as he did, at the distance of 18 feet, when he must have known that, if he failed to kill, he would certainly be killed with a gun shot from Bates or some one of his slaves, was the offspring of insanity. Had he been self-possessed, he would either have avoided that perilous dilemma or been prepared to meet it more prudently and on more equal terms. No rational being would have acted as he did: nor ought there to be any doubt, that had there been no insane delusion, he would not, that day, have shot at Bates, as he did, with his little pistol. The facts which he believed respecting Bates' cruel conduct to his own wife, (Baker's sister,) and his attempts to assassinate him, whether true or only the imaginings of a diseased mind, had not prompted any effort to take the life of Bates, when he had various opportunities of effecting such a purpose, without much, if any immediate peril. But, in a paroxysm of insane jealousy, he had attempted to shoot Bates in his own house and in the presence of their wives. It was, then, insane delusion as to his wife, and Bates' imputed connexion with her, that prompted him to seek his life. And if he were insane also as to Bates' supposed maltreatment of his sister and designs on his own life, this only aggravated his imagined wrongs. Having repudiated his wife and left Kentucky, he had abandoned his par-

oxismal designs, to kill Bates. But, returning to settle his affairs, he was excited, by his delusions and by the apprehension that Bates meditated his destruction, to pass heedlessly within the range of his gun, and being, on the first sight of him, transported with ungovernable fury, he insanely dismounted, and fired at the side of Bates as he sat under a shelter where he could not rationally have expected to kill him, and where, whether he hit or missed, Bates must have instantly seen him and been able to have killed him before he could have escaped. Who can doubt that, had he not labored under insane delusions and been impelled by ungovernable emotions arising from them, he would not then have thus passed and dismounted, or then, if ever, have shot at Bates? And who can doubt, therefore, that, whatever cause of complaint or of apprehension of danger he may have had, the killing, as it occurred, was the offspring of insanity—the insane act of an insane man?

And, under all these circumstances, will the law *assume*—or can you *presume*—that the accused knew that he was doing wrong, and also had the moral power to avoid the act? Never, never, if the law be just and you be rational. Does it appear here (as in the moot case on which the 12 Judges of England expressed an opinion) that the accused knew that he was violating the law, was actuated by revenge, and acted with a moral free will and full discretion? Revenge for what? For Bates' imputed conduct to his own wife, and designs on the life of the accused? Then why had he not attempted to kill him for this cause when he had multiplied opportunities of attempting it without personal hazard? No, it was not the voluntary vengeance of a sane mind, but the unavoidable act of a mind diseased, and dethroned, and impelled by an insane conviction that the act was one of lawful and righteous self-defence and retribution. Such, in my judgment, is the deduction of enlightened reason, and the presumption of rational and well established law.

But not only will the law presume that such an act, prompted by such insane delusion, was committed without a consciousness that, under all its imagined as well as actual circumstances, it was wrong, or without the moral power, at the time, to avoid it—but, in this case, there is affirmative proof of unconsciousness of wrong and also of moral inability. The accused neither attempted to escape nor manifested any contrition or alarm. On the contrary, he seemed *unusually* tranquil and self-satisfied—endeavored to go on foot to the house of his wife's father, whom he had so much outraged, but, missing the way, went to her uncle's; slept there all night peacefully, narrated all the facts and causes in a spirit of triumph and self-complacency, asseverated that he had done a necessary and glorious deed—and voluntarily surrendered himself to examining Justices, who, upon full investigation, discharged him on the ground of insanity. Then, were it possible for you to believe that an insane man, when actuated by insanity, might be conscious that he is, in that particular act, doing wrong, and might have the moral power to refrain—still you have, in this case, as strong evidence as could exist in any case to satisfy you that

the accused honestly believed that when he shot Bates, he did right and discharged a sacred duty to himself, his family and his country.

But, as previously shown, the plea of insanity is fortified by an accidental consideration which has seldom if ever before marked a case of homicide by an insane man. The accused had ample cause (had he been perfectly rational) to apprehend, as he doubtless did, that, if he should attempt to pass the furnace when Bates was there, he would be in imminent danger of being shot. He might have avoided the furnace, or passed in the night. *Had he been rational and self-possessed he would have done so*, though it was certainly not his duty to leave the highway or skulk along it under the cover of night. When, on passing the chimney of the furnace, he first saw Bates sitting with his side towards him, he had good reason to believe that Bates would soon see him, and would, as soon as he should see, shoot him with a gun. Then, impelled, thus far, by an insane mind, he was, at this pregnant crisis, excited by resentment at the threats of Bates and by a strong apprehension that his own life was in imminent peril. And, if these facts would amount almost, if not altogether to a legal justification in the case of a man of sound mind, what irresistible force must they have exerted over a shattered mind lacerated with imagined wrongs of the most aggravated kind, and tortured with the strongest and most aggravating passions that could ever spring from insane delusion? *And who can tell how completely his mind may have been dethroned on such an occasion?* Was there any such proximate cause of excitement in the case of Hadfield, or Orford, or Wilson, or Lawrence, or McNaghten? Or could a clearer or more conclusive case for unhesitating acquittal on the ground of monomania ever occur or be imagined?

There could not possibly be a stronger case than this for the *prima facie* presumption of law, as well as the satisfactory deduction of reason, that the killing was the offspring, directly or remotely, of insane delusion, and was without a consciousness of illegality or moral power, at the time, to act otherwise than the accused did act. It does seem to me that, if this be not satisfactorily manifested in this case, it never can be in any case of particular insanity. And therefore, I feel, gentlemen, that it would be trifling with your patience and intelligence to argue this matter with more minuteness or elaboration. Consequently, I will now leave it, as it is, in full confidence that, as to this, you must be perfectly satisfied.

But now let it be supposed that there is neither justification nor strong mitigation in the case of a sane man, and, moreo-

ver, that the law does not presume, *prima facie*, that a homicide under the influence of insane delusion was without full consciousness of wrong or moral power to avoid it—still, even on this hypothesis, applying the rule of law recognized by the twelve judges of England—that is, *that the accused shall be tried as if all the facts, he insanely imagined, were true as he believed them to be*—would you, could you, dare you convict him of *murder*? Let us put the case. Then it is to be admitted that Bates treated his own wife as Dr. Baker believed he did; that he had conspired with his own slaves to assassinate the Doctor, and had made attempts on his life; that he had often had criminal connection with the Doctor's wife in his own (Bates') house and in his (the Doctor's) bed—and then add the undoubted fact that Bates had declared that he would shoot the Doctor on sight, if he should ever return to Kentucky; and that the Doctor had good cause to apprehend that this would be attempted as he passed the furnace, and, that, to shoot Bates, if possible, with his pistol before Bates could draw his gun on him, was his only defensive expedient for avoiding his own destruction while in the act of passing the furnace. Upon these facts, was he guilty of *murder*? To decide that he was, would outrage reason, justice and law.

Then, gentlemen, we have, as we think, sufficiently shown, 1st, That the accused, if he had not been, in any degree, insane, had strong grounds of justification, and that, at least, his case is reduced below the grade of murder: 2d, That he was insane as to Bates and his own wife: 3d, That this insane delusion influenced him to pass the furnace as he did, and was either the predisposing or actuating cause of the homicide: 4th, That the law presumes that he was either not conscious of doing wrong when he fired his pistol at Bates, or had not the moral self-control necessary to enable him to forbear: 5th, That there is strong affirmative proof, in this case, of the absence of such consciousness and moral ability: and 6th and lastly, that even if you could, nevertheless, believe that the accused had no ground of justification, and had both a consciousness that he was doing wrong, and the moral power to forbear, still, admitting, as you then would be bound to do, that all he imagined and believed was true—you could not justly or legally bring in a verdict of guilty of the charge of *murder*—but ought to acquit the prisoner.

It seems to us, therefore, that you cannot doubt that he is not legally guilty of murder. But the law, in its wisdom and benignity, declares that if, on any essential point, you have a strong rational *doubt* of his guilt, you *must* return a verdict of "*not guilty*." While conceding this in general terms, the coun-

sel for the prosecution attempted to evade it, by insisting that insanity being urged as an exculpatory fact, the accused cannot escape unless *he* shall have proved *it* beyond a rational doubt. But, gentlemen, this is a hyper-technical perversion that would nullify the admitted rule of law. If you have a serious and rational doubt of the prisoner's guilt, you are bound to acquit him. This is not denied. Then if you have such doubt as to any one essential element of his guilt, can it be true that you have no doubt that he is guilty and ought to be hung? And if you had perplexing doubt whether the killing was the act of an insane mind, must you not to the same extent, and in the same degree, doubt his legal guilt? I affirm, therefore, that, if you have a legal doubt as to any point or fact essential to guilt, your oaths require you to acquit. Looking impartially at the facts and intelligently at the law, can any one of you, on the solemn oaths you have taken, say that you have no rational doubt of the prisoner's guilt on any material fact or constituent element of guilt in law? We hope not—we presume not. Then *Not guilty* is the verdict.

I must now close the argument in defence of the accused. Your verdict may seal his doom forever. Your decision may consign him to the gallows as a criminal, or will send him to a Lunatic Asylum as an unfortunate victim of insanity. In the event of an acquittal his friends are determined, for his own welfare and the security of themselves and the public, to place him in the Asylum in Lexington, where he can do no harm, and may be finally restored to health, and to reason—to himself, and to them. If, in these last hopes, they should be disappointed and his case should prove to be immedicable, still it would afford them consolation to know that "*murderer*" had not been stamped on his forehead by his country's verdict! And, if he should be restored, he might yet live to bless them and that country by his virtues and his talents. They look, with intense anxiety, but with flattering hope, to your decision. They feel that there has already been desolation enough in his once happy and united, but now mourning and dismembered family. His own afflictive visitations and bereavements and the melancholy death that they produced, have filled, to the brim, his grey-headed and pious father's cup of earthly sorrow. Must this poor son's ignominious sacrifice be added to make that cup overflow with tears and with blood? Can the public security be promoted, or the public welfare advanced by hanging a crazy man—who, *as a man*, is already dead? Does justice demand—does the law permit it? *No*, we say—and a just and enlightened country will echo, *no*. Then at "the tomb of the Capulets," let the progress of premature death

be now stayed. Let us dig no more graves—but rather invite all parties to meet over the grave of Bates, and, once more, become friends. Gentlemen, I came here to heal, not to wound—to defend a guiltless man, and restore peace—not to rescue the guilty and inflame unfriendly feelings that have been already too much exasperated. And if I should be an humble instrument in effecting these desirable ends, I shall be grateful for the blessing of being prompted to the benevolent mission. But these objects can be effected only by the acquittal of the accused. His conviction can add nothing to the happiness of his widowed sister. His death would not restore to her the husband whom his fatal phrenzy bore from her bosom. Nor could it heal the wound his insanity has made on his innocent wife and her excellent family. His conviction might falsify his plea of insanity, and thus tempt a censorious world to suspect that, being rational, when he charged her with infidelity and deserted her, he had some cause for the charges and desertion. And in this way, her character and the memory of Bates might unjustly suffer. But your acquittal of him on the ground of insanity would put the seal of delusion and falsehood on all his suspicions and accusations, and thus rescue his innocent and injured wife, surround her with universal sympathy and confidence, and relieve the character of Bates from obliquity and suspicion. And then, too, there would no longer be any cause for the distrust and non-intercourse of the members of these alienated and distracted households. Of all his sisters, Mrs. Bates should be most anxious for his acquittal. And the venerable father, who watched over his infancy and now mourns over his fallen condition, should not pray more fervently for his acquittal than the indignant father of his outraged wife. The only thing that can reinstate her perfectly and restore her to his arms unhurt and unsuspected, as she was when he gave her to her unfortunate husband, is a verdict of not guilty on the ground that his conduct to her was so destitute of any cause to excuse it as to prove that he was a madman.

You have, gentlemen, a singularly solemn and important duty to perform. This is the most interesting and eventful case I have known in Kentucky. It will be a leading case in the criminal jurisprudence of the West. It involves principles as important as its facts are novel. And not only may the safety of the accused, but public justice and security also, depend in no slight degree, on your proper understanding of those principles and right application of those facts.

The case is, in my judgment, altogether full and perfect in all its features; and there is none on record that can afford a

more complete and useful precedent on the law and the facts of insanity in their criminal bearing.

I have defended the accused fairly, candidly, and, I trust, fully. I have made no appeal to your fears or your hopes—your passions or your prejudices. I have uttered nothing that I do not believe; have descended to no pettifogging artifice—but have, throughout, endeavored to maintain truth, the law's integrity, and my own professional honor. If you err, I shall feel guiltless. If my client fall, I shall still feel that, though others might have defended him more ably, none could have done it more faithfully. And, whatever may result from your verdict, to him or to others, now or hereafter, I shall enjoy the comfort of the persuasion that I have honestly vindicated his rights, the wisdom of the law, and the interests of my country.

Upon you, then, gentlemen, rests the responsibility of a just administration of the law in this great cause. And whatever shall be your decision, let it be impartial, conscientious, and fearless. I am sure that none of you can thirst for this man's blood, or could derive any pleasure from his condemnation. And allow me to add that, in my opinion, neither your own consciences, nor enlightened public opinion, nor even the feelings and more dispassionate judgments of the now excited and persevering prosecutors can, in after times, approve the condemnation and sacrifice of this unfortunate prisoner. To hang him—the mournful catastrophe, being produced as, if it ensue, I believe it will have been chiefly produced, by the local influence, and extraordinary exertions of that opulent and multitudinous band of prosecutors—will, in my humble judgment, excite future remorse in their bosoms and reflect reproach on the proud and spotless State of Kentucky.

I must do you the justice to avow, in perfect candor, that your prudent deportment, so far as I have heard or observed, during this trial, absolves you from any imputation of *consciously* yielding to any such influences. But *you* know that unusual means of conviction have been *employed*, and that general excitement and delusion have been produced; and *I* know that they are contagious and difficult to escape or subdue. I trust that your verdict will be an honest one—and I hope that it will be impartial and just. If it shall acquit the accused, I believe that it will tranquilize your bosoms, hush the tongue of complaint, and extract from the tooth of calumny all its poison. And I cannot doubt that a verdict of "*Not Guilty*" will be sustained by the law—approved on earth—and ratified in Heaven.

LANCASTER, KY., OCTOBER 14, 1845.

W. H. CAPERTON, Esq.:

Dear Sir—I would be pleased if you would furnish a copy of your speech in the case of the Commonwealth against Dr. A. Baker, for publication. If you will enclose it to me within twenty days, I will forward it to the publishers of the trial, for insertion. Please answer me immediately.

I have this day enclosed similar letters to John A. Moore, John Kincaid, William Moore, &c.

Yours, very respectfully,

ALEX. R. McKEE.

RICHMOND, KY., October 21, 1845.

Dear Col:—On my return from Frankfort on Sunday evening, I received yours of the 14th inst., requesting me to furnish you a copy of my speech in the trial of Dr. Baker, for publication. Whilst I thank you for your politeness in regard to this matter, I would state that my professional engagements ahead, are of such a character, that it will be out of my power to comply with your request.

My position in the prosecution was strictly professional, and I have no wish now, by repeating what I considered it my duty to say on the prosecution, to harrow up or excite the feelings of the parties immediately interested in the trial.

Truly yours,

W. H. CAPERTON.

MANCHESTER, KY., OCT. 16, 1845.

ALEXANDER McKEE, Esq:

Dear Sir—I have to acknowledge the receipt of your letter dated 14th inst., asking me for a copy of my speech in the case of the Commonwealth against Baker. * * * * *

I have two Circuit Courts, Clay and Owsley, to attend soon, and I have not the time, even if I had the inclination, to write out such a speech as my friends would be willing to have published. You will therefore excuse your friend,

WILLIAM GARRARD.

WALNUT FLAT, NOV. 24, 1845.

Sir—Your note of this date has been received, and I regret to be compelled to say that my engagements are such that I cannot furnish you the argument I made in the defence of Dr. A. Baker. Besides, I have no notes of the argument, and could not write it out if I had time, with any thing like accuracy, without seeing the evidence to refresh my recollection.

I should like to do any thing in my power to present to the public a fair view of the unfortunate and melancholy case, but under the circumstances I must be excused.

Your obedient servant,

J. KINCAID.

No replies have been received from any others of the counsel employed in the case. It was confidently expected that at least one of the counsel for the prosecution would have favored the publisher with a copy of his speech, but they have not complied with the request, and consequently they cannot be included in this work.

Letters and Petitions soliciting the Executive to interpose his Constitutional Power to prevent the Execution of a Lunatic.

LANCASTER, Ky., 23d July, 1845.

TO HIS EXCELLENCY, WILLIAM OWSLEY,

GOVERNOR OF KENTUCKY:

Dear Sir—My deranged and unfortunate son, Abner, now stands convicted by the Clay Circuit Court for the killing of Daniel Bates, his brother-in-law.

In my humble, honest and unshaken opinion, he was convicted contrary to law and evidence—consequently unjustly. I shall not trouble you in detail, as the whole case will be laid before you, comprising the evidence, facts and state of Abner's mind, at the time of the homicide, long before, and up to the present time. Also, petitions and letters will be laid before you, requesting your merciful interposition in his behalf.

From our long acquaintance and general good understanding and friendship, I have thought that you would not consider it amiss to make my supplications to you in behalf of my unfortunate son. I leave you in all the endeared relations of life, in the distinguished station which you occupy, to anticipate the holy affections of a father to a son, and I here again repeat, from the strongest conviction of the facts within my knowledge, that Abner took the life of Mr. Bates under the influence of insane delusion, which I trust will fully appear to you. I had sometime before observed he was getting into that state of mind, and communicated my opinion to my family and some few friends, and hoped for his restoration, but had no reason to believe that it would lead to such a tragical result, the particular species of derangement having not yet fully developed itself.

Abner lived with Mr. Bates, enjoyed his friendship, shared in his hospitalities. I am at a loss, therefore, to conceive a motive for the deed, other than what insanity itself suggested. When Abner was acquitted by the examining Court, he labored under bodily and mental affliction. His brothers, William and Harvey, (physicians,) took him under their special care, administered to him medical aid, and then advised that he should spend the winter in a warm and salubrious climate; he sailed to Havana and spent the winter in Cuba. He was not in the United States, but in Cuba, at the date of the indictment, proclamation and reward; his departure was not to evade justice, but only with a view to the restoration of his health and mind, as the facts will clearly show to every impartial mind.

When the indictment and reward had their existence, I immediately determined, so far as I had it in my power, to influence his return, though I knew not where he was. I gave my advice accordingly to his brothers to advise him of the proceedings since his departure, and also his return and submission to further trial. His brothers brought him forth and gave him up to the authorities, desiring a trial, fearing no unfavorable result, knowing his insane condition, the evidence and the law in the case; but in this we were disappointed by previous arrangements and circumstances more corrupt and illegal than ever surrounded any unfortunate being in any enlightened and civilized government.

It is difficult to estimate the pernicious influence of highly excited, large, and wealthy family connexions in a place and among a people composing the major part, without law for the last three or four years; which fact is within the knowledge of your Excellency. How could a fair and impartial trial be expected under such circumstances and previous discipline?

The Court and trial was conducted with apparent fairness, invited by the friends of the accused; but what influence could this show and acquiescence of order have over fixed opinions, armed citizens and monied array? In my humble opinion, these prevailed, and no other verdict than guilty, in safety to any jury had in the place, could be rendered; hence manifest injustice has been done to the unfortunate accused. The jury may be, for aught I know, honest, but profoundly ignorant, and, under any set of circumstances, altogether incapable of deciding a case entirely new, and of such vast importance, both to the accused and to the community; it must, by all impartial and dispassionate minds, be regarded as trifling with the life of man, without regard to law, evidence, circumstances, or condition.

I am assured, my dear sir, that you know how to appreciate the distress of my present condition. Yet I am equally assured that you do know me and my character too well to suppose that I would, or could ask you to do anything contrary to your official duty. Yet I rely upon your enlightened humanity and the importance of the case as regards the subject of this letter and the community; for on this decision, without your interposition, the life of thousands of the unfortunate of the human family depends.

Dear Governor, none of us can tell beforehand what trouble is to come upon us, and often too by the dearest objects of our affections; and now in this, the time of my trial, it consoles me to know that a just, humane and enlightened man is finally to decide on this unhappy case. I have directed that a copy of the record should be laid before you together with a written statement of all the evidence necessary to enable you to form a correct opinion, and the opinions of medical gentlemen of high standing, reputation and skill in the science of medical jurisprudence; also, letters and petitions from others respectable and intelligent, all of whom concur in the opinion of the case that I entertain myself.

These documents you will have before you. I have confidence in you. I believe you will decide honestly and justly. If you can save my unfortunate son, you will relieve a heart torn and overburdened with distress.

Your friend and humble servant,
ABNER BAKER.

