

TRIAL  
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SAMUEL DAVIESS,

*Davies*

FOR THE MURDER OF

HENRY PENDLETON SMITH,

AT A COURT HELD IN HARRODSBURG,

SEPTEMBER TERM, 1818;

WITH AN APPENDIX.

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FRANKFORT:

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1819.

Gift

90.18.63 (Spec Coll)

ALSO ON  
MICROFILM  
NEGATIVES

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TO THE PUBLIC.

*THE* object of this publication is, to expose vice, and do justice to the character of an unfortunate youth.

On considering the circumstances which led to the death of a promising son, and remarking the incidents which occurred on the trial of his murderer, the undersigned deems it a duty which he owes to society, to expose those profligate men who conspired his destruction or were pleased at its accomplishment.

The character of the deceased, for integrity, honor and truth, was unspotted. Yet an attempt was made to prove that falsehood was the occasion of his death! It was a duty which an affectionate father owed to a murdered son, to wipe this imputation from his memory. This, he believes, is completely done by the testimony and the appendix.

In the following publication, the testimony, as to the guilt or innocence of the accused, is inserted complete, and all those decisions of the court which had an important bearing upon the trial. To have inserted the preliminary proceedings entire, and all the arguments of counsel, would have increased this pamphlet to an enormous size, and was not necessary to a correct understanding of the circumstances which attended this mournful event and extraordinary trial. However, did not the subscriber believe, that the public will think with him, that the interested speeches of lawyers would rather perplex than elucidate a subject which is sufficiently plain, from the testimony alone, to the most common capacity, he would insert the speeches, at whatever trouble or expence. Justice and truth are his object. He has no revenge to gratify, and nothing now can bring back his beloved son from the unknown land to which he has gone. The wise and the good will appreciate his motives, and do justice to his feelings; but he expects the censure of the wicked and depraved. Devils curse the hand of Eternal Justice which inflicts their torment.

Whatever may be the opinion of the public, he has the approbation of his own conscience; and when society shall awake from its present lethargy, and visit upon the great as well as the little, upon the rich as well as the poor, the punishment due to their crimes, then, if not before, will he stand justified and applauded in the eyes of an impartial world.

110796

JESSE SMITH.



THE undersigned having reported the testimony in this case at the request of Mr. Smith, would merely observe, that his only object has been to give a true and faithful report. There may be omissions and mistakes; but he is satisfied they are few, and knows they are not intentional. Whatever errors may have been committed, he has the fullest confidence, that most of those who are interested, will be too liberal and too just to impute them to any other source than the difficulty of taking down the very words of a witness, in the noise, the hurry, the anxiety and perplexity of an important criminal trial.

AMOS KENDALL.

## TRIAL, &c.

### PRESENT.

WILLIAM L. KELLY, *Judge.*

PAUL I. BOOKER, *Attorney for the Commonwealth.*

JOHN ROWAN,

GEORGE SHANNON, } *Attornies for the accused.*

THE grand jury having reported the indictment, both for murder and manslaughter, a true bill, on Tuesday morning September 11th; that day, Wednesday and Thursday were spent in preliminary proceedings, during which the *array* of the *venire* was quashed for partiality in the sheriff, the coroner and senior magistrate set aside for the same reason, and an elisor appointed to summon a new *venire*. There was not, however, any imputation of improper conduct against any of those gentlemen.

### FRIDAY, SEPTEMBER 11.

The jury having come into court, to wit: Thomas W. Fry, Starling Turner, Frederick Harris, Cornelius Cozine, William M'Ginnis, Anthony Prewitt, Charles Row, George Caldwell, William Phillips, Samuel Bunton, Elisha Stone and James M'Ewing, the trial proceeded.

### TESTIMONY ON THE PART OF THE COMMONWEALTH.

#### *Claiborne Bradshaw examined.*

Witness stated that he was standing about five steps from Smith and Daviess, but heard none of their conversation. The first thing which attracted his attention was Smith's raising his arm, at which time Daviess likewise raised his arm, and they gave a blow apiece about the same instant.

*Questioned by Mr. Booker.*—He was not looking at them until he saw their arms raised; both raised about the same instant; he thought Smith's hand was open, but did not know; did not think the blows very violent; Daviess staggered back a little, whether from the blow or not he did not know; did not see Smith advance—they were close together; Daviess.

might have got away if he had tried, was not hemmed in; there was a post near, but it was his impression there was a passage by it through which Daviess might have escaped; heard Daviess make no threat; did not see Smith have any weapon; saw Smith that day afterwards, but did not see the wound.

*Cross-examined by Mr. Rowan.*—Witness did not know whether Daviess' hat was on or off—did not notice; the first thing which attracted his notice was Smith's raising his arm; knew nothing about the quarrel, and did not hear a word of the conversation; thought that Daviess stood on the outside of the posts, and Smith on the inside, upon the side-walk; did not recollect whether there was any plank across from post to post or not; did not know whether Smith's hand was open or clenched; saw them both strike; thought Smith struck Daviess in the face; Daviess appeared moved back, but he did not know whether by the blow or whether he retired; saw only one blow; Smith used great exertions to get at Daviess again, and appeared irritated, but was held by capt. T. P. Moore and col. John Thompson; did not see Daviess advance at all; heard no threats, and did not see Daviess before on that day.

*Questioned further by Mr. Booker.*—Witness said, it was after the blow, that Smith appeared irritated; it was his impression that Smith gave Daviess a slap, and not a blow, but he was not certain.

*Thomas P. Moore examined.*

Witness was passing out of the court-house to Williams' store, on the first day of the election, and when he came, on the inside of the railing, saw Smith and Daviess in conversation on the outside; did not apprehend a fight, but after he had passed them some steps, heard the noise of fighting. Witness turned back, and saw Smith's fist drawn back, and likewise Daviess'; Smith's blow appeared to strike Daviess' head, and Daviess' appeared to strike Smith about here (putting his hand on the collar bone of the left side); did not see the previous blow. Witness rushed in and seized Smith, to prevent further violence.

*Questioned by Mr. Booker.*—Witness saw no dirk in Daviess' hand until he had turned around after letting Smith go; Daviess appeared staggered back by the blow, but showed no disposition to retreat; both were standing outside the railing, Daviess' back being obliquely towards it; saw no weapon in Smith's hand; Daviess was standing, when witness

turned round, with the dirk in his hand; did not then know that Smith was wounded; presumes Daviess might have retreated, but it is matter of opinion merely; there were not many persons near; Daviess was not brought to the ground by the blow, but staggered; knows not which struck first; saw no advance; both were close to the railing; the passage was near; thought Daviess stood three or four feet above it; the railing is about waist high.

*Cross-examined by Mr. Rowan.*—Witness said Daviess was close by the post; Smith showed a strong disposition to pursue Daviess—he broke away from witness, but was prevented by the help of Mr. Thompson; Daviess might have given Smith another blow, but it must have been while witness was holding him; Smith's strength had not been tested—he was well formed and to appearance a stout man—was 21 years old, as witness was informed, and Daviess was 43, according to his own declaration.

*Questioned further by Mr. Booker.*—Witness did not know Smith's weight, but supposed it might be about 170; in the first part of the affair Daviess might have got away; when witness passed them in conversation, they were not very near the railing, and if Daviess had turned, the street would have been before him; saw no weapon in Smith's hand; did not know Daviess' weight, but supposed it to be about 150.

*Cross-examined further by Mr. Rowan.*—Witness did not believe Smith's weight to be 200, but it may be 170 or 175; when witness passed them in conversation, Daviess might have got clear by turning and running; he was within three, four or five feet of the railing; did not see him on the railing—when hold of Smith, witness' back was turned to him—on turning, saw him standing near it, with the dirk in his hand; it is witness' impression that Daviess' hat was put on when he turned round; did not observe the dirk when he first interfered; had seen Smith repeatedly on that day before, but was ignorant of his intention to attack Daviess; saw him about half an hour before; from Daviess' position when witness passed them, he supposed he might escape by running, but knew not how it might have been changed by the subsequent quarrel; he thought Daviess' blow struck Smith's neck.

*Questioned further by Mr. Booker.*—Witness said, when the blows were given there was no attempt to escape; both were making towards each other; by turning one way Daviess would have been against the railing, by turning the other he would have had the street before him and might certainly have passed.

*Cross-examined further by Mr. Rowan.*—Witness did not say he could have escaped the blow which was then aimed at him.

*William Nourse examined.*

Witness said, he knew little about it; he heard a noise, and turning his eyes saw a couple of men, one of them capt. Daviess, the other he did not know, aiming a blow at each other. Both blows were given at the same time, and he thought Smith struck Daviess, but that Daviess did not strike Smith, for his fist did not seem to touch him; the street was full of people, and he did not see any thing more.

*Questioned by Mr. Booker.*—Witness could not see their position, as he was across the street; Daviess' back was down the street; he could not see how near they were to the railing; was sure Daviess' back was down the street, for he was on the other side, and saw his side-face; did not see Daviess retreat; thought the blow was violent; Daviess staggered down the street; could not see whether he was against the railing or not; did not know that any wound was inflicted.

*Cross-examined by Mr. Rowan.*—Witness could not see the whole posture of Daviess' body, but saw his side-face and shoulders, and thought his back was down the street; his attention was attracted by the noise of the affray.

*Questioned further by Mr. Booker.*—Witness thinks Smith's back was up the street; he was not between witness and Daviess.

*Cross-examined further by Mr. Rowan.*—Witness was at the upper end of the market-house, a little lower down the street than Daviess and Smith, so as to form a small angle; thought both parties advanced, but did not know whether they stepped or whether it was the effort in making a blow; did not see their feet.

*John Thompson examined.*

Witness did not see the commencement of the fight; he first saw Daviess staggering towards the post, as if he had been struck or pushed; thought he had been pushed by Moore; as he was staggering, his hat fell off; witness sprang in by Daviess, and seized Smith.

*Questioned by Mr. Booker.*—Witness did not see the stroke or the weapon; they were near the railing; did not see Moore push Daviess—when witness crept in, he was between Daviess and Smith, keeping them apart; there was room enough for Daviess to get away, if he had tried; did not know that

Smith had any weapon—he appeared to exert himself in the contest; did not see the wound, but Smith said he was dirked, as we were carrying him off.

*Cross-examined by mr. Rowan.*—Witness said, Smith made violent exertions to get at Daviess again; he was a large strong man; did not see Daviess either retreat or advance; he had before him a dirk or a knife; when the blow was given he staggered back obliquely against the railing.

*Questioned further by mr. Booker.*—Witness did not know whether the whole chain of posts was planked at that time or not.

*Stephen Munday examined.*

Witness was standing opposite the market-house, near the upper end, when he saw a quarrel raised across the street. He went over, and saw col. Thompson have hold of Smith, whom he took away. Davis was standing with his dirk in his hand, and observed that he had stabbed him with his dirk—that he did not know whether he had done him any injury, but damn him he did his best to put it to his heart. Witness then turned and went away.

*Questioned by mr. Booker.*—Witness said, he did not see the commencement of the fight; they were carrying Smith away, and there was a crowd of people around.

*Cross-examined by mr. Rowan.*—Witness did not know to whom he first gave this information, nor how the prosecution knew it; he might have spoke of it in the presence of some of them; Mr. Riggs applied to him; did not recollect any person standing by, except perhaps Basil Prather; the expression was used a minute or two after he stepped up; Thompson and Smith had gone up street; did not know to whom the expression was addressed—it was to a man before him; witness knows Williams, former sheriff—did not see him present; did not know whether Mr. Bridges or Mr. Pryor was there, for paid no attention; did not know who the young man was, until he enquired and heard it was judge Smith's son; saw Daviess with the dirk in his hand, who said he did not know that he had injured him, but he did his best to put it to his heart; did not notice any person between himself and Daviess; did not observe the post and railing.

*Question.*—Did not Daviess say he had dirked him, and he would dirk any man who would rush on him without cause in the street?

*Answer.*—No; he said damn him he did his best to put it to his heart, or he wished he had put it to his heart—witness

thinks he said he did his best, &c. There might have been fifty persons present, for the street was full; there was a crowd on the outside in front, he was on the right hand down the street below Daviess; remembers nobody there but Prafter; has been in the county 12 or 15 years; thought he had repeated the very words of Daviess; no person had applied to him but Mr. Riggs, as he could recollect; did not know whether the deputy sheriff had applied to him; he was summoned by Westerfield; did not know whether Smith was out of sight, for he did not look after him.

*Thomas Keel examined.*

On Monday, the first day of the election, witness was standing near the upper corner of the market-house, with his back towards the street, when he heard the cry of a fight. He turned around and saw Daviess standing up and Thompson carrying away Smith. Witness went over to the spot, and while he stood there Daviess spoke these words: By God I aimed to kill him, and damn him I will kill him if he comes near me. Witness saw the dirk in Daviess' hand, down by his side.

*Questioned by mr. Booker.*—Witness did not see the scuffle, the first he saw was Daviess standing up and Thompson taking Smith off; Daviess was standing on the side of the street near Williams' store; there was a considerable crowd about; witness walked off after hearing the expressions; saw the wound, it was on the collar bone, it was fresh, and there was blood on the outside.

*Cross-examined by mr. Rowan.*—Witness does not recollect to whom he mentioned this circumstance, except to Tom. Woods and Edward Worthington, the latter of whom called at his house to enquire what he knew about it, and he told him the same words; Smith was not carried off when he went over from the market-house, but they were carrying him off; saw doctor Bosley and col. Thompson between Daviess and Smith; saw Bosley have hold of Smith, who struggled violently to get at Daviess; knew Thomas P. Moore, but did not see him; saw what he saw when walking over the street; did not know Smith before; did not see Williams or Bridges there; his whole attention was turned to the parties; Daviess used the expression after he was up and Smith was away from him; it was a common dirk, did not know whether it was silver hilted; did not know to whom Daviess spoke; he was near him on the upper side, nobody between; did not know Stephen Munday; is positive that Daviess used the

words "by God," to the best of his knowledge; did not know whether Worthington knew before he told him, what he would state or not: Worthington did not repeat the words to him, but asked what he had heard, nor did he mention what other witnesses would prove; witness believes he did state what he understood witness would prove; did not know when Worthington applied; he was the only one that applied, and he did not go into witness' house, but sat on his horse at the bars and enquired.

*Andrew Kitox examined.*

Witness was passing out of the court-house, and when he had got out at the door, he saw doctor Bosley leading Smith along, and thought they were going into the clerk's office, but they passed on and went into a small house above. Witness ran up and saw the wound, and asked how it had happened, but could not learn. He then went down to Mr. Daviess' store, and went in, where he found Mr. Daviess, Mr. Bridges and many others. Some person asked Daviess how deep the wound was—he answered he did not know, but he took damned good aim, and the next time he got a crack at him he would aim a damned sight better. Some person asked Mr. Bridges the same question, and he said it was a damned pity he had not put it into him up to the hilt.

*Cross-examined by mr. Rowan.*—Witness said he did not hear of the jury which tried Daviess for a riot until some days after, it could not have been before Daviess made these expressions, or if it was, it was very hasty; he thought Daviess was angry—he spoke in an angry mood; witness made no enquiry before he got to the house where Smith was carried, when he got there many people were crowding around, the house was full, he enquired how it had happened, and could get no information, only that Smith had struck Daviess and that Daviess had dirked him; Smith gave no detail of the circumstances, for he was not in a situation to do it; witness did not know who made the enquiry of Daviess, but thought it was a man in cotton clothes; he observed only Bosley and Moore with Smith; who else was with him he did not know; did not know Samuel M'Affee; all present might have heard the expressions of Daviess, if they had listened; Daviess was in his store, near the door; witness was within the house; did not know who else were present, the entry was full; did not enquire of any body as he went along, nor did he remember of whom he first made the enquiry; witness thought the expressions horrid, and remembered them better



on that account ; did not hear any other person express what he felt ; witness was not applied to by any body for this information, he stated it at Perryville ; he was first asked about it by Anthony Johnson ; judge Worthington had spoke to him on Monday, since the court began.

*Question.*—Do you recollect hearing Daviess say it was a random stroke ?

*Answer.*—No ; I heard no such expression.

*Question.*—Did not Daviess say that he would stab any man who would rush on him without cause ?

*Answer.*—I do not recollect such an expression. I think he said that Smith rushed on him.

Witness did not hear Daviess say it was unexpected ; was in the store from five to fifteen minutes ; went out immediately after hearing those expressions ; Daviess sat on the counter, persons were speaking to each of the characters who sat there.

*Question.*—How can you account for the anxiety which led you into Daviess' store ?

*Answer.*—If an affray happened here, I reckon you could get information of it here better than in Lexington.

Witness knew Daviess, and expected Daviess knew him, as he shook hands with him, he either knew or affected to know him.

*Cross-examined further by mr. Shannon.*—Witness knew neither Smith nor any of his family, except by sight ; nothing but curiosity led him to the store ; knew Daviess better than Smith, never shook hands with Smith ; remembered the expression, because he thought it was horrid that the man should feel so.

*James Wood examined.*

Witness knew nothing of what took place on the first day of the election. On the last day, he was coming from Daviess' store to the court-house, when he saw some man standing in the street with his arms on Daviess' shoulders, talking with him. Witness stopped when close to them, and heard Daviess say, that at the time he stabbed Smith it was his intention to kill him, and he still wished he had done it.

*Questioned by mr. Booker.*—Witness said, they were standing in the street near the store door ; had no conversation with them ; did not know the gentleman to whom Daviess was speaking ; it was after dinner.

*Cross-examined by mr. Rowan.*—Witness took the sacrament here last Sunday ; did not take up a stray last spring,

doctor Humm took up one; the conversation was on the third day of the election; no one else was near; they were standing as if they were talking secrets, witness stepped up and heard the words stated, when he came to the court-house; Daviess said he meant to kill Smith, and still wished he had done it; Daviess did not say meant to kill Smith, but said meant to kill *him*, witness supposed he alluded to Smith; thought the expression horrid; their voices were not high; witness did not speak—knew not whether they observed him—was close to them, partly at Daviess' back—wished to get information. On being asked by Mr. Rowan, whether it was his habit to behave in that manner, he said it was his habit to behave like a gentleman. Made no enquiries of them; spoke of it first at home; did not know who was there, nor how many he had told it to; thought he had mentioned it to Jo. Burcham.

*Question.*—Did you not say, at Smock's sale, that you thought Daviess had done right, and that if you had been in his place you would have done the same?

Mr. Booker objected, that whatever the witness thought, it could not be evidence.

Mr. Rowan contended that this question was admissible, to show the consistency and credibility of the witness, &c.

*By the Court.*—If the witness had withheld the expression of his horror, the question would be improper and impertinent; but as he has spoken of his horror before the jury, the court thought the question admissible and proper.

*Answer of witness.*—When I arrived at the sale, they were talking of this transaction. A considerable argument arose, and Eccles took a very active part in favor of Daviess, and seemed to be in a great passion. I observed, that if Smith had said he would rush on Daviess, I did not blame Daviess for what he had done, and that I would do it myself.

Witness did not know to whom he had given the information; he often spoke of it in his family; did not know the man who was talking with Daviess, he might weigh 160. and was perhaps forty years old; witness had conversed with nobody on the subject, during the court, but a Mr. Coombs, a witness; Coombs asked him what would be his evidence; did not question Coombs.

The witness was required to repeat the words of Daviess in the first person, but refused, alleging that he had already given the words several times.

The court directed him to repeat them in the first person, which was done.

Witness stated, it had not been suggested to him to watch Daviess; he did not buy any thing at the store; he went to the store as much before as since; could not say whether when he was last in, Daviess was absent and he had waited his return; saw the man who was talking with Daviess once since, down on Salt river, at the time of the sale; knew him by his having a handkerchief round his neck and one arm slung up as if it was sore; did not say his arm was in the sling when he was talking with Daviess, but on Daviess' shoulder; the handkerchief was of the same kind as the one lying on the table.

*Richard Thompson examined.*

Witness was at Williams' store, and hearing a fuss looked out into the street. He saw Daviess and Smith in a striking position, and saw Daviess' hand up. They were separated, and witness stepped out. He saw the dirk in Daviess' hand, and heard him say he was getting to be an old man, and would defend himself when attacked by a young man.

*Questioned by mr. Booker.*—Witness did not see the commencement of the affray nor the blows, but saw the parties in a striking posture; did not see Daviess retreat; knew not which way his face was turned, it seemed sidewise to the street; Daviess was near the post, his back partly towards witness; the post was between him and witness; the posts were some feet apart, Daviess could have passed between and gone up or down the side pavement; witness saw nothing like advancing or retreating; Daviess appeared very angry.

*Cross-examined by mr. Rowan.*—Witness said, that Daviess stated that he was getting to be an old man, and would defend himself when attacked by a young man; Daviess went home immediately; witness did not see any railing on the posts.

*Questioned further by mr. Booker.*—Witness said Daviess' back was rather obliquely against the post; did not know what induced Daviess to go armed, nor whether he usually went so.

*Question by a juror.*—Did you see Smith strike Daviess?

*Answer.*—No.

*John Wycoff examined.*

Witness knew nothing about the fight. He was afterwards in Daviess' counting room, and heard him say that he had insulted Smith, that Smith struck him, and he threw up his hand and stuck him in his damned woosen.

*Cross-examined by mr. Rowan.*—Witness said, that he had reported what he heard at different times, and had spoke of it at William Timberlake's, and that George B. Thompson, in particular, spoke to him and enquired what he knew.

*Bentley Taylor examined.*

Witness said, that all he knew took place at Bullock's stable, in Perryville. Daviess was told that Smith had stated that he was not a friend to the war, and Daviess said that Smith was a damned, pitiful liar, an understrapper and a tool, and he would tell him of it as soon as he got to town.

*Cross-examined by mr. Rowan.*—Witness said, that Smith had stated that Daviess was an enemy to the war and to every act of the administration; he did not hear Daviess make any threats.

*Henry Willis examined.*

Witness stated, that a few days before the election, Daviess called at his house, and said that he understood Smith had been making statements injurious to his election. Witness told him he had not heard any from Smith. Daviess staid some time, and named what Smith had said at Bullock's. Witness told him he had not heard of it. Daviess then said that Smith was employed by Moore to electioneer against him; that he was a tool for Moore, and a damned, mean, lying rascal. Witness never heard Smith make any statements about Daviess at all.

*Cross-examined by mr. Rowan.*—Witness told Daviess of something he had heard that Daviess had said, and told him something which passed at his table, between him and captain Moore.

*Question.*—Did you not tell him that capt. Moore said that he had got Woodson to treat for him with two barrels of whiskey, and that he had employed two men who were notoriously insolvent to electioneer for him?

*Mr. Booker* objected to the question.

*Capt. Moore*, who was in court, requested that the examination might proceed, and the witness be permitted to answer, to which *Mr. Booker* assented; but the court interferred and forbade it.

*Dr. Josiah Hale examined.*

Witness was present at the time and place mentioned by Taylor, and heard Daviess call Smith many hard names, such as an understrapper and a pitiful liar.

*Questioned by mr. Booker.*—Witness said, that something which Smith had stated to doctor Gordon, led to this conversation. It was stated, that Smith said Daviess was an enemy to the war, and that Bullock had given up Smith as the author of the report—he did not pay very particular attention to the conversation.

*Cross-examined by mr. Rowan.*—Witness did not recollect that it was told to Daviess, that Smith had said he was an enemy to every act of the administration, and he heard Daviess make no threats.

