ARGUMENT

OF

HON. HENRY L. STONE,

OF MT. STERLING, KY.,

DELIVERED MAY 20TH, 21ST, AND 24TH, 1880, BEFORE THE JURY IN THE JEFFERSON COURT OF COMMON PLEAS, AT LOUISVILLE, IN BEHALF OF THE DEFENDANT, ON THE TRIAL OF THE CELEBRATED LIBEL SUIT

OF

THOMAS M. GREEN VS. THOMAS F. HARGIS

(*Reported by Charles A. Graham, Official Stenographer*),

WITH AN

APPENDIX CONTAINING THE PLEADINGS, INSTRUCTIONS, VERDICT, JUDGMENT, EXECUTIONS, OFFICER'S RETURNS THEREON, AND SKETCHES OF THE JURORS.

FRANKFORT, KY.:
PRINTED AT THE ROUNDABOUT OFFICE,
GEORGE A. LEWIS,
1881.

ARGUMENT

—OF—

HON. HENRY L. STONE,

DELIVERED BEFORE THE JURY MAY 20TH, 21ST, AND 24TH, 1880, IN BEHALF OF THE DEFENDANT, AT LOUISVILLE, ON THE TRIAL OF THE GREAT LIBEL SUIT OF

GREEN vs. HARGIS.

May it Please the Court: Gentlemen of the Jury:

I must compliment you for the patience you have shown in the progress of this long and laborious trial. I regret that it becomes my duty to still further tax your patience. You have doubtless already discovered that an excellent opportunity is afforded plaintiff's counsel, in the discussion of this case, to vent their malice against Judge Hargis. You have just had an example of that character in the speech of Mr. Larew, the gentleman who last addressed you in plaintiff's behalf. I shall have occasion, as I proceed, to refer to some of his remarks, and the points he attempted to make upon the testimony.

Before entering into the discussion of the evidence bearing on the main issues, I desire to call your attention to some of the events which immediately preceded the institution of this suit.

From the record we learn that on the 26th day of March, 1879, Hon. John M. Elliott, one of the Judges of the Court of Appeals of Kentucky, was shot down in the streets of Frankfort by an assassin. His tragic death sent a thrill of horror throughout the Commonwealth. His life was taken for no imaginable cause other than his faithful discharge of official duty in rendering a decision adverse to his slayer. Wherever known, Judge Elliott was beloved. In his death his wife lost an affectionate husband, and his State a pure and upright Judge.

Thirty days afterwards the defendant, Hon. Thomas F. Hargis, then Judge of the Criminal Court in the Fourteenth Judicial District, was nominated at Owingsville to fill the vacancy on the appellate bench, by the accredited delegates of the Democratic party, from the forty counties composing the First Appellate District. On the 12th day of May following, at the special election held under the Governor's proclamation, the defendant was elected over his opponent, Hon. William H. Holt, a popular and talented Republican lawyer of Mt. Sterling, by a majority of 3,555 votes. On the 4th day of June, having received his commission, he was duly qualified as the successor of the lamented Elliott, and entered upon the arduous labors of his high office.

But what had occurred in the meantime? The defendant, thus chosen, elected, and qualified as one of the supreme judicial officers

of the State, had been attacked by the plaintiff, Thomas M. Green, through the public press, with a recklessness and desperation perfectly amazing to all fair-minded people. Once more a Judge of the Court of Appeals was sought to be stricken down. This time, however, the assault is not upon his life; but upon that which is far more sacred—his character. The weapon used is not the knife or the shot-gun of the assassin; but the poisonous and more deadly pen of the calumniator.

As early as Monday, the 28th of April, 1879, but two days after the nomination of Judge Hargis for Appellate Judge, W. B. F. Clift, of Mason county, held a conversation with Judge Andrews, at his office in Flemingsburg, upon the propriety of reviving the charges that had been made against Judge Hargis in 1874. Judge Andrews repudiated such a course, to his honor be it said, but in that conversation Mr. Clift tells Judge Andrews he had learned from Mr. Green it was his purpose to again revive these charges against defendant. On the 5th of May, the plaintiff, having been in the city of Louisville, arriving at Maysville on the night of the 4th, is met in the street by one Mr. Hutchins, and there occurs the beginning of the revival of these charges in the year 1879. Mr. Green does not take Mr. Hutchins' proposition, he does not base his action upon what Mr. Hutchins says to him, but shortly afterwards, on the same day, Mr. Wadsworth, the leading counsel for the plaintiff in this action, sees Mr. Green. A similar interview to that with Mr. Hutchins takes place between them upon the subject of these charges. Mr. Green says to Mr. Wadsworth: "I can take no action in this matter upon verbal statements. I am willing to act upon information given to me by responsible men, but that information, and that basis upon which I propose to act, must be put down in black and white." So Mr. Green himself testified.

Now what interest in this matter had Mr. Wadsworth? Why didn't he leave it as it was? But instead of that we learn from the testimony of Mr. Green himself that Mr. Wadsworth, later in the day, came to him with a letter which forms the text and basis of the article of the 7th of May, 1879, written out in full with his name signed to it. For what? For the purpose, I am authorized to say, of giving Mr. Green an excuse to revive these charges against the defendant. That letter is as follows:

MAYSVILLE, May 5, 1879.

THOS. M. GREEN:

My Dear Sir:—I have heard for some time that the statement was in circulation that you had changed your opinion, heretofore often and plainly expressed, of the charge against Thos. F. Hargis, of mutilating the records of the Courts of Rowan county.

I now learn from Col. R. H. Stanton, that when he was in Clark county, recently, a gentleman there asked him if you hadn't taken it all back, and if Taber hadn't confessed that he did the crime, at the same time telling him it was freely so reported in Clark. Mr. W. B. F Clift, of this county, also says it is so reported about Mason county.

It is right that you should know this, explicitly.

Very truly yours,

W. H. WADSWORTH.

We thus see from the record, and from the lips of the plaintiff himself, the manner in which this controversy was revived in the month of May, 1879, at the instigation of his leading counsel. Not a candidate against Judge Hargis, not personally interested in the contest for Appellate Judge, for some unexplained reason Mr. Wadsworth takes it upon himself to write this letter, to afford Mr. Green a pretext for reviving this controversy.

The gentleman who preceded me (Mr. Larew) would have you believe that he is the most disinterested gentleman imaginable; that for the mere supposed good of the Commonwealth and his love of justice, he is here to-day to prosecute the defendant. Were I to inform you, gentlemen of the jury, that Mr. Larew was in the Owingsville Convention as a delegate from the county of Mason; that he was one of the Committee on Resolutions which reported that they had confidence in the integrity and qualifications of all the candidates before the Convention, and that whoever obtained its nomination should receive the cordial support of the entire Democracy of the District, and that he was then present in making that nomination, you would doubtless be astonished. We learn, further, from the testimony of Mr. Green, that Mr. Larew, on the night of the 5th of May, 1879, was the amanuensis of Mr. Green in the revival of these charges, copying his two letters, afterwards published in the *Cincinnati Commercial*, dated the 5th and 6th of May. Yet, he comes before this jury and tells you he is the most disinterested man in the world, and that he has said nothing in malice against the defendant. Of course he has none of the money jingling in his pockets which has come out of the bank of Pearce, Wallingford & Co., and he is here prosecuting this case without fee or reward.

We thus see, from the evidence, gentlemen of the jury, that this controversy was revived in the town of Maysville upon a letter written by Mr. Wadsworth, whose law office was about fifty yards from the *Eagle* office, the plaintiff's printing establishment. It will strike you as something remarkable that one gentleman residing in the same town with another should write a letter of the character of the one which has been read of the 7th of May, 1879—the letter which heads the article of that date. Mr. Green says that of that issue of his paper he got off three thousand three hundred extra copies, and of the articles published in the *Cincinnati Commercial* there were some four thousand extra copies printed. They were received by Mr. Green or his agents for the purpose of being circulated against the defendant the week before the special election of the 12th of May, 1879. They were sent by express, by mail, and special messengers, all over the accessible parts of the District. As to who paid for those extra copies, and at whose expense they were distributed, we called upon the plaintiff to testify. The moment we struck that point the gentleman representing him objected. Judge Hargis was traveling in company with Mr. Holt, his competitor, up in the Sandy Valley, one hundred and fifty miles away, with no time or opportunity afforded him to meet these charges or counteract their baneful effects before the election, while these gentlemen in Maysville were getting off these extras and circulating them by thousands among the people, in remote counties where he had no possible chance to contradict them previous to the election. These gentlemen who acted as the amanuenses of the plaintiff in getting up those articles for publication, now have the hardihood to come before an honest jury of Jefferson county and say that they have said nothing in malice, and are as innocent as doves in this whole transaction.

Not stopping, however, with what had already been done, chagrined at the fact that Judge Hargis was elected, this infamous warfare upon him is kept up after the election under the pretense of correcting misstatements of the public press. Article after article is written to the

Paris True Kentuckian, the *Lexington Gazette*, the *Richmond Register*, the *Kentucky Sentinel*, and the *Courier-Journal*. On the 11th of June, 1879, the defendant, out of respect for that portion of the people of Kentucky who were not acquainted with the author of these charges against him, or familiar with its origin, wrote an article to the *Courier-Journal*, in which he denounced the charges as false, and those who had theretofore circulated them, and those who might thereafter do so, as willful caluminators; and upon that article the plaintiff brought this action for libel, on the 18th day of June, in the Jefferson Court of Common Pleas, claiming damages in the sum of ten thousand dollars. Mr. Green, after the appellate election, had gone about over the State wherever he could obtain a listening ear, upon the street, in the office, in the store—everywhere his tongue and pen were busy upon the reputation of the defendant. Here and there a bar meeting was instigated. Prejudices were engendered against the defendant in the minds of the people, and especially among the legal profession. Here in the city of Louisville, justly regarded as the center of legal knowledge in Kentucky, the plaintiff was at work with an object perfectly apparent to my mind. He and his friends in this city were then preparing the soil where they expected to pitch their crop. Many of the legal profession, and especially the younger members, were prejudiced against the defendant by the *ex parte* statements of Mr. Green. In answer to this suit Judge Hargis pleads that he was justifiable in denouncing these charges as false, and that the plaintiff is, in fact, a willful caluminator.

What constitutes a willful calumniator, gentlemen? A man who writes and publishes a charge of an infamous character against another, which turns out to be false, is in law a calumniator. When through the the same journal or channel of publication the party accused denounces the charge, and characterizes the author as a willful calumniator, the author cannot sue the accused in an action for libel and recover damages unless he makes out the truth of his charge; and even then it is doubtful whether he would have a legal cause of action. If a man could with impunity utter and publish in the newspapers, a charge which was false against another, and then turn around and say by way of defense that he did not *know* that the charge was false when he made it, thus trying to escape the consequences of his own wrongful act, no man's reputation would be safe in the community. But the law says he must abide the consequences of his charge whether he knew it or not to be true. He must know that it is true before he makes it. If he makes it and it should turn out to be false, he does it at his peril. But we find counsel representing the plaintiff in this case struggling before this Court two or three days for what? Virtually acknowledging that they have made a failure in this prosecution, that they have been unable to satisfy a reasonable jury of the guilt of the defendant in this case, yet asking the Court to instruct the jury that if the plaintiff did not *know* his charge was false that he still has the right to recover damages from the man he has denounced in the face of the public who calls him a willful calumniator, thereby endeavoring to crawl out of the main issue involved in this case, to escape its consequences and recover a verdict for damages upon the ground of the plaintiff's want of knowledge.

But, gentlemen of the jury, you know from the instructions of the Court, such pretended law was not given for your consideration, and your verdict must turn, in this case, upon the guilt or innocence of the

defendant, Judge Hargis, on the charge of mutilating the Rowan county records. Unless he is shown to be guilty of that crime, there is no instruction upon which you can base a verdict for the plaintiff. In other words, if the defendant is innocent of these charges, it is your duty to so find, and you cannot go further, upon any instruction, and find a verdict for damages for the plaintiff. On that point alone does your verdict turn. In the decision of that question the defendant has involved all that is near and dear to him. Not so with the plaintiff in this case. He has not the same great interests at stake. He has, in a measure, gained all that he set out for, let the result be as it may—that is, notoriety, and the gratification of his unbounded malice towards Judge Hargis. To quote his own language, in the *Lexington Gazette*: "If what I have stated is not true, even though believing it to be true, if I have made such serious charges upon insufficient testimony, then I have been guilty of a grave offense against the good of society, and the dignity of the Commonwealth, and ought to be severely punished for it. If Judge Hargis be innocent, my offense is not that of a mere libeller of individual character, but if I have gone deliberately to work to utter and publish falsehoods, the effect of which, until they may be put down by judicial investigation, will be to destroy the confidence of a large body of the people in the integrity of one of the judges of the court of last resort, then I ought to be sent to jail."

You have no power, in this form of action, to send the plaintiff to jail or otherwise punish him, but if upon this investigation his charges are false he cannot complain of a mere judgment for defendant's costs against him, which he himself acknowledges cannot be made out of him by law. His own costs and expenses, according to his testimony, are not borne by himself. All this litigation has been carried on without cost to Mr. Green in any particular. So we see he at least has nothing to lose.

A solid year almost has been consumed in the preparation and trial of this case, during which time the parties and their attorneys have been almost constantly engaged. Nearly four months of your time have been taken up since you were sworn and impanelled as a jury, but I would remind you, gentlemen, that it has not been our fault. Judge Hargis did not bring this litigation into this court to vex and annoy the good people of Louisville. He came here, however, when sued, and entered his appearance, without objection to the court or the county in which he was sued, not even making the objection, which he could perhaps have made successfully, that he was not sued in the county of his residence. We have not asked even for a change of venue. He has come willing to submit this case to a jury of honest men, whatever may be their avocations in life, and let them be obtained from whatever portion of this broad Commonwealth they may. He is willing to trust his all in your hands.

You have seen in the testimony of this case, however, that this controversy is six years old. It began in the heat and partisan strife of a race for Judge in the Fourteenth Judicial District in 1874. It was revived in the canvass for Appellate Judge in 1879. One remarkable fact appears in the history of this controversy, and that is, that as early as June, 1874, Judge Hargis, after the plaintiff had made this charge for the first time in the early days of June, 1874, wrote what is known in this record as the Open Letter, dated the 8th of June, 1874, and

published in the *Mercury*, at Carlisle, in Nicholas county. That letter was circulated all over the Fourteenth Judicial District. It was published in the newspapers throughout that District. These charges having been first intimated by the plaintiff, without stating the facts, or supporting the charges by record and oral evidence, as appears in that letter, the defendant charged that the plaintiff was a venal writer—that he was a willful and malicious liar, slanderer, and coward.

But what does the plaintiff do? Does he bring a suit for libel? Does he take any personal action in the matter? He contents himself by shooting paper bullets at the defendant through the columns of his villainous sheet, the *Maysville Eagle*. For five years the matter rests in that shape? What more could Judge Hargis do? After the plaintiff had thus submitted to the denunciations contained in that Open Letter, neither instituting suit for libel against defendant, nor taking any other steps as a man thus denounced ought to have done, there was no other course for Judge Hargis to pursue than to treat his publications with the silent contempt they deserved. Judge Hargis took no notice of him until 1879, and even then in the article on which this action is brought he does not mention the name of Mr. Green. Yet, this man who swallowed the words of Judge Hargis in 1874, when he called him a malicious liar, slanderer, and coward, comes into this court-house, having slept on the Open Letter for five years, and says now that he is greatly slandered because Judge Hargis has, in the *Courier-Journal* article, called him a willful calumniator. With what consideration, I ask you as honest men, should you treat a man that acts in that way? What consideration does he deserve at your hands? He is too long in discovering that his reputation can be injured by the defendant. Why didn't he bring his suit in the county of Nicholas, the residence of Judge Hargis, where the Open Letter thus denouncing him was published, when all these matters were fresh in the recollection of witnesses, when some of the most important witnesses in this controversy were then alive and could have testified, among whom were Judge Apperson, Stevens Roe, Samuel R. Elliott, C. E. Johnson, Wm. L. Sudduth, Judge Elliott, and divers others who are now dead and gone. No, he did not choose to bring his action then and there, but he chose to bring it out of the county of Judge Hargis' residence, away from the people of his section, among strangers, but among plaintiff's own kinsmen, college-mates, and personal friends in the city of Louisville. Judge Hargis brought his witnesses and attorneys here at frightful expense in railroad and hotel fare, hundreds of miles, to make good the charge against the plaintiff—that he is a willful calumniator. Upon Mr. Green's own chosen ground the defendant has not been afraid or failed to meet him, and asks no quarter. Do you believe, after all these facts, that the plaintiff brought this action in good faith? Do you believe that this action was instituted by the plaintiff for the purpose of recovering damages from the defendant on account of an alleged injury to his character?

In April, 1874, John R. Taber was the clerk of the Rowan Circuit Court, and the custodian of its records Sometime in that month it was discovered that certain mutilations had been made upon his books. First, that a leaf had been taken out of Order Book, No. 2, containing a portion of the orders of the 28th of August, 1866; that a leaf had been cut from the Minute Book corresponding with those orders; that

the index to the Record Book had been erased to some extent on the numbers of pages opposite the name of the defendant, leaving but the figures 82 and his name, and that a forgery had been committed, forging some names on said index, the exact names not being intelligible; that at the February Term of that court, 1866, an order appointing and qualifying the defendant as examiner had been partially erased, while the minute corresponding with that order had been left untouched; and that the Common Law Docket had been so altered as to insert the initials E and H, representing Elliott & Hargis, in certain cases on that Docket for the February Term, 1866.

In April, 1874, Jas. W. Johnson was the clerk of the Rowan County Court and the custodian of its records. The Order Book, containing the record of proceedings in the year 1866 in that court, was mutilated in this manner: First, an order qualifying James Carey as administrator of John Carey at the regular February term, upon the 19th of February, 1866, was partially erased, and the top of the order relating to the guardian settlement of J. B. Zimmerman was also erased; and at the regular May term, the 21st of May, 1866, an order was almost entirely erased, and at the regular June term the same year, two orders were forged at the foot of the page—one purporting to qualify the defendant as an attorney in that court, and the other appointing one Robert Henderson surveyor of a certain road. At the July term of the same court, its regular term upon the 16th of July, 1866, was an order which originally read releasing this same man Henderson as surveyor of that road, and altered so that it would read as having been done upon the motion of the defendant. Thus you see there were three books mutilated in the circuit court clerk's office, and one book in the county court clerk's office.

The fact that these mutilations were committed is beyond all question. That is a conceded proposition. There is no positive proof, however, as to who committed these acts. No witness in this entire record has undertaken to swear who did commit these acts, or either of them. The best and the most that either the plaintiff or the defendant has been able to obtain upon the question of the guilt or innocence of the party who committed these mutilations, is circumstantial in its nature. The plaintiff claims that in April, 1874, the defendant was ineligible to the office of Circuit Judge, for which he was a candidate, and that the record showed the fact that he was ineligible, and for the purpose of destroying the evidence of his ineligibility these records were destroyed by him or at his instance. On the other hand, the defendant asserts that he was eligible to that office, that the records showed his eligibility to the office, and that the mutilations were made, not in his interest, but in order to destroy the evidences of his eligibility, and that it was done by some one opposed to him, in the interest of and by his enemies. Such is the attitude of the parties to this controversy. This question of eligibility, I grant you, has entered into this controversy to a very large extent. Upon your decision in that regard, depends in a great degree your decision as to the guilt or innocence of the defendant. You have learned, in the progress of this trial, that, for an attorney to be eligible to the office of circuit judge at the August election, 1874, it was necessary that he should have been a licensed practicing lawyer for a period of eight years. You have learned further that, as a preliminary step in obtaining a license to practice law, the statutes directed that he should obtain a certificate of his honesty, prob-

ity, and good demeanor from the county court of the county of his residence. The court has instructed you as to the certificate as follows:

"The law in 1866 made it necessary, before a license to practice law could be granted, that the applicant therefor should first obtain from the county court, of the county of his residence, a certificate that he was a man of honesty, probity and good demeanor, and that such certificate should be produced or presented to the judges to whom the application for license was made. No special time was necessary within which, after the obtention of the certificate, it should be so presented to the judges to whom the application for license was made. In this case the jury are instructed that the signing and granting of the license to defendant by Judges Andrews and Apperson is to be regarded by them as conclusive evidence that the requisite certificate of his honesty, probity and good demeanor had been theretofore obtained, and presented or produced by him to said judges; but not as to the particular day or time when said order of the County Court of Rowan was made."

Thus under that instruction it is not a question as to whether Judge Hargis ever had such a certificate. You are not to inquire as to whether he ever obtained such a certificate. The court, has said to you that the license itself is conclusive upon that question, and the only open question under that instruction is the time when he obtained such certificate. The gentlemen who have argued this case so far for the plaintiff have undertaken to show to you that it was necessary for that certificate to be recorded. I deny it. The court has not so told you. These same gentlemen struggled hard to get such an instruction, and they know it was overruled. The county judge can call his court in session at any time and hold a special term. The orders and proceedings at special term, and the acts of the judge thus performed, are as binding and obligatory and as conclusive upon the rights of parties as if made at a regular term. I believe the only two things that a county judge cannot hold a special term for are the granting of tavern license and the probate of wills. It is conceded that the defendant was sworn into the circuit court upon the 28th of August, 1866. I maintain from the evidence in this case that five propositions, which I will undertake to discuss, have been established:

First. That the defendant obtained his certificate prior to the first day of the February Term of the Rowan Circuit Court, 1866.

Second. That Judge Andrews signed his license upon the night of the 26th of February, the first day of the February Term of the Rowan Circuit Court, 1866.

Third. That Judge Apperson signed his license at Grayson upon the 2d day of April, the first day of the April Term of the Carter Circuit Court, 1866.

Fourth. That he was sworn in on the 21st of May, at the regular May Term of the Rowan County Court, 1866, as an attorney at law.

Fifth. That he practiced his profession as an attorney after the May Term of the Rowan County Court, 1866, and before the 1st day of August, 1866.

Before going into a discussion of these propositions, I desire to call your attention to the preceding history of Judge Hargis. We learn from this record that he was born in the county of Breathitt on the 24th day of June, 1842. Among the rugged mountains of Eastern Kentucky, without any of the appliances of wealth, or influential and

distinguished relatives to surround him, with no educational advantages, he spent the first fourteen years of his life. He was not born upon some estate in the bluegrass region, bearing some aristocratic name, as the plaintiff says he was. He cannot boast a long line of ancestry, but he is of poor and honest parents. He was not even blessed with the early love and training of a mother, who died while he was an infant in her arms. This untutored boy we find in the new county of Rowan, at Morehead, in 1856, toiling in the Valley of the Triplett, upon his father's farm, among the rocks and the pines of that sterile region. On court occasions he was engaged waiting upon his father's guests, blacking their boots or currying, watering, and feeding their horses. On one occasion, graphically described by Charlton H. Ashton (who in after years by the force of circumstances became his warm and ardent friend), while seated in the porch at his father's hotel, being up there on a fishing excursion, Ashton saw some young man coming up the road driving an ox team. He drove it around in front of the porch, and he asked Col. Hargis who that was. He made him the answer: "It is my son Tom." Ashton says the young man had on brown jeans pants, ragged and torn, and rolled up to the knees, no coat, bare-footed, in his shirt sleeves, with a broad-brimmed straw hat on his head, much worn. He was apparently about seventeen years of age, and much freckled. That is the way that the defendant first presented himself to Charlton H. Ashton. My friend, Mr. Larew, says that there is nothing remarkable in the history of the defendant, that he was like other mountain boys. Mr. Larew has not traveled the same road with the defendant. He does not appreciate the fact that the defendant is a self-made man, and when he undertook upon the cross-examination of Mr. Ashton, to bring this touching picture of the early life of Judge Hargis into contempt and ridicule, he only increased a sympathy which is natural in the bosom of every one. Mr. Larew asked: "Why, Mr. Ashton, how did I appear to you when you first saw me," and Ashton describes my friend Mr. Larew dressed in a black cloth suit, walking up the streets of Flemingsburg, I believe, with a rattan cane in his hand, and a cigar in his mouth, on his road to some convention, perhaps, whose nominee he afterwards refused to support.

Thus the defendant struggled on until 1860, obtaining what little education he could in the log school-houses of that locality and time, taking up the profession of the law, reading law books irregularly, until in September, 1861, he joined the Confederate Army, leaving a three months' school half-taught out, that he had undertaken to teach a few miles above Morehead. As to his career during the war we know from the evidence this much at least—that he went into the army as a private soldier, and came out as a captain. He was in a department where fighting had to be done, and at the close of the war, as late as July 14th, 1865, he reached home, having been released from prison upon Johnson's Island. This much we know from the record, and when counsel go out of the record for the purpose of smirching the honorable conduct of the defendant during the late war, they are upon forbidden ground. When counsel undertake to testify in their speeches where they were during the war, let them look out that their own military records are clean. Go ask the commanding officers of Judge Hargis, go ask his comrades whether he was a brave and honorable sol-

dier, and whether he stuck out to the last. Gentlemen [*addressing plaintiff's counsel*], unless you have some evidence that Judge Hargis forsook that cause, whether right or wrong, that he had joined himself to, in September, 1861, don't insinuate. The intimation is made that in the Valley of Virginia, where Mr. Burns described him as leaving camp one day, that he neglected to come back, and deserted that army to which he belonged, when in point of fact (as the gentlemen have gone out of the record) on that identical day he was shot down on the field of battle, and for long weary months lay in prison as a wounded prisoner. Let gentlemen who undertake to smirch the military career of Judge Hargis look to it that they have as many honorable wounds received upon the battle field as he carries upon his body. We have a good many military characters in this case. They got to calling me Colonel. I repudiate it. I did not get that high. They call my friend Thomas W. Bullitt, Colonel, I believe, and his associate counsel Major General William Henry Wadsworth. Where did the leading counsel, Gen. Wadsworth, ever smell gunpowder during the late war? Where did *Col.* Thos. M. Green ever meet the enemy upon the battle-field? They do say (I am quoting Mr. Green's style now—not what he knows himself, but what he has heard—) that Gen. Wadsworth was the defender of Kentucky against Morgan, and whenever Morgan came into Kentucky that he ran over into Ohio, and when he wanted to defend Ohio against Morgan he ran back, to Kentucky and *Colonel* Thos. M. Green was his aide-de-camp in these tactics, commanding a lot of home guards. Talk to me about military careers! That is the style of the plaintiff's warfare when war was on hand. He wanted the houses burnt and the lives taken of ten Southern men in Kentucky for one Union man killed by guerrillas. After the war is over, if he wanted to injure a man he circulated his libelous articles behind his back. That is your client [*addressing plaintiff's counsel*] as true a picture as ever was drawn, and in this record you can find the evidence of it if you will read the depositions.

Well, the defendant returned after the war was over in 1865, and with the exception of a short absence, he remained at home reading law in a desultory manner, not regularly, but about the 1st of November, 1865, he commenced to put in all his time at his studies and subsequently, at the February Term, 1866, as I will show you after a while, he obtained his license and entered upon the practice of his profession during the summer of 1866, having been sworn in as an attorney at the May County Court. He announced himself as a candidate for county judge against Judge Roe about the first of June, 1866, having talked of it perhaps a month or two before, but not announcing himself as a candidate. Defeated for the office of county judge in 1866, he continued his practice in that county and adjoining counties until he removed from Morehead in August, 1868. He was soon appointed Master Commissioner of the Nicholas Circuit Court ard subsequently was elected by the magistrates Judge of the County Court to fill a vacancy, and then at the August election of 1870, he was elected by the people County Judge of that county. In August 1871 he was elevated to the position of State Senator by the people ot the counties of Fleming, Carter, Rowan and Nicholas, and served out his term of four years. In the fall of 1873, he aspired to the Circuit Judgeship, and announced his intention to Mr. Thos. J. Young,

then a resident lawyer of Carlisle, in a conversation with him, and to his friend Mr. C. H. Ashton, in the letter which was read to you of the 26th of September, 1873. At the November Term, 1873, of the Rowan Circuit Court, having in the meantime partially abandoned his purpose of running for that office, after having an interview with Judge Stanton, the incumbent, he announced his determination to make the race. Shortly afterwards, on the 4th day of December, 1873, he publicly announced himself in the *Flemingsburg Democrat* as a candidate for the Democratic nomination. Sometime in February, March, or April—in the spring of 1874, at least—the question of his eligibility was canvassed by the people in his district. The means and agencies by which that question was made and brought about, I propose to examine further along. In all the history of Judge Hargis preceding, 1874, and since, he has maintained a character for truth, for honor, for sobriety, and for morality, second to no man's in the State of Kentucky.

But we find in 1874 the plaintiff undertakes to charge him with a crime, the only one that has ever been charged against the defendant. The only man that has ever made a criminal charge against the defendant is the plaintiff in this action. It is a little remarkable, it seems to me, that a man whose character stands unimpeached and unimpeachable, whether as a private citizen or as an officer, legislative or judicial, and who in his profession in all the relations between client and attorney has maintained his good character, should be guilty, of the crime with which the plaintiff has charged him in this action.

The first proposition in controversy, then, gentlemen of the jury, is, did the defendant obtain his certificate prior to the first day of the February Term of the Rowan Circuit Court, 1866? Judge Hargis has testified before you that some ten days or two weeks prior to the February Term, of the Rowan Circuit Court, 1866, he obtained from Judge Roe, the County Judge of Rowan County, in the County Court Clerk's office, in the presence of the Clerk of that Court, a certificate of his honesty, probity and good demeanor; that there were others present whom he does not recollect; that the matter was first named to Judge Roe at his father's house; that he went with Judge Roe to the County Clerk's office and there obtained his certificate. He received it from the Clerk of that Court. He does not pretend to say that that certificate was ever recorded. He has no knowledge upon that subject. It is argued by the plaintiff's counsel in this case that it was necessary to be recorded, that it was not a certificate without it was recorded, but the court has not told you so. You have no instruction upon that point, and such is not the law. Many orders are made by a court which are never entered of record. The very object for which the orders are read over in the morning in this court is to ascertain whether any of them have been made wrong, or if any of them have not been entered by the clerk. The County Judge held a special term of that court. It is quite probable that orders made in that way might be neglected by the clerk and never entered up. We find that in this record, among the small number of lawyers who have testified in this case, that there are three of them whose certificates were never recorded besides the defendant. Is your witness [*Addressing Mr. Green*], Mr. Harvey G. Burns, a lawyer? This man who says that he went to the house of Judge Lykins, the County Judge of Morgan county, twelve miles from West Liberty, on Caney Creek, and obtained

his certificate, and on it procured the signatures of two judges to his license. Was it ever recorded? He has testified upon the witness stand that he obtained his certificate in that manner, and that he never went to the clerk's office or the court house at all. He said that he had no idea that it was recorded, that he never had anything to do with the clerk, and never delivered it to the clerk, and I presume that the County Court records of Morgan, which were at plaintiff's disposal, if copies had been gotten, would show that his certificate never had been recorded. If it had been recorded the counsel for the plaintiff would have lugged it into the case long ago, especially when Mr. Burns' deposition was taken last summer.

Again we find from the deposition of Mr. Ben. G. Paton, a practicing lawyer who obtained his license in 1870, residing at Paris, Ky., that when he undertook to find his certificate upon the County Court records of Nicholas County, where plaintiff's witness, Mr. John A. Campbell, was and is yet the clerk, he was unable to find it. No record of his certificate, although he swears positively that he obtained it from Judge Hargis, who was Judge of the Court at the time. We find further that Mr. John P. Norvell, who has given his depositionin this case, a practicing lawyer since 1871, obtained his certificate from Judge Hargis when he was Judge of the Nicholas County Court, when he went to the clerk, Mr. John A. Campbell, to find it, he was unable to discover any record that had been made of his certificate. It is not unusual, gentlemen, for such certificates to be left off the record. The testimony in this case shows that fact beyond controversy. Here are Burns, Paton and Norvell. Are they not attorneys at law within the State of Kentucky? Certainly they are. Hence it is that the court in this case refused to give an instruction to this jury saying that it was necessary to record the certificate. It is not the law. On the contrary he says that so far as the certificate is concerned the license is conclusive. You have nothing to do, gentlemen of the jury, with the question of whether it was entered of record or not. So far as that point is concerned, the only question is, when did the defendant obtain it? That is the question, and to that I propose to direct your attention.

Cyrus Alley, the Clerk of the Court at the time this certificate was obtained in 1866, swears in his deposition that he has a recollection that Judge Roe and the defendant came to his office and fixed up some sort of paper of that kind in the winter or spring of 1866. Judge Roe is dead. We have not therefore been able to bring his testimony before this jury, but as early as April, 1874, he gave a certificate setting forth his recollection of this matter, which has been read to you not as to the truth of its statements, for I will not intentionally mislead this jury, but as evidence that Judge Roe made the certificate. Cyrus Alley swears that he and Judge Hargis went to the residence of Judge Roe some eight or nine miles from Morehead, where this certificate was dictated by Judge Roe, and as dictated by him he wrote it down. That certificate was published in the controversy of 1874. It was the first certificate he gave upon this question. He had not then been preyed upon, his political prejudices excited, or pulled and hauled by the plaintiff in this case, and those that were working upon his side, for he gave five certificates in 1874. This is No. 1. So much as relates to the certificate I will read: "While I was Judge of the Rowan County Court, in February or March 1866, I gave to said Hargis a cer-

tificate of his honesty, probity and good demeanor to get license as an attorney at law." Subsequently the plaintiff's man, C. E. Johnson, his left-bower in the controversy of 1874, residing at Vanceburg, embodied a certificate of Judge Roe in his letter in the latter part of May, 1874, which was published in the *Maysville Eagle*, if I recollect right, on the 4th day of June, 1874. I have always thought that certificate was obtained by Mr. Thos. W. Mitchell, a friend of the plaintiff in the controversy of 1874. C. E. Johnson was not at the Rowan Circuit Court in May, 1874, but Thos. W. Mitchell, a lawyer and friend of the plaintiff, and hostile to Judge Hargis in that controversy, was, and took a certificate. I don't know that he was the man, but Johnson not being there, as shown by this record, and Mitchell being there, and residing in the same town with Johnson, I infer that he is the man that took that certificate and sent it to Chas. E. Johnson, who had it published. At any rate it was done. The defendant was not present. He took no part in the obtention of that certificate of the 27th of May, 1874, signed by Judge Roe. What was in that? I will read so much as pertains to the certificate: "I do recollect of his getting a certificate of honesty, probity and good demeanor at a *special term* of the court in the spring of 1866. I had gone to Morehead to make some administrators' settlements, and was called on to hold this *special term*." Who by, Judge? He does not say, but the inference is natural, as he granted the certificate at that special term, that he was called on by Judge Hargis or some one else to grant his certificate at that special term. Now he gives the circumstances under which he went to Morehead—that he had gone there to make some administrators' settlements. He says in that same certificate: "I gave him a certificate at the house of Col. Hargis, where I held the special term." Now we maintain that Judge Roe was just mistaken in these two points: that the term was held at the house of Col. Hargis, and that it was in the spring of 1866. That it was at a special term there can be no question. He gives the circumstances under which he went to Morehead, and it was not at a regular term of the Rowan County Court, held upon the third Monday at that time. His certificate having been talked about at the house of Judge Hargis, he inferred it had been written there, instead of at the clerk's office where they went from the hotel, as proven by Judges Hargis and Alley. Right there let me say, gentlemen of the jury, that when Judge Roe gave that certificate to a man like Thos. W. Mitchell, unfriendly to Judge Hargis, when Judge Hargis was not present, and was not aware of its having been executed until it was published in the *Maysville Eagle*, he is there pinned to a statement of fact which is forever damaging to plaintiff's present theory that the certificate to Judge Hargis was granted at the *regular term* in May, 1866. The man who granted the certificate, signs his name to a statement and permits it to go to the public in plaintiff's paper (and from that day to the day of his death does not deny it), that he granted the certificate at a special term. We did not make him say that. Mr. Larew has repeated and reiterated here for hours at a time as to what people have stated in certificates, which he says they were made to state in that way by Judge Hargis, as though the farmers in Rowan county were machines, upon which Judge Hargis has nothing to do but play—that they were all instruments in his hands—with no free agency whatever. This is one certificate that Judge Hargis did not get

Judge Roe to make. Judge Bullitt says we brought Judge Roe's son here to contradict his dead father. I deny it. Cornelius E. Roe's deposition is in this record, but under the ruling of the court it is not competent evidence to go to this jury. Judge Bullitt, however, argued that testimony as though it was before this jury, and I propose to follow him upon it. Cornelius E. Roe contradict his dead father, eh? That is their position. His father states in his certificate No. 1, that he granted this certificate to the defendant in February or March, of 1866. On that point now we offered to prove by Cornelius E. Roe, the son of Judge Roe, that in the month of February his father came home from Morehead, not at a regular term, and informed him that he had granted the defendant a certificate of honesty, probity and good demeanor; that 'Squire Chris. Ham was present upon that occasion and objected to it, and made a memorandum of it; and he believed that 'Squire Ham had a notion of making a race against him for County Judge, and using the fact that he (Judge Roe) had granted defendant's certificate against him before the Republican party of Rowan county. We offered further to prove by Cornelius E. Roe, that in the spring of 1866, when the canvass had commenced for county offices, that his father had been in the Pine Grove precinct where 'Squire Chris. Ham resided at that time, and said to his son: "Sure enough my prediction is correct. 'Squire Chris. Ham is using the granting of that certificate against me." Where is the contradiction? The gentlemen have plumed themselves upon the idea that this memorandum taken by 'Squire Ham is a forgery. That is the argument. Because they cannot impeach 'Squire Ham's testimony, and break down the force of facts in a regular way, it is the pleasure of counsel to come before this jury and abuse Ham, not only charging him with being a forger, but a perjured scoundrel. Not content with that, but that the defendant, Judge Hargis, knew it. Not content with that, but that Cyrus Alley and Joseph Norvell were forgers likewise, going out of the record to make such charges. The gentlemen are driven to such expedients as these. When they cannot get over a man's testimony, cannot escape the force of it in any other way, plaintiff's counsel come before an honest, intelligent jury, sworn to try this case according to the evidence, and slander witnesses and endeavor to break them down by their own standing and social influence in this community. Now I have to say this for 'Squire Chris. Ham, a man who has been magistrate of his precinct, elected to his position year after year for ten long years, who has served in that capacity, a man who stands well at home, a member, as the proof shows, of the Methodist Episcopal Church North, and has sustained an upright moral life, arriving at the age of sixty years, if he then becomes a forger and perjurer in the interest of a man to whom he is no kin, of a different political party, with no feeling upon our side whatever, it is indeed a wonderful change, contrary to all my observations in life, and if this is the position of plaintiff's counsel, let them take it. I don't believe an intelligent jury will ever come to such a conclusion. This certificate they say—this memorandum that he thus preserved is not old enough for them. The proof shows that he used it only for a short while in 1866, and then laid it away in his pocket-book, where it stayed from that time until he gave his deposition. Here is another paper that he produced at the same time of his examination, dated the 5th day of March, 1866. I ask you to take these two papers and compare them,

and tell me from their appearance which is the oldest in your opinion? They are produced by the same witness. One is dated the 5th of March, 1866, and they are filed as exhibits in his deposition. I ask you to take that memorandum so far as its appearance is concerned, and compare it with my license, dated February 28th, 1866, compare it with the license of Mr. W. V. Prather, compare it with the other exhibits filed in this case shown to have been as old as 1866, and I venture the assertion that nothing can be argued from the appearance of that memorandum. But they say Judge Hargis wrote his name *T. J. F.* Hargis in 1866, while in Ham's memorandum it is written T. F. Hargis. But Judge Hargis did not write that. If Judge Hargis had been writing it or having it done, it is very likely that a man of his intelligence would not have written it in that way. I ask you to take this minute made by Cyrus Alley, the Clerk of the Rowan County and Circuit Courts, in 1866—take the examiner's order. Cyrus Alley knew how Judge Hargis spelled his name. He knew his initials, and when he qualified as examiner and wrote it "*Thos. J.* Hargis." "Upon recommendation of the Bar, *Thos. J.* Hargis is appointed examiner." When he enters that upon the order book, I have not time to refer to it at length, you will find that he writes it *Thos. J.* Hargis, leaving out one of the initials then of the defendant. So it seems to me nothing can be argued from that discrepancy in the memorandum.

Again, when Judge Hargis is sworn into the Carter Circuit Court, in 1867, the entry in that court is entered up *Thos. J.* Hargis. I suppose they are forgeries too, because they do not have all the initials. This memorandum made by Ham does not even state that Judge Hargis obtained his certificate of honesty, probity and good demeanor, but in the rough, uneducated language of Chris. Ham, "got recommendation from Stevens Roe, County Judge of Rowan County, to obtain his license." If that had been forged, don't you know that he would have put the word *certificate* in it? He would have used one of the three words *honesty*, *probity* and *good demeanor*, but none of them are in that memorandum. That fact shows to me that it is the original composition of Christopher Ham, made in 1866, without a thought or apprehension of any controversy, without undertaking to follow the language of the certificate, but the substance of it, as he recollected, or was informed of it by Judge Roe, on that occasion when he took it down. He thought it was defendant's recommendation to practice law. That is all he wanted to know about it. He did not know that it was necessary to record these certificates. There are some lawyers in the country that don't know it. He was not a lawyer. Judge Bullitt argued that it is absurd that 'Squire Ham would take a memorandum of that which was bound to be on the record. That is the argument of his client. The court don't say that it is bound to be on record. There is no such law in this country. Christopher Ham did not know it. All he wanted was to take the memorandum down or the substance of it, and the time that it was done, so that he could use it against Judge Roe in his canvass. Judge Bullitt stated a hypothetical case to you. I want to put one. If Judge Bullitt believed that Judge Hargis was a forger, that he had procured Joe Norvell to go out to 'Squire Ham's in the month of September, 1879, and get up this memorandum; that he had stood by and taken the testimony of a man like 'Squire Ham, sixty years of age, put him upon the witness stand, and had him swear what was false, I ask

you if it is not a little strange, if Judge Bullitt believed all that, then after being three weeks in the company of Judge Hargis at Grayson and Morehead, sitting down at the social card-table at Mr. Z. T. Young's on Saturday night after Christopher Ham had sworn in this case, after that satchel had been stolen, accepting the hospitality of the defendant and riding forty-four miles with him in a single horse buggy from Morehead to Carlisle—do you believe that a gentleman like Judge Bullitt is sincere, when he tells you that he believes that Judge Hargis is a forger, scoundrel, and perjurer. His own acts prove that he is not sincere in his statements to this jury. It is only done because he cannot get over this evidence in any other way than to call harsh names and abuse people. That is the hypothetical case I proposed to state. But plaintiff's counsel would have you believe everybody concerned in this matter has perjured himself. Here is Robt. L. White, a man forty years of age, a neighbor of Chris. Ham, E. W. Waller, another neighbor, no kin to him on earth, F. B. Ham, Ben. J. Rayburn, three of them swearing in depositions taken by us, one of them in a deposition taken by them, that they saw this memorandum in 1866. They heard it read, and know that it was used by 'Squire Ham in the canvass for County Judge, in the Pine Grove precinct, and give the names of Capt. James Blue, of the Federal army, and Geo. W. Bocook, their residence and locality in the State of Kansas, four months before this trial began. Their depositions could have been taken by the plaintiff, had he supposed that he could have contradicted our witnesses. They all swear to the genuineness and age of this memorandum. Judge Bullitt argues that it is very strange that there were so many men together. If this was a fixed up matter, that would be the last thing a fellow would do. My observation is that when a man is going to swear to a lie, he keeps as far away from other people as possible. He don't want anybody present. But these men swear who was present, their residences, and plaintiff's counsel could have taken their depositions, if they wanted to prove that these witnesses had not sworn the truth. They do not take those depositions. I suppose if we had taken forty depositions to prove that this memorandum was used by 'Squire Ham in Pine Grove precinct, that the more we brought the less reliance would be placed in it. The more proof we have, the more suspicious these gentlemen become. If we don't bring enough witnesses to suit them, they say that we have not brought enough. If we take the depositions of men who live one hundred and fifty miles from Louisville, they say we ought to have brought them here before the jury. Did they bring all of theirs here? No.