TO GOVERNOR OWSLEY :

The undersigned asks leave to make the following representation to your Excellency, respecting the case of Dr. A. Baker, lately tried for the killing of D. Bates. Having attended the trial, examined the accused, and heard the evidence, he trusts that the following facts and deductions will be accredited.

On examination, he found said Baker in a high state of mental and physical excitement—his pulse quicker than natural, his extremities cool—his countenance wild and unnatural—the muscles of his face flaccid and of a peculiar hang; and his eyes, when a particular subject was alluded to, becoming singularly wild and red, as if radiating red rays, and his conversation incoherent, erratic and irrational. From his appearance, his condition and his conversation alone, I would not doubt that he was insane.

But the facts proved on the trial, independently of the foregoing circumstances, would leave no room for doubt, that Dr. Ba-

ker was insane as to his wife and Danl. Bates, when and before he killed the latter. Among other facts, it was proved that, before the marriage of the Doctor, his father and other members of the family apprehended that he was insane; and after the marriage, and before the killing of Bates, his father communicated confidentially to others, and in a letter to his sons at Knoxville, Tennessee, his conviction that he was insane.—He (the Doctor) believed that Bates and others had combined to prevent his marriage and to destroy his reputation and his life. He believed that Bates maltreated his sister, (the wife of Bates,) and was endeavoring to take her life; and that it was necessary for him to remain in the family to protect her. He believed that Bates was attempting his own life and had also employed his slaves to assassinate him. A few days after his marriage, he published the conviction that his wife, when not more than nine years of age, had been prostituted by the gentleman who was her teacher, and whom he charged also with prostituting, in like manner, his whole school, or nearly the whole—and all the circumstances of manner, time, place, and signs, he imagined and stated most minutely. He also charged many other persons with illicit intercourse with his wife, some time before, and some time after marriage—and among them was an uncle, an ugly negro, his brother-in-law, Bates, and her own father. He imagined and asseverated that Bates and her father came to the bed in which he and his wife were sleeping, at Bates' house, and had intercourse with her, there in his presence. He alleged that Bates had gotten his (Baker's) young sister — with child. He asserted that, at Lancaster, about a month after the marriage, his wife had an abortion, which was shown by other testimony to have been impossible. He said, and persists in declaring that, at Lancaster, his mother, every night, after he and his wife were asleep, opened their chamber door, up-stairs, and let another man in to his wife, whom one night he made jump through a window, by drawing his pistol on him. He also charged his mother with keeping a licentious house. He stated to two of his brothers that he tried the teacher's sign on a married lady at Knoxville, whom the teacher had educated, and that she understood the signs perfectly. He denies insanity, and says he would rather be shot than acquitted on that ground—insisted that he was able to prove every fact he had ever stated, and was offended with his counsel, because they would not defend him in that way alone. Many other facts of a similar character were proved; and, from all the facts, I did not doubt that he labored under an insane delusion as to his wife and Bates; and under the influence of a morbid derangement of the brain,

imagined facts that did not exist; for the supposed existence of which there was no evidence whatever, and of the falsehood of which no argument or proof could convince him; because a diseased brain communicated false images and distorted objects, which made all the impression on the mind that the evidence of sound sense could make as to what is true.

I have no doubt that the killing of Bates was the offspring of that insane delusion—was the act of a deranged mind, and would never have occurred if Baker's mind had not been deranged.

It was also proved that, after Baker had left Kentucky, he returned to settle his affairs, and that before he got to Bates' furnace, which he had to pass, he was informed by several persons that Bates had said he would kill him on sight if he ever returned, and that Bates and his negroes were armed for that purpose; and he was advised to postpone passing the furnace until after night. I believe that he was convinced that Bates would kill him unless he should kill Bates first. It also appeared that he expressed the conviction that in killing Bates, he had violated no law of Heaven or of earth. He made no attempt to escape—but endeavored to go to his wife's father's, and missing the way, staid all night at Hugh White's, and seemed unconscious of having done any wrong in killing Bates.

There was no testimony showing any motive for hostility to Bates, and a disposition to kill him, except his convictions as to his treatment of his wife, and his conduct to Baker's wife, and of which supposed mistreatment, there was no other evidence than his own statements, in either case.

That Baker believed, and yet believes firmly, all the facts he repeatedly stated respecting Bates and his wife, there can be no doubt. He urged his counsel to suffer him to prove them, all of which he insisted that he could prove beyond question! If he had been sane and so unaccountably diabolical as to wish to destroy Bates, and the character and happiness of his wife without any imaginable motive, he would have told tales more plausible—something that might have been believed—and surely he would not have charged Bates with impregnating his (Baker's) own young sister, or his mother with prostituting her house.

Ever since the case of Hadfield, in 1794, persons in Baker's condition, have been invariably acquitted or pardoned—and a stronger case than Baker's does not appear in either medical or criminal jurisprudence. If you have any doubt as to the case of Baker, I would be obliged to you to examine carefully Ray's Medical Jurisprudence on Insanity, and Esquirol and

the case of Hadfield—that also of Lord Oxford, and of the man who shot at President Jackson; in all of which cases there were acquittals on the ground of insane delusion on one or more subjects, whilst there was apparent rationality on others; and in none of which was there any inquiry as to whether the accused had a general knowledge of right or wrong; but in all of which, it was taken for granted that the act being the offspring of insanity, the accused, as to that act, should be treated as he should have been, had he been totally insane on all subjects. There is, in no asylum, one case in twenty in which the lunatic does not reason well, and is not rational on some subjects. Intellectual insanity is, in fact, nothing else than the morbid imagination of false facts. The reasoning of lunatics is generally correct—their premises only are false, being merely imaginary.

The jury, as you will see from their petition, were satisfied of Baker's insanity—but found him guilty because he was rational on some subjects! It is almost impossible to make a jury understand such a case correctly; and, in this case, it was impossible to procure a jury that had not been excited against the prisoner, and formed an opinion of his guilt. Even the judge and all the four prosecuting attorneys, at first, and for a while, denied the existence of particular insanity or unsoundness of mind on particular subjects. But they all, I believe, (and the Commonwealth's Attorney, I know,) became convinced of it during the trial. And I have no doubt that a jury of enlightened medical men or jurists, could not have been selected who would have hesitated five minutes, to find a verdict of not guilty.

This is a novel and interesting case. It will be reported and become a leading case; and allow me to say that, in my undoubting judgment, no case ever occurred which was more entitled to the interposition of the executive, whose power to pardon was given for no class of cases more clearly than for such as this.

I am well satisfied that no informed man could have heard the trial and seen Baker, without being convinced, beyond a doubt, that he is now insane, and was even more so when he killed his brother-in-law. And it does seem to me that he who, upon a full knowledge of all the facts, doubts Baker's insanity, would by such incredulity, exhibit himself, strong evidence of monomania—and I honestly think that the execution of Baker would be a judicial murder.

I never asked for the pardon of a convict, because the cases, in my judgment, are rare, in which the innocent are, through ignorance or passion, convicted. But I feel sure, beyond any

doubt, that such has been the doom of Dr. Baker, and that he ought not to be punished, but placed, (as he will be, in the event of a pardon,) in our Lunatic Asylum. Respectfully,
G. ROBERTSON.

Lexington, July 25, 1845.

Postscript to Geo. Robertson's Statement.

P. S. The foregoing was written when I did not know that a transcript of the evidence on the trial, would be laid before you. But having been since furnished with a certified copy of that evidence, I present to you that as more satisfactory than my synopsis of it. But, as Dr. Cross' opinion was formed on this general statement of mine, I must, for the benefit of the opinion of that eminent gentleman, ask your attention to this statement, for the purpose of seeing that Dr. C.'s opinion on those facts, would certainly be his opinion on the certified evidence. And I think that I hazard nothing in the opinion that no intelligent jurist or medical man could be found, who would entertain any other opinion when possessed of full information on the subject. G. R.

Opinion of Dr. Jas. C. Cross, on the Synopsis of evidence prepared by Geo. Robertson, Esq.

From the statement within made of the facts, and which Judge Robertson assures me were proved on the trial of Dr. Abner Baker, for the murder of Daniel Bates, I have no hesitation in saying that said Baker is, and was at the time of the murder, laboring under monomania, if, indeed, there has not been a complete subversion of the faculty, of judging between what is right and wrong. This being the case, Baker cannot be regarded as responsible for his conduct, and therefore, should not be subjected to the penalty which has been decreed by the jury.

JAMES C. CROSS,

Late Prof. in the Medical School of Transylvania.

TO HIS EXCELLENCY, WILLIAM OWSLEY,
GOVERNOR OF KENTUCKY:

The undersigned, composing the jury that found a verdict of guilty in the prosecution of Abner Baker for the alleged murder of Daniel Bates, feel it their duty to recommend him to your Excellency as a fit object of Executive mercy. Whilst we felt constrained, by our opinion of the law and the evidence, to pronounce a verdict of guilty, we are satisfied that the said Baker, when he killed said Bates, and before, and

since, was in a state of mental excitement and delusion respecting his wife and said Bates, which may be considered insanity. And although we were of the opinion that he was, at the time of the killing, able to discriminate right from wrong, yet we believed that his said state of mind was such as to entitle him to a pardon. And we further state that the prisoner is, from his appearance, and from the evidence, in a worse condition of mind at this time, than at the time of the killing.

JULIUS ✕ ROBINSON,
ABRAHAM CARTER,
WM. BISHOP,
WM. B. ALLEN,
BRYSON ✕ BISHOP,
THOS. COOK.

We say, from his present appearance, in our own judgment, we have no doubt the prisoner is insane.

L. HOLCOMB,
HENRY HENSLEY.

This is to certify that the undersigned was one of the jury who tried Abner Baker on a charge of murder, in killing Daniel Bates: and do further certify, that it was proved by several witnesses that Dr. Abner Baker had, some three or four months previous, and at different times, told them that Daniel Bates, he believed, intended to kill him—that Daniel Bates had formed schemes and conspired with his negroes, and to carry those schemes into effect, he had sent his negroes out in ambush armed with guns—and that they believed that Baker thought, at the time he told them, that such were facts. It was also proved by several witnesses, that Dr. Baker had told them, at different times, that Daniel Bates treated his wife, who is Baker's sister, badly; and that Bates had, at different times, in the night, when his wife was in bed, wielded his Bowie knife over her head and throat and threatened her with instant death; and that he believed that Bates intended to kill her, and he was staying at Bates' to protect his sister, and they believed that Dr. Baker thought that the same was true. It was also proved by several witnesses, that Dr. Baker had told them that his wife was a whore, and that Daniel Bates had seduced his wife and had intercourse with her while he was boarding, with his wife, at Bates'; and that she had intercourse with her uncles and an old, ugly negro; and that her teacher had kept her since she was nine years of age, which statements they believed Dr. Baker thought were true at the time he told them. And from the evidence they believed that

Dr. Baker was deranged upon those subjects and not a fit subject for example; but from our understanding of the law applied to the evidence, we had to find a verdict of guilty. I do further certify, that if the delusions which were proved upon Baker had been facts, it would have been a full and good excuse for killing him. And do further certify, that we did not, in the jury room, consider the works read on the part of the defence to be good authority, which works were Beck's Medical Jurisprudence, Ray's Medical Jurisprudence, and other works, which, if we had taken them to be good authority, we should have been obliged to acquit, or found a verdict of not guilty, from the evidence. And it was considered that the Commonwealth's Attorney was a sworn officer, and was bound to give the whole law governing us in the finding of our verdict. And some of the jury called upon the Court for some instruction, and from the general instruction given, we construed it to go so far as to make the prisoner guilty, if he knew that there was such a being as a God, or such laws in existence as would punish the killing of a man; or knew, generally, right from wrong. But if we had understood that the instruction would have excused him if he sincerely believed that he was called upon to kill Bates in self-defence, or was called upon by some superior power to kill Bates for his fancied injuries, we should have been obliged to have found a verdict of not guilty.

ABRAHAM CARTER.

CLAY COUNTY, *set:*

This day, Abraham Carter personally appeared before the undersigned, one of the Commonwealth's Justices of the Peace, and made oath that the facts stated in the foregoing certificate are true.

Given under my hand this 5th of August, 1845.

J. H. GARRARD, J. P.

This is to certify, that the undersigned are a part of the Jury who set upon the case of the Commonwealth *vs.* Abner Baker upon a charge of murder, in killing Daniel Bates. And do further certify, that it was proved by several witnesses that Baker had told them some three months or more previous to the killing of Bates, that Bates had formed secret schemes to kill Baker at different times, and that at different times he had sent his negroes out in ambush, armed with guns, to kill Baker, which they believe was believed by Baker to be true. It was also proved by several witnesses that Baker had

told them at different times, that Bates treated his (Bates') wife badly, who was and is Baker's sister, and that Bates had threatened her life, and he was staying at Bates' to protect his sister, and that Bates had, at different times, in the night, wielded his Bowie knife over her head, threatening her with instant death; which statement the witnesses believed that Baker thought was true. And also, it was proved by several witnesses that Baker had told them Bates had, at different times, had intercourse with his wife at his (Bates') own house, where he boarded at the time with his wife; and that her uncles and her old teacher had likewise had intercourse with her, and that her teacher had kept her since she was about nine years old, and they believed that Baker thought, at the time he told them, that the same was true, and from the evidence, they believed that Baker was deranged upon the above subjects; which evidence will be, or is already laid before you, as we are told. And from the evidence they do not believe that he is a proper subject for example; but from what we considered the law we had to find a verdict of guilty. We do further certify, that if the delusions which were proved upon Baker had not been delusions, but facts, that Baker would have been justified or excused in the killing of Bates. We do further certify, that we did not look upon the authorities which were read on the part of the defence as law, which authorities, or some of them, were Beck's Medical Jurisprudence, Ray's Medical Jurisprudence, and other works; but they considered that the Attorney for the Commonwealth was sworn and bound to give the law which governed us in the finding of our verdict, and upon that impression, together with the general instruction given by the Court at the request of the Jury, we found our verdict.

H. HENSLEY,
 JULIUS ✕ ROBINSON,
 L. HOLCOMB.
 ZADOCK PONDER.

CLAY COUNTY, *set*:

This day, Henry Hensley personally appeared before the undersigned, one of the Commonwealth's Justices of the Peace for the county of Clay, and made oath that the facts stated in the foregoing certificate were true.

Given under my hand this — day of August, 1845.

THO. J. McWHORTER, J. P.

MT. VERNON, July, 1845.

Dear Governor:—I am informed that there will be an application to your Excellency for the pardon of Abner Baker, who was condemned by a Jury of Clay county for the murder of Daniel Bates. From the evidence in the case, I am inclined very strongly to the belief that he now is, and has been for some two years at least, laboring under monomania. The evidence will all be laid before you, from which you can form your own opinion; and I should be very much gratified to see him pardoned.

W. B. MOORE, Att'y for Com'th.

LEXINGTON, July 21st, 1845.

TO HIS EXCELLENCY, WILLIAM OWSLEY:

Dear Sir:—I beg leave to make the following representation to your Excellency respecting the case of Dr. Abner Baker, lately tried in Clay county, Ky., for shooting his brother-in-law, D. Bates. I was induced to attend the trial, and whilst there examined Dr. Baker in jail before the trial came on. I found him in a high state of mental excitement, with manifestations of bodily derangement; such as quick pulse, cool extremities, countenance wild and unnatural, the muscles of his face flaccid and of a peculiar hang, with a fierce, wild, and ferocious expression of his eyes—this latter symptom was greatly aggravated when he dwelt on those subjects, or delusions, that led to the unfortunate and unnatural murder.

I learned his appetite and digestion were irregular, and his sleep imperfect and irregular. When in conversation, his manner, attitude, and tones of voice all indicated mental alienation. I heard the material and circumstantial evidence on both sides, detailing as well the manner and circumstances attending the murder, as his previous and subsequent conduct, the motives that seemed to impel him to commit the act, the probable provocation, &c. &c. From all the facts and circumstances of the case, I became thoroughly satisfied he labored under mental derangement caused by a morbid state of the brain, and so expressed myself under oath to the Jury sworn and empaneled to try the case.

I could embody copious extracts from the testimony given by the witnesses on the trial, as evidence of the correctness of the professional opinion above given. It would be, however, on my part, uncalled for and irrelevant, especially as your Excellency will, in all probability, be furnished with it in an authentic and accurate form. From a thorough conviction of

the insanity of Dr. Baker, before and at the time of his shooting his brother-in-law, D. Bates, I beg leave most respectfully and earnestly to commend him to your Excellency as a proper subject for Executive clemency and mercy.

With assurances of great respect,

I am your obedient servant,

W. H. RICHARDSON, M. D.

TO WILLIAM OWSLEY, GOVERNOR OF KENTUCKY:

The undersigned, members of the Medical Faculty of Transylvania University, having heard from Dr. W. H. Richardson a recital of the material facts proved, as well by the Commonwealth as by the accused, in the late prosecution of Dr. A. Baker, for killing his brother-in-law, Daniel Bates, in Clay county, in this State, feel it to be their duty, as well as their privilege, to declare to your Excellency their conviction that before, and at the time of said homicide, the said Baker was of unsound mind, in fact and in law; that he labored, without doubt, under an insane delusion, especially respecting his wife and said Bates, which is sometimes characterized as *monomania*, and which, in its various forms and degrees, is the most prevalent kind of insanity, intellectual and moral: and they cannot hesitate to express the confident opinion that the killing of Bates was the direct offspring of the said insanity: and that, while it may be that Baker was conscious of right and wrong generally, or in the abstract, he was, from the proofs, so far insane, on this particular subject and occasion, as to have been impelled to the homicide by an irresistible motive of delusion, without a consciousness of a violation of the law of God or of man in that particular act.

They are, also, clearly of the opinion that said Baker is now of unsound mind, and is a fit subject for a lunatic asylum. They consider this one of the clearest and best defined cases which they have known, or of which they have heard.

Wherefore, they have no difficulty in coming to the conclusion, that said Baker is a proper object of Executive mercy; that neither the letter nor the policy of our criminal code would require, nor justice and humanity permit his conviction and execution for the blind and insane act of killing his said brother-in-law. They, therefore, without hesitation, but with great respect for your Excellency, and solicitude for the result, beg leave to unite their petition with that of others for the pardon of said Baker.

THOS. D. MITCHELL, M. D.

Prof. Materia Medica and Therap. Tran. Univ.

L. G. WATSON,

Prof. Theory and Practice, Trans. University.

LEXINGTON, July 25th, 1845.

Subsequently to signing the foregoing paper, the undersigned has heard the testimony given in the case, and has no hesitation to say that his opinion in the premises is confirmed.

THOS. D. MITCHELL, M.D.

Prof. Materia Medica and Therap., Trans. Univ.

The undersigned has heard the evidence read in the case of Dr. Baker, and conceives it a case of monomania as conclusively made out as can be found upon record.

B. W. DUDLEY, M.D.

July 25th, 1845.

LEXINGTON, July 25th, 1845.

Gov. Owsley.—From the fact that I have been officially connected with the Lunatic Asylum, at this place, I have had more extended opportunities of becoming acquainted, both practically and theoretically, with the diseases of the human mind. (in all their endless variety,) than ordinary members of the profession. Therefore, I have presumed, at the solicitation of Dr. Baker's friends, to give you *my most unqualified opinion*, after a critical examination of the evidence in the case, that before, and at the time of, the commission of the act, for which he has been convicted, he was of unsound mind, and should not be held responsible, either in law or in morals, for an act committed under such a state of mind.

Respectfully, &c.

S. M. LETCHER.

P.S. I have not conversed with a Physician who don't concur in the above opinion.

S. M. L.

KENTUCKY LUNATIC ASYLUM, July 24, 1845.

I have examined fully the testimony, both on the part of the Commonwealth, and the defendant, in the case of Dr. Abner Baker for the murder of Daniel Bates. After having seen a great number of insane persons, and after an uninterrupted intercourse with more than two hundred of them for twelve months, I feel no hesitancy in giving it as my opinion, that Dr. Baker had been before, and was at the time of, the murder, affected with monomania, upon the subject of his wife's chastity, and ideas naturally connected with it; with symptoms

indicating a strong tendency to degenerate into general derangement.

I would further state, as my opinion, that there can be no doubt that there are many cases, in which the most acute observation fails to detect disorder of the understanding upon more than a single idea or train of ideas. Examples of such are reported by all the best authors upon the subject, and I have had under my charge a number of them. And I can, from my experience, join heartily in the statement advanced by one versed in this subject: "That all cases of crimes of violence, in which previous mental disease is proved, should have the whole benefit of the presumption that such disease may, in a moment, run into irresponsible mania, and the unhappy patient be judged fit for confinement and not for punishment."

With the facts of the case before me, I should feel that I was omitting a duty to justice and humanity, to withhold my earnest recommendation of Dr. Baker, as an object deserving, if not demanding, *Executive clemency*.

JNO. R. ALLAN,

Superintendent Ky. Lunatic Asylum.

His Excellency, WILLIAM OWSLEY.