*John Hanna examined.*

*Questioned by mr. Booker.*—Witness heard some conversation about the dirking, at Gordon's room. Daviess was present, and said that he did not think the wound was deep enough to kill him, for he had examined the dirk and [putting his finger on his thumb, upon the joint] said that it had not gone in farther than that. Dr. Huna, Mr. Bridges and others were present.

*Cross-examined by mr. Rowan.*—Witness was sure, that Daviess put his finger near the joint, and not on the thumb nail; did not recollect his saying, that it did not penetrate more than one eighth of an inch. The evening after Smith's death, he mentioned this conversation to several gentlemen, and believed that doctor Bosley was at his right, and Mr. Worthington at his left, and several others were present: thought Daviess put his finger upon the top of the joint: never heard Daviess make any threats directly or indirectly.

*Edward Bullock examined.*

Witness stated, that Daviess was a candidate for the legislature, and some things of an arbitrary nature were reported which he had said about the establishment of the bank. Capt. Daviess procured some certificates to vindicate himself from the charges. On the — day of August last, he called at my house, and asked if I had made any objections to him? He then brought the certificates and showed them to me. We then conversed concerning the precinct, and he said he would satisfy me on that point. We then sat down to dinner, and at the table I told him that I understood he was inimical to the war. He enquired who had said so, and stated that it was a lie. As he seemed to wish to know who was the author, and lest he should think that I started the report, I thought I must give up somebody. Looking around, I saw doctor Gordon, to whom Smith had made the statement. I told Daviess that

Smith had said so. I do not know whether I can recollect the precise words which he used, but he said in substance, that Smith was a mean, pitiful liar, an understrapper and a tool, and if ever he lived to get to Harrodsburg, he would stop him from telling any more lies about him. After Daviess went away, I felt uneasy; for I had never given up an author before. I therefore wrote a letter to Smith, informing him, that I had given him up as the author—stating that I was sorry for it, and would explain the matter to him when I saw him. To this letter I received an answer, which perhaps it is unnecessary to read.

The letters were submitted to the counsel for the accused, who read them, and observed, that it was unnecessary to trouble the court and the jury with the reading of them, as they could not be evidence in the trial. It was admitted on all sides, that they were not evidence, and they were not read.

[These letters may be found in Appendix, Nos. 11 and 12.]

*Questioned by Mr. Booker.*—Witness gave no information to Smith in his letter of what Daviess had said, but only told him, that he had given him up as the author of the report; there was nothing in the letter calculated to raise Smith's passions; witness does not remember the words used by Daviess precisely, but he said if he lived to get to Harrodsburg, he would stop the rascal's mouth from telling any more lies about him, or something to that effect; Smith was at witness' house on Tuesday preceding, going to Springfield, as he said, to take depositions—he dined there on his return, and used the expression which he made relative to Daviess, to Gordon; witness tried to impress Daviess with a belief that Smith had not made the expressions on his own knowledge, and that he was not electioneering against him at the time.

*Questioned by Mr. Rowan.*—Witness did not recollect whether Smith said that Daviess was opposed to every act of the administration or not, but thought he said he could prove what he had stated by a hundred men; Taylor, Hale and others were present; witness is positive that Daviess said when he got to Harrodsburg, he would stop his mouth; witness and Daviess were not very warm in that conversation, he was surprised that they were not more so; remembered the expressions of Daviess, because they made such an impression on his mind that he enquired the next Sunday whether an affray had happened between Daviess and Smith; witness had never stated he did not think the expression of Daviess a threat, but he had said he had his doubts, he did not know whether it was a threat or not; for an hour or so Daviess

seemed irritated, but at last appeared to be in a good humor; drank some grog with witness and cracked a smile; witness did not know that Daviess said any thing about his respect for Smith—he said he was an understrapper and a tool, going through the country telling lies upon him, and that others were engaged in the same business; never heard the statements made by Smith in circulation before Daviess was at his house, but afterwards heard them from others.

*Questioned further by mr. Booker.*—Witness gave up Smith as the author of what he had heard of Daviess, but understood that Smith made the statements as coming from others; for he said he could prove it by hundreds; understood it not as a charge made by himself, but by others.

*Questioned further by mr. Rowan.*—Witness stated, that Smith said he was informed that Daviess was hostile to the war, and it could be proved by hundreds; did not recollect that Smith said Daviess was hostile to every act of the administration.

*Doctor J. A. Tomlinson examined.*

Witness did not see the affray. After it was over, he was called on to examine the wound which Smith had received. He did so, and at that time he thought it slight, as did all the doctors who were present. He probed it, and finding that the probe would not enter to any considerable depth, pronounced it a mere scratch. After the death of Smith, he was called on to examine the body. On opening it, they found the left cavity of the thorax filled with chyle. This is a fluid resembling milk in color, which contains all the nutritive matter of our food, and passes through a vessel called the thoracic duct, which leads from the lower parts of the body, where our food is digested, up near the spine or back-bone, crosses over to the left side, rises nearly to the top of the thorax or breast, and then turning downwards empties its contents into the left subclavian vein, by which it passes into the heart and lungs, is formed into blood and driven out through the arteries into every part of the body. On finding this matter in the cavity, the surgeons concluded the duct must be wounded, as they supposed it could come there from no other cause. We did not examine the duct.

*Questioned by mr. Booker.*—Witness thought the wound was in the neighborhood of the duct; had probed the wound so little before death, as not to ascertain; thought at first it had struck the collar bone—if so, it could not have touched the duct; nor could it have injured the duct, unless it passed

over the collar bone, for he was certain it did not pass under; if it passed over, it would not necessarily touch the duct, and witness did not suppose it had, until after Smith's death; witness thought they could not be mistaken in the nature of the fluid, but he would not be positive—it had the complexion of milk—the death could be attributed by the physicians to no other cause; it is this fluid which nourishes the body, and when diverted from its course the person dies; witness never heard or read of a case in which this duct was broke or cut; it is not very close to the collar bone, it lies behind other important blood vessels and passes over back of the collar bone into the subclavian vein, and if wounded at all it must have been in that part; witness had no doubt the duct was wounded, though he should doubt, had he not found the chyle, which was proof that the duct was cut or broken; for if he wished to reach the duct for any purpose, it would be almost impossible to do it, in consequence of important blood vessels which lie before it—yet it must have been broke; had no doubt the fluid found in the thorax was chyle, but did not analyze it; the cutting of this duct is certain death, as it cuts off the whole nourishment of the body, and it cannot be tied up like a blood vessel, for there is no other channel through which the chyle can force itself; there is said to be sometimes a biforkation or division in the duct before it enters the vein, but witness had never seen one in that situation; any fluid in the cavity of the thorax would produce the symptoms which appeared in this case—such as a disposition to set up, difficulty of breathing, pain in the side and great debility; it is possible, but not probable, that a dirk could pass the arteries and veins without injury, and cut this duct; from the circumstances of the case, finding the chyle in the cavity, and supposing it came from the wound, it was the opinion of all the physicians that Smith's death was caused by the wound.

*Questioned by mr. Rowan.*—Witness thought it would be difficult to penetrate to the thoracic duct without producing large quantities of blood from the lips of the wound; it would be difficult for the most skilful anatomist, with his instruments, to penetrate to the duct without cutting important blood vessels; the quantity of chyle produced in each day, is about five pounds, as is stated by anatomists; if a person were wounded through the duct into the chest, and were in an erect position, the chyle would most likely pass into the cavity—if he were not in such a position, it might rush out; it is not possible that the whole chyle, accumulating five pounds per day, and one pint to the pound, could for three days pass



into the chest and the man still appear to be in perfect health—it would cause great debility, great oppression in the thorax, the left lobe of the lungs would be contracted, and the person suffer great pain; witness should not think it possible that the duct could empty all its contents into the chest, from Monday to Wednesday, and the person still be walking about in apparent health—he would naturally be getting worse, suffering more pain and feeling a greater oppression; a horizontal blow, to cut the duct, must first cut the subclavian vein—if it passed over the collar bone, the direction of the blow must have been downwards, to cut the duct and enter the cavity—it must make an angle of about 45 degrees; it is there about one and a half, perhaps two inches from the outer surface into the chest; it is improbable that the duct should ever be ruptured or cut—the only thing which made the doctors suppose it was so in this instance, was the existence of the fluid in the cavity of the chest; if the subclavian vein were cut, it would not produce instant death, unless some artery were likewise cut; there are various arteries in that neighborhood; there are likewise the lymphatic ducts, which extend from the inner surface of the pleura, the coat of the stomach, to the thoracic duct, and carry off into that duct the fluids which collect in the cavities. The principle of retrograde action, when the parts are injured, or when there is great debility, is admitted by some anatomists; but on this principle, supposing the chyle thrown through the lymphatics into the cavity, the quantity found there must have kept them very busy, though they might produce a considerable quantity; it is not probable that such could have been the fact, for it would have been found in the right side as well as the left. Witness said the dimensions of the wound at its lips were about a quarter of an inch, and if the dirk went in deep it must have been small; it entered the body rather transversely; he moved the skin and probed in various directions, and could easily have followed the wound if he had hit it; he used the diligence which was common to surgeons, and was surprized he did not find it; if the blood vessels had been cut, it is reasonable to suppose a considerable quantity would have issued, although it might pass into the chest, if the wound penetrated there. Witness said the pleura is muscular and very sensitive, a wound through it must produce much pain, and the flowing of the chyle through the wound would probably increase it; and he did not believe a man could be well, or tolerably well, three days after it had been wounded. They did not analyze the fluid found in the chest, but had no

doubt it was chyle. Witness examined on the inside of the pleura for a wound, but found none. He found two orifices which he supposed were made by the knife in dissection, as they appeared like new wounds. From a wound passing through into the cavity, there must be some blood; on the dissection no blood appeared in the cavity, except some clots on the lower surface, which probably fell from the large blood vessels in the dissection. Towards the bottom of the fluid it appeared tinged with blood, but it might have come from the blood vessels cut at the time. It was his conclusion at the time that there had been no loss of blood. [Here the dirk was submitted to the inspection of witness.] The dirk is very broad and dull, and, witness supposed, if it struck against the duct, the parts would give way and it would slip by, as the veins will often move under the point of the lancet, and this duct is, from its contractile power, still more difficult to cut; in the situation the dirk now is, it must produce laceration, pain and inflammation. Nature secures all the vital parts with extreme care; hence it is not likely the thoracic duct should be cut, without at the same time cutting some other vital part, which would produce instant death. The neck is harder and more compact in its construction than the rest of the body, and witness should hardly think that a man could give force enough to that dirk, in its present state, to drive it through that part of the body into the chest. The wound was nearly an inch wide, not so wide as the dirk, but as the edges are very dull it might have contracted; in the situation in which the dirk now is, it would be hardly possible for Daviess to drive it through into the chest of Smith, independently of his clothes. Witness supposed he could easily follow a wound made by that dirk, if he had found the orifice—it was hardly possible he should miss it. In probing the wound, the probe went over the collar bone, but he could not follow the wound more than about an inch. Anomalies frequently occur to physicians, and they often meet with them as unaccountable as the existence of the chyle in the left cavity of the thorax. The only evidence that it came from the wound, was, the existence of the wound in that neighborhood. Witness entered his probe its whole length into the orifice nearest the direction of the wound on the inner side of the pleura, and it did not come out at the exterior wound.

*Questioned further by Mr. Booker.*—Witness said the wound was lacerated but very little; he should have supposed, if made with that dirk, in its present situation, it would have been more so; it would require great exertion to drive that

dirk through Smith's clothes and skin, as deep as the wound appeared to be; he did not give his opinion that this is not the dirk, but should think that in its present situation it would make a lacerated wound; on the entrance of a dirk so dull, the skin would stretch and again relax when it was drawn out, so as not to show so wide a mouth, but would not contract so much as one third. Witness had seen the dirk before, and believed it was Daviess'. He did not think the dirk entered horizontally; but if it had, it would not have struck the collar bone, but gone above it—he concluded at the time, that the direction of the wound was nearly perpendicular. If the muscles of that part were contracted, they would bring the wound lower down; it was possible that the skin or cellular substance might have changed its position, so as to have prevented the entrance of the probe. When Smith was dead, the wound appeared further above the collar bone than it was before, when it appeared about a quarter of an inch above it. Witness could form no opinion how so large a quantity of chyle could find its way into the chest, unless the duct was wounded; there were about 16 pounds of fluid in the cavity; he would suppose that if the wound was considerable, the whole quantity of chyle would either pass into the body or outwards. Witness did not see him at first, but was soon sent for, and found his symptoms, breathing hard, oppression in the breast—thought he needed physic; these are symptoms which always happen when the chest is penetrated; there was not more chyle in the cavity than might have been expected if the whole had passed inwards after he received the wound; the quantity of chyle formed each day depends very much on the health of the person, together with the quantity and quality of his food. The last part of the chyle was tinged with blood, and there were some clots of blood at the bottom, which he supposed had fallen in during the dissection.

*John M' Coy examined.*

Witness did not see the affray, as he was at that time in Hanna's store. On hearing of it, he immediately came up street, and saw Daviess standing. Some person, witness does not know who, asked Daviess whether he meant to kill Smith? He answered, "damn him he meant to put it to his heart."

*Cross-examined by Mr. Rowan.*—Witness said this was while they were carrying the young man off; he was immediately summoned on a jury to try Daviess for rioting; did not notice Mr. Bridges, Mr. Samuel M' Afce, nor any other

person present ; jury acquitted Daviess, for there was no evidence against him ; he had just got up when Daviess made the expression, and Apperson smacked him on the spot to serve on the jury ; believed there was nobody between him and Daviess ; did not know to whom he first told what he had heard ; he had talked of it freely in the neighborhood ; he lived in the neighborhood of Shawanee run ; perhaps Wm. Ashford enquired of him what he knew ; he had never told any of the Westerfields, or any body near Danville ; did not know who asked Daviess, he stood partly behind witness ; Daviess spoke so loud that all near him might have heard, if they had listened ; did not remember any body who had spoke to him since the commencement of the court, except a young Mr. Woodfield ; never asked him what he would swear ; saw no dirk in Daviess' hand—his hat was on ; several had spoke to witness since Monday on the subject ; to some he told what he know, to others not—who they were he did not recollect, nor did he recollect any person standing around when Daviess used the words, except Apperson ; did not know how many were around, supposed there were nearer 50 than 100 ; he was summoned on the jury before Daviess went to his house ; did not hear the constable give Daviess notice ; it might have been done in his own house ; did not hear Daviess say he would kill any man who would rush on him in the street without cause, nor did he say he was an old man and would defend himself.

#### SATURDAY, SEPTEMBER 12.

##### *Doctor John Bosley examined.*

Witness stood, at the time of the affray, at the door of the court-house. He saw Thompson push back Smith and remonstrate with him. He ran up and spoke to Smith, and they all walked off towards Smith's office. When they were passing the court-house door, Smith told witness that he was stabbed. On removing the clothes, witness saw the wound, and pressing it open with his fingers distinctly saw the collar bone. He concluded the dirk had struck it, and did not apprehend any danger. In a short time Smith began to complain of a pain in his side and a difficulty of breathing. Dr. Tomlinson was then sent for, who came with his instruments. He probed the wound himself, as also did Dr. Tomlinson, and the probe would not enter more than about an inch. They both concluded that the wound had not penetrated into the

chest, and that the symptoms which appeared were produced by excessive anger, which has been known to produce not only these symptoms, but convulsions, and even death in certain cases. Witness then bled Smith, and told him to take a purge. The next morning he still complained of the difficulty of breathing and a pain in his side. Witness bled him again, and left him, thinking he would soon be well. On the third day did not visit him, and on Thursday, returning home after dark, witness found Smith at his house. Mrs. Bosley had given him some tea, and he appeared somewhat revived and more tranquil. The next day the difficulty of breathing and pain in the side still continued, and he remained in the same condition until Sunday morning, when he died. His strength gradually left him, and for the last twenty-four hours he was kept alive by the aid of stimulants. The evening before his death, witness discovered the fluctuation of some fluid in his chest, and told his father he thought they had been mistaken in the depth of the wound. Doctors Tomlinson and M'Dowell were sent for, and they opened the body. The left side of the thorax, the side of the wound, they found filled and very much distended with a fluid which physicians call chyle. A large quantity, but not the whole of it, was taken out.

*Questioned by Mr. Booker.*—Witness was present at the dissection. In performing that operation they began at the sternum, and took off the skin as high as the ribs. As soon as the knife penetrated through the cartilages into the left cavity of the chest, the chyle flew out. He examined it only with the eye, but had no doubt that it was chyle; it was different from dropsical water, which often collects in the abdomen as well as in the chest; thought physicians could not mistake the one for the other; the fluid was the color of milk, except the clots of blood which doctor Tomlinson mentioned; there was no gangrene—the wound on the outside had suppurated handsomely, and was nearly closed; witness could give no reason why the probe would not follow the wound soon after it was given, only that the skin and integuments might have been pushed from the position they occupied when the wound was given, and covered the orifice so that they could not find it; the thoracic duct does not run through the chest; there is a membrane, called the pleura, which is between the duct and the chest, so that if the duct be wounded, the pleura must likewise be penetrated, before the chyle can flow into the chest; the pleura doubles over and divides the chest into two apartments, which contain the lungs; the chyle was found in the left apartment; the duct lies back of this membrane, if

doctor Tomlinson has described it ; he had never heard of this duct being cut or ruptured ; after Smith was dead, the wound seemed to have changed its position, and was considerably higher up than it appeared when first examined ; it was in the neighborhood of the duct, and they attempted to trace it by introducing a conductor to some depth, until they were satisfied, at least witness was satisfied, and he believed the rest were, that the dirk had cut the duct and penetrated into the chest ; it was witness' opinion that the wound caused the death, and he has seen no reason to change it, though they did not examine so far as to see the wound in the duct ; the bleeding was no doubt improper, and arose from mistaking the cause of the symptoms ; the quantity of chyle produced in a healthy man, is estimated at about five pounds a day, but may be increased or diminished by the quantity and quality of the aliment taken by him ; Smith's aliment was light, but witness felt at a loss to determine whether the quantity of chyle found in the chest was as great as would probably be formed after the wound was given ; there have been instances of the duct branching, and it may have been the case here, and one branch only being cut, but a part of the chyle would be discharged into the chest : if the duct were cut, it is not probable that any proportion of the chyle would pass on in its natural channel, unless the duct was forked ; for the last twenty-four hours Smith took little nourishment, except drinks, but wine particularly produces more chyle than almost anything else, and will sooner restore the blood ; if the duct be cut, death is certain, unless it fork, which is extremely rare ; witness did not know that Smith was subject to any dropsical complaint ; he had known more dropsical water collect in the same time ; in a dropsy the symptoms generally exist for some time before the water begins to collect, and when it does begin its accumulation is rapid ; Smith, previous to the wound, appeared well—he never knew that he had any symptoms of a dropsy.

*Cross-examined by Mr. Rowan.*—Witness never heard of the thoracic duct being cut—if cases have occurred, other vital parts have been wounded at the same time, so that the duct has been overlooked ; it is so secured behind other vital parts, that it is almost impossible to reach it without cutting other vessels which would cause immediate death ; it is nearly as improbable that it should be cut as ruptured ; a surgeon with his instruments would find it most difficult to reach it without wounding other vital parts, and witness would think him a madman who should attempt it ; if a dull weapon were thrust

through in that quarter, it would not cut the duct easier than the blood vessels, but would be as likely to push it aside as them, unless it hit the duct so fairly that it must cut or break; to penetrate the chest over the collar bone, the wound must make an angle of probably more than 45 degrees; the distance from the exterior surface to the cavity in that quarter, is greater or less in proportion to the size or fatness of the man; doctor Tomlinson examined the cavity, and was not able to trace the orifice in the pleura to the external wound; he put in the probe nearly the whole length.

*[Witness produced the probe, which was about five inches long, a little longer than the dirk from the hilt to the point.]*

Doctor Tomlinson was again called, and stated, that he entered the probe into the interior orifice, its whole length, except enough to hold it by between his thumb and finger, and it did not come out at the exterior wound.

*Dr. Bosley cross-examined further by mr. Rowan.*—Witness on examining the wound directly after Smith was hurt, turned his probe in every direction, the probe then passed upwards, and he thought the dirk had struck the collar-bone, as he distinctly saw it on pressing the wound open with his fingers; he was perfectly satisfied at that time, that the wound had not penetrated deeper; there was one circumstance besides the existence of the chyle in the Thorax which made him believe the wound had penetrated into the chest—on introducing the conductor and cutting into the wound after Smith's death, they found it in a granulated, healing condition near an inch deeper than he had been able to penetrate with his probe in the first instance; they then made one or two attempts to introduce the conductor deeper, but failed; it is easier to penetrate the flesh of a man dead than living, because it gives away more readily and there is some uncertainty unless you have ocular demonstration; there would be no difficulty in following the direction of the dirk through the flesh unless the mouth of the wound were disguised; in this instance he had shifted the skin one way and the other, but was able to penetrate only about three fourths of an inch; he supposed he followed the channel of the wound and was then satisfied as a surgeon it had not penetrated into the chest or he should have prescribed a different mode of treatment; if the wound had penetrated ever so far in the direction it then seemed to have, it would not have reached the duct, though that vessel is not always precisely in the same situation; nature exhibits great care in securing all the important parts of the human system, and this is one of the most important; wit-

ness never had seen the duct rise higher than was necessary to discharge its contents into the subclavian vein ; the pleura is very muscular and sensitive, it could not be penetrated by such a weapon as the dirk without violent pain ; Smith complained of a good deal of pain, but the wound was not in a part to produce the severest pain ; though all parts of the pleura are sensitive, those nearest the heart are most so, and a wound there would produce more pain than where the dirk passed ; witness would suppose that such a dirk as that penetrating into the chest would bring out a considerable quantity of blood or other fluid, and that the pain would go on increasing until death ; it is impossible that the man could be getting better though he might have that appearance ; the man himself could not easily be deceived in this case though his physicians might ; witness was deceived in the accumulation of the fluid in the chest, for he did not discover it until Sunday morning ; it is the usual course to bleed for wounds, and when inflammation is apprehended it is the best course ; witness bled Smith twice, the first time he took from him about a pound of blood, the next time more ; the size of the wound was about as Dr. Tomlinson has described it ; it is much more difficult to penetrate the neck transversely than otherwise ; the wound was not transverse but obliquely so, but in that way the dirk would not pass much more easily ; in a transverse position there would be ten times the danger from the dirk ; ninety-nine times in an hundred it would cut some important blood vessel ; there was a spot of blood on Smith's shirt about as big as a dollar ; witness would suppose it would take a strong man to drive that dirk through the neck transversely into the chest if he did not strike any bone ; those parts offer a much greater resistance than any other part of the body, the vessels are covered with a harder substance ; the skin or cellular substance must have resisted in probing in the first instance ; witness was sure the collar bone was struck as he saw it, but on a second examination the wound had changed its position and he did not see it ; a surgeon cannot easily be defeated in following a wound if he succeeds in finding its direction ; it would be impossible to turn the hand so as to give another direction to the weapon after its point had entered the body, for in turning it the blow would lose its force ; if the wound preserved the direction which it appeared to have at first, it would not touch the duct, and if it had cut the duct it is impossible that the chyle could enter the chest unless it had likewise perforated the pleura ; the chyle would ooze out when the duct was cut unless it



could find an easier passage inwards ; it is possible in that case that it might flow out when the person was in different positions, if the wound were open, but in this instance the wound of Smith was immediately dressed and closed at the first dressing ; sympathy between the parts may prevent a wound's healing in some measure though not entirely, one side of a wound often heals when the other remains open. The reason why witness supposed Smith died of the wound was the existence of the chyle in the chest, a knowledge that it could not get there unless the pleura were perforated, the existence of the wound and the complaints of Smith from the time that he received it until his death. Debility sometimes gives rise to a regurgitation and reaction in the vessels as is the case in a dropsy ; the quantity of fluids produced in a stout strong man would be greater than those produced in a weak one ; there are a number of lymphatic vessels which open into the thoracic duct from the inner side of the pleura ; in case the glands of those parts were affected the mouths of these small vessels might be forced open, and through debility and relaxation they might discharge their contents back into the chest ; in case of such a paralysis the quantity thus thrown back would depend on the action of the lymphatics ; there is a great difference between chyle and lymph ; if these vessels could absorb any of the chyle from the chyle duct and carry it into the chest, the quantity must be very small as the whole system is so constructed as to resist this operation, but if the duct were very much distended it is possible the lymphatics might take off a small quantity into the chest ; if very much excited, the chyle duct might discharge some of its contents through the lymphatics laterally ; if we reason from analogy we should say that great exertion which produces perspiration on the outer surface must produce a similar effect in the inner cavities. On the second or third day of the election witness was in the silversmith's shop with Daviess who enquired how Smith was ? Witness told him he thought he was out of danger ; that he had had a narrow escape, for the dirk had struck the collar-bone ; but that it was in fact but a mere scratch, Daviess seemed to be rejoiced at it and sorry for the affray, at least he so expressed himself to witness.