Now it is not a question, gentlemen of the jury, as to whether Squire Ham gave the correct reason for taking that memorandum, or whether he gave more than one reason for it. I care nothing about that. The purpose he put it to is the most convincing evidence, to my mind, as to the object for which he took it. It is proven in his first deposition that he told Judge Roe about it, and that he intended to oppose him before the people for having granted that certificate to a man just fresh out of the Rebel army. The deposition of H. R. Myers has been taken in this case. He was a witness for the plaintiff, and they gave us notice to take his deposition four or five times.

By Col. Bullitt—There is nothing to that effect in the evidence that has been read before the jury.

By Mr. Stone—So far as that is concerned, it is immaterial. The proof of Henry R. Myers himself shows on the face of his deposition that the plaintiff, Thos. M. Green, talked to him with the view of taking his deposition in this case, giving defendant notice he would do so, and after that time he told him that he did not want to take his deposition. After they had thus sought the testimony of Henry R. Myers, a man of sixty years of age, thirteen years a magistrate of the county of Rowan, a Republican in politics, we took his deposition, and what do these gentlemen do? They turn around upon this man Myers and undertake to impeach his character, and having made an utter failure of it, they dare not read that proof in this court-house. His character for truth and good morals in the county of Rowan, stands before you unimpeached.

What is the proof in regard to this matter? The deposition of Henry R. Myers has been read to you, and I propose to read to you from the cross-examination of that witness: "You seem positive that your interview with Judge Roe concerning defendant's certificate took place prior to the May term of the county court in 1866, yet you cannot say how long. Now please tell me why it is you fix it certainly before the May term?" "Because I am satisfied it was. I know the weather was cool when he told me so."

"Is that your only reason for so thinking?" "Not the only reason, but the more I study about it, the plainer it comes to me. I am satisfied it was before the May court."

"It was cool before the January court of that year, may it not have been before then?" "I think not My recollection is that it was February, March or April—one of them three."

There we find the testimony of this witness, a neighbor of Judge Roe, living in a short distance of him, near the same age, having a conversation with Judge Roe in regard to granting the certificate of the defendant, prior to the May term, one, two or three months.

But they say, you ought to have had Myers here. They got an order for him to be here, why did he go home? They asked the question and I will answer it. Simply because that old man, seventy years of age, who was down here on expenses two or three weeks, when he went to Mr. Green to pay his expenses he would not do it. He was unable without money to pay his bill and hence went home, as the court said he ought to have done by not requiring his presence. The plaintiff had the utmost latitude in taking his deposition. My friend, Mr. Larew, cross-examined him for two days, I believe, and perhaps three, and not content with that he went home, and as a specimen of his high art in cross examination, had the deposition published in full in the *Maysville Republican.* Not satisfied yet, he put it in the plaintiff's paper, the *Maysville Eagle.* Still Henry R. Myers lives.

The defendant's license is dated the 26th of February, 1866. If the date of that license is genuine, the court has told you that it forms conclusive evidence of the granting and presentation of the certificate prior to that time. Now the body of that license says that the defendant having produced a certificate of his honesty, probity and good demeanor —not a copy, not an order of the Rowan County Court, but a certificate of his honesty, probity and good demeanor. Don't come before this jury then [*turning to plaintiff's counsel*] and tell them that that license says a copy, or an order of the County Court of Rowan county.

He produced the certificate itself—the original paper. Judge Andrews shed some light on this point, and I propose to read some from his oral testimony. Judge Andrews says to this jury, that the defendant applied to him for a license upon the first day of the February term, of the Rowan Circuit Court, 1866. Does he not so testify? On the main examination he says: "Judge Hargis spoke to me upon the subject, that he would be pleased to apply for his license, and we had a conversation upon the subject." On the cross-examination he is still more explicit. "You state that he then applied to you for a license?" "I do." "What was the language he used in making the application?" "Well, I cannot give you the exact language. The substance was—he probably asked what I thought—he had a desire to apply for a license." "It is not what he probably may have done. I am asking you for your recollection of the language he used in making the application?" "That is my recollection, that he said that he would like to apply for his license." "Like for you to sign his license?" "Yes, sir."

Now I want to know, gentlemen of the jury, why the defendant was applying to Judge Andrews for his license on the 26th of February, 1866, unless he was prepared with the requisite preliminary certificate to obtain that license. Tell me, with the intelligence of the defendant, having studied law as much as he had done, that he would go to the Circuit Judge, as that Circuit Judge says himself, and as Judge Hargis swears, wanting a license, asking him to sign his license, to give him his license, without he had his certificate prepared beforehand on which he could obtain that signature? Gentlemen, it don't stand to reason. Judge Hargis, in this record, is thus backed and corroborated by Judge Andrews in the fact that he had that certificate before the 26th of February, 1866, because both agree that upon that date he applied for his license. Unless he was very ignorant and very little versed in such matters, you cannot conclude that he did not have his certificate when he asked Judge Andrews to sign his license. Never.

We don't stop here. Judge Bullitt, in his argument, never mentioned Hon. Jas. M. Nesbitt from the beginning to the end of his speech, although he undertook to show when and where the defendant's license was signed. Mr. Larew touched him very gingerly, and I believe had the audacity to say that Mr. Nesbitt had testified on their side, and that his proof went to show that the conversation between him and the defendant was not until March, 1867. We will see further along Now what does Mr. Nesbitt say upon the subject of the certificate? Mr. Nesbitt has been before you. The gentleman cannot complain that we took his deposition, and did not bring him here. He is the equal of Judge Andrews. Without disparagement to Judge Andrews, Mr. Nesbitt stands as high before this jury and before any community in the State of Kentucky, as a man of credibility, of honor and character. He had known the defendant prior to the war, had known him about his father's premises as he attended the Rowan Court. After the war, and upon the Saturday preceding the County Court of Bath County, on the second Saturday in March, 1866, on the 10th day of the month, at or near the hotel now known as the Brooks House, in a conversation with the defendant, after talking about his license he states: "He (the defendant) then took out of his pocket, is my recollection, an envelope. Perhaps I had asked him—I know that I did ask him in the

conversation—if he had procured the certificate of the Rowan County Court of his honesty, probity and good character, or county court; I wont say positively that I said Rowan, though I believe I did. He said he had. He produced an envelope and it had two papers in it, the license and the certificate. The certificate was handed to me, or the envelope was handed to me, one or the other, and I took it out and found that it was in form." Again: "The certificate of honesty, probity and good demeanor, do you recollect whether that was a copy or the original paper?" That is where the question is put directly to him upon that point. "I am not very clear on that point. I am not positively clear. It was in the hand-writing of Cyrus Alley, who was then Clerk of the County Court, as I understood. It was attested by him, but my best recollection is that it had the name of the Judge to it, Stevens Roe. To say that it was a copy of the original, I cannot, but I can give you my best recollection about it." "Were you acquainted with Stevens Roe's hand writing?" "Very well." "What is your recollection about whether the signature was in his hand writing or some one else's?" "It was a different hand writing from Alley's, and I am inclined to believe that it was Stevens Roe's hand writing. If I was to see Stevens Roe's hand writing I would know it I think without a bit of trouble, but I am not positive that it was in his hand-writing. Still this is my best recollection."

And he goes on further to speak of the license. I will call your attention to that hereafter. There we find the positive, unequivocal proof by Hon. Jas. M. Nesbitt, that on the Saturday preceding the second Monday of March, 1866, "he saw with his own eyes," quoting the language of the plaintiff, in the possession of the defendant, a certificate of his honesty, probity and good demeanor, in the hand-writing of Cyrus Alley, and signed by the Judge of the County Court. The circumstances under which he saw that certificate are all given. Judge Hargis was out there on business, seeing something about a horse that he had left with a man named Collins in the county. There can be no mistake about this testimony of Mr. Nesbitt. He does not say that it is my recollection that I saw it, but he tells you as a fact, in such a definite and fixed manner that the jury can afford to hang their verdict upon it—that he tells the truth. It is no chimera of the brain, no inference merely or opinion, he swears to it without qualification. He then and there saw the defendant's certificate in his possession, in the handwriting of the clerk, attested by the clerk and signed by the County Judge. Judge Hargis swears to the same interview with Mr. Nesbitt. He swears that he did then and there exhibit that certificate to Mr. Nesbitt in connection with his license. It was here read and seen by Mr. Nesbitt. Now the fact that it was in the htand-writing of the clerk, attested by him and signed by the County Judge is conclusive of another fact, that it was the *original* certificate—not a copy—not a copy of any order of the court, because in making copies the judge of the court does not sign them, and the clerk of the court only attests them. This was attested by Cyrus Alley, not as a copy, he did not wish the jury to understand him as so stating, but it was attested by Cyrus Alley as an attesting witness, and when we consider that the Judge signed that certificate, we then know that it was not a copy, that it was the original certificate itself. That is consistent with the theory that it was never entered of record, which we maintain.

Now what have we opposed to this evidence upon the subject of the certificate? We have Mr. Wadsworth's assertion, in his opening statement, that the certificate was recorded at a regular term of the Rowan County Court, on the 21st of May, 1866. But who proves it? Has any witness, in this entire record, undertaken to tell this jury upon this important question, that the certificate was recorded upon the Record Book of the Rowan County Court at its regular term on the 21st of May, 1866? No. This jury want facts, I take it, instead of the assertions of counsel. The vague, indefinite recollection of Mr. James E. Clarke won't do. Clarke says he has a recollection that he recorded it. He will not fix the time, he will not state it as a fact, that he did record it, but when I asked him to tell this jury—can you state positively as a fact that you recorded that certificate—this is an important matter, we want to know the truth—we want something that we can rely on—will you tell this jury that you recorded that certificate as a fact. He responded: "I state it as my recollection." Now, whether I quote Mr Clarke correctly or not can be best determined by the record itself. "You stated also that your recollection was that you recorded it?" "I stated it as my recollection." "You are not positive then?" "Not perhaps just as positive as I am that I see you, but it is in my recollection that way." "Is that recollection of such a character that you can state positively to this jury that you recorded that order?" Now what does he say? "I could only state to this jury that it is my recollection that I recorded that order." That is just as near as the plaintiff ever came to proving that fact. I put it to Jas. E. Clarke, while he sat upon the witness stand, so that this jury might know whether they could hang their verdict upon that testimony as a fact. I gave him the opportunity, with all his training, with all his bias, with all his feelings against us, I put it to him directly, whether he could state it as a fact that he recorded that certificate, and he answered, "I cannot and will not. I only state that it is in my recollection that way." He could not tell the year at first when it was done. Finally, he says, after thinking about it, "I think it was in 1866—it must have been in 1866." Now further, on that subject, I call your attention to question 20: "You stated that it was your impression that it was in the year 1866 that the certificate was granted?" "Well, sir, upon thinking more about it since, I am satisfied that it was in that year." "Now, as to the month, you cannot fix it?" "I cannot fix it now." "You don't pretend to fix it now?" "No, sir, I don't pretend to as a fact of recollection." "You say, 'the only impression that I have that would direct my attention to the time of year is, that it was warm weather?'" "Yes sir."

You recollect the question I put to Mr. Clarke on that subject of warm weather—how he could determine that it was warm weather? He said that he recollected that Col. Hargis and he were able to stand out in the court-house yard and be comfortable. Now, the most comfortable place that I could find this last winter was in the court-house yard here, or somewhere out of doors, and when I asked him whether he could state any other fact that would enable him to say that it was warm weather, except that he and Col. Hargis could stand in the court-house yard, he said he could not. You recollect my examination of Mr. Clarke after he had been giving his deposition for a day or so. He came to me and told me that the winter of 1865–'6 was a very

mild and pleasant winter, only three cold days, and those were in January. Then I, upon the next morning, as the deposition shows, put the question to him as to the temperate weather in 1865–'6, in pursuance of the suggestion that he had made the evening before; the first question I put to him was, what kind of weather was it in the winter of 1865–'6, in January and February. He answered that it was a very mild winter, he did not recollect of but three cold days, and they were in January. What does that prove? It proves that James E. Clarke even was not willing to leave that witness stand without a salve to his conscience, and he comes to me and gives me a suggestion as to a state of facts showing conclusively that his mind was wholly in doubt as to when that certificate (if he had any recollection about it at all) was granted. That warm weather, which is the only fact that guides him as to the time of the year, according to his own testimony, may have occurred in the month of February, 1866.

Now, here is the man upon whom they rely to prove the assertions of Mr. Wadsworth, so broadly and unequivocally made in his opening statement, that the certificate of the defendant was recorded upon the 21st day of May, at a regular term of the Rowan County Court. Interrogated upon that subject, with the book before him when he gave his deposition, Clarke is unwilling to state it as a fact then, or when examined before this jury, that he recorded it, and unwilling to state the month or the time of the year. Now, how can this jury be satisfied with evidence of that character, without evidence more tangible and reliable? Instead of that testimony being inconsistent with our testimony, it is entirely consistent, so far as the time when this certificate was granted is concerned. When that book was before James E. Clarke, when he had every opportunity to examine it, he would not state even that it was his *judgment* that he recorded it at that place, May, 1866.

Now, there is some intrinsic evidence as shown by this proof upon the book itself, or rather evidence which the book bore upon its face, corroborating our testimony, and excluding the idea that Clarke recorded the certificate in May. We find that the proof shows that the ten orders preceding the May erasure were recorded by Cyrus Alley, the clerk. We find that four orders immediately succeeding the May erasure were recorded by Cyrus Alley, the clerk. We find that above that erasure and below it, upon the marginal line, are the two parallel marks like the sign of equality, which Clarke says he never made, and which the records of the Circuit Court and the proof show Alley always made. I shall have occasion to allude to these marks hereafter. We find that upon the second day of June, 1874, according to the testimony of the plaintiff himself, and according to an article published in his paper in answer to a letter written by myself, this article being dated the 8th of July, 1874, and read to you in evidence, that Clarke, who they claim recorded this certificate at that particular spot, sits down and carefully examines it with the plaintiff, and concurs with him that he can spell the word "thence," every letter of it, upon that erasure, and pronounces it a *road order*. Here is the man who it is said recorded it, after too he had discovered that it was not in February, after he had discovered that the Carey and Zimmerman orders covered the erasure in February, and that there was no other spot upon the face of that book where the certificate could

be recorded, sitting down there and concurring in the view of the plaintiff, that the spot where that May erasure occurs was filled with a road order, and that he can spell the word "thence," like the plaintff, in that erasure.

Now, is not that preposterous? Is it not preposterous to now claim that this man recorded that order, when six years ago, knowing at the time it could not be in February, knowing at the time it could not be anywhere else except on the 21st of May, 1866, if he did record it, he sat down deliberately and concurred with the plaintiff, if the plaintiff is to be believed (and Clarke would not deny it when he was upon the witness stand), in the statement that he could see in that identical spot the word "thence," and that the order was a road order? Not a word said about Clarke's ever having recorded there the certificate of honesty, probity, and good demeanor from the beginning of that interview to the end of it, nor from the second day of June, 1874, down to the present time. Now, it looks to me like a little too late to depend upon this witness to prove that he recorded the certificate of honesty, probity, and good demeanor at that spot, when he knew just as well then, six years ago, as he knows now, if he did record it, that there was no other place upon the face of the Order Book where it could have been recorded except that spot, and he then concurred with the plaintiff that it was not there, never was there, that it was a road order, and he could spell out the word "thence" in that erasure.

Oh, but Maj. Jas. M. Brain is relied upon to prove another fact in this connection! Mr. Johnson B. Phelps' deposition settles that question as well as other evidence in this case. In 1874 Maj. Jas. M. Brain executed this certificate and signed it in the presence of J. B. Phelps. I will read it:

"I, Jas. M. Brain, certify that I met Thos. F. Hargis in June, 1866, just after he became a candidate for County Judge of Rowan county against Hon. Stevens Roe. Capt. Hargis told me that Mr. Roe had admitted him (Hargis) to the bar, and he seemed to have some pride in the fact that his opponent had admitted him as a lawyer. Given under my hand this 26th day of May, 1874. JAS. M. BRAIN.

"Attest: J. B. PHELPS."

Maj. Brain, as the proof shows, was an active supporter of the defendant for the office of Circuit Judge in 1874, and voted for him; he was a subscriber to the *Carlisle Mercury* (in which his certificate was published), and perhaps to other papers in that Judicial District, and for five long years and more that certificate stood uncontradicted by him, and he comes, after the lapse of that time, and pretends that the conversation had with Judge Hargis in 1866 was to this effect: that Judge Hargis told him that on the day before, or shortly before the conversation, Judge Roe had granted him his certificate of honesty, probity, and good demeanor. His own son, Hiram G. Brain, proves that he saw his father's certificate as published there at his father's house, and Dr. McMillan proves that he has often heard Maj. Brain allude to the subject—the fact that he had thus given a certificate to the defendant. But under the manipulations of his son-in-law, Judge James Carey, after he had become unfriendly with the defendant, after he had grown some six years older, and feeble health had to some extent impaired his recollection, his deposition is taken in this case by the plaintiff, and he goes back upon the written certificate published in 1874. He is made to eat his own words. This is the man relied

upon to prove a conversation had in 1866, when in 1874 he gave a certificate showing that the conversation was an entirely different one. He is contradicted by his own son, by Dr. McMillan, by Judge Hargis, and by many other witnesses.

Clarke, after giving his deposition, goes over to the town of Owingsville and there has a conversation with Mr. Jas. J. Nesbitt. You saw him. He testified in an intelligent, clear, unequivocal way. In that conversation he says Mr. Clarke told him that he knew that the defendant had his certificate *early* in the spring of 1866. Now gentlemen, May is the last month in the spring of the year. When asked by Mr. J. J. Nesbitt if he had so stated in his deposition, he said he had not. He is asked why he did not do so, and he says he was not asked the question. Well, it seems to me that he might have found an opportunity to have stated it anyhow. Mr. Clarke does not make it his business to prompt counsel how to frame questions (?) He has done nothing of that sort in this case (?) He did not come to me, according to his own testimony, on one evening during the taking of his deposition and tell me in effect what question to ask him (?) Oh, no! Then, Mr. Clarke, if you knew that he had a certificate *early* in the spring of 1866, you knew a fact that is entirely inconsistent with the theory of the plaintiff, that you recorded that certificate on the 21st of May, 1866.

But further. I will not take time to read the article to show you that this is a brand new theory, coined out of the brain of Mr. Wadsworth, after being employed in this case, but as late as the 24th of May, 1879, only three weeks before this suit was brought, in an article written to the *Kentucky Sentinel*, the plaintiff declared it as rather his own conclusion that the defendant's certificate *never was recorded*. He had that conclusion three weeks before he brought this suit. Whether he entertained it up to the hour Mr. Wadsworth went before this jury to make his opening statement, makes no sort of difference. He said, however, upon the witness stand that he concurred and approved of Mr. Wadsworth's statement in that respect and it met with his entire endorsement. Now I ask you what other witness has testified upon this question? What witness living or dead has introduced testimony into this record going to establish the theory that this certficate was granted at a later period than February, 1866? I challenge the gentlemen of plaintiff's counsel to show it. They say, however, and their theory drives them to it, that Judge Hargis got his certificate of Judge Roe three months and one week before he had any use for it—from the 21st of May to the 27th of August. From the third Monday in May to the fourth Monday in August, 1866, they tell you Judge Hargis carried that certificate in his pocket without a particle of use for it. Was the like ever known in the history of Kentucky, that an applicant for law license, three months and one week before he expected to or would apply to the first Judge, obtained his certificate preparatory to getting his license? It is without a precedent, and you cannot believe such an absurdity. We insist, therefore, gentlemen of the jury, that this point in controversy, the first which I undertook to discuss, that the defendant obtained his certificate prior to the first day of the February term of the Rowan Circuit Court, 1866, has been established, not only by the preponderance of proof, but no witness testifies to a single fact in this entire record from one end of it to the other, upon which you can come to a contrary conclusion. All the testimony is

consistent with our theory. Three or four witnesses swear positively to the fact that it was granted at that time—previous to the February term of the Circuit Court. We have the testimony of the clerk himself, who wrote the certificate, that he recollects that it was fixed up in his office, or a paper of that kind. We have the Judge himself, in the first certificate that he gives, stating that he granted it in February or March. We have the testimony of 'Squire Ham, that he was present upon that occasion, and knows that it was granted, and took a memorandum of it. We have the testimony of Mr. Nesbitt, that he saw it as early as the 10th of March, 1866, in the handwriting of Alley, and signed by the Judge, with no evidence to the contrary, or that it was recorded in May, 1866, and the man upon whom plaintiff's counsel rely to prove the pivotal fact in dispute—that it was then and there recorded, is indistinct in his testimony, stating circumstances from the beginning of his examination to the end which can be reconciled and are consistent with the testimony we have offered. Hence, I say that upon that point I shall not pursue the discussion further.

This leads us to the second proposition, whether or not the defendant's license was signed upon the 26th day of February, 1866, by Judge Andrews, at Morehead. Judge Hargis has stated it as a fact, that having procured his certificate, he made the application to the first Judge, at the February term of the Rowan Circuit Court, 1866—Judge Andrews so far agrees with him. "He made the application to me," Judge Andrews says, "according to my recollection, on the first day of the term." Judge Hargis swears that Judge Andrews asked him if he thought he could write his own license. Judge Hargis told him that he thought he could. Judge Andrews then said, do so and return after supper, and the defendant went into his room after supper, and Judge Andrews made one criticism—that he had left out after Rowan county, the words "the county of his residence." That he went back to his room where he was staying for the purpose of re-writing it, and after getting there he concluded that he could interline it and did so. That he returned with his license, and that it was signed by Judge Andrews upon that night, Judge Andrews saying that a young man who could write his own license, and knew what was necessary to obtain a license, deserved to have it.

Now I want to call your attention to one fact. Judge Hargis says his license was written in the room then occupied by himself and Jas. E. Clarke, Judge John M. Elliott and his brother, K. F. Hargis, being present. How easy it would have been for Judge Hargis, in his testimony, had he been the corrupt, fraudulent forger and perjurer, the plaintiff would have you believe him to be, to have left Jas. E. Clarke out of that room. Instead of that he gives the facts as they occurred, knowing at the time, from his past conduct, that Clarke would come into the court-house and fail to recollect it, or say that he did not recollect it. But he went to that room. After seeing Clarke's license, he resolved upon having his in a shorter form. He did not write it out as long and as voluminous as the license produced by Clarke. Clarke says that he recollects that he asked him for his license, but he cannot tell when or where. He has a vague uncertain recollection about it. Clarke says he saw the form of the defendant's license, and he remembers that it was shorter than his own, but where it was or when it was he has only a vague uncertain recollection about it. To that extent, at least, he corroborates Judge Hargis.

Now, Judge Andrews was asked about that interlineation when he gave his first deposition. That is the first time that he had ever heard of it, and his memory was completely at fault in regard to it. He had no recollection of it whatever. "When your deposition was taken in June last, did you have any recollection of words having been interlined?" He says he would not, if the license had not been shown to him, have had any recollection at all. "After the license was exhibited to you on the witness stand, had you then on inspecting the interlineation, any recollection?" "My recollection was that it had been put there when Judge Hargis withdrew from the room." "You say that was your recollection in June last?" "My recollection was not clear about that. I am quite sure that that was not written in my presence." Further on in his deposition I ask him this question: "I will ask you to look at the 46th question and your answer, and ask you if you did not use this language in that answer written by you, speaking of the original license then before you: "I was presented the license this morning by the defendant and his attorney, H. L. Stone, which I have inspected. I find them in the hand-writing of defendant, except the signature of myself and that of Judge Apperson. I find an interlineation after the words Rowan county, 'the county of his residence.' As to this interlineation I said on yesterday, *I had no recollection and have not now;* and they have been again presented and exhibited while making this answer." So you see the first intimation as to the facts of this matter of the interlineation came out in the question that I propounded to him in June last. Then he had no recollection of the circumstances whatever, the criticism, as to the interlineation, the making of the interlineation, and the signing of the license after it had been made. Now after he takes the witness stand, he thinks he does have a recollection upon that subject, and thought he had when he gave his first deposition; but we have seen he had no recollection about it. In what I may say of Judge Andrews' testimony, I want it distinctly understood now that I don't believe that it is necessary, as gentlemen would have you believe, that the testimony of Judge Andrews should be regarded as willfully false before you can find the defendant innocent of the charge that the plaintiff has made against him. Such is not my view of the testimony of Judge Andrews. I expect to treat his testimony respectfully, as this jury will bear me witness I treated him respectfully upon the witness stand. I have no desire to say aught against Judge Andrews in this case. I have no desire or purpose to ask a verdict at the hands of this jury on any grounds except those which are legitimate and proper. It is not necessary, according to my view of this case, that this jury must come to the conclusion that Judge Andrews has perjured himself upon the witness stand. That he has testified to facts inconsistent with our theory of this case I do not deny, and when I examine his testimony I shall unhesitatingly take the ground that his recollection of the circumstances attending the execution of the defendant's license cannot be relied on, however fair, however honest, however good his intentions may have been. I expect to show, by this record and by his own testimony upon the witness stand, that this jury cannot rely upon his evidence to make out the plaintiff's case.

We find that at the February term, 1866, of the Rowan Circuit Court, for the first time since the war, the defendant's brother, K. F. Hargis, was in attendance upon that court. He stayed there during

that term, and as shown by this exhibit, which I alluded to awhile ago, filed with the deposition of Chris. Ham, he was there upon the 5th day of March, and entered into a written contract with 'Squire Ham in relation to the lease of some mineral lands. He says that upon the first day of that court, the defendant, his brother, informed him that he intended to apply to Judge Andrews to obtain his license; that he has not a distinct recollection that he saw the license during that term, but after that, in conversation with the defendant, he informed him that his license had been signed by Judge Andrews. He says also that he occupied this upstairs room with Judge Hargis, where also stayed Mr. Clarke and Judge Elliott.

Next in order comes the testimony of Mr. Nesbitt. I have incidentally alluded to the fact of the interview between him and the defendant. He was well acquainted with him. It was the first time that he had seen him since the close of the war in Owingsville. The defendant commenced talking of his license. Mr. Nesbitt had received the impression from what he said that his license was completed, and asked him if he would not stay there and be sworn into the court that was coming on. If it was the second Saturday it was the County Court; if it was the third Saturday it was the Circuit Court, which he had allusion to. He knows there were some two days intervened between the date of the interview and the session of the court, not during the session of the Circuit Court, as Mr. Larew would have you believe. But when he was informed by Judge Hargis that his license was not completed, that he had only one signature to it, that he only alluded to the fact with a view of ascertaining Mr. Nesbitt's opinion as to whether his license was in proper form, and desired to show it to him, Mr. Nesbitt at first waived the matter by saying that he had seen many law licenses. But when it was made known to him that he desired to get his opinion as to the license, and wanted him to see it for that purpose, it was then exhibited to him there near the hotel in Owingsville. He took out a large envelope and in that envelope were the license and the certificate. He tells us plainly and unequivocally that there was but one signature to that license, and that was the signature of Judge Andrews, whose handwriting he had known for years. He says that while the defendant held the license in his hand and read it, he looked over it, approved of its form, and then the defendant informed him that it was his purpose to obtain the second signature, that of Judge Apperson, as he passed through Morehead going to the Grayson Court, or to go to Grayson and apply to him there. Mr. Larew argues that with a license signed by but one Judge, with the signature of Judge Andrews, with the declaration on the defendant's lips that he could not swear in at the Bath court, because he did not have the completed license, but that he intended to have it signed by Judge Apperson as he passed through Morehead, or go out to Grayson and there get it signed—Mr. Larew would have you believe I say, that that was in March, 1867, when plaintiff's counsel know and they admit according to their own theory that he then had had his license for six long months. Now if you can reconcile that with the idea that it was in March, 1867, do so. I cannot. Oh, but they say, why didn't he stay in Morehead, and have it signed there? The plantiff himself proves the fact that Judge Apperson went up the Ohio river to attend the Boyd and Carter courts, in 1867—that it was not his universal habit

to go through Morehead. Hence it was that Judge Hargis said: "I will see him as he passes through Morehead, or at the Grayson court." It was the first court after the war that Judge Hargis knew anything about the route traveled by Judge Apperson to the Grayson court. He did not know that it was his habit to pass through Morehead. He knew that he could come through Morehead, but he knew that he could go just as well by the Ohio river, as the proof shows that he did subsequently.

I desire to again call your attention to the fact that Judge Bullitt, who in part cross-examined Mr. Nesbitt in this case, did not allude to the testimony of Hon. Jas. M. Nesbitt once in his entire argument. Judge Bullitt sat upon the same Commission with him at the Capital of your State, in the revision of the General Statutes and Codes of Practice, and then came here in the course of the cross examination and undertook to break him down before this jury by pretending that Mr. Nesbitt had been employed by a man to get him a law license for ten dollars, and the signature of the second judge for five dollars, when he knew that the applicant was incompetent to practice law. Mr. Nesbitt said that he never had, under any circumstances upon the face of the earth, undertaken such a business, or to obtain a law license for any one for a money consideration. No wonder, after the failure upon the part of Judge Bullitt to break down Judge Nesbitt before this jury, by casting a slur upon his reputation as a lawyer and as a man, he did not once allude to his testimony. I shall proceed with my discussion of this branch of the case in the morning.

The court thereupon adjourned.

MAY 21st, 1880.

The court met pursuant to adjournment, and Mr. Stone continued his argument as follows:

Gentlemen of the Jury:

In order that there may be no misunderstanding as to the testimony of Mr. Nesbitt, I desire to read from the record so much as pertains to the interview he had with Judge Hargis in March, 1866, page 677, of the stenographer's report:

"I understood him to say that he had procured his license to practice law. I then said to him that he must come to my house, and remain there until Monday—it was on Saturday—and take the oath as a lawyer in the court that was to be held on Monday following. I don't remember distinctly whether it was the County or Circuit Court, but my best recollection is that it was the County Court." He then said: "I was informed that his license was not signed by but one judge, Mr. Andrews. He had said to me that he wanted me to see it. I laughingly told him that I had seen many law licenses, and did not care about seeing it. He said his object was in having me examine it, to know whether it was right or not; in proper form, that he had written it himself. He then took out of his pocket, is my recollection, an envelope. Perhaps I had asked him—I know that I did ask him in the conversation—if he had procured the certificate of the Rowan County Court of his honesty, probity, and good demeanor, or County Court; I wont say positively that I said Rowan, though I believe that I did. He said he had. He produced an envelope, and it had two papers in it, the license and the certificate. The certificate was handed to me, or the envelope was handed to me, one or the other, and I took it out and found that it was in form. I then said to him, as the license was in his own hand-writing, he had better read it. He stood by the window and I by the side of him, and he read it, and I read it over after him. It then had the name of Mr. Andrews—L. W. Andrews, Judge of the Circuit Court—signed to it. I know that it was Andrews' hand-writing; I had seen it often and seen him write."

"Was there any other name signed to that license except that of Andrews?"

"No, sir, Mr. Apperson's name was not signed to it at that time."

"How long had you known Judge Andrews?"
"I have known Judge Andrews from my boyhood."
"Have you ever practiced law with him at the same court?"
"Oh, yes, sir"
"Acquainted with his hand-writing?"
"Yes, sir, as familiar as I could be with anybody else's, because it was a hand-writing easily known."

From that testimony you will see that all the circumstances are given by Mr. Nesbitt under which he saw that license. They are of such a character that there can be no mistake. He testifies to them unhesitatingly, and from his testimony it is perfectly clear that at that time there was only one signature to the license—that of Judge Andrews. He tells you positively that the signature of Judge Apperson was not to the license. That at once establishes the fact that prior to this interview with Mr. Nesbitt, the license of the defendant had been signed by Judge Andrews, and if signed by Judge Andrews prior to that time, it necessarily follows that he signed it at the February Term, 1866, when he was attending the Rowan Circuit Court.

Still further, on page 679 of the stenographer's record;

"How long did that conversation between you and Judge Hargis continue?"
"Well, I don't know how long we were talking about that. We talked about other things. He told me that the reason of his coming there, or in other words, he gave as a reason when I insisted that he should remain with me to take the oath—there were other reasons—perhaps there was something said about his going to Mt. Sterling and getting Judge Apperson to sign his license; I am not certain about that, but he told me that he was there on the subject of a horse, either getting a horse or getting paid for a horse; something of that character. There were other things said. He gave, as another reason why he would not remain over with me until the next morning, and go to see Judge Apperson, that he had been negotiating with John M. Elliott in regard to a partnership in practicing law, and that he would see Judge Apperson as he passed through Rowan county on his way to Carter county, if he could, and get him to sign his license then. If he failed to do that, he would then go to the Carter Circuit Court, which came in April, and there would see Judge Apperson and get his license completed, and complete the arrangement with Elliott for the purpose of practicing law, and he would come home and take the oath of office as a lawyer in his own court."

Now, here we find the further fact that the intention of the defendant in getting the signature of Judge Apperson is disclosed as to the time and place where he expected to get that signature, in the conversation with Mr. Nesbitt. So that it is fixed beyond peradventure that the license was only signed with the signature of Judge Andrews, and that Judge Apperson's name was not to it at that time, and declarations are made by the defendant as to when and where he expected to get the signature of Judge Apperson to that license. Now, when counsel allude to the testimony in this case, I desire to call their attention to the testimony of Mr. Nesbitt, and I state it as a proposition that I don't think can be controverted, that the testimony of Mr. Nesbitt settles the question, if true, as to the fact that Judge Andrews signed the license of the defendant at the February Term, 1866, and settles the question as to whether Judge Apperson signed it at the same time that Judge Andrews did. There is no escape from it. It is either true or false, and when plaintiff's counsel speak of the testimony of witnesses in this case, it is impossible for this jury to get over the state of facts testified to by Mr. Nesbitt upon any other hypothesis than that he has willfully and deliberately sworn falsely as to the facts testified to by him. In addition to this, this same state of facts are testified to by the defendant himself. His trip to Owingsville is proven, the manner in which he exhibited his certificate and license

to Mr. Nesbitt upon that occasion, and the conversation that occurred are all testified to by Judge Hargis, and are consistent with what Mr. Nesbitt said about them.

But the plaintiff claims that Judge Andrews signed the defendant's license upon the 27th of August, 1866. There is no middle ground between the February and August Term, 1866, of the Rowan Circuit Court. Judge Andrews either signed that license at the February or August Term of the Rowan Circuit Court, 1866. One of these two propositions is true. They cannot both be true. I desire to take up the testimony of Judge Andrews and discuss it fairly, and ascertain, if we can, from it, whether it can be relied upon as proof of the time when he signed the defendant's license. His age is seventy-seven; past his three score years and ten; verging upon four score. That of itself seems to me to be a fact which should lead the jury at least to doubt the accuracy of his memory as to events occurring fourteen years ago, in which he had no personal interest. Judge Bullitt has seen fit to illustrate the memory of a man in regard to matters in which he had no personal interest by his own recollection. He says that he has often officiated as a pall-bearer, and that he could not, five years back, recollect now a solitary man who acted in company with him upon an occasion like that. I ask you, gentlemen of the jury, when you are undertaking to determine the accuracy of Judge Andrews' testimony, to take the illustration of Judge Bullitt, and test Judge Andrews' memory by that, and tell me whether or not the statements of a man seventy-seven years of age, detailing events most trivial in their character, which he has no personal interest in whatever, and say whether or not they can be relied upon as true, definite, and certain. We find, from the testimony in this case, that Judge Andrews has opposed Judge Hargis in his aspirations for office; that if he has any bias at all in this case it is not upon our side. We find that his political and social relations with the plaintiff have been quite intimate, going back as far as 1860, when the plaintiff moved to Maysville; that the plaintiff has been a constant visitor at his house, not only during the time that his son-in-law, Wm. L. Sudduth, lived with him, but since, never going to Flemingsburg without stopping at his house, or hardly ever. When his deposition was taken in June last, we find him at the house of Judge Andrews, and that his wife was there. We find him, with his wife, quartered upon Judge Andrews, the witness whose deposition he was taking. Then I say this, that if he has any feeling in the case, or any bias upon the one side or the other, it is in favor of the plaintiff and against Judge Hargis. As early as August, 1873, we learn from the testimony of Theodore Hart, the present sheriff of Fleming county, a man of standing, a man whose word cannot be doubted, that he was approached by Judge Andrews, and the subject of the Circuit Judgeship was mentioned; that in that conversation, defendant being present at the Fleming Circuit Court, then in session, Judge Andrews said to him the defendant was not there for the purpose of attending to legal business at that court, but he was slipping around there pretending to have business in that court, when he was, in fact, electioneering for the office of Circuit Judge. He knew that Theodore Hart was a man of some prominence, taking some interest in political affairs; and we find him as early as that date undertaking to deride the aspirations of the defendant for the office of

Circuit Judge. Still later he uses remarks of the same character pertaining to the defendant in the presence of Sanders and Poynter in his own office, telling them that Judge Hargis was too young; that he was not qualified for the office of Circuit Judge. And still further, in talking with Henry J. Darnall, a man whom he had known all his life, associated with him in boyhood, residing near the town of Flemingsburg, and of prominence in society, an elder in the Pesbyterian Church, when he approached him upon the subject of, the defendant, Judge Andrews said: "All that I have against you in the world is that you have taken up this mountain sprout, Tom Hargis." I shall not repeat the profanity that he accompanied the remark with, and I only allude to these expressions as testified to by these four witnesses for the purpose of showing you that Judge Andrews' feelings towards the defendant were not of the kindest character.

We learn, further, that in the canvass of 1874, that while not an avowed candidate, Judge Andrews would at least have taken the office, had the nomination been tendered him. That I can say from the evidence in this case, and I don't think the testimony of Judge Andrews himself contradicts the statement. Theodore Hart says that he said to him in August, 1873: "Who are you for for Circuit Judge?" broaching the subject himself; that he alluded to Judge Hargis and Judge Stanton, saying that they could not get the office, and that he had been solicited to become a candidate for the office, but had not yet determined whether he would or not. To Solomon Royse in his own office, as Royse testifies, he said upon Royse's inquiry whether he would make the race or not, speaking of the defendant, that the defendant could afford to wait a while, and if he ever became a candidate again, or filled the office of Circuit Judge that then was the time. To Geo. W. Bramlette, in March, 1874, at the session of the Nicholas Circuit Court, he said that the probability was that Judge Hargis or Judge Stanton neither one would be nominated, and if it would harmonize the elements of the party, and he was tendered the nomination he would take it; that a new convention had been ordered in Nicholas county, and that there was no telling what might turn up in the convention that was subsequently to be held, and for Bramlette to have his friends ready, "setting up," I believe was the term used in that connection. When we look at these facts, and the further fact that when this charge of the mutilations was sprung upon the Flemingsburg Convention, Judge Andrews' name was mentioned as the probable nominee instead of Judge Hargis, there was something in the aspirations of Judge Andrews for the Circuit Judgeship in 1874. He read the entire controversy of 1874, as he admits himself. He was a subscriber to the plaintiff's paper. He read all that was said *pro* and *con*. He so states upon the witness stand. Yet, in 1874, Judge Andrews never once intimated in any way, shape, or form, that he signed the defendant's license at the *August* term of the Rowan Circuit Court, 1866. He said to Sanders and Poynter in the spring of 1874, at his office, as they both testify, that the defendant's license was all right, but he was too young, he was not qualified for the office, he could afford to wait. He said to Isaac Vanarsdell, a farmer and citizen of Fleming county, who went to his office shortly after these charges were circulated against the defendant, and shortly after they had reached Flemingsburg, on an inquiry by Vanarsdell as to what he thought about it—what he knew about de-

fendant's license, and this question of eligibility: "I signed the defendant's license, but I don't remember when I signed it." Judge Andrews, upon the witness stand, when I asked him that question, did not say that he had not so stated to Vanarsdell, but in his deposition and upon the witness stand here he admitted, while not actually saying he had, that he may have so stated to Vanarsdell. That in order to avoid talking upon the subject, he would state sometimes that he had no memory of the time when he signed the defendant's license.

Now, it does seem to me that that is not a tangible reason for that admission I do not believe that six years ago, when called upon by such a man as Isaac Vanarsdell, that Judge Andrews would have intentionally evaded a matter of that sort by stating he did not recollect when he signed the defendant's license, if at the same time he did remember. He puts himself in that attitude, however, and I am only commenting upon the testimony of Judge Andrews by showing you the position in which he places himself in this case. I certainly have a right to do that, and I shall not hesitate to comment on it in any way which will illustrate the value of his testimony. Again, after he had been at the Rowan Circuit Court at its May Term, 1874, after these charges of mutilation had been discussed in the newspapers for more than thirty days, when he was in attendance upon that court at Morehead, had witnessed all the proceedings of that term and come home, he was interviewed by Wm. S. T. Graham, a prominent citizen of Fleming county, his friend and his client, and asked as to these charges against the defendant. What was his response? "Mr. Graham, I don't believe a damned word of it." Now, if at that time, Judge Andrews knew that he had signed, or remembered that he had signed, the defendant's license at the August Term, 1866, when Judge Hargis was claiming it was signed in February, 1866, with his license published to the people of the Fourteenth Judicial District four or five weeks preceding that conversation, with the date affixed to it as the 26th of February, 1866, and appended to it the plaintiff's own affidavit that it was genuine in all its parts, date included, is it reasonable that Judge Andrews would have stated to his friend and client, Mr. Graham, "I don't believe a damned word of these charges against the defendant," unless he was sincere in that declaration? He admits that he may have so stated to Mr. Graham upon the witness stand. He does not deny it. And further, in that conversation with Mr. Graham, his recollection was at fault as to when the Circuit Court convened in 1866, and he gave it as his recollection that the defendant was sworn in at the May Term of the Rowan Circuit Court, when in point of fact there was then no May Term of that court. This is not at all astonishing, for when I called on him to give the courts of Mason, Lewis, and Greenup, more important courts than that of Rowan, in the year 1866, he could not even give the order or time in which they came as he traveled around as judge of the circuit.

Next, he had a conversation with Elder Cleon Keyes, a Baptist minister of thirty or forty years standing, who hailed from the county of Mason, and I suppose his place of residence alone will be sufficient to sustain his reputation for truth. He does not come from the Holy of Holies, the city of Maysville, but he comes from within the borders of Mason county, and he stands as high to-day as any Christian gentleman in the State of Kentucky. Judge Andrews says he never talked with

him on this subject in his life. Now, it is doubtless true that Judge Andrews had no recollection of it, but this jury will not undertake to say that Mr. Keyes has testified falsely about this matter. What does he state? He says that shortly before the August election, 1874, upon a railroad train from Maysville to Paris or Carlisle, this whole matter was talked of between him and Judge Andrews. The entire controversy was gone over between them, and he says that at the close of it, and reviewing the whole matter which had been discussed in the newspapers up to that time, Judge Andrews told him that he could not see any motive in the defendant to mutilate the records of Rowan county. Judge Andrews, who testifies he signed the license at night in August, 1855, must have known, if that was true, that defendant was not sworn in at the May Term, 1856. He must have known that the license which was published in the newspapers and sworn to by the plaintiff himself, could not bear the true and genuine date. He says notwithstanding all these facts, however, to Elder Keyes that he could see no motive in the defendant to mutilate the records of Rowan county.