LOUISVILLE, August 1st, 1845.

To His Excellency, WILLIAM OWSLEY,

GOVERNOR OF KENTUCKY:

Sir:—We, the undersigned, would respectfully represent to your Excellency, that, after a careful examination of the testimony taken in the case of Dr. Abner Baker, charged with the murder of Daniel Bates, we are of opinion that said Baker is of unsound mind, and consequently a fitter subject for a lunatic asylum than for the gibbet.

We have the honor to remain

Your Excellency's ob't serv'ts,

CH. CALDWELL, M.D.

L. P. YANDELL, M.D.

H. MILLER, M.D.

S. D. GROSS, M.D.

LANCASTER, July 24th, 1845.

To His Excellency, WILLIAM OWSLEY:

Sir:—Having been called upon to examine the testimony adduced on the trial of Dr. A. Baker, (who is now under sentence of death,) we proceeded to do so in as thorough a man-

ner as the circumstances would allow, and have unanimously come to the conclusion, from the extraordinary character of the testimony of the case, that the said Baker, at the time of committing the crime for which he now stands convicted, must have been laboring under that form of mental alienation called *monomania*. That there is such a disease is not questioned by any scientific man of the present day. We would, therefore, respectfully direct the especial attention of the Executive to the facts of the case, and implore the interposition of his power. Respectfully, your friends, &c.

O. P. HILL, M.D.
WM. H. PETTUS, M.D.
JENNINGS PRICE, M.D.
L. M. BUFORD, M.D.

The undersigned, Physicians of Danville, having been called upon to examine the evidence submitted to them, as given before the Circuit Court of Clay County, Kentucky, in the case of the Commonwealth against Dr. Abner Baker, tried for the murder of Daniel Bates, which evidence was written out by Alexander R. McKee, Esq., clerk of Garrard county, present at the trial, are, on due consideration, unanimously of the opinion that the said Abner Baker was, at the time of the killing of Bates, and for some time before and subsequently, laboring under *monomania*, in a very marked and severe form, and as such we recommend him to the clemency of the Executive.

D. J. AYRES, M.D.
JOHN TODD, M.D.
JOS. WEISIGER, M.D.
WM. PAULING, M.D.
JOSEPH SMITH, M.D.
J. HOLLINGSWORTH, M.D.
R. W. DUNLAP, M.D.

FRANKFORT, Aug. 11, 1845.

We, the undersigned, Physicians of Frankfort, after a careful examination of the testimony in the case of the Commonwealth against Dr. Abner Baker, on charge of the murder of Daniel Bates—of which the said Baker now stands convicted in the county of Clay—are unanimously of the opinion, that said Baker, previous to and at the time of the committal of said act, was laboring under mental derangement.

JOS. G. ROBERTS, M.D.
CHAS. G. PHYTHIAN, M.D.
LUKE P. BLACKBURN, M.D.
LEWIS SNEED, M.D.
A. F. MACURDY, M.D.
E. H. WATSON, M.D.

NICHOLASVILLE, July 25, 1845.

HON. WILLIAM OWSLEY:

Dear Sir:—At the request of a friend of Mr. Abner Baker, Sr., I have examined the testimony in the case of Dr. A. Baker. The record was submitted to me that I might give my opinion as to the sanity of Dr. Baker.

It is due to myself and to the parties to state that from the rumors which I had heard of the circumstances attending the death of Mr. Bates, that my opinion was that it was murder most foul; and I believed that the acquittal of Baker was the result of effort and the influence of wealth.

I, however, had not gone through the testimony introduced by the prosecution, before I became *perfectly* satisfied that Dr. Baker was a *madman*.

I am confident that it is impossible that any man can examine the evidence of Mr. James White, without being satisfied that no man could speak to a father, of his child, as he spoke, and give utterance to such absurd charges against his own wife, who was sane. The statement of all the witnesses, especially Dr. H. Baker, go most conclusively to prove this fact, that Dr. A. Baker was, and is the subject of monomania—a disease as well known and clearly defined (though strange and unaccountable) as fever or any thing known to exist. In my practice, I have met with cases as singular, but not more perfect than Baker's, and I would as soon have thought of passing sentence against an infant or an idiot as against Dr. Baker, with evidence as set forth in the record.

I am, sir, with great respect,

A. K. MARSHALL, M.D.

I have also examined the testimony in the case of the Commonwealth against Dr. A. Baker, in connection with Dr. A. K. Marshall, of our town, and fully concur in his opinion as stated to you in the foregoing.

W. J. BALLARD, M.D.

TO HIS EXCELLENCY, WILLIAM OWSLEY,

GOVERNOR OF THE COMMONWEALTH OF KENTUCKY:

The undersigned, Attorneys at law, were present (but not employed by either party) at the trial of Abner Baker for killing Daniel Bates, and heard all, or much the greater part of the testimony introduced, both on the part of the Commonwealth and the Defendant, and from the testimony so introduced, we were fully convinced of his derangement, at

the time he killed Bates, and also that he had been deranged for some time prior to that act; that he has been ever since, and is now, in a state of mental derangement, both upon the subject of his wife's inconstancy to him, and of Daniel Bates having been too intimate with her, and of his (Bates) contriving plans to have the said Baker killed.

We further state, that every witness who testified to any thing bearing upon the case, disclosed some fact conducing to show that he (Baker) was laboring under a state of mental derangement, and we were utterly surprised and astonished, at hearing the jury had brought in a verdict of "*guilty*," contrary to the law and evidence in the case. In fact, we did not think that the jury would hesitate ten minutes in agreeing upon a verdict of "*not guilty*."

We therefore petition your Excellency to interfere in his behalf, to extend the Executive clemency to him and release him from the verdict of the jury, and the judgment of the Court.

LEWIS LANDRAM,
J. BURDETT,
L. F. DUNLAP,
D. H. DENTON.

Lancaster, Ky., July 19, 1845.

LEXINGTON, August 8th, 1845.

GOV. WILLIAM OWSLEY:

Dear Sir:—I have been requested to give my views as to the effect of monomania upon the criminality of acts committed under its influence. The principle laid down in all the books is, that insanity must proceed to such an extent as to disable the person from distinguishing right from wrong, and the defence must be well made out. There is certainly no disputing either of the propositions above stated. And I believe juries should always convict where the defence fails in either point, leaving to the Executive the discretion given him by the Constitution of distinguishing and giving pardon, where the reason is only partially wrecked, and guilt palliated, but not entirely taken away.

In the application of the above principles, I entertain no doubt that if a monomaniac, under the influence of an insane delusion, kills, or does any other act, it is not criminal, though on other subjects he could accurately distinguish between right and wrong. I admit the case of Billingham would seem to be, in some measure, opposud to this; but in that case the law was correctly laid down, the error was in its application, for Billingham killed Percival under an insane de-

lusion, and believed in that act he was doing right, and the chief error was by the jury. His conviction and execution must be regarded rather as a political than a judicial action by the Courts of England. It has received the reprobation of eminent jurists, and I have read an able and clear view given of it by Lord Brougham, (I think,) but am not able to lay my hands on it at present. Practically the case of Billingham has been overruled in the strongest manner in the trial and acquittal of the monomaniac that attempted the life of the Queen.

It seems to me that it follows as a mathematical truth, that the only inquiry is, whether the act done was an act of insanity. If it was, it cannot be with a "felonious intent." And this renders it wholly immaterial whether the reason was wrecked generally, or only on the particular subject which produced the act.

I know nothing of the case to which it is desired that these views should apply. But I would add that I consider that there are many cases in which I believe it would be right that the jury should convict, but in which pardon should be extended by the Executive. Where a real and well founded doubt exists in a community, on the subject of insanity, the execution of such person can produce no beneficial effect. His death is apt to change doubts into certainties, and it is highly prejudicial to all future trials that a general belief should exist that a man, innocent in law, had suffered.

Respectfully, yours, &c.

M. C. JOHNSON.

I had occasion lately to examine the subject upon which the above opinion is expressed, and concur with the views therein expressed.

A. K. WOOLLEY.

I concur in the above views.

C. S. MOREHEAD.

I think the above views of M. C. Johnson so clear and correct that no two men would differ in regard to them.

GEO. B. KINKEAD.

CLAY COUNTY, August 8th, 1845.

Dear Sir:—Being a citizen of Knox county, Ky., and heretofore a resident of Clay for several years, and Dr. Abner Baker was my family physician, and being well acquainted with him for years, but have not seen him since he killed

Daniel Bates, until I saw him two days since in jail, and had a conversation with him, which has convinced me that he is not in his right mind.

The manner in which he speaks of his wife—the improbable tales he tells of her, which I think he firmly believes, from altered eye, convinces me that he is laboring under mental derangement, and is a fit subject for your Excellency's interposition.

With high consideration,

Your obedient servant,

JAMES WILLIAMS.

This is to certify that since the conviction of Dr. Abner Baker, for the murder of Daniel Bates, I have had conversation with him, and in that conversation, whenever woman was named, he immediately hinted on his wife or Daniel Bates, and seemed to become entirely deranged—his eyes having a peculiar appearance and his general demeanor became changed, and he had the general appearance of a deranged man.

I have been acquainted with Dr. Abner Baker since he was a child, and his appearance and demeanor has changed within a year or eighteen months, and I have not the least doubt of his derangement; and I believe him to be worse now than previous to his trial and conviction, and not a fit subject to be made an example of.

Given under my hand at Manchester, the 6th of August, 1845.

EDWARD ✕ CORNETT.

COMMONWEALTH OF KENTUCKY, CLAY COUNTY, sct:

This day Edward Cornett personally appeared before the undersigned, and made oath that the facts stated in the foregoing certificate are true.

Given under my hand the 6th day of August, 1845.

BOSTON POTTER, J. P.

YELLOW CREEK, KY., July 7, 1845.

Dear Sir:—Last night I heard the result of the trial of Abner Baker, jr., in Clay county, and I now take the liberty of writing to you in reference to his condition.

I was perfectly thunderstruck at the conclusion at which the jury arrived; for a more decided case of insanity I do not recollect to have seen. Even before he killed Mr. Bates I pronounced him deranged in the presence of several persons, and told my wife that he was; and in an enlightened and properly educated community he would have been acquitted.

But there is great difficulty in this county to convince the people that any body is deranged, for very few cases of insanity occur in any section where agriculture forms a great part of their labor. Scarce any one among us has the time or money to be sedentary, and insanity is known to prevail among those who labor none.

I say to you that public sentiment is for his reprieve. The only persons who object to it are Mr. Bates' relatives and those under their influence, and some of the White family—and were Abner hung, I would conceive it to be a greater murder than has ever been committed in Kentucky. However, I know you will do what is right in the premises, and the same causes that surrounded both judge and jury, will not have their influence with you; for both judge and jury were overawed by the influence, wealth, and power of the prosecutors and relatives. Baker's conviction was the triumph of a faction. Public justice had nothing to do with it.

I speak warmly, for I feel so. I esteemed Daniel Bates highly—he was a worthy man—and did I believe that Baker had a sound mind when he killed him, I would say hang him. But to hang a deranged man is what I hope will never be done in Kentucky, and more especially, during your administration of affairs.

Accept the assurance of the respect of your friend,
JNO. P. BRUCE.

MT. VERNON, KY., 20TH JULY, 1845.

Dear Governor:—Being solicited by A. Baker, sen., and his friends to say something in regard to the trial of A. Baker jr., and my own feelings constrain me to do so. I was at the trial only a portion of the time, though I have heard what the whole testimony was from the *witnesses* themselves in part, and in part from others since the trial; and from the knowledge of the man, and from the testimony in the cause, I have no hesitancy in saying, he is diseased of monomania, and has been since about 1840, and am consequently clearly of the opinion, that he ought to have been acquitted. I further state that his conviction was contrary to the expectation of a very great majority of the people, and, so far as I am advised, his pardon is greatly desired by almost every one except the particular friends and relatives of the deceased; and although unconnected with either party, or with the trial in any way whatever, God knows, I very much desire that by your Excellency he may be pardoned, and from no other consideration than that I think it obviously wrong that he should be executed under the sentence pronounced against him under all the circumstances.

I remain your sincere friend,
W. H. W. WILSON.

MT. VERNON, KY., JULY 22D, 1845.

HIS EXCELLENCY, WILLIAM OWSLEY:

Dear Sir—Being requested by the friends of Abner Baker, lately convicted, in Clay county, for the murder of Daniel Bates, I state that I was present during part of the trial, and being well acquainted with said Baker previous to the murder, I have no doubt of his insanity, and from the evidence I had heard, he certainly was wrongfully convicted; and if it should meet your approbation, I would be glad to see him released.

Respectfully yours,

CHARLES KIRTLEY.

BARBOURVILLE, KY., JULY 23, 1845.

Dear Governor:—I was one of the Counsel of Dr. Baker, in his late trial for the murder of Daniel Bates, which resulted in his conviction.

The whole facts, as they came out on the trial, will be laid before you. Dr. Baker was tried last fall by our examining Court, and discharged. It is true that no one, in particular, appeared on the part of the prosecution, though the facts which were unfavorable to Baker all came out. On the trial before the jury, about fifteen witnesses swore to the insanity of Baker, three of them physicians, two introduced by the Counsel of Baker, and one on the part of the Commonwealth. At least half, perhaps more, of these fifteen came to this opinion, as they stated on oath, before there was any difficulty between Bates and Baker. Every individual who had examined the subject, and who believed that there was such disease as monomania, concurred in the opinion that he labored under that disease. The facts of the case show an entire want of motive or cause, on the part of Baker, in committing the act. They show that he was and always had been a respectable man and a good physician—that Mr. Bates had been his best friend—that Mr. Bates had been kind and affectionate to his [Bates's] own wife, and that Baker's charges against Bates and his [Baker's] wife, and other men, were wholly without foundation; as were also his charges against Mr. Bates of forming combinations to kill him, (Baker.)

Baker's friends said at the close of the examining Court, that if the prosecution should be carried any further, they would have him forthcoming to stand a final trial. And as soon as they ascertained that there was a reward for him, they took steps to have him forthcoming to a trial, though he was out of the United States at the time. His Counsel had the most perfect confidence in his acquittal, and I can say, in truth, that the verdict astonished both his friends and enemies, after they had heard the evidence, and we had no other ground on which to rely for a new trial.

The Court would not take the responsibility of deciding contrary to the verdict of the jury; which, in truth, ought seldom to be done. To execute Dr. Baker, I am most honestly and thoroughly convinced, would be a judicial murder. Public sentiment, I know, is against him,

and that fact is attributable to the fact that the disease under which he labors, is one which is not understood and which is not even acknowledged to exist by the great mass of the community. Even our judge himself would not acknowledge, at the commencement of the trial, that there was any such disease recognised either in medicine or law, though he became convinced before the trial ended, but certainly did not well understand the law of the case. Hence the difficulties under which the Counsel of the prisoner labored during the whole trial.

I only ask and beseech you to look well to the facts of the case, as they will be laid before you. You will find the law well settled, and the most of the cases referred to in "Stock on *Non compotes mentis*, Law Library."

We expect Executive interposition only on the ground that the law and facts of the case merit it. We know that the jury did not recognise the existence of such disease in the human mind.

Respectfully yours, &c.,

J. HAYS.

MANCHESTER, JULY 18th, 1845.

TO HIS EXCELLENCY WILLIAM OWSLEY.

Honored Sir:—Ere you receive this, I presume you will have heard of the trial of Dr. Abner Baker, for the murder of Daniel Bates. Having had an acquaintance with Dr. Baker some three or four years, and having heard the evidence, as deposed before the jury, which found him guilty, and from that evidence I concluded that he was not a proper subject for conviction, or at least for execution, and having come to that conclusion, as I think from taking an impartial view of the case, I take the liberty of addressing you these few lines to implore you to exercise, for the unfortunate Dr. Baker, the power given you by the Constitution, to grant him a pardon. I will state that the reasons that I ask this at your hands, are not from the sympathetic feelings which generally induce individuals to ask for such favors, but upon the ground of justice only. I think that the laws should always be administered rigidly, so far as they will further the ends of justice, and promote the ends of civil society, but they should be administered in mercy. The first reason which I have to offer, why he should be pardoned, is, that I believe that at the time he committed the offence, he was laboring under an illusion, or deranged state of mind, which is called *monomania*, a partial insanity, and Baker came within the channel of that delusion, which would make him irresponsible, if such were the fact. The second reason is, that it was a new question, and one which had not been before discussed in the court, in this part of the State, and was, therefore, considered a mere humbug, and was so generally talked in the country, and it was almost impossible to make the jury and bystanders believe that there was any insanity, but a perfect delusion upon all subjects. Third, the Judge came upon the bench to try the case, believing that there was no partial insanity, or monomania, recognized in the laws of the land, and, therefore, it

cut the Counsel for the prisoner out of privilege of having such instructions, as would have produced an acquittal of the prisoner, from the evidence which was adduced upon the trial, but the Judge, before the trial was closed, was convinced that such was the law, but too late to remedy the injury already done. Fourth, there was a great excitement in the country against the prisoner, brought about by the wealthy connexions of Daniel Bates, and the wife of the prisoner, who, it was, and is thought, was badly injured—the effect of which was to be seen upon the trial, by some of the wealthy and influential, standing or sitting in front of the jury—and when anything was said against the prisoner, or anything read which they thought was against him, they would nod their assent, but on the contrary, when anything was said which operated in his favor, you could see the marks of dissent, which, in exciting cases, has a tendency to influence the minds of jurymen, particularly when the jury have been in the habit of looking up to them for advice. Fifth, the influential, wealthy class of the community in Clay county were all arrayed against Baker (except the Garrard family,) and they used not only all their own influence, to bring about a conviction, but employed three able Counsel, with their influence, to assist the Commonwealth in sacrificing Abner Baker to their spirit of revenge, and they used other means, which looked to me improper to be used in such cases, and such as a person can see, but it is difficult to put upon paper, and immediately after the jury had returned their verdict, they were taken to the tavern, where the Walkers and the other of Bates's connexions put up and got their dinner, and were roomed for some time, as I was informed. I know they went there and stayed some time, but as I did not go there, I cannot state what passed there, but I know that the whole transaction looked like the friends of Bates intended to have Baker convicted if possible, whether guilty or innocent. I wish you could know all that is in any way connected with this transaction, that justice might be meted out where it is due. Justice is all that I ask as a citizen, and since the case has closed I can ask nothing as one of his Counsel, but only as a citizen who has often thought that justice was not generally done to criminals. But is a person who is insane a proper example? What a sight would it be to see a lunatic under the gallows, trying to cast his vacant stare beyond the circumference of his woes, and then to hear his idiotic laugh. Would that be such an example as justice, blind to the interests of family and connections, would hang up to the view of an intelligent and enlightened community? Would it deter others laboring under the same delusion, from committing the same offences? I would in a concise and explicit manner set out the evidence, did I not understand that it was to be laid before you in as full and complete manner as possible. If this is not a case where the Governor should stay the hand of the executioner, I cannot figure out in my imagination one. Knowing that your Excellency in the discharge of your duty, will be governed by the principles of justice and mercy, so far as I am concerned, I leave him in your hands, to do

with him, as you would others should do unto you, under like circumstances.

Your humble petitioner, and obedient servant,

SAMUEL ENSWORTH.

[A true copy.]

BEN. HARDIN, Secretary.

By W. C. ANDERSON.

MT. VERNON, July 20th, 1845.