[Witness was here stopped by *Mr. Booker*, and *Mr. Rowan* observed that the question would be made before the court whether the expressions of Daviess could be given in evidence in his favor.]

*Questioned by Mr. Booker.*—Witness did not examine the pleura minutely, nor did any of the surgeons ; they saw two

orifices in it ; they did not appear to be healing ; it was his opinion they were made by the knife in dissection, and neither of them by the dirk ; a probe entered into them would not extend to the external surface ; it was difficult to judge whether those orifices were fresh or not, as the blood vessels being cut and the blood coming in contact with them would change their appearance in an instant ; in entering the probe into the inner orifice towards the outer wound, it appeared to follow the channel of a wound for some distance. Witness saw Smith on the next morning after the wound was given ; he then seemed better and had not much pain, but his pulse was depressed and witness bled him again and staid with him until sundown ; thought that he was rather better and that the feeling of which he complained arose from anger, agitation and exertion ; did not visit him the third day, but after he came to witness' house on Thursday he was constantly complaining and getting worse until his death ; witness would suppose that if a man could walk about after the pleura was cut it must be with extreme pain.

*Question.*—Are you not of opinion that Smith died of that wound ?

*Answer.*—I am.

*Question.*—Are you not of opinion that in the hands of the most skillful physician he must have been lost ?

*Answer.*—If there was not a biforkation in the thoracic duct, he must have been lost.

#### TESTIMONY ON THE PART OF THE ACCUSED.

*Stephen Daviess examined.*

On the first day of the election, towards the latter part of the day, witness was passing from the court-house over towards Daviess' store, and met Daviess coming from his store towards the court-house. While they stood talking together, Mr. Smith came up, and touching Daviess, they walked out about six or eight steps, and commenced a conversation. Witness could not hear a word that Smith said, excepting the word Perryville. Daviess said, "what I have stated, I have stated," upon which Smith struck him upon the side of the head, and staggered him against a post which stood by the side of the street. Smith was about to strike, or had struck a second blow, when Daviess threw up his arm, as if to defend himself, and the people immediately rushed in. Witness did not see the dirk.

*Questioned by mr. Rowan.*—When talking with witness, Daviess appeared to be in perfect good humor; did not see Daviess advance; Smith advanced upon Daviess, after his blow, with great fury; Daviess could not have got away after the first blow, unless he had crawled on his hands and feet, for there was a railing along the side of the street from post to post, and Daviess was on the outside; when held by Moore and Thompson, Smith struggled hard to pursue him; took Smith, from his appearance, to be a strong, stout man.

*Cross-examined by mr. Booker.*—Witness did not recollect who was by, believed there was nobody nearer than himself, the first who rushed in was capt. Moore; capt. Moore was at Williams' store door; there were a number of persons about; did not know what Smith said; did not at first look at them, but when he turned around Smith appeared very angry; Daviess did not appear angry at first; they talked one or two minutes; Smith struck forward with his fist; did not see how near Daviess' arm was to Smith; Daviess stood with his face partly to the south, quartering against the post, and when he fell his left hand was on the post. Witness meant by Smith's being furious, that he did his best to strike Daviess. Witness had given his deposition on this subject before the attorney for the commonwealth, as he thought; Daviess requested him to do so by letter; Thomas Elgin was present; his affidavit was written that night by Daviess; no magistrate was present that night, but some corrections were made in the morning, before the magistrate, on the suggestion of those who swore. Did not know whether Daviess could get away; did not see Smith have any weapon; did not hear Smith state to Daviess that he was a liar; knew he was angry, because he was talking louder than usual; he said something about reports at Perryville; he asked Daviess if he had stated such things at Perryville; did not hear what things; did not hear Daviess call Smith a liar, until after Smith had called him a liar; when Smith told Daviess he was a liar, Daviess told him he (Smith) was a liar; was certain both gave the lie; could hear nothing more; did not recollect any person so near as himself; supposed the difference between the height of the two men was three or four inches—he supposed Smith was about six feet high.

*Questioned further by mr. Rowan.*—Witness was in no way connected with the accused; he had sworn in his affidavit to nothing which was not true; there was no tampering with him; he understood the object was to obtain bail.

*Moses M' Coun examined.*

On Monday evening, the first day of the election, witness was hunting after a man whom he wished to see, and stopping in the street he heard loud words from some person near him. He looked around, and saw Smith with his arm out, who struck Daviess and staggered him against the post. Daviess recovered, and throwing up his arm nearly as high as Smith's hat, struck him, as he thought, upon the shoulder, but was not certain.

*Questioned by mr. Rowan.*—About the time that Daviess struck, Smith struck again; on receiving the first blow, Daviess seemed to sink down, but not to the ground; Smith seemed to push forward to get to Daviess again; capt. Moore was the first who rushed in, and then col. Thompson, and they kept Smith back; did not see Daviess advance; did not stay till Daviess went to his own house; walked away in the crowd, and went up to see if Smith was hurt; heard no threats from either; thought that Daviess threw up his arm in defence.

*Cross-examined by mr. Booker.*—Witness saw Daviess' hand as high as the rim of Smith's hat, and it appeared to come down upon his neck; witness saw Daviess before the affray, standing and talking with somebody; he stood a little quartering, with his back partly down the street; he might be a rod from the railing; there was no person around Daviess, and but few near Smith; Daviess might have escaped, if he had run—if he had wheeled around the whole street was before him; witness has sworn this before, in the presence of John Eccles; Daviess applied to him and wanted his deposition, as he understood, to show to his attorney; it was last Wednesday a week—nobody excepting him and Eccles were present—there was no cross-examination; the blow of Daviess appeared to be middling severe; the difference in the height of the men may be about three or four inches; did not know to whom he had told what he knew, nor how Daviess found it out; Daviess might have got away, if he had turned and run; Smith's second blow was quick after the first—both struck nearly together; thought Daviess might have turned and run as easy as he could give a blow.

*Questioned further by mr. Rowan.*—Witness did not know which knee of Daviess was against the post when he sunk down: he was not entirely up when he received Smith's second blow, and had not time to turn and run without receiving that blow; in his affidavit, witness had told the truth so far as

he knew it; he thought it was right to tell to others what he knew on this subject, and would not refuse it to those who had a right to know; there was not any weapon in Smith's hand; witness had heard of death being produced by a blow of the fist, but never knew an instance.

*Cross-examined further by Mr. Hooker.*—Witness thought Daviess an athletic man; saw some scantling nailed across from post to post, near where Daviess and Smith were standing; Daviess was near the end of the scantling, by which there was a passage—he might have passed up to the opening, but that would have been towards Smith; Daviess did not advance towards Smith in rising, any more than was necessary to straighten himself; thought the scantling was nailed to only two posts, but did not recollect exactly; when Daviess staggered back, he did not stagger between the posts where the passage was below; did not know whether there was any scantling lower down or not.

*Questioned further by Mr. Rowan.*—Witness had known Daviess twenty years, and had always thought him a peaceable, quiet citizen; supposed he was 40 years old; witness was 45.

*James Daviess examined.*

Witness was present on the first day of the election, when the riot took place; he had walked out in order to find his son, and saw him talking with the accused; he had walked about to the middle of the street, within 12 or 15 feet of Daviess, when he saw the young man walk up to Daviess, and motion to him, as if he wished to speak to him. His son gave way, and Daviess and Smith conversed together a little while, when he heard the lie pass between them, but did not know from whom it came first. At that moment Smith touched Daviess on the face with his left hand, in a kind of slap, and drawing back his fist gave him a push, which staggered him against the cedar post—he caught the post, and witness thought his left hand went to the ground. He rose instantly, and did not show any violence to get at Smith, though in rising he advanced towards him. Smith was ready to come on him again. Daviess stood with his face rather south, or towards the courthouse, as Smith came on him, and gave him, as witness thought, a pretty good lick. As Smith struck, Daviess seemed to ward off the blow. At this time witness saw Moore step off the pavement, and appear to stop Mr. Smith in his career. Col. Thompson, at nearly the same time, caught him around the body, and said, "O, Mr. Smith, do you know me? Stop,

Mr. Smith." The crowd then rushed in, and he saw no more, only that Mr. Smith struggled hard to get at Mr. Daviess.

*Questioned by mr. Rowan.*—Witness had known Daviess for some time, and never knew him engaged in a fight before.

*Cross-examined by mr. Booker.*—Witness supposed he saw the first blow; thought Daviess gave the lie first, but did not know—was several feet off; heard the lie pass only once; Smith's first blow was merely a tap; Daviess had not time to put himself in an attitude of defence, for Smith pushed him with his right hand nearly at the same moment he slapped him with his left; thought Daviess' left hand touched the ground when he staggered back; supposed they were then 6 or 8 feet apart; did not see Daviess rush on, and thought at the time he acted cowardly; did not think Daviess could have got through between the posts, without changing his position, and while he was doing that, Smith would have been on him; Daviess, in getting up, seemed to advance a little; witness did not know there was a dirk there until after it was over; Daviess hardly had time to get away, if he had turned—as soon as he was on his feet Smith was on him; both appeared to advance a little, but Daviess seemed to fend off the blow; there was a way through between the posts, near where Daviess fell against it, but before he was up Smith was on him again; when Daviess gave the blow, he might have stepped aside upon the pavement—did not see him step one inch; saw Daviess in the crowd afterwards, while they were holding Mr. Smith; was not sure that Moore had hold of Smith at all—col. J. Thompson had hold of him; saw Moore step in before Smith about the time the last blow was given; saw no weapon in Smith's hand.

#### MONDAY, SEPTEMBER 14.

*Doctor William M'Dowell examined on the part of the Commonwealth, having been absent at the proper time.*

Witness said all he knew on the subject was from the appearance of the wound on opening the body. When himself and the other surgeons, in opening Smith, had raised the breast-bone and penetrated the cavity, they found there a large quantity of fluid resembling milk and water.

*Questioned by mr. Booker.*—Witness believed the fluid to be composed of chyle and lymph, with a great proportion of lymph. There was from three to four gallons of it, about one

third of which he supposed was chyle. He attempted to trace the wound, and traced it with his probe until it came against the lining of the chest; found an orifice on the inside, through the pleura or the lining of the chest; entered his probe into that orifice, but it did not come out at the exterior wound; traced the wound to some depth with the knife, but not through to the cavity; the pleura is about one eighth of an inch thick—the opening through it seemed to have been made some time—it appeared like an old wound; the probe, when entered into the wound, came within one fourth or one half inch of this orifice; the reason why it would not come out at the exterior wound, when entered on the inside, he supposed was, because the intermediate parts interposed; did not think the orifice in the pleura was made in dissection, for the knife was not used near that quarter; could not account for the appearance of the chyle in the cavity, from any other cause than the cutting or bursting of the thoracic duct; from the best authority, he was of opinion, that it could not have happened by regurgitation—the most celebrated anatomists think regurgitation through the lymphatics to be impossible, on account of the number of valves, unless in some very debilitating disease, which would entirely destroy their action. If regurgitation took place, as much or more would pass into the bowels as into the chest. If the duct were wounded, its contents could not pass into the cavity of the chest, unless the pleura were wounded also; the orifice in the pleura looked more like a wound than a rupture; witness did not discover whether there were any symptoms of healing or not; never read of a case in which the lymphatics were supposed to regurgitate such a quantity in so short a time; theorists have thought regurgitation possible, but anatomists believe it impracticable. The absorbents, or mouths of the lymphatics, open on the inside of the pleura, and afford a passage for the lymph from the cavity into the thoracic duct. Witness thought the wound was the cause of Smith's death, but would not say he was without doubt, as he did not see the duct, but judged merely from the circumstances of the wound, and from finding the fluid in the cavity, which he judged could come there through no other channel. The thoracic duct takes off the nourishment produced by our food from the stomach and bowels, and passing up a little to the right of the spine or back-bone, until it ascends a little above the breast-bone, it crosses over to the left, and ascending up near the collar bone, it turns downwards and enters the left subclavian vein, where it unites with the jugular, and thus empties its contents into the heart. Back

of the collar bone, it may be wounded without striking any of the other important vessels.

*Cross-examined by mr. Rowan.*—Witness said, the fluid found in the left cavity of Smith's breast, appeared to be about two thirds lymph and one third chyle, which is about the usual proportion in the duct; though the proportion is not for any two hours the same. The chyle is produced by the food which is digested, and the lymph is the fluid which collects in the cavities of the body, and is carried off through the duct. They did not examine the abdominal cavity; the left breast was considerably protruded by the fluid, of which there were three or four gallons; when the knife penetrated into the cavity it spirted out; the pleura doubles over and divides the thorax into the right and left cavity; on finding the fluid in the left cavity, it was their supposition that the duct was cut, and that the wound had penetrated the pleura; the duct might be easily cut, without wounding any other important blood vessel, where it elevates itself before it joins with the jugular; in that place it passes behind those vessels and inclines to the left, and may be reached by a wound over the collar bone ranging downward, without injury to those vessels; the carotids are within the veins nearer the windpipe; the duct leaves the artery to the left, passes up behind the other blood vessels, makes a turn forward and downward, where it comes a little before the jugular vein; a wound might be made behind the vessels, cut the duct and pass into the cavity; the duct is about one inch behind the collar bone; the left subclavian vein is protected by the clavicle; a wound might touch the collar bone and pass down behind it, without injuring the subclavian; the first rib and collar bone come in contact; the collar bone is about three fourths of an inch wide—in some persons, an inch; witness never heard of the duct being cut accidentally; it is cut sometimes in animals, intentionally, by way of experiment; it is not one hundred years since this duct was first discovered; a ball passing through the chest, would be likely to wound some other vital vessels; witness probed the wound inwards to the pleura; in a dead person the probe passes easily through the lamina of the flesh, but witness believes that his probe in this instance followed the channel of the wound; did not try the probe in any transverse direction; could not by the probe connect the external wound with that in the pleura; when the chest is penetrated this result is not common; when entered into the external wound, the probe came through near the wound in the pleura, and he supposed them both made by the same weapon; anat-



my would not decide whether they were made by the same weapon or not—the opinions of anatomists are formed on the best evidence they have; for himself, he was fully satisfied both wounds were made by the same weapon; there is a great difference between chyle and lymph, so that they cannot be mistaken for each other—the former is a little curdled and white—the latter is clear and transparent; when mixed they produce a discolored fluid; in cases of hydrops the lymph is sometimes higher colored than at others; in performing the operation some blood was mingled with the fluid in the chest; it is not lymph which forms a diabetes, but vitiated urine—in this case it is the opinion of the best physicians, that there is no regurgitation, but the fluids pass in their regular channel from the stomach through the duct into the heart and lungs, where they are not formed into blood as usual, but sent forth through the arteries in an imperfect state, and a larger quantity than usual is secreted in the kidneys, which discharge it into the bladder; there are three kinds of diabetes, which require different regimen and different treatment, but in all of them the fluids are supposed to pass through their regular and natural channels; a morbid action in the secreting vessels, does not necessarily or naturally produce a morbid action in the absorbing vessels; sometimes the absorption of saliva is greater than the secretion, which produces excessive thirst—sometimes the secretion is greater than the absorption, as in case of a person chewing tobacco; it is the general process, that absorption is equal to secretion, but there are departures from it without disease. Witness did not enter the probe into the wound the whole length, but about two thirds—he felt the end of the probe through the pleura near the orifice—on entering it into the orifice through the pleura, it went in about the same distance, and he felt the end of it through the skin, near the external wound; he performed the operation of dissection on the right side.

*Questioned further by Mr. Booker.*—Witness said, if there had been a regurgitation through the lymphatics, it would have thrown the chyle into the right cavity as well as the left.

#### TESTIMONY ON THE PART OF THE ACCUSED, CONTINUED.

*Doctor Anthony Hunn examined.*

Witness said, he had paid great attention to the testimony of the three physicians and considered it minutely. He agreed with them generally in regard to the anatomy of the body; but differed with them dia materially with respect to the effect

of the wound in the present instance. It appeared to him, that a wound, such as that was described to be, inflicted by such an instrument, could never have produced the chyle in the cavity of the thorax. This opinion he did not offer carelessly, but after deep examination and intense thought in which he had been occupied by day and by night. He thought he could prove to any unprejudiced mind—first, that the pleura was not penetrated, and secondly, that the duct was not cut at all; for if it were wounded by so blunt an instrument as that dirk, it must have been torn out by the roots, and besides it cannot be touched by a weapon unless by its point where it appears behind the jugular. It appeared to him that something had been accidentally omitted by the physicians, that is, that when the pleura is wounded and the cavity of the thorax laid open, the atmospheric air rushes in almost with the sound of a gun, the lungs collapse, the blood stops, the person falls and faints. This is the inevitable effect of penetrating the thorax, for which reason, when surgeons find it necessary to lay open that part of the body, they open but one side at a time; for if they opened both the patient must inevitably die. This effect not having taken place in the present instance, he concluded that from the laws of matter and gravity, it was impossible that the thorax could have been penetrated by the wound. This opinion, he said, was confirmed by another circumstance. There is in fact no cavity in the chest. The lungs fill up the thorax completely. How then the pleura could be penetrated without wounding the lungs which lie close to it, is unaccountable. If the lungs had been wounded the deceased would have spit blood and shewn other symptoms. As to the wounding of the duct it appeared to witness impossible. With any instrument it would be improbable, it is so surrounded with muscles and blood vessels; but with that dirk if you were to take hold of the duct and try to cut it, it could not be done. If the blood vessels had been cut, the blood would have poured out of the wound, and if the pleura had been cut the deceased would have felt more pain and an oppressive weight upon his lungs. It was his opinion decidedly, that the pleura could not have been wounded, and in that case if the duct had been cut the chyle could not have passed inwards, but would have issued out at the external wound, as it would even if the pleura were cut, because the lungs fill up the whole cavity of the chest. That the duct could be wounded behind the other vessels is difficult to comprehend; for the aorta passes over it and it is concealed behind the bend of that vessel except where it unites with the subclavian, at which place it might be touched with a lance.

*Questioned by Mr. Rowan.*—Witness had wondered at the difficulty which had been experienced in accounting for the appearance of the chyle in the thorax, when it is universally known, that depositions of chyle take place in various cavities of the body. In a healthy state it is deposited in the female breast as milk, and sometimes in small quantities in the breast of the male. In the puerperile fever a vast quantity of it is deposited in the abdomen, where it lies with the appearance of cheese—this is the effect of a morbid action in the vessels, not of wounding the duct. In the course of his practice he had met with three instances which bore some analogy to the present case, where a morbid action had caused deposits of chyle in different cavities of the body. The first was the case of a large fellow who had the dropsy in the pericardium. In this disease the heart swims in the fluid, which fills the cavity that contains it; there is an increasing pain in the heart, and symptoms of suffocation. Witness bled this fellow and found the blood one half like common blood and the other half like cream. After he was dead witness opened him and found in the pericardium about a gallon of greenish fluid strongly tinged with chyle. Another case was that of a Mrs. Sutton of Lincoln county, who had a dropsy. Witness tapped her several times, and the last time the fluid which came from her had the appearance of chyle. The other instance was that of a Mr. Pancake upon Salt river. On bleeding him a second time the blood had the appearance of being partly chyle. There were 10 or 15 protuberances on the outer side of his body just under the skin, filled with a whitish substance resembling chyle. On opening him the abdomen was found full of a fluid resembling milk. Witness did not examine it, but supposed it must be chyle. From these instances he concluded that deposits of chyle in different cavities of the body were not only possible but common.

Witness was in his shop when the unfortunate affray took place, and as soon as he heard of it, he ran up to see Smith, as he had formerly been his physician; saw doctors Bosley and Tomlinson near him—heard doctor Bosley say it was a mere scratch, and returned and told his wife so. On Wednesday the third day of the election, witness came up to the court-house and met Smith near the market-house. Smith walked up to witness briskly, and said he felt well. Witness asked him to draw in his breath and fill his lungs slowly, which he did, and said he felt no pain, from which witness concluded that his chest was not injured. Witness asked him what made him so pale, and he replied that doctor Bos-

ley had bled him too much. Witness told him not to complain, for he had better be bled too much than too little. He could not have breathed so without pain on any physical principles unless the chest had been sound and well.

*Cross-examined by Mr. Booker.*—Witness said, that the chest was filled by the lungs when the lungs are filled with air, but when free from air they still adhere close to the pleura; there is no room for a fluid there except by the compression of the lungs. On the principle of morbid action it would seem that the chyle would appear in the right cavity as well as the left; it was very singular that it should not be so; he could not tell the reason why it was not, any more than he could tell why there should be a bile on one hand and not on the other; he could not see the difference in the two cases. Daviess had made an application to him for a dirk nine months before, as he then supposed, for a journey; but he could not find it. Witness said he felt particularly interested in favor of Smith, for he was once the family physician, and felt very friendly towards him; he did not expect to have been summoned. He said he was not applied to after Smith's death to go and see him, nor was he asked whether he would go if he should be sent for; no application was made to him at all; he should have been happy to have gone.

*Henry Smock examined.*

Witness was standing in Williams' store, and saw Daviess standing before the door. Smith came up to him, and they talked together for a minute or a minute and a half, when he saw Smith strike him. As Smith struck a second blow Daviess threw up his hand as if he would defend himself.

*Questioned by Mr. Rowan.*—Witness said, that Daviess was staggered back by the first blow, and while recovering received the second; the first blow appeared to be a severe one; did not see Daviess advance, and thought he struck back-handed.