The question was asked by Mr. Larew as to who Cyrus Alley was. I answer the question in this way, that he is the same man to whom Judge Andrews, after being at the Rowan Circuit Court, at its May Term, 1879, some three or four weeks before the institution of this suit, carried a letter from Thos. M. Green. He had seen him at Morehead and when he came back down to Flemingsburg, he sits down and writes to Alley that he should "come down or answer Green's matter." Judge Andrews says that that was done for the purpose of getting Mr. Alley down to Flemingsburg, in order that he might sell him a carding machine which he understood Mr. Alley desired to buy. But when the fact is disclosed by his language that it is not only to come down and see Mr. Green, but that he should *answer* Mr. Green's matter, it is at once seen that Judge Andrews is taking a step on his own responsibility in this matter with a man that he must have known was an important witness for the defendant, and trying to cultivate a correspondence or an interview between the plaintiff in this action and Mr. Alley. For what purpose I leave this jury to draw their own conclusions.

Again we find that Judge Andrews was not satisfied to rely upon his own memory as to these transactions, and when I asked him as to whether or not he had had an interview with Jas. E. Clarke at his office in Flemingsburg last June, he testified that he had, and that it was during the time he gave his deposition—that he had been giving his deposition and testifying in chief for one day, and then it was that he had the interview with Clarke in his office. "In your front or back office?" "In the front office. I had no occasion to take him into the back office." "Did you tell him what you would testify in this case at that time? "Certainly not. I reckon Mr. Clarke knew, for I had been testifying during the day." "Did you state to him any hypothetical case as to what you would testify?" "Certainly not." "Did Mr. Clarke tell you what he would testify to—give you any intimation about it?" "I certainly did not ask Mr. Clarke what he would testify to, and he did not state to me." But when Mr. Clarke's deposition, taken in July last, is read to Judge Andrews on the stand, wherein Clarke testifies that that interview took place before even this suit was brought—that it was at the solicitation of Judge Andrews himself, and was in his back office, and when it was shown to him that he had then and there

stated a hypothetical case to Mr. Clarke, and Mr. Clarke had told him what he would testify to, Judge Andrews took it all back, and said, "if Mr. Clarke says so, I will say so too, for he is a man that I have great respect for." Now that was not a year ago. If Judge Andrews is so vacillating in his testimony in regard to a matter of that importance, and about an interview with one of the chief witnesses for the plaintiff, discussing this suit and discussing their testimony, one with the other, before this suit was brought, s[illegible]ng to Mr. Clarke, as Clarke swears upon the witness stand, "I want somebody to support me in my testimony, I care nothing about old Bowling and those fellows up in Rowan county, but I feel like I want to be supported in my recollection," you should be exceedingly cautious in considering his testimony as to the material facts in the case. It is remarkable, if a man knows a thing and can testify to it clearly and unequivocally, that he should want to be supported. It is a comfort to him, I suppose, but at the same time I should not want my testimony to depend upon that of other people. If I did, I should want better supporters than Clarke. But I am alluding to this for the purpose of showing you that Judge Andrews was taking an unusual interest in this matter with the witnesses who knew some facts in this case, before this suit was brought, and also for the purpose of illustrating to you that his memory cannot be depended upon for even a twelve month.

On the fourth Monday in June, 1874, Judge Hargis made a speech in the court-house at Flemingsburg. It was county court day. The house was crowded with Judge Andrews' townsmen and countymen. He sat within a few steps of Judge Hargis and heard every word of that speech in which speech, Charlton H. Ashton says, and as Judge Hargis swears also, he declared to those people whose suffrages he was then seeking: "My license was dated and signed by Judge Andrews upon the 26th of February, 1866, at Morehead, and was signed upon the 2d day of April, 1866, by Judge Apperson, at Grayson, and there sits Judge Andrews who knows whether I speak the truth or not." Judge Andrews heard that declaration, as proven by Charlton H. Ashton, because it was made in that speech. Judge Hargis spoke in such a tone of voice he says Judge Andrews must have heard it. Judge Andrews says he heard the whole of that speech but don't remember that part of it, yet there, in the presence of his townsmen, he permits the defendant to make that declaration in his presence, and when thus challenged to state whether or not he spoke the truth, he is as silent as the grave. He is by that one act, if by no other, estopped to say now, after the lapse of six years, in the presence of those same people, in the presence of the people of the State of Kentucky, that he did not sign his license at the February term, 1866. All just and fair men will say: "You acquiesced in it, you were silent when you ought to have spoken. It is too late for you to come forward and say that this defendant, who thus publicly, and in your presence declared a state of facts within your personal knowledge which you acquiesced in at the time, has not told the truth when he utters the same declaration now.

We have been able in this investigation to ascertain that Judge Andrews signed the licenses of ten applicants besides the defendant, viz: Messrs. Rolph, May, Buckler, Beckner, Bennett, Strong, Friend, Howard, Prather, and myself. When he first testified I asked him the question as to whether he ever wrote a law license. He said he did

not believe that he ever had, yet he wrote three out of these ten that we know of, Prather's license, Buckler's license, and my license, every word of those three licenses. Seven of those licenses he signed as the first Judge—all except those of Friend, Strong and Howard. Yet when called on to give the facts and circumstances attending the execution of these licenses by him, when first the subject was mentioned and he was interrogated about them, he could not give the day the month, or the year of a solitary one, but after four months' study about Strong's license or a copy of it exhibited to him in his January deposition, he was able, by getting his friend Kennedy, at Carlisle, to go to the record, to state that he signed that license sometime in December, 1865. Judge Andrews gives as a reason why he can be more definite as to the defendant's license, that he had known his family. But it appears in evidence that from August, 1861, to February, 1866, a period of four years and a half, he had not seen the defendant or known anything of him. When asked as to whether he had signed my license, he had no recollection of it whatever. He had known my family, both on my father's and my mother's side well, had practiced law in the county of Bath, and when my license was presented to him, written every word of it in his own hand-writing upon the 28th of February, 1866, but two days after that of the defendant, he still had no recollection of ever signing my license, or anything connected with it in any shape or form, and after the lapse of ten months, when he took the witness stand here, he could still recollect no solitary fact attending my license. When asked as to Prather's license you remember what he told you—now Prather was a man that he had known for years, ever since his boyhood, he had known his father and mother and grandfather, he had been born in his county, the county of Fleming. There is every reason why he should have recollected the circumstances attending the execution of that license. I read from page 1,500 of the Stenographer's record. "You had known Mr. Prather?" "From his boyhood." "Known his family?" "Known his family well, and known him from the time that he was a lad. The first time I had ever seen him he was a lad fifteen or eighteen years old." "Did the family live in Fleming?" "His father lived and died there, and his grandfather." He says he postponed this man indefinitely because he had no certificate, and didn't have knowledge enough of the law to get a certificate, and for that reason, while he had no personal objection to the man, he thought it his duty to postpone him indefinitely and did so.

"Having postponed his application on account of his not knowing that it was necessary to obtain a certificate of honesty, probity, and good demeanor, would you not have recollected whether you had signed his license afterwards or not—a man that you had known thus?" "Perhaps I ought to do it." "You do not?" "I don't know it." "If you had actually written out his license yourself, every word of it, and signed it as the first Judge, would you not have recollected it?" "I ought to probably, but I do not, for I learned in the progress of the taking of my deposition that I had written your license and signed it—" "We will come to that after a while?" "I am just giving you a case." "I want to give you another case. Look at that document. (Paper purporting to be the license of Mr. Prather handed witness)?"

The license was thus produced, and Judge Andrews said before this jury that he *did not* indefinitely postpone Prather, but that he had signed

his license as the first Judge upon the 3d day of November, 1866, and that he had written every word of that license himself. Previous to making that interrogatory, however, I wish to refer you to what was asked him, as to Mr. Prather, upon page 1,497 of the Stenographer's record. "You have no personal knowledge that he ever obtained his license?" "No sir, I know he has been practicing law." "But upon whose license you could not state?" "No sir." "You are certain that he did not get his license from you?" "I may have afterwards signed his license—I may have done it, but I am very certain that I did not upon that occasion." "If I understand you, you said that you had postponed his license indefinitely?" "It was indefinite. There was no future time fixed." "And if he had ever gotten his license, it was from some other Judge?" "Yes sir; I have no recollection on the subject. If he did get his license, and my name was to it, I have no present recollection of it."

Now it is conceded he did not write the defendant's license. He did write my license, and wrote Mr. Prather's. He knew my family, and he had known Mr. Prather's all his life from the time that he was a lad, and the family lived in his own county. Now why is it, I ask you as intelligent men, why is it that Judge Andrews can speak with such particularity, with such exactness of recollection as to the defendant, when there is no reason in the defendant's case why he should do so more than there is at least in that of Mr. Prather? Just imagine, gentlemen, if Mr. Prather's license was in question—suppose that it was lost and nobody had ever seen it besides Prather himself, that it could not be produced and identified by Judge Andrews upon the witness stand, where would my friend Prather be before a jury of his country upon the testimony of Judge Andrews? He would say "why, sir, I never signed your license. You came to me without a certificate, and did not know tnat it was necessary to have one, and I postponed you indefinitely. If you ever had any license you never got it from me. I don't know who signed it. I know that I never did." Now what sort of a fix would my friend Prather be in? And yet that is the attitude Judge Andrews puts himself in, and would put Prather in had his license been stolen as the defendant's has been. The only way we could have brought to light this matter as to Prather's license was by the production of the license itself, in the Judge's own hand-writing, signed as the first Judge upon the 3d day of November, 1866.

I asked him in his January deposition, if he had ever signed the license of R. S. Friend, and he had no recollection of doing so. Finally he said that perhaps he had signed Mr. Friend's license at the Greenup court. "Did you or not at your residence in Flemingsburg, upon the 13th day of July, 1866, sign the license of Mr. Friend as the second judge, then and there upon that occasion, telling him that young Strong and Tom Hargis were the best qualified of any young lawyers that you had signed the licenses of, and that you had signed the license of the defendant before that time?" "I have no recollection of anything of that sort, and this could not have taken place." Yet Mr. Friend comes in before this jury and swears that he never saw Judge Andrews at the Greenup court. The first time that he ever saw him was at his residence in Flemingsburg upon the 13th day of July, 1866, having obtained his license the month before, signed by Judge Apperson on the 16th of June. He swears he went with a letter of introduc-

tion from Judge Elliott to Judge Andrews in Flemingsburg, and there, upon the 13th day of July, Judge Andrews signed his license, and Judge Andrews upon that occasion alluded to the fact that he had theretofore signed the licenses of young Strong and the defendant, and said that they were the best qualified young men that he had ever examined for law license, that he had signed the defendant's license, and that he was located at Morehead. When asked as to whether he signed any license upon the 27th of August, leaving the defendant out of the question, he had no recollection of signing the license of young Mr. Howard, yet the proof shows that upon that very day, in the Court-house at Morehead, the license of Mr. Howard was signed by Judge Andrews. After being on the witness stand for one day in June, 1879, Judge Andrews having thought about this matter over night, in the silent chambers of the night he reflected upon the testimony of the day before, and without seeing the defendant's license, he tells us upon the witness stand he resolved when he went back to that deposition room next day that he would qualify his testimony and make a voluntary statement in regard to this matter. Do witnesses often do that way? Is it usual for a man in giving his deposition, after testifying to a state of facts which he actually remembers and knows to be true, to come back without interogation, without suggestion, to make a voluntary statement qualifying the statement of facts that he has theretofore made? I venture to say throughout this entire record there is not another instance of it, although we have examined orally and by deposition for plaintiff and defendant 148 witnesses in this case. But to the honor of Judge Andrews, be it said, after giving a statement of facts in regard to the defendant's license that he perhaps honestly believed were true, he is not contented with it, and it does not satisfy his mind, and he resolves to change it, declares to the defendant and to me, when we went to his office the next morning, the purpose that he had in view. When he gets into the deposition room he writes this: "Witness desiring to be accurate in all his testimony, states it may be true that he signed defendant's license at the February term, 1866." That is his own language. Take him at his word, gentlemen, that he desired to be accurate, that such was his purpose, don't you see at once that Judge Andrews is in doubt about this matter himself, and did not intend to leave that witness stand until he had put it in black and white that it may be true that the defendant's license was signed by him at the February Term, 1866. I take it that this jury desires to be accurate also in this matter, this controversy of so much importance, involving interests so momentous in their nature to the defendant—that this jury desires to be strictly accurate, and if Judge Andrews himself, the only witness who has any personal knowledge upon this subject except the defendant himself, will not, when he is sworn to state the facts in this case, go off the witness stand with the statement positive and unequivocal that this license was signed by him in August, 1866—if he will not do it, this witness upon which the plaintiff above all others relies to establish this one important fact—if he says that he desires to be accurate in his testimony, and says notwithstanding all that I recollect about it, and all I know about it, that it may be true after all that I signed the defendant's license in February, 1866, it seems to me that after a verdict in this case in behalf of the plaintiff, if it should be rendered—there is no juror but what would have that declaration of Judge Andrews ringing in his ears for all time

to come—"*it may be true that the defendant's license was signed by me at the February Term,* 1866." Think of it, gentlemen. Judge Andrews tells you that it may be true. If you don't know that it is true, that it was signed in August, 1866, and cannot find testimony in this record that places it beyond question, I take it that this jury will never upon the face of the earth find a verdict that it was signed at that time. The plaintiff wants you to say what Judge Andrews himself will not say. The plaintiff wants you to say that the defendant's license was signed upon the 27th of August, 1866, when Judge Andrews, the man that did the signing, says it may be true that I signed it in February, 1866. How can plaintiff's counsel ask this jury to determine the very fact which Judge Andrews himself on the witness stand will not determine?

When we look at our testimony upon the other hand, we find no such qualification, or saving clause, in the testimony of Mr. Nesbitt, of Judge Hargis, or the other witnesses who have testified as to the fact that defendant's license was signed in February. None of them say it may be true that it was signed in August. I say when we take the contradictions of Judge Andrews, his failure of memory in 1874, his bias and old age and their influence over him, however honest he may be in his belief, in his opinion that he signed it in August—when you take that voluntary declaration of his, you are able to reconcile his testimony with that of all the defendant's witnesses, and you can see a way out of this inquiry. You can see a way to reconcile the testimony of the plaintiff and the defendant upon this important point.

Now as to Burns and Clarke. They say themselves that they have no personal knowledge as to when the defendant's license was signed. Neither of them was present. Neither of them saw it signed, the defendant examined, or the license after it was signed until in June, 1879. Clarke, on the 23d of June, 1879, made this statement, and although it is not signed by him, he tells us upon the witness stand that it is no less true on that account. "My recollection and memory is not distinct or positive—not entirely clear as to the term of court at which he was licensed, and I was not present when he was licensed, and did not see him licensed or hear it done." He testifies as to a conversation which he says he recollects, occurring at the time when Judge Apperson and Judge Andrews were there. That was fourteen years ago. He has undertaken to give that conversation *verbatim*, and I want you all the time when you come to consider the testimony of these witnesses of the plaintiff, to remember Judge Bullitt's apt illustration of the pall-bearers. Clarke had no personal interest in this matter, yet he undertakes to give you *verbatim* a conversation occurring between him and the defendant fourteen years ago in regard to his license. I say that whole conversation, when you put it in the singular instead of the plural, is consistent with the testimony of the defendant. If any such conversation took place, it is reasonable to suppose that it was on the morning after Judge Andrews had signed the defendant's license in February, 1866. Clarke states that on an inquiry by him, the declaration was made by the defendant, that his license had been signed the night before, and that the Judges had given him no examination, but signed it without any examination at all, or only returning a few compliments. When told that his license was signed, Clarke says that he made the inquiry, "you did get your license last night?" with some surprise. When asked as to the cause of his surprise, he said he

thought it was quick work. It was quick work according to Clarke's recollection, if he took up the study of the law in the fall of 1865, and obtained his license in February, 1866. Judge Hargis tells you that he had studied law prior to the war. It was quite natural that it should fix upon Clarke's mind the idea that it was quick work, but when we come to investigate the question of surprise, upon the theory that Mr. Clarke made the motion for his certificate and had obtained it prior to that time, and he had loaned him his license to write his by, and had seen the form of that license before it was signed—we conclude upon that state of facts, that there was very little ground for surprise on the part of Clarke.

As to Burns, he was absent a great deal of the time. He lived in the county of Mason, at Helena. He did not move to Rowan county until June, 1866. He was there only occasionally—not there at all from December until February. He took only two or three meals in Morehead during the entire February term, and was not there at night at all—not a single night during that term. He went up to his farm and lodged there with a tenant. But we find in his testimony that he has put himself upon record in this matter, and that a written statement was made by him on the 27th of April, 1874. You have heard Mr. Larew and Judge Bullitt, time and again, assert that this certificate stated that Harry Burns recollected that Judge Hargis was a *practicing* lawyer from the *early* spring of 1866. Why didn't they read it to this jury? I have the original in my hand, and we will see what it does state. Remember that this was given more than six years ago, when Harry Burns' recollection was more accurate in the nature of things about these matters than it can be now. He made that certificate, and it was afterwards published in all the newspapers of the 14th Judicial District, as his own statement of his recollection of these matters. "This is to certify that I have been acquainted with T. F. Hargis as a *licensed* lawyer since the early spring of 1866." That is what he said, and not that he was acquainted with the defendant as a *practicing* lawyer since the early spring of 1866.

"He began his studies in the year 1860, whilst a boy, under my supervision, and after the war he resumed his studies for a short time and was soon licensed as a lawyer to practice. I have been associated with him in the *practice* of the law since the *spring* of 1866. This 27th April, 1874.

"H. G. BURNS."

How literally true is this statement, how literally consistent with every statement of fact that we rely upon in this case. He *had* studied law before the war. He *did* resume his studies after the war. It *is* a fact that he was *soon* licensed. It is a fact that he was a licensed lawyer *early* in the spring of 1866, at least as early as the 2d day of April. It is a fact that he was associated in the practice of the law with H. G. Burns since the *spring* of 1866, or since the 21st of May, at least, the last month in the spring of 1866. We stand by that declaration in black and white of Harry Burns. He then stated his recollection, and he has to eat his own words and go back on them line after line and word after word before he can come before this jury and pretend that he recollects a different state of facts now. And when gentlemen representing the plaintiff in this case undertake to quote the testimony, let them go by the record, and not give you their recollection, and harp on it, and reiterate it for hour after hour that we obtained a false certificate

from Harry Burns when it is literally true, every word of it, and was the recollection of Harry Burns at the time, and he knows it.

But I am not done with Mr. Burns. I know that this is a growing city, and have seen examples of it in more ways than one. Men who live in Rowan county and who gave depositions ten months ago, are brought down here, and under the manipulations of plaintiff's counsel and the plaintiff himself, grow to extraordinary proportions. Oh, it is a growing city, and both Clarke and Burns have undertaken to enlarge and get away from what they have sworn to in the summer of 1879 after they got to the city of Louisville. There must be something peculiar in this locality. It is said that Burns told plaintiff that he recollected that the defendant's license was obtained when both judges were present at Morehead. In answer to question 69, page 111 of his deposition —a question written by Mr. Wadsworth: "Did you hear of his getting a license, from him or others at the time he obtained it, or near that time?" he said: "I don't know that he had gotten it of either or both of them, but heard that he had gotten his license, but at what time I don't remember. I answer the question in this way." Now he is going to volunteer a statement, something like Judge Andrews on this point. There is a vacancy of a line between what he said there and this. "I answer the question in this way. I don't think Judge Hargis ever told me that he got his license of both judges at the same time. We have differed on this proposition and argued it frequently." Did he state what the plaintiff in this case would have you believe, that on the 26th of April, 1874, upon the Sunday preceding the execution of his certificate, that Judge Hargis stated he was so licensed by both judges at Morehead at the same time, or that it was so stated by Burns and Judge Hargis acquiesced in it? Nothing of that sort in his deposition, gentlemen, but a statement in his deposition directly to the contrary. But further. Question 11 on cross-examination: "Have you ever stated that you knew it was a fact that both judges were present in Morehead when defendant's license was signed? Could you have truthfully made such a statement?" "I am satisfied I never intended to make such a statement, for I did not know it as a fact." But we won't stop here. Still further. "Have you personal knowledge of any fact inconsistent with defendant's claim that Judge Andrews signed his license in February, 1866, and that Judge Apperson signed it in April, 1866, at the Carter Circuit Court?" That is question 13 in his cross-examination. He answers, "*I have not*," in his own hand-writing.

But since coming to Louisville he has testified to a conversation that he claims occurred in May, 1856, with the defendant, in which Judge Hargis spoke of the fact that he had an arrangement with Judge Elliott that when he got his license they were to practice law together in the Rowan Circuit Court. "When did he say that he had made that arrangement, Mr. Burns?" "I don't recollect." "Don't you know Judge Elliott was at the February Term, 1866, of the Rowan Circuit Court?" "Yes, because I know that he signed a petition at that term to have the defendant appointed an examiner. I recollect of seeing him there." Judge Hargis tells us at that term he did make the arrangement with Judge Elliott. Having obtained the signature of Judge Andrews to his license, the arrangement was that as soon as he got it signed by the second judge that he and Judge Elliott would go into partnership in the county of Rowan, and practice law in the Rowan

Circuit Court. The August Term was the first term of court succeeding that arrangement. So while the substance of the conversation as detailed by Burns may be true, the construction that the plaintiff's counsel place upon it is incorrect. It was a fact that he then and at that time, in May, 1866, had an arrangement with Judge Elliott by which they were to practice in partnership in the county of Rowan when he got his license signed, but it is not a fact that he had not at that time already gotten his license signed by Judge Apperson, because in June, 1866, he says that he had another conversation with him in which Judge Hargis stated that he thought that he would try and see Judge Elliott, and get him to extend their partnership to the county of Carter. Does not that prove that it was already in force as to the county of Rowan? He says in June, 1866, "I have a partnership with Judge Elliott as to Rowan county, and now when I see him again at the August Term, 1866, I want to extend it to the county of Carter." It is a settled thing as to the county of Rowan. The arrangement is made. My license is completed and I have the partnership as to Rowan county, but I want to extend it to Carter. Burns remembers that and says that he told him if he did so extend the partnership it would put him into a fine practice at once. There is nothing inconsistent in these conversations when they are properly construed with reference to circumstances that attended them. But Mr. Burns has written a letter in this case. The plaintiff did not like that very well. It did not suit him, and his counsel did not relish it. They say it was obtained by Judge Hargis through fraud. Under duress, I suppose. Gentlemen of the jury, take that deposition of Harry Burns, which we could have read to the jury with perfect impunity—there is nothing in that deposition that we are afraid of, but after he had given that deposition, and had been engaged in counseling with Col. Thos. W. Bullitt, and the plaintiff had been seen at his office, and questions were propounded to the witnesses subsequently, which made it inevitably certain that Burns was communicating and talking with the other side, and when the communication was published, as we are authorized to believe, under the inspiration, if not the dictation, of Col. Thos. W. Bullitt in the *Post and News*, wherein it was tated that Burns had withdrawn from this case, and after he had indignantly denied that he had given any authority for it, and repudiated it and promised to correct it in a letter to the *Courier-Journal*, then it was, when he came back to Morehead, having failed to make the correction, upon the request of Judge Hargis, that this letter was written—not dictated by Judge Hargis, but as Burns says upon the witness stand, written at his request, and in every word of it, and in every statement of it he tells you he was sincere—they were true. I care not under this state of case for the charge of fraud. Put yourselves in the defendant's place under those circumstances, with his character at stake, with a deposition in this record which showed the truth, given by Harry Burns, who knew nothing pertaining to the defendant's license or the question of his eligibility that conflicted with the testimony of the defendant, but when found thus acting in connection with the plaintiff and the plaintiff's counsel, I ask you whether or not you would not have taken every opportunity and precaution in an honorable way to have headed off any effort on the part of Burns to falsify his sworn declarations, and play the traitor upon the defendant. This is the letter:

"MOREHEAD, KY., Sept. 26th, 1879.

Mrs. T. F. Hargis:

After my kindest regards, permit me to say that Judge Hargis and myself concluded the taking of depositions for him in Carter county. the result of which was very conclusive of his presence in the town of Grayson at the April term of the Carter Circuit Court, 1866, for the purpose of having his license completed by the signature of the Hon. R. Apperson, then judge of said court. and the proof was made by men and ladies of the best standing in the community; and they, without equivocation or doubt, state their knowledge of his presence, and that he was a guest at their houses at the time, and refer to facts and circumstances that occurred in the vicinity that are now matters of record that corroborate them and sustain their recollections of the time, April, 1866. Taking this proof with the proof heretofore taken at Morehead and Owingsville, *puts at rest* the question as to whether Judge Hargis was in Grayson in April, 1866, to have his license completed, and by proof that cannot be impeached or contradicted, and taking this in connection with what has been already proved in Morehead of the oath in May, 1866, in the County Court, *establishes, as I think, the completion of the license before August,* 1866. I write this to you as the friend of Judge Hargis and believing that it will afford you some pleasure to know the character of the proof made and the standing of the witnesses establishing the fact. I remain, most respectfully, Your friend,

H. G. BURNS."

Thus we have Burns in this record with no personal knowledge as to the execution of defendant's license, and when he undertakes to give his recollection about it, stating facts entirely consistent with the testimony of the defendant, which can be reconciled with the defendant's testimony, and then he comes as late as the 26th of September, 1879, and says that the question as to when the defendant's license was signed—whether he obtained it prior to the 1st of August, 1866—that question, he says, is put at rest. And this letter that I have read to you puts my friend Mr. Burns at rest upon this point.

The deposition of Judge Geo. M. Thomas has been taken in this case. His deposition is here. He says that upon the night of the 27th of August, 1866, then being Commonwealth's Attorney of that judicial district, in passing Judge Andrews' room, he saw there Judge Apperson, Judge Andrews and Judge Hargis. He did not go in, but passed on, and after a while returned. He is not certain that Judge Hargis was in the room on his return. He only gives it as an impression and does not state it as a fact, and says that he will not state it as a fact that he was present, and then he says that he heard Judge Andrews and Judge Apperson say that they had signed the license of the defendant. Did they say when? No. Did they say where? No. Then from all you heard Judge Andrews say upon that occasion, and from all you witnessed upon that occasion, and from all you know upon this subject, I ask you whether it may be true that Judge Andrews signed his license at the February term, 1866, of the Rowan Circuit Court, and Judge Apperson at the April term, 1866, of the Carter Circuit Court, and he says yes. What is there in his testimony when we consider the facts? Judge Hargis states he was in that room upon that night. He says that he was there with his license and that Judge Apperson remarked to Judge Andrews upon that occasion that he had completed one of his lawyers, Tom here, and that Judge Hargis upon that occasion announced that his intention was to swear into the Circuit Court on the next morning. Judge Andrews had not seen Judge Hargis since the February term, 1866, as he swears, and he had not seen Judge Apperson between February and August. How natural, under those circumstances, Judge Andrews having signed the license of Howard during the day—this talk having occurred in the presence of Judge Apperson in his room—how natural that he should

have gotten it into his mind that the defendant's license was executed at that time. Why, he did not know even from the declarations of the defendant as to where Judge Apperson had signed his license. Perhaps Judge Hargis did not go so far as to tell him that it was at any particular place or time, but the announcement was made by defendant to Judge Andrews that his license was completed. How natural, then, that Judge Andrews should come to the conclusion that the license was completed when Judge Apperson came there at the August term, and that Judge Hargis had not seen Judge Apperson until that day. So far as the testimony of Judge Thomas is concerned, it does not conflict with the testimony of the defendant, for it does not exclude the idea that the license was signed by Judge Andrews in February and Judge Apperson in April, 1866, and one evidence of the fact that Judge Hargis was not present upon that occasion when Judge Thomas returned is, that Judge Thomas states that Judge Andrews remarked that he thought the defendant would make a fine lawyer. I don't believe Judge Andrews would have said that in the presence of the defendant. It is not natural that he would say so in the presence of the man upon whom he was pronouncing such a compliment. But so far as that is concerned, it makes no difference whether the defendant was present or not. The declaration of Judge Andrews, as proven by Judge Thomas, is nothing more than the simple truth. He and Judge Apperson had signed the license of the defendant, but in that declaration it does not follow that it was signed by both judges on that occasion, for Judge Andrews did not state when and where he had signed it, or when and where Judge Apperson had signed it.

The testimony of Mr. Ringo cuts no figure in this case upon the question of the execution of the license. He simply proves, in what was permitted of his deposition to go to you as testimony, that he was at Morehead during the August term, 1866, and there saw Judge Andrews in the public room.

John A. Campbell testifies that he had always got the impression from the defendant that he was licensed by the two judges at the August term, 1866, of the Rowan Circuit Court, or in August. In his deposition he does not tell you positively that Judge Hargis ever said so to him, but he says that he got that opinion, got that impression from the defendant. Yet that same witness tells you, upon this witness stand, when Judge Hargis presented him a certificate, to certify to the fact that the signatures of Judges Apperson and Andrews to his license were genuine, and that the date was genuine, the 26th of February, 1866, that he manifested and felt no surprise whatever. Here is a man now that has the impression that the license was signed in August, with a certificate signed by him on the 5th of May, 1874, and published in his own county paper under his nose, and read every week of his life, in which he stated the signatures of the two judges and the date, 26th February, 1866, were genuine. This certificate, given by Campbell, remained public in the controversy of 1874, and up to the time he took the witness stand, without contradiction or qualification, certifying that the date of the license, the 26th of February, 1866, is genuine, and that the signatures are genuine. Yet, when Judge Lindsay asks the question, didn't that date of the license strike you as surprising if you had the impression prior to that time that it was signed in August? His answer is: "Oh, no, I paid no

attention to it and thought nothing about it." And three days afterwards, on the 8th day of May, 1874, when the plaintiff comes into your county clerk's office in company with the defendant, all the way from Maysville, for the express purpose of investigating that license and examining it with a magnifying glass, when the plaintiff, Green, sat down, and with his own hand penned the affidavit in which he stated that the license was genuine in all its parts, the date, the 26th of February, 1866, and all, didn't that strike you, Mr. Campbell, as a little strange—did that create no surprise? He says none at all. Here was a man coming all the way from Maysville, and in Campbell's presence, before him as the county clerk, making an affidavit that the date of this license, the 26th of February, 1866, is genuine. How can Campbell then come into this court house and tell this jury that he had no surprise about it, and never thought about it in any way, shape, or form, if he had always been under the impression that Judge Hargis had gotten that license in August? It is incredible.

But we are told, for the first time during this trial, that defendant's license was signed without a date. I want to examine and see whether there can be any mistake about that. You remember that Judge Andrews says that he told the defendant to write his license in February, 1866.

Judge Andrews, what do you mean by the date being blank? Let us understand that. Well, I mean that the day of the month was blank, that the month was blank, and the 66 was blank. There was nothing there but the 18. Now, that is the way that he puts himself on record. That is the way that it is down in his testimony. For fear that I may be misunderstood we will see. I read from page 1542 of the stenographer's record. "What do you mean by its being without date? The copy you file with the deposition says, 'given under our hands this 26th day of February, 1866.' What portion was not there according to your recollection?" "I mean 'given under our hands this blank day of blank, 18 blank. The day of the month, the month and the year blank. The 18 was there.'" "But the 66 was not?" "It was not." "And the month was not there?" "The month was not there." "And 26 was not there?" "26 or 27 was not there. There was a blank for it."

Now we understand it. I ask you as intelligent and reasonable men, if Judge Hargis prepared that license between February and August, expecting to have it signed at the August term, 1866, why would he have left the year blank? Didn't he know that he was going to get his license at the August term, 1866? Did he expect to see the judges at any other time, going upon the hypothesis that Judge Andrews is correct in his recollection? Was there any reason on earth for leaving the year blank? He only put the 18 according to Judge Andrews. It seems to me that he ought to put it 186 blank anyhow—come within one figure of it. But if it be true according to Judge Andrews' testimony, didn't he expect to get that license signed in August? Is it probable that if he did not get his license at February, that he ever wrote it out until August? What did he want to write his license out for six months before, and carry it around in his pocket when paper and ink were plenty? Why this long preparation to write a dozen lines? If he wrote it in August, or a short time before the August term, why didn't he put the month in? He could not have known the

day of the month on which he would get it signed by these two judges, but you know and I know, and every reasonable man knows, that under that state of facts Judge Hargis would have filled in the month and year, leaving nothing but the day blank. Anything said in 1874 about the day being left blank and the year? Not a word. On the contrary, we find the plaintiff, after giving an affidavit that this license was genuine in all its parts, including the date; that it had been tampered with in no way, and publishing it in his paper, after the lapse of five years, when these charges are revived in 1879, does not then even suggest the idea that the date was blank. But he goes about over the country showing that *Aug.* could be made into *Feb'y,* not denying it was dated until he discovers that there is something else to be accomplished, that he was wrong about the *26th* of August being during the session of the Rowan Circuit Court, and that it was on Sunday. He says that he saw the license when Mr. Nesbitt's deposition was taken upon the 15th of July last, and that he abandoned the preconceived notion that it was altered from August to February, and has never claimed it or intimated it since. But did Mr. Wadsworth, in his opening statement, say to the jury that he intended to prove that the date was blank? No, sirs, the intimation was made all along until Judge Andrews took the stand, that *Aug.* had been taken out by chemicals and *Feb'y* written in. "O! consistency, thou art a jewel." We find none of it, however, in the history of the plaintiff's course in this controversy.

But, Judge Andrews, you gave your deposition last June. Judge Stanton took you out and talked to you about those things which you could prove? Yes. Then the plaintiff talked to you about it? Yes. You knew that you were called on to prove about the time the license was executed? Yes. You knew that the date of the license was February? Yes. Did you tell Judge Stanton or Mr. Green either one that you would state anything about a blank date in that license? No. Did you, on the witness stand, when asked to give all the facts within your knowledge attending the execution of the license, say one word or intimate one word as to that license being blank in date? No, sir. You have given two depositions, have you not? Yes, sir. Have you stated or intimated in either of them anything about a blank date in that license. Not a word. Judge Andrews tells you that he has talked easily and freely with Mr. Wadsworth; that he came down from Maysville and stopped at Cincinnati and occupied the same room with Mr. Wadsworth at the Burnett House, and that they came here together. That was after the testimony of all the witnesses in chief for defendant was in—afterMr. Green had testified—before Judge Andrews had taken the I can imagine how Mr. Wadsworth felt just at that time. They had made no proof or explanation in this case up to that time as to how this license could be dated the 26th of February, 1866. I can imagine his anxiety to persuade Judge Andrews into some sort of recollection in regard to that matter. Whether he did so or not, of course I don't know, but I do know this fact, that when Judge Andrews is asked about the date of this license, he does not state it was originally blank as a fact. He was cautious upon that. All that Mr. Wadsworth could squeeze out of him on his examination in chief was, "that it is my best recollection." I have no doubt Judge Andrews got himself persuaded into that notion some way. You see that he gives it as a recollection.

This is Mr. Wadsworth's question, page 1464 of the stenographer's record: "Do you have any recollection whether it was dated or not?" "My recollection is that they were not dated."

With your experience, gentlemen of the jury, in instruments of that important character, I ask you if ever you knew of an instance like this, where an important document, the law license of an applicant to practice law was signed and executed by one judge, and by the second judge with the day of the month blank, the month blank and the year blank. Let us trace this a little further. I take it that this jury wants to understand this case, and to investigate it just as far as it can be. While Judge Andrews gives this as a recollection, I want to know whether that recollection can be correct—whether it is borne out by the testimony. Mr. Nesbitt tells you that when he saw that license in March, 1866, it was a complete document, date and all, down to and including the signature of Judge Andrews. Ben. G. Paton testifies that he obtained his license in 1870—ten years ago—that he copied his license from the defendant's, and when he did so the defendant's license was dated, and as he recollects, dated in February, 1866. Now, if this license was ever ante-dated, gentlemen of the jury, it must have been done with a motive. On the supposition that it was blank when signed by Judge Andrews and Judge Apperson, and that it was filled up, why would the defendant ante-date it six months unless he had a motive for it? Is it not the most natural thing in the world that he would have put in the correct date if it was ever filled up after being signed? What purpose could he have had in ante-dating it six months unless it was to afford evidence that he had been practicing law longer than he really had. We find from this record that the defendant had no aspirations for the Circuit Judgeship until the summer or fall of 1873, three and one half years after Ben. G. Paton had seen that license fully dated in February, 1866. But suppose for the sake of argument that Mr. Nesbitt and Ben. G. Paton are mistaken, and it was blank in 1866 and in 1870. Would not Judge Hargis most likely have filled up that blank in order to lengthen the time of his practicing law, when he aspired to the judgeship in the summer or fall of 1873? If it was filled up at all it was filled up with a motive, and that motive was to lengthen the time of his practicing law, and he had no motive until he aspired to the Circuit Judgeship in 1873. Now, what is the proof? Is there a man on this jury that would say that a law license seven years old, filled up with the day of the month, the month, and the year would not show the fact in the ink or in its freshness in the spring of 1874, six or eight months after it had been filled up? The license of Judge Andrews—have you got it?

By Mr. Wadsworth —No sir.

By Mr. Stone—I only desire to call the attention of the jury to what appears on the face of Judge Andrews' license. Judge Andrews says that his license was not dated when signed by the first or last judge. Gentlemen, that was fifty-four years ago. It is true that it is his own case, and he ought to recollect more about that than anybody else's, but I want you to examine that license, and I am going to state this as my belief about it from its appearance, and I do it simply because I think I am borne out in it by its appearance. You will find the ink in which Judge Roper's signature is written in the body of that license, the same as the word *fourth* in the date as entered at the foot of the license. I

forget whether there is any other word filled up except fourth. I think it is apparent that the word fourth was written after the balance of the license was. But my theory about that is that Mr. Crawford wrote out the body of the license, leaving the names of the judges blank, and leaving the day of the month blank, and when Judge Roper put his name in the body of it and to the foot of it, that the word fourth was written in it by Mr. Crawford. Judge Andrews says that Judge Roper was present when Crawford did that. I think that Crawford filled it in at the time that Judge Roper, the first Judge, signed it, and if you will look at the ink in his name in the body and foot of it, you will find fourth written in almost exactly the same color of ink, and apparently at the same time, so I think that when Judge Roper signed that license it was filled up. That would be the reasonable way in which it was done, and Judge Andrews had a complete license when he went to Judge Robbins, except the signature of the second judge. But that license is a boomerang in this case. Look at it. It is fifty-four years old, and notwithstanding its age you can see that it was filled up. You can see that the date was filled up after the body of the license was written. Yet here we have it argued in this case that the license of the defendant was filled up, necessarily a few months before the spring of 1874, and it defies the detection even of the eyes of the plaintiff himself through a magnifying glass. It defies the detection of Dr. McMillan upon the first Monday of July, 1874. It defies the detection of every man who looked at it in 1874, and it defies the detection of every man from 1874 to 1879. It defies the detection of Judges Pryor and Cofer, Judge Bullock, Hon. Saml. Russell, Capt. Abbott and Mr. Bennett H. Young, the date having an exact similitude with the body of the license, and the signature of Judge Andrews. But this pretended instance that Judge Andrews speaks of, I venture the assertion, is the only one that ever was known in the State of Kentucky or the United States where two Circuit Court Judges performed the solemn act of licensing an applicant to practice law, when their attention was called to it—and the first judge says his attention was called to it—by deliberately putting their signatures to a license without filling up the date. It is asking too much of reasonable men to believe such a theory, especially in the face of all the facts.

Now, Judge Andrews, I grant you, might perhaps be a little careless about such things. His memory is not exactly clear about this transaction. You have seen that. It is not clear about any other applicant that ever applied to him for license, but I venture the assertion that no man in the history of Judge Richard Apperson, jr., ever found an act implying such a neglect of official duty. He was a careful man. Never on the face of this earth did Richard Apperson, jr., sign a law license without a date, and I challenge the counsel for plaintiff to show in the official acts of Judge Apperson an act even approaching to it in neglect. But Judge Hargis swears that this license was signed, fully completed in date at the time it was signed, and that is borne out by the testimony of every man that examined it from that day to this. No man on this witness stand not even Mr. Green himself), who saw that license from the time that it was signed, has ever intimated that it looked like its date had been filled. Is not that remarkable? They all say that it did not bear the slightest resemblance to having been filled up. Throughout this entire record, no man has undertaken to swear it

had been filled up. On the contrary there is one unbroken current of testimony going to show that it was in the exact similitude with the balance of the handwriting, body, date, and signature of Judge Andrews. I have gone over, gentlemen of the jury, the second point in controversy in this case, and I maintain with the utmost sincerity that we have established the fact that Judge Andrews signed the defendant's law license on the 26th of February, 1866.

The third proposition which I now propose to discuss is, that Judge Apperson signed the defendant's law license upon the 2d day of April, 1866, in the town of Grayson, in Carter county. Judge Hargis swears that he left his home in Morehead upon Friday, the 30th of March, 1866, going into the Epperhart neighborhood, a few miles above Morehead. On Saturday he went as far as the Sanfords, in the same county, and on Sunday he went out into Carter county and stopped within three miles of Grayson, at the house of Senator Chas. N. Lewis, sr.; that he went for the purpose of having his license completed to practice law. He stayed there all night on Sunday night, and on Monday morning he went into the town of Grayson, and met with some of his old Rebel soldier friends upon the streets, among others Saml. R. Elliott, and towards the hour of noon, requested Mr. Elliott to go with him to the Court-house, and there in the Court-house at the hour of adjournment for dinner, upon Monday, April 2d, 1866, Judge Apperson affixed his signature to his law license and thus completed it. It is said that he subsequently stated, in his letter to Judge Apperson, dated 2d of June, 1874, that he went *out* on Sunday. Went out from where? The neighborhood of the Epperhearts and Sanfords was only a few miles above Morehead, in Rowan county. He did go out of Rowan county and into the county of Carter, within a few miles of the town of Grayson, on Sunday, and his statement was literally true. But be that as it may, all the particular circumstances may not, at that time, have been called to mind. He is not the only witness that testifies in this record as to his ability to call to mind more circumstances, when his attention was drawn afterward to the subject, than he was at first. We find that on the 20th day of June, 1874, that Saml. R. Elliott, this man whom Judge Hargis says he went with to the Court-house for the purpose of getting his law license signed, made a statement which was published in the controversy in 1874, in which he states:

"In justice to Thos. F. Hargis, I feel it my duty to give this certificate for the public to see. There has been much said in regard to the time said Hargis should have obtained his license to practice law. I here state that I was at Grayson court (Carter county) in April, 1866. I then and there saw Judge Apperson sign Thos. F. Hargis' license to practice law. I will qualify to the above statement whenever called on. Given under my hand this 20th of June, 1874. SAML. R. ELLIOTT."