DEAR GOVERNOR:

The unfortunate young man, Dr. A. Baker, who last fall, in a fit of *insane delusion*, killed his friend and brother-in-law, D. Bates, has been convicted, and by the judgment of the law is to be executed on the 13th of September next; and the only hope his worthy parents and much afflicted relatives and friends have, is in an independent and humane Executive, in whom they have much confidence, and I myself entertain no doubts, that when your Excellency learns the facts, you will pardon this unfortunate youth. The facts, I presume, will, in the main, be laid before you; but, nevertheless, I will give you a short history of the causes which impelled this young man to kill Bates, and which brought about his conviction. I say he was impelled; yes, impelled by the irresistible impulse of a diseased and greatly deluded mind, to do the deed for which he has been unjustly and illegally convicted—convicted, I assert, contrary to law and evidence. I have been engaged in his defence ever since and before his trial last September before the Justices, and I speak advisedly on the subject. The history of this young man's character, as developed by his conduct, and the evidence in the case, is about this. Some four or five years since, from being a high-minded, intelligent gentleman, and one of the most popular physicians of his age within the bounds of his acquaintance, he began to exhibit evidence of the workings of a distempered mind—began to change his character. From an affectionate son to his parents, and an agreeable associate with others, he became disaffected towards his parents and disagreeable to his friends. He became suspicious and jealous—convinced that his friends were his enemies—always talking of designs and combinations against him, either against his life or character. And after he married (which took place a short time before the killing of Bates) he was placed precisely in the element to produce additional matter for the workings of his already distempered mind. He therefore immediately concluded that his wife was a desperate whore, and so expressed himself; that she had intercourse with all, black and white, and concluded that he would kill everybody that he could get a chance at; but that he would take Bates first, as he had done worse than all—he being his brother-in-law and professed friend. He never seemed to blame his wife so much! He thought she had a disease called, I think, *Nymphomania*, which he said prompted her to do what she did irresistibly, and when she was laboring under the influence of this disease, which he said was continually exciting her, she was bound to be gratified—hence he could not blame her so much. That she often had to call on her own uncle, and occasionally her father, to relieve her; and if no white person were convenient, any negro would be acceptable. These things he told to me and others, and believed them as firmly as if they were so, and does believe them yet, and will become much agitated if he is contradicted. He also believed that Bates had on many occasions engaged his negroes to waylay him and kill him; and that Bates was about to kill his own wife, (Baker's sister,) and

then make his negroes kill him, and then take his wife for a concubine and believed when he shot Bates he was waylaying to kill him, and that night he was going to kill his own wife, and then take his. These things, together with a thousand minutia, much of which does not appear in the evidence, go to show the workings of a greatly distempered mind, the effect of which reduced him to a mere skeleton, by destroying his physical powers. He could not eat or sleep for weeks until after the death of Bates, when he could do both, and congratulate himself that he had done one righteous act, for which heaven would reward him—having done, as he told me, just what the Lord had been trying to get him to do for a long time. He never would have been convicted had he been tried when there was less prejudice and more intelligence. It was a new kind of case to Judge and Jury, and all the doctors and lawyers never could succeed in getting the jury to discriminate between *mania* and *monomania*—how a person could be sane on all subjects but one or two, and be able to tell right from wrong generally, and be excusable for killing not in self-defence, they never could tell. Now I say to you, governor, there can be no more doubt of his derangement than of his existence, and to execute him would be, in the language of Lord Erskine in Hadfield's case, "a judicial murder," which I know will not be done under the administration of your Excellency, if your Excellency is convinced, or even have doubts on the subject. If he is pardoned, his friends will forthwith place him in the Lexington Asylum. This they would have done before, when acquitted by the Justices, had it not been for his state of health. They conveyed him to a southern Island to improve his health, and having attained that object in a good degree they caused him to return for trial. He never was a refugee from justice, for he never believed that he had done anything unjust; nor does he yet; nor has his conviction made any change in his mind or appearance. The country, however, I will say, would not be willing for him to be pardoned and turned loose; but I have not seen or heard of any person who is not willing for his pardon on condition that he is placed in the Asylum. This will satisfy the country and the law. The Commonwealth's Attorney—you will see a letter from him—is satisfied that this unfortunate man ought not to be executed. In full confidence, therefore, that he will be pardoned, and restored to the embraces of the most affectionate of fathers, and to the circle of a large and respectable connexion, I subscribe myself

Your most obedient servant,

[A true copy.]

BEN HARDIN, Secretary.

By W. C. ANDERSON.

J. A. MOORE.

WALNUT FLAT, Ky., July 21st, 1845.

HIS EXCELLENCY, THE GOVERNOR of Kentucky:

Dear Sir—Dr. Abner Baker has been tried at a special term of the Clay Circuit Court for killing Daniel Bates, and was found guilty; and he is now under sentence of death to be executed on the 13th day of September next. It is clearly a case for the interposition of your Excellency, and I cannot doubt, when you examine the facts of the case, which will be laid before you, that you will feel it your duty to grant a pardon.

At the time of the killing, and for some time before, Dr. Baker was a monomaniac in regard to his wife, whom he had recently married, and Daniel Bates, and his sister, Mrs. Bates, and several other persons. I doubt whether there ever was a disease of that character more strongly marked than it was in Dr. Baker at the time Bates was killed. And, in doing the

act, he believed confidently that he was justifiable, and that, if he did not do it, his own destruction would be the consequence. I will not detail the facts demonstrating the insane delusion, as you will see them in the minutes of the evidence, which will also shew you that Dr. Baker had no possible motive for doing such a deed, except as suggested by his hallucination: with this single fact however, which was calculated to increase the desparation of his feelings, which was this: But a short time before the killing, Baker was informed by credible persons, that Bates went armed, and had avowed the determination to kill him [Baker] the first time he saw him. If ever Baker, before this, could have controlled himself in regard to killing Bates, this fact was calculated to disarm him of that power—as we can readily imagine the influence such a fact would have on a mind laboring under the impression of great injury previously received from Bates, in addition to which he was then threatened, and likely to suffer death from Bates' hands.

As Dr. Baker's insane delusion still existed at the time of his trial, an objection on that ground might well have been made to permitting the trial to take place, but this objection was not raised, as it seemed almost impossible that Baker would be able to stand his confinement in jail. And if the sentence of the law is executed according to the judgment of the Court, I have no doubt it will be upon an insane man.

I would further ask the attention of your Excellency to the indictment, and the verdict found by the jury, and I do this because I think it is by no means certain, that the indictment in legal and appropriate terms, charges the crime of murder. I am induced to believe that the crime charged, is that of manslaughter, only. It is true that malice aforethought is not wholly excluded from the indictment, but it is stated in one place only, and in that place not very appropriately. It is charged that the assault was made with malice aforethought by shooting, &c., but it is not alleged that the killing was made with malice aforethought. The verdict finds the prisoner guilty as charged in the indictment. Whilst, therefore, it is not contended that the term malice aforethought should be used to every allegation, when the acts charged are properly connected. In this case the acts charged are not properly connected. And there is no allegation after the circumstances are stated, which pronounced the death, that the killing was with malice aforethought. *Second. Chitty, 738.* This objection to the indictment and verdict was made to the Court in arrest of judgment, and was overruled upon the ground that the act of 1805, 1st Statute Laws 535, applied to the case and removed the objection. In this it is believed the Court was in error, because the defect in the indictment, if it exists as is supposed, is not in form but substance, as the authorities very fully show. Upon the whole case, I feel assured that your Excellency will not hesitate to grant a pardon; and in doing so, I am certain you will satisfy the country. My convictions are clear, that a pardon should not be refused.

I am your Excellency's obedient servant,

JNO. KINCAID.

[A true copy.]

BEN. HARDIN, Secretary.

By A. S. MITCHELL.

MOUNT VERNON, JULY 23, 1845.

Dear Governor—Since writing my former communication to your Excellency, I have ascertained more in relation to the feeling and excitement here and elsewhere, relative to the case of the unfortunate Dr. Baker. Public sentiment is greatly increasing in his favor, and those who were before the trial against him, are now almost universally for his pardon, and

all uncommitted persons are now on his side, and seem solicitous for him. Hundreds could be obtained in this county to a petition for his pardon, but it seems enough has been said and done to move your Excellency in his behalf, and I trust the power vested in the discretion of the Executive will be favorably and speedily exercised, as the physical, as well as the mental condition of the Doctor is getting worse daily, owing to his confinement.

Respectfully,

J. A. MOORE.

His Excellency, WILLIAM OWSLEY.

[A true copy.]

BEN. HARDIN, Secretary.

By W. C. ANDERSON.

TO HIS EXCELLENCY, WILLIAM OWSLEY,

GOVERNOR OF THE COMMONWEALTH OF KENTUCKY:

I beg leave again to address you on the subject of my son, who is now the subject of your clemency, and though I have ardent feelings, not as relates to my son, but also to the community; assured that the weal or woe of thousands of the unfortunate of the human family depend upon your decision in this case. It may be readily imagined by all who know me that I have ardent feelings on the subject, and I confess that it is and has ever been a source of pleasure to me on all proper occasions, either in public or private life, to find a heart within me that could feel with tender sympathy and concern for another's woe. But great injustice would be done me to suppose that an apology for my ardor could be found alone in the case of my son. The character of my whole life, known to my acquaintances, and especially to your Excellency, will testify that the welfare of the whole human family has been the field in which my sympathies were employed. Mercy mingled with justice is the road to safety, but justice without mercy is despotism. I can therefore meditate, reflect, and write on this subject coolly and dispassionately, and confine myself (with great deference to your Excellency) to the points upon which the decision must turn.

1st. I call your careful attention to the facts and host of evidence proving the insanity of my son.

I respectfully request your serious attention to the documents from the learned and skilful both in law and medicine. Upon these facts and documents I rely—together with numerous petitions. In them, I think, may be found abundant justification to pardon—and even in the evidence for the Commonwealth.

I would again respectfully call your attention to the document signed by eight of the Jury, and one other who signed his name to the petition; and also the letter from the Commonwealth's Attorney.

The law on Medical Jurisprudence will be found upon examination to be founded in wisdom, mercy, and humanity in favor of the unfortunate. The law of the land subjects no insane person to the penalty, but guards and protects them under their misfortune. Its penalties are against the sane and unjustifiable.

With confidence and high respect, I submit the foregoing topics for your serious and solemn consideration—and this I do under a clear sense of my privileges as a citizen, and your high and responsible station as Governor of this proud Commonwealth.

I now beg leave to call your attention to the unrelenting, violent, vindictive, and savage disposition manifested by the opposition, including the hired lawyers, with their diabolical-remonstrance: to gorge their ambition, and secure a contingent fee to mercenary lawyers in the event that Abner

be hung—this is said—and the very unnatural and revengeful excitement and conduct of the persecuting party will, in my opinion, induce that belief in the mind of every unprejudiced man.

Such has been the influence of the satanic spirit wielded by the prosecutors and persecutors, that they have not only subjected almost every man in their circle to their wishes by fear, favor, and monied influence, but have caused the names of men, women, and children, ignorant of the merits of the case, to be subscribed to the remonstrance. But, great God! look at that savage disposition—that chills the blood of humanity—that has induced the relict of the deceased man—in a state of derangement, as I do solemnly believe, (having been kept under,) and induced by a high state of excitement for several months past—and also the wives of David and Wade Walker, all sisters to the unfortunate subject of your clemency—if these names be on the remonstrance, as is reported, they have been constrained to put them there, or have been added without their consent. I pity the dear children, with a tender father's pity, and lament the departure from the well known humane and moral character of my family.

This unnatural and unholy excitement has abused the public mind, and prejudiced this case more than any other within my knowledge since we had a government. The verdict of the jury, manifestly contrary to the law and evidence, is the effect of this corrupt influence of which I complain, and against which all enlightened humanity will hereafter protest—to which I implore your most earnest attention; and in this enlightened republic let it never be recorded that any unfortunate being was deprived of his life by such a corrupt and satanic procedure. May the constituted powers of earth forbid it!—may an overruling Providence prevent it, and shield the honor of the Commonwealth from the accursed blot.

The argument of Mr. Hardin, the Secretary of State, as I understood it, by which I supposed he attempted to influence the decision in this case, is, to me, futile and delusive, (that is,) that the Executive has no right to examine or decide upon facts and evidence that was before the Court, &c. The Governor is vested with pardoning power. We complain that injustice has been done, that a verdict has been rendered contrary to law and evidence in this case, and the life of an individual put in jeopardy. We complain that it was induced by an illegal, corrupt, and undue influence. We lay before the Governor the facts, evidence, and all the documents connected. How can the Governor arrive at a just knowledge and decision of the case, and withhold these documents? I ask, if they are not to be noticed, upon what will the Governor found his decision? Shall it be founded upon public clamor?—does not all the intelligent world know that public clamor is enveloped in ignorance and error? I could easily shew by further reasoning, that the argument is a dangerous one, and, if adopted, I see no utility in vesting the Governor with pardoning power. How is injustice to be remedied!—how is jeopardied life to be relieved? I am at a loss to know.

I could relate much more of the iniquity of the history of this case, but I will not weary you. I leave the matter in your hands. I ask both justice and mercy. God delights in mercy and not in sacrifice. May the same good spirit influence the hearts of all men vested with power.

Very respectfully, your humble servant,

A. BAKER.

To HIS EXCELLENCY, WILLIAM OWSLEY,

GOVERNOR OF THE COMMONWEALTH OF KENTUCKY:

Your petitioners state they have been acquainted with Doctor Abner

Baker, who is convicted for killing Daniel Bates, and who we present to your Excellency as an object of mercy, and one who we believe is not subject to the penalty of the law. We state that Dr. Baker is by nature a high and lofty minded man, as incapable of stooping to a low or mean act as any man living—his capacity and qualifications fine—he promised to be useful to himself and society—his prospects were fair and promising. Among the people, he was popular, beloved, and respected, both as a man and a physician.

But the Lord laid on him his afflicting hand—his mind was impaired and exhibited signs of derangement which increased and was developed in the destruction of D. Bates. We state that previous to this unfortunate event, and at the time, he was under such a state of derangement, that he had no control over his mind—he did imagine, just as the notion would flit across his deluded mind, that that which was palpably wrong was perfectly right, as the killing of Mr. Bates; and that individuals contemplated his death, and that combinations were formed against him for evil—and that his father and mother and his best and nearest friends were his greatest enemies. No reason nor argument could change his mind. He has no reasoning mind on certain subjects, which is fully represented in the documents before you—we mean the subject of his wife and Bates, &c. Here it is plain he believed that that which was evidently wrong in the sight of God and man, he firmly, under his delusion, believed to be right. It is then clear to every rational mind that said Baker did not know right from wrong, as to the object of his attack, and then not responsible for the act, and so innocent of the murder of Bates, it having been the effect of insane delusion. He was evidently excited by Bates' threats, as proved by more than one witness, and was beyond doubt, irresistibly compelled under his derangement, and he had no rational control over himself to prevent the deed at a moment when, from the threats of Bates, or the information of Cobb and Morris, two witnesses, he was excited to a high degree and believed that Bates would kill him if he did not prevent him by killing Bates first. We believe that deranged persons are capable of excitement, anger and revenge. Several of the subscribers have seen Dr. Abner Baker from time to time since his conviction, and we believe he is still a deranged man, and that lately he has attempted his life. And we further believe it would be murder to inflict the sentence of law upon him. We further state that, said Baker's deluded mind may be clearly seen in this: He believes that Judge Robertson and John Moore, two lawyers that appeared for him, came to Court and designed to have him convicted. He regards them, under his delusion, as his enemies.

We therefore beseech your Excellency to reconsider the case of said Baker and grant him a pardon, which, we have no doubt, will meet the public approbation.

THOS. T. GARRARD,
WILLIAM GARRARD,
DANIEL GARRARD,
J. H. GARRARD,
S. M. WILLIAMS,
W. H. YOUNG.

From observation and testimony, we believe every fact stated in the above petition, to be true.

S. C. PEARL,
HUMPHREY T. JACKSON,
ABRAHAM BAUGH,
THOS. W. POPE.

From the testimony and my own observation, I have no doubt of the facts stated in this petition.

J. A. MOORE.

I concur in the above of Mr. Moore.

SAMUEL EVESWORTH.

Being present during part of the trial of Baker for the murder of Bates, and conversing with all the witnesses, and from being acquainted with Baker for a long time, I honestly believe the statements as made in the foregoing petition.

C. KIRTLEY.

WOODBOURNE, Ten., August 11, 1845.

Gov. OWSLEY:

My Dear Sir—Oh cannot you grant my dear brother his precious life? I beg it of you, unworthy as it is,—poor, unfortunate, heart-broken brother! Oh that he was a christian! then I could see him die. Oh! pardon him: again I beseech a pardon for him. A kind and merciful God will grant you a greater reward in heaven,—This is the petition of his much distressed sister.

Yours, with much respect,

E. B. CROZIER.

[This letter addressed to Capt. Baker, was, in part, read to the Governor.]

SALT WORKS, September 18, 1845.

Capt. A. BAKER:

Dear Sir—I received your letter and pamphlets by Mr. Mershon last evening, and to-day went to see Abner for the first time since he wounded himself. He was glad to see me. Asked me if I had brought my musket with me. Said there were some negroes above him which annoyed him very much. They threw dust in his eyes, and he wished me to stay in jail with him. He told me he had a visit from a most beautiful woman at his bed-side. She had a fine bunch of flowers which she offered him, but he declined accepting. She then pulled them to pieces and strewed them over him. She told him he thought he knew a good deal about his wife, but she knew much more than he did. I then gave him one of the pamphlets, after being inspected by the jailor. He thanked me for it. I told him to keep in good spirits. He said he was in good spirits. I fear he will be a confirmed lunatic if the Governor should pardon him,—which, from the opinion of all the medical men and the lawyers in the pamphlet, no governor will have the hardihood to refuse a pardon—so that I confidently expect a pardon. If Governor Owsley should not interpose his power in his behalf, he ought to be hunted down as a monster, too great to inhabit with civilized men or even savages. Gen. Dudley is here yet. He visited Abner at the jail. He is satisfied that Abner believes all his imaginary sayings are true. He thinks the evidence of the medical men ought to be conclusive. He will return home on Saturday or Sunday next. He has had a pretty severe attack of the diarrhœa with fever; but is so he can now go about. I shall attend to your request, if any accident should happen. Your friend,

DANL. GARRARD.

[Letter from Rev. John T. Higgins, Baptist clergyman.]

WALNUT FLAT, September 22, 1845.

DEAR Gov. OWSLEY:

I think myself happy that I am permitted by our peculiar form of government to have the privilege of addressing your Excellency as though you were my respected neighbor Samuel Owsley; and especially so, be-

cause I know you to be high in office, and I hope worthy of a high-minded and honorable people; and the importance of the subject will be the only apology I need for troubling you with these few lines. You are aware, no doubt, that the condition of the unfortunate Baker is at this time greatly exciting the community, and that it will form a peculiar feature in your administration for weal or wo; and that your name, connected with the office you fill, shall be recorded by the faithful page of history with credit to your posterity, is my sincere prayer and anxious desire. And that the extension of pardon, according to the provisions of the constitution, will contribute to that end I doubt not,—as I am strongly impressed with the belief that young Baker is a fit subject for the exercise of your clemency: as it seems to be the decided opinion of some of the ablest physicians and best lawyers of human nature, that he is now, and was at the time of his killing the lamented Bates, non compos mentis—under the influence of a diseased state of mind. And I can assure you that this impression is rapidly spreading in the community. So that, if he is executed, some hundreds may be gratified; but if he is pardoned thousands will rejoice: and I am induced to believe it will be to you, sir, a happy source of reflection while you live, and upon a dying bed, that you extended mercy to an unfortunat fellow-citizen condemned to die; and especially so as you hope for mercy at the hand of the God of the Universe at the Judgment Day. There is one more idea I beg leave to submit to your consideration; and that is this—that there is some personal feeling growing out of the two great political parties in the county of Garrard, and that many of your warmest friends are on one side, and the Baker family and connexion on the other; and if young Baker is not pardoned, I discover that many persons are about to conclude that has some influence with you in this matter. Now, sir, I for one, and I have no doubt many others agree with me, and are unwilling that any such dishonorable motives should be attributed to you. And again; I have heard the question asked, Why should not Baker be pardoned, when a negro from the county of Pulaski was? I assure you, my dear sir, there are very many of your best friends cannot divine the reason. But I forbear. I hope that you will do me the justice to believe that none but the most friendly feelings have prompted me in addressing you in so familiar a manner, and I can but hope that you will so decide this infinitely important matter that the aged and highly respected father and family of this ill-fated young man will remember you with everlasting gratitude. And may the wisdom and philanthropy of the Saviour of the world dwell in your bosom, and guide you while you live, and save you with the sacramental host of God's elect, is the prayer of your fellow-citizen, in the hope of immortality and eternal life, through Jesus Christ our Lord.

JOHN T. HIGGINS.

To WM. OWSLEY, Governor of Kentucky.

We do certify, that we agree in the above letter.

E. PENNINGTON,
DAYTON TUCKER,
ELISHA VAUGHAN,
THOMAS M. ROBERTS,
CLAYTON C. MONTGOMERY,
THOMAS BUFORD,
THOMAS B. MONTGOMERY.

* NOTE.—A negro man, having been convicted of murder in the county of Pulaski, for killing his wife, some of the counsel represented to the Executive that he was partially deranged, and that if the Governor would pardon him, he would be sent out of this Commonwealth. The petition was granted.

At a large and respectable meeting of the citizens of Lincoln county, held at the Court-House in Stanford, on Wednesday, September 24th, 1845, to take into consideration the case of Dr. Abner Baker, condemned to be hung on the first Friday of October, 1845, for the murder of Daniel Bates, and now in confinement in the jail of Clay county; Dr. A. G. Huffman, on motion, was called to the chair, and Robert Blain, jr., was appointed secretary. After reading various extracts from the evidence in the case by the chairman, the following resolutions were adopted:

Resolved. That it is the honest conviction of the persons composing this meeting, from the evidence in the case of Dr. Abner Baker, now under condemnation in Clay county jail for the murder of Daniel Bates, that said Baker is deranged, or a monomaniac, and consequently a fit subject for the interposition of the Governor in his behalf; and therefore we, the friends and acquaintances of his Excellency William Owsley, recommend to his mercy the said Abner Baker, and fondly hope he will interpose in his behalf and extend to him a pardon.