*Cross-examined by Mr. Booker.*—Witness said he was standing in Williams' store, six, seven or eight steps from Daviess and Smith; Daviess stood by the post at the side of the street, and Smith came up to him; could not say how long Daviess had been there; saw him talking with nobody; Smith was going down the street and they seemed to meet there; did not know whether Daviess was standing still or stepping about; at the time the conversation commenced Daviess did not move; Smith came up close to him; Daviess stood with his back not precisely down the street, but a little towards the

side-walk, but with his side rather towards the street ; witness did not hear what passed, nor did he notice who was by ; has since observed that there are plank on the posts, but did not think there are more than two ; thought the passage between the two posts next to where they stood was vacant ; supposed the posts were three or four feet apart, but did not measure the distance ; could not say whether Daviess staggered against the plank or against the post ; did not see Daviess retreat ; the first blow appeared to be with his fist against the side of his face, and staggered him against the post, but did not bring him to the ground ; supposed Daviess might have stepped back and retreated ; thought Daviess' blow a little after Smith's second ; Smith struck his second as soon as possible, and there was but little difference in time between them ; Daviess stood still, witness did not see him advance ; thought Daviess might have retreated unless Smith had followed him up ; did not see Daviess draw his dirk ; saw no blood ; he just saw the dirk and should not know it, if he saw it again.

*Questioned further by Mr. Rowan.*—Witness said that Daviess could not have got away without receiving Smith's second blow.

*Cross-examined further by Mr. Booker.*—Witness said Smith's second blow was not so violent as the first—it did not stagger Daviess much, though he might have been moved a little. Witness had given his affidavit before Esquire Blackwood ; he was in Daviess' counting room and did not remember whether any body else was present ; Daviess wrote the affidavit and said he wanted it to show to his counsel.

*Questioned further by Mr. Rowan.*—Witness said he made no statement in that affidavit which was not true, and that Daviess did not attempt to influence him.

*Burrell Noel examined.*

Witness was walking up the street on the first day of the election, and as he came opposite where Daviess was standing, he saw a man come up to him as if he were angry and slap him in the face with one hand, and then strike him with the other. Daviess cringed down, as witness thought, on the right side, when the man gave him another lick, and about the same time Daviess threw up his hand.

*Questioned by Mr. Rowan.*—Witness said, that Daviess threw up his hand as if to defend himself ; could not say whether he reached Smith or not ; Smith rushed on him with great fury ; did not think that Daviess advanced ; Daviess'

arm was raised up before his body was fairly straightened from the effects of the previous blow; did not notice the post.

*Cross-examined by mr. Booker.*—Witness was five or six steps off, and there was no person between him and the parties; Smith was coming down the street; did not know that Daviess was conversing with any person; saw no one near him; thought Smith came up partly meeting him; there was no time for conversation after they met, and he did not hear a word; witness has not been sworn before, and has given no affidavit; Daviess was much cringed down by the blow; there was first a slap and then a blow; Daviess stood with his back partly quartering down the street; Daviess had no opportunity to retreat, after he saw him; there was no obstacle to prevent his running away; did not see Daviess retreat; Daviess was not more than straightened up when he received the second blow, and was, as it were, creened over when he raised his arm up; did not see his arm when it was down; both struck together; saw nothing in the hand of either; at the second blow Daviess staggered back a little; did not know where the blow hit; capt. Moore and col. John Thompson ran in and prevented further violence.

*Questioned further by mr. Rowan.*—Witness said, Daviess could not have run, without receiving the second blow; Smith appeared very violent.

*William M' Carty examined.*

Witness was riding down the street on the first day of the election, and saw Smith slap Daviess in the mouth with his hand, immediately after which he struck Daviess and staggered him against a cedar post. Smith struck Daviess again as he was recovering, and Daviess at the same time threw up his hand, in which witness saw a knife or some other instrument.

*Questioned by mr. Rowan.*—Witness did not see Daviess advance; thought he was about half up when Smith struck the second blow; when Daviess received the first blow, witness thought he would have fallen, but for the cedar post; did not think that Smith struck Daviess the second time, but that the latter threw off the lick with his arm; Daviess was not up sufficiently to run and escape the second blow; Smith continued to make violent exertions to get at him, but doctor Bosley took hold of his arm, and told him to come along with him.

*Cross-examined by mr. Booker.*—Witness did not see them come together; Daviess stood with his back rather quartering down the street; witness did not at first notice the post;

some of the posts alongside of the pavement have boards across from one to another, and some of them not; did not know whether there was a board on that against which Daviess fell or not; the posts were about three feet apart; did not think that Smith struck Daviess the second time, but that Daviess knocked off the blow; saw a knife, or something like it, in Daviess' hand; at the time of receiving the second blow, Daviess was about half down, and struck up; Daviess was straight before he received Smith's blow; witness has given his deposition before on this subject, for which purpose he was qualified before Esquire Eccles, at a sale down at Mrs. Shepard's; nobody but witness, Eccles and Daviess were present; the deposition was read to him before he swore to it; did not know who told Daviess what he knew; had told it himself to Joel P. Williams, whom he saw there, and who asked him; was told that the deposition was to be taken down to Springfield, for some purpose; did not know the day nor the week; it was on Friday, but not the week of the election.

*Questioned further by mr. Rowan.*—Witness stated nothing in his deposition which was not true, nor did Daviess attempt to influence him to swear to any thing which was not true; Daviess told witness it was to show to his counsel.

*John Morris examined.*

Witness was standing in Mr. Williams' store, and saw Smith strike Daviess on the side of the head; did not see the slap; there is a kind of plank nailed to the posts, against which Daviess was staggered by the blow; thought he received the second blow on his arm, which he raised up; it appeared to witness that Smith struck two blows against Daviess' arm; did not see what more passed; capt. Moore stepped in between them, and witness spoke to Thompson, who was in the store, and he immediately went out.

*Questioned by mr. Rowan.*—Witness said, that Daviess staggered against the post when he received Smith's first blow, and had not straightened up when he raised his hand up and received the second blow; Daviess did not advance, but stood in the same place where he had recovered; Daviess could not have escaped without receiving the second blow, and perhaps more.

*Cross-examined by mr. Booker.*—Witness said the affair happened after dinner; there was a large concourse of people in the street, and a crowd within 15 or 20 steps up this way [towards the court-house] but not towards the store; Daviess stood cornering with his back partly towards the post, and

witness was certain that he fell against the plank; the posts are about three feet apart, and Daviess fell against the lower end of the plank, near the passage between the posts; there is a passway by each end of the plank, which extends from one post to the next; Daviess did not attempt to run—he could not run without receiving more blows; saw no weapon in Smith's hand; his affidavit had not been taken; did not see Daviess' hand down, nor see him strike; Smith's second blow did not hit Daviess, but was received on his arm; had no conversation with any one about it that evening; when the affray commenced he was standing in the passage through the counter in Williams' store.

*Questioned further by mr. Rowan.*—Witness said, that when the two blows were given together, Smith's arm was above Daviess' arm.

*Thomas P. Elgin examined.*

Witness did not see the affray; saw Smith that evening before his wound was dressed, and enquired of him how it had happened. Smith told him, that he had heard that Daviess had said of him at Perryville, that he was a tool for Tom. Moore, and a base and insignificant puppy, and he had asked Daviess if he had made any such expressions. Daviess denied having said, that he was a puppy, but said he thought he was too much under the influence of Tom. Moore—upon which he (Smith) told Daviess that any man who said he was under the influence of any body whatever, was a liar. Daviess then called him a damned liar, when he slapped Daviess in the face and gave him a blow upon the neck, and that the third time he struck Daviess, their blows came nearly together.

*Questioned by mr. Rowan.*—Witness said, that on the Friday or Saturday before the election, he had brought Smith and Daviess together, and confronted them with respect to a statement which Smith had made to him about Daviess' political opinions. Smith stated to witness that Daviess denied the right of instruction—that he was opposed to the war and all the measures of the government—that he rejoiced at the defeat of our armies, and mourned at our victories. It was on the point of instructions, that witness brought the parties together. Smith said if Daviess denied that he was opposed to the right of instruction, he would throw something in his teeth, that he had told him, which he could not deny. Witness offered to bet that Daviess was in favor of the right of instructions, and Smith said he would bet a ginger-cake. Smith



did not throw any thing in his teeth. Daviess treated him as politely as he could, after the assertions which Smith had made—more so than witness could. Daviess sent for witness to go to Springfield and give his affidavit; when he received this intelligence, he did not know for what purpose Daviess wanted him, but supposed he wished to ward off attacks, by delivering himself up to the judge.

*Cross-examined by mr. Booker.*—Witness said, that Smith had stated to him the circumstances of the affray, on the evening after it had happened; had no conversation with him afterwards; was at Daviess' store that evening, where he heard that the jury had fined Smith twenty dollars, and enquired how that could take place when he was not present; on the last day of the election, witness saw Smith on the outside of the court-house, and enquired about his health and his wound, and also asked him how Daviess came to make those assertions at Perryville? He answered, smiling, that it was because he had called him a federalist. Had no further conversation with him about the affray, than has been detailed; Dr. Bosley was present; witness went up to Smith's office, to be satisfied with respect to the affair, and commenced the conversation loud enough for any present to hear; Dr. Bosley was fearful that it would injure Smith to talk with him in the first instance; witness went up there three or four times, and at one time staid near an hour; was led there by his anxiety, as Smith was a particular acquaintance, though he did not think him in danger; the last time he went up, doctor Bosley was not there; Smith gave an account of the affray, the second or third time he went up; doctor Bosley then stood at a table, mixing some diet drink; witness made the enquiry of him only once, and did not recollect which time; did not recollect who else was present; did not know whether Zachariah Smith was there or not; capt. Moore was there sometime in the evening, but did not recollect whether he was present when Smith gave an account of the affray or not; cannot swear whether doctor Bosley heard what was said or not, but was sure he was mixing some drink at the table. In meeting Daviess on the Friday or Saturday before, Smith showed no disposition to quarrel; they found Daviess in his store-room—Smith stated to him the question, and on his answering it, Smith asked if those were always his sentiments. Daviess answered, that he thought he was satisfied on that point before. On the first day of the election, Smith took witness out between the court-house and the clerk's office, and said to him that he believed there was some misunderstanding between

them, and asked witness how he understood him before they went to see Daviess the week before? Witness told him, that he understood him to say that if Daviess did deny that he was opposed to the right of instruction, he would throw something in his teeth which he would not deny; he then told witness to go and tell Daviess, that it was all a mistake; witness answered he would say, that he (Smith) said it was a mistake; this was about two hours before the affray. Witness knows James M' Cormack—he was present once when witness went up to Smith's office, and came out and went down street some distance with him, and then went back again; witness told him he would give \$ 500 to have his vote back again, for he had heard that Daviess rushed on Smith in the street and stabbed him.

*Joel P. Williams examined.*

When the affray commenced, witness was standing in his own store, but not exactly opposite to the door; Morris said there was a fight, and as quick as he could he jumped over the counter and was there; col. John Thompson was in the store, and got to the spot before witness. Smith had slung capt. Moore behind him, and Thompson took hold of him and prevented any further violence; witness stood by Daviess eight or ten minutes, and heard no threats.

*Questioned by mr. Rowan.*—Witness said, that Daviess spoke but few words; Mr. Bridges came up, and Daviess said he was getting to be an old man, and would not be run over in the street; he had a dirk in his hand, and stood near the cedar post; witness was on the inside, upon the side-walk; witness knew the dirk, for he had seen it several times before; Daviess had been wearing it a long time, and he had seen it, as they were frequently in each other's houses with their coats off; witness heard no horrid expressions from Daviess; if he had said "damn him he did his best to put it to his heart," witness would have heard it; was confident Daviess made no such expression, for he stood there until Daviess had walked half way to his own house; was also confident that Daviess did not say, "by God I aimed to kill him, and damn him I will kill him, if he comes near me," while witness was there, for he did not hear him swear, or use any similar expression; had been acquainted with Stephen Munday for several years, and never heard his veracity impeached, when on oath—had never heard it spoken of. The first which witness saw, was Daviess staggering against the plank which is nailed to the posts; in recovering, saw him raise his

arm, but did not see any person strike ; what he saw, he saw out at the door of his store ; Daviess fell against the plank upon his side ; Daviess is a peaceable, orderly man as ever witness was acquainted with ; never knew him quarrel, except when separating those who were quarreling ; Daviess was at that time a candidate for the house of representatives in the general assembly.

*Cross-examined further by mr. Booker.*—Witness said, that Smith was likewise a very peaceable man, as much so as Daviess ; had known him for a long time.

*John L. Bridges examined.*

Witness was in the court-house when the affray happened, and although he heard a noise, did not then attend to it. There were but a few left in the court-house, when a boy ran in and said that Daviess had stabbed Smith. Witness went out and saw several people before Williams' store door, and another cluster near the clerk's office. He went near Daviess, and enquired of him what was the matter. He answered, that Smith had rushed on him, and he had stabbed him, and said he was getting to be an old man, and had no idea of being run over by a young man in the streets. Daviess' face was then towards the court-house door. Some person said to him, that he had better go in, as the attack might be renewed. They stood there about ten minutes, and witness saw Williams, Pryor, Adair and others present. Witness told Daviess he would not be whipped off the ground. Witness went with Daviess to his own house, and sat down upon a bench at the door, until some one said they were going in to the trial by the jury. Witness then went into the store and sat upon the counter, where he remained until the jury were collected in the counting-room. He recollected Knox coming into the store, and taking his station on the left hand of the door. He did not recollect hearing Daviess say "he did not know how deep the wound was, but damn him he did his best to put it to his heart." He recollected Daviess coming out of the counting-room and stopping near the door—Adair was near him, and Knox at his right hand. Witness was not conscious of using the expression in the store, which Knox had stated—he might have said, that if Daviess was to be mobbed or whipped off the ground, he did not blame him for defending himself, or something of that sort. When witness approached Daviess, he was pale, but did not appear to be alarmed, and gave a short account of the affray. Witness remembers a conversation with Mr. Gilpis. He was asked by some one

he carried a dirk, and answered that he did. He was then asked if it was not against law, and answered that it was not more so than for a man to rush on and beat him in the streets. Daviess' voice is a very singular one—so much so that witness should know it in the dark; the store was much crowded; there was much noise and much talking, and Daviess might have used the expression mentioned by Knox, and he not hear it. He saw Knox come in, but did not hear him say a word, and was struck by the manner of his coming in, and thought it might be for some other purpose than to gain information. Witness did not recollect ever saying any thing injurious to Smith, and never heard of the Perryville business until the Friday before the election. He had known Smith when he wrote in the clerk's office, and always thought him a peaceable, well-disposed young man. Witness recollects some person saying in the store, if he (Daviess) had struck him a little higher he would have bled him like a beef, but the store was crowded, there was much talking, and he could not tell what any one man said. Witness knew the dirk, and believed it was the same with which Daviess gave the blow, because as he held it hanging down witness saw the guard against his finger, and he was talking with Daviess last spring while they were looking at his dirk, and told him that if he found it necessary to make use of it, he could not hold it, because the handle was so short and the guard so turned up, and if he were in his place he would beat down the guard. He had no doubt the dirk they were examining last spring, is the one that Daviess had that day. Daviess stated, that he had got the dirk of William Hord.

*Cross-examined by Mr. Hooker.*—Witness noticed the dirk particularly when they were talking about the guard, but did not observe whether it was sharp or dull, nor try it in the scabbard, but recollected that it had a metal scabbard, the same as this.

*Samuel Pryor examined.*

As witness was coming up where Daviess stood, after the affray, he heard it said, that Daviess had struck Smith with a dirk. When he came up, Daviess was silent, and witness thought he was confused. They stood some time, and witness told Daviess he had better be cautious what he said, and let the thing die away. If he said, he aimed at his damned heart, or any such expression, witness did not hear it. He stood on the ground until Daviess went off, and some time after went into his store, and did not believe that after he came

up Daviess could have used such expressions as had been mentioned without his hearing them, though he might have used them before he got there. When he came up Smith was carried away, though he saw the crowd that was with him at a distance. Witness was in Hanna's store, when he heard some one say there was a fight. He did not immediately run over, but when he heard that it was Smith and Daviess, he broke and run. When in Daviess' store, he heard none of the expressions which have been mentioned.

*William Woods examined.*

Witness did not see the fight, but only was witness to the uproar. A constable was standing near him, whom he directed to take the parties into custody. When he came up they were parted, and he told the constable to take them into Daviess' counting room. Witness stood there a few minutes, and then went into the store. Daviess likewise went into the store, and was so near witness that he could hear him talk, until they went into the counting room.

*Questioned by mr. Rowan.*—Witness did not hear any harsh expressions at all, either from Daviess or Bridges, in the store or in the counting room; saw Bridges come down from the court-house, who seemed as if he wished to enquire into the circumstances; might have heard the expressions, if any had been made in the store; if Daviess had said he aimed at his dauned heart, witness would have remembered it; was with Daviess half an hour after the trial; Smith did not appear, and witness wrote a warrant; Daviess was sitting on the door-sill, and witness asked him for instructions relative to writing the warrant, which he gave; neither on the ground, in the store, nor on the door-sill, did he hear any thing like a threat from Daviess.

*Cross-examined by mr. Booker.*—Witness did not hear any person ask how deep the wound was, nor did he recollect having heard Daviess say he had taken good aim, but it might have been said and he not hear it; while in the counting-room, he thought Daviess was either in the room or at the door the whole time, but did not know; it was not long after the affray.

*Questioned by mr. Rowan.*—Witness said, it was probable that Daviess might have gone into his house first, but he was not certain.

*Cross-examined further by mr. Booker.*—Witness said, he was part of the time in the back room, and part in the front, and did not recollect whether Daviess was with him all the time or not.

*Questioned further by mr. Rowan.*—Witness never saw any thing in Daviess which was not peaceable and orderly.

*William Gillkerson examined.*

Witness was on the ground immediately after the affray, and was present until the jury was over. He did not hear any oath or threat from Daviess, and thought if any had been used he should have heard them. Neither did he hear any harsh expression from Mr. Bridges. He had known Daviess seven or eight years, and never known him quarrelsome at all.

*Cross-examined by mr. Booker.*—Witness did not recollect hearing any person ask how deep the wound was; when he came up the constable summoned him as a juror; some said Daviess had struck him a random blow, others that if he had struck a little higher he would have bled him, and Daviess himself said he had made a pretty good lunge at him; did not hear any threat; Daviess appeared sorry for what had happened; the question was introduced by somebody, how they came to fight, and Daviess said he was not going to be run over in the street, but would defend himself.

*Priestley H. M'Bride examined.*

Witness was on the ground directly after the affray was over; he was in the middle of the street, and walked up near Daviess immediately, and did not think that Daviess used any oaths or threats, for he did not hear any. He did not go into the store, but staid till Daviess went in, and could not help hearing the expressions, if any had been made.

*Cross-examined by mr. Booker.*—Witness heard Daviess say, that he had stabbed Smith, but not that he had taken good aim; did not hear him say where he had stabbed him; he said he was getting to be an old man, and would not be run over in the street, or would not be imposed upon, or some words to that amount; did not hear whether he stood his ground or retreated.

*Questioned by mr. Rowan.*—Witness did not hear Daviess say he wished he had stabbed him to the heart, or any thing like it; must have heard it, if he had said it, as he was sometimes next to Daviess, and at others there was but one between them.

*Joel P. Williams further examined.*

Witness was acquainted with James Wood. In talking on this subject in his store, witness heard him say, that he would have done the same, if he had been in Daviess' situation; and

said he had been summoned on this trial, and had attended two or three days—that he did not think he should be called on, for he knew little about it, and believed he would go home and not return. Witness told him, he thought it was his duty to return.

*Cross-examined by mr. Booker.*—Witness said, that when Wood made these observations, there were a number of Daviess' friends present, who had been conversing on this subject, and it was on the statements which were there made, that Wood said he would have done so. Witness never heard Wood's reputation for veracity, when on oath, impeached—for he never heard any thing about it; Wood said, if any man over his size were to rush on him, he would use any weapon he could get hold of; this was after a conversation on the subject; Wood never stated to him what he would swear.

*Jesse Head examined.*

Witness never heard, that Smith had said or done any thing in relation to Daviess, until Thursday evening, when he was informed what he had said at Perryville. He had heard of such statements made by others as well as Smith, but when he heard that Smith had made them, he determined to have some conversation with him, as the information made a strong impression on his mind. On Thursday evening, in conversation with Daviess, witness told him what he had heard, and that he would see Smith. Daviess urged him to do so, and appeared solicitous that, as he was an acquaintance of Smith, that he would try to moderate his mind. Witness intended to have seen Smith on Friday morning, but was prevented by several affairs of business. At length Smith came into witness' store, and said he wished some private conversation with him. Witness asked him into the counting-room, and told him he was glad to see him, and had waited some hours for an opportunity. Smith sat down on the sill of the door, and witness asked him what he wanted? Smith said, he had made some statements at Perryville, in relation to Daviess' politics, which he was called upon to verify, and supposed as he (Head) was the friend of his father and the family, and had been long acquainted with Daviess, that he would be willing to certify what he knew. Witness reminded Smith that he was young—that he was taking an important stand, and might do that which he would regret as long as he lived—and enquired what he wanted witness should certify? He said, he had stated that Daviess was opposed to the war and to the right of instruction, and witness believed there were three points.

Witness told him, that although Daviess differed with him in politics, he had not gone that length; that Daviess had contended that there was equal cause of war against both England and France, and that war ought to have been declared against both. As to the right of instruction, Daviess held it in a different and more restricted sense than some others; but witness told him that the republicans themselves did not agree, but some held to the doctrine in a more restricted sense than others. Witness told him that he disapproved the course he was taking—that he thought he ought to stop and consider—and with tears in his eyes, said every thing which he thought could dissuade him from so pernicious a course. He thought that what he said produced some hesitation on Smith's mind; but at length he remarked, if he could not get him to certify, there were enough others who would. Witness told him for God's sake not to pursue the matter any further. On Saturday witness saw there would be considerable ferment on the subject. On the first day of the election he did not go out more than once, and saw nothing of the rencentre.

*Questioned by mr. Rowan.*—Daviess, when witness talked with him, did not show any malice against Smith, or make any threats; but seemed to wish him to converse with Smith, from motives of friendship towards Smith. Witness remarked to Smith, that his course was so variant from his usual course and disposition, that he could not but think he was acting under the influence of others. He said he was not, and named some whom he supposed witness meant, but said he was not influenced by them.

*Cross-examined by mr. Booker.*—Witness did not know whether he had received the first information of Smith's statement at Perryville, from Daviess or not; had a conversation with Daviess on Thursday, and thought it was his wish to avoid any ill feelings between Smith and himself; did not recollect whether Smith stated to him, that he had made the statements at Perryville on his own knowledge, or on that of others; supposed his object in requesting the certificate, was to make good what he had stated; every man, when he makes a statement, feels justified in establishing its truth; saw no certificate which had been procured by Smith, but saw some letters which had passed between him and others. Witness remarked to Smith, that it was not yet time for him to have influence—that he ought to desist from interference in elections, until he was twenty-one years old—this was the pernicious course to which witness alluded.



*John Eccles examined.*

Witness said, he had business at Smock's sale, which took place on the Wednesday after the election, and arrived there perhaps before any other person. Some time after he got there, James Wood came, with two or three of his brothers. They were sitting in a part of Smock's house, when the conversation turned upon this unfortunate affair. He did not recollect what other persons were present, or whether there were any. One or two of the other Woods reprobated the conduct of Daviess, but James for a long time did not say anything. At length he said, if a big man were to rush on him, he would do his best to kill him. Afterwards he observed, that if some facts were proved, which he understood would be, it would go hard with Daviess. Wood in his testimony had said that witness was in a passion, but he did not recollect being in a passion, though he defended the conduct of Daviess.