The Judge has instructed you, gentlemen of the jury, that the statements contained in this certificate are not to be taken as true, but that it is permitted to go to you simply to show the fact that Saml. R. Elliott signed and executed such a written statement. Its execution has been proven by Mrs. Louisa Sanford, who wrote it, Mr. Elliott being her neighbor. Saml. R. Elliott lived until within the last two or three years, but unfortunately for us upon that point, when the controversy of 1879 arose, his death prevented us from introducing him as a witness before this jury. But there stands his statement consistent with the testimony of the defendant in every particular. C. N. Lewis, sr., swears that he never saw the defendant until April, 1866; that the first

time that he ever saw him he came to his house and stopped on the Sunday night preceding the April Term of the Carter Circuit Court, 1866. He swears that Judge Hargis upon that occasion told him that he was out there to get his license signed to practice law. That is his language. Now there is no way to get around testimony of that sort, except just simply to say that Senator Lewis has willfully perjured himself in making that statement. It is true you may say that he may be mistaken, like Mr. Larew and Judge Bullitt, but it is hardly to be conceived that a man would, upon the witness stand, with the reputation and standing of Senator Lewis, solemnly and with uplifted hand, state that Judge Hargis, upon that occasion, announced to him that his business out there was to get Judge Apperson to sign his law license, unless he was stating the strict truth. He says that Judge Hargis inquired for the Ward boys, and expressed an anxiety to see B. W. Ward, with whom he had been in the army, and he remembers that he told him that B. W. Ward was going to marry. Now we will see further on when he did actually marry. He says further, that his daughter Lucy was single at home, and it was before her marriage, which took place in May, 1866. He says further that Judge Hargis returned and stopped at his house during the October Term, 1866. Judge Hargis was asked, on cross-examination, whether he had gone out to Grayson to practice law in October, 1866. He repeatedly responded to Col. Bullitt that he had other business, but he did not inquire what that business was. Mr. Lewis had some single daughters at that time. We don't know from this record what his object was, but we can draw an inference. We have the right to presume that plaintiff's counsel did not ask what his other business was, or his other motive in going to Carter county, because he knew what would be the response. He says that in April, 1867, Judge Hargis came to his house and stopped over night on Sunday, went to the court and stayed at Judge Botts' during that term, and gave as his reason for it, that he had business in that court, and he preferred to stay at the county-seat. He says that on the first occasion, in April, 1866, when he came back and stayed with him on Tuesday night, and left for home Wednesday morning, Judge Hargis informed him that he had stayed one night with the Ward boys. Mr. Lewis says that he came there on the night of Sunday, April 1st, 1866, in company with Levi W. Goodan. Judge Bullitt says he reckons that the countryman that was along with Mr. Lacy and John W. Hazelrigg was Levi W. Goodan, and that it was in April, 1867. Why didn't he ask Mr. Lacy whether he was the man? He knew Levi W. Goodan. If he had asked Mr. Lacy if it was Levi W. Goodan he would have responded as quick as any man you ever heard. They don't believe any such theory themselves. But suppose Judge Bullitt to be right on that so far as the man is concerned, how does it happen that Mr. Lewis didn't swear that John W. Hazelrigg was in his company when he went to Grayson? Why didn't Judge Bullitt ask that? Why didn't he ask Senator Lewis if John W. Hazelrigg was along? Why didn't he ask Mr. Lewis if Goodan was not the man that was in their company, and if he didn't stop and Mr. Lacy and Hazelrigg went along to Grayson together? While I am on that matter of Mr. Lacy's testimony I will mention this fact—they charge Judge Hargis with making a statement that he left Morehead on Friday to escape the fact of Mr. Lacy's testimony, having found out that Mr. Lacy would prove that he

and Judge Apperson stayed there on the night of Saturday the 31st of March, 1866, at his father's hotel. Now let us look at that. Judge Hargis and no attorney upon his side, by notice, intimation or otherwise, had ever heard that Mr. Lacy would be a witness in this case until he came to the city of Louisville for that purpose, long after Judge Hargis had testified. Plaintiff didn't take a subpœna out for him, and didn't put him upon his list of witnesses at the outset of this trial. How then could we know that Mr. Lacy would testify to a state of facts that Judge Hargis would wish to escape the effect of? But does he try to escape the effect of it? Judge Bullitt argues according to his theory, that Judge Hargis was at home on the night of the 31st of March, 1866, when Mr Lacy and Judge Apperson stayed there. If he was, why didn't he ask Mr. Lacy the question? Mr. Lacy would not prove it. Plaintiff's counsel dared not attempt to make the proof, or ask Mr. Lacy if he would swear it. The fact that plaintiff's counsel did not make that proof by Mr. Lacy, a man who could have known it and testified to it, a truthful and honorable gentleman as he is, places the question beyond doubt that Judge Hargis was not at his father's house on the night of the 31st of March, 1866, and Mr. Lacy, had he been asked, doubtless would have proven his absence and thus corroborated the defendant.

C. N. Lewis, jr., the son of Senator Lewis, says that the first time that he ever met Judge Hargis was at his father's house at the April term of the Carter Circuit Court, 1866; that he took a number of mules to the county of Bath to sell in the fall of 1866, and stopped at Col Hargis', in Morehead, and he remembers asking for the whereabout of the defendant. On that occasion the defendant was not at home and by reason of that fact he was able to determine that it was in th spring preceding that he had first become acquainted with the defend ant at his father's house. He tells us further, that he was not living with his father in 1867—that he was making his home then with H. J. McAlister, in the county of Greenup, and could not have first seen Judge Hargis at his father's house in the spring of 1867.

Joseph R. Ward says the first time that he ever saw Judge Hargis was in the summer or fall of 1865, at Morehead, and the next time that he saw him was in April, 1866, at a place called the Cross-Roads, where he and his brothers were keeping bachelor's hall, some three quarters of a mile from Grayson. He does not remember seeing the defendant in Grayson during the first day of Court. He says he don't remember whether he did or not. He remembers his brother William asking him where Hargis was, that they might take him out home to spend the night; that he subsequently, on the same day, saw the defendant at the Cross-Roads where they were keeping bachelor's hall, at a time when his brother William was not married, and on that occasion he heard them talking about having been in prison on Johnson's Island together, and that it was the first time that his brother William had met Judge Hargis after the war, and that they discussed the future prospects of the defendant on that occasion. Now, it is true, that the Ward boys say they do not think Judge Hargis stayed all night. Judge Hargis thinks he did; but, be that as it may, the trifling circumstance whether he stayed until midnight or all night does not alter the question as to whether he was there at the time when these boys were keeping bachelor's hall in April, 1866.

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B. W. Ward was in the Confederate army with the defendant and in prison with him. He swears that the first time he saw Judge Hargis after the war was at the April term, 1866; that he knows he was not married, that he was living at the Cross-Roads with his two brothers. I forgot to mention the fact that Joseph Ward swears he left the Cross-Roads in the fall of 1866, and did not live there any more. William Ward swears that it was before his marriage, and he produces the minister's return and record, which shows that he was married on the 13th of June, 1866. In the conversation then had with Judge Hargis, in which the subject of his prospects were discussed, he says that Judge Hargis then said he was out there to get Judge Apperson to sign his license.

H. P. Biggs, a man who kept a hotel in the town of Grayson, swears that the first time he ever saw Judge Hargis was at the April term, 1866, of the Carter Circuit Court, and he was at that time in company with the Ward boys in Grayson.

The Court thereupon adjourned.

The Court met pursuant to the adjournment, and Mr. Stone continued his argument, as follows:

Philip B. Hord, a magistrate of Carter county in 1866, testifies that he saw the defendant, in company with Samuel R. Elliott, on the 2d day of April, 1866, in the town of Grayson; that he remembers to have sworn Mr. Elliott to a pleading, and in corroboration of that recollection, the pleading itself is exhibited to the jury, signed by Sam'l R. Elliott, and dated on the 2d day of April, 1866. This testimony of 'Squire Hord is sought to be contradicted by the plaintiff through the witness John M. Burns. Mr. Burns was brought here for the purpose of telling you that he recollected when a client of his swore to an affidavit, and to fix a date, after the lapse of fourteen years, when the record itself stared him in the face that it was upon a different day. You remember that he told you that B. F. Elliott, a brother of Sam'l R. Elliott, swore to an affidavit on the same day. That pleading was drawn in the country by his brother, Hon. John M. Elliott, some thirty days before the beginning of the term. The day of the month was left blank, but the month was put in as March. When the 'Squire came to swear B. F. Elliott to that pleading he erased the month of March and inserted April, and filled it up the 2d day of April, which was the first day of the term. When we take the affidavit of Samuel R. Elliott, sworn to before Hord, and compare the signatures of Hord to the one and the other, we find the ink and every appearance alike, going to corroborate the recollection of the 'Squire that they were both sworn to at the same time, on the 2d day of April. Mr. Burns drew a number of pleadings that day. The man who comes, an attorney I care not who, after the lapse of fourteen years, having drawn perhaps half a dozen pleadings on the same day, and undertakes to swear that a particular one was sworn to at a particular place and a particular time, is undertaking more than any reasonable man ought to undertake to swear to, especially when the record itself, and the magistrate who took the affidavit, contradict him.

Mrs. Juliet Lansdowne Powers, not a thirteen-year-old girl, in 1866, as plaintiff's counsel stated to you, but fourteen years old, has a recollection distinctly of seeing the defendant, in Carter county, at the April term of the Carter Circuit Court, in 1866—the first time that she had ever seen the defendant—being introduced to him by her father, Dr. A. J. Lansdowne, now dead. She has often seen him since, and has become intimately acquainted with him. She is a lady of intelligence and refinement, who stands as high, and whose reputation for veracity is as much beyond question as any lady in Eastern Kentucky. Her subsequent acquaintance with the defendant enables her to fix the date. She recollects of being introduced to him on that occasion. She recollects the further fact that she attended the wedding of B. W. Ward in June, 1866, and that she had seen the defendant prior to that event.

Judge James R. Botts was introduced before you, and he swore that he had lived at the Cross-Roads with these Ward boys, for whom he was guardian, previous to March, 1866; that in that month he moved to the town of Grayson, leaving them to keep bachelor's hall; that during the April term of the Carter Circuit Court, 1866, Dr. Lansdowne, the father of this lady, lived in the town of Grayson, and as he went from his own house to the Court House he passed by his residence. He says to you that, while he did not see Judge Hargis in Grayson at that time, and would not have known him had he seen him, not having seen him since he was a three-year-old boy in the county of Breathitt, that his wife had a conversation with him during the April term, 1866, in which Judge Hargis' presence at the house of the Ward boys was discussed, and their ability to entertain him mentioned on account of the scarcity of their bedding. He knows that it was while he was living in Grayson, and he knows it was while the Ward boys were keeping bachelor's hall.

Again: He says that having met Judge Hargis at the Rowan Circuit Court, at its February term, 1867, he saw the defendant in Grayson in April, 1867, and that Judge Hargis came to his house and boarded during the term. That is what Judge Hargis says, and Senator Lewis states that Judge Hargis said to him when he had gotten more business in that Court, that he preferred to stay in the town of Grayson. Here are two preceding terms testified to when he stayed at Senator Lewis', and Judge Botts says that during the April term, 1867, he boarded at his house, and stayed there during that whole term, and stayed from that time on, whenever he came to the Carter Circuit Court, at his house. So it necessarily must be inferred that the terms at which he stayed at Lewis' preceded April, 1867, as to date.

Jonathan Davis' testimony was commented upon by Judge Bullitt. Now, Mr. Davis, when he started to give his deposition, was of the impression that the first time he had seen Judge Hargis after the war, was when he was at the convention when Hon. John W. Stevenson was nominated for Lieutenant Governor, which we know was in February, 1867, but he tells you in the same deposition that he recollects distinctly of seeing Judge Hargis at the spring term, 1866, of the Carter Circuit Court. They say none of the officers of the Court saw Judge Hargis on that occasion. He was the sheriff of Carter county at that time. He says that he recollects of coming out of the Court House, where he had been waiting upon the Court during that session,

and passing out of the Court House he saw Judge Hargis standing in the Court House yard, and had a talk with him. Davis was sick with a spell of fever in October, 1867, and was not about the Court House at all. In April, 1867, he was not sheriff of the county, and had nothing to do with the Court.

John M. Elliott, jr., the son of Samuel R. Elliott, who gave the certificate that I have alluded to, had known Judge Hargis in the Rebel army. He and his father went, at least part of the way, to Grayson Court House on Sunday preceding the first day of the April term, 1866, and during the forenoon of the first day he met with Judge Hargis, having previously met him at Morehead, after the war was over, when he was on a trip to Poplar Plains. He tells you that upon that occasion, in April, 1866, he heard Judge Hargis, in his presence, ask his father to go with him to the Court House, as he was an old acquaintance of Judge Apperson, to get his license signed. That they went off together; that they were gone some twenty minutes, going in the direction of the Court House, and returning from the same direction, and when they came back to where he and some others were, near the Black Jack Hotel, his father remarked that the defendant now has his license, and "I think he is a *pattern for a considerable man*"—such was the old gentleman's expression; that Judge Hargis, at the time, had a paper in his hand.

Nor can counsel for the plaintiff get over this testimony, so plainly and unequivocally expressed, so in accordance and consistent with the balance of the testimony, by saying that John M. Elliott, jr., is certainly mistaken as to this matter, and that the defendant, at the time he speaks of, was going up to get sworn into Court. They try to show to this intelligent jury that it was about the middle of the day, because there were fifteen or sixteen orders preceding the order swearing Judge Hargis in at the April term, 1867. That is a novel way to prove the time of day. A lawyer goes to the Court House and makes half a dozen motions in cases that he is attorney in, and then somebody is sworn in—all done in half an hour's time—at the morning hour. The clerk gets all those preceding motions first, and the idea of Judge Bullitt that that shows the time of day is absolutely ricidulous. But how does he account for the declaration of John M. Elliott, jr., that the defendant aked his father to go with him to the Court House? What did he want his father to go to the Court House for, if he expected to be sworn in as an attorney at law? Judge Hargis had known Judge Apperson slightly before. Samuel R. Elliott was an old acquaintance; he preferred to have him go with him, and they did go, not to be sworn in, but for the purpose of having his license signed, just as Samuel R. Elliott, in his certificate, has stated. John M. Elliott, jr., gave his deposition at Morehead. He said that his uncle, John M. Elliott, had drawn some pleadings, and especially that of his grandmother—had drawn them up, and his grandmother's was sworn to before 'Squire Catron—that his father had taken these pleadings to Court, and that John M. Burns had drawn one or more pleadings for his father at the April term, 1866. Elias P. Davis, the Circuit Clerk, says that John M. Elliott, jr., had no access to these papers, and that he had never seen them from the time they had been prepared. Thirty-five miles from Grayson, he is testifying as to the hand-writing and everything, and he is sustained when the records are brought in. We find

that these pleadings were drawn, some of them, by Judge Elliott in the country; that his grandmother's was sworn to before 'Squire Catron, and that John M. Burns did draw the pleading he says his father swore to on the first day of the term. Now, Judge Bullitt cross-examined John M. Elliott, jr. He knows whether he is an honest man or not by that cross-examination. He has undertaken to tell you in his speech that, in his opinion, William A. Fouch is an honest man; and I dare say if Judge Bullitt was called upon, that he would tell this jury that John M. Elliott, jr., was an honest man. His deposition shows it, and with all the ingenuity of Judge Bullitt, he did not jostle him or cross him in one solitary particular. Judge Bullitt has given you his opinion, after cross-examining Wm. A. Fouch (a man, you remember, who testified in your presence), that he is an honest man, and yet the plaintiff Green, at the dinner table of Carey's Hotel, in the presence of A. J. McKenzie, Carey and his wife, said that Wm. A. Fouch had perjured himself. When Carey is brought here as a witness, they do not contradict that statement of McKenzie, that upon that occasion Mr. Green said that Fouch had perjured himself. Thus it is, that the plaintiff and his counsel disagree as to the character and reputation of William A. Fouch.

But how natural it is for the plaintiff to charge people with perjury, to undertake to break them down, and to injure their reputation. Now, William A. Fouch swears that he, in the spring of 1866, before the canvass for County Judge, met Judge Hargis coming home from the Carter Court House, and, in an interview with him upon that occasion, two or three miles above Morehead, Judge Hargis informed him that he had been to Grayson to get his license signed, or his license completed. The language was that he had been to Grayson to complete his license, or to get his license. I quote from the deposition. It has been charged by the plaintiff's counsel in this case, that Fouch said that conversation occurred when he was the deputy sheriff of Barney T. Hayden, and that would fix it in 1867, and they introduced the record to show when Barney T. Hayden qualified, to show that it was in 1867. I undertake to state this, in the presence of counsel for plaintiff, that he testified to no such thing. He does not, from one end of that deposition to the other, say that he was the deputy sheriff of Barney T. Hayden when that conversation occurred. The nearest approach to it, or the only language that would authorize the slightest inference of that kind is, that when asked when he was deputy under Barney T. Hayden, he says I reckon it was in the *latter part* of 1866. But when his attention is called to it on the witness stand, he fixes January, 1867, the sheriff having been elected in August, 1866, qualified in January, 1867, when he was appointed deputy under him. He says this conversation occurred in the *spring* of 1866. He does not, anywhere in the deposition, say, that at the time of that conversation, he was deputy under Hayden. If I had been in the Court House when it was undertaken to contradict him by these records, or in any other way, I should have certainly called the Court's attention to the fact that he had nowhere made such a statement. This is the same witness, as the proof shows, that the plaintiff wanted to come down to his room to take a drink with him, to drown grievances; and Judge Bullitt puts the question to him twice, if the plaintiff did not, on more than one occasion, ask him to come down and take a drink to

drown grievances. That grievance was this: The plaintiff charged that he was an accommodating sheriff, that he was the man that had packed the May grand jury, in 1874, and had put upon the May grand jury the brother of the defendant, when, in point of fact, both the deposition of Wm. A. Fouch and the original list of the clerk, John R. Tabor, show that the jurors selected for the May term, 1874, were selected by the jury commissioners in the fall before—in 1873—and the brother of the defendant was on it; thus showing another evidence of the recklessness with which the plaintiff attacks witnesses and parties in this controversy. Question thirty-eight of my examination of Wm. A. Fouch is this: "What position, if any, did you hold in 1866?" "I was deputy sheriff in the latter part of 1866, I reckon." Yet the gentlemen come before this jury and actually assert and reiterate, time and again, that their witnesses contradict him on a thing that he never said, and it was during the time he was deputy sheriff that he met Judge Hargis and had this conversation with him. They may have done this through a mistake. I do not say that they did it, not believing it was so stated, but I only give this jury the facts.

Now, I desire to call your attention to the question of the difference in the ink in the two signatures of Judge Apperson and Judge Andrews, as one evidence that Judge Apperson did not sign it at the same time with Judge Andrews. Dr. McMillan testifies that he saw that license, as he recollects, about the first of July, 1874. It is in proof that Judge Hargis made a speech at the town of Morehead on the first Monday in July, 1874. At that time, Dr. McMillan testifies that the difference in the signatures of Judge Andrews and Judge Apperson was perfectly perceptible—that Judge Apperson's signature was much paler than that of Judge Andrews. Mr. Burns and Mr. Clarke saw that license in June, 1879, either shortly before or after this suit was brought. Neither of them undertakes to state that the signatures of the two Judges were not in different ink. I believe the plaintiff has not asked them a solitary question as to the condition of the license. But in 1879 Judges Pryor and Cofer examined that license and they both testify that it was perfectly plain that the signature of Judge Apperson was in paler ink. I believe that one of them gave it as his opinion that it was of a purplish hue. Some of the witnesses have testified that it had a bluish cast, but all agree that whatever may have been the original colors of these inks, that the signature of Judge Apperson was in paler ink. So has Judge Bullock testified. So have Messrs. Young, Russell, and Abbott testified. In all this record, from the time that this license was first examined, we find uniform testimony to the fact that Judge Apperson's signature was in paler ink—in different ink from that of Judge Andrews. On the other hand, the plaintiff has not asked a solitary witness, and has not undertaken to state himself, that when he saw this license in 1874, or when he saw it in 1879, such was not the fact; and, by his silence upon that subject, it is conceded by plaintiff that these two signatures had all the appearance of being in different ink. It is true that Elias P. Davis was brought here, as the clerk of the Carter Circuit Court, to show that he made ink out of ink-powder, but it is only one fact going to show the kind of ink up there at the time. It does not exclude the idea that there may not have been half a dozen bottles of various inks in that Court House, or brought there by attorneys. But I state this, that if this jury were to

take the license written by Judge Andrews for myself in February, 1866, and compare it with the general appearance of the orders recorded on the order book of the Carter Circuit Court at its April term, 1866, they will find a marked difference in the ink with which my license is written in 1866 and the orders recorded at that time by Mr. Davis.

From the testimony of Judge Bullock and others, in the examination of these two signatures, under the magnifying glass, a portion of Judge Apperson's signature over-lapped that of Judge Andrews, as one rye straw would over-lap another, and that, from appearances, the ink of the signature of Judge Andrews was perfectly dry when the signature of Judge Apperson was written afterwards. There was no transfusion of inks, one with another.

Allusion has been made to the overcoat that Judge Hargis wore to Grayson, as evidence that he was not there until April, 1867. Now, so far as the question when that overcoat was made for Judge Hargis is concerned, we have Judge Hargis himself swearing, the man for whom the overcoat was made, that he obtained it in the fall of 1865, and we have the old lady who made it saying the same thing. It was his first overcoat after he came back out of the Rebel army. We have introduced the person who made that coat, who swears that it was made in the fall of 1865, and gives her reasons for it. They have told you that Burns and Clarke ought to recollect more about this than anybody else. Now, Burns was not there in the fall of 1865. He lived in the county of Mason, and was there very seldom until June, 1866. Clarke did not begin to board in Morehead until February, 1866—that is to say, at the same house with Judge Hargis. I ask you, gentlemen of the jury, if it is reasonable—take it home to yourselves—take your most intimate confidential friend, and go back fourteen years and tell me what sort of an overcoat he wore. If you can do it, then I will have some confidence in the testimony of Burns and Clarke upon this question. Judge Hargis says he wore that overcoat, which has been introduced to you, both at the April term, 1866, and at the April term, 1867, of the Carter Circuit Court. Other witnesses corroborate him, who swear that they saw him have it on at the time he was there in April, 1866. Others prove that he had it there in 1867.

But we come now to the letter of Judge Apperson. My friend, Mr. Larew, was hard pressed when he stated to this jury that letter was a forgery—that he did not believe that Judge Apperson ever wrote it. If he has staked his case upon that, he had just as well surrender now. Judge Hargis told the counsel who was cross-examining, that that letter had been seen by numbers, but not a solitary question was put by plaintiff's counsel to Judge Hargis as to whom he had shown it. If they had done so, he could have perhaps named fifty persons to whom that letter had been exhibited, and if they are depending upon that now, I will stake this case upon the genuineness of that letter. Ask Judge Beckner if you want to know whether this is a genuine letter; ask Maj. Richards, ask Col. Woolley, and perhaps a dozen others who have seen that letter in the genuine hand-writing of Judge Apperson. I say plaintiff's counsel are hard pressed when they have to charge upon Judge Hargis that he forged this letter from Judge Apperson. Mr. Larew says that he thinks that Judge Apperson wrote to the defendant that he signed the license in Morehead,

and that Judge Hargis, bristling up, thought he would set him right, and said, no, you signed it in Grayson. Now, that is a little far-fetched, but such is his theory. Here is the letter:

"HON. THOS. F. HARGIS, *Carlisle:*

"DEAR TOM:—I find several letters, on my return, asking my recollection of when and where I signed your license. I did not, and do not now, remember that the honor was mine of having been one of your professional accoucheurs, though I have no doubt I assisted at the borning, as I understand my name is signed. Please let me know the time and place. Yours truly,

"R. APPERSON, JR.

"MT. STERLING, KY., 30th May, 1874."

We see, from that letter, gentlemen, that Judge Apperson, upon the 30th of May, 1874, says that a number of letters are upon his table, or "I find several letters, on my return, asking my recollection of when and where I signed your license," and he further states, "I did not, and do not now, remember that the honor was mine of having been one of your professional accoucheurs." The whole matter had passed out of his mind. He had no recollection either of the time or place; and right there, I would like to know by whom those several letters of inquiry, referred to by Judge Apperson, were written—whether by the plaintiff, Thos. M. Green, or any one in his interest. He has not told us whether he wrote to Judge Apperson or not. He has not told this jury whether he received any letters from Judge Apperson or not. He is as silent as the grave upon that subject. Those letters, thus written to Judge Apperson, were not written by the defendant. They were written by some one making these inquiries, and he must have made some response to them, but we don't hear what answers he made. Now, let it be as it may, whether Judge Apperson wrote one or two letters to Judge Hargis, this letter, written by Judge Hargis upon the 2d day of June, 1874, which they themselves have brought before this jury, is an answer to both. There is the letter of the 30th of May, alluded to in this original answer, written by Judge Hargis. If anything was stated in the letter of June 1st by Judge Apperson on a different subject, something certainly would have been said about it in this answer. This is an answer to both. The 31st of May, 1874, was Sunday. The 30th of May, when this letter was written, was Saturday. The 1st day of June was Monday. Now, whether Judge Apperson, after writing this first letter, dropped Judge Hargis a note calling attention to the fact that he desired an immediate answer to the letter of the 30th I know not, but it is quite probable. At any rate, if he had done so, it was quite natural for Judge Hargis to have paid no attention to the note calling attention to the fact that he wanted an answer. At any rate, this letter, written upon the 2d day of June, is an answer to one or both of these letters written to him by Judge Apperson, and that answer reads as follows:

"HON. R. APPERSON, JR.—*Dear Judge:* Yours of May 30th and June 1st are received. You signed my license at Carter Court House, at the April term thereof, 1866. I went out on Sunday and you signed them in the Court House on Monday, I think the 2d of April. I have had a hard time with them, but will come out all right.

"Yours truly, THOS. F. HARGIS.

"CARLISLE, KY., June 2d, 1874."

On that very day Judge Hargis penned his second card to the public, which was published in the *Carlisle Mercury* of June 4th, 1874, in which he stated broadly and unequivocally to the world that his license

was signed by Judge Andrews on the 26th of February, 1866, and by Judge Apperson on the 2d day of April, 1866, at the Carter Court House. Not waiting for a reply from Judge Apperson to his letter of the 2d of June, 1874, or for any further response from Judge Apperson, he stated to the public when and where those two Judges signed his license, and they acquiesced in that statement until the death of Judge Apperson upon the one hand, and until Judge Andrews took the witness stand upon the other. It never was questioned. Now, is that the way a man would do if he was not stating facts? Why should Judge Hargis thus put himself in the power of these two men who might come before the public and say to him, you are stating that which is false, as we did not sign your license at that time nor at that place? That is the way an innocent man does. He publishes to the world the facts, and challenges contradiction from those two men who, of all others, should know whether he was stating the truth or a falsehood. When they introduced the original letter from Judge Hargis to Judge Apperson, it enabled us to get in this preserved copy of the original letter from Judge Apperson to the defendant, and it explains the reason why nothing was heard from Judge Apperson in 1874—because he did not recollect when and where he signed the defendant's license. It must be remembered, gentlemen of the jury, that Judge Hargis wrote that letter to Judge Apperson on the 2d day of June, 1874, and that he published his June card on the 4th of June, 1874, asserting it as a fact that his license was signed by Judge Apperson at Carter Court House at the April term, 1866, before he had ever seen Samuel R. Elliott, or the certificate which he gave upon the 20th of June, 1874, in which a statement of facts is set forth in strict corroboration of every line and every letter that Judge Hargis had written on that subject, and that, too, without any concert of action upon the part of Judge Hargis, because the proof shows that when that certificate was executed, in the county of Rowan by Samuel R. Elliott, Judge Hargis was at home in Nicholas, sick and unable to venture out from home.

Allusion has been made to the fact that Judge Hargis sent James Keeton to get a copy of the convening order of the Carter Circuit Court at its April term, 1866. They took that deposition. We read it. Judge Hargis sent him there in broad daylight, riding his own horse, and when he got to Elias P. Davis, the clerk, he told him that he wanted it for Judge Hargis. He says that Judge Hargis told him, before he started, that Judge Apperson held the Court, and he wanted him to go and get a certificate of that fact. What is there in that, on which these doubting Thomases, in 1874, ready at all times to question a statement made by Judge Hargis, found a cause of suspicion? It was only a preparation, upon his part, to meet any statement questioning the fact that Judge Apperson was at the Carter Circuit Court in April, 1866, and he got it to fortify himself on the question whenever it became necessary to publish it.

It is said that Judge Hargis claimed that his license was signed by both Judges in February. We say that Judge Hargis never made that claim. We say that whenever Judge Hargis said anything about his license, he said he had obtained it, or it was dated in February. Now, how are we to determine what Judge Hargis' claim was? By going to his card upon the subject. On the second day of May,

1874, we find in his card, not a statement that he obtained his license signed by both Judges in February, 1866, but a statement that his license is *dated* the 26th of February, 1866. If he had, in that card, stated that he had obtained and completed his license in February, 1866, and both Judges had then signed it, there might have been something in the argument, but the very fact that he goes no further than to state the date of his license, confirms our theory that he never claimed, or intended to claim, that his license was completed in February, 1866. Capt. Thomas A. Curran says that, in giving the certificate upon the 8th of May, 1874, upon the subject as to when Judge Hargis stated that he obtained his license, he did not undertake to give the exact language of Judge Hargis—he don't recollect, and does not state it as a fact, that Judge Hargis stated that he had obtained his license *completed* in February, 1866; and how easy it is for a man to mistake the one for the other, when he said, my license is dated the 26th of February, 1866, to jump at the conclusion that it was then signed by both Judges. Mr. Green understood that well enough when he talked with Burns, as he says, in May, 1874. He understood that it did not necessarily follow, because it was dated in February, 1866, that both Judges had signed it then, for he says to Mr. Burns that Judge Apperson could have signed it afterwards, and it does not necessarily follow, because it was dated in February, that it was then signed by both Judges. But I have already shown you that Burns swears in his deposition that Judge Hargis never told him that. When he comes upon the witness stand he, in an evasive sort of way, pretends that something was said by Judge Hargis upon that subject in April, 1874. I call your attention to what Mr. Green himself says. It has been said by Mr. Larew that Judge Hargis told plaintiff in May, 1874, that he had obtained his license from both Judges in February, 1866, I read from page 1088 of the stenographer's record of his testimony —the testimony of Mr. Thomas M. Green himself. We will see whether Judge Hargis ever told him so: "I wish to say now that Mr. Hargis never did tell me in so many words that that order was his certificate, nor did he ever tell me in so many words, nor in any other way except as I have related, *that his license had been signed by both Judges when they were in Morehead together.*" If Judge Hargis had ever made such a claim to Mr. Thomas M. Green, he has every motive on earth in this case to testify to it. "He didn't tell me in so many words." Even Mr. Green is driven to an inference on this subject, and will not tell this jury that in any conversation that he ever had with Judge Hargis, that Judge Hargis said both Judges had signed his license in February, 1866. Then how was he misled? If he jumped at an erroneous conclusion and drew inferences from the conversation of Judge Hargis that were not warranted by the facts, no one is to blame but himself, for he says that Judge Hargis never told him in so many words that his license was signed in February by both Judges.

Now, with this array of testimony upon the trip of Judge Hargis to Carter county, with Senator Lewis, William Ward, J. M. Elliott, jr., Joe Ward, and Mrs. Powers in the county of Carter, and with William A. Fouch, who sees him on his return, stating to you that Judge Hargis s id that he was out there for the purpose of having Judge Apperson sign his license, and when returning home he had been there to obtain the signature of Judge Apperson to his license, how can gentlemen, with any degree of candor, come before a jury and argue this all

occurred in April, 1867? I therefore maintain, gentlemen of the jury, under the light of all the testimony on this branch of the case, that you are authorized to conclude—yea, you are driven to the conclusion, that Judge Hargis obtained the signature of Judge Apperson to his license, and it was then completed, at the April term of the Carter Circuit Court, 1866; and I pass now to the question as to whether he was sworn into the Rowan County Court at the May term, 1866.

Judge Hargis swears, that after his return from Carter he was absent during the month of April on a trip in the counties of Breathitt and Magoffin, and in that statement of fact he is confirmed by James E. Clarke, who says that he has a recollection that he was absent in the month of April. He was not, then, at the County Court in Rowan county on the third Monday in April, 1866. The first County Court that he was in attendance upon in Rowan county, after the completion of his license, was the May term, 1866. At that time, he says that he was called upon by Z. P. Johnson, who came there with his sister, Nellie Ann Johnson, and asked him to aid him in his qualification as her guardian; that he went to the Court House and in the presence of Judge Roe and Cyrus Alley, the clerk, others in the room not remembered being present, produced his license, then completed, and he took the oath as the Constitution and Statutes require, and was sworn into that Court as an attorney.

Cyrus Alley, the clerk of that Court, states that he recollects that while Judge Roe was presiding Judge, in the old Court House, Judge Hargis took the oath in that Court, and was sworn in as an attorney at the April or May term, 1865. He at first gave a certificate that it was in April or May, 1866, without seeing the mutilated records. Subsequently, after seeing that there were no orders erased at the April term, he came to the conclusion, and so stated, that he was sworn in at the May term, 1866. He states that he recollects it was after the birth of one of his children, his daughter, Ida May, who was born on the 17th of March, 1866; that it was before the Court House contract was let out, which was on the 18th of June, 1866, and it was before Judge Hargis was a candidate for County Judge, and before the canvass for county officers commenced. Now, Cyrus Alley testifies it was his habit—his universal habit—in recording orders, to write these two little marks upon the marginal line of the order above and below. As he completed the order he would make these marks, and as he wrote another order he would make the marks. The photograph, as presented to this jury, shows the fact that these two marginal marks are there above and below the May erasure. The ten orders that precede that erasure are in the handwriting of Cyrus Alley; the four orders that immediately succeed it are in the handwriting of Cyrus Alley. Those facts enable Mr Alley, as he testifies in his deposition, to state that it is his judgment that he recorded the order then and there in that spot, judging by the orders that precede and succeed it, and the fact of those marginal marks above and below, which you can see on that photograph, and like which you have seen perhaps in the Circuit Court order-book. James E. Clarke testified that he did not make those marks. It was not his habit. Now, is it probable, gentlemen of the jury, that right in that cluster of orders, by itself, James E. Clarke would have recorded an order, and is it probable that those marginal marks—those ear-marks, I may say—indicating unerringly that Cyrus Alley,

the clerk, recorded the order, should appear? I asked Mr. Clarke about those marginal marks in his deposition. The book was then before him—the page upon which this erasure occurred staring him in the face. Those marginal marks were there with all the appearance of originality, in exact similitude with other marks upon the preceding and succeeding pages. The counsel for the plaintiff had thus their attention drawn to them. What is the result? Not a solitary question, by way of re-examination, is put to James E. Clarke as to whether those marks are genuine, or put there since 1874. They dared not do it. Harry Burns' deposition was taken before the book was lost, and he was not asked a solitary question about those marks, as to whether they were genuine or not. You can see from that photograph that they are genuine—not so clearly and definitely, however, as you could by an examination of the book itself. The only man, in this entire record, that has been asked a solitary question indicating that these gentlemen representing the plaintiff proposed to charge that those marks were not genuine, is Mr. Thomas M. Green himself, and he says that he didn't see them there, or don't recollect of seeing them there, in 1874. I believe Judge Hargis testifies that his attention was not called to them in 1874, and it was afterwards in an examination of the book, discovering that it was the invariable habit of Cyrus Alley to so record his orders and put these little signs there, that caused him to examine James E. Clarke upon the subject, and when I had introduced the subject and shown that those marks were there, telling in unmistakable terms that Cyrus Alley recorded that order, plaintiff and his counsel then made no question of the genuineness of the marks. They did not ask James E. Clarke upon the subject, or Harry Burns, or any other witness while the book was in existence.

Z. P. Johnson swears that he was qualified as the guardian of his sister upon that day. There is the beginning of the order upon the right hand page (only two from where Judge Hargis was sworn in), showing his qualification as guardian. We produce a copy of his guardian bond dated the 21st of May, 1866, conclusively establishing the fact that he was qualified on that occasion. He swears that Judge Hargis made the motion for him.

Then we have the testimony of Henry R. Myers. He swears that he was in attendance there as one of the magistrates upon business connected with the new court-house, and while in that court-house at the May term, 1866, he recollects that Judge Hargis came into the court-house, and when Cyrus Alley called the attention of the court to the fact that Judge Hargis wanted to be sworn in as an attorney at-law, that Judge Roe directed him to swear him in, and he saw Judge Hargis lift up his hand and take the oath as an attorney in that court at that time. I do not wonder that the plaintiff, after having talked to Henry R. Myers, did not take his deposition. This man, who tells you that he was a magistrate of the county for thirteen years, when interrogated as to when he qualified under his first commission, fixes it in September, 1865, that Col. John Hargis was present, and that Judge Roe swore him in, and when his commission is produced the fact is developed that the oath upon the back is in the hand-writing of Col. Hargis, and dated in September, 1865. When asked as to the court-house, he states that the price was $2,965, giving it to a cent, without the record, showing the accuracy of the old man's memory.

'Squire Wm. Ramey, another magistrate, a man whom you saw and heard testify, and if there is a man who testified truthfully in this case I believe it to be Wm. Ramey, contradicting himself to some extent on immaterial matters, but as to the presence of the defendant on that occasion he stood definite and clear. He says that he was there on the business of the court-house, that it was in May or June, and remembers the fact that Judge Hargis was sworn in as an attorney, that he was unfriendly with him at the time, and had a contest with him during the war. His attention was thus directed to the fact. He wondered how it was that the defendant could take an oath to support the Constitution of the United States, when he recollected the fact that during the war Judge Hargis wanted him to take an oath to support the Southern Confederacy, that it was before a reconciliation had taken place between them which occurred subsequent to when Judge Hargis became a candidate for County Judge, about the 1st of July, 1866. He says that while Judge Hargis was taking the oath, or immediately preceding, something was said about what had happened in Carter county the month before. He did not catch exactly what it was, but some allusion was made to Carter Court, and some occurrence that had happened there the month before.

Jas. W. Nickell, another witness, testifies that he was present on that occasion; that he had known Judge Hargis all his life; had gone to school with him; had come down for the purpose of seeing something about the court-house contract, his father expecting to get the contract, and knowing that the magistrates would be present. While there he learned that Judge Hargis—at some time during the day, perhaps at the adjourning hour for dinner—that Judge Hargis was going to be sworn in as an attorney, and he remained, and went into the court-house and saw him take the oath. Jas. W. Nickell is an uneducated man, and his mind is not so quick as that of my friend Col. Bullitt, who conducted his cross-examination, but at the same time he is a truthful, honest man, and if gentlemen do not believe it, let them go to his neighbors and friends in the county of Rowan who have known him all his life. His father did take the contract to build the court-house the following month, and he says he knows that it was preceding that transaction. He worked upon the court-house himself as a laborer, and helped to build it.

Hiram G. Brain says in June, 1866, Judge Hargis informed him that Judge Roe had sworn him in as an attorney in his court. He is the son of Major Jas. M. Brain whose deposition has been taken and read by the plaintiff.

Judge Hargis has further produced a copy of the order swearing him in at the May term, 1866. That, by itself, the plaintiff knows full well must furnish conclusive evidence of the fact that Judge Hargis was sworn into that court, and the only refuge they have is to charge that it is a forgery. Judge Hargis told you that during the fall term, 1873, of the Rowan Circuit Court, when Hon. Geo. T. Halbert spoke of the fact that Judge R. H. Stanton would, perhaps, charge that he was ineligible to the office, that he went to the county clerk's office and found on the order-book where he was sworn into that court, and called the attention of the clerk to that order, and told him to give him a copy of it. The clerk testifies that he did copy that order upon the

day that it was ordered, and that it was delivered to Judge Hargis the same day or the next.

Now, I desire to take up the argument against this order and its genuineness and see what there is in it. Judge Stanton never made the charge direct that Judge Hargis was ineligible, and it was not to be expected that Judge Hargis should answer every question that might be propounded, or every suggestion that might be made by anonymous correspondents in the papers, and thereupon produce the proofs of his eligibility. Whenever the subject was mentioned in Judge Hargis' presence, he uniformly assured his friends unhesitatingly that he was eligible to the office. None of them called upon him for the proofs. They took his word for it. None of them demanded to see his license, or asked for any further evidence of his eligibility. In the examination of this subject he assured Halbert, Cole, Whittaker, Judge L. B. Cox, Thomas A. Curran, Wm. S. Frank, and others who asked him about it, that he was eligible. To Judge L. B. Cox, as early as the February term of the Fleming Circuit Court, the first week of that court, 1874, at the Dudley House, in Flemingsburg, when the subject was mentioned, he said: "I am eligible." Judge Cox asked if he had his license, and he said that he had, and it was dated in February, 1866, and what is more, "I have got a copy of the order of the county court swearing me into that court." This was about the 10th of February, 1874. On the 14th day of April, 1874, Wm. S. Frank has a conversation with him upon this subject, and he says to Frank unhesitatingly, "I have got a copy of the order, I am eligible." "I concede the fact that I was not sworn into the Rowan Circuit Court until August, 1866, but I was sworn into the Rowan County Court several months prior to August, or at its May term, 1866, and I am only waiting until Mr. Green, or anyone else, makes the charge directly that I am ineligible, and then I will produce a certified copy of the May order and knock his props from under him." Such is the testimony of Wm. S. Frank, as honorable and as truthful a man as lives in the State of Kentucky.

On the 24th of April, after this when the mutilations are discovered, he reminded Johnson, the clerk, that he had a copy of this order. The gentlemen representing the plaintiff argue that it is very strange that Johnson did not recollect it. Johnson had an indistinct recollection of something of the sort—of his getting a copy and some deeds at the November term preceding. I venture to say there is not a clerk in the State of Kentucky who, under the same circumstances, would have recollected the contents of an order copied in the same way. Go to Mr. Cain, your clerk, and get a copy of an order swearing in an attorney, and let the matter sleep for six months, and ask Mr. Cain for the circumstances under which he gave that order, and the contents of the order, and I venture that he could not do it to save his life. He informed Cole upon the night of the 3d of May, 1874, that he had such a copy, and I will show you presently that upon the same night, he, in effect, informed the plaintiff, Thomas M. Green, that he had a copy of that order. On the 2d day of June, 1874, Judge Hargis, in his card of that date, published in the *Carlisle Mercury* of the 4th of June, published a copy of this original order.

In an examination of this May erasure in 1874, Dr. McMillan and Geo. T. Halbert swear that there could be discovered in that era-

sure the words "On motion" and "Thos. J. F." and "practice." Dr. McMillan says about the third line he could discover the letters "ac," and upon the last line the words "to practice," or "practice." In this May order the space in recording it occupied about five lines of the order-book. The name of Thos. J. F. Hargis would occur at the right hand of the first line. The first time the word practice occurs would be near the beginning of the third line, and that the words, "to practice" in the latter part of the order would occur upon the last line of the order-book. A diagram was made by me and published in the *Flemingsburg Democrat* in 1874, setting forth those words, and when the copy of the order itself was published it was found to corroborate the statements of Dr. McMillan, Halbert, and others as to the existence of those words. Here was a physical or mathematical demonstration of the truth and genuineness of that order. It was charged by plaintiff, in 1874, that Cyrus Alley had never made an order like that in his life—that out of twenty orders recorded by Alley of other attorneys being sworn into the circuit or county court, not one of them were like this copy, but all of them were alike each other. But when we come to take the testimony in this case, there were only six or seven of such orders produced, which were recorded by Alley, each one of them different in character, and no two of them alike. The order swearing myself into the circuit court was greatly similar to this one, but when we produced the order swearing in W. G. Taber, written by Cyrus Alley, we found that it was very different from all the others. I don't believe that there is an order in the State of Kentucky just like that or approaching it. It is in the hand-writing of Cyrus Alley, and reads this way: "W. G. Taber took the constitutional oath, and the duelling oath, and the oath of office as a practicing attorney at law, and is permitted to practice in this court." I confess if Judge Hargis had presented a copy setting forth that he had taken three oaths like that in Taber's, there would have been some ground for suspicion, yet that is a genuine order written by Cyrus Alley, swearing W. G. Taber into the Rowan Circuit Court.