Resolved. That the proceedings of this meeting be signed by the chairman and secretary, and together with a petition signed by as many of those present as can be conveniently obtained, be transmitted to his Excellency William Owsley, Governor of Kentucky, forthwith.

On motion, the meeting adjourned.

A. G. HOFFMAN, *Chairman.*

ROBERT BLAIN, *Secretary.*

The undersigned petitioners unto his Excellency William Owsley, Governor of Kentucky, would humbly pray that you interpose in behalf of Dr. A. Baker, condemned to be hung for the murder of Daniel Bates, and now in confinement in the Clay county jail.

H. H. THURMAN, &c.

[One hundred and ten names signed.]

The officers of the 26th, 57th, 63d and 6th Regiments of Kentucky Militia having met at the bridge in the county of Lincoln and State of Kentucky, feeling it a privilege as well as a duty to express their opinion as to the sanity or insanity of Dr. Abner Baker, now confined in the jail of Clay county under sentence of death for killing Daniel Bates, organised themselves into a meeting, to take said matters into consideration. Major Wm. Daugherty was called to preside. A statement of the evidence introduced upon the trial of Dr. Baker, together with the opinions of medical gentlemen and others was thereupon read and the following resolutions unanimously adopted:

Resolved. That it is the opinion of this meeting that Dr. Abner Baker was before, at the time, and now is, laboring under insanity of a *marked* character, and that he is not a fit and proper subject for punishment; and we therefore most earnestly solicit his Excellency Governor Owsley, to grant him a pardon.

Resolved, further. That in the opinion of this meeting, no unprejudiced man can or will raise his voice against the pardon of Dr. Abner Baker, when he is fully advised of the circumstances and evidence touching this unfortunate case.

Resolved. That Dr. Theodore Dunlap, Col. Wm. Stein, Col. Thos. B. Dodd, and Col. John L. Barclay, be appointed a committee to transmit to the Governor a copy of the foregoing resolutions, accompanied with such remarks as they may think proper to make.

WM. DAUGHERTY, *President.*

TO HIS EXCELLENCY WILLIAM OWSLEY,
GOVERNOR OF KENTUCKY:

Dear Sir—The undersigned, appointed a committee upon the part of the meeting this day held in Lincoln county, at the bridge of Dix river, would represent to your Excellency that the meeting was composed of from sixty-five to seventy officers of the regiments aforesaid, besides some forty or fifty private citizens, who unanimously adopted the foregoing resolutions. And we, as the committee upon the part of said meeting, and as individuals, earnestly solicit a pardon for Dr. A. Baker, and hope your Excellency will grant it to him.

Very respectfully, your obedient servants,

WILLIAM STEIN,
JOHN L. BARCLAY,
T. B. DODD,
L. R. DUNLAP.

At a meeting of the citizens of Garrard county, held at the Court-house in the town of Lancaster, on Saturday the 27th day of September, 1845, agreeable to previous notice, on motion, Major Lewis Landram was called to the chair, who arose and explained the object of the meeting, and appointed Major Wm. B. Mason secretary; whereupon the following resolutions were unanimously adopted:

WHEREAS, the citizens of the county of Garrard, having heard and considered the testimony given on the trial of the Commonwealth against Dr. Abner Baker for killing his brother-in-law Daniel Bates; and whereas we do conscientiously believe that the accused was a monomaniac, and laboring under an insane delusion at the time he committed the act alleged against him, and as such we conceive it would not tend to the just advancement of criminal justice or to the honor of Kentucky, to execute the sentence of the law on him; and there being no person who can interpose in his present melancholy condition, except the Chief Executive officer of the State, therefore,

1st. *Resolved*, That we, the citizens of Garrard county, entertaining a profound respect for his Excellency William Owsley, Governor of the Commonwealth of Kentucky, do from our solemn convictions believe that the unfortunate condition of Dr. Baker, appeals justly to his Excellency for mercy; and we do therefore earnestly hope his Excellency will find it consistent with a faithful discharge of public duty to reconsider and extend a full and complete pardon to Dr. Baker, now under sentence of death—and

2nd. *Resolved*, That Joseph Hopper, Walter C. Bailey and Jas. Kinard, be appointed a committee to forward the wishes of this meeting to his Excellency William Owsley, Governor of the Commonwealth of Kentucky.

The meeting then adjourned.

L. LANDRAM, *President*.

WM. B. MASON, *Secretary*.

LANCASTER, KY., SEPT. 27, 1845.

TO HIS EXCELLENCY WILLIAM OWSLEY,
GOVERNOR OF KENTUCKY:

Dear Sir—The undersigned committee appointed at a meeting of the citizens of Garrard county, Ky., composed of between 150 and 200 persons held at the Court-house in the town of Lancaster on this day, do respect-

fully inclose to your Excellency the proceedings of said meeting, and we as individuals, earnestly solicit a pardon for Abner Baker.

Respectfully,

JAMES KINNARD,
JOSEPH HOPPER,
WALTER C. BAILEY.

MOUNT VERNON, September 14, 1845.

DEAR GOVERNOR:

You will see by my continued importunity, that I have not yet despaired in relation to the fate of Dr. Baker, and I must beseech your Excellency of your clemency to hear me once more in behalf of this unfortunate individual. I believe I know as much about his condition of mind from personal observation, as any other person except the physicians. I know as much about the mind of the country on the propriety of his execution, as any perhaps who has insisted on it, and I say to you, the country does not call for it. The country is not in favor of pardoning him by force, but the country is willing that it should be done by the Executive. The pardoning side is much the brightest side of the picture, and I have no doubt five will approve the pardoning act, to one who will say he desires the execution of this man. I do not believe that any man who has conversed with the Doctor as much as we have since he was first apprehended, will say he believes he is sane: and those who insist on his sanity, and consequent execution, are his enemies, employed to see that he dies. I do not say that all who have petitioned for Bakers' execution, are employed to do so; but I understand that some are so employed, and have contingent fees. Baker's lawyers, so far as I know, have no contingency about the matter. I understand some few individuals have written pressing letters to encourage the execution of Baker, because if he is pardoned, he will kill others. Now, this would likely be the case, or others would kill him: and I myself would perhaps be in as much danger as any other,—and perhaps all his counsel, for he says they tried to have him hung; and those generally who have done the most for him, even to his father and brothers, have alternately been the object of his hatred ever since the deed was done; and I understand for some time before, he was endeavoring to destroy the reputation of his father's family by talking about his step-mother and sisters keeping a house of bad fame in Lancaster, and that his younger sister, a little girl, being in the family way by Bates. And just recall to your recollection the evidence in relation to the treatment of his wife, and his charges upon her chastity—a young, innocent girl, about 14 years old, whose character is and always was unsullied as that of any female living. Now, could there be any design in all this? Was it the fruit of a mind that could design? Would any man who was sane concoct such tales? Would not even ordinary sense suggest that such things were unreasonable? If he had possessed sense, and had design in this matter, would he not have told things reasonable, or at least that had some semblance of plausibility?—Governor, I wish you could see him, or hear him state once these things and other broodings of his deluded mind, that you might see for yourself to what extent his mind is demented. Oh, you would not hesitate. I say *unhesitatingly*, you would not hesitate to extend to this unfortunate creature your pardoning power. Yes, and the country would be satisfied, and all excitement would cease, and the hostile parties become satisfied with each other. The Mr. Walkers who are insisting on his execution, (if indeed they are,) are the blood-relations of the deceased, and are doing what

they think they are in some degree bound to do, but they are clever men, and will no doubt be satisfied with a favorable result to Baker. They have been hostile to him, and have never, as I understand, conversed with him, so as to determine anything relative to his condition of mind. It is true that his condition of mind is such, that it would not do to turn him loose upon society. This is well known and admitted by his friends, but of course this affords no reason for his execution; I suppose he can be pardoned under such restrictions as will prevent bloodshed. You have been informed that his friends had it in contemplation to release him by force. I know nothing of this only from rumor, and I understand the first information on this subject came from this delusive creature to the guard. The people in these mountains will be the last of your subjects who will engage in and encourage *mob law*. Have mercy! Mercy is for him, who is exercised thereby. In great hopes of a merciful determination on the part of your Excellency, I subscribe myself your ob't serv't,

J. A. MOORE.

[A true copy.]

BEN. HARDIN, Secretary.

By W. C. ANDERSON.

Will of Daniel Bates, written before any difficulty occurred between Dr. A. Baker and himself, and is the only one that is known to have been made by him.

"Being in the enjoyment of my usual senses, I have thought proper, for reasons which are satisfactory to me, although in good health this day, make and declare my last will and testament. My will and desire that upon my death my wife shall have and enjoy forever one undivided fourth part of all my estate which may be left after the payment of all my just debts, to be disposed of according to her own good will and pleasure. 2nd. I will and desire that the remaining three-fourths of my estate be given to my two children, John and Mary, all the balance of my estate.

"I hereby nominate and appoint my friends D. V. Walker, Wm. J. Baker, Joel J. Walker, Frank Ballenger and George Stivers my executors of this my last will and testament. Given under my hand and seal this 25th June, 1844.

DANIEL BATES."

The following is the nuncupative will of the said Daniel Bates. The undersigned were present on the night of the 13th instant, in Clay county, at the salt furnace of Daniel Bates, about one mile and a quarter from the family residence of said Bates, which was during the last illness of said Bates, and whilst he was laboring under a mortal wound from a pistol shot, which the said Bates said was inflicted by Abner Baker, jr. Whilst the said Bates was ill from the wound aforesaid, he requested us to bear evidence of his request. He requested the undersigned Davis to give the undersigned Potter his pocket book which he said contained one thousand five hundred and fifty dollars, and requested said Potter to give the pocket book and its

contents to his brother-in-law, D. V. Walker. The said Daniel Bates informed us that he had a will in his desk at his residence, which he wished destroyed, and that his wish was, that the law in regard to his estate, should take its course and govern. He requested in our presence, that his estate should be managed by David V. Walker, Barton Potter, and Leander Miller.

JOSIAH DAVIS,
WILLIAM WOODCOCK,
BARTON POTTER,
JAMES T. WOODARD.

SEPT. 19th, 1844.

"The undersigned further state that the above Daniel Bates, during the night above named, requested that his slaves Joe Nash and wife, Lucy and his negro man Pompey should be set free. We further state that the said Daniel Bates stated to us that he had been shot by the said Abner Baker, jr., without cause or provocation. That he never had harmed him. That he wished said Baker brought to justice. That he would give ten thousand dollars for his scalp, and he wished that sum expended to bring him to justice. He further called on those present in our presence to request James B. Walker and Joel J. Walker to see that he had justice done him.

JAMES T. WOODARD,
JOSIAH DAVIS."

SEPT. 19th, 1844.

[A copy attest.]

WILLIAM WOODCOCK, Clerk.

The publisher regrets that he has been unable to procure copies of the petitions and affidavits referred to in the following letter.

It was stated in the affidavits of Capt. A. Baker and his son Hervey, and also by others, that Dr. A. Baker was a *maniac*. If the copies can be procured in time they will appear in the appendix.

LEXINGTON, 20TH SEPTEMBER, 1845.

My Dear Sir:—I have just received yours of this morning, informing me that the Governor had authorised you to say, "that upon consideration of the petition presented to him the day before yesterday by Capt. Baker and his son Hervey, he is of the opinion that he has no official authority to institute, or direct any inquisition or legal inquiry as to the sanity or insanity of Dr. Abner Baker, or to order his removal from his present place of confinement for the purpose of any such inquisition. These matters, he thinks, belongs to the judiciary, and to them must be left the duty of applying whatsoever proceeding or remedy the law allows. The Governor further says, he would be glad to hear the grounds upon which you supposed him authorised to institute such an inquisition or to remove Dr. Baker."

Availing myself of this invitation by the Governor, I will, through you, as his selected organ of communication on this occasion, suggest the general considerations which induced me to suppose that he has legal authority to do all the petition alluded to, requests him to do.

1st. If a man, sentenced to death, be insane after judgment, the law requires that he should be respited until he shall become *compos mentis*—and his execution, when insane, would be wrong and inconsistent with the policy and justice of the law.

2nd. In England, the judiciary has power to respite on the ground of insanity *whenever that disability can be pleaded against entering judgment on the verdict, or against issuing a warrant of execution on the judgment, because the case is still open and under the power of the court.* But here in Kentucky the judgment fixes the time and place of execution, and gives the only warrant for execution:—and, consequently, after such judgment and the final adjournment of the court, the judge who rendered the judgment, is, as to that case, *functus officii*, and has no more jurisdiction over it than any other circuit judge of the State. And it is worthy of grave consideration whether, after the judiciary has thus exercised its jurisdiction and consigned the convict to the executive department, it can exert any other power in the case. In some of the States of our Union, and in New York especially, there is statutory provision for trying the question of insanity in just such a state of case. But there is none such in Kentucky. And I apprehend that here the only object of an inquisition would be to subserve the power of respiting or pardoning by the Governor. The only reason why insanity, after sentence, should suspend execution is because the insensate is not in a proper condition for prosecuting his claims to a pardon.

3rd. In Kentucky, has not the Governor alone power to suspend execution after judgment and the adjournment of the convicting court? The prisoner is then in his exclusive custody—for he is the head of the executive department, and the jailor is but his subaltern agent or minister, and is subject to his supervision and control. And who but himself can change that imprisonment, or rescue from the judgment as rendered?

4th. As the Governor has the sole power to pardon and liberate the prisoner, either absolutely or conditionally, he surely must possess all subordinate or subservient power comprehended in, or subsidiary to the exercise of this plenary power. If he can liberate him unconditionally, he can certainly do so on condition that he be found a lunatic and be placed in the Asylum, and consequently as the prisoner cannot be placed in the Asylum without an inquisition, the Governor can authorise the inquisition and the prisoner's removal so far as it may be proper—and if the inquisition find the lunacy, the Governor can alone remit the imprisonment and punishment adjudged by the court, and authorise and compel the jailor to surrender the custody of him, and deliver him to a different custody. And this he can do under his *exclusive* power to respite and pardon.

5th. Why, without the authorisation of the Governor, would a judge hold an inquisition, when, even if the prisoner be found a lunatic, the judge cannot remit the judgment of conviction, nor substitute any other custody than the legal imprisonment adjudged against him? The judiciary, in the case of Dr. Baker, has no pow-

er now to suspend or remit the punishment adjudged against him. The only constitutional power is in the Governor. It seems to me, therefore, that the Governor undoubtedly possesses and ought to exercise the authority to direct the inquisition which has been called for by the petition, as he alone can give the full and proper legal benefit of a finding of lunacy, and no one but himself can know what he will do in the event of such a finding, which can have no beneficial effect unless he shall choose to grant a respite or pardon, and which finding may also be desired by him to enable him to decide whether he ought to grant a respite or pardon.

6th. I apprehend that a *habeas corpus* from a judge would not be obeyed without the Governor's endorsement—and if he have power thus to effectuate it, he must have power to direct the removal for the same purpose without the judicial writ, which, without his concurrence, would be ineffectual. And if a formal writ shall be required, (though I cannot imagine why,) may not the Governor say to the jailor that, in the event of its being presented to him, he shall obey it? And why, or for what end, or with what hopes, should an application be made to a judge without the Governor's official sanction and co-operation? No judge *now* can have jurisdiction to hold an inquisition for any other purpose than to enable the Governor to grant a respite or a conditional pardon and change of custody. Ought not the Governor then to institute this inquiry—and can it be either legally or availably had without his direction for the purpose of subserving his official action?

7th. Having said that there is no statute of Kentucky providing for a judicial intervention in a case of insanity after judgment of conviction, may I not now add that our *habeas corpus* statutes constructively deny the power of a judge to issue a *habeas corpus* in favor of a convict imprisoned under a final judgment for felony, and *murder especially?* See act of 1797.

In such a case there is no revisory power nor any authority to prevent execution elsewhere lodged by our law than in the Executive. And should a Judge strain a point and issue such a writ, and hold an inquisition finding lunacy, what will he then do with the prisoner? *He* cannot avert the sentence of the law by depositing the prisoner in an Asylum—for, by putting him there, the judgment is suspended or nullified—and the constitution concedes this power to the Governor only. For what purpose then will he hold the inquisition? Certainly there can be no other than to furnish to the Governor a new fact entitling the prisoner to a suspension of the judgment and a change of custody, which the Governor alone can order. And how does the Judge know that the Governor desires this, or will recognise, or act on it? And after the inquisition, what is he to do with the prisoner? And whence did he derive authority to take him out of jail? And suppose the prisoner shall escape. Who will be responsible? He took him *from Executive* custody without authority, and had no such power of safe keeping as the Executive magistracy had. But if the Governor order him to be brought out for inquisi-

tion and he escape, there can be no complaint, because he was still, as before, in the Governor's custody, and might have been constitutionally liberated by him altogether.

It seems to me, therefore, that the Governor now has exclusive power in the case, and I cannot doubt that it is sufficient for every purpose of respite, or pardon absolute or conditional. Having the exclusive power of respite and of pardon, he must have power to employ all non-prohibited means which may be necessary and proper for enabling him to exercise this unqualified power understandingly, justly, and effectually. But, if the Governor persist in a different conclusion, we must try the Judiciary. And in that event, *may we expect an Executive order to the Jailor to obey the mandate of the Judge?**

These, sir, are, very hastily my general views—and which I desire you to submit to the Governor in his official capacity. I have no other authorities than the reasons I have just suggested and the fact that there is no opposing precedent, statute or other authority—and the probable and almost certain and very singular circumstance also that, while the Judiciary cannot act without executive authority or sanction in advance, if the Governor, doubting his own power, shall refuse to act, a man known to be insane may be unjustly hung to the discredit of the Commonwealth, to the mortification of its just citizens, and to the disparagement either of its functionaries or its jurisprudence.

We care not about the form of the inquisition—whether it be by the Governor's own inspection, or by proof, or trial. But an inquisition we ask, and to one, in some form, we are, as we humbly think, undoubtedly entitled. And we are sure that we cannot procure one without Executive sanction, and co-operation, nor for any other end than Executive information and action.

Yours, &c.,

G. ROBERTSON.

TO HON. JOHN J. CRITTENDEN.

[A true copy.]

SEPT. 29th, 1845.

Dear Governor:—If you intend to permit my son to die, for God's sake intimate it to me, and relieve me from this suspense.

A. BAKER.

As soon as it was ascertained that the Governor had declined extending his constitutional power to pardon Dr. Baker, and that he had further declined issuing the writ of inquiry—alleging that this power was vested in the Judiciary only—application was made to Judge Buckner for that inquisition. The following letter will explain the purport of this petition and response of Judge Buckner:

LEXINGTON, Oct. 1st, 1845.

Dear Sir:—Application has this day been made to me on the pe-

* No response to this inquiry was received, as the publisher was informed.

ution of A. Baker, sr., for a writ of habeas corpus in favor of A. Baker, jr., now under sentence of death by the judgment of the Clay Circuit Court. The object of the petition is to have an inquest of lunacy. The fact of lunacy at the commission of the crime has already been tried, but the petition charges that he then labored under monomania, but that it is now total mania.

I am of the opinion that I have the power to hold such inquest, and would grant the writ, if it would not interfere with the execution of the sentence of another Court. If he were now found of unsound mind, it could be of no avail, unless you should thereafter think proper to interfere. But if you shall think proper to respite the execution of the sentence, I will grant the writ and direct the inquest as a means of ascertaining a fact to satisfy your mind. The object of the suspension, at this time, is only to give time to hold an inquisition.

Yours, &c.

R. A. BUCKNER, Jr.

Gov. OWSLEY, Frankfort, Ky.

When the above letter was presented to the Governor, he observed that he would consider of it by morning, (Thursday, one day preceding the day of execution.) It was represented to him that it would be impossible to reach the prisoner in time to suspend the execution, if he delayed granting the respite until the next day. He then remarked he had decided the case and would not take it up again—and when he was informed that the friends of Dr. Baker had been induced to believe that he intended to grant a pardon or further respite, from the impressions made by him to Dr. Baker's friends and his own relatives—and that he was awaiting the arrival of Gen. Dudley before he could decide upon the case—the Governor replied that he had "*never intended pardoning Dr. Baker*"—that he had "no idea of turning him loose upon the community."

The Governor having, a few days before the execution, expressed great anxiety to see Gen. Dudley, and that he could not determine upon Dr. Baker's case until he (Gen. Dudley) should arrive, it was reasonably anticipated that Gen. Dudley gave some opinion in relation to this extraordinary case. The publisher wishing to learn the facts, believing it but justice to make the result of his investigations known to the community, addressed to him the following letter—to which no reply has been received:

LOUISVILLE, Ky. Nov. 25th, 1845.