*Cross-examined by mr. Booker.*—Witness treasured up what Wood said, because he did expect at the time that he was not speaking his sentiments; but he did not remember one half which was said; facts might have been stated which were favorable to Daviess, for it was certain that witness had mentioned facts which were favorable to him, and was defending his conduct; believed Wood did not qualify his expression in any way, though he said afterwards, if some facts were proved which he understood would be, it would go hard with Daviess; witness thought Wood said, if a large man were to rush on him he would do his best to kill him; did not recollect that he said he would not get out of the way.

*John Comingoer examined.*

Witness was at Smock's sale, and saw there Mr. Eccles and Mr. Wood, or a man who they said was Mr. Wood, for he did not know him. Eccles was defending the conduct of Daviess, and witness told him he thought Daviess ought to have defended himself with the same weapon he was assaulted with. Mr. Wood said, if a large man were to attack him in that way, he did not know but he would do as Daviess had done.

*Cross-examined by mr. Booker.*—Witness believed there were several present, but he did not know them; there was a man there called Wood, but he did not know him, nor did he know that the man was a witness in this case; heard him say nothing about the affray, nor any threats he had heard.

*John Eccles further examined.*

Witness said, it was James Wood who was in the company at the sale and made the expressions; saw the foregoing witness there, but did not recollect whether his arm was slung up in a handkerchief or not; knew him well, and had known him for about three years.

*Thomas Higgeson examined.*

Witness was at the table in Perryville, at the time of the conversation between Daviess and Bullock, in relation to the statements of Smith; heard no threats from Daviess, but only a declaration that he would see Smith—but did not hear the whole conversation on the subject, for he went out before it was finished; Bullock's manner was calculated to irritate Daviess.

*Cross-examined by mr. Booker.*—When Daviess said that Smith was a damned pitiful liar, an understrapper and tool, witness did not recollect his saying that he would stop his mouth; thought he left the room before they had finished the conversation. Witness had lived with Bullock six years, and always took him to be a man of truth.

*Questioned by mr. Rowan.*—Witness considered Bullock as a man of extraordinary memory; he drinks a little sometimes, but never so much as not to recollect what passes; did not recollect Bullock's expression to Daviess, in detailing what Smith said, but it was something about his being an enemy to the war.

## TUESDAY, SEPTEMBER 15.

*Zerah T. Haggin* was introduced as a witness on the part of the accused, to prove the expressions which Daviess had made when it was considered by every body that Smith was out of danger, for the purpose of showing the state of his mind, and thereby rebutting some part of the testimony which had been introduced on the part of the accused.

*Mr. Booker* objected to the introduction of this testimony; because he contended that it was illegal; that no individual can give his own confessions in evidence; that even if Smith was considered out of danger, Daviess was liable to prosecution under the statute for stabbing, &c. This point gave rise to an argument of some length, in which all the counsel participated.

*By the Court.*—The court expressed regret, that this question had not been made when some notice had been taken of it

on Saturday, that there might have been more time for consideration. The question is involved in some doubt and difficulty. It may happen, that the accused may be in conversation, and some witness may have caught detached sentences, having an import very different from that which would appear if they were taken in connexion with the whole conversation. In this case, his situation is not equal. The question now is, whether the conversation of the accused, when he had no apprehension of Smith's death, are competent to be given in evidence. If the court think they are, then it will be left with the jury to consider with what motive the declarations were made. This is a subject on which the court has some doubt; but in a case of doubt, he should ever decide in favor of the accused. If the commonwealth is permitted to give evidence to prove the state of mind with which an offence has been committed, it seems no more than proper, that the accused should have an opportunity to rebut it by similar testimony, especially of declarations made when he could have no motive to conceal the truth. If the jury think, that the expressions were made with the intention that they should be used in evidence, they will give them no weight. No statement can be admitted, after there was any intimation that Smith was in danger.

*Doctor J. Bosley further examined.*

Witnesses did not recollect the precise words which Daviess had used in conversation with him about this affair; but he said in substance, that he regretted it had taken place, for he was disposed to be friendly with Smith. Daviess seemed to express satisfaction, when witness told him that the wound was a mere scratch, and that Smith was in no danger. This conversation passed in the back room of the silversmith's shop.

*Questioned by mr. Booker.*—Witness did not recollect positively, whether this took place on the second or third day of the election; Daviess touched him and requested him to walk into that place; had no conversation in the street.

*Cross-examined by mr. Rowan.*—Witness had expressed the same opinion on Tuesday to others, as well as to Daviess.

*Questioned further by mr. Booker.*—Witness was in Smith's office the whole of the evening after he received his wound, and was not out at all except in an adjoining room; heard the conversation between Smith and Elgin; there were a number of persons in the room, among whom were Moore, Zachariah Smith and others; some person, witness would not be posi-

tive that it was Elgin, but that was his impression, enquired how the affray had happened? Witness told him that he had better not converse, as it might injure him. But Smith stated, that he had heard of Daviess' calling him an understrapper, a puppy and a tool, and had enquired of him if it were so; that Daviess admitted some part of it, and some he denied, stating that he thought that he (Smith) was too much under the influence of others; that he replied, that if he (Daviess) meant that he was under the influence of Thomas Moore, or any body else, he was a liar—on which Daviess rejoined, that he was a damned liar; that he then struck Daviess in the mouth, and if he said he gave him a second blow, witness did not hear it; witness was near him; from the time of the affray till his death, witness never heard him mention the dirk—he seemed to avoid it. The place where witness saw him and Daviess at the time of the affray, was before Williams' store door; there is one house between that and Daviess'. Witness heard no conversation, but once that evening.

*Doctor J. A. Tomlinson further examined.*

Witness said, that when he was returning after having probed the wound of Smith he told Daviess, that the wound was slight and there was no danger, upon which he expressed great satisfaction, and said he was glad it was no worse. Witness conversed with doctor Hunn two or three days ago on this subject. Hunn enquired whether he was present at the dissection, to which witness answered that he was. Hunn then asked whether the thoracic duct was cut, to which witness answered that he did not know. Hunn said it was his opinion that the duct must have been cut or the chyle could not have got into the cavity of the body—he said he had never known a similar case, or so great an accumulation of chyle in any part of the body, and added that the pleura must be wounded. Witness agreed with doctor M'Dowell as to the quantity of the fluid. That regurgitation may exist witness had no doubt—the fluids may regurgitate into the bladder and other cavities of the body; there are a large number of lymphatics, opening into the cavity of the chest.

*Questioned by Mr. Rowan.*—Witness said, the opinion of a man might change on a subject of this kind after a more minute investigation—witness himself was more doubtful than at first; his opinion might be changed by learning other circumstances; witness did not think two-thirds of the fluid was lymph; the lungs fill the cavity of the chest; did not agree with doctor Hunn, that the air would rush in whenever the

cavity of the chest was penetrated by a wound ; the cavity has frequently been penetrated and tubes put in which have remained there days together without any injury from the atmospheric air ; the air may penetrate through the tube, but in that case it is expelled again by the patient making a full respiration ; the quantity of air which will pass in through the tube depends on the size of the orifice, if it be larger than the natural channel through which the air passes, the greater quantity of air will pass through the tube, and if it be smaller the less quantity will pass through it ; if the orifice be small but little air will pass through it ; an ascending stroke over the clavicle will not penetrate the cavity.

*Cross-examined by Mr. Booker.*—Witness said that a descending stroke over the clavicle might penetrate the chest ; regurgitation might take place in a person whose body was disordered by excessive labor, or by disease ; the morbid action and the collection of the fluid would take place at the same time ; wounding the pleura would cause inflammation, but not necessarily regurgitation.

*Questioned further by Mr. Rowan.*—Witness said there would not occur one case in twenty in which a dirk like that in court could cut the duct and pass into the chest without producing instant death ; he could hardly suppose such a case possible, as it would almost certainly cut some other vital part.

*Zeriah T. Haggin examined.*

The first time witness heard Daviess speak on this subject was on the evening of the day in which it had happened, and in Mr. Head's store. Mr. Head and another person were present. Daviess came in and expressed his satisfaction that Smith was not more injured ; for he said the doctors had given their opinion that there was no danger. Afterwards witness heard from him similar expressions, and did not believe that Daviess had the heart to kill a dog, much less a man.

*Jesse Head further examined.*

Witness heard Daviess express his satisfaction that Smith was not more injured, on the same evening, and in substance as Mr. Haggin had stated. There were several present. Witness had several conversations with him afterwards, in which he regretted the event very much.

*Questioned by Mr. Booker.*—Witness did not hear that Smith was in danger until he was dead—he heard of that event on Sunday evening.

*Rev. Thomas M' Clelland examined.*

On the third day of the election witness was passing along the pavement by Daviess' door towards the court-house, and met Daviess on the way. He mentioned to witness the unhappy circumstance which had taken place, and said it was the first squabble he had had with any man since the war. He expressed his joy with unusual emphasis that death had not taken place, and said if it had, it would have been a matter of regret with him as long as he lived; that it would have been a loss to the public, as Smith was a promising young man; and that he did not blame Smith so much as some others.

*David Cowan examined.*

On the morning of the second day of the election, witness met Daviess and made some remark upon the unfortunate affray. Daviess stated, that he regretted that he should have been under the necessity of defending himself, and expressed his satisfaction that no bad consequences were likely to ensue. He asked witness if he had seen Smith that morning? Witness answered that he had not, but heard the wound was trifling.

*William Bohon examined.*

On the third day of the election, witness met Daviess near his store door, who invited him in. Witness went in and they entered into conversation on the unfortunate affray. Witness asked him if he knew how Smith was? He said, that Smith was in no danger, and expressed his regret that it had happened.

*John L. Bridges further examined.*

Witness has had frequent conversations with Daviess, in which he has expressed the same sentiments which have been before stated, declaring his regret that it had happened, and his satisfaction that Smith was in no danger. Witness said, that in relation to the testimony which he gave yesterday, he was not sure that he was in the store the whole time during which Knox was there; recollected that he went out to write a warrant, but did not know whether it was before Knox went out or afterwards.

*Nathan Harris examined.*

On the third day of the election, witness was in Daviess' counting room, and asked Daviess whether he had seen captain Smith or his son since the affray? He said, that he had not spoke to them, but that he bare no malice, and wished

their friends would interfere and bring them together again on friendly terms. He said he regretted that it had happened, and expressed his satisfaction that it was no worse, and intimated that he wished witness would bring about an interview between them.

*Cross-examined by Mr. Booker.*—Witness said he knew James Wood and never heard his credibility when on oath questioned ; Wood is the brother-in-law of witness,

*David Sutton examined.*

This witness was called on the part of the commonwealth, and a question put to him which would lead to an answer relative to the feelings of John L. Bridges towards the deceased. Mr. Rowan objected to evidence of this kind, but on the request of Mr. Bridges he withdrew his objection.

Witness said, that in conversation with John L. Bridges shortly after the affray happened, either on the same evening or the evening after, Bridges justified Daviess, and said the young man must mend his manners if he wished to live in Harrodsburg. On the suggestion of Mr. Bridges, witness said, that he might have said if he wished to live in peace at Harrodsburg.

*Cross-examined by Mr. Rowan.*—Witness did not know that Bridges had any individual hostility to Smith, though he approved the conduct of Daviess.

*John Hannu further examined.*

Witness said, that on Sunday as soon as he heard the news of Smith's death, he went over to Bridges' office to get somebody to go out with him, and applied to Mr. Gordon and Mr. Bridges. Mr. Bridges had to go to some court, and Mr. Gordon had no horse. He also applied to S. M'Affee, who could not go. While he was there Daviess came in, and witness determined to send for doctor Hunn to go with him to know his ideas on the subject. Witness applied to the Doctor himself, who answered that he was not sent for ; that he was not on friendly terms with captain Smith, who considered him too much a federalist, or a damned federalist. Either at that time or some other, witness asked him whether he would go if sent for ? Witness did not know what his answer was, but he uniformly refused to go, and witness took the idea, that it was because he had not been originally sent for. Witness recollected no conversation about a pistol or dirk, except what he had detailed the other day.

*Cross-examined by Mr. Rowan.*—Witness stated, that Hunn said Smith thought him a federalist ; he did not consider Hunn as sent for ; he only applied to him as company to ride out with him ; had not heard that any other physicians had been sent for ; when going out of town afterwards, witness met the messenger who had come in for physicians, near the market-house. Witness' partner had enquired of him that morning what he had heard Hunn say, and he was told last evening that he should be summoned to-day and to call to mind what he had heard Hunn say ; captain Moore about ten o'clock to-day said to witness, that he was wanted to testify something about Hunn.

*James Wood further examined.*

Witness did not see the man that was talking with Daviess as stated in his former testimony at Durrs' sale ; he only saw the man ride by ; witness was at another sale beyond Salt river ; did not recollect the place where the sale was ; there might be twenty, thirty or forty persons there ; on suggestion, witness said it was at Dyer's sale ; did not know whether the man was there or not, as he had merely seen him ride by ; did not recollect his clothes, only that he had his arm slung up in a handkerchief like that which the clerk had. Here a Mr. William Armstrong was introduced with his arm slung up in a handkerchief, and witness was asked whether he was the man ?

Witness answered that he was not, for he was acquainted with Mr. Armstrong, and was not acquainted with the man whom he saw with Daviess.

*William Armstrong examined.*

Witness was at Dyer's sale, and wore his arm slung up in a handkerchief ; did not see any other man at the sale with his arm in the same situation ; was at the election and carried his arm so then ; saw several at the election with their hands in slings, but none in a handkerchief of the same color as his ; never spoke to Daviess at all on the last day of the election.

*Here the Testimony closed.*

Mr. Booker, Mr. Shannon and Mr. Rowan, then successively addressed the court, and the first gentleman closed the argument.

On Thursday evening the 17th, the arguments were concluded, and the jury retired.

On Friday morning they came into court with a verdict of  
**NOT GUILTY.**



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# APPENDIX.

No. 1.

TO CAPTAIN SAMUEL DAVIESS,

*Attorney at Law and Commission of the Peace, of Mercer County.*

SIR,

MURDER is one of the highest crimes known to the laws of our country. You have killed my son. By that act you have inflicted a wound on my present and future peace and happiness, which can *never* be healed. By that deed you have cast a gloom over the future prospects of a large family, and numerous friends; and robbed your country of one of the most promising members of society. To justify you in committing this greatest of all crimes against God, and your country, requires some strong, some potent reason for so doing. To find out the strong reason or cause of this bloody deed, is the object of the present enquiry.

You claim to yourself the experience and age of 43 years; a considerable part of that time you have been a lawyer; you profess to be knowing in the laws of our country; you sometimes had pretensions to the character of a good citizen, and to be a knowing man; and you have at different times even asked the suffrage of our county, to promote you to the high trust and honor of making laws. From the advantage of age and experience, and high pretensions of doing good, one would have thought that the common and most important duty due to our fellow man, would not have been neglected. This young man was just, as it were, launching his little boat into the great ocean of life, where lay concealed, dangerous rocks, sand-bars, and other obstructions. When you saw him going wrong, you ought to have spoke to him kindly, told him of his danger, and advised him better. If he still persisted, then informed some friend who might have had more influence with him.

You say that this young man told lies upon you at Perryville; and afterwards slapt you in the mouth, and struck you with his fist, or pushed you down in the streets of Harrodsburg. This I believe to be the sum and substance of all the evidence, both legal and illegal, that can be adduced in your favor, and all you contend for to justify you in taking the life of this young man. I will admit for a moment—But before I make the admission, I must ask forgiveness and pardon of that pure and heavenly spirit, which hovers around me, and says, “father, father, what do you do? I never told a lie to do injustice to any man.”—We will then suppose for a moment, that all you contend for is true; that this young man told lies upon you at Perryville, and afterwards slapt you in the mouth, and struck you with his fist, or pushed you down in the streets of Harrodsburg. When I say struck or pushed you down, I wish to draw the attention of the reader to the testimony. Most of the witnesses say, that you was in a falling position; but whether from the violence of a blow or push, they differ. The presumption is strong, that it was little else than a push, because you never showed or pretended to show any mark of violence; and it is very uncommon, when a stroke is sufficiently violent to stagger a man, not to leave some marks. We must suppose too, that the slap in the mouth must have been extremely gentle, for I never understood you complained of any hurt. Indeed it is doubtful whether my son’s hand ever touched your face at all. But suppose he did slap you in the mouth right hard, and that he did strike you hard enough to stagger you back, I say would all this justify you in the blood-thirsty deed of stabbing him to the heart? I presume not. The laws of your country do not justify you—the laws of your God do not justify you—neither do the laws of reason justify you. Nothing then but the depravity of the human heart would attempt to justify you. Should it be thought a sufficient justification for one neighbor to take the life of another, because he told lies upon him, or because he strikes him with his fist, I fear the inhabitants of our country would soon be thinned. Every person of the least reflection, must see the horrid state of society we would be in, and shudder at the very idea of such a state of things.

I will now enquire what those lies were, that this young man told upon you at Perryville? Why, it appears that he said you was opposed to the war and right of instruction. It appears too, that it was merely accidental that he spoke these words about you, and then not from his own knowledge, but

from the information of others. He spoke them not in an electioneering way, neither did he speak them in public company, but in private conversation with doctor Gordon, who told the story to major Bullock. At the time too, that major Bullock gave my son to you as the author, he says that he endeavored to persuade you that the young man was not electioneering against you—(See *Bullock's testimony.*) Major Bullock says that he had heard the same from others—(See *Bullock's letter to my son, Ap. No. 11.*) Your friend Head, states in his evidence, that he had heard the same statements made by others, as my son made. This by itself, shows that the charge against you was not uncommon in the county, and that you could not have been ignorant of it. But we will suppose for a moment that there was no foundation for the story. From your experience in life, you ought to have said, and every reasonable man would have said, this young man is mistaken—he has been imposed upon by some enemy to my election—that it is not uncommon for stories to be raised about candidate in electioneering times. Sentiments and words like these, would have been but a small exercise of charity towards a young man. But to fly into a rage and passion, and abuse of language, which would put to the blush Billingsgate itself, is only to be accounted for in some other way.

I will now ask the reader to turn to the letter of George B. Thompson to doctor W. Robertson, doctor Robertson's answer thereto, the certificate of captain E. Haley, &c. major Thomas Allin's and John Hanna's letters to me, Nos. 8, 9, 10 and 22. It will there be seen how far this young man was justifiable in making these statements about you.

The policy of the war, and right of instruction, have been two great national questions, on which political parties have differed; and these two questions, among other things, have given a distinction to what is called republicans and federalists. It is not uncommon for men to differ in opinion about these things. You thought the federalists right. You went with them in all their arguments against the measures of the administrations of both Jefferson and Madison. You was a federalist, as the common saying is, "up to the hub." Now I do not blame you for this. The laws of our country give you the privilege of exercising your own opinion. But afterwards to deny it, was very mean in you. Meaner still, when we consider you did it to injure the character and hurt the feelings of so worthy a young man. Like a little tyrant in heart, you seem to think yourself at liberty to say what you please about this young man, and if he dares to call on you.

for an explanation, you think yourself justified in taking his life—not in an open, gentlemanly way, but like an assassin, with a concealed dagger, stab him to the heart.

Let us hear what you said about the young man at Perryville:

That he was a damned pitiful liar, an understrapper and tool.—*See Taylor's testimony.*

You called him many hard names, such as understrapper, and pitiful liar.—*See Dr. Hale's testimony.*

That he was employed by Moore, to electioneer against you; that he was a tool for Moore, and a damned, mean, lying rascal.—*See Willis' testimony.*

He was a mean, pitiful liar, an understrapper and tool, going through the country telling lies upon you; and if you ever lived to get back to Harrodsburg, you would stop the rascal's mouth from telling any more lies on you.—*See Bullock's testimony.*

All this you said about this young man—knowing too, that every word of it was as false as it was base. You knowingly, wilfully, and maliciously, slandered him. You knew him from a boy; you had a good opportunity of being acquainted with his real character. You knew that he was one of the most promising young men of his age. You knew that he possessed all the moral virtues, in the fullest extent. No young man was more respected for his talents and virtue. All this you knew, and hated him for it. You hated virtue, and determined his destruction.

This baseness is congenial only with little, contracted souls like your own. The honest and enlightened mind loved and respected this young man, for the very reason you hated him. I mention this, to show how widely you differ from good men, and how little you deserve the good opinion of the wise and good. Nothing is more gratifying to the liberal, honest, enlightened mind, than to see young men of talents and virtue rising in the world. They take pleasure in promoting their interest and welfare. This is noble, great, and good. But to hate virtue, and plan its destruction, discovers a heart well schooled in the dark holes of corruption.

However painful to me, I will again repeat the slanderous words you used against my son at Perryville.

You said that Smith (meaning my son) was a damned, pitiful liar, an understrapper and tool.

You called him many hard names, such as understrapper and pitiful liar.

He was employed by Moore, to electioneer against you; that he was a tool for Moore, and a damned, mean, lying, rascal.

He was a mean, pitiful liar, an understrapper and tool, going about the country telling lies upon you; and if you ever lived to get back to Harrodsburg, you would stop the rascal's mouth from telling any *more* lies on you.

What rancor of determined malice shows itself here! This was the plan laid to execute a more horrid deed!

You spoke these words at Perryville, a place where my son was but little known; and in the presence of gentlemen who had but little or no acquaintance with his real character. You did this the more to excite the resentment of the young man. You knew very well that no man of resentment could put up with such unparalleled, indecent and provoking abuse—more particularly a young man, of high sense of honor, and delicacy of feeling. You expected, nay you were sure you would be called on to account for your conduct. This is what you wished. This would give you a good opportunity to execute the wicked intentions of the most vicious heart.

You prepared yourself for the bloody deed. You knew that on the first day of the election, people would be at Harrodsburg from all parts of the county, and in all probability my son would be told by some one, what you had said about him at Perryville. The thing happened as you expected. He was informed of what you said about him, in the evening of that day—(See the affidavit of Mr. S. M. Worthington,\* also my son's letter to Mr. Magoffin, Nos. 13 and 14.) My son, feeling indignant at such baseness, called on you the next moment. But alas! you stood ready with the weapon of death—You gave the fatal stab. But what is more cruel, you exulted in the bloody deed.—O, reader, go with me a little further, and hear his exclamations!

Damn him, (meaning Smith) he did his best to put it to his heart!—See *Munday's testimony*.

By God, I aimed to kill him, and damn him I will kill him, if he comes near me!—See *Keel's testimony*.

I took damned good aim, and the next time I get a crack at him, I will aim a damned sight better!—See *Knox's testimony*.

Stuck him in his damned woozen!—See *Wicoff's testimony*

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\* Mr Worthington was summoned as a witness, and attended at the trial, but was never examined. The attorney for the commonwealth thought his testimony inadmissible, under the rules of law.