But Mr. Larew says there are some words crossed out in this copy, and that shows that it is a forgery. Now, there is hardly a clerk, I reckon, in the State but what has made copies in the same way. He finds that he has written a wrong word and corrects it and makes the copy correct. To my mind that is a proof of its genuineness. If Johnson was going to make up a forgery upon this point and manufacture an order, he would not have had a blot, or a blur, or a blemish upon it, and that is a complete answer to that objection. I propose to notice a copy made by the plaintiff's immaculate witness, Elias P. Davis, the Circuit Court Clerk of Carter county, and read in evidence, qualifying Richard P. Hyrne as a licensed tavern-keeper at the March term, 1865, of the Carter County Court. You will find that in that very copy that he has started to write a wrong name, and then written the proper name over it. I take it that there is nothing in that objection.

Again, it is said that it is unusual for a clerk in making a copy to say, "Given under my hand the 27th of November, 1873," instead of saying, "A copy: Attest." It is in proof by Johnson that he was in the habit of so certifying copies, and that it had been his habit previous to that time, and they introduce here no copies made prior to

that time contradicting him upon that question. He says he may have varied his habit, but it was not until 1874 that his attention was called to this matter, and he began certifying copies, "A copy: Attest." I take it that this, instead of being evidence of a forgery, is the highest evidence of its genuineness. And why? If Judge Hargis and Johnson were undertaking to palm off upon the public a copy which was a forgery, they never, upon the face of the earth, would have left it in the shape that it is in. They would have had it "A copy: Attest," in the most approved style, and not subject to criticism in any way, shape, or form. The fact that it is given in that way is evidence to my mind that it is a genuine copy, given in the regular course of business by Jas. W. Johnson. Besides, it is in proof here that copies given afterwards in 1874 by Johnson are certified in the same way.

Again, they say it is unusual that Cyrus Alley, the clerk, should have been the mover of the motion. Granted. What does it prove? Judge Hargis and Jas. W. Johnson, if they had undertaken to get up a forged copy, which would have the effect of convincing the public mind that it was genuine, would never have put the name of Cyrus Alley in it, and thus made a witness against themselves. Half of the orders, yes, nine-tenths of those that are brought before this jury, qualifying attorneys in courts are without anybody as the mover in them. There was no necessity for putting anybody in as the mover if it be a forgery, let alone putting in a man like Cyrus Alley, the clerk of the court and a Republican in politics, a man who might reasonably be supposed to come forward and say that he did not make such a motion, and testify against the genuineness of the copy. Hence I say the fact that his name appears in that copy as the mover of that motion, affords the highest evidence that it is a genuine copy, that it appeared on the book, as Johnson swears, word for word, and that he literally copied it from the order-book.

One further point I desire to refer to in that copy. In this copy you will find that the word Thomas is abbreviated "Thos." It was the universal habit of Cyrus Alley—perhaps not universal—perhaps I state the proposition too broadly, but it was his custom to write the word Thomas "Thos.," as proven by Jas. E. Clarke on the witness stand, and as you will see from these exhibits and these order-books. He almost invariably wrote the word "Thos." He did it in the examiner's order where Judge Hargis was qualified as an examiner at the February term, 1866, of the Rowan Circuit Court. It is that way in this copy. It was another habit of Alley to abbreviate the word "and," and write it in the character which indicates the word, thus: "&." Two of those abbreviated characters occur in that copy, and the clerk making a true copy, copied it in the same way. In all the exhibits and order books containing Alley's hand-writing it was his habit to abbreviate that word.

Now it appears by the testimony of the plaintiff that he had a conversation with Jas. W. Johnson upon the subject of a copy of the order swearing Judge Hargis into the County Court of Rowan. He had that conversation on the 2d day of May, 1874. The plaintiff says that Johnson told him that he had never made Judge Hargis a copy of that order; that he had no recollection of ever seeing the orders of the Rowan County Court that far back. Johnson says that the interrogatory only reached to the 16th of April, the last trip that Judge Hargis made

up there, and he responded that he had not made a copy on that occasion. Now let it be true that James W. Johnson had at that interview with plaintiff an indistinct recollection, after being reminded on the 24th of April, 1874, by Judge Hargis of the circumstances under which he made that copy, was it incumbent upon Jas. W. Johnson, with the interrogatory of the plaintiff only relating to the last trip of Judge Hargis to Kowan county, to volunteer the statement that he had an indistinct recollection of some order having been copied for Judge Hargis at the fall term before? He did not know for what object the plaintiff was there, whether as the friend or the foe of Judge Hargis. Subsequently it is in proof that the plaintiff published the supposed conversation with Johnson upon that subject, in which he stated that Johnson had informed him he had not made such a copy for the defendant. Johnson was a candidate for office, the mails were irregularly carried to the county of Rowan, and Johnson swears that he never saw plaintiff's paper of the 5th of May until about the 24th of May—nearly three weeks after its publication. Then he wrote the plaintiff a letter to the effect that when he was asked by plaintiff about the copy of that order, his mind was upon the trip of Judge Hargis on the 16th and 17th days of April, 1874, and he stated in that letter to the plaintiff he had some recollection of a copy of some kind given by him to the defendant together with some deeds at the fall term before.

Now, as to the conversation between Judge Hargis and the plaintiff on the night of the 3d of May, 1874. It is claimed by the plaintiff that in that conversation Judge Hargis told him he had no copy of the order swearing him into the County Court, and never had gotten a copy of that order. It is claimed on the other hand by Judge Hargis that he did not so inform him. Hon. A. E. Cole was present at that conversation. He states in his deposition that he heard all that passed between them, and he is perfectly confident that Judge Hargis never told the plaintiff he had not obtained a copy of that order. On the contrary, he says that Judge Hargis told him, Cole, and called his attention to the fact, that during the conversation he had not told the plaintiff he had not obtained such a copy, but that he had a copy and wanted him to know it. Judge Hargis and the plaintiff concur as to the fact that the plaintiff told him on that occasion Johnson had informed him he had not made a copy of that order. Judge Hargis asked: "Did Johnson tell you that?" and Green answered, "He did." Judge Hargis testifies that immediately after Mr. Green made that answer he said: "When I come to Maysville on next Wednesday, the 6th of May, I will show you *a paper which will convince you beyond a doubt that I was sworn in at the May spot,* where the erasure occurs, into the County Court of Rowan." Mr. Green says that Judge Hargis did not tell him that on that night, but the next morning, when Judge Hargis was about half dressed, and when the plaintiff was about to leave, that Judge Hargis *did* make that statement to him. Now, I want to know, in the name of common sense, what the impression could have been upon the mind of the plaintiff? What could it have been upon the mind of any reasonable person when Judge Hargis said, "I will show you a paper which will convince you beyond a doubt that I was sworn into the Rowan County Court where that erasure occurs?" What could he have meant except a copy of the order? The original was gone, and no *paper* in my com-

prehension or that of any reasonable person on earth could have convinced the mind, beyond a reasonable doubt, that he was sworn in at that particular spot, except a certified copy of the order by the clerk. Then it won't do for the plaintiff to come into this Court House and say that Judge Hargis, on the night of May 3d, 1874, told him that he had no copy, and never had obtained one, and on the morning of the 4th told him he had a paper, and he would show it to him, that would convince him beyond doubt he was sworn in at that particular spot. Those two declarations are inconsistent. Mr. Green could never have believed Judge Hargis had no copy, or had told him so, and at the same time believed Judge Hargis would produce and show to him a paper that would convince him beyond doubt the was sworn in at that particular spot, because such a copy and such a paper are one and the same thing. Don't you know —let it be on the morning of the 4th that this conversation occurred, and that this promise was made by Judge Hargis—Judge Hargis says it was on the night of the 3d—the plaintiff says the morning of the 4th —take it whichever way you please—can this jury believe that Judge Hargis would have made the declaration that he had no copy in one breath, and in another say, "I have a paper, and I will show it to you, that will convince you beyond doubt I was sworn in at that particular spot." It could have meant nothing on earth except that he had a copy of that order. Could Thomas M. Green believe he had no copy, and at the same time believe he had such a paper and would show it to him? I ask you, as reasonable men, can you believe it? It proves that Judge Hargis' testimony is right, and what is it? That he didn't tell him that he had no copy on that night, but he told him on that night—either on that night or the next morning—take it whichever way you wish—that he had a paper that would convince him beyond doubt he was sworn in at that particular spot, which meant nothing more or less, to any reasonable man, than that he had a copy from the clerk. Judge Hargis is right unless the plaintiff is a man without sense or comprehension, and we know that he is not. Why, he says he relied on it. He says, I went home and wrote the article of the 5th of May, believing that Judge Hargis had such a paper. You did? What else could you have believed that he had? What other paper but a copy would have convinced you or any other man that he was sworn in at that particular spot? The license and no copy of the license could have done it. No other paper in the universe could have done it except a certified copy of that order, because he says, "I will convince you beyond doubt that I was sworn in at that particular spot." It must have been a copy of that order.

You relied on it [*addressing Mr. Green*]? Then you didn't rely on his statement that he had no copy. You knew the defendant never told you so, just as Judge Hargis and Mr. Cole said, when you made that charge and published it in your paper. When you published that statement he denounced you as a liar and slanderer, and backed his own statement by that of Cole. You told what occurred between you and Johnson in your article of the 5th of May, which was afterwards explained, and when you published your article of the 12th of May, but for thirty long days you never dared say that Judge Hargis told you that he had no copy, and when you did so, he denounced you in the terms of the Open Letter.

Now, when we come along to the 6th of May, at the Barcroft House in Maysville, what occurred? They both agree that the subject was talked of again. Mr. Green asked him: "Have you brought me that paper that you promised to bring me when you came to Maysville which would convince me beyond doubt that you were sworn in at that particular spot at the May term, 1866?" Judge Hargis answers: "I have concluded not to show you that, Mr. Green,". and gave him his reasons for it. Whether those reasons are sufficient or not does not amount to anything. The question is, whether or not that conversation occurred the way Thos. M. Green tells it. "I relied upon your statement when I wrote my article of the 5th of May." You did? You relied upon his having a copy of the May order? It don't amount to anything, but just take him at his word. Did he say in that conversation that he had no copy? No. He says, "Judge Hargis, who signed that paper?" That is his language. Mr. Green pretends that he said it involved family matters. Now there is no sense in that. That is perfectly silly. But Judge Hargis told him the naked truth; that that paper was signed by a member of his family. What did that mean to the mind of Thos. M. Green? It meant this—that it was a copy of that order, and that no member of the family could have signed it except Jas. W. Johnson, the County Court Clerk, for he was the only member of his family who could have signed and certified such a paper. [*Turning to Mr. Green.*] You are told, in effect, I have a copy, and it is signed by the County Court Clerk, Jas. W. Johnson, the very man that you suspected that it was signed by when you talked with Frank upon the night of the 20th of April, 1874. So you got the information, although Judge Hargis declined to show it to you. But we go another step. That is the second time that Judge Hargis told him in effect he had that copy.

On the 8th of May, 1874, in the town of Carlisle, he says, after he had given his affidavit, and had seen the license, and the copy of the license by Jas. W. Johnson, Judge Hargis said, "I have other evidence." Now, we will see what construction he placed upon that—what Thos. M. Green thought he meant by that. Speaking of the trip to Carlisle, in one of his articles, he says: "On that occasion, and at no other time during the conversation, he said that he had more evidence still, which I supposed to have been the *paper* he had referred to at Morehead, but declined to show at Maysville." So we discover, in the language of Thos. M. Green for the third time, Judge Hargis told him in effect that he had this certified copy signed by his brother-in-law, Jas. W. Johnson, and when Judge Hargis said to him, "I have other evidence," on the 8th of May, 1874, in the town of Carlisle, plaintiff says in that article he understood him to refer to the paper he promised to show him at Morehead, but declined to show him at Maysville. Then he has the hardihood to come before the public in his June article and say that Judge Hargis told him he had no copy of that order, when he has already stated that Judge Hargis told him three times in substance before the 9th of May he had that copy, once at Morehead, there upon the night of the 3d or morning of the 4th of May, again at the Barcroft House, on the 6th of May, and for the third time, in the town of Carlisle, on the 8th of May. That is the only reason why Thos. M. Green, (because he could not get to see that order,) turned around upon Judge Hargis and denounced him after-

wards, saying that Judge Hargis had told him that he did not have a copy, when for three successive times he told him that he did have it. And that is confirmed by the fact that he never dared to publish in his paper until June, 1874, that Judge Hargis told him that he didn't have a copy. [*Addressing Mr. Green.*] You pretended to give all the facts and all the information you got at Morehead, both for and against Judge Hargis, and I ask you to tell this jury through your counsel why it is, if such a conversation as that occurred between you and Judge Hargis at Morehead on the night of the 3d of May, you did not put it in your paper of the 5th and 12th of May, 1874, like you did the Johnson conversation? When you answer that question, I will have another for you.

But Mr. Green says Judge Hargis did not publish the copy soon enough. He did not show it to you. [*Turning to Mr. Green.*] That is what you mean. He did not make you his confidant. He did not believe in your honesty, and although he said that he had other evidence, he did not publish it for three weeks afterwards. There was no occasion for Judge Hargis to publish anything further until in June, and on account of the delay in publishing this copy to the public, the plaintiff says it is a forgery. So, when Judge Hargis is telling Judge L. B. Cox, Frank, Hon. A. E. Cole, and Thos. M. Green himself, that he has a copy, it is a forgery, because he does not publish it for a few weeks. Whether Judge Hargis made a mistake in that is not the question. Whether he ought to have published it sooner, is not the question. Whether it would have been prudent for him to have published it sooner, and spread it before the people as he did his license, say on the 8th of May, 1874, is not the question. The question is whether that copy is a genuine copy.

Thos. M. Green says in his testimony before this jury, for the first time in this controversy of six years duration, referring to the May erasure: "I saw on the 2d day of May, 1874, the top of the capital letters 'J. F.'" Never in his entire newspaper publications, from one end to the other, do I remember that he admitted he ever made such a discovery as that. He says himself that the letters "J. F."—the top of them—could be seen by him as early as the 2d day of May, in the May erasure. Now it is, I believe, freely conceded by the plaintiff's counsel that these letters were there. They freely concede that the name, "Thos. J. F. Hargis," was in that order, and they try to make you believe that while it pertained to the defendant, it did not pertain to the oath, but to his certificate, and they have struggled all through this trial to get the word *practice* in that order. Forced to admit that it was there, by the testimony of McMillan, Halbert, and others, and out of all these certificates that have been brought here, there is none of them that has the word practice in it. They have discovered that as late as 1875 or 1876, in the case of John W. Morgan, Jas. W. Johnson wrote a certificate in which that word occurred. But in the certificate (the only one that has been produced here that Cyrus Alley ever wrote) of W. G. Taber at the May term, 1870, that word does not occur in it. But there is some proof going to show that the order or erasure in May was not as plain in 1879 as in 1874. Now, I put it to you as reasonable men, that if the words occurring in that erasure are at all traceable, "Thos. J. F." and "practice," thus confirming this May copy, whether or not it was to defendant's interest

to wipe out those words, and to eliminate them from that erasure, or whether it was to the interest of the plaintiff? Defendant certainly could have had no motive to do so. It corroborated our theory, and corroborated our copy, and the claim that he was then sworn in at that time. It contradicted the theory of the plaintiff that it was his certificate. The jury can draw their own inference upon the question of motive, whether or not, if there has been any alteration in that erasure since 1874, as to whose interest it has been done in, and who did it. Thos. M. Green says, on the night of the 16th of July, as he and Mr. Wadsworth were going from Owingsville to Grayson he stopped at Carey's tavern, and he got up at one or two o'clock in the night, and saw a light in the county clerk's office; that he didn't tell Mr. Wadsworth; he didn't tell Jim Carey; didn't tell Howard Logan or any other man in the town of Morehead that there was a light in the clerk's office. Nobody testifies to it but Thos. M. Green. He attempted to make the inference, gentlemen of the jury, that Judge Hargis and Johnson waited until he and Mr. Wadsworth came to town, and gave them a fair opportunity to see it, in other words to mutilate the May order, and wipe from the record the last remains of the words "Thos. J. F." and "practice." He stood there at that hour of night, one or two o'clock in the morning, and says he saw a light in the clerk's office, and made no statement to anybody about it, when he could have gone to these parties, and got Judge Carey and a host of others to have gone with him and surrounded that clerk's office, and determined the question as to whether or not anybody was in there. Gentlemen, it is too thin. It is absolutely absurd. If there was anybody in that clerk's office Green himself knew it that night, for they must have been there in his interest, and he was likely out on the watch.

I have then, gentlemen of the jury, gone over the testimony as to whether or not the defendant was sworn into the Rowan County Court at its May term, 1866, and with what I have said upon that subject I propose to leave the question. I insist on the testimony in this record that it is conclusive that Judge Hargis was sworn in as an attorney at the May term of the Rowan County Court, 1866.

I will now approach the fifth and last proposition I set out to discuss relating to the defendant's eligibility, viz: That he practiced law after the 21st of May, 1866, and prior to August in that year. Z. P. Johnson, in his deposition, tells you, that after the business was transacted for him by Judge Hargis, that he knows that Judge Hargis held himself out to practice law from that time on. Delaney Bowling testifies to you that he came from Virginia in the latter part of May or forepart of June, 1866, and soon became acquainted with Judge Hargis, who was practicing law in the town of Morehead; he owned some interest in a tract of land; he consulted Judge Hargis in regard to it; he got Judge Hargis to institute a correspondence with some of the non-residents who were heirs, and he took Judge Hargis' advice in regard to the assignment of some interest that he was advised to buy, and a claim in a suit then pending in the Circuit Court. When that original assignment is produced, it is dated the 18th of June, 1866.

A great deal has been said about these cases of *Keeton against McDanold*, at the June term, 1866, of the Rowan Quarterly Court. Burns and Clarke do not recollect our way, but neither one of them tells you anything about what was done with the second suit—there was one of

those suits tried and there was a hung jury in it. Keeton says after that, he went to Judge Hargis' office and employed him, that Clarke was "out of fix"—had been on a spree, I suppose, on account of the jury hanging in the case. He does not say one word about Burns being his attorney. There is nothing in the record in this particular case that shows that Burns had anything to do with it. George W. McDanold, the party on the other side, says that he went to Hargis to assist him, and when he got to his office he found that Keeton was ahead of him. They both swear that he came into the Court House and obtained a continuance in the second case. McDanold says that Clarke was "out of shape," and that he was in the habit of getting out of shape at that time, or on sprees. He was not running the saloon at that time. It was running him. He says himself that he was in the habit of getting drunk—that the doctors prescribe whisky for him yet to steady his nerves. Now, I ask you as intelligent men, whose recollections, after the lapse of fourteen years, are the most to be relied on—the attorneys who have attended to a case or the parties themselves? If I were called upon to go back fourteen years and state the attorney associated with me in a particular case, not specially important, I might not recollect. But when you take a party, perhaps the only suit that he ever had in court in his life, he is just as certain to recollect every attorney in the case, for and against him, as he lives. And right here, while I think of it, Mr. Cord was an attorney for McDanold in those cases, and drew his answers. He, if he has not entirely forgotten the matter, could have testified whether Keeton and McDanold tell the truth or not in this matter, as to Judge Hargis getting that second suit continued. He is not introduced. I will allude to him after awhile.

Ben. Royse swears that along about June, 1866, he met Judge Hargis and stated a case to him that he had against a man named Stamper about a yoke of oxen. His statement of the facts did not impress Judge Hargis favorably with the prospect of success, and he says he told Royse he did not feel competent to bring that suit, but that he had a partnership with Judge Elliott, who would be there at the August term, and he could state over the facts to him and let him try it on. Sure enough Judge Elliott does bring the suit on the 29th of August, and the sequel shows that Judge Hargis was right. The old fellow got beaten badly in that suit.

In the appeal suit of *John Green* v. *Razor's Adm'x*, Judge Hargis swears he assisted Mr. Green in that appeal as one of his attorneys, and succeeded in reducing the judgment of the court below, and that after the suit was tried he made the calculation as to the costs, and went on the replevin bond with him on the 7th day of July, 1866, after the Quarterly Court had adjourned, and before the ten days had expired for the issuance of the execution. The replevin bond, with defendant's name to it as surety, has been produced before you. John Green is dead. He is not here to testify in this case, and sustain Judge Hargis in the facts attending that circumstance.

Hiram G. Brain testifies that he saw Judge Hargis frequently at Morehead during the summer of 1866, that he talked to him as to his race for county judge, that Judge Hargis told him that the salary would compensate him for giving up his practice in the Qnarterly and Magistrates' courts, and he thought, if he could be elected, his practice in the Circuit Court and the salary would satisfy his wants.

William A. Fouch testifies to a like conversation up on Christy Creek, on a certain Sunday in the presence of his wife, when defendant was a candidate for county judge. The matter was discussed between them, and Judge Hargis made a similar statement to him.

James W. Johnson was the sheriff of Rowan county from 1861 to 1863. He went to Lewis county, Kentucky, in 1863. He returned to his father-in-law, Col. Hargis', in Morehead, in June, 1866. An original receipt is filed with the papers here showing that Col. Hargis paid to him the last installment on a stock of dry goods that Johnson had sold to him, I believe, on the 12th day of June, 1866, perhaps the 18th. He says that within two weeks after he returned Judge Hargis showed him his license, and that it was signed by both Judges Apperson and Andrews; that Judge Hargis at that time was engaged in the practice of the law. He knows that he defended a young fellow before 'Squire Stewart, sometime in June, for fighting.

Andrew J. McKenzie was the Democratic candidate for sheriff in 1866, and canvassed the county of Rowan with Judge Hargis, and testifies that during that canvass Judge Hargis told him he had obtained his license and was then engaged in practicing law, and wanted McKenzie to send to him his friends about over the county who had litigation. He further says that defendant told him he had formed an arrangement with Judge Elliott by which they had become partners in the county of Rowan, and their business would continue in that county from that time on; he told him this on more than one occasion during the months of June and July, 1866.

Dr. McMillan swears that at a wedding in the county of Bath on the 5th day of July, as the record shows, 1866, he was introduced to Judge Hargis, and on that occasion Judge Hargis stated to him that he was practicing law at the town of Morehead—as a lawyer there located.

Now I come to the testimony of William Stewart. Mr. Larew has stated to this jury that Judge Hargis, in publishing the certificate of Wm. Stewart, perpetrated a fraud. Judge Hargis did not make him say anything. The proof of William Stewart shows that Cyrus Alley wrote that certificate. Now, gentlemen of the jury, Judge Hargis was not dictating to these men and manufacturing statements in his interest. They gave their own recollections, and he took them for what they were worth by way of corroboration of his claim. I want to read you that portion of the certificate of William Stewart that you may understand it. Recollect that William Stewart swears that this certificate was written by Cyrus Alley, and not by Judge Hargis:

"I, William Stewart, state that I was justice of the peace in Rowan county from 1864 up to 1870, continuously; and that I know Thos. F. Hargis, and have known him since July, 1865; and I know that Thos. F. Hargis was and did practice law before me in my court at my *Spring term*, 1866, in various suits."

What does that mean? Does that mean March? Strictly speaking, it does mean March, but I ask you, as gentlemen of candor, if Judge Hargis is to be confined to the technical construction of that certificate, and if he is to be put in the attitude of being bound to know that William Stewart's Spring term was in the month of March? What do we mean when we speak of a Spring term? Harry Burns says that when he says Spring term, he means February. There is not a lawyer practicing in the Circuit Courts of this State, but what calls all the courts beginning in February and ending in July, "Spring courts," or "Spring terms," and those beginning in August and running up to

Christmas, "Fall terms." But here is the vital statement in Stewart's certificate: "And I have no doubt about this fact, about which I am certain, he had been practicing law at Morehead *before the August election*, 1866, at which election Judge Hargis was a candidate for County Judge." That was strictly true. I say, in common parlance, it could well be said that the June term of 'Squire Stewart's court was his Spring term, 1866.

But gentlemen are driven to these mouse tracks—these technicalities, and these straws to make out a case. This old justice of the peace peace when sworn, swears that he tried a man named William Carpenter, that Judge Hargis defended him; that he was indicted in the Circuit Court, and that Judge Hargis procured his release upon the ground that he was indicted for the same offense in the Circuit Court, and he released him and let him off. But in connection with this man Stewart, when his dep osition was taken, he being an old man, eighty years of age, a docket was introduced which has been produced to this jury. I reckon they got tired of it. But while it is in the case, I shall comment on it, as it deserves to be. They put it here for the purpose of casting the imputation upon Jas. W. Johnson, or somebody else, that it had been mutilated by him in defendant's interest. Jas. W. Johnson says he never had that record in his office in his life. The only record he had which William Stewart had used, was for 1872 or 1873, and from that time on, and it was delivered to this man Tolliver. It was exhibited when Tolliver gave his deposition for plaintiff, and was not filed in this case. But they brought this old docket in for the purpose of proving that it was Stewart's docket for 1866, and that we had cut out a lot of leaves, in order to prevent a fair investigation of the cases before William Stewart and corroborate our statement that we had practiced law before him. William Stewart's deposition was taken before Tolliver's, and he says, "I gave my docket to Pascal Haney." Pascal Haney does not say in his deposition (which is in this case taken by the plaintiff but not read), what he did with Stewart's docket. Mr. Green was asked if he knew who Pascal Haney was, and if he had not paid him three dollars to run around through the county of Rowan and hunt up these dockets. He admitted that he had paid him some money, but when asked he said he didn't know till he took his deposition that Haney had stolen a free negro, sold him, and put the money in his own pocket—a negro named Fate. The fates were against him, and when the authorities slipped up on Haney, he had to shell out the money for which he sold Fate. No, he didn't read that deposition for all those facts came out in it. Haney is the only man who knows where Stewart's docket of 1866 is, if anybody does. 'Squire Stewart says that he delivered it to him, and that connecting link is left out of this case. In the entire deposition they did not ask him a single question, although they knew that Stewart had said that he had given it to him—as to what he had done with it. Then the gentlemen talk about fraud in this case. The testimony of Jas. W. Johnson and that docket itself show it was the docket in 1866 of I. E. Phelps, commonly called Evans Phelps. Dr. McMillan and Jas. W. Johnson testify as to his hand-writing, and they show that the only docket of 1866 in that book is in his hand-writing, and if this jury will take the trouble to examine the docket of the 20th of December, 1866, and compare it with the orders in the forepart of the book signed by Phelps, they will come to

the same conclusion, because they are *fac similes*, and instead of this mutilated docket being the docket of William Stewart, the proof shows positively and unequivocally that it was not, and it was introduced into this record for another purpose by Tolliver, the man who virtually admits in his deposition he is a horse thief as another dastardly attempt to smirch the character of Jas. W. Johnson, the County Court Clerk, and the defendant, Judge Hargis.

Now what proof in this case negatives the idea that Judge Hargis was not practicing law prior to August, 1866? Burns and Clarke say that they don't recollect it. Be that as it may, we have Burns in this record in black and white, as early as April, 1874, stating to the people of the Fourteenth Judicial District that he does recollect it, and that he was associated with Judge Hargis as a practicing lawyer since the *spring* of 1866. Clarke has been called an Assessor of Internal Revenue, and I don't know what position this man has not filled up there in that county. He acknowledges that when he was first elected county attorney, in Montgomery, that he was ineligible and for the first and second terms in the county of Rowan he was in the same condition. He was deputy clerk of the County and Circuit Courts, practicing law, though never sworn into the Circuit Court, and was Assessor of Internal Revenue, besides being a saloon keeper and preacher. That revenue tax-book shows that the very column above all others that Judge Hargis ought to have signed is not signed by him. That column states that the person assessed hereby acknowledges that the amount set opposite his name, and for which he is assessed, is the full amount for which he is liable. His name is not signed to it in 1866. That was an assessment for a fraction of a year, and it seems to me that in making an assessment for a fraction of the annual amount due, that it is more important that the column referred to should be signed, because in making a full assessment the assessor knows when he is making an assessment for a full year that it must be right. Where it is for part of the time it is more important for the person assessed to sign that column in order that the assessor may be sure that it is for the full amout that is due. Clarke himself swears the defendant was not sworn that $6.66⅔, or two thirds of the yearly rate, was the full amount of the assessment. We have Clarke on record to that effect. In 1874 he gave a statement about it. He said there was some question as to the time, and he could not tell what it was. I will read that to you: "My best impression is that at the time I made the assessment there was some question about his liability as to *time*. What the cause of this was I do not remember, nor do I remember the time from which I assessed him, but at all events I decided it to be right from the circumstances to assess him as I did. He made a race for county judge that summer, and was engaged most of the time in the canvass." Now what does that mean? That was given May 27th, 1874, We find that this man says that there was a question about the time for which Judge Hargis should be assessed, but he don't recollect the cause of it. But in the same connection he goes on to state that Judge Hargis was a candidate for county judge that summer, and for most of the time he was engaged in the canvass. Most of what time? We are unquestionably led to the conclusion that he meant most of the time during that summer, showing that most of the time during that summer he was engaged in his canvass for the office of county judge, and not prac-

ticing law. He was not practicing law in the Circuit Court, or in the higher courts, and Clarke says that from all the circumstances, although there was a question about the time, and the cause of it he don't know, he decided that it was right to assess him as he did, and that he assessed him from the first of September, 1866. Not sworn to by Judge Hargis, the column where he should have signed not signed, a question as to the time not recollected by Clarke, and under a statement by him in the same connection that he was a candidate for county judge, engaged most of the time in the canvass, the proof in this case showing that Judge Hargis practiced but little and that in the Magistrates' Courts, for he was not sworn into the Circuit Court until August, 1866, Clarke was right and I agree with him that "under all the circumstances" he did right to take the assessment from the first of September, 1866.

Some allusion has been made to Ullman's Law Journal, as another evidence that he did not practice prior to the 1st of September, 1866, or prior to August. What is the proof upon that subject? There was no one present when that statement was made, except John P. Norvell, the brother-in-law and partner at the time of Judge Hargis. He tells you how it was done; that the blanks were before him; that he asked Judge Hargis how he should fill it up; that Judge Hargis, being engaged at another desk, gave him in an off-hand way his recollection of the time when he was sworn into the Circuit Court, as the 26th of August, 1866, which was not the correct date, and said, "I suppose that will be sufficient for the purposes of the publisher." That is the Superior Court, that is when I began my practice in the higher courts, but I practiced previous to that time in the infer. or courts. Norvell acted upon the same suggestion, and fixed his fr om the 25th of September, 1871, when he was sworn into the Circuit Court of Nicholas. The proof shows that Norvell's license was signed, however, by both judges, and received by him as early as April, 1871; and that in the *Carlisle Mercury* for the first week in May, 1871, he was advertised as a practicing lawyer, soliciting practice. He files and gives the style of some twelve or fifteen suits brought by him in the spring and summer of 1871, yet we find young Norvell dating the commencement of his practice or his admission to the bar as the 25th af Septembet, 1871, acting upon the simple suggestion made by Judge Hargis, although he was a practicing lawyer to all intents and purposes, with his license in his pocket, holding himself out as such to the public, and bringing twelve or fifteen suits in the spring and summer of 1871, *five months* before he fixes the date of his oath. Is there any man on this jury that believes this Journal is conclusive evidence that Norvell was not a practicing lawyer prior to the 25th of September, 1871? I suppose not. Yet the plaintiff and his counsel in this case ask the jury to so find and argue that the state of facts which will not, and cannot be applied to Norvell, the junior member of the firm of Hargis & Norvell, must be applied to the senior member, and that it is conclusive upon him.

Now, gentlemen of the jury, that is about all that I desire to say upon the fifth point in controversy. I feel authorized in insisting that the testimony in this case establishes the fact that Judge Hargis was a practicing lawyer prior to the 1st day of August, 1866. Take these five points, viz: His certificate sustains the signing by Judge Andrews.

The signing by Judge Andrews sustains the signing by Apperson. The signing by Judge Apperson sustains the oath in the County Court. The oath in the County Court sustains the practice prior to the 1st day of August, 1866. Thus we see nearly one hundred witnesses testifying to separate and distinct facts, living remotely from Judge Hargis, of different avocations in life, with no chance for a conspiracy or combination, forming in their testimony one consistent whole, standing like an arch and stone wall, against which the arguments of the plaintiff must fall harmless to the ground. We can understand how one or two witnesses or half a dozen may commit perjury, but when it comes to a hundred witnesses, all testifying to a state of facts consistent one with another, establishing these points beyond all question, we are driven to the conclusion that Judge Hargis was eligible to the office of Circuit Judge in 1874. Take it from the beginning to the end, take it all, I might say cast out one third of the witnesses, and take the balance of them, and there are enough to sustain the claim of Judge Hargis. Take every one of these witnesses, and they sustain his claim of eligibility beyond all question. They cannot break down a solitary one of them, let alone all of them, and if one of these points in controversy is made out, our case is made out so far as the eligibility of Judge Hargis is concerned, and upon the question of eligibility I have concluded all that I desire to say. In any further remarks that I have to make, I shall address myself to the mutilations of these records, and I promise to show you by the mutilations themselves, and the manner in which they were committed, that Judge Hargis is an innocent man.

The court thereupon adjourned.

MAY 24th, 1880.

The court met pursuant to the adjournment, and the argument of Mr. Stone was continued as follows:

Gentlemen of the jury, I desire this morning to take up the declarations of Judge Hargis previous to this controversy evidencing his claim as to when he began to practice law, for it seems to me that such declarations, made before any controversy arose as to the time that he began to practice law, before there was any discussion upon that subject, if consistent and in accordance with the facts as subsequently developed, and the claim that he asserted this controversy arose in 1874, must necessarily afford the very highest evidence of their truth.

From the testimony of Dr. R. L. Cooper, who was at the time a member of the Lower House of the Legislature from the county of Mason, boarding with Judge Hargis at Mrs. Wingate's, in the city of Frankfort, during the session of 1871–'2, in the month either of January or February, 1872, we learn that upon one occasion Judge Hargis had been briefing some cases then pending in the Court of Appeals, which were read by Dr. Cooper, or read in his presence, and by their merit he was led to inquire of Judge Hargis how long he had been practicing law, and was informed by him that he was sworn into the Circuit Court of Rowan county in August, 1866, but that he had obtained his license and practiced in the lower and inferior courts sev-

eral months previous to that time. You all heard the testimony of Dr. Cooper. He is an intelligent man. He was cross-examined by Mr. Wadsworth thoroughly, and he made his statement of the facts clearly and unequivocally. My friend, Mr. Larew, says they could have contradicted Dr. Cooper if they had been afforded the time to bring witnesses here. It does seem to me that is the last excuse that counsel for plaintiff should offer in this case, for if there is any one thing that we have had an abundance of, it is *time*. No, they had no one to contradict Dr. Cooper with. His testimony stands uncontradicted upon that question. That was more than two years anterior to this controversy in 1874.

Sometime in 1872, as we have already seen in the discussion of what took place when the statement was made out that afterwards appeared in Ullman's Law Journal of 1872—either in 1871 or 1872, Judge Hargis, in giving the information to his partner, Norvell, stated to him that he was sworn into the Circuit Court in August, 1866, but had practiced in the inferior courts previous to that time.

Further, in this record Charlton H. Ashton, on the 25th of September, 1873, wrote to Judge Hargis a letter, suggesting candidacy for Congress. I hold in my hand the original letter. Here is the answer to it dated September 26th, 1873. After announcing his determination not to run for Congress, but to make the race for Circuit Judge, he says: "The reasons I have for doing so are many. In the first place you are aware of the fact that I have fought the battle thus far without money, except as I have made it. I have had to study night and day (and make my living at the same time) to obtain a legal education. *I will have been practicing law eight years and over next August;* besides the reading I did before and during that time has, I think, given me a pretty fair knowledge of the law." That is a declaration not made for the purpose of convincing Charlton H. Ashton that he was eligible to the office, but simply to announce to him the extent of his experience in the practice of the law, and in doing so, he announces a state of facts which makes him eligible to the office of Circuit Judge, viz: that he had been, or would be by the next August, a practicing lawyer eight years. That letter was written seven months before the discovery of the mutilations of the Rowan county records, not in anticipation of a question of his eligibility, but simply a declaration, stating his experience in the law at that date, September 26th, 1873. There it is, in black and white, written to his intimate friend, and in the light of the facts as I have discussed them how literally true is every line and every word in that declaration. "I will have been a practicing lawyer eight years and *over* next August." The excess over eight years is between the 21st of May, 1866, and the 1st day of August, 1866. If it was his purpose simply to declare that he would be even up within the requirements of the Constitution in the following August, why did he not stop, and content himself with making the declaration. "I will have been a practicing lawyer eight years next August." No, he conforms to the truth, as shown by this record, and says: "I will have been a practicing lawyer eight years and *over* next August."

The plaintiff's witness, John A. Campbell, claims to have received a letter from Judge Hargis, written on the 14th of February, 1874, in which Judge Hargis stated: "I will lack three weeks of being a prac-

ticing lawyer eight years next August." How can you reconcile that statement in February, 1874, with this statement in September, 1873? It cannot be done. For a man to sayin September, 1873, that I will have been a practicing lawyer eight years and over next August, and five months later to say I will lack three weeks of being a practicing lawyer eight years next August, is wholly irreconcilable. I ask you to contrast this letter with the supposed declaration in the letter alleged to have been received by Campbell, and I offset his recollection of the contents of that letter with the letter itself, the original document, received by Ashton. Is there a man on earth that would hesitate a moment in deciding between the two opposing witnesses?

Again, in the very week in which Campbell says that this letter of Judge Hargis to him was written Judge L. B. Cox, of Flemingsburg, on Wednesday, I believe, the 11th day of February, 1874, the third day of the term of the Fleming Circuit Court, saw Judge Hargis at the Dudley House, and remarked to him: "I suppose, Judge Hargis, you are eligible to the office?" He replied: "I am." "I suppose you have your license?" "I have. My license is dated in February, 1866, and what is more, I have a copy of the order of the County Court swearing me in as an attorney in that court." Now Judge Cox is an intelligent man. There was no vagueness about his testimony. He says that was at the Fleming Circuit Court in February, 1874. He says that he did not see Judge Hargis from that time until the assembling of the Convention in Flemingsburg, on the 23d day of April, 1874. He fixes the day, he fixes the place, and he says that he is satisfied that it was before he had ever seen any publication on the subject of Judge Hargis' eligibility—that the first time he ever saw any publication on the subject was in some Maysville paper, about the 14th of April. Ah! my friend, Mr. Larew, says that they might have done a great deal with my friend Cox had we given them the opportunity, and he alluded to the affidavit of Judge Hargis as to what he would prove by Judge Cox, and in that affidavit it was disclosed that certain declarations were made to Judge James P. Harbeson, and we didn't give them an opportunity to contradict Judge Cox by Judge Harbeson. Now, I will not go out of the record to allude to that further than to say this, (and if I know myself I do not intend to go outside of the record unless it is to meet some such statement of the gentlemen on the the other side): In the affidavit of Judge Cox filed in this action he stated on oath that he had a conversation with Thomas M. Green on this subject last summer, and after having that conversation with him, he remembered that he had omitted a part of it, and he said to Jas. P. Harbeson, in whose office depositions were being taken for the plaintiff, "go and tell Mr. Green that if he takes my deposition I shall be compelled to prove that in the same conversation in February, 1874, Judge Hargis informed me that he had a copy of the County Court order swearing him in as an attorney to practice in that court." We turned the witness over to the plaintiff's counsel. There sat Judge Harbeson before you. They could have laid the foundation by asking Judge Cox, did you ever state anything to anybody about this before? Yes sir. Did you or not have a conversation with Thomas M. Green on this subject, and did you afterwards have a conversation with Judge Harbeson on the subject? He would have answered promptly that he

did. They laid no foundation. They had their contradicting witness present, and I will say for Judge James P. Harbeson, if he *is* the cousin of Thomas M. Green, if he *has* given money to prosecute this suit against Judge Hargis, he would never, on the face of this earth, have come into this Court House and denied the conversation Judge Cox had with him. He came here without being aware of the object for which he was brought, and knowing that he would give the facts, the gentlemen declined to lay the foundation that they might have laid, because Judge Harbeson would never have met the requirements of the plaintiff upon that point. It was not competent for us to have asked Judge Cox what he said to Judge Harbeson. It was competent for them, but not for us. Is it probable, I ask, that Judge Hargis would have said to Judge Cox on the 11th day of February, 1874, in the town of Flemingsburg, that my license is dated in February, 1866, and I was sworn into the County Court previous to the August election, 1866, and *three days* afterwards, in the city of Frankfort, have written a letter to John A. Campbell, and stated: "I will not be a practicing lawyer by three weeks at the coming August election?" No, no, Mr. Campbell, your recollection is greatly at fault.

We have, then, not only this letter, which cannot make a mistake as to the declarations of Judge Hargis, but we have the defendant's declarations to Cooper, Norvell, Ashtor, and Cox, all preceding this alleged letter written to Campbell, and all going to show the improbability of Campbell's testimony upon the subject. In other words, we have four witnesses and this letter to oppose the bare recollection of John A. Campbell as to the contents of the letter which he says is lost. Lost to him, he says. We did not ask John A. Campbell, nor did he state that he had no information as to the whereabouts of that letter. I remember very distinctly the language that he used—that it was lost to him. You heard the testimony of Judge Pryor, and of Campbell's son. You heard Campbell say that he never looked for the letter, and had no information of its loss, supposing all the time that it was in his drawer, up to within a day or two of the day that he gave his deposition, and you heard what his son testified to, that two months before that time he had informed his father that it could not be found, and that the letter was lost. You heard Judge Pryor testify that at the Cynthiana Fair, in August, 1879, two months after his son had given his father that information, Campbell told him then and there, that the letter was at home in a drawer, or at his office in a

I think the meanest outrage perpetrated in this case by any drawer.
one, is the attempt to blast the reputation of John P. Norvell over this Campbell letter. The proof shows John P. Norvell was in the county clerk's office, having obtained the key from John A. Campbell himself, one evening or night, from two to four days before this suit was brought, and that he went there for a particular purpose. He had heard upon the streets in some way that it was rumored that the *26th* of August was on *Sunday* in 1865, and he went to the county clerk's office for the purpose of looking at the records to determine the fact, and when he ascertained it he returned the key to John A. Campbell's son. Nothing concealed about it; he went there and and got the key, and returned the key to the deputy clerk; that, too,

before the institution of this suit, and before he ever heard that John A. Campbell had a letter of the character he claims to have. Yet these gentlemen want to escape the suspicion that comes home to Campbell and his family, that they have suppressed this letter, and in order to do that they do not hesitate to blast, or attempt to blast, the reputation of a young man who lives in the town of Carlisle, where these Campbells live, whose family is well known, whose reputation is well known, and who stands as high as any young man in the Commonwealth of Kentucky. Such is the desperation of this prosecution. When they cannot come up and show clean hands as to this letter, in order to escape suspicion upon their side, they seek to shoulder it upon some one else.