Dear Sir:—I am preparing for publication the Life and Trial of Dr. A. Baker, with a narrative of the circumstances attending his execution. Desiring to give a true history of the case, and to publish the facts that have occurred, I will take it as a favor if you will give me the information as requested below. If the Governor requested of you, either directly or indirectly, any information in relation to Dr. Baker's state of mind when you were in Clay county; and whether he urged your return to Frankfort, giving you any intimation

that such information was desired by him? And what was the purport of this information that you may have given him, either while you were in Clay, or upon your return? Your early reply will oblige, very respectfully, yours.

C. W. CROZIER.

Gen. PETER DUDLEY, Frankfort, Ky.

It will perhaps be expected that the publisher will detail the character and conduct of the prosecuting party. It would be unpleasant, and the publisher has no desire to expose to public view the base and malicious conduct of any who have been engaged in bringing to an untimely end an unfortunate and deranged man, farther than the facts and circumstances make it his imperative duty.

Believing it due to the memory of Dr. A. Baker, and the community, that the *truth* shall be given, it may be absolutely necessary to exhibit the true character and disposition of certain persons concerned in this persecution.

The fact that during the trial of Dr. A. Baker the prosecuting party, amounting to some thirty and more persons, were constantly armed and exposed their arms to the Court and Jury, is stated by so many responsible and respectable persons that it will hardly be disputed. In relation to this fact, a gentleman writes as follows:—"You ask me for such information as will aid you in giving a correct narrative of the late mob, &c. The number of arms and armed men they had at their command during the trial I cannot ascertain, but I can safely say they thought they had a sufficient quantity to kill every friend Abner had upon the ground within five minutes after a difficulty might have been commenced." Another gentleman writes, May 6th, 1845:—"John Kinningham, of Clay, has visited Knox county, and procured all the pistols he could get, stating they intended to give them (the friends of Baker) a battle." Another states that "from the time it was known that Dr. Baker had returned, great excitement was manifested by the Walkers, Whites, and others, many of them armed with rifles, pistols, double-barreled shot-guns," &c. "While the trial of Dr. A. Baker was progressing before the Court, armed men were placed about the doors and windows, and a number of guns were deposited in several places in the town of Manchester, at the instigation of the prosecutors."

After the Governor had refused a pardon, Dr. A. Baker addressed a letter to one of his brothers as follows:

"Don't fail to thank the ladies who have honored me with their visits while in prison. Place this upon my grave:

'DR. A. BAKER,

'Died of his own hand on the — day of —, after being convicted, by a jury of his country calling themselves honest men, for shooting his brother-in-law for having illicit intercourse with his wife:

'Aged 33.—1845.'

"I have this morning heard that the Governor refuses to pardon me, and I here take occasion to vouch with my blood the truth of the statements that I have made in relation to the difficulties that brought about my conviction. I die without having been heard, and the fault was in a great measure with my counsel; or, if Mrs. Bates had come up and stated the truth, I would have been acquitted.

"I want you to insist in my writing, that I would not exchange my feelings and my death for Mrs. Bates' feelings and her life; and that my last great glory is, that D. Bates fell by my own hands—not that I loved him less, but that I loved honor more; so his friends may attribute his death to his own baseness and nothing else."

After this was written, Dr. Baker attempted to take his own life with a small penknife, by cutting the femoral artery: he made an incision of some two inches in length, about two inches below Poursart's ligament. This wound caused a great loss of blood, and being greatly exhausted, and his extremities cold, believing himself to be near his end, he repeated and reiterated the charges against his wife and Bates, and assured those present that all his statements in relation to them, were, most positively and unequivocally, true in every particular, and that he left the world confident that posterity would do him justice, and would be convinced of the veracity of these charges.

The father, hearing of the circumstance, that his son had inflicted a mortal wound, hastened out to see him in his supposed dying moments. Upon reaching the jail, he asked permission of one of the officers of the guard to see his son Abner, and was refused! He renewed the request to the jailor, and was again refused. In looking around the guard, he observed a number of his old acquaintances, reminded them of his long residence in Clay, of some twenty-five years, and that he had, during that period, endeavored to sustain the laws of the Commonwealth, and to establish law and morality among them—that they had once acknowledged his services—he had fed and clothed their poor and destitute—and, as they knew, had provided for the sick, administering to their wants, and waiting upon them at unseasonable hours—and demanded of them if he had taken any pay for these services. "And is this my reward—that I am denied the last opportunity of seeing my unfortunate son?" Finding it unavailing to make any other request, the father left, and traveled some fifty miles to get the Judge of the circuit to give a letter of permission for the desired interview. The Judge requested one of the prosecuting lawyers to write a letter. The letter was written, leaving it optional with the jailor to grant or refuse the interview. The father returned—and met with the same denial. These facts were all made known to the Executive, who was also called upon for a letter of admission. The Governor prepared a letter of the same import and

construction to the one signed by Judge Quarles. The father consequently never had the desired interview.*

As soon as it was understood by the prosecuting party that a pardon had been refused, they collected their forces, and, with a savage

*"One of Dr. A. Baker's sisters, residing in Tennessee, hearing that the Governor had refused to pardon her brother, was deeply and sorely distressed. This sister was unable to attend the trial—and as she would have been an important witness in establishing the fact of her brother's insanity, she resolved to visit the Governor and make her statement to him, hoping that if his mind could be convinced on this point, he would not refuse a pardon. At her earnest solicitation, her husband consented that the visit should be made—hoping that if her petition was denied, that it might be some consolation to her distressed feelings, that she had made an effort to save the life of her unfortunate brother. They traveled to the seat of government with but little delay, stopping but one night at her father's on the way. The father, witnessing her great distress, neither encouraged or endeavored to dissuade her from her visit. Some of her brothers, however, were much opposed to it, and used every argument to prevent the visit; but she determined to see the Governor—and, having her statement written out for fear she might not be enabled to repeat it, arriving at Frankfort, a worthy and feeling magistrate is introduced to sign the affidavit. He casually remarked that he regretted to say that the Governor is understood to have made known that he will receive no more petitions in relation to a pardon. This unexpected information was like an electric shock to her feelings. She could barely say "I can but try." Repairing to the Secretary's office, she is introduced to the Governor, and, unable to suppress her feelings any longer, she ran to the Governor, with uplifted hands and streaming eyes, crying out, "Oh, my brother!—my poor dying brother!—would to God I could be the humble instrument by which my brother could be saved from an unjust and cruel death. I have visited you, in opposition to most of my friends, believing and feeling it my duty—my conscience has urged me, and my Father in Heaven has forced me here. I have had no peace, day or night—see you I must. And now, sir, you have it in your power to relieve so many broken hearts—the almost broken heart of your old grey-headed friend, and my own dear father, whom I love much. Can you, sir, take any pleasure in causing so much distress and unhappiness?" Taking the Governor by the hand, she told him that she looked upon every grey-headed man as a father, and asked if he had not children that he loved. "My old father loves his son, and I love him too"—and falling upon her knees before him, she implored for one blessing—

"Oh, give my troubled conscience peace,
And grant my brother soon release."

During this time the windows and doors of the office were crowded with spectators. It is said a number of them were deeply affected. One little boy returning home in tears, was asked the cause of his distress by his mother. He replied he could not help it, to "see that poor distressed lady begging for the life of her brother."

The Governor was apparently unaffected, but somewhat disconcerted with the noise, requested the husband to prevent this noise and confusion—that he would dislike to have his wife taken away. He was told such an exhibition of feeling was not anticipated, and her husband was opposed to it, and had endeavored to prevent it. The husband then read the affidavit to the Governor. So apparently cold and unfeeling was the manner of the Executive, that it was remarked there could be no hope of a pardon. A stranger, believing such to be the feeling of the Governor, put a note in the hands of the husband with this question "Can you not get him to grant a respite until the meeting of the legislature."

The Governor, seemingly desirous to get rid of his company by request, made an appointment to meet them at his own house at 3 P. M. They met at the place and time appointed. One of the Governor's daughters being present, observed that she had told her father Dr. Baker was deranged before he separated from his wife."

yell, tore down the steps and platform of the jail, that there might be no access to the doomed inmate.

Formidable preparations were made by augmenting the number of the guard, (by order of Judge Quarles,) to one hundred and more. Pickets were erected and port-holes made; and shortly afterwards the Madison county militia were ordered out by the Executive. A quantity of fire arms and large supplies of powder and lead, furnished through the prosecuting party at Richmond, were despatched with all possible haste.

A monomaniac had inflicted a deep wound in attempting to commit suicide—stretched on his couch—emaciated—feeble—powerless: the prison door some twelve or fifteen feet above the level of the ground—surrounded by a guard of some 150 men—fortified by picketing, &c. Yet, notwithstanding all these formidable preparations, the Commonwealth—the Executive—the *Private Secretary*, &c. &c., are under great apprehension and alarm that the prisoner will, by some unforeseen and extraordinary feat, effect his liberation, and escape the ‘much desired and ignominious death of the gallows.’

Description of the Town of Manchester, County Jail, &c., by a Correspondent.

“The town of Manchester is situated upon a hill, about three hundred feet above the level of the waters of Goose creek. The creek surrounds about two-thirds or three-fifths of the town, forming something like an elbow. About one-third round the town the hill is very steep. Going up the hill through Main street, from south to north, there is a gradual, but steep ascent, on which, and at its bottom, several houses are built. On the top of the hill there are three or four acres of level land. Main street runs through near the middle of this level, being pretty much north and south.

“The Court yard, or public square, fronts the east side of Main street. The Court house is built in the front part of the square, the front door being about 15 feet from the street. The jail is in the back part of the square, behind the Court house, and rather at the south-east end, being some forty yards from the Court house. There are three long windows up stairs in the Court house, on each side, with shutters. The jail is built of foot square oak logs, lined with inch and a half oak plank, with four twenty penny nails to each inch and a half; then a brick wall on the outside fifteen inches thick. The windows in the jail are mere air holes, being only nine inches square with iron cross bars.

“Around the jail were erected pickets fifteen feet long, placed about two feet in the ground, with port holes at convenient distances, and bastions made of picketing, to rake the sides. The fort was fifty or sixty feet square. There were fences behind the jail, and a corn-field extending some three hundred yards to the creek. Part of the fencing was pulled down, corn topped or cut up, scaffolds erected with kettles on top, on which was kept up fire during night. There were also similar fires on other sides of the Court yard.

"The guard, composed of men from the counties of Clay, Knox, Laurel, and Owsley, were from 125 to 225 strong. These men lodged in the Court house, above and below stairs, and within the picketing.

"The Madison militia, of upwards of 130, occupied camp-tents to the number of five, ranged up and down Main street. The Colonel and part of the militia occupied some houses on Main street, opposite side from the Court house.

"Sentinels were posted out—drill, dress, and parade musters were carried on—together with all other duties of a regular camp. * * * * *

"As to Dr. Baker's ever being intoxicated, there is not a particle of truth in the charge. When he cut himself, I procured some whiskey for him to drink and to dress his wound. He did drink some, but never was, in my opinion, the least intoxicated. It is like the thousand other falsehoods that have been raised and told, by hired tools, to blacken his character. One of the guards, who was constantly in or near the jail, bears me out in this.

"They have circulated that he used profane language under the gallows, swore oaths, &c.—that he denied that any one but himself knew his motive for killing Bates, &c. To all these I universally give, and am always ready to give under oath or otherwise, the direct lie."

Dr. Abner Baker having voluntarily surrendered himself for trial by an enquiring court, was, by that court discharged on full proof of insanity, and one of the witnesses who testified to that insanity was Gen. Hugh White, the grand father of his wife. His family then intended to send him to the Asylum at Lexington, but being advised that a southern climate would improve his health, and thereby restore his mind and feeling, also apprehensive that the prosecuting party might pretend to consider the sending of him to the Asylum as a trick to elude punishment, they sent him to Cuba. Where he remained, much to his benefit, until he was brought back by his brothers, in consequence of a proclamation by the Governor of Kentucky, advertising him as a fugitive from justice. He was by them placed in the jail of Clay county, to be tried at a special term fixed for the 7th July. When his trial commenced, his friends were so thoroughly convinced of his insanity, that they felt no apprehension of his conviction. Their only fear was that the overwhelming influence of the wealthy prosecutors and Daniel Bates's legacy of \$10,000 for his execution, might produce a hung jury, and thus continue his imprisonment to the peril of his life. But few jurors were challenged and several were taken who had formed unfavorable opinions, but had not, *as they said*, expressed them. During the trial, armed men of the prosecuting party could be seen in almost every direction, and some of them significantly manifested their feelings to the jury by significant gesticulations and expressions of face. After the argument the jury remained out about two days, during a great portion of which time a large body of influential men, most of them armed, stood *in full view of the jury*.

The testimony and argument had made the general impression that the prisoner would be acquitted, and even some of the prosecuting party were heard to say that he might as well be let loose at once. There was much testimony in his favor which was not examined, because his Counsel considered his defence complete and sure.

But to the general amazement, a verdict of "guilty" was finally returned. His Counsel, confident that he was insane and that the law would not convict him, intended to move for such instructions as if given would have insured his acquittal. But the judge had, before the argument to the jury so clearly and repeatedly intimated an opinion that there was no such legal disability as *monomania*, as to induce a belief that he would overrule every proper instruction that might be asked on that subject, and thereby preclude an acquittal by forestalling and preventing all argument to the jury on the law of the case. And when after the argument to the jury they (the jury) asked for an instruction on a single point, and the judge, by giving the law on that point substantially according to the view of the prisoner's Counsel evinced a radical change in his opinion, the Counsel had no right to move for instructions on other points equally essential to the safety of their client.

And thus in effect the whole case, law and all, was, from necessity, virtually submitted to the jury without any light from the court except on a single question, and consequently the verdict, if wrong, may be ascribed to the erroneous impressions manifested by the judge during the trial, and until it was too late to get before the jury the true law on every essential point.

A motion for a new trial was made on two general grounds. First, That the verdict was "guilty of *the charge* in the indictment," and it was contended that there was no charge of malice, and therefore the offence described in the indictment was not murder. And second, That the verdict was not authorised by the law and the facts. But, after able and elaborate argument, the judge overruled the motion, observing that during the argument to the jury, he had changed his opinion as to the law of the case, and also suggesting that a "new trial would be tantamount to an acquittal." Immediately after they were discharged eight of the jury signed a petition for a pardon, stating that they believed that the prisoner labored under insane delusion as to Bates when he shot him, and that he was insane on the trial, but that they believed that he had capacity enough to determine between right and wrong generally; and, therefore, as they understood the law, they felt bound to convict and present the prisoner to the Governor as a proper subject for pardon. Another of the jury afterwards signed a similar petition, and *the official attorney for the Commonwealth* also petitioned *on the ground of insanity*. Petitions were also signed by hundreds of the most respectable citizens of Clay, Laurel, Rockcastle, Lincoln, Garrard, Boyle, Fayette, Jefferson, and Franklin counties, and large popular meetings spontaneously convened in Garrard and Lincoln, earnestly appealed to the Governor for a pardon. Many of the most eminent

medical men in Kentucky carefully examined the evidence as certified, and *unanimously* expressed to the Governor their conviction that the prisoner was insane when he shot his brother-in-law, and that the shooting was the offspring of that insanity. And four distinguished jurists, on that hypothesis, gave to the Governor the opinion that the law did not authorise conviction and execution. And no contradicting professional opinion, medical or legal, was ever filed with his Excellency, as the publisher believes.

In addition to all these facts, numerous affidavits which cannot be conveniently published now, were laid before the Governor, averring facts strongly conducing to show the prisoner's insanity before, since, and about the time of Bates' death: and among these were those of Mrs. Judge White, Mrs. Cynthia Boyd, Mrs. Dr. Crozier, and of Dr. William J. Baker and his wife, of Knoxville, Tennessee—none of whom were witnesses on the trial.

To prevent a pardon, the prosecutors and some of their *hired* counsel (working for their shares of the \$10,000) procured, by various means, some remonstrances, signed chiefly by persons who were ignorant of both the law and the facts of the case, and in some instances by children. And they also published scurrilous pamphlets replete with defamation and misrepresentation, as the published evidence will in many instances show.

The petition of the jury and attorney for the Commonwealth, the opinions of medical and legal men, and some other important documents accompanying this publication—and when all shall have been examined, the inquiry will arise, Was any man, white or black, bond or free, ever hung in Kentucky, under such circumstances, and in defiance of such *uncontradicted facts* and opinions and of such petitions—especially by the jury and Commonwealth's Attorney? The memory of the sacrificed victim, and the feelings of his suffering friends, are deeply implicated in the melancholy issue; and consequently no important truth should be concealed. The publisher is ignorant of the motives which influenced either the jury or the Executive, and therefore he imputes to neither of them any thing sinister.

It has been said, however, that the Governor was under peculiar obligations to the father, and was, on that account anxious to pardon the son, and as this, unexplained, might imply that the Governor considered the case of Dr. Baker so clear and atrocious as to prevent any *honest* Executive from either arresting or suspending the sentence of the judge, the publisher feels it to be proper to make an explanation and suggestion; and for that purpose to publish a letter from the Governor to Capt. Baker,* on the subject of the Gubernatorial election, and to state that Capt. Baker, believing that the writer was not the proper man to run *that race*,—directly affecting, as he knew it would the then pending election of President, declined to aid in calling him out, and even refused to attend a meeting held for that purpose;

* This letter Capt. Baker declines giving to the public, as it is confidential.

and he feels it his duty also to publish the Governor's Proclamation, and the card of Capt. B., which he had published under it, to the Governor's great dissatisfaction. And he feels it likewise his duty to state that, while the prosecuting party were among the few active partizans who forced the nomination of the Governor, Capt. Baker and the friends of his wife, (a sister of an Ex-Governor,) though they were personally friendly to the Governor, were among the many Whigs who thought that some other man could be elected more triumphantly. And with these clues might it not be presumed that these more recent circumstances may have neutralized the Governor's rather antiquated obligations to Capt. Baker, arising from a long life of constant devotion to him, and of services in his behalf—commencing when the Governor was a teacher of a small reading school—and Capt. Baker prevailed on him to read law, and was instrumental in procuring for him books and instruction. The publisher considers it plain that his Excellency was not embarrassed by any undue bias in the prisoner's favor—and he would hope that no opposite feeling controlled his eventful and awfully responsible agency in the case of the unfortunate son of his once devoted friend.

Upon the presentation of the petitions for pardon, certificates of eminent physicians, and numerous corroborating affidavits and letters from persons as respectable as any in the west, the Governor determined to postpone a decision until after remonstrances should be received, and did not intimate any opinion until some time in August, when he directed a respite until the 3d of October, 1845.

But it being still believed by many persons, and among them some of the Governor's confidential friends, that he was inclined to consider the case further with reference to either a pardon, or a continued prolongation of the respite for legislative counsel, or for securing the prisoner in the Asylum, renewed efforts were made for obtaining some one of these ends, with the apparent approval of his excellency. No indication of his determination to do no more being known to the friends of the prisoner, but feeling assured that the prospect of his ultimate liberation was encouraging, they reposed in the confident hope that he would not be hung. But, to leave nothing undone which might be proper for his security, his father and one of his brothers, (Dr. Hervey Baker,) about three weeks before the third of October, presented to the governor their affidavits, accompanied by several other affidavits, averring that the prisoner was then insane, and petitioning for some sort of inquisition for satisfying his Excellency of that fact, so as to convince him that the execution would be illegal. After a consideration of several days, he communicated through a mutual friend, doubts whether the desired inquisition was not a judicial rather than executive matter; but invited argument or authorities to shew that it was within his official province. Thus invited, one of the counsel for the prisoner, to whom the communication was made, instantly addressed to the Governor a brief and general argument to show that he, and he only, had the power to do all that was desired. But knowing that an inquisition of lunacy would be useless, unless

the Governor would, on the report of it, either pardon or extend the respite, and apprehending that a *Habeas corpus* from a judge would not be obeyed without the Governor's sanction, *this counsel, in the same communication, requested to be informed whether, in the event of the Governor adhering to his opinion, that the inquisition was exclusively judicial, he would give his sanction to a writ of Habeas corpus, if one could be procured from a judge, and would authorize his jailor and his army to obey it.* There having been no response to this communication, the friends of the accused felt assured that the Governor intended to pardon him, or extend the respite to give time to settle the important question thus raised. And they were not undeceived until the father of the prisoner, on Wednesday morning before the execution, received, at his residence near Lancaster, intelligence (by express from a friend) of the astounding fact, that on the day before, (which was Tuesday preceding Friday, the day of execution,) the Governor had despatched a messenger to Clay county, to remove all doubt about the execution. The father instantly sent by express a petition to Judge Buckner at Lexington, for a *Habeas corpus*, to try the question of insanity since the conviction. The Judge inclining to grant the writ, but knowing that, if he should do so it would either not be obeyed without the Governor's approval, or if obeyed, that it would defeat the execution and would be without avail unless the Governor desired an inquisition, despatched a letter to that effect to the Governor, which he received about 10 o'clock Wednesday night; but to which he made no other response than to say to the messenger, "I will do nothing more." And thus all investigation into the question of insanity since the trial, and at the time of execution was prevented, and an insane man was hung in a most ferocious and diabolical manner for fifty-eight minutes, surrounded by his enemies and the Governor's army, and when, too, he was so feeble as to require to be held up while the executioner fixed the halter around his devoted neck. For some time previous to the day of execution, his hands had been tied behind him, all the comforts and consolations which friends could have administered were cruelly cut off. He had been mocked and insulted by his persecutors, and to insure his destruction, even in the event of a pardon, it is said that a barrel of powder had been burrowed under the jail ready for explosion at any moment.