At the time he stabbed Smith, it was his intention to kill him, and still wished he had done it!—*See Wood's testimony.*

Damn him, he meant to put it to his heart!—*See M' Coy's testimony.*

The reader will recollect that these unfeeling and horrid expressions were made in the presence of different gentlemen, and at different times. Yes, the reflection of three days appears not to have abated your blood-thirsty desire. On the last day of the election, you still wished the blood of this young man—(*See James Wood's testimony.*) The sensible and feeling heart will cry out and say, is it possible there is such a monster in human shape! It would lessen the pangs of the sensible philanthropic breast, if these horrid expressions could have been confined to one solitary person; but we find that there are others who wished the destruction of this amiable and virtuous young man.—*See my address to John L. Bridges, John A. Gordon, &c. &c. Nos. 2, 3 and 4.*

I will now endeavor to develop another species of deception, as base as it was false, but insidiously and industriously circulated by yourself and friends, (let it be understood by the word *friends*, that I mean those persons who knowingly and willingly justified you in this murder) a little before and after you killed my son. Which was, that this young man, though well-meaning and honest, had unfortunately allowed himself to be improperly influenced by others, particularly capt. Moore; and that Moore had employed him to electioneer against you; and further, that my son was set on by capt. Moore to attack you, when you killed him. From the art and cunning used in telling these stories, many people, and some honest ones too, rather pitied than blamed my son, and implicated capt. Moore as a kind of accessory to his death.

As to the charge of capt. Moore's having had any thing to do with the attack of my son, when you killed him, captain Moore has satisfied every impartial mind of its falsity, by a publication lately made by him. The story never was believed by any man who was acquainted with the character of my son; but too many pretended to believe it, from corrupt and base motives—*See No. 14.*

The other charge, that my son went about for the purpose of electioneering against you, is so extraordinarily ridiculous, that nothing but a little head and a corrupt heart would have thought of such a charge. In the first place, I know of no law or usage in our country, to prohibit him from electioneering against you, provided he acted fairly and honestly. As

to his going about through the country, it was as false as your other assertions.\* He went no where, except his business called him. Neither you nor any other man ever saw a young man who confined himself more closely to business or study. You say he was electioneering for capt. Moore. This assertion is as ridiculous as false. Capt. Moore was no candidate. I mention these matters, to show the reader my further reason for thinking that your apparent anger at Perryville against my son for electioneering against you, was all a pretext to have an opportunity to abuse him, so that he might call you to an account for that abuse, when you might be prepared to take his life.

Another reason. It is a well known fact that there were many men in and about Harrodsburg who took an active part against your election, said ten times more about your politics than my son did, spoke their mind freely in any company, and even before your face laughed at you for your pretensions. These men too were gentlemen of full age, had families, had influence. I would ask how it happened you did not get angry and show your malice against these men? How was it that you did not call them mean, lying, rascal, puppy, &c. But what is more extraordinary than all, is, that this young man because he electioneered against you should excite such rancor, malice and hatred, when you considered him such a mean, lying, rascal, puppy, tool, &c. Surely every person would say that you ought to pity rather than show resentment to a character of this kind. Such a character could have no weight, could injure your election in no shape; he had not even a vote himself, for he was not twenty-one years of age.

Thus it is shown how extremely absurd and ridiculous it must have been to get angry at my son, because he was opposed to your election. Every impartial reader will easily see that this had nothing to do with your hatred to this unfortunate young man.

You saw in him superior literary knowledge. You discovered in him an uncommon strength of mind—inconstant application—inflexible virtue—and the most independent spirit. Yes; you must have seen rising and combining in this young man, all the distinguished attributes which constitute and give dignity to man; and for this, you hated him—and for this, you planned his destruction.

You said you would stop the rascal's mouth from telling any more lies on you. Yes, it is too true—you did stop this young man's mouth, not from telling lies, but from telling the truth.



Truth was what you feared and hated. You saw light, truth and knowledge like to beam forth. This you could not bear; like the midnight beast of prey, it was death to your schemes and plans; the light must be extinguished in embryo:—The youth must be slain.

But not satisfied with knowingly and maliciously slandering this young man, and taking his life, you must impute improper motives to his distressed and afflicted friends. You and your satellites endeavored to impress upon the public mind, a belief that you was prosecuted with the most rigorous, malignant hatred. This charge is as unfeeling as it is false. I will venture to say, that there never has been a crime committed in the state of Kentucky, of the same magnitude, attended with the same aggravated circumstances, which was prosecuted with less rigor. On Monday the first day of the election, you made yourself liable to be prosecuted under the statute of stabbing. This law makes the gist of the crime to consist in the intention to kill. The evidence of this horrid intention was abundant, and aggravated, in the extreme.— But you was permitted to go at large, undisturbed. No person thought proper to prosecute for the breach of this important law of our country. On Sunday following, six days after, my son died of the wound. But you are still permitted to go at large. You go to Washington court, as you say, on professional business; you continue there until Friday the 14th of August, when you return to Harrodsburg undisturbed, deliver yourself up to two justices of the peace, who *tenderly and politely go with you into your own house*, and there recognize you for the crime of murder in the sum of \$2000!! Not from any evidence on the part of the commonwealth, but from two affidavits taken in Washington county, and no doubt framed by yourself—(See the recognizance &c. Nos. 5, 6, & 7. See also, Stephen Davis and Elgin's testimony.) Still you complained of rigor and malignancy of heart in the friends of the deceased. This tenderness for yourself is not thought strange, when we consider the whole of your conduct in this transaction. Indeed, it is entirely consistent with your political, if not with your moral character. Pride and ambition, when unfortunately confined to little contracted souls, are apt to think themselves above the restraint of law. It only shows what a big, little, tyrant you would be if you had the power.

It will be seen, but only partially seen, from the manner of examining the evidence in this trial what pains was taken to impress upon the minds of the people a belief that the friends of the deceased had bribed the witnesses to give testimony on

behalf of the commonwealth. This indirect attack on the character of the friends of the deceased, I consider more cruel if possible than stabbing my son to the heart. And none but the most unfeeling and corrupt heart would have imputed such a crime to them. In justice to those witnesses who gave evidence in behalf of the commonwealth, although the greater part of them were strangers to me, so far as I know and believe, they are gentlemen of truth and honor.

I wish not to be understood that the friends of the deceased were entirely indifferent about your being prosecuted. Had they been so, they would have forfeited the name of good citizens of society; and would have been guilty of the most gross sin against the laws of God and their country. Those laws are intended to punish the wicked for their evil deeds. They would be useless if they were not executed; and a partial execution of them is worse than none. Society is formed for the benefit of the whole, and not a part, and he who makes a distinction and withholds his vigilance in bringing to punishment the enemy to virtue is an unworthy member.

Had you not left the county immediately on your being informed of the death of my son, and had the friends of the deceased, and I will say, the friends of justice, known certainly where you were to be found, no doubt, but you would have been prosecuted some days sooner.

It is also true, that exertions were made to procure additional counsel on behalf of the commonwealth. This was done with a belief that justice to the commonwealth could not be had without additional counsel. The result of this trial will show how far I was mistaken in this belief. A proper zeal to punish outrageous breaches of the laws of our country, I consider a virtue. But a sanguinary, malignant spirit never belonged to my breast. I never taught such a diabolical spirit to my children.

The following extract will show the sentiments and feelings of the young man you murdered. They are taken from a long letter, or rather an essay on crimes and punishments, written by my deceased son to a friend, bearing date January 17, 1817; wherein he advocates the policy of confinement to hard labor in the jail and penitentiary, instead of the punishment of death. The subject of course is mostly confined to murder and treason, they being the only crimes punished with death in our country.

After treating the subject under the head of murder very lengthily, he concludes thus:

“There are other reasons to prove that the punishment of slavery would more effectually prevent the crime of murder than the five mentioned above. But the subject has lengthened itself so much beyond my expectations, I must give my pen a check.

“If then slavery be more instrumental in suppressing the future commission of crimes than death is, and if such suppression be the great and sole design of all punishments, consequently slavery ought to be substituted instead of death. And even if it were not more instrumental than taking life in this suppression, but only equally so, it should be preferred, because it is the milder punishment. But suppose confinement in the jail and penitentiary were not quite as effective in restraining offences as hanging is, does it follow as a necessary consequence, that the latter ought to be preferred? This is certainly a difficult question. But I must answer in the negative. I think that penitentiary, &c. is a more proper punishment than the deprivation of life, although the latter might be rather more instrumental in preventing crimes than the former. I think so on account of the latter's inexpressible severity. Let us take a cool, impartial view of this sending a mortal to the other world. Where does he go? he has been a murderer! Heavens! where does he go? Is there such a place as *Hell*? and is there any probability of his being quickly hurried there? Christian, christian—you tell me that there is surely a hell—and that all those who are guilty of such a horrid crime as murder, shall unavoidably be plunged in that fiery gulf unless they repent. Oh! then in the name of God, christian! how can you advocate the punishment of death? How is it possible that you who are confident of a hell, should sentence a wretch whose hands are bloody with guilt; whose heart is black with sin, to dark mysterious ETERNITY? Oh! how can you hurl a fellow mortal to a dungeon where “seas of boiling sulphur roll,” there to writhe and shriek a long, long *forever*. No, no, you certainly cannot. Then give him time to repent, punish him with earthly confinement the remainder of his sublunary days, and let him have opportunities of reading his bible, of hearing his duty to God expounded, that he may save his soul and escape gasping eternally in indescribable agony. I, for my part, will boldly declare, that although a man had injured me in the most insulting and outrageous manner, although he had murdered my father or mother, my brother or sister; yea, although he had put to death the wife of my bosom, her on whom my soul doted, on whom my happiness, my all was fixed;

yet if I thought there was the remotest probability of his being sunk into the infernal pit of damnation by his being deprived of life, I should without a single scruple, without one word of hesitation, give my voice for him to live. Yea, before I would send him to hell, before I would cause him to "*roll and writhe interminable ages on red-hot lava,*" by my God, I would pray on my knees for his acquittal."

Such sentiments and feelings, I know, are strangers to your breast. Your little self has always set bounds to your thoughts; but it may be possible that this little extract may induce you to take a second look, and cause you to see yourself in a different light from what you have done. Although they are the feelings and effusions of the mind of a youth who now lays low in the grave, let it admonish you for the future to confess your sins before God, who knows the heart, and not before man who is liable to be imposed upon through hypocrisy and deceit.

A word about your friend Elgin. The reader will easily see what weight is due to this man's evidence. One thing is certain, that is, he was a very willing witness, to go backwards and forwards three or four times in the course of the evening, to see Smith, to enquire of him how the thing happened—at length drags from Smith a conversation that nobody else ever heard—afterwards was obliging enough to go all the way from Harrodsburg, where you both lived, 25 or 30 miles, to Springfield, to meet you there and swear to what he had seen and heard—(*See Elgin's affidavit, on which you was recognized, No. 7, and particularly his evidence given in open court.*) But suppose this young man, Elgin, told truth: He says, that on Friday or Saturday before the election, he brought my son and you together, and confronted you about political questions; when, from this man Elgin's story, there must have passed more offensive charges than ever were heard of before or since. How did it happen that you did not get angry at that moment, and call my son, mean, lying, rascal, puppy, &c. But it appears, from your friend's story, that you took it all very patiently—much more so than he would have done himself. Again, your friend Elgin says, that my son told him that you denied all that you said about him at Perryville, except that he was under the improper influence of others. Now if it be true that you did deny these things to my son's face, it is only another proof, if any more proof were wanting, to show with how much facility you can make statements one day, and deny them the next; and how

meanly and basely you can act—(*See the testimony of Bullock, Willis, and others.*) By Elgin's own testimony, it appears you gave my son the damned lie, thereby adding insult to injury.

JESSE SMITH.

No. 2.

TO JOHN L. BRIDGES,

*Attorney at Law.*

SIR,

YOU too wished the destruction of this young man. But before I enquire into this philanthropic wish of yours, some apology may be thought due to my county-men, who have thought proper by their suffrage to place you in the high station you now hold as senator in the councils of our government—a standing you never merited. But as you was placed there under the rules and regulations adopted by the laws of our country, a due respect to those laws will always be acknowledged by me. But when those high places of trust and honor are disgraced in the persons who fill them, I feel myself at liberty—not only at liberty, but in duty bound—to expose to the world, the wickedness and hardness of your heart. In doing this, I shall not say any thing about your former sins, but confine myself to your conduct and expressions towards this unfortunate son of mine. You justify Daviess in stabbing him, and say, that this young man must mend his manners if he wished to live in Harrodsburg; you was permitted to add the two words, “*in peace*”—the witness said it might be so—(*See David Sutton's testimony.*) I will then make use of the expression as qualified by yourself—that you justified Daviess in stabbing this young man, and that he must mend his manners if he wished to live in peace in Harrodsburg. I would then ask, how and in what way you would wish this young man to alter his manners? It could not be because of his vicious habits; neither could it arise from want of knowing his duty. It is sufficiently shown, that he was one of the most peaceable, discreet, upright and enlightened young men of his age; and that his manners, so far from being exceptionable, were of the most exemplary kind. All this you had every opportunity of knowing. I would again ask, what alterations in his manners you thought ne-

ecessary? It could not be from vice to virtue—it is known that he was free from vice. It must then be because he was virtuous. Yes, you hated virtue—an honest, candid, enlightened mind, you could not suffer about you. The alteration which suited you, was from the paths of virtue to the broad roads of vice; that is, this young man must be more subservient to our views and interest. You must not expose our dark holes of corruption. On these conditions you are permitted to live among us; but if you do not yield to our measures, self defence is the first law of nature, and will justify us in taking your life. Thus must have reasoned the grave senator of Mercer; for let the reader hear your exclamations of regret, when you thought the wound given by Daviess was not mortal. Daviess being asked how deep the wound was, answered that he did not know, but he took damned good aim, and the next time he got a crack at him he would aim a damned sight better. Bridges sitting by, said it was a damned pity he had not put it into him up to the hilt.—*See Knox's testimony.*

It is said by writers on civilization, that it has been found from experience, that in proportion to the frequency of the crime of murder being committed in a country, it has a tendency to blunt the feelings of humanity; and some excuse is made for those of little virtue, from the commonness of seeing and hearing of this horrid deed. But in a country like ours, where the crime of murder is so seldom committed, and little heard of, compared with other countries—where the very mention of murder rouses the feelings of every good man, and where all the sensibilities of nicer feelings are shocked at the very idea of stabbing a fellow being to the heart, it is difficult to account for your conduct. Had you possessed the least characteristic of a gentleman, you would have shown friendship and encouragement to a youth just setting out in life. Had you had any regard for the good of your country, you would have been pleased to see talents and virtue rising, and ambitious to make themselves useful to the world. And even when errors are committed, friendly advice is not withheld. These are common duties, acknowledged and attended with pleasure by all good men. But to be insensible to these common duties, and on the contrary to wish the heart's blood of so good a young man, discovers a mind depraved and desperately wicked above all things.

JESSE SMITH.

TO JOHN A. GORDON,

*Attorney at Law.*

SIR,

IT is to be regretted, for the peace and happiness of the human family, that we sometimes meet with men of age and experience, who, from disappointed pride and ambition, and having indulged themselves in vice and corruption, become insensible to the duties they owe to society, and hardened to the common feelings of humanity. But in youth, the mind is so little enured to crosses and disappointments, before it has met with any thing to sour its temper; when peace and good will to his fellow, coeval in years, is his greatest delight; at a time when all the sympathetic feelings are most easily excited, and when the youthful passions are so susceptible of the most tender feelings of humanity, it must be strange indeed to find an exception to this great general rule: And I can assure you, that it is painful to me to have to point you out as this phenomenon. I admit that young men, and even the more experienced in life, are often deceived by false representations of the designing and wicked, in order to impose on them wrong opinions of his neighbor; and by art and cunning, these impositions may be carried so far as to make you despise your neighbor, and even hate him. All this is not uncommon. But what I mean is uncommon, and what I mean in pointing you out as an exception in youth, is the expression you made after Daviess had stabbed my son, but before the wound was thought to be mortal. The very idea of stabbing with an intention to kill, when applied to our fellow-being, has in it something extremely revolting. But when you coolly and deliberately wished, that *Daviess had stabbed this young man to the heart*, it shocks and chills all the innocent feelings of the youthful family. This young man never did wrong to you—he never wronged any man—he loved the human family. His whole time and thoughts were engaged in the pursuit of knowledge, to enable him to be useful to man. Among his private papers now in my possession, is to be seen in what manner he spent his leisure hours. These writings, with his extensive epistolary correspondence with more than half a dozen young gentlemen in different parts of the country, show the bent of his early mind. Those young gentlemen acknowledge his worth and friendship. They lament and mourn his untimely death, and weep over his remains. How

widely they differ from you! Had you solicited the friendship of my son, instead of wishing his heart's blood, how much more praiseworthy would it have been, and how different you would have stood in the estimation of all good men! But it is probable you ought to be pitied, rather than hated. You had unfortunately fell into bad company, from which may God deliver you, and dispose your heart better.

JESSE SMITH.

BEING requested by the friends of the late Henry P. Smith, to state a conversation that occurred in my presence, in relation to the rencountre between Mr. Smith and Capt. Daviess; I certify, that a day or two after Capt. Daviess had stabbed Mr. Smith, I heard Mr. John A. Gordon observe, that *he wished the dirk had gone to Smith's heart.* Given under my hand this 2d December, 1818.

DAVID SUTTON.

I certify, that a few minutes after the sad catastrophe between Samuel Daviess and Henry P. Smith, in company with John A. Gordon and others, I heard (after expressing my regret at the event) this expression from John A. Gordon, to wit: That he wished, by God, *he* (meaning Daviess) had stabbed him (Smith) to the heart.

CHARLES BOSLEY.

March 1st, 1819.

No. 4.

TO THE REVEREND JESSE HEAD.

Sir,

YOUR conduct towards my late unfortunate son, a little before his untimely death, and during the trial of Daviess, is so very unaccountable and mysterious, that I am under the necessity of enquiring into the motives which caused you to act so extraordinarily. It is a fact too well known for you to deny, that for many years the most friendly intimacy existed between yourself and my family. It was because I thought you an honest man. My bosom companion, not only thought you an honest man, but considered you among the most pious,



good christians. This reciprocity of opinion between myself and wife, made you among the most welcome visitors to my house. [The reader is here referred to a letter from Mrs. Smith to you, dated on the 14th day of August, a copy of which is subjoined.]

My enquiries will be mostly confined to the alarm you expressed when my son called on you to certify to the truth of what he had said about Daviess at Ferryville, to wit: That Daviess was opposed to the war and right of instruction. In giving in your evidence in this case, on the part of the criminal, you say that you told my son that you disapproved of the course he was taking, and that with tears in your eyes you dissuaded him from so *fatal* or pernicious a course. You further say, that when my son remarked, that if he could not get you to certify, there were enough others that would. You then again expressed your alarm, and told for GOD'S SAKE to pursue the matter no further. Now I want to know what it was my son was doing, which created such alarming sensations in your mind as to cause TEARS to flow from your eyes, and make you exclaim "for GOD'S SAKE DESIST." Surely it could not be on account of my son's asking you to certify to the truth of what he had said about Daviess. These things are too common in our country to alarm the mind of any man; more particularly you—for I will venture to say that there are few men in Kentucky who have so often availed themselves of this kind of evidence as yourself. Reflect a moment upon the many religious, political and private disputes you have had through life, and see what a host of certificate-men you have been obliged to call on to prove your assertions; and then consider how monstrous strange it must appear, that because this young man, for the first time in his life, should ask you for a certificate, in doing so should cause the tears to flow from your eyes, and cause you to exclaim *for God's sake desist!* No, sir; this was not, or could not have been the cause of those tears. But you say, upon your oath, that my son was too young to take part in elections—that he was not 21 years of age—and that was what you meant by a pernicious course. Do you mean that young men are not permitted to think or talk about politics, until they are of full age? This would be arbitrary indeed, in the school of politics. Had my son offered to give his vote in the election, or attempted to intrude himself into some office of honor or profit, before the laws of our country permitted him to do so, he would have been reprehensible; but had he even been guilty of this crime, would it have been sufficient to have caus-

ed tears to flow in your eyes, or an exclamation to your God? It is too absurd, too ridiculous, to require further elucidation. There must have been more strong and weighty matter which caused these tears. I wish to call the attention of the reader particularly to the fore part of your evidence, where you say that you never heard that Smith had done any thing in relation to Daviess, until Thursday evening, when you was informed what he (Smith) had said at Perryville. At the same time you say, that you had heard the same, or such statements, made by others as well as Smith. But you do not say when those statements were made to you by others, or whether it produced the same effect on your mind. Neither do you say who those others were that made the same statements that Smith did. How did it happen that when you heard these statements from others, it did not cause tears in your eyes; for it is said that the same cause always produces the same effect? But you say nothing about tears, when you hear the same statements from others. Why, sir, if you had shed tears every time you heard that Daviess was a federalist, &c. I fear that your whole system would have been exhausted, and your body left as dry as a chip: For I will venture to say, that there is not an honest, candid man in the county, who was conversant with Daviess' politics, that would not say that he was a federalist, and was in the habit of finding fault with, and abusing the administration both of Jefferson and Madison.

You further state in your evidence, that you foresaw on Saturday, that there would be considerable ferment on the subject, on the first day of the election. I wish the reader to carry in mind the whole of your conduct through this mysterious affair, and try to account for the great alarm on your mind. Add to this, that you foresaw, on Saturday, that there would be considerable ferment on the first day of the election, and that *you did not go out more than once on that day*. Keep in mind that you conversed with Daviess on Thursday evening, the day after Daviess made the threats at Perryville, at the same time that you was Daviess' bosom friend. Taking into consideration all these circumstances, and the impartial reader will see an awful squinting at the real cause of the tears in your eyes, your exclamation to your God, and your caution not to go out on the first day of the election. Would to God that you had had honest firmness enough to have communicated to this unfortunate young man his real danger! What streams of tears, what anguish of heart, groans and sighs of family affliction might have been saved! No doubt

when you saw this young man, the son of your former friend, in imminent danger of his life, there were some moments of a returning sense of duty and gratitude, and awful reflection, which caused the tears to flow in your eyes. But alas! the divine spirit of truth and justice was too weak. You had become bankrupt in virtue. I fear you had lately been making bad trades; that you had exchanged your candid, honest friends for the friendship of Daviess, Bridges and Co.; that you had swapt your republicanism for federalism; that you had bartered your methodism for F———ism; and finally, your moral virtue for ——.

JESSE SMITH.

LETTER FROM MRS. SMITH TO MR. HEAD.

14th August, 1818.

*Dr. Mr. Head,*

YOU must be sensible of my extreme affliction for the loss of my dear son. Nothing but the blessed religion of Jesus, which we both profess to believe, could have supported me until now; but from the feelings of my breast at present, if my God does not relieve me, I shall not be long behind him. O, Mr. Head, he was a sweet child; but he is gone—never, no never to return. O! had you been present at his dying moment, when he sent for me and said I had been a great comfort to him; when, O yes! when he took me in his arms and pressed me to his bosom, and said “*faréwell, Mother*”—O what a sweet embrace! I would not take millions for it. But I will endeavor to resign, and say with Job, “the Lord gave and taketh away, blessed be the Lord.” Still there is a circumstance which gives me great inquietude, and distresses me very much, and is the cause of this letter to you. I have been informed, that after my dear son had received the fatal stab, and you being fully acquainted with the fact, you stepped forward and voted for the man who had perpetrated the murder, thereby sanctioning the cruel and horrid deed: Yes, I have been told you went further—O, can it be possible that Mr. Head, whom we have viewed as our sincerest friend, and who I have often thought was to be the means of bringing Mr. Smith to love our holy religion? For he thought you one of the most upright, best men he ever knew—and how hath my heart throbbéd with delight, and my eyes overflowed with tears, when you came to our house, and bowed the knee before a Throne of Grace, and plead for blessings on our family! Yes, we chose you, in preference to all others, to baptize our

children, and flattered ourselves, had you seen them do wrong, as a father in the Gospel, you would reprove them.