Judge Whittaker states that on the 4th of April, 1874, at his residence, Judge Hargis staying that night with him—it was upon Saturday night—the next morning Judge Hargis sent a note over to Mr. Wadsworth's, and called on him Sunday morning, and Judge Whittaker left that evening for the Bracken Circuit Court—that upon Saturday night he had a conversation with Judge Hargis upon the question of his eligibility, in which Judge Hargis told him that so far as the August court was concerned, he was not sworn into the Circuit Court until August, 1866, and a person taking that record might deem him ineligible, but that he was sworn into the County Court previous to that time. Now, the Barcroft register produced here shows that Judge Hargis was in Maysville on the 4th, and Mr. Wadsworth knows whether he was at his house or not on the 5th. Thos. M. Green swears that Judge Hargis was in Maysville on the 6th, having stayed over Sunday. There is no question about his presence at Judge Whittaker's upon the night of the 4th of April. Judge Whittaker made a statement of all these facts in the controversy of 1874, which was published in the papers throughout that district, and we have that statement locating the conversation he had with Judge Hargis upon the 4th of April.

Again, W. S. Frank testifies clearly and positively the conversation that he had with Judge Hargis upon this subject was on the morning of the 14th of April at his office in the city of Maysville. Judge Hargis then and there told him that it was true that he was not sworn into the Circuit Court until August, 1866, but that he had been sworn into the County Court several months previous to that time, and went on further to state in that conversation that he was only waiting for Mr. Green to make his charge direct, and then he would produce a certified copy of the May order, and "knock his props from under him." The question is asked in the deposition of Frank, as to whether he did not tell Mr. Green sometime about the 11th of May, 1874, or afterwards, that this conversation he had had with Judge Hargis was after night on the 14th of April. Question 98 by Mr. Larew: "Did you not, after the 11th of May, 1874, tell plaintiff that the talk alluded to by you and Curran took place on the night of April 14th, 1874, and after the publication of the issue of the *Eagle* raising the question of the defendant's eligibility?" He answered: "I never did."

Now, the conversation with Curran was at a different time. We concede that occurred on the night of the 14th of April. Mr. Curran so testifies. Mr. Larew claims that conversation with Thos. A. Curran occurred on the night of the 6th of May. Let us

look at that. Mr. Curran gave a certificate of this matter on the 8th of May, 1874. He says that he came to the Barcroft House in Maysville on the first day of the Mason Circuit Court, and there registered. The register shows that to be a fact, that he registered at the Barcroft House on the 14th day of April, 1874, for dinner. He says that the first time he ever saw Judge Hargis in his life was on the evening of the 14th of April, at the Barcroft House; he was there introduced to him; and during the course of the conversation Judge Hargis solicited his support for Circuit Judge. He responded that he could not support him; that Judge Stanton, who was a resident of his own county, was a candidate, and he was for Judge Stanton. Judge Hargis observed to him that Judge Stanton had withdrawn, and was no longer a candidate, and Curran remarked he had not heard that, and he did not know it, if Judge Stanton was off he might, perhaps, support Judge Hargis. Now, I asked Mr. Curran this question. Question 10: "Have you any doubt of this conversation having occurred at the time you first became acquainted with Judge Hargis, and when he solicited your support?" Answer: "I have no doubt whatever on that subject." Thos. A. Curran lived below Maysville; he is a lawyer; he attended the Mason Circuit Court; the 14th day of April was the first day of the term; he remained during the term, at least until perhaps the middle of May. He says that while engaged in talking with Judge Hargis, Thos. M. Green came in and went up stairs with Judge Hargis, and we know from this record that did not occur until the night of the 6th of May. My solution of that matter is just this, and it stands to reason: Nothing was said by Curran in his certificate in 1874 as to Thos. M. Green coming in at the time of the interview that he had with Judge Hargis, and when he first became acquainted with him. Now, I have no doubt in the world that Thos. A. Curran saw Thos. M. Green go up stairs with Judge Hargis on the night of the 6th of May. Mr. Green thinks that he saw him present at the time, that he was there in attendance on the Circuit Court. But that Mr. Green's going up stairs with defendant was at the same time he was introduced to Judge Hargis and his support was solicited by him for Circuit Judge, I don't believe. He has, after the lapse of six years, got the two things confused to that extent, at least, because he says after having the conversation with Judge Hargis he went out and bought the *Maysville Eagle* and read Judge Stanton's card withdrawing as a candidate, and we know that appeared upon the 14th of April. It was issued upon that day. He tells you that he has no question in his mind that the talk with Judge Hargis upon the subject of his eligibility was at the same interview when he was introduced to him, and on the evening he learned that Judge Stanton had withdrawn. But the gentlemen representing the plaintiff would have you believe that Thos. A. Curran, on the morning of the 8th of May, after the mutilations had been discussed, and after the controversy had gone on for ten days, after the Flemingsburg Convention, would take a conversation only thirty-six hours old, if occurring on the night of the 6th of May, and locate it back as far as the 14th of April. It is not reasonable. Thos. A. Curran, in 1874, could not, within thirty-six hours after having had an interview with Judge Hargis upon this question (on the night of the 6th of May, if the theory of the plaintiff is correct),

have put that conversation back three weeks to the 14th of April, 1874, unless it had occurred at that time, because in that very certificate, given on the morning of the 8th of May, 1874, and published in the *Eagle*, he says it was when he first became acquainted with Judge Hargis. Why, he was at the Flemingsburg Convention. Tell me that he did not meet Judge Hargis at the Mason County Convention on the 20th of April, and did not meet him at Flemingsburg on the 23d? That he didn't *hear* him make his speech of acceptance, and didn't talk with him *on that* occasion? He swears that he did. Then how could it have been on the night of the 6th of May, 1874, that this conversation as to his eligibility occurred?

Thus we see that from 1872 down to 1874, Judge Hargis had uniformly and consistently asserted to divers persons, on sundry occasions, and in different ways, that he did not rely upon his oath in the Circuit Court to support his eligibility, but that he commenced his practice previous to August, 1866, and was sworn into the County Court. And what is singular, and I call your attention to it, there is not a solitary witness in this entire record, unless it may be John A. Campbell, in his recollection as to that letter, who tells this jury that Judge Hargis, previous to this controversy, or afterwards, claimed that he was eligible by reason of his oath in the Circuit Court, or who ever heard Judge Hargis say he was *first* sworn in as an attorney at the August term of the Circuit Court, 1866. All the testimony uniformly establishes the fact that his claim was that he had been practicing law eight years and over, and that his practice began in the inferior or lower courts, and that he was first sworn into the County Court.

It is claimed that Judge Hargis left Maysville previous to the 16th day of April, 1874, and went to Morehead. This has been termed by Mr. Green a hurried trip. Now, we will see how much hurry there was in it. The proof of Judge Hargis and William S. Frank shows that he went to Maysville on the morning of the 14th of April, and the Barcroft register shows that he was there upon the 15th to dinner with Judge Whittaker. The plaintiff argues that the article appearing in the *Eagle* of the 14th, was the cause of Judge Hargis' leaving Maysville for Morehead. The question of his eligibility was raised by that article, and plaintiff says the defendant hurriedly left Maysville to go to Morehead, yet we find that he went to Maysville on the morning of the 14th, remained all day, that night, and the next day until after dinner, never going home until the evening train. It is argued that he went to Morehead for the purpose of investigating the records on the subject of his eligibility. Judge Hargis states that he didn't go there for any such reason. Mr. Larew has read an extract from the card of Judge Hargis dated May 2d, 1874, and placed a construction on it in which no man on this jury will agree with him. I know how hard Col. Bullitt tried, in the cross-examination of Judge Hargis, to prove that, by his card, he had but one object in going to Morehead, and, I believe, he asked one question leaving out the word "and" in this card. Here is the language commented on: "I went there on legal business, *and* in pursuance of an arrangement made before the article of the *Eagle* was published." There is the conjunction, "and," evidently connecting the one object with the other, and I agree with the gentlemen, that if that word was left out they might claim the construction they seek to put on it. "I went there on legal business, *and* in pursuance of an arrange-

ment made before." If that word was left out it might mean, as they claim, that he had but the one object, viz legal business; but when it is inserted, as it is there, it means that he had two objects in going to Morehead. He tells you that the principal object that he had was in pursuance of this arrangement that he had made. "I went there on legal business, and in pursuance of an arrangement made before the article of the *Eagle* was published." Now, what was that arrangement? We learn from the deposition of Hon. A. E. Cole what it was. "State whether or not, at any time preceding the Democratic District Convention, held 23d April, 1874, which nominated Judge Hargis and yourself, you had any conversation or arrangement with the defendant as to the delegates, or their attendance at said convention? If so, when and how long before said District Convention, where was it, and what occurred between you on that subject?" Answer: "I had a conversation with Judge Hargis before the Democratic Convention that nominated him for Circuit Judge, and myself as Commonwealth's Attorney. It was some time before the convention, though I cannot recollect the exact date, but after I became satisfied that Col. Stanton's friends would give the Democracy trouble, and that there would be a break in the Mason delegation. I desired good men—men of judgment and courage—to come to the convention. I believed I was going to receive the nomination, and had a talk with Judge Hargis on the train, between Maysville and Elizaville Station, and told him that there would be trouble, and there ought to be good men from the different counties to represent the Democracy in the convention that was to assemble thereafter at Flemingsburg. He agreed with me in this proposition, and said he would go to Rowan county and see that the delegation from Rowan would be certain to be at the convention in Flemingsburg." So you see the proposition came from Cole to Judge Hargis. It was on his suggestion that the arrangement was made. He was satisfied there was trouble brewing, had this conversation with Judge Hargis, and made this suggestion. Judge Hargis agreed with him on this proposition, and said he would go to Rowan county and see that the delegation from Rowan would be certain to be at the convention in Flemingsburg. "Was anything said between you as to what efforts you were to make in obtaining the attendance of delegates, if so what?" "I think he said something about my seeing the delegation from Lewis county." "Why was it desired by you both to have the attendance of the delegates from the different counties? What was the object at the time of such efforts?" "My object was that the convention might go on and make its nominations in accordance with what I believed was the will of a large majority of the Democracy of the district, and the party might not be broken up by what I believed was a faction." "State whether this conversation with defendant was before or after, or about the time of the withdrawal of Judge Stanton from the race, as published in his card?" "It was about that time, and I think perhaps before his withdrawal." "Can you state whether the train you were on at the time of the said conversation was the morning or evening train?" "I am not clear on that point, but I think it was in the morning." "Was the train you and he were on going to or from Maysville?" "I don't remember, sir." "How soon was it arranged, if at all, or understood between you by what was said on that occasion, that Judge Hargis was to go to Rowan to see to the attendance of the delegates

from that county?" "My recollection is he was to go in a day or two?" "Was this arrangement before or after his last trip to Rowan county preceding the District Convention?" "I don't know when his last trip to Rowan before this convention was made." "If he went to Rowan county on the 16th of April, 1874, or the week before the District Convention, state whether said conversation between you was had before or after his trip of the 16th?" "Before the 16th, I think, sir. I don't think I saw Judge Hargis after that date until the general convention met, though I may have done so."

From that deposition you will see what is meant by that May card where it asserts "in pursuance of an arrangement made before the article of the *Eagle* was published." Now I care not whether Mr. Cole and Judge Hargis be exactly correct as to their recollection of this conversation, because if he was there in the city of Maysville on the 13th, as shown by the register, Judge Hargis coming there on the morning of the 14th would undoubtedly have met him there, whether it was on the train or off, it is perfectly apparent from the testimony of Judge Hargis and Mr. Cole that this arrangement was made between them as to getting delegations from the different counties to assemble at this convention prior to the 16th of April, or Judge Hargis' trip to Morehead.

Sands, from Greenup, being a candidate for Commonwealth's Attorney, would bring up the delegation from that county. There was no dissatisfaction on that score. Cole was to see to Lewis and his own county of Fleming. Judge Hargis' own county and Rowan being represented, this made five out of the six counties which would avoid the disruption of the District Convention, insure the nomination of Judge Hargis and Mr. Cole, and prevent the success of the factious opposition of Judge Stanton's friends. So we see from this testimony of Judge Hargis and Mr. Cole that previous to Judge Hargis' going to the county of Rowan this arrangement was made, and that was the prime object he had in going to the county of Rowan at that time. Mr. Larew says the defendant didn't see any of the delegates the night he got to Morehead, didn't talk to any, and never mentioned the subject. He has forgotten the deposition of Thos. J. Oxley, who lived one-half or three-quarters of a mile from Morehead, where Judge Hargis, in riding into Morehead, stopped, announced his object in coming to the county of Rowan, requested him to come up to his room that night, and offered to pay his expenses to go to the Flemingsburg Convention as a delegate. Instead of waiting until the next morning to announce his canvass for delegates, and to secure their attendance, he, on the evening of his arrival, announced the main object he had in coming to Morehead. It is shown that Jas. Oxley, B. F. Johnson, Jim Keeten, Z. T. Young, and others were in his room that night, this man Thos. J. Oxley, who had been requested to come up was there, and he met a number of persons on the street and in his room that evening. The depositions of Z. T. Young and Jas. W. Johnson both prove he announced his object in coming there at that time, and he talked with a number of gentlemen with a view of getting them to go to the Flemingsburg Convention. Then how is it that counsel claiming to be fair in the discussion of this case will tell this jury, in the face of this evidence, he did not announce his purpose in coming to Morehead, and made no effort to get the delegates to attend the convention until the next morning? Thos. J. Oxley did go to see him, and stayed there as late as nine or ten o'clock

that night, talking over these matters. So he proves in his deposition.

Now when we come to the action of Judge Hargis in getting the books from Taber that evening, we find from the testimony, not in thirty minutes, as asserted by plaintiff's counsel, if I recollect the testimony, after getting there, but sometime in the course of an hour, Judge Hargis went over to Taber's office, and called for the record book, and the minute book, asked him about the docket, what sort of a docket he would have for the next term, and requested to look at it, and he was handed this old docket, for which he had no use and did not want, and did not look at it until he got to his room. He has told you he got the cases of Crouch, &c., vs. McIntire, &c., consolidated cases involving the title to land in the Cross Roads in Rowan county, also the suit of McIntire vs. Filson, and took those papers and the minute book over to his room. He has told you he did this for the purpose of looking into these records—looking into these papers in which he had a conditional fee of several hundred dollars in each case, and for the purpose of obtaining an execution in the case of Robbins vs. Carey, amounting to six or seven hundred dollars, which he desired Taber to issue on that occasion; he had but little time, didn't propose to examine the records and papers that night, and the next morning gave them but a casual examination; looked into the record and found the judgment he wanted and caused the execution to issue, and this man Carey not living in Morehead at the time, he found at the Cross Roads and made an arrangement by which the execution was not to be placed in the hands of the officer, but was to be held up and settled otherwise. He has told you what his object in getting the minute book was. It had been asserted at the term before that the consolidated cases of Crouch, &c., vs. McIntire, &c., had been dismissed by an order that had never been entered up, and with the view of discovering the truth of that assertion, the minute book was taken to his room. He did not get these books surreptitiously. He did not get them in the night time. He went to the clerk, the custodian of the records, as any other attorney would have done. He went in broad daylight, in the presence of persons on the street, who saw him go to the office and take the books to his room. When he returned these records he did it in broad daylight at ten o'clock the next day. There was no concealment about it, but it was done openly and publicly as any other innocent man would have done. A hurried visit, they say! He didn't leave the town of Morehead until the afternoon of the 17th, going to the Cross Roads that night. If I recollect his card right in May, 1874, he states he left there on Friday evening. There is no hurry in this entire transaction. There is nothing in it implying that he was surreptitiously getting these books to injure and mutilate them, and get away hurriedly to avoid detection. Nothing of that sort.

But you are asked by the plaintiff in this case to believe that Judge Hargis thus openly and publicly in broad daylight, went to the clerk of the Rowan Circuit Court and got these books, mutilated them in the manner in which they were mutilated, and returned them to the clerk again in the same manner; cut out the leaves containing his oath in August, and the minute corresponding with it—I have forgotten the page—cut out the August oath in 1866, the entire leaf embracing pages 110 and 111; then took the minute-book and cut out the minute there cor-

responding with it, when previous to his coming to Morehead, in fact every time he had spoken on this subject, he had said to any and all persons: "I was not sworn into the *Circuit Court* until *August*, 1866, and I never claimed that I was sworn in at any other time in *that* court." Yet they would have you believe that Judge Hargis, whether before the issue of the *Eagle* or afterwards, directly before his trip to Morehead, declared solemnly and publicly to all that asked him about it that he was not sworn into the Circuit Court until August, 1866, and then went directly to Morehead and there cut out that record which he had admitted to those parties was in existence. Not only that, but that he would go to the February Term, 1866, of the Circuit Court and there partially mutilate an order qualifying him as an examiner, and leave in that identical minute-book to which his attention, if he cut out the other leaf, had been drawn—another minute showing what the order at the February Term, 1866, actually was. And they tell you this was done for the purpose of asserting what? That he was sworn in at the February Circuit Court, 1866! They are driven to that. But the proof shows that he never to any one claimed before these mutilations were done, that he had been sworn into the February Circuit Court, 1866. At no time did he ever claim that he was sworn into the February Circuit Court, 1866. They tell you that in this mutilated docket that has been exhibited to you here, the letters "E. & H." inserted at the foot of certain cases, and docketed for the February Term, 1866, to indicate that Elliott & Hargis had defended those cases, could not have been put there for any other purpose except to make a claim that he was sworn into the Circuit Court and practiced law in February, 1866. Yet this is a claim that Judge Hargis always repudiated before these mutilations were made, and ever since they were made. Now are you going to believe that Judge Hargis mutilated these Circuit Court books without a motive in contradiction to what he has always claimed, and when his attention was called to this minute-book, cut out a leaf at the August Term, and then erased the examiner's order at the February Term, and left the minute-book to tell just what it was? Will you come to the conclusion that he is nothing but a fool, and would do an act without a motive, in the most silly manner in addition? Will you not rather conclude, in the language of Jack Taber himself, when he showed that leaf to the plaintiff in this case (the minute-book showing beyond all question what the examiner's order was in February, 1866), that it was intended by his enemies for the purpose (if Judge Hargis should make the claim that he was sworn in at that place) of catching him. "Here is where *we* will catch him," Taber tells the plaintiff. Jack Taber knew the effect of leaving that leaf in the minute-book, and he apprised Mr. Green, as plaintiff testifies, of its existence and its object, when he said, "Here is where *we* will catch him." That shows the design for which it was left.

Suppose that Judge Hargis did mutilate these books, upon plaintiff's theory, that the defendant intended to claim he was sworn into the Circuit Court in February, 1866, going, as they say, publicly and destroying the record for the purpose of going behind all his previous declarations and assertions that he was sworn in in August, 1866, why in the name of common sense, after coming back, before these mutilations were discovered, didn't he tell some one that he was sworn into

the Circuit Court in *February*, 1866? If he had fixed the records for the purpose of upholding such a claim, and going back upon what he had previously stated, why is it that before the Flemingsburg Convention he didn't say so to some one—why is it that plaintiff could not get some one in this record to swear that Judge Hargis, after the 16th of April, 1874, or his trip to Morehead, had said he was sworn into the February Circuit Court, 1866. If he made these mutilations for that purpose, why didn't he carry out his purpose by his declarations? The very fact that he never *before* the mutilations were discovered so claimed, and that he never *after* the mutilations were discovered so claimed, is conclusive evidence that Judge Hargis had nothing to do with the mutilation of these Circuit Court records.

We have seen by what has been said this morning, that Judge Hargis always relied upon the County Court records. It was not necessary for him to make his claim good, that he should touch a solitary leaf in these records of the Circuit Court. Not one. He admitted that they showed he was ineligible. He admitted he did not rely upon them. He always relied, whenever he said anything to any one on the subject, upon the County Court records.

Now, in the discussion of this matter, the plaintiff himself is not a stranger to the position in which one must necessarily place himself in arguing that the defendant committed these acts. In his article of May 12th, 1874, he says: "Appended we publish a copy of the license of Thos. F. Hargis, which we have seen and believe to be genuine as to the date and in all other particulars. We also publish the statements of gentlemen who conversed with Mr. Hargis upon the subject before he went to Morehead on the 16th of April, and before the publication of the article in the *Eagle* of the 14th, and who bear witness that he then told them that he had not been sworn in the Circuit Court of Rowan until the 28th of August, but was eligible, because of having taken the oath in the County Court of Rowan some months previously. Assuming that these gentlemen are credible witnesses, we again ask: What motive could Mr. Hargis have had for mutilating the records of the Circuit Court by erasing and cutting from the minutes, and from the order-books and the index, the proof that he did not take the oath in the Circuit Court until the 28th of August? The date when he himself declared that he had been sworn in that court. It does not appear that it had ever suggested itself to the mind of Mr. Hargis to claim that he had taken the oath as an attorney in the Circuit Court at the February Term. What motive then could he have had for erasing the latter part of the order of that term swearing him in as an examiner, if he did not want to leave a place for a claim that he had at the same time taken the oath as an attorney? As Mr. Taber says he heard from one of Mr. Hargis' friends he intended to do, but which he has never done, but always said exactly to the contrary. And is it conceivable that a man intending to claim that he had been sworn in in February, and to support it had removed from the index and the order-book and the minutes the proof that he had not been sworn in until August; and from the index the proof that the February order related exclusively to his being sworn in as examiner; is it probable that a man who had taken all this trouble, and whose attention is shown to have been so closely directed to the minutes as well as to the order-book, would have left in the minutes

the proof that the erased part of the February order, the only place where his oath as attorney could be pretended to have been, related solely to his keeping his office as examiner at the house of John Hargis in Morehead? As Mr. Hargis never pretended his eligibility could be established by the records of the Circuit Court, but always admitted the records of that court, in the absence of an earlier oath in some other court, would prove him ineligible, it must be conceded that if he is guilty of these erasures and mutilations of the records of that court, it was without any possible rational motive in the matter of his disputed eligibility."

Again, upon the same subject the plaintiff asserted, in 1874, further: "Why openly borrow for the purpose of mutilating them, from an opponent who would certainly expose him, the Circuit Court records which he had no interest or motive to mutilate, in order to support his claim to have been sworn in the County Court in May; and resort to surreptitious means to obtain the County Court records, which were in the custody of his brother-in-law, and which alone contained the proof of the truth or falsity of his claim to have been sworn in that court before the August election of 1866? He is certainly lawyer enough to know that the mutilation of the records of the Circuit Court was wholly unnecessary to establish the claim he had made to have been sworn in at the County Court in May?"

Such is the language of the plaintiff himself after investigating this matter by a visit to Morehead, and looking at the records and understanding the circumstances at the time. Thus I ask upon this question, why would Judge Hargis, without a motive, unnecessarily go to Jack Taber, the Circuit Court clerk, who was an enemy, and mutilate the records of that court, when it was not in conflict with all he had claimed theretofore, and all he has claimed since, when from all we can gather in this case it was wholly superfluous, and which doubled the risk of his being detected if he was a guilty man? These questions I know are perplexing to the gentlemen who argue the guilt of the defendant, for they have never been able in this entire controversy, so far as I have discovered, to show that Judge Hargis ever claimed he was sworn into the Circuit Court of Rowan county at its February Term, 1666. Put your finger on the witness who ever swore to it. Put your finger upon the record or exhibit that ever tended to prove it. When they fail to find that, how can they stand before this jury and say that Judge Hargis mutilated these records to make that claim? I am pretty familiar with this record, and I defy the gentlemen to show where Judge Hargis ever claimed before or since the mutilations that he was sworn into the Rowan Circuit Court at its February Term, 1866.

But now, upon the theory that an enemy did this, we have a very reasonable explanation of it. I allude to the Circuit Court records. The plaintiff, in 1874, wrote and published in his paper the following:

"But, then, we are asked, why should any adversary of Hargis have mutilated the Circuit Court records? Because these records were the only ones he was known to have had in his possession; and the determination to remove the proof of his eligibility from the records of the County Court having been reached, it was necessary to mutilate the Circuit Court records so as to establish a *connecting link* between Hargis and the infamous work. And it was necessary to mutilate them in the way in which it was done, by removing the record of August and partially erasing that of February, so as to make a place for Hargis to claim he had been sworn in at that time so as to furnish a plausible showing for a motive on his part to have done the thing; and at the same time keep the February

record in the minute book, so as to be able to prove what the order really was. Hargis' own reticence on the subject helped the plan, for not all the declarations he might have made on the subject after the mutilations would have done him any good. His visit to Morehead and his taking the record of the Circuit Court to his room furnished the opportunity to remove all evidence on the subject and to lay the blame on him."

Now that argument has lost none of its force in six years. It has lost none of its force by reason of anything that has been proven in this case. My theory of the mutilation of the *Circuit Court records* is this: That it was never done or determined upon until after Judge Hargis returned those Circuit Court books to Jack Taber, and had he never visited the town of Morehead, there would never have been a leaf or a line of these Circuit Court records touched by Jack Taber or anybody else. Mr. Green has said in one place "the same mind conceived, if the same hand did not execute the mutilations of both courts." We might, upon that argument, after showing that it was impossible for Judge Hargis to have mutilated the Circuit Court records, without a motive and in the unnecessary and silly manner in which it was done, if done by him, when it is once established I say that Judge Hargis did not mutilate the Circuit Court records—we might rest the matter there. According to the plaintiff's own argument, if Judge Hargis didn't mutilate both, he mutilated neither.

When we come to the County Court records, as we maintain at the May term, 1866, there was recorded the oath swearing Judge Hargis in as an attorney of that court. The mutilator of those records, on seeing the oath there, in which it is recorded that the defendant presented his license, would determine necessarily that he had obtained his license prior to that time. It was well known that Judge Andrews did not go to Rowan county prior to May, except at the February term of the Circuit Court, being the the Judge of that circuit in 1866, and if the mutilator, or the parties who were engaged in this matter did not know from Judge Andrews or others as to when the license of the defendant was signed, they would conclude on seeing the recorded oath in May, that his license was signed by Judge Andrews at the February term, 1866, of the Rowan Circuit Court. But Jack Taber, they say, did not reside in Rowan county, in 1866. But Wm. H. Cord was a regular attendant on that court, and was there in February, 1866. He practiced law there, and had every opportunity to have personal knowledge of when the defendant obtained his license. But as I say, the mutilator would conclude this license was signed by Judge Andrews, at least, at the February term, 1866, on an inspection of the oath at the May term. There is no place anterior to the February Circuit Court, in the County Court records, for the certificate of honesty, probity and good demeanor. He found that it was not recorded, and he would assuredly conclude that Judge Hargis would not recollect whether it was recorded or not—would not know whether it was recorded or not, and he would fix the most likely place for him to assert his claim, and he selects the *regular term* of the Rowan County Court, in February, 1866, and there makes his erasure. In the absence of the record itself, it is the first County Court preceding the Circuit Court, the most natural place for Judge Hargis to make the claim, or to assert that his certificate was recorded.

Now there is not one lawyer out of a hundred that preserves his certificate. Out of all that have been produced here, not one is the *original* except Dr. Cooper's, and if he had ever practiced law and sworn in under his license I reckon he would have lost his. All those practic-

ing lawyers who have produced their certificates here have gotten them in the form of copies from the record. Now in making this mutilation, at the February term, 1866, of the Rowan County Court, if the words that are left here in that erasure, "On motion of James," were left by design at all, they were left for the purpose of giving a friendly witness like James Carey, and a political enemy of Judge Hargis, something to swear by, in order to make a connecting link between this order qualifying him as administrator of his brother John, and the administrator's bond. Nor would that prevent Judge Hargis from believing his certificate was there and recorded because it is in the hand-writing of Jas. E. Clarke, he being a lawyer at that time, and he might suppose (while he had no recollection that Clarke was present) it was entered up and made on his motion. He might very naturally further suppose, although he recollected it was at a special term, it had not been recorded until the regular term came on, which happens sometimes. It was necessary to leave something in order to connect the *key* of the administrator's bond with this order. Had it been wholly obliterated, there would have been no way of identifying it as the order qualifying Carey as administrator. Besides that, not only is that order erased, but the one below is erased in such a manner as to show that the balance of the order pertains to Zimmerman's guardian settlement.

Further from the testimony of H. G. Burns there are two orders of five lines each at the February Term, 1866, of the Rowan County Court, four of four lines each, and one of three lines, making seven orders in all recorded upon the proceedings of that term, on the 19th of February, 1866, neither one of which evidences the execution of a bond, and there being no index then, as is proven, to the record-book, if one of these seven orders had been chosen by Judge Hargis (had he been intending to make this erasure for the purpose of establishing the fact that his certificate was recorded there), no way would have been left open by which to detect whether it was true or not.

Again, one of these four line orders is recorded in the handwriting of Jas. E. Clarke, and it commences: "On motion of James Click." That order pertains to a road, appointing some man overseer of a road. It does not evidence the execution of any bond. There is no key to it, no index to it, it possesses all the requisites that might be desired if it was intended to claim that Clarke had recorded his certificate, and that was the spot where the certificate was recorded—every requisite is in that order, and it is of such a character that it would have defied detection. This drives us to the conclusion, gentlemen of the jury, that the man who erased that order, selected an order that could be unravelled by the administrator's bond in the office. He selected that order so Judge Hargis might be entrapped into supposing that it was his certificate, and it might readily be exposed, and that, too, by a witness who could be relied on. Besides, in this erasure at the February term, on a close inspection of it, even with the naked eye, you can discover the word "with" and the word "security." Now is it reasonable to suppose that Judge Hargis, a man of his intelligence, would have erased an order for the purpose of claiming it as his certificate in such a manner as not to have defied detection, and would have left such words visible as we have seen visible, words, too, which never occur in a certificate of that character? Judge Hargis would the more readily have supposed that was the place where his certificate was re-

corded, by reason of the fact that his oath had been erased at the May Term of the County Court, and he would naturally suppose that the man who was doing this work was making an attack upon him, and when the mutilator struck the February orders that he was erasing his certificate. Judge Hargis has stated he never knew whether his certificate was recoided or not. He has stated while he has no recollection of Clarke being present; that he didn't know but what it had been entered up as having been made on his motion; while his recollection was that it was at a special term, the fact that this erasure occurred at a regular term of the court in 1866, did not preclude that idea because the clerk sometimes entered up orders made at a special term, afterwards at a regular term. But all that Judge Hargis has ever said in regard to that February erasure has amounted to nothing more than a *supposition*. When we come to investigate this question, we ascertain in his card of June 2d, 1874, he only states it as a supposition that it was recorded there. He didn't know it, and did not assert it as a fact. The plaintiff's counsel have said that he so testified before the grand jury at its May term. Such is not the proof. On the contrary Geo. T. Halbert swears that Judge Hargis informed him he had obtained his certificate in February, but being an old county clerk himself, that it was his own conclusion, and he drew the indictment accordingly. But Mr. Green has told us about this matter, and we will determine from his testimony whether Judge Hargis ever so claimed as a fact.

Mr. Green says on page 1088 of the stenographer's record of his testimony: "I wish to say now Mr. Hargis never did tell me in so many words that order was his certificate." Yet, gentlemen who represent the plaintiff in argument upon the merits of this case, continually, and for hour after hour, tell this jury Judge Hargis claimed that his certificate was recorded at that spot, when at most, even under the plaintiff's own testimony, it was nothing but a supposition, and as I have endeavored to show you, a natural one under the circumstances for him to fall into.

Now when we come to the May erasure and the June forgeries, I desire to consider them together. In order to establish his claim, if it was a false one, that he was sworn in at the May County Court, it was not necessary for him to make the June forgeries. Even if Mr. Wadsworth's theory is correct, in the face of all the testimony in the case against him, that the certificate was recorded there, Judge Hargis could have very well asserted, after the certificate was gotten out of the way by the erasure, that he was sworn in at that spot. The one act would be sufficient for all purposes. He could have thus "killed two birds with one stone." Yet, at the June term, at a place where Jack Taber saw and identified a *blank* when he looked at the book, although there are fourteen blanks between May and August as proven by Clarke and Burns, there are recorded two forged orders, the first purporting to swear Judge Hargis in as an attorney, and the other appointing Robt. Henderson surveyor of a road. These gentlemen ask you to believe Judge Hargis *erased* this order at the May term, 1866, to claim that he was sworn in there, and then taking a double and more dangerous risk, *forged* an order at the June term, to claim that he was sworm in there, when he never had to Frank or anyone else with whom he conversed on the subject, asserted anything except that he was he was sworn in at the May term. That is a likely story. But that order

down at the bottom of the page, can anybody imagine why that was made by Judge Hargis or anyone for him? "Ordered that Robt. Henderson be appointed surveyor of the public road from Francis Purvis' to the Fleming line." Was it made for the purpose of showing that Judge Hargis made the motion? His name don't appear in it. What connection has Judge Hargis with that lower order? Right over here in July we find some name scratched out and "T. J. F." put in. That is the order which releases Mr. Henderson. Anyone looking at that order sees at once that it releases Henderson as the surveyor of that road. The mutilator must have known that Henderson could not be released without first being appointed, and if he had hunted back on the book any distance he would have found where Henderson was appointed, and the proof shows that he was actually appointed in December, 1865, about four or five months before this, yet here is an order releasing him. The mutilator must have known if he put down that order in June he would have two orders of appointment on the record, and one order releasing Henderson. Is there any man idiot enough to believe he could perpetrate a thing of that sort and pass it off on sensible people? Appointed twice and released once, and the last time appointed one month before he was released! Henderson must have been an excellent surveyor to be let off in thirty days on those mountain roads. Yet here this July order is fixed up. He is a very polite man whoever did this. "*Mr.* Robt. Henderson is released," &c. He was very respectful indeed to Mr. Henderson. He treated him badly by putting him in twice and only letting him off once, and I suppose he thought he would treat him with a great deal of courtesy on that account and call him *Mister* when he let him off. There is no other order on the book calling a man *Mister*, and I doubt whether there is any on the records of this court. Yet it is said that is put in for the purpose of showing that Judge Hargis made that motion, and it was recorded in the regular course of business.

Now as to these forgeries, did they ever deceive anybody? The first man that ever saw them pronounced them forgeries. No man ever took them for genuine orders. The defendant, Judge Hargis, never claimed them as genuine. He never relied on them, and no man can prove that he ever did rely on them. What conclusion does this lead us to? Just this and nothing else, inevitably, that the man who made those forged orders, and altered this July order and the index in the Circuit Court, never intended that they should be palmed off as genuine. They were made to be discovered. They were made to be pronounced forgeries and to cast suspicion on Judge Hargis by the use of his name in them, and being apparently made in his interest. If that be the case how is it possible that Judge Hargis or Jas. W. Johnson, or anyone else could have done these things for the purpose of having them discovered and pronounced forgeries? It is evident that if Judge Hargis had done these things, he did it to benefit himself, or profit by them, yet we know in this record that he never laid claim to these forgeries, and never laid claim to have made that motion for Henderson.

Now, by way of varying the monotony, we will see what view the plaintiff took of that matter at one time. Mr. Green, on the 12th of May, 1874, said:

"If Hargis' claim to have been sworn in the County Court in May is false, a motive might have existed for erasing an order in that month that had no reference to him or his pretended oath, in order to fix a place for him to say that the order admitting him to the practice in that court had stood where the erasure of May now is. But in that case, if intending to make a false claim to have been sworn in in May, why forge the order swearing him in in June? Why the erasure and the forgery both, when either would have answered the purpose, but when one was utterly inconsistent with the only object that could have incited Hargis to the other? If Hargis' claim is false, the only thing necessary for him to have done to give it color and plausibility was to have erased the order in May. All the rest, the mutilation of the Circuit Court records, and the other erasure and the forged orders and the altered order in the book of the County Court were wholly unnecessary and superfluous, and if done by Hargis were perpetrated without a motive."

All of us know that if a man wants to make a forgery successful, he does just as little writing as possible, or only so much as is necessary to accomplish his purpose, but if a fellow wants it known that it is a forgery he will do a great deal that is unnecessary, just as in that second forged order, and this alteration in July. Now when we look at that index to the Circuit Court, is there any man of ordinary intelligence, who could not detect that as a forgery? Recollect this is Jack Taber's book; it was in his possession. They are all made in that bungling style easy to be detected. You can see at a glance that they are forgeries, and even if these forgeries had been retraced at any time, before they were retraced, as declared by Z. T. Young, he had no difficulty in detecting that they were forgeries. So I conclude in the language of the plaintiff that if the same hand did not execute the forgeries of both courts, the same mind conceived them. These three forgeries and this alteration in Taber's index go to show conclusively that the same hand did the work in both courts. They are in the same ink, and have the same blurred, rough style throughout the whole of them.

It is in proof, gentlemen of the jury, that Jack Taber was engaged in a race with Johnson for office. Mr. Larew has taken occasion to say that upon the 19th of April, 1874, Taber and Johnson were at daggers' points. These mutilations were made, as I maintain, to be discovered, and were never intended to permanently deceive anybody. They were made for the purpose of casting suspicion upon the party, in whose interest, upon their face, they were apparently made. It was upon the eve of the primary election between Johnson and Taber. The mutilations were discovered about the 20th, and in the same week on the 25th, Saturday, the primary election of the Republican party occurred between Taber and Johnson, and on the theory that Taber was the guilty man who perpetrated these mutilations on the books, we have in him a palpable motive, viz: that he hoped by this charge, circulated in the county in the course of the next few days, before it could be explained by Johnson, to defeat him for the Republican nomination for Circuit and County Court Clerk. When the election comes on the people do not believe anything of that sort. His scheme fails, and instead of defeating Johnson he is not able to carry but 42 votes in the county.

Now as to the object of these mutilations in the manner in which they were done, we will read a little further from the plaintiff's articles in this case. All this has been read as evidence, and I only desire to call your attention to a part of it.

"And the record of the oath in May was erased because that contained the proof of his eligibility, and then the order in June was forged, in clumsy imitation of his hand-writing, so as to make it appear that the whole work was his and to furnish a showing of a motive for it on his part. The rascal who did it knew that by removing all the proof, as Hargis had kept still on the subject, and had made no public declaration about his eligibility, the burden of

the proof of his eligibility would rest on him; that he could only do it by parol testimony to be gathered from his political adversaries, and that their recollections of so unimportant an event of eight years in the past, would be apt to be indistinct; and that unless he could by such means show himself to be eligible, the whole suspicion would rest on him as the perpetrator of the felony in order to conceal his ineligibility and to fix a place for his claim to have been sworn in one or both courts before the August election of 1866."

Now we have had in this case a labored effort to ascertain the hand-writing of these forged orders. Experts have been examined upon the subject. You have heard their testimony. It is your province to give to their testimony such weight as you think in your judgment, it is entitled to. But you will remember that the three persons introduced as experts in this case, by the plaintiff, disagreed upon many important points as to that hand-writing. They were not consistent and uniform. We introduced two experts upon our side, and we maintain their testimony shows that the testimony of experts cannot be relied on to determine this question, but if it is to be relied on, there are more similarities in the forged orders to the hand-writing of Taber, than to the hand-writing of Johnson, and there are as many dissimilarities in the forged orders to the hand-writing of Johnson as there are to the hand-writing of Taber. Mr. Larew has said we brought men here who were broken down politicians; that they were not to be believed on that account; that Capt. Pope had been compelled to resign his office as city auditor because of his habit of drinking, and he was not to be believed for that reason. I am unable to see the force of the argument. If a man, I care not what has been his past conduct, can show to an intelligent jury similarities between hand-writings, or dissimilarities between them, I maintain that it does not make a particle of difference as to whether he ever took a drink of whisky in his life. It is just a plain question of fact, whether the similarity or the dissimilarity is there. You heard Capt. Pope testify. I don't wonder that the gentlemen undertake to break him down in the manner they have. They have the idea that if they can prove any little thing of that sort, that it breaks down the whole testimony of a witness. Old Mrs. Keesee is attacked and reproached by Mr. Larew. She is abused as unworthy of belief, notwithstanding she has been for years, and is now, an exemplary Christian, a married woman, the mother of many children, and stands well in her community as an industrious, noble-hearted old lady. Mr. Larew talks about impeaching her, and what he could have done. I deny it. He cannot impeach Mrs. Keesee's reputation for truth and veracity by a respectable witness in the county of Rowan. Gentlemen are hard pressed when they undertake to break down the force of a woman's testimony by alluding to some past indiscretion in her life.

But we have not rested with the introduction of experts merely. We have introduced men who knew the hand-writing of Jas. W. Johnson. We have introduced Wm. A. Fouch, Wm. P. Wyatt, and Andrew J. McKenzie, three gentlemen who have been sheriffs of the county of Rowan, who have handled and served process issued by Mr. Johnson, have collected his fee-bills, and known his hand-writing for years. We have introduced Dr. McMillan and Geo. W. Clayton, who have been duputy clerks under him, Edward Patton, who was a deputy under Cyrus Alley, Joseph Myers, Cyrus Alley himself and some others whom I do not now remember. All of them testified that they knew the hand-writing of Jas. W. Johnson, and they can discover no resemblances between the hand-writing of the forged orders and that of Jas. W. John-

son. In addition to all this testimony Jas. W. Johnson comes before you, and with an uplifted hand before God, swears he did not write the forged orders, or any part of them, or commit any portion of this foul work. Ah, but they have introduced Harry G. Burns, Jas. E. Clarke, and James Carey. Well, Harry Burns did say that he noticed in parts of three words in the forged orders represented by the photograph, a resemblance to Johnson's hand-writing. Yet, last summer, when he gave his deposition with the book before him, the forged orders themselves, he was asked if they resembled the hand-writing of Jas. W. Johnson, and he said "*not in the least.*" Jas. E. Clarke went before the grand jury in May, 1874, as proven by several grand jurymen, and swore the hand-writing looked like the hand-writing of Jack Taber. He comes on the witness stand now, however, and says he only swore then that "it looked a little—*just a little*—like Jack Taber's hand-writing." Jim Carey is the next witness that they introduced. He was familiar with the hand-writing of Johnson, but he is a man who was the personal enemy of Johnson, and who would gladly break him down if he could. He says he has entertained the opinion that it was Johnson's hand-writing since he first saw those forged orders. That was in April, 1874. Yet, he says he afterward voted for Johnson, this man that he believed to be a forger and villain, at the August election, 1874, for Circuit and County Court Clerk. In that connection he says Johnson went back on him—that Johnson had pledged himself to vote for him for County Judge and didn't do it. When the poll-books are produced they show that Johnson did vote for Carey for County Judge. Now do you believe that a man who sincerely believed Johnson was the author of these forged orders; that he was a forger and a villain; would vote for him for County and Circuit Court Clerk, to retain charge of those very records which he believed were forged and mutilated by him? Can you believe such testimony as that? The first time that any man has undertaken to intimate or testify that Jas. W. Johnson was the author of those forged orders, in six long years, was when the testimony came out upon this trial in the opinions of Burns, Clarke and Carey.

The court thereupon took a recess.