And so ended a bloody tragedy, which the publisher cannot but consider one of official murder,—but, in respect to which this publication and subsequent facts will enable the present generation to pronounce a just sentence, which will abide "the scrutiny of talents and of time."

APPENDIX.

Pleas before Tunstall Quarles, Judge of the 15th Judicial District, Kentucky, on the 17th day of July, 1845.

At a Circuit Court begun and held for the county of Clay, at the Court-house thereof, in the town of Manchester, on Tuesday the 7th day of November, 1844, and on the third day of said term, the following order was made, to wit:

The Grand Jurors returned into Court the following indictment against Baker, to wit:

The Commonwealth of Kentucky, Clay County and Circuit, to wit:

The Grand Jurors for the Commonwealth aforesaid, good and lawful men, empannelled and sworn for the body of Clay county, upon their oaths, present that, Abner Baker, yeoman late of said county, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, and his own wicked mind and disposition, did, on the 13th day of September, in the year of our Lord one thousand eight hundred and forty-four, in said county, feloniously, and of his malice aforethought, make an assault upon a certain Daniel Bates, then and there being in the peace of God, by then and there shooting and discharging a pistol which was loaded with powder and leaden ball, which he had and held in his right hand, at the said Bates, which said ball so discharged from said pistol, did enter the back a little to the left of the back bone, and pass above the left hip of him the said Bates and penetrating into and through the bowels of him the said Bates, thereby inflicting one mortal wound upon the said Bates, of which said mortal wound so inflicted as aforesaid, he the said Bates did languish from the said thirteenth day of September, in the year aforesaid, until four o'clock in the morning of the fourteenth day of September in the year aforesaid, on which said last mentioned day he the said Bates of said mortal wound died, and so the jurors aforesaid, upon their oaths aforesaid, do say that, he said Abner Baker, in manner and form, and by the means aforesaid, in the county aforesaid, did feloniously kill, slay and murder the said Daniel Bates, against the laws of God and man, contrary to the statute in such cases made and provided, and against the peace and dignity of the Commonwealth of Kentucky, found upon the information of James White, Theophilus B. Garrard and Hugh White, not of the grand jury.

WILLIAM B. MOORE.

Attorney for the Commonwealth.

TO HIS EXCELLENCY WILLIAM OWSELY,

Governor of the Commonwealth of Kentucky:

The undersigned, the father of the unfortunate Abner Baker, who is now under guard in the jail of Clay county on a sentence of conviction for the alleged murder of Daniel Bates, begs leave respectfully to make known to you that his said son is now evidently and extensively insane in mind and in body, and is not a fit subject of legal punishment or imprisonment. Of this your petitioner has no doubt. His opinion is derived from his own personal observation of, and conversation with his said son since his conviction, and the concurrent opinion of many others who have, within a few days past, seen and conversed with him; and for further assurance, he refers you to the affidavit of Edward Cornett, and the certificates of Col. D. Garrard and others, now on file in your office, and all of whom aver that, when they certified, which was long since the conviction, the said convict was insane. Your petitioner is advised that, by the law of the land, a person insane *after conviction*, cannot be executed during his insanity. He also submits to your excellency, whether, under the plenary power of reprieve,

respite and pardon, you have not the authority to prevent the hanging of an insane man, by directing an inquisition to ascertain the present state of his mind, and in the event of a finding that his said son is now insane, by authorizing a remission of his imprisonment in a loathsome jail, the curation of him in the Lunatic Asylum, and a suspension of the execution of the sentence against him until he shall be restored to sound mind. For this your petitioner humbly, earnestly and respectfully, but confidently prays.

He also states that such are the excitement and prejudice in the county of Clay, that he could have no hope of a fair and just inquisition in that county. He would desire that his said son be brought either to Lexington or Frankfort, where intelligence, impartiality, and professional science would ensure a satisfactory investigation and decision.

He therefore petitions your Excellency to direct the jailor of Clay county to bring the said prisoner, with all the protecting force that may be deemed prudent to one of the places just mentioned, for the purpose of having an inquisition into his present state of mind, and for such ulterior action on your part, as, in your wisdom and justice you shall deem proper, as the only person who, under our constitution, has power to suspend the execution of an insane fellow-citizen, or extricate him from illegal sacrifice.

A. BAKER.

I have read the foregoing petition and fully concur therein. I too have seen the prisoner, A. Baker, since his conviction, and have received from the most credible sources, information confirmatory of my own undoubting conviction, that my said brother is now an insane man, and not a fit subject of legal punishment at this time or during the continuance of his present state of mental unsoundness.

H. BAKER.

Commonwealth of Kentucky, Town of Frankfort, Oct.:

This day, personally appeared before me, Police Judge of Frankfort, A. Baker and H. Baker, and subscribed and swore to the statements contained in the foregoing petition. Given under my hand, this 18th day of September, 1845.

L. HORD, J. P. F.

LANCASTER, Ky., Dec. 3d, 1845.

Dr. C. W. CROZIER,

Dear Sir:—You ask me to favor you with the last conversation had with Gov. Wm. Owsley, in relation to a pardon of my unfortunate and deranged son, Dr. A. Baker.

To comply with your request, so that it may be clearly understood, I must begin with my application to the Governor for a pardon, immediately after the verdict of the Jury was rendered.

I did believe, and do still believe most solemnly before God, that the verdict of 'guilty' rendered by the jury was the result of management, ignorance, and fear, under the influence of ten thousand dollars, the devise of Mr. Bates' ambition. In his dying moments, this sum he offered for Baker's scalp. I use the language of the dying man, which exhibits the spirit of revenge that marked his character both in life and death; and also the character of his relatives, Baker's persecutors. He knew that in a few moments he must be in the presence of the Judge of all the earth—how much better to have employed his last breath at the Throne of Grace, pleading to God for pardon and mercy.

The verdict, the sentence, and the refusal to grant a new trial, under all the circumstances, was contrary to the expectation, and to the expressed astonishment of all impartial persons who had witnessed the trial. The universal opinion, as far as expressed, (except by the prosecuting party,) was that law and justice had been trampled upon by a mob and faction in a revengeful and persecuting spirit. In what manner the \$10,000 has been disposed of I know not. It is said, contingent fees were promised, in the event of the execution, to several individuals who were engaged in pursuing their victim to the gallows with unrelenting and cruel persecution. All honest and experienced men know that nothing is more difficult than to find out the low, cunning, and secret doings of a vicious and corrupt combination. Their dark and concealed designs are plotted and executed at the midnight hour! How base, low, and degrading must be that wretch who abuses the

public mind and prejudices the case of an unfortunate deranged man, and pursues his victim with savage ferocity to the gallows—for a few paltry dollars. There are men who have acted the part assigned them in this tragedy, who are entitled to, and no doubt have received, *THE PRICE OF BLOOD!*

I will, however, at present forbear, as it is unpleasant to me to expose the acts of bad men, even when justice demands. I will leave them in the hands of others to tell the tale of their enormities.

But let the tale of woe be told from the bleeding heart of an affectionate *father*. They have persecuted my deranged son to the disgraceful death of the *gallows*.

Immediately after conviction, we petitioned the Governor for a pardon. I addressed him a letter, accompanied with the facts and evidence on the trial, written out by Col. A. R. McKee, Clerk of Garrard county, a man of high and unblemished character, who is known to write with great facility and correctness. These documents were accompanied by letters from Judge Robertson and several other eminent lawyers, and the opinions of eminent Medical practitioners. All of these documents were presented to the Governor by Judge Robertson, who informed me that the Governor would decide in a few days favorably, in his opinion, observing that it was impossible for him to do otherwise. I waited on the Governor accordingly, who informed me that he was notified by the opposition, (perhaps Col. Caperton,) that a remonstrance was being gotten up, and wished further time. I said I wished nothing but fairness—that we relied upon the documents filed on our part—and remarked that petitions with many names of men, women, and children, could know nothing of the merits of the case: but if the number of names to petitions were to be estimated, that we could obtain many petitions of respectable men. I asked his opinion in regard to petitions; he replied he would leave me to my own course, but he would say that petitions were of little importance. I again remarked that we relied upon the facts, evidence, &c., in his possession, and consequently made no effort to obtain names to petitions. However, some friends in different places, of their own accord, obtained and sent to the Governor a number of petitions for a pardon. It is very certain had the effort been made ten thousand names could have been procured in favor of a pardon. I afterwards waited on the Governor, and urged a decision by considerations that I thought merited attention—such as, my son's confinement in a small uncomfortable jail room, with but little air, his deranged condition, that he was emaciated and very feeble, and was necessarily obliged to submit to great privations; and that I had great fears that his malady would terminate in total derangement; and that if he should be pardoned, I intended placing him in the lunatic asylum at Lexington, with a hope of his restoration to health. I urged him, by the anxious feelings of a father and friends—the pain of heart under such circumstances—to hasten a decision. But I did not perceive that my importunities had any softening or favorable influence on the heart of the Governor, although he always treated me with customary business civility. It seemed to me that his inmost soul was distant and reserved, wrapt up in a mantle of ice!—repulsive, and apparently deaf to my importunity and to every consideration that I could offer. This I regarded as ominous of evil. But there was another circumstance that I thought unfavorable, which I will now barely notice. It was said that William Goodloe, (the Governor's son-in-law,) was the organ of Dr. Baker's vicious persecutors—that he received from that party, and handed over to the Governor, all communications made by them—that he corresponded with them, and when any statement or communication was made to the Governor in favor of Dr. Baker, he immediately communicated the fact to the prosecuting party. And it was also said that he offered to bet ten dollars to one that the Governor would not grant a pardon. I could make no certain calculations on the amount of his influence or feeling, yet I could not conceive in what way any high minded, humane, generous soul could aid in persecuting an unfortunate being to death, or lend himself to a vicious mob—this I concluded was impossible.

Oppressed, but not in despair—relying on the strength of the documents—I again waited on the Governor. The case was postponed again and again, with a resolve not to determine it until week after next—that he had not yet examined the papers, &c. This postponement consumed much the greatest part of the time allotted to the unfortunate man to live, and I began to fear design in this procrastination. In all this relation, I aim at nothing but unvarnished truth—simple matters of fact in justice to myself and my murdered son. I would not pluck

the smallest sprig from the wreath that adorns the Governor's brow. I have been his undeviating friend for forty years—we lived neighbors part of this time. At one period I acted, at his request as a mediator to bring about an adjustment of serious and unpleasant difficulties, that existed and continued for a long period between his family and connections, on the one part, and another family and connections, on the other part to-wit: * * * * two respectable parties, with whom I had been ever mutually friendly. It was my delight to restore peace and harmony. I was instrumental in arranging and effecting a meeting of the heads of the parties—succeeded in settling the old differences, and obtained from the parties their mutual assent to a restoration of peace and harmony and future unity and good feeling. But unfortunately the treaty of peace was soon violated: by whom I say not. But the bad spirit has been long since resuscitated, and I fear is now inhaling the breath of revenge—at least there are some visible sufferers. Little did I think the unfortunate son of the mediator was to be the sacrifice!

In my conversation, I remarked to the Governor, that he must not suppose that I made any calculation of favor on the ground of my long friendship and services. I said I relied upon the facts and host of testimony in the case. I hoped they were amply sufficient. But I confess I expected and looked, but watched in vain, for some kind emotions of soul. But oh, when I turned my vision upon the picture which presented itself to my mind—an old, grey-headed, and once an acknowledged benefactor, upwards of seventy years of age, the father of fourteen children, at the feet of this man with a heart of steel!—I was once his early and esteemed friend, chosen by his father as his adviser. To me he now turned with an indifferent, cold, and unfeeling manner. Now I was entreating for the life of my deranged, my youngest son, without being able to discover one kind emotion, or one kind feeling more than could be recognized in a rock of marble. My heart was broken, and my spirits were crushed within me. But I leave it to a kind and generous public to imagine my indescribable feelings.

After the last postponement—as I thought designedly to consume time—the Governor, callous to the painful sufferings of an unfortunate member of the human family, and to the feelings of an old father, his family and friends—I say, regardless of all these sufferings, elated with the dignity of his station, and blind to a sense of the more heavenly feelings, that ennoble, enrich and dignify man, in the similitude of a higher being, he leaves the seat of government, the situation and fate of the unfortunate prisoner apparently of but little importance, and visits in his carriage with his family his rich farm and friends in Boyle—spending several days in feasting and pleasure—thence to Lancaster, visiting his relatives apparently with an air of ease, consuming nearly another week. The pains of the sufferer increasing, spending sleepless nights in anxiety and restlessness. The Circuit Court being in session, the Governor might have had some matter of business, but thirty or forty days had already been consumed without attention to this very extraordinary case? Whilst the Governor was in Lancaster I met with him, and asked him when he thought he would decide my son's case. He answered, Not until the middle of next week. I said, I wished to be in Frankfort on Wednesday morning, will that be in time before you decide? Full time, he replied; for, said he, I shall not reach Frankfort until Saturday next, and I have not yet fully examined the papers. I shall not be able to decide sooner than the middle of the next week. According to understanding I was in Frankfort on Wednesday morning shortly after breakfast, and went to the Governor's office; was informed he was at the Palace. I walked over and had an interview with him. We were seated, when I asked him when he would decide the case of my son; he answered, to my great astonishment, that he had decided the case. I asked When. He said, On Monday last. Why, Governor, did you not tell me you could not decide until the middle of the week, and remarked, that if I would be here on Wednesday I would be in time before the case could be decided? And now you tell me you decided the case on Monday. How did you decide, Governor? He replied, "Against Dr. Baker, and added he could not do otherwise from all the circumstances. Why, said I, Governor, the circumstances of the case, the facts and the law are evidently all in his favor. Look at the host of evidence, the testimony of Dr. Richardson and many others; the opinions of many eminent medical men, who certainly understand this malady better than those who do not make it their study—it is a part of their science and profession. Do you get over all this testimony? He said, My responsibilities are great. It is my duty to see the laws executed. True,

said I, Governor, I am aware of the responsible station you fill; but do you say, Governor, that the false clamor of a revengeful and ambitious mob, with a lawyer at their head and ten thousand dollars at their will, to maintain and enforce the base passions that influence the faction, shall outweigh and influence your decision against the host of evidence in this case? The Governor said he had no right to notice the testimony before the Court or Jury. How then, Governor, are you to understand and arrive at a perfect knowledge of the case, if you set aside the positive evidence upon the trial? Is your decision in a case of life and death to be controlled by the clamor and basest passions of the human heart? My dear Governor, you ought to have told me long ago, that the book of testimony made up of responsible and unimpeachable evidence could not be noticed by you in making up your decision. Why did you conceal this important matter from me until after the decision? We asked you to correct the errors of the jury and the Court, made out through the misfortune of ignorance. We laid before you all the evidence before the Court, with much additional testimony, to enable you to decide correctly. Do you not know, Governor, that public clamor, public excitement, and public opinion are often the result of ignorance, ambition and error? Governor, by your reserve and distant deportment, from the first time this case was laid before you, I marked a concealed and hidden mystery that my dull powers could not comprehend. I was unwilling to indulge an unfavorable thought—supposed you meant no more than to maintain the dignity of your station, and establish a character of firmness and stability—and that you would do right.

Just now you have revealed the mystery. You tell me now, after the decision, what you must have always intended to disregard—the testimony on the part of my son—and let him die under the sentence.

But said I, Governor, let us reason a little farther. Can you say you have *no doubt* as to the insanity of my son? Since the world was created, did the law ever make it the duty of a Governor to hang a deranged man? You must admit, from the host of testimony collected and laid before you after the conviction, that my son was partially deranged. Why then hang a deranged man? He said, I have decided the case. How, then, can I account for it, but upon the ground of ambition? Oh that I could be reasonably delivered from this position! Governor, are you determined to hang my deranged son against light and knowledge? I discovered nothing in the vision of the Governor but confusion, and determination, regardless of all consequences. I then said, may God prevent the impress of this revengeful blot upon the archives of this proud republic!

And Governor you have by your postponement, without one good feeling for this old grey headed friend, or for my persecuted and unfortunate son, consumed much the greatest part of the time allotted him to live. Will you grant him a reasonable respite? The Governor replied, he would consider of it. I then said, Governor, I have a few things more to say, and then I am done. I have not the spirit of a prophet, but I know that God will not tolerate all this iniquity. His judgments will go forth in the land, and signs too visible to doubt will be seen. Your decision will not only take the life of my son, but will cause many more of my children to be cut off at a sweep and find an untimely grave. Governor, you do know the moral influence used in the rearing of my family, and you have reason to know that no family on earth enjoyed more peace and harmony and a fairer share of esteem among my acquaintances. But dear Governor, you have blasted my earthly comforts. The life of my son was in your hands. Had you delighted in mercy and not in sacrifice, he might still live with the approbation of a generous public. The voice of posterity would have honored you—the law would have justified you—the host of evidence would have sustained and proclaimed you a faithful servant.

Now, my dear Governor, do not think I am angry—I am not. I speak my sentiments deliberately. Mark what I say: When you signed and dated your sentence in this case, you signed and dated the end of your glory. While you live on the earth, your conscience is destined to misery, horror and remorse. And in the great day of judgment, you will be arraigned as the murderer of my son.

I then left, with a consciousness that I had done my duty to save the life of my deranged son. With feelings indescribable under a burden of a broken heart and a disconsolate soul, conscious the Governor had done my unfortunate son great injustice—his old father a great injury—and himself a greater.

As I returned to my room, I labored to compose my mind and maintain my usual deportment, with an humble reliance on God, asking Him in the plenitude of his mercy, for his supporting grace. If I have written one word or sentence unjustly, it will give me pleasure to correct it. Respectfully, A. BAKER.

MANCHESTER, KY., Oct. 23d, 1845.

Col. A. McKEE—I received by yesterday's mail your letter of the 14th inst., requesting a copy of my speech, in twenty days, delivered in the case of the Commonwealth against Baker. The remarks which I made upon that occasion, were not reduced to writing, either before or since the trial. The Fall terms of the Clay and Owsley Circuit Courts will commence in a few days, and I would not have the time—had I the inclination—to write out a speech for publication. I regret, therefore, that I will not be able to comply with your request. It may not be amiss, however, to add a few words more, as I understand you are preparing a book in which it is your object to lay before the world a true history of Dr. Baker's trial, &c.

Dr. Baker came to this county several years since and commenced the practice of medicine. Mrs. Daniel Bates (Dr. Baker's sister) was in bad health, and Baker lived at Bates', that he might the better aid in restoring his sister's health. He remained in Bates' family till he and Bates had their first difficulty, about the last of July, 1844. On the 21st day of May previous to the above date, Dr. Baker had married Miss Susan White, daughter of James White, of this county. I met with Dr. Baker a short time after his wedding, at a party given him by one of his wife's relations. At this place his conduct was more caressing and attentive than I ever before or since noticed from a husband to his wife. It was, to say the least, childish. This was the only time after his marriage, that I recollect of having been in Dr. Baker's company, till the morning he killed Bates. *

At the time he left his wife and attempted to take Bates' life, I was absent in an adjoining county, and Dr. Baker had left for Knoxville, Tennessee, before my return. On my arrival in the county, I heard many rumors, some true—more false. One thing was almost universally stated, and especially by those who afterwards persecuted with such blind and reckless zeal—that Abner Baker was certainly *insane*. This, sir, was the first of August. The evening of the 13th of September following, Dr. Baker took Mr. Bates' life. When he shot, his horse ran off. He followed to the woods, failed to catch it, and remained out till some three o'clock in the morning, when he went to Hugh L. White's, an uncle to his wife. From Mr. White's, Dr. Baker sent for my brothers, James and Theophilus, (Justices,) and myself. I happened to arrive there first, and found Dr. Baker in bed. He talked some time and finally requested me to ride to James White's, (his father-in-law,) and ask him to come there—he wished to see Mr. White and have a conversation with him. My brothers having arrived, I departed for Mr. White and met him some mile from Hugh White's, with a gun in company with four other men, two of whom also had guns. I stopped Mr. White, and told him my business. He asked where Dr. Baker was. I replied he was safe. He still refused to stop and converse, saying—*if we do not save him now, how do we know which one of us he will next kill*. I then returned with the company to where Dr. Baker was. Here one of James White's negro men had just arrived upon whom Mr. White drew his gun and threatened to shoot if he did not return home instantly. It is said in the country here, that Dr. Baker's wife sent this negro through a near way to give Baker word to escape. This, however, is only rumor.