Why, O why this change in your mind? What has my poor son done to merit your displeasure? His crime must have been great indeed, to have caused you to neglect your friends, and forget your duty to your country and your God. I have heard my dear Henry speak of you with respect—he must have had some malicious enemy, that had represented things in a false color to you. Tell me, yes, I earnestly request you will write to me, and let me know what he has done. Give my love to Mrs. Head; tell her to remember she has sons, and to pray for a poor afflicted mother.

Yours,

JOANNA SMITH.

*The Reverend Jesse Head,  
in Harrodsburg.*

No. 5.

STATE OF KENTUCKY, MERCER COUNTY, SCT.

*Be it remembered,* That on this day, to wit: the 14th day of August, in the year of our Lord one thousand eight hundred and eighteen, Samuel Daviess, Esq. of the county and state aforesaid, personally appeared before us Joseph Morgan and John Eccles, two of the commonwealth's justices of the peace in and for the county of Mercer aforesaid, and freely and voluntarily surrendered himself in custody upon a charge of homicide, said to be committed by the said Daviess upon a certain Henry P. Smith, now deceased; late of the county of Mercer, upon the third day of this instant in the town of Harrodsburg in the county of Mercer aforesaid. And thereupon the said Daviess prayed to be admitted to bail for his appearance at the next circuit court for the county of Mercer and circuit aforesaid. And the said Daviess to authorize himself to bail produced sundry affidavits, to wit: the affidavits of Stephen Davis and Thomas P. Elgin, which being produced, examined and read to us, we are of opinion that the said Samuel Daviess is entitled to bail. We therefore have, and do by these presents release him from custody on his entering into recognizance to the commonwealth of Kentucky in the penalty of two thousand dollars, viz. the said Daviess in the sum of one thousand dollars, and Robert B. M'Affee and Zerab T.

Haggin, in the sum of five hundred dollars each : Whereupon they entered into the following recognizance, to wit.

STATE OF KENTUCKY, MERCER COUNTY, SCT.

*Be it remembered,* That on this 14th day of August, 1818, Samuel Daviess, Robert B. M'Affee and Zerah T. Haggin personally appeared before us Joseph Morgan and John Eccles, two of the commonwealth's justices of the peace in and for the county aforesaid, and severally acknowledged themselves indebted to the commonwealth of Kentucky in the penal sum of two thousand dollars, viz. the said Samuel Daviess in the sum of one thousand dollars, and the said Robert B. M'Affee and the said Zerah T. Haggin in the sum of five hundred dollars each, to be levied of their respective lands and tenements, goods and chattels, and to the commonwealth rendered ; but to be void in this condition, that if the said Samuel Daviess, shall appear on the first Monday in September next, at the court house in Harrodsburg, at the circuit court to be then and there holden, to answer a charge of homicide, said to have been committed on the body of Henry P. Smith on the third day of August, inst. viz. 1818, by which it is said he the said Smith since died, and then and there abide by and await the judgment of said court, and not depart thence until discharged by due course of law ; then this recognizance to be void, else to remain in full force and virtue in law.

Acknowledged before us,

JOSEPH MORGAN, } J. P. M. C.  
JOHN ECCLES, }

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No. 6.

THE affidavit of Stephen Davis, taken at the house of John Calhoun in the town of Springfield on the 18th day of August, 1818, to be used upon the application of Samuel Daviess for bail, before the Hon. William L. Kelly, one of the circuit judges for Kentucky, upon a charge against said Daviess having committed homicide upon a certain Henry P. Smith, now deceased. This affiant being first sworn deposeseth and saith, that on Monday the first day of the election at Harrodsburg, Samuel Daviess and this affiant were standing by themselves conversing, when Henry P. Smith came up, and laid his hand upon said Samuel Daviess and said he

wanted to speak with him, the said Daviess turned off with said Smith, and after going from the crowd near to where the cedar posts stand before the house lately occupied by captain Garrett Darland, the said Smith and Daviess stopped, and the said Smith began to address the said Daviess in apparently an angry tone of voice. What he said this affiant could not distinctly hear, but saw nothing like anger on the part of said Daviess until after the said Smith had drew and struck the said Daviess with his fist upon the side of the head, which caused the said Daviess to reel back against one of said posts—his hat flew off, the said Smith then advanced upon the said Daviess, and had drawn to strike the second blow, and had struck it, when the said Daviess struck him with his dirk. This affiant feels confident that the said Daviess made no advance upon the said Smith, nor did he show any wish or desire to injure the said Smith; the said Daviess, as this affiant believes, could easily have repeated the blow if he had been so disposed. But after he recovered he stood still while several persons were engaged in preventing the said Smith from rushing upon the said Daviess. This affiant is clearly of opinion, that after said Daviess had recovered said blow as before stated, he could not have possibly retreated farther than he was until he would have received the second blow. He further states, that the said Smith was a very strong, stout young man, about (as this affiant supposes) twenty-one years old; the said Daviess is a small man about forty-three years old (as this affiant is informed) entirely unable, as this affiant believes, to cope with the said Smith in point of manhood or athletic powers.

STEPHEN DAVIS.

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No. 7.

THE affidavit of Thomas P. Elgin at the same time and place, to be used for the purpose aforesaid. This affiant being first sworn, deposeth and saith, that some short time after the affray took place between Henry P. Smith and Samuel Daviess, this affiant understanding that said Smith was dirked, he went to see said Smith, and enquired of him how the thing had taken place. The said Smith informed this affiant, that he had understood that the said Daviess had stated

at Perryville, that he was a puppy and a tool of Thomas P. Moore ; that he had asked the said Daviess about it, who denied calling him a puppy, but stated he thought him too much under the influence of said Moore ; the said Smith then stated that he slapped the said Daviess in the mouth with the back of his hand, and then struck him with his fist on the neck, and was about striking the said Daviess the third time, when the said Daviess dirked him. This affiant further states, that a few days after, he was again in company with said Smith, and enquired of him how it happened that said Daviess had made use of these expressions about him ? The said Smith stated that it was in consequence of his having told that said Daviess was a federalist. This affiant further states, that said Smith asked this affiant a few days before the election if he would vote for a man who had been opposed to the war ? To which the said affiant replied he would not. He then stated that the said Daviess was a federalist, and opposed to the war and every act of the administration ; that when he heard of our defeats, he wore a smile on his countenance, but when the enemy were defeated he looked sad and had little or nothing to say.

THOMAS P. ELGIN.

WASHINGTON COUNTY, SCT.

Personally came Stephen Davis and Thomas P. Elgin before me, William B. Booker, one of the commonwealth's justices, assigned to keep the peace in and for the county aforesaid, and made oath that the facts as in their respective affidavits are true. Given from under my hand this 13th day of August, 1818.

WM. B. BOOKER, J. P. W. C.

No. 8.

HARRODSBURG, August 3d, 1818.

Dr. Sir,

HAVING expressed my determination to vote against Samuel Daviess, upon the principle of his not being a repub-

ican, or in other words his being a federalist or oppositionist, that is, possessing principles which must be admitted (even by his friends) hostile to our republican administration, and as instances, mentioned his opposition to the late war with Great Britain, and denying the right and ridiculing the idea of the people's having the power to instruct their representatives upon questions in which the general policy of the country was immediately affected. And believe me, sir, when I state, that he has the effrontery and hardihood to deny his ever being opposed to the war, and declares he has ever advocated the right of instruction! Permit me, sir, to request of you, in answer to this, to say, whether you have not, during the late war with Great Britain, heard Samuel Daviess denouncing and censuring the American government and Madison, who was the president, as having involved the country in a war with Great Britain, unaggravated on her part, and unjustifiable on ours?

I am, sir, yours with esteem,

G. B. THOMPSON.

*Dr. Wm. Robertson, present.*

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No. 9.

*Answer of Doctor Robertson to the above letter.*

HARRODSBURG, August 3d, 1818.

*Dear Sir,*

IN answer to your letter of this date, I have only to observe, that in frequent conversations with Capt. Samuel Daviess, I have heard him reprobating the administrations of Jefferson and Madison, censuring the latter for involving the country in a useless and unnecessary war, which would only exhaust the country and demoralize a large portion of our citizens. And further, in a conversation since the war, I heard him, in Mr. Hanna's counting room, rather in an exulting way, stating the amount which the government had expended, the lives which had been lost, and that as to the difference between the two countries, they stood about as they had done when the war commenced. Observations of this kind from



Capt. Daviess frequently, have induced me to believe that he was attached to that party of politicians in our country known by the name of federalists. On the subject of instructions, Capt. Daviess informed me, about four weeks ago, (in front of J. Hanna's store) that the subject, as understood by some of our citizens, was totally repugnant to our form of government, degrading to the representative, and calculated to produce evils in the country. In fact he said it was a doctrine which he had heard nothing of, until four or five years past.

Your obedient servant,

WM. ROBERTSON.

*Mr. George B. Thompson, present.*

*Certificate of Capt. Haley.*

ON request, I do hereby certify, that some time in the year 1814, in the town of Harrodsburg, in Mr. Hanna's store, I heard Capt. Samuel Daviess, in conversation with Col. William Starling, abusing the administrations of Jefferson and Madison, and Madison and congress for pushing the country into an expensive and unnecessary war with Britain. Given under my hand this 7th day of December 1818.

EDMUND HALEY.

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No. 10.

HARRODSBURG.

*Dr. Sir,*

IN conformity to your request, I proceed to reply to your enquiries—1st. Whether I consider Capt. Daviess a federalist? And 2d. Whether I consider him an opposer of the *war*?

To your first enquiry, state, that I have always considered the Captain a federalist, and believe he is generally identified with that party.

To your second enquiry, state, that I have considered Capt. Daviess as an opposer of the *war*, in this, to wit: That he frequently spoke of it as being badly timed; that we were not prepared; that war should have been declared against France at the same time it was against England; and that Mr. Ma-

dison was not a war president, &c. Other insinuations like these, induced me to consider him an opposer of the war.

Your friend,

JOHN HANNA.

*Capt. Jesse Smith.*

N. B. Towards Capt. Daviess I have never entertained an unfriendly sentiment, but to the contrary, and do therefore regret extremely the necessity of relating matters about which I had never expected to concern. J. H.

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After reading the foregoing documents, I beg the reader's attention to the subjoined letter of Major Bullock to my son, and my son's answer thereto.

No. 11.

PERRYVILLE, 30th July, 1818.

*Dear Sir,*

YESTERDAY, at my table, in company with Captain Daviess, I, amongst other charges, stated that I had been informed that he was an enemy to the late war with England; which he positively denied, and demanded my informant. I hesitated whom to name, as I had heard it from several; but looking into the porch, saw doctor Gordon, whom you made the statement to, the evening before. I then named you, as Gordon was at hand to prove it by. It is always painful to name any man when he is not present; but having done it, I think it my duty to inform you of it; and when I have the pleasure of seeing you, you shall have a full statement, from

Your obedient servant,

EDWD. BULLOCK.

*Henry Smith, Esq.*

*Attorney at Law, Harrodsburg.*

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No. 12.

HARRODSBURG, August 1st, 1818.

*Dear Sir,*

I DO not now recollect the exact expressions I made to Doctor Gordon, relative to Capt. Daviess. I spoke not from

my own particular and immediate knowledge of the matter, (for I do not now remember any particular observation of Daviess respecting the war) but I spoke from the general impression imbibed by those who have heard Daviess on the subject, and from the information of others, whom I can never disbelieve. It cannot be expected, that the exact expressions of so unimportant a character as Capt. Daviess, should be for three or four years treasured in the memory of any man. I am actuated by no personal rancor against Daviess; and I am not old enough to take so deep a plunge in politics, as to engage in the political prostration of any one. It is therefore amply sufficient for me to satisfy you, and others interested, that I was justifiable in stating to Doctor Gordon what I did. To convince you of this, I refer you to Major Thomas Allin, John J. Allin, John Hanna and Thomas P. Moore; also to Doctor William Robertson—gentlemen well known to you, and whose integrity no one dares impeach.

By reference to these gentlemen, you will be perfectly satisfied, that in your porch, the other day, I did not make statements without a proper foundation.

You are not by any means to use this letter for electioneering purposes. I write it entirely to vindicate myself. Show it or speak of it to none, except those who heard me make, or have subsequently understood that I made the expressions alluded to above.

Yours, respectfully,

HENRY P. SMITH.

*Major Edward Bullock, Perryville.*

No. 13.

*Captain Jesse Smith,*

SIR,

AT your request, I give the following affidavit: I went to Perryville on the first day of our last election; while there, I was informed by several gentlemen that Capt. Samuel Daviess had been speaking in an abusive and disrespectful manner of Henry P. Smith. I started from there to Harrodsburg, between one and two o'clock of the same day, with a statement of the polls, and arrived at that place I think between three and four in the afternoon. Some short time after I got there, I met with Henry, and told him what I heard that Capt. Daviess had said about him; namely, that he was nothing but

a tool of Capt. Moore's; that he had gone about and told lies on him, and was a mean, lying puppy. We then parted—he walked up street, and I went to Jennings', and in a few minutes afterwards I heard it reported that Daviess had stabbed Smith.

SAMUEL M. WORTHINGTON.

*Mercer County, sct.*

I hereby certify, that Samuel M. Worthington swore to the above affidavit, before me, a justice of the peace for said county. Given under my hand the 17th day of November, 1818.

JERH. CLEMENS, J. P. M. C.

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No. 14.

HARRODSBURG, August 6th, 1818.

*Sir,*

Understanding that you have been informed, from some mistaken or malignant source, that T. P. Moore was an accessory or adviser of my attack on Capt. S. Daviess on Monday last, I feel it a duty obligatory on me, to give the lie to such information. Previous to the attack, there did not pass a single breath or syllable between Major Moore and myself, relative to it, or to the cause of it. It proceeded entirely from certain unwarrantable and insufferable statements which Daviess made respecting me, not long ago, at Perryville. Information of those statements was not given me until about a minute before said attack. I spoke to, and conversed with no living soul, between the time when such communication was rendered, and my conversation with Daviess, which eventuated in the battle. When a youthful, independent spirit considers his honor and standing in society unjustifiably and outrageously attacked, he does not wait for the cooling and moderating advice of friends, to point out his course of conduct—*his feelings are his guide*. Any assertions, that Moore was apprised of my intention to attack Daviess, you may rest assured are false.

Yours, &c.

HENRY P. SMITH.

*Mr. Beriah Magoffin.*

*From Chief Justice Boyle to T. P. Moore.*

November 12th 1818.

DEAR SIR,

I HAVE no hesitation in stating, at your request, that I have never for a moment given credit to the report in circulation, of Mr. Henry P. Smith having been influenced by you, in the attack which he made upon Capt. Daviess, and which terminated so fatally to the life of Mr. Smith.

He was a man of too much intelligence to be duped, and of too much firmness to be dictated to, by any one, on an occasion of that sort. I knew of no man, of his age, who possessed those attributes in a more eminent degree than Mr. Smith. He was, indeed, remarkably polite and amiable in his deportment towards others; but he was nevertheless firm and independent, and never acted contrary to his own feelings and sense of propriety. Judging, therefore, alone from his general conduct and character, I would not scruple to say that the report was groundless. But I have moreover heard Mr. Smith's own statement, flatly contradicting the report; and knowing him to have been a man of the most perfect truth and integrity, I give to his statement the most unreserved and implicit confidence.

I am, respectfully, your most obedient servant,

JOHN BOYLE.

I, Richard Boyce, of the town of Harrodsburg, being requested, do certify, that a few days after H. Smith had been stabbed by Samuel Daviess, Esq. I called to see Smith. Upon casually mentioning the report then in circulation, of T. P. Moore having originated or advised his attack on Daviess, he pronounced it a falsehood, declaring he had not seen Moore after the information upon which the attack was bot-tomed was given, until he made it. And I further state, that from an acquaintance with H. P. Smith, I should place the most implicit reliance upon his word.

RICH<sup>d</sup>. BOYCE.

November 6th, 1818.

Test, JACOB KELLER.

## TO THE PUBLIC.

MY object in this publication is, to do justice to the character of a deceased son, whose tender years, virtue and merit deserved a better fate. Also, to expose to public view a transaction which, in my opinion, was extremely censurable. In doing this, I now state, that previous to the circumstance of the death of my son, I never harbored the least personal enmity towards either of the persons whose conduct I have arraigned. Indeed, I am not conscious of having felt personal enmity against a single individual of the human family. It is true, that I may have often given offence by not yielding to the fashionable complaisance of amalgamating virtue and vice, or in other words making a distinction between open, candid, fair dealing, and that of art, cunning and deceit. I thought it my duty to make this distinction, in order to give merit its due. Hypocrisy I always detested. I have never understood that even my enemies ever charged me with the want of candor or veracity. But sometimes they have charged my sins to the account of my friends. As I always feel willing to bear the burthen of my own acts and deeds, I now declare, that I have neither consulted friend nor foe in the course I have taken in this publication. Those parts of it bearing my signature, are written by myself, and no person has seen them, except my son who copied them, until the manuscript was put into the hands of the printer.

I may be charged by some, with indulging my feelings too much in what I have written. To those I answer, that the whole evidence of the case is before the reader. The impartial and candid will judge whether the conclusions which I have drawn, be justified from the evidence and circumstances of the case. I have not the vanity to expect, that this publication, coming from an obscure individual, will excite much interest in the public mind. The present crisis is very differently disposed. I consider, that the moral, as well as the physical world, has its epidemic diseases. When we see vice and corruption taking their gigantic strides in open day, while virtue only whispers truth and justice with fear and caution, it shows a strong morbid action in the body moral

and politic. When this body gets restored to its wonted health, (which I pray God to speed) then these few remarks may be remembered with some respect.

JESSE SMITH.

No. 16.

FEBRUARY 2d, 1819.

Dear Sir,

AS far as my testimony can avail in rescuing the character of your son, Henry P. Smith, from the obloquy which some who were strangers to him, may be inclined to attach to his name, I most cheerfully give it. I was intimately acquainted with him some time before his unfortunate death, and I can with the utmost sincerity say, I knew no man of his age, whom, for his moral virtues and his mental endowments, I appreciated so highly.

His disposition was strikingly amiable and benevolent, and his deportment peaceful and orderly in an exemplary degree; and such were his intellectual capacity and acquirements, that united with his studious habits and integrity of his principles, they presaged a life equally useful to his country and distinguished in the profession of law, the practice of which he was just commencing.

His death was therefore deeply deplored by his acquaintances, as a loss, not only to his friends and relations, but to his country.

I am, respectfully, your obedient servant,

JOHN BOYLE.

Capt. Jesse Smith.

No. 17.

BEING requested by a friend of the late Henry Pendleton Smith, to state what I may know respecting his life and character, as well as my means of information, I do state, that I was acquainted with him from about the year 1814, until the time of his death; that during the most of that period we were remarkably intimate, having some part of that time been school-mates, a great part of that space, fellow students in the law, and afterwards, as frequently, if not more frequently, in

each other's company, as is usual between the warmest friends.

In his studies he was remarkably industrious and indefatigable—sitting up frequently till twelve, and rising before it was sufficiently light to read. It was, I confess, with considerable difficulty, that I could bridle myself into his strict and time-economising habits. Though I believe him to have been susceptible of, and really exercising the warmest friendships, yet I know that during our acquaintance he indulged himself comparatively little in company, unless with fellow students, and then generally for the purpose of study. He was careless of dress, but cleanly in person; unusually temperate in eating and drinking; and free from all kinds of debauch whatever. He was generally the first man from the table, and you might expect him to be the last in going to the *grog-shop*. He despised that but too common and almost fashionable vice of *night-walking*. He seemed to regard truth as a virtue of the first importance, and “to love it for its own sake.” His tenderness for his reputation as a man of truth, seemed to keep pace with the exalted ideas he had formed of the thing itself. Independent, noble, courageous and generous, he despised art, cunning, cowardice and hypocrisy. If he wrote any composition of any kind, he would scarcely ever listen to any suggestion of alterations, unless it was of grammatical errors. His abhorrence of calling any thing his own, which was not purely and entirely so, was perhaps carried to an extreme. He seemed to delight in an open, candid course, and to think that any object which could not be obtained by such means, was not worth the having. Guiltless of any wrong too, he was perfectly fearless of man. He thought hypocrisy the meanest crime that could blacken the human heart, and regarded it as the most mischievous in its consequences to society. He was contemplative and silent; in all mixed companies, modest and unassuming, but especially before virtuous age and experience. He had a heart that seemed to feel strongly “another's woe,” and which led him to neglect but few opportunities of “visiting the sick and the afflicted.” He loved liberty, if I may be allowed the expression, to a delightful extravagance; and as extremely detested tyranny and oppression. My opinion of his intellect is, that it was strong, robust and active. It was not so much the dexterous arrow of Paris, as the majestic rock of Ajax. It was not so capable of sport and play, as of profound meditation and research. If his imagination was incapable of wild and extensive flights, its flights were at least well sustained. If the butterflies of



wit and imagination did not hover continually around his mind, neither did they darken nor divert the sunshine of his luminous intellect.

D. C. WESTERFIELD.

No. 18.

SEPTEMBER 23d, 1818.

*Dear Sir,*

I HAD not supposed that malice itself, would attempt to assail the character of Henry, however much envy might wish an opportunity for so doing. It is with cheerfulness I bear testimony to his worth, because it at all times delights my soul to dwell on the virtues of Henry. I have known him from an infant, and marked the progress of his mind; he was educated mostly at the same schools with my own children. I have had constant opportunities of observing his conduct; his modest and unassuming behavior, peaceable and amiable disposition, secured to him the love and esteem of his school fellows, his teachers, and all who became acquainted with him. His industry and incessant application, in the pursuit of literary acquirements and useful information, the rapid progress he made, early indicated an unusual strength of mind, and promised fair to make him useful to his country, and a blessing to his parents and friends.

Not only in literary pursuits was he thought to excel, but in morality also, I have often thought he exceeded most young men of his age. If he was under the influence of vice of any sort, I never knew or heard of it; to me he appeared to possess the virtues of truth, candor, prudence, forbearance, fortitude and perseverance in a pre-eminent degree, and have often thought you were doubly blessed in having such a son. When giving advice to my eldest sons, I had constantly reminded them of their friend Henry, and his conduct, as examples worthy of imitation; I had also flattered myself that my sons would derive great advantages, from the friendly advice and able instructions which his amiable disposition and enlightened mind would have afforded them.

Nature had endowed Henry with a strong mind, which he, by unremitting industry, had highly cultivated. Very few young men of his age possessed a judgment equally good, or talents equally brilliant. With such talents, he could not have failed to feel his dignity as a man. You had yourself

early taught him, by both precept and example, to know the inestimable value of candor and independence. His moral principles were well settled and confirmed; his soul beamed with philanthropy; he dictated his own actions, and I do not believe that any influence on earth could have induced him to do an act which in his own opinion he did not believe to be right. Therefore, it is my opinion, that any reports or insinuations, that he was misguided by the influence of others, are entirely without foundation.