The Court met pursuant to the adjournment, and Mr. Stone continued his argument for the defendant as follows:

With the indulgence of the court, it is my hope to get through with my remarks this evening, and I hope in what I have to say further that I will have your attention. I shall endeavor to get along as fast as possible consistent with my duty to my client. In the investigation of these mutilations, John R. Taber was the only man that was capable of doing an act of this character. The plaintiff himself was ready to testify in June, 1874, about his bad moral character. Taber had the motive and the opportunity. His hostility to Johnson, his race with Johnson, being a political opponent of Judge Hargis, all go to show the probability, at least, that he had a hand in this work. So far as the opportunity is concerned, the May grand jury in 1874, who investigated the condition of the clerk's office, made this report which has been read to you in evidence: "The County Court Clerk's office is insecure and has evidently been entered by persons through the back window,

an opening having been made by boring or cutting an entrance to the bolt which fastens the shutters of such window, and by using a small stick the office can be easily entered. The county has no Circuit Court Clerk's office for the safe keeping of its records, the clerk having to keep them in his private house where they are liable to damage. This should not be, and we think the county ought to build one." Such was the condition of the clerk's office at that time. These mutilations were discovered at least as early as the 20th of April, 1874. It has been said by my friend Mr. Larew that the second letter from Cord was not received by Taber until Sunday, the 19th. That is the testimony in this case. He said further, however, and was prompted to so state by the senior counsel for the plaintiff, that the Scott letter—the letter of R. G. Scott to Taber, was not received until the 21st. I don't so understand the testimony in this case. On the contrary, if the jury will take the trouble to read the editorial of the plaintiff himself on the 5th of May, 1874, they will find that John R. Taber informed the plaintiff that he received the R. G. Scott letter on Sunday. Now it is very easy for R. G. Scott, who was the postmaster at the Cross-Roads in 1874, and since, to have made that pretended postmark. The truth is that it was never sent through the mails regularly. This letter was carried by hand, and this pretended postmark of the 21st is not correct. At any rate we have the statement from Green that Taber said he received that letter on the 19th, which was Sunday.

In Young's deposition we learn how he was led to make this discovery. I shall not weary you with much reading, but I desire particularly to call your attention to this part of Young's testimony. Cross-examination, question No. 1: "You have spoken of going to the County Court Clerk's office and discovering the erasures and forged orders on the order-book of that court in company with Mr. Keeton. Will you state how you came to go there and for what purpose. State the facts?" "On the night before I went to the clerk's office, Mr. H. M. Logan, Geo. Morris, and I think Allen Keeton, and may be some one else were in Morris' store, and I think Mr. Logan said Judge Hargis would not be judge, or was not eligible and something was wrong."

That was Sunday night. Young did not fix the date he discovered these mutilations except by the fact that he informed Harry Burns on the same day, and Harry Burns fixed it as the 20th of April. So that when he speaks of the night before when he had this conversation your minds will recur to the fact that it was on Monday that he made the discovery, and if it was the night before that he had the conversation with Logan, it was on Sunday night, the 19th of April. Young's full answer is as follows: "On the night before I went to the clerk's office, Mr. H. M. Logan, Geo. Morris, and I think Allen Keeton, and may be some one else were in Morris' store, and I think Mr. Logan said Judge Hargis would not be judge or was not eligible, and that something was wrong. I cannot give his exact language, but it was words to that effect, and Mr. Keeton came to me the next morning and asked me if there was anything in what Logan had said, or what I thought of it, or something of that kind, and I told him to come and we would go and see the order-book, and see if we could ascertain anything, or words to that effect." "Then was it what H. M. Logan had said on the night before, that led you to make the examination?" "It was." "Where was this store of Mr. Morris situated?" "In

the room where Alderson now sells goods in Morehead." "Which George Morris was it that you say was present on that occasion?" "Young George." "Is he not a son of George V. Morris, of Flemingsburg, and where does young George now reside?" He is; don't know where he resides; probably in Flemingsburg." "Where does H. M. Logan reside?" "In Morehead, Ky."

Now from that testimony, gentlemen of the jury, this man Howard M. Logan dropped an intimation that something was wrong with those records. He was the intimate, personal, and political friend of Jack Taber, and was his cousin. As early as the night of the 19th he is possessed of such information as leads to the discovery of the mutilated records by what he says upon that occasion, that there is something wrong. That leads Young on the next morning to go and investigate it and find out their condition. In that connection this record shows Thos. M. Green continued this case last December by filing an affidavit for that purpose, and in that affidavit Howard M. Logan was made a prospective witness whose deposition he expected to take. He has all the time lived in the town of Morehead. Plaintiff has given us notice four or five times to take that man's deposition. He pretended that he wanted to take it as set forth in his affidavit last December. It is in proof in this record that Howard M. Logan was present last January when plaintiff was taking other depositions, but never has he taken that man's deposition or brought him before this jury.

In the testimony of Mr. Clarke he tells you that on Thursday preceding the May term, 1874, he arrived in Morehead from Frenchburg; that Judge Hargis got there about noon of Friday, but before the arrival of Judge Hargis, Jack Taber asked him this question: "Can a man be indicted and tried at the same term of court?" Clarke looked at the Criminal Code and told him that if on bail or in custody he could. Now I put it to you, gentlemen of the jury, this was before Judge Hargis had arrived there, before any accusation had been made directly against Jack Taber, looking to his indictment by Judge Hargis—before his arrival he expects to be indicted, and he is taking legal advice as to what course he should pursue—I ask you if that is the conduct of an innocent man? Who could he mean but himself? He was neither on bail or in custody. He had not been arrested for this offense yet, and a week before he is actually indicted he is inquiring of a lawyer whether a man can be indicted and tried at the same term or not.

Again, in the progress of the investigation at the May term, 1874, Jack Taber, knowing that he could quash those indictments by reason of the fact that Vest, one of the grand jury, was a deputy County Court Clerk, and an examiner, pretended that he desired a trial of these indictments. But when the case comes on it is just as we expected—he through his counsel moves to quash the indictments, and they are quashed by reason of the supposed irregularity in the formation of the grand jury. Geo. T. Halbert swears that after that was done he took an exception to the action of the court. The bill of exceptions was prepared by myself. It is correct, and was interlined by different attorneys before it was signed by the Judge. That was prepared for the purpose of taking an appeal from the ruling of the court in quashing those indictments, on the ground that one of the grand jurymen was a Deputy County Clerk. Halbert says he ordered Taber to copy this record before he left that court. He was

the Circuit Court Clerk until the August election, but instead of copying this record for the Court of Appeals he refused and failed to copy it for sixty days, the time fixed by law for taking an appeal. No man could copy it but Jack Taber. He was the Circuit Court Clerk. I put it to you whether or not that was intentionally done in order to avoid the appeal on these indictments? In order to prevent the hearing of an appeal from the judgment quashing these indictments, he permits the sixty days to expire and never copies the record for the Commonwealth's Attorney so that the action of the court might be reversed. I shall not allude to the statement made by Judge Bullitt that Geo. T. Halbert moved to quash these indictments when he found out he could not win the cases, for I am satisfied Judge Bullitt made that statement by mistake. I do not think he intentionally attempted to mislead this jury, for he is not that sort of a man, but it was evidently an error, as this jury must know from the record.

Now in arguing the innocence of Judge Hargis it is not incumbent upon us to prove the guilt of somebody else, and to show that some particular person committed these acts. Not at all. But we know from this record that there is one man that is acquainted with the bottom facts of this whole affair, and we know further that he has been scrupulously kept off the witness stand by the plaintiff. I allude to William H. Cord, of Flemingsburg. He was not our friend. He was the friend, if of either, of the plaintiff. You find Mr. Green as early as the 3d of May, 1874, defending Mr. Cord to Judge Hargis for any part he may have taken in this matter, by saying that he knew what Mr. Cord had done was done at the *suggestion* of Judge Andrews and at the *request* of William L. Sudduth. But, be that as it may, we find that William H. Cord has been studiously kept off the witness stand in this case by the plaintiff. Four or five times he has given us notice that he would take the deposition of William H. Cord in Flemingsburg. Every time William H. Cord was there at home, and every time I was there, or my client was there, ready to cross-examine him. Major Richards stated to you, in the opening of this case, that the plaintiff would never introduce him. We wanted them to introduce him upon this witness stand, in order that we might get at the bottom facts of this case under a cross-examination. They were challenged at the outset of this case to introduce William H. Cord, and yet, at the conclusion of the case, when counsel came to argue it, Mr. Larew tells you that Cord was not their witness. He was here for several weeks in Louisville, I suppose, at nobody's expense (?). He didn't tell you squarely and fairly that Cord didn't come here to be put on the stand for the plaintiff. Mr. Larew would not do that, but he says there is no proof that he was our witness. Well, he runs with a strange crowd if he was not your witness. He was mixed up at the St. Cloud Hotel with Burns and Clarke and Jim Carey and John Martin—a strange crowd, indeed, not to be your witness. Whether or not he was brought here as a witness on their side, to watch the outside maneuvres in this case and see that everything went right with Martin and Burns and Jim Carey, or as a witness-trainer, I don't know. He is a very useful man in a thing of that sort, and technically it may be true that he was not here as their witness, but I don't think the gentlemen will go so far as to say that he was not brought here by their side. It is in proof that he took in Jeffersonville while he was here, and some people think it would have

been better for the country if Jeffersonville had taken him in. But after exciting the curiosity of this jury, after all that Cord is said to have done, it is too bad that the plaintiff did not gratify their curiosity by introducing him. Mr. Green has not even given you Cord's photograph, or a negative, or a positive of him. He was back in the audience here one day, and but for the Court's injunction, I would have pointed him out to the jury, so they might have gotten one glance at this much talked of individual, so prominently mentioned in this controversy. They brought him here to Louisville. They cannot get rid of that. He had no other business here, and I tell you, gentlemen of the jury, there is "something rotten in Denmark," or they would have brought him before the jury. [*Turning to Mr. Larew*]. What did you have him here for? Don't pretend that he was not your witness, and don't give us any shallow pretense about it as to whether he was a man of bad moral character! Mr. Larew says he don't know anything. He was bound to know something about the origin of this thing. He was at the beginning of it. He played too conspicuous a part not to know something about it. He does know something, and it is idle to tell this jury that he is not on the inside. Nor can plaintiff's counsel play the high moral in this matter. I admire it when well founded, but they cannot come here and say that they don't want to drag down the character of Judge Hargis by such a man as William H. Cord, whom all concede to be a man of bad character. That won't do, when they have introduced such fellows as Martin, Davis, and Max Oxley, who virtually confessed they were thieves, scoundrels, and liars upon the witness stand. The gentlemen are driven to state the only reason why he was kept off the witness stand. There is no help for it, and we must necessarily come to the conclusion that he would have damaged the case of the plaintiff had he been put upon the witness stand, and that they were satisfied they could not pull through with Cord. This man who Thomas Marshall Fleming swears hired a horse from him on the 4th of March, 1874, to go to the town of Wyoming, in Bath county, to be gone one day, and went in a different direction and was gone two and one half days; this man who was afterwards seen by James W. Johnson, the County Court Clerk, in his office poring over the records of that Court, without telling his business, in the latter part of March or the first of April, 1874, as he swears in his deposition; this man who, after going to Judge Andrews, writes a letter on the 11th of April to Jack Taber, and then another on the 18th day of April; this man who writes a letter through John Ingram, the man accused of hog stealing, to R. G. Scott on the 18th of April, concerning these matters; this man who is at the office of Judge Andrews on the evening before the Flemingsburg Convention discussing this matter; this man who in June, 1874, is seen by Charlton H. Ashton in company and in consultation with Jack Taber in the town of Flemingsburg; this man who is denounced by Judge Hargis in his Maysville speech read to this jury, and in other speeches of the canvass of 1874, as the arch conspirator in this infamous plot, a charge which he has never dared to deny from that day to this; this man who entertained James E. Clarke for two days and nights in the town of Flemingsburg immediately preceding the institution of this suit; this man whose hand-writing, the evidence in this case goes to show in some respects, at least, resembles the forged orders, is not permitted by the plaintiff to come upon the witness stand and explain

these matters in his own vindication, or for the enlightenment of this jury. It does seem to me if Cord is an innocent man—if he is not the man that he has been charged with being, if he knows nothing about this question—that for the sake of humanity and justice he ought to have been permitted to come upon the stand and tell us the facts in his own vindication. But [*addressing plaintiff's counsel*] you gave him no such opportunity. It is idle to talk to this jury—a sensible jury as it is—about any other reason but the one which is based upon the truth, that Cord would do your side no good and would damage it. You talk about hunting the truth in this case, and wanting nothing but the truth to come out in this investigation, and then stifle the evidence of witnesses and keep them off the witness stand! It was not our place to introduce Cord. He belongs to your side. Mr. Larew says that it is so natural for Mr. Cord, knowing William L. Sudduth was a personal friend of Mr. Green, to go to Mr. Sudduth and tell him that he had certain information, and that Mr. Sudduth would probably communicate this to Mr. Green. But that is not the testimony of the plaintiff himself. The plaintiff himself says: "I *know* that the first letter—not only the first letter but the second letter—written by Cord to Taber, was at the *request* of William L. Sudduth." How Mr. Green knew that I don't know, and I don't pretend to say, but I state as an offset to Mr. Larew's assertion that this was a voluntary matter on the part of Cord, that he went into this matter of his own motion, and not at the instance of somebody else. Mr. Green has not told you how he knew Sudduth requested this thing to be done, or for what purpose it was done, but he has told you plainly and unequivocally that he knows Sudduth got Cord to do this thing. I don't mean to say that William L. Sudduth requested Cord to do anything dishonorable, but William L. Sudduth knew as well as Judge Andrews and every man in Flemingsburg, the character of William H. Cord, and if he requested him to do a thing of this sort, and write a letter, which he might have done himself, it is a little strange, to say the least of it, that such an instrument as Cord should be employed in anything honorable and straightforward. But the best of men make mistakes and act indiscreetly and imprudently. This letter of Scott has been alluded to by other counsel and I shall not allude to it any more than to say this: It shows on its face there were certain matters between Cord and him that were to be kept secret, and that they had a common plot and plan in view, because he uses the plural, and says, "*we* want you to carefully examine when County Court gave certificate to T. F. Hargis to get license," &c.; again, at the bottom, "I will tell you *all* when I see you though you can *keep this to yourself*." Now what was that all? It was such a state of facts as he did not dare to commit to paper. He could only risk imparting that information by word of mouth when he saw him. Scott's deposition is taken by the plaintiff, and in that deposition from one end to the other, the plaintiff does not inquire what the "maneuvre" meant that Scott spoke of in his letter. It was not our place to do it, for he was their witness. Scott pretends he gave a copy of that letter to Judge Hargis, written by Cord through Ingram. Judge Hargis swears he never saw that letter, never took a copy of it, and knows nothing about its contents. When Scott is called on to tell whom he showed that letter to, he gives the names of Jack Taber, the fugitive from justice, and

Judge Roe, who is dead. I then asked him to tell somebody who was not dead or out of the State that he had ever shown that letter to in his life, and he could not do it. He is asked about what he did with it, and he swore he believed he had lost it or burnt it up, something of the sort, before he gave his deposition. What there was in that letter we don't know, but it is very clear to my mind that, through this man Ingram, Scott was made a party to this transaction, and by the statement that there was a maneuvre on foot, something to be accomplished, is meant something in regard to the defendant Judge Hargis. That is perfectly plain. Ingram is not introduced by the plaintiff either. He lives in the county of Rowan. He is another man who is scrupulously kept off the witness stand, and whom this jury is not permitted to see. There has been a good deal said about "hell's to play in Rowan." If such men as Cord, Ingram, Scott, and Taber could not play hell in Rowan the devil and his imps had better go out of the business. Yet three out of four of these fellows that were in that plot are not brought before this jury.

It has been charged that Judge Hargis testified before the May Grand Jury in 1874 that Taber had confessed his guilt to him. Tom Mitchell, a man who lives in Vanceburg (and he is another gentleman that has not been introduced in this case—he belongs to the plaintiff's side—a nephew of Judge Thomas' wife, and he is no worse off for that)—is sent by plaintiff last July, the first week in July, to the county of Rowan, a distance of thirty-five or forty miles. We proved by Judge Thomas, on cross-examination, that Mitchell was in his office when he gave his deposition. We had been notified that they were going to take Mitchell's deposition, and for fear they would not do it, I proved by Judge Thomas that he was in his office that evening—that is the 3d day of July, 1879—but from that day to this they have never taken Tom Mitchell's deposition. He is in telegraphic and steamboat communication with Louisville, but he is not brought here to testify upon this stand. He went over into the county of Rowan and induced two or three of these grand jurors to state Judge Hargis swore before the grand jury that at the public well Jack Taber came up to him and said, "Well, Tom, you have got me. I am the man that mutilated the records. For God's sake don't tell on me." That is Tom Mitchell's best effort. That is the best that he could do. These three grand jurors don't recollect anything else, don't know anything else, and they all swear exactly alike—the most improbable tale that was ever told in a deposition. This man Humphrey, one of the three, swore that he voted for Judge Hargis—yes, voted for him once certain—but when the poll-books are produced he never had voted for him in his life. Cogswell, another one, testified on the witness stand that he had told Dr. McMillan that if the other grand jurymen would sign a statement that he had presented, that he would do so too—a statement entirely different from what he has testified to. We introduce six grand jurors who prove that Judge Hargis did not state before the May grand jury that he had had a conversation at the public well with Jack Taber. I desire to call your attention to the deposition of Moses C. Royse. He proves substantially the conversation between Taber and the defendant as detailed by Judge Hargis, and the other five jurors corroborate him. It was to this effect. In answer to question 4, he says: "He (Judge Hargis) said he went to Taber's office on the first morning of court,

Monday morning, to get some papers, or to examine some papers, in a suit that he was concerned in. After getting or examining the papers he stated—he said that Taber followed him to the door, and Taber said to Hargis that he wanted to talk with him. Hargis said he told Taber that he had the "dead-wood" on him, but didn't say what it was about. Then he said that Taber told him that he was a friend to him, and had rather he was elected than any other Democrat, and he said to let that all go. Yet there was nothing said about what it was to be let go, but he supposed that it was concerning the records. He then said that Taber said he was not guilty of all that he was charged with, or hadn't done all that he was accused of. He said that Taber said something, intimating that it would take a smarter man than he was to have done it all. I can't give the exact language about this, but that is the substance of it. Then he said that Taber said to let it all go, and let James Johnson run for county clerk, and him for circuit clerk, and they would all get along smoothly. He said that Taber said that he knew enough, that if he had one hundred dollars he could carry the county for Hargis, and he believed if he had five hundred he could secure his election, and Hargis said he declined giving him any money, and came on to the Court House."

That is the conversation in substance as detailed by Judge Hargis before the grand jury. Now, it has been asserted here time and again by the plaintiff's counsel that the indictments found at the May term, 1874, were procured on the testimony of Judge Hargis alone, when six grand jurymen swear that James E. Clarke testified to the forged orders being in the hand-writing of Taber, some that Burns also stated it, and that Cyrus Alley made some statement, which he admits in his own deposition, in regard to it resembling Taber's. Alfred H. Alfrey stated that he had a subpœna issued by Taber, and that the grand jury compared the record books containing the forged orders with this subpœna, and it was upon all this testimony that Jack Taber was indicted. The grand jury, with the facts before them, came to the conclusion that Taber was guilty of the mutilations and instructed the Commonwealth's Attorney to draw the indictments. Then, I say that the proof does not bear out the assertion that Jack Taber was indicted on the testimony of Judge Hargis alone. But we offered to prove a certain state of facts, which you remember, and I shall not allude to them in detail, as to the declarations of Jack Taber. Under the rulings of the Court all that Jack Taber had said to the plaintiff was permitted to go to you merely to show what information the plaintiff received at that time, not as evidence of the truth of those statements. When we offered to prove a statement of Jack Taber which was inconsistent with the theory that the defendant was guilty, and that this man who was the custodian of the Circuit Court records had so stated in a conversation in 1876—a statement of facts going to repel that idea—these gentlemen who want all the facts, who pretend that they are after the truth in this matter, having gotten in all that Jack Taber said to plaintiff in 1874, would not permit but objected to the testimony of Rev. J. S. Sims, who is a credible witness and who stands as high as any gentleman in Kentucky, and would not permit him to give the declarations of Jack Taber after this matter was all over in 1876. Rev. J. S. Sims would have testified that Taber, in September, 1876, at Morehead, on being asked if Judge Hargis had anything to do with the mutilations,

answered: "Oh, hell, no; that was done several days before Hargis came up here."

Right here I desire to allude to one fact in the testimony of Judge Andrews which did not seem to me consistent with the idea that Judge Andrews recollected in 1874 all that he testified to on this trial. You remember that he said that Taber desired to employ him to defend him against these indictments, and he dickered with Taber over a fee of fifty dollars because Taber could not secure it. I want to know if this jury can come to the conclusion that Judge Andrews—a man of his standing and reputation—would refuse to take a fee from Jack Taber simply because he could not secure it, and not even give him an intimation that he had in his possession a knowledge of facts which would show that Taber was not guilty of these mutilations. If Judge Andrews knew the state of facts which he testified to here, if they be taken as established facts, instead of his mere recollection, if he is not mistaken in his statements, then he knew that Judge Hargis' license was not signed until August, 1866, and it was impossible that the May erasure could have been the oath of Judge Hargis in that Court. Yet we find that Judge Andrews not only refuses to take a fee from Jack Taber because he cannot secure it, but does not even say that he knows anything that might do him any good. That is convincing proof, to my mind, that Judge Andrews did not recollect in 1874 what he now testifies to, for if he did he would not certainly have acted so with Jack Taber.

But Judge Hargis is charged, in the face of the proof, with leaving the May Court for the purpose of not having the cases tried at that term, when it is in proof by George T. Halbert, Judge Hargis, and others that Halbert said he did not intend to try those cases at that term; did not believe that the Court had jurisdiction in the first place, and under no consideration did he intend to go into a trial at that term. Taber was not on bail or in custody when indicted, and under the Code was not entitled to a trial at the first term, and the trial by a special judge who had extended the regular term, was resisted by the Commonwealth's Attorney. Besides Judge Hargis had learned the supposed defect in the grand jury, and that Taber's counsel intended to rely upon that fact to quash the indictments. The indictments were not put off and not filed until the last day of the term as stated by Mr. Larew, but they were filed on Thursday, the fourth day of the term; and on that day, or on Friday morning at least, the Commonwealth's Attorney, in an interview with Judge Hargis, assured him that those indictments would not be tried. There was no agreement about it. He advised Judge Hargis not to be detained there, and that it was not necessary to come back, a distance of forty-four miles from Carlisle, for the purpose of attending a court where there would necessarily be no trial, and where the indictments would be quashed on the first motion. He tells Judge Hargis to go home, that he does not intend to try those indictments. Under that assurance Judge Hargis told him that he would come back if it was required or necessary, and the false charge is founded on this state of facts, that Judge Hargis failed to come back intentionally and for the purpose of defeating a trial on those indictments.

I desire to notice what occurred at the November term, 1874. When the November term came on the newly elected Commonwealth's

Attorney, Mr. Cole, was sick. Judge Thomas, the leading counsel of Taber, had been elected Judge. Thomas Mitchell, nephew of Judge Thomas' wife, a man who never practiced law over there in his life, is conveniently present, and he is just as conveniently appointed Commonwealth's Attorney *pro tem;* and what is the first step taken? Now these indictments have been re-submitted to a grand jury, under the order of Judge Botts, at the May term. The question is to be re-investigated, and the very first act of Tom Mitchell, this nephew by marriage of Judge Thomas, in order to get his uncle's client off, is to send that identical man thus charged, Jack Taber himself, as the first witness before that grand jury, to testify in his own behalf and swear himself clear. Was not that the most complete farce that ever was perpetrated in a civilized community? But it is the truth, and so W. H. B. Evans, a member of that grand jury, and a witness whose deposition was taken by the plaintiff, swears. If Tom Mitchell was present he would swear it too, and that he examined Taber before the grand jury, and whenever Jack would go a little crooked he would perhaps set him straight. That is the truth of it—that he was present in that grand jury room and examined, by interrogatories, Jack Taber for the purpose of finding out whether Jack Taber was guilty of the charge that had been re-submitted to that grand jury! The next witness introduced by Tom Mitchell before that grand jury is the plaintiff. What Jack Taber had left undone Thomas M. Green is expected to do, and Mitchell just says: "Mr. Green, let yourself loose; just swear to what you know and everything about it that you have ever heard of." You heard Mr. Green's grand jury speech in his testimony. The plaintiff's counsel have a little the advantage of us in this case. They have gotten in five speeches to our four, but I reckon it is all fair. The plaintiff has no malice, of course; he is for a fair investigation; he wants the grand jury to take their choice; but the grand jurors themselves say that his speech was like the speech of a lawyer to a jury—that he thumped the table and walked the floor, speaking a good deal louder no doubt than I am in this case, so that he could be heard clear down in the court-room below, and that he kept it up for two days. When you come to think over the subject, that speech (as you heard plaintiff rehearse it on the witness stand) cannot be made much under two days. Well, he got that all in. His speech was for Taber and against Judge Hargis. I venture to say that the annals of the United States do not give a similar case, where a man like Thomas M. Green is permitted to go before a grand jury and to tell not only what he knows and has seen himself, but all that he has heard from every source, and for two days to make a speech to acquit the man that the charges are submitted against and to fasten them upon another and an innocent man because of his unbounded malice—and then to come into a Court-house and say he is a fair man and wants the truth! Gentlemen, there is nothing in this case that illustrates the man more than this one act, and I venture to say there is no man in America that would have done it except Thomas M. Green.

What is the result? He goes on before that grand jury saying, "I will swear to this. I want you to understand that I am swearing to this point," and then he would go off and argue awhile, and come back and say, "I swear to this," and he thus proceeded, and made the distinction between his argument and his testimony. One

grand juror asked him if he was the attorney of Taber—a very natural question, I think—and he got insulted. He says he told them he had never been a practicing lawyer—never had gotten a license—and asked the foreman of the grand jury to protect him from such insults. W. H. B. Evans, this grand juror whose deposition plaintiff took, and we read (he took seven that we read)—this man who was in attendance all the time, who was in Mr. Green's room thirteen days—he gave notice to take his deposition three or four times—but with all that coaching the old gentleman came in and stated that the plaintiff, in his testimony before the grand jury, at the November term, 1874, swore that he was up at Rowan and saw the records *before* they were ever mutilated. He stuck to it, and Thomas M. Green did not deny that he so stated to that grand jury on the witness stand. He said this: He was not up there, that it was not true that he was up there before the mutilations; but that does not answer the question. The question is whether or not on the witness stand, to the grand jury, you so swore. He does not contradict Evans. It may not be true that he was there before the records were mutilated, but if he swore he was, he tried to indict a man upon testimony that was not true. Why didn't he say that Evans was mistaken, or that Evans had stated what is untrue? Hunt the records through and you cannot find where he says that Evans swore to a lie about that thing. There is only one conclusion to come to, and that is, that Thomas M. Green was getting off false testimony before that grand jury in order to get them to indict Judge Hargis. He gave a state of facts to that grand jury that did not exist. It won't do simply to say that he was not up there. What this jury wants to know is, did you so tell the grand jury, or has Evans told the truth? After this conduct on the part of plaintiff he is the last man on earth to talk of perjury in the grand jury room. But this thing goes on for three days. The grand jury resolves to indict nobody, and at the end of that time Mr. Mitchell, as a courtesy to Judge Hargis, suggests to one of the grand jurors that perhaps they had better go to see him and ascertain whether he wants to make a statement before the grand jury. Engaged in a trial and busy in court, after this thing had been going on for several days, such a suggestion is made to Judge Hargis. I say, if Judge Hargis had gone before that grand jury, ran as it was like a machine to acquit Jack Taber, that he would have forgotten his manhood, and have deserved the contempt of all sensible men in the community. And this is argued as another reason why Judge Hargis is guilty, because he would not go before a grand jury run in that sort of style for the purpose of acquitting Jack Taber, against whom the charges were re-submitted. Now I don't know whether Judge Thomas suggested this programme to his nephew, Tom Mitchell. I am not going to say that, but he got his client off. "Uncle Morg." was successful.

Something has been said about lost papers in this case in the grand jury room. Oh, it was a fortunate thing for Mr. Green that he discovered where he could lose all these papers during the progress of this trial. He swore at first that the letter that Johnson wrote to him was at home in one of his pigeon-holes, but when he found out that the John A. Campbell letter, the only thing that he did actually leave in the grand jury room, had been sent by Johnson to Judge Hargis, who was honest enough to file it, he discovered that the grand jury room was a good place for him to lose all his papers, and he lost them right there.

What has he lost? The original affidavit made by him on the 8th of May, 1874; he had that eighteen months ago, but it is lost. Taber's letter to William H. Cord received by Mr. Green. Dr. Sam. Marshall's letter of March, 1874, in which he wrote to Mr. Green to act for him. These are gone. Wilhoit's and Nethercutt's certificates are gone. We find nothing in this case that we want except the affidavit of Jack Taber, and we do not care about that although he preserved it. He used that before the grand jury and put it along with his affidavit of the 8th of May—had them in the same pigeon-hole eighteen months ago—and somehow they got separated, and every one of these lost papers, that he claims are lost at least, Mr. Green undertakes by his own testimony to enlarge.

Up to the first of August, 1879, Mr. Green had utterly failed in the proof taken in this case. He had taken the proof of Judge Andrews, and it was of a vascillating, unsatisfactory character. He had taken the proof of Burns and Clarke, who had no personal knowledge as to the defendant's license, and stated in their testimony that they were not present when it was executed. On the other hand we had taken the testimony of Judge Nesbitt, who testified that he had seen the license in March, 1866, with Judge Andrews' signature alone to it. We had taken the proof of a number of witnesses at Grayson showing conclusively that Judge Hargis was there for the purpose of completing his license in April, 1866. The accusations that he had brought were about to fail, when, on the night of the 5th of August, 1879, the record book of the County Court, containing the mutilations in that court, was taken from the office. By whom, is a question for this jury to determine—whether by one or the other of the parties—or whether by a third party from a different motive. For the purpose of inviting your attention to that branch of the case, I want to go over some of the facts which preceded the loss of that book. We find that for five years James W. Johnson, from 1874 to 1879, had been the custodian of that book, that it was in his possession; that it had been seen by hundreds of persons; that at no time had he ever objected to its examination by any and everybody. We find that when plaintiff came to take his depositions, Johnson furnished him that book to examine to his heart's content, without any subpœna *duces tecum.* Day by day, for ten long days, Johnson carries it to the deposition room and back again, and when they ask to have it photographed he spreads it before them—goes into the woods where the photographer is and assists in the preparation—carrying it out from his office on two different occasions. Before the adjournment on the first day of August, 1879 (the plaintiff took a recess in his depositions from the 1st of August to the 12th of August, it being prior to that time that these photographs were taken)—for a week or more Burns and Clarke had been examined upon the contents of that book—everything that appeared in that book was set forth in the depositions of Clarke and Burns, yet plaintiff's counsel obtained a large number of copies of orders contained in that book, none of which orders, photographs, and none of the testimony of Burns and Clarke as to the contents of the book (being secondary in its character) could have been introduced before this jury unless the book was absent itself. On the first day of August a proposition is made that this book, which had been before these witnesses, should be sent off to some city to have a chem-

ical analysis made of these forged orders, or some chemical tests applied to them. After they had had that book before their witnesses, and examined them thoroughly, without an opportunity upon our part to examine a single witness as to its contents and appearance, this proposition is made for such a disposition of the book. The plaintiff could not reasonably have expected that the defendant would accept a proposition of that character until his own proof had been taken with this book before the witnesses. We had notices out at that time to take the depositions of Cyrus Alley, James W. Johnson, Z. P. Johnson, Dr. McMillan, William A. Fouch, and divers other witnesses, whom we expected to examine touching the contents and appearance of these erasures and forged orders—our notices being set for the latter part of August. Yet the cool proposition is made to the defendant to take this book off and have it chemically tested before the defendant has an opportunity to examine a single witness on it. I say that this proposition was made by the plaintiff, knowing that we could not and would not accept it. It was a proposition so unreasonable that its refusal was a matter of course. Yet we offered to accept it, on condition that we were first allowed to take our proof with the book before our witnesses, as they had it before theirs.

In regard to that window in the clerk's office, the deposition of Henry D. Hardinburg, an experienced mechanic from New York, shows this state of fact—I will not stop to read it—that the probability is that the shutter was open when the sill was cut. Hardinburg shows that the shutter can be pushed in and the bolt raised with very little trouble with a wire or piece of tin, and the stick over the sash taken out or knocked out through the broken pane, and that, in his judgment, the window was opened in that way, and that the cut was made in the sill for the purpose of laying the charge on an innocent man, and entrapping some one into the belief that it was opened in that way. Now, had it been done by James W. Johnson, or any one in his interest, don't you know that he would have cut that notch clear through and put it beyond controversy that it was opened from the outside? Would he have been idiot enough to have left that cut only three quarters down through the sill? This man Jack Taber in 1874, as the grand jury report shows, had easy access to the window. The county authorities had not, after 1874, taken charge of the clerk's office and made any repairs on it. As I said before, when that book was stolen Judge Hargis had not taken a solitary deposition at Morehead. He had not had an opportunity, owing to the plaintiff's notices being ahead of his, to take any proof as to the appearance and contents of that book. I put the qustion to you, as sensible men, the book being taken on the night of the 5th of August, 1879, had it been the intention of Judge Hargis or James W. Johnson, or any one in their interest, to have taken that book, could not they have done it just as well after the lapse of four or five months, after all their testimony had been taken, and their witnesses examined fully on the contents of that book? It was just as easy to have taken that book then, after they had gotten all the advantages they could out of it. It was just as easy to have had that book made away with after defendant's proof was taken as before. Yet we find that the plaintiff secures his testimony as to the contents of that book, and having done so, and before

we have an opportunity to examine a solitary witness on the contents of that book, it is taken.

Now I call your attention to another remarkable fact, in this investigation. I proved by James E. Clarke it was the habit of Cyrus Alley, on the margin of his record when he copied an order, to write the word "cop'd." On this May order there is nothing of the sort on the margin. If this be the certificate, as claimed by Mr. Wadsworth, and Cyrus Alley copied it for Judge Hargis, when he wanted to present it to the Judges to get his license, he would naturally have put that word on the margin. Hence, in the absence of that word on the margin, it is convincing proof to my mind the certificate never was there, or the word "copied" would have been on the margin. Now, I put the question to James E. Clarke, whether on the margin of the record as made by Alley, he did not often find the word "copied" in full or abbreviated "cop'd." He said in his testimony on the witness stand that he remembered seeing the word there abbreviated "cop'd." I will read you these two questions and answers from his deposition: Questions 110 and 111 on cross-examination. "Examine said order-book and state if you do not find on the margin, and opposite a great many orders the word 'copied' in Mr. Alley's hand-writing?" "I find the word 'copied,' either in full or abbreviated, opposite to a considerable number of orders in the book in Mr. Alley's hand-writing." "Do you find that word 'copied' in the margin opposite the order erased in May, 1866, p. 160?" "I do not."

Those answers were made by him with the book before him, and they are correct. Now, gentlemen of the jury, on re-examination, Col. Bullitt, Mr. Wadsworth, or Mr. Larew did not ask him a solitary question as to that margin. Why? Because they saw the force of those interrogatories. But now Thomas M. Green comes into this Court House and intimates that the margin of the May order was mutilated and erased—the only witness from the beginning to the end that dares to testify to it. Nor did *he* undertake to do it, until after this book is stolen. Only then does he have the hardihood to give such testimony. I would have been a fool to have asked James E. Clarke, do you see any such word as "copied" on the margin of the May order, if there had been any appearance of an erasure there. Col. Bullitt would have said instantly that there was nothing in it; don't you see right there, Mr. Clarke, where it was erased —don't you see where the word "copied" was erased? No, sir, Col. Bullitt and his associates and Thomas M. Green, know just as well as they know they are in this Court House that there has never been an erasure upon that margin, and they dared not ask Jim Clarke that question. If there has been one lie sworn in this case that is it. And after they get Jim Clarke and Harry Burns back again here on the witness stand, they are not asked if that margin was erased, and I say the conclusion is that it was not erased. I brought out that subject and proved that the word "copied" was not there for the express purpose of showing that it could not be the certificate that had been recorded there and copied by Alley, and never until the book is gone does any man pretend to swear that the margin was erased, and when it is undertaken, the plaintiff is the *only man* that has the courage to come up and swear to it before the jury. *The loss of the book affords him an opportunity to do it, and nothiug else could have done it.*

In the examination of Burns and Clarke I prove, too, that these marginal marks are above and below that order. They are Alley's distinguishing marks, and appear between all the orders recorded by him. When you look at the orders recorded by Clarke you do not find them in between his orders at all. Take the record-book of the Circuit Court and you will find them between all of Alley's orders. I introduced that subject in the cross-examination of Burns and Clarke when their depositions were taken. On re-examination no intimation is made by the counsel on the other side that those marginal marks there bore the resemblance of having been newly made, or of not having been made when the orders were originally recorded. There the book stared them in the face. There were their own witnesses, Burns and Clarke. I had brought out the subject. I had asked them if the marks were not there, genuine, made when the orders were recorded. Plaintiff's counsel did not question them on that subject, and when Burns and Clarke came into the Court House they are not even then asked the question, but Thomas M. Green himself is the only man—the plaintiff in this case is the only man—who has the audacity to say, or to intimate, that those marginal marks were not made there when the orders were recorded. *The loss of the book again affords the plaintiff a chance to swear.*

In this investigation Jim Carey is shown to have been County Judge of Rowan; that he appointed himself his own receiver without giving bond, and when he went out of office he owed the county about four hundred dollars. He claims credits which he says will bring it down to $240. That lost book contained the evidence of that indebtedness, which was for money collected due the county on warrants for vacant lands, and without that book the county can never recover a cent off Jim Carey, although he has been sued. You have it in this record that he is a personal enemy of James W. Johnson, and made in 1878 an excited and bitter race against him for County Court Clerk, and out of six or seven hundred votes, Johnson beat him 138 votes. This man, after the book is stolen on Wednesday evening, in the presence of Alvin Bowling, is heard to use this language: "It don't hurt us any. We have got all we want out of it." Now, under this state of facts, I leave it to this jury to determine what Jim Carey meant when he said, "It don't hurt *us* any. We have got all *we* want out of it."

Now, when we come to discuss the loss of Judge Hargis' satchel in October, 1879, we discover that Judge Bullitt relies upon an *alibi*, and says he does not intend to follow Martin to Jim Carey's and Mrs. Trumbo's. I admire the gentleman's discretion. He did not want to go with Martin on that trip, nor did Mr. Larew, but I don't intend the gentlemen to escape the facts attending the loss of Judge Hargis' license. From the testimony of John M. Elliott, Jr., just before the supper hour—but in order that there may be no mistake about this matter, I will read from his deposition: Question 36 of the direct examination of John M. Elliott, p. 144. "State if you saw John Martin of this county on that night about that hotel? If so, at what time, where, and what did you see him doing?" "I saw him there just a little before the bell rang for supper. He walked past me where I was sitting in front of the main building between the two doors that go into the front rooms under the porch. He walked past me and walked on

up past the main row of buildings, and went out through the gate. He had, I thought, a stick which he carried between his arms and across his back." "Did you see him any more after he passed by you, and passed out the gate? Where did you then go?" "I did not see him any more after he passed out at that gate on that night. In a few minutes after that I went to my supper." "Was this after dark or not? What time in the night was it?" "It was just at dark—I don't think it was entirely dark. It was getting very thick dusk though." "Examine the map now exhibited to you, and state if it is a representation of the hotel kept by William Hargis in Morehead—the rooms, doors, windows, gates, &c., about the premises? If so, file it as a part of your deposition." "I think it is, sir, a fair representation—and I file it and make it a part of my deposition marked 'J. M. E.'" Now at what point as shown on the map were you sitting as Martin passed, and along what building did he go, and out of what gate?" "I was sitting between the two doors of the room, marked ½. He passed along in front of the building marked 2, 3, 4, and 5, and passed out at the gate marked 6." "Is or not that the same hotel kept by Col. John Hargis in July and August last?" "Yes, sir, it is." "State whether lights had been lit before Martin passed along these rooms?" "I think they had, sir." "State if Judge Hargis ate supper at the time you did?" "Yes sir, he did."