Dr. Baker having given himself up to Theophilus Garrard, a Commonwealth's Justice of the Peace, and having desired to be taken to Daniel Garrard's till he could make preparations for a trial, a guard of two men was summoned and the company departed to where Dr. Baker wished to go. *And now ceased forever among the prosecuting party, their former universal cry that Dr. Baker was certainly an insane man.*

In the day, David V. Walker requested that the guard might be increased, which was done by adding Wm. White and others. Not long after, a constable came with a warrant from John Hibbard, Esq., and demanded Dr. Baker, who was already in the hands of an officer. Finding he could not take him, he increased the guard to thirteen. Whilst Dr. Baker was then in the custody of an officer, threats were made to take him and put him in jail, before an examining Court had

tried him. When Dr. Baker's father and brothers had arrived, he made preparation for trial and went to the Court-house in Manchester for the purpose of undergoing an examination before a Court of inquiry. The prosecutors having failed to attend at the appointed hour, the Court requested Gen. White to enquire of them whether or not they were ready for trial. His answer from them was in effect, that the trial could progress as far as they were concerned. If the prosecutors could have had their choice of magistrates—thereby their choice of verdict, they would have been appeased—not, otherwise. The Court after some discussion, adjourned to meet next day at the seminary, where they went through the whole evidence, and delivered Dr. Baker into the hands of his brothers, (physicians,) pronouncing him a *monomaniac of such a degree as not to be amenable to the laws of his country for his acts.*

Let me now explain who was Daniel Bates and who were the prosecutors. Daniel Bates was a man of some fifty years of age, and one of the wealthiest—perhaps the wealthiest man in our county. He was a man of a deep, dark, revengeful mind. Two subjects occupied his constant attention—money and revenge. These ruled, controlled, absorbed his mind. Originally a brave man, but now fearing death, he scrupled not to hire a base assassin to take an enemy's life. Such base characters he always had at hand. Upon his death bed, he desired his executors should spend ten thousand dollars, and his whole estate, if necessary, to bring Baker back to trial. He desired farther, that if Baker did make his escape, his (Bates') son when he became a man, should follow and slay him. Here is the "ruling passion strong in death." His acting executors are David V. Walker and George Stivers. These were active prosecutors. There were many others, equally active prosecutors, too numerous to name. Among them all of Dr. Baker's wife's family, as well as all the Walkers' and Bates' in this and other counties. D. V. Walker is nephew to Daniel Bates, also his brother-in-law, as well as Dr. Baker's brother-in-law. A man of the strongest feelings and the highest prejudices. George Stivers is a preacher, a clerk, a surveyor, deputy sheriff, and most any thing else, a right accommodating man may desire. These executors offered eight hundred and fifty dollars for Dr. Baker's apprehension and delivery in the jail of this county. When Dr. Baker was brought back and delivered to the jailor by his brother, Caleb Baker, these executors employed prosecuting counsel, for whom they paid fifteen hundred or two thousand dollars. And now, sir, commenced one of the most relentless, savage, overawing, corrupt prosecutions that ever disgraced a free country. When the counsel for Baker asked for a writ of habeas corpus to test his right of bail, these *law abiding* men marched an armed force, of forty or fifty persons to town, fed them at a public table, at the expense of the prosecutors—all of this little standing army. This writ was not tried, because the Judge proffered to hold a called Court in five weeks, at which Dr. Baker was tried, commencing the first Monday in July last. With some of Bates' old, well-trained tools to swear, it was not difficult to prove most any thing the counsel would advise or suggest. If there was a man engaged in the prosecution either in or out of the Court-house (Commonwealth's officers excepted), who was actuated by any other feeling than a sense of fear, avarice or revenge, I know him not. During the trial, they had arms and armed men so placed, as to be confident every thing and every person was in their power.

The counsel for the defence challenged only six persons offered as jurors. They desired nothing else than a jury with capacity to ascertain what was right, and *independence* to execute their opinion. That such a jury was obtained, I at that time firmly believed, but I did not then know all the influences brought to bear in that trial. That an acquittal was generally expected by the audience after a part of the evidence had been heard is certain. Indeed, as far as I have heard, (and I have heard from several,) every man who left the county before the jury returned their verdict, reported that Baker would be cleared.

After the Judge passed sentence, he appointed six men to guard the jail. The prosecutors, not content, must hire a private guard. The friends of Baker (their hopes not the least abated) now prepared petitions to the Governor for a pardon. They thought it possible that a jury of uneducated men, and a Judge who acknowledged himself, upon the bench, profoundly ignorant upon the subject of monomania, might be led into error by the persuasive influence of an armed force, or the chicanery of counsel, who would hire themselves to aid in taking a man's

life—but they did not think it possible that the Executive of this State would lend himself to a faction to carry out their unholy and revengeful purposes.

During the pendency of the application for a pardon, men who were secretly active in the prosecution, but apparently friendly to Dr. Baker, would frequent his prison, and, by all means in their power, induce him to say or acknowledge things disadvantageous to himself, which would immediately be laid before the Governor, by certificate or otherwise. Not satisfied with this meanness, they stole from him his private papers and laid them before the Executive; which letters or papers were directed to gentlemen, and not intended for perusal till after the law had disposed of his body. Even persons who had gone there as guard would taunt and abuse him as they passed by the Jail.

After the Governor refused a pardon, it seems the prosecutors imagined an attempt to rescue. They commenced increasing the Guard—got authority from the Judge to summon a hundred men and as many more as they pleased, and sent men out to ascertain the strength of the enemy—*of course they knew who to send.* Their spies returned with the report that an hundred and fifty men had been seen and counted not thirty miles off. This was all they wanted. They sent runners with this report to all parts of the county, and thereby induced numbers of good, substantial, honest men to collect all their neighbors and fly to the aid of the laws, as they were made to believe. The prosecutors were not yet satisfied. They procured affidavits that a large armed force was collecting to attack the jail, &c. The Governor now sent the Adjutant-General, with 130 militia from Madison county, to aid a guard of 200 men in securing an insane wounded man. Indeed, it seems Quixotic days are not yet passed.

During the guard, D. V. Walker said “by G-d, don't they (or you) know I want him hung if there was not a brain in his head?” This expression was an index to more minds than the one so imprudent as to let it escape.

The 3d of October arrived, and Baker was taken to the gallows. He rode through the crowd as much collected or more than he ever was before. Under the gallows, he was calm, cool, and firm. He then, in the presence of several hundred persons repeated the charges he had before made against Bates and others. He referred the people to a history of the whole affair which he had written out and handed his friends for publication. He appeared to court rather than fear death. When he had finished speaking, and the executioner was placing the rope round his neck, he raised his hand, taking hold of the rope, and, with a bitter scorn, exclaimed “behold the necklace of a whore!”

That he died a monomaniac, advancing gradually to general insanity, I have not a doubt. That those who caused his death will one day, in this or another world, regret their course, I believe as firmly as that there is a judgment after death. His blood is upon their heads—his death was effected by unholy means—his execution has stained the records of our Commonwealth—and I sincerely hope that those who had the power and would not stop it, may become better or wiser before another such has to undergo their supervision.

With high regard,

WILLIAM GARRARD.

Col. A. R. McKee, Lancaster, Ky.

[FROM THE KNOXVILLE REGISTER.]

When, a few weeks since, we noticed the situation of the unfortunate and deranged man whose declaration is given below, we hoped that the painful task of announcing his death by the hand of a public executioner, would never be ours. Believing that the circumstances of the case were such as to render the fulfilment of the sentence of the law altogether unjustifiable we fervently trusted that the Executive of the proud State of Kentucky would never suffer her annals to be stained with the record of a proceeding for which we know no softer name than judicial murder. The result has proved that we confided too much in a conviction of his readiness to listen to the calls of justice and humanity, and that we made too little allowance for the influence of that blood-hound ferocity with which the enemies of the victim pursued him to death. The work of destruction has been effected; and the relentless persecutors of Baker have now

an opportunity of enjoying that kind of gratification which demons feel at the successful accomplishment of plots that fiendish malice suggests. Upon them devolves, and with them will ever remain, the curse of remembering their iniquitous participation in the unhallowed deed of hurrying a *lunatic* from time to eternity. If they are *men*—if they have not divested themselves of every feeling common to our nature—if the last spark of conscience has not been already smothered within them—the blood for which they thirsted will be indued with a voice that will ring in their ears—with a form that will follow in their footsteps, haunting them by noon-day and night, at home and abroad, until they, too, go down to untimely and unhonored graves.

We have heretofore stated, and need not now repeat, the grounds of our belief of Dr. Baker's insanity. Surely, if there is an individual who is still doubtful upon this point, he cannot read the language which follows, and deny the existence of a *sufficient cause* for mental derangement. The words are those of one who was conscious that he had but a few moments to live. Would he, under such circumstances, have spoken aught of the truth of which he was not firmly convinced? Would he have dared to appear with a lie upon his lips in the presence of his God? It is impossible. The conclusion is irresistible that he believed what he said. Whether his assertions are entitled to the credence of others is a different matter. We speak only with reference to the sincerity of his own opinion, and to the fact that in many cases the direct result of such an opinion as he entertained, is the dethronement of reason. The conviction that there had fallen upon him the most dreadful calamity which man in this world can suffer, took full possession of his soul. What wonder is it that the bitter, burning thought of such a wrong, should sting a man to madness?

In giving publicity to the following remarks, a mere disposition to gratify an idle curiosity forms no part of our motive. The apology for our course—if any is needed—arises from a desire to render, so far as we are able, a tribute of justice to the memory of the dead.

The reporter states that he was unable to catch the first few words of Dr. Baker, but thinks they were spoken in reference to a detailed account of the matter, which will be hereafter published.

Dr. A. Baker's Address under the gallows at Manchester, Ky., Oct. 3, 1845.

I labored to give the truth, and the truth I give you. All I told come from Susan. Out of the mouth of a White shall they be judged. I am the victim of a whore, and a whore's friends. There is a way to present the truth to the world, and I present it in that way. THERE is the gentleman who made a mistress of his brother's daughter up to the very night before I married her—that man is Dougherty White. And I would to Heaven these people could see the letter her father (in giving evidence before the Court), called a little piece of paper.

It is useless for me here to tell all that has occurred in this matter; I could not do it. Wait, all of you, and see it where I have written.

The woman I married was not only a whore, but a liar. If the tales of this woman had been false, would she have implicated her uncles? No. She would have used other names.

Had James White stated the truth before the Court, the Court would have known all—the world would have known all. You see a man offered up to the gallows by the foulest means to save the wreck of a whore's family. If the world ask why Abner Baker killed Daniel Bates, tell them that it was for tampering with his wife. Tell them Abner Baker glories in having cut the thread of Daniel Bates' life. He should have treated Susan well, instead of seducing her.

Is it not strange that Abner Baker would have travelled fifteen hundred or two thousand miles to have his trial, if he had not a pure heart and a just cause? But his heart felt pure and right, and he did come back. Would Abner Baker now exchange his fate for James White's and others who suppressed evidence that would have acquitted him? James White not only suppressed evidence, but *****

Now, gentlemen, if the world ask you why Abner Baker killed Daniel Bates, tell them it was not because he liked Daniel Bates less, but honor more. That was the law that prompted me. Would you not do it? Yes, if you had a hosom full of soul. Now

if my brother-in-law, Davy Walker, goes home and does his duty, he will tell his wife he is no longer fit to be her husband or her children's father. He aided in taking my life; he knows it, and I will show it*.

Now the friends of Susan Baker should place a mark upon her bosom, that she may be known by the world, as a whore. It ought to be there to mark her where she goes.

If she were innocent, why did she attempt to take her life the morning I left her, and on the morning that she acknowledged her guilt with Bates? It was a perfect knowledge of the fact that her own acts for the last five or six years, had been forging a thunderbolt that was now made up of lewdness and infanticide, that would sooner or later be impinged not only against a heart that was never moved by a noble thought or a noble sentiment, but it would be also hurled with the power of truth against the old family tree, stripping it of all its foliage, of all of its branches, of all of its stateliness, and of all of its lofty bearing and towering height, leaving a dismantled and shattered trunk, to be pelted and contorted by every storm—a fit monument of the well-earned downfall of the character of her family.

I did not make this state of things; the Whites did it for themselves. It's no fault of mine; it is their daughter's. I have not drawn before the world any one on suspicion. Do you understand me? I have not drawn before the world any one on suspicion. None but those whose names she gave me were laid before the world. Young men, behold the victim of a whore! Be warned! Will not all agree with me that it is better to die, knowing these facts? Yes. Any death rather than know you were ever the husband of a whore. Wait, and hear what I shall say. You shall hear from me and that right soon, and then you will know Daniel Bates, the whore, and the whore's family. All will say this: I die a death I do not deserve, but a death that is better than to live.

When this thing occurred, you may well imagine the state of feeling here. The Garrard family, on whom I had no claims, came up like noble-souled men, and asked the county to give me justice, and they asked no more. Learn from them all I ever wished—the truth. The world will be satisfied that those who prosecuted me could prove any thing. What would serve them they could prove. Mine, gentlemen, is no murderer's heart. But what sort of a heart must he have who would sneak in my prison-room, steal my private papers directed to gentlemen, and show them to the world? Is he human? No. He would rob his mother's grave. These are the sort of men who prosecuted me even to death. After I was condemned to go to the gallows, they were not satisfied, but must thrust their hands within my grave and steal what little there remained. I do not believe I am here by law, but by perjury. They were perjured, and what they did not do themselves they hired others to do. And why? Because I killed a brother-in-law for tampering with my wife. Again, young men, I say to you, see what a whore can do. When you wish to marry, look around for fear you take to your bosom a serpent that may one day thrust its poisonous fangs within your heart, as was the case with me.

They tell that Abner Baker wanted to kill Daniel Bates to get his money. Does any one who knows Abner Baker believe this tale? Look at the evidence. The Rev. George Stivers states that Bates told him the reason I wished to kill him was to get his money—that I asked for ten thousand dollars and he offered me five thousand. Wm. Lucas, a man who lived with Bates, states that Bates told him I wanted four thousand dollars and he offered me two thousand. Col. Hibbard says Bates told him I wanted five thousand dollars and he offered me two thousand or two thousand five hundred. Which, then, of his statements must we believe? Take any two of them and they destroy each other. Who, then, would believe the third? All were made under the same circumstances. Do not two of them mark the other and themselves as lies? Is it not passing strange that Abner Baker would kill a man for offering him money?

As to being an executor or legatee of Daniel Bates', his will stamps that as false. The record shows his will was made before the first difficulty—at a time when Bates says I could have led him out like a horse to grass and then have butchered him.

What did Abner Baker, then, kill Daniel Bates for? Why did Daniel Bates tell these lies? I will tell you why—Daniel Bates was trying to cover up his most damnable conduct with Abner Baker's wife. You may doubt these statements—you may believe them; but as to the money, go see the record. Why did he on his death-bed wish to destroy his will? He knew that would discover him to the world. Some men may glory in their walks, but the time will come when they will view their conduct in a different light, and they need not go farther than their hearts, if they have any. I did not know the sins of a whore extended so far. 'Tis all the work of a whore! 'Tis all the work of a whore! 'Tis all the work of a whore! I am ready, let a whore's work be done! Let a whore's work be finished! (Here the executioner remarked that Dr. Baker's friends could come and bid him farewell. At this time Baker cried out) Go on, go on; let a whore's work be completed!

* Referring to a pamphlet which he had prepared for publication while in prison, and which the world will have an opportunity of seeing.

INDEX.

Baker, Dr. Abner, jr., <i>Address</i> ,.....	149
Adams Armstead, <i>Testimony</i> ,.....	44
Adams Jones L. ".....	44
Allan, John R., <i>Letter</i> ,.....	105
Baker Capt. A., <i>Remarks</i> ,.....	5
" " " <i>Testimony</i> ,.....	24
" " " <i>Letters</i> ,.....	92. 119. 130. 142
" " " <i>Petition for Writ</i> ,.....
Baker Mrs. Sally, <i>Testimony</i> ,.....	18
Baker Miss Harriet, ".....	19
Baker Miss Almyra, ".....	19
Baker Dr. Hervey, ".....	19
Ballenger Frank, ".....	15
Ballard W. J., <i>Letter</i> ,.....	107
Beasley James A., <i>Testimony</i> ,.....	38
Black Samuel, ".....	16
Bruce John P., <i>Letter</i> ,.....	111
Buckner R. A. ".....	131
Caldwell Prof. C., and others, <i>Letter</i> ,.....	105
Caperton W. H., ".....	91
Coleman Jo, <i>Testimony</i> ,.....	41
Coleman Joseph ".....	8
Cobb R. M., ".....	15
Cobb Mrs. R. ".....	16
Cornett Edward, <i>Letter</i> ,.....	110
Cox Rhoda, <i>Testimony</i> ,.....	17
Cross James C., <i>Letter</i> ,.....	98
Crozier Mrs. E. B. ".....	121
Crozier C. W., ".....	131
Davis Josiah; <i>Testimony</i> ,.....	11
Description of County Jail.....	135
Duncan James, <i>Testimony</i> ,.....	26
Dudley Dr. B. W., <i>Letter</i> ,.....	104
Eley Thos. <i>Testimony</i> ,.....	43
Ensworth Samuel, <i>Letter</i> ,.....	105
Epitaph of Dr. A. Baker,.....	102
Evesworth Samuel, <i>Letter</i> ,.....	121
Eye Benj., <i>Testimony</i> ,.....	13
Examining Court.....	1
Farriss Mr., <i>Testimony</i> ,.....	14
Garrard Daniel, <i>Testimony</i> , 28. <i>Letter</i> ,.....	121
Garrard Theo., ".....	30
Garrard Theo., and others, <i>Petition</i> ,.....	120
Garrard James, <i>Testimony</i> ,.....	32
Garrard William,.....	91. 147
Gibson Miss, <i>Testimony</i> ,.....	10
Gibson John, ".....	8

Governor's Proclamation and Executor's Reward,.....	4
Hays J., <i>Letter</i> ,.....	113
Hibbard Mr., <i>Testimony</i> ,.....	39
Hibbard Hiram, ".....	40
Higgins Rev. John T., <i>Letter</i> ,.....	121
Indictment,.....	141
Jackson Mr. <i>Testimony</i> ,.....	26
Johnson M. C., <i>Letter</i> ,.....	109
Juror's <i>Letters</i> ,.....	99.100
Justice's Certificate,.....	2
Kinnard James, and others, <i>Letter</i> ,.....	125
Kincaid J., <i>Letters</i> ,.....	3.91.117
Kinhead G. B. ".....	109
Kirtley Chas., ".....	112.121
Landram Lewis, and others, <i>Letter</i> ,.....	108
Letcher S. M., <i>Letter</i> ,.....	104
Lancaster Meeting,.....	124
Miller Mr., <i>Testimony</i> ,.....	12
Murphy Miss Rhoda, <i>Testimony</i> ,.....	36
McKee Alex. R., <i>Testimony</i> , 27... <i>Letter</i> ,.....	91
McKee Mrs. E. B., ".....	18
McGee Mr., ".....	28
Moore J. A., <i>Letters</i> ,.....	2.115.118
Moore Wm B., ".....	102
Marshall, Dr. A. K., <i>Letter</i> ,.....	107
Mitchell Prof. Thos. D. ".....	103
Morehead C. S. ".....	109
Ohler Benj., <i>Testimony</i> ,.....	14
Officers—Public Meeting,.....	123
Payne Mr., <i>Testimony</i> ,.....	13
Petition for writ of Habeas Corpus,.....	Appendix.
Potter Mr., <i>Testimony</i> ,.....	12
Pope Thos. W. ".....	27
Physicians of Danville, Lancaster, and Frankfort, <i>Letters</i> ,.....	106
Potter Mrs., <i>Testimony</i> ,.....	19
Pearl Sidney, ".....	25
Pennington E., and others, <i>Letter</i> ,.....	122
Redman Mr., <i>Testimony</i> ,.....	41
Reid Dr. ".....	42
Richardson Dr. Wm., <i>Testimony</i> , 45, ... <i>Letter</i> ,.....	102
Robertson Geo., <i>Address</i> , 49, ... <i>Letter</i> , 90, ... <i>Argument in favor of Writ</i> , 127	
Smith Campbell and G. W., <i>Testimony</i> ,.....	45
Soper Robert, <i>Testimony</i> ,.....	38
Stanford Meeting,.....	123
Stein Wm., and others, <i>Letter</i> ,.....	124
Vaughn Oliver P., <i>Testimony</i> ,.....	37
White James, ".....	9
White Mrs. A., ".....	13
Watkins C., ".....	14
White Frank, ".....	36.41
Williams James, <i>Letter</i> ,.....	110
Wilson W. H. W. ".....	111
Woodward Mr., <i>Testimony</i> ,.....	33.41
Will of Bates,.....	126
Woolley A. K., <i>Letter</i> ,.....	109

R6R

*

F

455

B3

C70

W217