I have not language, my dear sir, to express the exalted opinion I had of Henry's worth. That none ever more sensibly felt or lamented the loss of a friend, than I did his, is what I can with sincerity assure you. Not only on my own account, and on that of his parents and friends, did I lament his loss, but on that of my country also. Talents such as his were, when accompanied with virtue, industry and stability, could not have failed (if his life had been prolonged) being useful to his country, making him an ornament to society, and one of the props and pillars of our rights and liberties.

Accept my best wishes for your health and tranquility.

Your friend, &c.

EDWARD WORTHINGTON.

*Capt. Jesse Smith.*

No. 19.

*Letter from Colonel Barbee to General Barbee.*

DANVILLE, Oct. 2d, 1818.

*Dear Brother,*

NO doubt but that you have heard of the death of Henry P. Smith, which was occasioned by the stab of a dirk from the hand of Capt. Samuel Daviess. Daviess had his trial at our last court, and was acquitted by the jury, which has given rise to a great deal being said, both for and against the parties. Suffice it for me at present to give to you, in as brief and candid a manner as I can, the character of H. P. Smith.

In the first place, there is nothing that can be said by me, or any other person, in his favor, which he did not, in my opinion, justly merit. I have known him ever since he was an infant, and have had frequent opportunities of observing his conduct, which I ever viewed as prudent, modest, unassuming, polite and respectful to others. His close application to

study, and perseverance in the pursuit of useful knowledge, had in a measure secluded him from the society of the gay and fashionable circles, and for which he did not appear to have much relish—by which means he had treasured up a fund of information, rarely to be met with in a young man of his age. His character, as to integrity, firmness, and truth, were excelled by none. And I never knew or heard of any act of his, in my opinion, that was dishonorable; and his loss I shall ever deplore.

I am, dear brother, yours respectfully,

JOSHUA BARBEE.

*Gen. Elias Barbee, Green County.*

No. 20.

*Letter from T. P. Wilson to Capt. T. P. Moore.*

SHELBYVILLE, Nov. 18th, 1818.

*Dear Sir,*

I HAVE just received a few lines from you, in which you request that I should make a statement touching the character of our deceased friend, H. P. Smith, adverting to our intimacy, &c. With such request I readily comply.

Mr. Smith and myself were students of law, at the same time, under Mr. Rowan. We occupied the same room. Our intimacy was such as is created by the warmest friendship. I had every opportunity of learning the true character of his deportment, his disposition, and the qualities of his mind.

As to his deportment, it was exemplary for its purity. He was a rigid adherent to the rules of moral propriety—circumspect in all his actions—zealous to have every act stamped with the approbatory seal of rectitude. Idleness, frivolity and dissipation were obnoxious to him. He lived above vice.

As to his disposition: He was mild, generous, and kind; candid, but reserved; far from being irascible, but determined and inflexible; adopting no principle until he had thoroughly investigated its purity; when thus received, he never yielded it until its fallacy was demonstratively proved. He never formed an opinion without a plausible reason to support it; an arbitrary dogmatizing he despised. His noble and unaffected spirit of independence, would not suffer him to bow to dictatorial assertions—he assumed and maintained the right of thinking and judging for himself. Pardon the di-

gression, and I will say, he was a warm republican, and looked with a jealous eye upon every thing that savored of encroachment upon the people's liberties. I have said he was mild: He was so, until some injustice done him called his stronger passions into action; when he became daringly resolute, and unremitting in his exertions to be redressed.

As to the qualities of his mind: He was deep in thought, but slow in speech, until warmed by the heat of argument—then he was animated and voluble. In the investigation of a subject, he pursued with great precision, every branch which it presented. In fine, he was a close and logical reasoner.

Yours, with respect,

T. P. WILSON.

*T. P. Moore, Esq. Harrodsburg.*

No. 21.

NOVEMBER 22, 1818:

AT the request of a friend of the late Henry P. Smith, deceased, I state, that having been intimately acquainted with Mr. Smith from his infancy, I have no hesitation in saying, that the course he pursued, so far as ever came within my knowledge in any way, was such as entitled him to the highest respect. He naturally possessed the advantages of a strong and susceptible mind; and of those advantages he made the most prudent use, by constant study and close application to literary pursuits. His mind was highly cultivated, and well stored with useful knowledge. His deportment was mild, affable and unassuming; yet his principles were firm and independent. As a man of truth and integrity, he possessed my utmost confidence. With respect to what has been said about improper influence, it is my decided opinion, that Mr. Smith, who possessed a mind so enlightened and well matured—whose conduct was governed by the strictest rules of honor and virtue, could not have been induced to do an act which his own judgment would have disapproved.

JOHN BOWMAN.

*Letter from Major Allin to J. Smith.*

DECEMBER 10th, 1813.

*Dear Captain,*

IT affords me pleasure to answer yours touching the character of your son the late Henry P. Smith, deceased, who you may recollect, commenced writing with me at about thirteen or fourteen years of age, and continued about two years, during which time he made one of my family, and then returned to live with you. He again lived with me a short time whilst going to school to Mr. Guerine, and for some time before his death he lived in Harrodsburg, where I saw him almost every day; from which I had a full opportunity of becoming well acquainted with his manners, habits and attention to business. In point of moral conduct and virtue in general, I considered him a model either for old or young: nor was his industry and application to business surpassed by any youth I ever knew. When the business of the office did not require his attention, contrary to the usual course of youth of his age, instead of amusing himself as other boys at play and boyish diversions, he was generally employed in reading books calculated to afford useful information; and although he was silent and modest, yet when drawn into conversation, he appeared as if the subject in question, had been long by him canvassed and matured. And such was his course until the unhappy event that terminated his life; before which if Henry ever had an enemy, I never knew it.

One circumstance relative to my late young friend, I cannot omit; which is, that whilst he was at school with Mr. Guerine, that teacher required of his students that each should write an essay on such subject as they might choose. Various were the subjects on which the pupils wrote, but your son's was the only one on morality and religion; and such was its merits, that I have seldom heard a better from the pulpit.

You wish my opinion of Capt. Daviess' politics. The captain and myself have long been acquainted, and near neighbors; he has for several years lived, and still lives in Harrodsburg, where, as well as in the adjacent courts, he practised law, and I conclude that all the captain's acquaintances consider him what is termed a federalist; by which term or appellation, you are not to understand that I considered Capt. Daviess an enemy to his country. Very far from it; but by

the term I mean no more than that he disapproved of the declaration of the late war with Great Britain, the course pursued by our government in the prosecution of it, as well as the terms of the peace.

I am, dear captain with much esteem,

Your sincere friend,

THOMAS ALLIN.

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No. 23.

DANVILLE, December 21st, 1818.

*Dear Sir,*

IT was with surprise that I learned on my return from Philadelphia, that an attempt had been made to asperse the character of my friend, your unfortunate son Henry P. Smith, deceased.

I could not have supposed that the innocent, modest, reserved course of life to which he has adhered from my first acquaintance with him, and which I may say was an inherent quality of his character, could ever have subjected him to the calumny even of enemies. But "envy will merit as its shade pursue."

Our acquaintance has been coeval since my residence in Danville, and our intercourse of that unreserved kind, which could not but afford me a knowledge of every trait in his character and disposition. When our respective situations did not admit of personal interviews, we had recourse to epistolary correspondence. And I can say, with the strongest conviction that my opinion of his good qualities was correctly formed, that every interview *with*, and every epistle *from* him, gave me proofs of a strength of mind, a firmness of character, an inherent attachment to virtuous principles, totally at variance with any thing that would in the least sully the character of a youth, and such as would establish it if known to the world, too durably to be affected by the poisonous breath of calumniators.

His probity, his love of truth, his adherence to honorable principles; were such, that he could not be charged with a dereliction of either in the *smallest* point; no, *not even suspected*, without the *most palpable* injustice. No temporary. nor even

permanent advantage would have been purchased from him at the price of these qualities ;—qualities which in his estimation gave their possessor a pre-eminence over all others. To these qualities, together with his intense application to study, his benevolent disposition, his affable deportment, his adherence to all the principles of morality, would he have been indebted for his advancement ?

He resigned all the pleasures of gay company for his favorite pursuit, his study : Not because he was an unsocial character, (for none was more social, none more capable of the truest friendship ; nor had any a higher relish for the unre-served intercourse of friends) but because those pleasures were at variance with his favorite object.

Nor did he pursue with so much zeal the study of his adopted profession, because it might be lucrative in the end. His views extended beyond this, as he believed a pre-eminence in it would enable a virtuous, good character to promote the best interests, the happiness of mankind.

His bosom glowed with patriotic emotions—his views of the prosperity of our country were extensive, and his hopes of its continual advancement great ; and whatever might have tended to retard, *that* would have met in *him* a zealous opponent.

Perhaps his enemies may say, I feel too much of friendship to be an impartial narrator of his good qualities. To them I would only say, that if they respected virtue, and the strictest morality, together with the qualities I have enumerated, and had been as intimate with him as I have been, they never would have been his enemies.

I have pleasure in giving this token of respect to the memory of one whom I considered a warm friend, and who might be pointed out as an example to those of his own age, and from whose conduct many of more advanced years might take salutary lessons.

Respectfully yours,

P. G. RICE.

☞ The receipt of other letters on the same subject as the foregoing from several gentlemen of the first respectability, is thankfully acknowledged, but the limits of this publication prevent their insertion.

J. S.

*Extract of a Letter from a young man coeval in years, and with whom a friendly correspondence had existed with the deceased, dated,*

BOWLING-GREEN, November 30th, 1818.

“IT may be some consolation to the bosom of fond parents and numerous friends, whose minds have been borne down with bitter woes, to hear what was the reception of Henry’s Oration on the 4th of July. Although his character as a young man of profound erudition, sound principles and brilliant talents, had reached this place before, yet the communication of the 6th inst. confirmed the opinion, that the rash, the inconsiderate, unjustifiable and Heaven-daring hand had plucked from the blooming field of our state one of its choicest flowers just opening its beauties to a gazing & admiring world. There is no unprejudiced mind who knew him personally, even in his boyhood, who would not vouch for the purity of his heart. But when they have read his single Oration, how can they fail to form the most exalted opinion of his character? This speech alone, shows the greatness and goodness of his soul. It speaks joy at the progressive march of virtue; gladdens at the downfall of tyranny and superstition—and bids speed to the universal liberty and happiness of man.

“When we consider those ideas and sentiments flowed from the mind of a youth not yet twenty-one years old, what must have been the fond anticipation of those who loved the human family? But, alas! his short course is run, his lamp of life is extinguished forever.

“Is there no balm in Gilead?” Is there no consideration to reconcile his loss to the feelings of his many friends? Yes, his heavenly spirit has flown to more happy climes; and is in the full fruition of boundless immortality, where the bloody hand shall not mar his peaceful prosperity, and where the monster death, shall be seen nor felt no more. All finite man can do is to bedew his grave with the tribute of tears, and erect a monument of fond recollection to their departed friend.”

The foregoing extract is published in order to do justice to the feelings and sensibilities of the author.



*The following is taken from a letter written by my deceased son to an intimate friend and correspondent, dated 9th February 1817. This extract will further illustrate his true character.*

“YOUR letter of the 28th January last, was timely received. In it you express your uneasiness at the existence of the violent political parties in our country, and request my remarks thereon. My dear sir, this is a hard request. Politics is a theme with which I am less acquainted than with any other of the same importance. None of my former pursuits or avocations, except the one in which I am now engaged, had any connexion with politics. These of course seldom occupied my attention. Since I commenced the law, which is well known to be intimately blended with politics, I have discovered so great a variety, and so opposite opinions prevailing on the latter subject, that I have hesitated in forming an opinion myself, from the dread of imbibing an erroneous one. This I shuddered at: For on a subject of such immense importance as that of politics—on a subject whose object is to prescribe rules and regulations for the conduct of man, to secure those inestimable rights which were granted him by heaven—his life, his liberty, his character and property—I thought an erroneous opinion was above all things to be shunned. And I am not yet sufficiently acquainted with human nature—I am not yet enough versed in the history of man—I have not yet so ample a knowledge of the causes which have upreared and pulled down governments and empires, as to be capable of judging what forms of government, what kind of laws, or what system of policy is best adapted to preserve immaculate the great rights of man, and promote his lasting and universal happiness. On this account, I have heretofore refrained, and do still refrain, from fixing my political sentiments; though this wavering, unsettled situation has at times operated to my disadvantage. It has occasioned me, when in company where politics was the subject of discussion, either to sit in silence, or at different times to advocate different principles. This has been construed into a cold indifference, or a lukewarmness which I feel in the welfare of our country. Such a construction, however, I can pronounce a false one. God knows, I have my country's welfare much at heart. My tongue and arm, as long as life shall last, shall act in its support. But notwithstanding this, I shall forbear making up and expressing my opinion on the different systems

of policy which are afloat in our country, until I am better qualified for forming a correct one. And am I not right in doing so? And is it not surprising to see so many upstart, hair-brained young men, just emerged from school, or just crawled out from their mama's lap, ushering forth their opinions on politics, damning every measure, and God-damning every officer of government, with as much freedom and confidence as if they were acknowledged Pitts or Foxes?

From hence you see, my friend, I cannot offer you any observations respecting the justice of either side of the existing parties in our country. And from the same cause, to wit, ignorance of politics, I dare not make any remarks on what will be the probable result of such violent opposition. I can only join with you in deeply lamenting that such parties do exist, and in expressing my fervent wish, that their confliction may not eventuate in consequences which will be to our country irreparably injurious.

There are some among us who maintain, that the difference of opinion on politics is an advantage; because collision of sentiment, like the collision of matter, produces light. And from this belief they express no fear of danger ensuing from the prevailing party spirit. An opposition of sentiment, where virtuous, enlightened and unprejudiced minds are the calm disputers, and where there are cool, impartial judges to decide, is undoubtedly beneficial, and sheds light on the subject contested. But among mankind in general, who are their own judges—who commonly form opinions and become bigotted in them before they are in any manner discussed, and before any reflective investigation whatever, and whose blood flashes in their face when the correctness of their political opinions is called in question, collision of opinion must unavoidably be one of the greatest sources of evil. Opposition of sentiment in politics, seldom or never fails being carried to violence; and violent opposition quickly engenders factions. To the second of these three stages, our country appears to have arrived. And O! may it not travel on to the third? Is there a possibility of this? The progressing violence of our parties, compels us to admit that there is; although we cannot make such admission without trembling, and crying out, gracious Heaven! forbid it. We cannot reflect on the possibility—yea; perhaps I had better say, on the probability, of our beloved country being one day torn with factions, without having our feelings racked with the most painful sensations. For out of factions, have risen a Cæsar, a Dionysius, a Cromwell, a Bonaparte. Great God! avert the impending danger!

But let the issue of the prevailing party violence, my dear friend, be what it may, I trust in God, that we will raise our voice and arms under that party's standard which struggles for freedom, and there combat against despotism and tyranny, until our hearts no longer beat. Let the pride of our souls, while we dwell on earth, be, to obtain that exalted, that glorious appellation—the defenders of freedom, the enemies of slavery. For my part, I sigh for no other glory—I care not for any thing else being said or done concerning me, after I am laid in the “narrow house,” than for the traveller, as he passes by my grave, to point to it and say, “there lies the friend of liberty and the tyrant's foe.”

My sentiments respecting the destructive consequences that are to result to our country from riches, are the same as yours; and these consequences are the more terrifying to me, on account of their appearing unavoidable. For I expect, in a country situated like ours, where every mortal pursues what he pleases, and chooses his own track to happiness, and where commerce with the nations of the earth has such an extensive range, it would be impossible to prevent individuals from growing rich. The only means, according to my views of the matter, by which we can repel, or at least procrastinate the aspid effects of wealth, must be those which you have named in your letter, to wit, by disseminating useful knowledge, and by deeply instilling into the minds of those who are receiving educations, true and noble sentiments of virtue and freedom. I look upon the God of Wealth as a monster who has already mangled our individual comfort, and who will, on some future day, strike the great death-blow to our political happiness. And I am surprised to see so many, of the present day, beholding this God with eyes of admiration, or at any rate with an aspect of unconcern. For although he himself has a fair, ruddy, plump, strong, hale, smiling and lively looking face, yet certainly no friend to virtue, knowledge or liberty, can seriously look towards him, without either trembling or turning away in disgust; for by his side stalk the horrid demons, vice and ignorance; his left hand leads along black, satan-browed tyranny, and his right hand hold a spade to dig the grave of liberty. But my paper tells me to stop, which I will, by subscribing myself yours entirely and eternally,

HENRY P. SMITH.”

The letter containing the foregoing extract, was enclosed to me under cover, with these impressive words: “It (meaning the letter) is well calculated to bring to one's recollection the image of its author. I shall never again find such a correspondent—such a friend.”

*The following is an extract from a speech on Death, composed and delivered by Henry P. Smith, at a school exhibition, when he was about 16 years old. The piece is lengthy, and does much credit to his early mind. At the request of his mother, a manuscript copy was furnished her. The whole will be published at some future day.*

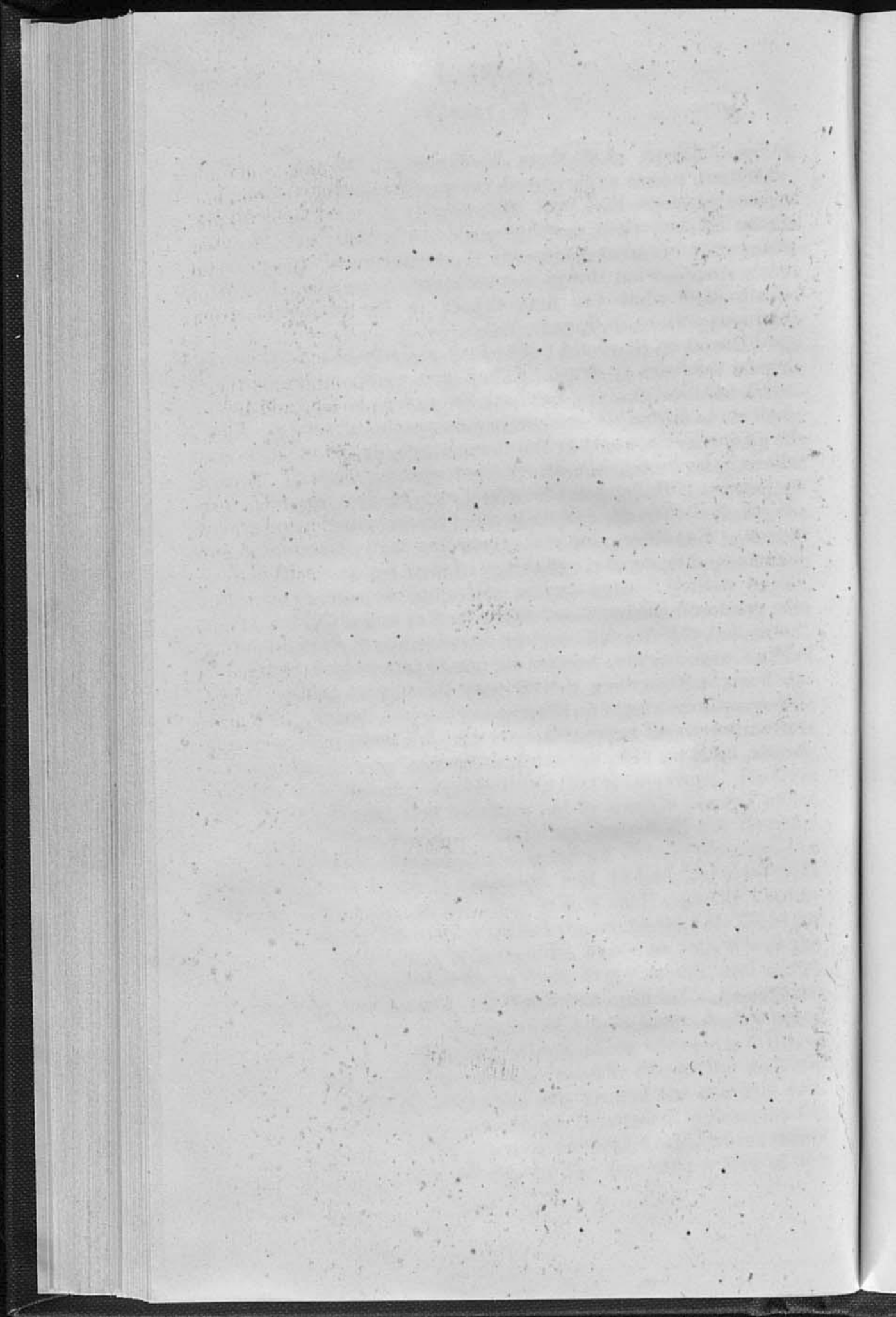
“ But it is not to be expected, that my reasonings or your cool reflections will inspire you with contempt of death, while you are now far distant, as you think, from the end of life. There must be something besides those reasonings and reflections, which are cast when in undisturbed health—something that proceeds from within, and tells you that you may defy the terrors of the king of terrors. Some inward tongue, that says, I despise the scoffs of wicked men, I defy the snares of the mischievous wicked, I do not fear the bloody blade, the grinning smiles of ghastly death. This inward voice is, what? It is needless for me to tell you, that it is a self-approbating conscience. Never while life exists, will you have peace, happiness or pleasure—never will you be able to conquer the fear of death, without a peaceful conscience. A good conscience is as necessary towards the happiness of a person, as food is towards the support of life. When a person has a self-approbating conscience, he fears nothing that can happen him hereafter; and when he fears nothing that may come in the next world, he may expect every thing that is good—every thing that is pleasing—every thing that is cheering. He feels some inward spirit that tells him not to trouble himself about the affairs of this world—to stand up against all the troubles and temptations thereof—to despise all vicious pleasure—to hold the fear of death in contempt, and to look forward with delightful pleasure, at the time which shall separate his immortal soul from its mortal frame, thence to take its flight up to the celestial fields, where troubles cease to roll, where the sweet sound of happiness flows from every mouth, and where saints and angels join in one melodious symphony, to sing the praises of *Him* who is the father of all—who made this earth and all the heavenly bodies which shine with such brilliant lustre on the great canopy above—who caused the majestic planets to wheel their extensive orb around our common sun. But let me not have the assurance to attempt to describe the endless pleasures of that place in the next world, where saints and angels have their abode, or the immense power of the

*King of Kings.* Let them be described by some venerable christian, whose experienced years, whose lips of wisdom, and whose virtuous life, will add dignity to what he says, and make his assertions more plausible. Let him tell you what things are necessary towards the acquirement of a peaceful conscience—what things are necessary to conquer the fear of death—and what you may expect in the next world, from virtuous actions in this.

“However, it would not be best entirely to erase from our breast the fears of death. They are wisely implanted there by the God of Nature, to check the career of vice, and to induce us to follow the seldom-trodden paths of virtue. Yet to be as much depressed at the thoughts of death as some are, shows a baseness, a meanness that none but the wicked ought to possess. So long as virtue and religion are our guides, then ought, and then does death become the welcome harbinger of peace. But when vice and corruption take possession of our hearts—when we have nothing in view but the gratifications of our wicked desires—when we despise the solemn counsel of the good and the wise—when we scoff at and ridicule their virtuous and christianlike actions—and when the very name of virtue and talents, creates in our hearts envy and hatred—then ought, then does, then O, may the terrors of death strike like poisonous daggers, deep in our wicked hearts. And may the sunbeams of happiness, never let fall their rays over our heads, until we alter our wicked course.

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ERROR.—In the names of the jurors, for *Thomas Row*, read *Charles Rose*.



\* 343.1  
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