There is the exhibit filed with the deposition of John M. Elliott which shows where he was sitting. He went to his supper after seeing Martin pass the door, and he says that Judge Hargis was at supper at the same time. Now when John Martin was seen after Judge Hargis had eaten his supper, he passed along by the side of this building, and either went into the Court House yard, or passed down towards the rear buildings. There was no trouble up to this time for a man to slip into that room, take these things and hide them at a convenient place, and then come back in the same direction. None whatever. They were at supper say half hour. Judge Hargis discovers that his door is open, and he goes into the room and discovers his loss. There, in the presence of Dr. McMillan, he exclaims, "My God, my satchel and my papers are gone," and McMillan sees at once the loss that Judge Hargis has sustained. This man Bowling, the town marshal, is sent down to watch all these suspicious characters about the hotel. What is the testimony of Martin previous to that? It is urged by the plaintiff in this case that Martin had an interview about four o'clock with Judge Hargis, in which Martin claims that Judge Hargis induced him to remain in town that evening, and that he did stay there on that account. Nobody sustains him in that. Not a witness has come and sworn that Martin and Judge Hargis were even seen together or in speaking distance of each other. The record shows that depositions were taken until six o'clock that evening, and that Judge Hargis was in the deposition room until that hour or shortly previous. Martin claims that he had to go home to his sick wife that night. Davis asked him to go home with him, and Davis swears that he declined to do so. Alvin Bowling's recollection is that Martin promised to do so—that he expected to stay in town that night. But be that as it may, take Martin at his word, he came into the town of Morehead with a cutting-knife. He lived two miles on the road towards Grayson, up Triplett creek. About dark that night he leaves the corn-knife at Bowling's saloon. I

want to know if that does not evidence the truth of the theory that it was his intention to stay in town that night? He never calls for that corn-knife until the following evening late, when he takes it. If it was his intention to go home that night to see his sick wife, two miles up the road, I want to know why it is, after he had remained as long as he had, he did not go home to see his sick wife, instead of going to Jim Carey's hotel, or instead of going to Mrs. Trumbo's? Now what precedes this? Mr. Green says that the first interview he had with John Martin was on Friday before in his room. John Martin says the same thing. Now here is a reputed murderer and horse thief, in plaintiff's private room, a man that Thomas M. Green, in 1877, saw in the Maysville jail, having been caught in possession of stolen horses in company with Jack Taber. The plaintiff sought the interview with John Martin. He sent the negro Lewis out to see that fellow John Martin and tell him to come in, that he wanted to see him. No deposition has been taken of that negro, Lewis. He was the negro whom Green sent out to get Martin to come into his room to have a private interview with as an expert. A beautiful expert—this fellow that can hardly write his own name—sent for by Thomas M. Green through a negro to come and have a private interview in order to tell whether some scribbling, found in the deposition room, is in the hand-writing of Will Hargis or not. How did he ever get it in his head that John Martin was an expert? He brought about that interview. He had a talk with Martin before this satchel was stolen. But when the satchel is stolen John Martin pretends to get the idea into his head that old 'Squire Ham, John Elliott, and Dr. McMillan were a set of regulators and were going to kill Tom Green that night, and he goes over to Wash Davis' to tell him. He did not go to Tom Green to tell him of his apprehension, but he goes to Wash Davis and consults him as to the best means of defense against this raid of the regulators upon Thomas M. Green, and when he leaves Wash Davis' he goes down to Jim Carey's and there informs him that he believes the regulators are going to kill Tom Green. He don't mention that Will Hargis is going to do it. That is an afterthought. Martin may have written that scribbling in Tom Green's room, and not been there as an expert. If we had brought Will. Hargis down here as a witness, they would have said, of course Judge Hargis' brother will swear for him. Nobody who is kin to Judge Hargis can swear the truth(?). Martin goes down and tells Jim Carey, who says, "I reckon they won't hurt my Matt; he has gone up with Green." But when Bowling, the town marshal, a man that Jim Carey and Martin both knew, comes and he is inquired of as to who he is, and says, "It is me, Bowling," then Martin and Carey knew for certain who it was. Martin knew it was not the regulators; but what does he do? He runs away from him. John Martin knew it was not the regulators or Will Hargis, but Alvin Bowling, the town marshal. "The wicked flee when no man pursueth." Bowling threatened to shoot him if he didn't stop, but he goes around back of Carey's house and hides in Carey's little private room. They pretend now it was by the permission of Carey's sick wife that he was there, yet when plaintiff took her deposition he did not ask her a solitary question about it. After this thing had been exposed, Jim Carey's deposition was taken, and he didn't pretend that his wife told him that John Martin was there, before he discovered him in his private room. My judg-

ment is that Mrs. Carey knew nothing about it, and that John Martin crept through that back window into that little room, just as he told Alvin Bowling he did the next morning. Why did he run? *He* was not afraid. He didn't apprehend that *he* was going to be hurt! It was Tom Green who was going to be hurt. What is he running for? He has never said the regulators were after him, or that Will Hargis desired to injure him, but it is Tom Green that he is solicitous about all the time, and instead of going to Tom Green he is running himself to get out of danger. Now we find that this innocent man cautions Carey to look at the clock, and he says he told his mother-in-law to do the same thing. We have no evidence in this case that he was at Mrs. Trumbo's except his own testimony. Nobody saw him there. Nobody has proved that he was there except himself. It may be that after getting these things out and hiding them in a convenient place, instead of going to Mrs. Trumbo's he went to his own house. He could have done it very easily. It was only two miles up the creek, in a direct line with where defendant's overcoat was afterwards discovered in the bushes. But, at any rate, he is there in town early the next morning, and he comes back armed. I asked him the question, "didn't you arm yourself before coming back the next morning?" and he would not answer the question. I asked him whether he was not armed when he left Bowling's that evening, and he would not answer the question. The very first thing that he is informed of is that he is accused of stealing Judge Hargis' satchel. What does he do? Does he go to Judge Hargis, like an innocent man, and say to him, "No sir, I didn't take your things?" Not at all. He knew, from the very first, from Wednesday morning on, that he was accused of this felony; yet he never pretends that he wants to see Judge Hargis on the subject, or say anything to him about it, until late Friday evening, after Johnson, the policeman from Louisville, had talked to him. Johnson had exhausted every other means in his power. Everybody had searched around to ascertain whether they could get any clue, and as a last resort, Johnson seeks a conversation with Martin to see if he can discover anything from him. Although he knows that he is charged with this offense, he never intimates that he desires to see Judge Hargis upon this charge until three days after the felony is committed. I put it to you, gentlemen of the jury, suppose John Martin was telling the truth as to Judge Hargis wanting him to remain in town. Suppose that this story, which is an afterthought, is true, I ask you, gentlemen of the jury, would not John Martin have gone *at once* to see Judge Hargis? Was there anything to prevent? Why did he not seek him at his room and say, "Sir, I desire to know what you want to see me about?" After supper or before supper does he seek Judge Hargis? No, sirs. Judge Hargis was there. Why not go to see him and ascertain whether or not Judge Hargis had anything for him to do? That is convincing proof to my mind that he never had any conversation with Judge Hargis, and that he did not desire to have an interview.

Again, we find by the testimony of Alvin Bowling and by Martin himself, admitted by Thos. M. Green, that this man Martin was in his room on the evening of Wednesday, the 8th of October, 1879, the day after the satchel was stolen, for an hour or so. Mr. Green does not tell us what they were doing and John Martin does not tell us. Here this man whom plaintiff had in his room on Friday before, through the in-

tervention of a negro, is again in his room after this satchel is stolen for an hour or so, and no explanation to this jury as to what he was there for, either by Martin or Green. Plaintiff's counsel talk about defendant associating with John Martin. Even if Judge Hargis did take a statement from him in June, 1879, Mr. Green took a statement of Martin's partner in crime, John R. Taber, on the 2d of May, 1874, at a time when he knew Taber was a scoundrel, and carried it in his pocket for six long years without publishing it in his paper, or without saying anything publicly about it to any one. He used it in his remarkable speech before the grand jury in November, 1874. Then after this man Martin is seen in his society in an interview brought about in his room by a negro, and after the satchel is stolen, having another private interview with him in his room which is unexplained to this jury, I take it that it is a little too late for the plaintiff to talk about Martin being the friend of Judge Hargis. He was his enemy, his consistent enemy, and the friend and associate of Jack Taber through the contest of 1874 and on down to this time. At no time was he the friend of Judge Hargis personally or politically, although I believe it is in proof that he gave his vote for him at the last May election.

What was in that satchel? We find the license of Judge Hargis was contained in that satchel, the original licenses and certificates of Ben. G. Patton and J. A. Buckler, the original letter of Judge Apperson, the original letter of Judge Elliott, all the original certificates, including that of Saml. R. Elliott, which had not been filed with the depositions, notices that had been served on Judge Hargis and on Thos. M. Green, memoranda of what witnesses would prove—all these things were in that satchel. I ask this jury whether they are going to believe Judge Hargis made way with those papers which were so valuable to him in this case? I care not whether the plaintiff instigated the stealing of that satchel or not, or whether it was done on John Martin's own suggestion, for his own private good, expecting to get a reward for it, the truth stares this jury in the face that the most important papers Judge Hargis had were lost in that satchel, and he could not have designed it himself. Why, the license had been preserved through a controversy of nearly six years. Judge Hargis kept it as he would his life, showing it on all proper occasions. He exhibited it to Judge Andrews, Mr. Nesbitt, Judge Cofer, Judge Pryor, and anyone who desired to look at it, including Burns and Clarke. He even permitted the plaintiff and his counsel to look at it and investigate it. Is it possible when none of them from the beginning to the end could pick a single flaw in it, that he would want to make way with the most important document which he had, which sustained his defense in every particular, date and all? Is it possible that he would make way with that license, and with the licenses of his witnesses, and these important letters and papers that were contained in the same depository? On the other hand though, when we find that after the lapse of five and one-half years, no flaw can be picked in that license, no theory can be made on which to build a charge, the plans of his enemies are altered and they say if we can just keep that license away from the jury, we may get the jury to believe the date was filled up, none of our witnesses will swear it as long as they have the license to look at, no expert that we can bring will swear it, but if we can get the license out of the way, may be we can induce the jury to believe it was filled up. Now, gentlemen, that is not an extreme

position. The plaintiff knows what he has at stake in this case. He had grown desperate by his failure to establish the guilt of Judge Hargis, and if he could only make away with this important evidence, these important papers, and cast suspicion on Judge Hargis that he is trying to suppress evidence, he thought his case was won. I tell you a man who has stretched his imagination and conscience as far as the plaintiff has done on this witness stand would not hesitate to do most anything for success.

I want to call your attention to one thing that Mr. Green has undertaken to swear to. You heard him on the witness stand say that on the 15th of July last, in the office of Reid & Young, at Owingsville, he saw Judge Hargis walk up to Mr. Wadsworth and extend his hand and offer to shake hands with him, and Mr. Wadsworth turned away from him, and would not shake hands with him, as though he scorned the idea. Judge Lindsay swears that it did not take place. Judge Hargis swears it. Judge Nesbitt swears it. Judge Reid swears it. That was a gratuitous, unfounded, and unnecessary fabrication on his part. Judge Hargis, while on the witness stand, turned to Mr. Wadsworth and said it did not take place "*and Mr. Wadsworth knows it.*" I don't care if I were an attorney, before I would sit by and hear my client swear to a transaction that took place between us, while four witnesses came on the stand and swore that it did not take place, thus putting my client in the attitude of uttering a wilful and malicious falsehood, I would take the witness stand for my client and testify as to whether he told the truth. I would stand by him at all hazards, if he was telling the truth. By the failure of Mr. Wadsworth to stand by his client and corroborate him here, Mr. Green is put in the attitude of swearing to a pitiful but characteristic falsehood. The man that will do such a thing to prejudice Judge Hargis before this jury, will not hesitate at anything to gain his case. The plaintiff and Mr. Wadsworth must have known this pretended occurrence did not take place, and that it was made out of whole cloth.

In going over this case as far as I have, undertaking to discuss the testimony of nearly one hundred and fifty witnesses, a record that would make, at least, ten thousand manuscript pages, I have tried to classify as far as I could the evidence on certain points. I have only attempted in what I have said, to be of some assistance to you in bringing the testimony to bear upon the different points in order that you might properly consider them. The court has instructed you that we have the burden under the pleadings to prove that Judge Hargis is not guilty of the mutilation of the Rowan records, or of causing it to be done. But you are left to consider the whole evidence as to whether or not he obtained his license previous to the 1st of August, 1866, and was sworn into the May County Court, 1866, there being no burden on the defendant by the court's instructions to establish his eligibility for the office of Circuit Judge in 1874. But I maintain that the evidence greatly preponderates in establishing both of these propositions, and that the jury are led to the conclusion from all the testimony (and it is upon the evidence that you are to decide this case), that Judge Hargis did procure his license signed by both judges prior to the 1st of August, 1866, and that he was sworn into the County Court previous to that date. The question as to whether he is guilty of the mutilation of these records or causing it to be done, must be answered in the negative or

affirmative. "Did the defendant, Judge Hargis, mutilate or cause to be mutilated previous to June, 1879, the records of the Rowan County and Circuit Court or any part thereof?" In deciding that question in the affirmative you sweep away from the defendant all rights which are near and dear to him. Before this jury can decide that Judge Hargis is a guilty man, or undertake to decide that momentous question, I know they will require of the plaintiff and his counsel testimony that they can safely rely on, testimony that clearly convinces their minds of the truth of the charge. The stake is too large, involving not only the reputation of Judge Hargis and his family, but the decision of it in the affirmative would blacken the fair escutcheon of the State of Kentucky. Hence I say that the plaintiff, before this jury can answer the question affirmatively, and decide that Judge Hargis is guilty of these mutilations, must bring to bear reliable proof by honest witnesses.

I have in this discussion endeavored to state the evidence upon both sides fairly. Whether I have done so will be for you to judge. If I have gone out of the record at any time, I have been tempted by the adversary. I know I am not free from error; I do not claim to be; but I do say that I have not intentionally misrepresented the testimony of any witness in this case.

There is a great deal of difference between the plaintiff and the defendant. They are two different men entirely. There is no similarity between them. All the antecedents of the plaintiff and those of the defendant are antagonistic. The plaintiff is the editor of a paper, which the record shows has been, since its publication in 1860, used by the plaintiff to defame the public men of his section of the State. He is a disappointed man, misanthropic, liking nobody, differing with everybody, and is continually using his paper to break down and vilify those whom he can attack and destroy in no other way. At the age of forty-four, Thomas M. Green is a failure. At the age of thirty-eight, the defendant has far exceeded him in the attainments of life. Mr. Green is a vindictive man. His whole course of conduct since 1874 shows that it has been founded in malice against Judge Hargis. He knows and feels that he was denounced in 1874 by Judge Hargis, and that fact has rankled in his bosom from that day to this. It is not for the good of the Commonwealth that he sues. Not at all. But it is in order to gratify his deep-seated malevolence towards Judge Hargis that he has filled the papers of the State of Kentucky with his slanderous articles and brought this action. I care not what crime Judge Hargis may have committed, the most heinous crime on earth, murder or anything else, the plaintiff is not justifiable. The history of the civilized world does not show an instance where a man has been persecuted and hunted down as the defendant has been by the plaintiff since this controversy commenced. Tell me it proceeds from honest, upright motives? Never on earth.

Yet from all this testimony you must decide this case. You must take it as it is. I have been Judge Hargis' attorney from the beginning of the contest. I have known him long and well. We have traveled along the journey of life as it were together, and in all the relations of life, whether as private citizen or public officer, as judge or lawyer, I have found him always faithful and true. In the event, under this testimony, you find the defendant guilty of these charges you brand and

disgrace him forever. On the contrary, if you find him not guilty, you settle this vexatious controversy and dispose of it finally. There will be no appeal in this case. This is the last time it will ever be tried in a Court House. Teach, by your verdict, Mr. Green a lesson he will never forget. Set a precedent in our State by putting the seal of your condemnation on the violent, malicious libels he has uttered and published for years, with mercenary and unworthy motives, against the defendant. From what I have known of this defendant, and from what I have seen developed throughout this controversy, I cannot be persuaded that you believe he is a guilty man, that he is a forger, perjurer, or villain. Never can I come to the conviction that the man who sits there, and has sat there during this entire trial, manly, upright, patient, and, when on the witness stand, telling his story of these enormous persecutions with simplicity, with no effort to conceal anything, is not an honest man. No, I feel assured you will send Judge Hargis back to the discharge of the duties of that high office to which his people have called him, back to his faithful wife, whose love and devotion have never failed in the hour of trial; and to the sweet caresses of those four little girls who bear his name. I do not, and will not, believe you can find the defendant guilty. [*Addressing Judge Hargis*]. Never, never, never will this jury find you guilty, sir, of these infamous charges, *because they are not true*.

I thank you, gentlemen of the jury, for your kind and most careful attention.

APPENDIX.

PETITION.

JEFFERSON COURT OF COMMON PLEAS.

THOMAS M. GREEN, *Plaintiff*,
v.
THOMAS F. HARGIS, *Defendant*. } Petition.

The plaintiff, Thomas M. Green, states that, in the year 1874, he composed and published statements asserting his belief that the defendant, Thomas F. Hargis, had mutilated, or caused to be mutilated, certain records of the Circuit and County Courts of Rowan county; that recently, to-wit: in the month of May, in the year 1879, the plaintiff revived and circulated the charge that the defendant had mutilated, or caused to be mutilated, certain records of the Circuit and County Courts of Rowan county; and that said charge is true yet; that afterward, in the month of June, in the year 1879, the defendant, knowing that said charge is true, did with wilful malice, compose and write of and concerning the plaintiff, and of and concerning the aforesaid charge, a false and defamatory libel, which contained, among other things, the following words, viz:

'*To the Editor of the Courier-Journal:*

"In 1874, I (meaning the defendant) was nominated by a Democratic Convention as a candidate for Circuit Judge. It was charged that I (meaning the defendant) was ineligible to the office, and that for the purpose of destroying the proof of my (meaning the defendant's) ineligibility, and of establishing my (meaning the defendant's) false claim, that I (meaning the defendant) was eligible, I (meaning the defendant) mutilated, or caused to be mutilated, certain records of the Circuit and County Courts of Rowan county. Out of respect for that portion of the people of Kentucky who are not familiar with the persons (meaning the plaintiff) who originally concocted this charge, and have recently revived and circulated it, nor with the facts as known to those who know the parties (meaning the plaintiff) and witnesses to to this assault upon me (meaning the defendant), I (meaning the defendant) now solemnly declare that the charge, in whatever form, or by whomsoever (meaning the plaintiff) made or insinuated, is false. I (meaning the defendant) do further denounce those who have heretofore made (meaning the plaintiff) and those who do hereafter circulate this charge (meaning the charge aforesaid) as wilful calumniators."

And that the defendant sent said libel to the editor of the Louisville *Courier-Journal*, a newspaper published in the county of Jefferson and State of Kentucky, and caused said libel to be delivered to said editor, in said county, and requested and caused said libel to be published in the said newspaper, in the said county of Jefferson, over his, the defendant's, signature, of and concerning the plaintiff and of and concerning the aforesaid charge to the damage of the plaintiff in the sum of $10,000. Wherefore the plaintiff asks for judgment against the defendant for $10,000, and for his costs of suit.

WILLIAM H. WADSWORTH,
STANTON & LAREW,
BULLITT, BULLITT & HARRIS,
For Plaintiff.

The plaintiff, Thomas M. Green, being duly sworn, says that the facts stated in the foregoing petition are true as he verily believes.

THOMAS M. GREEN.

Signed and sworn to before me by Thomas M. Green, this 19th day of June, 1879.

PAUL CAIN, Deputy Clerk
for John S. Cain, Clerk Jefferson Court Common Pleas.

A copy.—Attest: JNO. S. CAIN, C. J. C. C. P.

ANSWER.

JEFFERSON COURT OF COMMON PLEAS.

THOMAS M. GREEN, *Plaintiff*,
v.
THOMAS F. HARGIS, *Defendant*.
} Answer.

The defendant, Thomas F. Hargis, comes and says that he was served with summons in this action in Franklin county, which is not the county of his residence, and not the county in which the alleged wrongs were committed, and therefore that the said service does not give this court jurisdiction of his person, but he hereby expressly waives such want of jurisdiction and enters his appearance.

He says further that the petition does not set out a cause of action, but nevertheless for answer thereto he says, the plaintiff did in the year 1874, compose and publish certain statements charging that defendant was ineligible to the office of Circuit Judge for the 14th judicial district at the August election in 1874, and asserting his (plaintiff's) belief that defendant had mutilated, or caused to be mutilated, certain records of the Circuit and County Courts of Rowan county; and said plaintiff did, in May, 1879, revive and circulate the said charge, that defendant was ineligible as aforesaid, and had mutilated, or caused to be mutilated, said courts' records, which charge was false and so known to be to plaintiff when he composed and published the same, as well in May, 1879, as in 1874.

Further answering, the defendant says he did compose and write, and did procure and cause to be published in the newspaper mentioned in plaintiff's petition, viz: The *Courier-Journal*, a communication containing the words, language, and statements set out in the petition herein. Said communication is in words and figures as follows:

To the Editor of the Courier-Journal:

In 1874 I was nominated by a Democratic Convention as a candidate for Circuit Judge. It was charged that I was ineligible to the office, and that, for the purpose of destroying the proof of my ineligibility, and of establishing my false claim that I was eligible, I mutilated, or caused to be mutilated, certain records of the Circuit and County Courts of Rowan county.

Out of respect for that portion of the people of Kentucky who are not familiar with the persons who originally concocted this charge and have recently revived and circulated it, nor with the facts as known to those who knew the parties and witnesses to this assault upon me, I do

now solemnly declare that the charge, in whatever form or by whomsoever made or insinuated, is false. I do further denounce those who have heretofore made, and those who do hereafter circulate this charge, as wilful calumniators. As my only answer to the charge, I declare that I was eligible to the office of Circuit Judge at the election in August, 1874, and therefore was wholly without motive to commit the crime charged. In proof of my eligibility I submit the following papers:

"STATE OF KENTUCKY, SCT.—Thos. J. F. Hargis having produced to the undersigned a certificate from the County Court of Rowan county, the county of his residence, of his honesty, probity, and good demeanor, and having been examined by us touching his qualifications to practice as an attorney at law, we hereby authorize, license and permit the said Thos. J. F. Hargis to practice as an attorney at law in all the courts of this Commonwealth.

"Given under our hands this 26th day of Feb'y., 1866.

"L. W. ANDREWS,
"Tenth Judicial District.
"R. APPERSON, JR.,
"Judge of the Eleventh District."

The license was completed by Judge Apperson, who affixed his signature to it at the April term, 1866, of the Carter Circuit Court, in the presence of myself and Samuel R. Elliott, Esq., brother of my lamented predecessor. I here give Mr. Elliott's written statement:

"In justice to Thos. F. Hargis, I feel it to be my duty to give this certificate for the public to see. There has been much said in regard to the time said Hargis should have obtained his license to practice law. I here state that I was at Grayson Court (Carter county) in April, 1866. I then and there saw Judge Apperson sign Thomas F. Hargis' license to practice law. I will qualify to the above statement whenever called on.

"Given under my hand this 20th of June, 1874.

"SAMUEL R. ELLIOTT.

"Attest: T. W. SANDFORD,
L. S. SANDFORD."

At the May term, 1866, of the Rowan County Court, on the motion of Cyrus Alley, then Clerk of said Court, the following order, of which I have an official copy, was entered:

"ROWAN COUNTY COURT, MAY TERM, 1866.—On motion of Cyrus Alley, Thos. J. F. Hargis appeared in open court and produced his license to practice law, and, having taken the oath required by law, the said Hargis was admitted to practice his profession in this court.

"Given under my hand this 27th day of November, 1873.

JAS. W. JOHNSON, Clerk R. C. C."

Mr. Alley, a few days after the offense was said to have been committed, expressed a just indignation against the outrage sought to be perpetrated upon me, and voluntarily wrote and signed the following statement:

"I, Cyrus Alley, state that I was Clerk of the Rowan County Court from 1863 to 1870 continuously, and also Clerk of the Rowan Circuit and Quarterly Courts during the whole of the above period, from 1863 to 1870; and Thomas F. Hargis, who then wrote his name T. J. F. Hargis, was sworn in as a practicing attorney at law in the Rowan County Court some time in the Spring of 1866, either in the month of April or May of 1866, and he was also sworn in the Circuit Court in August, 1866, and during that year I was very intimate with Mr. Hargis, and employed him as my attorney, and have since employed him in various important suits.

"Given under my hand this 25th day of April, 1874.

"CYRUS ALLEY."

Mrs. Nannie E. Alley sent, through her husband, to me, the following statement, with permission to publish:

"I, N. E. Alley, state that I am the wife of Cyrus Alley, who was formerly Clerk of the Rowan Circuit and County Courts, and that I was well acquainted with Thomas F. Hargis in the year 1866, and that upon one occasion I well remember of having a conversation with said Thomas F. Hargis about his practicing law. I remember that he had not then

been practicing long, and this conversation was some time in the spring of 1866, and I think either in the month of April or May of 1866.

"Given under my hand this 25th day of May, 1874.

"Attest: NANNIE E. ALLEY,

"CYRUS ALLEY."

Some question was raised after the 25th of April, 1874, as to the indefiniteness of Mr. Alley's statement relative to the month of my admission, and on the 27th day of May he wrote, sighed, and made oath to the following statement:

"MOREHEAD, KY., May 27, 1874—I, Cyrus Alley, state that Thomas F. Hargis was sworn in to practice law in Rowan County Court, at the Court House in the town of Morehead, at the May term of said Court, 1866. I have looked over the orders of April, 1866, none being missing, and none in that month in reference to him. I can therefore state the month, and this was the meaning of the first certificate I gave him. I was then Clerk of the Rowan County and Circuit Courts.

"CYRUS ALLEY."

"Sworn to before me, by Cyrus Alley, this 27th May, 1874.

"JAMES W. JOHNSON,
"Clerk Rowan County Court."

"This is to certify that I have been acquainted with T. F. Hargis as a licensed lawyer since the early spring of 1866. He began his studies in the year 1860, whilst a boy, under my supervision, and after the war he resumed his studies for a short time, and was soon licensed as a lawyer to practice. I have been associated with him in the practice of the law since the spring of 1866. This 27th April, 1874.

"H. G. BURNS."

"I, William Stewart, state that I was Justice of the Peace in Rowan county from 1864 up to 1870 continuously, and that I knew Thomas F. Hargis, and have known him since July, 1865, and I know that Thomas F. Hargis was and did practice law before me in my court, at my spring term, 1866, in various suits. And I have no doubt about this fact, of which I am cetain, he had been practicing law at Morehead before the August election, 1866, at which election said Hargis was a candidate for County Judge. I am a Republican in politics, and have been. I knew said Hargis well in the fall of 1865, and the winter of 1865 and 1866. I was frequently in his office, and he always had his law-books, and I thought he was studying hard. Given under my hand this 25th day of April, 1874.

"WM. STEWART.

"Att: CYRUS ALLEY."

"I certify that I have lived in Rowan county for near eight years (since 15th May, 1866), and that I knew Thomas F. Hargis during the whole of that time; was frequently in his law office in 1866, from June till the first Monday in August, and afterward until he moved to Carlisle. And before the August election, 1866, *I do positively know* that Mr. Hargis was practicing law, because I frequently consulted with him. And he was my attorney all the time he practiced at Morehead.

"Given under my hand this 25th day of April, 1874.

"D. BOWLING."

Mr. Bowling has, since the date of his statement, been a Justice of the Peace. I have many other like statements of credible persons not necessary to publish. Wherever duty leads me, I will go with an unshaken faith in the justice of God and with a clear conscience, trusting in the power of truth and an upright life to protect my good name. But the thread upon which my life hangs is too frail; the public trust confided to me by an intelligent and honorable constituency, who were fully cognizant of all the calumnies heaped upon me and their falsity, is too sacred; and my consciousness of my own innocence and of the ultimate judgment of all good men too profound to permit me to consume my time and strength otherwise than by the faithful discharge of my duties. And now I enter upon the performance of the onerous duties of the high office to which I have been called with the purpose to so live and labor that the rancorous fury of the calumny, upon which

I look undisturbed, will be drowned in the plaudits of those who, having known me best, trusted and loved me most; to whose partial affection and strong sense of justice I owe more than I can express.

THOMAS F. HARGIS.

FRANKFORT, June 10, 1879.

And defendant says he did mean and intend to apply to this plaintiff the language complained of and set out in his (plaintiff's) petition. But defendant says he had a right in law, to compose, write, and cause to be published as aforesaid, the said communication, and especially the words, language, and statements complained of; because he says said language, words and statements, and in fact all the statements contained in said communication are true, and were true when published.

He says the charge that he, defendant, was not eligible to said office of Circuit Judge in 1874 was based upon the further charge, made by plaintiff, "That he (defendant) did not receive his license until the 26th of August, 1866," and "that the pretended date upon it is a forgery," when in point of fact he, defendant, was eligible to said office, and did receive his license before the 26th of August, 1866, and before the 1st of May, 1866, and the date of his said license, to-wit: the 26th of February, 1866, is not a forgery, but is genuine, and all these facts were well known to plaintiff in 1874 and before May, 1879, and at the times he (plaintiff) composed and wrote and published said charges.

And defendant says that the charge that he mutilated, or caused to be mutilated, the records of the Circuit and County Courts of Rowan county, or of either of said Courts, for the purpose of destroying the evidence of his supposed want of eligibility, or to establish his (defendant's) claim that he was eligible to the said office of Circuit Judge, or for any other purpose whatever, was and is false and was known so to be by plaintiff in 1874 and in May, 1879, when he composed, published, and circulated the same. And he says further that those who made and circulated the said charges, of want of eligibility on the part of defendant, and of the mutilation of the records of the Courts of Rowan county, and especially this plaintiff who knew said charges, and each of them, to be false, were and are "wilful calumniators," and this he, the defendant, is ready to verify.

Wherefore he prays judgment; that said petition be dismissed, and for his costs and all proper relief.

W. LINDSAY,
HENRY L. STONE,
W. C. P. BRECKINRIDGE,
A. E. RICHARDS,
M. MUNDY,
R. W. WOOLLEY.

The defendant, Thomas F. Hargis, says the statements of this answer are true.

THOMAS F. HARGIS.

Subscribed and sworn to before me by Thomas F. Hargis, this 9th day of July, 1879, in Jefferson county, Kentucky.

JOHN B. BASKIN, N. P. J. C. KY.

A copy.—Attest: JNO. S. CAIN, C. J. C. C. P.

REPLY.

JEFFERSON COURT OF COMMON PLEAS.

THOMAS M. GREEN, *Plaintiff*,
v.
THOMAS F. HARGIS, *Defendant*. } Reply.

The plaintiff for reply to defendant's answer herein, says: He denies that the charge, made by plaintiff in the year 1874 and by him revived in May, 1879, that defendant at the August election, 1874, was ineligible to the office of Circuit Judge of the 14th judicial district, and that the defendant had mutilated, or caused to be mutilated, certain records of the Circuit and County Courts of Rowan county, was false or known to plaintiff to be false when he composed and published said charges in May, 1879, and in 1874. He denies that the words, statements, and language contained in the published statement of defendant, set forth in his answer, in so far as the same are complained of in the petition are, or that any part of them is, true.

Plaintiff denies that defendant received his license to practice law prior to August 27, 1866, or that he was eligible to said office of Circuit Judge of the 14th judicial district at the August election, 1874.

Plaintiff says that while he believes it to be true that the defendant did not receive his license prior to August 26th, 1866, and that the date of February 26th, 1866, thereon is a forgery, yet his said charges as to the ineligibility of defendant are not based solely upon said further charge as to the date of obtaining said license or as to the date thereon being a forgery, and he denies that said first named charges, or either of them, are based wholly upon said last mentioned charges or either of them.

Plaintiff denies that the date of February 26th, 1866, on said license of defendant is the genuine date thereof.

Plaintiff denies that the charges made by him against defendant that he mutilated, or caused to be mutilated, the records of the County and Circuit Courts of Rowan county, or either of them, was false or known by plaintiff to be false in 1874 or in 1879.

BULLITT, BULLITT & HARRIS,
STANTON & LAREW,
W. H. WADSWORTH,
Attorneys for Plaintiff.

Plaintiff, Thomas M. Green, says he believes the statements made in the foregoing reply are true.

THOMAS M. GREEN.

Sworn to before me by plaintiff Thomas M. Green, this 20th day of September, 1879.

(SEAL.)
A. M. J. COCHRAN
Notary Public.

A copy.—Attest: , JNO. S. CAIN, C. J. C. C. P.

AMENDED REPLY.

JEFFERSON COURT OF COMMON PLEAS.

THOMAS M. GREEN, *Plaintiff*,
v.
THOMAS F. HARGIS, *Defendant*. } Amended Reply.

Plaintiff, by leave of Court, herein amends his reply as follows:

He denies that the defendant received his license to practice law before the 1st of May, 1866, or before the 26th of August, 1866.

BULLITT, BULLITT & HARRIS,
Attorneys for Plaintiff.

INSTRUCTIONS OF THE COURT.

1st. The burden of proof is on the defendant to show that he did not mutilate, or cause to be mutilated, the records of the Circuit and County Courts of Rowan county, or any part thereof.

2d. The jury are the sole judges of the credibility of each and all the witnesses who have testified in the case; and, further, it is the duty of the jury to weigh and consider all the evidence in the case, and it is their duty and province to give that weight and effect to all of the evidence and the testimony of each and all the witnesses, to which, in their judgment, it may be entitled.

3d. The law in 1866 made it necessary, before a license to practice law could be granted, that the applicant therefor should first obtain from the County Court of the county of his residence a certificate that he was a man of honesty, probity, and good demeanor, and that such certificate should be produced or presented to the judges to whom the application for license was made. No special time was necessary within which, after the obtaining of the certificate, it should be so presented to the judges to whom the application for license was made.

In this case the jury are instructed that the signing and granting of his license to defendant by Judges Andrews and Apperson is to be regarded by them as conclusive evidence of the fact that the requisite certificate of his honesty, probity, and good demeanor had been theretofore obtained and presented or produced by him to said judges; but not as to the particular day or time when said order of the County Court of Rowan county was made.

QUESTIONS ASKED THE JURY.

As a special verdict has been asked for in this case, the jury are directed to answer the following questions of fact:

1. Was the defendant's license to practice law in this State, signed and granted to him by the Judges, Andrews and Apperson, before the first day of August, 1866?

2. Was the defendant sworn in the Rowan County Court as a practicing lawyer at any time before the first day of August, 1866?

3. Did the defendant Hargis at any time before the publication of his card in June, 1879, mutilate or cause to be mutilated the records of the Circuit and County Courts of Rowan county, or any part of the same?

4. If the jury in answer to question No. 3 find that said defendant, Hargis, did not mutilate or cause to be mutilated the records therein named or any part thereof, then they need make no further answer. If, however, they shall find in answer to question No. 3 that said defendant did mutilate or cause to be mutilated said records or any part of the same, then they will consider and fix the amount of plaintiff's damages at such sum within that claimed, as under the evidence they deem fit and proper.

VERDICT.

1st Ques. Was the defendant's license to practice law in this State signed and granted to him by Judges Andrews and Apperson before the 1st day of August in the year 1866?

Ans. *Yes.*

We of the jury, in answer to question No. 1, find that defendant's license to practice law in this State was granted to him by said Judges Andrews and Apperson before the 1st day of August, 1866.

JOSEPH GAULT, *Foreman.*

2d Ques. Was the defendant sworn in the Rowan County Court as a practicing lawyer at any time before the 1st day of August, 1866?

Ans. *Yes.*

We of the jury, in answer to question No. 2, find that defendant was sworn in the Rowan County Court as a practicing lawyer before the 1st of August, 1866. JOSEPH GAULT, *Foreman.*

3d. Ques. Did the defendant, Hargis, at any time before the publication of his card in June, 1879, mutilate or cause to be mutilated the records of the Circuit and County Courts of Rowan county, or any part of the same?

Ans. *No.*

In answer to question No. 3, we, of the jury, find that said defendant, Hargis, did not mutilate or cause to be mutilated the records of the Circuit and County Courts of Rowan county, nor any part of the same. JOSEPH GAULT, *Foreman.*

JUDGMENT.

Thereupon the defendant, by counsel, moved the Court for a judgment in his favor upon the special findings of the jury herein and the Court being fully advised orders said motion be sustained. It is, therefore, adjudged by the Court that the plaintiff take nothing by his petition herein, and that the defendant Thomas F. Hargis go hence without day and recover of said plaintiff Thomas M. Green his costs herein expended and may have execution.

EXECUTION FOR COSTS OF CONTINUANCE.

THE COMMONWEALTH OF KENTUCKY,

To the Sheriff of Mason County—Greeting:

We command you that of the estate of Thomas M. Green, late of your bailiwick, you cause to be made the sum of one hundred and seven dollars and twenty-seven cents, which Thomas F. Hargis late in our Jefferson Court of Common Pleas has recovered against against him for costs of continuance, December 15, 1879, whereof the plaintiff is convicted as appears to us of record, and that you have said sum of money before the Judge of our said Court, at the Court House in the city of Louisville, on the Saturday succeeding the first Monday in March next, to render to the said plaintiff his debt, interest and costs aforesaid, and have then there this writ.

Witness, JOHN S. CAIN, Clerk of said Court, at the Court House aforesaid, this 9th day of January, 1880, and in the 88th year of the Commonwealth.

(Signed) JOHN S. CAIN, *Clerk.*

SHERIFF'S RETURN.

Came to hand January 11th, 1880. No property found of which I could make this execution out of, and return by order defendant.

(Signed). J. C. PICKETT, S. M. C.

January 28th, 1880.

EXECUTION FOR COSTS ON FINAL JUDGMENT.

THE COMMONWEATH OF KENTUCKY,

To the Sheriff of Mason County—Greeting:

We command you that of the estate of Thomas M. Green, late of your bailiwick, you cause to be made the sum of ($1,617.83) one thousand six hundred and seventeen dollars and eighty-three cents, which Thomas F. Hargis late in our Jefferson Court of Common Pleas has recovered against him for his costs in that behalf expended, whereof the plaintiff is convicted as appears to us of record, and that you have said sums of money before the Judge of our said Court, at the Court House in the city of Louisville, on the Saturday succeeding the first Monday in November next, to render to the said plaintiff his debt, interest and costs aforesaid, and have then there this writ.

Witness, JOHN S. CAIN, Clerk of said Court, at the Court House aforesaid, this 22d day of September, 1880, and in the 89th year of the Commonwealth.

(Signed.) JOHN S. CAIN, *Clerk,*
By TIDBALL MILTON, *Deputy Clerk.*

SHERIFF'S RETURN.

Came to hand October 1st, 1880, at half past 8 o'clock, P. M.

(Signed). J. C. PICKETT, S. M. C.

No property found.

J. C. PICKETT, S. M. C.

SKETCHES OF THE JURORS.

JOSEPH GAULT.

Joseph Gault is a native of Ireland, born in 1814. His parents came to this country when he was but six months old, and consequently, he claims to be a thoroughbred American.

He came to Louisville in 1839, and for ten years ran on the river. In 1849 he went into the lumber business, in which he still continues, having a planing mill on High street, between Twelfth and Thirteenth,

and a lumber yard on lower Main street. The firm name is "Joseph Gault & Son."

Mr. Gault has always been a public spirited man, and has served six or seven terms in both branches of the City Council, and was recently appointed a member of the Charity Board. Mr. Gault was one of the prominent parties in the famous suit involving the Eleventh and Walnut Street Church about twelve years ago. In personal appearance Mr. Gault is of medium size, with smooth face and thin white hair, with somewhat rugged features and lines indicating great firmness, perseverance, and thoughtfulness. He is one of our self-made men. He is the oldest man on the jury, and, it is said, will probably be elected foreman.

W. C. Priest.

W. C. Priest is one of our most prominent real estate agents. He does business at 118, Jefferson street, near Fourth. He is a native of Henderson county, Ky., born in 1835. Until his twenty-first year he worked on a farm and went to school. In 1850 he started in business for himself, engaging in general merchandise and in the tobacco trade. In 1869 he started in the real estate line, in this city, in which he is still engaged. In personal appearance he is large, fine looking, with thick black hair and full beard, with sparkling black eyes which indicate his natural geniality and good humor. Mr. Priest stands high among the business men of the city for his integrity and fair dealing.

W. L. Murphy.

W. L. Murphy is a native of Maryland, born in 1822. He came to Louisville in 1852, and has variously engaged since in the steamboat business, coal trade, and in farming. Nine years ago he took the Fifth Ward flouring mills, the largest in the city, which establishment he still runs. Mr. Murphy has suffered severely in business by serving so long a time on the jury, as he has not been able to give it the attention it requires. In personal appearance Mr. Murphy is a large, well-made man, with hair just turning white, and a large gray mustache. In manner, he is hearty and pleasant.

Henry W. Barret.

Henry W. Barret is a native of Mumfordsville, Ky., and was born May 10th, 1843. He came to Louisville in 1855 and attended Professor Harney's school near the city. Afterwards he was employed as a clerk in various houses until 1865, when he started out for himself. For several years he carried on successfully a wholesale business in agricultural implements. In 1874 he associated himself with Silas F. Miller, under the firm name of "H. W. Barret & Co.," as proprietors of the Eclipse Woolen Mill, on Garden street. This establishment is the largest of our woolen mills, and is doing a thriving business, the owners having been obliged to largely increase their facilities within the last year. In personal appearance Mr. Barret is a man of medium size, with well proportioned, handsome features, and dark hair, very quiet and courteous in manner.

Joseph Enders.

Joseph Enders was born near Winchester, in Old Virginia, in the year 1816. He is the second oldest man on the jury. He came to Louis-

ville in 1834, and has lived here ever since. He chose the trade of carriage maker and has followed it successfully. He was engaged in various capacities and places in this business till 1855, when he started his present large factory on Jefferson street, between 2d and 3d. The firm name is "Joseph Enders & Co.," and the subject of this sketch is senior partner. Personally Mr. Enders is rather below medium height, of stout build, with gray hair and smooth face.

R. C. Hill.

R. C. Hill is a native of Chatauqua county, N. Y. He came to Louisville in 1854 and engaged in the manufacture of gold pens in 1861, in which business he has continued ever since. His life has been a quiet and industrious one, and he manufactures an excellent article. Personally he is a tall man, with thick black hair, and bushy beard, just beginning to be tinged with gray, he has dark, deep set thoughtful eyes, and is quiet and thoughtful as he sits listening to the testimony. Mr. Hill has just lost his father, who died this week in Franklin, Pa. The remains are to be sent to this city, and this may possibly delay the case a short time. Mr. Hill is a natural mechanical genius, never having had any instruction in his trade. He was formerly engaged in the iron business. He is a man of very extensive reading. In his youth he entered Alleghany College, but did not complete his course on account of ill health.

Henry Winter.

Henry Winter is a native of the town of Bunde, Germany, and was born November 21st, 1841. He came to America in March, 1866, and made his home in Louisville, where his elder brother, Julius, had already established himself in business. Henry immediately went into the clothing establishment of his brother, and in 1870 became a member of the firm, which is styled "Julius Winter & Co." The firm has one of the largest and best clothing houses in the city, on the corner of Third and Market. The Winter brothers are enterprising and intelligent German citizens of the better class, and have been very successful in their business. Mr. Henry Winter is personally a fine looking man, with regular German features, dark hair and beard, and blue eyes. He, like all Germans, is a great lover of music, and does all in his power to promote it in Louisville.

Joseph H. Otter.

Joseph H. Otter is a member of the firm of Otter & Bro., dealers in stoves and tin ware, Sixth street, near Market.

He was born in Edmondson county, Kentucky, June 2d, 1850, and came here in 1859. He went to school and grew up in this city, and in 1872 went into business with his brother John. Mr. Otter is the youngest juror in the case at present, since the release of William Kendrick. In appearance he is a slender young man, with light hair and mustache and blue eyes.

J. T. Campbell.

James T. Campbell was born in Louisville in 1839, and has always lived here. He has been in the establishment of R. A. Robinson & Co. for twenty years. He is thoroughly acquainted with the wholesale drug business, and is a very valuable man to his employers. Per-

sonally, Mr. Campbell is probably the smallest man on the jury. He has brown hair and eyes, and is very pleasant and affable in manner.

H. A. WITHERSPOON.

H. A. Witherspoon is a native of Clarksville, Tennessee, and was born March 19th, 1847. He was raised in Memphis, and has been in the clothing business in various capacities since his twelfth year. When eighteen years of age he joined the Southern army and served until the close of the war. In 1867 he went to Vicksburg and opened a clothing house as manager of Sproule & McKown. In 1872 he came to Louisville to take charge of the establishment of James Sproule & Co., where he continued till Mr. Sproule's health caused him to quit the business. In 1878 he opened a branch house for John Wanamaker, the largest clothing man in Philadelphia. May 1st, 1880, he bought the establishment himself and is now sole proprietor. He has the well known stand on the corner of Fourth and Jefferson. Mr. Witherspoon is a spare built man, of medium size, with light hair and blue eyes, and resembles Judge Hargis more than any other member of the jury. He is known as the poet and punster of the jury. He is a very jovial, affable gentleman.

R. E. MILES.

R. E. Miles is 47 years of age, and a native of this city. He has always been engaged in active business, and is in every respect a self-made man. In his youth, in the intervals of going to school, he was employed in his brother's chair establishment, and also in J. H. Praig's hat store. Several years later he commenced as an apprentice in the saddlery business, working as such both here and in Cincinnati. After learning the business thoroughly he was made foreman of the establishment here, in which he had worked, and one year after was taken into partnership. Five years after he bought his partner out, and has continued the business ever since, in his own name. He now does a large business at Second and Main streets. Mr. Miles was one of the organizers of the Merchants' and Manufacturers' Exchange, and was its first Vice President and afterwards President. He is a prominent Mason and a member of the Board of Directory of the Masonic Widows' and Orphans' Home, for which he has worked faithfully. In personal appearance, Mr. Miles is of medium size, with brown hair and beard, blue eyes and Roman nose. He is a very pleasant and benevolent looking gentleman.

WILLIAM C. KENDRICK.

William C Kendrick is the son of the late William Kendrick, tne jeweler, and is continuing his father's business at the old place on Fourth Street. He was born in 1852, and was the youngest man chosen on the jury. He started in his father's store in 1869, and became a member of the firm in 1874. He is a native of Louisville, and is one of our best known and most popular business men. He was one of the best looking men on the jury. Owing to the death of his father on March 16th, he was released from further jury service at his earnest request. He still maintains an interest in the suit, and has heard most of the speeches.